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HOUSE BILL NO. 2145

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 13, 2001)

(Patron Prior to Substitute—Delegate Drake)

A BILL to amend and reenact §§ 36-55.63 and 58.1-435 of the Code of Virginia and to repeal § 58.1-336 of the Code of Virginia, relating to low-income housing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.63 and 58.1-435 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.63. Low-income housing credit.

A. Any person shall be entitled to a credit against the income taxes imposed pursuant to Chapter 3 (§ 58.1-300 et seq.) by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 for the first any five taxable years in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board of Housing and Community Development for claiming such credit on the applicable Virginia income tax return.

B. The Board of Housing and Community Development shall issue regulations establishing the amount of the low-income housing credit allowable, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than twelve months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a twelve-month period for the taxable year.

C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. The total maximum amount of low-income housing credits which may be approved by the Board in any calendar year shall be \$3.5 million \$500,000. When the Department authorizes a person to claim a low-income housing credit amount on the Virginia income tax return, the amount allocated for the initial calendar year shall be applied to reduce the total maximum credit limit, only for the first calendar year in which the credit amount is authorized by the Department. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

D. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia income tax return for which the applicable Virginia low-income housing credit was applied or used. The Board shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia income tax return.

E. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation or the State Corporation Commission, as applicable, that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia income tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Housing and Community Development shall also provide the Department of Taxation or the State Corporation Commission, as applicable, with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

§ 58.1-435. Low-income housing credit.

A. Any person shall be entitled to a credit against the tax imposed by § 58.1-400 by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of this title in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to § 36-55.63 for the first any five taxable years, as such years are determined by the Board of Housing and Community Development, in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998. Credits granted to a partnership or S

60 corporation shall be passed through to the partners or shareholders, respectively. Credits granted to a
61 partnership, limited liability company or electing small business corporation (S corporation) shall be
62 allocated among all partners or shareholders, respectively, either in proportion to their ownership
63 interest in such entity or as the partners or shareholders mutually agree as provided in an executed
64 document, the form of which shall be prescribed by the Board of Housing and Community Development.

65 B. Any person claiming a credit pursuant to subsection A shall be subject to recapture of the credit
66 pursuant to § 36-55.63. Any credit recapture shall be assessed and collected in the same manner as a tax
67 attributable to a change in federal taxable income within the meaning of § 58.1-311.

68 C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
69 taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier
70 of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable
71 year in which the Department of Housing and Community Development has certified the amount of such
72 tax credit pursuant to § 36-55.63. No credit shall be carried back to a preceding taxable year. If a
73 taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another
74 credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding
75 taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not
76 have a carryover provision, and then any credit that is carried forward from a preceding taxable year,
77 prior to the utilization of any credit allowed pursuant to this section.

78 2. That the provisions of this act shall be effective for all taxable years beginning on or after
79 January 1, 2001.

80 3. That § 58.1-336 of the Code of Virginia is repealed.