

069160140

SENATE BILL NO. 279

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 36-55.63, 36-137, and 36-139 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to tax credits for low-income housing units.

Patron—Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.63, 36-137, and 36-139 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:

§ 36-55.63. Low-income housing credit.

A. Any person shall be entitled to a credit against the taxes imposed 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 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 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 \$500,000. 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 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 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 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.

F. *In no case shall the Department of Housing and Community Development approve low-income housing credits pursuant to this section for housing units placed in service on or after January 1, 2006. In addition, only those persons who were approved by the Department to receive a credit under this section and § 58.1-435 for their taxable year beginning in calendar year 2005 shall be eligible to receive credit under this section for taxable year 2006 and thereafter, and such persons shall be eligible*

INTRODUCED

SB279

59 *for credit only for those low-income housing units for which the Department approved credit under this*
60 *section and § 58.1-435 for taxable year 2005.*

61 § 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory Committee.
62 The Board shall exercise the following powers and duties, and such others as may be provided by
63 law:

64 1. Provide a means of citizen access to the Department.

65 2. Provide a means of publicizing the policies and programs of the Department in order to educate
66 the public and elicit public support for Department activities.

67 3. Monitor the policies and activities of the Department and have the right of access to departmental
68 information.

69 4. Advise the Governor and the Director on matters relating to housing and community development.

70 5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or
71 amend such rules when necessary.

72 6. Issue a certificate of competence concerning the content, application, and intent of specified
73 subject areas of the building and fire prevention regulations promulgated by the Board to present or
74 prospective personnel of local governments and to any other persons seeking to become qualified to
75 perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of this title, Chapter 9 (§ 27-94 et seq.) of
76 Title 27, and any regulations adopted thereunder, who have completed training programs or in other
77 ways demonstrated adequate knowledge.

78 7. Levy by regulation up to two percent of building permit fees authorized pursuant to § 36-105 to
79 support training programs of the Building Code Academy established pursuant to § 36-139. Local
80 building departments shall collect such levy and transmit it quarterly to the Department of Housing and
81 Community Development. Localities that maintain, individual or regional, training academies accredited
82 by the Department of Housing and Community Development shall retain such levy. However, such
83 localities may send employees to training programs of the Building Code Academy upon payment of a
84 fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year
85 for the continued operation of the Building Code Academy.

86 The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised
87 of representatives of code enforcement personnel and construction industry professions affected by the
88 provisions of the building and fire prevention regulations promulgated by the Board. Members of the
89 Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and
90 necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The
91 Committee shall advise the Board and the Director on policies, procedures, operations, and other matters
92 pertinent to enhancing the delivery of training services provided by the Building Code Academy.

93 8. Establish general policies, procedures, and programs for the Virginia Housing Partnership
94 Revolving Fund established in Chapter 9 (§ 36-141 et seq.) of this title.

95 9. Determine the categories of housing programs, housing sponsors and persons and families of low
96 and moderate income eligible to participate in grant or loan programs of the Virginia Housing
97 Partnership Revolving Fund and designate the proportion of such grants or loans to be made available in
98 each category.

99 10. Advise the Director of the Department on the program guidelines required to accomplish the
100 policies and procedures of the Virginia Housing Partnership Revolving Fund.

101 11. Advise the Virginia Housing Development Authority on matters relating to the administration and
102 management of loans and grants from the Virginia Housing Partnership Revolving Fund.

103 12. Establish the amount of the low-income housing credit pursuant to § 36-55.63 and the community
104 housing tax credit pursuant to § 58.1-439.12:02, the terms and conditions for qualifying for such
105 credits, and the terms and conditions for computing any credit recapture amount for the Virginia
106 income tax return.

107 13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.

108 14. Advise the Department in the development of the Consolidated Plan Strategy to guide and
109 coordinate the housing programs of the Department, the Virginia Housing Development Authority, and
110 other state agencies and instrumentalities.

111 15. Advise the Governor and the Department on the expansion of affordable, accessible housing for
112 older Virginians and Virginians with disabilities, including supportive services.

113 § 36-139. Powers and duties of Director.

114 The Director of the Department of Housing and Community Development shall have the following
115 responsibilities:

116 1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their
117 planning and development activities, boundary changes, changes of forms and status of government,
118 intergovernmental agreements and arrangements, and such other information as he may deem necessary.

119 2. Making information available to communities, planning district commissions, service districts and
120 governmental subdivisions of the Commonwealth.

121 3. Providing professional and technical assistance to, and cooperating with, any planning agency,
 122 planning district commission, service district, and governmental subdivision engaged in the preparation
 123 of development plans and programs, service district plans, or consolidation agreements.

124 4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the
 125 General Assembly in accordance with § 15.2-4216.

126 5. Administering federal grant assistance programs, including funds from the Appalachian Regional
 127 Commission, the Economic Development Administration and other such federal agencies, directed at
 128 promoting the development of the Commonwealth's communities and regions.

129 6. Developing state community development policies, goals, plans and programs for the consideration
 130 and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the
 131 General Assembly.

132 7. Developing a Consolidated Plan to guide the development and implementation of housing
 133 programs and community development in the Commonwealth for the purpose of meeting the housing
 134 and community development needs of the Commonwealth and, in particular, those of low-income and
 135 moderate-income persons, families and communities.

136 8. Determining present and future housing requirements of the Commonwealth on an annual basis
 137 and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to
 138 ensure the availability of housing where and when needed.

139 9. Assuming administrative coordination of the various state housing programs and cooperating with
 140 the various state agencies in their programs as they relate to housing.

141 10. Establishing public information and educational programs relating to housing; devising and
 142 administering programs to inform all citizens about housing and housing-related programs that are
 143 available on all levels of government; designing and administering educational programs to prepare
 144 families for home ownership and counseling them during their first years as homeowners; and promoting
 145 educational programs to assist sponsors in the development of low and moderate income housing as well
 146 as programs to lessen the problems of rental housing management.

147 11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

148 12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

149 13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

150 14. Establishing and operating a Building Code Academy for the training of persons in the content,
 151 application, and intent of specified subject areas of the building and fire prevention regulations
 152 promulgated by the Board of Housing and Community Development.

153 15. Administering, in conjunction with the federal government, and promulgating any necessary
 154 regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

155 16. Identifying and disseminating information to local governments about the availability and
 156 utilization of federal and state resources.

157 17. Administering, with the cooperation of the Department of Health, state assistance programs for
 158 public water supply systems.

159 18. Advising the Board on matters relating to policies and programs of the Virginia Housing
 160 Partnership Revolving Fund.

161 19. Designing and establishing program guidelines to meet the purposes of the Virginia Housing
 162 Partnership Revolving Fund and to carry out the policies and procedures established by the Board.

163 20. Preparing agreements and documents for loans and grants to be made from the Virginia Housing
 164 Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which
 165 loans and grants are to be made from such fund; directing the Virginia Housing Development Authority
 166 as to the closing and disbursing of such loans and grants and as to the servicing and collection of such
 167 loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the
 168 ownership, occupancy and operation of the housing developments and residential housing financed or
 169 assisted by such loans and grants; and providing direction and guidance to the Virginia Housing
 170 Development Authority as to the investment of moneys in such fund.

171 21. Advising the Board on matters relating to policies for the low-income housing credit and *the*
 172 *community housing tax credit* and administering the approval of ~~low-income housing~~ *such* credits as
 173 provided in §§ 36-55.63 and 58.1-439.12:02, respectively.

174 22. Establishing and administering program guidelines for a statewide homeless intervention program.

175 23. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block
 176 Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and
 177 associated services to low-income households within the Commonwealth in accordance with applicable
 178 federal law and regulations.

179 24. Developing a strategy concerning the expansion of affordable, accessible housing for older
 180 Virginians and Virginians with disabilities, including supportive services.

181 25. Serving as the Executive Director of the Commission on Local Government as prescribed in

182 § 15.2-2901 and perform all other duties of that position as prescribed by law.

183 26. Carrying out such other duties as may be necessary and convenient to the exercise of powers
184 granted to the Department.

185 § 58.1-439.12:02. *Community Housing Tax Credit.*

186 A. For taxable years beginning on or after January 1, 2006, a developer or investor who builds or
187 substantially rehabilitates a multifamily housing project that qualifies under the federal Low Income
188 Housing Tax Credit Program (LIHTC) administered by the Virginia Housing Development Authority,
189 shall be allowed a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et
190 seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1- 1200 et seq.); or Article 1
191 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1. The credit shall equal 50% of the actual amount
192 expended by the developer or investor to acquire the land for such multifamily housing project
193 qualifying under the federal LIHTC. In no event, however, shall the credit exceed an amount equal to
194 \$5,000 multiplied by the number of units of low-income housing (placed in service as a result of such
195 land acquisition) that qualify under the federal LIHTC. Credit shall only be allowed for that portion of
196 such land acquisition costs that directly relates to a unit or units of low-income housing that qualify
197 under the federal LIHTC. The credit may be claimed in the taxable year in which the qualifying
198 multifamily housing is placed in service.

199 B. The amount of credit that may be claimed by the taxpayer in any taxable year shall not exceed
200 the lesser of (i) the tax imposed for the taxable year, or (ii) \$500,000. Any credit not usable for the
201 taxable year may be carried over for credit in the next five taxable years until the total amount of the
202 tax credit has been taken.

203 C. A developer or investor who has been allowed a tax credit under this section may transfer any
204 unused credit for use by another taxpayer on a Virginia income tax return.

205 D. The land that is the subject of a tax credit under this section shall not again be the subject of a
206 tax credit under this section for at least 15 years from when the credit is first allowed. In addition, no
207 tax credit shall be allowed more than once under this section for a unit or units of multifamily housing
208 unless the basis for subsequent tax credit is a substantial rehabilitation to such unit or units.

209 E. Any credit claimed or transferred under this section shall be claimed or transferred in accordance
210 with guidelines established by the Board of the Department of Housing and Community Development. If
211 any multifamily housing for which a credit has been allowed under this section is not operated in
212 compliance with the provisions of § 42 of the U.S. Internal Revenue Code of 1986, as amended, within
213 the 15 years that immediately follow the taxable year in which the qualifying multifamily housing is
214 placed in service, the Department of Taxation or the State Corporation Commission, as applicable, shall
215 recapture the entire amount of any credit claimed for such multifamily housing up through the taxable
216 year of noncompliance. In addition, no credit may be claimed pursuant to this section for such
217 noncomplying multifamily housing subsequent to the finding of noncompliance. The entire amount of any
218 such credit claimed shall be recaptured from the taxpayer who actually claimed the credit. The
219 Department of Housing and Community Development shall at least annually check each multifamily
220 housing that it has certified, pursuant to subsection G, as qualifying for the credit provided under this
221 section to verify that such housing is being operated in compliance with the provisions of § 42 of the
222 U.S. Internal Revenue Code of 1986, as amended.

223 F. The Board of Housing and Community Development shall develop guidelines setting forth the
224 general requirements for qualification of the credit provided under this section, including the land
225 acquisition costs for which credit is eligible. The guidelines shall also include provisions prohibiting a
226 tax credit under this section and § 36-55.63 in the same taxable year for the same housing unit. To
227 qualify for such credit, the developer or investor shall comply with a competitive process for allocation
228 of tax credits established by the Board, and the process shall be in conjunction with applying for the
229 federal LIHTC. For purposes of this section, the total amount of tax credits available each fiscal year to
230 all such developers or investors shall not exceed \$10 million. The promulgation of guidelines by the
231 Board shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

232 G. To claim the credit allowed under this section, a developer or investor shall apply to the
233 Department of Housing and Community Development, which shall determine the amount of credit. The
234 Director of the Department of Housing and Community Development shall certify to the Department of
235 Taxation or the State Corporation Commission, as applicable, that such person qualified for the credit
236 amount claimed on the applicable tax return for the taxable year. The developer or investor shall attach
237 the certification form to the Virginia tax return filed with the Department of Taxation or the State
238 Corporation Commission, as applicable. The Director shall also provide the Department of Taxation or
239 the State Corporation Commission, as applicable, with credit recapture amounts and any other
240 information it may require relating to the credit claimed by the taxpayer. The guidelines developed by
241 the Board of Housing and Community Development pursuant to subsection F shall include guidelines for
242 cases where a developer or investor has transferred any tax credit pursuant to this section.

243 H. Credits granted to a partnership, limited liability company or electing small business corporation

244 *(S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion*
245 *to their ownership interest in such entity or as the partners or shareholders mutually agree as provided*
246 *in an executed document, the form of which shall be prescribed by the Board of Housing and*
247 *Community Development.*