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HOUSE BILL NO. 2106

Offered January 14, 2009

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A BILL to amend and reenact §§ 36-55.63, 58.1-435, 58.1-439.18, 58.1-439.19, 58.1-439.20, and 63.2-2002 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13.2 of Chapter 3 of Title 58.1 a section numbered 58.1-439.25, relating to the Neighborhood Assistance Act Tax Credit program, including allocating neighborhood assistance tax credits to certain landlords participating in a housing choice voucher program.

Patrons—McClellan and Englin; Senator: McEachin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.63, 58.1-435, 58.1-439.18, 58.1-439.19, 58.1-439.20, and 63.2-2002 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13.2 of Chapter 3 of Title 58.1 a section numbered 58.1-439.25 as follows:

§ 36-55.63. Low-income housing credit.

The Board of Housing and Community Development shall, consistent with the provisions, terms, and conditions set forth under § 58.1-435, issue regulations establishing the amount of the credit allowable for the low-income housing credit provided under such section, 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. However, the Board shall not approve any low-income housing credits after June 30, 2009.

The Department of Housing and Community Development shall administer the approval of low-income housing credits. As provided under § 58.1-435, the total maximum amount of low-income housing credits which may be approved by the Board in any calendar year shall be \$500,000.

§ 58.1-435. Low-income housing credit.

A. Any person shall be entitled to a credit against the tax 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 in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to subsection F for 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, 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 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 12 months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a 12-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 of Housing and Community Development in any calendar year shall be \$500,000. However, the Board shall not approve any low-income housing credits after June 30, 2009. 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. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the Department of Housing and Community Development has certified the amount of such tax credit pursuant to subsection F. No credit shall be carried back to a preceding taxable year. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding

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59 taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not  
60 have a carryover provision, and then any credit that is carried forward from a preceding taxable year,  
61 prior to the utilization of any credit allowed pursuant to this section.

62 E. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a  
63 subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes,  
64 such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which  
65 the applicable Virginia low-income housing credit was applied or used. Any credit recapture shall be  
66 assessed and collected in the same manner as a tax attributable to a change in federal taxable income  
67 within the meaning of § 58.1-311. The Board of Housing and Community Development shall promulgate  
68 regulations establishing the terms and conditions for computing the credit recapture amount for the  
69 applicable Virginia tax return.

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

79 § 58.1-439.18. Definitions.

80 As used in this article:

81 "Business firm" means any corporation, partnership, electing small business (Subchapter S)  
82 corporation, limited liability company, or sole proprietorship authorized to do business in this  
83 Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of  
84 Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2  
85 (§ 58.1-2620 et seq.) of Chapter 26.

86 "Commissioner of the State Department of Social Services" means the Commissioner of the State  
87 Department of Social Services or his designee.

88 "Community services" means any type of counseling and advice, emergency assistance, medical care,  
89 provision of basic necessities, or services designed to minimize the effects of poverty, furnished  
90 primarily to impoverished people.

91 "Contracting services" means the provision, by a business firm licensed by the Commonwealth as a  
92 contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the  
93 development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings  
94 used by neighborhood organizations.

95 "Education" means any type of scholastic instruction or scholarship assistance to an individual who is  
96 impoverished.

97 "*Eligible housing area*" means a census tract in the Commonwealth in which less than 10 percent of  
98 the residents live below the poverty level, as defined by the United States government and determined by  
99 the most recent United States census.

100 "Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid  
101 the physical improvement of the homes of impoverished people.

102 "*Housing authority*" means a housing authority created under Article 1 (§ 36-1 et seq.) of Chapter 1  
103 of Title 36 or other government agency that is authorized by the United States government under the  
104 United States Housing Act of 1937 (42 U.S.C. § 1437 et seq.) to administer a housing choice voucher  
105 program, or the authorized agent of such a housing authority that is authorized to act upon that  
106 authority's behalf.

107 "*Housing choice voucher*" means tenant-based assistance by a housing authority pursuant to 42  
108 U.S.C. § 1437f et seq.

109 "Impoverished people" means people in Virginia approved as such by the State Board of Social  
110 Services. Such approval shall be made on the basis of generally recognized low-income criteria used by  
111 federal and state agencies.

112 "Job training" means any type of instruction to an individual who is impoverished that enables him  
113 to acquire vocational skills so that he can become employable or able to seek a higher grade of  
114 employment.

115 "Neighborhood assistance" means providing community services, education, housing assistance, or  
116 job training.

117 "Neighborhood organization" means any local, regional or statewide organization whose primary  
118 function is providing neighborhood assistance for impoverished people, and holding a ruling from the  
119 Internal Revenue Service of the United States Department of the Treasury that the organization is  
120 exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal

121 Revenue Code of 1986, as amended from time to time, or any organization defined as a community  
122 action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing  
123 authority as defined in § 36-3.

124 *"Participating landlord" means any person engaged in the business of the rental of dwelling units*  
125 *who is (i) subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) and (ii)*  
126 *performing obligations under a contract with a housing authority relating to the rental of qualified*  
127 *housing units.*

128 "Professional services" means any type of personal service to the public that requires as a condition  
129 precedent to the rendering of such service the obtaining of a license or other legal authorization and  
130 shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists,  
131 architects, professional engineers, certified public accountants, and attorneys-at-law.

132 *"Qualified housing unit" means a dwelling unit that is located in an eligible housing area for which*  
133 *a portion of the rent is paid by a housing authority, which payment is pursuant to a housing choice*  
134 *voucher program. A qualified housing unit shall be a part of the same parcel of real property that*  
135 *contains at least four dwelling units, with no more than 25 percent of the total dwelling units on the*  
136 *parcel being a qualified housing unit during the relevant taxable year.*

137 *No dwelling unit shall be a qualified housing unit unless the property in which it is contained is in*  
138 *substantial compliance with the provisions of the Uniform Statewide Building Code.*

139 § 58.1-439.19. Public policy; business firms; donations.

140 It is hereby declared to be public policy of the Commonwealth to encourage *private* business firms  
141 to ~~make donations to neighborhood organizations~~ *participate in assistance programs* for the benefit of  
142 impoverished people.

143 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

144 A. Any neighborhood organization may submit a proposal to the Commissioner of the State  
145 Department of Social Services requesting an allocation of tax credits for use by business firms making  
146 donations to the neighborhood organization. The proposal shall set forth the program to be conducted by  
147 the neighborhood organization, the impoverished people to be assisted, the estimated amount to be  
148 donated to the program, and the plans for implementing the program.

149 B. The State Board of Social Services is hereby authorized to adopt regulations for the approval or  
150 disapproval of such proposals by neighborhood organizations and for determining the value of the  
151 donations. Such regulations shall contain a requirement that an annual audit be provided by the  
152 neighborhood organization as a prerequisite for approval. Such regulations shall also provide that at least  
153 50 percent of the persons served by the neighborhood organization are impoverished people as defined  
154 in § 58.1-439.18. Such regulations shall provide for the equitable allocation of the available amount of  
155 tax credits among the approved proposals submitted by neighborhood organizations. The regulations  
156 shall also provide that at least 10 percent of the available amount of tax credits each year shall be  
157 allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the  
158 preceding year; however, if the amount of tax credits for qualified programs requested by such  
159 neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated  
160 portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs  
161 proposed by other neighborhood organizations.

162 C. If the Commissioner of the State Department of Social Services approves a proposal submitted by  
163 a neighborhood organization, the organization shall make the allocated tax credit amounts available to  
164 business firms making donations to the approved program. A neighborhood organization shall not assign  
165 or transfer an allocation of tax credits to another neighborhood organization without the approval of the  
166 Commissioner of the State Department of Social Services.

167 D. The total amount of tax credits granted ~~for programs approved under this article under the~~  
168 *Neighborhood Assistance Act Tax Credit program* for each fiscal year shall not exceed \$8 \$12.5 million;  
169 ~~however, \$2,750,000 shall be allocated to education programs conducted by neighborhood organizations,~~  
170 *allocated as follows: (i) \$8.5 million as provided in this article and (ii) \$4 million in accordance with*  
171 *any additional allocation of neighborhood assistance tax credits as may be provided in the general*  
172 *appropriation act.*

173 *Of the \$8.5 million allocated as provided in this article, \$2.75 million shall be allocated to education*  
174 *programs conducted by neighborhood organizations and \$4.5 million shall be allocated to participating*  
175 *landlords as approved by the Department of Housing and Community Development pursuant to*  
176 *§ 58.1-439.25. Such allocation of tax credits to education programs shall constitute the minimum amount*  
177 *of tax credits to be allocated to education programs pursuant to this article. However, if the amount of*  
178 *tax credits requested by neighborhood organizations for qualified education programs is less than*  
179 *\$2,750,000 If the amount of tax credits requested by neighborhood organizations for qualified education*  
180 *programs is less than (i) the \$2.75 million allocated as provided in this article plus (ii) the amount, if*  
181 *any, of additional tax credits allocated for qualified education programs as provided in the general*

182 *appropriation act, the balance of such amount shall be allocated to other types of qualified programs,*  
183 *but not including tax credits under § 58.1-439.25.*

184 Tax credits shall not be authorized after fiscal year ~~2009~~ 2011.

185 § 58.1-439.25. *Tax credit for participating landlords.*

186 A. *For taxable years beginning on or after January 1, 2009, a participating landlord renting a*  
187 *qualified housing unit shall be eligible for a credit against the tax levied pursuant to § 58.1-320 or*  
188 *58.1-400 in an amount equal to 40 percent of the fair market value of the rent for the unit, computed*  
189 *for that portion of the taxable year in which the unit was rented by such landlord to a tenant*  
190 *participating in a housing choice voucher program. The Department of Housing and Community*  
191 *Development shall administer and issue the tax credit under this section.*

192 B. *Participating landlords shall apply to the Department of Housing and Community Development*  
193 *for tax credits under this section. The Department of Housing and Community Development shall*  
194 *determine the credit amount allowable for the taxable year and shall also determine the fair market*  
195 *value of the rent for the qualified housing unit taking into consideration (i) comparable dwelling units*  
196 *on the same parcel of property or, if none, comparable dwelling units in the same market area, and (ii)*  
197 *market values during the period in which the unit was rented to the tenant participating in a housing*  
198 *choice voucher program.*

199 C. *The Board of Housing and Community Development shall establish and issue guidelines for*  
200 *purposes of implementing the provisions of this section. The guidelines shall provide for the equitable*  
201 *allocation of tax credits among participating landlords requesting credits in the event the amount of*  
202 *credits for which requests are made and approved exceeds the available amount of credits in any one*  
203 *fiscal year. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). The*  
204 *Department of Housing and Community Development shall not issue more than \$4.5 million in tax*  
205 *credits in any fiscal year to participating landlords.*

206 D. *The amount of the credit shall not exceed the total amount of tax imposed by this chapter for the*  
207 *taxable year in which the qualified housing unit was rented by the participating landlord to a tenant*  
208 *participating in a housing choice voucher program. If the amount of credit allowed exceeds the*  
209 *landlord's tax liability for such taxable year, the amount that exceeds the tax liability may be carried*  
210 *over for credit against the income taxes of the participating landlord in the next five taxable years or*  
211 *until the total amount of the tax credit has been taken, whichever is sooner. Credits granted to a*  
212 *partnership, limited liability company, or electing small business corporation (S corporation) shall be*  
213 *allocated to the individual partners, members, or shareholders, respectively, in proportion to their*  
214 *ownership or interest in such business entities.*

215 E. *If the amount of tax credits approved under this section is less than \$4.5 million in the applicable*  
216 *fiscal year, the balance of such amount shall be allocated to other types of qualified programs as*  
217 *provided in this article. The Director of the Department of Housing and Community Development shall*  
218 *promptly notify the Commissioner of the State Department of Social Services of any such balance.*

219 F. *No person shall be allowed a tax credit under § 58.1-339.9 and this section for the rental of the*  
220 *same dwelling unit in a taxable year.*

221 § 63.2-2002. *Neighborhood Assistance Act.*

222 The Board is hereby authorized to adopt regulations consistent with the provisions, terms, and  
223 conditions of the Neighborhood Assistance Act Tax Credit (§ 58.1-439.18 et seq.). The Commissioner  
224 shall administer a portion of the tax credits allocated under the Neighborhood Assistance Act Tax  
225 Credit program pursuant to law.

226 As provided in § 58.1-439.20, the total amount of tax credits granted for programs approved under  
227 the Neighborhood Assistance Act Tax Credit for each fiscal year shall not exceed \$8 million; however,  
228 \$2,750,000 shall be allocated to "education" programs conducted by "neighborhood organizations" as  
229 such terms are defined in § 58.1-439.18. Such allocation of tax credits to education programs shall  
230 constitute the minimum amount of tax credits to be allocated to education programs. However, if the  
231 amount of tax credits requested by neighborhood organizations for qualified education programs is less  
232 than \$2,750,000, the balance of such amount shall be allocated to other types of qualified programs.