DEPARTMENT OF TAXATION
2013 Fiscal Impact Statement

1. Patron Kenneth R. Plum

2. Bill Number HB 2282

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Tax Credit for Removing Barriers at Places of Public Accommodation

5. Summary/Purpose:

This bill would create an individual and corporate income tax credit for businesses that remove physical barriers from an existing place of public accommodation to provide greater access to and usability of such place by persons with disabilities. This credit would be equal to 50 percent of the total amount paid by the business in removing such barriers at the place of public accommodation, but not to exceed $1,000 expended by the business for each place of public accommodation.

To receive a credit under this bill, businesses would be required to apply to the Department of Housing and Community Development ("DHCD") for preapproval. DCHD would have to verify that the proposed barrier removal actions fall within the requirements for the removal of barriers set forth in applicable federal regulations implementing the Americans with Disabilities Act. DHCD would not be permitted to preapprove more than $1 million in tax credits. If applications preapproved during a fiscal year result in more than $1 million in preapproved tax credits, DHCD would be required to allocate credits on a pro rata basis.

Upon completion of the proposed barrier removal action for which a tax credit was preapproved, the business would be required to provide documentation to DHCD. Upon receipt of the evidence and confirmation of completion of the proposed barrier removal action, DHCD would provide a written certification to the business issuing a tax credit that is not in excess of the preapproved tax credit amount. The business would be required to attach the certification to the applicable income tax return.

This credit would be effective for taxable years beginning on or after January 1, 2013, but before January 1, 2018.

6. Budget amendment necessary: Yes.
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7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7b. Revenue Impact:

Fiscal Year	***Dollars***	***Fund***
2012-13	$0	GF
2013-14	($1 million)	GF
2014-15	($1 million)	GF
2015-16	($1 million)	GF
2016-17	($1 million)	GF
2017-18	($1 million)	GF
2018-19	($1 million)	GF

8. Fiscal implications:

Administrative Costs – Department of Taxation

The Department of Taxation ("the Department") has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Administrative Costs – Department of Housing and Community Development

Because DHCD would be involved in an initial review to certify the eligibility of applicants for the tax credit on the basis of the proposed improvements, DHCD would incur some costs in developing guidelines and setting up the administrative structure for the program. However, these could likely be accommodated within existing program resources. Because it is difficult to estimate the number of applicants that might request certification in a given year, the ongoing annual administrative overhead is indeterminate.

Revenue Impact

This would have a negative impact on General Fund revenue of approximately $1 million annually. There are more than 200,000 establishments in Virginia that meet the definition of a "place of public accommodation." The number of such businesses with physical barriers is unknown, as is the amount of credits that would be requested by such businesses. However, it is likely that DHCD would receive enough applications each year to reach the annual cap of $1 million.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Housing and Community Development

10. Technical amendment necessary: No.

11. Other comments:

House Joint Resolution 648 Work Group

During the 2011 session, the General Assembly passed House Joint Resolution No. 648, which required DHCD and the Department of Rehabilitative Services to study the feasibility of amendments to the Virginia Building Code in order to provide accessible routes for persons with disabilities. This work group also reviewed financial incentives for increased building accessibility and recommended language that would create a Virginia tax credit that would provide an additional state incentive for building owners. This language was included as an appendix to the work group's final report, which was published as 2012 House Document 15.

Virginia Livable Home Tax Credit

The Livable Home Tax Credit is an income tax credit for individuals who purchase a new residence or retrofit an existing residence, provided the residence is designed to improve accessibility and provide universal visitability, and meets the eligibility requirements established by DHCD. The credit may be claimed for a portion of the total purchase price paid by the individual for a new residence or the total amount expended to retrofit an existing residence.

A licensed contractor may also claim the Livable Home Tax Credit against the individual or corporate income tax for a portion of the total amount expended in constructing a new residential structure or unit or retrofitting or renovating an existing residential structure or unit. This tax credit is not allowed for the purchase, construction, retrofitting, or renovation of a residential rental property.

The credit is allowed for the taxable year in which the residence has been purchased or in which the construction, retrofitting, or renovation is completed. The credit cannot exceed $5,000 for the purchase of each new residences or the construction of each new residential structure or unit, or 50 percent of the total amount expended, not to exceed $5,000, for the retrofitting or renovation of each existing residence or residential structure or unit.

To receive this credit, taxpayers are required to apply to DHCD. The total amount of credits granted in any fiscal year cannot exceed $1 million. Of this cap, $500,000 must be allocated for the purchase or construction of a new residence, and $500,000 must be allocated for the retrofitting or renovation of existing residences or residential structures or units. If the amount of tax credits approved for either purpose is less than $500,000, the remaining balance of such tax credits are reallocated among taxpayers that qualify for credits for the other purpose. If the total amount of tax credits applied for exceeds the amount allocated by DHCD for the fiscal year, the credits are allocated to taxpayers on a pro rata basis.

Federal Disabled Access Credit

Certain businesses may claim a federal income tax credit in an amount equal to 50 percent of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250. This credit may only be claimed by an eligible small business, which is defined as a business with gross receipts that did not exceed $1 million for the preceding taxable year or that employed not more than 30 full-time employees during the preceding taxable year.

For purposes of the federal credit, eligible access expenditures include amounts paid or incurred by an eligible small business for the purpose of enabling such business to comply with applicable requirements under the Americans with Disabilities Act. The following are explicitly included as eligible access expenditures under the federal credit:

- Amounts paid or incurred for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities;
- Amounts paid or incurred to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- Amounts paid or incurred to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments;
- Amounts paid or incurred to acquire or modify equipment or devices for individuals with disabilities; and
- Amounts paid or incurred to provide other similar services, modifications, materials, or equipment.

To qualify, such expenditures must be reasonable and necessary. To avoid a double benefit, federal law prohibits taxpayers from claiming any other federal deduction or credit for the same amount and from increasing the adjusted basis of any property as a result of such amount.

Federal Architectural Barrier Removal Tax Deduction

Businesses of any size may claim the federal Architectural Barrier Removal Tax Deduction for removing architectural and transportation barriers for the mobility of persons with disabilities and the elderly. Certain types of business expenses may be deducted in the year paid or incurred. However, certain expenses, including amounts paid for new buildings or for permanent improvements made to increase property value, must instead be capitalized and deducted on a pro rata basis over future taxable years. The Architectural Barrier Removal Tax Deduction allows businesses to claim a full deduction, up to $15,000 per year, for qualified expenses for items that would normally be capitalized. Any amount in excess of $15,000 may still be capitalized and claimed as a deduction over time.

Taxpayers may claim both the Architectural Barrier Removal Tax Deduction and the Disabled Tax Credit if the expenses meet the requirements of both incentives. However, the deduction cannot exceed the difference between the total expenditures and the amount of credit claimed.

Proposed Legislation

This bill would create an individual and corporate income tax credit for businesses that remove physical barriers from an existing place of public accommodation to provide greater access to and usability of such place by persons with disabilities. This credit would be equal to 50 percent of the total amount paid by the business in removing such barriers at the place of public accommodation, but not to exceed $1,000 expended by the business for each place of public accommodation.

For purposes of this credit, a “place of public accommodation” would be defined as a facility subject to Title III of the Americans with Disabilities Act that is a public accommodation as defined under such Title or the regulations thereto.

To receive a credit under this bill, businesses would be required to apply to the Department of Housing and Community Development (“DHCD”) for preapproval. DCHD would have to verify that the proposed barrier removal actions fall within the requirements for the removal of barriers set forth in applicable federal regulations implementing the Americans with Disabilities Act. DHCD would not be permitted to preapprove more than $1 million in tax credits. If applications preapproved during a fiscal year result in more than $1 million in preapproved tax credits, DHCD would be required to divide $1 million by the total amount of preapproved tax credits to determine the percentage of preapproved tax credits that each business may receive.

Upon completion of the proposed barrier removal action for which a tax credit was preapproved, the business would be required to provide documentation to DHCD. Upon receipt of the evidence and confirmation of completion of the proposed barrier removal action, DHCD would provide a written certification to the business issuing a tax credit that is not in excess of the preapproved tax credit amount. The business would be required to attach the certification to the applicable income tax return.

Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

DHCD, in consultation with the Tax Commissioner, would be required to develop guidelines implementing the provisions of this bill. Such guidelines would be required to include policies and procedures to ensure that tax credits are not issued to more than one business for the same costs incurred in removing physical barriers at a place of business accommodation. Such guidelines would be exempt from the provisions of the Administrative Process Act.

This credit would be effective for taxable years beginning on or after January 1, 2013, but before January 1, 2018.

cc : Secretary of Finance