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## SENATE BILL NO. 1197

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on February 17, 2021)

(Patron Prior to Substitute—Senator Locke)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 and 58.1-439.30, relating to Virginia housing opportunity tax credit.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 and 58.1-439.30, as follows:

Article 13.4.

Virginia Housing Opportunity Tax Credit Act.

**§ 58.1-439.29. Definitions.**

As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Housing Development Authority, or its successor agency.

"Credit period" means the credit period as defined in § 42(f)(1) of the Internal Revenue Code, as amended.

"Eligibility certificate" means a certificate issued by the Authority to the owner of a qualified project certifying that such project qualifies for the Virginia housing opportunity tax credit authorized by this article, and specifying the amount of housing opportunity tax credits that the owner of such qualified project may claim in each year of the credit period. The Authority shall issue an eligibility certificate to a qualified project upon the Authority's approval of a final cost certification that complies with the Authority's requirements.

"Federal low-income housing tax credit" means the federal tax credit as provided in § 42 of the Internal Revenue Code, as amended.

"Housing opportunity tax credit" or "tax credit" means the tax credit created by this article.

"Qualified project" means a qualified low-income building, as defined in § 42(c) of the Internal Revenue Code, as amended, that is located in Virginia, is initiated on or after January 1, 2022, and is issued an eligibility certificate. "Qualified project" does not include a project for which a federal low-income housing tax credit has previously been issued.

"Qualified taxpayer" means a taxpayer owning an interest, direct or indirect, through one or more pass-through entities, in a qualified project at any time prior to filing a tax return claiming a housing opportunity tax credit.

"Taxpayer" means an individual, corporation, S corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, or nonprofit organization.

"Virginia tax liability" means the income taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, and Article 2 (§ 58.1-2620 et seq.) of Chapter 26. An insurance company claiming a housing opportunity tax credit against the taxes, licenses, and other fees, fines, and penalties imposed by Article 1 of Chapter 25, including any retaliatory tax imposed on insurance companies by the Code of Virginia, shall not be required to pay any additional tax as a result of claiming the housing opportunity tax credit. The housing opportunity tax credit may fully offset any retaliatory tax imposed by the Code of Virginia.

**§ 58.1-439.30. Tax credit.**

A. For taxable years beginning on and after January 1, 2022, but before January 1, 2025, a housing opportunity tax credit shall be allowed for each qualified project for each year of the credit period, in an amount equal to the amount of federal low-income housing tax credit allocated or allowed by the Authority to such qualified project, except that there shall be no reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2).

B. A qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to by such persons, regardless of whether or not any such person is allocated or allowed any portion of any federal low-income housing tax credit with respect to the qualified project, whether or not the allocation of the housing opportunity tax credit under the terms of the agreement has substantial economic effect within the meaning of § 704(b) of the Internal Revenue Code, and whether any such person is deemed a partner for federal income tax purposes as long as the partner or member would be considered a partner or member as defined under applicable state law, and has been admitted

60 as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including  
61 any amendments thereto, with respect to the year of the housing opportunity tax credit. Such  
62 pass-through entities or qualified taxpayer may assign all or any part of its interest, including its  
63 interest in the tax credits, to one or more pass-through entities or qualified taxpayers, and the qualified  
64 taxpayer shall be able to claim the housing opportunity tax credit so long as its interest is acquired  
65 prior to the filing of its tax return claiming the housing opportunity tax credit.

66 C. The housing opportunity tax credit authorized by this article shall not be refundable. Any housing  
67 opportunity tax credit not used in a taxable year may be carried forward for the succeeding five years.

68 D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the  
69 eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified  
70 project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the  
71 eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing  
72 opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount  
73 of tax credit set forth in the carryover allocation or 42(m) letter, as applicable, issued to the qualified  
74 project and shall amend its tax return to include the eligibility certificate upon its receipt. If the amount  
75 of tax credit in the eligibility certificate is different than the amount of tax credit previously claimed, the  
76 taxpayer shall adjust the tax credit amount claimed on the amended tax return.

77 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income  
78 housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed  
79 during the credit period, the taxpayer claiming housing opportunity tax credits with respect to such  
80 project shall also be required to recapture a portion of any tax credits authorized by this article. The  
81 percentage of housing opportunity tax credits subject to recapture shall be equal to the percentage of  
82 federal low-income housing credits subject to recapture or otherwise disallowed during such period. Any  
83 tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who  
84 claimed the tax credits in a like amount and shall be included on the tax return of the qualified  
85 taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

86 F. The Authority shall administer the housing opportunity tax credit program and shall be authorized  
87 to promulgate the regulations and guidelines necessary to implement and administer this article. Such  
88 regulations and guidelines may include the imposition of application, allocation, certification, and  
89 monitoring fees designed to recoup the costs of the Authority in administering the housing opportunity  
90 tax credit. The Authority may also promulgate regulations and guidelines in consultation with the  
91 Department of Taxation to allow a qualified project to elect in its application to the Authority to sell all  
92 or any portion of its credits awarded pursuant to this article to one or more unrelated taxpayers. Such  
93 regulations and guidelines, if promulgated, shall not take effect prior to January 1, 2024, and shall not  
94 apply to credits awarded prior to January 1, 2024.

95 G. The total amount of tax credits available under this section shall not exceed \$7.5 million per  
96 fiscal year. Tax credits shall be allocated by the Authority on a first-come, first-served basis.

97 H. The housing opportunity tax credit created pursuant to this article may not be claimed for taxable  
98 years beginning prior to January 1, 2022.

99 **2. That the provisions of the first enactment of this act shall not become effective unless reenacted  
100 by the 2022 Session of the General Assembly.**

101 **3. That the Department of Housing and Community Development and the Virginia Housing  
102 Development Authority shall continue to convene the stakeholder advisory group created pursuant  
103 to Chapter 517 of the Acts of Assembly of 2020. The stakeholder advisory group shall continue its  
104 work as provided in such act, and shall report its recommendations to the Governor, the Secretary  
105 of Commerce and Trade, the Director of the Department of Housing and Community  
106 Development, and the commissioners of the Virginia Housing Development Authority by November  
107 1, 2021.**