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HOUSE BILL NO. 817

Offered January 24, 2000

A BILL to amend and reenact §§ 15.2-2201 and 15.2-2306 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, relating to tax credits for qualified business activities within historic district enterprise zones.

Patrons—Devolites, Davis, Drake, Dudley, Ingram, Jones, S.C., Landes, Louderback, Scott and Wardrup;
Senators: Barry and Byrne

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201 and 15.2-2306 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 as follows:

§ 15.2-2201. Definitions.

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

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Historic commercial area" means an area, commonly referred to as a historic downtown, which is adjacent or contiguous to a historic structure or structures, contains buildings architecturally compatible with said structures and is traditionally designated for street-level commercial or retail uses.

"Historic district enterprise zone" or "zone" means an area containing or contiguous to a historic commercial area and designated as such by local ordinance under subsection C of § 15.2-2306.

"Historic structure" means a structure designated or eligible for designation as such by the Virginia Board of Historic Resources under § 10.1-2204.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat of subdivision" means the schematic representation of land divided or to be divided.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or

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60 easements and other conditions relating to use, location and bulk of buildings, density of development,
61 common open space, public facilities and such other information as required by the subdivision
62 ordinance to which the proposed development or subdivision is subject.

63 "Special exception" means a special use, that is a use not permitted in a particular district except by
64 a special use permit granted under the provisions of this chapter and any zoning ordinances adopted
65 herewith.

66 "Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

67 "Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the
68 division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose
69 of transfer of ownership or building development, or, if a new street is involved in such division, any
70 division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall
71 relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation
72 of any single division of land into two lots or parcels, a plat of such division shall be submitted for
73 approval in accordance with § 15.2-2258.

74 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those
75 provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a
76 building or structure when the strict application of the ordinance would result in unnecessary or
77 unreasonable hardship to the property owner, and such need for a variance would not be shared
78 generally by other properties, and provided such variance is not contrary to the intended spirit and
79 purpose of the ordinance, and would result in substantial justice being done. It shall not include a
80 change in use which change shall be accomplished by a rezoning or by a conditional zoning.

81 "Zoning" or "to zone" means the process of classifying land within a locality into areas and districts,
82 such areas and districts being generally referred to as "zones," by legislative action and the prescribing
83 and application in each area and district of regulations concerning building and structure designs,
84 building and structure placement and uses to which land, buildings and structures within such designated
85 areas and districts may be put.

86 § 15.2-2306. Preservation of historical sites and architectural areas.

87 A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as
88 established by the Virginia Board of Historic Resources, and any other buildings or structures within the
89 locality having an important historic, architectural, archaeological or cultural interest, any historic areas
90 *or historic commercial areas* within the locality as defined by § 15.2-2201, and areas of unique
91 architectural value located within designated conservation, rehabilitation or redevelopment districts,
92 amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such
93 landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land
94 contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of
95 that title) found by the governing body to be significant routes of tourist access to the locality or to
96 designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. An
97 amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance
98 with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide
99 for a review board to administer the ordinance and may provide compensation to the board. The
100 ordinance may include a provision that no building or structure, including signs, shall be erected,
101 reconstructed, altered or restored within any such district unless approved by the review board or, on
102 appeal, by the governing body of the locality as being architecturally compatible with the historic
103 landmarks, buildings or structures therein.

104 2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in
105 the ordinance that no historic landmark, building or structure within any district shall be razed,
106 demolished or moved until the razing, demolition or moving thereof is approved by the review board,
107 or, on appeal, by the governing body after consultation with the review board.

108 3. The governing body shall provide by ordinance for appeals to the circuit court for such locality
109 from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and
110 shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to
111 appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the
112 action of the governing body, provided the petition is filed within thirty days after the final decision is
113 rendered by the governing body. The filing of the petition shall stay the decision of the governing body
114 pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the
115 decision of the governing body if the decision denies the right to raze or demolish a historic landmark,
116 building or structure. The court may reverse or modify the decision of the governing body, in whole or
117 in part, if it finds upon review that the decision of the governing body is contrary to law or that its
118 decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the
119 governing body.

120 In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or
121 structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this

subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

C. Any locality may adopt an ordinance establishing a historic district enterprise zone in accordance with and subject to all of the provisions of subsection A for the purpose of establishing eligibility for tax credits pursuant § 58.1-439.12, provided that the zone contains or is contiguous to a historic commercial area as designated in subsection A 1. Any locality adopting an ordinance establishing a historic district enterprise zone shall establish architectural guidelines and review procedures as outlined in subsection A in order to qualify for tax credits pursuant to § 58.1-439.12. No locality shall designate more than one such district pursuant to this provision.

§ 58.1-439.12. Tax credit for qualifying business activities in historic district enterprise zones.

A. For taxable years beginning on and after January 1, 2001, but before January 1, 2006, a business firm shall be allowed a credit against the taxes imposed under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title, as provided in this section.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders or members, respectively, in proportion to their ownership or interest in such business entities.

C. For purposes of this section:

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

"Historic district enterprise zone" or "zone" means an area (i) containing or contiguous to a historic

183 landmark or structure designated or eligible for designation as such by the Virginia Board of Historic
184 Resources under § 10.1-2204 and (ii) designated as such by local ordinance in accordance with
185 subsection C of § 15.2-2306.

186 D. The amount of the credit for each qualifying business activity, as defined in subsection G,
187 conducted by a business firm in any taxable year shall be equal to the lesser of (i) \$25,000 per year or
188 (ii) twenty-five percent of the taxes imposed per year with respect to the qualifying business activity
189 under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200
190 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26
191 of this title. No tax credit shall be provided unless the business firm conducted the qualifying business
192 activity during the full taxable year for which the credit is claimed. The tax credits provided by this
193 section shall be in addition to any tax credits allowed to a business firm by the locality in which its
194 historic district enterprise zone is located.

195 E. A credit shall not be provided under this section for any qualified business firm which is eligible
196 to receive a tax credit under § 59.1-280 or §59.1-280.1.

197 F. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
198 taxable year. Any credit not usable for the taxable year in which the credit was allowed may be, to the
199 extent usable, carried over for the next ten succeeding taxable years. No credit shall be carried back to
200 a preceding taxable year. If a business firm which is subject to the tax limitation herein is allowed
201 another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a
202 preceding taxable year, it shall be considered to have first utilized any credit allowed which does not
203 have a carryover provision and then any credit which is carried forward from a preceding taxable year,
204 prior to the utilization of any credit allowed pursuant to this section.

205 G. Any business firm applying to the Department for a credit under this section shall attach a
206 certification by the governing body of the locality that the structure within which the qualifying business
207 activity is conducted and the business activity for which the tax credit is sought is located in and
208 satisfies the architectural standards for the historic district enterprise zone adopted pursuant to
209 subsection C of § 15.2-2306. The application shall also include such other information as the
210 Department may require in implementing the provisions of this section.

211 The governing body's certification shall establish that (i) the structure in which the business activity
212 is conducted is located within a historic district enterprise zone as designated by the governing body of
213 the locality; and (ii) the business activity was (a) not previously conducted within the zone by the
214 business firm and is conducted in a structure that is determined by the governing body of the locality to
215 be compatible with the architectural standards of the historic district enterprise zone as determined by
216 the governing body of the locality or (b) previously conducted by the business firm within such zone
217 immediately prior to its being designated as a zone and is conducted in a structure which is maintained
218 in accordance with the local historic district enterprise zone ordinance as determined by the governing
219 body of the locality.

220 H. Each business firm applying for the credit provided by this section shall annually certify to the
221 Department the applicability of such credit.

222 I. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative
223 Process Act (§ 9-6.14:1 et seq.), relating to the computation and carryover of the tax credit provided by
224 this section.