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SENATE BILL NO. 512

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.15, relating to income tax credit; adaptive repurposing of underutilized structures.

Patrons—Williams Graves and Salim; Delegates: Rasoul and Thomas

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Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.15 as follows:

§ 58.1-339.15. Adaptive repurposing of underutilized structures tax credit.

A. For purposes of this section:

"At-risk locality" means a locality of the Commonwealth (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

"Eligible developer" means a person, including a real estate investment trust, having an ownership interest in a qualified converted building who contracts for or undertakes the qualifying residential conversion and incurs eligible expenses.

"Eligible expenses" means expenses incurred in connection with the qualifying residential conversion of a building to a qualified converted building. "Eligible expenses" does not include (i) any costs associated with the acquisition of any building or interest thereon, (ii) any expenses incurred that are attributable to the enlargement of an existing building, or (iii) any expenses incurred in connection with the conversion of a building that is allocable to the portion of the property that is a tax-exempt use property under Virginia law.

"Qualified converted building" means any building and its structural components if (i) prior to conversion, such building was not a residential property and only made available to commercial office tenants; (ii) such building was substantially converted from office use to residential use in a qualifying residential conversion; (iii) such building was first placed into service at least 25 years prior to the start of a qualifying residential conversion; and (iv) depreciation is allowed for such building.

"Qualifying residential conversion" means the conversion of a building and its structural components from office use to residential use in a qualified converted building such that, at completion, (i) at least 20 percent of the residential units at such converted building are both rent-restricted and occupied by individuals with per capita income below 80 percent of the median per capita income for the locality in which such converted building is located or (ii) the converted building owner is subject to a binding, written agreement with the Commonwealth or the locality regarding the provision of affordable housing and such agreement is documented in the form and manner required by the Department of Housing and Community Development.

"Substantially converted" means the conversion of a building from office use to residential use in a qualifying residential conversion if the eligible expenses incurred within the taxable year the qualified converted building is placed into service exceed the greater of (i) the adjusted basis of the building and its structural components or (ii) $15,000. The adjusted basis of the building shall be determined as of the first day of the taxable year in which a credit under this section is claimed.

B. For taxable years beginning on and after January 1, 2024, but before January 1, 2029, an eligible developer who incurs eligible expenses shall be entitled to a nonrefundable 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.). The amount of the credit shall equal (i) 20 percent of the amount of eligible expenses incurred in connection with the qualifying residential conversion of a building to a qualified converted building or (ii) 30 percent of the amount of eligible expenses incurred in connection with the qualifying residential conversion of a building to a qualified converted building in an at-risk locality, but in no event shall the aggregate amount of credits allowed to any taxpayer exceed $2.5 million in any single taxable year. The credit shall be claimed only in the year in which the qualified converted building is placed into service for residential purposes. The aggregate amount of credits allowed to all taxpayers in any taxable year shall not exceed $30 million.

C. The amount of the credit that may be claimed in any single taxable year shall not exceed the individual's liability for taxes imposed by this chapter for that taxable year. If the amount of the credit allowed under this section exceeds the individual's tax liability for the taxable year in which the eligible transaction occurred, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the individual in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. Credits granted to a pass-through entity shall be passed through to the partners or shareholders, respectively. Credits granted to a pass-through entity 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 Director of the Department of Housing and Community Development.

D. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development, which shall determine the amount of eligible expenses such taxpayer incurred and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

E. The Tax Commissioner shall develop guidelines for claiming the credit provided by this section. The Director of the Department of Housing and Community Development shall develop guidelines for determining which expenditures shall qualify as eligible expenses. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).