

# 2000 RECONVENED SESSION

## LEGISLATION NOT PREPARED BY DLS SENATE SUBSTITUTE

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### SENATE BILL NO. 421

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on April 19, 2000)

(Patron Prior to Substitute—Senator Wampler)

*A BILL to amend the Code of Virginia by amending and reenacting § 58.1-439.2 of, relating to the coalfield employment enhancement tax credit and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12, relating to teleworking tax credit.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-439.2 of the Code of Virginia is 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:**

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, 2002 2008, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

Seam Thickness Credit per Ton

36" and under \$2.00

Above 36" \$1.00

The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach mapping is based.

2. For coal mined by surface mining methods, a credit in the amount of forty cents per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for ninety percent of the face value within ninety days after filing the return; *however, for credit earned in tax years beginning on and after January 1, 2002, such excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for eighty-five percent of the face value within ninety days after filing the return.* The remaining ten or fifteen percent of the value of the credit being redeemed, *as applicable for such tax year,* shall be deposited by the Commissioner in a regional economic development fund administered by the Coalfields Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the Coalfields Economic Development Authority and the Virginia Economic Development Partnership.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under §§ 58.1-433, 58.1-433.1 or § 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually beginning in 1999.

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the Department of Mines, Minerals and Energy for the year in which the credit was earned by the total number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for

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60 the year immediately prior to the year in which the credit was earned. In no case shall the credit  
61 claimed exceed that amount set forth in subsection A.

62 G. The tax credit allowed under this section shall be claimed according to the following schedule:

63 1. 50% of the credit allowed in tax year 1996 shall be claimed in tax year 1999 and the remainder in  
64 tax year 2005.

65 2. 50% of the credit allowed in tax year 1997 shall be claimed in tax year 2000 and the remainder in  
66 tax year 2006.

67 3. 75% of the credit allowed in tax year 1998 shall be claimed in tax year 2001 and the remainder in  
68 tax year 2007.

69 4. 75% of the credit allowed in tax year 1999 shall be claimed in tax year 2002 and the remainder in  
70 tax year 2008.

71 5. 100% of the credit allowed in tax year 2000 shall be claimed in tax year 2003.

72 6. 100% of the credit allowed in tax year 2001 shall be claimed in tax year 2004.

73 7. 100% of the credit allowed in tax year 2002 shall be claimed in tax year 2005.

74 8. 100% of the credit allowed in tax year 2003 shall be claimed in tax year 2006.

75 9. 100% of the credit allowed in tax year 2004 shall be claimed in tax year 2007.

76 10. 100% of the credit allowed in tax year 2005 shall be claimed in tax year 2008.

77 11. 100% of the credit allowed in tax year 2006 shall be claimed in tax year 2009.

78 12. 100% of the credit allowed in tax year 2007 shall be claimed in tax year 2010.

79 § 58.1-439.12. Teleworking tax credit.

80 A. As used in this section:

81 "Eligible costs" means expenditures, including the first year's rental charge, for computers, computer  
82 equipment, telecommunications equipment, and telecommunications services that enable an employee to  
83 first begin teleworking in Virginia. Eligible costs do not include the upgrade, repair, or any other type  
84 of replacement of such equipment and services unless such upgrade, repair, or replacement directly  
85 results in an increase in the number of the qualified employer's employees teleworking in Virginia.

86 "Employee" means any person who is regularly employed full time, whose tenure is not restricted as  
87 to temporary or provisional appointment, and who teleworks for a period of at least one continuous  
88 year for a qualified employer with such period beginning immediately after such employer has paid or  
89 incurred eligible costs. An employee does not include such persons teleworking for a qualified employer  
90 prior to the effective date of the credit.

91 "Qualified employer" means an employer in any region of the Commonwealth, which has not  
92 attained federal air pollution limits as of January 1, 2000.

93 "Secretary" means the Secretary of Technology or his delegate.

94 "Telework" or "teleworking" means an employee's performance of or carrying out the job functions  
95 of his qualified employer from the employee's residence, or from a teleworking center in accordance  
96 with guidelines provided under subsection G.

97 "Teleworking center" means an office or a location in Virginia, but not located in any region of the  
98 Commonwealth which has not attained federal air pollution limits as of January 1, 2000, that is  
99 equipped with computers or other telecommunications equipment and in which employees telework for a  
100 qualified employer.

101 B. For taxable years beginning on and after January 1, 2001, but before January 1, 2002, a  
102 qualified employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.),  
103 6 (§ 58.1-360 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.);  
104 Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620) of Chapter 26 of this title, as  
105 set forth in this section.

106 C. A qualified employer shall be allowed a credit for eligible costs paid or incurred by such  
107 employer for his employees who telework. The credit shall be equal to 100 percent of eligible costs for  
108 an employee who teleworks five or more days per week. If the employee teleworks less than five days  
109 per week, the amount of the credit shall be reduced in accordance with guidelines provided under  
110 subsection G.

111 D. The credit provided under this section shall be limited to \$2,000 of eligible costs per teleworking  
112 employee. The total amount of tax credits allowed to qualified employers under this section shall not  
113 exceed ten million dollars and total participation shall not exceed 10,000 teleworking employees. The  
114 credit shall be inapplicable for employees whose job functions require that the majority of their duties,  
115 or the majority of time required to perform such functions, be performed outside of their employer's  
116 workplace.

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

121 F. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such

122 taxable year. Any credit not usable for the taxable year in which it is allowed may be, to the extent  
123 usable, carried over for the next ten succeeding taxable years. No credit shall be carried back to a  
124 preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed  
125 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of  
126 Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to  
127 have first utilized any credit allowed that does not have a carryover provision, and then any credit that  
128 is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant  
129 to this section.

130 G. The Secretary, in consultation with the Secretary of Finance or his delegate and the Secretary of  
131 Transportation or his delegate, shall issue guidelines further defining eligible costs, teleworking centers,  
132 employees, and eligible job functions. In preparing such guidelines, the Secretaries shall not be subject  
133 to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), but shall conduct a public  
134 hearing prior to issuing such guidelines.

135 H. The credit provided under this section shall be allowed only if the Secretary approves an  
136 employer's application for credit and certifies to the Department of Taxation that the employer is a  
137 qualified employer, including the amount of credit for such employer. Subject to the limitations  
138 contained in subsections C and D, applications to make use of the credit set forth in this section  
139 submitted to the Secretary shall be considered in the order received.

140 I. The Secretary shall review any credit allowed to an employer to verify that such credit is for  
141 employees as defined in this section. In the event that an employer has been allowed a credit for a  
142 person who is not such an employee as defined in this section, the employer shall repay the tax credit  
143 claimed for such person. Additionally, the Secretary and/or the Tax Commissioner shall provide written  
144 notice to any employer who has been allowed credit for a person who is not an employee under this  
145 section. Such notice shall require repayment of the full amount of the credit. Within ninety days after  
146 sending such written notification, and if the full amount of such credit has not been repaid by such date,  
147 the Tax Commissioner may use all powers and means available to him under this title and other law to  
148 collect the full amount of such credit.

149 J. Notwithstanding any other provisions of this section or any other law, two million dollars of the  
150 total ten million dollars in credits allowed under this section shall be allocated or made available to  
151 qualified employers based on the number of employees of such employers teleworking in localities that  
152 have average unemployment rates for the most recent calendar year that are 150% higher than the final  
153 statewide average unemployment rate for the most recent calendar year.