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SENATE BILL NO. 365

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 9, 2006)

(Patron Prior to Substitute—Senator Wampler)

A *BILL to amend and reenact §§ 58.1-433.1 and 58.1-439.2 of the Code of Virginia, relating to tax credits for the production and use of coal.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-433.1 and 58.1-439.2 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-433.1. Virginia Coal Employment and Production Incentive Tax Credit.

A. For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a three-dollar-per-ton credit against the tax imposed by § 58.1-400 or § 58.1-400.2 for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a three-dollar-per-ton coal tax credit and shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next five 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale. However, a cogenerator, as defined in § 58.1-2600, shall not be allowed to claim the credit provided by this section and the credit provided by § 58.1-433 on the same ton of coal.

B. For each such ton of coal described in subsection A that is purchased on or after January 1, 2006, from any person with an economic interest in coal as defined under § 58.1-439.2, the \$3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the \$3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and such persons with an economic interest in coal exceed \$3 per ton.

All credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006, and prior to July 1, 2011, exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2.

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, 2008 2015, 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

60 cent per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by
61 § 58.1-400 and any other tax imposed by the Commonwealth on such person.

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

66 D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable
67 by the Tax Commissioner on behalf of the Commonwealth for ninety percent of the face value within
68 ninety days after filing the return; however, for credit earned in tax years beginning on and after January
69 1, 2002, such excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for
70 eighty-five percent of the face value within ninety days after filing the return. The remaining ten or
71 fifteen percent of the value of the credit being redeemed, as applicable for such tax year, shall be
72 deposited by the Commissioner in a regional economic development fund administered by the Coalfields
73 Economic Development Authority to be used for regional economic diversification in accordance with
74 guidelines developed by the Coalfields Economic Development Authority and the Virginia Economic
75 Development Partnership.

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

81 F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned
82 multiplied by the person's employment factor. The person's employment factor shall be the percentage
83 obtained by dividing the total number of coal mining jobs of the person filing the return, including the
84 jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the
85 Department of Mines, Minerals and Energy for the year in which the credit was earned by the total
86 number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for
87 the year immediately prior to the year in which the credit was earned. In no case shall the credit
88 claimed exceed that amount set forth in subsection A.

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

90 1. 50% of the credit allowed in tax year 1996 shall be claimed in tax year 1999 and the remainder in
91 tax year 2005.

92 2. 50% of the credit allowed in tax year 1997 shall be claimed in tax year 2000 and the remainder in
93 tax year 2006.

94 3. 75% of the credit allowed in tax year 1998 shall be claimed in tax year 2001 and the remainder in
95 tax year 2007.

96 4. 75% of the credit allowed in tax year 1999 shall be claimed in tax year 2002 and the remainder in
97 tax year 2008.

98 5. 100% of the credit allowed in tax year 2000 shall be claimed in tax year 2003.

99 6. 100% of the credit allowed in tax year 2001 shall be claimed in tax year 2004.

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

101 8. 100% of the credit allowed in tax year 2003 shall be claimed in tax year 2006.

102 9. 100% of the credit allowed in tax year 2004 shall be claimed in tax year 2007.

103 10. 100% of the credit allowed in tax year 2005 shall be claimed in tax year 2008.

104 11. 100% of the credit allowed in tax year 2006 shall be claimed in tax year 2009.

105 12. 100% of the credit allowed in tax year 2007 shall be claimed in tax year 2010.

106 13. 100% of the credit allowed in tax year 2008 shall be claimed in tax year 2011.

107 14. 100% of the credit allowed in tax year 2009 shall be claimed in tax year 2012.

108 15. 100% of the credit allowed in tax year 2010 shall be claimed in tax year 2013.

109 16. 100% of the credit allowed in tax year 2011 shall be claimed in tax year 2014.

110 17. 100% of the credit allowed in tax year 2012 shall be claimed in tax year 2015.

111 18. 100% of the credit allowed in tax year 2013 shall be claimed in tax year 2016.

112 19. 100% of the credit allowed in tax year 2014 shall be claimed in tax year 2017.

113 2. That the provisions of this act amending subsection A of § 58.1-433.1 shall be applicable to any
114 tax credit allowed under such section for coal purchased and consumed on or after January 1,
115 2001.