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**SENATE BILL NO. 91**

Offered January 11, 2006

Prefiled January 6, 2006

A *BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to tax credits for producing electricity from certain renewable resources.*

Patron—Watkins

Referred to Committee on Finance

**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 58.1-339.11 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:**

*§ 58.1-339.11. Renewable resources energy production tax credit.*

*A. As used in this section, unless the context requires otherwise:*

*"Qualified energy resources" means the same as that term is defined under § 45(c) of the U.S. Internal Revenue Code of 1986, as amended.*

*"Qualified facility" means a qualified facility as defined under § 45(d) of the U.S. Internal Revenue Code of 1986, as amended, that is located in the Commonwealth. Notwithstanding any provision to the contrary under § 45 of the U.S. Internal Revenue Code of 1986, as amended, for purposes of this section, an otherwise qualified facility shall not lose such qualification if the taxpayer has been allowed a tax credit or taken a tax credit pursuant to any other section of the Internal Revenue Code for such facility, or for production from such facility.*

*B. 1. For taxable years beginning on or after January 1, 2007, there shall be allowed as a credit against the tax liability imposed by § 58.1-320, an amount equal to 0.85 cents for each kilowatt of electricity produced by the individual from qualified energy resources at a qualified facility, which is produced during the 10-year period beginning on the date that the facility was originally placed in service. Credit shall only be allowed for each such kilowatt of electricity that is sold by the individual to an unrelated person during the taxable year.*

*2. For qualified facilities originally placed in service prior to January 1, 2007, the 10-year production period described in subdivision 1 shall begin January 1, 2007.*

*3. In the case of a qualified facility producing incremental hydropower production attributable to efficiency improvements or additions to capacity as described in § 45(d)(9) of the U.S. Internal Revenue Code of 1986, as amended, the 10-year production period described in subdivision 1 shall begin on the date the efficiency improvements or additions to capacity are originally placed in service.*

*C. The adjustment to the federal income tax credit for certain renewable electricity production pursuant to § 45(d)(2)(B)(ii) of the U.S. Internal Revenue Code of 1986, as amended, shall be applicable mutatis mutandis for purposes of the credit under this section.*

*D. The provisions of § 45(e)(4) of the U.S. Internal Revenue Code of 1986, as amended, shall be applicable for purposes of determining whether or not a sale under this section has been made to an unrelated person.*

*E. The provisions of § 45(e)(7) of the U.S. Internal Revenue Code of 1986, as amended, prohibiting credit for electricity sold to utilities under certain contracts shall be applicable for purposes of the credit under this section.*

*F. The amount of any credit attributable to electricity production by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.*

*G. The amount of credit that may be claimed by the individual in any taxable year shall not exceed the lesser of (i) the tax imposed by this chapter for such taxable year or (ii) \$100,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried forward for the next 10 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.*

*§ 58.1-439.12:02. Renewable resources energy production tax credit.*

*A. As used in this section, unless the context requires otherwise:*

*"Qualified energy resources" means the same as that term is defined under § 45(c) of the U.S. Internal Revenue Code of 1986, as amended.*

*"Qualified facility" means a qualified facility as defined under § 45(d) of the U.S. Internal Revenue*

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59 Code of 1986, as amended, that is located in the Commonwealth. Notwithstanding any provision to the  
60 contrary under § 45 of the Internal Revenue Code of 1986, as amended, for purposes of this section, an  
61 otherwise qualified facility shall not lose such qualification if the taxpayer has been allowed a tax credit  
62 or taken a tax credit pursuant to any other section of the Internal Revenue Code for such facility, or for  
63 production from such facility.

64 B. 1. For taxable years beginning on or after January 1, 2007, there shall be allowed as a credit  
65 against the tax liability imposed by § 58.1-400, an amount equal to 0.85 cents for each kilowatt of  
66 electricity produced by the corporation from qualified energy resources at a qualified facility, which is  
67 produced during the 10-year period beginning on the date that the facility was originally placed in  
68 service. Credit shall only be allowed for each such kilowatt of electricity that is sold by the corporation  
69 to an unrelated person during the taxable year.

70 2. For qualified facilities originally placed in service prior to January 1, 2007, the 10-year  
71 production period described in subdivision 1 shall begin January 1, 2007.

72 3. In the case of a qualified facility producing incremental hydropower production attributable to  
73 efficiency improvements or additions to capacity as described in § 45(d)(9) of the U.S. Internal Revenue  
74 Code of 1986, as amended, the 10-year production period described in subdivision 1 shall begin on the  
75 date the efficiency improvements or additions to capacity are originally placed in service.

76 C. The adjustment to the federal income tax credit for certain renewable electricity production  
77 pursuant to § 45(d)(2)(B)(ii) of the U.S. Internal Revenue Code of 1986, as amended, shall be applicable  
78 mutatis mutandis for purposes of the credit under this section.

79 D. The provisions of § 45(e)(4) of the U.S. Internal Revenue Code of 1986, as amended, shall be  
80 applicable for purposes of determining whether or not a sale under this section has been made to an  
81 unrelated person.

82 E. The provisions of § 45(e)(7) of the U.S. Internal Revenue Code of 1986, as amended, prohibiting  
83 credit for electricity sold to utilities under certain contracts shall be applicable for purposes of the  
84 credit under this section.

85 F. The amount of credit that may be claimed by the corporation in any taxable year shall not exceed  
86 the lesser of (i) the tax imposed by this chapter for such taxable year or (ii) \$100,000. Any credit not  
87 usable for the taxable year in which the credit was allowed may be, to the extent usable, carried  
88 forward for the next 10 succeeding taxable years or until the total amount of the tax credit has been  
89 taken, whichever occurs first.

90 2. That the Tax Commissioner shall, by October 1, 2006, establish and publish guidelines for  
91 purposes of implementing the provisions of this act. Such guidelines shall be exempt from the  
92 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).