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**HOUSE BILL NO. 125**

Offered January 9, 2008

Prefiled December 20, 2007

A *BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.12, relating to the nanotechnology qualified equity and subordinated debt investments tax credit.*

Patrons—Purkey, Hall and Moran

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 58.1-339.12 as follows:**

*§ 58.1-339.12. Nanotechnology qualified equity and subordinated debt investments tax credit.*

*A. As used in this section:*

*"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.*

*"Qualified business" means a business that (i) has its principal office or facility in the Commonwealth, (ii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, and (iii) is primarily engaged, or is primarily organized to engage, in the research, development, or commercialization of nanotechnology with applications in any of the following subject areas:*

- 1. Energy, conservation, and the environment;*
- 2. Microelectronics; or*
- 3. Lifespan biology and medicine.*

*"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, or independent contractor within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.*

*"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.*

*B. For taxable years beginning on or after January 1, 2009, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50% of such taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer that has committed capital under management in excess of \$10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member, or owner of an entity that engages in such business.*

*C. The amount of any credit attributable to a qualified investment 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.*

*D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.*

*E. The amount of tax credits available under this section for a calendar year shall be \$15 million.*

*F. Any taxpayer that transfers the equity received in connection with a qualified and fails to hold such equity for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of 1% per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The*

59 *Department of Taxation shall deposit any amounts received under this subsection into the general fund*  
60 *of the Commonwealth.*

61 *G. Subsection F shall not apply if the taxpayer transfers the equity received in connection with a*  
62 *qualified investment as a result of (i) the liquidation of the qualified business issuing such equity, (ii)*  
63 *the merger, consolidation, or other acquisition of such business with or by a party not affiliated with*  
64 *such business, or (iii) the death of the taxpayer.*

65 *H. Prior to December 31, 2008, the Department of Taxation shall promulgate regulations in*  
66 *accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for*  
67 *claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits*  
68 *among taxpayers requesting credits in the event the amount of credits for which requests are made*  
69 *exceeds the available amount of credits in any one calendar year. Notwithstanding the foregoing, the*  
70 *Department of Taxation shall permit an application for certification as a qualified business to be filed at*  
71 *any time during the calendar year regardless of when the investment was made during the calendar*  
72 *year.*