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HOUSE BILL NO. 139**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Finance
on February 4, 2008)

(Patrons Prior to Substitute—Delegates Peace [HB 139], Hogan [HB 647], and Moran [HB 1539])

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to biodiesel fuels producers income tax credit.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:

§ 58.1-439.12:02. *Biodiesel fuels producers tax credit.*

A. *For purposes of this section:*

"Biodiesel fuels" means biodiesel or green diesel that is a renewable, biodegradable, and combustible liquid fuel from agricultural or silvicultural plants, animal fats or other renewable resources including residue and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources that meets American Society for Testing and Materials (ASTM) specifications for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, ASTM specification for green diesel for highway transportation use, or applicable fuel specifications for other use.

"Feedstock" means the agricultural or other renewable resources, whether plant or animal derived, used to produce biodiesel fuels.

"Producer" means any person, entity, or agricultural cooperative association, as defined in the Agricultural Cooperative Association Act (§ 13.1-312 et seq.) that, in a calendar year, produces in the Commonwealth up to two million gallons of biodiesel fuels using feedstock originating domestically within the United States.

B. For taxable years beginning on or after January 1, 2008, any taxpayer who is a biodiesel fuels producer shall be entitled to a nonrefundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to \$0.01 per gallon of biodiesel fuels produced by such taxpayer. However, the annual amount of the credit shall not exceed \$5,000. The taxpayer shall be eligible for the credit during the first three years of production of biodiesel fuels.

Any taxpayer entitled to a credit under this section may transfer unused but otherwise allowable credits for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of the credit in accordance with this section shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

C. The Department of Mines, Minerals and Energy shall certify that the biodiesel fuels producer has satisfied the requirements of this section for the taxable year in which the credit is allowed. In addition, the taxpayer shall submit with his income tax return all documentation as required by the Department of Taxation. Any credit not usable for the taxable year may be carried over the next three taxable years. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year.

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