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HOUSE BILL NO. 647

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend the Code of Virginia by adding a section numbered 58.1-439.10:1, relating to a renewable and alternative energy production tax credit.

Patrons—Hogan, Abbitt, Albo, Athey, Cole, Gilbert, Merricks, Miller, J.H., Peace and Sherwood

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58.1-439.10:1 as follows:

§ 58.1-439.10:1. Renewable and alternative energy production tax credit.

A. As used in this section:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants, and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;

3. Animal waste, including manure and slaughterhouse and other processing waste;

4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated, or painted wood wastes and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Eligible person" means a person that (i) holds title to a qualified energy generator or (ii) leases the property upon which a qualified energy generator operates from a locality pursuant to an industrial revenue bond issue.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate at least one megawatt of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from solar photovoltaic technology, wind power, or biomass, and that is sold to an unrelated person or used in a manufacturing process.

"Renewable or alternative energy" means the electricity or other form of energy, including fuel or steam, that is generated or produced at a qualified energy generator from solar photovoltaic technology, wind power, or biomass.

B. For taxable years beginning on or after January 1, 2009, an eligible person shall be allowed a credit against the tax imposed by §§ 58.1-320 and 58.1-400 in the amount of \$0.001 per kWh of electricity, or its equivalent of energy other than electricity, that is renewable or alternative energy produced at a qualified energy generator in the taxable year.

C. The Department shall determine the appropriate conversion factor to be used in quantifying the tax credit applicable when renewable or alternative energy is produced in a form, including fuel or steam, that is sold or used commercially, which conversion shall be based on the average energy input, in British thermal units, required to generate one kWh in fossil-fuel utility plants in the United States; however, in determining the appropriate conversion factor, the conversion factor stated in the most recent federal Energy Information Agency's Monthly Energy Review shall be presumed to be valid. Until a new conversion factor is established by the Department pursuant to this subsection, a factor of 10,280 Btu/kWh shall be applied.

D. In no event shall the credit allowed under this section exceed the total amount of tax liability of an eligible person for such taxable year. No credit shall be carried back to a preceding taxable year. If the amount of tax credit exceeds the taxpayer's corporate income tax liability for the taxable year the excess may be carried forward for a period of five taxable years. The tax credit provided in this section may not be claimed with respect to the same energy production for which any other tax credit provided under this title, including but not limited to the steam producers tax credit provided under § 58.1-439.3, is or has been claimed.

INTRODUCED

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