

2008 SPECIAL SESSION II

SENATE SUBSTITUTE

086034220

SENATE BILL NO. 6013

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on June 25, 2008)

(Patron Prior to Substitute—Senator Deeds)

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to telework expenses income tax credit to mitigate Virginia's transportation problems.*

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 58.1-439.12:03 as follows:

§ 58.1-439.12:03. Telework expenses tax credit.

A. For purposes of this section:

"Eligible telework expenses" means expenses incurred during the taxable year pursuant to a telework agreement, in an amount up to \$1,200 for each participating employee, that enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses include, but are not limited to, expenses paid or incurred to purchase computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed Internet connectivity equipment, computer security software and devices, and all related delivery, installation, and maintenance fees. Such expenses do not include replacement costs for computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site.

"Employer" means any employer subject to the income tax imposed by this chapter.

"Participating employee" means an employee who has entered into a telework agreement with his employer on or after January 1, 2009. The term shall not include an individual who is self-employed or an individual who ordinarily spends a majority of the workday at a location other than the employer's principal place of business.

"Telework" means the performance of normal and regular work functions on a workday at a location different from the employer's principal place of business where they are normally performed. The term shall not include home-based businesses, extensions of the workday, or work performed on a weekend or holiday.

"Telework agreement" means an agreement signed by the employer and the participating employee, on or after January 1, 2009, but before January 1, 2011, that defines the terms of a telework arrangement, including the number of days per year the participating employee will telework, as provided in subsection B in order to qualify for the credit, and any restrictions on the location from which the employee will telework.

"Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program that would qualify the employer for the credit provided in this section, including but not limited to a workforce profile, a telework program business case and plan, a detailed accounting of the purpose, goals, and operating procedures of the telework program, methodologies for measuring telework program activities and success, and a deployment schedule for increasing telework activity.

B. For taxable years beginning on or after January 1, 2009, but before January 1, 2011, an employer shall be allowed a credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 for a percentage of eligible telework expenses incurred during the 2009 and 2010 calendar years. The amount of the credit shall be equal to:

1. One hundred percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month if the employer's principal place of business is located in an area designated by the United States Environmental Protection Agency as a nonattainment area under the Clean Air Act, 42 U.S.C. § 7401 et seq.;

2. Seventy-five percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month if the employer's principal place of business is not located in an area designated by the United States Environmental Protection Agency as a nonattainment area under the Clean Air Act, 42 U.S.C. § 7401 et seq.; or

3. Twenty-five percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least five days per month.

Such expenses may be incurred (i) only once per employee, and (ii) directly by the employer on behalf of the participating employee or directly by the participating employee and reimbursed by the

SENATE SUBSTITUTE

SB6013S1

60 employer.

61 C. In addition to the credit provided in subsection B, an employer conducting a telework assessment
62 on or after January 1, 2009, shall be allowed a credit against the taxes imposed pursuant to Articles 2
63 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 for the taxable year in which such
64 employer implements a formal telework program in an amount equal to 100 percent of the cost of
65 preparing the assessment, up to a maximum of \$20,000 per employer. Such costs shall be ineligible for
66 this credit if they are otherwise taken as a deduction by the employer from income in any taxable year.
67 The costs included and allowed to be taken as a credit include program planning costs, which may
68 include direct program development and training costs, raw labor costs, and professional consulting
69 fees. Such costs shall not include those for which a credit is claimed under any other provision of this
70 chapter. The credit shall be allowed once for each employer meeting the requirements herein.

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

75 E. The amount of tax credits available to any employer under this section in any taxable year shall
76 not exceed the employer's tax liability. No unused tax credit shall be carried forward or carried back
77 against the employer's tax liability. An employer shall be ineligible for a tax credit pursuant to this
78 section if such employer claims a credit under any other provisions of this chapter.

79 F. 1. An employer seeking to claim a tax credit provided herein shall submit a reservation
80 application to the Tax Commissioner for tentative approval of the credit between September 1 and
81 October 31 of the year preceding the taxable year for which the tax credit is to be earned. The Tax
82 Commissioner shall establish policies and procedures for the reservation of tax credits by eligible
83 employers. Such policies and procedures shall provide (i) requirements for applying for reservations of
84 tax credits; (ii) a system for allocating the available amount of tax credits among eligible employers;
85 and (iii) a procedure for the cancellation and reallocation of tax credit reservations allocated to eligible
86 employers that, after reserving tax credits, have been determined to be ineligible for all or a portion of
87 the tax credits reserved. Such application shall certify that the employer would not have incurred the
88 eligible telework expenses for which the credit is sought but for the availability of such credit. The Tax
89 Commissioner shall provide tentative approval of the applications no later than December 31 of the
90 year in which the applications are received. When the application and amount of tax credits have been
91 approved and the employer applicant notified, such employer may make purchases approved for the tax
92 credits during the immediately following taxable year or lose the right to such credits.

93 2. In no event shall the aggregate amount of tax credits approved by the Tax Commissioner exceed
94 \$1 million annually for credits earned in taxable years 2009 and 2010. In the event the credit amounts
95 on the applications filed with the Tax Commissioner exceed the maximum aggregate amount of tax
96 credits, then the tax credits shall be allocated on a pro rata basis based on the amounts allowed by
97 subsections B and C among the eligible employers who filed timely applications.

98 G. Actions of the Tax Commissioner relating to the approval or denial of applications for
99 reservations of tax credits pursuant to this section shall be exempt from the provisions of the
100 Administrative Process Act (§ 2.2-4000 et seq.).

101 H. The general fund shall be reimbursed, dollar for dollar, from revenues in the Transportation
102 Trust Fund established under § 33.1-23.03:1 for every credit issued pursuant to the provisions of this
103 section.

104 2. That the provisions of this act shall only become effective upon the creation of at least \$1
105 million of new revenues dedicated to the Transportation Trust Fund established under
106 § 33.1-23.03:1 of the Code of Virginia by an enactment of the 2008 Special Session II of the
107 General Assembly that becomes law.