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SENATE BILL NO. 1141

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 5, 2009)

(Patron Prior to Substitute—Senator Lucas)

A BILL to amend the Code of Virginia by adding sections numbered 58.1-331.1 and 58.1-431.1, relating to renewable energy property tax credit.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 58.1-331.1 and 58.1-431.1 as follows:

§ 58.1-331.1. Renewable energy property tax credit.

A. For the purposes of this section:

"Department" means the Virginia Department of Mines, Minerals and Energy.

"Renewable energy property" means a solar photovoltaic system, a solar thermal system, or a wind-powered electrical generator.

"Solar photovoltaic system" means an energy system or solar panel that collects or absorbs sunlight for conversion into electricity and that has been certified as meeting all applicable safety standards of Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with performance and safety standards established by the Virginia State Corporation Commission in accordance with § 56-594.

"Solar thermal system" means a solar energy system that collects or absorbs solar energy to generate hot water or air for space heating or water heating. Solar water heating systems shall meet the operational guidelines for an OG-300 certified solar water heating system as established by the Solar Rating and Certification Corporation. Solar space heating panels that heat air shall meet the operational guidelines for an OG-100 certified solar panel.

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is intended primarily to offset all or part of the owner's electricity requirements, (iv) meets all applicable performance and quality standards specified by the Virginia Department of Mines, Minerals and Energy, and (v) for units that are interconnected with the utility grid, complies with performance and safety standards established by the Virginia State Corporation Commission in accordance with § 56-594.

B. For taxable years beginning on or after January 1, 2009, any individual shall be allowed a credit against the tax imposed by § 58.1-320 for qualifying renewable energy property placed in service during the taxable year.

C. The amount of such credit shall not exceed:

1. \$2,000 for each kilowatt of a solar photovoltaic system, not to exceed \$8,000 per system or the total cost of the system, whichever is less;

2. \$1,500 for each kilowatt of wind-powered electrical generators, not to exceed \$6,000 per system or the total cost of the system, whichever is less; or

3. \$1,000 for each kilowatt equivalent of a solar thermal system, as determined by the Department, not to exceed \$4,000 per system or the total cost of the system, whichever is less.

D. Credits shall be granted by the Department on a first-come, first-served basis until the aggregate amount of all tax credits granted under this section equals \$1,000,000 in a given year.

E. An individual seeking to claim any tax credit provided for under this section shall submit an application to the Department for approval of such tax credit. The Department shall establish the guidelines and forms on which the application is to be submitted. The Department shall within 14 days review such application and shall approve such application upon determining that it meets all guidelines. Actions by the Department relating to the allocation and awarding of credits under this section shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

F. 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 to 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.

G. 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 of Taxation in accordance with procedures and forms prescribed by the Tax Commissioner.

§ 58.1-431.1. Renewable energy property tax credit.

A. For the purposes of this section:

"Department" means the Virginia Department of Mines, Minerals and Energy.

"Renewable energy property" means a solar photovoltaic system, a solar thermal system, or a wind-powered electrical generator.

"Solar photovoltaic system" means an energy system or solar panel that collects or absorbs sunlight for conversion into electricity and that has been certified as meeting all applicable safety standards of Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with performance and safety standards established by the Virginia State Corporation Commission in accordance with § 56-594.

"Solar thermal system" means a solar energy system that collects or absorbs solar energy to generate hot water or air for space heating or water heating. Solar water heating systems shall meet the operational guidelines for an OG-300 certified solar water heating system as established by the Solar Rating and Certification Corporation. Solar space heating panels that heat air shall meet the operational guidelines for an OG-100 certified solar panel.

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is intended primarily to offset all or part of the owner's electricity requirements, (iv) meets all applicable performance and quality standards specified by the Virginia Department of Mines, Minerals and Energy, and (v) for units that are interconnected with the utility grid, complies with performance and safety standards established by the Virginia State Corporation Commission in accordance with § 56-594.

B. For taxable years beginning on or after January 1, 2009, any corporation shall be allowed a credit against the tax imposed by § 58.1-400 for qualifying renewable energy property placed in service during the taxable year.

C. The amount of such credit shall not exceed:

1. \$2,000 for each kilowatt of a solar photovoltaic system, not to exceed \$20,000 per system or the total cost of the system, whichever is less;

2. \$1,500 for each kilowatt of wind-powered electrical generators, not to exceed \$15,000 per system or the total cost of the system, whichever is less; or

3. \$1,000 for each kilowatt equivalent of a solar thermal system, as determined by the Department, not to exceed \$10,000 per system or the total cost of the system, whichever is less.

D. Credits shall be granted by the Department on a first-come, first-served basis until the aggregate amount of all tax credits granted under this section equals \$1,000,000 in a given year.

E. A corporation seeking to claim any tax credit provided for under this section shall submit an application to the Department for approval of such tax credit. The Department shall establish the guidelines and forms on which the application is to be submitted. The Department shall within 14 days review such application and shall certify that the taxpayer has satisfied the requirements of this section for the tax year in which the credit is allowed. Actions by the Department relating to the allocation and awarding of credits under this section shall be except from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

F. The taxpayer shall submit with its income tax return all documentation as required by the Department of Taxation. Any credit not usable for the taxable year may be carried over to 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.

G. 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 of Taxation in accordance with procedures and forms prescribed by the Tax Commissioner.

H. 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 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

2. That the provisions of this act shall not become effective unless (i) the American Recovery and Reinvestment Act of 2009 (H.R. 1, 111th Congress, 1st Session), or similar federal legislation that makes supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization is enacted into law prior to March 27, 2009, and (ii) such federal legislation allows for such supplemental appropriations, in an amount at least equal to the combined anticipated negative fiscal impact on the revenues of the Commonwealth for the 2009-2010 and 2010-2011 fiscal years pursuant to the provisions of this act, to be lawfully used for the tax credits under this act.

Determinations as to whether the conditions under clauses (i) and (ii) have been met shall be made by the Secretary of Finance in writing to the Governor by no later than April 1, 2009.