

10105096D

**HOUSE BILL NO. 545****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance  
on February 10, 2010)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

A *BILL to amend and reenact §§ 58.1-301 and 58.1-3661 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 35 of Title 58.1 a section numbered 58.1-3508.4 and by adding a section numbered 59.1-547.1, relating to recycled materials; tax exemptions and incentives.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-301 and 58.1-3661 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 35 of Title 58.1 a section numbered 58.1-3508.4 and by adding a section numbered 59.1-547.1 as follows:**

§ 58.1-301. Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on December 31, 2008, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code; and

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code.

*However, the special depreciation allowance for certain property provided for under § 168(k) of the Internal Revenue Code shall be permitted for qualified items used in the production, processing, manufacturing, refining, retrieval, transportation or conversion of recycled building materials into articles of tangible personal property for resale.*

§ 58.1-3508.4. *Separate classification of machinery and tools used directly in recycled building materials; certified recycling equipment, facilities or devices.*

*Machinery and tools used directly in the production, processing, manufacturing, refining, retrieval, transportation, or conversion of recycled building materials into articles of tangible personal property for resale shall constitute a classification for local taxation separate from other classifications of machinery and tools, as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable generally to machinery and tools.*

§ 58.1-3661. Certified solar energy equipment, facilities or devices and certified recycling equipment, facilities or devices.

A. Certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real or personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation in the manner provided by subsection D.

B. As used in this section:

"Certified recycling equipment, facilities, or devices" means machinery and equipment which is certified by the Department of ~~Waste Management~~ *Environmental Quality* as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at fixed locations in the Commonwealth. *Machinery and equipment (i) used primarily for the purpose of abating or preventing pollution of the atmosphere or water of the Commonwealth, and (ii) used in the production, processing, manufacturing, refining, retrieval, transportation, or conversion of recycled building materials into articles of tangible personal property for resale, where such industrial materials either enter into production or become a component part of the finished product, may constitute recycling equipment, facilities, or devices for purposes of this section, if certified as such by the Department of Environmental Quality.*

"Certified solar energy equipment, facilities or devices" means any property, including real or

60 personal property, equipment, facilities, or devices, certified by the local certifying authority to be  
61 designed and used primarily for the purpose of providing for the collection and use of incident solar  
62 energy for water heating, space heating or cooling or other application which would otherwise require a  
63 conventional source of energy such as petroleum products, natural gas, or electricity.

64 "Local certifying authority" means the local building departments or the Department of ~~Waste~~  
65 ~~Management~~ *Environmental Quality*. The State Board of Housing and Community Development shall  
66 promulgate regulations setting forth criteria for certifiable solar energy equipment. The Department of  
67 ~~Waste Management~~ *Environmental Quality* shall promulgate regulations establishing criteria for recycling  
68 equipment, facilities, or devices.

69 C. Any person residing in a county, city or town which has adopted an ordinance pursuant to  
70 subsection A may proceed to have solar energy equipment, facilities or devices certified as exempt,  
71 wholly or partially, from taxation by applying to the local building department. If, after examination of  
72 such equipment, facility or device, the local building department determines that the unit primarily  
73 performs any of the functions set forth in subsection B and conforms to the requirements set by  
74 regulations of the Board of Housing and Community Development, such department shall approve and  
75 certify such application. The local department shall forthwith transmit to the local assessing officer those  
76 applications properly approved and certified by the local building department as meeting all  
77 requirements qualifying such equipment, facility or device for exemption from taxation. Any person  
78 aggrieved by a decision of the local building department may appeal such decision to the local board of  
79 building code appeals, which may affirm or reverse such decision.

80 D. Upon receipt of the certificate from the local building department or the Department of ~~Waste~~  
81 ~~Management~~ *Environmental Quality* the local assessing officer shall, if such local ordinance is in effect,  
82 proceed to determine the value of such qualifying solar energy equipment, facilities or devices or  
83 certified recycling equipment, facilities, or devices. The exemption provided by this section shall be  
84 determined by applying the local tax rate to the value of such equipment, facilities or devices and  
85 subtracting such amount, wholly or partially, either (i) from the total real property tax due on the real  
86 property to which such equipment, facilities, or devices are attached or (ii) if such equipment, facilities,  
87 or devices are taxable as machinery and tools under § 58.1-3507, from the total machinery and tools tax  
88 due on such equipment, facilities, or devices, at the election of the taxpayer. This exemption shall be  
89 effective beginning in the next succeeding tax year, and shall be permitted for a term of not less than  
90 five years. In the event the locality assesses real estate pursuant to § 58.1-3292, the exemption shall be  
91 first effective when such real estate is first assessed, but not prior to the date of such application for  
92 exemption.

93 E. It shall be presumed for purposes of the administration of ordinances pursuant to this section, and  
94 for no other purposes, that the value of such qualifying solar energy equipment, facilities and devices is  
95 not less than the normal cost of purchasing and installing such equipment, facilities and devices.

96 § 59.1-547.1. *Recycling of building materials zone; job creation incentives.*

97 A. *A business firm that engages in the production, processing, manufacturing, refining, retrieval,*  
98 *transportation, or conversion of recycled building materials into articles of tangible personal property*  
99 *for resale, where such industrial materials either enter into production or become a component part of*  
100 *the finished product, shall be a qualified business firm for purposes of subsections B and C.*

101 B. *Local governments may provide for local incentives that address the economic conditions within*  
102 *their localities and that will help stimulate real property improvements and new job creation for a*  
103 *qualified business firm. Such local incentives include but are not limited to: (i) reduction of permit fees;*  
104 *(ii) reduction of user fees; (iii) reduction of business, professional, and occupational license tax; (iv)*  
105 *partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and*  
106 *(v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2*  
107 *(§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall*  
108 *conform to the requirements of the Constitution of Virginia and the Constitution of the United States.*  
109 *The locality may also provide for regulatory flexibility, including but not limited to: (a) special zoning*  
110 *districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other such other*  
111 *public incentives as determined by that locality to be desirable.*

112 C. *Any qualified business firm under this section shall be eligible for the following, provided the firm*  
113 *meets all relevant conditions and criteria for the respective grant or tax credit and, notwithstanding any*  
114 *other provision of law, shall not be prohibited from benefiting under all of the following: an enterprise*  
115 *zone job creation grant under § 59.1-547, an enterprise zone real property investment grant under*  
116 *§ 59.1-548, and a major business facility job tax credit pursuant to § 58.1-439.*