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SENATE BILL NO. 1326

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 21, 2011)

(Patron Prior to Substitute—Senator Herring)

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06, relating to research and development expenses 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 58.1-439.12:06 as follows:

§ 58.1-439.12:06. Research and development expenses tax credit.

A. As used in this section, unless the context requires a different meaning:

"Partnership" means the Virginia Economic Development Partnership.

"Virginia base amount" means the base amount as defined in § 41(c) of the Internal Revenue Code, as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research and development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research" for "qualified research"; and (iii) instead of "fixed base percentage," using:

1. The percentage that the Virginia qualified research and development expense for the three taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years; or

2. The percentage that the Virginia qualified research and development expense for the applicable number of taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at least one prior taxable year.

"Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

"Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth.

"Virginia qualified research and development expenses" means qualified research expenses, as defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

B. For taxable years beginning on or after January 1, 2011, but before January 1, 2016, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to (i) 15 percent of the first \$167,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first \$175,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer.

The total amount of credits granted for each fiscal year of the Commonwealth pursuant to this section shall not exceed \$5 million.

C. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as provided herein. The Department shall develop and publish guidelines for applications and such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). In the event applications for the tax credits allowed under this section exceed \$5 million for any taxable year, the Department shall apportion the credits by dividing \$5 million by the total amount of tax credits applied for, to determine the percentage of allowed tax credits each taxpayer shall receive. In the event that the total amount of approved tax credits under this section for all applications for any taxable year is less than \$5 million, the Department shall allocate credits up to the maximum of \$5 million, on a pro rata basis, to taxpayers who are already approved for the tax credit for the taxable year equal to 15 percent of the second \$167,000 in qualified research expenses during the taxable year or 20 percent of the second \$175,000 in qualified research expenses conducted in conjunction with a public or private college or university located in the Commonwealth.

D. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the limitations set forth in the guidelines developed by the Department.

E. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

F. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such entities or in accordance with a written agreement

60 entered into by such individual partners, members, or shareholders.

61 G. The Department shall adopt guidelines to prescribe standards for determining when research and
62 development is considered conducted in the Commonwealth for purposes of allowing the credit under
63 this section. In adopting guidelines, the Department may consider (i) the location where the research
64 and development is performed; (ii) the residence or business location of the taxpayer or taxpayers
65 conducting the research and development; (iii) the location where supplies used in the research and
66 development are consumed; and (iv) any other factors that the Department deems to be relevant.

67 H. The Partnership shall include the tax credits approved in accordance with the provisions of this
68 section in the Annual Report on Business Incentives compiled by the Secretary of Commerce and Trade.
69 Such report shall include (i) the total number of applicants approved for tax credits for the applicable
70 tax year and (ii) the total number of tax credits approved for the applicable tax year.

71 **2. That no tax credit shall be allowed pursuant to § 58.1-439.12:06 of the Code of Virginia if the**
72 **otherwise qualified research and development expenses are paid for or incurred by a taxpayer for**
73 **research conducted in the Commonwealth on human cells or tissue derived from induced abortions**
74 **or from stem cells obtained from human embryos. The foregoing provision shall not apply to**
75 **research conducted using stem cells other than embryonic stem cells.**

76 **3. That the guidelines developed by the Department of Taxation pursuant to § 58.1-439.12:06 shall**
77 **specify that the tax credit authorized pursuant to § 58.1-439.12:06 shall not be refundable if the**
78 **taxpayer conducts research in the Commonwealth on human cells or tissue derived from induced**
79 **abortions or from stem cells obtained from human embryos. The foregoing provision shall not**
80 **apply to research conducted using stem cells other than embryonic stem cells.**