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SENATE BILL NO. 981

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance)

(Patron Prior to Substitute—Senator Whipple)

Senate Amendments in [] — February 2, 2011

A *BILL to amend and reenact § 58.1-433.1 of the Code of Virginia, relating to tax credits for producing energy from renewable energy sources.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-433.1 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-433.1. Energy production tax credit.

A. For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a three-dollar-per-ton credit against the tax imposed by § 58.1-400 or § 58.1-400.2 for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a three-dollar-per-ton coal tax credit and shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale. However, a cogenerator, as defined in § 58.1-2600, shall not be allowed to claim the credit provided by this section and the credit provided by § 58.1-433 on the same ton of coal.

B. For each such ton of coal described in subsection A that is purchased on or after January 1, 2006, from any person with an economic interest in coal as defined under § 58.1-439.2, the \$3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the \$3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and such persons with an economic interest in coal exceed \$3 per ton.

All credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006, and prior to July 1, 2011, exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2.

C. *For taxable years beginning on or after January 1, 2012, every energy producer in the Commonwealth shall be allowed a one-dollar-per-megawatt-hour credit against the tax imposed by § 58.1-320, 58.1-400, or 58.1-400.2 for each megawatt-hour of electricity or megawatt-hour equivalent in thermal energy (generally accepted as 3414425.94972 BTU(th)) that the energy producer generated, and sold or produced for self-consumption, during the taxable year, provided the energy producer has met all conditions of this subsection. In order to be eligible for the credit, the energy producer shall have generated such electricity or thermal energy from equipment first placed in service on or after January 1, 2012, which equipment generated the electricity or thermal energy using sources of renewable energy, as defined in § 56-576, harvested or captured in Virginia as certified by such energy producer. Notwithstanding any other provision of law, no energy producer shall be allowed more than a one-dollar-per-megawatt-hour tax credit. The energy producer shall be subject to all limitations set forth in § 58.1-400.2. In no case shall the amount of credit taken by an energy producer for a taxable year exceed the total amount of tax imposed on the producer by this chapter for the taxable year. Any tax credit not usable for the taxable year in which such credit was earned may be carried over to the extent usable for the next 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this subsection, "energy producer" means any person who produces electricity or thermal energy for self-consumption or for sale. [Energy producer shall not include any investor-owned incumbent electric utility that has applied to the State Corporation Commission for approval to participate in a renewable energy portfolio standard program pursuant to § 56-585.2.*

2. That the provisions of this act shall expire on July 1, 2016.]

ENGROSSED

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