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HOUSE BILL NO. 1728

Offered January 14, 2015

Prefiled January 12, 2015

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11, relating to tax credits for placing into service renewable energy property.

Patron—Sullivan

Referred to Committee on Finance

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 58.1-439.12:11 as follows:

§ 58.1-439.12:11. Renewable energy property tax credit.

A. As used in this section:

"Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

"Hydroelectric generator" means a machine that produces electricity by water power or by the friction of water or steam.

"Renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes.

"Renewable energy property" means any of the following machinery and equipment or real property:

1. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. Biomass equipment that uses renewable biomass resources also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

2. Combined heat and power system property.

3. Geothermal equipment that (i) is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure or (ii) uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.

4. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

5. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Solar energy equipment also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

6. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid.

B. For taxable years beginning on or after January 1, 2015, but before January 1, 2020, any person who has constructed, purchased, or leased renewable energy property and placed such property in service in the Commonwealth during the taxable year shall be allowed a credit against the tax imposed under Article 10 (§ 58.1-400 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 35 percent of the installed cost of the renewable energy property. However, in no case shall the aggregate amount of credit allowed to each person for placing into service renewable energy property during the taxable year exceed the lesser of (i) 50 percent of the tax imposed upon the person under Article 10 (§ 58.1-400 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 for such year or (ii) $15,000. The credit shall only be allowed to the ultimate consumer or user of the renewable energy property.

C. The tax credit shall be claimed in five equal annual installments beginning with the taxable year in which the property is placed in service and for the next four succeeding taxable years.

D. Upon request of a person that leases renewable energy property, the lessor of the property shall give the person a statement that describes the renewable energy property and states the cost of the property.

E. No credit shall be allowed under this section to the extent that the cost of the renewable energy

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property was provided by public funds.

F. If in one of the taxable years in which the installment of a credit accrues the renewable energy property is disposed of, taken out of service, or moved out of the Commonwealth, the credit shall expire and the person shall not claim any installment of the credit for such renewable energy property for that taxable year (and shall be subject to recapture for any credit so claimed) or any taxable year thereafter. However, the person may claim the portion of an installment that accrued in a prior taxable year and is being carried over pursuant to subsection H.

G. To claim the credit established under this section, the person shall apply to the Department to determine the credit amount allowable for the renewable energy property placed in service. The Department shall issue the tax credit by providing a written certification of the allowable amount to the person. The person shall attach the certification to the tax return filed with the Department or the State Corporation Commission, as applicable. In no case shall the Department issue more than $5 million in tax credits under this section during any fiscal year of the Commonwealth. The Department shall develop procedures to issue tax credits in the event that applications for tax credits exceed $5 million for the fiscal year.

H. The amount of the credit claimed shall not exceed the total amount of tax imposed upon the person for the taxable year under Article 10 (§ 58.1-400 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable. Any credit not usable for the taxable year for which the credit was first allowed to be claimed may be carried over for credit against the tax imposed upon the person under Article 10 (§ 58.1-400 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

I. The Tax Commissioner in consultation with the Director of the Department of Mines, Minerals and Energy shall develop and update as necessary guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).