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HOUSE BILL NO. 1877

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4.4:2 of Title 23 a section numbered 23-38.53:10.1, relating to certain coal-related income tax credits.

Patrons—Krupicka and Hope

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4.4:2 of Title 23 a section numbered 23-38.53:10.1 as follows:

§ 23-38.53:10.1. Additional Guaranteed Assistance Fund created.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Additional Guaranteed Assistance Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues described in subsection B, any revenues appropriated by the General Assembly to the Fund, and such gifts, donations, grants, bequests, and other funds as may be received and designated for the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of making payments to any public institution of higher education on behalf of students who have been awarded financial assistance pursuant to the provisions of § 23-38.53:6, subject to the conditions in subsection C. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the State Council of Higher Education for Virginia.

B. By July 31 of each year, beginning in 2016, the Comptroller shall deposit into the Fund an amount that represents the additional annual revenue anticipated to be received in the state treasury from the expiration of the tax credits, effective January 1, 2016, under §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1. The calculation of such amount shall be made by the Tax Commissioner in the month of June 2016. Such amount shall equal the average annual amount claimed on tax returns or redeemed with the Commonwealth by all persons pursuant to such sections for three most recent taxable years for which the Department of Taxation has tax data. The Tax Commissioner shall, as soon as practicable after making such calculation, provide a written certification to the Comptroller of the amount to be deposited into the Fund in 2016 and each year thereafter, which amount shall be the same for each fiscal year.

C. Grant amounts awarded from the Fund on behalf of eligible students shall be determined by the use of a needs-analysis methodology approved by the Council. However, one-half of the amount deposited into the Fund each year shall be reserved and awarded on behalf of eligible students who have as a domicile the County of Lee, County of Wise, County of Scott, County of Buchanan, County of Russell, County of Tazewell, County of Dickenson, or the City of Norton for the 12-month period immediately prior to the awarding of grants from the Fund.

D. The Council shall award grants from the Fund to students who are enrolled in or accepted for enrollment in any public institution of higher education in Virginia.

E. Moneys deposited to the Fund under this section are intended to be in addition to and not in replacement of appropriations to the Virginia Guaranteed Assistance Fund established under § 23-38.53:5.

§ 58.1-433.1. Virginia coal employment and production incentive tax credit.

A. For taxable years beginning on and after January 1, 2001, but before January 1, 2016, 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

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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.

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 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, provided that the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section shall expire for credits earned under this section on or after ~~July 1, 2016~~ *January 1, 2016*.

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, ~~2017~~ *2016*, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

| Seam Thickness | Credit per Ton |
|----------------|----------------|
| 36" and under | \$2.00 |
| Above 36" | \$1.00 |

The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach mapping is based.

2. For coal mined by surface mining methods, a credit in the amount of 40 cents (\$0.40) per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, *but before January 1, 2016*, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent (\$0.01) per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90 days after filing the return; however, for credit earned in tax years beginning on and after January 1, 2002, such excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 85 percent of the face value within 90 days after filing the return. The remaining 10 or 15 percent of the value of the credit being redeemed, as applicable for such tax year, shall be deposited by the Commissioner in a regional economic development fund administered by the Coalfields Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the Coalfields Economic Development Authority and the Virginia Economic Development Partnership.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under § 58.1-433.1 or 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually

beginning in 1999.

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the Department of Mines, Minerals and Energy for the year in which the credit was earned by the total number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for the year immediately prior to the year in which the credit was earned. In no case shall the credit claimed exceed that amount set forth in subsection A.

G. The tax credit allowed under this section shall be claimed in the third taxable year following the taxable year in which the credit was earned and allowed.

§ 58.1-2626.1. The Virginia coal employment and production incentive tax credit.

A. For the tax years beginning on and after January 1, 1988, *but before January 1, 2016*, every corporation in the Commonwealth doing the business of furnishing water, heat, light or power to the Commonwealth or its citizens, whether by means of electricity, gas or steam shall be allowed a credit against the tax imposed by § 58.1-2626 in the following amount: one dollar per ton for each ton of coal purchased and consumed by such corporation in excess of the number of tons of Virginia coal purchased by such corporation in 1985, provided such coal was mined in Virginia as certified by the producer of such coal. This credit shall be prorated equally against the corporation's estimated payments made in September and December and the final payment.

B. For tax years beginning on and after January 1, 1989, *but before January 1, 2016*, every corporation in the Commonwealth doing the business of furnishing water, heat, light or power to the Commonwealth or its citizens, whether by means of electricity, gas or steam shall be allowed additional credit against the tax imposed by § 58.1-2626 in the following amount: one dollar per ton for each ton of coal purchased and consumed by such corporation, provided such coal was mined in Virginia as certified by such seller. The credit shall be prorated equally against the corporation's estimated payments made in September and December and the final payment.

C. [Expired.]

2. That the provisions of this act shall become effective on January 1, 2016.