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## SENATE BILL NO. 1161

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 3, 2015)

(Patron Prior to Substitute—Senator Colgan)

*A BILL to amend and reenact § 58.1-433.1 of the Code of Virginia, relating to coal tax credits.***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. Virginia Coal Employment and Production Incentive 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~~ \$3-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. *For taxable years beginning on and after January 1, 2015, the amount of such credit shall be \$2 per ton.* Notwithstanding any other provision of law, no electricity generator shall be allowed more than a ~~three-dollar-per-ton~~ \$3-per-ton coal tax credit *for taxable years beginning before January 1, 2015, or more than a \$2-per-ton coal tax credit for taxable years beginning on and after January 1, 2015,* and each electricity generator 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.

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. *However, for taxable years beginning on or after January 1, 2015, an electricity generator may not allocate an aggregate amount of credits pursuant to this subsection that exceeds the total number of credits allocated by such electricity generator in taxable year 2012.*

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 *for taxable years beginning before January 1, 2015, or \$2 per ton for taxable years beginning on and after January 1, 2015.*

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.

C. *For Virginia income tax returns filed for taxable year 2015 and taxable years thereafter, the aggregate amount of the credits claimed pursuant to this section shall be limited to \$500,000 per return. Any remaining credit amount may be carried over to the extent usable for the next five succeeding taxable years or until the full credit is utilized, whichever occurs sooner. However, to the extent that any credit pursuant to subsection A was earned for a taxable year beginning before January 1, 2015, any credit amount in excess of the \$500,000 limitation may be carried over to the extent usable for the 12 taxable years following the year in which the credit was earned or until the full credit is utilized, whichever occurs sooner.*