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HOUSE BILL NO. 1814

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on January 30, 2017)

(Patron Prior to Substitute—Delegate Ware)

A BILL to amend and reenact §§ 58.1-439.6 and 58.1-439.12:07 of the Code of Virginia, relating to tax credits for worker retraining and telework expenses.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.6 and 58.1-439.12:07 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.6. Worker retraining tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Commissioner of Labor and Industry.

"Qualified employee" means an employee of an employer eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's operations if the standard fringe benefits are paid by the employer for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as determined by the Department of Small Business and Supplier Diversity Virginia Economic Development Partnership Authority in consultation with the Superintendent of Public Instruction. The term shall include a health care-related discipline.

B. For taxable years beginning on and after January 1, 1999, but prior to January 1, 2018 2022, an employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for eligible worker retraining. However, for taxable years beginning prior to January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed \$100 per qualified employee annually. For taxable years beginning on or after January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed \$200 per qualified employee annually, or \$300 per qualified employee annually if the eligible worker retraining includes retraining in a STEM or STEAM discipline, including but not limited to industry-recognized credentials, certificates, and certifications. The total amount of tax credits granted to employers under this section for each fiscal year shall not exceed \$2,500,000.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. An employer shall be entitled to the credit granted under this section only for those courses at a community college or a private school for which courses have been certified as eligible worker retraining to the Department of Taxation by the Department of Small Business and Supplier Diversity Virginia Economic Development Partnership Authority. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), (i) establishing procedures for claiming the credit provided by this section, (ii) defining eligible worker retraining, which shall include only those courses and programs that are substantially related to the duties of a qualified employee or that enhance the qualified employee's job-related skills, and that promote economic development, and (iii) providing for the allocation of credits among employers requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. The Department of Small Business and Supplier Diversity Virginia Economic Development

60 *Partnership Authority* shall review requests for certification submitted by employers and shall advise the
61 Tax Commissioner whether a course or program qualifies as eligible worker retraining and, if it
62 qualifies, whether the course or program is in a STEM or STEAM discipline.

63 E. Any credit not usable for the taxable year may be carried over for the next three taxable years.
64 The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable
65 year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the
66 tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section
67 of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered
68 to have first utilized any credit allowed which does not have a carryover provision, and then any credit
69 which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed
70 pursuant to this section.

71 F. No employer shall be eligible to claim a credit under this section for worker retraining undertaken
72 by any program operated, administered, or paid for by the Commonwealth.

73 G. The ~~Director of the Department of Small Business and Supplier Diversity~~ *Chief Executive Officer*
74 *of the Virginia Economic Development Partnership Authority* shall report annually to the ~~chairmen~~
75 *Chairmen* of the House Finance and Senate Finance Committees on the status and implementation of the
76 credit established by this section, including certifications for eligible worker retraining.

77 **§ 58.1-439.12:07. Telework expenses tax credit.**

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

79 "Eligible telework expenses" means expenses incurred during the taxable year pursuant to a telework
80 agreement, in an amount up to \$1,200 for each participating employee, that enable a participating
81 employee to begin to telework, which expenses are not otherwise the subject of a deduction from
82 income claimed by the employer in any tax year. Such expenses include, but are not limited to,
83 expenses paid or incurred to purchase computers, computer-related hardware and software, modems, data
84 processing equipment, telecommunications equipment, high-speed Internet connectivity equipment,
85 computer security software and devices, and all related delivery, installation, and maintenance fees. Such
86 expenses do not include replacement costs for computers, computer-related hardware and software,
87 modems, data processing equipment, telecommunications equipment, or computer security software and
88 devices at the principal place of business when that equipment is relocated to the telework site. Eligible
89 telework expenses may also include up to a maximum of \$20,000 for conducting a telework assessment
90 on or after January 1, 2012. Such costs shall be ineligible for this credit if they are otherwise taken as a
91 deduction by the employer from income in any taxable year. The costs included and allowed to be taken
92 as a credit include program planning costs, which may include direct program development and training
93 costs, raw labor costs, and professional consulting fees. Such costs shall not include those for which a
94 credit is claimed under any other provision of this chapter. The credit for conducting a telework
95 assessment shall be allowed once for each employer meeting the requirements herein.

96 "Employer" means any employer subject to the income tax imposed by this chapter.

97 "Participating employee" means an employee who has entered into a telework agreement with his
98 employer on or after July 1, 2012, in accordance with policies set by the Virginia Department of Rail
99 and Public Transportation. The term shall not include an individual who is self-employed or an
100 individual who ordinarily spends a majority of the workday at a location other than the place where his
101 duties are normally performed.

102 "Telework" means the performance of normal and regular work functions on a workday at a location
103 different from the place where work functions are normally performed and that is within or closer to the
104 participating employee's residence. The term shall not include home-based businesses, extensions of the
105 workday, or work performed on a weekend or holiday.

106 "Telework agreement" means an agreement signed by the employer and the participating employee,
107 on or after July 1, 2012, but before January 1, 2017 2022, that defines the terms of a telework
108 arrangement, including the number of days per month the participating employee will telework in order
109 to qualify for the credit, and any restrictions on the location from which the employee will telework.

110 "Telework assessment" means an optional assessment leading to the development of policies and
111 procedures necessary to implement a formal telework program that would qualify the employer for the
112 credit provided in this section, including but not limited to a workforce profile; a telework program
113 business case and plan; a detailed accounting of the purpose, goals, and operating procedures of the
114 telework program; methodologies for measuring telework program activities and success; and a
115 deployment schedule for increasing telework activity.

116 B. For taxable years beginning on or after January 1, 2012, but before January 1, 2017 2022, an
117 employer shall be allowed a credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.)
118 and 10 (§ 58.1-400 et seq.) of this chapter for eligible telework expenses incurred during the calendar
119 year that ends during the taxable year. The amount of the credit shall not exceed \$50,000 per employer
120 for each calendar year.

121 Such expenses may be incurred (i) only once per participating employee and (ii) directly by the

122 employer on behalf of the participating employee or directly by the participating employee and
123 reimbursed by the employer.

124 C. For purposes of this section, the amount of any credit attributable to a partnership, electing small
125 business corporation (S corporation), or limited liability company shall be allocated to the individual
126 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such
127 business entities.

128 D. The amount of tax credits available to any employer under this section in any taxable year shall
129 not exceed the employer's tax liability. No unused tax credit shall be carried forward or carried back
130 against the employer's tax liability. An employer shall be ineligible for a tax credit pursuant to this
131 section if such employer claims a credit based on the jobs, wages, or other expenses for the same
132 employee under any other provision of this chapter.

133 E. An employer seeking to claim a tax credit provided herein shall submit a reservation application
134 to the Tax Commissioner for tentative approval of the credit between September 1 and October 31 of
135 the year preceding the calendar year in which the eligible telework expenses will be incurred. The Tax
136 Commissioner shall establish policies and procedures for the reservation of tax credits by eligible
137 employers. Such policies and procedures shall provide (i) requirements for applying for reservations of
138 tax credits; (ii) a system for allocating the available amount of tax credits among eligible employers; and
139 (iii) a procedure for the cancellation and reallocation of tax credit reservations allocated to eligible
140 employers that, after reserving tax credits, have been determined to be ineligible for all or a portion of
141 the tax credits reserved. Such application shall certify that the employer would not have incurred the
142 eligible telework expenses for which the credit is sought but for the availability of such credit. The Tax
143 Commissioner shall provide tentative approval of the applications no later than December 31 of the year
144 in which the applications are received. When the application and amount of tax credits have been
145 approved and the employer applicant notified, such employer may make purchases approved for the tax
146 credits during the immediately following taxable year or lose the right to such credits.

147 F. In no event shall the aggregate amount of tax credits approved by the Tax Commissioner exceed
148 \$1 million annually. In the event the credit amounts on the applications filed with the Tax
149 Commissioner exceed the maximum aggregate amount of tax credits, then the tax credits shall be
150 allocated on a pro rata basis based on the amounts allowed by subsection B among the eligible
151 employers who filed timely applications.

152 G. Actions of the Tax Commissioner relating to the approval or denial of applications for
153 reservations of tax credits pursuant to this section shall be exempt from the provisions of the
154 Administrative Process Act (§ 2.2-4000 et seq.).