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HOUSE BILL NO. 656

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to coal refuse energy and reclamation tax credit.*

Patron—Wampler

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 58.1-439.12:13 as follows:

§ 58.1-439.12:13. Coal refuse energy and reclamation tax credit.

A. For the purposes of this section:

"Eligible facility" means an electric generating facility placed in service before January 1, 2022, consisting of one or more units placed in service before January 1, 2022, that generates electricity located on the same property and that (i) combusts qualified coal refuse or fuel composed of at least 75 percent qualified coal refuse by BTU energy value in the taxable year; (ii) utilizes at a minimum a circulating fluidized bed combustion unit or pressurized fluidized bed combustion unit equipped with a limestone injection system for control of acid gases and a fabric filter particulate emission control system; and (iii) beneficially uses ash produced by the facility in the taxable year to reclaim mining-affected sites in amounts equal to at least 50 percent of the ash produced by the facility during such taxable year.

"Eligible taxpayer" means a taxpayer that owns an eligible facility in the Commonwealth to whom a tax credit is issued under this section. Such taxpayer must have filed all tax returns and reports required under Virginia law and must have paid any balance of Virginia taxes owed as determined by assessments by the Department not subject to a pending timely appeal.

"Qualified coal refuse" means waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, and related materials associated with or near a coal seam that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or that are separated from coal during the cleaning or preparation operations. "Qualified coal refuse" includes underground development wastes, coal processing wastes, and excess spoil but does not include overburden from surface mining activities.

"Ton" means 2,000 pounds of qualified coal refuse, including inherent moisture, ash, sulphur, and other noncalorific substances, but excluding excess moisture.

B. For taxable years beginning on and after January 1, 2023, but before January 1, 2028, an eligible taxpayer shall be allowed a nonrefundable credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to \$4 per ton of qualified coal refuse used to generate electricity at an eligible facility in the Commonwealth by an eligible taxpayer during the taxable year.

C. The amount of credits that may be claimed for a single eligible facility under this section shall not exceed \$1,665,000 in taxable year 2023, \$2,220,000 in taxable year 2024, and \$4,440,000 in taxable years 2025, 2026, and 2027.

D. The aggregate amount of credits available under this section for each taxable year shall be as follows:

1. For taxable years beginning on and after January 1, 2023, but before January 1, 2024, the total amount of credits granted shall not exceed \$7.5 million.

2. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, the total amount of credits granted shall not exceed \$10 million.

3. For taxable years beginning on and after January 1, 2025, but before January 1, 2028, the total amount of credits granted shall not exceed \$20 million.

In the event approved applications for the credit exceed such aggregate amounts in each taxable year, the Department shall issue the tax credits pro rata based upon the amount of credits approved for each eligible taxpayer.

E. The amount of the credit that may be claimed in any single taxable year shall not exceed the eligible taxpayer's liability for taxes imposed by this chapter for such taxable year. No credit shall be carried back to a preceding taxable year. If the amount of the credit allowed under this section exceeds the eligible taxpayer's liability for the taxable year in which the credit is claimed, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the eligible taxpayer

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59 *in the next five taxable years or until the total amount of the tax credit has been taken, whichever is*
60 *sooner. The credit may only be claimed by one taxpayer for each eligible facility.*

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

65 *G. The Department shall compile an annual report on credits claimed in the respective taxable year*
66 *and shall submit a report by November 1, 2024, and each taxable year thereafter through taxable year*
67 *2027, to the Chairmen of the House Committee on Appropriations, the House Committee on Finance,*
68 *and the Senate Committee on Finance and Appropriations. In preparing such report, the Department*
69 *shall consult and coordinate with the Department of Taxation to provide the number of eligible*
70 *taxpayers applying for and utilizing the credit, the amount of credits approved, and data on the benefits*
71 *to the Commonwealth of the use of qualified coal refuse to generate electricity at an eligible facility in*
72 *the Commonwealth. This information shall be reported in summary fashion as appropriate to preserve*
73 *confidentiality of information.*

74 *H. The Tax Commissioner shall consult and develop guidelines for applying for and claiming the*
75 *credit provided by this section. Such guidelines shall be exempt from the provisions of the*
76 *Administrative Process Act (§ 2.2-4000 et seq.).*