

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section*
 3 *numbered 58.1-439.11, relating to a research and development investment tax credit; study.*

4 [H 1667]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a**
 8 **section numbered 58.1-439.11 as follows:**

9 *§ 58.1-439.11. Research and development investment tax credit.*

10 *A. For taxable years beginning on and after January 1, 2001, but before January 1, 2006, a*
 11 *taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6*
 12 *(§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title as set forth in this section. The*
 13 *amount of credit earned pursuant to this section shall be equal to fifteen percent of the amount spent by*
 14 *a taxpayer on an eligible research and development activity during the taxable year.*

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

19 *C. "Eligible research and development activity" means qualified research expenses as defined in § 41*
 20 *of the Internal Revenue Code of 1986, 26 U.S.C. § 41, when such expenses are incurred by a taxpayer*
 21 *for activity occurring in the Commonwealth.*

22 *D. A taxpayer shall be eligible to claim the credit for the taxable year in which the eligible research*
 23 *and development activity occurred. No taxpayer shall be eligible to claim a credit of more than*
 24 *\$100,000 per year. The amount of credit allowed shall not exceed the tax imposed for the taxable year.*
 25 *Any credit not usable for the taxable year the credit is allowed may be, to the extent usable, carried*
 26 *over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable*
 27 *year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed*
 28 *another credit pursuant to any other section of this Code, or has a credit carryover from a preceding*
 29 *taxable year, such taxpayer shall be considered to have first utilized any credit allowed which does not*
 30 *have a carryover provision, and then any credit which is carried forward from a preceding taxable*
 31 *year, prior to the utilization of any credit allowed pursuant to this section. In no event shall more than*
 32 *five million dollars in credits be allowed for any taxable year. If applications for credits under this*
 33 *section exceed five million dollars for a taxable year, they shall be allocated by the Department among*
 34 *eligible taxpayers in the manner provided by regulations promulgated by the Department pursuant to*
 35 *subsection E.*

36 *E. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative*
 37 *Process Act (§ 9-6.14:1 et seq.), that establish procedures (i) for applying for the credit provided by this*
 38 *section, (ii) for allocating the available amount of tax credits among taxpayers if the amount applied for*
 39 *exceeds five million dollars for a taxable year, and (iii) relating to the computation and carryover of the*
 40 *credit provided under this section.*

41 *F. Any taxpayer that receives tax credits pursuant to § 58.1-439.1; receives grants for manufacturing*
 42 *wafers pursuant to §§ 59.1-284.13, 59.1-284.14 or § 59.1-284.15; receives grants for manufacturing*
 43 *solar panels pursuant to § 45.1-392; or is deemed a qualified shipbuilder pursuant to the third*
 44 *enactment clause of Chapter 790 of the 1998 Acts of Assembly shall not be eligible to receive credits*
 45 *pursuant to this section.*

46 **2. § 1. That the Secretary of Technology and Secretary of Commerce and Trade are directed to conduct**
 47 *a study of tax incentives for research and development investments in the Commonwealth. The study*
 48 *shall specifically address the respective benefits and costs of an investment tax credit for amounts spent*
 49 *in Virginia on qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986. The*
 50 *study shall also address legal and fiscal policy issues relating to incentives for such investments,*
 51 *including, but not limited to, the (i) effectiveness of investment incentives offered by other states for*
 52 *research and development investments; (ii) amount spent in Virginia annually on qualified research*
 53 *expenses; (iii) relative benefits and liabilities of an incentive program that provides an income tax credit*
 54 *compared to a grant program; and (iv) appropriate amount of a cap on tax credits or grant funding*
 55 *that would provide a meaningful incentive to induce materially greater amounts of research and*
 56 *development investments in Virginia. The Secretaries shall work with the Innovative Technology*

57 *Authority, the Virginia Biotechnology Research Park Authority, and the Commonwealth's public colleges*
58 *and universities to determine whether incentives should be focused more narrowly on specific categories*
59 *of qualified research expenses, and if so shall develop guidelines establishing eligibility criteria for such*
60 *incentives. The Secretaries shall confer with the Department of Taxation (i) in developing*
61 *recommendations for methods of allocating tax credits or other incentives among taxpayers whose*
62 *applications exceed a maximum amount of such credits or incentives and (ii) regarding how a state tax*
63 *credit or other incentive program would compound the existing federal income tax credit for research*
64 *and development expenses. The Secretaries shall conduct the study required by this act in conjunction*
65 *with their study and development of a coordinated research and development policy for the*
66 *Commonwealth pursuant to Senate Joint Resolution No. 502 of the 1999 Session of the General*
67 *Assembly. All agencies of the Commonwealth shall provide assistance to the Secretaries or their*
68 *designees in the conduct of this study, upon request. The Secretaries shall complete their work in time to*
69 *submit their findings and recommendations to the Governor and the chairmen of the Senate Committee*
70 *on Finance and the House Committee on Finance by September 1, 1999.*
71 **3. That the provisions of the first enactment of this act shall not become effective unless reenacted**
72 **by the 2000 Session of the General Assembly.**