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## SENATE BILL NO. 1326

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:06, relating to research and development expenses tax credit.

Patrons—Herring, Howell and Reynolds

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 58.1-439.12:06 as follows:**

§ 58.1-439.12:06. Research and development expenses tax credit.

A. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Authority" means the Virginia Economic Development Partnership Authority.

"Virginia base amount" means the base amount as defined in § 41 (c) of the Internal Revenue Code, as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research and development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research" for "qualified research"; and (iii) instead of "fixed base percentage," using:

1. The percentage that the Virginia qualified research and development expense for the three taxable years immediately preceding the taxable year in which such expense is incurred is of the taxpayer's total gross receipts for such years; or

2. The percentage that the Virginia qualified research and development expense for the applicable number of taxable years immediately preceding the taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at least one prior taxable year.

"Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

"Virginia qualified research" means qualified research, as defined in § 41 (d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth.

"Virginia qualified research and development expenses" means qualified research expenses, as defined in § 41 (b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

B. For taxable years beginning on or after January 1, 2012, but before January 1, 2017, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to (i) fifteen percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year, or (ii) twenty percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public college or university, not to exceed the Virginia base amount for the taxpayer.

The total amount of credits granted for each fiscal year of the Commonwealth pursuant to this section shall not exceed \$10 million.

C. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as provided herein. The Department shall develop and publish guidelines for applications and such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). In the event applications for the tax credits allowed under this section exceed \$10 million for any taxable year, the Department shall apportion the credits by dividing the \$10 million by the total amount of tax credits applied for, to determine the percentage each taxpayer shall receive.

D. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer.

E. A taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

F. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders.

G. The Department shall adopt guidelines to prescribe standards for determining when research and development is considered conducted in the Commonwealth for purposes of allowing the credit under this section. In adopting guidelines, the Department may consider (i) the location where the research

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59 *and development are performed; (ii) the residence or business location of the taxpayer or taxpayers*  
60 *doing the research and development; (iii) the location where supplies used in the research and*  
61 *development are consumed; and (iv) any other factors that the Department deems to be relevant.*

62 *H. The Authority shall include the tax credits approved in accordance with the provisions of this*  
63 *section in the Annual Report on Business Incentives compiled by the Secretary of Commerce and Trade.*  
64 *Such report shall include (i) the total number of applicants approved for tax credits for the applicable*  
65 *tax year, and (ii) the total number of tax credits approved for the applicable tax year.*  
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