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## HOUSE BILL NO. 585

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on February 8, 2012)

(Patron Prior to Substitute—Delegate Merricks)

A *BILL to amend and reenact § 58.1-339.4 of the Code of Virginia, relating to tax credits for equity and subordinated debt investments in small businesses.*

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

**1. That § 58.1-339.4 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified *technology* business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Qualified investment" means a cash investment in a qualified *technology* business or a qualified *small business* in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"*Qualified small business*" means a business that (i) is primarily engaged, or is primarily organized to engage, in business in a field that is other than a technology-related field; (ii) has annual gross revenues of no more than \$3 million in its most recent fiscal year; (iii) has its principal office or facility in the Commonwealth; (iv) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (v) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (vi) has no more than 50 employees who are employed within the Commonwealth; and (vii) has been designated as such pursuant to subsection C.

"Qualified *technology* business" means a business which (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is primarily engaged, or is primarily organized to engage, in the fields of a *technology-related field* including, but not limited to, advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments in a *qualified technology business* during such taxable year. For taxable years beginning on or after January 1, 2012, but before January 1, 2015, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to 10 percent of such taxpayer's qualified investments in a *qualified small business* during the taxable year.

No credit shall be allowed under this section to any taxpayer that has committed capital under management in excess of \$10 million and engages in the business of making debt or equity investments

60 in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or  
61 owner of an entity that engages in such business.

62 *C. A business seeking to be a qualified small business shall apply to the Department to be certified*  
63 *as the same in order to receive qualified investments eligible for the credit pursuant to this section and*  
64 *shall provide to the Department such information as the Department deems necessary to demonstrate*  
65 *that it meets all qualifications set forth under this section. A business shall apply each year in order to*  
66 *be certified as a qualified small business. No credit shall be allocated to a taxpayer pursuant to an*  
67 *investment in a small business not first certified by the Department as a qualified small business.*

68 *ED.* The amount of any credit attributable to a qualified investment by a partnership, electing small  
69 business corporation (S corporation), or limited liability company shall be allocated to the individual  
70 partners, shareholders, or members, as the case may be, as they may determine.

71 *DE.* The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax  
72 imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the  
73 credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or  
74 until the total amount of the tax credit has been taken, whichever occurs first.

75 *EF.* The amount of tax credits available under this section for a calendar year shall be \$5 million. Of  
76 the amount of available credits, one-half of the amount shall be allocated exclusively for credits for  
77 commercialization investments. Such allocation of tax credits shall constitute the minimum amount of  
78 tax credits to be allocated for commercialization investments. However, if the amount of tax credits  
79 requested for commercialization investments is less than one-half of the total amount of credits available  
80 under this section, the balance of such credits shall be allocated for qualified investments in any  
81 qualified *small business or qualified technology business* under this section.

82 *FG.* Unless the taxpayer transfers the equity received in connection with a qualified investment as a  
83 result of (i) the liquidation of the qualified *small business or the qualified technology business* issuing  
84 such equity, (ii) the merger, consolidation or other acquisition of such business with or by a party not  
85 affiliated with such business, or (iii) the death of the taxpayer, any taxpayer that fails to hold such  
86 equity for at least three full calendar years following the calendar year for which a tax credit for a  
87 qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits  
88 and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of  
89 one percent per month, compounded monthly, from the date the tax credits were allocated to the  
90 taxpayer. The Department of Taxation shall deposit any amounts received under this subsection into the  
91 general fund of the Commonwealth.

92 *GH.* Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in  
93 accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for  
94 claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among  
95 taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the  
96 available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of  
97 Taxation shall permit an application for certification as a qualified *technology business* to be filed at any  
98 time during the calendar year regardless of when the investment was made during the calendar year.

99 **2. That the fourth enactment of Chapter 853 of the Acts of Assembly of 2009 is amended and**  
100 **reenacted as follows:**

101 **4. That no investment shall be qualified pursuant to § 58.1-339.4 of the Code of Virginia if (i)**  
102 **the otherwise qualified *small business or qualified technology business* performs research in**  
103 **Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from**  
104 **human embryos, or (ii) the taxpayer making the otherwise qualified investment under § 58.1-339.4**  
105 **performs research in Virginia on human cells or tissue derived from induced abortions or from stem**  
106 **cells obtained from human embryos. The foregoing provision shall not apply to research conducted**  
107 **using stem cells other than embryonic stem cells.**

108 **3. That the Tax Commissioner shall develop guidelines implementing the provisions of this act.**  
109 **Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000**  
110 **et seq. of the Code of Virginia).**