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HOUSE BILL NO. 1170

Offered January 17, 2012

A *BILL to amend and reenact § 58.1-439.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-331.1 and 58.1-431.1, relating to income tax credits.*

Patrons—Kory and Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-331.1 and 58.1-431.1 as follows:

§ 58.1-331.1. Renewable energy property and energy audit tax credits.

A. For the purposes of this section, unless the context requires a different meaning:

"Department" means the Virginia Department of Mines, Minerals and Energy.

"Geothermal system" means energy generating units, sometimes referred to as earth-coupled, ground source, or water source heat pumps, that use the constant temperature of the earth as the exchange medium, instead of the outside air temperature, by exchanging heat with the earth through a ground heat exchanger in order to heat, cool, and, if equipped, supply the building with hot water.

"Qualified residential energy audit" means an energy audit performed on the taxpayer's primary residence on or after January 1, 2009, that assesses how much energy a building or operation consumes and evaluates what measures can be taken to make the residence more energy efficient. The audit must be performed by an analyst certified by the Building Performance Institute, Inc. (BPI) or Residential Energy Services Network (RESNET) and documented with a dated copy of the auditor's report identifying the taxpayer's property and auditor's certification number.

"Renewable energy property" means a solar photovoltaic system, a solar thermal system, or a geothermal system.

"Solar photovoltaic system" means an energy system or solar panel that collects or absorbs sunlight for conversion into electricity and that has been certified as meeting all applicable safety standards of Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with performance and safety standards established by the State Corporation Commission in accordance with § 56-594.

"Solar thermal system" means a solar energy system that collects or absorbs solar energy to generate hot water or air for space heating or water heating. Solar water heating systems shall meet the operational guidelines for an OG-300 certified solar water heating system as established by the Solar Rating and Certification Corporation. Solar space heating panels that heat air shall meet the operational guidelines for an OG-100 certified solar panel.

B. For taxable years beginning on or after January 1, 2012, any individual shall be allowed a credit against the tax imposed by § 58.1-320 for qualifying renewable energy property placed in service during the taxable year.

The amount of such credit shall be computed at:

1. \$1.25 per watt for the first 2,000 watts; \$0.75 per watt for 2,001 through 8,000 watts; and \$0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed \$10,000 per system or the total cost of the system, whichever is less;

2. Ten percent of the installed cost of a geothermal system, not to exceed \$3,000 per system or the total cost of the system, whichever is less; or

3. \$2,000 per system for a solar thermal system or the total cost of the system, whichever is less.

C. In addition to the credit provided in subsection B, for taxable years beginning on or after January 1, 2012, any individual shall be allowed a credit against the tax imposed by § 58.1-320 for a qualified residential energy audit equal to 50 percent of the cost of such audit, not to exceed \$250. The taxpayer shall be allowed only one credit for a qualified residential energy audit during any five-taxable-year period. Such credit shall be in lieu of any rebate offered by the Department for the same type of audit.

D. 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 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

E. An individual seeking to claim any tax credit provided for under this section shall submit an application to the Department for approval of such tax credit. The Department shall establish the guidelines and forms on which the application is to be submitted. The Department shall within 14 days

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59 review such application and shall approve such application upon determining that it meets all
60 guidelines. Actions by the Department relating to the allocation and awarding of credits under this
61 section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

62 F. In no case shall the Department approve more than \$3 million in tax credits under this section
63 during any fiscal year of the Commonwealth. The Department shall develop procedures for the approval
64 of tax credits in the event that applications for tax credits exceed \$3 million for the fiscal year.

65 G. The taxpayer shall submit with his income tax return all documentation as required by the
66 Department of Taxation. For purposes of tax credit for a qualified residential energy audit, such
67 documentation shall include the auditor's report and evidence, including but not limited to paid receipts,
68 that the taxpayer implemented all improvements in energy efficiency recommended in the auditor's
69 report. Any credit not usable for the taxable year may be carried over for the next three taxable years.
70 The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such
71 taxable year.

72 § 58.1-431.1. Renewable energy property and energy audit tax credits.

73 A. For the purposes of this section, unless the context requires a different meaning:

74 "Department" means the Virginia Department of Mines, Minerals and Energy.

75 "Geothermal system" means energy generating units, sometimes referred to as earth-coupled, ground
76 source, or water source heat pumps, that use the constant temperature of the earth as the exchange
77 medium, instead of the outside air temperature, by exchanging heat with the earth through a ground
78 heat exchanger in order to heat, cool, and, if equipped, supply the building with hot water.

79 "Qualified commercial property energy audit" means an energy audit performed on the taxpayer's
80 commercial property on or after January 1, 2009, that assesses how much energy a building or
81 operation consumes and evaluates what measures can be taken to make the commercial property more
82 energy efficient. The audit must be performed by an analyst certified by the Building Performance
83 Institute, Inc. (BPI) or other analyst approved by the Department and documented with a dated copy of
84 the auditor's report identifying the taxpayer's property and auditor's certification number.

85 "Renewable energy property" means a solar photovoltaic system, a solar thermal system, or a
86 geothermal system.

87 "Solar photovoltaic system" means an energy system or solar panel that collects or absorbs sunlight
88 for conversion into electricity and that has been certified as meeting all applicable safety standards of
89 Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with
90 performance and safety standards established by the State Corporation Commission in accordance with
91 § 56-594.

92 "Solar thermal system" means a solar energy system that collects or absorbs solar energy to
93 generate hot water or air for space heating or water heating. Solar water heating systems shall meet the
94 operational guidelines for an OG-300 certified solar water heating system as established by the Solar
95 Rating and Certification Corporation. Solar space heating panels that heat air shall meet the
96 operational guidelines for an OG-100 certified solar panel.

97 B. For taxable years beginning on or after January 1, 2012, any corporation shall be allowed a
98 credit against the tax imposed by § 58.1-400 for qualifying renewable energy property placed in service
99 during the taxable year.

100 The amount of such credit shall be computed at:

101 1. \$1.25 per watt for the first 2,000 watts; \$0.75 per watt for 2,001 through 8,000 watts; and \$0.25
102 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed \$2.5 million per
103 system or the total cost of the system, whichever is less;

104 2. Ten percent of the installed cost for a geothermal system, not to exceed \$10,000 per system or the
105 total cost of the system, whichever is less; or

106 3. Twenty-five percent of the installed cost for a solar thermal system, not to exceed \$10,000 per
107 system or the total cost of the system, whichever is less.

108 C. In addition to the credit provided in subsection B, for taxable years beginning on or after January
109 1, 2012, any corporation shall be allowed a credit against the tax imposed by § 58.1-400 for a qualified
110 commercial property energy audit equal to 50 percent of the cost of such audit, not to exceed \$500. The
111 taxpayer shall be allowed only one credit for a qualified commercial property energy audit during any
112 five-taxable-year period.

113 D. A corporation seeking to claim any tax credit provided for under this section shall submit an
114 application to the Department for approval of such tax credit. The Department shall establish the
115 guidelines and forms on which the application is to be submitted. The Department shall within 14 days
116 review such application and, upon determining that it meets all guidelines, shall certify that the taxpayer
117 has satisfied the requirements of this section for the taxable year in which the credit is allowed. Actions
118 by the Department relating to the allocation and awarding of credits under this section shall be exempt
119 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

120 E. In no case shall the Department approve more than \$5 million in tax credits under this section

121 during any fiscal year of the Commonwealth. The Department shall develop procedures for the approval
122 of tax credits in the event that applications for tax credits exceed \$5 million for the fiscal year.

123 F. The taxpayer shall submit with its income tax return all documentation as required by the
124 Department of Taxation. For purposes of tax credit for a qualified commercial property energy audit,
125 such documentation shall include the auditor's report and evidence, including but not limited to paid
126 receipts, that the taxpayer implemented all improvements in energy efficiency recommended in the
127 auditor's report. Any credit not usable for the taxable year may be carried over to the next three taxable
128 years. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for
129 such taxable year.

130 § 58.1-439.2. Coalfield employment enhancement tax credit.

131 A. For tax years beginning on and after January 1, 1996, but before January 1, 2015, any person
132 who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the
133 tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the
134 following:

135 1. For coal mined by underground methods, the credit amount shall be based on the seam thickness
136 as follows:

137	Seam Thickness	Credit per Ton
138	36" and under	\$2.00
139	Above 36"	\$1.00

140 The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness
141 by mine as certified by a professional engineer. Copies of such certification shall be maintained by the
142 person qualifying for the credit under this section for a period of three years after the credit is applied
143 for and received and shall be available for inspection by the Department of Taxation. The Department of
144 Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach
145 mapping is based.

146 2. For coal mined by surface mining methods, a credit in the amount of 40 cents per ton for coal
147 sold in 1996, and each year thereafter.

148 B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1,
149 1996, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one
150 cent (\$0.01) per million BTUs of coalbed methane produced in the Commonwealth against the tax
151 imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

152 C. For purposes of this section, economic interest is the same as the economic ownership interest
153 required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party
154 who only receives an arm's length royalty shall not be considered as having an economic interest in coal
155 mined in the Commonwealth.

156 D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable
157 by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90
158 days after filing the return; however, for credit earned in tax years beginning on and after January 1,
159 2002, but prior to January 1, 2012, such excess shall be redeemable by the Tax Commissioner on
160 behalf of the Commonwealth for 85 percent of the face value within 90 days after filing the return and
161 for tax years beginning on and after January 1, 2012, such excess shall be redeemable by the Tax
162 Commissioner on behalf of the Commonwealth for 75 percent of the face value within 90 days after
163 filing the return. For tax years beginning prior to January 1, 2012, the remaining 10 or 15 percent
164 of the value of the credit being redeemed, as applicable for such tax year, shall be deposited by the
165 Commissioner in a regional economic development fund administered by the Coalfields Economic
166 Development Authority to be used for regional economic diversification in accordance with guidelines
167 developed by the Coalfields Economic Development Authority and the Virginia Economic Development
168 Partnership. For tax years beginning on and after January 1, 2012, 15 percent of the value of the credit
169 being redeemed shall be deposited by the Commissioner in such regional economic development fund
170 administered by the Coalfields Economic Development Authority and the remaining 10 percent of the
171 value of the credit being redeemed shall not be paid.

172 E. No person may utilize more than one of the credits on a given ton of coal described in subsection
173 A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been
174 claimed under § 58.1-433.1 or 58.1-2626.1. Persons who qualify for the credit may not apply such credit
175 to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually
176 beginning in 1999.

177 F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned
178 multiplied by the person's employment factor. The person's employment factor shall be the percentage
179 obtained by dividing the total number of coal mining jobs of the person filing the return, including the
180 jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the
181 Department of Mines, Minerals and Energy for the year in which the credit was earned by the total

182 number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for
183 the year immediately prior to the year in which the credit was earned. In no case shall the credit
184 claimed exceed that amount set forth in subsection A.
185 G. The tax credit allowed under this section shall be claimed in the third taxable year following the
186 taxable year in which the credit was earned and allowed.