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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

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

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

§ 58.1-439.2. Coalfield employment enhancement tax credit.

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

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

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

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

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

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

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

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

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

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the 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.