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HOUSE BILL NO. 1063

Offered January 8, 2014

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11, relating to tax credits for installing renewable energy property.

Patron—Villanueva

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 58.1-439.12:11 as follows:

§ 58.1-439.12:11. *Renewable energy property tax credit.*

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

"Biomass system" means equipment that uses renewable biomass resources utilizing agricultural, animal waste, or garbage for (i) anaerobic biogas production of methane, (ii) commercial thermal generation, or (iii) electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

"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.

"Hydroelectric system" means a new energy generating unit located at an existing dam or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

"Renewable energy property" means a solar photovoltaic system, solar thermal system, wind system, hydroelectric system, biomass system, or 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 photovoltaic system" includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy. Such devices include renewable energy assisted energy storage or micro-grid and off-grid systems.

"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 thermal systems shall meet the operational guidelines for an OG-100 certified solar panel, as established by the Solar Rating and Certification Corporation.

"Wind system" means energy generation units required to capture and convert wind energy into electricity or mechanical power and related devices for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid.

B. 1. For taxable years beginning on or after January 1, 2014, a person shall be eligible for a credit against the tax levied pursuant to § 58.1-320, 58.1-400, or 58.1-2500 for renewable energy property placed into service in the Commonwealth by the person during the taxable year. The credit shall equal 40 percent of the costs paid or incurred by the person to place the property into service, not to exceed \$3 million for any individual piece of renewable energy property. No credit shall be allowed for costs paid or incurred related to existing infrastructure.

2. In the case of renewable energy property that is eligible for a credit not in excess of \$250,000, the credit shall be allowed for the taxable year in which the property is placed into service. For all other renewable energy property eligible for credit, the tax credit shall be allowed in three equal taxable year installments beginning with the taxable year in which the property is placed into service and for the next two succeeding taxable years.

C. If any portion of the cost of the renewable energy property was funded directly or indirectly by Commonwealth of Virginia grants, Commonwealth of Virginia tax exempt bonds, utility ratepayer funds, or other public funds, the amount of the credit otherwise allowed under subsection B for the taxable year with respect to the renewable energy property shall be a reduced credit amount computed using the following formula:

Amount of Credit	—	(Amount of Credit	X	Percentage of the
Otherwise Allowed		Otherwise Allowed		Property Funded

INTRODUCED

HB1063

Publicly)

The Percentage of the Property Funded Publicly shall be a fraction (i) the numerator of which is the sum, for the taxable year and all prior taxable years, of (a) grants provided by the Commonwealth or an authority or political subdivision of the Commonwealth for use in connection with the renewable energy property, (b) proceeds of obligations issued by the Commonwealth or an authority or political subdivision of the Commonwealth used to provide financing for the property, the interest of which is exempt under this chapter, (c) utility ratepayer funds for which the utility is guaranteed a rate of return by the State Corporation Commission, and (d) other public funds of the Commonwealth or an authority or political subdivision of the Commonwealth directly or indirectly provided in connection with the property and (ii) the denominator of which is the aggregate amount of additions to the capital account for the renewable energy property for the taxable year and all prior taxable years.

The amounts included in the numerator and the denominator for any taxable year shall be determined as of the close of the taxable year.

D. If in one of the three taxable years in which the installment of a credit accrues the renewable energy property is disposed of, taken out of service, or moved out of the Commonwealth, the credit shall expire and the person shall not be allowed the credit installment for such renewable energy property for such taxable year (and shall be subject to recapture for any credit so claimed) or any taxable year thereafter. However, the person may claim any credit installment that accrued in a prior taxable year and is being carried over pursuant to subsection E.

E. The amount of the credit claimed shall not exceed the total amount of tax imposed by this chapter or Chapter 25 (§ 58.1-2500 et seq.) upon the person for the taxable year, as applicable. Any credit not usable for the taxable year for which the credit was first allowed to be claimed may be carried over for credit against the taxes imposed by this chapter or Chapter 25 (§ 58.1-2500 et seq.), as applicable, upon the person in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

F. 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, or as the partners, shareholders, or members mutually agree as provided in an executed document the form of which shall be prescribed by the Tax Commissioner.

G. Any person who has been allowed a tax credit under this section may transfer or assign any unused but otherwise allowable portion of such credit for use by another person against the taxes imposed by this chapter or Chapter 25 (§ 58.1-2500 et seq.), as applicable. Any person who transfers or assigns any portion of the credit in accordance with this section shall file a notification of such transfer or assignment to the Department of Taxation in accordance with procedures and forms prescribed by the Tax Commissioner. Any proceeds realized by the person from such transfer or assignment shall be exempt from the taxes imposed under this chapter.

Any person to whom a credit has been transferred or assigned may use such credit for the taxable year in which the transfer or assignment occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred or assigned credit be used more than 11 years after it was originally allowed or in any taxable year of such person that ended prior to the date of transfer.

H. The credit under this section shall be administered by the Department of Mines, Minerals and Energy. In no case shall the Department of Mines, Minerals and Energy approve more than \$100 million in tax credits under this section during any fiscal year of the Commonwealth. The Department of Mines, Minerals and Energy shall develop procedures for the allocation of tax credits. At a minimum, a person seeking to claim any tax credit provided for under this section shall submit an application to the Department including the construction permits needed to build the renewable energy property. The Department of Mines, Minerals and Energy shall within 14 days after receipt of a complete application review such application and approve such application if it determines that it meets all requirements. The person shall then have 12 months from the date of allocation of the tax credits to place the renewable energy property into service. If the person fails to place the renewable energy property into service within such 12 months, then the person's allocation of tax credit shall expire and the allocated tax credit amount shall be added to the current fiscal year allocation of tax credits. Actions by the Department relating to the allocation and awarding of credits under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

I. The person shall submit with his applicable tax return all documentation as required by the Department of Taxation.

J. The Tax Commissioner in consultation with the Director of the Department of Mines, Minerals and Energy shall develop and update as necessary guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

121 *K. Guidelines implementing the provisions of this section shall be first developed and made publicly*
122 *available within 90 days of the effective date of this section.*

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HB1063