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HOUSE BILL NO. 910

Offered January 8, 2014

Prefiled 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 placing into service 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:

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power.

"Renewable energy property" means property that produces renewable energy and related devices necessary for collecting, controlling, storing, exchanging, conditioning, or converting such energy.

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:

$$\begin{array}{lcl} \text{Amount of Credit} & - & (\text{Amount of Credit} \times \text{Percentage of the} \\ \text{Otherwise Allowed} & & \text{Property Funded} \\ & & \text{Publicly}) \end{array}$$

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

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

64 F. For purposes of this section, the amount of any credit attributable to a partnership, electing small
65 business corporation (S corporation), or limited liability company shall be allocated to the partners,
66 shareholders, or members, respectively, in proportion to their ownership or interest in such business
67 entity, or as the partners, shareholders, or members mutually agree as provided in an executed
68 document the form of which shall be prescribed by the Tax Commissioner.

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

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

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

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

97 J. The Tax Commissioner in consultation with the Director of the Department of Mines, Minerals
98 and Energy shall develop and update as necessary guidelines implementing the provisions of this
99 section. Such guidelines shall be exempt from the provisions of the Administrative Process Act
100 (§ 2.2-4000 et seq.).

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