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HOUSE BILL NO. 1979

Offered January 13, 2021

Prefiled January 11, 2021

A BILL to amend and reenact §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-1509.5 and by adding in Title 67 a chapter numbered 18, consisting of sections numbered 67-1800 through 67-1807, relating to electric vehicle rebate program; creation and funding; report.

Patrons—Reid, Willett, Kory, Bagby, Carr, Gooditis, Keam, Krizek, Lopez, McQuinn, Mugler, Murphy, Plum, Sullivan and Tran; Senators: Boysko, Favola and McClellan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-1509.5 and by adding in Title 67 a chapter numbered 18, consisting of sections numbered 67-1800 through 67-1807, as follows:

§ 2.2-1509.5. Budget bill to include an appropriation for Electric Vehicle Rebate Program.

Each year the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a recommended appropriation to the Electronic Vehicle Rebate Fund established pursuant to § 67-1806 equal to the difference between the amount of revenue lost in the Commonwealth in fiscal year 2020 due to tax credits claimed pursuant to §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 and the amount of revenue lost in the Commonwealth in the fiscal year that ended the immediately preceding June 30 due to the tax credits claimed pursuant to §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1.

§ 58.1-433.1. Virginia Coal Employment and Production Incentive Tax Credit.

A. For taxable years beginning on and after January 1, 2001, *but before January 1, 2021*, every electricity generator in the Commonwealth shall be allowed a ~~three-dollar-per-ton~~ \$3-per-ton credit against the tax imposed by § 58.1-400 or § 58.1-400.2 for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a ~~three-dollar-per-ton~~ \$3-per-ton coal tax credit and shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale.

B. For each such ton of coal described in subsection A that is purchased on or after January 1, 2006, *but before January 1, 2021*, from any person with an economic interest in coal as defined under § 58.1-439.2, the \$3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the \$3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and such persons with an economic interest in coal exceed \$3 per ton.

All credits earned on or after January 1, 2006, ~~which~~ *but before January 1, 2021*, that are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006, *but before January 1, 2021*, exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2, provided that the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section shall expire for credits earned under this section on or after July 1, 2016.

§ 58.1-439.2. Coalfield employment enhancement tax credit.

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58 A. For tax years beginning on and after January 1, 1996, but before January 1, 2017, and on and
 59 after January 1, 2018, but before January 1, ~~2023~~ 2021, any person who has an economic interest in
 60 coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and
 61 any other tax imposed by the Commonwealth in accordance with the following:

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

64 Seam Thickness	Credit per Ton
65 36" and under	\$2.00
66 Above 36"	\$1.00

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

73 2. For metallurgical coal mined by surface mining methods, a credit in the amount of 40 cents
 74 (\$0.40) per ton for coal sold in 1996, and each year thereafter.

75 B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1,
 76 1996, but before January 1, ~~2023~~ 2021, any person who is a producer of coalbed methane shall be
 77 allowed a credit in the amount of one cent (\$0.01) per million BTUs of coalbed methane produced in
 78 the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the
 79 Commonwealth on such person.

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

84 D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable
 85 by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90
 86 days after filing the return; however, for credit earned in tax years beginning on and after January 1,
 87 2002, *but before January 1, 2021*, such excess shall be redeemable by the Tax Commissioner on behalf
 88 of the Commonwealth for 85 percent of the face value within 90 days after filing the return. The
 89 remaining 10 or 15 percent of the value of the credit being redeemed, as applicable for such tax year,
 90 shall be deposited by the Commissioner in a regional economic development fund administered by the
 91 Virginia Coalfield Economic Development Authority to be used for regional economic diversification in
 92 accordance with guidelines developed by the Virginia Coalfield Economic Development Authority and
 93 the Virginia Economic Development Partnership.

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

99 F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned
 100 multiplied by the person's employment factor. The person's employment factor shall be the percentage
 101 obtained by dividing the total number of coal mining jobs of the person filing the return, including the
 102 jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the
 103 Department of Mines, Minerals and Energy for the year in which the credit was earned by the total
 104 number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for
 105 the year immediately prior to the year in which the credit was earned. In no case shall the credit
 106 claimed exceed that amount set forth in subsection A.

107 G. The tax credit allowed under this section shall be claimed in the third taxable year following the
 108 taxable year in which the credit was earned and allowed.

109 H. As used in this section, "metallurgical coal" means bituminous coal used for the manufacture of
 110 iron and steel with calorific value of 14,000 BTUs or greater on a moisture and ash free basis.

111 **§ 58.1-2626.1. The Virginia Coal Employment and Production Incentive Tax Credit.**

112 A. For the tax years beginning on and after January 1, 1988, *but before January 1, 2021*, every
 113 corporation in the Commonwealth doing the business of furnishing water, heat, light, or power to the
 114 Commonwealth or its citizens, whether by means of electricity, gas, or steam shall be allowed a credit
 115 against the tax imposed by § 58.1-2626 in the following amount: ~~one dollar~~ \$1 per ton for each ton of
 116 coal purchased and consumed by such corporation in excess of the number of tons of Virginia coal
 117 purchased by such corporation in 1985, provided such coal was mined in Virginia as certified by the
 118 producer of such coal. This credit shall be prorated equally against the corporation's estimated payments
 119 made in September and December and the final payment.

B. For tax years beginning on and after January 1, 1989, *but before January 1, 2021*, every corporation in the Commonwealth doing the business of furnishing water, heat, light, or power to the Commonwealth or its citizens, whether by means of electricity, gas, or steam shall be allowed additional credit against the tax imposed by § 58.1-2626 in the following amount: ~~one dollar~~ \$1 per ton for each ton of coal purchased and consumed by such corporation, provided such coal was mined in Virginia as certified by such seller. The credit shall be prorated equally against the corporation's estimated payments made in September and December and the final payment.

C. ~~[Expired.]~~

CHAPTER 18. ELECTRIC VEHICLE REBATE PROGRAM.

§ 67-1800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory Council" means the Electric Vehicle Rebate Advisory Council.

"Dealer" means a motor vehicle dealer licensed pursuant to Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2. For purposes of this chapter, "dealer" shall also include any vehicle manufacturer that is authorized to sell directly to consumers in the Commonwealth.

"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power. "Electric motor vehicle" includes fuel cell electric vehicles.

"Fund" means the Electric Vehicle Rebate Program Fund.

"Participating dealer" means a dealer who is participating in the Program.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 773(2) of the Omnibus Budget Reconciliation Act of 1981.

"Program" means the Electric Vehicle Rebate Program established pursuant to this chapter.

"Purchaser" means a purchaser or lessee of a new or used electric motor vehicle.

"Qualified resident of the Commonwealth" means a resident of the Commonwealth whose annual household income does not exceed 300 percent of the current poverty guidelines.

"Used electric motor vehicle" means a previously owned or leased electric motor vehicle that is not more than seven years old.

§ 67-1801. Electric Vehicle Rebate Program.

There is hereby established an Electric Vehicle Rebate Program for the purchase or lease of new and used electric motor vehicles. The Program shall be administered by the Department. The Department shall determine the best method to administer the Program, which may include contracting with a third-party administrator.

§ 67-1802. Eligibility for rebate; amount of rebate.

A. Beginning September 1, 2021, a resident of the Commonwealth who is the purchaser of a new or used electric motor vehicle from a participating dealer shall be eligible for a rebate of \$2,500, subject to the availability of funds in the Fund.

B. Beginning September 1, 2021, a qualified resident of the Commonwealth who is the purchaser of a new or used electric motor vehicle from a participating dealer shall be eligible for a \$2,000 enhanced rebate, in addition to the rebate provided in subsection A, subject to availability of funds in the Fund.

C. The Department shall develop and implement a process by which a purchaser may apply to the Department for a rebate pursuant to this section. Such process shall include verification that the purchaser possesses a valid Virginia driver's license and submission of the purchaser's full name, address, and contact information; the make and model of the vehicle to be purchased or leased; the vehicle identification number; the name of the participating dealer; and any other information deemed necessary by the Department. Upon verification that the purchaser is eligible for a rebate pursuant to this section, the Department shall issue to the purchaser a voucher or other evidence of verification that includes the total amount of the rebate to which the purchaser is entitled. The purchaser shall present the voucher to the dealer at the time of the purchase or lease. The amount of the rebate shall be deducted from the sales price by the participating dealer at the time of the sale or lease, and the participating dealer shall be reimbursed for the amount of the rebate by the Department from the Fund.

§ 67-1803. Program website.

The Department shall establish a website for the administration of the Program. The website shall include general information for the public, including details about the Program and performance metrics regarding the Program. The website shall also provide real-time data regarding the availability of funds in the Fund at the time of the sale or lease, and shall provide instructions for the dealer as to how to process a reimbursement for the rebate provided pursuant to subsection C of § 67-1802.

§ 67-1804. Incentive payment.

In addition to reimbursing a dealer for the rebate provided to a purchaser pursuant to this chapter, the Department shall also provide a dealer with a \$50 incentive payment for each eligible rebate

181 processed by the dealer, to be paid to the employee of the dealer who sold the vehicle.

182 **§ 67-1805. Electronic Rebate Advisory Council.**

183 A. The Electric Rebate Advisory Council (the Advisory Council) is established to monitor the
184 implementation and operation of the Program and to make recommendations to the Department
185 regarding suggested changes to the Program.

186 B. The Advisory Council shall consist of 12 members as follows: (i) two nonlegislative citizen
187 members who shall be licensed motor vehicle dealers to be appointed by the Secretary of
188 Transportation; (ii) eight nonlegislative citizen members to be appointed by the Secretary of Natural
189 Resources, at least two of whom shall represent environmental justice organizations, at least two of
190 whom shall represent environmental advocacy organizations, at least one of whom shall represent an
191 automobile manufacturer, and at least one of whom shall represent an original equipment manufacturer;
192 (iii) the Director of the Department of Mines, Minerals and Energy, or his designee, who shall serve ex
193 officio with voting privileges; and (iv) the Executive Director of the Motor Vehicle Dealer Board, who
194 shall serve ex officio with voting privileges.

195 After an initial staggering of terms, nonlegislative members shall be appointed for a term of four
196 years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired
197 terms. All members may be reappointed. Vacancies shall be filled in the same manner as the original
198 appointments.

199 C. The Advisory Council shall elect a chairman and vice-chairman annually from among the
200 members. The meetings of the Advisory Council shall be at the call of the chairman, the Director, or
201 whenever a majority of the members so request.

202 D. Nonlegislative citizen members shall receive compensation and shall be reimbursed for all
203 reasonable and necessary expenses incurred in the performance of their duties, as provided in §§
204 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be
205 provided by the Department.

206 E. The Department shall serve as staff to the Advisory Council.

207 **§ 67-1806. Electronic Vehicle Rebate Fund.**

208 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
209 Electronic Vehicle Rebate Fund. The Fund shall be established on the books of the Comptroller. All
210 funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received
211 on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys
212 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
213 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
214 remain in the Fund. Moneys in the Fund shall be used solely for the purposes of set forth in this
215 chapter, including expenses related to the administration of the Program by the Department.
216 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued
217 by the Comptroller upon written request signed by the Director of the Department.

218 B. Of the amount of funds available for the provision of rebates and incentive payments pursuant to
219 this chapter, 75 percent of the funds shall be allocated for the payment of rebates pursuant to
220 subsection A of § 67-1802 and incentive payments pursuant to § 67-1804, and 25 percent of the funds
221 shall be allocated for the payment of the enhanced rebate pursuant to subsection B of § 67-1802.

222 C. Beginning with the submission due on or before December 20, 2021, and in each year thereafter,
223 the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in
224 his amendments to the general appropriations act in effect submitted pursuant to subsection E of
225 § 2.2-1509 a recommended appropriation to the Fund equal to the difference between the amount of
226 revenue lost in the Commonwealth in fiscal year 2020 due to tax credits claimed pursuant to
227 §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 and the amount of revenue lost in the Commonwealth in the
228 fiscal year that ended the immediately preceding June 30 due to tax credits claimed pursuant to
229 §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1.

230 **§ 67-1807. Report.**

231 The Director shall report annually on or before December 1 regarding the implementation and
232 administration of the Program, and any recommendations of the Advisory Council.

233 2. That the initial terms of the Electronic Vehicle Rebate Advisory Council shall be staggered as
234 follows: (i) of the nonlegislative citizen members appointed by the Secretary of Transportation, one
235 shall be appointed for a term of one year, and one shall be appointed for a term of three years
236 and (ii) of the nonlegislative citizen members appointed by the Secretary of Natural Resources, two
237 shall be appointed for a term of one year, two shall be appointed for a term of two years, two
238 shall be appointed for a term of three years, and two shall be appointed for a term of four years.

239 3. That if tax credits were earned under the provisions of § 58.1-433.1, 58.1-439.2, or 58.1-2626.1
240 of the Code of Virginia prior to January 1, 2021, the taxpayer holding such credits as of
241 December 31, 2020, may claim such credits on a return for taxable years on and after January 1,
242 2021, but only pursuant to the applicable carryover or carryforward period specified in §

243 58.1-433.1, 58.1-439.2, or 58.1-2626.1 of the Code of Virginia, prior to their amendment by this
244 act. A taxpayer claiming credits pursuant to the provisions of this enactment shall not claim more
245 than \$1 million in credits for a single taxable year, measured in the aggregate of all credits earned
246 under the provisions of §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 of the Code of Virginia. No
247 taxpayer shall amend a return for a taxable year prior to January 1, 2021, to claim more in
248 credits earned under the provisions of § 58.1-433.1, 58.1-439.2, or 58.1-2626.1 of the Code of
249 Virginia than such taxpayer stated on such return before amending it.
250 4. That § 2.2-1509.5 of the Code of Virginia and Chapter 19 (§ 67-1800 et seq.) of Title 67 of the
251 Code of Virginia, as created by this act, shall expire on September 1, 2026.