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HOUSE BILL NO. 1667**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Finance
on February 4, 1999)

(Patron Prior to Substitute—Delegate Purkey)

A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.11, relating to research and development investment tax credit.

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 58.1-439.11 as follows:

§ 58.1-439.11. Research and development investment tax credit.

A. For taxable years beginning on and after January 1, 2001, but before January 1, 2010, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title as set forth in this section. The amount of credit earned pursuant to this section shall be equal to twenty-five percent of the amount spent by a taxpayer on an eligible research and development activity during the calendar year.

B. 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 individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. "Eligible research and development activity" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, when such expenses are incurred by a taxpayer for activity occurring in the Commonwealth. The activity shall also be certified by either the Innovative Technology Authority or the Virginia Biotechnology Research Park Authority.

D. A taxpayer shall be eligible to claim the credit for the taxable year in which the eligible research and development activity occurred. No taxpayer shall be eligible to claim a credit of more than \$500,000 per year. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year the credit is allowed may be, to the extent usable and subject to subsection E, carried over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section. In no event shall more than five million dollars in credits be allowed for any taxable year; however, if credits exceed five million dollars for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis.

E. If the taxpayer has no state tax liability for two consecutive tax years, the credit amount shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for ninety percent of the face value within ninety days after filing the return. The remaining ten percent shall be deposited in a fund administered by the Virginia Small Business Financing Authority to support a revolving loan fund for technology companies in the Commonwealth for the purchase of equipment used for eligible research and development activities in the Commonwealth. No equipment financed by this fund shall be eligible for the tax credit provided pursuant to this section.

F. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) relating to the computation and carryover of the credit provided under this section. The Innovative Technology Authority and the Virginia Biotechnology Research Park Authority shall also develop guidelines that serve as eligibility criteria for a taxpayer to qualify for the credit.

G. Any taxpayer that receives tax credits pursuant to § 58.1-439.1; receives grants for manufacturing wafers pursuant to §§ 59.1-284.13, 59.1-284.14 or 59.1-284.15; receives grants for manufacturing solar panels pursuant to § 45.1-392; or is deemed a qualified shipbuilder pursuant to the third enactment clause of Chapter 790 of the 1998 Acts of Assembly shall not be eligible to receive credits pursuant to this section.

2. That the provisions of this act shall not become effective unless reenacted by the 2000 Session of the General Assembly.

HOUSE SUBSTITUTE

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