

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section
2 numbered 58.1-339.11 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered
3 58.1-439.12:02, relating to tax credits for producing electricity from certain renewable resources.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section**
6 **numbered 58.1-339.11 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered**
7 **58.1-439.12:02 as follows:**

8 § 58.1-339.11. Renewable resources energy production tax credit.

9 A. As used in this section, unless the context requires otherwise:

10 "Qualified energy resources" means the same as that term is defined under § 45(c) of the U.S.
11 Internal Revenue Code of 1986, as amended.

12 "Qualified facility" means a qualified facility as defined under § 45(d) of the U.S. Internal
13 Revenue Code of 1986, as amended, that is located in the Commonwealth. Notwithstanding any
14 provision to the contrary under § 45 of the U.S. Internal Revenue Code of 1986, as amended, for
15 purposes of this section, an otherwise qualified facility shall not lose such qualification if the taxpayer
16 has been allowed a tax credit or taken a tax credit pursuant to any other section of the Internal Revenue
17 Code for such facility, or for production from such facility.

18 B. 1. For taxable years beginning on or after January 1, 2007, there shall be allowed as a credit
19 against the tax liability imposed by § 58.1-320, an amount equal to 0.85 cents for each kilowatt of
20 electricity produced by the individual from qualified energy resources at a qualified facility, which is
21 produced during the 10-year period beginning on the date that the facility was originally placed in
22 service. Credit shall only be allowed for each such kilowatt of electricity that is sold by the individual to
23 an unrelated person during the taxable year.

24 2. For qualified facilities originally placed in service prior to January 1, 2007, the 10-year
25 production period described in subdivision 1 shall begin January 1, 2007.

26 3. In the case of a qualified facility producing incremental hydropower production attributable to
27 efficiency improvements or additions to capacity as described in § 45(d)(9) of the U.S. Internal Revenue
28 Code of 1986, as amended, the 10-year production period described in subdivision 1 shall begin on the
29 date the efficiency improvements or additions to capacity are originally placed in service.

30 C. The adjustment to the federal income tax credit for certain renewable electricity production
31 pursuant to § 45(d)(2)(B)(ii) of the U.S. Internal Revenue Code of 1986, as amended, shall be applicable
32 mutatis mutandis for purposes of the credit under this section.

33 D. The provisions of § 45(e)(4) of the U.S. Internal Revenue Code of 1986, as amended, shall be
34 applicable for purposes of determining whether or not a sale under this section has been made to an
35 unrelated person.

36 E. The provisions of § 45(e)(7) of the U.S. Internal Revenue Code of 1986, as amended,
37 prohibiting credit for electricity sold to utilities under certain contracts shall be applicable for purposes
38 of the credit under this section.

39 F. The amount of any credit attributable to electricity production by a partnership, electing small
40 business corporation (S corporation), or limited liability company shall be allocated to the individual
41 partners, shareholders, or members, as the case may be, as they may determine.

42 G. The amount of credit that may be claimed by the individual in any taxable year shall not
43 exceed the lesser of (i) the tax imposed by this chapter for such taxable year or (ii) \$100,000. Any credit
44 not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried
45 forward for the next 10 succeeding taxable years or until the total amount of the tax credit has been
46 taken, whichever occurs first.

47 § 58.1-439.12:02. Renewable resources energy production tax credit.

48 A. As used in this section, unless the context requires otherwise:

49 "Qualified energy resources" means the same as that term is defined under § 45(c) of the U.S.
50 Internal Revenue Code of 1986, as amended.

51 "Qualified facility" means a qualified facility as defined under § 45(d) of the U.S. Internal
52 Revenue Code of 1986, as amended, that is located in the Commonwealth. Notwithstanding any
53 provision to the contrary under § 45 of the Internal Revenue Code of 1986, as amended, for purposes of
54 this section, an otherwise qualified facility shall not lose such qualification if the taxpayer has been
55 allowed a tax credit or taken a tax credit pursuant to any other section of the Internal Revenue Code for
56 such facility, or for production from such facility.

57 B. 1. For taxable years beginning on or after January 1, 2007, there shall be allowed as a credit
58 against the tax liability imposed by § 58.1-400, an amount equal to 0.85 cents for each kilowatt of
59 electricity produced by the corporation from qualified energy resources at a qualified facility, which is
60 produced during the 10-year period beginning on the date that the facility was originally placed in
61 service. Credit shall only be allowed for each such kilowatt of electricity that is sold by the corporation
62 to an unrelated person during the taxable year.

63 2. For qualified facilities originally placed in service prior to January 1, 2007, the 10-year
64 production period described in subdivision 1 shall begin January 1, 2007.

65 3. In the case of a qualified facility producing incremental hydropower production attributable to
66 efficiency improvements or additions to capacity as described in § 45(d)(9) of the U.S. Internal Revenue
67 Code of 1986, as amended, the 10-year production period described in subdivision 1 shall begin on the
68 date the efficiency improvements or additions to capacity are originally placed in service.

69 C. The adjustment to the federal income tax credit for certain renewable electricity production
70 pursuant to § 45(d)(2)(B)(ii) of the U.S. Internal Revenue Code of 1986, as amended, shall be applicable
71 mutatis mutandis for purposes of the credit under this section.

72 D. The provisions of § 45(e)(4) of the U.S. Internal Revenue Code of 1986, as amended, shall be
73 applicable for purposes of determining whether or not a sale under this section has been made to an
74 unrelated person.

75 E. The provisions of § 45(e)(7) of the U.S. Internal Revenue Code of 1986, as amended,
76 prohibiting credit for electricity sold to utilities under certain contracts shall be applicable for purposes
77 of the credit under this section.

78 F. The amount of credit that may be claimed by the corporation in any taxable year shall not
79 exceed the lesser of (i) the tax imposed by this chapter for such taxable year or (ii) \$100,000. Any credit
80 not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried
81 forward for the next 10 succeeding taxable years or until the total amount of the tax credit has been
82 taken, whichever occurs first.

83 **2. That the Tax Commissioner shall, by October 1, 2006, establish and publish guidelines for**
84 **purposes of implementing the provisions of this act. Such guidelines shall be exempt from the**
85 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

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