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HOUSE BILL NO. 5

Offered January 12, 2022

Prefiled December 7, 2021

A BILL to amend and reenact §§ 10.1-1330, 58.1-322.02, and 58.1-402 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3.2 of Title 44 a section numbered 44-146.29:4, relating to Flood Relief Fund established.

Patrons—Morefield; Senator: Hackworth

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1330, 58.1-322.02, and 58.1-402 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3.2 of Title 44 a section numbered 44-146.29:4 as follows:

§ 10.1-1330. Clean Energy and Community Flood Preparedness.

A. The provisions of this article shall be incorporated by the Department, without further action by the Board, into the final regulation adopted by the Board on April 19, 2019, and published in the Virginia Register on May 27, 2019. Such incorporation by the Department shall be exempt from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

B. The Director is hereby authorized to establish, implement, and manage an auction program to sell allowances into a market-based trading program consistent with the RGGI program and this article. The Director shall seek to sell 100 percent of all allowances issued each year through the allowance auction, unless the Department finds that doing so will have a negative impact on the value of allowances and result in a net loss of consumer benefit or is otherwise inconsistent with the RGGI program.

C. To the extent permitted by Article X, Section 7 of the Constitution of Virginia, the state treasury shall (i) hold the proceeds recovered from the allowance auction in an interest-bearing account with all interest directed to the account to carry out the purposes of this article and (ii) use the proceeds without further appropriation for the following purposes:

1. ~~Forty-five~~ **Forty** percent of the revenue shall be credited to the account established pursuant to the Fund for the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events.

2. *Five percent of the revenue shall be credited to the Flood Relief Fund established by § 44-146.29:4.*

3. Fifty percent of the revenue shall be credited to an account administered by DHCD to support low-income energy efficiency programs, including programs for eligible housing developments. DHCD shall review and approve funding proposals for such energy efficiency programs, and DOE shall provide technical assistance upon request. Any sums remaining within the account administered by DHCD, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in such account to support low-income energy efficiency programs.

~~3-~~ 4. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade program, and auction and (ii) carry out statewide climate change planning and mitigation activities.

~~4-~~ 5. Two percent of the revenue shall be used by DHCD, in partnership with DOE, to administer and implement low-income energy efficiency programs pursuant to subdivision 2.

D. The Department, the Department of Conservation and Recreation, DHCD, and DOE shall prepare a joint annual written report describing the Commonwealth's participation in RGGI, the annual reduction in greenhouse gas emissions, the revenues collected and deposited in the interest-bearing account maintained by the Department pursuant to this article, and a description of each way in which money was expended during the fiscal year. The report shall be submitted to the Governor and General Assembly by January 1, 2022, and annually thereafter.

§ 44-146.29:4. Flood Relief Fund.

A. As used in this section:

"Department" means the Department of Emergency Management.

"Distressed locality" means a locality (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

"Double distressed locality" means a locality with (i) an annual unemployment rate for the most

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59 recent calendar year for which such data is available that is greater than the final statewide average
60 unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for
61 which such data is available that exceeds the statewide average poverty rate for that year.

62 "Eligible locality" means a locality where privately owned realty was damaged by a flood disaster.

63 "Eligible recipient" means a person owning realty in an eligible locality that was damaged by a
64 flood disaster and that (i) applied for insurance coverage but was denied or (ii) does not have
65 insurance coverage.

66 "Flood disaster" means a flood, landslide, or mudslide occurring in Virginia for which the President
67 declares a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42
68 U.S.C. § 5121 et seq.

69 "Fund" means the Flood Relief Fund established in this section.

70 "Major damage" means real property that has substantial failure to its structural elements, such as
71 walls, floor, or foundation, or that has sustained damage that will take more than 30 days to repair.

72 "Other relief" means monetary relief for damage from the flood disaster received by an eligible
73 recipient from the federal government, the Commonwealth or any political subdivision thereof, a
74 business, or a nonprofit. "Other relief" does not include payments under this section.

75 "Property value" means the taxable value of realty at the most recent assessment preceding the flood
76 disaster.

77 "Total loss" means real property that has been destroyed, such that there is a total loss of the
78 structure, the structure is not economically feasible to repair, or there is a complete failure to major
79 structural components, such as the collapse of the basement, wall, or roof.

80 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
81 Flood Relief Fund. The Fund shall be established on the books of the Comptroller. All revenues credited
82 to the Fund pursuant to § 10.1-1330, all funds appropriated to the Fund, and any gifts, donations,
83 grants, bequests, and other funds received on its behalf shall be paid into the state treasury and
84 credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited
85 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall
86 not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to
87 provide flood relief as described in this section. Expenditures and disbursements from the Fund shall be
88 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
89 State Coordinator of Emergency Management or his designee.

90 C. The Department shall establish a program to provide flood relief to eligible recipients affected by
91 a flood disaster. The amount of flood relief shall be as specified in this section, subject to the limits and
92 reductions specified in this section. The Department shall establish procedures for filing and resolving
93 claims, which shall include measures to prevent fraud, and which may include any criteria the
94 Department determines reasonable to carry out the provisions of this section.

95 D. The amount of flood relief shall be as follows:

96 1. For realty that is a total loss or has sustained major damage, as demonstrated by the applicant to
97 the satisfaction of the Department, the Department shall pay:

98 a. 100 percent of property value for realty not in a distressed or double distressed locality.

99 b. 150 percent of property value for realty in a distressed locality.

100 c. 175 percent of property value for realty in a double distressed locality.

101 2. For realty that is not eligible under subdivision 1, the Department shall pay for estimated repairs
102 up to the limits specified in subdivision 3.

103 3. Payments under subdivisions 1 and 2 shall be limited to the following maximums:

104 a. \$500,000 for residential realty.

105 b. \$1 million for commercial realty.

106 E. 1. If an eligible recipient owns multiple, noncontiguous properties in an eligible locality, the
107 eligible recipient may file separate claims for each parcel. The maximums specified in subdivision D 3
108 shall apply to each separate claim.

109 2. Payments under subsection D shall be reduced by any other relief.

110 F. Payments under subsection D shall be subject to the availability of funds in the Fund. If claims
111 exceed available funds, the Department shall make payments (i) in the order that claims were received
112 and (ii) to eligible recipients that did not receive payments in the next year in which funds are
113 available.

114 G. The Department shall not provide relief under this section for realty that was abandoned or
115 uninhabited at the time of the flood disaster.

116 H. If there are no flood disasters during a year:

117 1. Fifty percent of funds in the Fund shall be set aside by the Department for distribution to
118 applicants in double distressed localities that seek grants or loans for (i) flood prevention and
119 protection projects that meet the requirements of Article 1.3 (§ 10.1-603.24 et seq.) of Chapter 6 of Title
120 10.1, (ii) the repair or replacement of public or private property affected by weather, or (iii)

weather-related rescue equipment and services. The Department of Conservation and Recreation shall assist the Department in the implementation of this subdivision.

2. Fifty percent of funds in the Fund shall be invested by the State Treasurer pursuant to the provisions of § 2.2-1807, and any income from such funds shall be allocated to the Fund in the next fiscal year.

I. No recourse may be had by any person against a recipient of payment under this section, absent any evidence of misuse of funds. Misuse of funds shall be established by a showing that a recipient knowingly misapplied the proceeds of a payment received under this section. If a showing of misuse of funds has been made, then a person may seek recourse against the recipient for an amount no greater than the extent of the payment.

§ 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States, including, but not limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

8. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified in this subdivision.

9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while

182 serving by order of the President of the United States with the consent of Congress in a combat zone or
183 qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112
184 of the Internal Revenue Code.

185 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange
186 of real property or the sale or exchange of an easement to real property which results in the real
187 property or the easement thereto being devoted to open-space use, as that term is defined in §
188 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in
189 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
190 shall be allowed for three years following the year in which the subtraction is taken.

191 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active
192 duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar
193 by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero
194 if such military basic pay amount is equal to or exceeds \$30,000.

195 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all
196 employment for the taxable year is \$15,000 or less.

197 17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

198 18. Any amount received as military retirement income by an individual awarded the Congressional
199 Medal of Honor.

200 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,
201 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)
202 damages, reparations, or other consideration received by a victim or target of Nazi persecution to
203 compensate such individual for performing labor against his will under the threat of death, during World
204 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such
205 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost
206 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The
207 provisions of this subdivision shall only apply to an individual who was the first recipient of such items
208 of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child
209 or stepchild of such victim.

210 As used in this subdivision:

211 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those
212 European countries allied with Nazi Germany, or any other neutral European country or area in Europe
213 under the influence or threat of Nazi invasion.

214 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by
215 the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or
216 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
217 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,
218 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
219 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual
220 forced into labor against his will, under the threat of death, during World War II and its prelude and
221 direct aftermath.

222 20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased
223 military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction
224 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal
225 gross income in accordance with § 134 of the Internal Revenue Code.

226 21. The death benefit payments from an annuity contract that are received by a beneficiary of such
227 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an
228 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under
229 this subdivision shall be allowed only for that portion of the death benefit payment that is included in
230 federal adjusted gross income.

231 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
232 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of
233 a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
234 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

235 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
236 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the
237 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
238 and launched from an airport or spaceport in Virginia.

239 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
240 taxed as investment services partnership interest income (otherwise known as investment partnership
241 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
242 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in
243 § 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided

that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

26. For taxable years beginning on and after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

27. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 27:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for

305 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4
306 for the same investment.

307 b. As used in this subdivision 28:

308 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of
309 § 2.2-115.

310 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3
311 of § 2.2-115.

312 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
313 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
314 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
315 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in
316 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double
317 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department
318 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests
319 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in
320 localities that are distressed or double distressed.

321 29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of
322 real property by condemnation proceedings.

323 30. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
324 \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by
325 the Governor and administered by the Department of Small Business and Supplier Diversity.

326 31. *Any flood relief payment received under the provisions of § 44-146.29:4. This subtraction shall*
327 *not be available for payments for flood prevention and protection or any other payment provided under*
328 *subsection H of § 44-146.29:4.*

329 **§ 58.1-402. Virginia taxable income.**

330 A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable
331 income and any other income taxable to the corporation under federal law for such year of a corporation
332 adjusted as provided in subsections B, C, D, E, G, and H.

333 For a regulated investment company and a real estate investment trust, such term means the
334 "investment company taxable income" and "real estate investment trust taxable income," respectively, to
335 which shall be added in each case any amount of capital gains and any other income taxable to the
336 corporation under federal law which shall be further adjusted as provided in subsections B, C, D, E, G,
337 and H.

338 B. There shall be added to the extent excluded from federal taxable income:

339 1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on
340 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
341 created by compact or agreement to which the Commonwealth is a party;

342 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
343 taxable income, on obligations or securities of any authority, commission or instrumentality of the
344 United States, which the laws of the United States exempt from federal income tax but not from state
345 income taxes;

346 3. [Repealed.]

347 4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which
348 are based on, measured by, or computed with reference to net income, imposed by the Commonwealth
349 or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

350 5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

351 6. [Repealed.]

352 7. The amount required to be included in income for the purpose of computing the partial tax on an
353 accumulation distribution pursuant to § 667 of the Internal Revenue Code;

354 8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible
355 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or
356 indirectly with one or more direct or indirect transactions with one or more related members to the
357 extent such expenses and costs were deductible or deducted in computing federal taxable income for
358 Virginia purposes. This addition shall not be required for any portion of the intangible expenses and
359 costs if one of the following applies:

360 (1) The corresponding item of income received by the related member is subject to a tax based on or
361 measured by net income or capital imposed by Virginia, another state, or a foreign government that has
362 entered into a comprehensive tax treaty with the United States government;

363 (2) The related member derives at least one-third of its gross revenues from the licensing of
364 intangible property to parties who are not related members, and the transaction giving rise to the
365 expenses and costs between the corporation and the related member was made at rates and terms
366 comparable to the rates and terms of agreements that the related member has entered into with parties

who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

(1) The related member has substantial business operations relating to interest-generating activities, in which the related member pays expenses for at least five full-time employees who maintain, manage, defend or are otherwise responsible for operations or administration relating to the interest-generating activities; and

(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property; and

(3) The transaction giving rise to the expenses and costs between the corporation and the related member has a valid business purpose other than the avoidance or reduction of taxation and payments between the parties are made at arm's length rates and terms; and

(4) One of the following applies:

(i) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related

428 members provided the payments continue to be made at arm's length rates and terms;

429 (iii) The related member engages in transactions with parties other than related members that
430 generate revenue in excess of \$2 million annually; or

431 (iv) The transaction giving rise to the interest payments between the corporation and a related
432 member was done at arm's length rates and terms and meets any of the following: (a) the related
433 member uses funds that are borrowed from a party other than a related member or that are paid,
434 incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and
435 systematic funds management or portfolio investment activity conducted by the related member, whereby
436 the funds of two or more related members are aggregated for the purpose of achieving economies of
437 scale, the internal financing of the active business operations of members, or the benefit of centralized
438 management of funds; (c) financing the expansion of the business operations; or (d) restructuring the
439 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

440 b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to
441 subdivision a may petition the Tax Commissioner, after filing the related income tax return for the
442 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this
443 article for such taxable year including tax upon any amount of interest expenses and costs required to be
444 added to federal taxable income pursuant to subdivision a, to consider evidence relating to the
445 transaction or transactions between the corporation and a related member or members that resulted in the
446 corporation's taxable income being increased, as required under subdivision a, for such interest expenses
447 and costs.

448 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
449 convincing evidence, that the transaction or transactions between the corporation and a related member
450 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
451 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
452 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
453 permit the corporation to file an amended return. For purposes of such amended return, the requirements
454 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
455 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
456 tax due under this chapter and that the related payments between the parties were made at arm's length
457 rates and terms. Such amended return shall be filed by the corporation within one year of the written
458 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
459 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
460 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
461 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision
462 C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the
463 corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions
464 identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing
465 evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent
466 taxable years to deduct the related interest expenses and costs without making the adjustment under
467 subdivision a.

468 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of
469 any petition pursuant to this subdivision, to include costs necessary to secure outside experts in
470 evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this
471 subdivision upon payment of such fee.

472 No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision
473 shall be maintained in any court of this Commonwealth.

474 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
475 § 58.1-446.

476 d. For purposes of subdivision B 9:

477 "Arm's-length rates and terms" means that (i) two or more related members enter into a written
478 agreement for the transaction, (ii) such agreement is of a duration and contains payment terms
479 substantially similar to those that the related member would be able to obtain from an unrelated entity,
480 (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments
481 under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv)
482 the borrower or payor adheres to the payment terms of the agreement governing the transaction or any
483 amendments thereto.

484 "Valid business purpose" means one or more business purposes that alone or in combination
485 constitute the motivation for some business activity or transaction, which activity or transaction
486 improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

487 10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible
488 under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT).
489 For purposes of this subdivision, a REIT is a Captive REIT if:

- (1) It is not regularly traded on an established securities market;
- (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and
- (3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.
- b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:
- (1) Any REIT that is not treated as a Captive REIT;
- (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;
- (3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and
- (4) Any Qualified Foreign Entity.
- c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.
- d. For purposes of subdivision B 10:
- "Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.
- "Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:
- (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;
- (2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;
- (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;
- (4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and
- (5) The entity is organized in a country that has a tax treaty with the United States.
- e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.
11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.
- C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:
1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.
2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.
3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding year, or the last year in which such corporation has income, under the provisions of the income tax laws of the Commonwealth.
4. The amount of any refund or credit for overpayment of income taxes imposed by this

551 Commonwealth or any other taxing jurisdiction.

552 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
553 Code (foreign dividend gross-up).

554 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
555 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

556 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
557 income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue
558 Code (Global Intangible Low-Taxed Income).

559 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

560 9. [Repealed.]

561 10. The amount of any dividends received from corporations in which the taxpaying corporation
562 owns 50 percent or more of the voting stock.

563 11. [Repealed.]

564 12, 13. [Expired.]

565 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
566 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
567 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.

568 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
569 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
570 (§ 22.1-175.1 et seq.) of Title 22.1.

571 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain
572 derived from the sale or exchange of real property or the sale or exchange of an easement to real
573 property which results in the real property or the easement thereto being devoted to open-space use, as
574 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a
575 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating
576 land for its preservation shall be allowed for three years following the year in which the subtraction is
577 taken.

578 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
579 respect to § 58.1-440.1.

580 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
581 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
582 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
583 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
584 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

585 19, 20. [Repealed.]

586 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and
587 costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to
588 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that
589 received such amount if such related member is subject to Virginia income tax on the same amount.

590 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of
591 launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended
592 to provide individuals the training or experience of a launch, without performing an actual launch. To
593 qualify for a deduction under this subdivision, launch services must be performed in Virginia or
594 originate from an airport or spaceport in Virginia.

595 23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of
596 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the
597 Commercial Orbital Transportation Services division of the National Aeronautics and Space
598 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or
599 spaceport in Virginia.

600 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
601 gain for federal income tax purposes, or any income taxed as investment services partnership interest
602 income (otherwise known as investment partnership carried interest income) for federal income tax
603 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
604 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
605 approved by the Secretary of Administration, provided the business has its principal office or facility in
606 the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the
607 investment. To qualify for a subtraction under this subdivision, the investment must be made between
608 the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an
609 investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this
610 subdivision for an investment in the same business.

611 25. a. Income, including investment services partnership interest income (otherwise known as
612 investment partnership carried interest income), attributable to an investment in a Virginia venture

capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 for the same investment.

b. As used in this subdivision 25:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 25 for the same investment.

b. As used in this subdivision 26:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

27. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

28. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

29. *Any flood relief payment received under the provisions of § 44-146.29:4. This subtraction shall not be available for payments for flood prevention and protection or any other payment provided under subsection H of § 44-146.29:4.*

D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

1. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

2. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

674 E. Adjustments to federal taxable income shall be made to reflect the transitional modifications
675 provided in § 58.1-315.

676 F. Notwithstanding any other provision of law, the income from any disposition of real property
677 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
678 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after
679 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
680 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
681 disposition of the property has been made on or before the due date prescribed by law (including
682 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
683 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
684 conditions established by the Department, which shall be set forth in guidelines developed by the
685 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
686 such income under certain circumstances. The development of the guidelines shall be exempt from the
687 Administrative Process Act (§ 2.2-4000 et seq.).

688 G. For taxable years beginning on and after January 1, 2018, there shall be deducted to the extent
689 included in and not otherwise subtracted from federal taxable income 20 percent of business interest
690 disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this
691 subsection, "business interest" means the same as that term is defined under § 163(j) of the Internal
692 Revenue Code.

693 H. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, there shall
694 be deducted to the extent not otherwise subtracted from federal taxable income up to \$100,000 of the
695 amount that is not deductible when computing federal taxable income solely on account of the portion
696 of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.

697 **2. That the Virginia Department of Emergency Management (VDEM) shall allow eligible**
698 **recipients, as defined in § 44-146.29:4 of the Code of Virginia, as created by this act, to apply for**
699 **relief pursuant to the provisions of § 44-146.29:4 for any flood disaster, as defined in § 44-146.29:4,**
700 **occurring on or after July 1, 2020. VDEM also shall allow applicants to apply for grants and loans**
701 **pursuant to the provisions of subsection H of § 44-146.29:4 for any damage that occurred on or**
702 **after July 1, 2020.**

703 **3. That the Virginia Department of Emergency Management shall promulgate guidelines**
704 **implementing the provisions of this act. Such guidelines shall be exempt from the provisions of the**
705 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

706 **4. That if Virginia withdraws from the Regional Greenhouse Gas Initiative, \$50 million of any**
707 **unobligated proceeds from allowance auctions, as defined in § 10.1-1329, shall be reallocated to the**
708 **Flood Relief Fund established by § 44-146.29:4 of the Code of Virginia, as created by this act.**
709 **Fifty percent of the \$50 million shall be reallocated from any unobligated funds in the account**
710 **established by subdivision C 1 of § 10.1-1330 of the Code of Virginia, as amended by this act, and**
711 **50 percent of the \$50 million shall be reallocated from any unobligated funds in the account**
712 **established by subdivision C 3 of § 10.1-1330 of the Code of Virginia, as amended by this act.**