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HOUSE BILL NO. 656**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 2, 2022)

(Patron Prior to Substitute—Delegate Wampler)

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to coal refuse energy and reclamation 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 58.1-439.12:13 as follows:

§ 58.1-439.12:13. Coal refuse energy and reclamation tax credit.

A. For the purposes of this section:

"Eligible taxpayer" means a taxpayer that (i) owns and operates a coal production or reclamation business that was authorized to conduct business in the Commonwealth before January 1, 2022, that produces or reclaims qualified coal refuse in the Commonwealth, to whom a tax credit is allowed under this section; (ii) has filed all tax returns and reports required under Virginia law; and (iii) has paid any balance of Virginia taxes owed as determined by assessments by the Department not subject to a pending timely appeal.

"Qualified coal refuse" means waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, fines, and related materials associated with or near a coal seam that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or that are separated from coal during cleaning, preparation, or reclamation operations.

"Ton" means 2,000 pounds of qualified coal refuse, including inherent moisture, ash, sulphur, and other noncalorific substances, but excluding excess moisture.

B. For taxable years beginning on and after January 1, 2023, but before January 1, 2028, an eligible taxpayer shall be allowed a nonrefundable credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to \$2 per ton of qualified coal refuse produced or reclaimed in the Commonwealth by an eligible taxpayer during the taxable year.

C. The amount of credits that may be claimed by an eligible taxpayer under this section shall not exceed \$500,000 in any taxable year.

D. The aggregate amount of credits available under this section for each taxable year shall be \$2 million. In the event that approved applications for the credit exceed such aggregate amounts in each taxable year, the Department shall issue the tax credits pro rata based upon the amount of credits approved for each eligible taxpayer.

E. The amount of the credit that may be claimed in any single taxable year shall not exceed the eligible taxpayer's liability for taxes imposed by this chapter for such taxable year. No credit shall be carried back to a preceding taxable year. If the amount of the credit allowed under this section exceeds the eligible taxpayer's liability for the taxable year in which the credit is claimed, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the eligible taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. The credit may only be claimed by one eligible taxpayer for the same produced or reclaimed qualified coal refuse.

F. For purposes of this section, the amount of the 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.

G. The Department shall compile an annual report on credits claimed in the respective taxable year and shall submit a report by November 1, 2024, and each taxable year thereafter through taxable year 2027, to the Chairmen of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance and Appropriations. In preparing such report, the Department shall consult and coordinate with the Department of Energy to provide the number of eligible taxpayers applying for and utilizing the credit, the amount of credits approved, and data on the benefits to the Commonwealth of the production and reclamation of qualified coal refuse in the Commonwealth. This information shall be reported in summary fashion as appropriate to preserve confidentiality of information.

H. The Tax Commissioner shall consult with the Department of Energy to develop guidelines for applying for and claiming the credit provided by this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).