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HOUSE BILL NO. 849

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 3.2-3100 and 3.2-3106 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.13, relating to income tax; geothermal tax credit.

Patron—Reid

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3100 and 3.2-3106 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.13 as follows:

§ 3.2-3100. Definitions.

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

"Active tobacco producer" means a person actively engaged in planting, growing, harvesting, and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the crop.

"Agreement" means the agreement or agreements between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.

"Commission" means the Tobacco Region Revitalization Commission created pursuant to § 3.2-3101.

"Commission Allocation" means 50 percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.

"Corporation" means the Tobacco Settlement Financing Corporation as created under state law.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 3.2-3104.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.2-3106.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

"Period of sale" means the time during which a purchaser under an agreement is entitled to receive the Commission Allocation.

"Strategic Plan" means the strategic plan required pursuant to subsection C of § 3.2-3103.

"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission Allocation that may be sold to the Corporation.

"Tobacco region locality" means Amelia, Appomattox, Bedford, Bland, Brunswick, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Cumberland, Dickenson, Dinwiddie, Floyd, Franklin, Grayson, Greenville, Halifax, Henry, Lee, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, Prince Edward, Russell, Scott, Smyth, Sussex, Tazewell, Washington, Wise, or Wythe County or the City of Bristol, Danville, Emporia, Galax, Martinsville, or Norton.

§ 3.2-3106. Tobacco Indemnification and Community Revitalization Fund.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the provisions of § 58.1-339.13 and the special nonreverting funds established by subsection B and by §§ 3.2-3104 and 32.1-360.

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Subject to the sale of all or any portion of the Commission Allocation, 50 25 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In the event of such sale: (i) the Commission Allocation shall be paid in accordance with the agreement for the period of sale; and (ii) the Fund shall receive the amounts withdrawn from the Endowment in accordance with § 3.2-3104. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including

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HB849

59 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the
60 Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter. Expenditures
61 and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
62 Comptroller upon written authorization signed by the chairman of the Commission or his designee. The
63 Fund shall also consist of other moneys received by the Commission, from any source, for the purpose
64 of implementing the provisions of this chapter.

65 C. The obligations of the Commission shall not be a debt or grant or loan of credit of the
66 Commonwealth, and the Commonwealth shall not be liable thereon, nor shall such obligations be
67 payable out of any funds other than those credited to the Fund.

68 **§ 58.1-339.13. Geothermal tax credit.**

69 A. As used in this section:

70 "Geothermal system" means any equipment that (i) uses the ground or groundwater as a thermal
71 energy source to heat the residence or as a thermal energy sink to cool the residence, (ii) is installed at
72 a residence in a tobacco region locality, (iii) is installed by a business headquartered in a tobacco
73 region locality, (iv) complies with any applicable regulations promulgated under Chapter 20 (§
74 45.2-2000 et seq.) of Title 45.2, and (v) meets any other energy standards prescribed by the Department
75 of Energy.

76 "Qualified expenditures" means expenditures for materials, labor costs, properly allocable to on-site
77 preparation, assembly and original installation, architectural and engineering services, and designs and
78 plans directly related to the construction or installation of a geothermal system. "Qualified expenditures"
79 does not include interest or other financing charges.

80 "Tobacco region locality" means the same as such term is defined in § 3.2-3100.

81 B. For taxable years beginning on or after January 1, 2023, but before January 1, 2028, any person
82 who places a geothermal system in service in Virginia during the taxable year shall be allowed a
83 nonrefundable credit against the taxes imposed under this chapter. The credit amount shall be the lesser
84 of (i) up to \$7,500 of qualified expenditures or (ii) 25 percent of qualified expenditures.

85 C. 1. The credit shall be allowed only to the person at whose residence the geothermal system is
86 installed.

87 2. No credit shall be allowed under this section to the extent that the cost of the geothermal system
88 was (i) paid with public funds or (ii) reduced by a federal tax credit.

89 3. If the credit amount exceeds the person's tax liability for the taxable year, he may carry over the
90 excess for the next five taxable years or until the total credit amount has been taken, whichever is
91 sooner.

92 D. 1. The Department of Energy shall approve no more than \$1 million in credits in the aggregate
93 for each taxable year. If applications for credits exceed the aggregate limit, the Department of Energy
94 shall issue certifications in the order that applications were received.

95 2. Subject to the sale of all or any portion of the Commission Allocation, as defined in § 3.2-3100,
96 25 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement,
97 as defined in § 3.2-3100, shall be set aside to fund the revenue loss, in any, attributable to credits
98 claimed under this section. If the amount set aside is insufficient to fund such loss, it shall be funded
99 from the general fund. If the amount set aside exceeds such loss, the excess shall revert to the Tobacco
100 Indemnification and Community Revitalization Fund established under § 3.2-3106.

101 E. To claim the credit, a person shall apply to the Department of Energy for certification that the
102 geothermal system meets the standards prescribed by this section. The person shall provide to the
103 Department of Energy proof of qualified expenditures, proof that the geothermal system meets local
104 building code standards, and any other information requested by the Department of Energy. The
105 Department of Energy may establish procedures for inspecting geothermal systems. If the Department of
106 Energy determines the person's geothermal system meets the standards prescribed by this section, it
107 shall issue a certification to the person, who shall attach such certification to his income tax return.

108 2. That the Department of Taxation, in cooperation with the Department of Energy, shall publish
109 guidelines implementing the provisions of this act, which shall be exempt from the provisions of
110 the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

111 3. That the provisions of this act shall become effective on January 1, 2023.