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SENATE BILL NO. 472

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 3, 2010)

(Patrons Prior to Substitute—Senators Watkins, Hurt [SB 481] and McWaters [SB 693])

A *BILL to amend and reenact § 58.1-439 of the Code of Virginia, relating to the major business facility job tax credit.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439. Major business facility job tax credit.

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2020, 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; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title as set forth in this section.

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. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K or L, the establishment or expansion of the company shall result in the creation of at least 400 50 jobs for qualified full-time employees; the first such 400 50 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture, forestry or fishing; transportation or communications; or a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in the Commonwealth, requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal

60 to \$1,000 per qualified full-time employee, over the threshold amount, employed during the credit year.
61 The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years
62 beginning with the credit year. However, for taxable years beginning January 1, 2009, through
63 December 31, 2010, one-half of the credit amount shall be allowed each year for two years. The portion
64 of the \$1,000 credit earned with respect to any qualified full-time employee who is employed in the
65 Commonwealth for less than 12 full months during the credit year will be determined by multiplying the
66 credit amount by a fraction, the numerator of which is the number of full months that the qualified
67 full-time employee worked for the major business facility in the Commonwealth during the credit year,
68 and the denominator of which is 12. A separate credit year and a three-year allowance period shall exist
69 for each distinct major business facility of a single taxpayer, except for credits allowed for taxable years
70 beginning January 1, 2009, through December 31, 2010, when a two-year allowance period shall exist
71 for each distinct major business facility of a single taxpayer.

72 H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
73 taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent
74 usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a
75 preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed
76 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of
77 Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to
78 have first utilized any credit allowed which does not have a carryover provision, and then any credit
79 which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed
80 pursuant to this section.

81 I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under
82 this section was previously earned by a related party as defined by Internal Revenue Code § 267(b) or a
83 trade or business under common control as defined by Internal Revenue Code § 52(b); (ii) who was
84 previously employed in the same job function in Virginia by a related party as defined by Internal
85 Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue
86 Code § 52(b); (iii) whose job function was previously performed at a different location in Virginia by an
87 employee of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or
88 business under common control as defined by Internal Revenue Code § 52(b); or (iv) whose job function
89 previously qualified for a credit under this section at a different major business facility on behalf of the
90 taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under
91 common control as defined by Internal Revenue Code § 52(b).

92 J. Subject to the provisions of subsections K or L, recapture of this credit, under the following
93 circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the
94 taxable year in which a credit has been earned pursuant to this section if the number of qualified
95 full-time employees decreases below the average number of qualified full-time employees employed
96 during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which
97 would have been earned for the original credit year using the decreased number of qualified full-time
98 employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In
99 the event that the average number of qualifying full-time employees employed at a major business
100 facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all
101 credits earned with respect to such major business facility shall be recaptured. No credit amount will be
102 recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall
103 reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's
104 tax liability may be increased.

105 K. In the event that a major business facility is located in an economically distressed area or in an
106 enterprise zone as defined in ~~§ 59.1-274~~ in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a
107 credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid
108 full recapture shall be reduced from ~~100 to 50~~ to 25 for purposes of subdivision C 1 and subsection J.
109 An area shall qualify as economically distressed if it is a city or county with an unemployment rate for
110 the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such
111 year. The Virginia Economic Development Partnership shall identify and publish a list of all
112 economically distressed areas at least annually.

113 L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event
114 that a major business facility is located in a severely economically distressed area, the threshold amount
115 required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from
116 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit
117 allowable under this subsection shall not exceed \$100,000 in aggregate. An area shall qualify as severely
118 economically distressed if it is a city or county with an unemployment rate for the preceding year of at
119 least twice the average statewide unemployment rate for such year. The Virginia Economic Development
120 Partnership shall identify and publish a list of all severely economically distressed areas at least
121 annually.

122 M. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative
 123 Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit
 124 provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time
 125 employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover,
 126 recapture, and redemption of the credit by affiliated companies pursuant to subsection S.

127 N. The provisions of this section shall apply only in instances where an announcement of intent to
 128 establish or expand a major business facility is made on or after January 1, 1994. An announcement of
 129 intent to establish or expand a major business facility includes, but is not limited to, a press conference
 130 or extensive press coverage, providing information with respect to the impact of the project on the
 131 economy of the area where the major business facility is to be established or expanded and the
 132 Commonwealth as a whole.

133 O. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the
 134 qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

135 P. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to
 136 § 58.1-439.2.

137 Q. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.)
 138 of Title 59.1 shall claim a credit pursuant to this section.

139 R. Notwithstanding subsection O, a taxpayer may, for the purpose of determining the number of
 140 qualified full-time employees at a major business facility, include the employees of a contractor or a
 141 subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the
 142 taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time
 143 employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the
 144 contractor or subcontractor from also claiming these employees in order to receive a credit given under
 145 this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has
 146 entered into such a contract.

147 S. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may
 148 elect to aggregate the number of jobs created for qualified full-time employees as the result of the
 149 establishment or expansion by the individual companies in order to qualify for the credit allowed
 150 pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more
 151 companies related to each other such that (i) one company owns at least 80 percent of the voting power
 152 of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned
 153 by the same interests.

154 T. The General Assembly of Virginia finds that modern business infrastructure allows businesses to
 155 locate their administrative or manufacturing facilities with minimal regard to the location of markets or
 156 the transportation of raw materials and finished goods, and that the economic vitality of the
 157 Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the
 158 provisions of this section targeting the credit to major business facilities and limiting the credit to those
 159 companies which establish a major business facility in Virginia are integral to the purpose of the credit
 160 earned pursuant to this section and shall not be deemed severable.

161 **2. That the tax credits pursuant to this act shall only be allowed for qualified full-time employees**
 162 **as defined in § 58.1-439 of the Code of Virginia first hired on or after January 1, 2010.**