

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section
2 numbered 58.1-339.12, relating to the nanotechnology qualified equity and subordinated debt
3 investments tax credit.

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

5 **1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section**
6 **numbered 58.1-339.12 as follows:**

7 § 58.1-339.12. Nanotechnology qualified equity and subordinated debt investments tax credit.

8 A. As used in this section:

9 "Equity" means common stock or preferred stock, regardless of class or series, of a corporation;
10 a partnership interest in a limited partnership; or a membership interest in a limited liability company,
11 which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer
12 within three years from the date of issuance.

13 "Qualified business" means a business that (i) has its principal office or facility in the
14 Commonwealth, (ii) is engaged in business primarily in or does substantially all of its production in the
15 Commonwealth, and (iii) is primarily engaged, or is primarily organized to engage, in the research,
16 development, or commercialization of nanotechnology with applications in any of the following subject
17 areas:

18 1. Energy, conservation, and the environment;

19 2. Microelectronics; or

20 3. Lifespan biology and medicine.

21 "Qualified investment" means a cash investment in a qualified business in the form of equity or
22 subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such
23 investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer,
24 receives or has received compensation from the qualified business in exchange for services provided to

25 such business as an employee, officer, director, manager, or independent contractor within one year
26 before or after the date of such investment. For the purposes hereof, reimbursement of reasonable
27 expenses incurred shall not be deemed to be compensation.

28 "Subordinated debt" means indebtedness of a corporation, general or limited partnership, or
29 limited liability company that (i) by its terms required no repayment of principal for the first three years
30 after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any
31 other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or
32 state-chartered banking or savings and loan institutions.

33 B. For taxable years beginning on or after January 1, 2009, a taxpayer shall be allowed a credit
34 against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50% of such
35 taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer
36 that has committed capital under management in excess of \$10 million and engages in the business of
37 making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a
38 partner, shareholder, member, or owner of an entity that engages in such business.

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

42 D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax
43 imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the
44 credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or
45 until the total amount of the tax credit has been taken, whichever occurs first.

46 E. The amount of tax credits available under this section for a calendar year shall be \$15 million.

47 F. Any taxpayer that transfers the equity received in connection with a qualified and fails to hold
48 such equity for at least three full calendar years following the calendar year for which a tax credit for a
49 qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits
50 and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of
51 1% per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The

52 Department of Taxation shall deposit any amounts received under this subsection into the general fund
53 of the Commonwealth.

54 G. Subsection F shall not apply if the taxpayer transfers the equity received in connection with a
55 qualified investment as a result of (i) the liquidation of the qualified business issuing such equity, (ii) the
56 merger, consolidation, or other acquisition of such business with or by a party not affiliated with such
57 business, or (iii) the death of the taxpayer.

58 H. Prior to December 31, 2008, the Department of Taxation shall promulgate regulations in
59 accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for
60 claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among
61 taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the
62 available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of
63 Taxation shall permit an application for certification as a qualified business to be filed at any time
64 during the calendar year regardless of when the investment was made during the calendar year.

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