

## 1 HOUSE BILL NO. 2403

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Finance

4 on \_\_\_\_\_)

5 (Patron Prior to Substitute--Delegate Shin)

6 A BILL to amend and reenact §§ 58.1-439.12:08 and 58.1-439.12:11 of the Code of Virginia, relating to  
7 research and development expenses tax credits.

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

9 **1. That §§ 58.1-439.12:08 and 58.1-439.12:11 of the Code of Virginia are amended and reenacted as**  
10 **follows:**

11 **§ 58.1-439.12:08. Research and development expenses tax credit.**

12 A. As used in this section, unless the context requires a different meaning:

13 "Virginia base amount" means the base amount as defined in § 41(c) of the Internal Revenue Code,  
14 as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research and  
15 development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research" for  
16 "qualified research"; and (iii) instead of "fixed base percentage," using:

17 1. The percentage that the Virginia qualified research and development expense for the three  
18 taxable years immediately preceding the current taxable year in which the expense is incurred is of the  
19 taxpayer's total gross receipts for such years; or

20 2. The percentage that the Virginia qualified research and development expense for the applicable  
21 number of taxable years immediately preceding the current taxable year in which the expense is incurred  
22 is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at least  
23 one prior taxable year.

24 "Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

25 "Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal  
26 Revenue Code, as amended, that is conducted in the Commonwealth.

27 "Virginia qualified research and development expenses" means qualified research expenses, as  
28 defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

29 B. 1. For taxable years beginning on or after January 1, 2011, but before January 1, 2021, a  
30 taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount  
31 equal to (i) 15 percent of the first \$300,000 in Virginia qualified research and development expenses paid  
32 or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first \$300,000 in Virginia  
33 qualified research and development expenses paid or incurred by the taxpayer during the taxable year if  
34 the Virginia qualified research was conducted in conjunction with a public or private institution of higher  
35 education in the Commonwealth, to the extent the expenses exceed the Virginia base amount for the  
36 taxpayer.

37 2. For taxable years beginning on or after January 1, 2021, but before January 1, 2025, a taxpayer  
38 shall be allowed a credit against the tax levied pursuant to § 58.1-320, 58.1-400, or 58.1-1202 in an amount  
39 equal to (i) 15 percent of the first \$300,000 in Virginia qualified research and development expenses paid  
40 or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first \$300,000 in Virginia  
41 qualified research and development expenses paid or incurred by the taxpayer during the taxable year if  
42 the Virginia qualified research was conducted in conjunction with a public or private institution of higher  
43 education in the Commonwealth, to the extent the expenses exceed the Virginia base amount for the  
44 taxpayer.

45 C. 1. Effective for taxable years beginning on or after January 1, 2016, at the election of the  
46 taxpayer, the credit otherwise allowed under this section shall be computed under this subsection and shall  
47 equal 10 percent of the difference of (i) the Virginia qualified research and development expenses paid or  
48 incurred by the taxpayer during the taxable year and (ii) 50 percent of the average Virginia qualified  
49 research and development expenses paid or incurred by the taxpayer for the three taxable years  
50 immediately preceding the taxable year for which the credit is being determined. If the taxpayer did not  
51 pay or incur Virginia qualified research and development expenses in any one of the three taxable years  
52 immediately preceding the taxable year for which the credit is being determined, the tax credit shall equal

53 five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer  
54 during the relevant taxable year.

55 2. The aggregate amount of credits allowed to each taxpayer under this subsection shall not exceed  
56 \$45,000 for the taxable year, except that the aggregate amount of credits allowed to each taxpayer shall  
57 not exceed \$60,000 for the taxable year if the Virginia qualified research was conducted in conjunction  
58 with a public institution of higher education in the Commonwealth or a private institution of higher  
59 education in the Commonwealth.

60 D. The aggregate amount of credits available under this section for each fiscal year of the  
61 Commonwealth shall be as follows:

62 1. For taxable years beginning on and after January 1, 2014, but before January 1, 2016, the total  
63 amount of credits granted for each of fiscal years 2015 and 2016 shall not exceed \$6 million.

64 2. For taxable years beginning on and after January 1, 2016, but before January 1, 2021, the total  
65 amount of credits granted for each fiscal year of the Commonwealth beginning with fiscal year 2017 shall  
66 not exceed \$7 million.

67 3. For taxable years beginning on and after January 1, 2021, but before January 1, 2023, the total  
68 amount of credits granted for each fiscal year of the Commonwealth beginning with fiscal year 2022 shall  
69 not exceed \$7.77 million.

70 4. For taxable years beginning on and after January 1, 2023, the total amount of credits granted for  
71 each fiscal year of the Commonwealth beginning with fiscal year 2024 shall not exceed \$15.77 million.

72 E. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as  
73 provided herein. The Department shall develop and publish guidelines for applications and such guidelines  
74 shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). Applications must be received  
75 by the Department no later than September 1 of the calendar year following the close of the taxable year  
76 in which the expenses were paid or incurred. In the event that approved applications for the tax credits  
77 allowed under this section exceed the amount of credits specified in subsection D for the taxable year, the  
78 Department shall apportion the credits by dividing the amount of credits specified in subsection D by the  
79 total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer

80 shall receive. In the event that the total amount of approved tax credits under this section for all  
81 applications for any taxable year is less than the maximum amount of credits for the year as specified in  
82 subsection D, the Department shall allocate credits up to the maximum amount as specified in subsection  
83 D, on a pro rata basis, to taxpayers who are already approved for the tax credit for the taxable year, in the  
84 following amounts:

85 1. If the taxpayer computed the credit pursuant to subsection B, in an amount equal to 15 percent  
86 of the second \$300,000 in qualified research expenses during the taxable year or 20 percent of the second  
87 \$300,000 in qualified research expenses if the Virginia qualified research was conducted in conjunction  
88 with a public institution of higher education in the Commonwealth or a private institution of higher  
89 education in the Commonwealth; or

90 2. If the taxpayer computed the credit under subdivision C 1, in an amount equal to the excess of  
91 the limitation set forth in subdivision C 2, up to an additional \$45,000 per taxpayer, or \$60,000 per  
92 taxpayer if the Virginia qualified research was conducted in conjunction with a public institution of higher  
93 education in the Commonwealth or a private institution of higher education in the Commonwealth.

94 F. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the  
95 amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the limitations set forth  
96 in the guidelines developed by the Department.

97 G. Any taxpayer who claims the tax credit for Virginia qualified research and development  
98 expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit  
99 provided under the Code of Virginia.

100 H. Effective for taxable years beginning on or after January 1, 2016, no taxpayer with Virginia  
101 qualified research and development expenses in excess of \$5 million for the taxable year shall claim both  
102 the credit allowed pursuant to this section and the credit allowed under § 58.1-439.12:11 for such year.

103 I. Credits granted to a partnership, limited liability company, or electing small business corporation  
104 (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in  
105 proportion to their ownership interests in such entities or in accordance with a written agreement entered  
106 into by such individual partners, members, or shareholders, unless the partnership, limited liability

107 company, or electing small business corporation (S corporation) elects for such credits not to be so  
108 allocated but to be received and claimed at the entity level by the partnership, limited liability company,  
109 or electing small business corporation (S corporation) pursuant to guidelines that shall be issued by the  
110 Department for purposes of such election.

111 J. The Department shall adopt guidelines to prescribe standards for determining when research and  
112 development is considered conducted in the Commonwealth for purposes of allowing the credit under this  
113 section. In adopting guidelines, the Department may consider (i) the location where the research and  
114 development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting  
115 the research and development; (iii) the location where supplies used in the research and development are  
116 consumed; and (iv) any other factors that the Department deems to be relevant.

117 K. The Tax Commissioner's annual report to the Governor on revenue collections by tax source  
118 shall include (i) the total number of applicants approved for tax credits pursuant to this section for the  
119 applicable tax year and (ii) the total amount of such tax credits approved for the applicable tax year.

120 L. The Department shall require taxpayers applying for the credit to provide information including  
121 (i) the number of full-time employees employed by the taxpayer in the Commonwealth during the taxable  
122 year for which the credit is sought; (ii) the taxpayer's sector or sectors according to the 2012 edition of the  
123 North American Industry Classification System (NAICS) as published by the United States Census  
124 Bureau; (iii) a brief description of the area, discipline, or field of Virginia qualified research performed by  
125 the taxpayer; (iv) the total gross receipts or anticipated total gross receipts of the taxpayer for the taxable  
126 year for which the credit is sought; and (v) whether the Virginia qualified research was conducted in  
127 conjunction with a Virginia public or private college or university. The Department shall aggregate and  
128 summarize the information collected and make it available to the Governor and any member of the General  
129 Assembly upon request, regardless of the number of taxpayers applying for the credit.

130 M. No tax credit shall be allowed pursuant to this section if the otherwise qualified research and  
131 development expenses are paid for or incurred by a taxpayer for research conducted in the Commonwealth  
132 on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos.

133 The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem  
134 cells.

135 **§ 58.1-439.12:11. Major research and development expenses tax credit.**

136 A. As used in this section, unless the context requires a different meaning:

137 "Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal  
138 Revenue Code, as amended, that is conducted in the Commonwealth.

139 "Virginia qualified research and development expenses" means qualified research expenses, as  
140 defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

141 B. 1. For taxable years beginning on or after January 1, 2016, but before January 1, 2021, a  
142 taxpayer with Virginia qualified research and development expenses for the taxable year in excess of \$5  
143 million shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount  
144 equal to 10 percent of the difference between (i) the Virginia qualified research and development expenses  
145 paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the average Virginia  
146 qualified research and development expenses paid or incurred by the taxpayer for the three taxable years  
147 immediately preceding the taxable year for which the credit is being determined. If the taxpayer did not  
148 pay or incur Virginia qualified research and development expenses in any one of the three taxable years  
149 immediately preceding the taxable year for which the credit is being determined, the tax credit shall equal  
150 five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer  
151 during the relevant taxable year.

152 2. For taxable years beginning on or after January 1, 2021, but before January 1, ~~2025~~ 2023, a  
153 taxpayer with Virginia qualified research and development expenses for the taxable year in excess of \$5  
154 million shall be allowed a credit against the tax levied pursuant to § 58.1-320, 58.1-400, or 58.1-1202 in  
155 an amount equal to 10 percent of the difference between (i) the Virginia qualified research and  
156 development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the  
157 average Virginia qualified research and development expenses paid or incurred by the taxpayer for the  
158 three taxable years immediately preceding the taxable year for which the credit is being determined. If the  
159 taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three

160 taxable years immediately preceding the taxable year for which the credit is being determined, the tax  
161 credit shall equal five percent of the Virginia qualified research and development expenses paid or  
162 incurred by the taxpayer during the relevant taxable year.

163 3. For taxable years beginning on or after January 1, 2023, but before January 1, 2025, a taxpayer  
164 with Virginia qualified research and development expenses for the taxable year in excess of \$5 million  
165 shall be allowed a credit against the tax levied pursuant to § 58.1-320, 58.1-400, or 58.1-1202 in an amount  
166 equal to:

167 a. Ten percent, up to the first \$1 million, of the difference between (i) Virginia qualified research  
168 and development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of  
169 the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the  
170 three taxable years immediately preceding the taxable year for which the credit is being determined.

171 b. Five percent of the difference in excess of \$1 million between (i) any Virginia qualified research  
172 and development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of  
173 the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the  
174 three taxable years immediately preceding the taxable year for which the credit is being determined.

175 If the taxpayer did not pay or incur Virginia qualified research and development expenses in any  
176 one of the three taxable years immediately preceding the taxable year for which the credit is being  
177 determined, the tax credit shall equal five percent of the Virginia qualified research and development  
178 expenses paid or incurred by the taxpayer during the relevant taxable year.

179 The aggregate amount of credits allowed to each taxpayer under this subdivision 3 shall not exceed  
180 \$300,000 for the taxable year, except that the aggregate amount of credits allowed to each taxpayer shall  
181 not exceed \$400,000 for the taxable year if the Virginia qualified research was conducted in conjunction  
182 with a public institution of higher education in the Commonwealth or a private institution of higher  
183 education in the Commonwealth.

184 C. 1. For taxable years beginning before January 1, 2021, the aggregate amount of credits granted  
185 for each fiscal year of the Commonwealth pursuant to this section shall not exceed \$20 million.

186           2. For taxable years beginning on and after January 1, 2021, but before January 1, 2023, the  
187 aggregate amount of credits granted for each fiscal year of the Commonwealth pursuant to this section  
188 shall not exceed \$24 million.

189           3. For taxable years beginning before January 1, 2023, the aggregate amount of credits granted for  
190 each fiscal year of the Commonwealth pursuant to this section shall not exceed \$16 million.

191           D. In the event that approved applications for the tax credits allowed under this section exceed the  
192 limit described in subsection C for any taxable year, the Department shall apportion the credits by dividing  
193 such limit by the total amount of tax credits approved, to determine the percentage of allowed tax credits  
194 each taxpayer shall receive.

195           E. The amount of the credit claimed for the taxable year shall not exceed 75 percent of the total  
196 amount of tax imposed by this chapter upon the taxpayer for the taxable year. Any credit not usable for  
197 the taxable year for which the credit was first allowed may be carried over for credit against the income  
198 taxes of the taxpayer in the next 10 succeeding taxable years or until the total amount of the tax credit has  
199 been taken, whichever is sooner.

200           F. Any taxpayer who claims the tax credit for Virginia qualified research and development  
201 expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit  
202 provided under the Code of Virginia.

203           G. Credits granted to a partnership, limited liability company, or electing small business  
204 corporation (S corporation) shall be allocated to the individual partners, members, or shareholders,  
205 respectively, in proportion to their ownership interests in such entities or in accordance with a written  
206 agreement entered into by such individual partners, members, or shareholders.

207           H. The Department shall develop and publish guidelines under this section including guidelines  
208 for applying for the tax credit. Such guidelines shall be exempt from the Administrative Process Act (§  
209 2.2-4000 et seq.). Applications for the tax credit must be received by the Department no later than  
210 September 1 of the calendar year following the close of the taxable year in which the expenses were paid  
211 or incurred.



212 The Department shall also adopt guidelines to prescribe standards for determining when research  
213 and development is considered conducted in the Commonwealth for purposes of allowing the credit under  
214 this section. In adopting guidelines, the Department may consider (i) the location where the research and  
215 development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting  
216 the research and development; (iii) the location where supplies used in the research and development are  
217 consumed; and (iv) any other factors that the Department deems to be relevant.

218 I. No tax credit shall be allowed pursuant to this section, if the otherwise qualified research and  
219 development expenses are paid for or incurred by a taxpayer for research conducted in the Commonwealth  
220 on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos.  
221 The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem  
222 cells.

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