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SENATE BILL NO. 1030

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 10, 2003)

(Patron Prior to Substitute—Senator Chichester)

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 18 of Title 58.1 a section numbered 58.1-1840.1, relating to the Virginia Tax Amnesty Program.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 18 of Title 58.1 a section numbered 58.1-1840.1 as follows:

§ 58.1-1840.1. Virginia Tax Amnesty Program established.

A. There is hereby established the Virginia Tax Amnesty Program. It is the intent of this program to improve voluntary compliance with the tax laws and to increase and to accelerate collections of certain taxes owed to the Commonwealth.

B. The Virginia Tax Amnesty Program shall be administered by the Department of Taxation, and any person, individual, corporation, estate, trust or partnership required to file a return or to pay any tax administered or collected by the Department of Taxation shall be eligible to participate, subject to the requirements set forth below and guidelines established by the Tax Commissioner.

C. The Tax Commissioner shall establish guidelines and rules for the procedures for participation and any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules issued by the Tax Commissioner regarding the Virginia Tax Amnesty Program shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

D. The Virginia Tax Amnesty Program shall have the following features:

1. The program shall be conducted during the period July 1, 2003, through June 30, 2004, and shall not last less than 60 nor more than 75 days. The exact dates of the program shall be established by the Tax Commissioner.

2. All civil or criminal penalties assessed or assessable, as provided in this title, including the addition to tax under §§ 58.1-492 and 58.1-504, and one-half of the interest assessed or assessable, as provided in this title, which are the result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities, shall be waived upon receipt of the payment of the amount of taxes and interest owed, with the following exceptions:

a. No person, individual, corporation, estate, trust or partnership currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.

b. No person, individual, corporation, estate, trust or partnership shall be eligible to participate in the program with respect to any assessment outstanding for which the date of assessment is less than 90 days prior to the first day of the program or with respect to any liability arising from the failure to file a return for which the due date of the return is less than 90 days prior to the first day of the program.

c. No person, individual, corporation, estate, or trust shall be eligible to participate in the program with respect to any tax liability from the income taxes imposed by §§ 58.1-320, 58.1-360 and 58.1-400, if the tax liability is attributable to taxable years beginning on and after January 1, 2002.

E. For the purpose of computing the outstanding balance due because of the nonpayment, underpayment, nonreporting or underreporting of any tax liability that has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § 58.1-15 shall not be applicable. The Tax Commissioner shall, instead, establish one interest rate to be used for each taxable year that approximates the average "underpayment rate" specified under § 58.1-15 for the five-year period immediately preceding the program.

F. 1. If any taxpayer eligible for amnesty under this section and under the rules and guidelines established by the Tax Commissioner retains any outstanding balance after the close of the Virginia Tax Amnesty Program because of the nonpayment, underpayment, nonreporting or underreporting of any tax liability eligible for relief under the Virginia Tax Amnesty Program, then such balance shall be subject to a 20-percent penalty on the unpaid tax. This penalty is in addition to all other penalties that may apply to the taxpayer.

2. Any taxpayer who defaults upon any agreement to pay tax and interest arising out of a grant of amnesty is subject to reinstatement of the penalty and interest forgiven and the imposition of the penalty under this section as though the taxpayer retained the original outstanding balance at the close of the Virginia Tax Amnesty Program.

2. Notwithstanding §§ 2.2-4309 and 58.1-202.2 of the Code of Virginia, the Tax Commissioner is hereby authorized to contract for all goods and services related to the conduct of an amnesty

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60 program as an enlargement of the scope and cost of the public-private partnership contract
61 authorized by § 58.1-202.2 of the Code of Virginia. The conduct of an amnesty program shall be
62 defined as a "technology need," which term shall include any costs associated with the adjustment
63 to the schedule for existing technology projects as a consequence of the conduct of the amnesty
64 program.

65 3. That any enlargement of the scope and cost of the public-private partnership contract
66 authorized by § 58.1-202.2 of the Code of Virginia, as described in the second enactment of this
67 act, shall be reported in writing to the Chairmen of the Senate Finance and House Appropriations
68 Committees prior to execution of said contract revision or such enlargement of such scope and
69 cost of the public-private partnership.