DEPARTMENT OF TAXATION
2006 Fiscal Impact Statement

1. Patron John C. Watkins

2. Bill Number SB 91

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee Senate Finance

4. Title Individual and Corporate Income Tax; Renewable Resources Energy Production Tax Credit

5. Summary/Purpose:

This bill would create an individual and corporate income tax credit equal to 0.85 cents for each kilowatt of electricity produced by an individual or corporation from qualified energy resources at a qualified facility. In order to qualify, such electricity would have to be produced during the 10-year period beginning on the date that the facility was originally placed in service; and the credit would only be allowed for kilowatts sold by the individual or corporation to an unrelated person during the taxable year. The amount of this credit would be limited to the lesser of the tax liability of the individual or corporation or $100,000. Any unused credit amounts could be carried forward for up to 10 years.

This bill would also require the Tax Commissioner to establish and publish guidelines for the purposes of implementing the provisions of this act. These guidelines would be required to be completed by October 1, 2006.

This bill would be effective for taxable years beginning on or after January 1, 2007.

6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

Administrative Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as “routine,” and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not “routine.” Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

Based on the production of electricity from qualified renewable energy resources by electric utilities in Virginia in 2003, the credit proposed by this bill would have a negative revenue impact of $9.2 million per year. This estimate was limited to production by electric utilities in order to be compatible with the requirement that the electricity be sold by the taxpayer to an unrelated person.

The actual negative revenue impact of this bill would likely be higher than this revenue estimate because the estimate does not account for cogenerators or individuals. Individuals who use renewable energy resources to produce electricity, however, would typically utilize net energy metering, which means that the individuals are credited by the utility company for electricity that they generate in excess of their own electricity consumption. Thus, many individuals would not qualify for this credit.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

In order to clarify that this bill refers to kilowatts hours, the following technical amendments are suggested:

Page 1, Line 26 after kilowatt
Insert: hours

Page 1, Line 29 after kilowatt
Insert: hours

Page 2, Line 65 after kilowatt
Insert: hours

Page 2, Line 68 after kilowatt
Insert: hours

11. Other comments:

Generally

The Renewable Resources Energy Production Tax Credit would be available to individual and corporate income taxpayers who produce electricity from qualified energy resources at a qualified facility. The definitions for “qualified energy resources” and “qualified facility” would be identical to those under Internal Revenue Code (“IRC”) § 45, which provides a similar federal credit.

Under the IRC, “qualified energy resources” include wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production. In general, “qualified facilities” are those that produce energy by utilizing these energy resources, in addition to refined coal and Indian coal. Such facilities must be placed into service at a specified time, typically before January 1, 2008. The only exceptions to this are facilities using solar energy, which must be placed in service before January 1, 2006, or those producing refined coal or Indian coal, which must be placed in service before January 1, 2009.

Proposal

This bill would create an individual and corporate income tax credit for an amount equal to 0.85 cents for each kilowatt of electricity produced by the individual or corporation from qualified energy resources at a qualified facility. In order to qualify, such electricity would have to be produced during the 10-year period beginning on the date that the facility was originally placed in service. Qualified facilities placed in service prior to January 1, 2007 would be allowed to use that date as the beginning of their 10-year period.

This credit would only be allowed for kilowatts sold by the individual or corporation to an unrelated person during the taxable year. The amount of the credit would be limited to the lesser of the tax liability of the individual or corporation or $100,000. Any unused credit amounts could be carried forward for up to 10 years.

Under IRC § 45, certain geothermal and solar energy facilities are excluded from the federal credit if they have been used to determine the amount of a different energy credit. This bill would allow such facilities to be included in the definition of qualified facilities for the purposes of determining the proposed Virginia income tax credit.

This bill would also require the Tax Commissioner to establish and publish guidelines for the purposes of implementing the provisions of this act. This would be required to be completed by October 1, 2006.

This bill would be effective for taxable years beginning on or after January 1, 2007.

cc : Secretary of Finance

Date: 01/23/2006 AMS
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