DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron C. Todd Gilbert

2. Bill Number HB 1341

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

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

3. Committee House Finance

4. Title Income Tax: Electric Energy Facility Producing Electricity Primarily From Agricultural Livestock Waste Nutrients

5. Summary/Purpose:

TAX understands that the patron will introduce an amendment to this bill. This fiscal impact statement is based on that amendment.

This bill would allow an individual and corporate income tax credit for qualified property that is placed in service in a Virginia county or city with a current 5-year annual average unemployment rate of at least 6.5 percent. Qualified property would include energy property that is part of an electric energy facility producing electricity primarily from agricultural livestock waste nutrients. The amount of the credit would be equal to the amount of the federal Energy Credit.

The amount of credit may not exceed the tax liability of a taxpayer for the taxable year. Any unused credits would be allowed to be carried over for the next 10 succeeding taxable years.

Currently, there are 18 counties and cities with a 5-year annual average unemployment rate of at least 6.5 percent.

This bill would be effective for taxable years beginning on or after January 1, 2010.

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

7. Budget amendment necessary: No.

8. Fiscal implications:

Administrative Costs

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

This bill would have an unknown negative impact on General Fund revenue. The costs of various open-loop biomass agricultural livestock waste processing facilities range from $25,000 to $1.8 million. Based on Virginia Unemployment Commission (“VEC”) data, currently there are 18 localities that meet or exceed the five-year average unemployment rate of 6.5 percent. Only property placed in service in those localities would qualify for this credit.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

It is our understanding that the patron of this bill intends to propose an amendment that will change the 5-year annual average unemployment rate from 11 to 6.5 percent. Therefore, the following technical amendment is suggested:

Page 1, Line 21, after at the beginning of the line
Strike: 11
Insert: 6.5

In order to clarify that individuals and corporations may earn this credit, the following technical amendment is suggested:

Page 1, Line 27, after to any
Strike: person
Insert: taxpayer

11. Other comments:

Federal Law

Under IRC § 48 (a) (the “Energy Credit”), an income tax credit is allowed for certain "energy property" placed in service used to produce electricity. The credit amount is equal to 30% of the value of the property placed in service.

Energy property includes (i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool, (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage, (iv) qualified fuel cell property or qualified microturbine property, (v) combined heat and power system property, (vi) qualified small wind energy property, or (vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017.

Another income tax credit, provided under IRC § 45 (the "Renewable Electricity Production Credit"), is allowed for the production of electricity from "qualified energy resources" at qualified facilities. The credit is equal to 1.5 cents per kilowatt hours of electricity that is produced. Qualified energy resources comprise of wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

Open-loop biomass includes "agricultural livestock waste nutrients," which are defined as agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

2009 American Recovery and Reinvestment Tax Act

The 2009 American Recovery and Reinvestment Tax Act (the "Act") allows a taxpayer to make an irrevocable election to have certain facilities that qualify for the Renewable Electricity Production Credit and are placed in service in 2009 through 2013 to treat certain "qualified property" as "energy property" as defined under the Energy Credit. Qualified facilities are facilities otherwise eligible for the Renewable Electricity Production Credit (other than refined coal, Indian coal, and solar facilities) with respect to which no credit has been allowed.

The "qualified property" that would be allowed to be treated as "energy property" is (i) tangible personal property, or (ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment facility. In addition, deprecation (or amortization in lieu of depreciation) must be allowed with respect to the property.

The Act, therefore, allows qualified facilities that are placed in service that otherwise would be eligible for the Renewable Electricity Production Credit to be eligible for the 30% Energy Credit. Such facilities include those that utilize agricultural livestock waste nutrients for the production of electricity.

Proposed Legislation

This bill would allow an individual and corporate income tax credit for qualified property that is placed in service in a Virginia county or city with a current 5-year annual average unemployment rate of at least 6.5 percent. Qualified property would include energy property that is part of an electric energy facility producing electricity primarily from agricultural livestock waste nutrients. The amount of the credit would be equal to the amount of the federal Energy Credit.

According to data from the Virginia Employment Commission, there are 18 localities that have a five-year average annual unemployment rate of 6.5 percent from December of 2004 through December of 2009. These localities are listed below.

Counties	**Cities**
Henry County	Martinsville City
Halifax County	Danville City
Pittsylvania County	Williamsburg City
Charlotte County	Petersburg City
Mecklenburg County	Emporia City
Page County	Covington City
Carroll County	Galax City
Patrick County	
Russell County	
Brunswick County	
Grayson County	

The amount of credit may not exceed the tax liability of a taxpayer for the taxable year. Any unused credits would be allowed to be carried over for the next 10 succeeding taxable years. This bill would not prevent a taxpayer from claiming this credit and the federal Energy Credit for the same qualified property that is placed in service.

This bill would also provide that for a partnership, limited liability company, or electing small business corporation (S corporation) the tax credit would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

Because facilities utilizing agricultural waste nutrients that are placed in service in 2009 through 2013 are eligible for the federal Energy Credit, they would also be eligible for this credit. Such facilities placed in service after 2013 will no longer be allowed to elect to treat their qualified property as energy property. Therefore, they will not be eligible to qualify for the federal Energy Credit or this credit.

This bill would be effective for taxable years beginning on or after January 1, 2010.

Other Legislation

Senate Bill 678 is similar to this bill, but it would not limit the credit to localities with a current 5-year annual average unemployment rate of at least 6.5 percent.

House Bill 998 and Senate Bill 657 would allow an income tax credit to a corporation that manufactures renewable energy products in Virginia provided they export at least 50 percent of the number of renewable energy products that were exported in 2010. The credit would vary from 20 cents per ton of renewable energy products exported if at least 50 percent of the 2010 exports, to 40 cents per ton of renewable energy products exported if at least 120 percent of 2010 exports.

cc : Secretary of Finance

Date: 2/4/2010 TG
HB1341F161