DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Terry G. Kilgore

2. Bill Number HB 712

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

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

3. Committee House Finance

4. Title Coal and Gas Severance Tax; Contract Miners

5. Summary/Purpose:

For purposes of the local Coal Severance Tax this bill would provide that if the severer of the coal is an unrelated contract miner, a locality may impose the local severance tax on coal and gases at a rate not to exceed one percent of the gross receipts the miner receives from the contracting entity.

Under current law, the governing body of any locality is authorized to levy a license ("BPOL") tax on every person engaging in the business of severing coal or gases ("severance tax"). The tax is imposed at a rate not to exceed one percent of the gross receipts from the sale of coal or gases.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

8. Fiscal implications:

This bill would have no impact on state revenues. To the extent that any locality does not impose the severance tax on contract miners on the gross receipts the contract miner receives from the contracting entity, this bill would have an unknown revenue impact on the locality.

9. Specific agency or political subdivisions affected:

City of Norton
Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise

10. Technical amendment necessary: No.

11. Other comments:

Generally

Under current law, localities are generally prohibited from imposing a license tax or fee on any person engaged in the business of severing minerals from the earth for the privilege of selling the severed minerals at wholesale at the place of severance.

However, localities are authorized to levy a severance tax that is capped at one percent of the gross receipts from the sale of coal or gases severed within such county. The gross receipts are the fair market value measured at the time the coal or gases are utilized or sold for utilization in the locality or at the time they are placed in transit for shipment from the locality. In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining is permitted to take any deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees and personal property taxes. According to *Tax Rates 2010*, Virginia's Cities, Counties, and Selected Towns, by Weldon Cooper Center for Public Policy, the City of Norton and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise report imposing the severance tax at a rate of one percent.

The Attorney General held in a 1983 opinion, *Opinions of the Attorney General of Virginia*, 1983 at 514, that levying the severance tax on contract miners when a contract miner is retained to sever coal was consistent with the law and apparently consistent with the industry understanding. Additionally, the Attorney General held that it was logical for a locality to measure the contract miner's gross receipts for purposes of the tax by the amount of money he receives from the owner. The Attorney General was unable to conclude that the law required the locality to consider additional factors in determining the contract miner's gross receipts.

Proposal

This bill would provide that if a severer is an unrelated contract miner, a locality may impose the local BPOL severance tax on coal and gases at a rate not to exceed one percent of the gross receipts the miner receives from the contracting entity.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1233 and **Senate Bill 658** would require counties and cities that imposed or is imposing a license tax for the severance of coal, gas, or oil to adopt or include the uniform ordinance provisions in *Va. Code* § 58.1-3703.1(A) for the BPOL tax into the local ordinance with a retroactive effective date to the 2008 license year.

House Joint Resolution 4 would direct the Department of Taxation to conduct a study of the BPOL tax with the input of business, industry, and local government representatives in order to determine whether the current business classifications and tax rates reflect today's economy.

Senate Bill 154 would provide that localities may incorporate or adopt by reference the uniform ordinance provisions in *Va. Code* § 58.1-3703.1(A) for the BPOL tax.

cc : Secretary of Finance

Date: 1/21/2012 AM
DLAS File Name: HB712F161