DEPARTMENT OF TAXATION
2015 Fiscal Impact Statement

1. Patron Richard C. "Rip" Sullivan

2. Bill Number HB 1728

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

3. Committee House Finance

4. Title Renewable Energy Property Tax Credit

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

5. Summary/Purpose:

This bill would allow any person who has constructed, purchased, or leased renewable energy property and placed such property in service in the Commonwealth during the taxable year to claim a tax credit against the corporate income tax, the insurance premiums license tax, and the tax on public service corporations. The tax credit would be equal to 35 percent of the installed cost of the renewable energy property, up to $15,000. The credit would only be allowed to the ultimate consumer or user of the renewable energy property.

To qualify for the credit, a taxpayer would be required to apply to the Department of Taxation ("the Department"). The Department would not be permitted to issue more than $5 million in any fiscal year of the Commonwealth. The Department would be required to develop procedures to issue tax credits in the event that applications for tax credits exceed $5 million for the fiscal year.

The credit would be claimed in five equal annual installments, beginning with the taxable year in which the property is placed in service and for the next four succeeding taxable years. The amount of the credit claimed would not be permitted to exceed the fifty percent of the total amount of corporate income tax, insurance premiums license tax, or tax on public service corporations imposed on the taxpayer. Any credit not usable for the taxable year for which the credit was allowed would be permitted to be carried over for up to five taxable years.

If, in one of the taxable years in which the installment of a credit accrued, the renewable energy property is disposed of, taken out of service, or moved out of the Commonwealth, this bill would prohibit the person from claiming any installment of the credit for such renewable energy property for that taxable year or any taxable year thereafter, and such person would be subject to recapture for any credit so claimed.

This bill would be effective for taxable years beginning on or after January 1, 2015, but before January 1, 2020.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Cost

The Department 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, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department 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, the Department will identify the costs at that time.

The Department of Mines, Minerals, and Energy would not incur significant costs as a result of this bill.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue. The total negative revenue impact would not exceed the $5 million cap; however, it is unclear how many taxpayers would qualify for and claim this tax credit. This credit could be claimed for placing in service the following types of renewable energy property: biomass, geothermal, hydroelectric, solar energy, and wind systems. It is unknown how many of these systems would be placed into service during the applicable taxable years.

Energy Derived from Biomass Systems
According to the United States Energy Information Administration ("USEIA"), there are 23 biomass power plants currently located in Virginia. These plants produced approximately 88 percent of the renewable energy consumed in Virginia between 2007 and 2011. Although the USEIA indicates that Virginia has abundant biomass, biomass energy consumption has fallen 15 percent in the past 5 years. Accordingly, the amount of credits claimed for this type of energy would likely have a relatively small negative revenue impact.

Energy Derived from Geothermal Power
According to the USEIA, geothermal energy produced 1.26 percent of the renewable energy consumed in Virginia from 2007 through 2011, with consumption of geothermal energy increasing by approximately 80 percent during these years. Due to the significant investment required for geothermal systems, it is unknown how much property would be placed in service that would qualify for tax credits under this bill. Accordingly, the amount of credits claimed for geothermal energy systems would likely have a relatively small negative revenue impact.

Energy Derived from Hydroelectric (Water) Power
Hydroelectric energy is the renewable energy source that produces the most electricity in the United States. In 2012, it accounted for approximately 7 percent of total U.S. electricity generation, and approximately 56 percent of the total generation from renewable energy. From 2007 through 2012, hydroelectric power accounted for approximately 11 percent of the renewable energy consumed in Virginia. According to the USEIA, Virginia currently has 21 hydroelectric power plants in operation. It is unknown how many credits would be claimed for investment in hydroelectric energy property.

Energy Derived from Solar Thermal Systems
During 2009 and 2010, DMME administered a solar rebate program, through which it processed 351 claims for rebates. Applying data from this solar rebate program, it is estimated that approximately $1.73 million worth of credits for solar photovoltaic and solar thermal systems would have been issued under the tax credit program proposed by this bill. However, it is unknown if the same amount of tax credits would be issued under this bill for Taxable Year 2015 and thereafter.

Energy Derived from Wind Systems
According to the USEIA, very little wind energy was consumed in Virginia from 2007 to 2011. Accordingly, it is projected that the amount of credits claimed for placing wind systems into service would have a relatively small negative revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Mines, Minerals, and Energy
State Corporation Commission

10. Technical amendment necessary: Yes. It is the Department's understanding that the Patron's intent is to allow taxpayers to claim a credit of up to $15,000 over a five-year period, that the amount claimed each year would not be permitted to exceed 50 percent of the taxpayer's tax liability, and that any amounts in excess of 50 percent of the taxpayer's tax liability would be permitted to be carried over for up to five taxable years. Accordingly, the Department suggests the following technical amendments:

Page 1, Line 49, after "exceed"
Strike: "the lesser of (i) 50 percent of the tax imposed upon the person under Articlel 10 (§ 58.1-400 et seq.), Chapter 25 (§ 58.1-2500 et seq), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 for such year or (ii)"

Page 2, Line 74, after "exceed"
Insert: "50 percent of"

Page 2, Line 77, after "for which the credit was"
Strike: "first"

11. Other comments:

Federal Business Energy Investment Tax Credit

Under federal law, businesses may claim a tax credit equal to 30 percent of the costs of qualified fuel cell property; equipment which uses solar energy to generate electricity, heat or cool a structure, or provide solar process heat; equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight; and qualified small wind energy property.

Businesses may claim a credit equal to 10 percent of the costs of any other energy property. Other types of energy property include equipment used to produce, distribute, or use energy derived from a geothermal deposit; qualified microturbine property; combined heat and power system property; and 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.

To qualify for the credit, the original use of the property must begin with the taxpayer, or the property must be constructed by the taxpayer. Additionally, the property must be depreciable or amortizable and the property must meet the performance and quality standards set forth in the Treasury Regulations.

No credit is allowed with respect to property for the taxable year in which a grant is made under § 1603 of the American Recovery and Reinvestment Tax Act of 2009 or any subsequent taxable year. A recapture provision applies if a credit is determined for any taxable year before which a grant is made.

For purposes of the credit, "qualified fuel cell property" is defined as a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent.

"Qualified microturbine property" means a stationary microturbine power plant which has a nameplate capacity of less than 2,000 kilowatts and an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

"Combined heat and power system property" is defined as property comprising a system which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy; which produces at least 20 percent of its useful energy in the form of thermal energy which is not used to produce electrical or mechanical power, and at least 20 percent of its total useful energy in the form of electrical or mechanical power; the energy efficiency percentage of which exceeds 60 percent; and which is placed in service before January 1, 2017.

"Qualified small wind energy property" is defined as property which uses a wind turbine that has a nameplate capacity of not more than 200 kilowatts to generate energy and is placed into service in service before January 1, 2017.

Virginia's Clean Energy Manufacturing Incentive Grant Program

In April 2011, Virginia's Clean Energy Manufacturing Incentive Grant Program was established to create a program that provides financial incentives to companies that manufacture or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products used for energy conservation, storage, or grid efficiency purposes. A clean energy manufacturer can receive a grant for up to six years if, beginning on or after July 1, 2011, it meets all of the following criteria:

- Begins or expands its operations in Virginia;
- Makes a capital investment of more than $50 million in Virginia;
- Creates 200 or more new full-time jobs; and
- Enters a memorandum of understanding setting forth the requirements for capital investment and the creation of new full time jobs.

The Governor, however, may reduce the capital investment and full-time job minimums if the manufacturer is located in an area with an unemployment rate of 1.25 times the statewide average unemployment rate of the previous year. For wind manufacturers, the capital investment minimum is $10 million and the new full-time job minimum is 30.

Proposed Legislation

This bill would allow any person who has constructed, purchased, or leased renewable energy property and placed such property in service in the Commonwealth during the taxable year to claim a tax credit against the corporate income tax, the insurance premiums license tax, and the tax on public service corporations. The tax credit would be equal to 35 percent of the installed cost of the renewable energy property, up to $15,000. The credit would only be allowed to the ultimate consumer or user of the renewable energy property. No credit would be allowed to the extent that the cost of the renewable energy property was provided by public funds. Upon request of a person that leases renewable energy property, the lessor of the property would be required to give the person a statement that describes the renewable energy property and states the cost of the property.

For purposes of this bill, "renewable energy property" means any of the following machinery and equipment or real property:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. For purposes of this credit, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes. Biomass equipment that uses renewable biomass resources also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

- Combined heat and power system property, which is defined as a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

- Geothermal equipment that (i) is a heat pump that uses the ground or groundwater as a thermal heat source to heat a structure or as a thermal energy sink to cool a structure or (ii) uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.

- Hydroelectric generators located at existing dams or in free-flowing waterways and related devices for water supply and control, and converting, conditioning, and storing the electricity generated. For purposes of this credit, a "hydroelectric generator" is defined as a machine that produces electricity by water power or by friction of water or stream.

- Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Solar energy equipment also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

- Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid.

To qualify for the credit, a taxpayer would be required to apply to the Department. The Department would not be permitted to issue more than $5 million in any fiscal year of the Commonwealth. The Department would be required to develop procedures to issue tax credits in the event that applications for tax credits exceed $5 million for the fiscal year.

The credit would be claimed in five equal annual installments, beginning with the taxable year in which the property is placed in service and for the next four succeeding taxable years. The amount of the credit claimed would not be permitted to exceed the fifty percent of the total amount of corporate income tax, insurance premiums license tax, or tax on public service corporations imposed on the taxpayer. Any credit not usable for the taxable year for which the credit was allowed would be permitted to be carried over for up to five taxable years.

If, in one of the taxable years in which the installment of a credit accrued, the renewable energy property is disposed of, taken out of service, or moved out of the Commonwealth, this bill would prohibit the person from claiming any installment of the credit for such renewable energy property for that taxable year or any taxable year thereafter, and such person would be subject to recapture for any credit so claimed.

The Tax Commissioner in consultation with the Director of the Department of Mines, Minerals, and Energy, would be required to develop and update as necessary guidelines

implementing the provisions of this bill. Such guidelines would be exempt from the provisions of the Administrative Process Act.

This bill would be effective for taxable years beginning on or after January 1, 2015, but before January 1, 2020.

Similar Legislation

House Bill 1650 would establish a grant program for placing renewable energy property into service.

cc : Secretary of Finance

Date: 1/22/2015 KLC
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