DEPARTMENT OF TAXATION
2015 Fiscal Impact Statement

1. Patron Charles J. Colgan

2. Bill Number SB 1161

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

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

3. Committee House Finance

4. Title Income Tax; Virginia Coal Credits

5. Summary/Purpose:

This bill would limit the aggregate amount of Virginia Coal Employment and Production Incentive Tax Credits that may be allocated or claimed by electricity generators to $7.5 million per fiscal year.

This bill would extend the time period during which persons with an economic interest in coal may redeem Virginia Coal Employment and Production Incentive Tax Credits allocated by an electricity generator, so that such redemption would expire for credits earned on or after January 1, 2019, rather than July 1, 2016.

This bill would also extend the sunset date for the Coalfield Employment Enhancement Tax Credit from taxable years beginning before January 1, 2017 to taxable years beginning before January 1, 2019.

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

6. Budget amendment necessary: Yes.

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

8. Fiscal implications:

Administrative Costs

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

Revenue Impact

Because the amount of Virginia Coal Employment and Production Incentive Tax Credits claimed is generally lower than the $7.5 million imposed by this bill, such provision would have no impact on General Fund revenues. However, this bill would eliminate the risk to the General Fund of a large amount of credits being claimed during a particular year. During Fiscal Year 2013, taxpayers claimed $59.4 million Virginia Coal Employment and Production Incentive Tax Credits. This significant increase in the amount of credits claimed was caused by taxpayers claiming a large number of carryover credits in Fiscal Year 2013, and was unexpected after no credits being claimed during the prior two fiscal years. The provision of this bill capping the amount of newly issued and carryover credits claimed at $7.5 million per calendar year would limit the General Fund's exposure to this risk in the future by significantly limiting the degree to which the amount claimed could fluctuate annually.

However, as amended, this bill would have a negative revenue impact, beginning in Fiscal Year 2016. The Introduced Executive Budget included additional revenue from provisions in the introduced version of this bill that would have limited the amount of coal credits taxpayers could claim to $500,000 per return. Because this substitute would no longer impose such limitations on the coal credits, the amount of revenue generated by this bill would require a reduction in the General Fund by $19.9 million in Fiscal Year 2016.

The engrossed House and Senate budget bills (House Bill 1400 and Senate Bill 800) would account for a portion of this reduction in estimated revenues by reducing the General Fund revenue estimate by $14.7 million in Fiscal Year 2016. This reduction accounts for the revenue reduction from removing the proposed limitation on the Coalfield Employment Enhancement Tax Credit. However, neither House Bill 1400 nor Senate Bill 800 account for the revenue reduction from removing such limitation from the Virginia Coal Employment and Production Incentive Tax Credit. The removal of such limitation would result in a negative revenue impact of $5.2 million in Fiscal Year 2016, $4.9 million in Fiscal Year 2017, $4.6 million in Fiscal Year 2018, $4.3 million in Fiscal Year 2019, $4.0 million in Fiscal Year 2020, and $3.8 million in Fiscal Year 2021. Accordingly, if this bill is enacted, the budget would need to be adjusted to further reduce the revenue estimate by $5.2 million in Fiscal Year 2016.

Because the extension of the sunset date for the Coalfield Employment Enhancement Tax Credit is assumed in the General Fund revenue forecast, the provision of this bill that would extend such sunset date would have no impact on General Fund revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

<u>Virginia Coal Employment and Production Incentive Tax Credit</u>

The Virginia Coal Employment and Production Incentive Tax Credit is a credit allowed to electricity generators in Virginia against the corporation income tax and the tax that applies to electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers. The amount of the credit is equal to $3 for each ton of coal purchased and consumed by an electricity generator, provided such coal was mined in Virginia. To the extent an electricity generator purchased coal qualifying for the credit from a person with an economic interest in coal, the credit may be allocated between the electricity generator and such person with an economic interest in coal. Any person with an economic interest in coal that receives an allocation of credits is required to redeem such credits in a taxable year ending before July 1, 2016.

Any credit not allocated to a person with an economic interest in coal that is not usable for the taxable year for which the credit was issued may be carried over for up to ten taxable years. To the extent credit allocated to a person with an economic interest in coal exceeds such person's Virginia tax liability, such taxpayer is entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent is to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

Coalfield Employment Enhancement Tax Credit

Persons with an economic interest in coal mined in Virginia are permitted to claim the Coalfield Employment Enhancement Tax Credit against any tax imposed by Virginia. For coal mined underground, the credit amount varies according to the seam thickness of the coal that is being mined. The credit is equal to $2.00 per ton for a seam thickness of 36 inches or less and $1.00 per ton for a seam thickness greater than 36 inches. For coal mined by surface mining methods, the credit is equal to $0.40 per ton of coal sold. Coalbed methane gas producers may claim a credit equal to $0.01 per million BTU's of gas produced.

The credit may be claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeds a taxpayer's Virginia tax liability, the taxpayer is entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent is to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

The Coalfield Employment Enhancement Tax Credit is currently available for taxable years beginning before January 1, 2017.

JLARC Report on the Coal-Related Tax Credits

During 2011, the Joint Legislative Audit and Review Commission ("JLARC") reviewed the effectiveness of Virginia's tax preferences. According to JLARC's report, the coal credits do not appear to be effectively promoting coal production and employment in Virginia. JLARC found that Virginia coal production and employment have declined by over 50 percent since their historic highs in 1990. Both of the coal credits were enacted to slow the decline of Virginia coal employment and production, which were each predicted to decline by 28 percent between 1996 and 2005 without the credits. Despite the enactment of the Coalfield Employment Enhancement Tax Credit in 1995 and the Virginia Coal Employment and Production Incentive Tax Credit in 1999, between 1996 and 2005, Virginia's coal production declined by 27 percent and coal employment declined by 36 percent. JLARC concluded that although the coal credits can significantly reduce tax liability for mine operators, they do not appear to be sufficient to counteract the negative impact of other factors on Virginia coal production and employment, such as the high costs of production and transportation.

Despite their potential ineffectiveness, taxpayers claimed over $28 million in coal-related tax credits during Fiscal Year 2014. In addition to the large fiscal impact, these credits tend to be volatile, which can cause potential unexpected revenue shortfalls. For example, in Fiscal Year 2013, electricity generators claimed $59 million worth of Virginia Coal Employment and Production Incentive Tax Credits after not claiming any of this credit for several years prior. This large revenue loss was due to built-up credit carryovers that were claimed in the same year by several generators that began generating profits, and as a result, finally had sufficient tax liability to absorb the credits. The following chart shows the amount of coal credits claimed for Fiscal Years 2008 through 2014:

	Coalfield Employment Enhancement Tax Credit		Virginia Coal Employment and Production Incentive Tax Credit	
Fiscal Year	No. of Returns	Amount Claimed	No. of Returns	Amount Claimed
2008	47	$35.1 million	<4	$3.2 million
2009	59	$36.3 million	0	$0
2010	86	$44.1 million	<4	$0.4 million
2011	50	$27.3 million	0	$0
2012	31	$25.0 million	0	$0
2013	37	$21.8 million	8	$59.4 million
2014	42	$21.5 million	<4	$6.7 million

Proposed Legislation

This bill would limit the aggregate amount of Virginia Coal Employment and Production Incentive Tax Credits that may be allocated or claimed by electricity generators to $7.5 million per fiscal year. No electricity generator would be permitted to allocate or claim any tax credit during the relevant fiscal year until it has filed an application with the Department. The Department would then be required to determine and approve the amount of tax credits that each electricity generator may allocate or claim during the fiscal year. If applications for the relevant fiscal year exceed $7.5 million, the Department would apportion the tax credits first based on tax credits that were earned during the current taxable year by electricity generators. If such tax credits earned during the current taxable year exceed $7.5 million, the credits would be apportioned pro rata. If there is a remaining balance of tax credits after credits have been apportioned for tax credits earned during the current taxable year, such remaining balance would be apportioned pro rata based on tax credits earned in prior taxable years that are being carried forward by electricity generators.

This bill would extend the time period during which persons with an economic interest in coal may redeem Virginia Coal Employment and Production Incentive Tax Credits allocated by an electricity generator, so that such redemption would expire for credits earned on or after January 1, 2019, rather than July 1, 2016.

This bill would extend the sunset date for the Coalfield Employment Enhancement Tax Credit from taxable years beginning before January 1, 2017 to taxable years beginning before January 1, 2019.

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

Similar Bills

House Bill 1879 and **Senate Bill 741** identical to this bill.

cc : Secretary of Finance

Date: 2/19/2015 MTH
SB1161FH2161