

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** Jackson H. Miller

3. **Committee** House Finance

4. **Title** Solar Energy Equipment; Retail Sales and  
Use Tax and Local Property Tax Exemption

2. **Bill Number** HB 1305

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide a Retail Sales and Use Tax exemption for machinery, tools, and equipment used by a public service corporation to generate energy derived from sunlight and wind. Effective for solar energy equipment, facilities and devices placed in service after December 31, 2016, the bill also would provide that the exemption from local taxation for solar photovoltaic systems only would apply in full to projects equaling one megawatt or less, measured in alternating current (AC) generation capacity, and would apply to 80 percent of the assessed value of projects exceeding one megawatt.

Under current law, raw materials that are inputs to production of electricity, including fuel, used by a public service corporation are exempt from the Retail Sales and Use Tax. All other tangible personal property used by a public service corporation in the generation of electric power is subject to the Retail Sales and Use Tax. Currently, the local tax exemption for solar photovoltaic systems only applies to projects equaling 20 megawatts or less, as measured in alternating current generation capacity.

The effective date of this bill is January 1, 2017.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (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

The provision of the bill providing a Retail Sales and Use Tax exemption for machinery, tools, and equipment used by a public service corporation to generate energy derived from sunlight or wind would have a negative impact on Retail Sales and Use Tax revenues, the magnitude of which is unknown but could be significant.

The bill also would modify the local property tax exemption for solar voltaic systems from applying in full to projects of 20 megawatts or less to applying 1) in full to projects of one megawatt or less and 2) to 80 percent of the assessed value of projects exceeding one megawatt. According to data from the Energy Information Administration, the total amount of solar voltaic capacity installed in Virginia in 2014 was 16.4 megawatts. Given that the total capacity of all projects in Virginia in 2014 was less than 20 megawatts, applying the local property tax exemption to 80 percent of the assessed value of solar voltaic projects exceeding 20 megawatts is not expected to impact local revenues at current levels of investment. Additionally, if future solar voltaic projects are constrained so that each one does not exceed 20 megawatts in generation capacity, the provision of this bill applying the local property tax exemption to 80 percent of the assessed value of solar voltaic projects exceeding 20 megawatts would not impact local revenues.

However, to the extent that the 20 megawatt cap is removed and taxpayers bring larger projects online in the future that qualify for the exemption, localities may observe less property tax revenues from projects that exceed 20 megawatts under this bill than under current law, as only 80 percent of the assessed value would be taxable. To the extent that 20 percent of the assessed value of solar voltaic projects between one megawatt and 20 megawatts would no longer qualify for the exemption, the modification to the local property tax exemption for solar voltaic systems is estimated to result in an increase in local revenues at current levels of investment, the magnitude of which is unknown.

### **9. Specific agency or political subdivisions affected:**

All localities

### **10. Technical amendment necessary: No.**

### **11. Other comments:**

#### Public Service Corporations

In the Commonwealth, public service corporations include electric power and distribution companies, gas and product pipeline transmission companies, public service water companies, telephone and telegraph companies, and railroads. Prior to September 1, 2004, public service corporations were entitled to a Retail Sales and Use Tax exemption for all tangible personal property purchased or leased and used directly in the rendition of their public service. Effective September 1, 2004, the public service corporation exemption for electric utilities was repealed, except for raw materials and fuel consumed in the production of electricity. Public utility companies were granted authorization to collect a surcharge from their customers in order to recover Retail Sales and Use Tax paid as a result of the repeal.

The Department of Taxation issued a ruling in 2014, Public Document 14-37 (03/19/2014), holding that the Retail Sales and Use Tax manufacturing exemption was applicable to solar panels and certain other solar energy equipment used to manufacture electricity for sale or resale by an entity who is not organized as a public service corporation.

#### Local Property Tax Exemption for Solar Equipment

Article X, § 6 of the *Constitution of Virginia* lists all property that may be exempted from taxation by general law. Article X, § 6 (d) provides that the General Assembly may define as a separate subject of taxation any property used primarily for the purpose of transferring or storing solar energy and by general law may allow the governing body of any locality to exempt such property from taxation, or by general law may directly exempt such property from taxation. Additionally, Article X, § 6 provides that exemptions of property from taxation shall be strictly construed.

Solar energy equipment, facilities and devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy, are exempt from taxation, whether or not such property has been certified to the Department of Taxation by a state certifying authority. The exemption for solar photovoltaic systems only applies to projects equaling 20 megawatts or less, as measured in alternating current generation capacity.

The state certifying authority is the State Water Control Board for water pollution; the State Air Pollution Control Board for air pollution; the Department of Mines, Minerals and Energy for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities and any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

Any locality may also grant a local option exemption from local taxation for certified solar energy equipment, facilities and devices. Certified solar energy equipment, facilities or devices are any property, including real or personal property, equipment, facilities, or devices, certified by the local certifying authority to be designed and used primarily for the purpose of collecting, generating, transferring, or storing thermal or electric energy. The local certifying authority is the local building department.

#### Proposal

This bill would provide a Retail Sales and Use Tax exemption for machinery, tools, and equipment used by a public service corporation to generate energy derived from sunlight and wind. Effective for solar energy equipment, facilities and devices placed in service after December 31, 2016, the bill also would provide that the exemption from local taxation for solar photovoltaic systems only would apply in full to projects equaling one megawatt or less, measured in alternating current (AC) generation capacity, and would apply to 80 percent of the assessed value of projects exceeding one megawatt.

The effective date of this bill is January 1, 2017.

### Similar Legislation

**House Bill 80** would provide that once real or personal property, machinery, equipment, facilities, devices, or real estate improvements have been certified by a state or local certifying authority for the purposes of certain local property tax exemptions, such property would be deemed exempt as of the date the property is placed in service.

cc : Secretary of Finance

Date: 1/30/2016 AM  
DLAS File Name: HB1305F161