

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

1. **Patron** Jackson H. Miller

2. **Bill Number** HB 1305

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Passed House and Senate

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

Second House:

 In Committee

 Substitute

 X **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 beginning January 1, 2017, and expiring June 30, 2027.

The bill also would provide that the exemption from local property taxation for solar photovoltaic systems would apply in full only to 1) projects equaling 20 megawatts or less for which an initial interconnection request form is filed with an electric utility or regional transmission organization on or before December 31, 2018; 2) projects equaling 20 megawatts or less that serve a public institute of higher education or a private college in the Commonwealth; and 3) projects equaling 5 megawatts or less for which an initial interconnection request form is filed on or after January 1, 2019.

The bill would provide that the exemption from local taxation would apply to 80 percent of the assessed value for 1) projects greater than 20 megawatts first in service on or after January 1, 2017, for which an initial interconnection request form was filed after January 1, 2015; and 2) projects greater than 5 megawatts for which an initial interconnection request form is filed on or after January 1, 2019. The bill also would provide that the local exemption for solar photovoltaic projects greater than 20 megawatts would not apply to projects upon which construction begins after January 1, 2024.

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 applies to projects equaling 20 megawatts or less.

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.

Under current law, the local property tax exemption for solar voltaic systems applies in full to projects of 20 megawatts or less. Larger solar voltaic systems do not qualify for the exemption. This bill would modify the exemption so that it applies in full to solar voltaic projects equaling 20 megawatts or less that: 1) an interconnection request has been filed with an electric utility or regional transmission organization on or before December 31, 2018, or 2) serve a public institute of higher education or a private college in the Commonwealth. The exemption would apply to 80 percent of the assessed value of solar voltaic projects greater than 20 megawatts that are first in service on or after January 1, 2017, for which an initial interconnection request form was filed after January 1, 2015. Additionally, for projects that an interconnection request has been filed on or after January 1, 2019, the exemption would apply in full to projects equaling 5 megawatts or less and to 80 percent of the assessed value of projects greater than 5 megawatts.

According to data from the Energy Information Administration, the total amount of solar voltaic capacity installed in Virginia in 2014 was 16.4 megawatts. However, the extent to which taxpayers will bring solar projects online in the future that qualify for the exemption is unknown. To the extent that this bill would modify the types of projects that qualify for the local property tax exemption for solar voltaic systems, this bill would have an unknown impact on local revenues.

9. Specific agency or political subdivisions affected:

All localities
Department of Taxation

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.

Interconnection Requests

Permission from an electric utility or regional transmission organization must be obtained before a generator that produces electricity can be connected to their electric grid. In Virginia, such interconnections are subject to the Regulations Governing Interconnection of Small Electrical Generators, in Chapter 314 of the *Virginia Administrative Code*. The

regulations set forth the process for submitting an interconnection request form and obtaining permission to connect to the electric grid from the utility.

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 beginning January 1, 2017, and expiring June 30, 2027.

The bill also would provide that the exemption from local property taxation for solar photovoltaic systems would apply in full only to 1) projects equaling 20 megawatts or less for which an initial interconnection request form is filed with an electric utility or regional transmission organization on or before December 31, 2018; 2) projects equaling 20 megawatts or less that serve a public institute of higher education or a private college in the Commonwealth; and 3) projects equaling 5 megawatts or less for which an initial interconnection request form is filed on or after January 1, 2019.

The bill would provide that the exemption from local taxation would apply to 80 percent of the assessed value for 1) projects greater than 20 megawatts first in service on or after January 1, 2017, for which an initial interconnection request form was filed after January 1, 2015; and 2) projects greater than 5 megawatts for which an initial interconnection request form is filed on or after January 1, 2019. The bill also would provide that the local exemption for solar photovoltaic projects greater than 20 megawatts would not apply to projects upon which construction begins after January 1, 2024.

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: 3/7/2016 AM
DLAS File Name: HB1305FERH1161