DEPARTMENT OF TAXATION
2017 Fiscal Impact Statement

1. Patron James W. Morefield

2. Bill Number HB 1917

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

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

3. Committee House Finance

4. Title Virginia Coalfield Energy Production Tax Credit

5. Summary/Purpose:

This bill would allow a tax credit in an amount equal to 25 percent of a capital investment in an energy production facility located in the coalfield region of Virginia. This bill would permit the credit to be applied only when the energy production facility is operational or producing energy for sale. The Department would not be permitted to issue more than $7.3 million in credits during any fiscal year.

This bill would be effective for taxable years beginning on or after January 1, 2017, but before January 1, 2022.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

<u>Administrative Costs</u>

The Department of Taxation ("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.

<u>Revenue Impact</u>

Because the amount of capital investments that would qualify for this credit is uncertain, this bill would have an unknown annual negative General Fund revenue impact, beginning in Fiscal Year 2018. Because the credit is subject to an annual credit cap, the impact of this legislation would not exceed $7.3 million. Taxpayers would be allowed to claim this credit against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, and the tax on public service corporations.

9. Specific agency or political subdivisions affected:

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

10. Technical amendment necessary: Yes.

This bill would permit the credit to be applied only when the energy production facility to which a capital investment is made is operational or producing energy for sale. It is unclear whether this requirement means that a taxpayer would not be permitted to apply for credits until the energy production facility is made operational or producing energy for sale, or if a taxpayer would be permitted to apply for and receive an allocation of credits in the taxable year in which a qualifying capital investment is made, but would not be permitted to claim allocated credits until the energy production facility is made operational or producing energy for sale. Therefore, the Department recommends the following amendment:

Page 1, Lines 28 and 29, after investment.
Strike: The credit may be applied
Insert: The taxpayer may apply for the credit

If eligible credit requests exceed the $7.3 million annual credit cap, this bill would require the Department to equitably allocate credits to taxpayers. Because the meaning of "equitably" may be unclear, the Department recommends the following amendment:

Line 43, after "fiscal year."

> Strike: The Department shall develop procedures to allocate credits equitably in the event that applications for credits exceed $7.3 million for the fiscal year.
>
> Insert: In the event approved applications for the tax credits allowed under this section exceed $7.3 million, the Department shall apportion the credits by dividing $7.3 million by the total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer shall receive.

11. Other comments:

<u>Existing Tax Credits Primarily for the Coalfield Region of Virginia</u>

Virginia Coal Employment and Production Incentive Tax Credit

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 was 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 were permitted to claim the Coalfield Employment Enhancement Tax Credit against any tax imposed by Virginia. For coal mined underground, the credit amount varied according to the seam thickness of the coal that is being mined. The credit was 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 was 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 could be claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeded a taxpayer's Virginia tax liability, the taxpayer was entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent was required to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

The Coalfield Employment Enhancement Tax Credit expired for taxable years beginning on or after January 1, 2017.

Proposed Legislation

This bill would allow a tax credit in an amount equal to 25 percent of a capital investment in an energy production facility located in the coalfield region of Virginia. Taxpayers would be allowed to claim this credit against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, and the tax on public service corporations. However, this bill would permit the credit to be applied only when the energy production facility is operational or producing energy for sale.
"Capital investment" would mean (i) any expenditure for the construction or improvement of an energy production facility or (ii) the cost of machinery, tools, and equipment used at an energy production facility and directly related to energy production.

"Coalfield region" would mean the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise, and the City of Norton.

"Energy production facility" would mean a facility that has the primary purpose of producing energy for sale including, but not limited to, biomass, coal, geothermal, hydroelectric, natural gas, nuclear, oil, solar, or wind energy.

No taxpayer would be permitted to claim credits in excess of their tax liability for a taxable year. A taxpayer would be allowed to carry over any unused credits for the next five succeeding taxable years or until the total amount of credit has been taken, whichever is sooner.

The Department would not be permitted to issue more than $7.3 million in credits during any fiscal year. The Department would be required to develop procedures to allocate credits equitably in the event that applications for credits exceed the $7.3 million annual credit cap.

The amount of credits attributable to a partnership, electing small business corporation, or limited liability company would be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

This bill would be effective for taxable years beginning on or after January 1, 2017, but before January 1, 2022.

Similar Legislation

House Bill 1672 would allow a credit equal to 65 percent of the value of a monetary donation made to any school district in the coalfield region of Virginia.

House Bill 1581 and **Senate Bill 1106** would allow a tax credit for certain capital investments, certain jobs created, and sales tax paid on certain items purchased in the Appalachian region of Virginia.

House Bill 2198 and **Senate Bill 1470** would reduce the annual credit cap on the Virginia Coal Employment and Production Incentive Tax Credit, and would extend the sunset date for the Coalfield Employment Enhancement Tax Credit.

cc : Secretary of Finance

Date: 1/19/2017 MTH
HB1917F161