

# DEPARTMENT OF TAXATION

## 2020 Fiscal Impact Statement

1. **Patron** Richard C. Sullivan, Jr.

3. **Committee** House Finance

4. **Title** Renewable Energy Property Tax Credit

2. **Bill Number** HB 461

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**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 into service in Virginia during the taxable year to claim a credit against the corporate income tax, the insurance premiums license tax, and the tax on public service corporations. The credit would be equal to 35 percent of the installed cost of the renewable energy property, but may not exceed \$15,000 per taxable year. The credit would only be allowed to the ultimate consumer or user of the renewable energy property. The credit would be subject to an annual credit cap of \$5 million.

This bill would be effective for taxable years beginning on or after January 1, 2020, but before January 1, 2025.

6. **Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates

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

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department"), the Department of Mines, Minerals and Energy ("DMME") and State Corporation Commission ("SCC") consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue beginning in Fiscal Year 2021. Taxpayers would be permitted to claim this credit for placing into service the following types of renewable energy property: biomass, combined heat and water systems, geothermal equipment, hydroelectric generators, solar energy equipment, and wind equipment. The extent to which such property would be placed into service and how many taxpayers would claim credits as a result is unknown. However, the negative revenue impact would not exceed the \$5 million annual credit cap.

### *Energy Derived from Biomass Systems*

According to the U.S. Energy Information Administration (“the USEIA”), biomass energy consumption in Virginia (including wood and wood waste, fuel ethanol, and losses and co-products from the production of fuel ethanol) has increased 18 percent from 2007 to 2017. While Virginia has abundant biomass resources, it is unclear whether this bill would provide significant incentive to build biomass power plants. Therefore, the amount of credits claimed for this type of energy would likely have a negative, but unknown revenue impact.

### *Energy Derived from Geothermal Power*

According to the USEIA geothermal energy produced 1.06% of the renewable energy consumed in Virginia and approximately 0.07% of the total energy consumed in the state in 2017. Overall, geothermal energy consumption has remained constant over the last five 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 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*

During 2017, hydroelectric power accounted for almost 6% of the renewable energy consumed or 0.4 percent of the overall energy consumed in Virginia. According to the USEIA there were two pumped hydroelectric projects in Virginia and about two dozen large-scale conventional hydroelectric plants operating in 2017. It is unclear whether this bill would provide significant incentive to build hydroelectric power plants. Therefore, the amount of credits claimed for such plants would likely have a relatively small negative revenue impact.

### *Energy Derived from Solar Thermal Systems*

During 2018, solar energy accounted for approximately 2.5 percent of the renewable energy consumed or 0.17 percent of the overall energy consumed in Virginia. According to the USEIA, there were about 2,400 new clients that connected their solar photovoltaic system to power companies in Virginia in 2018, 100 of which were commercial and industrial customers. However, it is unclear whether this bill would provide significant incentive to install solar thermal systems. Therefore, the amount of credits claimed for solar thermal systems would likely have a negative, but unknown revenue impact.

### *Energy Derived from Wind Systems*

According to the USAEI, there was almost no energy consumed from 2007 to 2017 that was produced by wind in Virginia. 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:** No.

**11. Other comments:**

Federal Renewable Energy Incentives

*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.

The credit was scheduled to be reduced to 10 percent after December 31, 2016. However, on December 18, 2015, the President signed into law the Consolidated Appropriations Act of 2016 (H.R. 2029). Pursuant to that legislation, the tax credit will remain at 30 percent for qualifying solar projects for which construction begins prior to January 1, 2020 and which are placed in service before January 1, 2024. The credit will be reduced to:

- 26 percent for projects for which construction begins in 2020 and which are placed in service before January 1, 2024;

- 22 percent for projects for which construction begins in 2021 and which are placed in service before January 1, 2024; and
- 10 percent for projects for which construction begins after December 31, 2021 or which are placed in service after January 1, 2024.

### Virginia Renewable Energy Incentives

Virginia does not currently have any income tax incentives for renewable energy property. However, Virginia has or has had various renewable energy incentives:

#### *Property and Sales Tax Exemptions*

Machinery and tools used to generate electricity by a business that is not a public service corporation qualify for the sales tax manufacturing exemption. Enacted in 2014, House Bill 1239 (2014 *Acts of Assembly* Chapter 737) and Senate Bill 418 (2014 *Acts of Assembly* Chapter 259) provide a mandatory exemption from local taxation for certain solar energy equipment, facilities and devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy, whether or not such property has been certified to the Department by a state certifying authority.

During the 2016 Session, the General Assembly enacted a sales tax exemption for machinery, tools, and equipment used by a public service corporation to generate energy derived from sunlight and wind effective January 1, 2017, and broadened the local property tax exemption for solar and wind. In order to qualify for the local property tax exemption, solar photovoltaic systems must meet certain requirements: (i) projects equaling 20 megawatts or less, for which an initial interconnection request form has been filed on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, that serve any of the public institutions of higher education or private college; (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed after January 1, 2015, and greater than 20 megawatts, for projects first in service on or after January 1, 2017, (iv) projects equaling 5 megawatts or less, for which an initial interconnection request form has been filed on or after January 1, 2019, and (v) 80 percent of the assessed value of all other projects equaling more than 5 megawatts, for which an initial interconnection request form has been filed on or after January 1, 2019. The exemption for solar photovoltaic (electric energy) projects greater than 20 megawatts, as measured in alternating current (AC) generation capacity, shall not apply to projects upon which construction begins after January 1, 2024. Such equipment and facilities are also exempt from sales tax if certified by a state certifying authority.

#### *Machinery and Tools Tax for Renewable Energy Production*

During the 2015 Session, the General Assembly enacted a bill which creates a separate class of property for purposes of the Machinery and Tools Tax for machinery and tools owned by a business and used directly in producing or generating renewable energy. For the purposes of this legislation, “renewable energy” is defined as energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, energy from waste, landfill gas, municipal solid waste, wave motion, tides, or geothermal power, but does not include energy derived from coal, oil, natural gas, or nuclear power. Localities are authorized to

levy a tax on this separate class of property at a different rate from that levied on other machinery and tools, but not exceeding the rate imposed on the general class of machinery and tools in the locality. This rate of tax does not apply to machinery and tools owned by public service corporations, unless such rate of tax results in a lower property tax on such machinery and tools. Generally, machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, radio and television broadcasting, dairy, dry cleaning or a laundry business are segregated as a separate class of tangible personal property and are subject to local taxation only. The tax rate imposed on machinery and tools may not exceed that imposed on other classes of tangible personal property.

#### *Virginia Energy Efficiency Rebate Program*

The Virginia Energy Efficiency Rebate Program was a federally funded program that was administered through DMME. Through this program, homeowners were eligible for rebates equal to 20 percent of the costs of qualifying energy conserving products and services, up to \$2,000. Commercial consumers were eligible for rebates equal to 20 percent of qualifying costs, up to \$4,000. Home and business owners were also able to qualify for an additional \$250 for the cost of energy audits. Qualifying costs included the costs of upgrading heating and air conditioning equipment, adding insulation, replacing leaky windows, and other improvements to existing homes and businesses that reduced energy consumption and utility costs.

This program was funded through the American Recovery and Reinvestment Act of 2009. The first round of funding for efficiency rebates was approximately \$10 million and this amount was reserved within three weeks of the start of the program. Applicants were able to reserve a rebate for a qualifying system by applying to the DMME and would then have 180 days to complete the work and redeem their reservation for a rebate check. Once reservations depleted available funds, applications were placed on a waiting list. Another round of funding was available in March 2010 in the amount of \$6.5 million, which allowed wait-listed applicants to receive rebate reservations as unclaimed rebate funds became available. The Energy Efficiency Rebate Program was closed on April 29, 2011, after paying out nearly 7,700 rebates and dispersing \$10.4 million to Virginia homeowners and businesses.

#### *Virginia Energy Income Tax Credit*

Virginia previously allowed an energy income tax credit, which was effective for taxable years beginning on and after January 1, 1983 through December 31, 1987. The credit was available to individuals and corporations for their renewable energy source expenditures, as defined under federal law. The amount of the credit varied through the years. For the three most recent years, a credit was allowed in the amount of:

- Twenty percent of renewable energy source expenditures made during 1985;
- Fifteen percent of renewable energy source expenditures made during 1986; and
- Ten percent of renewable energy source expenditures made during 1987.

## Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session.

### Proposed Legislation

This bill would allow any person who has constructed, purchased, or leased renewable energy property and placed such property into service in Virginia 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 credit would be equal to 35 percent of the installed cost of the renewable energy property, but may not exceed \$15,000 per taxable year. The credit would only be allowed to the ultimate consumer or user of the renewable energy property.

The credit would be subject to an annual credit cap of \$5 million. The Department would be required to develop procedures to issue tax credits in the event that applications for tax credits exceed \$5 million.

For purposes of this bill, “renewable energy property” would be defined as 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 electric energy. For purposes of this credit, “renewable biomass resources” would be defined as 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 would also include related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.
- Combined heat and power system property, which would be 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 energy 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” would be defined as a machine that produces electricity by waterpower or by the 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 claim the credit, a taxpayer would be required to submit a credit application to the Department to determine the credit amount allowable for the renewable energy property placed into service. The Department would be required to provide a written certification of the allowable amount of credits. The taxpayer would be required to attach such certification to the tax return filed with the Department or the SCC, as applicable.

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.

A taxpayer would be required to claim the credit in five equal annual installments, beginning with the taxable year in which the property is placed into service and for the next four succeeding taxable years. The amount of the credit claimed would not be permitted to exceed 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, or until the total amount of the credit has been used, whichever is sooner.

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 Virginia, the credit would expire and the taxpayer would be prohibited from claiming any installment of the credit for such renewable energy property for that taxable year or any taxable year thereafter, and such taxpayer would be subject to recapture for any credit so claimed. However, the taxpayer may claim the portion of an installment that accrued in a prior taxable year and is being carried over.

The Tax Commissioner in consultation with the Director of the DMME, 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, 2020, but before January 1, 2025.

#### Similar Bills

**House Bill 633** would allow an individual income tax deduction of up to \$10,000 for the amount paid for certain energy-saving products.

**House Bill 408** would extend the sunset date of the Green Job Creation Tax Credit.

**Senate Bill 590** and **Senate Bill 789** would, with respect to income taxes, extend the sunset date of the Recyclable Materials Processing Equipment Tax Credit, expand the type of purchases that may qualify for the credit, increase the value of the credit, increase the amount of credits taxpayers may claim each taxable year, and make the credit refundable and transferable.

**Senate Bill 591** would, with respect to income taxes, allow an individual income tax deduction and a corporate income tax subtraction for any income for the taxable year attributable to the ownership and operation of a gasification facility or pyrolysis facility, provided that the facility would be entitled to such deduction or subtraction only during its startup period.

cc : Secretary of Finance

Date: 1/22/2020 JJS  
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