

# DEPARTMENT OF TAXATION

## 2020 Fiscal Impact Statement

1. **Patron** Emmett W. Hanger, Jr.
3. **Committee** Senate Finance and Appropriations
4. **Title** Individual and Corporate Income Tax;  
Gasification and Pyrolysis Tax Incentives

2. **Bill Number** SB 591  
**House of Origin:**  
  X   **Introduced**  
      **Substitute**  
      **Engrossed**  
  
**Second House:**  
      **In Committee**  
      **Substitute**  
      **Enrolled**

**5. Summary/Purpose:**

This bill would provide an individual and corporate income tax exemption for any income attributable to the ownership and operation of a gasification facility or pyrolysis facility during the first five years such facility is in operation ("the startup period"). This bill would also provide a sales tax exemption for all eligible purchases made by a gasification facility or pyrolysis facility during the startup period.

In addition, this bill would authorize the Governor to give grants or loans from the Commonwealth's Development Opportunity Fund ("the Fund") to certain economic development projects to construct a gasification facility or pyrolysis facility.

The provisions of this bill providing an income tax exemption would be effective for taxable years beginning on and after January 1, 2020. The sales tax exemption provided by this bill would be effective for purchases beginning January 1, 2020. If enacted during the 2020 Regular Session, the portions of this bill regarding the provision of grants and loans from the Fund would be effective July 1, 2020.

6. **Budget amendment necessary:** No.
7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)
8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would result in an unknown, potentially significant, negative General Fund revenue impact in Fiscal Year 2021 and thereafter. The extent to which companies would qualify for and utilize these incentives is unknown.

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

Department of Taxation

**10. Technical amendment necessary: Yes.**

As currently drafted, this bill would not limit the tax incentives this bill would provide to gasification facilities and pyrolysis facilities located in Virginia. If the Patron's intent is to limit these incentives to such facilities located in Virginia, the Department recommends the following technical amendments:

Page 12, Line 729, after facility  
Insert: located in the Commonwealth

Page 13, Line 741, after facility  
Insert: located in the Commonwealth

As currently drafted, this bill would define "startup period" as the first five taxable years that a gasification facility or pyrolysis facility in operation. This would not include language affirmatively preventing a taxpayer from potentially renewing the startup period through a merger, acquisition, name change, change in business form, or other methods. If restricting the startup period is the Patron's intent, the Department recommends the following technical amendment or language that is substantially similar:

Page 13, Line 748 after operation.  
Insert: Any subsequent merger, acquisition, similar business combination, name change, change in business form, or other transaction will not renew the facility's startup period.

**11. Other comments:**

Federal Qualifying Gasification Project Credit

For federal income tax purposes, eligible entities may qualify for a federal tax credit for projects that:

- Employ gasification technology
- Include a qualified investment (limited to no more than \$650 million) certified under the qualifying gasification program as eligible for the credit.

An "eligible entity" is any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to chemicals, fertilizers, glass, steel, petroleum residues, forest products, agriculture, and transportation grade liquid fuels.

Amount of the credit is equal to:

- 20 percent of the qualified investment for that taxable year in qualifying gasification projects; and

- 30 percent of the qualified investment for that taxable year in qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.

### 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

#### *Tax Incentives for Gasification and Pyrolysis Facilities*

This bill would provide an individual income tax deduction and corporate income tax subtraction for any income attributable to the ownership and operation of a gasification facility or pyrolysis facility during the startup period. This bill would provide a sales tax exemption for all eligible purchases made by a gasification facility or pyrolysis facility during the startup period.

"Eligible purchases" would be defined as:

- Machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies;
- Post-use polymers; and
- Recoverable feedstock.

"Gasification" would be defined as the process through which recoverable feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is then converted to crude oil, diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are returned to the economic mainstream in the form of raw materials, products, or fuels.

"Gasification facility" would be defined as a facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.

"Post-use polymer" would be defined as a plastic polymer that:

- Is derived from any industrial, commercial, agricultural, or domestic activities;
- Is used or is intended to be used to manufacture crude oil, fuels, feedstocks, blendstocks, raw materials, or other intermediate products or final products using pyrolysis or gasification; and
- May contain incidental contaminants or impurities, such as paper labels or metal rings.

“Pyrolysis” would be defined as the process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted to crude oil, diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are returned to the economic mainstream in the form of raw materials, products, or fuels.

“Pyrolysis facility” would be defined as a facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

“Recoverable feedstock” would be defined as one or more of the following materials derived from recoverable waste that has been processed so that it may be used as feedstock in a gasification facility:

- Post-use polymers; or
- Materials for which the U.S. Environmental Protection Agency has made a nonwaste determination, or has otherwise determined are not solid waste.

“Startup period” would be defined as the first five taxable years (which must coincide with the taxpayers individual or corporate taxable year) that a gasification facility or pyrolysis facility is in operation.

#### *Commonwealth’s Development Opportunity Fund*

This bill would also permit the Governor to give grants or loans from the Fund for any economic development project to construct a gasification or pyrolysis facility. Eligible projects would be required to involve a minimum private investment of \$1.5 million and create at least 15 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

The provisions of this bill providing an income tax exemption would be effective for taxable years beginning on and after January 1, 2020. The sales tax exemption provided by this bill would be effective for purchases beginning January 1, 2020. If enacted during the 2020 Regular Session, the portions of this bill regarding the provision of grants and loans from the Fund would be effective July 1, 2020.

#### Similar Bills

**House Bill 408** would extend the sunset date for the Green Job Creation Tax Credit from January 1, 2021 to January 1, 2026.

**Senate Bill 590** and **Senate Bill 789** would extend the sunset date of the Recyclable Materials Processing Equipment Tax Credit, make several changes to the credit, and provide a sales tax exemption for certain machinery, tools, and materials used in advanced recycling.

cc : Secretary of Finance

Date: 1/26/2020 RWC  
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