DEPARTMENT OF TAXATION
2021 Fiscal Impact Statement

1. Patron Jeremy S. McPike

2. Bill Number SB 1252

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

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

3. Committee Passed House and Senate

4. Title Repeal of Virginia's Coal Tax Credits

5. Summary/Purpose:

This bill would repeal the Coalfield Employment Enhancement Tax Credit, the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the corporate income tax, and the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the public service corporation's license tax.

Taxpayers that earned Virginia Coal Employment and Production Incentive Tax Credits that may be claimed against the corporate income tax prior to the repeal would be permitted to claim such credits pursuant to the applicable carryover period. This bill would limit the amount of such credits that a taxpayer may claim per taxable year pursuant to any applicable carryover or carryforward period, in aggregate, to $1 million.

This bill would be effective for taxable years beginning on and after January 1, 2022.

6. Budget amendment necessary: No.

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

7b. Revenue Impact:

Fiscal Year	***Dollars***	***Fund***
2022-23	$0.3 Million	GF
2023-24	$0.3 Million	GF
2024-25	$0.3 Million	GF
2025-26	$6.5 Million	GF
2025-26	($0.9 Million)	NGF
2026-27	$6.5 Million	GF
2026-27	($0.9 Million)	NGF

8. Fiscal implications:

<u>Administrative Costs</u>

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

Fiscal Impact

This bill would have an estimated positive General Fund revenue impact of $0.3 million in Fiscal Year 2023 through Fiscal Year 2025, and $6.5 million in Fiscal Year 2026 and thereafter. Because the refundable Coalfield Employment Enhancement Tax Credit may not be claimed until the third taxable year after the credit was earned, the revenue impact of repealing the credit would not be realized until income tax returns are filed for Taxable Year 2025, which generally would occur during Fiscal Year 2026.

As of the beginning of Taxable Year 2020, taxpayers had unused carryover Virginia Coal Employment and Production Incentive Tax Credits of $7.5 million. The $1 million limitation would prevent all such outstanding carry over credits from being claimed at once.

The Virginia Coalfield Economic Development Authority receives 15 percent of the face value of Coalfield Employment Enhancement Tax Credits that are redeemed by taxpayers. Accordingly, the repeal of such credit would decrease funding to the Virginia Coalfield Economic Development Authority by $900,000 in Fiscal Year 2026 and thereafter.

9. Specific agency or political subdivisions affected:

Department of Taxation
Coalfield Economic Development Authority

10. Technical amendment necessary: No.

11. Other comments:

Coalfield Employment Enhancement Tax Credit

Persons with an economic interest in metallurgical coal mined in Virginia are permitted to claim the Coalfield Employment Enhancement Tax Credit against any tax imposed by Virginia. For metallurgical coal mined underground, the amount of the credit varies according to the seam thickness of the coal that is being mined. The credit is 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 taxable years beginning prior to January 1, 2017, the credit was not limited to metallurgical coal.

For metallurgical coal mined by surface mining methods, the credit is equal to $0.40 per ton of coal sold. Coalbed methane gas producers may claim a credit equal to $0.01 per million BTUs of gas produced.

The credit may be claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeds a taxpayer's Virginia tax liability, the 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 required to be deposited in a regional economic development fund administered by the Coalfields Economic Development Authority.

The Coalfield Employment Enhancement Tax Credit expired for Taxable Year 2017, but was renewed for taxable years beginning on or after January 1, 2018.

Corporate Income Tax 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. Electricity generators may carry over unused credits for up to ten taxable years.

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 received an allocation of credits is permitted to redeem such credits only if they were earned in a taxable year ending before July 1, 2016. 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 Coalfields Economic Development Authority.

For credits earned in a taxable year ending on or after July 1, 2016, a person with an economic interest in coal may still receive an allocation of credits. However, the credits must be used to reduce the person's corporate tax liability or any other tax imposed by Virginia in the year during which the credits are received. Any excess may not be carried over to a future taxable year and may not be redeemed in the current taxable year.

An electricity generator that does not allocate credits to a person with an economic interest in coal may carry over such unused credits to future tax returns for up to 10 years or until the credit has been fully utilized.

Public Service Corporation Virginia Coal Employment and Production Incentive Tax Credit

Every public service corporation in Virginia doing the business of furnishing water, heat, light, or power to the Commonwealth or its citizens may claim a credit of $1 per ton for each ton of coal purchased and consumed by such corporation in excess of the number of tons of Virginia coal purchased by such corporation in 1985. In addition, such corporations may claim an additional credit of $1 per ton for each ton of coal purchased and consumed by the corporation. For both portions of the credit, coal qualifies toward the incentive to the extent that it was mined in Virginia. Such credit may be claimed against the public service corporation's license tax.

JLARC Reports on the Coal-Related Tax Credits

During 2020, the Joint Legislative Audit and Review Commission ("JLARC") reviewed the effectiveness of Virginia's coal tax credits. JLARC recommended that Virginia's Coalfield

Employment Enhancement Tax Credit and Corporate Income Tax Virginia Coal Employment and Production Incentive Tax Credit. JLARC recommended the repeal of both credits because they have negligible economic benefits and return on investment for the state. JLARC also determined that the Coalfield Employment Enhancement Tax Credit was no longer relevant for purposes of making Virginia mines more competitive with operations in other, similar states due to significant declines in the industry at large and Virginia's favorable position with respect to its high-quality metallurgical coal. In addition, JLARC found that the credit no longer supports small, marginal coal mining operations in Virginia because such companies have largely gone out of business or have been acquired by larger operations.

In addition, JLARC found that the purpose of the Corporate Income Tax Virginia Coal Employment and Production Incentive Tax Credit, to encourage Virginia electricity generators to use Virginia-mined coal, is no longer relevant due to the national and Virginia movement away from coal-fired plants. JLARC reported that all but one of such plants in Virginia will likely close by 2025. In addition, JLARC determined that the use of Virginia-mined coal in the state's coal-fired plants has fluctuated greatly since the credits enactment in 1994. This suggests that other factors have more influence over where companies purchase coal.

During 2011, the Joint Legislative Audit and Review Commission ("JLARC") reviewed the effectiveness of Virginia's tax preferences. According to JLARC's report, the coal credits did not appear to be effectively promoting coal production and employment in Virginia. JLARC found that Virginia coal production and employment have declined by over 50 percent since their historic highs in 1990. Both of the coal credits were enacted to slow the decline of Virginia coal employment and production, which were each predicted to decline by 28 percent between 1996 and 2005 without the credits. Despite the enactment of the Coalfield Employment Enhancement Tax Credit in 1995 and the Virginia Coal Employment and Production Incentive Tax Credit in 1999, between 1996 and 2005, Virginia's coal production declined by 27 percent and coal employment declined by 36 percent. JLARC concluded that although the coal credits can significantly reduce tax liability for mine operators, they do not appear to be sufficient to counteract the negative impact of other factors on Virginia coal production and employment, such as the high costs of production and transportation.

Despite their potential ineffectiveness, taxpayers claimed $16.6 million in coal-related tax credits during Fiscal Year 2019. In addition to the large fiscal impact, these credits tend to be volatile, which can cause potential unexpected revenue shortfalls. For example, in Fiscal Year 2013, electricity generators claimed $59 million worth of Virginia Coal Employment and Production Incentive Tax Credits after not claiming any of this credit for several years prior. This large revenue loss was due to built-up credit carryovers that were claimed in the same year by several generators that began generating profits, and as a result, finally had sufficient tax liability to absorb the credits.

Proposed Legislation

This bill would repeal the Coalfield Employment Enhancement Tax Credit, the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the corporate income tax, and the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the public service corporation's license tax.

Taxpayers that earned Virginia Coal Employment and Production Incentive Tax Credits that may be claimed against the corporate income tax prior to the repeal would be permitted to claim such credits pursuant to the applicable carryover period. This bill would limit the amount of such credits that a taxpayer may claim per taxable year pursuant to any applicable carryover or carryforward period, in aggregate, to $1 million. No taxpayer would be permitted to amend a tax return for a taxable year prior to January 1, 2022 to claim more of such credits than the taxpayer claimed on their return before amending it.

This bill would require that the Department of Mines, Minerals and Energy, in coordination with the Virginia Coalfield Economic Development Authority, the Virginia Economic Development Partnership Authority, the Virginia Employment Commission, the Southwest Virginia Workforce Development Board, and the Council on Environmental Justice, convene a stakeholder process, which would include public meetings and public comment opportunities. The Department of Mines, Minerals and Energy would be required to provide an interim report to the General Assembly no later than September 1, 2021 and a final report on December 1, 2021, regarding recommendations for how the Commonwealth can provide economic transition support to the coalfield region, with a particular focus on workforce redevelopment, economic diversification, reclamation of coal-impacted lands and brownfields, community revitalization, infrastructure improvements, and clean energy development.

This bill would be effective for taxable years beginning on and after January 1, 2022.

Similar Bills

House Bill 1899 is identical to this bill.

cc : Secretary of Finance

Date: 2/24/2021 RWC
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