DEPARTMENT OF TAXATION
2022 Fiscal Impact Statement

1. **Patron** William C. Wampler, III

2. **Bill Number** HB 656
   House of Origin:
   X **Introduced**
   _____ **Substitute**
   _____ **Engrossed**

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

3. **Committee** House Finance

4. **Title** Individual and Corporate Income Tax; Coal Refuse Energy and Reclamation Tax Credit

5. **Summary/Purpose:**

   This bill would provide an individual and corporate income tax credit to taxpayers that own certain electrical facilities that utilize qualified coal refuse to generate electricity. The amount of the credit would be equal to $4 per ton of qualified coal refuse used an eligible taxpayer during the taxable year. No taxpayer would be permitted to claim credits for a single eligible facility in excess of $1,665,000 for Taxable Year 2023, $2,220,000 for Taxable Year 2024, and $4,440,000 for Taxable Years 2025, 2026, and 2027.

   The credit would be subject to an annual credit cap of $7.5 million for Taxable Year 2023, $10 million for Taxable Year 2024, and $20 million for Taxable Years 2025, 2026, and 2027.

   The bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028.

6. **Budget amendment necessary:** Yes.
   Item(s): Page 1, Revenue Estimates
   Item 274 and 276, Department of Taxation

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

Fiscal Year	***Dollars***	***Positions***	***Fund***
2023-24	$237,655	1	GF
2024-25	$70,200	1	GF
2025-26	$70,200	1	GF
2026-27	$70,200	1	GF
2027-28	$70,200	1	GF

8. Fiscal implications:

Administrative Cost

The Department of Taxation ("the Department") estimates that this bill would result in administrative costs of $237,655 in Fiscal Year 2024, and $70,200 in Fiscal Year 2025 and all subsequent years. These costs would be incurred for purposes of hiring one full time employee to administer the Department's responsibilities with respect to the credit, and additional ongoing operational expenses related to overseeing this credit program.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact in Fiscal Year 2024 and thereafter. It is unknown to what extent taxpayers own qualifying facilities and would be eligible to claim this credit. However, because this credit would be subject an annual credit cap, the negative revenue impact would be limited to a maximum of $7.5 million in Fiscal Year 2024, $10 million in Fiscal Year 2025, and $20 million in Fiscal Year 2026 and thereafter.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Since the bill does not define "Department," the more general definition of Department in Title 58.1 would apply, which means that the Department of Taxation would administer the proposed credit program. However, Lines 68-69 require the Department to consult and coordinate with the Department of Taxation for purposes of the reporting requirement that this bill would set forth. The Department suggests a technical amendment to either remove this reference or to otherwise which other agency would be involved in administration of the credit program.

11. Other comments:

Virginia Coal Tax Credits

Prior to January 1, 2022 Virginia provided two tax credits related to the production and use of coal: the Virginia Coal Employment and Production Incentive Tax Credit and the Coalfield Employment Enhancement Tax Credit. The Virginia Coal Employment and Production Incentive Tax Credit provided a tax credit equal to $3 for each ton of Virginia mined coal purchased and used by an electricity generator. The Coalfield Employment Enhancement Tax Credit provided a tax credit related to the mining of metallurgical coal and for coalbed methane gas producers.

During the 2021 Session, the General Assembly enacted legislation that repealed both of these credits for taxable years beginning on or after January 1, 2022.

Sunset Dates for New Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2021 Appropriation Act provides that any new sales tax exemption or tax credit enacted by the General Assembly after the 2019 Session, but prior to the 2024 Session, must have a sunset date of not later than June 30, 2025.

Proposed Legislation

This bill would provide an individual and corporate income tax credit to taxpayers that own certain electrical facilities that utilize qualified coal refuse to generate electricity. The amount of the credit would be equal to $4 per ton of qualified coal refuse used an eligible taxpayer during the taxable year. No taxpayer would be permitted to claim credits for a single eligible facility in excess of $1,665,000 for Taxable Year 2023, $2,220,000 for Taxable Year 2024, and $4,440,000 for Taxable Years 2025, 2026, and 2027.

"Eligible facility" would be defined as an electric generating facility placed in service before January 1, 2022, consisting of one or more units placed in service before January 1, 2022, that generates electricity located on the same property and that (i) combusts qualified coal refuse or fuel composed of at least 75 percent qualified coal refuse by BTU energy value in the taxable year; (ii) utilizes at a minimum a circulating fluidized bed combustion unit or pressurized fluidized bed combustion unit equipped with a limestone injection system for control of acid gases and a fabric filter particulate emission control system; and (iii) beneficially uses ash produced by the facility in the taxable year to reclaim mining-affected sites in amounts equal to at least 50 percent of the ash produced by the facility during such taxable year.

"Eligible taxpayer" would be defined as a taxpayer that owns an eligible facility in the Commonwealth to whom a tax credit is issued. Such taxpayer must have filed all tax returns and reports required under Virginia law and must have paid any balance of Virginia taxes owed as determined by assessments by the Department not subject to a pending timely appeal.

"Qualified coal refuse" would be defined as waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, and related materials associated with or near a coal seam that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or that are separated from coal during the cleaning or preparation operations. Qualified coal refuse would include underground development wastes, coal processing wastes, and excess spoil but does not include overburden from surface mining activities.

"Ton" would be defined as 2,000 pounds of qualified coal refuse, including inherent moisture, ash, sulphur, and other noncalorific substances, but excluding excess moisture.

The credit would be subject to an annual credit cap of $7.5 million for Taxable Year 2023, $10 million for Taxable Year 2024, and $20 million for Taxable Years 2025, 2026, and 2027. In the event that approved applications for the credit exceed the annual cap for a taxable year, the Department would be required to issue credits on a pro rata basis.

The amount of credits that may be claimed in any single taxable year would be limited to the eligible taxpayer’s tax liability. If the amount of the credit allowed exceeds the eligible taxpayer's tax liability, the excess may be carried over for the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. This bill would provide that no credits may be carried back for use in a preceding taxable year.

This bill would require the Department to consult and develop guidelines for applying for and claiming the credit provided by this section, and these guidelines would be exempt from the provisions of the Administrative Process Act. The bill would also require the Department to compile an annual report on credits claimed in the respective taxable year and shall submit a report by November 1, 2024, and each taxable year thereafter through taxable year 2027, to the Chairmen of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance and Appropriations.

The bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028

cc : Secretary of Finance

Date: 1/23/2022 RWC
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