DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Kaye Kory

2. Bill Number HB 1170

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

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

3. Committee House Finance

4. Title Income tax credits; renewable energy property and energy audit tax credits; Coalfield Employment Enhancement Tax Credit

5. Summary/Purpose:

This bill would create two new income tax credits. The first would be an individual and corporate income tax credit for the purchase of qualifying renewable energy property that is placed in service during the taxable year. This credit would be effective for taxable years beginning on and after January 1, 2012.

For individuals, the credit would be equal to: $1.25 per watt for the first 2,000 watts, $0.75 per watt for 2,001 through 8,000 watts, and $0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed $10,000 per system or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed $3,000 per system or the total cost of the system, whichever is less; or $2,000 per system for a solar thermal system or the total cost of the system, whichever is less.

For corporations, the credit would be equal to: $1.25 per watt for the first 2,000 watts, $0.75 per watt for 2,001 through 8,000 watts, and $0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed $2.5 million per system or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed $10,000 per system or the total cost of the system, whichever is less; or 25 percent of the installed cost of a solar thermal system, not to exceed $10,000 per system or the total cost of the system, whichever is less.

This bill would also provide an individual and corporate income tax credit for a qualified residential or commercial property energy audit. The credit would be equal to 50 percent of the cost of such audit, not to exceed $250 for individuals or $500 for corporations. Taxpayers would be allowed only such one credit during any five-taxable-year period. In addition, individuals would not be allowed both the tax credit and any rebate offered by the Department of Mines, Minerals and Energy ("DMME") for the same audit. This credit would also be effective for taxable years beginning on and after January 1, 2012.

The total amount of individual renewable energy credits under this bill would be limited to no more than $3 million in a fiscal year. The total amount of corporate renewable energy credits under this bill would be limited to no more than $5 million in a fiscal year. Any unused credits would be permitted to be carried over for the next three taxable years.

This bill would also make changes to the procedures for claiming Coalfield Employment Enhancement Tax Credits and Virginia Coal Employment and Production Incentive Tax Credits that have been allocated to parties with an economic interest in coal. For taxable years beginning on and after January 1, 2012, the amount of excess credit that would be redeemable would be equal to 75 percent of the face value, rather than 90 percent. Of the remaining credit amount, 15 percent would be deposited into a regional economic development fund administered by the Coalfields Economic Development Authority, and the remaining 10 percent would not be paid.

6. **Budget amendment necessary:** Yes.
   Page 1, Revenue Estimates
   ITEM(S): 273, Department of Taxation

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

Fiscal Year	***Dollars***	***Positions***	***Fund***
2011-12	$0	0	GF
2012-13	$39,795	1 PTE	GF
2013-14	$38,064	1 PTE	GF
2014-15	$39,062	1 PTE	GF
2015-16	$40,090	1 PTE	GF
2016-17	$41,148	1 PTE	GF
2017-18	$42,239	1 PTE	GF

8. **Fiscal implications:**

Administrative Costs – Department of Taxation

The Department of Taxation ("the Department") believes it could implement this bill as part of its routine annual changes to systems and forms, but is requesting funding in the amount of $39,795 in FY 2013, $38,064 in FY 2014, $39,062 in FY 2015, $40,090 in FY 2016, $41,148 in FY 2017 and $42,239 in FY 2018, and each subsequent year thereafter, for hiring one additional part-time employee necessary to review, verify, and process the anticipated volume of returns claiming the credit. The Department may revise these administrative costs later in the session after analyzing all state tax legislation.

Administrative Costs – Department of Mines, Minerals and Energy

The Department of Mines, Minerals and Energy believes that it would incur administrative costs to develop the necessary guidelines and process applications. The amount of such costs is unknown because DMME does not have an estimate of the number of potential applicants, but DMME anticipates minimal costs that would likely be absorbed.

Revenue Impact

This bill would have an unknown revenue impact. There would likely be a significant General Fund revenue loss from the energy audit credit provisions of the bill. This impact would increase when combined with the solar and geothermal credits. The maximum negative revenue impact from the renewable energy credits would be $8 million, since the individual income tax credits are capped at $3 million annually and the corporate income tax credits are capped at $5 million annually.

The General Fund revenue loss from the issuance of renewable energy credits may be partially offset by the reduction of the refund percentage for Virginia coal tax credits. However, it is unknown how much revenue would result from this reduction.

9. Specific agency or political subdivisions affected:

Department of Mines, Minerals and Energy
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

<u>Federal Energy Investment Tax Credit</u>

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 construction, reconstruction, or erection of the property must be completed by the taxpayer or the original use of the property must commence with 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.

For purposes of the credit, “qualified fuel cell property” is defined as a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent.

“Qualified microturbine property” means a stationary microturbine power plant which has a nameplate capacity of less than 2,000 kilowatts and an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

“Combined heat and power system property” is defined as property which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy; which produces at least 20 percent of its useful energy in the form of thermal energy which is not used to produce electrical or mechanical power and at least 20 percent of its total useful energy in the form of electrical or mechanical power; and the energy efficiency percentage of which exceeds 60 percent.

“Qualified small wind energy property” is defined as property which uses a wind turbine which has a nameplate capacity of not more than 200 kilowatts to generate energy.

Federal Residential Energy Efficient Property Tax Credit

Under federal law, individual taxpayers may claim a nonrefundable credit equal to the sum of 30 percent of qualified solar electric property, solar water heating property, fuel cell property, small wind energy property, and geothermal heat pump property expenditures made during the taxable year. The credit cannot exceed the sum of the taxpayer’s regular tax liability less any nonrefundable personal credits, foreign tax credits, Puerto Rico and possession tax credits for the taxable year. Any unused credit may be carried over to the following taxable year and added to the residential energy efficient property credit for that year.

For purposes of the residential energy efficient property tax credit, a “qualified solar water heating property expenditure” is defined as an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by the property for such purpose is derived from the sun. To qualify for the credit, solar water heating property must be certified for performance by the Solar Rating Certification Corporation or a comparable entity endorsed by the government of the state in which such property is installed.

“Qualified solar electric property expenditure” is defined as an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

“Qualified fuel cell property expenditure” is defined as an expenditure for qualified fuel cell property, as defined in IRC § 48(c)(1), installed on or in connection with a dwelling unit located in the United States and used as a principal residence by the taxpayer. The credit for fuel cell property cannot exceed $500 per half kilowatt of capacity of the qualified fuel cell property to which the expenditure relates.

“Qualified small wind energy property expenditure” is defined as an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

"Qualified geothermal heat pump property expenditure" is defined as an expenditure for any equipment which (i) uses the ground or ground water as a thermal energy source to heat a dwelling unit located in the United States and used as a residence by the taxpayer or a thermal energy sink to cool such unit, and (ii) meets the requirements of the Energy Star program.

Virginia Renewable Energy Incentives

Virginia does not currently have any tax incentives for renewable energy property or energy audits. However, Virginia does have several rebate programs that allow individuals and businesses to receive rebates for certain qualifying costs associated with energy efficient equipment, including the installation of geothermal systems and the costs of conducting energy audits.

The Virginia Energy Efficiency Rebate Program was a federally funded program that was administered through the Department of Mines, Minerals, and Energy (DMME). Through this program, homeowners were eligible for rebates equal to 20% of the costs of qualifying energy conserving products and services, up to $2,000. Commercial consumers were eligible for rebates equal to 20% 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 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 almost 7,700 rebates and dispersing $10.4 million to Virginia homeowners and businesses.

The Energy Efficient Appliance Rebate Program is another federally funded program that is administered through DMME. Through this program, Virginians can receive up to $500 on certain ENERGY STAR qualified appliances, such as heat pumps, dishwashers, air conditioners, furnaces, and refrigerators. This program is closed to new applicants as of January 20, 2012.

The Home Efficiency Rebate Program is a third program administered by DMME, through which homeowners can receive rebates for 20 percent of the documented cost of qualifying energy conserving products and services, up to a maximum of $595 per residential property address. Items that qualify for the rebate include oil furnaces, gas, propane, or oil hot water boilers, insulation and air sealing, replacement windows and exterior doors, and storm doors. Homeowners may also receive rebates for the cost of energy audits, up to $250. To qualify, homeowners must purchase energy efficiency products and systems from a Virginia retailer or vendor, or from a contractor with a license to do business in Virginia. The application process for this program opened on June 20, 2011, and will close to new applicants on February 17, 2012.

A final program administered through DMME is the Geothermal Heat Pump Rebate Program. This program allows Virginia homeowners to receive a rebate for 20 percent of the documented costs of qualifying geothermal heat pumps, up to $2,000 per residential property address. To qualify, homeowners must purchase energy efficiency products and systems from a Virginia retailer or vendor, or from a contractor with a license to do business in Virginia. This program closed to new applicants on December 31, 2011 to allow time to close out currently-approved claims before funding expires in April 2012.

Virginia Coal Tax Credits

The Coalfield Employment Enhancement Tax Credit provides a credit against any tax imposed by the Commonwealth to Virginia producers of coal and coal methane gas. Two credits are available for coal mining, one for underground mines and another for surface mined coal. For coal mined underground, the credit amount varies according to the seam thickness mined. The credit is equal to $2.00 per ton for a seam thickness of 36 inches or less and SB $1.00 per ton for a seam thickness greater than 36 inches. Seam thickness is certified by the Department of Mines, Minerals and Energy. A credit of $0.40 per ton is permitted for coal mined by surface mining methods. Also available is a credit for coal methane gas producers of $0.01 per million BTU's of gas produced.

The Coalfield Employment Enhancement Tax Credit is currently available for taxable years beginning on or after January 1, 1996 but before January 1, 2015. The credit is claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeds income tax liability, the excess is refundable up to 85 percent of the face value of the credit. The remaining 15 percent is to be deposited in a regional fund administered by the Coalfield Economic Development Authority.

The Coal Employment and Production Incentive Tax Credit is a corporate income tax credit equal to $3 per ton for the purchase and consumption of Virginia mined coal by an electricity generator in the Commonwealth. Unused amounts of the credit may be carried over for ten taxable years. The credit may be allocated between an electricity generator and any person with an economic interest in the coal purchased and consumed by the electricity generator. The allocation of the credit can be provided in the contract between the parties for the sale of the coal. The parties can amend any such allocation with a written instrument prior to December 31 of the year in which the coal was purchased.

Credits allocated to persons with an economic interest in coal may be used against any tax imposed by Virginia. Credits earned on or after January 1, 2006, and prior to July 1, 2016, that exceed the tax liability of such person may be redeemed along with the Coalfield Employment Enhancement Tax Credit in the form of a refund. Such refunds are administered following the same rules as the Coalfield Employment Enhancement Tax Credit.

Proposal – Renewable Energy Tax Credits

This bill would create two new income tax credits. The first would be an individual and corporate income tax credit for the purchase of qualifying renewable energy property that is placed in service during the taxable year. This credit would be effective for taxable years beginning on and after January 1, 2012.

For individuals, the credit would be equal to: $1.25 per watt for the first 2,000 watts, $0.75 per watt for 2,001 through 8,000 watts, and $0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed $10,000 per system or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed $3,000 per system or the total cost of the system, whichever is less; or $2,000 per system for a solar thermal system or the total cost of the system, whichever is less.

For corporations, the credit would be equal to: $1.25 per watt for the first 2,000 watts, $0.75 per watt for 2,001 through 8,000 watts, and $0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed $2.5 million per system or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed $10,000 per system or the total cost of the system, whichever is less; or 25 percent of the installed cost of a solar thermal system, not to exceed $10,000 per system or the total cost of the system, whichever is less.

This bill would also provide an individual and corporate income tax credit for a qualified residential or commercial property energy audit. The credit would be equal to 50 percent of the cost of such audit, not to exceed $250 for individuals or $500 for corporations. Taxpayers would be allowed only such one credit during any five-taxable-year period. In addition, individuals would not be allowed both the tax credit and any rebate offered by the Department of Mines, Minerals and Energy ("DMME") for the same audit. This credit would also be effective for taxable years beginning on and after January 1, 2012.

The total amount of individual renewable energy credits under this bill would be limited to no more than $3 million in a fiscal year. The total amount of corporate renewable energy credits under this bill would be limited to no more than $5 million in a fiscal year. DMME would be responsible for developing procedures for the approval of tax credits if applications of tax credits exceed the maximum allowed for the fiscal year.

Any unused tax credits would be permitted to be carried over for the next three taxable years. The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company would be allocated to the partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

"Geothermal system" would mean energy generating units, sometimes referred to as earth-coupled, ground-source or water-source heat pumps, that use the constant temperature of the earth as the exchange medium, instead of the outside air temperature, by exchanging heat with the earth through a ground heat exchanger in order to heat, cool, and if equipped, supply the building with hot water.

"Qualified residential energy audit" would mean an energy audit performed on the taxpayer's primary residence that assesses how much energy a building or operation consumes and evaluates what measures can be taken to make the residence more energy efficient. The audit must be performed by an analyst certified by the Building Performance Institute, Inc. (BPI) or Residential Energy Services Network (RESNET) and documented with a dated copy of the auditor's report identifying the taxpayer's property and auditor's certification number.

"Qualified commercial property energy audit" would mean an energy audit performed on the taxpayer's commercial property on or after January 1, 2009, that assesses how much energy a building or operation consumes and evaluates what measures can be taken to make the commercial property more energy efficient. The audit must be performed by an analyst certified by the Building Performance Institute (BPI) or other analyst approved by DMME and documented with a dated copy of the auditor's report identifying the taxpayer's property and auditor's certification number.

"Renewable energy property" would mean a solar photovoltaic system, a solar thermal system, or a geothermal system.

"Solar photovoltaic system" would mean an energy system or solar panel that collects or absorbs sunlight for conversion into electricity and that has been certified as meeting all applicable safety standards of Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with performance and safety standards established by the State Corporation Commission.

"Solar thermal system" would mean a solar energy system that collects or absorbs solar energy to generate hot water or air for space heating or water heating. Solar water heating systems shall meet the operational guidelines for an OG-300 certified solar water heating system as established by the Solar Rating and Certification Corporation. Solar space heating panels that heat air shall meet the operational guidelines for an OG-100 certified solar panel.

In order to claim the credit, both individuals and corporations must be approved by DMME. This bill would require DMME to establish guidelines, exempt from the Administrative Process Act, and forms for the application process. DMME would be further required to review an application within 14 days of receipt, and determine if the application satisfies the requirements outlined in its guidelines. The taxpayer would be required to submit with his income tax return all documentation required by the Department in order to be allowed the credit. For purposes of tax credits for qualified residential or commercial energy audits, such documentation would include the auditor's report and evidence, including but not limited to paid receipts, that the taxpayer implemented all improvements in energy efficiency recommended in the auditor's report.

Proposal – Virginia Coal Credits

This bill would also make changes to the procedures for claiming the Coalfield Employment Enhancement Tax Credit. For taxable years beginning on and after January 1, 2012, the amount of excess credit that would be redeemable would be equal to 75 percent of the face value, rather than 85 percent. Of the remaining credit amount, 15 percent would be deposited into a regional economic development fund administered by the Coalfields Economic Development Authority, and the remaining 10 percent would not be paid.

Because the refundable portion of Virginia Coal Employment and Production Incentive Tax Credits that have been allocated to persons with an economic interest in coal is based on the refund procedure for Coalfield Employment Enhancement Tax Credits, the same procedures would also apply to refunds of Coal Employment and Production Incentive Tax Credits.

Similar Legislation

House Bill 883 would create an individual and corporate income tax credit for investments in solar energy equipment.

House Bill 787 would provide a refund of sales and use tax paid on the purchase of certain renewable energy equipment.

House Bill 446 would repeal the Virginia Coal Employment and Production Incentive Tax Credit, the Coalfield Employment Enhancement Tax Credit, and the Virginia Coal Employment and Production Incentive Tax Credit for public service corporations, effective January 1, 2012.

House Bill 1192, **Senate Bill 609**, and **Senate Bill 616** would eliminate the sunset date for the Coalfield Employment Enhancement Tax Credit.

cc : Secretary of Finance

Date: 2/2/2012 KLC
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