

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Glenn R. Davis

3. **Committee** House Finance

4. **Title** Income Tax Credit; Solar Energy Equipment

2. **Bill Number** HB 2165

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide a tax credit against the corporate income tax, the Insurance Premiums License Tax, or the public service corporation license tax for the construction, purchase, or leasing of solar energy equipment that is placed in service on certain nonresidential real property. The amount of the credit would be equal 35 percent of the installed cost of the solar energy equipment. No taxpayer would be permitted to earn credits in excess of \$100,000 for a taxable year. The credit would be subject to an annual credit cap of \$10 million.

This bill would be effective for taxable years beginning on and after January 1, 2019, but before January 1, 2024.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Costs

Department of Mines, Minerals, and Energy

The Department of Mines, Minerals, and Energy ("DMME") considers implementation of this bill as routine, and does not require additional funding.

Department of Taxation

Due to uncertainty about the systems and processing changes that may be required for the 2018 and 2019 income tax filing seasons, the Department of Taxation ("the Department") is unable to assign administrative costs to this bill at this time. During 2017, Congress enacted the Tax Cuts and Jobs Act, which made substantial changes to federal tax law. At this time, it is uncertain what Virginia tax policy changes will be adopted in reaction to the federal law.

If substantial changes are enacted or required in response to state/federal law, it is possible that the Department may not have the ability to implement the changes set forth in this bill by the proposed effective date. Accordingly, the Department will reevaluate its costs once action is taken and may request additional funding or an amendment to delay the effective date of this legislation.

Revenue Impact

This bill would result in an unknown negative General Fund revenue impact for Fiscal Years 2020 through 2024. The extent to which taxpayers would qualify for and claim this credit is unknown. However, the negative revenue impact would be limited by the \$10 million annual credit cap.

9. Specific agency or political subdivisions affected:

Department of Mines, Minerals, and Energy
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Business Energy Investment Tax Credit

For federal income tax purposes, taxpayers may claim the investment tax credit ("ITC") for certain renewable energy-related investments. The amount of the credit is determined as a percentage of the taxpayer's basis in eligible property. The tax credit rate and other credit parameters depend on the type of property or technology for which the credit is being claimed. The ITC for investments in solar technology is set at 30 percent Taxable 2019, 26 percent in 2020, 22 percent in Taxable Year 2021, and 10 percent for Taxable Year 2022 and after.

Virginia Solar Energy Incentives

Local Property Tax Exemptions for Solar Equipment

Article X, § 6 of the *Constitution of Virginia* lists all property that may be exempted from taxation by general law. Article X, § 6 (d) provides that the General Assembly may define as a separate subject of taxation any property used primarily for the purpose of abating or preventing air or water pollution or for the purpose of transferring or storing solar energy and by general law may allow the governing body of any locality to exempt such property from taxation, or by general law may directly exempt such property from taxation. Additionally, Article X, § 6 provides that exemptions of property from taxation shall be strictly construed.

Exemptions for Commercial Solar Equipment

Legislation enacted during the 2014 Session provided a mandatory local property tax exemption for solar photovoltaic systems equaling 20 megawatts or less owned or operated by a business.

Legislation enacted during the 2016 Session made several changes to the exemption effective January 1, 2017:

- The full exemption was limited to 1) projects equaling 20 megawatts or less for which an initial interconnection request form is filed on or before December 31, 2018; 2) projects equaling 20 megawatts or less that serve a public institute of higher education or a private college in the Commonwealth; and 3) projects equaling 5 megawatts or less for which an initial interconnection request form is filed on or after January 1, 2019.
- The exemption was expanded to provide an exemption for 80 percent of the assessed value for 1) projects greater than 20 megawatts first in service on or after January 1, 2017, for which an initial interconnection request form was filed after January 1, 2015; and 2) projects greater than 5 megawatts for which an initial interconnection request form is filed on or after January 1, 2019.
- A sunset date was provided for the exemption for projects greater than 20 megawatts so that it does not apply to projects on which construction begins after January 1, 2024.

Exemptions for Residential Solar Equipment

All localities are authorized to grant a local option property tax exemption for solar energy equipment certified by the local building department to be designed and used primarily for the purpose of collecting, generating, transferring, or storing thermal or electric energy.

Retail Sales and Use Tax

Under current law, a sales tax exemption for residential solar energy equipment is not available. Legislation in the 2016 General Assembly Session provided a sales tax exemption for machinery and tools used by a public service corporation to generate energy derived from sunlight. The legislation also provided a sales tax exemption for solar energy property certified to the Department as pollution control property by the DMME.

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 2016 Appropriations 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 provide a tax credit against the corporate income tax, the Insurance Premiums License Tax, or the public service corporation license tax for the construction, purchase, or leasing of solar energy equipment that is placed in service on certain nonresidential real property. The amount of the credit would be equal 35 percent of the installed cost of the solar energy equipment. No taxpayer would be permitted to earn credits in excess of \$100,000 for a taxable year. The credit would be subject to an annual credit cap of \$10 million.

This bill would define “certain nonresidential real property” as any nonresidential real property in Virginia that:

- Is located in a Virginia Qualified Opportunity Zone as designated by the U.S. Department of the Treasury;
- Is currently or formerly operated as a landfill;
- Is located in a brownfield; or
- Receives its electrical distribution services from a utility consumer services cooperative.

This bill would define “solar energy equipment” as any solar equipment owned by the taxpayer, for which the taxpayer is the electric distribution customer, and that is installed on certain nonresidential real property. This would include a photovoltaic system that uses solar radiation as a substitute for traditional energy for water heating; active space heating and cooling; passive heating; daylighting; generating electricity; distilling; or producing industrial or commercial process heat. This would also include related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

For purposes of determining the amount of the credit, the installed cost would not include the amount of any rebate received by the taxpayer related to the installation of the solar energy equipment.

In order to claim the credit, a taxpayer would be required to apply to the Department to determine the amount of the credit allowable for solar energy equipment placed into service. The Department would be required to issue the tax credit by providing a written certification of the allowable amount of the credit, which the taxpayer would be required to attach to their tax return.

The amount of the credit claimed would not be permitted to exceed 50 percent of the total amount of corporate income tax, Insurance Premiums License Tax, or public service corporations tax imposed upon the taxpayer for the taxable year. Any unused credit would be carried over for the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

This bill would require the DMME, in consultation with the Department, to develop and update as necessary guidelines implementing the provisions this credit. The Department would also be required to develop guidelines for the issuance of tax credits if the aggregate amount of credits applied for in a fiscal year exceed \$10 million. Both guidelines would be exempt from the provisions of the Administrative Process Act.

Similar Legislation

House Bill 2460 and **Senate Bill 1496** are identical to this bill.

House Bill 2070 would create a tax deduction for the amount a taxpayer pays for energy saving products.

House Bill 2241 would create an income tax credit beginning in for the expenses incurred by taxpayers in the training and transitioning of fossil fuel workers to green jobs.

Senate Bill 1091 would require an owner or operator of solar photovoltaic systems and related equipment to submit a performance and reclamation bond to DMME in order to qualify for a property tax exemption.

cc : Secretary of Finance

Date: 1/15/2019 JLOF
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