Department of Legislative Services

Maryland General Assembly
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FISCAL NOTE

House Bill 1406 (Delegate Cane, *et al.*)
Ways and Means

Tax Credits for Electricity Purchased from Poultry Litter Electricity Generating Facilities

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This bill provides a credit against the State income tax and the public service company franchise tax for electricity purchased from a qualified energy facility that generates electricity from poultry litter under a "qualified electricity contract." The aggregate amount of electricity that may be produced under any contracts may not exceed 60 megawatts.

The bill takes effect July 1, 2001 and applies to all taxable years beginning after December 31, 2001.

Fiscal Summary

State Effect: Significant general fund and Transportation Trust Fund (TTF) revenue decrease beginning in FY 2005. Revenues would decrease by up to approximately $1.7 million for every five megawatts of electricity produced by a qualified facility. No effect on expenditures.

Local Effect: Potential local government revenue decrease as a result of credits being claimed against the corporate income tax. Potential increase in local income and property tax revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill seeks to promote the production and utilization of "green power" in Maryland's economically distressed counties by providing for a long-term tax incentive for the purchase of electricity generated by using poultry litter as the primary fuel.

A qualified energy facility is defined as a facility that: (1) is located in a county that, as of July 1, 2001, is a qualified distressed county; (2) is designed to use poultry litter as its primary fuel to produce electricity; (3) is originally placed in service after December 31, 2002, but before January 1, 2007; and (4) has been approved by the Public Service Commission (PSC) as a qualified energy facility with a designated maximum generating capacity, in megawatts.

A qualified electricity contract is defined as an electricity purchase agreement that: (1) is entered into between a wholesale electricity purchaser and the owner or lessee of a qualified energy facility; and (2) obligates the electricity purchaser to purchase all electricity generated at a qualified energy facility, up to the approved maximum generating capacity, at a rate not exceeding the required rate for a period not exceeding 21 years. The required rate is a rate not exceeding 8.5 cents per kilowatt-hour as adjusted annually beginning on January 1, 2002 by the percentage change in the consumer price index from the preceding year.

In any calendar year, the maximum amount of electricity purchased under a qualified electricity contract at the required rate may not exceed the product of multiplying: (1) the approved designated maximum generating capacity, in megawatt hours per hour; and (2) the number of hours in the calendar year. The maximum generating capacity for a qualified energy facility designated by the PSC in its approval of the facility may not be reduced after the execution of the qualified electricity contract associated with the facility except with the consent of the parties to the qualified electricity contract relating to the facility.

The credit that may be claimed in each taxable year is equal to the amount, if any, by which the purchaser's payments for electricity at the required rate during the taxable year exceed the amounts that would have been paid for the electricity at a rate equal to the greater of: (1) the sum of the average market price and 20% of the average market price; or (2) 4.5 cents per kilowatt-hour, as adjusted annually beginning on January 1, 2002 by the percentage change in the consumer price index from the preceding year.

Any unused credit may be carried forward for up to ten years after the taxable year in which the credit was claimed.

The tax credit is also to any person or entity that owns, either directly or indirectly, 20% or more of the stock, or other equity interests of the purchaser. However, the same tax credit may not be applied by more than one taxpayer or more than once against different taxes.

The bill requires that on or before July 1 of each year, a person claiming the tax credit must report to the PSC on the credit claimed for prior year, including: (1) the amount of the credit claimed; and (2) the qualified energy facility from which the electricity was purchased.

The owner or lessee of a qualified energy facility that is a party to a qualified electricity contract must repay to the State an amount equal to the actual reduction in State tax revenues resulting from the tax credits with respect to the facility. This repayment must be paid beginning in the calendar year immediately following the earlier of: (1) the calendar year in which the final payment is made in respect of the debt incurred to finance the qualified energy facility; and (2) the calendar year in which the twenty-sixth anniversary of the commercial operation date for the qualified energy facility occurs. Repayment must be completed by the forty-third anniversary of the commercial operation date for the qualified energy facility occurs. Payments are to be deposited in the general fund.

The aggregate generating capacity of all qualified energy facilities approved by the PSC may not at any time exceed an aggregate of 60 megawatts of electricity available for sale under qualified electricity contracts.

In considering approval of a facility as a qualified energy facility, the PSC must base its determination solely on: (1) whether the facility satisfies the criteria for a qualified energy facility under this subtitle; (2) whether the aggregate 60 megawatt limit will be exceeded by approving the requested maximum generating capacity requested for the facility; and (3) whether a contract satisfying the requirements of a qualified electricity contract has been executed for the purchase of electricity generated by the facility.

On or before January 15 of each year beginning in the calendar year immediately following the year in which a qualified energy facility begins commercial operation, the owner or lessee of a qualified energy facility shall certify to the PSC that poultry litter is the primary fuel used to generate electricity at the facility and comprises at least 65% of the annual fuel loading for the facility.

The Public Service Commission and the Comptroller are required to jointly administer the provisions of the bill.

Current Law: Current federal law allows a variety of credits and deductions for the use of energy efficient technology, including an income tax credit for the production of electricity from either qualified wind energy or qualified "closed-loop" biomass facilities (IRC. sec. 45). The credit is equal to 1.7 cents (1.5 cents plus adjustments for inflation since 1992) per kilowatt hour of electricity produced from these qualified sources during the ten-year period after the facility is placed in service. Closed-loop biomass is the use of plant matter, if the plants are grown for the sole purpose of being used to generate electricity. The term does not include waste materials (including but not limited to, scrap wood, manure, and municipal or agricultural waste) or standing timber used to produce electricity. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. This law expires January 1, 2002.

Maryland provides an income tax credit for the production of electricity through the use of qualified energy resources (Chapters 295 and 296 of 2000):

- Wind power, poultry litter, and closed-loop biomass-based power systems qualify the owner, operator, or lessee for a tax credit against the State income tax for electric power produced and delivered to an unrelated third party.

- Electric power generated in Maryland by newly installed wind turbines would be eligible for a 0.85-cent-per-kilowatt-hour tax credit, approximately one-half of the current federal tax credit.

- Electric power generated in Maryland by newly installed facilities fueled exclusively by biomass (organic plant material) would be eligible for a 0.85-cent-per-kilowatt-hour tax credit, approximately one-half of the current federal tax credit. Where electricity is produced from biomass that is co-fired at coal-burning power plants, a credit of 0.5-cent-per-kilowatt-hour would be authorized. Qualified energy resources include: (1) any solid, nonhazardous, cellulosic waste material (segregated from other waste materials), such as those derived from forest-related resources, not including old growth timber: mill residues, pre-commercial thinnings, slash, or brush; (2) waste pallets, crates, dunnage, and landscape or right-of-way trimmings, not including unsegregated municipal waste and post-consumer wastepaper; and (3) agricultural sources including orchard crops and, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Qualified energy resources also includes methane gas resulting from the anaerobic decomposition or organic materials in landfills or wastewater treatment plants.

Qualifying facilities must be placed into service on or after January 1, 2001, but before January 1, 2005, except in the case of facilities that produce electricity from a qualified energy resource that is co-fired with coal at the facility and initially begins co-firing a qualified energy resource on or after January 1, 2001 but before January 1, 2005, regardless of when the original facility was placed into service.

Background: According to information provided by the Delmarva Poultry Industry, Inc., three projects are being considered or are underway that could benefit from the bill.

Allen Family Foods, Inc. is planning to operate a gasification co-generation facility at its chicken processing plant. Any power that is not used by the plant would be sold to electricity purchasers. It is expected that the facility could use up to 40,000 tons of poultry litter per year.

Eastern Shore Forest Products, Inc., is in the process of developing a poultry litter management system that would include transporting manure, burning manure to generate energy for a company operated manure to fertilizer plant, and starting one to ten megawatt power plants that would be located next to poultry company facilities. It is estimated that these facilities could use up to 85,000 tons of poultry litter annually.

A British company, FibroWatt, through a subsidiary, FibroShore, is considering construction of a poultry litter burning power plant on the Eastern Shore that would sell electricity. It is estimated that this facility could use up to 350,000 tons of poultry litter annually. In the fall of 2001, FibroWatt expects to begin construction of a 50 megawatt power plant in Benson, Minnesota. It is expected that this plant could cost $150 million to construct. This company also operates a 38.5 megawatt poultry litter burning facility in England.

According to the Maryland Department of Agriculture, approximately 650,000 – 750,000 tons of poultry litter are produced each year on the Delmarva Peninsula.

State Fiscal Effect: The bill provides for a State income tax credit for the purchase of electricity from a facility that generates electricity from poultry litter. The facility must be originally placed in service after December 31, 2002, but before January 1, 2007. It is assumed that any qualifying facility could begin operation by July 1, 2004.

Revenues would decrease by approximately $1.7 million for every five megawatts produced and sold. With a cumulative 60 megawatt limit, revenues could decrease by up to $20.1 million annually beginning in fiscal 2005, based on the following facts and assumptions:

5 megawatts = 5,000 kilowatts
24 hours x 365 days = 8,760 hours per year
8,760 hours x 85% capacity factor = 7,446 hours of facility operation
7,446 hours x 5,000 kilowatts = 37,230,000 kilowatts of electricity generated per year
37,230,000 kilowatts x $.045 per kilowatt hour credit = $1,675,350

Therefore, based on these assumptions, the credit for a 20 megawatt facility would be approximately $6.8 million annually and approximately $13.6 million annually for a 40 megawatt facility beginning in fiscal 2005.

The credits may be claimed for 21 years -- the length of the required qualified electricity contract. As a result, total State revenues would decrease by approximately $422.2 million from fiscal 2005 to fiscal 2026 assuming the aggregate 60 megawatts of electricity are produced. However, to the extent that the per kilowatt credit varies from year to year as a result of changing electricity prices, the actual cost of the credit each year will vary accordingly. If the price of electricity goes up, the revenue loss could be less.

The bill also provides that the total amount of the credit claimed is to be repaid to the State, with no interest, beginning the earlier of either the calendar year immediately following the final payment made on the debt required to finance the facility or the calendar year which marks the twenty-sixth anniversary of the facility beginning operation.

Credits taken on personal income tax returns and the public service company franchise tax would reduce general fund revenues in the amount of the credits. Because 75% of all corporate income tax revenue is distributed to the general fund and 25% is distributed to the TTF, credits taken on corporate income tax returns would reduce general fund revenues by 75% of the amount of the credits taken, and TTF revenues would be reduced by 25% of the credits taken. In addition, 30% of the 25% of revenue distributed to the TTF is distributed to local governments. At this time, it is not known whether the credits would be claimed on personal or corporate income tax returns or against the public service company franchise tax.

Maryland currently operates two programs -- the Manure Transportation Pilot Program and the Nutrient Management Cost Share Program -- which are aimed at helping farmers on the Eastern Shore mitigate the cost of implementing nutrient management plans in order to comply with the Water Quality Improvement Act of 1998. To the extent that a facility using poultry litter to generate electricity reduces reliance on these existing State programs as a result of poultry farmers having a market for poultry litter, State funding for these programs could decrease in future years. The Governor’s proposed fiscal 2002 budget includes $216,000 in general funds for the Nutrient Management Cost Share Program and $701,670 in general funds for the Manure Transportation Pilot Program. The poultry industry may provide up to $701,670 in matching funds. However, any resulting decreases in State spending cannot be reliably estimated at this time.

In addition, revenue losses resulting from the bill could be offset to the extent that a project of this type creates new jobs and increased economic development in the area and income, property, and sales tax revenues increase as a result. However, the extent of any offsetting revenue increase resulting from such a project cannot be reliably estimated at this time.

Local Fiscal Effect: Local government revenues would decline as a result of corporate taxpayers claiming the credits proposed in the bill. As mentioned above, 75% of corporate tax revenues are distributed to the general fund and 25% are distributed to the TTF. Of the 25% distributed to the TTF, approximately 30% is distributed to local jurisdictions.

Local government revenues could increase to the extent that a project of this type creates new jobs and increased economic development in the area and income, property, and sales tax revenues increase as a result. However, the extent of any offsetting revenue increase resulting from such a project cannot be reliably estimated at this time.

Additional Comments: State revenues could also decrease to the extent that such a facility is able to claim the State's existing clean energy tax credit. This credit would qualify the owner, operator, or lessee for a tax credit against the State income tax for electric power produced and delivered to an unrelated third party from wind power, poultry litter, and closed-loop biomass-based power systems. The amount of the credit is .85 cents per kilowatt hour. To be eligible, the facility must be placed into service on or after January 1, 2001, but before January 1, 2005. The credits may be taken for ten years after the facility is placed in service. Assuming a 40 megawatt facility such as the one described above, State revenues could decline by approximately $3.2 million annually beginning in fiscal 2005 (the assumed date the facility would be operational).

Finally, to the extent that the purchaser of the electricity pays a higher price than the market price for the electricity produced, consumers would face higher costs. Any such increase cannot be predicted at this time. In any event, because the electric industry has been restructured, a consumer facing higher prices could always choose another electricity supplier.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller of the Treasury (Bureau of Revenue Estimates); Department of Assessments and Taxation; Public Service Commission; Association of Forest Industries, Inc.; Department of Legislative Services

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