
By: **Senator Hafer**

Introduced and read first time: January 27, 2006

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Tax Credit for Maryland-Mined Coal**

3 FOR the purpose of altering certain credits allowed against the public service
4 company franchise tax and State income tax for the purchase of
5 Maryland-mined coal; limiting the credit to the amount approved by the
6 Department of Assessments and Taxation; limiting the total amount of credits
7 that the Department may approve for certain calendar years to certain amounts;
8 allowing a credit against the public service company franchise tax or State
9 income tax for certain new or retrofitted facilities using certain technology that
10 use Maryland-mined coal; requiring the Department of Business and Economic
11 Development to report to certain committees on the economic and
12 environmental impacts of the Maryland-mined coal tax credit; providing for the
13 application of this Act; and generally relating to certain credits against the taxes
14 for the purchase of Maryland-mined coal.

15 BY repealing and reenacting, with amendments,
16 Article - Tax - General
17 Section 8-406(b) and 10-704.1
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2005 Supplement)

20 BY adding to
21 Article - Tax - General
22 Section 10-726
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2005 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Tax - General**

2 8-406.

3 (b) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
4 MEANINGS INDICATED.5 (II) "CERTIFIED EMPLOYMENT POSITIONS" MEANS POSITIONS
6 CERTIFIED BY THE DEPARTMENT AS:7 1. FULL-TIME POSITIONS OF INDEFINITE DURATION
8 REQUIRING AT LEAST 840 HOURS OF AN EMPLOYEE'S TIME DURING AT LEAST 24
9 WEEKS IN A 6-MONTH PERIOD;

10 2. PAYING AT LEAST 150% OF THE FEDERAL MINIMUM WAGE;

11 3. LOCATED IN MARYLAND;

12 4. NEWLY CREATED, AS A RESULT OF THE ESTABLISHMENT
13 OF A NEW FACILITY IN A SINGLE LOCATION IN MARYLAND; AND

14 5. FILLED.

15 (III) "CERTIFIED EXPENSES" MEANS COSTS CERTIFIED BY THE
16 DEPARTMENT AS DIRECTLY RELATED TO:17 1. THE ACQUISITION, CONSTRUCTION, AND INSTALLATION
18 OF EQUIPMENT DESIGNED TO REDUCE THE LEVEL OF AIR OR WATER POLLUTION
19 RELEASED AS A RESULT OF THE OPERATION OF A RETROFITTED FACILITY; OR20 2. THE CONSTRUCTION OF A NEW FACILITY, INCLUDING
21 OBLIGATIONS INCURRED FOR MATERIALS, LABOR, CONTRACTORS,
22 SUBCONTRACTORS, OR BUILDERS AND THE COSTS OF ACQUIRING LAND OR RIGHTS
23 IN LAND.24 (IV) "NEW FACILITY" MEANS A FACILITY LOCATED IN MARYLAND
25 THAT:

26 1. USES MARYLAND-MINED COAL TO GENERATE ENERGY;

27 2. IS NOT A RETROFITTED FACILITY;

28 3. IS CONSTRUCTED AFTER JANUARY 1, 2007, AT A COST OF
29 NOT LESS THAN \$350,000,000 IN CERTIFIED EXPENSES;30 4. RESULTS IN THE CREATION OF AT LEAST 50 CERTIFIED
31 EMPLOYMENT POSITIONS; AND32 5. IS DESIGNED TO EXCEED THE AIR EMISSION STANDARDS
33 REQUIRED IN BOTH STATE AND FEDERAL LAWS AND REGULATIONS IN EFFECT AT
34 THE TIME THE FACILITY BEGINS OPERATIONS.

1 (V) "RETROFITTED FACILITY" MEANS AN EXISTING FACILITY
2 LOCATED IN MARYLAND THAT INSTALLS OR IMPROVES ITS POLLUTION CONTROL
3 EQUIPMENT IF:

4 1. THE INSTALLATION OR IMPROVEMENT OCCURS AFTER
5 JANUARY 1, 2007, AT A COST OF NOT LESS THAN \$100,000,000 IN CERTIFIED EXPENSES;
6 AND

7 2. THE FACILITY IS DESIGNED TO EXCEED THE AIR
8 EMISSION STANDARDS REQUIRED IN BOTH STATE AND FEDERAL LAWS AND
9 REGULATIONS IN EFFECT AT THE TIME THE FACILITY BEGINS OPERATIONS AFTER
10 INSTALLATION OR IMPROVEMENT OF THE POLLUTION CONTROL EQUIPMENT.

11 (2) (I) [A] SUBJECT TO THE LIMITATIONS OF THIS PARAGRAPH, A
12 public service company, including any multijurisdictional public service company,
13 may claim a credit against the public service company franchise tax in the amount of
14 \$3 for each ton of Maryland-mined coal that the public service company purchased in
15 the calendar year.

16 (II) THE AMOUNT CLAIMED AS A CREDIT UNDER THIS PARAGRAPH
17 MAY NOT EXCEED THE AMOUNT APPROVED BY THE DEPARTMENT UNDER THIS
18 PARAGRAPH.

19 (III) BY JANUARY 15 OF THE CALENDAR YEAR FOLLOWING THE END
20 OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED COAL WAS PURCHASED,
21 A PUBLIC SERVICE COMPANY, OR A COGENERATOR OR ELECTRICITY SUPPLIER AS
22 DEFINED IN § 10-704.1 OF THIS ARTICLE, SHALL SUBMIT AN APPLICATION TO THE
23 DEPARTMENT FOR APPROVAL OF THE CREDIT ALLOWED UNDER THIS PARAGRAPH.

24 (IV) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, THE
25 TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS
26 PARAGRAPH FOR ANY CALENDAR YEAR MAY NOT EXCEED:

27 1. \$12,000,000 FOR CALENDAR YEAR 2006;

28 2. \$9,000,000 FOR A CALENDAR YEAR BEGINNING AFTER
29 DECEMBER 31, 2006, BUT BEFORE JANUARY 1, 2015;

30 3. \$6,000,000 FOR A CALENDAR YEAR BEGINNING AFTER
31 DECEMBER 31, 2014, BUT BEFORE JANUARY 1, 2021; OR

32 4. \$3,000,000 FOR A CALENDAR YEAR BEGINNING AFTER
33 DECEMBER 31, 2020.

34 (V) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, IF THE
35 TOTAL AMOUNT OF CREDITS APPLIED FOR IN ANY CALENDAR YEAR UNDER THIS
36 PARAGRAPH EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (IV) OF
37 THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS
38 PARAGRAPH FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF
39 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

1 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
2 UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH; AND

3 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
4 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
5 CALENDAR YEAR.

6 (VI) 1. OF THE TOTAL CREDITS APPROVED FOR ANY CALENDAR
7 YEAR BEGINNING AFTER DECEMBER 31, 2006, THE DEPARTMENT SHALL RESERVE
8 \$2,250,000 OF THE CREDITS FOR PURCHASES OF MARYLAND-MINED COAL THAT WILL
9 BE USED BY A FACILITY IN MARYLAND.

10 2. IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
11 APPLICANTS FOR ANY CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED
12 COAL THAT WILL BE USED IN MARYLAND EXCEEDS \$2,250,000, THE DEPARTMENT
13 SHALL APPROVE A CREDIT UNDER THIS PARAGRAPH FOR EACH APPLICANT IN AN
14 AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY
15 THE APPLICANT TIMES A FRACTION:

16 A. THE NUMERATOR OF WHICH IS \$2,250,000; AND

17 B. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
18 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
19 CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED COAL THAT WILL BE
20 USED IN MARYLAND.

21 (VII) ON OR BEFORE FEBRUARY 15 OF THE CALENDAR YEAR
22 FOLLOWING THE END OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED
23 COAL WAS PURCHASED, THE DEPARTMENT SHALL CERTIFY TO EACH APPLICANT
24 CLAIMING A CREDIT THE AMOUNT OF THE TAX CREDITS APPROVED BY THE
25 DEPARTMENT FOR THAT APPLICANT UNDER THIS PARAGRAPH.

26 (3) (I) A NEW FACILITY OR RETROFITTED FACILITY THAT BURNS
27 MARYLAND-MINED COAL MAY CLAIM A CREDIT AGAINST EITHER THE PUBLIC
28 SERVICE COMPANY FRANCHISE TAX OR THE STATE INCOME TAX IN THE AMOUNT OF
29 \$3 FOR EACH TON OF MARYLAND-MINED COAL THAT THE FACILITY PURCHASED IN
30 THE CALENDAR YEAR.

31 (II) A NEW FACILITY OR A RETROFITTED FACILITY MAY CLAIM THE
32 CREDIT PROVIDED FOR UNDER THIS PARAGRAPH FOR A PERIOD OF 10 YEARS FROM
33 THE TIME THAT THE NEW PLANT BECAME OPERATIONAL OR THE RETROFITTED
34 FACILITY BEGAN OPERATIONS AFTER ITS RETROFIT.

35 (III) THE TAX CREDIT UNDER THIS PARAGRAPH MAY BE CLAIMED
36 ONLY FOR MARYLAND-MINED COAL THAT IS CONSUMED IN THE NEW FACILITY OR
37 THE RETROFITTED FACILITY.

38 (IV) TAX CREDITS ALLOWED UNDER THIS PARAGRAPH ARE NOT
39 SUBJECT TO THE LIMITATIONS IMPOSED UNDER PARAGRAPH (2) OF THIS
40 SUBSECTION.

1 (V) A NEW FACILITY OR RETROFITTED FACILITY THAT CLAIMS A
2 CREDIT UNDER THIS PARAGRAPH MAY NOT CLAIM A TAX CREDIT UNDER EITHER
3 PARAGRAPH (2) OF THIS SUBSECTION OR § 10-704.1 OF THIS ARTICLE.

4 (VI) A NEW FACILITY OR RETROFITTED FACILITY SHALL SUBMIT AN
5 APPLICATION TO THE DEPARTMENT FOR CERTIFICATION AS A NEW FACILITY OR
6 RETROFITTED FACILITY BEFORE CLAIMING THE TAX CREDIT AVAILABLE UNDER
7 THIS PARAGRAPH.

8 (VII) A NEW FACILITY OR RETROFITTED FACILITY SHALL OBTAIN
9 AND SUBMIT TO THE APPROPRIATE STATE AGENCY WITH THE TAX RETURN ON
10 WHICH THE CREDIT IS CLAIMED THE CERTIFICATION FROM THE DEPARTMENT THAT
11 THE ENTITY HAS MET THE REQUIREMENTS OF THIS PARAGRAPH AND IS ELIGIBLE
12 FOR THE CREDIT.

13 (4) (I) ON OR BEFORE NOVEMBER 1, 2019, THE DEPARTMENT OF
14 BUSINESS AND ECONOMIC DEVELOPMENT SHALL REPORT TO THE SENATE BUDGET
15 AND TAXATION COMMITTEE AND THE HOUSE COMMITTEE ON WAYS AND MEANS ON
16 THE MARYLAND-MINED COAL TAX CREDIT AVAILABLE UNDER PARAGRAPH (2) OF
17 THIS SUBSECTION AND § 10-704.1 OF THIS ARTICLE.

18 (II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS
19 PARAGRAPH SHALL INCLUDE:

20 1. RECOMMENDATIONS AS TO WHETHER THE
21 MARYLAND-MINED COAL TAX CREDIT SHOULD BE CONTINUED, DISCONTINUED, OR
22 ALTERED;

23 2. AN ANALYSIS OF THE ECONOMIC BENEFITS OF THE
24 MARYLAND-MINED COAL TAX CREDIT, INCLUDING ITS IMPACT ON EMPLOYMENT IN
25 MARYLAND; AND

26 3. AN ANALYSIS OF THE ENVIRONMENTAL IMPACT OF THE
27 MARYLAND-MINED COAL TAX CREDIT, INCLUDING AN EVALUATION OF ANY AIR OR
28 WATER QUALITY ISSUES CREATED BY THE MINING OF MARYLAND COAL.

29 10-704.1.

30 (a) (1) In this section the following words have the meanings indicated.

31 (2) "Cogenerator" means a qualifying cogenerator or qualifying small
32 power producer as determined by the Federal Energy Regulatory Commission under
33 the Public Utility Regulatory Policies Act of 1978.

34 (3) "Electricity supplier" has the meaning stated in § 1-101 of the Public
35 Utility Companies Article.

36 (b) This section does not apply to:

1 (1) a cogenerator or electricity supplier that is subject to the public
2 service company franchise tax; or

3 (2) an electricity supplier that, before July 1, 1999, was not an electric
4 company as defined in § 1-101 of the Public Utility Companies Article as in effect on
5 June 30, 1999, unless the electricity supplier is an affiliate of such an electric
6 company.

7 (c) [A] SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2) OF THIS ARTICLE, A
8 cogenerator or electricity supplier may claim a credit against the State income tax in
9 the amount of \$3 for each ton of Maryland-mined coal that the cogenerator or
10 electricity supplier purchased in the taxable year.

11 (d) (1) A cogenerator or electricity supplier may only apply the credit
12 against the State income tax for the taxable year in which the credit was earned.

13 (2) The amount of the credit may not exceed the State income tax for
14 that taxable year.

15 (3) THE TOTAL AMOUNT OF CREDITS APPROVED UNDER THIS SECTION
16 SHALL BE SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2)(IV), (V), AND (VI) OF THIS
17 ARTICLE.

18 (E) A COGENERATOR OR ELECTRICITY SUPPLIER SHALL SUBMIT AN
19 APPLICATION IN ACCORDANCE WITH § 8-406(B)(2)(III) OF THIS ARTICLE IN ORDER TO
20 CLAIM THE CREDIT AVAILABLE UNDER THIS SECTION.

21 10-726.

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

24 (2) "COGENERATOR" MEANS A QUALIFYING COGENERATOR OR
25 QUALIFYING SMALL POWER PRODUCER AS DETERMINED BY THE FEDERAL
26 REGULATORY COMMISSION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT
27 OF 1978.

28 (3) "ELECTRICITY SUPPLIER" HAS THE MEANING STATED IN § 1-101 OF
29 THE PUBLIC UTILITY COMPANIES ARTICLE.

30 (4) "NEW FACILITY" HAS THE MEANING STATED IN § 8-406(B)(1)(IV) OF
31 THIS ARTICLE.

32 (5) "RETROFITTED FACILITY" HAS THE MEANING STATED IN §
33 8-406(B)(1)(V) OF THIS ARTICLE.

34 (B) THIS SECTION DOES NOT APPLY TO:

35 (1) A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS SUBJECT TO
36 THE PUBLIC SERVICE COMPANY FRANCHISE TAX; OR

1 (2) AN ELECTRICITY SUPPLIER THAT, BEFORE JULY 1, 1999, WAS NOT AN
2 ELECTRIC COMPANY AS DEFINED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES
3 ARTICLE AS IN EFFECT ON JUNE 30, 1999, UNLESS THE ELECTRICITY SUPPLIER IS AN
4 AFFILIATE OF SUCH AN ELECTRIC COMPANY.

5 (C) A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS A NEW FACILITY OR
6 A RETROFITTED FACILITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX AS
7 PROVIDED IN § 8-406(B)(3) OF THIS ARTICLE.

8 (D) A COGENERATOR OR ELECTRICITY SUPPLIER THAT CLAIMS A CREDIT
9 UNDER THIS SECTION MAY NOT CLAIM A TAX CREDIT UNDER § 8-406(B)(2) OF THIS
10 ARTICLE OR § 10-704.1 OF THIS SUBTITLE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,
13 2006.