

HOUSE BILL 464

Q7, M3, C5

(0lr0178)

ENROLLED BILL

— *Ways and Means and Economic Matters/Budget and Taxation* —

Introduced by **The Speaker (By Request – Administration) and Delegates Frick, Doory, Bartlett, Beidle, Bobo, Bronrott, Cardin, Carr, Elmore, Haddaway, Hecht, Levy, Love, Manno, Mathias, Niemann, Reznik, Ross, Shewell, and Stein**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2010**

3 FOR the purpose of extending a certain credit against the State income tax for
4 electricity produced by certain facilities from certain qualified energy resources
5 until a certain date; extending the period in which the Maryland Energy
6 Administration may issue certain qualifying certifications; altering certain
7 requirements for certain credit certificates; prohibiting the Administration from
8 issuing initial credit certificates for less than a certain amount; providing for
9 the refund of the credit under certain circumstances; and generally relating to a
10 certain income tax credit for electricity produced from qualified energy
11 resources.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
2 Article – Tax – General
3 Section 10–720
4 Annotated Code of Maryland
5 (2004 Replacement Volume and 2009 Supplement)

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

8 **Article – Tax – General**

9 10–720.

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

11 (2) “Administration” means the Maryland Energy Administration.

12 (3) (i) Except as provided in subparagraphs (ii) and (iii) of this
13 paragraph, “qualified energy resources” has the meaning stated in § 45(c)(1) of the
14 Internal Revenue Code.

15 (ii) “Qualified energy resources” includes any solid,
16 nonhazardous, cellulosic waste material that is segregated from other waste materials
17 and is derived from:

18 1. any of the following forest–related resources, not
19 including old–growth timber:

20 A. mill residues, except sawdust and wood shavings;

21 B. forest thinnings;

22 C. slash; or

23 D. brush;

24 2. waste pallets, crates, and dunnage and landscape or
25 right–of–way trimmings; or

26 3. agricultural sources, including orchard tree crops,
27 vineyard, grain, legumes, sugar, and other crop by–products or residues.

28 (iii) “Qualified energy resources” includes methane gas or other
29 combustible gases resulting from the decomposition of organic materials from an
30 agricultural operation, or from a landfill or wastewater treatment plant using one or a
31 combination of the following processes:

- 1 1. anaerobic decomposition; or
- 2 2. thermal decomposition.

3 (4) “Qualified Maryland facility” means a facility located in the State
4 that:

5 (i) primarily uses qualified energy resources to produce
6 electricity and is originally placed in service on or after January 1, 2006, but before
7 January 1, ~~[2011]~~ **2016**; or

8 (ii) produces electricity from a qualified energy resource that is
9 co-fired with coal and initially begins co-firing a qualified energy resource on or after
10 January 1, 2006, but before January 1, ~~[2011]~~ **2016**, regardless of when the original
11 facility was placed in service.

12 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an
13 individual or corporation that receives an initial credit certificate from the
14 Administration may claim a credit against the State income tax for a taxable year in
15 an amount equal to 0.85 cents for each kilowatt hour of electricity:

16 (i) produced by the individual or corporation from qualified
17 energy resources at a qualified Maryland facility during the 5-year period specified in
18 the initial credit certificate; and

19 (ii) sold by the individual or corporation to a person other than a
20 related person, within the meaning of § 45 of the Internal Revenue Code, during the
21 taxable year.

22 (2) If the electricity is produced from a qualified energy resource that
23 is co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for
24 each kilowatt hour of electricity produced from the qualified energy resource instead of
25 0.85 cents.

26 (3) The annual tax credit under this subsection may not exceed
27 one-fifth of the maximum amount of credit stated in the initial credit certificate.

28 (c) (1) Subject to the provisions of this subsection, on application by a
29 taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has
30 demonstrated that the taxpayer will within the next 12 months produce electricity
31 from qualified energy resources at a qualified Maryland facility.

32 (2) The initial credit certificate issued under this subsection shall:

33 (i) state the maximum amount of credit that may be claimed by
34 the taxpayer **FOR ELECTRICITY PRODUCED** over a 5-year period;

1 (ii) state the earliest tax year for which the credit may be
2 claimed; and

3 (iii) ~~expire after the 5th consecutive tax year beginning with the~~
4 ~~earliest tax year for which the credit may be claimed~~ **STATE THE 5-YEAR PERIOD**
5 **DURING WHICH ELECTRICITY PRODUCED FROM QUALIFIED ENERGY RESOURCES**
6 **AT THE QUALIFIED MARYLAND FACILITY QUALIFIES FOR THE CREDIT.**

7 (3) The maximum amount of credit stated in the initial credit
8 certificate shall:

9 (i) for an energy producer, be in an amount equal to the lesser
10 of:

11 1. the product of multiplying 5 times the taxpayer's
12 estimated annual tax credit, based on estimated annual energy production, as certified
13 by the Administration; or

14 2. \$2,500,000.

15 (4) The Administration may not issue initial credit certificates for
16 maximum credit amounts in the aggregate totaling more than \$25,000,000.

17 (5) The Administration shall approve all applications that qualify for
18 an initial credit certificate under this subsection on a first-come, first-served basis.

19 (6) If a taxpayer over a 3-year period does not claim on average at
20 least 10% of the maximum credit amount stated in the initial credit certificate, the
21 Administration at its discretion may cancel an amount of the taxpayer's initial credit
22 certificate equal to the product of multiplying:

23 (i) the amount of the credit on average that was not claimed
24 over the 3-year period; and

25 (ii) the remaining number of tax years that the taxpayer is
26 eligible to take the credit.

27 (7) An applicant for an initial credit certificate or a taxpayer whose
28 credits have been canceled under paragraph (6) of this subsection, may appeal a
29 decision by the Administration to the Office of Administrative Hearings in accordance
30 with Title 10, Subtitle 2 of the State Government Article.

31 (8) The Administration may not issue an initial credit certificate after
32 December 31, [2010] **2015**.

1 **(9) THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT**
 2 **CERTIFICATES FOR CREDIT AMOUNTS LESS THAN \$1,000.**

3 (d) If the credit allowed under this section in any taxable year exceeds the
 4 State income tax, ~~any unused credit may be carried forward and applied for~~
 5 ~~succeeding taxable years until the earlier of:~~

6 ~~(1) the full amount of the credit is used; or~~

7 ~~(2) the expiration of the 10th taxable year after the taxable year in~~
 8 ~~which the credit arose~~ **OTHERWISE PAYABLE BY THE CORPORATION OR**
 9 **INDIVIDUAL FOR THAT TAXABLE YEAR, THE CORPORATION OR THE INDIVIDUAL**
 10 **MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.**

11 (e) (1) On January 1, 2007, and each year thereafter, the Administration
 12 shall provide to the Comptroller a list of all taxpayers in the prior tax year that have
 13 been issued an initial credit certificate and shall specify for each taxpayer the earliest
 14 tax year for which the credit may be claimed and the maximum amount of credit
 15 allowed.

16 (2) (i) On or before October 1, 2007, and each year thereafter, the
 17 Comptroller and the Administration jointly shall submit to the Governor and, subject
 18 to § 2-1246 of the State Government Article, to the General Assembly a written report
 19 regarding:

20 1. the number of certifications and taxpayers claiming
 21 the credit under this section;

22 2. the name and physical location of each taxpayer
 23 issued an initial credit certificate;

24 3. the maximum credit amount approved for each
 25 taxpayer;

26 4. the geographical distribution of the credits claimed;
 27 and

28 5. any other available information the Administration
 29 determines to be meaningful and appropriate.

30 (ii) The Comptroller shall ensure that the information is
 31 presented and classified in a manner consistent with the confidentiality of tax return
 32 information.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 34 July 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.