

HOUSE BILL 827

C5, C2, M3

01r2137
CF SB 569

By: **Delegates Hubbard, Barnes, Barve, Beidle, Bobo, Bohanan, Bronrott, Cardin, Carr, V. Clagett, Eckardt, Frush, Hecht, Huckler, Jameson, Krysiak, Kullen, Lafferty, Levy, Love, Morhaim, Niemann, O'Donnell, Ross, Schuh, Sossi, Stein, Taylor, and Wood**

Introduced and read first time: February 9, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Biomass and Biofuels – In-State Production Incentives**

3 FOR the purpose of altering certain provisions relating to net energy metering to allow
4 certain eligible customer–generators generating electricity from cellulosic
5 feedstock to recover certain accrued generation credit for certain electricity fed
6 back to the grid; requiring, on or after certain dates after a certain time and
7 certification that a certain number of gallons of in–State production level of
8 biodiesel is reached, a certain percentage of the total diesel sold by volume in
9 the State be biodiesel produced from feedstock grown in the United States;
10 requiring the Comptroller to adopt certain regulations; authorizing the use of
11 certain renewable diesel in place of biodiesel to satisfy up to a certain
12 percentage of the biodiesel content requirements of this Act; providing that
13 certain biodiesel content requirements apply only if the Comptroller, in
14 consultation with the Department of Transportation and other applicable
15 agencies, makes a certain determination; prohibiting a person from selling or
16 offering for sale gasoline in the State more than a certain period after the
17 in–State production level of cellulosic biofuel reaches a certain level unless the
18 gasoline contains a certain percentage of cellulosic biofuel by volume;
19 authorizing the use of certain renewable fuel in place of cellulosic biofuel to
20 satisfy the cellulosic biofuel content requirements of this Act; providing that the
21 Comptroller, in consultation with the Department of Agriculture and the
22 Department of Transportation, shall suspend or reduce the biodiesel and
23 cellulosic biofuel content requirements under certain circumstances; requiring
24 the Comptroller, after consulting with the Department of Agriculture and the
25 Department of Transportation, to report to the General Assembly on certain
26 matters on or before a certain date each year; requiring the Department of
27 Agriculture, in consultation with certain agencies, to develop a plan for
28 infrastructure development that will support certain requirements once the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 State reaches applicable production levels; requiring the Department of
2 Agriculture to report on the plan, findings, and recommendations to the
3 Governor and the General Assembly on or before a certain date; providing for
4 the application of certain provisions of this Act; defining certain terms; making
5 stylistic changes; and generally relating to net energy metering and motor fuel.

6 BY repealing and reenacting, with amendments,
7 Article – Public Utility Companies
8 Section 7–306
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2009 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Business Regulation
13 Section 10–101(d), (e), (f), and (l)
14 Annotated Code of Maryland
15 (2004 Replacement Volume and 2009 Supplement)

16 BY adding to
17 Article – Business Regulation
18 Section 10–304.2
19 Annotated Code of Maryland
20 (2004 Replacement Volume and 2009 Supplement)

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

23 **Article – Public Utility Companies**

24 7–306.

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

26 (2) “Biomass” means [“qualified] **“QUALIFYING biomass”** as defined in
27 § 7–701 of this title.

28 **(3) “CELLULOSIC FEEDSTOCK” MEANS PLANT MATTER OR**
29 **MATERIAL COMPOSED OF CELLULOSE, HEMICELLULOSE, OR LIGNIN THAT IS**
30 **AVAILABLE ON A RENEWABLE OR RECURRING BASIS, INCLUDING:**

31 **(I) AGRICULTURE WASTES, SUCH AS CORN STOVER, STRAW,**
32 **SEED HULLS, SORGHUM BAGASSE, AND NUTSHELLS;**

33 **(II) HIGH-YIELDING ENERGY CROPS, SUCH AS POPLARS,**
34 **WILLOWS, SWITCHGRASS, ALFALFA, AND ALGAE;**

1 (III) WOOD MATERIALS, SUCH AS WOOD OR BARK, SAWDUST,
2 TIMBER SLASH, AND MILL SCRAP; AND

3 (IV) WASTE MATERIAL, INCLUDING MUNICIPAL WASTE, SUCH
4 AS YARD CLIPPINGS.

5 [(3)] (4) “Eligible customer-generator” means a customer that owns
6 and operates, leases and operates, or contracts with a third party that owns and
7 operates a biomass, micro combined heat and power, solar, or wind electric generating
8 facility that:

9 (i) is located on the customer’s premises or contiguous property;

10 (ii) is interconnected and operated in parallel with an electric
11 company’s transmission and distribution facilities; and

12 (iii) is intended primarily to offset all or part of the customer’s
13 own electricity requirements.

14 [(4)] (5) “Micro combined heat and power” means the simultaneous
15 or sequential production of useful thermal energy and electrical or mechanical power
16 not exceeding 30 kilowatts.

17 [(5)] (6) “Net energy metering” means measurement of the difference
18 between the electricity that is supplied by an electric company and the electricity that
19 is generated by an eligible customer-generator and fed back to the electric company
20 over the eligible customer-generator’s billing period.

21 (b) The General Assembly finds and declares that a program to provide net
22 energy metering for eligible customer-generators is a means to encourage private
23 investment in renewable energy resources, stimulate in-State economic growth,
24 enhance continued diversification of the State’s energy resource mix, and reduce costs
25 of interconnection and administration.

26 (c) An electric company serving an eligible customer-generator shall ensure
27 that the meter installed for net energy metering is capable of measuring the flow of
28 electricity in two directions.

29 (d) The Commission shall require electric utilities to develop a standard
30 contract or tariff for net energy metering and make it available to eligible
31 customer-generators on a first-come, first-served basis until the rated generating
32 capacity owned and operated by eligible customer-generators in the State reaches
33 1,500 megawatts.

34 (e) (1) Except as provided in subsection (g) of this section, a net energy
35 metering contract or tariff shall be identical, in energy rates, rate structure, and

1 monthly charges, to the contract or tariff that the customer would be assigned if the
2 customer were not an eligible customer-generator.

3 (2) (i) A net energy metering contract or tariff may not include
4 charges that would raise the eligible customer-generator's minimum monthly charge
5 above that of customers of the rate class to which the eligible customer-generator
6 would otherwise be assigned.

7 (ii) Charges prohibited by this paragraph include new or
8 additional demand charges, standby charges, customer charges, and minimum
9 monthly charges.

10 (f) (1) The electric company shall calculate net energy metering in
11 accordance with this subsection.

12 (2) Net energy produced or consumed on a monthly basis shall be
13 measured in accordance with standard metering practices.

14 (3) If electricity supplied by the grid exceeds electricity generated by
15 the eligible customer-generator during a month, the eligible customer-generator shall
16 be billed for the net energy supplied in accordance with subsection (e) of this section.

17 (4) If electricity generated by the eligible customer-generator exceeds
18 the electricity supplied by the grid, the eligible customer-generator shall be required
19 to pay only customer charges for that month in accordance with subsection (e) of this
20 section.

21 (5) (i) An eligible customer-generator under paragraph (4) of this
22 subsection may accrue generation credit for a period not to exceed 12 months.

23 (ii) The electric company shall carry forward a negative
24 kilowatt-hour reading until:

25 1. the eligible customer-generator's consumption of
26 electricity from the grid eliminates the credit; or

27 2. the 12-month accrual period under subparagraph (i)
28 of this paragraph expires.

29 (6) **[Any] EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**
30 **SUBSECTION, ANY** remaining accrued generation credit at the expiration of the
31 12-month accrual period under paragraph (5)(i)2 of this subsection:

32 (i) shall revert to the electric company; and

33 (ii) may not be recovered by the eligible customer-generator.

1 **(7) (I) THIS PARAGRAPH APPLIES TO ELIGIBLE**
2 **CUSTOMER-GENERATORS THAT GENERATE ELECTRICITY FROM CELLULOSIC**
3 **FEEDSTOCK GROWN ON THE CUSTOMER'S PREMISES.**

4 **(II) ANY REMAINING ACCRUED GENERATION CREDIT AT**
5 **THE EXPIRATION OF THE 12-MONTH ACCRUAL PERIOD UNDER PARAGRAPH**
6 **(5)(II)2 OF THIS SUBSECTION:**

7 **1. MAY NOT REVERT TO THE ELECTRIC COMPANY;**
8 **AND**

9 **2. MAY BE RECOVERED BY THE ELIGIBLE**
10 **CUSTOMER-GENERATOR.**

11 (g) (1) For an eligible customer-generator whose facility is sized to
12 produce energy in excess of the eligible customer-generator's annual energy
13 consumption, the Commission:

14 (i) may require the eligible customer-generator to install a dual
15 meter that is capable of measuring the flow of electricity in two directions; and

16 (ii) shall develop a credit formula that:

17 1. excludes recovery of transmission and distribution
18 costs; and

19 2. provides that the credit may be calculated using a
20 method other than a kilowatt-hour basis, including a method that allows a
21 dollar-for-dollar offset of electricity supplied by the grid compared to electricity
22 generated by the eligible customer-generator.

23 (2) In determining whether to require an eligible customer-generator
24 to install a dual meter under paragraph (1)(i) of this subsection, the Commission shall
25 consider the generating capacity of the eligible customer-generator.

26 (h) (1) The generating capacity of an electric generating system used by
27 an eligible customer-generator for net metering may not exceed 2 megawatts.

28 (2) An electric generating system used by an eligible
29 customer-generator for net metering shall meet all applicable safety and performance
30 standards established by the National Electrical Code, the Institute of Electrical and
31 Electronics Engineers, and Underwriters Laboratories.

32 (3) The Commission may adopt by regulation additional control and
33 testing requirements for eligible customer-generators that the Commission
34 determines are necessary to protect public safety and system reliability.

1 (4) An electric company may not require an eligible
2 customer-generator whose electric generating system meets the standards of
3 paragraphs (2) and (3) of this subsection to:

- 4 (i) install additional controls;
- 5 (ii) perform or pay for additional tests; or
- 6 (iii) purchase additional liability insurance.

7 (5) An eligible customer-generator shall own and have title to all
8 renewable energy attributes or renewable energy credits associated with any
9 electricity produced by its electric generating system.

10 (i) On or before February 1 of each year, the Commission shall report to the
11 General Assembly, in accordance with § 2-1246 of the State Government Article, on
12 the status of the net metering program under this section, including:

13 (1) the amount of capacity of electric generating facilities owned and
14 operated by eligible customer-generators in the State by type of energy resource;

15 (2) based on the need to encourage a diversification of the State's
16 energy resource mix to ensure reliability, whether the rated generating capacity limit
17 in subsection (d) of this section should be altered; and

18 (3) other pertinent information.

19 **Article – Business Regulation**

20 10-101.

21 (d) (1) “Gasoline” means a product that:

22 (i) is used as fuel in a spark ignited, internal combustion
23 engine; or

24 (ii) is designated as gasoline by the Comptroller.

25 (2) “Gasoline” includes:

26 (i) casing head gasoline;

27 (ii) absorption gasoline;

28 (iii) other natural gasoline; and

1 (iv) aviation gasoline, as defined in § 9–101(c) of the
2 Tax – General Article.

3 (e) “Motor fuel” means:

4 (1) gasoline; or

5 (2) special fuel.

6 (f) “Motor vehicle” means a vehicle that:

7 (1) is self-propelled;

8 (2) is designed to be operated on a public highway; and

9 (3) is not operated only on rails.

10 (l) (1) “Special fuel” means a product that is usable as fuel in an internal
11 combustion engine.

12 (2) “Special fuel” does not include gasoline.

13 **10–304.2.**

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
15 MEANINGS INDICATED.

16 (2) “BIODIESEL” MEANS A FUEL DERIVED FROM A RENEWABLE
17 SOURCE AND COMPOSED OF MONO-ALKYL ESTERS OF LONG CHAIN FATTY ACIDS
18 DERIVED FROM VEGETABLE OILS OR ANIMAL FATS THAT MEETS THE
19 REQUIREMENTS OF ASTM D 6751 AND ITS SUCCESSORS AND THAT IS
20 MANUFACTURED BY AN ENTITY CERTIFIED BY THE BQ-9000 NATIONAL
21 BIODIESEL ACCREDITATION PROGRAM.

22 (3) “CELLULOSIC BIOFUEL” HAS THE MEANING STATED IN
23 § 211(O)(1)(E) OF THE CLEAN AIR ACT (42 U.S.C. § 7545(O)(1)(E)).

24 (4) (I) “IN-STATE PRODUCTION LEVEL” MEANS THE
25 ANNUALIZED VOLUME OF IN-STATE PRODUCTION OF BIODIESEL OR
26 CELLULOSIC BIOFUEL OVER ANY 3-MONTH PERIOD, AS CERTIFIED BY THE
27 DEPARTMENT OF AGRICULTURE.

28 (II) CERTIFICATION BY THE DEPARTMENT OF
29 AGRICULTURE UNDER THIS PARAGRAPH SHALL BE PUBLISHED IN THE
30 MARYLAND REGISTER.

1 (5) **“RENEWABLE DIESEL” MEANS A DIESEL FUEL SUBSTITUTE**
2 **THAT:**

3 (I) **IS DERIVED FROM NONPETROLEUM RENEWABLE**
4 **RESOURCES;**

5 (II) **IS PRODUCED FROM BIOLOGICAL SOURCES OF OILS;**

6 (III) **HAS AN EMISSIONS PROFILE AT LEAST AS**
7 **ENVIRONMENTALLY PROTECTIVE AS THE BIODIESEL THAT IT REPLACES;**

8 (IV) **IS SUITABLE FOR USE AS A FUEL;**

9 (V) **WHEN INTENDED FOR USE IN MOTOR VEHICLES, IS**
10 **REGISTERED UNDER 40 C.F.R. PART 79 AS A MOTOR VEHICLE FUEL OR FUEL**
11 **ADDITIVE;**

12 (VI) **WHEN INTENDED FOR USE IN NONMOTOR VEHICLE**
13 **APPLICATIONS, IS PROPERLY REGISTERED AS REQUIRED UNDER APPLICABLE**
14 **FEDERAL OR STATE LAW; AND**

15 (VII) **MEETS OTHER STANDARDS ADOPTED BY THE**
16 **COMPTRROLLER.**

17 (6) **“RENEWABLE FUEL” MEANS A GASOLINE SUBSTITUTE OTHER**
18 **THAN CELLULOSIC BIOFUEL THAT:**

19 (I) **IS DERIVED FROM NONPETROLEUM RENEWABLE**
20 **RESOURCES;**

21 (II) **IS REGISTERED UNDER 40 C.F.R. PART 79 AS A MOTOR**
22 **VEHICLE FUEL OR FUEL ADDITIVE;**

23 (III) **IS SUITABLE FOR USE IN GASOLINE ENGINES;**

24 (IV) **HAS AN EMISSIONS PROFILE AT LEAST AS**
25 **ENVIRONMENTALLY PROTECTIVE AS THE CELLULOSIC BIOFUEL THAT IT**
26 **REPLACES; AND**

27 (V) **MEETS OTHER STANDARDS ADOPTED BY THE**
28 **COMPTRROLLER.**

1 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS**
2 **SUBSECTION, ON OR AFTER THE DATES SET BY THE COMPTROLLER BY**
3 **REGULATION THAT ARE MORE THAN 1 YEAR AFTER THE DEPARTMENT OF**
4 **AGRICULTURE CERTIFIES THAT THE IN-STATE PRODUCTION LEVEL OF**
5 **BIODIESEL EQUALS AT LEAST:**

6 **(I) 12,000,000 GALLONS, 2% OF THE TOTAL DIESEL SOLD**
7 **BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK**
8 **GROWN IN THE UNITED STATES;**

9 **(II) 30,000,000 GALLONS, 5% OF THE TOTAL DIESEL SOLD**
10 **BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK**
11 **GROWN IN THE UNITED STATES;**

12 **(III) 55,000,000 GALLONS, 10% OF THE TOTAL DIESEL SOLD**
13 **BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK**
14 **GROWN IN THE UNITED STATES; AND**

15 **(IV) 110,000,000 GALLONS, 20% OF THE TOTAL DIESEL SOLD**
16 **BY VOLUME IN THE STATE MUST BE BIODIESEL PRODUCED FROM FEEDSTOCK**
17 **GROWN IN THE UNITED STATES.**

18 **(2) RENEWABLE DIESEL PRODUCED IN THE STATE MAY BE USED**
19 **IN PLACE OF BIODIESEL TO SATISFY UP TO 25% OF THE BIODIESEL CONTENT**
20 **REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

21 **(3) (I) THE BIODIESEL CONTENT REQUIREMENTS UNDER**
22 **PARAGRAPH (1)(III) AND (IV) OF THIS SUBSECTION SHALL APPLY ONLY IF THE**
23 **COMPTROLLER, IN CONSULTATION WITH THE DEPARTMENT OF**
24 **TRANSPORTATION AND OTHER APPLICABLE AGENCIES, DETERMINES THAT**
25 **MANUFACTURER WARRANTIES WILL NOT BE VOIDED DUE TO THE USE OF**
26 **BIODIESEL BLENDS AT THE REQUIRED PERCENTAGES.**

27 **(II) THE COMPTROLLER SHALL PUBLISH NOTICE OF ITS**
28 **DETERMINATION UNDER THIS PARAGRAPH IN THE MARYLAND REGISTER.**

29 **(4) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT**
30 **SPECIFY THE DATES AND THE MANNER IN WHICH THE BIODIESEL CONTENT**
31 **REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION ARE TO BE MET.**

32 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
33 **SUBSECTION, A PERSON MAY NOT SELL OR OFFER FOR SALE GASOLINE IN THE**
34 **STATE MORE THAN 1 YEAR AFTER THE DEPARTMENT OF AGRICULTURE**
35 **CERTIFIES THAT THE IN-STATE PRODUCTION LEVEL OF CELLULOSIC BIOFUEL**

1 HAS REACHED 100,000,000 GALLONS UNLESS THE GASOLINE CONTAINS AT
2 LEAST 5% CELLULOSIC BIOFUEL BY VOLUME.

3 (2) RENEWABLE FUEL PRODUCED IN THE STATE MAY BE USED IN
4 PLACE OF CELLULOSIC BIOFUEL TO SATISFY UP TO 25% OF THE REQUIREMENTS
5 OF THIS SUBSECTION.

6 (D) THE COMPTROLLER, IN CONSULTATION WITH THE DEPARTMENT
7 OF AGRICULTURE AND THE DEPARTMENT OF TRANSPORTATION, SHALL
8 SUSPEND OR REDUCE THE CONTENT REQUIREMENTS OF SUBSECTIONS (B) AND
9 (C) OF THIS SECTION IF THE CONTENT REQUIREMENTS:

10 (1) WOULD PLACE RETAILERS AT A COMPETITIVE DISADVANTAGE
11 OR CAUSE ECONOMIC HARDSHIP TO CONSUMERS; OR

12 (2) CANNOT BE MET:

13 (I) AS A RESULT OF INSUFFICIENT SUPPLIES OF BIODIESEL
14 OR CELLULOSIC BIOFUEL; OR

15 (II) BECAUSE THE NECESSARY INFRASTRUCTURE,
16 INCLUDING DISTRIBUTION SYSTEMS FOR BIODIESEL AND CELLULOSIC BIOFUEL,
17 DOES NOT EXIST.

18 (E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE COMPTROLLER,
19 AFTER CONSULTING WITH THE DEPARTMENT OF AGRICULTURE AND THE
20 DEPARTMENT OF TRANSPORTATION, SHALL REPORT TO THE GENERAL
21 ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
22 ARTICLE, ON THE STATUS OF THE STATE'S BIODIESEL AND CELLULOSIC
23 BIOFUEL INDUSTRIES AND THE IMPLEMENTATION OF THIS SECTION,
24 INCLUDING:

25 (1) THE ECONOMIC IMPACT OF THE BIODIESEL AND CELLULOSIC
26 BIOFUEL CONTENT REQUIREMENTS;

27 (2) THE INCIDENCE OF PERFORMANCE-RELATED ISSUES THAT
28 MAY HAVE ARISEN DUE TO COLD WEATHER OR BIOFUEL QUALITY;

29 (3) THE NAMES AND LOCATIONS OF BIODIESEL AND CELLULOSIC
30 BIOFUEL PRODUCTION FACILITIES IN THE STATE; AND

31 (4) THE LEVEL OF IN-STATE PRODUCTION OF BIODIESEL AND
32 CELLULOSIC BIOFUEL.

1 SECTION 2. AND BE IT FURTHER ENACTED, That:

2 (a) (1) The Department of Agriculture, in consultation with the
3 Comptroller, the Maryland Energy Administration, the Chesapeake Bay Commission,
4 the Department of Transportation, and the Department of Business and Economic
5 Development, shall develop a plan that includes findings and recommendations for
6 infrastructure development that will support the requirements under § 10-304.2(b)
7 and (c) of the Business Regulation Article, as enacted by Section 1 of this Act, once the
8 State reaches applicable production levels.

9 (2) The plan shall include all aspects of the biofuel supply chain
10 infrastructure, including:

11 (i) Feedstock production: sustainably produced supplies of
12 biofuel feedstocks;

13 (ii) Feedstock logistics: equipment, labor force, harvesting,
14 collection, storage, pre-processing, and transportation operations;

15 (iii) Biofuels production: refining, conversion operations,
16 transportation operations, and storage;

17 (iv) Biofuels distribution: transportation, storage, blending, and
18 dispensing operations; and

19 (v) Biofuels end use infrastructure: storage, retail pump
20 retrofits and upgrades, marketing, consumer demand, compatible vehicles with higher
21 blends of biofuels, and manufacturer warranties.

22 (3) The plan shall include a list of available State and federal funds
23 that may be available for supply chain infrastructure needs through various State or
24 federal programs with the intent to minimize supply chain construction costs and costs
25 of the fuel product. The list should, at a minimum, include:

26 (i) Grants;

27 (ii) Loans, loan guarantees, and leases;

28 (iii) Tax incentives;

29 (iv) Rebates;

30 (v) Fuel discounts;

31 (vi) Technical assistance; and

1 (vii) Funds made available through the federal American
2 Recovery and Reinvestment Act of 2009 or similar legislation.

3 (4) The plan shall include comprehensive and proactive
4 recommendations to ensure public health, safety, and environmental sustainability
5 and natural resource protection, including:

6 (i) Types of feedstocks used;

7 (ii) Location of feedstocks grown;

8 (iii) Removal guidelines for agricultural and forestry cellulosic
9 feedstocks; and

10 (iv) Best management practices needed for sustainable feedstock
11 production.

12 (b) On or before January 1, 2011, the Department of Agriculture shall report
13 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
14 General Assembly on its plan, findings, and recommendations.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2010.