

SENATE BILL 936

Q3, M3, C5

6lr3041
CF HB 1145

By: **Senator Manno**

Introduced and read first time: February 5, 2016

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2016

CHAPTER _____

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2016**

3 FOR the purpose of extending a certain credit against the State income tax for electricity
4 produced by certain facilities from certain qualified energy resources until a certain
5 date; altering the definition of “qualified Maryland facility” for purposes of eligibility
6 for the credit; extending the period in which the Maryland Energy Administration
7 may issue certain qualifying certifications; and generally relating to a certain income
8 tax credit for electricity produced from qualified energy resources.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 10–720
12 Annotated Code of Maryland
13 (2010 Replacement Volume and 2015 Supplement)

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

16 **Article – Tax – General**

17 10–720.

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

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

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.



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

4 (ii) “Qualified energy resources” includes any nonhazardous waste
 5 material that is segregated from other waste materials and is derived from:

6 1. any of the following forest-related resources, not including
 7 old-growth timber:

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

9 B. forest thinnings;

10 C. slash; or

11 D. brush;

12 2. waste pallets, crates, and dunnage and landscape or
 13 right-of-way trimmings; or

14 3. agricultural sources, including, but not limited to, orchard
 15 tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

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

20 1. anaerobic decomposition; or

21 2. thermal decomposition.

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

23 ~~(i)~~ primarily uses qualified energy resources to produce electricity
 24 and is originally placed in service on or after January 1, 2006, but before January 1, [2016]
 25 **2019**, ~~or~~

26 ~~(ii) produces electricity from a qualified energy resource that is~~
 27 ~~co-fired with coal and initially begins co-firing a qualified energy resource on or after~~
 28 ~~January 1, 2006, but before January 1, [2016] 2019, regardless of when the original facility~~
 29 ~~was placed in service.~~

30 (b) (1) Except as provided in ~~paragraphs (2) and (3)~~ **PARAGRAPH (2)** of this
 31 subsection, an individual or corporation that receives an initial credit certificate from the

1 Administration may claim a credit against the State income tax for a taxable year in an
2 amount equal to 0.85 cents for each kilowatt hour of electricity:

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

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

9 ~~(2) If the electricity is produced from a qualified energy resource that is
10 co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for each
11 kilowatt hour of electricity produced from the qualified energy resource instead of 0.85
12 cents.~~

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

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

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

20 (i) state the maximum amount of credit that may be claimed by the
21 taxpayer for electricity produced over a 5-year period;

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

24 (iii) state the 5-year period during which electricity produced from
25 qualified energy resources at the qualified Maryland facility qualifies for the credit.

26 (3) The maximum amount of credit stated in the initial credit certificate
27 shall, for an energy producer, be in an amount equal to the lesser of:

28 (i) the product of multiplying 5 times the taxpayer's estimated
29 annual tax credit, based on estimated annual energy production, as certified by the
30 Administration; or

31 (ii) \$2,500,000.

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

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

3 (6) If a taxpayer over a 3–year period does not claim on average at least
4 10% of the maximum credit amount stated in the initial credit certificate, the
5 Administration at its discretion may cancel an amount of the taxpayer’s initial credit
6 certificate equal to the product of multiplying:

7 (i) the amount of the credit on average that was not claimed over
8 the 3–year period; and

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

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

15 (8) The Administration may not issue an initial credit certificate after
16 December 31, [2015] **2018**.

17 (9) The Administration may not issue initial credit certificates for credit
18 amounts less than \$1,000.

19 (d) If the credit allowed under this section in any taxable year exceeds the State
20 income tax otherwise payable by the corporation or individual for that taxable year, the
21 corporation or the individual may claim a refund in the amount of the excess.

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

26 (2) (i) On or before October 1, 2007, and each year thereafter, the
27 Comptroller and the Administration jointly shall submit to the Governor and, subject to §
28 2–1246 of the State Government Article, to the General Assembly a written report
29 regarding:

30 1. the number of certifications and taxpayers claiming the
31 credit under this section;

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

34 3. the maximum credit amount approved for each taxpayer;

- 1 4. the geographical distribution of the credits claimed; and
2 5. any other available information the Administration
3 determines to be meaningful and appropriate.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2016.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.