

Chapter 594

(Senate Bill 936)

AN ACT concerning

Maryland Clean Energy Incentive Act of 2016

FOR the purpose of extending a certain credit against the State income tax for electricity produced by certain facilities from certain qualified energy resources until a certain date; altering the definition of “qualified Maryland facility” for purposes of eligibility for the credit; extending the period in which the Maryland Energy Administration may issue certain qualifying certifications; altering a certain limitation on the amount of initial credit certificates that the Administration may issue; establishing the Maryland Clean Energy Incentive Tax Credit Reserve Fund; authorizing the Governor to include in the budget bill an appropriation to the Reserve Fund for certain fiscal years; requiring the Comptroller to transfer certain amounts from the Reserve Fund to the General Fund of the State under certain circumstances; and generally relating to a certain income tax credit for electricity produced from qualified energy resources.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–720

Annotated Code of Maryland

(2010 Replacement Volume and 2015 Supplement)

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

Article – Tax – General

10–720.

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

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

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

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

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

- A. mill residues, except sawdust and wood shavings;
 - B. forest thinnings;
 - C. slash; or
 - D. brush;
2. waste pallets, crates, and dunnage and landscape or right-of-way trimmings; or
3. agricultural sources, including, but not limited to, orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

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

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

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

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

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

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

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

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

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

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

(c) (1) Subject to the provisions of this subsection ***AND SUBSECTION (D) OF THIS SECTION***, on application by a taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has demonstrated that the taxpayer will within the next 12 months produce electricity from qualified energy resources at a qualified Maryland facility.

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

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

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

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

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

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

(ii) \$2,500,000.

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

~~(5)~~ **(4)** The Administration shall approve all applications that qualify for an initial credit certificate under this subsection on a first-come, first-served basis.

~~(6)~~ **(5)** If a taxpayer over a 3-year period does not claim on average at least 10% of the maximum credit amount stated in the initial credit certificate, the

Administration at its discretion may cancel an amount of the taxpayer's initial credit certificate equal to the product of multiplying:

- (i) the amount of the credit on average that was not claimed over the 3-year period; and
- (ii) the remaining number of tax years that the taxpayer is eligible to take the credit.

~~(7)~~ **(6)** An applicant for an initial credit certificate or a taxpayer whose credits have been canceled under paragraph ~~(6)~~ **(5)** of this subsection, may appeal a decision by the Administration to the Office of Administrative Hearings in accordance with Title 10, Subtitle 2 of the State Government Article.

~~(8)~~ **(7)** The Administration may not issue an initial credit certificate after December 31, [2015] **2018**.

~~(9)~~ **(8)** The Administration may not issue initial credit certificates for credit amounts less than \$1,000.

(d) **(1)** *IN THIS SUBSECTION, "RESERVE FUND" MEANS THE MARYLAND CLEAN ENERGY INCENTIVE TAX CREDIT RESERVE FUND ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION.*

(2) **(I)** *THERE IS A MARYLAND CLEAN ENERGY INCENTIVE TAX CREDIT RESERVE FUND THAT IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.*

(II) *THE MONEY IN THE RESERVE FUND SHALL BE INVESTED AND REINVESTED BY THE TREASURER, AND INTEREST AND EARNINGS SHALL BE CREDITED TO THE GENERAL FUND.*

(3) **(I)** *EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, FOR ANY FISCAL YEAR, THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING MORE THAN THE AMOUNT APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR IN THE STATE BUDGET AS APPROVED BY THE GENERAL ASSEMBLY.*

(II) *IF THE AGGREGATE CREDIT AMOUNTS UNDER INITIAL CREDIT CERTIFICATES ISSUED IN A FISCAL YEAR TOTAL LESS THAN THE AMOUNT APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR, ANY EXCESS AMOUNT SHALL REMAIN IN THE RESERVE FUND AND MAY BE ISSUED UNDER INITIAL CREDIT CERTIFICATES FOR THE NEXT FISCAL YEAR.*

(III) FOR ANY FISCAL YEAR, IF FUNDS ARE TRANSFERRED FROM THE RESERVE FUND UNDER THE AUTHORITY OF ANY PROVISION OF LAW OTHER THAN UNDER PARAGRAPH (6) OF THIS SUBSECTION, THE MAXIMUM CREDIT AMOUNTS IN THE AGGREGATE FOR WHICH THE ADMINISTRATION MAY ISSUE INITIAL CREDIT CERTIFICATES SHALL BE REDUCED BY THE AMOUNT TRANSFERRED.

(4) FOR EACH OF FISCAL YEARS 2018 AND 2019, THE GOVERNOR MAY INCLUDE IN THE BUDGET BILL AN APPROPRIATION TO THE RESERVE FUND.

(5) NOTWITHSTANDING THE PROVISIONS OF § 7-213 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE GOVERNOR MAY NOT REDUCE AN APPROPRIATION TO THE RESERVE FUND IN THE STATE BUDGET AS APPROVED BY THE GENERAL ASSEMBLY.

(6) (I) EXCEPT AS PROVIDED IN THIS PARAGRAPH, MONEY APPROPRIATED TO THE RESERVE FUND SHALL REMAIN IN THE FUND.

(II) 1. WITHIN 15 DAYS AFTER THE END OF EACH CALENDAR QUARTER, THE ADMINISTRATION SHALL NOTIFY THE COMPTROLLER AS TO EACH FINAL CREDIT CERTIFICATE ISSUED DURING THE QUARTER:

A. THE MAXIMUM CREDIT AMOUNT STATED IN THE INITIAL TAX CREDIT CERTIFICATE FOR THE PRODUCER OF ELECTRICITY FROM QUALIFIED ENERGY RESOURCES AT A QUALIFIED MARYLAND FACILITY; AND

B. THE FINAL CERTIFIED CREDIT AMOUNT FOR THE ELECTRICITY PRODUCER.

2. ON NOTIFICATION THAT A FINAL CREDIT AMOUNT HAS BEEN CERTIFIED, THE COMPTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO THE CREDIT AMOUNT STATED IN THE INITIAL CREDIT CERTIFICATE FOR THE ELECTRICITY PRODUCER FROM THE RESERVE FUND TO THE GENERAL FUND.

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

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

(2) (i) On or before October 1, 2007, and each year thereafter, the Comptroller and the Administration jointly shall submit to the Governor and, subject to §

2-1246 of the State Government Article, to the General Assembly a written report regarding:

1. the number of certifications and taxpayers claiming the credit under this section;
2. the name and physical location of each taxpayer issued an initial credit certificate;
3. the maximum credit amount approved for each taxpayer;
4. the geographical distribution of the credits claimed; and
5. any other available information the Administration determines to be meaningful and appropriate.

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

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

Approved by the Governor, May 19, 2016.