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By: **Senators Middleton, Astle, Brinkley, DeGrange, Green, Hafer,  
Klausmeier, Stone, and Teitelbaum**

Introduced and read first time: February 4, 2005

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Energy - Taxes - Extension and Expansion of Credit for Renewable Energy**

3 FOR the purpose of extending a certain credit against State income tax for electricity  
4 produced from certain qualified resources; altering the types of qualified  
5 resources eligible for the credit; allowing for the credit to be used in addition to  
6 a certain federal tax credit; making the State income tax credit transferable to  
7 certain nonrelated third parties; and generally relating to a certain income tax  
8 credit for electricity produced from certain qualified resources.

9 BY repealing and reenacting, with amendments,

10 Article - Tax - General

11 Section 10-720

12 Annotated Code of Maryland

13 (2004 Replacement Volume)

14 **Preamble**

15 WHEREAS, Estimates indicate that over the next 20 years, America's oil  
16 consumption will increase by 33%, natural gas consumption by well over 50%, and  
17 demand for electricity will rise by 45% resulting in a projected need of between 1,300  
18 and 1,900 new electric plants; and

19 WHEREAS, Maryland's energy policy should encourage a clean and diverse  
20 portfolio of domestic energy supplies in order to help ensure that future generations of  
21 Marylanders have access to the energy they need at stable prices; and

22 WHEREAS, Renewable energy production in the State of Maryland offers  
23 promise in helping to advance the State's efforts to improve the Chesapeake Bay and  
24 the air we breathe, enhance the economic viability of Maryland's rural  
25 resource-based industries, and provide needed energy production from clean,  
26 domestically produced "green" energy fuel sources; and

27 WHEREAS, These renewable sources of energy - naturally occurring sources  
28 of energy, such as the sun, the wind, and biomass - are abundant, often have less

1 impact on the environment than conventional sources, provide a reliable source of  
 2 energy at a stable price, and can generate income for farmers, landowners, and others  
 3 who harness them; and

4 WHEREAS, Maryland has been a nationally recognized environmental leader  
 5 as evidenced by its legislative and administrative action in 2000 to promote  
 6 renewable energy production; and

7 WHEREAS, This Act is an initiative by the State of Maryland to advance an  
 8 energy policy that is rooted in its long-standing environmental efforts to help restore  
 9 the Chesapeake Bay and its ongoing economic-related efforts to create opportunities  
 10 for rural Maryland and is designed to help secure the State's future energy needs  
 11 through domestic energy production at stable prices; now, therefore,

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

14 **Article - Tax - General**

15 10-720.

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

17 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this  
 18 paragraph, "qualified energy resources" has the meaning stated in [§ 45] § 45(C)(1) of  
 19 the Internal Revenue Code.

20 (ii) "Qualified energy resources" includes any solid, nonhazardous,  
 21 cellulosic waste material that is segregated from other waste materials and is derived  
 22 from:

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

25 A. mill residues;

26 B. pre-commercial thinnings;

27 C. slash; or

28 D. brush;

29 2. waste pallets, crates, and dunnage and landscape or  
 30 right-of-way trimmings, not including unsegregated municipal solid waste and  
 31 post-consumer waste paper; or

32 3. agricultural sources, including orchard tree crops,  
 33 vineyard, grain, legumes, sugar, and other crop by-products or residues.

1 (iii) "Qualified energy resources" includes methane gas OR OTHER  
2 COMBUSTIBLE GASES resulting from the [anaerobic] decomposition of organic  
3 materials [in] FROM AN AGRICULTURAL OPERATION, OR FROM a landfill or  
4 wastewater treatment plant USING ONE OR A COMBINATION OF THE FOLLOWING  
5 PROCESSES:

6 1. ANAEROBIC DECOMPOSITION; OR

7 2. THERMAL DECOMPOSITION.

8 (3) [(i) Except as provided in subparagraph (ii) of this paragraph,  
9 "qualified] "QUALIFIED Maryland facility" means a facility located in the State that:

10 [1.] (I) primarily uses qualified energy resources to produce  
11 electricity and is originally placed in service on or after January 1, [2001] 2005, but  
12 before January 1, [2005] 2013; or

13 [2.] (II) produces electricity from a qualified energy resource  
14 that is co-fired with coal and initially begins co-firing a qualified energy resource on  
15 or after January 1, [2001] 2005 but before January 1, [2005] 2013, regardless of when  
16 the original facility was placed in service.

17 [(ii) "Qualified Maryland facility" does not include a qualified  
18 facility that claims a tax credit under § 45 of the Internal Revenue Code:

19 1. that is originally placed in service before January 1, 2002;  
20 or

21 2. if § 45 of the Internal Revenue Code is amended to extend  
22 the applicability of the credit under that section, that is originally placed in service  
23 during the time period specified in § 45 of the Internal Revenue Code for eligibility for  
24 the credit under that section.]

25 (b) (1) Except as provided in paragraph (2) of this subsection, an individual  
26 or corporation may claim a credit against the State income tax for a taxable year in an  
27 amount equal to 0.85 cents for each kilowatt hour of electricity:

28 (i) produced by the individual or corporation from qualified energy  
29 resources at a qualified Maryland facility during the 10-year period beginning on:

30 1. the date the facility was originally placed in service; or

31 2. in the case of a facility that produces electricity from a  
32 qualified energy resource that is co-fired with coal, the date of the initial co-firing;  
33 and

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

1 (2) If the electricity is produced from a qualified energy resource that is  
2 co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for each  
3 kilowatt hour of electricity produced from the qualified energy resource instead of  
4 0.85 cents.

5 (c) If the credit allowed under this section exceeds the State income tax, any  
6 unused credit may be carried forward and applied for succeeding taxable years until  
7 the earlier of:

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

9 (2) the expiration of the 10th taxable year after the taxable year in  
10 which the credit arose.

11 (D) (1) THE AMOUNT OF THE CREDIT ALLOWED, BUT NOT USED, SHALL BE  
12 FREELY TRANSFERABLE AT ANY TIME DURING THE 10 YEARS FOLLOWING THE YEAR  
13 OF QUALIFICATION.

14 (2) ANY PERSON TO WHOM OR TO WHICH A TAX CREDIT IS  
15 TRANSFERRED SHALL HAVE ONLY THE RIGHTS TO CLAIM AND USE THE CREDIT  
16 UNDER THE TERMS THAT WOULD HAVE APPLIED TO THE ENTITY THAT  
17 TRANSFERRED THE TAX CREDIT.

18 (3) (I) THE PROVISIONS OF THIS SUBSECTION DO NOT LIMIT THE  
19 ABILITY OF A TAX CREDIT TRANSFEREE TO REDUCE THE TAX LIABILITY OF THE  
20 TRANSFEREE, REGARDLESS OF THE ACTUAL TAX LIABILITY OF THE TAX CREDIT  
21 TRANSFEROR, FOR THE RELEVANT TAXABLE PERIOD.

22 (II) THE TRANSFEROR INITIALLY ALLOWED THE CREDIT AND ANY  
23 SUBSEQUENT TRANSFEREES SHALL JOINTLY FILE A COPY OF ANY WRITTEN  
24 TRANSFER AGREEMENT WITH THE COMPTROLLER WITHIN 30 DAYS OF THE  
25 TRANSFER.

26 (III) THE WRITTEN AGREEMENT SHALL CONTAIN THE NAME,  
27 ADDRESS, AND TAXPAYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER  
28 OF THE PARTIES TO THE TRANSFER, THE AMOUNT OF THE CREDIT BEING  
29 TRANSFERRED, THE YEAR THE CREDIT WAS ORIGINALLY ALLOWED TO THE  
30 TRANSFEROR, AND THE TAX YEAR OR YEARS FOR WHICH THE CREDIT MAY BE  
31 CLAIMED.

32 (IV) THE COMPTROLLER MAY ADOPT REGULATIONS TO ALLOW  
33 VERIFICATION OF THE VALIDITY AND TIMELINESS OF THE TAX CREDIT CLAIMED ON  
34 A TAX RETURN UNDER THIS SUBSECTION BUT MAY NOT ADOPT ANY REGULATIONS  
35 THAT UNDULY RESTRICT OR HINDER THE TRANSFERS OF THE TAX CREDIT.

36 (4) AT THE ELECTION OF THE TAXPAYER, THE TAX CREDIT ALLOWED BY  
37 THIS SUBSECTION MAY BE CLAIMED AS A PAYMENT OF TAX, A PREPAYMENT OF TAX,  
38 OR A PAYMENT OF ESTIMATED TAX.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect July 1, 2005.