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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2006**

3 FOR the purpose of providing a certain credit against the State income tax for
4 electricity produced from certain qualified resources for a certain time period;
5 altering the types of qualified resources eligible for the credit; making certain
6 energy producers and energy aggregators or brokers eligible for a certain tax
7 credit under certain circumstances; requiring the Maryland Energy
8 Administration to issue an initial credit certificate to certain taxpayers for a
9 certain time period and under certain circumstances; prohibiting initial credit
10 certificates from exceeding a certain maximum amount; authorizing the
11 Administration to cancel initial credit certificates of a certain amount under
12 certain circumstances; authorizing certain taxpayers to appeal certain decisions;
13 allowing for the tax credit to be used in addition to a certain federal tax credit;
14 making the State income tax credit refundable under certain circumstances;
15 requiring the Administration to provide certain information to the Comptroller;
16 requiring the Administration and the Comptroller to jointly submit a certain
17 report to the Governor and General Assembly; defining certain terms; and
18 generally relating to a certain income tax credit for electricity produced from
19 certain qualified resources.

20 BY repealing and reenacting, with amendments,
21 Article - Tax - General
22 Section 10-720
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2005 Supplement)

25 Preamble

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

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

6 WHEREAS, These renewable sources of energy - naturally occurring sources of
7 energy, such as the sun, the wind, and biomass - are abundant, often have less impact
8 on the environment than conventional sources, provide a reliable source of energy at
9 a stable price, and can generate income for farmers, landowners, and others who
10 harness them; and

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

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

18 **Article - Tax - General**

19 10-720.

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

21 (2) "ADMINISTRATION" MEANS THE MARYLAND ENERGY
22 ADMINISTRATION.

23 (3) "QUALIFIED ENERGY AGGREGATOR OR BROKER" MEANS A PRIVATE
24 ENERGY AGGREGATOR OR BROKER LICENSED BY THE PUBLIC SERVICE COMMISSION
25 THAT:

26 (I) PURCHASES ELECTRICITY PRODUCED FROM QUALIFIED
27 ENERGY RESOURCES AT A QUALIFIED MARYLAND FACILITY; AND

28 (II) SELLS THE ELECTRICITY TO AN ENERGY CONSUMER LOCATED
29 IN MARYLAND.

30 [(2)] (4) (i) Except as provided in subparagraphs (ii) and (iii) of this
31 paragraph, "qualified energy resources" has the meaning stated in [§ 45] § 45(C)(1) of
32 the Internal Revenue Code.

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

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

- 1 A. mill residues, EXCEPT SAWDUST AND WOOD SHAVINGS;
- 2 B. [pre-commercial] FOREST thinnings;
- 3 C. slash; or
- 4 D. brush;
- 5 2. waste pallets, crates, and dunnage and landscape or
- 6 right-of-way trimmings[, not including unsegregated municipal solid waste and
- 7 post-consumer waste paper]; or
- 8 3. agricultural sources, including orchard tree crops,
- 9 vineyard, grain, legumes, sugar, and other crop by-products or residues.

10 (iii) "Qualified energy resources" includes methane gas OR OTHER

11 COMBUSTIBLE GASES resulting from the [anaerobic] decomposition of organic

12 materials [in] FROM AN AGRICULTURAL OPERATION, OR FROM a landfill or

13 wastewater treatment plant USING ONE OR A COMBINATION OF THE FOLLOWING

14 PROCESSES:

- 15 1. ANAEROBIC DECOMPOSITION; OR
- 16 2. THERMAL DECOMPOSITION.

17 [(3)] (5) [(i) Except as provided in subparagraph (ii) of this paragraph,

18 "qualified] "QUALIFIED Maryland facility" means a facility located in the State that:

19 [1.] (I) primarily uses qualified energy resources to produce

20 electricity and is originally placed in service on or after January 1, [2001] 2006, but

21 before January 1, [2005] 2011; or

22 [2.] (II) produces electricity from a qualified energy resource

23 that is co-fired with coal and initially begins co-firing a qualified energy resource on

24 or after January 1, [2001] 2006, but before January 1, [2005] 2011, regardless of

25 when the original facility was placed in service.

26 [(ii) "Qualified Maryland facility" does not include a qualified

27 facility that claims a tax credit under § 45 of the Internal Revenue Code:

28 1. that is originally placed in service before January 1, 2002;

29 or

30 2. if § 45 of the Internal Revenue Code is amended to extend

31 the applicability of the credit under that section, that is originally placed in service

32 during the time period specified in § 45 of the Internal Revenue Code for eligibility for

33 the credit under that section.]

34 (b) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2) AND (3) of

35 this subsection, an individual or corporation THAT RECEIVES AN INITIAL CREDIT

36 CERTIFICATE FROM THE ADMINISTRATION may claim a credit against the State

1 income tax for a taxable year in an amount equal to 0.85 cents for each kilowatt hour
2 of electricity:

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

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

6 2. in the case of a facility that produces electricity from a
7 qualified energy resource that is co-fired with coal, the date of the initial co-firing]
8 SPECIFIED IN THE INITIAL CREDIT CERTIFICATE; and

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

12 (2) If the electricity is produced from a qualified energy resource that is
13 co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for each
14 kilowatt hour of electricity produced from the qualified energy resource instead of
15 0.85 cents.

16 (3) THE ANNUAL TAX CREDIT UNDER THIS SUBSECTION MAY NOT
17 EXCEED ONE-TENTH OF THE MAXIMUM AMOUNT OF CREDIT STATED IN THE INITIAL
18 CREDIT CERTIFICATE.

19 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
20 INDIVIDUAL OR CORPORATION THAT IS A QUALIFIED ENERGY AGGREGATOR OR
21 BROKER AND THAT RECEIVES AN INITIAL CREDIT CERTIFICATE FROM THE
22 ADMINISTRATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX FOR A
23 TAXABLE YEAR IN AN AMOUNT EQUAL TO 0.5 CENTS FOR EACH KILOWATT HOUR OF
24 ELECTRICITY:

25 (I) PRODUCED FROM QUALIFIED ENERGY RESOURCES AT A
26 QUALIFIED MARYLAND FACILITY DURING THE 10-YEAR PERIOD SPECIFIED IN THE
27 INITIAL CREDIT CERTIFICATE;

28 (II) PURCHASED BY THE QUALIFIED ENERGY AGGREGATOR OR
29 BROKER; AND

30 (III) SOLD BY THE QUALIFIED ENERGY AGGREGATOR OR BROKER
31 TO AN ENERGY CONSUMER LOCATED IN MARYLAND, OTHER THAN A RELATED
32 PERSON, WITHIN THE MEANING OF § 45 OF THE INTERNAL REVENUE CODE, DURING
33 THE TAXABLE YEAR.

34 (2) THE ANNUAL TAX CREDIT UNDER THIS SUBSECTION MAY NOT
35 EXCEED ONE-TENTH OF THE MAXIMUM AMOUNT OF CREDIT STATED IN THE INITIAL
36 CREDIT CERTIFICATE.

1 (3) A TAX CREDIT UNDER THIS SUBSECTION MAY BE TAKEN IN
2 ADDITION TO ANY TAX CREDIT TAKEN UNDER SUBSECTION (B) OF THIS SECTION FOR
3 ELECTRICITY PRODUCED FROM QUALIFIED ENERGY RESOURCES.

4 (D) (1) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, ON
5 APPLICATION BY A TAXPAYER, THE ADMINISTRATION SHALL ISSUE AN INITIAL
6 CREDIT CERTIFICATE IF THE TAXPAYER HAS DEMONSTRATED THAT THE TAXPAYER
7 WILL WITHIN THE NEXT 12 MONTHS:

8 (I) PRODUCE ELECTRICITY FROM QUALIFIED ENERGY RESOURCES
9 AT A QUALIFIED MARYLAND FACILITY; OR

10 (II) PURCHASE ELECTRICITY AS A QUALIFIED ENERGY
11 AGGREGATOR OR BROKER.

12 (2) THE INITIAL CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION
13 SHALL:

14 (I) STATE THE MAXIMUM AMOUNT OF CREDIT THAT MAY BE
15 CLAIMED BY THE TAXPAYER OVER A 10-YEAR PERIOD;

16 (II) STATE THE EARLIEST TAX YEAR FOR WHICH THE CREDIT MAY
17 BE CLAIMED; AND

18 (III) EXPIRE AFTER THE 10TH CONSECUTIVE TAX YEAR BEGINNING
19 WITH THE EARLIEST TAX YEAR FOR WHICH THE CREDIT MAY BE CLAIMED.

20 (3) THE MAXIMUM AMOUNT OF CREDIT STATED IN THE INITIAL CREDIT
21 CERTIFICATE SHALL:

22 (I) FOR AN ENERGY PRODUCER, BE IN AN AMOUNT EQUAL TO THE
23 LESSER OF:

24 1. THE PRODUCT OF MULTIPLYING 10 TIMES THE
25 TAXPAYER'S ESTIMATED ANNUAL TAX CREDIT, BASED ON ESTIMATED ANNUAL
26 ENERGY PRODUCTION, AS CERTIFIED BY THE ADMINISTRATION; OR

27 2. \$10,000,000; AND

28 (II) FOR A QUALIFIED ENERGY AGGREGATOR OR BROKER, BE IN AN
29 AMOUNT EQUAL TO THE LESSER OF:

30 1. THE PRODUCT OF MULTIPLYING 10 TIMES THE
31 TAXPAYER'S ESTIMATED ANNUAL TAX CREDIT, BASED ON ESTIMATED ANNUAL
32 ENERGY PURCHASES, AS CERTIFIED BY THE ADMINISTRATION; OR

33 2. \$5,000,000.

34 (4) (I) THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT
35 CERTIFICATES FOR MAXIMUM CREDIT AMOUNTS IN THE AGGREGATE TOTALING
36 MORE THAN \$100,000,000.

1 (II) THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT
2 CERTIFICATES TO QUALIFIED ENERGY AGGREGATORS OR BROKERS TOTALING MORE
3 THAN 10% OF THE LIMIT SPECIFIED IN ITEM (I) OF THIS PARAGRAPH.

4 (5) THE ADMINISTRATION SHALL APPROVE ALL APPLICATIONS THAT
5 QUALIFY FOR AN INITIAL CREDIT CERTIFICATE UNDER THIS SUBSECTION ON A
6 FIRST-COME, FIRST-SERVED BASIS.

7 (6) IF A TAXPAYER OVER A 3-YEAR PERIOD DOES NOT CLAIM ON
8 AVERAGE AT LEAST 5% OF THE MAXIMUM CREDIT AMOUNT STATED IN THE INITIAL
9 CREDIT CERTIFICATE, THE ADMINISTRATION AT ITS DISCRETION MAY CANCEL AN
10 AMOUNT OF THE TAXPAYER'S INITIAL CREDIT CERTIFICATE EQUAL TO THE
11 PRODUCT OF MULTIPLYING:

12 (I) THE AMOUNT OF THE CREDIT ON AVERAGE THAT WAS NOT
13 CLAIMED OVER THE 3-YEAR PERIOD; AND

14 (II) THE REMAINING NUMBER OF TAX YEARS THAT THE TAXPAYER
15 IS ELIGIBLE TO TAKE THE CREDIT.

16 (7) AN APPLICANT FOR AN INITIAL CREDIT CERTIFICATE OR A
17 TAXPAYER WHOSE CREDITS HAVE BEEN CANCELED UNDER PARAGRAPH (6) OF THIS
18 SUBSECTION, MAY APPEAL A DECISION BY THE ADMINISTRATION TO THE OFFICE OF
19 ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE
20 STATE GOVERNMENT ARTICLE.

21 (8) THE ADMINISTRATION MAY NOT ISSUE AN INITIAL CREDIT
22 CERTIFICATE AFTER DECEMBER 31, 2010.

23 [(c)] (E) If the credit allowed under this section IN ANY TAXABLE YEAR
24 exceeds the State income tax[, any unused credit may be carried forward and applied
25 for succeeding taxable years until the earlier of:

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

27 (2) the expiration of the 10th taxable year after the taxable year in
28 which the credit arose] OTHERWISE PAYABLE BY THE INDIVIDUAL OR CORPORATION
29 FOR THAT TAXABLE YEAR, THE INDIVIDUAL OR CORPORATION MAY CLAIM A REFUND
30 IN THE AMOUNT OF THE EXCESS.

31 (F) (1) ON JANUARY 1, 2007, AND EACH YEAR THEREAFTER, THE
32 ADMINISTRATION SHALL PROVIDE TO THE COMPTROLLER A LIST OF ALL TAXPAYERS
33 IN THE PRIOR TAX YEAR THAT HAVE BEEN ISSUED AN INITIAL CREDIT CERTIFICATE
34 AND SHALL SPECIFY FOR EACH TAXPAYER THE EARLIEST TAX YEAR FOR WHICH THE
35 CREDIT MAY BE CLAIMED AND THE MAXIMUM AMOUNT OF CREDIT ALLOWED.

36 (2) (I) ON OR BEFORE OCTOBER 1, 2009, THE COMPTROLLER AND THE
37 ADMINISTRATION JOINTLY SHALL SUBMIT TO THE GOVERNOR AND, SUBJECT TO §
38 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY A
39 WRITTEN REPORT REGARDING:

UNOFFICIAL COPY OF HOUSE BILL 395

- 1 1. THE NUMBER OF CERTIFICATIONS AND TAXPAYERS
2 CLAIMING THE CREDIT UNDER THIS SECTION;
- 3 2. THE NAME AND PHYSICAL LOCATION OF EACH TAXPAYER
4 ISSUED AN INITIAL CREDIT CERTIFICATE;
- 5 3. THE MAXIMUM CREDIT AMOUNT APPROVED FOR EACH
6 TAXPAYER;
- 7 4. THE GEOGRAPHICAL DISTRIBUTION OF THE CREDITS
8 CLAIMED; AND
- 9 5. ANY OTHER AVAILABLE INFORMATION THE
10 ADMINISTRATION DETERMINES TO BE MEANINGFUL AND APPROPRIATE.

11 (II) THE COMPTROLLER SHALL ENSURE THAT THE INFORMATION
12 IS PRESENTED AND CLASSIFIED IN A MANNER CONSISTENT WITH THE
13 CONFIDENTIALITY OF TAX RETURN INFORMATION.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2006.