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CHAPTER \_\_\_\_\_

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 ~~providing for the carryforward of certain tax credits;~~ requiring the  
16 Administration to provide certain information to the Comptroller; requiring the  
17 Administration and the Comptroller to jointly submit a certain report to the  
18 Governor and General Assembly; defining certain terms; and generally relating  
19 to a certain income tax credit for electricity produced from certain qualified  
20 resources.

21 BY repealing and reenacting, with amendments,  
22 Article - Tax - General

1 Section 10-720  
 2 Annotated Code of Maryland  
 3 (2004 Replacement Volume and 2005 Supplement)

4 Preamble

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

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

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

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

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

25 **Article - Tax - General**

26 10-720.

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

28 (2) "ADMINISTRATION" MEANS THE MARYLAND ENERGY  
 29 ADMINISTRATION.

30 ~~(3) "QUALIFIED ENERGY AGGREGATOR OR BROKER" MEANS A PRIVATE~~  
 31 ~~ENERGY AGGREGATOR OR BROKER LICENSED BY THE PUBLIC SERVICE COMMISSION~~  
 32 ~~THAT:~~

33 ~~(I) PURCHASES ELECTRICITY PRODUCED FROM QUALIFIED~~  
 34 ~~ENERGY RESOURCES AT A QUALIFIED MARYLAND FACILITY; AND~~

35 ~~(II) SELLS THE ELECTRICITY TO AN ENERGY CONSUMER LOCATED~~  
 36 ~~IN MARYLAND.~~

1           ~~[(2)]~~ ~~(4)~~ (3) (i)       Except as provided in subparagraphs (ii) and (iii) of  
 2 this paragraph, "qualified energy resources" has the meaning stated in [§ 45] §  
 3 45(C)(1) of the Internal Revenue Code.

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

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

9                               A.       mill residues, EXCEPT SAWDUST AND WOOD SHAVINGS;

10                              B.       [pre-commercial] FOREST thinnings;

11                              C.       slash; or

12                              D.       brush;

13                              2.       waste pallets, crates, and dunnage and landscape or  
 14 right-of-way trimmings[, not including unsegregated municipal solid waste and  
 15 post-consumer waste paper]; or

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

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

23                              1.       ANAEROBIC DECOMPOSITION; OR

24                              2.       THERMAL DECOMPOSITION.

25           ~~[(3)]~~ ~~(5)~~ (4) [(i)       Except as provided in subparagraph (ii) of this  
 26 paragraph, "qualified] "QUALIFIED Maryland facility" means a facility located in the  
 27 State that:

28                              [1.]   (I)       primarily uses qualified energy resources to produce  
 29 electricity and is originally placed in service on or after January 1, [2001] 2006, but  
 30 before January 1, [2005] 2011; or

31                              [2.]   (II)      produces electricity from a qualified energy resource  
 32 that is co-fired with coal and initially begins co-firing a qualified energy resource on  
 33 or after January 1, [2001] 2006, but before January 1, [2005] 2011, regardless of  
 34 when the original facility was placed in service.

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

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

2 or

3 2. if § 45 of the Internal Revenue Code is amended to extend  
4 the applicability of the credit under that section, that is originally placed in service  
5 during the time period specified in § 45 of the Internal Revenue Code for eligibility for  
6 the credit under that section.]

7 (b) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2) AND (3) of  
8 this subsection, an individual or corporation THAT RECEIVES AN INITIAL CREDIT  
9 CERTIFICATE FROM THE ADMINISTRATION may claim a credit against the State  
10 income tax for a taxable year in an amount equal to 0.85 cents for each kilowatt hour  
11 of electricity:

12 (i) produced by the individual or corporation from qualified energy  
13 resources at a qualified Maryland facility during the ~~10-year~~ 5-YEAR period  
14 [beginning on:

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

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

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

22 (2) If the electricity is produced from a qualified energy resource that is  
23 co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for each  
24 kilowatt hour of electricity produced from the qualified energy resource instead of  
25 0.85 cents.

26 (3) THE ANNUAL TAX CREDIT UNDER THIS SUBSECTION MAY NOT  
27 EXCEED ~~ONE-TENTH~~ ONE-FIFTH OF THE MAXIMUM AMOUNT OF CREDIT STATED IN  
28 THE INITIAL CREDIT CERTIFICATE.

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

35 ~~(1) PRODUCED FROM QUALIFIED ENERGY RESOURCES AT A  
36 QUALIFIED MARYLAND FACILITY DURING THE 10-YEAR PERIOD SPECIFIED IN THE  
37 INITIAL CREDIT CERTIFICATE;~~

38 ~~(II) PURCHASED BY THE QUALIFIED ENERGY AGGREGATOR OR  
39 BROKER; AND~~

1                   (III)    ~~SOLD BY THE QUALIFIED ENERGY AGGREGATOR OR BROKER~~  
 2 ~~TO AN ENERGY CONSUMER LOCATED IN MARYLAND, OTHER THAN A RELATED~~  
 3 ~~PERSON, WITHIN THE MEANING OF § 45 OF THE INTERNAL REVENUE CODE, DURING~~  
 4 ~~THE TAXABLE YEAR.~~

5                   (2)    ~~THE ANNUAL TAX CREDIT UNDER THIS SUBSECTION MAY NOT~~  
 6 ~~EXCEED ONE TENTH OF THE MAXIMUM AMOUNT OF CREDIT STATED IN THE INITIAL~~  
 7 ~~CREDIT CERTIFICATE.~~

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

11    ~~(D)~~    (C)    (1)    SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, ON  
 12 APPLICATION BY A TAXPAYER, THE ADMINISTRATION SHALL ISSUE AN INITIAL  
 13 CREDIT CERTIFICATE IF THE TAXPAYER HAS DEMONSTRATED THAT THE TAXPAYER  
 14 WILL WITHIN THE NEXT 12 MONTHS:

15                   (4)    PRODUCE ELECTRICITY FROM QUALIFIED ENERGY RESOURCES  
 16 AT A QUALIFIED MARYLAND FACILITY; ~~OR,~~

17                   (4)    ~~PURCHASE ELECTRICITY AS A QUALIFIED ENERGY~~  
 18 ~~AGGREGATOR OR BROKER.~~

19                   (2)    THE INITIAL CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION  
 20 SHALL:

21                   (I)    STATE THE MAXIMUM AMOUNT OF CREDIT THAT MAY BE  
 22 CLAIMED BY THE TAXPAYER OVER A ~~10-YEAR~~ 5-YEAR PERIOD;

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

25                   (III)   EXPIRE AFTER THE ~~10TH~~ 5TH CONSECUTIVE TAX YEAR  
 26 BEGINNING WITH THE EARLIEST TAX YEAR FOR WHICH THE CREDIT MAY BE  
 27 CLAIMED.

28                   (3)    THE MAXIMUM AMOUNT OF CREDIT STATED IN THE INITIAL CREDIT  
 29 CERTIFICATE SHALL:

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

32                               1.    THE PRODUCT OF MULTIPLYING ~~10~~ 5 TIMES THE  
 33 TAXPAYER'S ESTIMATED ANNUAL TAX CREDIT, BASED ON ESTIMATED ANNUAL  
 34 ENERGY PRODUCTION, AS CERTIFIED BY THE ADMINISTRATION; OR

35                               2.    \$10,000,000; AND \$2,500,000.

1 ~~(H)~~ FOR A QUALIFIED ENERGY AGGREGATOR OR BROKER, BE IN AN  
2 AMOUNT EQUAL TO THE LESSER OF:

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

6 2. ~~\$5,000,000.~~

7 (4) ~~(H)~~ THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT  
8 CERTIFICATES FOR MAXIMUM CREDIT AMOUNTS IN THE AGGREGATE TOTALING  
9 MORE THAN ~~\$100,000,000~~ \$25,000,000.

10 ~~(H)~~ THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT  
11 CERTIFICATES TO QUALIFIED ENERGY AGGREGATORS OR BROKERS TOTALING MORE  
12 THAN 10% OF THE LIMIT SPECIFIED IN ITEM (1) OF THIS PARAGRAPH.

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

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

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

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

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

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

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

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

36 (2) the expiration of the 10th taxable year after the taxable year in  
37 which the credit arose~~} OTHERWISE PAYABLE BY THE INDIVIDUAL OR CORPORATION~~

1 ~~FOR THAT TAXABLE YEAR, THE INDIVIDUAL OR CORPORATION MAY CLAIM A REFUND~~  
2 ~~IN THE AMOUNT OF THE EXCESS.~~

3 ~~(F)~~ (E) (1) ON JANUARY 1, 2007, AND EACH YEAR THEREAFTER, THE  
4 ADMINISTRATION SHALL PROVIDE TO THE COMPTROLLER A LIST OF ALL TAXPAYERS  
5 IN THE PRIOR TAX YEAR THAT HAVE BEEN ISSUED AN INITIAL CREDIT CERTIFICATE  
6 AND SHALL SPECIFY FOR EACH TAXPAYER THE EARLIEST TAX YEAR FOR WHICH THE  
7 CREDIT MAY BE CLAIMED AND THE MAXIMUM AMOUNT OF CREDIT ALLOWED.

8 (2) (I) ON OR BEFORE OCTOBER 1, ~~2009~~ 2007 AND EACH YEAR  
9 THEREAFTER, THE COMPTROLLER AND THE ADMINISTRATION JOINTLY SHALL  
10 SUBMIT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT  
11 ARTICLE, TO THE GENERAL ASSEMBLY A WRITTEN REPORT REGARDING:

12 1. THE NUMBER OF CERTIFICATIONS AND TAXPAYERS  
13 CLAIMING THE CREDIT UNDER THIS SECTION;

14 2. THE NAME AND PHYSICAL LOCATION OF EACH TAXPAYER  
15 ISSUED AN INITIAL CREDIT CERTIFICATE;

16 3. THE MAXIMUM CREDIT AMOUNT APPROVED FOR EACH  
17 TAXPAYER;

18 4. THE GEOGRAPHICAL DISTRIBUTION OF THE CREDITS  
19 CLAIMED; AND

20 5. ANY OTHER AVAILABLE INFORMATION THE  
21 ADMINISTRATION DETERMINES TO BE MEANINGFUL AND APPROPRIATE.

22 (II) THE COMPTROLLER SHALL ENSURE THAT THE INFORMATION  
23 IS PRESENTED AND CLASSIFIED IN A MANNER CONSISTENT WITH THE  
24 CONFIDENTIALITY OF TAX RETURN INFORMATION.

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