

**ENROLLED BILL**

-- Ways and Means/Budget and Taxation --

Introduced by **Garrett County Delegation and Allegany County Delegation**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Tax Credit for Maryland-Mined Coal**

3 FOR the purpose of altering certain credits allowed against the public service  
4 company franchise tax and State income tax for the purchase of  
5 Maryland-mined coal; limiting the credit to the amount approved by the  
6 Department of Assessments and Taxation; limiting the total amount of credits  
7 that the Department may approve for certain calendar years to certain amounts;  
8 ~~allowing a credit against the public service company franchise tax or State~~  
9 ~~income tax for certain new or retrofitted facilities using certain technology that~~  
10 ~~use Maryland-mined coal; requiring the Department of Business and Economic~~  
11 ~~Development to report to certain committees on the economic and~~  
12 ~~environmental impacts of the Maryland-mined coal tax credit~~ prohibiting the  
13 credits from being claimed after a certain date; providing for the application of  
14 this Act; and generally relating to certain credits against ~~the~~ certain taxes for  
15 the purchase of Maryland-mined coal.

16 BY repealing and reenacting, with amendments,

1 Article - Tax - General  
 2 Section 8-406(b) and 10-704.1  
 3 Annotated Code of Maryland  
 4 (2004 Replacement Volume and 2005 Supplement)

5 ~~BY adding to~~  
 6 ~~Article Tax General~~  
 7 ~~Section 10-726~~  
 8 ~~Annotated Code of Maryland~~  
 9 ~~(2004 Replacement Volume and 2005 Supplement)~~

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

12 **Article - Tax - General**

13 8-406.

14 ~~(b) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE~~  
 15 ~~MEANINGS INDICATED.~~

16 ~~(II) "CERTIFIED EMPLOYMENT POSITIONS" MEANS POSITIONS~~  
 17 ~~CERTIFIED BY THE DEPARTMENT AS:~~

18 ~~1. FULL TIME POSITIONS OF INDEFINITE DURATION~~  
 19 ~~REQUIRING AT LEAST 840 HOURS OF AN EMPLOYEE'S TIME DURING AT LEAST 24~~  
 20 ~~WEEKS IN A 6 MONTH PERIOD;~~

21 ~~2. PAYING AT LEAST 150% OF THE FEDERAL MINIMUM WAGE;~~

22 ~~3. LOCATED IN MARYLAND;~~

23 ~~4. NEWLY CREATED, AS A RESULT OF THE ESTABLISHMENT~~  
 24 ~~OF A NEW FACILITY IN A SINGLE LOCATION IN MARYLAND; AND~~

25 ~~5. FILLED.~~

26 ~~(III) "CERTIFIED EXPENSES" MEANS COSTS CERTIFIED BY THE~~  
 27 ~~DEPARTMENT AS DIRECTLY RELATED TO:~~

28 ~~1. THE ACQUISITION, CONSTRUCTION, AND INSTALLATION~~  
 29 ~~OF EQUIPMENT DESIGNED TO REDUCE THE LEVEL OF AIR OR WATER POLLUTION~~  
 30 ~~RELEASED AS A RESULT OF THE OPERATION OF A RETROFITTED FACILITY; OR~~

31 ~~2. THE CONSTRUCTION OF A NEW FACILITY, INCLUDING~~  
 32 ~~OBLIGATIONS INCURRED FOR MATERIALS, LABOR, CONTRACTORS,~~  
 33 ~~SUBCONTRACTORS, OR BUILDERS AND THE COSTS OF ACQUIRING LAND OR RIGHTS~~  
 34 ~~IN LAND.~~

1 (IV) "NEW FACILITY" MEANS A FACILITY LOCATED IN MARYLAND  
 2 THAT:  
 3 1. USES MARYLAND MINED COAL TO GENERATE ENERGY;  
 4 2. IS NOT A RETROFITTED FACILITY;  
 5 3. IS CONSTRUCTED AFTER JANUARY 1, 2007, AT A COST OF  
 6 NOT LESS THAN \$350,000,000 IN CERTIFIED EXPENSES;  
 7 4. RESULTS IN THE CREATION OF AT LEAST 50 CERTIFIED  
 8 EMPLOYMENT POSITIONS; AND  
 9 5. IS DESIGNED TO EXCEED THE AIR EMISSION STANDARDS  
 10 REQUIRED IN BOTH STATE AND FEDERAL LAWS AND REGULATIONS IN EFFECT AT  
 11 THE TIME THE FACILITY BEGINS OPERATIONS.

12 (V) "RETROFITTED FACILITY" MEANS AN EXISTING FACILITY  
 13 LOCATED IN MARYLAND THAT INSTALLS OR IMPROVES ITS POLLUTION CONTROL  
 14 EQUIPMENT IF:

15 1. THE INSTALLATION OR IMPROVEMENT OCCURS AFTER  
 16 JANUARY 1, 2007, AT A COST OF NOT LESS THAN \$100,000,000 IN CERTIFIED EXPENSES;  
 17 AND

18 2. THE FACILITY IS DESIGNED TO EXCEED THE AIR  
 19 EMISSION STANDARDS REQUIRED IN BOTH STATE AND FEDERAL LAWS AND  
 20 REGULATIONS IN EFFECT AT THE TIME THE FACILITY BEGINS OPERATIONS AFTER  
 21 INSTALLATION OR IMPROVEMENT OF THE POLLUTION CONTROL EQUIPMENT.

22 (b) (2) (1) (I) [A] SUBJECT TO THE LIMITATIONS OF THIS PARAGRAPH  
 23 SUBSECTION, A public service company, including any multijurisdictional public  
 24 service company, may claim a credit against the public service company franchise tax  
 25 in the amount of \$3 for each ton of Maryland-mined coal that the public service  
 26 company purchased in the calendar year.

27 (ii) The credit under this subsection may not be claimed for  
 28 Maryland-mined coal purchased in a calendar year beginning after December 31,  
 29 2020.

30 (2) (i) This paragraph applies only to credits claimed under this  
 31 subsection for calendar years beginning on or after January 1, 2007.

32 (II) THE CREDIT UNDER THIS SUBSECTION MAY NOT BE CLAIMED  
 33 FOR MARYLAND-MINED COAL PURCHASED IN A CALENDAR YEAR BEGINNING AFTER  
 34 DECEMBER 31, 2020.

35 (2) (I) THIS PARAGRAPH APPLIES ONLY TO CREDITS CLAIMED UNDER  
 36 THIS SUBSECTION FOR CALENDAR YEARS BEGINNING ON OR AFTER JANUARY 1,  
 37 2007.

1 (II) THE AMOUNT CLAIMED AS A CREDIT UNDER THIS PARAGRAPH  
2 SUBSECTION MAY NOT EXCEED THE AMOUNT APPROVED BY THE DEPARTMENT  
3 UNDER THIS PARAGRAPH.

4 (III) BY JANUARY 15 OF THE CALENDAR YEAR FOLLOWING THE END  
5 OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED COAL WAS PURCHASED,  
6 A PUBLIC SERVICE COMPANY, OR A COGENERATOR OR ELECTRICITY SUPPLIER AS  
7 DEFINED IN § 10-704.1 OF THIS ARTICLE, SHALL SUBMIT AN APPLICATION TO THE  
8 DEPARTMENT FOR APPROVAL OF THE CREDIT ALLOWED UNDER THIS PARAGRAPH.

9 (IV) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, THE  
10 TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS  
11 PARAGRAPH FOR ANY CALENDAR YEAR MAY NOT EXCEED:

12 ~~1. \$12,000,000 FOR CALENDAR YEAR 2006;~~

13 ~~2.~~ 1. \$9,000,000 FOR A CALENDAR YEAR BEGINNING AFTER  
14 DECEMBER 31, 2006, BUT BEFORE JANUARY 1, ~~2015~~ 2011;

15 ~~3.~~ 2. \$6,000,000 FOR A CALENDAR YEAR BEGINNING AFTER  
16 DECEMBER 31, ~~2014~~ 2010, BUT BEFORE JANUARY 1, ~~2021~~ 2015; OR

17 ~~4.~~ 3. \$3,000,000 FOR A CALENDAR YEAR BEGINNING AFTER  
18 DECEMBER 31, ~~2020~~ 2014, BUT BEFORE JANUARY 1, 2021.

19 (V) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, IF THE  
20 TOTAL AMOUNT OF CREDITS APPLIED FOR IN ANY CALENDAR YEAR UNDER THIS  
21 PARAGRAPH EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (IV) OF  
22 THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS  
23 PARAGRAPH FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF  
24 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

25 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED  
26 UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH; AND

27 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL  
28 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE  
29 CALENDAR YEAR.

30 (VI) 1. OF THE TOTAL CREDITS APPROVED FOR ANY CALENDAR  
31 YEAR BEGINNING AFTER DECEMBER 31, 2006, BUT BEFORE JANUARY 1, 2021, THE  
32 DEPARTMENT SHALL RESERVE \$2,250,000 OF THE CREDITS FOR PURCHASES OF  
33 MARYLAND-MINED COAL THAT WILL BE USED BY A FACILITY IN MARYLAND.

34 2. IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL  
35 APPLICANTS FOR ANY CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED  
36 COAL THAT WILL BE USED IN MARYLAND EXCEEDS \$2,250,000, THE DEPARTMENT  
37 SHALL APPROVE A CREDIT UNDER THIS PARAGRAPH FOR EACH APPLICANT IN AN  
38 AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR BY  
39 THE APPLICANT TIMES A FRACTION:

1                   A.       THE NUMERATOR OF WHICH IS \$2,250,000; AND

2                   B.       THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL  
3 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE  
4 CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED COAL THAT WILL BE  
5 USED IN MARYLAND.

6                   (VII)   ON OR BEFORE FEBRUARY 15 OF THE CALENDAR YEAR  
7 FOLLOWING THE END OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED  
8 COAL WAS PURCHASED, THE DEPARTMENT SHALL CERTIFY TO EACH APPLICANT  
9 CLAIMING A CREDIT THE AMOUNT OF THE TAX CREDITS APPROVED BY THE  
10 DEPARTMENT FOR THAT APPLICANT UNDER THIS PARAGRAPH.

11                 ~~(3)    (†)    A NEW FACILITY OR RETROFITTED FACILITY THAT BURNS  
12 MARYLAND-MINED COAL MAY CLAIM A CREDIT AGAINST EITHER THE PUBLIC  
13 SERVICE COMPANY FRANCHISE TAX OR THE STATE INCOME TAX IN THE AMOUNT OF  
14 \$3 FOR EACH TON OF MARYLAND-MINED COAL THAT THE FACILITY PURCHASED IN  
15 THE CALENDAR YEAR.~~

16                 ~~(II)   A NEW FACILITY OR A RETROFITTED FACILITY MAY CLAIM THE  
17 CREDIT PROVIDED FOR UNDER THIS PARAGRAPH FOR A PERIOD OF 10 YEARS FROM  
18 THE TIME THAT THE NEW PLANT BECAME OPERATIONAL OR THE RETROFITTED  
19 FACILITY BEGAN OPERATIONS AFTER ITS RETROFIT.~~

20                 ~~(III)   THE TAX CREDIT UNDER THIS PARAGRAPH MAY BE CLAIMED  
21 ONLY FOR MARYLAND-MINED COAL THAT IS CONSUMED IN THE NEW FACILITY OR  
22 THE RETROFITTED FACILITY.~~

23                 ~~(IV)   TAX CREDITS ALLOWED UNDER THIS PARAGRAPH ARE NOT  
24 SUBJECT TO THE LIMITATIONS IMPOSED UNDER PARAGRAPH (2) OF THIS  
25 SUBSECTION.~~

26                 ~~(V)    A NEW FACILITY OR RETROFITTED FACILITY THAT CLAIMS A  
27 CREDIT UNDER THIS PARAGRAPH MAY NOT CLAIM A TAX CREDIT UNDER EITHER  
28 PARAGRAPH (2) OF THIS SUBSECTION OR § 10-704.1 OF THIS ARTICLE.~~

29                 ~~(VI)   A NEW FACILITY OR RETROFITTED FACILITY SHALL SUBMIT AN  
30 APPLICATION TO THE DEPARTMENT FOR CERTIFICATION AS A NEW FACILITY OR  
31 RETROFITTED FACILITY BEFORE CLAIMING THE TAX CREDIT AVAILABLE UNDER  
32 THIS PARAGRAPH.~~

33                 ~~(VII)   A NEW FACILITY OR RETROFITTED FACILITY SHALL OBTAIN  
34 AND SUBMIT TO THE APPROPRIATE STATE AGENCY WITH THE TAX RETURN ON  
35 WHICH THE CREDIT IS CLAIMED THE CERTIFICATION FROM THE DEPARTMENT THAT  
36 THE ENTITY HAS MET THE REQUIREMENTS OF THIS PARAGRAPH AND IS ELIGIBLE  
37 FOR THE CREDIT.~~

38                 ~~(4)    (†)    ON OR BEFORE NOVEMBER 1, 2019, THE DEPARTMENT OF  
39 BUSINESS AND ECONOMIC DEVELOPMENT SHALL REPORT TO THE SENATE BUDGET  
40 AND TAXATION COMMITTEE AND THE HOUSE COMMITTEE ON WAYS AND MEANS ON~~

~~1 THE MARYLAND MINED COAL TAX CREDIT AVAILABLE UNDER PARAGRAPH (2) OF  
2 THIS SUBSECTION AND § 10-704.1 OF THIS ARTICLE.~~

~~3 (H) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS  
4 PARAGRAPH SHALL INCLUDE:~~

~~5 1. RECOMMENDATIONS AS TO WHETHER THE  
6 MARYLAND MINED COAL TAX CREDIT SHOULD BE CONTINUED, DISCONTINUED, OR  
7 ALTERED;~~

~~8 2. AN ANALYSIS OF THE ECONOMIC BENEFITS OF THE  
9 MARYLAND MINED COAL TAX CREDIT, INCLUDING ITS IMPACT ON EMPLOYMENT IN  
10 MARYLAND; AND~~

~~11 3. AN ANALYSIS OF THE ENVIRONMENTAL IMPACT OF THE  
12 MARYLAND MINED COAL TAX CREDIT, INCLUDING AN EVALUATION OF ANY AIR OR  
13 WATER QUALITY ISSUES CREATED BY THE MINING OF MARYLAND COAL.~~

14 10-704.1.

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

16 (2) "Cogenerator" means a qualifying cogenerator or qualifying small  
17 power producer as determined by the Federal Energy Regulatory Commission under  
18 the Public Utility Regulatory Policies Act of 1978.

19 (3) "Electricity supplier" has the meaning stated in § 1-101 of the Public  
20 Utility Companies Article.

21 (b) This section does not apply to:

22 (1) a cogenerator or electricity supplier that is subject to the public  
23 service company franchise tax; or

24 (2) an electricity supplier that, before July 1, 1999, was not an electric  
25 company as defined in § 1-101 of the Public Utility Companies Article as in effect on  
26 June 30, 1999, unless the electricity supplier is an affiliate of such an electric  
27 company.

28 (c) [A] SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2) OF THIS ARTICLE, A  
29 cogenerator or electricity supplier may claim a credit against the State income tax in  
30 the amount of \$3 for each ton of Maryland-mined coal that the cogenerator or  
31 electricity supplier purchased in the taxable year.

32 (d) (1) A cogenerator or electricity supplier may only apply the credit  
33 against the State income tax for the taxable year in which the credit was earned.

34 (2) The amount of the credit may not exceed the State income tax for  
35 that taxable year.

1 (3) THE TOTAL AMOUNT OF CREDITS APPROVED UNDER THIS SECTION  
2 SHALL BE SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2)(IV), (V), AND (VI) OF THIS  
3 ARTICLE.

4 (E) A COGENERATOR OR ELECTRICITY SUPPLIER SHALL SUBMIT AN  
5 APPLICATION IN ACCORDANCE WITH § 8-406(B)(2)(III) OF THIS ARTICLE IN ORDER TO  
6 CLAIM THE CREDIT AVAILABLE UNDER THIS SECTION.

7 ~~10-726.~~

8 (A) ~~(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~  
9 ~~INDICATED.~~

10 ~~(2) "COGENERATOR" MEANS A QUALIFYING COGENERATOR OR~~  
11 ~~QUALIFYING SMALL POWER PRODUCER AS DETERMINED BY THE FEDERAL~~  
12 ~~REGULATORY COMMISSION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT~~  
13 ~~OF 1978.~~

14 ~~(3) "ELECTRICITY SUPPLIER" HAS THE MEANING STATED IN § 1-101 OF~~  
15 ~~THE PUBLIC UTILITY COMPANIES ARTICLE.~~

16 ~~(4) "NEW FACILITY" HAS THE MEANING STATED IN § 8-406(B)(1)(IV) OF~~  
17 ~~THIS ARTICLE.~~

18 ~~(5) "RETROFITTED FACILITY" HAS THE MEANING STATED IN §~~  
19 ~~8-406(B)(1)(V) OF THIS ARTICLE.~~

20 (B) THIS SECTION DOES NOT APPLY TO:

21 (1) A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS SUBJECT TO  
22 THE PUBLIC SERVICE COMPANY FRANCHISE TAX; OR

23 (2) AN ELECTRICITY SUPPLIER THAT, BEFORE JULY 1, 1999, WAS NOT AN  
24 ELECTRIC COMPANY AS DEFINED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES  
25 ARTICLE AS IN EFFECT ON JUNE 30, 1999, UNLESS THE ELECTRICITY SUPPLIER IS AN  
26 AFFILIATE OF SUCH AN ELECTRIC COMPANY.

27 (C) A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS A NEW FACILITY OR  
28 A RETROFITTED FACILITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX AS  
29 PROVIDED IN § 8-406(B)(3) OF THIS ARTICLE.

30 (D) A COGENERATOR OR ELECTRICITY SUPPLIER THAT CLAIMS A CREDIT  
31 UNDER THIS SECTION MAY NOT CLAIM A TAX CREDIT UNDER § 8-406(B)(2) OF THIS  
32 ARTICLE OR § 10-704.1 OF THIS SUBTITLE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,  
35 2006.

