
By: **Senator Hafer**

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Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 24, 2006

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,
 17 Article - Tax - General
 18 Section 8-406(b) and 10-704.1
 19 Annotated Code of Maryland
 20 (2004 Replacement Volume and 2005 Supplement)

21 ~~BY adding to~~
 22 ~~Article Tax General~~
 23 ~~Section 10-726~~
 24 ~~Annotated Code of Maryland~~
 25 ~~(2004 Replacement Volume and 2005 Supplement)~~

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

3 **Article - Tax - General**

4 8-406.

5 ~~(b) (1) (1) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE~~
6 ~~MEANINGS INDICATED.~~

7 ~~(II) "CERTIFIED EMPLOYMENT POSITIONS" MEANS POSITIONS~~
8 ~~CERTIFIED BY THE DEPARTMENT AS:~~

9 ~~1. FULL-TIME POSITIONS OF INDEFINITE DURATION~~
10 ~~REQUIRING AT LEAST 840 HOURS OF AN EMPLOYEE'S TIME DURING AT LEAST 24~~
11 ~~WEEKS IN A 6 MONTH PERIOD;~~

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

13 ~~3. LOCATED IN MARYLAND;~~

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

16 ~~5. FILLED.~~

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

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

22 ~~2. THE CONSTRUCTION OF A NEW FACILITY, INCLUDING~~
23 ~~OBLIGATIONS INCURRED FOR MATERIALS, LABOR, CONTRACTORS,~~
24 ~~SUBCONTRACTORS, OR BUILDERS AND THE COSTS OF ACQUIRING LAND OR RIGHTS~~
25 ~~IN LAND.~~

26 ~~(IV) "NEW FACILITY" MEANS A FACILITY LOCATED IN MARYLAND~~
27 ~~THAT:~~

28 ~~1. USES MARYLAND MINED COAL TO GENERATE ENERGY;~~

29 ~~2. IS NOT A RETROFITTED FACILITY;~~

30 ~~3. IS CONSTRUCTED AFTER JANUARY 1, 2007, AT A COST OF~~
31 ~~NOT LESS THAN \$350,000,000 IN CERTIFIED EXPENSES;~~

32 ~~4. RESULTS IN THE CREATION OF AT LEAST 50 CERTIFIED~~
33 ~~EMPLOYMENT POSITIONS; AND~~

1 ~~5. IS DESIGNED TO EXCEED THE AIR EMISSION STANDARDS~~
 2 ~~REQUIRED IN BOTH STATE AND FEDERAL LAWS AND REGULATIONS IN EFFECT AT~~
 3 ~~THE TIME THE FACILITY BEGINS OPERATIONS.~~

4 ~~(V) "RETROFITTED FACILITY" MEANS AN EXISTING FACILITY~~
 5 ~~LOCATED IN MARYLAND THAT INSTALLS OR IMPROVES ITS POLLUTION CONTROL~~
 6 ~~EQUIPMENT IF:~~

7 ~~1. THE INSTALLATION OR IMPROVEMENT OCCURS AFTER~~
 8 ~~JANUARY 1, 2007, AT A COST OF NOT LESS THAN \$100,000,000 IN CERTIFIED EXPENSES;~~
 9 ~~AND~~

10 ~~2. THE FACILITY IS DESIGNED TO EXCEED THE AIR~~
 11 ~~EMISSION STANDARDS REQUIRED IN BOTH STATE AND FEDERAL LAWS AND~~
 12 ~~REGULATIONS IN EFFECT AT THE TIME THE FACILITY BEGINS OPERATIONS AFTER~~
 13 ~~INSTALLATION OR IMPROVEMENT OF THE POLLUTION CONTROL EQUIPMENT.~~

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

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

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

24 ~~(II) THE AMOUNT CLAIMED AS A CREDIT UNDER THIS PARAGRAPH~~
 25 ~~SUBSECTION MAY NOT EXCEED THE AMOUNT APPROVED BY THE DEPARTMENT~~
 26 ~~UNDER THIS PARAGRAPH.~~

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

32 ~~(IV) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, THE~~
 33 ~~TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS~~
 34 ~~PARAGRAPH FOR ANY CALENDAR YEAR MAY NOT EXCEED:~~

35 ~~1. \$12,000,000 FOR CALENDAR YEAR 2006;~~

36 ~~2. 1. \$9,000,000 FOR A CALENDAR YEAR BEGINNING AFTER~~
 37 ~~DECEMBER 31, 2006, BUT BEFORE JANUARY 1, 2015 2011;~~

1 3. 2. \$6,000,000 ~~\$4,200,000~~ \$6,000,000 FOR A CALENDAR
2 YEAR BEGINNING AFTER DECEMBER 31, ~~2014~~ 2010, BUT BEFORE JANUARY 1, ~~2021~~ 2015;
3 OR

4 4. 3. \$3,000,000 ~~\$2,100,000~~ \$3,000,000 FOR A CALENDAR
5 YEAR BEGINNING AFTER DECEMBER 31, ~~2020~~ 2014, BUT BEFORE JANUARY 1, 2021.

6 (V) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, IF THE
7 TOTAL AMOUNT OF CREDITS APPLIED FOR IN ANY CALENDAR YEAR UNDER THIS
8 PARAGRAPH EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (IV) OF
9 THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS
10 PARAGRAPH FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF
11 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

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

14 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
15 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
16 CALENDAR YEAR.

17 (VI) 1. OF THE TOTAL CREDITS APPROVED FOR ANY CALENDAR
18 YEAR BEGINNING AFTER DECEMBER 31, 2006, BUT BEFORE JANUARY 1, 2021, THE
19 DEPARTMENT SHALL RESERVE ~~\$2,250,000~~ \$2,100,000 OF THE CREDITS FOR PURCHASES
20 OF MARYLAND-MINED COAL THAT WILL BE USED BY A FACILITY IN MARYLAND.

21 2. IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
22 APPLICANTS FOR ANY CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED
23 COAL THAT WILL BE USED IN MARYLAND EXCEEDS ~~\$2,250,000~~ \$2,100,000, THE
24 DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS PARAGRAPH FOR EACH
25 APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT
26 APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

27 A. THE NUMERATOR OF WHICH IS ~~\$2,250,000~~ \$2,100,000; AND

28 B. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
29 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
30 CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED COAL THAT WILL BE
31 USED IN MARYLAND.

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

37 (~~3~~) (~~4~~) ~~A NEW FACILITY OR RETROFITTED FACILITY THAT BURNS~~
38 ~~MARYLAND-MINED COAL MAY CLAIM A CREDIT AGAINST EITHER THE PUBLIC~~
39 ~~SERVICE COMPANY FRANCHISE TAX OR THE STATE INCOME TAX IN THE AMOUNT OF~~

~~1 \$3 FOR EACH TON OF MARYLAND MINED COAL THAT THE FACILITY PURCHASED IN
2 THE CALENDAR YEAR.~~

~~3 (II) A NEW FACILITY OR A RETROFITTED FACILITY MAY CLAIM THE
4 CREDIT PROVIDED FOR UNDER THIS PARAGRAPH FOR A PERIOD OF 10 YEARS FROM
5 THE TIME THAT THE NEW PLANT BECAME OPERATIONAL OR THE RETROFITTED
6 FACILITY BEGAN OPERATIONS AFTER ITS RETROFIT.~~

~~7 (III) THE TAX CREDIT UNDER THIS PARAGRAPH MAY BE CLAIMED
8 ONLY FOR MARYLAND MINED COAL THAT IS CONSUMED IN THE NEW FACILITY OR
9 THE RETROFITTED FACILITY.~~

~~10 (IV) TAX CREDITS ALLOWED UNDER THIS PARAGRAPH ARE NOT
11 SUBJECT TO THE LIMITATIONS IMPOSED UNDER PARAGRAPH (2) OF THIS
12 SUBSECTION.~~

~~13 (V) A NEW FACILITY OR RETROFITTED FACILITY THAT CLAIMS A
14 CREDIT UNDER THIS PARAGRAPH MAY NOT CLAIM A TAX CREDIT UNDER EITHER
15 PARAGRAPH (2) OF THIS SUBSECTION OR § 10-704.1 OF THIS ARTICLE.~~

~~16 (VI) A NEW FACILITY OR RETROFITTED FACILITY SHALL SUBMIT AN
17 APPLICATION TO THE DEPARTMENT FOR CERTIFICATION AS A NEW FACILITY OR
18 RETROFITTED FACILITY BEFORE CLAIMING THE TAX CREDIT AVAILABLE UNDER
19 THIS PARAGRAPH.~~

~~20 (VII) A NEW FACILITY OR RETROFITTED FACILITY SHALL OBTAIN
21 AND SUBMIT TO THE APPROPRIATE STATE AGENCY WITH THE TAX RETURN ON
22 WHICH THE CREDIT IS CLAIMED THE CERTIFICATION FROM THE DEPARTMENT THAT
23 THE ENTITY HAS MET THE REQUIREMENTS OF THIS PARAGRAPH AND IS ELIGIBLE
24 FOR THE CREDIT.~~

~~25 (4) (f) ON OR BEFORE NOVEMBER 1, 2019, THE DEPARTMENT OF
26 BUSINESS AND ECONOMIC DEVELOPMENT SHALL REPORT TO THE SENATE BUDGET
27 AND TAXATION COMMITTEE AND THE HOUSE COMMITTEE ON WAYS AND MEANS ON
28 THE MARYLAND MINED COAL TAX CREDIT AVAILABLE UNDER PARAGRAPH (2) OF
29 THIS SUBSECTION AND § 10-704.1 OF THIS ARTICLE.~~

~~30 (H) THE REPORT REQUIRED UNDER SUBPARAGRAPH (f) OF THIS
31 PARAGRAPH SHALL INCLUDE:~~

~~32 1. RECOMMENDATIONS AS TO WHETHER THE
33 MARYLAND MINED COAL TAX CREDIT SHOULD BE CONTINUED, DISCONTINUED, OR
34 ALTERED;~~

~~35 2. AN ANALYSIS OF THE ECONOMIC BENEFITS OF THE
36 MARYLAND MINED COAL TAX CREDIT, INCLUDING ITS IMPACT ON EMPLOYMENT IN
37 MARYLAND; AND~~

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

4 10-704.1.

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

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

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

11 (b) This section does not apply to:

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

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

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

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

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

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

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

32 ~~10-726.~~

33 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
34 ~~INDICATED.~~

35 ~~(2) "COGENERATOR" MEANS A QUALIFYING COGENERATOR OR~~
36 ~~QUALIFYING SMALL POWER PRODUCER AS DETERMINED BY THE FEDERAL~~

1 ~~REGULATORY COMMISSION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT~~
2 ~~OF 1978.~~

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

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

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

9 (B) ~~THIS SECTION DOES NOT APPLY TO:~~

10 (1) ~~A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS SUBJECT TO~~
11 ~~THE PUBLIC SERVICE COMPANY FRANCHISE TAX; OR~~

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,
24 2006.