Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 395 (Delegate Petzold, *et al.*)
Ways and Means and Economic Matters Budget and Taxation

Maryland Clean Energy Incentive Act of 2006

This bill reauthorizes the clean energy incentive tax credit by: (1) authorizing the Maryland Energy Administration (MEA) to award a total of $25 million in credits until December 31, 2010; (2) altering the types of energy resources that can qualify for the credit; and (3) changing the dates a facility can qualify for the credit if it is originally placed in service or begins co-firing a qualified energy resource on or after January 1, 2006 but before January 1, 2011. The bill provides for the procedures for awarding and claiming credits.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: State revenues could decrease by approximately $1.1 million in FY 2008 due to credits being claimed by windmill and landfill gas projects. Future years reflect estimated amount of qualifying energy production. Expenditures would not be affected.

($ in millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF/SF Rev.	$0	($1.1)	($2.1)	($2.6)	($3.1)
Expenditure	$0	$0	$0	$0	$0
Net Effect	$0	($1.1)	($2.1)	($2.6)	($3.1)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Credits claimed against the corporate income tax would reduce the amount of local highway user revenues distributed to local governments.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill creates a tax credit program administered by MEA for producers of qualified energy resources. MEA can issue a total of $25 million in credits. MEA will issue an initial credit certificate if an applicant will produce a qualified energy resource from a qualified energy facility and will issue credits on a first-come, first-served basis. The credit is for a five-year period and MEA may not issue an initial credit certificate after December 31, 2010. Any initial credit certificate issued by MEA must: (1) state the maximum credit amount that can be claimed over a five-year period; and (2) state the earliest tax year the credit can be claimed. The maximum total value of an initial credit certificate for an energy producer cannot exceed $2.5 million. The amount of initial credit certificate issued by MEA is based on the estimated amount of energy produced or purchased annually by the applicant. The credit can be claimed in each year equal to a maximum of one-fifth of the total value stated in the initial credit certificate. If a taxpayer does not claim on average 10% of the maximum value of the credit over a three-year period MEA can cancel a portion of the remaining credit.

This bill also makes the following changes to the tax credit by: (1) changing the dates a facility can qualify for the credit if it is originally placed in service or begins co-firing a qualified energy resource on or after January 1, 2006 but before January 1, 2011; (2) eliminating the restriction that a taxpayer may not claim the State credit if the taxpayer claims the federal renewable electricity production credit; (3) specifying that facilities that produce energy from sawdust and wood shavings do not qualify for the credit; (4) expanding qualifying facilities to include electricity generated from (a) any combustible gas resulting from thermal decomposition generated from an agricultural operation; and (b) waste material consisting of unsegregated municipal solid waste and post-consumer waste paper; (5) alters existing qualifying resources to include forest thinnings; and (6) clarifies that unless otherwise specified, qualified energy resources has the meaning defined in Section 45 (C) (1) of the Internal Revenue Code (IRC).

Beginning on January 1, 2007, MEA is required to report annually to the Comptroller's Office a list of all taxpayers who were issued an initial credit certificate in the previous tax year. Beginning on October 1, 2007 the Comptroller's Office and MEA are required to report annually specified information about the credit.

Current Law: Qualifying facilities can claim the credit if they were originally placed in service or began co-firing a qualified energy resource on or after January 1, 2001 but before January 1, 2005. If a facility claims the federal renewable electricity production credit, they cannot claim the State credit. The credit is not refundable but can be carried forward 10 years. The amount of the credit is 0.5 cents for each kilowatt hour of electricity produced for each qualifying facility that is co-fired with coal and equal to

0.85 cents for all other facilities. Unless otherwise specified, qualified energy resource has the meaning defined in Section 45 of the IRC.

Background: A federal renewable energy production credit is provided for electricity produced from qualifying renewable energy under Section 45 of the IRC. The electricity produced from these facilities must be sold to an unrelated third party to qualify for this credit. Generally, the credit equals 1.5 cents (adjusted for inflation) per kilowatt hour of electricity produced from these fuel sources during the 10-year period after the qualified facility is placed in service.

After numerous delays, two wind projects located in Western Maryland are likely to begin operating in late 2006 or 2007. The latest estimate is that the 100.5 Clipper project will begin operations in November 30, 2006 with 50 megawatts of capacity and will add another 50 megawatts in September 2007. According to MEA, the Clipper Windpower Criterion Project and Savage Mountain projects have received permitting approval from the State and will produce approximately 247,000 megawatts annually.

Two other wind projects have been proposed in Western Maryland; the Roth Rock (estimated 40 megawatts) and Dan's Rock (50 megawatts). These facilities will likely begin production in 2008. Numerous proposed landfill biogas plants could qualify for the credit, including the Newland Park Landfill project. This project will have an initial capacity of 4 megawatts and will begin operating in late 2006 or 2007. A 30 to 40 megawatt biomass plant fueled by poultry litter has been planned for the Eastern Shore. Additional biomass and solar projects are being proposed, but these projects are in the feasibility not planning phase.

State Fiscal Effect: State revenues could decrease by approximately $1.1 million in fiscal 2008, $2.1 million in fiscal 2009, $2.6 million in fiscal 2010, and $3.1 million in fiscal 2011. This estimate is based on the following facts and assumptions:

- Two wind projects will begin operation in 2007, and two wind projects will begin operation in 2008. Based on estimated capacity, each facility would claim the maximum $500,000 in credits annually.
- Landfill gas projects claim a total of $100,000 in credits annually beginning in 2007.
- A 40 megawatt biomass plant begins operations in 2009 and claims the maximum $500,000 in credits annually.
- An additional qualifying plant begins operations in 2010 and claims the maximum $500,000 in credits annually.

Before commencing operations, any large-scale project would need to receive a Certificate of Public Convenience and Necessity from the Public Service Commission, arrange financing and contracts for the purchase of its energy, and construct the facility. It is assumed that this process will take a minimum of three years. To the extent that additional projects other than the ones identified are constructed, revenue losses could be greater than estimated in fiscal 2010 and 2011. If credits are not carried forward from any prior tax years, however, revenue losses in a fiscal year would not exceed $5 million annually.

MEA reports that it can administer the credit within existing budgeted resources.

Additional Information

Prior Introductions: Similar bills were introduced in the 2005 session as SB 633/HB 1277 and in the 2004 session as HB 1496. SB 633 of 2005 received a favorable with amendments report from the Senate Budget and Taxation Committee. HB 1277 of 2005 passed the House and Senate, but differences in the bills were not reconciled. HB 1496 of 2004 received an unfavorable report from the House Ways and Means Committee.

Cross File: SB 314 (Senator Hafer, *et al.*) – Budget and Taxation.

Information Source(s): Comptroller's Office, Maryland Energy Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2006
ncs/hlb Revised - House Third Reader - April 3, 2006

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