

SENATE BILL 287

Q7, M3, C5

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CF 0lr0178

By: **The President (By Request – Administration) and Senators King, Madaleno, McFadden, Munson, Forehand, Garagiola, Harrington, Klausmeier, Lenett, and Pinsky**

Introduced and read first time: January 22, 2010

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2010**

3 FOR the purpose of extending a certain credit against the State income tax for
4 electricity produced by certain facilities from certain qualified energy resources
5 until a certain date; extending the period in which the Maryland Energy
6 Administration may issue certain qualifying certifications; and generally
7 relating to a certain income tax credit for electricity produced from qualified
8 energy resources.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 10–720
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2009 Supplement)

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

16 **Article – Tax – General**

17 10–720.

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

19 (2) “Administration” means the Maryland Energy Administration.

20 (3) (i) Except as provided in subparagraphs (ii) and (iii) of this
21 paragraph, “qualified energy resources” has the meaning stated in § 45(c)(1) of the
22 Internal Revenue Code.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(ii) “Qualified energy resources” includes any solid, nonhazardous, cellulosic waste material that is segregated from other waste materials and is derived from:

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

A. mill residues, except sawdust and wood shavings;

B. forest thinnings;

C. slash; or

D. brush;

2. waste pallets, crates, and dunnage and landscape or right-of-way trimmings; or

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

(iii) “Qualified energy resources” includes methane gas or other combustible gases resulting from the decomposition of organic materials from an agricultural operation, or from a landfill or wastewater treatment plant using one or a combination of the following processes:

1. anaerobic decomposition; or

2. thermal decomposition.

(4) “Qualified Maryland facility” means a facility located in the State that:

(i) primarily uses qualified energy resources to produce electricity and is originally placed in service on or after January 1, 2006, but before January 1, ~~[2011]~~ **2016**; or

(ii) produces electricity from a qualified energy resource that is co-fired with coal and initially begins co-firing a qualified energy resource on or after January 1, 2006, but before January 1, ~~[2011]~~ **2016**, regardless of when the original facility was placed in service.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an individual or corporation that receives an initial credit certificate from the Administration may claim a credit against the State income tax for a taxable year in an amount equal to 0.85 cents for each kilowatt hour of electricity:

1 (i) produced by the individual or corporation from qualified
2 energy resources at a qualified Maryland facility during the 5-year period specified in
3 the initial credit certificate; and

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

7 (2) If the electricity is produced from a qualified energy resource that
8 is co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for
9 each kilowatt hour of electricity produced from the qualified energy resource instead of
10 0.85 cents.

11 (3) The annual tax credit under this subsection may not exceed
12 one-fifth of the maximum amount of credit stated in the initial credit certificate.

13 (c) (1) Subject to the provisions of this subsection, on application by a
14 taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has
15 demonstrated that the taxpayer will within the next 12 months produce electricity
16 from qualified energy resources at a qualified Maryland facility.

17 (2) The initial credit certificate issued under this subsection shall:

18 (i) state the maximum amount of credit that may be claimed by
19 the taxpayer over a 5-year period;

20 (ii) state the earliest tax year for which the credit may be
21 claimed; and

22 (iii) expire after the 5th consecutive tax year beginning with the
23 earliest tax year for which the credit may be claimed.

24 (3) The maximum amount of credit stated in the initial credit
25 certificate shall:

26 (i) for an energy producer, be in an amount equal to the lesser
27 of:

28 1. the product of multiplying 5 times the taxpayer's
29 estimated annual tax credit, based on estimated annual energy production, as certified
30 by the Administration; or

31 2. \$2,500,000.

32 (4) The Administration may not issue initial credit certificates for
33 maximum credit amounts in the aggregate totaling more than \$25,000,000.

1 (5) The Administration shall approve all applications that qualify for
2 an initial credit certificate under this subsection on a first-come, first-served basis.

3 (6) If a taxpayer over a 3-year period does not claim on average at
4 least 10% of the maximum credit amount stated in the initial credit certificate, the
5 Administration at its discretion may cancel an amount of the taxpayer's initial credit
6 certificate equal to the product of multiplying:

7 (i) the amount of the credit on average that was not claimed
8 over the 3-year period; and

9 (ii) the remaining number of tax years that the taxpayer is
10 eligible to take the credit.

11 (7) An applicant for an initial credit certificate or a taxpayer whose
12 credits have been canceled under paragraph (6) of this subsection, may appeal a
13 decision by the Administration to the Office of Administrative Hearings in accordance
14 with Title 10, Subtitle 2 of the State Government Article.

15 (8) The Administration may not issue an initial credit certificate after
16 December 31, [2010] **2015**.

17 (d) If the credit allowed under this section in any taxable year exceeds the
18 State income tax, any unused credit may be carried forward and applied for
19 succeeding taxable years until the earlier of:

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

21 (2) the expiration of the 10th taxable year after the taxable year in
22 which the credit arose.

23 (e) (1) On January 1, 2007, and each year thereafter, the Administration
24 shall provide to the Comptroller a list of all taxpayers in the prior tax year that have
25 been issued an initial credit certificate and shall specify for each taxpayer the earliest
26 tax year for which the credit may be claimed and the maximum amount of credit
27 allowed.

28 (2) (i) On or before October 1, 2007, and each year thereafter, the
29 Comptroller and the Administration jointly shall submit to the Governor and, subject
30 to § 2-1246 of the State Government Article, to the General Assembly a written report
31 regarding:

32 1. the number of certifications and taxpayers claiming
33 the credit under this section;

34 2. the name and physical location of each taxpayer
35 issued an initial credit certificate;

3. the maximum credit amount approved for each taxpayer;

4. the geographical distribution of the credits claimed;

and

5. any other available information the Administration determines to be meaningful and appropriate.

(ii) The Comptroller shall ensure that the information is presented and classified in a manner consistent with the confidentiality of tax return information.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.