HB 464

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Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 464 (The Speaker, *et al.*) (By Request - Administration)
Ways and Means and Economic Matters Budget and Taxation

Maryland Clean Energy Incentive Act of 2010

This Administration bill extends the termination date of the clean energy incentive tax credit to December 31, 2015. The bill also (1) extends to January 1, 2016, the date by which a facility must begin producing qualified energy in order to claim the credit; (2) prohibits the Maryland Energy Administration (MEA) from issuing an initial credit certificate for less than $1,000; and (3) makes the credit refundable.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: State revenues may decrease by $3.7 million annually beginning in FY 2012. Expenditures are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	$0	($3,714,700)	($3,714,700)	($3,714,700)	($3,714,700)
Expenditure	0	0	0	0	0
Net Effect	$0	($3,714,700)	($3,714,700)	($3,714,700)	($3,714,700)

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

Local Effect: Credits claimed against the corporate income tax will decrease local highway user revenues distributed to local governments. Local revenues are not affected.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Current Law: The Maryland Energy Administration (MEA) can issue a total of $25 million in credits to qualified energy resources. MEA issues an initial credit certificate if an applicant will produce a qualified energy resource from a qualified energy facility and issues 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 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. MEA cannot issue an initial credit certificate for less than $1,000. 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.

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.

Generally, qualified energy resources are as defined in Section 45 (C) (1) of the Internal Revenue Code (IRC) and include wind, solar, geothermal, municipal solid waste, closed- and open-loop biomass, and marine and hydrokinetic renewable energy. Qualified energy resources also include electricity generated from (1) any combustible gas resulting from the decomposition of organic materials from an agricultural operation, or from a landfill or wastewater treatment plant using anaerobic and/or thermal decomposition; or (2) any solid, nonhazardous, cellulosic waste material and derived from (a) specified forest-related resources, not including old-growth timber; (b) waste pallets, crates, and dunnage and landscape or right-of-way trimmings; or (c) agricultural sources.

Beginning on October 1, 2007, the Comptroller's Office and MEA are required to report annually specified information about the credit.

Background:

Federal Renewable Energy Production Credit

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.

The American Recovery and Reinvestment Act of 2009 amended the credit by extending the in-service deadline for most facilities to 2013 and allowing facilities that qualify for the credit to instead claim the federal business energy investment credit or an equivalent cash grant from the U.S. Department of Treasury. The investment credit or grant for eligible technologies is generally equal to 30% of eligible costs.

State Renewable Energy Programs

Under the Renewable Energy Portfolio Standard (RPS) established in State law, an electricity supplier must accumulate renewable energy credits (commodities equal to the renewable energy generation attributes of one megawatt-hour of electricity) created from specified renewable energy sources and equivalent to specified percentages of the supplier's electricity sales. If an electricity supplier does not accumulate enough renewable energy credits to meet the standard, it must pay compliance fees.

RPS was created with the intent of recognizing the economic, environmental, fuel diversity, and security benefits of renewable energy resources, establishing a market for electricity from those resources in Maryland, and lowering consumers' cost for electricity from renewable sources. RPS is implemented by PSC and applies to all retail electricity sales in the State by electricity suppliers, subject to certain exceptions.

Other renewable energy-related policies/efforts in the State include:

- the Maryland Strategic Energy Investment Program (Chapters 127 and 128 of 2008) – established to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy to fuel the State's future prosperity;
- the Maryland Clean Energy Center (Chapter 137 of 2008; launched in January 2009) – established to generally promote and assist the development of the clean energy industry in the State; promote the deployment of clean energy technology in the State; and collect, analyze, and disseminate industry data.

Clean Energy Incentive Tax Credit Program

Through October 2009, MEA has awarded $5.1 million of the $25 million in initial credit certificates. **Exhibit 1** shows the facilities that have been awarded initial credit certificates, the amount of the initial credit certificate, and the total kilowatt hours the facility will produce over a five-year period.

Exhibit 1
Maryland Clean Energy Incentive Tax Credit Program

Project	Location	Initial Credit Certificate	KWh Certified
Landfill Gas	White Marsh	$770,661	90,666,000
Landfill Gas	Newark	1,005,210	118,260,000
Wind	Backbone Mountain Oakland	2,500,000	294,117,647
Small Wind	Mount Airy	255	30,000
Small Wind	East New Market	255	30,000
Landfill Gas	Salisbury	850,000	100,000,000
Small Solar	Saint Inigoes	166	19,510
Small Wind	Parsonburg	770	96,600
Small Solar	Randallstown	191	22,460
Small Solar	Greenbelt	134	15,750
Total		**$5,127,642**	**603,257,967**

These facilities will produce, on average 121 gigawatt hours (121 million KWh) of electricity annually. By comparison, this is about 0.2% of forecasted Maryland energy sales in 2010 and about 1% of the RPS standard set for 2015.

State Revenues: The bill extends the termination date of the clean energy incentive tax credit to December 31, 2015. The bill also extends to January 1, 2016, the date by which a facility must begin producing qualified energy in order to claim the credit. The bill does not increase the total amount of initial credit certificates MEA can award. As a result, general fund revenues may decrease by $3.7 million annually beginning in fiscal 2012.

MEA advises it will certify $6.4 million in credits through the current termination date of the program, which allows an additional $18.6 million in credits to be awarded as a result of extending the credit. MEA advises this can decrease revenues by $3.7 million annually beginning in fiscal 2012. The estimate produced by MEA assumes that the maximum amount of initial credit certificates will be issued in calendar 2011. Legislative Services advises that actual revenue losses may be significantly less and depend on the number of qualifying facilities that begin or continue operations.

The bill also makes the credit refundable. This will accelerate revenue losses as companies claiming the credit are no longer limited by State tax liability. Given the uncertainty over the additional amount of credits MEA will award and the production schedule of qualifying facilities, the amount cannot be accurately estimated. Although the amount may be significant in a fiscal year, the total fiscal impact of the program remains at $25 million.

Additional Information

Prior Introductions: None.

Cross File: SB 287 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

Information Source(s): Comptroller's Office, Maryland Energy Administration, Office of Administrative Hearings, Public Service Commission, Department of Legislative Services

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