

Department of Legislative Services  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 958 (Senator Garagiola)

Budget and Taxation

Ways and Means

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**Maryland Clean Energy Incentive Act - Qualified Energy Resources**

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This bill expands the energy resources that can qualify for the Maryland clean energy incentive tax credit by allowing any nonhazardous waste material that is segregated from other waste materials to qualify as a qualified energy resource. Under current law, the Maryland Energy Administration (MEA) can only approve facilities that use waste materials that are solid and cellulosic.

The bill takes effect July 1, 2011.

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**Fiscal Summary**

**State Effect:** MEA may award a maximum of \$25 million in credits under the current program. To the extent that the bill will allow additional types of facilities to qualify, State revenue losses under the program may be accelerated or increased if MEA would not have otherwise awarded the full amount of credits. Expenditures are not affected.

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

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary/Current Law:** A State income tax credit is available for electricity generated by qualified resources of 0.85 cents per kilowatt hour, and 0.50 cents per kilowatt hour for electricity generated from co-firing a qualified resource with coal if the

facility receives approval from MEA. 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, 2016.

Qualified energy resources are 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 that is segregated from other waste materials 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 including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

The bill will expand the credit to any nonhazardous waste material that is segregated from other waste materials by eliminating the requirement that the waste material must be solid and cellulosic. The bill also clarifies that agricultural sources qualifying for the credit are not limited only to the types of sources explicitly listed.

MEA can issue a total of \$25 million in credits to facilities using qualified energy resources. The credit is taken over a five-year period and MEA may not issue an initial credit certificate after December 31, 2015. The maximum total value of an initial credit certificate for an energy producer cannot exceed \$2.5 million. The amount of the 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. The credit is refundable.

## **Background:**

### *Government Renewable Energy Programs*

The federal government and state and local governments operate a multitude of programs intended to encourage the establishment of a viable renewable energy industry that could eventually meet the nation's energy needs in a cost-effective manner while simultaneously reducing some of the harmful impacts created by fossil fuel energy production. In recent years, there has been increasing focus in the tax code on energy conservation and renewable energy production standards. While the federal Joint Committee on Taxation notes that economists generally agree that the most efficient

means of addressing pollution would be a direct tax on the pollution-causing activities, the more indirect approach of targeting tax credits for certain technologies has been utilized. Considerable debate exists over the efficacy of these programs in reducing greenhouse gas emissions and helping to reduce dependence on fossil fuels as well as concerns over its costs (for example, the federal biofuel tax credits reduced federal receipts by \$6.0 billion in federal fiscal 2009) and potential unintended consequences.

In addition to the Clean Energy Incentive tax credit, the State operates several programs that promote renewable energy production and energy efficiency and conservation including:

- *Renewable Portfolio Standards*: These standards require that renewable energy must comprise specified minimum percentages of Maryland's total electricity supply in each year;
- *Maryland Strategic Energy Investment Fund*: These revenues, generated from the proceeds from the sale of carbon dioxide allowances under the Regional Greenhouse Gas Initiative, provide a majority of funding for State renewable energy projects;
- *Maryland Energy Administration (MEA) Clean Energy Programs*: MEA is currently charged under State law with administering a number of programs aimed at encouraging energy efficiency and renewable energy projects in the State;
- *Maryland Clean Energy Center (MCEC)*: MCEC was established to generally promote and assist the development of the clean energy industry in the State and promote the deployment of clean energy technology in the State;
- *EmPOWER Maryland*: The EmPOWER Maryland Energy Efficiency Act of 2008 (Chapter 131) requires electric companies to procure and provide customers with energy conservation and energy efficiency programs and services that are designed to achieve targeted electricity savings and demand reductions for specified years; and
- *Environmental Trust Fund (ETF)*: ETF was established by Chapter 31 of 1971 to fund electric power plant site evaluation and acquisition and research on environmental and land use consideration associated with power plants.

In addition, several counties provide property tax incentives for renewable energy and energy efficiency, including green building property in Carroll County, high-performance building property in Montgomery County, and solar and geothermal residential property in Prince George's County.

#### *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 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.

*Clean Energy Incentive Tax Credit*

Chapter 493 of 2010 extended the termination date of the clean energy incentive tax credit to December 31, 2015. Chapter 493 also prohibited MEA from issuing an initial credit certificate for less than \$1,000 and made the credit refundable. These changes were effective July 1, 2010.

Through October 2010, MEA has awarded \$5.1 million of the available \$25 million in initial credit certificates. **Exhibit 1** shows the facilities that have been awarded initial credit certificates, the amount each certificate, and the total kilowatt hours the facility will produce over a five-year period. A total of 12 small-scale solar and wind projects have been awarded a credit of less than \$1,000 each; the credits earned and certified energy earned by these projects have been aggregated.

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**Exhibit 1**  
**Maryland Clean Energy Incentive Tax Credit Program**

<u>Project</u>	<u>Location</u>	<u>Initial Credit Certificate</u>	<u>KWh Certified</u>
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
Landfill Gas	Salisbury	850,000	100,000,000
Other	Various	4,192	493,160
<b>Total</b>		<b>\$5,130,063</b>	<b>603,536,807</b>

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MEA advises that the Backbone Mountain wind project rescinded its application and informed MEA that it will resubmit its application under the program as extended by Chapter 493. These facilities earning credits 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.

**State Revenues:** The bill expands the eligible types of energy resources that a facility can use to produce electricity for the clean energy incentive tax credit. The bill does not alter the maximum \$25.0 million in credits that MEA can award under the program. Including the amount of credits expected to be re-awarded to the Backbone Mountain wind project, MEA can award an additional \$19.9 million in credits for facilities that commence operations through calendar 2015.

To the extent the bill allows additional types of facilities to qualify, State revenue losses will be accelerated or increase to the extent that MEA would not have awarded the maximum amount of credits under current law.

The Public Service Commission advises that it is aware of one proposed 120-megawatt facility that could qualify for the credit due to the changes proposed by the bill. This proposed plant, which is not expected to begin operations for three years, could qualify for a credit in excess of the total remaining amount MEA can award. To the extent other facilities can qualify for the credit due to the proposed changes and begin operations sooner, revenue losses may occur sooner.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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ncs/jrb

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