

HOUSE BILL 1145

Q3, M3, C5

6lr3168
CF SB 936

By: **Delegates Turner, Morales, Atterbeary, Barkley, Ebersole, Gutierrez, Haynes, Hill, Hixson, Kaiser, Kelly, Lam, A. Miller, Moon, Pendergrass, Platt, and Reznik**

Introduced and read first time: February 11, 2016

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2016**

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

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 10–720
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2015 Supplement)

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

15 **Article – Tax – General**

16 10–720.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

5 A. mill residues, except sawdust and wood shavings;

6 B. forest thinnings;

7 C. slash; or

8 D. brush;

9 2. waste pallets, crates, and dunnage and landscape or
10 right–of–way trimmings; or

11 3. agricultural sources, including, but not limited to, orchard
12 tree crops, vineyard, grain, legumes, sugar, and other crop by–products or residues.

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

17 1. anaerobic decomposition; or

18 2. thermal decomposition.

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

20 (i) primarily uses qualified energy resources to produce electricity
21 and is originally placed in service on or after January 1, 2006, but before January 1, [2016]
22 **2019**; or

23 (ii) produces electricity from a qualified energy resource that is
24 co–fired with coal and initially begins co–firing a qualified energy resource on or after
25 January 1, 2006, but before January 1, [2016] **2019**, regardless of when the original facility
26 was placed in service.

27 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an
28 individual or corporation that receives an initial credit certificate from the Administration
29 may claim a credit against the State income tax for a taxable year in an amount equal to
30 0.85 cents for each kilowatt hour of electricity:

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

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

11 (3) The annual tax credit under this subsection may not exceed one-fifth
12 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 from
16 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 the
19 taxpayer for electricity produced over a 5-year period;

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

22 (iii) state the 5-year period during which electricity produced from
23 qualified energy resources at the qualified Maryland facility qualifies for the credit.

24 (3) The maximum amount of credit stated in the initial credit certificate
25 shall, for an energy producer, be in an amount equal to the lesser of:

26 (i) the product of multiplying 5 times the taxpayer's estimated
27 annual tax credit, based on estimated annual energy production, as certified by the
28 Administration; or

29 (ii) \$2,500,000.

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

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

1 (6) If a taxpayer over a 3-year period does not claim on average at least
2 10% of the maximum credit amount stated in the initial credit certificate, the
3 Administration at its discretion may cancel an amount of the taxpayer's initial credit
4 certificate equal to the product of multiplying:

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

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

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

13 (8) The Administration may not issue an initial credit certificate after
14 December 31, ~~[2015]~~ **2018**.

15 (9) The Administration may not issue initial credit certificates for credit
16 amounts less than \$1,000.

17 (d) If the credit allowed under this section in any taxable year exceeds the State
18 income tax otherwise payable by the corporation or individual for that taxable year, the
19 corporation or the individual may claim a refund in the amount of the excess.

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

24 (2) (i) On or before October 1, 2007, and each year thereafter, the
25 Comptroller and the Administration jointly shall submit to the Governor and, subject to §
26 2-1246 of the State Government Article, to the General Assembly a written report
27 regarding:

28 1. the number of certifications and taxpayers claiming the
29 credit under this section;

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

32 3. the maximum credit amount approved for each taxpayer;

33 4. the geographical distribution of the credits claimed; and

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

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
6 1, 2016.