

# HOUSE BILL 1145

Q3, M3, C5

6lr3168  
CF SB 936

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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

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Committee Report: Favorable

House action: Adopted

Read second time: March 18, 2016

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## CHAPTER \_\_\_\_\_

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.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

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

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

10 B. forest thinnings;

11 C. slash; or

12 D. brush;

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

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

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

21 1. anaerobic decomposition; or

22 2. thermal decomposition.

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

24 (i) primarily uses qualified energy resources to produce electricity  
25 and is originally placed in service on or after January 1, 2006, but before January 1, [2016]  
26 **2019**; or

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

1 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an  
2 individual or corporation that receives an initial credit certificate from the Administration  
3 may claim a credit against the State income tax for a taxable year in an amount equal to  
4 0.85 cents for each kilowatt hour of electricity:

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

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

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

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

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

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

22 (i) state the maximum amount of credit that may be claimed by the  
23 taxpayer for electricity produced over a 5-year period;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1                                   3.     the maximum credit amount approved for each taxpayer;
- 2                                   4.     the geographical distribution of the credits claimed; and
- 3                                   5.     any other available information the Administration
- 4 determines to be meaningful and appropriate.

5                                   (ii)    The Comptroller shall ensure that the information is presented

6 and classified in a manner consistent with the confidentiality of tax return information.

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

8 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.