

SENATE BILL 809

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By: **Senators Madaleno, Feldman, King, Lee, and Nathan–Pulliam**

Introduced and read first time: February 5, 2016

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit – Renewable Energy Property**

3 FOR the purpose of allowing certain individuals or corporations a credit against the State
4 income tax for a certain percentage of the cost of certain renewable energy property
5 constructed or purchased and placed in service in the State; limiting the amount of
6 the credit for each installation of renewable energy property; limiting the aggregate
7 amount of tax credit certificates that may be issued during a certain period; requiring
8 the credit to be claimed in certain taxable years in a certain manner; authorizing an
9 individual or a corporation to carry over to certain taxable years any excess credit;
10 requiring an individual or a corporation to file an application for a tax credit
11 certificate with the Maryland Energy Administration before placing renewable
12 energy property in service to claim the credit; requiring the application to include
13 certain information; requiring an individual or a corporation claiming the credit to
14 maintain and make available certain records; requiring the Administration to issue
15 tax credit certificates on a first–come, first–served basis; requiring an individual or
16 a corporation that receives a tax credit certificate to place renewable energy property
17 in service within a certain period of time; specifying procedures if an individual or a
18 corporation that receives a tax credit certificate does not place renewable energy
19 property in service within a specified period of time; prohibiting the Administration
20 from issuing a tax credit certificate before a certain date or after a certain date;
21 authorizing the tax credit to be transferred; specifying procedures that apply when
22 the tax credit is transferred; authorizing the tax credit to be allocated among
23 partners, members, or shareholders of certain business entities; authorizing the
24 lessor and the lessee of renewable energy property to elect to treat a lease of
25 renewable energy property as a sale of the property to the lessee for tax purposes;
26 specifying procedures that apply when a lease of renewable energy property is
27 treated as a sale of the property to the lessee for tax purposes; requiring the
28 recapture of the tax credit under certain circumstances; authorizing the
29 Administration to adopt regulations to implement the tax credit; defining certain
30 terms; providing for the application of this Act; and generally relating to an income
31 tax credit for renewable energy property.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Tax – General
3 Section 10–737
4 Annotated Code of Maryland
5 (2010 Replacement Volume and 2015 Supplement)

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

8 **Article – Tax – General**

9 **10–737.**

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (2) “ADMINISTRATION” MEANS THE MARYLAND ENERGY
13 ADMINISTRATION.

14 (3) “BROWNFIELDS SITE” HAS THE MEANING STATED IN § 5–301 OF
15 THE ECONOMIC DEVELOPMENT ARTICLE.

16 (4) “BUSINESS USE” MEANS OFFERING ENERGY FOR SALE OR USING
17 ENERGY ON THE SITE WHERE THE ENERGY IS GENERATED FOR ANY
18 NONRESIDENTIAL PURPOSE.

19 (5) “INSTALLATION OF RENEWABLE ENERGY PROPERTY” MEANS
20 RENEWABLE ENERGY PROPERTY THAT, STANDING ALONE OR IN COMBINATION WITH
21 OTHER MACHINERY, EQUIPMENT, OR OTHER PERSONAL OR REAL PROPERTY, IS
22 CAPABLE OF PRODUCING USABLE ENERGY INDEPENDENTLY OF ANY OTHER ENERGY
23 SOURCE.

24 (6) “LOW-INCOME COMMUNITY” MEANS A CENSUS TRACT FOR WHICH
25 ONE OF THE FOLLOWING APPLIES:

26 (I) THE POVERTY RATE IS AT LEAST 20%;

27 (II) IF THE CENSUS TRACT IS LOCATED OUTSIDE A
28 METROPOLITAN STATISTICAL AREA, THE MEDIAN HOUSEHOLD INCOME FOR THE
29 TRACT DOES NOT EXCEED 80% OF THE STATEWIDE MEDIAN HOUSEHOLD INCOME;
30 OR

1 (III) IF THE CENSUS TRACT IS LOCATED WITHIN A
2 METROPOLITAN STATISTICAL AREA, THE MEDIAN HOUSEHOLD INCOME FOR THE
3 TRACT DOES NOT EXCEED 80% OF THE GREATER OF THE STATEWIDE MEDIAN
4 HOUSEHOLD INCOME OR THE METROPOLITAN STATISTICAL AREA MEDIAN
5 HOUSEHOLD INCOME.

6 (7) "METROPOLITAN STATISTICAL AREA" MEANS AN AREA DEFINED
7 AS A METROPOLITAN STATISTICAL AREA BY THE UNITED STATES OFFICE OF
8 MANAGEMENT AND BUDGET.

9 (8) "RENEWABLE ENERGY PROPERTY" MEANS PROPERTY THAT IS
10 DEFINED AS ENERGY PROPERTY UNDER SECTION 48(A)(3) OF THE INTERNAL
11 REVENUE CODE.

12 (9) "RESIDENTIAL USE" MEANS USING ENERGY ON THE SITE WHERE
13 THE ENERGY IS GENERATED FOR A RESIDENCE.

14 (10) "RURAL AREA" MEANS AN AREA DEFINED AS RURAL BY THE
15 UNITED STATES CENSUS BUREAU.

16 (11) "TRANSFER" MEANS AN ASSIGNMENT, A SALE, A DISPOSITION, OR
17 ANY OTHER TRANSFER.

18 (B) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AN
19 INDIVIDUAL OR A CORPORATION THAT RECEIVES A CREDIT CERTIFICATE FROM THE
20 ADMINISTRATION MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN
21 AMOUNT EQUAL TO A PERCENTAGE OF THE COST OF RENEWABLE ENERGY
22 PROPERTY CONSTRUCTED OR PURCHASED AND PLACED IN SERVICE IN THE STATE
23 BY THE INDIVIDUAL OR CORPORATION AS FOLLOWS:

24 (I) 35% OF THE COST OF RENEWABLE ENERGY PROPERTY
25 LOCATED IN AN AREA THAT IS NOT A BROWNFIELDS SITE, LOW-INCOME COMMUNITY,
26 OR RURAL AREA; OR

27 (II) 50% OF THE COST OF RENEWABLE ENERGY PROPERTY
28 LOCATED IN AN AREA THAT IS A BROWNFIELDS SITE, LOW-INCOME COMMUNITY, OR
29 RURAL AREA.

30 (2) THE CREDIT MAY NOT EXCEED:

31 (I) \$10,500 FOR EACH INSTALLATION OF RENEWABLE ENERGY
32 PROPERTY FOR RESIDENTIAL USE; OR

1 **(II) \$5,000,000 FOR EACH INSTALLATION OF RENEWABLE**
2 **ENERGY PROPERTY FOR BUSINESS USE.**

3 **(3) DURING THE PERIOD FROM JANUARY 1, 2017, THROUGH**
4 **DECEMBER 31, 2021, THE ADMINISTRATION MAY NOT ISSUE TAX CREDIT**
5 **CERTIFICATES FOR CREDIT AMOUNTS TOTALING IN THE AGGREGATE MORE THAN:**

6 **(I) \$25,000,000 FOR ALL INSTALLATIONS OF RENEWABLE**
7 **ENERGY PROPERTY FOR RESIDENTIAL USE; AND**

8 **(II) \$125,000,000 FOR ALL INSTALLATIONS OF RENEWABLE**
9 **ENERGY PROPERTY FOR BUSINESS USE.**

10 **(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE TAX**
11 **CREDIT SHALL BE CLAIMED:**

12 **(I) IN THE FIRST TAXABLE YEAR AFTER THE RENEWABLE**
13 **ENERGY PROPERTY IS PLACED IN SERVICE IF THE RENEWABLE ENERGY PROPERTY**
14 **IS FOR RESIDENTIAL USE; OR**

15 **(II) IN EQUAL INCREMENTS OF 25% ANNUALLY OVER THE 4**
16 **CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR AFTER**
17 **THE RENEWABLE ENERGY PROPERTY IS PLACED IN SERVICE IF THE RENEWABLE**
18 **ENERGY PROPERTY IS FOR BUSINESS USE.**

19 **(2) IF THE CREDIT IN ANY TAXABLE YEAR EXCEEDS THE STATE**
20 **INCOME TAX FOR THAT TAXABLE YEAR, AN INDIVIDUAL OR A CORPORATION MAY**
21 **APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME TAX FOR SUCCEEDING**
22 **TAXABLE YEARS UNTIL THE EARLIER OF:**

23 **(I) THE FULL AMOUNT OF THE CREDIT IS USED; OR**

24 **(II) THE EXPIRATION OF THE 5TH TAXABLE YEAR AFTER THE**
25 **LAST TAXABLE YEAR FOR WHICH THE CREDIT WAS ALLOWED.**

26 **(D) (1) TO CLAIM THE TAX CREDIT UNDER THIS SECTION, AN INDIVIDUAL**
27 **OR A CORPORATION SHALL SUBMIT AN APPLICATION FOR A TAX CREDIT**
28 **CERTIFICATE TO THE ADMINISTRATION BEFORE PLACING RENEWABLE ENERGY**
29 **PROPERTY IN SERVICE.**

30 **(2) THE APPLICATION SHALL INCLUDE:**

1 **(I) A DESIGN PLAN STAMPED BY A PROFESSIONAL ENGINEER;**
2 **AND**

3 **(II) A DETAILED BREAKDOWN OF ELIGIBLE COSTS.**

4 **(3) AN INDIVIDUAL OR A CORPORATION CLAIMING A TAX CREDIT**
5 **SHALL MAINTAIN AND MAKE AVAILABLE FOR INSPECTION BY THE ADMINISTRATION**
6 **ANY RECORDS THE ADMINISTRATION CONSIDERS NECESSARY TO:**

7 **(I) DETERMINE THE AMOUNT OF THE TAX CREDIT; AND**

8 **(II) VERIFY ELIGIBILITY FOR THE TAX CREDIT.**

9 **(4) THE ADMINISTRATION SHALL ISSUE TAX CREDIT CERTIFICATES**
10 **TO QUALIFYING APPLICANTS ON A FIRST-COME, FIRST-SERVED BASIS.**

11 **(5) AN INDIVIDUAL OR A CORPORATION THAT RECEIVES A TAX**
12 **CREDIT CERTIFICATE SHALL PLACE RENEWABLE ENERGY PROPERTY IN SERVICE**
13 **WITHIN 1 YEAR OF THE DATE ON WHICH THE TAX CREDIT CERTIFICATE IS ISSUED.**

14 **(6) IF AN INDIVIDUAL OR A CORPORATION THAT RECEIVES A TAX**
15 **CREDIT CERTIFICATE DOES NOT PLACE RENEWABLE ENERGY PROPERTY IN SERVICE**
16 **WITHIN 1 YEAR OF THE DATE ON WHICH THE TAX CREDIT CERTIFICATE IS ISSUED:**

17 **(I) THE TAX CREDIT CERTIFICATE IS VOID;**

18 **(II) THE FUNDS DESIGNATED FOR THE VOIDED TAX CREDIT**
19 **CERTIFICATE SHALL BE REALLOCATED TO OTHER APPLICANTS ON A FIRST-COME,**
20 **FIRST-SERVED BASIS; AND**

21 **(III) THE PROJECT FOR WHICH THE VOIDED TAX CREDIT**
22 **CERTIFICATE WAS ISSUED MAY NOT RECEIVE A NEW TAX CREDIT CERTIFICATE**
23 **UNTIL ALL QUALIFIED APPLICANTS WITH APPLICATIONS PENDING AT THE TIME THE**
24 **CERTIFICATE WAS VOIDED HAVE RECEIVED CERTIFICATES.**

25 **(7) THE ADMINISTRATION MAY NOT ISSUE A TAX CREDIT**
26 **CERTIFICATE:**

27 **(I) BEFORE JANUARY 1, 2017; OR**

28 **(II) AFTER DECEMBER 31, 2021.**

1 **(E) (1) A TAX CREDIT OR PORTION OF A TAX CREDIT UNDER THIS**
2 **SECTION THAT HAS NOT BEEN CLAIMED MAY BE TRANSFERRED FROM THE**
3 **INDIVIDUAL OR CORPORATION THAT PLACED THE RENEWABLE ENERGY PROPERTY**
4 **IN SERVICE TO ANOTHER PERSON.**

5 **(2) A TRANSFER OF A TAX CREDIT DOES NOT EXTEND THE PERIOD**
6 **DURING WHICH ANY EXCESS PORTION OF THE CREDIT MAY BE CARRIED OVER**
7 **UNDER SUBSECTION (C)(2) OF THIS SECTION.**

8 **(3) THE TRANSFEROR AND TRANSFEREE SHALL JOINTLY SUBMIT TO**
9 **THE ADMINISTRATION A WRITTEN NOTIFICATION OF THE TRANSFER WITHIN 30**
10 **DAYS AFTER THE TRANSFER OCCURS THAT INCLUDES:**

11 **(I) THE DATE OF THE TRANSFER;**

12 **(II) THE AMOUNT OF THE TAX CREDIT TRANSFERRED; AND**

13 **(III) ANY OTHER INFORMATION REQUIRED BY THE**
14 **ADMINISTRATION.**

15 **(4) AFTER A TRANSFER OCCURS, THE TAX CREDIT UNDER THIS**
16 **SECTION MAY NOT BE CLAIMED FOR ANY TAXABLE YEAR UNTIL THE TRANSFEROR**
17 **AND TRANSFEREE ARE IN COMPLIANCE WITH PARAGRAPH (3) OF THIS SUBSECTION.**

18 **(F) (1) A TAX CREDIT UNDER THIS SECTION MAY BE ALLOCATED AMONG**
19 **THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF A PARTNERSHIP, A LIMITED**
20 **LIABILITY COMPANY, AN S-CORPORATION, OR ANY OTHER BUSINESS ENTITY IN**
21 **ACCORDANCE WITH AN AGREEMENT AMONG THE PARTNERS, MEMBERS, OR**
22 **SHAREHOLDERS.**

23 **(2) A CHANGE IN THE ALLOCATION OF A TAX CREDIT UNDER AN**
24 **AGREEMENT SHALL BE REPORTED TO THE ADMINISTRATION WITHIN 30 DAYS AFTER**
25 **THE CHANGE OCCURS.**

26 **(G) (1) THE LESSOR AND LESSEE OF RENEWABLE ENERGY PROPERTY**
27 **MAY ELECT TO TREAT A LEASE OF RENEWABLE ENERGY PROPERTY AS A SALE OF**
28 **THE RENEWABLE ENERGY PROPERTY TO THE LESSEE FOR FAIR MARKET VALUE FOR**
29 **TAX PURPOSES.**

30 **(2) IF AN ELECTION IS MADE UNDER THIS SUBSECTION:**

31 **(I) THE LESSEE MAY CLAIM THE TAX CREDIT UNDER THIS**
32 **SECTION FOR THE RENEWABLE ENERGY PROPERTY;**

1 **(II) IF THE LESSEE CLAIMS THE TAX CREDIT UNDER THIS**
2 **SECTION, THE LESSOR OF THE RENEWABLE ENERGY PROPERTY SHALL PROVIDE TO**
3 **THE LESSEE A WRITTEN STATEMENT THAT:**

4 **1. DESCRIBES THE RENEWABLE ENERGY PROPERTY;**

5 **2. STATES THE COST OF THE PROPERTY; AND**

6 **3. STATES THAT THE LESSOR WAIVES ALL RIGHTS TO**
7 **THE TAX CREDIT UNDER THIS SECTION; AND**

8 **(III) THE LESSOR OF THE RENEWABLE ENERGY PROPERTY MAY**
9 **ONLY CLAIM THE TAX CREDIT UNDER THIS SECTION IF THE LESSOR RECEIVES A**
10 **WRITTEN STATEMENT FROM THE LESSEE THAT THE LESSEE WILL NOT CLAIM THE**
11 **TAX CREDIT UNDER THIS SECTION.**

12 **(H) (1) THE COMPTROLLER SHALL RECAPTURE THE TAX CREDIT UNDER**
13 **THIS SECTION FROM THE INDIVIDUAL OR CORPORATION THAT CLAIMED THE TAX**
14 **CREDIT IF THE RENEWABLE ENERGY PROPERTY THAT QUALIFIED FOR THE TAX**
15 **CREDIT IS TAKEN OUT OF SERVICE OR MOVED OUT OF THE STATE DURING THE**
16 **5-YEAR PERIOD BEGINNING WITH THE FIRST TAXABLE YEAR FOR WHICH THE**
17 **CREDIT IS ALLOWED.**

18 **(2) THE COMPTROLLER SHALL PROVIDE NOTICE TO AN INDIVIDUAL**
19 **OR A CORPORATION WHOSE TAX CREDIT IS SUBJECT TO RECAPTURE UNDER THIS**
20 **SUBSECTION AND ALLOW THE INDIVIDUAL OR CORPORATION A 6-MONTH PERIOD**
21 **AFTER THE DATE OF THE NOTICE IN WHICH TO BECOME COMPLIANT BEFORE**
22 **RECAPTURING THE CREDIT.**

23 **(I) THE ADMINISTRATION MAY ADOPT REGULATIONS TO IMPLEMENT THIS**
24 **SECTION.**

25 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
26 **1, 2016, and shall be applicable to all taxable years beginning after December 31, 2017.**