

# SENATE BILL 174

Q3

7lr0497

---

By: **Senators Manno and Madaleno**

Introduced and read first time: January 18, 2017

Assigned to: Budget and Taxation

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Credit – Clean Energy Production – Qualified Energy Resources**  
3 **(Maryland Clean Energy Incentive Act)**

4 FOR the purpose of altering the definition of “qualified energy resources” that may be used  
5 to produce energy that qualifies for the clean energy production income tax credit;  
6 and generally relating to the clean energy production income tax credit.

7 BY repealing and reenacting, with amendments,  
8 Article – Tax – General  
9 Section 10–720  
10 Annotated Code of Maryland  
11 (2010 Replacement Volume and 2016 Supplement)

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

### Article – Tax – General

15 10–720.

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

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

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

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

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1  
2 old-growth timber:
- 3 1. any of the following forest-related resources, not including
    - 4 A. mill residues, except sawdust and wood shavings;
    - 5 B. forest thinning;
    - 6 C. slash; or
    - 7 D. brush;
  - 8 2. waste pallets, crates, and dunnage and landscape or  
9 right-of-way trimmings; or
  - 10 3. agricultural sources, including, but not limited to, orchard  
11 tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

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

- 16 1. anaerobic decomposition; or
- 17 2. thermal decomposition.]

18 **(3) “QUALIFIED ENERGY RESOURCES” MEANS WIND, SOLAR ENERGY,  
19 OR MARINE AND HYDROKINETIC RENEWABLE ENERGY.**

20 (4) “Qualified Maryland facility” means a facility located in the State that  
21 primarily uses qualified energy resources to produce electricity and is originally placed in  
22 service on or after January 1, 2006, but before January 1, 2019.

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

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

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

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

3           (c)    (1)    Subject to the provisions of this subsection and subsection (d) of this  
4 section, on application by a taxpayer, the Administration shall issue an initial credit  
5 certificate if the taxpayer has demonstrated that the taxpayer will within the next 12  
6 months produce electricity from qualified energy resources at a qualified Maryland facility.

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

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

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

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

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

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

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

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

22           (5)    If a taxpayer over a 3-year period does not claim on average at least  
23 10% of the maximum credit amount stated in the initial credit certificate, the  
24 Administration at its discretion may cancel an amount of the taxpayer's initial credit  
25 certificate equal to the product of multiplying:

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

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

30           (6)    An applicant for an initial credit certificate or a taxpayer whose credits  
31 have been canceled under paragraph (5) of this subsection, may appeal a decision by the  
32 Administration to the Office of Administrative Hearings in accordance with Title 10,  
33 Subtitle 2 of the State Government Article.

1           (7)    The Administration may not issue an initial credit certificate after  
2 December 31, 2018.

3           (8)    The Administration may not issue initial credit certificates for credit  
4 amounts less than \$1,000.

5           (d)    (1)    In this subsection, “Reserve Fund” means the Maryland Clean Energy  
6 Incentive Tax Credit Reserve Fund established under paragraph (2) of this subsection.

7                   (2)    (i)    There is a Maryland Clean Energy Incentive Tax Credit Reserve  
8 Fund that is a special continuing, nonlapsing fund that is not subject to § 7–302 of the State  
9 Finance and Procurement Article.

10                           (ii)   The money in the Reserve Fund shall be invested and reinvested  
11 by the Treasurer, and interest and earnings shall be credited to the General Fund.

12                   (3)    (i)    Except as otherwise provided in this paragraph, for any fiscal  
13 year, the Administration may not issue initial credit certificates for credit amounts in the  
14 aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal  
15 year in the State budget as approved by the General Assembly.

16                           (ii)   If the aggregate credit amounts under initial credit certificates  
17 issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that  
18 fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under  
19 initial credit certificates for the next fiscal year.

20                           (iii)   For any fiscal year, if funds are transferred from the Reserve  
21 Fund under the authority of any provision of law other than under paragraph (6) of this  
22 subsection, the maximum credit amounts in the aggregate for which the Administration  
23 may issue initial credit certificates shall be reduced by the amount transferred.

24           (4)    For each of fiscal years 2018 and 2019, the Governor may include in the  
25 budget bill an appropriation to the Reserve Fund.

26           (5)    Notwithstanding the provisions of § 7–213 of the State Finance and  
27 Procurement Article, the Governor may not reduce an appropriation to the Reserve Fund  
28 in the State budget as approved by the General Assembly.

29           (6)    (i)    Except as provided in this paragraph, money appropriated to the  
30 Reserve Fund shall remain in the Fund.

31                           (ii)   1.    Within 15 days after the end of each calendar quarter, the  
32 Administration shall notify the Comptroller as to each final credit certificate issued during  
33 the quarter:

1                   A.     the maximum credit amount stated in the initial tax credit  
2 certificate for the producer of electricity from qualified energy resources at a qualified  
3 Maryland facility; and

4                   B.     the final certified credit amount for the electricity  
5 producer.

6                   2.     On notification that a final credit amount has been  
7 certified, the Comptroller shall transfer an amount equal to the credit amount stated in the  
8 initial credit certificate for the electricity producer from the Reserve Fund to the General  
9 Fund.

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

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

17                   (2)    (i)    On or before October 1, 2007, and each year thereafter, the  
18 Comptroller and the Administration jointly shall submit to the Governor and, subject to §  
19 2-1246 of the State Government Article, to the General Assembly a written report  
20 regarding:

21                           1.     the number of certifications and taxpayers claiming the  
22 credit under this section;

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

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

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

27                           5.     any other available information the Administration  
28 determines to be meaningful and appropriate.

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

31           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
32 1, 2017.