

HOUSE BILL 1548

Q3
HB 1070/16 – W&M

7lr3656
CF SB 926

By: **Delegates Ebersole, Lam, Luedtke, and Turner**

Introduced and read first time: February 15, 2017

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



authorizing the Administration to adopt regulations to implement the tax credit; defining certain terms; providing for the application of this Act; and generally relating to an income tax credit for renewable energy property.

BY adding to

Article – Tax – General

Section 10–741

Annotated Code of Maryland

(2016 Replacement Volume)

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

Article – Tax – General

10–741.

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

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

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

(4) “BUSINESS ENTITY” MEANS A CORPORATION, AN S CORPORATION, A PARTNERSHIP, A LIMITED LIABILITY COMPANY, OR ANY OTHER LEGAL ENTITY.

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

(6) (I) “ELIGIBLE COST” MEANS THE COST OF THE RENEWABLE ENERGY PROPERTY, INCLUDING THE COST OF EQUIPMENT AND RELATED DESIGN, CONSTRUCTION, DEVELOPMENT, AND INSTALLATION COSTS.

(II) “ELIGIBLE COST” DOES NOT INCLUDE ANY DISCOUNTS, REBATES, ADVERTISING EXPENSES, INSTALLATION ASSISTANCE CREDITS, NAME REFERRAL ALLOWANCES, COSTS PAID BY PUBLIC FUNDS, OR OTHER SIMILAR REDUCTIONS IN THE COST OF THE RENEWABLE ENERGY PROPERTY PAID TO THE OWNER OF THE PROPERTY AS AN INDUCEMENT TO PURCHASE THE PROPERTY.

(7) "INSTALLATION OF RENEWABLE ENERGY PROPERTY" MEANS RENEWABLE ENERGY PROPERTY THAT, STANDING ALONE OR IN COMBINATION WITH OTHER MACHINERY, EQUIPMENT, OR OTHER PERSONAL OR REAL PROPERTY, IS CAPABLE OF PRODUCING USABLE ENERGY INDEPENDENTLY OF ANY OTHER ENERGY SOURCE.

(8) "LOW-INCOME COMMUNITY" MEANS A CENSUS TRACT FOR WHICH ONE OF THE FOLLOWING APPLIES:

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

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

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

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

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

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

(12) "TRANSFER" MEANS AN ASSIGNMENT, A SALE, A DISPOSITION, OR ANY OTHER TRANSFER.

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

(I) 35% OF THE ELIGIBLE COST OF RENEWABLE ENERGY PROPERTY INSTALLED IN AN AREA THAT IS NOT A BROWNFIELDS SITE OR LOW-INCOME COMMUNITY; OR

(II) 50% OF THE ELIGIBLE COST OF RENEWABLE ENERGY PROPERTY INSTALLED IN AN AREA THAT IS A BROWNFIELDS SITE OR LOW-INCOME COMMUNITY.

(2) THE CREDIT MAY NOT EXCEED:

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

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

(3) DURING THE PERIOD FROM JANUARY 1, 2018, THROUGH DECEMBER 31, 2022, THE ADMINISTRATION MAY NOT ISSUE TAX CREDIT CERTIFICATES FOR CREDIT AMOUNTS TOTALING IN THE AGGREGATE MORE THAN:

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

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

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

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

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

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

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

2 **(II) THE EXPIRATION OF THE FIFTH TAXABLE YEAR AFTER THE**
3 **LAST TAXABLE YEAR FOR WHICH THE CREDIT WAS ALLOWED.**

4 **(D) (1) TO CLAIM THE TAX CREDIT UNDER THIS SECTION, AN INDIVIDUAL**
5 **OR A BUSINESS ENTITY SHALL SUBMIT AN APPLICATION FOR A TAX CREDIT**
6 **CERTIFICATE TO THE ADMINISTRATION BEFORE PLACING RENEWABLE ENERGY**
7 **PROPERTY IN SERVICE.**

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

9 **(I) A DESIGN PLAN STAMPED BY A PROFESSIONAL ENGINEER;**

10 **(II) A DETAILED BREAKDOWN OF ELIGIBLE COSTS;**

11 **(III) EVIDENCE OF APPROVAL TO INTERCONNECT TO THE GRID**
12 **BY THE LOCAL DISTRIBUTION OR UTILITY COMPANY; AND**

13 **(IV) ANY GOVERNMENTAL PERMITS AND APPROVALS**
14 **NECESSARY TO CONSTRUCT OR INSTALL THE RENEWABLE ENERGY PROPERTY,**
15 **INCLUDING LAND USE APPROVALS.**

16 **(3) (I) AN APPLICATION FEE EQUAL TO 0.5% OF THE ANTICIPATED**
17 **TAX CREDIT AMOUNT, BASED UPON THE ELIGIBLE COSTS CLAIMED IN THE**
18 **APPLICATION, SHALL BE PAID TO THE ADMINISTRATION TO COVER COSTS**
19 **ASSOCIATED WITH REVIEW OF APPLICATIONS.**

20 **(II) IF A NOTICE OF APPROVAL UNDER PARAGRAPH (4) OF THIS**
21 **SUBSECTION IS ISSUED BY THE ADMINISTRATION IN CONNECTION WITH THE**
22 **APPLICATION, THE APPLICATION FEE UNDER SUBPARAGRAPH (I) OF THIS**
23 **PARAGRAPH IS NONREFUNDABLE.**

24 **(4) SUBJECT TO SUBSECTION (B)(3) OF THIS SECTION, UPON RECEIPT**
25 **AND APPROVAL OF AN APPLICATION FOR A TAX CREDIT CERTIFICATE, THE**
26 **ADMINISTRATION SHALL PROVIDE THE APPLICANT WITH A NOTICE OF APPROVAL,**
27 **WHICH SHALL INCLUDE AN ANTICIPATED TAX CREDIT AMOUNT.**

28 **(5) (I) AFTER THE RENEWABLE ENERGY PROPERTY HAS BEEN**
29 **PLACED IN SERVICE, THE INDIVIDUAL OR BUSINESS ENTITY CLAIMING THE TAX**
30 **CREDIT SHALL PROVIDE PROOF OF ELIGIBLE COSTS AND ANY OTHER INFORMATION**
31 **AS REQUIRED BY THE ADMINISTRATION TO CONFIRM ELIGIBLE COSTS.**

(II) UPON CONFIRMATION OF ELIGIBLE COSTS, THE ADMINISTRATION SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE INDIVIDUAL OR BUSINESS ENTITY CLAIMING THE CREDIT.

(6) THE ADMINISTRATION SHALL:

(I) ISSUE NOTICES OF APPROVAL TO QUALIFYING APPLICANTS ON A FIRST-COME, FIRST-SERVED BASIS; AND

(II) ESTABLISH A WAIT LIST FOR ANY ADDITIONAL APPLICATIONS IN THE ORDER IN WHICH THE APPLICATIONS WERE RECEIVED.

(7) (I) AN INDIVIDUAL OR A BUSINESS ENTITY THAT RECEIVES A NOTICE OF APPROVAL UNDER THIS SUBSECTION SHALL PLACE THE RENEWABLE ENERGY PROPERTY IN SERVICE WITHIN 1 YEAR OF THE DATE ON WHICH THE NOTICE OF APPROVAL WAS ISSUED BY THE ADMINISTRATION.

(II) 1. IF RENEWABLE ENERGY PROPERTY IS NOT PLACED IN SERVICE AS REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE ADMINISTRATION SHALL VOID THE NOTICE OF APPROVAL ISSUED WITH RESPECT TO THE PROPERTY.

2. THE FUNDS DESIGNATED FOR THE VOIDED NOTICE OF APPROVAL UNDER THIS PARAGRAPH SHALL BE REALLOCATED TO OTHER APPLICANTS IN THE ORDER OF PRIORITY ESTABLISHED UNDER PARAGRAPH (6) OF THIS SUBSECTION.

3. IF A NOTICE OF APPROVAL IS VOIDED UNDER THIS PARAGRAPH, A NEW NOTICE OF APPROVAL MAY NOT BE ISSUED FOR THE SAME RENEWABLE ENERGY PROPERTY UNLESS ALL OTHER PENDING APPLICATIONS HAVE BEEN APPROVED OR REJECTED BY THE ADMINISTRATION.

(8) AN INDIVIDUAL OR BUSINESS ENTITY THAT RECEIVES OR HOLDS A TAX CREDIT CERTIFICATE UNDER THIS SECTION SHALL MAINTAIN AND MAKE AVAILABLE FOR INSPECTION BY THE ADMINISTRATION ANY RECORDS THE ADMINISTRATION CONSIDERS NECESSARY TO DETERMINE THE AMOUNT OF AND VERIFY ELIGIBILITY FOR THE TAX CREDIT UNDER THIS SECTION.

(9) THE ADMINISTRATION MAY NOT ISSUE A TAX CREDIT CERTIFICATE:

(I) BEFORE JANUARY 1, 2018; OR

(II) AFTER DECEMBER 31, 2022.

(E) (1) A TAX CREDIT OR PORTION OF A TAX CREDIT UNDER THIS SECTION THAT HAS NOT BEEN CLAIMED MAY BE TRANSFERRED TO ANOTHER INDIVIDUAL OR BUSINESS ENTITY WITHOUT LIMITATION ON THE NUMBER OF TRANSFERS.

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

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

(I) THE DATE OF THE TRANSFER;

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

(III) ANY OTHER INFORMATION REQUIRED BY THE ADMINISTRATION.

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

(F) (1) A TAX CREDIT UNDER THIS SECTION MAY BE ALLOCATED AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF A BUSINESS ENTITY IN ACCORDANCE WITH AN AGREEMENT AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS.

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

(G) (1) THE LESSOR AND LESSEE OF RENEWABLE ENERGY PROPERTY MAY ELECT TO TREAT A LEASE OF RENEWABLE ENERGY PROPERTY AS A SALE OF ALL OR A PORTION OF THE RENEWABLE ENERGY PROPERTY TO THE LESSEE FOR FAIR MARKET VALUE FOR TAX PURPOSES.

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

(I) THE LESSEE MAY CLAIM ALL OR THE APPLICABLE PORTION OF THE TAX CREDIT UNDER THIS SECTION FOR THE RENEWABLE ENERGY PROPERTY;

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

1. DESCRIBES THE RENEWABLE ENERGY PROPERTY;

2. STATES THE ELIGIBLE COST OF THE PROPERTY; AND

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2017, and shall be applicable to all taxable years beginning after December 31, 2018.