

SENATE BILL 365

C8

5lr2069
CF 5lr2711

By: **Senators Ferguson, Currie, DeGrange, Eckardt, Edwards, Guzzone, Kasemeyer, King, Madaleno, Manno, McFadden, Peters, Rosapepe, Serafini, and Young**

Introduced and read first time: February 6, 2015

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **One Maryland Economic Development Tax Credit – Business Incubators**

3 FOR the purpose of altering certain eligibility criteria for certain credits under the One
4 Maryland Economic Development Tax Credit to include certain persons who
5 establish or expand a business facility that, for certain business incubators, creates
6 a certain aggregate number of qualified positions at the facility under certain
7 circumstances; requiring, in order to be certified as a certain qualified business
8 entity for certain credits, a certain business incubator to submit certain information
9 to the Secretary of Business and Economic Development; altering the manner in
10 which the amount of a certain start-up tax credit is calculated for each taxable year;
11 authorizing, under certain circumstances, certain business incubators to claim a
12 certain start-up tax credit on a prorated basis if the aggregate number of qualifying
13 positions filled by the businesses at the business incubator's facility meets certain
14 requirements; providing that the total amount claimed as a refund under certain
15 circumstances may not exceed a certain amount; providing for the application of this
16 Act; and generally relating to the One Maryland Economic Development Tax Credit
17 and certain business incubators.

18 BY repealing and reenacting, without amendments,
19 Article – Economic Development
20 Section 6-401(a), (f), and (g)
21 Annotated Code of Maryland
22 (2008 Volume and 2014 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Economic Development
25 Section 6-402 and 6-404
26 Annotated Code of Maryland
27 (2008 Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Tax – Property
3 Section 9–247(a)
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2014 Supplement)

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

8 **Article – Economic Development**

9 6–401.

10 (a) In this subtitle the following words have the meanings indicated.

11 (f) “Qualified business entity” means a person that:

12 (1) (i) conducts or operates a trade or business in the State; or

13 (ii) operates in the State and is exempt from taxation under §
14 501(c)(3) or (4) of the Internal Revenue Code; and

15 (2) is certified in accordance with § 6–402 of this subtitle as qualifying for
16 a project tax credit or a start-up tax credit under this subtitle.

17 (g) (1) “Qualified position” means a position that:

18 (i) is a full-time position and is of indefinite duration;

19 (ii) pays at least 150% of the federal minimum wage;

20 (iii) is in a qualified distressed county;

21 (iv) is newly created because a business facility begins or expands in
22 one location in a qualified distressed county; and

23 (v) is filled.

24 (2) “Qualified position” does not include a position that is:

25 (i) created when an employment function is shifted from an existing
26 business facility of a business entity in the State to another business facility of the same
27 business entity if the position is not a net new job in the State;

28 (ii) created through a change in ownership of a trade or business;

1 (iii) created through a consolidation, merger, or restructuring of a
2 business entity if the position is not a net new job in the State;

3 (iv) created when an employment function is contractually shifted
4 from an existing business entity in the State to another business entity if the position is
5 not a net new job in the State; or

6 (v) filled for a period of less than 12 months.

7 6–402.

8 (a) (1) To qualify for a project tax credit or a start–up tax credit, a person shall
9 be certified by the Secretary as meeting the requirements of this subtitle and as being
10 eligible for the tax credit.

11 (2) The Secretary may not certify a person as a qualified business entity
12 unless the person notifies the Department of its intent to seek certification before hiring
13 any qualified employees to fill the qualified positions necessary to satisfy the employment
14 threshold under subsection (b)(2) of this section.

15 (b) To be eligible for a project tax credit or a start–up tax credit, a person shall:

16 (1) establish or expand a business facility that:

17 (i) is located in a qualified distressed county; and

18 (ii) 1. is located in a priority funding area under § 5–7B–02 of
19 the State Finance and Procurement Article; or

20 2. is eligible for funding outside of a priority funding area
21 under § 5–7B–05 or § 5–7B–06 of the State Finance and Procurement Article;

22 (2) (I) during any 24–month period, create at least 25 qualified
23 positions at the new or expanded business facility; OR

24 (II) **FOR A BUSINESS INCUBATOR AS DEFINED IN § 9–247 OF THE**
25 **TAX – PROPERTY ARTICLE, DURING ANY 24–MONTH PERIOD, CREATE AT LEAST 25**
26 **QUALIFIED POSITIONS AT THE FACILITY BY AGGREGATING THE POSITIONS CREATED**
27 **BY THE BUSINESSES AT THE FACILITY; and**

28 (3) be primarily engaged at the new or expanded business facility in any
29 combination of:

30 (i) manufacturing or mining;

31 (ii) transportation or communications;

- 1 (iii) filmmaking, resort business, or recreational business;
- 2 (iv) agriculture, forestry, or fishing;
- 3 (v) research, development, or testing;
- 4 (vi) biotechnology;
- 5 (vii) computer programming, information technology, or other
6 computer-related services;
- 7 (viii) central services for a business entity engaged in financial
8 services, real estate services, or insurance services;
- 9 (ix) the operation of central administrative offices;
- 10 (x) the operation of a company headquarters other than the
11 headquarters of a professional sports organization;
- 12 (xi) the operation of a public utility;
- 13 (xii) warehousing; or
- 14 (xiii) other business services.

15 (c) To be certified as a qualified business entity for a project tax credit or a
16 start-up tax credit, a person shall submit to the Secretary an application that specifies:

- 17 (1) the effective date of the start-up or expansion;
- 18 (2) the number of full-time employees before the start-up or expansion and
19 the payroll of the existing employees;
- 20 (3) **(I)** the number of qualified positions created and qualified
21 employees hired and the payroll of the new qualified employees; **OR**
- 22 **(II) FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE**
23 **TAX – PROPERTY ARTICLE, THE NUMBER OF QUALIFIED POSITIONS CREATED AND**
24 **QUALIFIED EMPLOYEES HIRED AT THE FACILITY BY AGGREGATING THE QUALIFIED**
25 **POSITIONS CREATED AND QUALIFIED EMPLOYEES HIRED BY THE BUSINESSES AT**
26 **THE FACILITY AND THE PAYROLL OF THE NEW QUALIFIED EMPLOYEES; and**
- 27 (4) any other information that the Secretary requires by regulation.

1 (d) The Secretary may require any information required under this section to be
2 verified by an independent auditor that the qualified business entity selects.

3 6-404.

4 (a) (1) A qualified business entity that locates in a qualified distressed county
5 may claim a start-up tax credit in the amount provided in subsection (b) of this section.

6 (2) A qualified business entity is not entitled to a start-up tax credit for a
7 cost incurred before notifying the Department of its intent to seek certification as qualifying
8 for the start-up tax credit.

9 (b) The start-up tax credit allowed under this section for each taxable year equals
10 the least of:

11 (1) the qualified business entity's total eligible start-up cost associated
12 with establishing or expanding a business facility in the qualified distressed county, less
13 the amount of the credit previously taken for the project;

14 (2) the product of multiplying \$10,000 times the number of qualified
15 employees employed at the new or expanded business facility, **INCLUDING THE**
16 **AGGREGATE NUMBER OF QUALIFIED EMPLOYEES EMPLOYED BY THE BUSINESSES AT**
17 **THE FACILITY OF A BUSINESS INCUBATOR, AS DEFINED IN § 9-247 OF THE TAX -**
18 **PROPERTY ARTICLE**; or

19 (3) \$500,000.

20 (c) (1) Subject to paragraph (2) of this subsection, if the start-up tax credit
21 allowed under subsection (b) of this section for the taxable year in which a qualified
22 business entity locates in a qualified distressed county exceeds the total tax otherwise due
23 from the qualified business entity for that taxable year, the qualified business entity may
24 apply the excess as a credit for succeeding taxable years until the earlier of:

25 (i) the full amount of the excess is used; or

26 (ii) the expiration of the 14th taxable year following the taxable year
27 in which the qualified business entity locates in a qualified distressed county.

28 (2) (i) A qualified business entity may claim a prorated share of the
29 credit under this subsection if:

30 1. during any taxable year after the qualified business entity
31 is certified for the tax credit[.]:

32 **A.** the number of qualified positions filled by the qualified
33 business entity falls below 25, but does not fall below 10; **OR**

B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR’S FACILITY FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and

2. the qualified business entity has maintained at least 25 qualified positions for at least 5 years.

(ii) The prorated share of the credit is calculated based on the number of qualified positions filled for the taxable year divided by 25.

(d) (1) Subject to the limitation in paragraph (3) of this subsection and subject to § 6-405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the qualified business entity locates in a qualified distressed county.

(2) A qualified business entity may claim a refund in the amount, if any, by which the qualified business entity’s eligible start-up cost exceeds the cumulative amount used as a start-up tax credit for the taxable year and all prior taxable years.

(3) For any taxable year, the total amount claimed as a refund under this subsection may not exceed:

(I) the amount of tax that the qualified business entity is required to withhold for the taxable year from the wages of qualified employees under § 10-908 of the Tax – General Article; **OR**

(II) **FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO THE AMOUNT OF TAX THAT THE BUSINESSES AT THE BUSINESS INCUBATOR’S FACILITY ARE REQUIRED TO WITHHOLD FOR THE TAXABLE YEAR FROM THE WAGES OF QUALIFIED EMPLOYEES UNDER § 10-908 OF THE TAX – GENERAL ARTICLE.**

(4) (i) A qualified business entity may claim a prorated share of the credit under this subsection if:

1. during any taxable year after the qualified business entity is certified for the tax credit[.]:

A. the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; **OR**

B. FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF QUALIFIED

