

SENATE BILL 405

Q3
SB 633/14 – B&T

5lr1109

By: **Senators DeGrange, Astle, Currie, Eckardt, Gladden, Hershey, Jennings, Klausmeier, Mathias, McFadden, Miller, Muse, Peters, Reilly, and Serafini**
Introduced and read first time: February 6, 2015
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Education Credit**

3 FOR the purpose of allowing a credit against the State income tax for contributions made
4 to certain student assistance organizations; requiring the Department of Business
5 and Economic Development to administer the tax credit; requiring an entity to
6 submit an application to be a student assistance organization by a certain date each
7 year; requiring a student assistance organization to meet certain qualifications;
8 requiring a business entity to submit a certain application within a certain time
9 period and to make a contribution to a student assistance organization and to provide
10 certain notice within a certain time period; requiring the Department to adopt
11 certain regulations; requiring the Department to approve certain applications within
12 a certain time period and in a certain manner; requiring the Department to rescind
13 certain tax credit certificates if certain notice is not provided within a certain time
14 period; providing limits on the amount of certain tax credits and the aggregate
15 amount of tax credits that may be approved by the Department in a calendar year;
16 establishing the Maryland Education Tax Credit Reserve Fund; authorizing the
17 Governor to include an appropriation to the Fund in the annual budget bill and
18 providing that the appropriation may not exceed a certain amount; requiring the
19 Comptroller to transfer certain amounts from the Fund to the General Fund under
20 certain circumstances; providing that certain unused tax credits may not be carried
21 forward; requiring the Department to publish and update a certain list in a certain
22 manner each year and report certain information on the credit each year; requiring
23 a certain addition modification under the Maryland income tax if a certain tax credit
24 is claimed; defining certain terms; providing for the application of this Act; and
25 generally relating to a State income tax credit for contributions made to certain
26 student assistance organizations.

27 BY repealing and reenacting, with amendments,
28 Article – Economic Development
29 Section 2–123(a)(2)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Volume and 2014 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Tax – General
5 Section 10–205(a) and 10–306(a)
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2014 Supplement)

8 BY adding to
9 Article – Tax – General
10 Section 10–205(l), 10–306(g), and 10–737
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2014 Supplement)

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

15 **Article – Economic Development**

16 2–123.

17 (a) In this section, “economic development program” means:

18 (2) each of the tax credit programs administered by the Department,
19 including:

20 (i) the Film Production Activity Tax Credit;

21 (ii) the Job Creation Tax Credit;

22 (iii) the One Maryland Economic Development Tax Credit;

23 (iv) the Invest Maryland Program;

24 (v) the Biotechnology Investment Incentive Tax Credit; [and]

25 (vi) the Research and Development Tax Credit; **AND**

26 **(VII) THE MARYLAND EDUCATION TAX CREDIT.**

27 **Article – Tax – General**

28 10–205.

1 (a) In addition to the modification under § 10–204 of this subtitle, the amounts
2 under this section are added to the federal adjusted gross income of a resident to determine
3 Maryland adjusted gross income.

4 **(L) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE**
5 **AMOUNT OF A CONTRIBUTION MADE TO A STUDENT ASSISTANCE ORGANIZATION FOR**
6 **WHICH A CREDIT IS CLAIMED UNDER § 10–737 OF THIS TITLE.**

7 10–306.

8 (a) In addition to the modification under § 10–305 of this subtitle, the amounts
9 under this section are added to the federal taxable income of a corporation to determine
10 Maryland modified income.

11 **(G) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE**
12 **AMOUNT OF A CONTRIBUTION MADE TO A STUDENT ASSISTANCE ORGANIZATION FOR**
13 **WHICH A CREDIT IS CLAIMED UNDER § 10–737 OF THIS TITLE.**

14 **10–737.**

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

17 **(2) “BUSINESS ENTITY” MEANS:**

18 **(I) A PERSON CONDUCTING OR OPERATING A TRADE OR**
19 **BUSINESS IN MARYLAND; OR**

20 **(II) AN ORGANIZATION OPERATING IN MARYLAND THAT IS**
21 **EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.**

22 **(3) “CONTRIBUTION” MEANS A MONETARY DONATION.**

23 **(4) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND**
24 **ECONOMIC DEVELOPMENT.**

25 **(5) “ELIGIBLE SCHOOL” MEANS:**

26 **(I) A PUBLIC PREKINDERGARTEN PROGRAM, AN ELEMENTARY**
27 **PUBLIC SCHOOL, OR A SECONDARY PUBLIC SCHOOL; OR**

28 **(II) A NONPUBLIC PREKINDERGARTEN PROGRAM, AN**
29 **ELEMENTARY NONPUBLIC SCHOOL, OR A SECONDARY NONPUBLIC SCHOOL THAT:**

1 1. **HOLDS A CERTIFICATE OF APPROVAL FROM OR IS**
2 **REGISTERED WITH THE STATE BOARD OF EDUCATION;**

3 2. **DOES NOT CHARGE TUITION THAT IS GREATER THAN**
4 **THE STATEWIDE AVERAGE PER PUPIL EXPENDITURE BY THE LOCAL EDUCATION**
5 **AGENCIES CALCULATED BY THE STATE DEPARTMENT OF EDUCATION WITH**
6 **EXCEPTIONS FOR SPECIAL EDUCATION STUDENTS DETERMINED BY THE STATE**
7 **DEPARTMENT OF EDUCATION TO BE APPROPRIATE;**

8 3. **ADMINISTERS A NATIONALLY ACKNOWLEDGED**
9 **ACHIEVEMENT TEST TO THE STUDENTS; AND**

10 4. **COMPLIES WITH TITLE VI OF THE CIVIL RIGHTS ACT**
11 **OF 1964, AS AMENDED.**

12 **(6) “PREKINDERGARTEN PROGRAM” MEANS A PREKINDERGARTEN**
13 **EDUCATION PROGRAM THAT HAS OBTAINED A LICENSE, LETTER OF COMPLIANCE,**
14 **OR CERTIFICATE OF APPROVAL FROM THE STATE BOARD OF EDUCATION.**

15 **(7) (I) “QUALIFIED EDUCATION EXPENSES” MEANS QUALIFIED**
16 **ELEMENTARY AND SECONDARY EDUCATION EXPENSES AS DEFINED IN §**
17 **530(B)(3)(A) OF THE INTERNAL REVENUE CODE.**

18 **(II) “QUALIFIED EDUCATION EXPENSES” INCLUDE EXPENSES**
19 **FOR:**

20 1. **ACADEMIC TUTORING;**

21 2. **BOOKS, SUPPLIES, AND OTHER EQUIPMENT;**

22 3. **COMPUTER TECHNOLOGY, EQUIPMENT, OR INTERNET**
23 **ACCESS;**

24 4. **SPECIAL NEEDS SERVICES;**

25 5. **TRANSPORTATION;**

26 6. **TUITION AND FEES; OR**

27 7. **UNIFORMS THAT ARE REQUIRED BY AN ELIGIBLE**
28 **SCHOOL.**

29 **(8) “STUDENT ASSISTANCE ORGANIZATION” MEANS AN ENTITY THAT:**

1 (I) IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE
2 INTERNAL REVENUE CODE;

3 (II) PROVIDES FINANCIAL ASSISTANCE FOR QUALIFIED
4 EDUCATION EXPENSES TO STUDENTS ATTENDING ELIGIBLE SCHOOLS IN THE STATE;
5 AND

6 (III) MEETS THE REQUIREMENTS OF SUBSECTION (C)(1) OF THIS
7 SECTION.

8 (B) (1) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, A BUSINESS
9 ENTITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT
10 EQUAL TO 60% OF A CONTRIBUTION MADE TO A STUDENT ASSISTANCE
11 ORGANIZATION.

12 (2) A CREDIT CLAIMED BY A BUSINESS ENTITY UNDER THIS SECTION
13 MAY NOT EXCEED \$200,000 IN EACH TAXABLE YEAR.

14 (C) (1) TO QUALIFY AS A STUDENT ASSISTANCE ORGANIZATION, AN
15 ENTITY SHALL:

16 (I) APPLY TO THE DEPARTMENT ON OR BEFORE DECEMBER 1
17 OF EACH YEAR;

18 (II) PROVIDE FINANCIAL ASSISTANCE FOR QUALIFIED
19 EDUCATION EXPENSES TO STUDENTS ATTENDING ELIGIBLE SCHOOLS;

20 (III) PROVIDE FINANCIAL ASSISTANCE TO AT LEAST FOUR
21 DIFFERENT ELIGIBLE SCHOOLS IN EACH CALENDAR YEAR;

22 (IV) CONTRIBUTE OR IRREVOCABLY ENCUMBER AT LEAST 90%
23 OF ANNUAL CASH RECEIPTS RECEIVED AS THE RESULT OF CONTRIBUTIONS
24 APPROVED FOR TAX CREDITS UNDER THIS SECTION TOWARD FINANCIAL
25 ASSISTANCE FOR QUALIFIED EDUCATION EXPENSES TO STUDENTS AT ELIGIBLE
26 SCHOOLS AS PROVIDED UNDER THIS SECTION;

27 (V) PROVIDE FINANCIAL ASSISTANCE FOR QUALIFIED
28 EDUCATION EXPENSES ON A PRIORITY BASIS FIRST TO STUDENT APPLICANTS WHO
29 ARE ELIGIBLE FOR FREE AND REDUCED PRICE MEALS BASED ON ELIGIBILITY
30 REQUIREMENTS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF
31 AGRICULTURE AND THEN TO OTHER STUDENT APPLICANTS BASED ON FINANCIAL
32 NEED;

1 (VI) SUBMIT TO THE DEPARTMENT THE APPLICATION AND
2 REVIEW PROCESS FOR ELIGIBILITY FOR FINANCIAL ASSISTANCE FOR QUALIFIED
3 EDUCATION EXPENSES BASED ON DEMONSTRATED FINANCIAL NEED; AND

4 (VII) ON OR BEFORE JANUARY 1 OF EACH YEAR, SUBMIT
5 VERIFICATION TO THE DEPARTMENT THAT ALL REQUIREMENTS FOR ELIGIBILITY
6 UNDER THIS PARAGRAPH HAVE BEEN MET IN THE PRIOR CALENDAR YEAR.

7 (2) IN THE APPLICATION REQUIRED UNDER PARAGRAPH (1) OF THIS
8 SUBSECTION, A STUDENT ASSISTANCE ORGANIZATION SHALL STATE IF THE
9 ORGANIZATION WILL PROVIDE FINANCIAL ASSISTANCE FOR QUALIFIED EDUCATION
10 EXPENSES TO:

11 (I) STUDENTS AT ELIGIBLE SCHOOLS THAT ARE PUBLIC; OR

12 (II) STUDENTS AT ELIGIBLE SCHOOLS THAT ARE NONPUBLIC.

13 (D) (1) AT LEAST 45 DAYS PRIOR TO MAKING A CONTRIBUTION TO A
14 STUDENT ASSISTANCE ORGANIZATION, A BUSINESS ENTITY SHALL APPLY TO THE
15 DEPARTMENT FOR AN INITIAL TAX CREDIT CERTIFICATE.

16 (2) THE APPLICATION FOR AN INITIAL TAX CREDIT CERTIFICATE
17 SHALL IDENTIFY IF THE STUDENT ASSISTANCE ORGANIZATION PROVIDES
18 FINANCIAL ASSISTANCE FOR QUALIFIED EDUCATION EXPENSES TO:

19 (I) STUDENTS AT ELIGIBLE SCHOOLS THAT ARE PUBLIC; OR

20 (II) STUDENTS AT ELIGIBLE SCHOOLS THAT ARE NONPUBLIC.

21 (E) THE DEPARTMENT SHALL:

22 (1) ADOPT REGULATIONS TO IMPLEMENT THIS SECTION, INCLUDING
23 THE METHOD FOR REPORTING BY STUDENT ASSISTANCE ORGANIZATIONS TO
24 ENSURE COMPLIANCE WITH THIS SECTION;

25 (2) APPROVE ALL APPLICATIONS FOR TAX CREDITS UNDER THIS
26 SECTION ON A FIRST-COME, FIRST-SERVED BASIS;

27 (3) WITHIN 60 DAYS AFTER RECEIPT, APPROVE OR REJECT AN
28 ENTITY'S APPLICATION TO BECOME A STUDENT ASSISTANCE ORGANIZATION;

1 **(4) WITHIN 45 DAYS AFTER RECEIVING AN APPLICATION, ISSUE AN**
2 **INITIAL TAX CREDIT CERTIFICATE AS PROVIDED UNDER THIS SECTION STATING THE**
3 **MAXIMUM AMOUNT OF THE TAX CREDIT FOR WHICH A BUSINESS ENTITY IS ELIGIBLE**
4 **OR PROVIDE NOTICE OF REJECTION OF THE APPLICATION THAT CONTAINS AN**
5 **EXPLANATION OF THE REASON FOR REJECTION;**

6 **(5) WITHIN 45 DAYS AFTER RECEIVING NOTICE OF A CONTRIBUTION**
7 **MADE TO A STUDENT ASSISTANCE ORGANIZATION, ISSUE A FINAL TAX CREDIT**
8 **CERTIFICATE AS PROVIDED UNDER THIS SECTION; AND**

9 **(6) PUBLISH AN ANNUAL LIST OF ALL STUDENT ASSISTANCE**
10 **ORGANIZATIONS APPROVED BY THE DEPARTMENT.**

11 **(F) (1) AFTER THE DEPARTMENT HAS ISSUED AN INITIAL TAX CREDIT**
12 **CERTIFICATE UNDER THIS SECTION, THE BUSINESS ENTITY SHALL HAVE 90 DAYS TO**
13 **MAKE A CONTRIBUTION TO A STUDENT ASSISTANCE ORGANIZATION UNDER THIS**
14 **SECTION.**

15 **(2) WITHIN 60 DAYS AFTER MAKING A CONTRIBUTION TO A STUDENT**
16 **ASSISTANCE ORGANIZATION, A BUSINESS ENTITY SHALL PROVIDE NOTICE TO THE**
17 **DEPARTMENT OF THE AMOUNT OF THE CONTRIBUTION.**

18 **(3) IF A BUSINESS ENTITY FAILS TO MAKE A CONTRIBUTION TO A**
19 **STUDENT ASSISTANCE ORGANIZATION WITHIN 90 DAYS AFTER RECEIVING AN**
20 **INITIAL TAX CREDIT CERTIFICATE, THE DEPARTMENT SHALL RESCIND THE INITIAL**
21 **TAX CREDIT CERTIFICATE.**

22 **(G) (1) IN THIS SUBSECTION, "RESERVE FUND" MEANS THE MARYLAND**
23 **EDUCATION TAX CREDIT RESERVE FUND ESTABLISHED UNDER PARAGRAPH (2) OF**
24 **THIS SUBSECTION.**

25 **(2) (I) THERE IS A MARYLAND EDUCATION TAX CREDIT RESERVE**
26 **FUND THAT IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT**
27 **TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

28 **(II) THE MONEY IN THE RESERVE FUND SHALL BE INVESTED**
29 **AND REINVESTED BY THE STATE TREASURER, AND INTEREST AND EARNINGS SHALL**
30 **BE CREDITED TO THE GENERAL FUND.**

31 **(3) (I) EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**
32 **SUBSECTION, THE DEPARTMENT MAY NOT ISSUE INITIAL TAX CREDIT CERTIFICATES**
33 **FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING MORE THAN THE AMOUNT**

1 APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR IN THE STATE
2 BUDGET AS APPROVED BY THE GENERAL ASSEMBLY.

3 (II) IF THE AGGREGATE CREDIT AMOUNTS UNDER INITIAL TAX
4 CREDIT CERTIFICATES ISSUED IN A FISCAL YEAR TOTAL LESS THAN THE AMOUNT
5 APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR, ANY EXCESS
6 AMOUNT SHALL REMAIN IN THE RESERVE FUND AND MAY BE ISSUED UNDER INITIAL
7 TAX CREDIT CERTIFICATES FOR THE NEXT FISCAL YEAR.

8 (III) IF THE AGGREGATE CREDIT AMOUNTS UNDER INITIAL TAX
9 CREDIT CERTIFICATES APPROVED FOR ELIGIBLE SCHOOLS THAT ARE PUBLIC
10 SCHOOLS IN A CALENDAR YEAR TOTAL LESS THAN 40% OF THE AMOUNT
11 APPROPRIATED TO THE RESERVE FUND FOR THAT FISCAL YEAR, THE EXCESS MAY
12 BE USED TO APPROVE INITIAL TAX CREDIT CERTIFICATES FOR ELIGIBLE SCHOOLS
13 THAT ARE NONPUBLIC SCHOOLS DURING THE NEXT CALENDAR YEAR.

14 (IV) FOR ANY FISCAL YEAR, IF FUNDS ARE TRANSFERRED FROM
15 THE RESERVE FUND UNDER THE AUTHORITY OF ANY PROVISION OF LAW OTHER
16 THAN UNDER PARAGRAPH (6) OF THIS SUBSECTION, THE MAXIMUM CREDIT
17 AMOUNTS IN THE AGGREGATE FOR WHICH THE DEPARTMENT MAY ISSUE INITIAL
18 TAX CREDIT CERTIFICATES SHALL BE REDUCED BY THE AMOUNT TRANSFERRED.

19 (4) (I) FOR EACH FISCAL YEAR, THE GOVERNOR MAY INCLUDE IN
20 THE BUDGET BILL AN APPROPRIATION TO THE RESERVE FUND.

21 (II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
22 APPROPRIATION UNDER THIS PARAGRAPH MAY NOT EXCEED \$15,000,000 IN ANY
23 FISCAL YEAR.

24 (5) NOTWITHSTANDING THE PROVISIONS OF § 7-213 OF THE STATE
25 FINANCE AND PROCUREMENT ARTICLE, THE GOVERNOR MAY NOT REDUCE AN
26 APPROPRIATION TO THE RESERVE FUND IN THE STATE BUDGET AS APPROVED BY
27 THE GENERAL ASSEMBLY.

28 (6) (I) EXCEPT AS PROVIDED IN THIS PARAGRAPH, MONEY
29 APPROPRIATED IN THE RESERVE FUND SHALL REMAIN IN THE RESERVE FUND.

30 (II) 1. WITHIN 15 DAYS AFTER THE END OF EACH CALENDAR
31 QUARTER, THE DEPARTMENT SHALL NOTIFY THE COMPTROLLER AS TO EACH FINAL
32 TAX CREDIT CERTIFICATE ISSUED DURING THE PREVIOUS QUARTER OF:

33 A. THE MAXIMUM CREDIT AMOUNT STATED IN THE
34 INITIAL TAX CREDIT CERTIFICATE; AND

1 **B. THE FINAL CERTIFIED TAX CREDIT AMOUNT.**

2 **2. ON NOTIFICATION THAT A FINAL TAX CREDIT HAS**
3 **BEEN ISSUED, THE COMPTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO THE**
4 **CREDIT AMOUNT STATED IN THE INITIAL TAX CREDIT CERTIFICATE FROM THE**
5 **RESERVE FUND TO THE GENERAL FUND.**

6 **(7) IF AN INITIAL TAX CREDIT CERTIFICATE HAS BEEN RESCINDED BY**
7 **THE DEPARTMENT, THE DEPARTMENT MAY APPROVE ADDITIONAL INITIAL TAX**
8 **CREDIT CERTIFICATES FOR OTHER BUSINESS ENTITIES THAT MAY NOT EXCEED THE**
9 **AMOUNT OF TAX CREDITS APPROVED IN THE INITIAL TAX CREDIT CERTIFICATES**
10 **THAT WERE RESCINDED.**

11 **(8) IN EACH CALENDAR YEAR, THE DEPARTMENT MAY NOT APPROVE**
12 **INITIAL TAX CREDIT CERTIFICATES THAT:**

13 **(I) EXCEED 60% OF THE TOTAL AMOUNT APPROPRIATED TO**
14 **THE RESERVE FUND FOR THAT FISCAL YEAR IN THE STATE BUDGET AS APPROVED**
15 **BY THE GENERAL ASSEMBLY FOR CONTRIBUTIONS TO STUDENT ASSISTANCE**
16 **ORGANIZATIONS THAT PROVIDE FINANCIAL ASSISTANCE FOR QUALIFIED**
17 **EDUCATION EXPENSES TO STUDENTS AT ELIGIBLE SCHOOLS THAT ARE NONPUBLIC;**
18 **OR**

19 **(II) EXCEED 40% OF THE TOTAL AMOUNT APPROPRIATED TO**
20 **THE RESERVE FUND FOR THAT FISCAL YEAR IN THE STATE BUDGET AS APPROVED**
21 **BY THE GENERAL ASSEMBLY FOR CONTRIBUTIONS TO STUDENT ASSISTANCE**
22 **ORGANIZATIONS THAT PROVIDE FINANCIAL ASSISTANCE FOR QUALIFIED**
23 **EDUCATION EXPENSES TO STUDENTS AT ELIGIBLE SCHOOLS THAT ARE PUBLIC.**

24 **(H) ANY UNUSED AMOUNT OF THE CREDIT MAY NOT BE CARRIED OVER TO**
25 **ANY OTHER TAXABLE YEAR.**

26 **(I) (1) IN ACCORDANCE WITH § 2-123 OF THE ECONOMIC DEVELOPMENT**
27 **ARTICLE, THE DEPARTMENT SHALL REPORT ON THE TAX CREDITS APPROVED**
28 **UNDER THIS SECTION.**

29 **(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS**
30 **SUBSECTION SHALL INCLUDE FOR EACH BUSINESS ENTITY APPROVED TO RECEIVE**
31 **A FINAL TAX CREDIT CERTIFICATE IN THE PRIOR CALENDAR YEAR:**

32 **(I) THE NAME AND ADDRESS OF THE STUDENT ASSISTANCE**
33 **ORGANIZATION RECEIVING THE CONTRIBUTION; AND**

1 **(II) THE AMOUNT OF THE APPROVED FINAL CREDIT**
2 **CERTIFICATE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
4 1, 2015, and shall be applicable to all taxable years beginning after December 31, 2014.