

SENATE BILL 560

C8, Q3

6lr1944

By: **Senators Ferguson, Benson, Currie, Edwards, Guzzone, Jennings, Kelley, King, Klausmeier, Madaleno, Manno, McFadden, Peters, and Raskin**

Introduced and read first time: February 4, 2016

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2016

CHAPTER _____

1 AN ACT concerning

2 **One Maryland Economic Development Tax Credits – Business Incubators,**
3 **Enterprise Zones, and Regional Institution Strategic Enterprise Zones**

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

20 BY repealing and reenacting, without amendments,
21 Article – Economic Development
22 Section 6-401(a), (f), and (g) and 6-403(g)
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Volume and 2015 Supplement)

2 BY repealing and reenacting, with amendments,
 3 Article – Economic Development
 4 Section 6–401(b), 6–402, 6–403(a), (e), and (f), 6–404, and 6–405
 5 Annotated Code of Maryland
 6 (2008 Volume and 2015 Supplement)

7 BY repealing and reenacting, without amendments,
 8 Article – Tax – Property
 9 Section 9–247(a)
 10 Annotated Code of Maryland
 11 (2012 Replacement Volume and 2015 Supplement)

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

14 **Article – Economic Development**

15 6–401.

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

17 (b) “Eligible economic development project” means an economic development
 18 project that:

19 (1) establishes or expands a business facility within a qualified distressed
 20 county, **AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC**
 21 **ENTERPRISE ZONE**; and

22 (2) is approved for a project tax credit or a start–up tax credit in accordance
 23 with this subtitle.

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

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

26 (ii) operates in the State and is exempt from taxation under §
 27 501(c)(3) or (4) of the Internal Revenue Code; and

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

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

31 (i) is a full–time position and is of indefinite duration;

- 1 (ii) pays at least 150% of the federal minimum wage;
- 2 (iii) is in a qualified distressed county;
- 3 (iv) is newly created because a business facility begins or expands in
4 one location in a qualified distressed county; and
- 5 (v) is filled.

6 (2) "Qualified position" does not include a position that is:

- 7 (i) created when an employment function is shifted from an existing
8 business facility of a business entity in the State to another business facility of the same
9 business entity if the position is not a net new job in the State;
- 10 (ii) created through a change in ownership of a trade or business;
- 11 (iii) created through a consolidation, merger, or restructuring of a
12 business entity if the position is not a net new job in the State;
- 13 (iv) created when an employment function is contractually shifted
14 from an existing business entity in the State to another business entity if the position is
15 not a net new job in the State; or
- 16 (v) filled for a period of less than 12 months.

17 6-402.

18 (a) (1) To qualify for a project tax credit or a start-up tax credit, a person shall
19 be certified by the Secretary as meeting the requirements of this subtitle and as being
20 eligible for the tax credit.

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

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

26 (1) (I) establish or expand a business facility that:

27 [(i)] 1. is located in a qualified distressed county; and

28 [(ii) 1.] 2. A. is located in a priority funding area under §
29 5-7B-02 of the State Finance and Procurement Article; or

1 [2.] B. is eligible for funding outside of a priority funding
2 area under § 5-7B-05 or § 5-7B-06 of the State Finance and Procurement Article; OR

3 (II) ESTABLISH OR EXPAND A BUSINESS INCUBATOR AS
4 DEFINED IN § 9-247 OF THE TAX - PROPERTY ARTICLE LOCATED IN:

5 1. AN ENTERPRISE ZONE DESIGNATED UNDER TITLE 5,
6 SUBTITLE 7 OF THIS ARTICLE; OR

7 2. A REGIONAL INSTITUTION STRATEGIC ENTERPRISE
8 ZONE ESTABLISHED UNDER TITLE 5, SUBTITLE 14 OF THIS ARTICLE;

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

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

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

17 (i) manufacturing or mining;

18 (ii) transportation or communications;

19 (iii) filmmaking, resort business, or recreational business;

20 (iv) agriculture, forestry, or fishing;

21 (v) research, development, or testing;

22 (vi) biotechnology;

23 (vii) computer programming, information technology, or other
24 computer-related services;

25 (viii) central services for a business entity engaged in financial
26 services, real estate services, or insurance services;

27 (ix) the operation of central administrative offices;

28 (x) the operation of a company headquarters other than the
29 headquarters of a professional sports organization;

1 (xi) the operation of a public utility;

2 (XII) A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE TAX
3 – PROPERTY ARTICLE;

4 [(xii)](XIII) warehousing; or

5 [(xiii)](XIV) other business services.

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

8 (1) the effective date of the start-up or expansion;

9 (2) the number of full-time employees before the start-up or expansion and
10 the payroll of the existing employees;

11 (3) (I) the number of qualified positions created and qualified
12 employees hired and the payroll of the new qualified employees; OR

13 (II) FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE
14 TAX – PROPERTY ARTICLE, THE NUMBER OF QUALIFIED POSITIONS CREATED AND
15 QUALIFIED EMPLOYEES HIRED AT THE FACILITY BY AGGREGATING THE QUALIFIED
16 POSITIONS CREATED AND QUALIFIED EMPLOYEES HIRED BY THE BUSINESSES AT
17 THE FACILITY AND THE PAYROLL OF THE NEW QUALIFIED EMPLOYEES; and

18 (4) any other information that the Secretary requires by regulation.

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

21 6-403.

22 (a) (1) A qualified business entity may claim a project tax credit for the cost of
23 an eligible economic development project in a qualified distressed county, **AN ENTERPRISE**
24 **ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE** if the total
25 eligible project cost for the eligible economic development project is at least \$500,000.

26 (2) A qualified business entity is not entitled to a project tax credit for a
27 cost incurred before notifying the Department of its intent to seek certification as qualifying
28 for the project tax credit.

29 (e) (1) Subject to paragraph (2) of this subsection, if the eligible project cost for
30 the eligible economic development project exceeds the State tax on the qualified business
31 entity's income generated by or arising out of the project for the taxable year in which the

1 project is placed in service, the qualified business entity may apply any excess as a project
 2 tax credit for succeeding taxable years against the State tax on the qualified business
 3 entity's income generated by or arising out of the project until the earlier of:

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

5 (ii) the expiration of the 14th taxable year following the taxable year
 6 in which the project is placed in service.

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

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

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

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

17 2. the qualified business entity [has] **OR BUSINESSES IN A**
 18 **BUSINESS INCUBATOR HAVE** maintained at least 25 qualified positions for at least 5
 19 years.

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

22 (f) (1) Subject to the limitation in paragraph (4) of this subsection and subject
 23 to § 6-405 of this subtitle, this subsection applies:

24 **(I) FOR A NONPROFIT ORGANIZATION THAT IS A BUSINESS**
 25 **INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, TO ANY**
 26 **TAXABLE YEAR FOLLOWING THE YEAR IN WHICH THE PROJECT IS PLACED IN**
 27 **SERVICE; OR**

28 **(II) FOR ANY OTHER QUALIFIED BUSINESS ENTITY,** to any taxable
 29 year after the 4th but before the 15th taxable year following the taxable year in which the
 30 project is placed in service.

31 (2) A qualified business entity other than a person subject to taxation
 32 under Title 6 of the Insurance Article may:

1 (i) apply any excess of eligible project costs for the eligible economic
2 development project over the cumulative amount used as a project tax credit for the taxable
3 year and all prior taxable years as a tax credit against the State tax for the taxable year on
4 the qualified business entity's income other than income generated by or arising out of the
5 project; and

6 (ii) claim a refund in the amount, if any, by which the unused excess
7 exceeds the State tax for the taxable year on the qualified business entity's income other
8 than income generated by or arising out of the project.

9 (3) A qualified business entity that is subject to taxation under Title 6 of
10 the Insurance Article may:

11 (i) apply any excess of eligible project costs for the eligible economic
12 development project over the cumulative amount used as a project tax credit for the taxable
13 year and all prior taxable years as a tax credit against the premium tax imposed for the
14 taxable year; and

15 (ii) claim a refund in the amount, if any, by which the unused excess
16 exceeds the premium tax for the taxable year.

17 (4) For any taxable year, the total amount used as a project tax credit and
18 claimed as a refund under this subsection may not exceed:

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

22 (II) FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE
23 TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:

24 1. THE AMOUNT OF TAX THAT THE BUSINESSES AT THE
25 BUSINESS INCUBATOR'S FACILITY ARE REQUIRED TO WITHHOLD FOR THE TAXABLE
26 YEAR FROM THE WAGES OF QUALIFIED EMPLOYEES UNDER § 10-908 OF THE TAX –
27 GENERAL ARTICLE; AND

28 2. 7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE
29 BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:

30 A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE
31 BUSINESS LOCATED IN THE BUSINESS INCUBATOR;

32 B. LOCATED AT THE BUSINESS INCUBATOR; AND

33 C. SUBJECT TO THE STATE INCOME TAX.

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

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

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

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

11 2. the qualified business entity [has] OR BUSINESSES IN A
12 BUSINESS INCUBATOR HAVE maintained at least 25 qualified positions for at least 5
13 years.

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

16 (g) A qualified business entity shall attach the certification required under §
17 6-402 of this subtitle to the tax return on which the project tax credit is claimed.

18 6-404.

19 (a) (1) A qualified business entity that locates in a qualified distressed county,
20 AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE
21 ZONE may claim a start-up tax credit in the amount provided in subsection (b) of this
22 section.

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

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

28 (1) the qualified business entity’s total eligible start-up cost associated
29 with establishing or expanding a business facility in the qualified distressed county, AN
30 ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE,
31 less the amount of the credit previously taken for the project;

32 (2) the product of multiplying \$10,000 times the number of qualified
33 employees employed at the new or expanded business facility, **INCLUDING THE**

1 AGGREGATE NUMBER OF QUALIFIED EMPLOYEES EMPLOYED BY THE BUSINESSES AT
2 THE FACILITY OF A BUSINESS INCUBATOR, AS DEFINED IN § 9-247 OF THE TAX –
3 PROPERTY ARTICLE; or

4 (3) \$500,000.

5 (c) (1) Subject to paragraph (2) of this subsection, if the start-up tax credit
6 allowed under subsection (b) of this section for the taxable year in which a qualified
7 business entity locates in a qualified distressed county, AN ENTERPRISE ZONE, OR A
8 REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE exceeds the total tax
9 otherwise due from the qualified business entity for that taxable year, the qualified
10 business entity may apply the excess as a credit for succeeding taxable years until the
11 earlier of:

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

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

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

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

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

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

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

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

29 (d) (1) Subject to the limitation in paragraph (3) of this subsection and subject
30 to § 6-405 of this subtitle, this subsection applies:

31 (I) FOR A NONPROFIT ORGANIZATION THAT IS A BUSINESS
32 INCUBATOR AS DEFINED IN § 9-247 OF THE TAX – PROPERTY ARTICLE, TO ANY
33 TAXABLE YEAR FOLLOWING THE YEAR IN WHICH THE QUALIFIED BUSINESS ENTITY

1 **LOCATES IN A QUALIFIED DISTRESSED COUNTY, ENTERPRISE ZONE, OR REGIONAL**
 2 **INSTITUTION STRATEGIC ENTERPRISE ZONE; OR**

3 **(II) FOR ANY OTHER QUALIFIED BUSINESS ENTITY**, to any taxable
 4 year after the 4th but before the 15th taxable year following the taxable year in which the
 5 qualified business entity locates in a qualified distressed county, **AN ENTERPRISE ZONE,**
 6 **OR REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE.**

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

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

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

15 **(II) FOR A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE**
 16 **TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:**

17 **1. THE AMOUNT OF TAX THAT THE BUSINESSES AT THE**
 18 **BUSINESS INCUBATOR'S FACILITY ARE REQUIRED TO WITHHOLD FOR THE TAXABLE**
 19 **YEAR FROM THE WAGES OF QUALIFIED EMPLOYEES UNDER § 10-908 OF THE TAX –**
 20 **GENERAL ARTICLE; AND**

21 **2. 7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE**
 22 **BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:**

23 **A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE**
 24 **BUSINESS LOCATED IN THE BUSINESS INCUBATOR;**

25 **B. LOCATED AT THE BUSINESS INCUBATOR; AND**

26 **C. SUBJECT TO THE STATE INCOME TAX.**

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

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

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

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

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

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

11 (e) A qualified business entity shall attach the certification required under §
12 6-402(a) of this subtitle to the tax return on which the start-up tax credit is claimed.

13 6-405.

14 **(A) ~~IF~~ EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF** the pay
15 for the majority of the qualified positions created from the establishment or expansion of a
16 business facility is at least 250% of the federal minimum wage, §§ 6-403(f) and 6-404(d) of
17 this subtitle apply beginning with the taxable year after the 2nd taxable year that follows
18 the taxable year when the qualified business entity locates in a qualified distressed county,
19 **AN ENTERPRISE ZONE, OR A REGIONAL INSTITUTION STRATEGIC ENTERPRISE**
20 **ZONE.**

21 **(B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO A NONPROFIT**
22 **ORGANIZATION THAT IS A BUSINESS INCUBATOR AS DEFINED IN § 9-247 OF THE TAX**
23 **– PROPERTY ARTICLE.**

24 **Article – Tax – Property**

25 9-247.

26 (a) In this section, “business incubator” means a program in which units of space
27 are leased by multiple early-stage businesses that share physical common space,
28 administrative services and equipment, business management training, mentoring, and
29 technical support.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
31 1, 2016, and shall be applicable to all taxable years beginning after December 31, 2015.