

SENATE BILL 364

C8, Q3
SB 560/16 – B&T

7lr1715
CF HB 1007

By: **Senators Ferguson, Astle, Guzzone, Kasemeyer, Klausmeier, Manno, Middleton, Ramirez, Rosapepe, Smith, Young, ~~and Zucker~~ Zucker, Madaleno, Currie, DeGrange, Eckardt, King, McFadden, Peters, and Serafini**

Introduced and read first time: January 25, 2017
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2017

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; providing for the construction of this Act; and generally
19 relating to the One Maryland Economic Development Tax Credit and certain
20 business incubators.

21 BY repealing and reenacting, without amendments,

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 Article – Economic Development
 2 Section 6–401(a), (f), and (g) and 6–403(g)
 3 Annotated Code of Maryland
 4 (2008 Volume and 2016 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – Economic Development
 7 Section 6–401(b), 6–402, 6–403(a), (e), and (f), 6–404, and 6–405
 8 Annotated Code of Maryland
 9 (2008 Volume and 2016 Supplement)

10 BY repealing and reenacting, without amendments,
 11 Article – Tax – Property
 12 Section 9–247(a)
 13 Annotated Code of Maryland
 14 (2012 Replacement Volume and 2016 Supplement)

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

17 **Article – Economic Development**

18 6–401.

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

20 (b) “Eligible economic development project” means an economic development
 21 project that:

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

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

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

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

29 (ii) operates in the State and is exempt from taxation under §
 30 501(c)(3) or (4) of the Internal Revenue Code; and

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

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

- 1 (i) is a full-time position and is of indefinite duration;
- 2 (ii) pays at least 150% of the federal minimum wage;
- 3 (iii) is in a qualified distressed county, **AN ENTERPRISE ZONE, OR A**
4 **REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE**;
- 5 (iv) is newly created because a business facility begins or expands in
6 one location in a qualified distressed county, **AN ENTERPRISE ZONE, OR A REGIONAL**
7 **INSTITUTION STRATEGIC ENTERPRISE ZONE**; and
- 8 (v) is filled.
- 9 (2) “Qualified position” does not include a position that is:
- 10 (i) created when an employment function is shifted from an existing
11 business facility of a business entity in the State to another business facility of the same
12 business entity if the position is not a net new job in the State;
- 13 (ii) created through a change in ownership of a trade or business;
- 14 (iii) created through a consolidation, merger, or restructuring of a
15 business entity if the position is not a net new job in the State;
- 16 (iv) created when an employment function is contractually shifted
17 from an existing business entity in the State to another business entity if the position is
18 not a net new job in the State; or
- 19 (v) filled for a period of less than 12 months.

20 6-402.

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

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

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

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

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

2 [(ii) 1.] 2. A. is located in a priority funding area under §
3 5-7B-02 of the State Finance and Procurement Article; or

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

6 (II) ESTABLISH OR EXPAND A BUSINESS INCUBATOR AS
7 DEFINED IN ~~§ 9-247~~ § 9-247(A) OF THE TAX – PROPERTY ARTICLE LOCATED IN:

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

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

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

14 (II) FOR A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9-247~~ §
15 9-247(A) OF THE TAX – PROPERTY ARTICLE, DURING ANY 24-MONTH PERIOD,
16 CREATE AT LEAST 25 QUALIFIED POSITIONS AT THE FACILITY BY AGGREGATING THE
17 POSITIONS CREATED BY THE BUSINESSES AT THE FACILITY; and

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

20 (i) manufacturing or mining;

21 (ii) transportation or communications;

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

23 (iv) agriculture, forestry, or fishing;

24 (v) research, development, or testing;

25 (vi) biotechnology;

26 (vii) computer programming, information technology, or other
27 computer-related services;

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

1 (ix) the operation of central administrative offices;

2 (x) the operation of a company headquarters other than the
3 headquarters of a professional sports organization;

4 (xi) the operation of a public utility;

5 **(XII) A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9-247~~ § 9-247(A)**
6 **OF THE TAX – PROPERTY ARTICLE;**

7 **[(xii)](XIII) warehousing; or**

8 **[(xiii)](XIV) other business services.**

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

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

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

14 (3) **(I)** the number of qualified positions created and qualified
15 employees hired and the payroll of the new qualified employees; **OR**

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

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

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

25 6-403.

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

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

(e) (1) Subject to paragraph (2) of this subsection, if the eligible project cost for the eligible economic development project exceeds the State tax on the qualified business entity's income generated by or arising out of the project for the taxable year in which the project is placed in service, the qualified business entity may apply any excess as a project tax credit for succeeding taxable years against the State tax on the qualified business entity's income generated by or arising out of the project until the earlier of:

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

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

(2) (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~~ § 9-247(A) 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] **OR BUSINESSES IN A BUSINESS INCUBATOR HAVE** 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.

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

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

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

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

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

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

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

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

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

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

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

27 **(II) FOR A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9-247~~ §**
28 **9-247(A) OF THE TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:**

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

33 **2. 7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE**
34 **BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:**

1 **A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE**
 2 **BUSINESS LOCATED IN THE BUSINESS INCUBATOR;**

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

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

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

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

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

11 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9-247~~ §**
 12 **9-247(A) OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF**
 13 **QUALIFIED POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR’S**
 14 **FACILITY FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and**

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

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

20 (g) A qualified business entity shall attach the certification required under §
 21 6-402 of this subtitle to the tax return on which the project tax credit is claimed.

22 6-404.

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

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

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

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

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

10 (3) \$500,000.

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

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

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

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

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

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

27 **B. FOR A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9-247~~ §**
28 **9-247(A) OF THE TAX – PROPERTY ARTICLE, THE AGGREGATE NUMBER OF**
29 **QUALIFIED POSITIONS FILLED BY THE BUSINESSES AT THE BUSINESS INCUBATOR'S**
30 **FACILITY FALLS BELOW 25, BUT DOES NOT FALL BELOW 10; and**

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

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

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

3 (I) FOR A NONPROFIT ORGANIZATION THAT IS A BUSINESS
4 INCUBATOR AS DEFINED IN ~~§ 9–247~~ § 9–247(A) OF THE TAX – PROPERTY ARTICLE,
5 TO ANY TAXABLE YEAR FOLLOWING THE YEAR IN WHICH THE QUALIFIED BUSINESS
6 ENTITY LOCATES IN A QUALIFIED DISTRESSED COUNTY, AN ENTERPRISE ZONE, OR A
7 REGIONAL INSTITUTION STRATEGIC ENTERPRISE ZONE; OR

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

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

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

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

20 (II) FOR A BUSINESS INCUBATOR AS DEFINED IN ~~§ 9–247~~ §
21 9–247(A) OF THE TAX – PROPERTY ARTICLE, AN AMOUNT EQUAL TO:

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

26 2. 7.5% OF THE AMOUNT PAID BY BUSINESSES AT THE
27 BUSINESS INCUBATOR'S FACILITY TO INDEPENDENT CONTRACTORS WHO ARE:

28 A. ENGAGED IN THE PRIMARY ACTIVITIES OF THE
29 BUSINESS LOCATED IN THE BUSINESS INCUBATOR;

30 B. LOCATED AT THE BUSINESS INCUBATOR; AND

31 C. SUBJECT TO THE STATE INCOME TAX.

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

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

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

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

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

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

13 (e) A qualified business entity shall attach the certification required under §
14 6-402(a) of this subtitle to the tax return on which the start-up tax credit is claimed.

15 6-405.

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

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

26 Article – Tax – Property

27 9-247.

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

32 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July~~
33 ~~1, 2017, and shall be applicable to all taxable years beginning after December 31, 2016.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply retroactively and shall be applicable to all taxable years beginning after December
3 31, 2015.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
5 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.