

# HOUSE BILL 565

Q3, C8, Q1

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By: **Delegates Kaiser, Feldmark, Palakovich Carr, Washington, and Wilkins**

Introduced and read first time: January 27, 2020

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Business and Economic Development Tax Credits – Termination**

3 FOR the purpose of prohibiting the Secretary of Commerce from designating or expanding  
4 certain enterprise zones and focus areas on or after a certain date; providing that the  
5 automatic designation of certain areas as enterprise zones applies only to areas  
6 designated on or before a certain date; prohibiting the Secretary from designating or  
7 renewing certain Regional Institution Strategic Enterprise zones on or after a  
8 certain date; providing for the termination of the One Maryland Economic  
9 Development Tax Credit Program on or after a certain date; providing for the  
10 application of certain enhancements offered under the Opportunity Zone  
11 Enhancement Program to certain taxable years and certain provisions relating to  
12 the enterprise zone program; prohibiting the Department of Commerce from issuing  
13 tax credit certificates to certain investors in certain biotechnology companies, to  
14 certain buyers of certain cybersecurity technology and services, and to certain small  
15 businesses that provide certain employer benefits to certain qualified employees on  
16 or after a certain date; prohibiting the Department from issuing tax credit  
17 certificates for certain film production activities for fiscal years beginning after a  
18 certain date; repealing a provision authorizing certain business entities to claim,  
19 under certain circumstances, enterprise zone property tax credits within a certain  
20 number of years after the enterprise zone expires; making a technical correction; and  
21 generally relating to business and economic development tax credit programs in the  
22 State.

23 BY repealing and reenacting, with amendments,  
24 Article – Economic Development  
25 Section 5–702, 5–708, 5–1404(f), and 6–1002  
26 Annotated Code of Maryland  
27 (2018 Replacement Volume and 2019 Supplement)

28 BY adding to  
29 Article – Economic Development

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 6–407  
2 Annotated Code of Maryland  
3 (2018 Replacement Volume and 2019 Supplement)

4 BY repealing and reenacting, with amendments,  
5 Article – Tax – General  
6 Section 10–725(c), 10–730(f), 10–733.1(d), and 10–748(d)  
7 Annotated Code of Maryland  
8 (2016 Replacement Volume and 2019 Supplement)

9 BY repealing and reenacting, with amendments,  
10 Article – Tax – Property  
11 Section 9–103(e)  
12 Annotated Code of Maryland  
13 (2019 Replacement Volume)

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

16 **Article – Economic Development**

17 5–702.

18 **(A) (1) THIS SUBTITLE APPLIES ONLY TO THE DESIGNATION OR**  
19 **EXPANSION OF AN ENTERPRISE ZONE OR A FOCUS AREA ON OR BEFORE MAY 31,**  
20 **2020.**

21 **(2) THE SECRETARY MAY NOT DESIGNATE OR EXPAND AN**  
22 **ENTERPRISE ZONE OR A FOCUS AREA UNDER THIS SUBTITLE ON OR AFTER JUNE 1,**  
23 **2020.**

24 **(B)** Subject to § 9–103 of the Tax – Property Article, a business entity that owns,  
25 operates, develops, constructs, or rehabilitates property intended for use primarily as single  
26 or multifamily residential property located in an enterprise zone may not benefit from an  
27 incentive or initiative under this subtitle.

28 5–708.

29 (a) An area that is designated an [enterprize] ENTERPRISE zone, empowerment  
30 zone, or enterprise community under federal law **ON OR BEFORE MAY 31, 2020**, shall  
31 automatically be designated as an enterprise zone notwithstanding the limit on the number  
32 of enterprise zones that the Secretary may designate under § 5–704(b) of this subtitle.

33 (b) An application by a political subdivision and the designation by the Secretary  
34 of an area as an enterprise zone constitutes the State approval that may be required to  
35 designate an area as an enterprise zone under federal law.

1 5-1404.

2 (f) (1) (i) Subject to subparagraph (ii) of this paragraph, the designation of  
3 an area as a RISE zone is effective for 5 years.

4 (ii) Upon a joint application of a qualified institution, a county and,  
5 if applicable, a municipal corporation, or the economic development agency of a county or  
6 municipal corporation, the Secretary may renew a RISE zone for an additional 5 years.

7 (2) The Secretary may not:

8 (I) approve more than three RISE zones in a single county or  
9 municipal corporation; OR

10 (II) DESIGNATE OR RENEW A RISE ZONE UNDER THIS SUBTITLE  
11 ON OR AFTER JUNE 1, 2020.

12 6-407.

13 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE AND  
14 THE PROJECT TAX CREDIT AUTHORIZED UNDER THIS SUBTITLE SHALL TERMINATE  
15 ON JANUARY 1, 2023.

16 (B) AFTER TERMINATION OF THIS SUBTITLE:

17 (1) A PERSON MAY BE CONSIDERED FOR ELIGIBILITY FOR THE  
18 PROJECT TAX CREDIT AUTHORIZED UNDER THIS SUBTITLE BASED ON POSITIONS  
19 FILLED BEFORE TERMINATION OF THIS SUBTITLE, PROVIDED THAT THE OTHER  
20 REQUIREMENTS OF THE SUBTITLE ARE SATISFIED; AND

21 (2) PROJECT TAX CREDITS EARNED MAY BE CARRIED FORWARD OR  
22 CLAIMED AS A REFUND IN ACCORDANCE WITH § 6-403 OF THIS SUBTITLE.

23 6-1002.

24 (a) There is an Opportunity Zone Enhancement Program in the Department.

25 (b) (1) The Department shall administer the tax credit enhancements offered  
26 under the Program.

27 (2) THE ENHANCEMENTS OFFERED UNDER THE PROGRAM SHALL BE  
28 APPLICABLE TO ALL TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2018, BUT  
29 BEFORE JANUARY 1, 2023.

1 (c) (1) The Department shall publish on its website information about the  
2 Program and information reported by a qualified opportunity fund receiving enhanced tax  
3 credits under the Program.

4 (2) The information published on the website may not include any  
5 proprietary or confidential information.

6 (d) The Department, in consultation with the Department of Housing and  
7 Community Development, shall adopt regulations to carry out this subtitle, including  
8 criteria and procedures for determining eligibility for a Level 1 or Level 2 opportunity zone  
9 enhancement.

#### 10 Article – Tax – General

11 10–725.

12 (c) (1) At least 30 days prior to making an investment in a qualified Maryland  
13 biotechnology company for which a qualified investor would be eligible for an initial tax  
14 credit certificate under subsection (b) of this section, the qualified investor shall submit an  
15 application to the Department.

16 (2) The application shall evidence that the qualified Maryland  
17 biotechnology company is:

18 (i) in good standing;

19 (ii) current in the payment of all tax obligations to the State or any  
20 unit or subdivision of the State; and

21 (iii) not in default under the terms of any contract with, indebtedness  
22 to, or grant from the State or any unit or subdivision of the State.

23 (3) **(I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS**  
24 **PARAGRAPH, THE** Department shall:

25 **[(i)] 1.** approve all applications that qualify for credits under this  
26 section on a first–come, first–served basis; and

27 **[(ii)] 2.** within 30 days of receipt of an application, certify the  
28 amount of any approved tax credits to a qualified investor.

29 **(II) THE DEPARTMENT MAY NOT ISSUE ANY TAX CREDIT**  
30 **CERTIFICATES UNDER THIS SECTION ON OR AFTER JANUARY 1, 2023.**

31 (4) (i) After the date on which the Department issues an initial tax  
32 credit certificate under this section, a qualified investor shall have 30 calendar days to

1 make an investment in a qualified Maryland biotechnology company under this section.

2 (ii) Within 10 calendar days after the date on which a qualified  
3 investor makes the investment, the qualified investor shall provide to the Department  
4 notice and proof of the making of the investment, including:

5 1. the date of the investment;

6 2. the amount invested;

7 3. proof of the receipt of the invested funds by the qualified  
8 Maryland biotechnology company;

9 4. a complete description of the nature of the ownership  
10 interest in the equity of the qualified Maryland biotechnology company acquired in  
11 consideration of the investment; and

12 5. any reasonable supporting documentation the  
13 Department may require.

14 (iii) If a qualified investor does not provide the notice and proof of the  
15 making of the investment required in subparagraph (ii) of this paragraph within 40  
16 calendar days after the date on which the Department issues an initial tax credit certificate  
17 under this section:

18 1. the Department shall rescind the initial tax credit  
19 certificate; and

20 2. the credit amount allocated to the rescinded certificate  
21 shall revert to the Maryland Biotechnology Investment Tax Credit Reserve Fund and shall  
22 be available in the applicable fiscal year for allocation by the Department to other initial  
23 tax credit certificates in accordance with the provisions of this section.

24 10-730.

25 (f) (1) Except as provided in paragraph (2) of this subsection, the Secretary  
26 may not issue tax credit certificates for credit amounts in the aggregate totaling more than:

27 (i) for fiscal year 2014, \$25,000,000;

28 (ii) for fiscal year 2015, \$7,500,000;

29 (iii) for fiscal year 2016, \$7,500,000;

30 (iv) for fiscal year 2019, \$8,000,000;

31 (v) for fiscal year 2020, \$11,000,000;

- 1 (vi) for fiscal year 2021, \$14,000,000;
- 2 (vii) for fiscal year 2022, \$17,000,000; and
- 3 (viii) for fiscal year 2023 [and each fiscal year thereafter],  
4 \$20,000,000.

5 (2) If the aggregate credit amounts under the tax credit certificates issued  
6 by the Secretary total less than the maximum provided under paragraph (1) of this  
7 subsection in any fiscal year, any excess amount may be carried forward and issued under  
8 tax credit certificates in a subsequent fiscal year.

9 (3) The Secretary may not issue tax credit certificates **UNDER THIS**  
10 **SECTION:**

11 (I) for credit amounts totaling more than \$10,000,000 in the  
12 aggregate for a single film production activity; **OR**

13 (II) **FOR ANY FISCAL YEAR BEGINNING AFTER JUNE 30, 2023.**

14 (4) (i) For fiscal year 2019 and each fiscal year thereafter, the Secretary  
15 shall make 10% of the credit amount authorized under paragraph (1) of this subsection  
16 available for Maryland small or independent film entities.

17 (ii) If the total amount of credits applied for by Maryland small or  
18 independent film entities is less than the amount made available under subparagraph (i)  
19 of this paragraph, the Secretary shall make available the unused amount of credits for use  
20 by qualified film production entities.

21 10-733.1.

22 (d) (1) (i) A qualified buyer eligible for the credit under this section may  
23 apply to the Department for a credit certificate that states the amount of the credit the  
24 qualified buyer may claim under subsection (b) of this section.

25 (ii) A qualified buyer shall attach the credit certificate to the income  
26 tax return on which the qualified buyer claims the credit under subsection (b) of this  
27 section.

28 (2) Subject to paragraph (3) of this subsection, the Secretary of Commerce  
29 shall approve each application under paragraph (1) of this subsection that qualifies for a  
30 credit certificate.

31 (3) (i) The total amount of the credit certificates approved by the  
32 Secretary of Commerce under this subsection may not exceed:

1                   1.     for taxable year 2018, \$2,000,000; and

2                   2.     for taxable [year 2019 and each taxable year thereafter,]  
3 **YEARS BEGINNING AFTER DECEMBER 31, 2018, BUT BEFORE JANUARY 1, 2023,**  
4 **\$4,000,000.**

5                   (ii)    For each taxable year, the Secretary of Commerce shall award  
6 25% of the amount of tax credits authorized under subparagraph (i) of this paragraph to  
7 qualified buyers that purchase cybersecurity services.

8                   **(iii) THE DEPARTMENT MAY NOT ISSUE ANY TAX CREDIT**  
9 **CERTIFICATES UNDER THIS SECTION ON OR AFTER JANUARY 1, 2023.**

10 10-748.

11           (d)   (1)   Subject to the limitations of this subsection, on application by a small  
12 business, the Department shall issue a tax credit certificate in the amount allowable under  
13 subsection (c) of this section.

14                   (2)    The application shall include:

15                   (i)     the name of the small business;

16                   (ii)    evidence that the small business is:

17                   1.     duly organized and in good standing in the jurisdiction  
18 under the laws under which it is organized;

19                   2.     current in the payment of all tax obligations to the State  
20 or any unit or subdivision of the State; and

21                   3.     not in default under the terms of any contract with,  
22 indebtedness to, or grant from the State or any unit or subdivision of the State;

23                   (iii)   proof of the wages paid to each qualified employee;

24                   (iv)   proof of the qualified employer benefits accrued to each qualified  
25 employee; and

26                   (v)     any other information that the Department requires.

27                   (3)    The Department shall:

28                   (i)     approve all applications that qualify for a tax credit certificate  
29 under this subsection on a first-come, first-served basis; and

1 (ii) notify the small business within 45 days after the receipt of the  
2 application of the Department's approval or denial of the application.

3 (4) For any taxable year, the total amount of credit certificates issued by  
4 the Department under this subsection may not exceed \$5,000,000.

5 **(5) THE DEPARTMENT MAY NOT ISSUE ANY TAX CREDIT**  
6 **CERTIFICATES UNDER THIS SUBSECTION ON OR AFTER JANUARY 1, 2023.**

7 **Article – Tax – Property**

8 9–103.

9 (e) (1) A tax credit under this section is available to a qualified property for no  
10 more than 10 consecutive years beginning with:

11 (i) the taxable year following the calendar year in which the real  
12 property initially becomes a qualified property; or

13 (ii) the taxable year in which the real property initially becomes a  
14 qualified property, subject to the approval of the appropriate local governing body and the  
15 Secretary of Commerce.

16 (2) Even if the designation of an enterprise zone expires, the tax credit  
17 under this section continues to be available to a qualified property.

18 (3) [Notwithstanding § 5–707(d) of the Economic Development Article but  
19 subject to § 5–707(b) and (c) of the Economic Development Article, a business entity  
20 operating in an enterprise zone when the designation of the enterprise zone expires may  
21 claim the credits allowed under this section for real property that:

22 (i) the business owns, operates, develops, constructs, or  
23 rehabilitates within 5 years after the date the designation of the enterprise zone expired;  
24 and

25 (ii) otherwise qualifies for the credits allowed under this section.

26 (4)] State property tax imposed on real property is not affected by this  
27 section.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
29 1, 2020.