

HOUSE BILL 398

C8, Q3, Q1
HB 1096/22 – W&M

3lr1572

By: **Delegate Feldmark**

Introduced and read first time: January 27, 2023

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development Tax Credit Programs – Qualified Position and Qualified**
3 **Employee – Definitions**

4 FOR the purpose of altering the definition of “qualified position” for purposes of eligibility
5 for and the calculation of benefits under the One Maryland and More Jobs for
6 Marylanders economic development tax credit programs; altering the definition of
7 “qualified employee” for purposes of eligibility for and calculation of the credit
8 against the income tax for certain business entities located in an enterprise zone;
9 and generally relating to eligibility for benefits under the Enterprise Zone, One
10 Maryland, and More Jobs for Marylanders economic development tax credit
11 programs.

12 BY repealing and reenacting, without amendments,
13 Article – Economic Development
14 Section 6–401(a), 6–403(a) and (b)(1), 6–801(a) and (i), and 6–804(a) and (b)
15 Annotated Code of Maryland
16 (2018 Replacement Volume and 2022 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Economic Development
19 Section 6–401(g) and 6–801(k)
20 Annotated Code of Maryland
21 (2018 Replacement Volume and 2022 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Tax – General
24 Section 10–702
25 Annotated Code of Maryland
26 (2022 Replacement Volume)

27 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Tax – General
Section 10–741(a) and (b)
Annotated Code of Maryland
(2022 Replacement Volume)

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

Article – Economic Development

6–401.

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

(g) (1) “Qualified position” means:

(I) IF THE POSITION IS FILLED BEFORE OCTOBER 1, 2023, a
position that:

[(i)] 1. is a full–time position and is of indefinite duration;

[(ii)] 2. pays at least 120% of the State minimum wage;

[(iii)] 3. is in a Tier I county;

[(iv)] 4. is newly created because a business facility begins or
expands in one location in a Tier I county; and

[(v)] 5. is filled; **OR**

(II) IF THE POSITION IS FILLED ON OR AFTER OCTOBER 1, 2023,
A POSITION THAT:

1. IS FULL–TIME AND OF INDEFINITE DURATION;

2. PAYS AT LEAST:

A. FOR AN EMPLOYEE CLASSIFICATION FOR WHICH
THERE IS A PREVAILING WAGE RATE, AS DEFINED UNDER § 17–201 OF THE STATE
FINANCE AND PROCUREMENT ARTICLE, THE PREVAILING WAGE; OR

B. FOR ANY OTHER EMPLOYEE CLASSIFICATION, 150%
OF THE STATE MINIMUM WAGE;

3. PROVIDES CAREER ADVANCEMENT TRAINING;

1 4. AFFORDS THE EMPLOYEE THE RIGHT TO
2 COLLECTIVELY BARGAIN FOR WAGES AND BENEFITS;

3 5. PROVIDES PAID LEAVE;

4 6. IS CONSIDERED COVERED EMPLOYMENT FOR
5 PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS IN ACCORDANCE WITH TITLE
6 8 OF THE LABOR AND EMPLOYMENT ARTICLE;

7 7. ENTITLES THE EMPLOYEE TO WORKERS'
8 COMPENSATION BENEFITS IN ACCORDANCE WITH TITLE 9 OF THE LABOR AND
9 EMPLOYMENT ARTICLE;

10 8. OFFERS EMPLOYER-PROVIDED HEALTH INSURANCE
11 BENEFITS WITH MONTHLY PREMIUMS THAT DO NOT EXCEED 8.5% OF THE
12 EMPLOYEE'S NET MONTHLY EARNINGS;

13 9. OFFERS RETIREMENT BENEFITS;

14 10. IS IN A TIER I COUNTY;

15 11. IS NEWLY CREATED BECAUSE A BUSINESS FACILITY
16 BEGINS OR EXPANDS IN ONE LOCATION IN A TIER I COUNTY; AND

17 12. IS FILLED.

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

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

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

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

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

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

(a) (1) A qualified business entity may claim a project tax credit for the cost of an eligible economic development project in a Tier I county if the total 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.

(b) (1) (i) Subject to the limitation in paragraph (2) of this subsection, the project tax credit allowed under this section is the lesser of the maximum amount specified in subparagraph (ii) of this paragraph and the total eligible project cost for the eligible economic development project, less the amount of the credit previously taken for the project in prior taxable years.

(ii) For purposes of calculation of the credit under subparagraph (i) of this paragraph, the maximum amount is:

1. \$5,000,000, if the qualified business entity creates at least 50 qualified positions;
2. \$2,500,000, if the qualified business entity creates at least 25 qualified positions but fewer than 50 qualified positions; or
3. \$1,000,000, if the qualified business entity creates at least 10 qualified positions but fewer than 25 qualified positions.

6–801.

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

(i) “Program” means the More Jobs for Marylanders Program established under this subtitle.

(k) (1) “Qualified position” means a position that:

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

(ii) 1. except as provided in item 2 of this item, for a position in a facility that is located in an opportunity zone, pays an average annual salary that exceeds \$50,000; or

2. A. for a position in a facility of a business entity described under subsection (c)(1)(i) of this section that is provided a certificate under § 6–805 of this subtitle before June 1, 2022, pays at least 120% of the State minimum wage **IF THE POSITION IS FILLED BEFORE OCTOBER 1, 2023, OR PAYS AT LEAST 150% OF THE STATE MINIMUM WAGE IF THE POSITION IS FILLED ON OR AFTER OCTOBER 1,**

1 **2023; or**

2 B. for a position in a facility of a business entity described
3 under subsection (c)(1)(i) of this section that is provided a certificate under § 6–805 of this
4 subtitle on or after June 1, 2022, pays at least 150% of the State minimum wage;

5 (iii) is located in a facility;

6 (iv) is newly created at a single facility in the State; [and]

7 (v) is filled; AND

8 **(VI) IF THE POSITION IS FILLED ON OR AFTER OCTOBER 1, 2023:**

9 **1. PROVIDES CAREER ADVANCEMENT TRAINING;**

10 **2. AFFORDS THE EMPLOYEE THE RIGHT TO**
11 **COLLECTIVELY BARGAIN FOR WAGES AND BENEFITS;**

12 **3. PROVIDES PAID LEAVE;**

13 **4. IS CONSIDERED COVERED EMPLOYMENT FOR**
14 **PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS IN ACCORDANCE WITH TITLE**
15 **8 OF THE LABOR AND EMPLOYMENT ARTICLE;**

16 **5. ENTITLES THE EMPLOYEE TO WORKERS’**
17 **COMPENSATION BENEFITS IN ACCORDANCE WITH TITLE 9 OF THE LABOR AND**
18 **EMPLOYMENT ARTICLE;**

19 **6. OFFERS EMPLOYER–PROVIDED HEALTH INSURANCE**
20 **BENEFITS WITH MONTHLY PREMIUMS THAT DO NOT EXCEED 8.5% OF THE**
21 **EMPLOYEE’S NET MONTHLY EARNINGS; AND**

22 **7. OFFERS RETIREMENT BENEFITS.**

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

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

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

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

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

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

6–804.

(a) (1) Except as provided in paragraph (2) of this subsection, the Program benefits authorized under this section may be claimed by a qualified business entity for up to 10 consecutive benefit years.

(2) In the case of a qualified business entity that is located in a Tier II area and is provided a certificate under § 6–805 of this subtitle on or after June 1, 2022, the Program benefits authorized under this section may be claimed by the qualified business entity for up to 5 consecutive benefit years.

(b) On enrollment in the Program:

(1) a new business entity in a Tier I area that is provided a certificate under § 6–805 of this subtitle before June 1, 2022, is eligible for:

(i) a credit against the State income tax, established under § 10–741(b) of the Tax – General Article;

(ii) a credit against the State property tax, established under § 9–110 of the Tax – Property Article;

(iii) a refund of sales and use tax paid during the immediately preceding taxable year, as provided under § 11–411 of the Tax – General Article; and

(iv) a waiver of fees charged by the State Department of Assessments and Taxation, established under § 1–203.1 of the Corporations and Associations Article; and

(2) except as provided in subsection (c) of this section, a new business entity not described under item (1) of this subsection or an existing business entity that operates an eligible project is eligible for a credit against the State income tax, established under § 10–741(b) of the Tax – General Article.

Article – Tax – General

10–702.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Business entity” means:

1. a person conducting or operating a trade or business; or

2. an organization that is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code.

(ii) “Business entity” does not include a person owning, operating, developing, constructing, or rehabilitating property intended for use primarily as single or multifamily residential property located within the enterprise zone.

(3) “Economically disadvantaged individual” means an individual who is certified by provisions that the Maryland Department of Labor adopts as an individual who, before becoming employed by a business entity in an enterprise zone:

(i) was both unemployed for at least 30 consecutive days and qualified to participate in training activities for the economically disadvantaged under the federal Workforce Innovation and Opportunity Act or its successor; or

(ii) in the absence of an applicable federal act, met the criteria for an economically disadvantaged individual that the Secretary of Labor sets.

(4) (i) “Enterprise zone” has the meaning stated in § 5–701 of the Economic Development Article.

(ii) “Enterprise zone” includes a Regional Institution Strategic Enterprise zone established under Title 5, Subtitle 14 of the Economic Development Article.

(5) “Focus area” has the meaning stated in § 5–701 of the Economic Development Article.

(6) “Focus area employee” means an individual who:

(i) is a new employee or an employee rehired after being laid off for more than 1 year by a business entity;

(ii) is employed by a business entity at least 35 hours each week for at least 12 months before or during the taxable year for which the entity claims a credit;

(iii) spends at least 50% of the hours under item (ii) of this paragraph either in the focus area or on activities of the business entity resulting directly from its location in the focus area;

(iv) is hired by the business entity after the later of:

1. the date on which the focus area is designated; or

1 (II) PROVIDES CAREER ADVANCEMENT TRAINING;

2 (III) AFFORDS THE EMPLOYEE THE RIGHT TO COLLECTIVELY
3 BARGAIN FOR WAGES AND BENEFITS;

4 (IV) PROVIDES PAID LEAVE;

5 (V) IS CONSIDERED COVERED EMPLOYMENT FOR PURPOSES OF
6 UNEMPLOYMENT INSURANCE BENEFITS IN ACCORDANCE WITH TITLE 8 OF THE
7 LABOR AND EMPLOYMENT ARTICLE;

8 (VI) ENTITLES THE EMPLOYEE TO WORKERS' COMPENSATION
9 BENEFITS IN ACCORDANCE WITH TITLE 9 OF THE LABOR AND EMPLOYMENT
10 ARTICLE;

11 (VII) OFFERS EMPLOYER-PROVIDED HEALTH INSURANCE
12 BENEFITS WITH MONTHLY PREMIUMS THAT DO NOT EXCEED 8.5% OF THE
13 EMPLOYEE'S NET MONTHLY EARNINGS; AND

14 (VIII) OFFERS RETIREMENT BENEFITS.

15 (b) (1) Any business entity that is located in an enterprise zone and satisfies
16 the requirements of § 5-707 of the Economic Development Article may claim a credit only
17 against the State income tax for the wages specified in subsections (c) and (d) of this section
18 that are paid in the taxable year for which the entity claims the credit.

19 (2) A business entity that is located in a focus area and satisfies the
20 requirements of § 5-707 of the Economic Development Article may claim a credit only
21 against the State income tax for the wages specified in subsection (e) of this section that
22 are paid to a focus area employee in the taxable year for which the entity claims the credit.

23 (3) An organization that is exempt from taxation under § 501(c)(3) or (4) of
24 the Internal Revenue Code may apply the credit under this section as a credit against
25 income tax due on unrelated business taxable income as provided under §§ 10-304 and
26 10-812 of this title.

27 (c) If a business entity does not claim an enhanced tax credit under subsection (e)
28 of this section for a focus area employee, for the taxable year in which a business entity
29 satisfies the requirements of § 5-707 or § 5-1406 of the Economic Development Article, a
30 credit is allowed that equals:

31 (1) up to \$3,000 of the wages paid to each qualified employee who:

32 (i) is an economically disadvantaged individual; and

1 (ii) is not hired to replace an individual whom the business entity
2 employed in that or any of the 3 preceding taxable years; and

3 (2) up to \$1,000 of the wages paid to each qualified employee who:

4 (i) is not an economically disadvantaged individual; and

5 (ii) is not hired to replace an individual whom the business entity
6 employed in that or any of the 3 preceding taxable years.

7 (d) (1) If a business entity does not claim an enhanced tax credit under
8 subsection (e) of this section for a focus area employee, for each taxable year after the
9 taxable year described in subsection (c) of this section, while the area is designated an
10 enterprise zone, a credit is allowed that equals:

11 (i) up to \$3,000 of the wages paid to each qualified employee who:

12 1. is an economically disadvantaged individual;

13 2. became a qualified employee during the taxable year to
14 which the credit applies; and

15 3. is not hired to replace an individual whom the business
16 entity employed in that or any of the 3 preceding taxable years;

17 (ii) up to \$2,000 of the wages paid to each qualified employee who is
18 an economically disadvantaged individual, if the business entity received a credit under
19 subsection (c)(1) of this section for the qualified employee in the immediately preceding
20 taxable year; and

21 (iii) up to \$1,000 of the wages paid to each qualified employee who is
22 not hired to replace an individual whom the business entity employed in that or any of the
23 3 preceding taxable years if the qualified employee:

24 1. is an economically disadvantaged individual for whom the
25 business entity received a credit under subsection (c)(1) of this section or item (i) of this
26 paragraph and a credit under item (ii) of this paragraph in the 2 immediately preceding
27 taxable years; or

28 2. is not an economically disadvantaged individual but
29 became a qualified employee during the taxable year to which the credit applies.

30 (2) A business entity that hires a qualified employee to replace another
31 qualified employee for whom the business entity received a credit under subsection (c)(1) of
32 this section and paragraph (1)(ii) of this subsection in the immediately preceding taxable
33 year may treat the new qualified employee as the replacement for the other qualified

1 employee to determine any credit that may be available to the business entity under
2 paragraph (1)(ii) or (iii) of this subsection.

3 (e) (1) For the taxable year in which a business entity satisfies the
4 requirements of §§ 5–706 and 5–707 or § 5–1406 of the Economic Development Article, a
5 credit is allowed that equals:

6 (i) up to \$4,500 of the wages paid to each focus area employee who:

7 1. is an economically disadvantaged individual; and

8 2. is not hired to replace an individual whom the business
9 entity employed in that year or any of the 3 preceding taxable years; and

10 (ii) up to \$1,500 of the wages paid to each focus area employee who:

11 1. is not an economically disadvantaged individual; and

12 2. is not hired to replace an individual whom the business
13 entity employed in that year or any of the 3 preceding taxable years.

14 (2) For each taxable year after the taxable year described in paragraph (1)
15 of this subsection, while the area is designated a focus area, a credit is allowed that equals:

16 (i) up to \$4,500 of the wages paid to each focus area employee who:

17 1. is an economically disadvantaged individual;

18 2. became a focus area employee during the taxable year to
19 which the credit applies; and

20 3. is not hired to replace an individual whom the business
21 entity employed in that year or any of the 3 preceding taxable years;

22 (ii) up to \$3,000 of the wages paid to each focus area employee who
23 is an economically disadvantaged individual, if the business entity received a credit under
24 paragraph (1)(i) of this subsection for the focus area employee in the immediately preceding
25 taxable year; and

26 (iii) up to \$1,500 of the wages paid to each focus area employee who
27 is not hired to replace an individual whom the business entity employed in that year or any
28 of the 3 preceding taxable years if the focus area employee:

29 1. is an economically disadvantaged individual for whom the
30 business entity received a credit under item (ii) of this paragraph in the 2 immediately
31 preceding taxable years and under:

1 A. paragraph (1)(i) of this subsection; or

2 B. item (i) of this paragraph; or

3 2. is not an economically disadvantaged individual but
4 became a focus area employee during the taxable year to which the credit applies.

5 (3) A business entity that hires a focus area employee to replace another
6 focus area employee for whom the business entity received a credit under paragraph (1)(i)
7 of this subsection and paragraph (2)(ii) of this subsection in the immediately preceding
8 taxable year may treat the focus area employee as the replacement for the other focus area
9 employee to determine any credit that may be available to the business entity under
10 paragraph (2)(ii) or (iii) of this subsection.

11 (f) If the credit allowed under this section in any taxable year exceeds the State
12 income tax for that taxable year, a business entity may apply the excess as a credit against
13 the State income tax for succeeding taxable years until the earlier of:

14 (1) the full amount of the excess is used; or

15 (2) the expiration of the 5th taxable year from the date on which the
16 business entity hired the qualified employee to whom the credit first applies.

17 (g) If a credit is claimed under this section, the claimant must make the addition
18 required in § 10–205, § 10–206, or § 10–306 of this title.

19 10–741.

20 (a) (1) In this section the following words have the meanings indicated.

21 (2) “Business entity” has the meaning stated in § 6–801 of the Economic
22 Development Article.

23 (3) “Department” means the Department of Commerce.

24 (4) “Eligible project” has the meaning stated in § 6–801 of the Economic
25 Development Article.

26 (5) “Existing business entity” has the meaning stated in § 6–801 of the
27 Economic Development Article.

28 (6) “New business entity” has the meaning stated in § 6–801 of the
29 Economic Development Article.

30 (7) “Qualified business entity” has the meaning stated in § 6–801 of the
31 Economic Development Article.

(8) “Qualified position” has the meaning stated in § 6–801 of the Economic Development Article.

(9) “Tier I area” has the meaning stated in § 6–801 of the Economic Development Article.

(10) “Tier II area” has the meaning stated in § 6–801 of the Economic Development Article.

(b) (1) Subject to the limitations of this section, an individual or corporation that is a new business entity that operates an eligible project in a Tier I area or an existing business entity that operates an eligible project may claim a credit against the State income tax equal to the amount stated in the final tax credit certificate approved by the Department for an eligible project.

(2) The amount of the credit authorized under paragraph (1) of this subsection is equal to the product of:

(i) 1. if the qualified business entity received a certificate under § 6–805 of the Economic Development Article before June 1, 2022, 5.75%; or

2. if the qualified business entity received a certificate under § 6–805 of the Economic Development Article on or after June 1, 2022, 4.75%; and

(ii) the total amount of wages paid for each qualified position at an eligible project.

(3) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified business entity for that taxable year, the qualified business entity may claim a refund in the amount of the excess.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.