

HOUSE BILL 282

C8
HB 584/16 – W&M

7lr1705

By: **Delegate Lafferty**

Introduced and read first time: January 23, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development – One Maryland Tax Credit – Expansion**

3 FOR the purpose of expanding the eligibility requirements for the One Maryland Economic
4 Development Tax Credit to include certain qualified businesses that establish or
5 expand a certain business facility that is located in a certain qualified distressed
6 political subdivision; expanding the eligibility requirements for the credit by
7 altering, under certain circumstances, the number of qualified positions that must
8 be created and the eligible activities in which a person may engage at a new or
9 expanded business facility; altering the minimum eligible project cost for a qualified
10 economic development project for which a qualified business entity may claim a
11 certain project tax credit under certain circumstances; authorizing, under certain
12 circumstances, qualified businesses located in certain qualified distressed political
13 subdivisions to claim certain credits on a prorated basis; defining a certain term;
14 providing for the application of this Act; and generally relating to the One Maryland
15 Economic Development Tax Credit.

16 BY repealing and reenacting, with amendments,
17 Article – Economic Development
18 Section 6–401, 6–402(b), 6–403(a), (e), and (f), 6–404, and 6–405
19 Annotated Code of Maryland
20 (2008 Volume and 2016 Supplement)

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

23 **Article – Economic Development**

24 6–401.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(1) establishes or expands a business facility within a qualified distressed [county] **POLITICAL SUBDIVISION**; and

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

(c) (1) “Eligible project cost” means the cost and expense a qualified business entity incurs to acquire, construct, rehabilitate, install, or equip an eligible economic development project.

(2) “Eligible project cost” includes:

(i) the cost of:

1. obligations for labor and payments made to contractors, subcontractors, builders, and suppliers;

2. acquiring land, rights in land, and costs incidental to acquiring land or rights in land;

3. contract bonds and insurance needed during the acquisition, construction, or installation of the project;

4. test borings, surveys, estimates, plans, specifications, preliminary investigations, environmental mitigation, supervision of construction, and other architectural and engineering services;

5. performing duties required by or consequent to the acquisition, construction, and installation of the project;

6. installing water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar utilities; and

7. bond insurance, letters of credit, or other forms of credit enhancement or liquidity facilities;

(ii) the interest cost before and during the acquisition, construction, installation, and equipping of the project, and for up to 2 years after project completion; and

(iii) legal, accounting, financial, printing, recording, filing, and other fees and expenses incurred to finance the project.

(d) (1) “Eligible start-up cost” means a qualified business entity’s cost to furnish and equip a new location for ordinary business functions.

(2) “Eligible start-up cost” includes:

(i) the cost of computers, nonrecurring costs of fixed telecommunications equipment, furnishings, and office equipment; and

(ii) expenditures for moving costs, separation costs, and other costs directly related to moving from outside of the State to a location in a qualified distressed [county] **POLITICAL SUBDIVISION.**

(e) “Project tax credit” means a tax credit for eligible project costs allowed under § 6–403 of this subtitle.

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

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

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

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

(G) (1) “QUALIFIED DISTRESSED POLITICAL SUBDIVISION” MEANS:

(I) A COUNTY OR MUNICIPAL CORPORATION WITH:

1. AN AVERAGE RATE OF UNEMPLOYMENT FOR THE MOST RECENT 60-MONTH PERIOD FOR WHICH DATA PROVIDED BY THE UNITED STATES BUREAU OF THE CENSUS ARE AVAILABLE THAT EXCEEDS:

A. 150% OF THE AVERAGE RATE OF UNEMPLOYMENT FOR THE STATE DURING THAT PERIOD; OR

B. THE AVERAGE RATE OF UNEMPLOYMENT FOR THE STATE DURING THAT PERIOD BY AT LEAST 2 PERCENTAGE POINTS; OR

2. AN AVERAGE PER CAPITA PERSONAL INCOME FOR THE MOST RECENT 60-MONTH PERIOD FOR WHICH DATA PROVIDED BY THE UNITED STATES BUREAU OF THE CENSUS ARE AVAILABLE THAT IS EQUAL TO OR LESS THAN 67% OF THE AVERAGE PER CAPITA PERSONAL INCOME FOR THE STATE DURING THAT PERIOD; OR

(II) A COUNTY IN WHICH AT LEAST 55% OF THE MUNICIPAL CORPORATIONS LOCATED IN THAT COUNTY MEET THE QUALIFICATIONS UNDER ITEM (I)1 OR 2 OF THIS PARAGRAPH.

(2) “QUALIFIED DISTRESSED POLITICAL SUBDIVISION” INCLUDES A COUNTY OR MUNICIPAL CORPORATION THAT NO LONGER MEETS EITHER CRITERION STATED IN PARAGRAPH (1) OF THIS SUBSECTION BUT HAS MET AT LEAST ONE OF THE CRITERIA AT SOME TIME DURING THE PRECEDING 24-MONTH PERIOD.

[(g)] (H) (1) “Qualified position” means a position that:

- (i) is a full-time position and is of indefinite duration;
- (ii) pays at least 150% of the federal minimum wage;
- (iii) is in a qualified distressed [county] POLITICAL SUBDIVISION;
- (iv) is newly created because a business facility begins or expands in one location in a qualified distressed [county] POLITICAL SUBDIVISION; and
- (v) is filled.

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

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

[(h)] (I) “Start-up tax credit” means a tax credit for eligible start-up costs allowed under § 6-404 of this subtitle.

6-402.

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

(1) establish or expand a business facility that:

(i) is located in a qualified distressed [county] **POLITICAL SUBDIVISION**; and

(ii) 1. is located in a priority funding area under § 5–7B–02 of the State Finance and Procurement Article; or

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

(2) during any 24-month period[,]:

(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM, create at least 25 qualified positions at the new or expanded business facility; **OR**

(II) FOR A FACILITY LOCATED IN A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS, CREATE AT LEAST 10 QUALIFIED POSITIONS AT THE NEW OR EXPANDED FACILITY; and

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

(i) manufacturing or mining;

(ii) transportation or communications;

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

(iv) agriculture, forestry, or fishing;

(v) research, development, or testing;

(vi) biotechnology;

(vii) [computer programming, information technology, or other computer-related services] **OTHER TECHNOLOGIES**;

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

(ix) the operation of central administrative offices;

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

(xi) the operation of a public utility;

(xii) warehousing; [or]

(xiii) other business services;

(XIV) RETAIL, EXCLUDING ADULT ENTERTAINMENT VENUES, PAWNSHOPS, FAST FOOD RESTAURANTS, GAS STATIONS, OR BUSINESSES WHOSE PRIMARY PURPOSE IS THE SALE OF ALCOHOL;

(XV) THE ARTS, INCLUDING GALLERIES, MUSEUMS, OR ART PRODUCTION STUDIOS; OR

(XVI) THE ACTIVITIES OF A NONPROFIT ORGANIZATION.

6–403.

(a) (1) A qualified business entity may claim a project tax credit for the cost of an eligible economic development project in a qualified distressed [county] **POLITICAL SUBDIVISION** if the total eligible project cost for the eligible economic development project is:

(I) FOR A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS, AT LEAST \$250,000;

(II) FOR A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF 5,001 TO 10,000 INDIVIDUALS, AT LEAST \$350,000; OR

(III) FOR A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF MORE THAN 10,000 INDIVIDUALS, 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)] **PARAGRAPHS (2) AND (3)** 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] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, 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, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has 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.

(3) (I) A QUALIFIED BUSINESS ENTITY LOCATED IN A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS 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, THE NUMBER OF QUALIFIED POSITIONS FILLED BY THE QUALIFIED BUSINESS ENTITY FALLS BELOW 10, BUT DOES NOT FALL BELOW 5; AND

2. THE QUALIFIED BUSINESS ENTITY HAS MAINTAINED AT LEAST 10 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 10.

(f) (1) Subject to the limitation in paragraph (4) of this subsection and subject to § 6–405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the project is placed in service.

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

(i) apply any excess of eligible project costs for the eligible economic development project over the cumulative amount used as a project tax credit for the taxable

year and all prior taxable years as a tax credit against the State tax for the taxable year on the qualified business entity's income other than income generated by or arising out of the project; and

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

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

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

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

(4) For any taxable year, the total amount used as a project tax credit and claimed as a refund under this subsection may not exceed the amount of tax that the qualified business entity is required to withhold for the taxable year from the wages of qualified employees under § 10-908 of the Tax – General Article.

(5) (i) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, 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, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has 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.

(6) (I) A QUALIFIED BUSINESS ENTITY LOCATED IN A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS 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, THE NUMBER OF QUALIFIED

1 POSITIONS FILLED BY THE QUALIFIED BUSINESS ENTITY FALLS BELOW 10, BUT
2 DOES NOT FALL BELOW 5; AND

3 2. THE QUALIFIED BUSINESS ENTITY HAS MAINTAINED
4 AT LEAST 10 QUALIFIED POSITIONS FOR AT LEAST 5 YEARS.

5 (II) THE PRORATED SHARE OF THE CREDIT IS CALCULATED
6 BASED ON THE NUMBER OF QUALIFIED POSITIONS FILLED FOR THE TAXABLE YEAR
7 DIVIDED BY 10.

8 6-404.

9 (a) (1) A qualified business entity that locates in a qualified distressed
10 [county] **POLITICAL SUBDIVISION** may claim a start-up tax credit in the amount provided
11 in subsection (b) of this section.

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

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

17 (1) the qualified business entity's total eligible start-up cost associated
18 with establishing or expanding a business facility in the qualified distressed [county]
19 **POLITICAL SUBDIVISION**, less the amount of the credit previously taken for the project;

20 (2) the product of multiplying \$10,000 times the number of qualified
21 employees employed at the new or expanded business facility; or

22 (3) \$500,000.

23 (c) (1) Subject to [paragraph (2)] **PARAGRAPHS (2) AND (3)** of this
24 subsection, if the start-up tax credit allowed under subsection (b) of this section for the
25 taxable year in which a qualified business entity locates in a qualified distressed [county]
26 **POLITICAL SUBDIVISION** exceeds the total tax otherwise due from the qualified business
27 entity for that taxable year, the qualified business entity may apply the excess as a credit
28 for succeeding taxable years until the earlier of:

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

30 (ii) the expiration of the 14th taxable year following the taxable year
31 in which the qualified business entity locates in a qualified distressed [county] **POLITICAL**
32 **SUBDIVISION**.

(2) (i) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, 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, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has 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.

(3) (I) A QUALIFIED BUSINESS ENTITY LOCATED IN A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS 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, THE NUMBER OF QUALIFIED POSITIONS FILLED BY THE QUALIFIED BUSINESS ENTITY FALLS BELOW 10, BUT DOES NOT FALL BELOW 5; AND

2. THE QUALIFIED BUSINESS ENTITY HAS MAINTAINED AT LEAST 10 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 10.

(d) (1) Subject to the limitation in paragraph (3) of this subsection and subject to § 6–405 of this subtitle, this subsection applies to any taxable year after the 4th but before the 15th taxable year following the taxable year in which the qualified business entity locates in a qualified distressed [county] **POLITICAL SUBDIVISION.**

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

(3) For any taxable year, the total amount claimed as a refund under this subsection may not exceed the amount of tax that the qualified business entity is required to withhold for the taxable year from the wages of qualified employees under § 10–908 of the Tax – General Article.

(4) (i) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, 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, the number of qualified positions filled by the qualified business entity falls below 25, but does not fall below 10; and

2. the qualified business entity has 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.

(5) (I) A QUALIFIED BUSINESS ENTITY LOCATED IN A QUALIFIED DISTRESSED POLITICAL SUBDIVISION WITH A POPULATION OF NOT MORE THAN 5,000 INDIVIDUALS 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, THE NUMBER OF QUALIFIED POSITIONS FILLED BY THE QUALIFIED BUSINESS ENTITY FALLS BELOW 10, BUT DOES NOT FALL BELOW 5; AND

2. THE QUALIFIED BUSINESS ENTITY HAS MAINTAINED AT LEAST 10 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 10.

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

6-405.

If the pay for the majority of the qualified positions created from the establishment or expansion of a business facility is at least 250% of the federal minimum wage, §§ 6-403(f) and 6-404(d) of this subtitle apply beginning with the taxable year after the 2nd taxable year that follows the taxable year when the qualified business entity locates in a qualified distressed [county] **POLITICAL SUBDIVISION.**

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