

HOUSE BILL 1520

C8

0lr3518

By: **Delegates Myers, Aumann, Bartlett, Bates, Beitzel, Boteler, Elliott, Elmore, Frick, George, Kelly, Krebs, Miller, O'Donnell, Olszewski, Rice, Serafini, Shank, and Stull**

Introduced and read first time: March 8, 2010

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Tax Credit for New or Expanded Business Facilities**

3 FOR the purpose of providing a credit against the State income tax for a qualified
4 business entity that establishes or expands a business facility under certain
5 circumstances; requiring the Secretary of Business and Economic Development
6 to certify certain persons as eligible for the tax credit; requiring a qualified
7 business entity to submit a certain application to be eligible for the tax credit;
8 requiring the Secretary to certify the maximum amount of the tax credit for
9 which a qualified business entity is eligible; providing that the total amount of
10 credits approved may not exceed a certain amount; providing for the calculation
11 of the tax credit; providing for the recapture of the tax credit under certain
12 circumstances; requiring the Secretary to adopt regulations to specify the
13 criteria and procedures for application and approval of projects for the tax
14 credit; making the credit refundable under certain circumstances; and generally
15 relating to a State income tax credit for certain business entities that establish
16 or expand certain business facilities in the State.

17 BY adding to

18 Article – Economic Development

19 Section 6–501 through 6–506 to be under the new subtitle “Subtitle 5. Tax

20 Credit for New or Expanded Business Facilities”

21 Annotated Code of Maryland

22 (2008 Volume and 2009 Supplement)

23 BY adding to

24 Article – Tax – General

25 Section 10–728

26 Annotated Code of Maryland

27 (2004 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Economic Development**

4 **SUBTITLE 5. TAX CREDIT FOR NEW OR EXPANDED BUSINESS FACILITIES.**

5 **6-501.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) “ELIGIBLE ECONOMIC DEVELOPMENT PROJECT” MEANS AN
9 ECONOMIC DEVELOPMENT PROJECT THAT:

10 (1) ESTABLISHES OR EXPANDS A BUSINESS FACILITY IN THE
11 STATE THAT WILL CREATE AT LEAST 10 QUALIFIED POSITIONS; AND

12 (2) IS APPROVED FOR A TAX CREDIT IN ACCORDANCE WITH THIS
13 SUBTITLE.

14 (C) (1) “ELIGIBLE PROJECT COSTS” MEANS THE COSTS AND
15 EXPENSES A QUALIFIED BUSINESS ENTITY INCURS TO ACQUIRE, CONSTRUCT,
16 REHABILITATE, INSTALL, OR EQUIP AN ELIGIBLE ECONOMIC DEVELOPMENT
17 PROJECT.

18 (2) “ELIGIBLE PROJECT COSTS” INCLUDES:

19 (I) THE COST OF:

20 1. OBLIGATIONS FOR LABOR AND PAYMENTS MADE
21 TO CONTRACTORS, SUBCONTRACTORS, BUILDERS, AND SUPPLIERS;

22 2. ACQUIRING LAND OR RIGHTS IN LAND AND
23 COVERING COSTS INCIDENTAL TO ACQUIRING LAND OR RIGHTS IN LAND;

24 3. CONTRACT BONDS AND INSURANCE NEEDED
25 DURING THE ACQUISITION, CONSTRUCTION, OR INSTALLATION OF THE
26 PROJECT;

27 4. TEST BORINGS, SURVEYS, ESTIMATES, PLANS,
28 SPECIFICATIONS, PRELIMINARY INVESTIGATIONS, ENVIRONMENTAL

1 MITIGATION, SUPERVISION OF CONSTRUCTION, AND OTHER ARCHITECTURAL
2 AND ENGINEERING SERVICES;

3 5. PERFORMING DUTIES REQUIRED BY OR
4 CONSEQUENT TO THE ACQUISITION, CONSTRUCTION, AND INSTALLATION OF
5 THE PROJECT;

6 6. INSTALLING WATER, SEWER, SEWER TREATMENT,
7 GAS, ELECTRICITY, COMMUNICATIONS, RAILROADS, AND SIMILAR UTILITIES;
8 AND

9 7. BOND INSURANCE, LETTERS OF CREDIT, OR
10 OTHER FORMS OF CREDIT ENHANCEMENT OR LIQUIDITY FACILITIES;

11 (II) THE INTEREST COST BEFORE AND DURING THE
12 ACQUISITION, CONSTRUCTION, INSTALLATION, AND EQUIPPING OF THE
13 PROJECT; AND

14 (III) LEGAL, ACCOUNTING, FINANCIAL, PRINTING,
15 RECORDING, FILING, AND OTHER FEES AND EXPENSES INCURRED TO FINANCE
16 THE PROJECT.

17 (D) "QUALIFIED BUSINESS ENTITY" MEANS A PERSON THAT:

18 (1) (I) CONDUCTS OR OPERATES A TRADE OR BUSINESS IN THE
19 STATE; OR

20 (II) OPERATES IN THE STATE AND IS EXEMPT FROM
21 TAXATION UNDER § 501(C)(3) OR (4) OF THE INTERNAL REVENUE CODE; AND

22 (2) IS CERTIFIED IN ACCORDANCE WITH § 6-502 OF THIS
23 SUBTITLE AS QUALIFYING FOR A TAX CREDIT UNDER THIS SUBTITLE.

24 (E) (1) "QUALIFIED POSITION" MEANS A POSITION THAT:

25 (I) IS A FULL-TIME POSITION AND IS OF INDEFINITE
26 DURATION;

27 (II) PAYS AT LEAST 150% OF THE FEDERAL MINIMUM WAGE;

28 (III) IS LOCATED IN THE STATE;

29 (IV) IS NEWLY CREATED AS A RESULT OF THE
30 ESTABLISHMENT OR EXPANSION OF A BUSINESS FACILITY; AND

1 (v) IS FILLED.

2 (2) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION
3 THAT:

4 (i) IS CREATED WHEN AN EMPLOYMENT FUNCTION IS
5 SHIFTED FROM AN EXISTING BUSINESS FACILITY OF A BUSINESS ENTITY IN THE
6 STATE TO ANOTHER BUSINESS FACILITY OF THE SAME BUSINESS ENTITY IF THE
7 POSITION IS NOT A NET NEW JOB IN THE STATE;

8 (ii) IS CREATED THROUGH A CHANGE IN OWNERSHIP OF A
9 TRADE OR BUSINESS;

10 (iii) IS CREATED THROUGH A CONSOLIDATION, MERGER, OR
11 RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW
12 JOB IN THE STATE;

13 (iv) IS CREATED WHEN AN EMPLOYMENT FUNCTION IS
14 CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY IN THE STATE
15 TO ANOTHER BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE
16 STATE; OR

17 (v) IS FILLED FOR A PERIOD OF LESS THAN 3 YEARS.

18 **6-502.**

19 (A) (1) TO QUALIFY FOR A TAX CREDIT UNDER THIS SUBTITLE, A
20 PERSON SHALL BE CERTIFIED BY THE SECRETARY AS MEETING THE
21 REQUIREMENTS OF THIS SUBTITLE AND AS BEING ELIGIBLE FOR THE TAX
22 CREDIT.

23 (2) THE SECRETARY MAY NOT CERTIFY A PERSON AS A
24 QUALIFIED BUSINESS ENTITY UNLESS THE PERSON NOTIFIES THE DEPARTMENT
25 OF ITS INTENT TO SEEK CERTIFICATION BEFORE HIRING ANY QUALIFIED
26 EMPLOYEES TO FILL THE QUALIFIED POSITIONS NECESSARY TO SATISFY THE
27 EMPLOYMENT THRESHOLD UNDER § 6-501(B)(1) OF THIS SUBTITLE.

28 (B) TO BE CERTIFIED AS A QUALIFIED BUSINESS ENTITY FOR A TAX
29 CREDIT UNDER THIS SUBTITLE, A PERSON SHALL SUBMIT TO THE SECRETARY
30 AN APPLICATION THAT SPECIFIES:

31 (1) THE EFFECTIVE DATE OF THE START-UP OR EXPANSION;

1 **(2) THE NUMBER OF FULL-TIME EMPLOYEES BEFORE THE**
2 **START-UP OR EXPANSION AND THE PAYROLL OF THE EXISTING EMPLOYEES;**

3 **(3) THE NUMBER OF QUALIFIED POSITIONS CREATED AND**
4 **QUALIFIED EMPLOYEES HIRED AND THE PAYROLL OF THE NEW QUALIFIED**
5 **EMPLOYEES; AND**

6 **(4) ANY OTHER INFORMATION THAT THE SECRETARY REQUIRES**
7 **BY REGULATION.**

8 **(C) THE SECRETARY MAY REQUIRE ANY INFORMATION REQUIRED**
9 **UNDER THIS SECTION TO BE VERIFIED BY AN INDEPENDENT AUDITOR THAT THE**
10 **QUALIFIED BUSINESS ENTITY SELECTS.**

11 **(D) (1) THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL**
12 **CERTIFY THE MAXIMUM AMOUNT OF THE TAX CREDIT FOR WHICH A QUALIFIED**
13 **BUSINESS ENTITY IS ELIGIBLE.**

14 **(2) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE**
15 **DEPARTMENT UNDER THIS SUBTITLE MAY NOT EXCEED \$10,000,000.**

16 **(3) THE CREDITS WILL BE AVAILABLE AND CERTIFIED ON A**
17 **FIRST-COME, FIRST-SERVED BASIS AT THE TIME OF APPLICATION.**

18 **6-503.**

19 **(A) (1) A QUALIFIED BUSINESS ENTITY MAY CLAIM A TAX CREDIT FOR**
20 **THE ELIGIBLE PROJECT COSTS OF AN ELIGIBLE ECONOMIC DEVELOPMENT**
21 **PROJECT.**

22 **(2) A QUALIFIED BUSINESS ENTITY IS NOT ENTITLED TO A TAX**
23 **CREDIT FOR A COST INCURRED BEFORE NOTIFYING THE DEPARTMENT OF ITS**
24 **INTENT TO SEEK CERTIFICATION AS QUALIFYING FOR THE TAX CREDIT UNDER**
25 **THIS SUBTITLE.**

26 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE TAX**
27 **CREDIT ALLOWED UNDER THIS SECTION IS THE LESSER OF:**

28 **(I) 10% OF THE ELIGIBLE PROJECT COSTS; OR**

29 **(II) \$50,000.**

1 **(2) THE TAX CREDIT ALLOWED UNDER THIS SECTION MAY NOT**
2 **EXCEED THE MAXIMUM AMOUNT OF TAX CREDIT CERTIFIED FOR THE**
3 **QUALIFIED BUSINESS ENTITY UNDER § 6-502 OF THIS SUBTITLE.**

4 **(C) A QUALIFIED BUSINESS ENTITY SHALL ATTACH THE CERTIFICATION**
5 **REQUIRED UNDER § 6-502 OF THIS SUBTITLE TO THE TAX RETURN ON WHICH**
6 **THE TAX CREDIT IS CLAIMED.**

7 **6-504.**

8 **(A) IF THE TAX CREDIT ALLOWED UNDER THIS SUBTITLE EXCEEDS THE**
9 **TOTAL TAX OTHERWISE PAYABLE BY THE BUSINESS ENTITY FOR A TAXABLE**
10 **YEAR, THE BUSINESS ENTITY MAY CLAIM A REFUND IN THE AMOUNT OF THE**
11 **EXCESS.**

12 **(B) A REFUND PAYABLE UNDER SUBSECTION (A) OF THIS SECTION:**

13 **(1) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM**
14 **CORPORATIONS IF THE PERSON ENTITLED TO THE REFUND IS A CORPORATION**
15 **SUBJECT TO TAXATION UNDER TITLE 10 OF THE TAX – GENERAL ARTICLE; AND**

16 **(2) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM**
17 **INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:**

18 **(I) AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER**
19 **TITLE 10 OF THE TAX – GENERAL ARTICLE; OR**

20 **(II) AN ORGANIZATION EXEMPT FROM TAXATION UNDER §**
21 **501(C) OF THE INTERNAL REVENUE CODE.**

22 **6-505.**

23 **IF, DURING ANY OF THE 3 YEARS AFTER THE YEAR A TAX CREDIT UNDER**
24 **THIS SUBTITLE IS CLAIMED, THE NUMBER OF QUALIFIED POSITIONS OF THE**
25 **QUALIFIED BUSINESS ENTITY IS LESS THAN 10, THE CREDIT SHALL BE**
26 **RECAPTURED AND THE QUALIFIED BUSINESS ENTITY SHALL PAY THE AMOUNT**
27 **OF THE TAX CREDIT PREVIOUSLY ALLOWED AS TAXES PAYABLE TO THE STATE**
28 **FOR THE NEXT TAXABLE YEAR.**

29 **6-506.**

30 **THE SECRETARY SHALL ADOPT REGULATIONS TO SPECIFY CRITERIA AND**
31 **PROCEDURES FOR APPLICATION AND APPROVAL OF ECONOMIC DEVELOPMENT**
32 **PROJECTS FOR THE TAX CREDIT UNDER THIS SUBTITLE.**

