

# HOUSE BILL 92

C8

EMERGENCY BILL

0lr0161  
CF SB 106

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By: **The Speaker (By Request – Administration) and Delegates Busch, Hixson, Doory, Barkley, Barnes, Bobo, Bohanan, Branch, Carr, Davis, Dumais, Eckardt, Feldman, Gilchrist, Glenn, Gutierrez, Haynes, Hecht, Heller, Howard, Huckler, Ivey, Kelly, King, Kipke, Kullen, Lafferty, Levi, Malone, Manno, McIntosh, Mizeur, Montgomery, Nathan–Pulliam, Niemann, Oaks, Pena–Melnyk, Ramirez, Reznik, Rice, Rosenberg, Ross, Rudolph, Schuler, Stukes, Tarrant, Taylor, F. Turner, V. Turner, Valderrama, Vallario, Vaughn, Waldstreicher, and Walker**

Introduced and read first time: January 14, 2010

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Labor and Employment – Job Creation and Recovery Tax Credit**

3 FOR the purpose of establishing the Job Creation and Recovery Tax Credit; providing  
4 a credit against the State income tax for certain employers employing certain  
5 individuals in certain qualified positions; defining certain terms; providing for  
6 certification by the Department of Labor, Licensing, and Regulation of persons  
7 eligible for the credit and of the maximum amount of credit for which a qualified  
8 employer is eligible; limiting to a certain amount the credit each qualified  
9 employer may receive; providing for a cap of the total aggregate amount of the  
10 tax credit that the Department may approve; ~~allowing the credit as a credit~~  
11 ~~against the payment of certain withholding taxes under certain circumstances;~~  
12 making the credit refundable under certain circumstances; requiring certain  
13 reports; authorizing the adoption of certain regulations; making the provisions  
14 of this Act severable; making this Act an emergency measure; and generally  
15 relating to tax credits in connection with the employment of certain individuals  
16 in certain qualified positions in the State and the Job Creation and Recovery  
17 Tax Credit ~~program~~.

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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 BY adding to  
2 Article – Labor and Employment  
3 Section 11–1101 through 11–1107 to be under the new subtitle “Subtitle 11. Job  
4 Creation and Recovery Tax Credit”  
5 Annotated Code of Maryland  
6 (2008 Replacement Volume and 2009 Supplement)

7 BY adding to  
8 Article – Tax – General  
9 Section 10–728  
10 Annotated Code of Maryland  
11 (2004 Replacement Volume and 2009 Supplement)

12 Preamble

13 WHEREAS, The current economic situation in the State and the country has  
14 left many Maryland workers unable to find new full–time employment; and

15 WHEREAS, Many of these workers are currently receiving unemployment  
16 insurance benefits from the State or have exhausted those benefits; and

17 WHEREAS, There are employers in the State who would like to hire new  
18 employees but face economic challenges in expanding their workforce at this time; and

19 WHEREAS, New jobs would reduce the burden of unemployment for Maryland  
20 workers and their families; and

21 WHEREAS, Expanding the State workforce would stimulate the State’s  
22 economy by enhancing personal spending and tax revenues associated with increased  
23 employment; and

24 WHEREAS, Creating new jobs for workers currently receiving unemployment  
25 insurance benefits would reduce the burden on the Unemployment Insurance Trust  
26 Fund and the employers who contribute to that Fund; and

27 WHEREAS, A State tax credit program for employers based on the creation of  
28 new jobs in the State would encourage and assist them in expanding their workforces  
29 and in reducing the burden of unemployment on the State and its citizens; now,  
30 therefore,

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

33 **Article – Labor and Employment**

34 **SUBTITLE 11. JOB CREATION AND RECOVERY TAX CREDIT.**

1 11-1101.

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (B) "QUALIFIED EMPLOYEE" MEANS AN INDIVIDUAL WHO, AT THE TIME  
5 OF HIRING:

6 (1) IS A RESIDENT OF THE STATE;

7 (2) (I) IS RECEIVING UNEMPLOYMENT INSURANCE BENEFITS;  
8 OR

9 (II) HAS EXHAUSTED THE INDIVIDUAL'S UNEMPLOYMENT  
10 INSURANCE BENEFITS WITHIN THE PAST 12 MONTHS; AND

11 (3) IS NOT EMPLOYED FULL TIME.

12 (C) "QUALIFIED EMPLOYER" MEANS A PERSON THAT IS:

13 (1) (I) CONDUCTING OR OPERATING A TRADE OR BUSINESS IN  
14 THE STATE AND FILING MARYLAND INCOME TAX RETURNS; OR

15 (II) AN ORGANIZATION OPERATING IN THE STATE THAT IS  
16 EXEMPT FROM TAXATION UNDER § 501(C) OF THE INTERNAL REVENUE CODE;  
17 AND

18 (2) CERTIFIED IN ACCORDANCE WITH § ~~11-1103~~ 11-1102 OF THIS  
19 SUBTITLE AS QUALIFYING FOR THE TAX CREDIT UNDER THIS SUBTITLE.

20 (D) (1) "QUALIFIED POSITION" MEANS A POSITION THAT:

21 (I) IS FULL TIME;

22 (II) REQUIRES OR IS EXPECTED TO REQUIRE THE SERVICES  
23 OF AN EMPLOYEE FOR AN INDEFINITE DURATION AND WITHOUT INTERRUPTION  
24 FOR A PERIOD OF 12 MONTHS OR MORE;

25 (III) IS LOCATED IN THE STATE; AND

26 (IV) IS NEWLY CREATED OR HAS BEEN VACANT FOR A  
27 PERIOD OF AT LEAST 6 MONTHS AT THE TIME OF HIRING.

28 (2) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION THAT  
29 IS CREATED:

1                   **(I) WHEN AN EMPLOYMENT FUNCTION IS SHIFTED FROM AN**  
2 **EXISTING BUSINESS FACILITY OF A BUSINESS ENTITY IN THE STATE TO**  
3 **ANOTHER BUSINESS FACILITY OF THE SAME BUSINESS ENTITY IF THE POSITION**  
4 **IS NOT A NET NEW JOB IN THE STATE;**

5                   **(II) THROUGH A CHANGE IN OWNERSHIP OF A TRADE OR**  
6 **BUSINESS;**

7                   **(III) THROUGH A CONSOLIDATION, MERGER, OR**  
8 **RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW**  
9 **JOB IN THE STATE;**

10                   **(IV) WHEN AN EMPLOYMENT FUNCTION IS CONTRACTUALLY**  
11 **SHIFTED FROM AN EXISTING BUSINESS ENTITY TO ANOTHER BUSINESS ENTITY;**  
12 **OR**

13                   **(V) BY DISPLACING AN EXISTING EMPLOYEE.**

14 **11-1102.**

15                   **(A) THE SECRETARY OR THE SECRETARY'S DESIGNEE SHALL CERTIFY A**  
16 **PERSON AS A QUALIFIED EMPLOYER ELIGIBLE FOR A TAX CREDIT UNDER THIS**  
17 **SUBTITLE IF THE PERSON MEETS THE REQUIREMENTS OF THIS SECTION.**

18                   **(B) TO BE ELIGIBLE FOR A TAX CREDIT UNDER THIS SUBTITLE, A**  
19 **PERSON MUST HIRE A QUALIFIED EMPLOYEE TO FILL A QUALIFIED POSITION**  
20 **AND BEGIN EMPLOYMENT IN THAT POSITION BETWEEN ~~JANUARY 1, 2010, THE~~**  
21 **EFFECTIVE DATE OF CHAPTER (H.B. 92) OF THE ACTS OF THE GENERAL**  
22 **ASSEMBLY OF 2010 AND DECEMBER 31, 2010.**

23                   **(C) TO BE CERTIFIED AS A QUALIFIED EMPLOYER FOR A TAX CREDIT**  
24 **UNDER THIS SUBTITLE, A PERSON SHALL SUBMIT TO THE DEPARTMENT AN**  
25 **APPLICATION CERTIFIED AND EXECUTED UNDER THE PENALTY OF PERJURY**  
26 **THAT SPECIFIES:**

27                   **(1) THE NAME AND SOCIAL SECURITY NUMBER OF EACH**  
28 **QUALIFIED EMPLOYEE;**

29                   **(2) THE DATE OF HIRE OF EACH QUALIFIED EMPLOYEE, THE**  
30 **WAGES PAID TO EACH QUALIFIED EMPLOYEE, THE DATE WAGES BEGAN TO BE**  
31 **PAID TO EACH QUALIFIED EMPLOYEE, AND THE POSITION FOR WHICH EACH**  
32 **QUALIFIED EMPLOYEE WAS HIRED;**

33                   **(3) THE NUMBER OF QUALIFIED POSITIONS CREATED;**

1           (4) THE EVIDENCE THAT THE EMPLOYER MEETS THE  
2 REQUIREMENTS OF § 11-1101(C) OF THIS SUBTITLE;

3           (5) THE EVIDENCE THAT THE POSITION MEETS THE  
4 REQUIREMENTS OF § 11-1101(D) OF THIS SUBTITLE; AND

5           (6) ANY OTHER INFORMATION THAT THE DEPARTMENT MAY  
6 REQUIRE.

7           (D) BASED ON THE INFORMATION PROVIDED TO THE DEPARTMENT  
8 UNDER SUBSECTION (C) OF THIS SECTION, AND IN ACCORDANCE WITH THE  
9 PROVISIONS OF SUBSECTION (E) OF THIS SECTION, WITHIN 60 DAYS OF  
10 RECEIVING THE APPLICATION, THE SECRETARY OR THE SECRETARY'S  
11 DESIGNEE SHALL CERTIFY THE MAXIMUM AMOUNT OF THE TAX CREDIT FOR  
12 WHICH A QUALIFIED EMPLOYER IS ELIGIBLE.

13           (E) (1) SUBJECT TO THE LIMITATIONS IN PARAGRAPHS (2), (3), AND  
14 (4) OF THIS SUBSECTION, THE CREDIT EARNED UNDER THIS SECTION IS ~~\$3,000~~  
15 \$5,000 MULTIPLIED BY THE NUMBER OF QUALIFIED EMPLOYEES HIRED BY THE  
16 QUALIFIED EMPLOYER ~~DURING THE 2010 CALENDAR YEAR~~ BETWEEN THE  
17 EFFECTIVE DATE OF CHAPTER \_\_\_\_ (H.B. 92) OF THE ACTS OF THE GENERAL  
18 ASSEMBLY OF 2010 AND DECEMBER 31, 2010.

19           (2) THE CREDIT EARNED BY A QUALIFIED EMPLOYER UNDER  
20 THIS SUBTITLE MAY NOT EXCEED \$250,000.

21           (3) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE  
22 DEPARTMENT UNDER THIS SUBTITLE MAY NOT EXCEED \$20,000,000.

23           (4) THE CREDITS WILL BE AVAILABLE AND CERTIFIED ON A  
24 FIRST-COME, FIRST-SERVED BASIS AT THE TIME OF APPLICATION.

25           (F) FOR ANY QUALIFIED POSITION CERTIFIED UNDER SUBSECTION (D)  
26 OF THIS SECTION THAT IS VACATED FOR ANY REASON, THE QUALIFIED  
27 EMPLOYER MUST SUBMIT AN AMENDED APPLICATION UNDER SUBSECTION (C)  
28 OF THIS SECTION TO RECEIVE THE TAX CREDIT FOR HIRING A REPLACEMENT  
29 QUALIFIED EMPLOYEE FOR THAT VACATED POSITION.

30           (G) THE SECRETARY AND THE COMPTROLLER MAY JOINTLY ADOPT  
31 REGULATIONS TO CARRY OUT THIS SUBTITLE AND THE PROVISIONS OF § 10-728  
32 OF THE TAX - GENERAL ARTICLE.

33 11-1103.

1           (A) AFTER RECEIVING THE CERTIFICATION IN ACCORDANCE WITH §  
2 11-1102(D) OF THIS SUBTITLE, AND IN ACCORDANCE WITH § 11-1107 OF THIS  
3 SUBTITLE, A QUALIFIED EMPLOYER MAY CLAIM AN INCOME TAX CREDIT IN THE  
4 AMOUNT PROVIDED IN THAT CERTIFICATION.

5           (B) TO CLAIM THE CREDIT CERTIFIED UNDER § 11-1102(D) OF THIS  
6 SUBTITLE, A QUALIFIED EMPLOYER SHALL SUBMIT TO THE COMPTROLLER:

7                   (1) A TAX RETURN FOR THE TAXABLE YEAR TO WHICH THE  
8 CERTIFICATION APPLIES, CLAIMING THE CREDIT; AND

9                   (2) A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE  
10 APPROVED CREDIT AMOUNT.

11 11-1104.

12           (A) (1) A QUALIFIED POSITION MUST REMAIN FILLED FOR A PERIOD  
13 OF 1 YEAR AFTER THE QUALIFIED EMPLOYEE IS HIRED AND BEGINS  
14 EMPLOYMENT.

15                   (2) IF THE POSITION IS VACATED PRIOR TO THE EXPIRATION OF  
16 THE 1-YEAR PERIOD, THE EMPLOYER SHALL IMMEDIATELY NOTIFY THE  
17 DEPARTMENT OF THE VACANCY.

18           (B) IF A POSITION IS FILLED FOR LESS THAN THE REQUIRED 1-YEAR  
19 PERIOD, THE EMPLOYER SHALL BE ENTITLED TO A PRO-RATA PORTION OF THE  
20 TAX CREDIT BASED ON THE DURATION OF EMPLOYMENT.

21 11-1105.

22           (A) THE DEPARTMENT, THE COMPTROLLER, AND THE DEPARTMENT  
23 OF BUSINESS AND ECONOMIC DEVELOPMENT MAY SHARE ANY INFORMATION  
24 RECEIVED FROM A QUALIFIED EMPLOYER ABOUT ELIGIBILITY FOR A CREDIT  
25 ALLOWED UNDER THIS SUBTITLE FOR THE PURPOSE OF ADMINISTERING THIS  
26 TAX CREDIT.

27           (B) INFORMATION THAT IS RECEIVED UNDER SUBSECTION (A) OF THIS  
28 SECTION IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS THAT APPLY  
29 TO THE DEPARTMENT, THE COMPTROLLER, THE DEPARTMENT OF BUSINESS  
30 AND ECONOMIC DEVELOPMENT, AND THE UNIT THAT RECEIVES THE  
31 INFORMATION.

32 11-1106.

1 ON OR BEFORE APRIL 1, 2011, THE DEPARTMENT SHALL REPORT TO THE  
2 GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT  
3 ARTICLE, THE GENERAL ASSEMBLY ON THE QUALIFIED EMPLOYERS CERTIFIED  
4 AS ELIGIBLE FOR JOB CREATION AND RECOVERY TAX CREDITS ~~AND~~, THE  
5 NUMBER OF ~~JOBS~~ QUALIFIED POSITIONS FOR WHICH THEY WERE CERTIFIED,  
6 THE TOTAL AMOUNT OF CREDITS CERTIFIED FOR EACH QUALIFIED EMPLOYER,  
7 AND THE TOTAL AMOUNT OF CREDITS CERTIFIED.

8 11-1107.

9 (A) (1) THE TAX CREDIT AUTHORIZED UNDER THIS SUBTITLE:

10 ~~(1)~~ (I) MAY BE CLAIMED ONLY FOR INDIVIDUALS HIRED INTO  
11 QUALIFIED POSITIONS FOR WHICH THEY BEGIN RECEIVING WAGES ON OR  
12 AFTER ~~JANUARY 1, 2010~~, THE EFFECTIVE DATE OF CHAPTER        (H.B. 92) OF  
13 THE ACTS OF THE GENERAL ASSEMBLY OF 2010 BUT ON OR BEFORE  
14 DECEMBER 31, 2010; AND

15 ~~(2)~~ ~~(I)~~ (II) EXCEPT AS OTHERWISE PROVIDED IN THIS  
16 SUBSECTION, MUST BE CLAIMED ON THE QUALIFIED EMPLOYER'S 2010 OR 2011  
17 STATE INCOME TAX RETURN.

18 ~~(I)~~ ~~1~~ (2) IN DETERMINING WHICH YEAR OR YEARS TO  
19 CLAIM THE CREDIT, THE QUALIFIED EMPLOYER SHALL CLAIM THE CREDIT FOR  
20 EACH CALENDAR MONTH OF 2010 AS THAT MONTH CORRESPONDS TO THE  
21 QUALIFIED EMPLOYER'S TAXABLE YEAR.

22 ~~2~~ (3) IF THE QUALIFIED EMPLOYER'S 2009 TAX YEAR  
23 INCLUDES 2010 CALENDAR MONTHS, THE QUALIFIED EMPLOYER SHALL CLAIM  
24 THE CREDIT ON THE QUALIFYING EMPLOYER'S 2009 TAX RETURN FOR THOSE  
25 2010 CALENDAR MONTHS CORRESPONDING TO THE QUALIFIED EMPLOYER'S  
26 2009 TAXABLE YEAR.

27 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
28 SUBSECTION, THE AMOUNT OF CREDIT THAT MAY BE CLAIMED IN A TAXABLE  
29 YEAR FOR EACH QUALIFIED EMPLOYEE IS ~~\$250~~ \$416.67 MULTIPLIED BY THE  
30 NUMBER OF MONTHS THE QUALIFIED EMPLOYEE WAS EMPLOYED IN THAT  
31 TAXABLE YEAR, PROVIDED THAT THE TOTAL NUMBER OF MONTHS FOR WHICH  
32 THE CREDIT IS CLAIMED FOR A PARTICULAR QUALIFIED EMPLOYEE DOES NOT  
33 EXCEED 12 MONTHS.

34 (2) IF, AT THE TIME OF FILING, A QUALIFIED EMPLOYER'S TAX  
35 RETURN FOR TAXABLE YEAR 2010 INCLUDES A QUALIFIED EMPLOYEE WHO  
36 REMAINED EMPLOYED DURING CALENDAR YEAR 2011, A QUALIFIED EMPLOYER

1 MAY CLAIM ON THAT TAX RETURN THE TAX CREDIT APPLICABLE TO THAT  
 2 EMPLOYEE FOR THE MONTHS DURING 2011, PROVIDED THAT THE TOTAL  
 3 NUMBER OF MONTHS FOR WHICH THE CREDIT IS CLAIMED FOR A PARTICULAR  
 4 QUALIFIED EMPLOYEE DOES NOT EXCEED 12 MONTHS.

5 (C) ~~EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IF~~ IF  
 6 THE CREDIT ALLOWED UNDER THIS SECTION IN ANY CORRESPONDING TAXABLE  
 7 YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE BUSINESS ENTITY  
 8 OR INDIVIDUAL FOR THAT TAXABLE YEAR, THE BUSINESS ENTITY OR  
 9 INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.

10 (D) A REFUND PAYABLE UNDER SUBSECTION (C) OF THIS SECTION:

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

14 (2) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM  
 15 INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:

16 (I) AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER  
 17 TITLE 10 OF THE TAX – GENERAL ARTICLE; OR

18 (II) AN ORGANIZATION EXEMPT FROM TAXATION UNDER §  
 19 501(C) OF THE INTERNAL REVENUE CODE.

20 (E) IF, AT THE TIME OF FILING, A PERSON IS DELINQUENT IN THE  
 21 PAYMENT OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS, STATE INCOME  
 22 TAXES, WITHHOLDING TAXES, OR OTHER DEBT OR DELINQUENT ACCOUNTS DUE  
 23 TO THE STATE, THE PERSON IS NOT ELIGIBLE FOR A ~~REFUND~~ CREDIT UNDER  
 24 THIS ~~SECTION~~ SUBTITLE.

25 Article – Tax – General

26 10-728.

27 (A) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A STATE TAX  
 28 CREDIT AGAINST THE INCOME TAX AS PROVIDED UNDER TITLE 11, SUBTITLE 11  
 29 OF THE LABOR AND EMPLOYMENT ARTICLE.

30 (B) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C) OF  
 31 THE INTERNAL REVENUE CODE MAY APPLY THE CREDIT UNDER THIS  
 32 SUBSECTION;



1           ~~(1) AS A CREDIT AGAINST STATE INCOME TAX DUE ON~~  
2 ~~UNRELATED BUSINESS TAXABLE INCOME AS PROVIDED UNDER §§ 10-304 AND~~  
3 ~~10-812 OF THIS TITLE; OR~~

4           ~~(2) AS A CREDIT FOR THE PAYMENT TO THE COMPTROLLER OF~~  
5 ~~TAXES THAT THE ORGANIZATION:~~

6           ~~(I) IS REQUIRED TO WITHHOLD FROM THE WAGES OF~~  
7 ~~EMPLOYEES UNDER § 10-908 OF THIS TITLE; AND~~

8           ~~(II) IS REQUIRED TO PAY TO THE COMPTROLLER UNDER §~~  
9 ~~10-906(A) OF THIS TITLE.~~

10           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
11 applicable to individuals hired and beginning work on or after ~~January 1, 2010,~~ the  
12 effective date of this Act but on or before December 31, 2010.

13           SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
14 Act or the application thereof to any person or circumstance is held invalid for any  
15 reason in a court of competent jurisdiction, the invalidity does not affect other  
16 provisions or any other application of this Act which can be given effect without the  
17 invalid provision or application, and for this purpose the provisions of this Act are  
18 declared severable.

19           SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency  
20 measure, is necessary for the immediate preservation of the public health or safety,  
21 has been passed by a yea and nay vote supported by three-fifths of all the members  
22 elected to each of the two Houses of the General Assembly, and shall take effect from  
23 the date it is enacted.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.