

# SENATE BILL 106

C8

EMERGENCY BILL

0lr0160  
CF HB 92

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By: **The President (By Request – Administration) and Senators Miller, Currie, Kasemeyer, Astle, Brinkley, Colburn, DeGrange, Forehand, Garagiola, Jones, Klausmeier, Kramer, Lenett, Madaleno, McFadden, Middleton, Mooney, Munson, Peters, Pugh, Robey, Rosapepe, ~~and Zirkin~~ Zirkin, and Stone**

Introduced and read first time: January 14, 2010

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 24, 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.

18 BY adding to

19 Article – Labor and Employment

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

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

10 Preamble

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

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

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

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

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

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

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

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

31 **Article – Labor and Employment**

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

33 **11–1101.**

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

3           (B) “QUALIFIED EMPLOYEE” MEANS AN INDIVIDUAL WHO, AT THE TIME  
4 OF HIRING:

5                   (1) IS A RESIDENT OF THE STATE;

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

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

10                   (3) IS NOT EMPLOYED FULL TIME.

11           (C) “QUALIFIED EMPLOYER” MEANS A PERSON THAT IS:

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

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

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

19           (D) (1) “QUALIFIED POSITION” MEANS A POSITION THAT:

20                           (I) IS FULL TIME;

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

24                           (III) IS LOCATED IN THE STATE; AND

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

27                   (2) “QUALIFIED POSITION” DOES NOT INCLUDE A POSITION THAT  
28 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;

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, AND  
21 DECEMBER 31, 2010.

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

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

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

32                   (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, THE SECRETARY OR THE  
10 SECRETARY'S DESIGNEE SHALL CERTIFY THE MAXIMUM AMOUNT OF THE TAX  
11 CREDIT FOR WHICH A QUALIFIED EMPLOYER IS ELIGIBLE.

12           (E) (1) SUBJECT TO THE LIMITATIONS IN PARAGRAPHS (2), (3), AND  
13 (4) OF THIS SUBSECTION, THE CREDIT EARNED UNDER THIS SECTION IS ~~\$3,000~~  
14 \$5,000 MULTIPLIED BY THE NUMBER OF QUALIFIED EMPLOYEES HIRED BY THE  
15 QUALIFIED EMPLOYER DURING THE 2010 CALENDAR YEAR.

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

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

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

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

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

30 11-1103.

31           (A) AFTER RECEIVING THE CERTIFICATION IN ACCORDANCE WITH  
32 § 11-1102(D) OF THIS SUBTITLE, AND IN ACCORDANCE WITH § 11-1107 OF THIS  
33 SUBTITLE, A QUALIFIED EMPLOYER MAY CLAIM AN INCOME TAX CREDIT IN THE  
34 AMOUNT PROVIDED IN THAT CERTIFICATION.

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

3                   **(1) A TAX RETURN FOR THE TAXABLE YEAR TO WHICH THE**  
4 **CERTIFICATION APPLIES, CLAIMING THE CREDIT; AND**

5                   **(2) A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE**  
6 **APPROVED CREDIT AMOUNT.**

7 **11-1104.**

8           **(A) (1) A QUALIFIED POSITION MUST REMAIN FILLED FOR A PERIOD**  
9 **OF 1 YEAR AFTER THE QUALIFIED EMPLOYEE IS HIRED AND BEGINS**  
10 **EMPLOYMENT.**

11                   **(2) IF THE POSITION IS VACATED PRIOR TO THE EXPIRATION OF**  
12 **THE 1-YEAR PERIOD, THE EMPLOYER SHALL IMMEDIATELY NOTIFY THE**  
13 **DEPARTMENT OF THE VACANCY.**

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

17 **11-1105.**

18           **(A) THE DEPARTMENT, THE COMPTROLLER, AND THE DEPARTMENT**  
19 **OF BUSINESS AND ECONOMIC DEVELOPMENT MAY SHARE ANY INFORMATION**  
20 **RECEIVED FROM A QUALIFIED EMPLOYER ABOUT ELIGIBILITY FOR A CREDIT**  
21 **ALLOWED UNDER THIS SUBTITLE FOR THE PURPOSE OF ADMINISTERING THIS**  
22 **TAX CREDIT.**

23           **(B) INFORMATION THAT IS RECEIVED UNDER SUBSECTION (A) OF THIS**  
24 **SECTION IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS THAT APPLY**  
25 **TO THE DEPARTMENT, THE COMPTROLLER, AND THE UNIT THAT RECEIVES THE**  
26 **INFORMATION.**

27 **11-1106.**

28           **ON OR BEFORE APRIL 1, 2011, THE DEPARTMENT SHALL REPORT TO THE**  
29 **GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**  
30 **ARTICLE, THE GENERAL ASSEMBLY ON THE QUALIFIED EMPLOYERS CERTIFIED**  
31 **AS ELIGIBLE FOR JOB CREATION AND RECOVERY TAX CREDITS AND THE**  
32 **NUMBER OF JOBS FOR WHICH THEY WERE CERTIFIED.**

1 11-1107.

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

3 ~~(1)~~ (I) MAY BE CLAIMED ONLY FOR INDIVIDUALS HIRED INTO  
4 QUALIFIED POSITIONS FOR WHICH THEY BEGIN RECEIVING WAGES ON OR  
5 AFTER JANUARY 1, 2010, BUT ON OR BEFORE DECEMBER 31, 2010; AND

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

9 ~~(II)~~ ~~(1)~~ (2) IN DETERMINING WHICH YEAR OR YEARS TO  
10 CLAIM THE CREDIT, THE QUALIFIED EMPLOYER SHALL CLAIM THE CREDIT FOR  
11 EACH CALENDAR MONTH OF 2010 AS THAT MONTH CORRESPONDS TO THE  
12 QUALIFIED EMPLOYER'S TAXABLE YEAR.

13 ~~(2)~~ (3) IF THE QUALIFIED EMPLOYER'S 2009 TAX YEAR  
14 INCLUDES 2010 CALENDAR MONTHS, THE QUALIFIED EMPLOYER SHALL CLAIM  
15 THE CREDIT ON THE QUALIFYING EMPLOYER'S 2009 TAX RETURN FOR THOSE  
16 2010 CALENDAR MONTHS CORRESPONDING TO THE QUALIFIED EMPLOYER'S  
17 2009 TAXABLE YEAR.

18 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
19 SUBSECTION, THE AMOUNT OF CREDIT THAT MAY BE CLAIMED IN A TAXABLE  
20 YEAR FOR EACH QUALIFIED EMPLOYEE IS ~~\$250~~ \$416.67 MULTIPLIED BY THE  
21 NUMBER OF MONTHS THE QUALIFIED EMPLOYEE WAS EMPLOYED IN THAT  
22 TAXABLE YEAR, PROVIDED THAT THE TOTAL NUMBER OF MONTHS FOR WHICH  
23 THE CREDIT IS CLAIMED FOR A PARTICULAR QUALIFIED EMPLOYEE DOES NOT  
24 EXCEED 12 MONTHS.

25 (2) IF, AT THE TIME OF FILING, A QUALIFIED EMPLOYER'S TAX  
26 RETURN FOR TAXABLE YEAR 2010 INCLUDES A QUALIFIED EMPLOYEE WHO  
27 REMAINED EMPLOYED DURING CALENDAR YEAR 2011, A QUALIFIED EMPLOYER  
28 MAY CLAIM ON THAT TAX RETURN THE TAX CREDIT APPLICABLE TO THAT  
29 EMPLOYEE FOR THE MONTHS DURING 2011, PROVIDED THAT THE TOTAL  
30 NUMBER OF MONTHS FOR WHICH THE CREDIT IS CLAIMED FOR A PARTICULAR  
31 QUALIFIED EMPLOYEE DOES NOT EXCEED 12 MONTHS.

32 (C) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IF THE  
33 CREDIT ALLOWED UNDER THIS SECTION IN ANY CORRESPONDING TAXABLE  
34 YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE BUSINESS ENTITY  
35 OR INDIVIDUAL FOR THAT TAXABLE YEAR, THE BUSINESS ENTITY OR  
36 INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.

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

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

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

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

9                           **(II) AN ORGANIZATION EXEMPT FROM TAXATION UNDER**  
10 **§ 501(C) OF THE INTERNAL REVENUE CODE.**

11           **(E) IF, AT THE TIME OF FILING, A PERSON IS DELINQUENT IN THE**  
12 **PAYMENT OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS, STATE INCOME**  
13 **TAXES, WITHHOLDING TAXES, OR OTHER DEBT OR DELINQUENT ACCOUNTS DUE**  
14 **TO THE STATE, THE PERSON IS NOT ELIGIBLE FOR A REFUND UNDER THIS**  
15 **SECTION.**

16                                   **Article – Tax – General**

17 **10–728.**

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

21           **(B) AN ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C) OF**  
22 **THE INTERNAL REVENUE CODE MAY APPLY THE CREDIT UNDER THIS**  
23 **SUBSECTION:**

24                   **(1) AS A CREDIT AGAINST STATE INCOME TAX DUE ON**  
25 **UNRELATED BUSINESS TAXABLE INCOME AS PROVIDED UNDER §§ 10–304 AND**  
26 **10–812 OF THIS TITLE; OR**

27                   **(2) AS A CREDIT FOR THE PAYMENT TO THE COMPTROLLER OF**  
28 **TAXES THAT THE ORGANIZATION:**

29                           **(I) IS REQUIRED TO WITHHOLD FROM THE WAGES OF**  
30 **EMPLOYEES UNDER § 10–908 OF THIS TITLE; AND**



1 (II) IS REQUIRED TO PAY TO THE COMPTROLLER UNDER  
2 § 10-906(A) OF THIS TITLE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
4 applicable to individuals hired and beginning work on or after January 1, 2010, but on  
5 or before December 31, 2010.

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.