HB 540

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 540 (Delegate Korman, *et al.*)
Economic Matters

Labor and Employment - Pre-Tax Transportation Fringe Benefit - Requirement (Maryland Pre-Tax Commuter Benefit Act)

This bill requires an employer with at least 20 employees to offer employees the opportunity to use a pre-tax transportation fringe benefit. The Commissioner of Labor and Industry may, on receipt of a written complaint from an employee, investigate the complaint. Whenever the commissioner determines that the bill has been violated, the commissioner may try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the employee in the county where the violation allegedly occurred, for injunctive relief, damages, or other relief. An employer that violates the bill is subject to a civil penalty of up to $500.

Fiscal Summary

State Effect: General fund revenues decrease significantly beginning in FY 2019, possibly by $2.4 million in FY 2019. General fund expenditures increase by at least $123,000 in FY 2019 to administer the benefit. Out-years reflect annualization and elimination of one-time costs.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	$120,300	$148,400	$151,700	$156,100	$160,700
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Under one set of assumptions, local revenues decrease by approximately $1.5 million in FY 2019 and by $2.1 million annually beginning in FY 2020. Local governments may incur additional costs for possible programming changes to payroll systems and for administering pre-tax transportation fringe benefit programs.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An "employer" includes the State or local governments and a person who acts directly or indirectly in the interest of another employer with an employee. The bill does not apply to employees who work fewer than 30 hours per week for an employer; employees covered by a collective bargaining agreement; specified associate real estate brokers and real estate salespersons; and specified employees of a temporary services or employment agency.

A "pre-tax transportation fringe benefit" is a qualified transportation fringe at the maximum benefit levels allowable under federal law that may be excluded from an employee's federal gross income, consistent with the provisions and limits of the Internal Revenue Code (IRC) §132(f)(1)(A), which applies to transportation in a commuter highway vehicle used for travel between the employee's residence and place of employment; IRC §132(f)(1)(B), which applies to transit passes; and IRC §132(f)(1)(D), which applies to qualified bicycle commuting reimbursements.

Current Law: Employers are not required to, but may, offer employees the opportunity to use a pre-tax transportation fringe benefit. The State provides a tax credit to employers for providing specified commuter benefits.

Maryland-based businesses that provide commuter benefits for employees may claim a tax credit for a portion of the amounts paid during the taxable year. Commuter benefits include certain vanpool costs for an employee's travel to and from home and the workplace, a Guaranteed Ride Home program, or a parking "Cash-Out" program. A qualified vanpool must (1) travel between the employee's residence and work location; (2) have a seating capacity of at least six adults; (3) have at least 80% of the van's mileage being used for transporting employees; and (4) have at least one-half of the vehicle's seating capacity being used.

The tax credit is 50% of the cost of providing the commuter benefits up to a maximum of $100 per month (based on a $200 employer contribution) for each employee. The credit may not exceed the Maryland tax due for a particular tax year. If the credit is more than the tax liability, the unused credit may not be carried forward to any other taxable year.

Federal Transportation Fringe Benefits

Certain qualified transportation fringe benefits provided by an employer are excluded from an employee's income for federal income tax purposes and from the employee's wages for payroll tax purposes. Qualified transportation fringe benefits include:

- §132(f)(1)(A) *Vanpooling:* The expense of commuting in a six-passenger (or greater) vehicle qualifies for the tax benefit, whether the service is public or private.

- §132(f)(1)(B) *Transit Passes:* A transit pass includes mass transit fares and certain vehicles for hire.

- §132(f)(1)(C) *Qualified Parking:* Qualified parking includes parking provided to an employee on or near the business premises or a location from which the employee commutes by means of mass transit, van pool, or carpooling.

- §132(f)(1)(D) *Qualified Bicycle Commuting:* Reasonable expenses incurred in order to commute via a bicycle on a regular basis.

The amount that can be excluded as qualified transportation fringe benefits in tax year 2018 is limited to $260 per month in combined vanpooling and transit pass benefits and $260 per month in qualified parking benefits. These limits are adjusted annually for inflation.

Employees may exclude $20 of qualified bicycle commuting reimbursements per month, subject to restrictions. Unlike other transportation benefits, this amount is not adjusted for inflation. The exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended for tax years beginning after December 31, 2017, and before January 1, 2026, under the Tax Cuts and Jobs Act of 2017.

Background: Nationally, several jurisdictions, such as the District of Columbia, New York City, and San Francisco, require employers with 20 or more employees to provide commuter benefits programs.

According to the U.S. Bureau of Labor Statistics, nationally only 7% of all workers have access to employer-provided subsidized commuting.

Eligible permanent State employees are entitled to use the Light Rail, the Baltimore Metro Subway, and bus service in the Baltimore metro area at no charge with a valid State identification card. This benefit can be used any time of day or evening, including weekends.

State Revenues: To the extent that employees did not previously have access to pre-tax transportation fringe benefits and now, under the bill, have access and elect to participate, individual income tax revenues decrease from not taxing a maximum of $2,340 of vanpooling and transit pass benefits per employee in fiscal 2019, which reflects the bill's October 1, 2018 effective date. Beginning in fiscal 2020, individual income tax revenues decrease from not taxing $3,120 (plus inflation) of an employee's income for every employee that elects to participate and contribute the maximum allowable amount for vanpooling and transit pass benefits. However, it is likely that most employees have commuter costs that are much lower than the maximum allowable amounts.

The actual general fund revenue loss depends on the number of employees without access to pre-tax transportation fringe benefits that elect to use the benefit, the amount of benefits employees elect to use, and the tax liability of the employees using the benefit. Assuming 85,000 employees participate and incur an average of $100 of monthly transportation fringe benefits, general fund revenues decrease by approximately $2.4 million in fiscal 2019 and by $3.2 million annually beginning in fiscal 2020; this accounts for one-third of employees not having sufficient tax liability to qualify for a tax savings.

State Expenditures: Generally, most State agencies, other than some colleges and universities, do not currently provide pre-tax transportation fringe benefits. There is no cost to the employer for this benefit other than the administrative costs for establishing and offering the program for its employees.

The Office of the Comptroller's Central Payroll Bureau (CPB), which handles payroll for State employees, already has a deduction established for the payroll event required under the bill. Thus, CPB can implement the bill with existing resources. However, State agencies would need to establish a program coordinator and submit deduction information to CPB using an already-defined format for data transfer. Currently, the deduction for pre-tax transportation fringe benefits is only being used by certain colleges and universities (but not the University of Maryland University College) that are federal, State, and Federal Insurance Contributions Act exempt. Each campus that provides such a benefit to the employee must provide a program coordinator who acts as the point-of-contact for any issues either from the employee or CPB. The campus coordinator is responsible for sending deduction information to CPB by certain pay period deadlines. CPB takes the deduction from the employee's check and sends the money back to the program coordinator along with a list of deductions taken. Employees would be required to reimburse the State for the deduction, so the Department of Budget and Management estimates outsourcing the pre-tax transportation fringe benefits program to a vendor, similar to the flexible spending account programs, at a cost of between $1.50 and $3.00 per participant.

It is unknown how many State employees will participate, but DBM estimates up to $28,500 in administrative fees just for employees within the State Personnel Management System. Other agencies with independent personnel systems could incur similar fees. DBM also needs an in-house program manager to set up the program, procure and monitor a vendor, develop correspondence and procedures for employees, and resolve any issues between employees and the vendor. Once the program is fully implemented, the employee could be reduced to a part-time position.

The bill creates additional responsibilities for the Division of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) by requiring all employers with at least 20 employees to offer employees access to pre-tax transportation fringe benefits. DLLR cannot absorb the additional workload within existing resources and requires an additional staff to respond to the increase in inquiries and complaints prompted by the bill. DLLR estimates it could receive fewer than 100 complaints alleging violations annually and, therefore, estimates needing one wage and hour investigator to respond to and manage the additional workload created by the bill.

Accordingly, general fund expenditures increase for DBM and DLLR by $120,291 in fiscal 2019, which reflects the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring one administration officer within DBM to administer the pre-tax transportation fringe benefit program and one wage and hour investigator within DLLR to investigate and process complaints. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salary and Fringe Benefits	$86,323
One-time Start-up Costs	9,780
Operating Expenses	24,188
Total FY 2019 State Expenditures	**$120,291**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Local Revenues: To the extent that employees did not previously have access to pre-tax transportation fringe benefits and now, under the bill, have access and elect to participate, local individual income tax revenues decrease. Under the same assumptions used above, local revenues decrease by approximately $1.5 million in fiscal 2019 and by $2.1 million annually beginning in fiscal 2020.

Local Expenditures: Local governments may incur additional costs for administering the pre-tax transportation fringe benefit program and for possible programming changes to payroll systems.

Small Business Effect: While the bill does not require subsidized transportation, it requires an employer with 20 or more employees to offer the employee the opportunity to use pre-tax funds for the defined uses. Thus, employers who do not already offer transportation benefit plans will likely need to make programming changes to their payroll systems and may incur administrative costs if outsourced to a vendor.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; CCH Intelliconnect; Zenefits; U.S. Census Bureau; U.S. Department of Labor; Department of Legislative Services

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