SB 877

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 877 (The President, *et al.*) (By Request - Administration)

Budget and Taxation and Finance Ways and Means

Promoting ext-Raordinary Innovation in Maryland's Economy (PRIME Act)

This Administration bill establishes tax incentives for a Fortune 100 company that establishes an eligible project in the State. In order to qualify, a company must submit to the Department of Commerce (Commerce) a project plan that commits to carrying out, over a 17-year period, (1) the hiring of 40,000 qualified positions and (2) $4.5 billion in specified project expenditures.

A qualifying business may claim (1) an income tax credit based on the number of jobs created at an eligible project; (2) a tax credit against the State and local property tax imposed on project real property; and (3) a sales and use tax exemption for specified purchases. In addition, the bill allows a business to receive the property tax credit proposed by the bill and a tax credit under the Businesses That Create New Jobs tax credit program. **The bill takes effect June 1, 2018. The bill terminates if Commerce fails to certify a business as a qualifying business before January 1, 2022.**

Fiscal Summary

State Effect: State revenues decrease by $25.6 million in FY 2019 due to the incentives specified by the bill. Future year estimates reflect projected eligible economic activity. General fund expenditures may increase by $0.7 million in FY 2023 due to implementation of local property tax reimbursements. **The potential net impact on State finances will total an estimated $5.6 billion decrease in revenues/increase in expenditures as discussed below.**

($ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	($25.6)	($23.9)	($23.2)	($22.6)	($54.8)
SF Revenue	$0	$0	$0	$0	($0.1)
GF Expenditure	$0	$0	$0	$0	$0.7
Net Effect	($25.6)	($23.9)	($23.2)	($22.6)	($55.6)

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

Local Effect: Net local revenues decrease by $2.2 million in FY 2023. Net local revenue losses total $924.3 million as discussed below. Local expenditures are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: The Administration has determined that the bill will have a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Program Incentives

A qualifying business may be entitled to (1) an income tax credit based on the number of jobs created at an eligible project; (2) a tax credit against the State and local property tax imposed on the facility's real property; and (3) a sales and use tax exemption for specified purchases.

Commerce must administer the tax credit application, approval, and certification process and is required to submit an annual report to the General Assembly detailing specified information about the program. Commerce and the Comptroller must jointly adopt regulations to implement the tax credit application, approval, and monitoring processes.

Eligibility

A business must be a Fortune 100 company that establishes an eligible project. Commerce may certify a business as operating an eligible project if the business submits evidence that the business entity is legally committed to expending or causing to be expended a minimum of $500 million in project costs and submits a project plan that commits to, over a 17-year period:

- filling at least 40,000 qualified positions at the project facility with an average compensation of at least $100,000; and
- expending or causing to expend a total of $4.5 billion in eligible costs.

Eligible costs include, but are not limited to (1) contractor, subcontractor, builder, and supplier labor costs and payments; (2) land acquisition and related incidental costs; (3) contract bonds and insurance as required during the project acquisition, construction, and installation; (4) any architectural and engineering costs including environmental mitigation; (5) performing duties required by or consequent to the undertaking of the project; (6) installing water, sewer, gas/electric, communications, railroad, and similar utilities; (7) bond insurance and other credit enhancement or liquidity facilities; (8) interest expenses before and during the undertaking of the project and up to two years after project completion; (9) computers, certain telecommunications equipment, furnishings and office equipment; and (10) moving expenses, separation expenses, and any other expenses directly related to moving from outside the State.

Qualified Positions

A qualified position (1) is full time and of indefinite duration; (2) pays at least $60,000 but not more than $500,000; (3) is newly created and located at a single, eligible project in the State; and (4) is filled for at least 12 months.

The job does not qualify if the job is the result of a change in business ownership. A job also does not qualify, unless the job is a "net new job in the State," if the job is the result of (1) the shift of an employment function within the entity's operations within the State; (2) a business consolidation or restructuring; or (3) a contractual shift from an existing business in the State.

Incentives

A business that establishes an eligible project may receive the following benefits:

- *Income Tax Credit:* A qualified business entity may claim a credit against the State income tax equal to the total wages paid for the qualified positions multiplied by 5.75%. The credit can be claimed for 10 tax years for each qualified position. A business must fill the required number of positions no later than 17 years after enrollment in the program. If the value of the credit exceeds the tax liability imposed in the year, the business can claim a refund in the amount of the excess. Tax credits can be claimed beginning in tax year 2018.

- *Sales and Use Tax Exemption:* All personal property and/or services purchased by a qualifying business entity for use at an eligible project may qualify for an exemption from the State sales and use tax.

- *State and Local Property Tax Credit:* The amount of the property tax credit is based on 50% of the increased assessment resulting from the value of real property improvements. Qualified property is the real property located at an eligible project. A tax credit can be claimed for 10 consecutive years if the property remains qualified property owned by the business. The State Department of Assessments and Taxation must calculate the value of the credit in each year. As provided in the budget, the State must reimburse local jurisdictions for one-half of the revenue loss resulting from the local property tax credit.

Program Eligibility and Credit Revocation

A business may not continue to qualify for the program and program benefits terminate if the number of qualified positions decreases below the total number in the first year in which the business qualified. Commerce may revoke tax credit certification if, as determined by Commerce, (1) any representation made by the business is determined to have been false when made or (2) the actual expenditures and hiring of employees to fill qualified positions by the business operating the project are significantly below the estimates in the project plan provided by the business.

Businesses That Create New Jobs

Under current law, a tax credit under the Businesses That Create New Jobs Tax Credit Program may not be granted if (1) the business entity or any of its affiliates have moved their operations from one county in the State to the new or expanded premises in another or (2) the new or expanded premises has otherwise been granted a property tax credit or exemption for the taxable year. The bill specifies that these provisions do not apply to a business that has been granted a property tax credit under the program created by the bill.

Current Law:

Sales and Use Tax

Businesses in Maryland are required to collect a 6% sales and use tax from taxable purchases, with a 9% tax imposed on sales of alcoholic beverages. The sale of tangible personal property is generally taxable except as otherwise provided by law, while most services are exempt from the tax.

Property Tax

The State real property tax rate is $0.112 per $100 of assessed value and the revenues are used to pay debt service on the State's general obligation bonds.

Businesses That Create New Jobs

The Businesses That Create New Jobs Tax Credit Program authorizes a county or municipality to grant property tax credits against real and personal property taxes for a business located in Maryland that creates new positions and establishes or expands business facilities in the State. In order to qualify for the credit, the new or expanded premises must be located in a priority funding area and a business must create at least 25 new positions as part of the new or expanded business facility, which must be at least 5,000 square feet in size. Businesses located in less-populated counties (*i.e.*, those counties with a population of 30,000 or less) must create at least 10 new positions.

A business can qualify for an enhanced credit if it (1) obtains at least 250,000 square feet of new or expanded premises, continues to employ at least 2,500 individuals in existing full-time positions, and employs at least 500 individuals in new permanent full-time positions or (2) obtains 250,000 square feet of new or expanded premises and employs at least 1,250 individuals in new permanent full-time positions. In Montgomery County only, a business must spend at least $150 million to obtain at least 700,000 square feet of new or expanded business premises (through the purchase, construction, or lease of a new premises) and employ at least 1,100 individuals including at least 500 new, permanent full-time positions.

The local property tax credit is claimed over 6 years and is equal to, in each year, between 26% and 52% of the amount of property tax imposed on the assessed value of the new or expanded premises. In addition, the business also qualifies for a 6-year State income tax credit equal to between 14% and 28% of the eligible amount of property tax of the new or expanded premises. The enhanced credit is available for 24 years and is equal in each year to 58.5% (property) and 31.5% (income).

Other State Tax Incentives

Numerous federal and State incentives are available to businesses that create new jobs and make capital improvements including the One Maryland, Enterprise Zone, Job Creation, and More Jobs for Marylanders programs.

Background: In September 2017, Amazon.com announced that it will establish a second corporate headquarters within a metropolitan area in North America. In its announcement, which can be found here, the company stated that it was conducting a competitive site selection process and outlined its anticipated site requirements as well as the priority considerations that would influence its decision. Localities were encouraged to submit proposals that described potential sites, incentive packages, and real estate opportunities. A reported 238 localities submitted proposals including Baltimore City and Montgomery County. In January 2018, Amazon announced a list of 20 finalists that included Montgomery County, Northern Virginia, and the District of Columbia.

According to the company, in the initial 15 to 17 years of the project, it will hire up to 50,000 new full-time employees with an average compensation of $100,000 and make $5 billion in capital expenditures. Amazon noted that the actual compensation and capital investment would vary based on the prevailing wages at the site location and site requirements including the need to acquire and renovate existing buildings. At full build-out, the campus or park may exceed 8 million square feet. The company expects that the second location will be similar in scope to its headquarters, which occupies 33 buildings in downtown Seattle. A map of the Seattle campus can be found here.

In January 2018, the Governor announced an incentive package to encourage the company to build its second headquarters in Montgomery County. The incentives included over $3 billion in financial incentives and $2 billion in unspecified transportation improvements. Pursuant to this effort, the Administration announced it would introduce legislation to establish the tax incentives and the proposed fiscal 2019 budget includes $10 million as a grant in the Sunny Day Fund as the first installment of a planned $150 million grant. According to published reports, Montgomery County is also offering financial incentives, but no details have been released as the county states it has signed a nondisclosure agreement.

State Fiscal Impact: State revenues will decrease as a result of an eligible business claiming (1) the State income tax credit for qualified positions; (2) a State property tax credit for eligible real property; and (3) an exemption from the sales and use tax for eligible personal property and services associated with the project. State expenditures will increase due to reimbursements to local jurisdictions for one-half of the local property tax credit established by the bill.

DLS advises that there is a lack of information on the timing and actual qualifying economic activity associated with an eligible project. In addition, the estimated fiscal impact will depend on additional factors that are not known at this time, including but not limited to (1) the location of the proposed project; (2) whether the company acquires existing buildings and the nature of the buildings acquired, renovated, and/or built (campus setting or high-rises); and (3) actual wages paid to qualifying positions. For example, based on an examination of data on average salaries paid within the State and other information, it is assumed that each qualified position will be paid on average $90,000 in the first year of the program. If the actual annual average salary is $10,000 more, the total State fiscal impact of the program will increase by an estimated $550 million.

Based on the limited available information on the likely project that will qualify for the program, it is assumed an eligible project will have three phases over the 17-year period. **Exhibit 1** shows the assumed start dates of these phases, with the associated project expenditures.

Exhibit 1
Estimated Project Timeline and Economic Activity

	Phase I	Phase II	Phase III	Total
Start Date	2019	2023	2028	n/a
New Employees Hired	7,273	14,545	18,182	40,000
Construction Duration (Years)	4	5	8	17
Project Expenditures ($ in Billions)	$0.8	$1.5	$2.2	$4.5

Note: Additional employees are assumed to be hired at the end of each phase except Phase I. It is assumed that in Phase I one-half of employees are hired at the beginning, and the remaining one-half are hired at the end.

It is assumed that except in Phase I, the new employees are hired at the end of each phase corresponding to the time in which office buildings are placed in service. It is also assumed that (1) purchases of qualified personal property including construction materials, equipment, and furnishings are exempt from the sales and use tax throughout the 17-year period and (2) the capital improvements undertaken and new employees hired in each phase qualify the company for the 10-year property tax credit specified by the bill and the enhanced credit provided by the Businesses That Create New Jobs Tax Credit Program.

Based on these assumptions, **Exhibit 2** and **Exhibit 3** show the projected total State and local fiscal impact of the bill in fiscal 2019 through 2054.

Exhibit 2
Total State and Local Impact
Fiscal 2019-2054

Provision	Total Revenue Loss
State Revenues	
Income Tax Credit	$4,921,750,000
Sales and Use Tax Exemption	92,888,000
State Property Tax Credit	13,669,000
Businesses/New Jobs Tax Credit	442,856,000
Total Revenues	**$5,471,163,000**
State Expenditures	
Local Property Tax Reimbursement	$101,850,000
Net State Impact	**$5,573,013,000**
Local Revenues	
Net Local Property Tax Credit	$101,850,000
Businesses/New Jobs Tax Credit	822,446,000
Total	**$924,296,000**
Total State and Local Impact	**$6,497,309,000**

Exhibit 3
State and Local Impact
Fiscal 2019-2054
($ in Millions)

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024-54	Total
State Revenues							
Income Tax Credit	($18.8)	($19.6)	($20.4)	($21.2)	($44.0)	($4,797.8)	($4,921.8)
Sales and Use Tax Exemption	(6.7)	(4.3)	(2.9)	(1.4)	(10.0)	(67.5)	(92.9)
State Property Tax Credit	0.0	0.0	0.0	0.0	(0.1)	(13.6)	(13.7)
Businesses/New Jobs Tax Credit	0.0	0.0	0.0	0.0	(0.8)	(442.0)	(442.9)
Total Revenues	**($25.6)**	**($23.9)**	**($23.2)**	**($22.6)**	**($54.9)**	**($5,321.0)**	**($5,471.2)**
State Expenditures							
Local Property Tax Reimbursement	**$0.0**	**$0.0**	**$0.0**	**$0.0**	**$0.7**	**$101.2**	**$101.9**
Net State Impact	**($25.6)**	**($23.9)**	**($23.2)**	**($22.6)**	**($55.6)**	**($5,422.2)**	**($5,573.0)**
Local Property Tax Credit	$0.0	$0.0	$0.0	$0.0	($1.3)	($202.4)	($203.7)
State Reimbursement	0.0	0.0	0.0	0.0	0.7	101.2	101.9
Net Local Property Tax Credit	0.0	0.0	0.0	0.0	(0.7)	(101.2)	(101.9)
Businesses/New Jobs Tax Credit	0.0	0.0	0.0	0.0	(1.5)	(820.9)	(822.4)
Total Local Impact	**$0.0**	**$0.0**	**$0.0**	**$0.0**	**($2.2)**	**($922.1)**	**($924.3)**

Commerce advises that it assumes that 3,125 qualified positions will be added in each of the first five years and that the project will include $300 million in annual capital expenditures over the same time period. Based on these statements, Commerce estimates that State and local revenues will decrease by a total of $300.0 million in the first five years – $18.0 million in fiscal 2019, $46.0 million in fiscal 2020, $65.0 million in fiscal 2021, $67.0 million in fiscal 2022, and by $104.0 million in fiscal 2023. Commerce states that due to the existence of a confidentiality agreement the department is unable to share additional information regarding the source of the estimates. In its response for the first reader version of this fiscal and policy note, Commerce did not provide an estimate of the bill's total fiscal cost beyond the first five fiscal years.

On March 19, 2018, Commerce advised that over a 25-year period the State and local incentives proposed by the bill will total $3.27 billion, which is about $3.2 billion less than estimated by DLS. Most of this difference reflects a lower estimated impact of the income tax credit by Commerce, which projects that the company receiving the benefits proposed by the bill will not increase the average salary paid to qualified positions over the 25-year period. This represents a real salary decrease of about 40% over that time period. In addition, Commerce does not include any fiscal impact from the bill's provision allowing a business to receive the property tax credit proposed by the bill and a tax credit under the Businesses That Create New Jobs tax credit program.

Local Revenues: Local revenues will decrease due to the local property tax credits specified by the bill. Exhibits 2 and 3 detail the impacts in fiscal 2019 through 2054.

Additional Information

Prior Introductions: None.

Cross File: HB 989 (The Speaker, *et al.*) (By Request - Administration) - Ways and Means.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2018
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Promoting ext-Raordinary Innovation in Maryland's Economy ("PRIME") Act

BILL NUMBER: SB 877/HB 989

PREPARED BY: Chris Carroll

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

____ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

X WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS