

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1637 (Delegate R. Lewis)  
 Economic Matters

Labor and Employment - Parking Cash-Out Program - Requirement

This bill requires an employer that provides to employees a free parking space or a parking subsidy to establish a parking cash-out program. In lieu of making a full cash payment under a parking cash-out program, an employer may provide an employee with a combination of transit passes, rideshare subsidies, and cash. The bill does not apply to an employer that has leased employee parking as of the bill’s effective date until the lease expires or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

Fiscal Summary

**State Effect:** The bill does not apply to the State as an employer so the bill pertains exclusively to private-sector employers. General fund expenditures increase by \$48,000 in FY 2019 to administer and enforce the program. Out-years reflect annualization and elimination of one-time costs. General fund, Transportation Trust Fund (TTF), and Higher Education Investment Fund (HEIF) revenues decrease beginning in FY 2019 to the extent that more businesses claim the commuter benefit tax credit.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF/SF Rev.	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$48,000	\$56,600	\$58,100	\$60,100	\$62,200
Net Effect	(-)	(-)	(-)	(-)	(-)

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

**Local Effect:** Local highway user revenues may decrease annually beginning in FY 2019 as a result of more commuter benefit tax credits claimed against the corporate income tax. The bill does not apply to local governments as employers. The bill is not anticipated to materially affect the circuit courts.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** A “parking cash-out program” is an employer-funded program in which an employer offers to provide a cash allowance to an employee that is equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. A “parking subsidy” is the difference between the out-of-pocket amount that an employer pays to rent or lease an employee parking space and the price, if any, charged to the employee for use of that space. It does not apply to parking spaces owned by an employer.

If an employer violates the bill, an employee may file a written complaint with the Commissioner of Labor and Industry, and upon receipt of the written complaint, the commissioner may investigate whether the bill has been violated. 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. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

**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 cash-out program is an employer-funded program under which an employer offers to provide a cash allowance to an employee in an amount equal to the parking subsidy that the employer would otherwise pay or incur to provide the employee a parking space.

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

An optional parking cash-out program, Commuter Choice Maryland, currently exists through the Maryland Department of Transportation (MDOT). An employee choosing a parking “cash-out” may use the money for public transit or another tax-free commuting alternative or could receive the “cash-out” as taxable income if they commute via carpooling, bicycling, or walking.

MDOT reported that over 698.5 million vehicle miles traveled were reduced in 2016 through various Travel Demand Management projects and programs, including Commuter Choice Maryland, Commuter Connections, the Telework Partnership, various transit marking and subsidy programs, and statewide park-and-ride facilities.

**Exhibit 1** shows how employees commuted to work in Maryland in 2015.

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**Exhibit 1**  
**Mode of Transportation for Commuters in Maryland**

	<u>2015</u>
Drove Alone	73.8%
Carpool	8.9%
Transit	9.0%
Work at Home	4.4%
Walk	2.6%
Other	0.3%
Bicycle	1.0%

Source: Maryland Department of Transportation

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**State Revenues:** General fund, TTF, and HEIF revenues decrease annually beginning in fiscal 2019 to the extent that more businesses claim the commuter benefit tax credit against the State individual or corporate income tax or the insurance premium tax for providing a parking cash-out program.

**State Expenditures:** The bill creates additional responsibilities for the Department of Labor, Licensing, and Regulation's (DLLR) Division of Labor and Industry by requiring employers to establish a parking cash-out program. The bill is expected to increase the number of inquiries and complaints related to the program. DLLR cannot fully absorb the additional workload within existing resources and requires an additional employee to respond to the increase in inquiries and complaints prompted by the bill.

Thus, general fund expenditures increase for DLLR by \$48,012 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring one DLLR wage and hour investigator to conduct outreach, respond to inquiries, investigate complaints, and enforce the new requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Position	1
Regular Salary and Fringe Benefits	\$38,860
Operating Expenses	<u>9,152</u>
<b>Total FY 2019 State Expenditures</b>	<b>\$48,012</b>

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

The bill is not expected to materially affect the workload of the District Court.

**Local Revenues:** Local highway user revenues may decrease annually beginning in fiscal 2019 as a result of more businesses claiming the commuter benefit tax credit against the corporate income tax.

**Small Business Effect:** Small businesses that provide a free parking space or a parking subsidy are negatively affected by the bill by having to provide employees with a cash allowance that is equivalent to the parking subsidy that the employers would otherwise pay to provide employees with a parking space. However, some of these costs may be offset since the employer may claim a tax credit of 50% of the cost of providing the parking cash-out program up to a maximum of \$100 per month (based on a \$200 employer contribution) for each employee.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; U.S Department of Labor; Department of Legislative Services

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