SB 174

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 174 (The President, *et al.*) (By Request - Administration)
Budget and Taxation

More Opportunities for Marylanders Act of 2019

This Administration bill extends the More Jobs for Marylanders Program by 10 years, through May 2030, and increases the total amount of 10-year tax credit certificates that may be awarded annually under the program from $10.0 million to $15.0 million. The bill also expands geographic eligibility for Tier I benefits to Opportunity Zones and expands eligible business activities beyond manufacturing for businesses located in Opportunity Zones. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by $5.0 million in FY 2020, escalating to $65.0 million in FY 2024, and continuing through FY 2039 at a total possible cost of almost $1.6 billion. State revenues decrease, likely beginning in FY 2020, as discussed below. The Governor's proposed FY 2020 budget includes $6.0 million for the expansion of the program to include Opportunity Zones, not contingent on enactment of this bill. **This bill increases mandated appropriations beginning in FY 2020.**

($ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	($0.01)	($0.05)	($0.11)	($0.18)	($0.28)
SF Revenue	($0.15)	($0.82)	($1.74)	($3.03)	($4.80)
GF Expenditure	$5.00	$20.00	$35.00	$50.00	$65.00
Net Effect	($5.16)	($20.87)	($36.85)	($53.21)	($70.08)

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

Local Effect: Local highway user revenues decrease beginning in FY 2020. Local expenditures are not affected.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Changes to Program Benefits

The maximum amount of tax credit certificates that the Department of Commerce (Commerce) may issue against the income tax in a fiscal year is increased from $9.0 million to $13.5 million. The maximum is likewise increased from $1.0 million to $1.5 million for sales and use tax refunds issued in a fiscal year. Under current law, the tax credits and refunds, in addition to other program benefits, may be taken for 10 consecutive years.

Expansion of Geographic and Business Activity Eligibility

Eligibility criteria for the More Jobs for Marylanders Program are expanded to include businesses in Opportunity Zones. Under current law, a new business in a Tier I county must be a manufacturing business to be otherwise eligible for Tier I benefits. Under the bill, in Opportunity Zones, the only business activity limitations are that a business not be a refiner (an existing requirement), provide adult entertainment, or be primarily engaged in retail activities or the sale or distribution of alcoholic beverages. No other changes are made to other existing eligibility requirements.

The definition of "Tier I county" is changed for purposes of the program to "Tier I area" which includes Opportunity Zones designated under the federal Internal Revenue Code.

See the **Appendix – More Jobs for Marylanders Act Tier I Benefits Eligibility Changes** for a map of existing eligible Tier I counties and the Opportunity Zones made eligible for Tier I benefits under the bill.

Current Law/Background:

Manufacturing Tax Incentives

Chapter 149 of 2017 established the More Jobs for Marylanders Program, which provides (1) an income tax credit to certain new or existing qualifying manufacturers that create a minimum number of jobs; (2) additional incentives to qualifying new manufacturing businesses that create a minimum number of jobs within a county designated as a Tier I county; and (3) additional Section 179 expensing and bonus depreciation as allowed under federal income tax law for all manufacturers located in the State.

For the tax credits and sales tax refunds, Commerce may authorize a manufacturing business to receive program benefits for up to 10 consecutive years beginning with the year in which the business becomes eligible. The maximum amounts that can be awarded annually against the State income tax and the sales and use tax are $9.0 million and $1.0 million, respectively.

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.

Eligibility

A business must operate or conduct a trade or business that is primarily engaged in manufacturing, but this does not include refiners. Prior to taking the action that qualifies the business for the program, a business must notify Commerce of its intent to seek certification of an eligible project. A business must offer an ongoing job skills enhancement training program or postsecondary education program that is approved by Commerce. A business within a Tier I county must create at least 5 qualified positions, and a business within a Tier II county must create at least 10 qualified positions. Within 12 months of notifying Commerce of its intent to seek designation of an eligible project, a business entity must begin hiring employees to fill the qualified positions.

The income tax credit and sales and use tax refund may not be claimed by an existing business entity that moves a facility to another county on or after June 1, 2017. Commerce may not certify a business as eligible for the program after May 31, 2020. A business may not continue to qualify for the program if the number of qualified positions decreases below the total number in the first year in which the business qualified.

Tier I and Tier II County Designations

Businesses located in counties designated by Commerce as Tier I counties may qualify for additional incentives and lower minimum job creation requirements. Commerce may designate a county as a Tier I county if the county meets specified income and unemployment requirements, as discussed below. In addition, Commerce may designate up to three counties as Tier I counties that do not qualify due to income/unemployment. Any county that is not designated as a Tier I county is considered a Tier II county.

Incentives – New Businesses in a Tier I County

A qualifying new manufacturing business in a Tier I county can claim the following benefits for up to 10 consecutive years.

- *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%. 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 Refund:* All personal property and/or services purchased by a qualifying business entity for use at a manufacturing facility may qualify for a refund of the State sales and use tax for purchases made on or after January 1, 2018.

- *State Property Tax Credit:* Chapter 149 exempts 100% of the State property tax imposed on the real property that is owned by a qualifying business and located at the qualifying manufacturing facility beginning in fiscal 2018. The State Department of Assessments and Taxation (SDAT) must calculate the value of the credit in each year.

- *Corporate Filing Fees:* A qualified business entity is exempt from all business recording, filing, or special fees collected by SDAT.

The income tax credit may be claimed for up to 10 years by an existing manufacturing business operating an eligible business in either a Tier I or Tier II county if the business creates the required number of qualified positions at the eligible manufacturing facility.

Reserve Funds

The total amount of initial tax credit certificates issued by Commerce in each fiscal year generally cannot exceed $9.0 million. Beginning in fiscal 2019, the Governor must appropriate money to the More Jobs for Marylanders Tax Credit Reserve Fund. The Governor must include an amount that is necessary to maintain the current level of manufacturing activity in the State and attract new manufacturing activity to the State. Any amount of money in the fund that is not expended in the fiscal year remains in the fund and must be rolled over into the next fiscal year.

The total amount of sales and use tax refunds issued by Commerce in each fiscal year generally cannot exceed $1.0 million. Beginning in fiscal 2019, the Governor must appropriate money to the More Jobs for Marylanders Sales and Use Tax Refund Reserve Fund. Any amount of money in the fund that is not expended in the fiscal year is transferred to the tax credit reserve fund.

Corporate Filing Fees

SDAT is the central repository of all records for business entity formation and filings, such as charters, limited liability companies, partnerships, and trusts. SDAT administers the State's annual corporate filing fee, as well as other business transaction fees. The fee is for the privilege of maintaining the legal entity's existence in the State and is generally equal to $300.

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. Manufacturing firms may qualify for several sales tax exemptions – for example, the sale of machinery, equipment, and other tangible personal property used directly and predominantly in a production activity is exempt.

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.

Tier I County

"Tier I County" means a county with:

- an average unemployment rate that exceeded the State's average during the preceding 24-month period by either two percentage points or 150%; or

- a median household income that may not exceed 75% of the State's average during the preceding 24-month period.

It also includes any county that no longer meets the unemployment and personal income criteria but has met at least one of the criteria at some point in the preceding 24-month period. For the More Jobs for Marylanders Program only, it also includes up to three jurisdictions designated by Commerce.

Baltimore City and Allegany, Caroline, Dorchester, Garrett, Kent, Somerset, Washington, Wicomico, and Worcester counties qualify under the unemployment/income standard. Commerce has also designated Baltimore, Cecil, and Prince George's counties.

Opportunity Zones

The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in distressed communities. Under the Act, states may nominate up to 25% of specified low-income census tracts for designation by the

U.S. Treasury as Opportunity Zones. Maryland designated zones in 2018. The Administration has also established the [Opportunity Zone Leadership Task Force] by executive order to provide guidance and coordinate efforts related to Opportunity Zone investment.

A qualified Opportunity Fund is a privately managed investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified Opportunity Zone property and that holds at least 90% of its assets in such property. Qualified Opportunity Zone property includes stock, a partnership interest, and tangible property used in a trade or business.

The program offers three federal tax incentives related to capital gains: (1) a temporary tax deferral for capital gains reinvested in an Opportunity Fund; (2) a step up in basis for capital gains reinvested in an Opportunity Fund, which excludes up to 15% of the original capital gain from taxation; and (3) a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in an Opportunity Fund, if the investment is held for at least 10 years. More information on the tax incentives, including helpful illustrative examples, can be found on the Economic Innovation Group's [website].

State Revenues:

Corporate Filing Fees and State Property Tax

State revenues decrease as a result of additional qualified businesses claiming (1) a corporate filing fee exemption and (2) a State property tax credit for eligible real property beginning in fiscal 2020, concurrent with the expanded income and sales tax incentives.

Based on previous estimates for this activity and the anticipated increase in program activity due to the bill, State revenues (combined general and special funds) may decrease by $162,000 in fiscal 2020, $870,000 in fiscal 2021, $1.9 million in fiscal 2022, $3.2 million in fiscal 2023, and $5.1 million in fiscal 2024. Actual amounts may vary significantly from this estimate. Nearly 95% of the amount in any fiscal year is anticipated to be due to the State property tax credit. State revenues continue to decrease through fiscal 2039 as the 10-year program benefits continue to be taken by qualified businesses.

State Expenditures: General fund expenditures increase *in total* by up to $1.6 billion from fiscal 2020 through 2039 to make reserve fund appropriations, as the 10-year program benefits continue to be taken by qualified businesses. Commerce, the Comptroller, and SDAT can likely handle the bill's administrative requirements with existing budgeted resources.

Reserve Fund Appropriations

Under the bill, Commerce may issue certifications for an additional 10 years, through May 2030, and may issue an additional $4.5 million in income tax credits and $0.5 million in sales and use tax refunds annually. There are two reserve funds intended to offset the revenue losses that result from businesses claiming income tax credits and sales tax refunds. It is assumed that the amounts appropriated to the reserve funds each year fully offset the revenue impacts of the income and sales tax benefits.

Based on the initial interest in the program and the broad expansion of program eligibility under the bill, it is assumed that the program is funded so that Commerce may award the new maximum allowable tax credits ($13.5 million) and sales tax refunds ($1.5 million) annually from fiscal 2020 through 2030.

Therefore, as shown in **Exhibit 1**, general fund expenditures increase by $5.0 million in fiscal 2020, escalating to $65.0 million by fiscal 2024, from additional reserve fund appropriations. Additional reserve fund appropriations totaling $1.4 billion continue through fiscal 2039 as the 10-year program benefits continue to be taken by qualified businesses. To the extent that the Governor provides less or no money to the reserve fund in any year, the increase in general fund expenditures will be less, but State revenues will decrease.

The Governor's proposed fiscal 2020 budget includes $14.0 million in total for authorized credits/refunds: $7.0 million for general income tax refunds, $1.0 million for sales tax refunds, and an additional $6.0 million for Opportunity Zone funding under the program. The additional funding is not contingent on enactment of this bill.

Local Revenues: Local highway user revenues distributed to Baltimore City, counties, and municipalities decrease as a result of income tax credits claimed against the corporate income tax beginning in fiscal 2020.

Exhibit 1
Possible Additional General Fund Appropriations for
Income Tax Credit and Sales Tax Refunds
($ in Millions)
Fiscal 2020-2039

Certification Year	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025-2039	Total
FY 20	$5	$5	$5	$5	$5	$25	**$50**
FY 21		15	15	15	15	90	**150**
FY 22			15	15	15	105	**150**
FY 23				15	15	120	**150**
FY 24					15	135	**150**
FY 25-30						900	**900**
Total	**$5**	**$20**	**$35**	**$50**	**$65**	**$1,375**	**$1,550**

Note: This estimate assumes Commerce certifies a total of $15.0 million in income tax credits and sales tax refunds each year beginning in fiscal 2020, the maximum amount allowable under the bill. To the extent that lesser amounts are certified in a particular year, the impact on expenditures will be less. Under current law, Commerce cannot issue new certifications after fiscal 2020, so each certification year from fiscal 2021 through 2030 creates $150.0 million in available credits spread evenly over a 10-year period.

Source: Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: HB 150 (The Speaker, *et al.*) (By Request - Administration) - Ways and Means.

Information Source(s): Department of Commerce; Comptroller's Office; Department of Budget and Management; State Department of Assessments and Taxation; Charles and Montgomery counties; Internal Revenue Service; Economic Innovation Group; Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2019
mm/vlg

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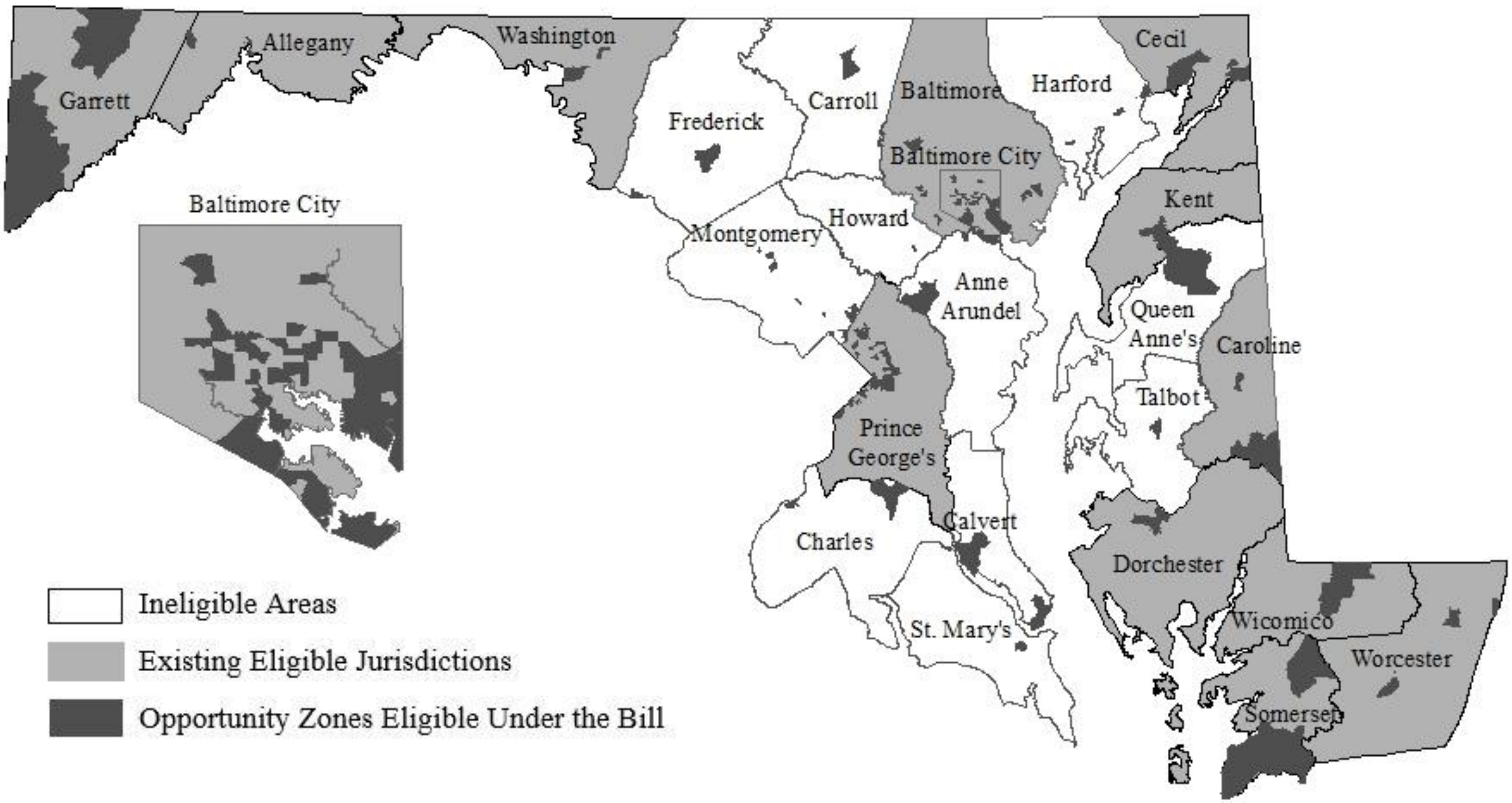
Appendix – More Jobs for Marylanders Act Tier I Benefits Eligibility Changes



ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: More Opportunities for Marylanders Act of 2019

BILL NUMBER: SB 174/HB 150

PREPARED BY: Nancy McCrea, Department of Commerce

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

Senate Bill 174/House Bill 150 will build upon the success of More Jobs for Marylanders (MJM) by expanding the MJM program to leverage the Opportunity Zone Program created through the Federal Tax Cuts and Jobs Act of 2017. More Opportunities for Marylanders will allow eligible businesses locating or expanding within Maryland Opportunity Zones to access a suite of programs and benefits.

Businesses in Opportunity Zones across the State will be eligible for a refundable credit against the State's income tax of 5.75% of wages for each new qualified positon. Businesses in an Opportunity Zone may also receive a credit against the State's portion of the property tax, a refund of sales and use tax; and a waiver of fees charged by SDAT. To qualify, a business must create a minimum of five new, full-time jobs paying at least 120% of state minimum wage and each job must be filled for 12 months.

Because the job threshold is relatively low, small businesses will benefit from this legislation with a hiring incentive. There are 20,050 business establishments in Maryland's 149 Opportunity Zones. Over 90 percent (18,430) of those establishments have fewer than 50 employees. These small businesses are located in lower-income areas and will benefit from the $1 billion dollars or more investment expected to be spurred by the Opportunity Zones' federal investment incentives.