HB 45

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 45 (Delegate Palakovich Carr)

Ways and Means Budget and Taxation

Economic Development - Opportunity Zone Incentives - Alteration of the More Jobs for Marylanders and Opportunity Zone Enhancement Programs

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This bill alters the Opportunity Zone Enhancement Program by (1) limiting the enhanced tax benefits available under the program to tax years 2019 through 2026; (2) restricting eligibility for the enhanced benefits under the biotechnology investment incentive and cybersecurity investment incentive tax credit programs to investments made in a company that is newly established or expands into an opportunity zone on or after March 1, 2018; (3) requiring businesses in a county with a minimum wage that exceeds the State minimum wage to pay the greater of 120% of the State or county minimum wage; and (4) altering certain application and reporting requirements. The bill also prohibits golf courses, country clubs, tanning salons, and bail bondsmen from participating in the More Jobs for Marylanders Program. **The bill takes effect July 1, 2020, and applies to tax year 2020 and beyond.**

Fiscal Summary

State Effect: State revenues may increase beginning in FY 2021, reflecting a reduction in incentives claimed due to the change in program eligibility requirements. Any increase is not expected to be significant. Expenditures are not materially affected.

Local Effect: Local revenues may increase beginning in FY 2021 due to a reduction in tax credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill requires a business to include additional information in the impact report submitted to the Department of Commerce (Commerce) in its Opportunity Zone Enhancement Program application. The impact report must, as applicable, include data on its progress toward (1) creating and retaining jobs; (2) promoting entrepreneurship, including among women- and minority-owned businesses; (3) providing affordable housing; (4) creating access to healthy food; (5) promoting environmental sustainability; and (6) otherwise benefitting the communities in the opportunity zone.

Under current law, Commerce must publish on its website non-confidential information about the program and information reported by a participating qualified opportunity fund. The bill requires that Commerce publish this information itemized by qualified opportunity fund and summarized in the aggregate.

Current Law:

Opportunity Zone Enhancement Program

The Opportunity Zone Enhancement Program, administered by Commerce, provides enhanced incentives for qualifying businesses within a federal opportunity zone. Qualifying businesses within an opportunity zone may qualify for enhanced incentives under the following tax credit programs (1) job creation; (2) One Maryland; (3) enterprise zone; (4) biotechnology investment incentive; (5) cybersecurity investment incentive; and (6) More Jobs for Marylanders. The enhanced incentives do not apply to (1) the enterprise zone property tax credit and (2) One Maryland tax credits unless the business hires at least 50 qualified employees.

Enhanced incentives can be claimed by a business that is within areas that are currently designated as a federal opportunity zone under Section 1400Z-1 of the Internal Revenue Code. These enhanced incentives (Level 1) are in addition to the standard credit provided under each program and in certain circumstances in addition to the enhanced additional credit available under each program. In addition, the program provides an additional enhancement (Level 2) beyond the enhanced credit.

A qualified opportunity zone (QOZ) business or qualified opportunity fund (QOF) qualifies for a Level 1 enhancement if it meets program requirements and provides specified information to Commerce. A QOZ business or QOF qualifies for a Level 2 enhancement if (1) the entity meets Level 1 requirements and (2) accountability to QOZ residents is maintained through their representation on any governing board or advisory board of the QOZ business; or a community benefits agreement or strategic industry partnership is negotiated and agreed to by QOZ community groups and the QOF that specifies a range of community benefits that the fund agrees to provide as part of the development project, including workforce development or local hiring requirements. In addition, if a QOZ business is located entirely within a municipality, the municipality must approve the Level 2 enhancement. Otherwise, the county in which the QOZ business is located must approve the Level 2 enhancement.

A business must also satisfy each program's applicable eligibility requirements and investment and job creation minimums. For example, under the More Jobs for Marylanders Program, a manufacturing business must pay a qualified employee 120% of the State minimum wage and non-manufacturers must pay at least $50,000. The job creation and One Maryland tax credits require a qualified employee to be paid 120% of the minimum wage and the enterprise zone income tax credit requires a qualified position to be paid 150% of the federal minimum wage.

The enhanced tax credits can be claimed beginning with tax year 2019.

More Jobs for Marylanders

The More Jobs for Marylanders Program, administered by Commerce, provides State income tax, sales tax, property tax, and fee benefits to certain businesses that create and maintain a minimum number of qualified jobs. Eligibility for specific benefits is determined by the type of business, its location, and whether or not it is a new business. Generally, a business must operate or conduct a trade or business that is primarily engaged in manufacturing, or else be located in an Opportunity Zone, and not be otherwise excluded by law. A business within a "Tier I Area" must create at least 5 qualified positions, and a business within a "Tier II Area" must create at least 10 qualified positions – there are different requirements for both areas. Specific benefits are as follows:

- *Tier I New Manufacturing Business:* (1) a refundable credit against the State income tax of 5.75% of wages for each qualified position; (2) a credit against the State's portion of the property tax; (3) a refund of sales and use tax; and (4) a waiver of the annual corporate filing fee.

- *Tier I or Tier II Existing Manufacturing Business:* A refundable credit against the State income tax of 5.75% of wages for each qualified position.

- *Opportunity Zone New Non-manufacturing Business:* (1) a refundable credit against the State income tax of 5.75% of wages for each qualified position; (2) a credit against the State's portion of the property tax that is the lesser of 100% of the State property tax *or* $250 per qualified position; (3) a refund of sales and use tax; and (4) a waiver of the annual corporate filing fee.

- *Opportunity Zone Existing Non-manufacturing Business:* A refundable credit against the State income tax of 5.75% of wages for each qualified position.

Businesses excluded from program eligibility are (1) refiners; (2) those that provide adult entertainment; (3) those that engage in retail activities, except for grocery stores located in Opportunity Zones; and (4) those primarily engaged in the sale or distribution of alcoholic beverages.

Tier I Areas include Baltimore City and Allegany, Baltimore, Caroline, Cecil, Dorchester, Garrett, Kent, Prince George's, Somerset, Washington, Wicomico and Worcester counties. Tier I Areas also include Opportunity Zones located in *any* Maryland county. Tier II Areas are any areas that are not Tier I Areas. Counties must meet specified income or unemployment criteria, or be designated by Commerce, to be considered a Tier I Area. Opportunity Zones are census tracts designated by the State as part of a federal program established by the Federal Tax Cuts and Jobs Act of 2017.

Commerce may certify businesses as eligible for the program through June 1, 2022. Commerce may annually award up to $9.0 million in credits against the State income tax and up to $1.0 million in sales and use tax refunds. If other requirements continue to be met, a business is eligible for 10 consecutive years of benefits. The Governor must appropriate sufficient funds to two related reserve accounts each year, subject to specified requirements. Therefore, *each* program certification year creates up to $100 million in future amounts that must be appropriated to reserve funds through the annual budget process. State property tax credits and corporate filing fee exemptions are unlimited.

In addition to providing tax benefits to businesses that meet program requirements and are certified by Commerce, the program also allows a manufacturer located in the State to claim increased expensing amounts under the State income tax by conforming State law to the maximum aggregate costs of expensing allowed under Section 179 of the Internal Revenue Code (IRC) and to claim any bonus depreciation amounts provided under Section 168(k) of IRC. These benefits apply if the property was placed in service on or after January 1, 2019.

Background: The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in certain 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 nominated its zones in March 2018 and the U.S. Treasury designated the zones in June 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.

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.

State Revenues: The bill (1) alters eligibility requirements under the Opportunity Zone Enhancement Program and the More Jobs for Marylanders Program and (2) limits the enhanced tax benefits under the Opportunity Zone Enhancement Program that can be claimed to tax years 2019 through 2026. As a result, State revenues may increase minimally beginning in fiscal 2021.

Tax credits awarded under the job creation, biotechnology investment incentive, cybersecurity investment incentive, and sales tax and income tax credits under the More Jobs for Marylanders programs are subject to an annual appropriation or maximum limit. Altering eligibility requirements and the years in which credits may be claimed will not materially impact State finances.

State property tax credits and the waiver of the annual corporate filing fee under the More Jobs for Marylanders Program as well as enterprise zone income and One Maryland tax credits are not subject to an annual limitation. Accordingly, the bill’s provisions altering eligibility requirements for these incentives may increase State revenues minimally beginning in fiscal 2021.

Small Business Effect: Small businesses that have a reduction or elimination in benefits due to the change in program eligibility requirements will be negatively impacted by the bill. In most programs the eligibility changes will result in a reallocation of some tax credits and not change the total amount of tax credits awarded. Small businesses that continue to meet the requirements under the bill and would not otherwise receive a tax credit under current law due to program funding limitations will benefit due to this reallocation.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 122 (Senator McCray) - Budget and Taxation.

Information Source(s): Department of Legislative Services

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