

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 256

(Chair, Finance Committee, *et al.*) (By Request -
Departmental - Commerce)

Finance

Appropriations

**Arts and Entertainment Districts – Artistic Work and Arts and Entertainment
Enterprise – Definitions**

This departmental bill alters the definitions of “artistic work” and “arts and entertainment enterprise” for purposes of the State Arts and Entertainment District Program and its related tax incentives. **The bill takes effect July 1, 2021, and applies to all taxable years beginning after December 31, 2020.**

Fiscal Summary

State Effect: The bill likely does not materially affect State finances or operations, under the assumptions discussed below.

Local Effect: The bill likely does not materially affect local government finances or operations, under the assumptions discussed below.

Small Business Effect: The Department of Commerce has determined that this bill has minimal or no 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: The definition of “artistic work” is altered, as specified, by (1) explicitly stating that the work may be generated with others; (2) explicitly including certain types of art, such as a photograph and digital or new media; and (3) explicitly including products generated through a combination of the listed categories. The definition of “arts and

entertainment enterprise” is modified to directly link to the definition of “artistic work,” rather than only “visual or performing arts.”

Current Law: For purposes of the Arts and Entertainment District Program “artistic work” means an original and creative work that is created, written, composed, or executed and falls into one of the following categories:

- a book or other writing;
- a play or performance of a play;
- a musical composition or the performance of a musical composition;
- a painting or other picture;
- a sculpture;
- traditional or fine crafts;
- the creation of a film or the acting within a film;
- the creation of a dance or the performance of a dance;
- the creation of original jewelry, clothing, or design; or
- any other product generated as a result of a work listed above.

Provisions related to arts and entertainment districts do not apply to (1) the creation or execution of artistic work for industry-oriented or -related production or (2) tailoring services, clothing alteration, or jewelry repair.

“Arts and entertainment enterprise” means a for-profit or nonprofit entity dedicated to visual or performing arts.

A “qualifying residing artist” means an individual who (1) owns or rents residential real property in the State; (2) conducts a business in any arts and entertainment district; and (3) derives income from the sale or performance within any arts and entertainment district of an artistic work that the individual wrote, composed, executed, either alone or with others, in any arts and entertainment district.

An “arts and entertainment district” is a developed district of public and private uses that (1) is distinguished by physical and cultural resources that play a vital role in community development and contribute to the public through interpretive, educational, and recreational uses and (2) ranges in size from a portion of a political subdivision to a regional district with a special coherence. Upon application from an eligible local government, the Secretary of Commerce may designate an area as an arts and entertainment district only if the area is a contiguous geographic area that is wholly within a priority funding area or a qualified opportunity zone.

Tax Benefits

Several tax benefits are available in arts and entertainment districts:

- qualifying residing artists may claim a subtraction modification on State and local income taxes for the income derived within any district from the publication, production, or sale of artistic work created, written, composed, or executed by the qualifying artist;
- a county or municipality may grant, by law, a property tax credit for up to 10 years against the property tax imposed on a manufacturing, commercial, or industrial building that is located in an arts and entertainment district and is wholly or partially renovated to be capable for use by a qualifying artist or an arts and entertainment enterprise; and
- a county or municipality may exempt from the admissions and amusement tax gross receipts from any admissions or amusement charge levied by an arts and entertainment enterprise or qualified residing artist in an arts and entertainment district.

Background: Maryland was among the first states to enact an arts or cultural district designation program through legislation in 2001. Since then, 29 districts have been designated as arts and entertainment districts, and many states operate programs modeled off of Maryland's program. The program is administered by the Maryland State Arts Council (MSAC) in Commerce. Commerce advises that the revised definitions, which were developed after soliciting input from stakeholders and the public throughout fiscal 2020, are intended to:

- provide clarity to Maryland artists and arts and entertainment enterprises about the applicability of the program;
- increase the ability of MSAC and Commerce employees to effectively communicate the program's benefits; and
- help local governments see progress toward economic development goals through the generation of arts activity within arts and entertainment districts across the State.

State Revenues: Commerce advises that the revised statutory definitions align with various determinations MSAC staff have received from assistant Attorneys General and the Comptroller's Office over time and, therefore, the changes are clarifying in nature and do not broaden the scope of artistic work. Commerce, therefore, advises that the bill's effect on general fund revenues would be limited to newly aware individuals claiming subtraction modifications under the clarified program requirements. However, when contacted by DLS to confirm Commerce's assessment, the Comptroller's Office advised that the bill is an expansion of eligibility.

Notwithstanding this disagreement, both Commerce and the Comptroller's Office advise and DLS concurs that the bill likely does not does not materially decrease general fund revenues – whether from newly eligible or merely newly aware individuals claiming subtraction modifications under the program. For context, in 2017, a total of 149 artists claimed subtraction modifications on income totaling \$1.9 million, which equates to approximately \$100,000 in foregone general fund revenue.

Local Revenues: See above. Local revenues may decrease due to subtraction modifications, local property tax credits, and potential local exemptions from the admissions and amusement tax. The effect on any particular local government is likely minimal. For context, in fiscal 2019, 26 arts and entertainment districts reported that a total of four property owners applied for local property tax credits and 35 businesses took advantage of the admissions and amusement tax abatement statewide.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2021
rh/vlg Third Reader - March 23, 2021

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Arts and Entertainment Districts – Artistic Work and Arts and Entertainment Enterprise - Definitions

BILL NUMBER: SB 256

PREPARED BY: Michael Siers

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

As proposed, the bill revises the definitions of ‘artistic work’ and ‘arts and entertainment enterprise’ found within the Arts and Entertainment (A&E) Districts statute. The revisions within this proposed legislation do not materially alter the types of artistic work covered by the statute; instead, the legislation is intended to clarify the definitions in response to questions from potential applicants. Therefore, the universe of businesses and individuals eligible to apply for funding remains the same, and, in theory means that the economic impact on small businesses remains unchanged.

There is the potential for a slight increase in benefits to Maryland small businesses if increased clarity in who may receive funding leads to an increase in applicants. In this case, Maryland could see a slight increase in the number of qualified artists or businesses. However, given the other requirements to obtain funding, any impact is likely to be minimal.