**HB 1508**

# Department of Legislative Services

Maryland General Assembly
2024 Session

## FISCAL AND POLICY NOTE
**First Reader**

House Bill 1508 (Chair, Ways and Means Committee)(By Request - Departmental - Commerce)

Ways and Means

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**Department of Commerce - Employer Tax Credit Programs - Alterations and Establishment**

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This departmental bill (1) terminates the Job Creation Tax Credit and One Maryland Economic Development Tax Credit programs on January 1, 2025, and (2) establishes a Maryland Jobs Development Tax Credit Program, under which qualified business entities may be eligible for refundable State income tax credits for creating a minimum number of qualified positions or for carrying out a "high impact economic development project" in the State. **The bill takes effect July 1, 2024, and applies to tax year 2024 and beyond.**

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## Fiscal Summary

**State Effect:** General fund revenues decrease by an indeterminate but likely significant amount beginning as early as FY 2025, as discussed below. To the extent the bill results in a net increase in tax credits claimed against the corporate income tax, Higher Education Investment Fund (HEIF) revenues and Transportation Trust Fund (TTF) revenues and expenditures also decrease. General fund expenditures for the Comptroller's Office increase by $200,000 in FY 2025 only.

**Local Effect:** Local highway user revenues decrease beginning as early as FY 2025 to the extent the bill results in a net increase in tax credits claimed against the corporate income tax. Local expenditures are not affected.

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

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## Analysis

**Bill Summary:** Commerce may designate eligible tax credit projects to permit qualified business entities to receive credits against the State income tax for creating a minimum number of qualified positions (Maryland jobs development tax credit) or for carrying out a high impact economic development project in the State (high impact economic development project tax credit). A business entity that receives a job creation or One Maryland tax credit is not eligible to receive benefits under the bill for the same project activities or jobs.

Subject to specified application and certification requirements, a business entity may be eligible for the tax credits under the bill if the business entity:

- operates or will operate a trade or business in connection with the project in an eligible industry sector, as determined by Commerce; and
- creates at least 10 qualified positions at a project location in a Tier I county (as defined under existing law) during a 24-month period; creates at least 20 qualified positions at a project location in a Tier II county (a county that is not a Tier I county) during a 24-month period; or, for a high impact economic development project, fulfills the requirements determined by the Secretary of Commerce.

"Qualified position" means a position that (1) is full-time and of indefinite duration; (2) pays at least 150% of the State minimum wage; (3) is located in the State; (4) is newly created at a single establishment in the State; and (5) is filled. It does not include a position that does not result in a net new job or is filled for a period of less than 12 months, as specified. "High impact economic development project" means a project designated by the Secretary as having a substantial effect on the State and local economy (as discussed below).

*Maryland Jobs Development Tax Credit:* A qualified business entity operating an eligible project is eligible for a refundable Maryland jobs development tax credit in an amount equal to:

- 5% of wages paid to employees in qualified positions during the tax year;
- 6% of wages paid to employees in qualified positions during the tax year, if the qualified business entity has invested at least $75.0 million in the eligible project; or
- 7% of wages paid to employees in qualified positions during the tax year, if the qualified business entity has invested at least $150.0 million in the eligible project.

The credit for each designated eligible project may be claimed for up to three consecutive tax years and may not exceed $1.0 million in any tax year or be carried back to a preceding tax year.

*High Impact Economic Development Project Tax Credit:* The Secretary may designate a project to be a high impact economic development project if the Secretary finds that the project is expected to have a substantial positive impact on the State and local economy. In making such a determination, the Secretary may consider all relevant factors, including the number and type of jobs to be created or retained by the project, the capital investment to be expended in connection with the project, the impact that the project would have on the local economy and the community, and the likelihood that the project will spur additional economic development in the region and the State. The Secretary may approve up to three high impact economic development projects per tax year.

A qualified business entity that carries out a high impact economic development project in the State is eligible to receive a refundable tax credit, the amount and term of which may be determined by the Secretary, and which may not be carried back to a preceding tax year. A business may not qualify for more than one high impact development project for any tax year.

*Recapture:* Commerce may revoke its certification of a credit under the bill, in whole or in part, if any representation in connection with the application for the certification is determined by Commerce to have been false when made. The Comptroller may make an assessment against the qualified business entity to recapture any amount of the tax credit claimed.

*Information Sharing, Confidentiality:* Commerce may require that any information provided under the bill be verified by an independent certified public accountant selected by the qualified business entity and Commerce. Acceptance of a tax credit under the bill is deemed to authorize the Comptroller or other appropriate unit to share with Commerce any information received by a qualified business entity about eligibility for a tax credit under the bill. Information received by Commerce is subject to confidentiality requirements established by statute or regulation that apply to the Comptroller or unit that receives the information.

**Current Law:** “Tier I county,” as defined under the Economic Development Article, means a county with:

- an average rate of unemployment for the most recent 24-month period for which data are available that exceeds 150% of the average rate of unemployment for the State during that period;

- an average rate of unemployment for the most recent 24-month period for which data are available that exceeds the average rate of unemployment for the State by at least 2 percentage points; or
- a median household income for the most recent 24-month period for which data are available that is equal to or less than 75% of the median household income for the State during that period.

The term includes a county that no longer meets any of the above criteria but has met at least one of the criteria at some time during the preceding 24-month period.

Current Tier I counties include Allegany, Caroline, Dorchester, Garrett, Kent, Somerset, Washington, Wicomico, and Worcester counties and Baltimore City.

*Job Creation Tax Credit*

*Eligibility:* The Job Creation Tax Credit Program offers nonrefundable tax credits against the income tax or the insurance premiums tax to a business that establishes or expands a facility in the State that (1) is primarily engaged in an eligible industry and (2) within a 24-month period, creates:

- at least 60 qualifying positions;
- at least 25 qualifying positions in a State priority funding area (PFA); or
- at least 10 qualifying positions in a county with an annual average employment that is less than 75,000 or a median household income that is less than two-thirds of the statewide median household income.

Chapter 22 of the 2021 special session altered the definitions of "qualified position" and "revitalization area" for purposes of the tax credit. For a position filled on or after October 1, 2021, "qualified position" means a position that (1) is full-time and of indefinite duration; (2) pays at least 150% of the State minimum wage or, for an employee classification for which there is a prevailing wage rate, the prevailing wage; (3) is located in the State; (4) provides career advancement training; (5) affords the employee the right to collectively bargain for wages and benefits; (6) provides paid leave; (7) is considered covered employment for purposes of unemployment insurance benefits; (8) entitles the employee to workers' compensation benefits; (9) offers employer-provided health insurance benefits with monthly premiums that do not exceed 8.5% of the employee's net monthly earnings; (10) offers retirement benefits; (11) is newly created as a result of the establishment or expansion of a business facility in a single location in the State; and (12) is filled for a period of at least 12 months. "Revitalization area" means a State or federal enterprise zone, a federal empowerment zone or enterprise community, a sustainable community designated by the Department of Housing and Community Development, or a Tier I county.

*Credit:* The value of the credit is generally equal to $3,000 per qualified employee employed during the credit year (for a facility located in a revitalization area, $5,000 per qualified employee employed during the credit year), subject to a maximum of $1.0 million per qualified business entity per credit year. The credit may be carried forward up to five tax years and may not be carried back to a preceding tax year.

Chapter 191 of 2021 established an enhanced job creation tax credit for the hiring of qualified veteran employees ($4,000 per qualified veteran employee employed during the credit year or, for a facility located in a revitalization area, $6,000 per qualified veteran employee employed during the credit year), and extended program eligibility to small businesses that hire at least one qualified veteran employee for a full-time position in the State. Under the Act, a qualifying small business may claim a credit equal to $2,500 per qualified veteran employee employed during the credit year, for up to five qualified veteran employees per credit year.

Commerce may certify up to $4.0 million in job creation tax credits annually.

*Termination:* The program is scheduled to terminate January 1, 2027, after which a business entity may be considered for eligibility for the tax credit based on positions filled before this termination date, and tax credits earned may be carried forward.

*Department of Legislative Services Evaluation:* In accordance with the Tax Expenditure Evaluation Act, DLS issued a draft evaluation of the job creation tax credit program in 2016. In its draft report, DLS made a number of draft findings and recommendations, including a recommendation that the General Assembly consider eliminating the job creation tax credit or consolidating the credit with other employment tax credits. It is worth noting that the program has undergone several legislative changes since the publication of the draft evaluation report.

*One Maryland Tax Credit*

*Eligibility:* The One Maryland Program offers tax credits against the income tax or the insurance premiums tax to businesses that establish or expand a business facility in a Tier I county with eligible project costs of at least $500,000. To be eligible for the credit, the new or expanded business facility must be:

- located in a PFA, eligible for funding outside of a PFA, or located in a qualified opportunity zone (QOZ) in Allegany, Garrett, Somerset, or Wicomico counties;
- primarily engaged in an eligible industry; and

- create a minimum of 10 qualified positions during a 24-month period.

"Qualified position," as it applies to the One Maryland Program, means a position that (1) is full-time and of indefinite duration; (2) pays at least 120% of the State minimum wage; (3) is in a Tier I county; (4) is newly created because a business facility begins or expands in one location in a Tier I county; and (5) is filled for a period of at least 12 months.

*Credit:* The amount of the credit is equal to 100% of total eligible project costs, up to a maximum of $5.0 million (if the business entity creates at least 50 qualified positions), $2.5 million (if the business entity creates at least 25 qualified positions but fewer than 50 qualified positions), or $1.0 million (if the business entity creates at least 10 qualified positions but fewer than 25 qualified positions). A QOZ business that creates at least 50 qualified positions may be eligible for an enhanced One Maryland credit of up to $5.5 million under the Opportunity Zone Enhancement Program.

The tax credit may be carried forward up to 10 tax years and is partially refundable beginning in the fifth tax year. The aggregate amount of credits that Commerce may award under the program is not subject to limitation.

*Termination:* The program is not subject to termination.

*Department of Legislative Services Evaluation:* DLS most recently evaluated the One Maryland Program during the 2022 interim and made several findings and recommendations as outlined in its December 2022 report.

*More Jobs for Marylanders Tax Credit*

*Eligibility:* The More Jobs for Marylanders Program offers State income tax credits (and, for new Tier I businesses certified before June 1, 2022, certain sales tax, property tax, and corporate filing fee benefits) to businesses that:

- conduct or operate a trade or business that is primarily engaged in manufacturing or located in a QOZ, and are not otherwise excluded by law;
- create at least 10 qualified positions at a project location in a Tier 1 area (Tier I county, other Commerce-designated county, or QOZ) or at least 20 qualified positions at a project location in a Tier II area (area other than a Tier I area); and
- offer an ongoing job skills enhancement training program or postsecondary education program approved by Commerce.

"Qualified position," for purposes of the program, means a position that (1) is full-time and of indefinite duration; (2) pays an average annual salary that exceeds $50,000 or, for a position located in a facility of a manufacturing business, pays at least 150% of the State minimum wage; (3) is located in a facility; (4) is newly created at a single facility in the State; and (5) is filled for a period of at least 12 months.

*Credit:* As altered by Chapter 136 of 2022, for projects certified on or after June 1, 2022, the program offers a refundable income tax credit equal to 4.75% of the total amount of wages paid for each qualified position at an eligible project. Commerce may award up to $5.0 million in initial tax credit certificates annually. Chapter 149 of 2017 established the More Jobs for Marylanders Tax Credit Reserve Fund to offset the cost of the income tax credit.

*Termination:* Chapter 136 extended the termination of the program by two years to June 1, 2024.

*Department of Legislative Services Evaluation:* DLS most recently evaluated the More Jobs for Marylanders Program during the 2021 interim and made several findings and recommendations as outlined in its December 2022 report.

**Background:** Commerce advises that the bill consolidates and streamlines three existing job creation tax incentive programs – the Job Creation Tax Credit, One Maryland Tax Credit, and More Jobs for Marylanders Program (which, though not directly affected by the bill, sunsets June 1, 2024) – under a new Maryland Jobs Development Tax Credit Program. According to Commerce, the program is designed to offer (1) more clarity and certainty for new and expanding businesses; (2) incentives designed to better support young, growing companies; (3) enhanced tax incentives for projects that include a significant amount of capital expenditures in addition to job creation; and (4) tax credit access across the State for significant, "high impact" projects.

**State Revenues:** As discussed above, the bill (1) accelerates the termination of the job creation tax credit by two years, to January 1, 2025; (2) terminates the One Maryland Program on January 1, 2025; and (3) establishes a new Maryland Jobs Development Tax Credit Program under which qualified business entities may earn fully refundable State income tax credits for creating a minimum number of qualified positions or for carrying out a high impact economic development project in the State. The bill specifies no limit on the amount of tax credits Commerce may certify in a given year, nor is the amount of credits Commerce may certify in a given year subject to an annual appropriation.

Based on an analysis of recently approved projects and the pipeline of project applications under the existing programs, Commerce anticipates that the bill will result in a significant net increase in the amount of tax credits awarded. Thus, general fund revenues decrease by a likely significant amount beginning as early as fiscal 2025 due to an anticipated increase in credits claimed against the State income tax. To the extent the bill results in a net increase in credits claimed against the corporate income tax, HEIF and TTF revenues also decrease.

However, the bill's precise net impact on State revenues cannot be reliably estimated at this time due to considerable uncertainty regarding the amount of credits to be awarded and claimed both under the bill and in the absence of the bill (including the *timing* of tax credit claims in the absence of the bill, as discussed further below). As noted above, under the bill, the newly authorized tax credits are not subject to an aggregate overall cap or annual appropriation. An estimate prepared by Commerce suggests that, once fully implemented, the jobs development tax credit component alone may result in a net increase of $24.0 million in annual tax credit awards. (For context, in fiscal 2023, Commerce approved $6.1 million in job creation and One Maryland tax credits.) However, Commerce advises that this estimate does not account for the applicable $1.0 million limit per business per tax year, nor does it capture potentially eligible business entities that are not currently reflected among existing program applications but that may seek benefits under the bill (due to, for example, the program's lack of a minimum capital expenditure requirement, the low minimum job creation threshold, and the credit's refundability). Thus, DLS advises that, while the aforementioned estimate provides a sense of the potential magnitude of the impact of the bill's jobs development tax credit component on tax credit awards, the precise impact is uncertain.

Further, the bill's high impact economic development project tax credit provisions grant Commerce broad discretion in designating eligible projects and determining the amount of tax credit awards and terms. Commerce advises that the high impact economic development project incentive provisions are designed to provide the department with flexibility in the event of unanticipated situations and large business attraction possibilities; thus, the amount of tax credits likely to be awarded under this project incentive is unknown. DLS further cautions that there may be significant year-to-year volatility in the amount of high impact economic development project tax credit awards and claims.

Additionally, there is particular uncertainty regarding the future cost of the One Maryland Program *absent the bill*. As detailed in the DLS evaluation report, several factors contribute to the program's fiscal uncertainty: (1) Commerce may award an unlimited amount of credits annually; (2) businesses typically receive a large tax credit that is claimed over multiple years; (3) the value of the tax credit is determined upon project certification, but the amount claimed in each year is less predictable compared to other multi-year State tax credit programs; and (4) there is insufficient data on the tax credits claimed in each year relative to the credits awarded.

**State Expenditures:** General fund expenditures for the Comptroller's Office increase by an estimated $200,000 in fiscal 2025 only for one-time programming changes.

Also, TTF expenditures for local highway user revenue grants decrease beginning as early as fiscal 2025 to the extent the bill results in a net increase in the amount of credits claimed against the corporate income tax.

**Local Revenues:** Local highway user revenues decrease beginning as early as fiscal 2025 to the extent the bill results in a net increase in the amount of credits claimed against the corporate income tax.

## Additional Information

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

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

**Fiscal Note History:** First Reader - March 11, 2024
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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

TITLE OF BILL: Department of Commerce – Employer Tax Credit Programs – Alterations and Establishments

BILL NUMBER: HB1508

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**

__X__ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposal establishes the Maryland Jobs Development Tax Credit (MJDC) and sunsets the One Maryland Tax Credit, and the Job Creation Tax Credit. The MJDC creates a refundable income tax credit based on job creation and project cost thresholds across different areas. In Tier 1 jurisdictions, companies are eligible for a credit if they create 10 jobs. In Tier 2 jurisdictions, companies are eligible for a credit if they create 20 jobs.

The amount of the credit starts at 5 percent of the wages paid to employees in qualified positions during the taxable year. If the company invests at least $100 million in capital expenditures, the credit amount increases to 6 percent of wages. If the company invests at least $250 million in capital expenditures, the credit amount increases to 7 percent of wages. Companies receive credits for three years.

The proposal will make it easier for small businesses to access incentives. For example, the One Maryland Tax Credit required businesses to have at least $500,000 in project costs to be eligible, a threshold difficult for many small businesses to achieve. In contrast, the MJDC does not have project cost thresholds.

Additionally, the job requirement thresholds are lower for the MJDC than for either the One Maryland Tax Credit or the Job Creation Tax Credit. Under the MJDC, companies must create 10 jobs in a Tier 1 county or 20 jobs in a Tier 2 county to be fully eligible. Under the One Maryland Tax Credit, the maximum credits were available after achieving a 50-job threshold. The Job Creation Tax Credit had a 60-job threshold for Tier 2 counties.

Although MJDC limits the amount of money that can be awarded to one million dollars per project, this cap is less likely to impact small businesses. Small businesses are likeliest to receive income tax credits at the 5 percent rate rather than the 6 percent or 7 percent rate triggered through project cost thresholds of $100 million or $250 million respectively. To hit one million dollars, the company would have to be paying $20 million in wages, an amount unlikely for any small business.

Put together, the revisions to Maryland’s tax credits under this proposal should benefit Maryland small businesses and make it easier for them to access incentives they need to grow and prosper in Maryland.