Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 502 (Senator Lawlah, *et al.*)
Budget and Taxation

Economic Development and Fiscal Accountability Act

This bill requires the State Department of Assessments and Taxation (SDAT) to submit a Unified Property Tax Exemption and Credit Report to the General Assembly by December 31 of each year. It also requires the Department of Business and Economic Development (DBED) to submit a Unified Economic Development Report by December 31 of each year to the General Assembly. All reports must be published in written and electronic format on the respective departments' web sites. The bill also imposes penalties (including withholding of program funds and fines) for any State agency or subsidy recipient that fails to cooperate in preparing these reports.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: Significant general fund expenditures to comply with the bill's data collection and reporting requirements in several State agencies. Expenditures for DBED alone could be as high as $495,200. Potentially significant increase in general fund revenues due to the bill's penalty provisions.

Local Effect: No direct fiscal or operational impact as local governments would not be required to disclose information on any subsidies they provide. However, the bill could increase applications for local business incentives because companies would not be subject to the same requirements or penalties.

Small Business Effect: Potentially meaningful. Any small business that receives a subsidy as defined by the bill would be subject to a fine for noncompliance.

Analysis

Bill Summary: The bill requires the submission and publication of the following reports:

Unified Economic Development Budget Report

The annual, Unified Economic Development report to be prepared by DBED must list all types of State expenditures made for economic development purposes during the prior fiscal year, including the amount of uncollected State tax revenues resulting from every State corporate or other business tax credit, abatement, exemption, and reduction of the following taxes – gross receipts, income, sales and use, excise, property, utility, and inventory.

The report must also include: (1) the name of each corporate or other business taxpayer who claimed a tax credit, abatement, exemption, or reduction worth $5,000 or more and the dollar amount received by the taxpayer; (2) the aggregate number and dollar amount of any such credits or reductions were worth less than $5,000; and (3) State-appropriated expenditures for economic development, with line-item budgets for every State-funded entity or program concerned with economic development, including university research programs and vocational or job-skills training programs.

Unified Annual Development Subsidy Report

The bill also requires a State agency that provides a development subsidy, to file an annual development report with DBED by February 1 of each year for each project for which a subsidy was granted in the previous fiscal year. The bill defines a development subsidy as an expenditure of at least $25,000 of public funds for stimulating economic development within the State and includes items such as bonds, grants, loans or loan guarantees, enterprise or empowerment zones, and tax credits.

Information required for the report includes:

- the name, address, and phone number of each subsidy recipient;
- a summary of the jobs created or lost by full-time, part-time, and temporary positions;
- the average hourly wage paid to all current and new employees, also by type of position, at a project site according to 10 specified wage groups;
- the type and amount of health care coverage provided to an employee at a project site, including any cost paid by the employee; and

- a comparison of the total employment in the State by the subsidy recipient on the date of the recipient's application for the development subsidy and at the end of the fiscal year covered by the annual report, broken down by full-time, part-time, and temporary positions.

The report must contain a statement as to whether the subsidy reduced employment at any other site controlled by the recipient or its corporate parent and whether the recipient is in compliance with its job creation and wage and benefit goals. The granting body must file an annual report for each subsidy recipient for the duration of the development subsidy or five years, whichever is greater.

Unified Property Tax Exemption and Credit Report

The annual Unified Property Tax Exemption and Credit Report to be prepared by SDAT must contain a listing of all property tax exemptions or credits for the previous fiscal year that are development subsidies, including:

- the name and address of the property owner;
- each property tax exemption or credit for the property;
- the amount of property tax revenues not collected by the taxing authority as a result of the property tax exemption or credit; and
- the total property tax revenues not paid to the State in the previous fiscal year due to development subsidies.

If a State agency does not cooperate with and assist in the preparation of any of these three reports, the department responsible for the report must notify the Comptroller, who must withhold payment of all development subsidies to the agency until assistance is provided. For the two DBED reports, subsidy recipients are required to provide access to project sites and records; a noncompliant subsidy recipient is subject to a $500 fine for each day the recipient does not comply with the requirements of the bill.

All of the reports described above must be made available to the public, and the information contained in the reports is not considered a violation of tax disclosure prohibitions.

Current Law: Several State agencies track the information described in the bill in various forms; for example, the Department of Budget and Management (DBM) compiles a biennial Tax Expenditure Report. DBED is required by law to provide information to the General Assembly about the financing programs that it administers. Businesses that receive funds from the Economic Development Opportunities Program (Sunny Day)

Fund must report the number of employees they hire annually and are subject to repayment penalties if they fail to meet stated employment or investment goals.

The Maryland Public Information Act requires any records made or received by a public agency in connection with the transaction of public business to be considered public records. However, State and federal laws protect the disclosure of taxpayer information and some company-specific data such as inventions and research. The District of Columbia Circuit Court ruled in *National Parks and Conservation Association v. Morton* that financial or commercial information a person is required to give the government should be considered confidential if disclosure would impair the government's ability to obtain the necessary information in the future or it would cause substantial harm to the person's competitive position.

Federal law allows tax returns and return information to be open to inspection by any State agency charged with administration of State tax laws only for the administration of such laws. SDAT advises that business information on business personal property returns, such as exemption amounts for inventory and research and development, has been considered proprietary. Violating federal privacy laws by disclosing tax information could eliminate the State's ability to obtain federal tax information for audits and other purposes.

Background: The State provides an array of economic development incentives to businesses that include: (1) loans, grants, and loan guarantees to small businesses; (2) loans to local governments in distressed jurisdictions; (3) loans to businesses in specific industry sectors for capital projects; and (4) conditional grants, loans, and job training funds for businesses that are proposing a project that meets the statutory criteria of a significant economic development opportunity. DBED provided loans or grants that exceed $25,000 to about 155 businesses in fiscal 2003. It also certifies eligibility for research and job creation tax credits for a few dozen companies annually. The Department of Housing and Community Development provides loans, grants, and tax credits to small businesses under Neighborhood Business Development and other programs.

Businesses are also eligible for a multitude of State tax credits, including those for heritage structure rehabilitation, research and development, job creation, hiring people with disabilities, and location in a designated enterprise zone or One Maryland area (an economically distressed area). In fiscal 2005, the State will provide approximately $4.6 million in tax credits for 554 properties located in empowerment or enterprise zones throughout Maryland.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) has promoted model legislation, also titled the Economic Development and

Accountability Act, that closely resembles the proposed requirements of the bill. According to the AFL-CIO, at least seven states have disclosure laws or procedures that generate annual, company-specific data about state subsidies.

Maine requires a business receiving certain economic development incentives that exceed $10,000 in one year to submit a written report by August 1 of the following year that describes the number and wage level of jobs created or retained as a result of the incentive, the total amount of assistance received from all economic assistance programs, and the business's performance with respect to the public purpose identified with the incentive. State agencies, including the State Tax Assessor, the Commissioner of Labor, and Maine Technical College, are required to report annually to the legislature regarding State workforce development and training expenditures, public funds and foregone revenues associated with economic incentives, and public funds spent for the direct benefit of businesses.

Minnesota has enacted a law directing agencies to set minimum requirements for recipients to be eligible for business subsidies. The criteria must include a specific wage floor for the wages to be paid for the jobs created. The criteria do not apply to business loans and loan guarantees of $75,000 or less. The law also requires subsidy recipients to disclose certain information to the granting agency. If the company fails to report within 14 days after a warning is sent, it must pay a fine of $100 a day, up to a maximum of $1,000.

State Fiscal Effect: The bill requires State agencies (including universities) to expand their data collection and develop the necessary procedures and infrastructure to collect information in the format required by the bill. DBED gathers some of the information required, such as the name and address of each subsidy recipient, a summary of the number of jobs created or lost during the past year, and a comparison of the total employment on the date of the application and at the end of the fiscal year. It does not collect the specified development subsidy information from other State agencies.

Both DBED and the Comptroller's Office would need additional staff to collect and coordinate the amount of information required by the bill. DBED estimates that it would need to hire four full-time staff as well as part-time legal assistance. General fund expenditures for DBED alone would total approximately $495,140 in fiscal 2005, which includes $250,000 of contractual services for database development and $194,000 for salaries and fringe benefits.

General fund revenues would increase to the extent that any subsidy recipient does not comply with the reporting requirements and pays the $500 daily fine imposed by the bill. This increase could be significant, depending upon the number of recipients who decline to provide the required information.

Small Business Effect: The bill affects any small business that received any type of grant, loan, or tax credit from the State. Many small businesses may have to report information that is not currently tabulated. Companies that are reluctant to disclose certain information may also incur the fine required under the bill, as well as legal fees.

Additional Information

Prior Introductions: Similar bills were introduced as SB 628 and HB 839 in 2003. These bills were heard in their respective houses by the Senate Budget and Taxation Committee and by the House Economic Matters Committee. Neither committee took any further action

Cross File: None, although HB 1018 is identical.

Information Source(s): State Department of Assessments and Taxation, Board of Public Works, Comptroller's Office, Maryland Public Information Act Manual, Department of Legislative Services

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