SB 581

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 581 (Senator Garagiola, *et al.*)
Budget and Taxation

Renewable Energy Development Act of 2005

This bill: (1) expands the existing job creation tax credit to include renewable energy facilities; (2) mandates that the Governor include funding in the State budget to fund the solar energy grant program in the amount of $500,000 in fiscal 2007, $750,000 in fiscal 2008, and $1.0 million in fiscal 2009 and beyond; and (3) phases out the Maryland-mined coal tax credits. The coal tax credit is $3 per ton in tax year 2005, $2 in tax year 2006, $1 in tax year 2007, and eliminated in tax year 2008 and beyond.

The bill takes effect July 1, 2005 and applies to tax year 2005 and beyond.

Fiscal Summary

State Effect: General fund revenues could increase by approximately $5.5 million in FY 2007 due to coal mine credits no longer being claimed against the public service franchise and corporate income tax. Transportation Trust Fund (TTF) increase of approximately $32,000 in FY 2007 due to credits no longer being claimed against the corporate income tax. Potential significant general fund/TTF decrease beginning in FY 2007 due to job creation tax credits being claimed by renewable energy facilities. General fund expenditures could increase by approximately $396,500 in FY 2007 due to mandated funding of solar energy grant program.

($ in millions)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	$0	$5.5	$11.3	$17.4	$17.5
SF Revenue	0	0	.1	.1	.1
GF/SF Rev.	0	(-)	(-)	(-)	(-)
GF Expenditure	0	.4	.6	.9	.9
Net Effect	$0	$5.1	$10.7	$16.6	$16.7

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

Local Effect: Local highway user revenues would increase due to coal mine credits no longer being claimed against the corporate income tax. This is estimated to increase local highway user revenues by approximately $10,000 in FY 2007, $19,000 in FY 2008, and $29,000 annually beginning in FY 2009. This increase in local highway user revenues, however, would be offset to the extent that renewable energy facilities claim Job Creation Tax Credits against the corporate income tax.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill expands the existing job creation tax credit to include renewable energy facilities. In order to qualify for the job creation tax credit a renewable energy facility is required to create at least 30 qualified new jobs during any two-year period. Renewable energy facilities that produce energy from among the following qualify: (1) solar; (2) wind; (3) biomass as defined in Section 7-701 of the Public Utilities Company Article; (4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant; (5) geothermal; (6) ocean; (7) fuel cells that produce electricity from qualifying renewable energy sources; and (8) hydroelectric plant of less than 30 megawatts.

Current Law:

Job Creation Tax Credit

The Job Creation Tax Credit was established by Chapter 84 of 1996. Chapter 159 of 2004 extended the termination of the program from January 1, 2007 to January 1, 2010. The program provides a tax credit to businesses that expand or establish a facility in Maryland that results in the creation of new jobs. The credit can be applied against the following taxes: corporate or personal income; insurance premium; and public service franchise. In any year, however, the credit may only be applied against one tax. The credit can be recaptured during any of the three taxable years following the claiming of the credit.

The threshold for eligibility is the creation of 60 qualified new jobs within a two-year period. The new jobs must be full-time, permanent, filled, located in Maryland, and pay at least 150% of the federal minimum wage (currently approximately $16,050 annually). The threshold is lowered to (1) 30 new jobs if the average salaries of the new jobs are highly paid as determined by a sliding scale relative to the average State salary; and (2) 25 new jobs if the new jobs are created within a State priority funding area.

The value of the credit depends on the number of jobs created, the wages of those jobs in the year the credit was claimed, and whether the jobs were created in a revitalization area. If the jobs were not created in a revitalization area, then the credit is equal to the lesser of $1,000 or 2.5% of the wages paid associated with those jobs in the year the credit was claimed. If the jobs were created in a revitalization area, the credit is equal to the lesser of $1,500 or 5% of the wages paid associated with those jobs. The credit is ratable for two years. Any unused portion of the credit can be carried forward for up to five tax years. The total credit claimed cannot exceed $1 million for any one business.

Maryland-mined Coal Credits

Public service companies in Maryland can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. This tax credit can be claimed against the public service company franchise tax and cannot exceed the State tax liability for that tax year.

Cogenerators and electricity suppliers that are not subject to the public service franchise tax can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. The credit is restricted to the electricity suppliers that were defined before July 1, 1999 as an electricity company under the Public Utility Companies Article. This restriction does not apply if an electricity supplier is an affiliate of one of the suppliers that were defined as an electricity company prior to July 1, 1999. This credit can be claimed against the State income tax and cannot exceed the tax liability for that tax year.

Solar Energy Grant Program

Chapter 128 of 2004 established the solar energy grant program which replaced a tax credit program that expired December 31, 2004. The grant program receives an annual budget appropriation. In fiscal 2005, the program received $103,500 in funding.

The amount of the grant distributed under the program is equal to the lesser of: (1) $3,000 or 20% of the total installed cost of photovoltaic property (maximum limit is increased to $5,000 if installed on nonresidential property); and (2) $2,000 or 20% of the total installed cost of solar water heating property. Grants can be made to individuals, businesses, and local governments.

Background:

Maryland-mined Coal Credits

Chapter 792 of 1988 established the tax credit for Maryland-mined coal purchased by public service companies, with a sunset provision of June 30, 1991. The credit allowed was $3 per ton of coal purchased by a public service company in excess of the number of tons purchased by the public service company in 1986. Chapter 832 of 1989 established a Maryland-mined coal tax credit for cogenerators and electricity producers not subject to the public service company franchise tax. The credit was equal to $3 per ton of coal purchased in excess of the amount that the cogenerator or electricity producer purchased in 1986. A cogenerator is a generating facility that produces electricity and another form of useful thermal energy (such as heat or steam) that is used for industrial, commercial, or heating and cooling purposes. The tax credit for cogenerators and electricity suppliers can be applied against the State income tax.

Chapter 700 of 2000 allowed the credit to be claimed for all amounts of coal purchased for both tax credits, not just the amount in excess of the amount purchased in 1986. Chapter 700 of 2000 also repealed the sunset provision originally established under Chapter 792 of 1988 for the tax credit available to public service companies. Chapter 700 of 2000 was not approved by the Attorney General's Office for constitutionality and legal sufficiency, in that it was determined that a court is likely to have serious problems under the Commerce Clause of the U.S. Constitution.

Maryland-mined coal has relatively high ash content and moderate levels of sulfur as compared to other types of coal such as anthracite. The sulfur and ash content contribute to acid rain and particulate pollution. As a result of amendments to the federal 1990 Clean Air Amendment, public service companies in Maryland significantly decreased their consumption of Maryland-mined coal. The Attorney General ruled in 1995 that consumption was not a requirement for claiming the credit. As a result, many companies have claimed the credit by acting as a broker, purchasing Maryland-mined coal and selling it to out-of-state companies who consume the coal.

Exhibit 1 lists the amount of credits claimed against the public service company franchise and corporate income taxes for tax years 2000-2003. Due to reporting restrictions, the amount of credits claimed against the corporate income tax is estimated. Exhibit 1 also lists the estimated amount of coal that is purchased and claimed as a credit. This estimate is based on the amount of credits claimed in each year and the amount of coal produced as reported by the State Bureau of Mines.

Exhibit 1
Amounts of Credits Claimed
Tax Years 2000-2003

Tax Year	Public Service Franchise Tax	Corporate Income Tax	Total	Percent of Coal Produced Estimated to Be Claimed as a Tax Credit
2000	$11,405,867	$900,000	$12,305,867	89%
2001	9,753,644	1,100,000	10,853,644	76%
2002	11,488,131	1,100,000	12,588,131	83%
2003	14,404,406	500,000	14,904,406	97%

Source: State Department of Assessments and Taxation; *Maryland Tax Expenditures Report Fiscal Year 2004*, Bureau of Mines; Department of Legislative Services

In addition, Maryland-mined coal is subject to State and local taxation. The State imposes a reclamation tax of $0.15 per ton on surface-mined coal. Nine cents per ton goes to the Bituminous Coal Open-Pit Mining Reclamation Fund and $0.06 per ton goes to the county in which the coal was extracted. There is a State $0.17 per ton reclamation tax on deep-mined coal. Counties can impose a $0.30 per ton tax on coal that is surface-mined. In fiscal 2003, Allegany and Garrett were the only counties that assessed this tax and collected a total of $517,022.

State Revenues: The bill expands the existing job creation tax credit to include renewable energy facilities, phases out the Maryland-mined coal credit, and mandates funding for the solar energy grant program. Each of these impacts are discussed separately below.

Expanding the Job Creation Tax Credit to Renewable Energy Facilities

The actual fiscal effect of expanding the job creation tax credit to renewable energy facilities cannot be reliably estimated and depends on the number of renewable energy facilities that would qualify, the qualifying jobs created by these facilities, and the tax liability of these facilities. However, revenues are expected to decrease by approximately $40,000 annually for each facility that qualifies for the credit. Since the inception of the tax credit program, on average 17 tax returns have claimed the job creation tax credit in the average amount of $37,227. Approximately $633,000 has been claimed on average in each of the last three years. Twelve business sectors are currently eligible to claim the credit including manufacturing; transportation; agriculture; research and development; biotechnology; computer programming; central financial, real estate, administrative offices, and insurance services; public utilities, warehousing, business services, and recreational and entertainment.

The expansion of the credit is effective July 1, 2005 and it is estimated that the earliest fiscal impact from expanding the credit would be in fiscal 2007. The amount of credit earned by a nonrenewable facility would be claimed over a two-year period, and limited by the tax liability of the tax return claiming the credit.

Repealing the Maryland-mined Coal Credits

As a result of phased-in repeal of the Maryland-mined coal tax, general fund revenues would increase by approximately $5.5 million in fiscal 2007, $11.3 million in fiscal 2008, $17.4 million in fiscal 2008, and $17.5 million in fiscal 2010. TTF revenues would increase by approximately $32,000 in fiscal 2007, $64,000 in fiscal 2008, and $96,000 annually beginning in fiscal 2009. The estimated revenue gains, and out-year projections, are based on the following facts and assumptions:

- According to the Maryland Bureau of Mines, approximately 5.3 million tons of coal was mined in 2004. From 1999 to 2004 the amount of coal mined increased on average by 5.4 % annually.

- The amount of coal mined from 2004 through 2010 is estimated to increase on average by approximately 3%.

- Approximately 96% of all coal will be claimed as a credit against the public service company franchise tax.

- Cogenerators will claim approximately $400,000 against the corporate income tax.

- Public service companies and corporations claiming the credit have sufficient tax liability to claim the entire credit available.

Mandating Solar Energy Grant Program Appropriations

The bill mandates that the Governor budget to the Solar Energy Grant Program $500,000 in fiscal 2007, $750,000 in fiscal 2008, and $1.0 million in fiscal 2009 and beyond. As a result, general fund expenditures could increase by approximately $396,500 in fiscal 2007, $646,500 in fiscal 2008, and by $896,500 in fiscal 2009 and beyond. Chapter 128 of 2004 stated that it is the intent of the General Assembly that at least $500,000 be included for the program in the State budget each year although this amount was not mandated. The program received $103,500 in fiscal 2005 and the Governor's budget includes $103,500 for the program in fiscal 2006. It is assumed that under current law, the program would receive $103,500 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland Energy Administration, Maryland Department of the Environment (Bureau of Mines), State Department of Assessments and Taxation, Department of Legislative Services

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