

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1066
 Ways and Means

(Delegate Jones, *et al.*)

Budget and Taxation

Economic Development and Tax Incentive 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. The bill also requires the Department of Business and Economic Development (DBED) to submit a Unified Economic Development and Tax Incentive Report to the General Assembly by the December 31 of each year.

The bill takes effect July 1, 2005.

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 \$262,200 in FY 2006, as shown in the table below.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	262,200	165,700	174,500	183,900	193,900
Net Effect	(\$262,200)	(\$165,700)	(\$174,500)	(\$183,900)	(\$193,900)

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

Local Effect: Potential increase in local government expenditures associated with the collection and distribution of data required for the reports established by the bill. Expenditures would vary by jurisdiction. **The bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Unless otherwise prohibited under federal law, the Unified Property Tax Exemption and Credit Report is required to contain:

- a listing of all property tax exemptions or credits for the previous fiscal year that are development subsidies, including: (1) the name of the property owner; (2) the address of the property; and (3) the amount of property tax revenue not collected by the taxing authority as a result of the property tax exemption or credit; and

In order to comply with the reporting requirements of the bill, SDAT must have access to any available information collected by a State agency regarding the development subsidy, in the form required by SDAT. The reporting requirements of the bill apply to development subsidies awarded on or after June 30, 2005.

The Unified Economic Development and Tax Incentive Report is required to contain a listing of expenditures made for economic development purposes during the prior fiscal year including:

- the total amount of uncollected State tax revenues resulting from all corporate and other business tax credits and reductions provided by the State, including under: (1) the income tax; (2) the sales and use tax; (3) the public service company franchise tax; (4) the property tax; and (5) the insurance premium tax;
- the name of each corporate or other business taxpayer who claimed a tax credit or reduction that is a development subsidy and the dollar amount received by the taxpayer;
- the number of corporate or other business taxpayers who claimed a tax credit or reduction worth less than \$50,000 and a sum of the dollar amounts received by all such taxpayers; and
- all expenditures for economic development for each financing program administered by DBED, including: (1) the Maryland Economic Development Assistance Authority Fund; (2) the Smart Growth Economic Development Infrastructure Fund; (3) the Sunny Day Fund; (4) the Maryland Small Business Development Financing Authority; (5) the Maryland Industrial Development Financing Authority; (6) the Maryland Economic Adjustment Fund; and (7) the Enterprise Investment Fund.

The report is also required to cover the previous fiscal year and must contain: (1) the name and address of the subsidy recipient; (2) the number of jobs created, broken down by full-time positions, part-time positions, and temporary positions, when applicable; (3) the average hourly wage paid to all employees at a project site in wage groups of dollar increments beginning at a minimum wage through \$14 or more per hour, broken down by full-time positions, part-time positions, and temporary positions; (4) the types and amounts of health insurance provided to employees at a project site, the number of employees covered by each type of insurance; (5) 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 report, broken down by full-time positions, part-time positions, and temporary positions; and (6) a certification signed by an authorized representative of the subsidy recipient that the information provided by the subsidy recipient to DBED for use in the report is complete and accurate.

In order to comply with the reporting requirements of the bill, DBED must have access to any available information collected by a State agency regarding the development subsidy, in the form required by DBED. The reporting requirements of the bill apply to development subsidies awarded on or after July 1, 2005.

Current Law: Several State agencies track the information described in the bill in various forms. DBED is required by law to submit annual reports for all its financing programs except the Maryland Economic Adjustment Fund and the Enterprise Investment Fund. The law has more extensive requirements for certain programs than others; some reports describe the amount of funds provided for each project, the purpose of the project, and economic development measures. The information required for other programs is less informative. None of the reports provide the average hourly wage paid to all current and new employees at a project site or a description of health care benefits, as would have been required by this legislation. However, DBED currently provides additional information beyond what is mandated by law, as shown in **Exhibit 1**.

Exhibit 1
Department of Business and Economic Development
Information Disclosed for Business Assistance

<u>Annual Report by Program</u>	<u>Statutory Requirements</u>	<u>Additional Information Disclosed</u>
MEDAFF	Number, amount, use, and economic benefits of financial assistance and grants.	Number of jobs created and retained.
One Maryland	Status of the fund.	Amount of funds per project and description and location of project.
Sunny Day	Financial status and a summary of its operations; status of account disbursements; and information on job creation, capital investment, and lower than expected economic development measures.	Amount and use of funds; recipient's name; delinquency and default status; and information on job creation, capital investment, forgiven loans, and clawbacks.
MSBDFA	Condition and operations of the fund.	Total number of loans and grants, amount and use of funds, and delinquency and default status.
MIDFA	Condition and operations of the fund.	Total number of loans and grants; amount and use of funds; number of jobs created; and information on exposure, leverage, and geographical distribution.
MEAF	None.	None.
EIF	None.	None.

MEDAAF – Maryland Economic Development Assistance Authority Fund

MSBDFA – Maryland Small Business Development Financing Authority

MIDFA – Maryland Industrial Development Financing Authority

MEAF – Maryland Economic Adjustment Fund

EIF – Enterprise Investment Fund

Source: Department of Business and Economic Development and Department of Legislative Services

DBED also prepares the Blue Book, a document that summarizes the same information as the annual reports but also provides a list of approved projects with the name of the company receiving the subsidy. The Blue Book is an internal report; however, the Department of Legislative Services (DLS) and the Department of Budget and Management (DBM) are provided copies. Although it is not published, the Attorney General's Office advises that the contents of this report are public information.

There are no systematic or consistent requirements for reporting on tax credits under current Maryland law. Over the past 10 years, numerous tax credits have been enacted,

many designed to serve as tax incentives to encourage economic activity. Requirements for reporting on the various economic development tax incentives range from no reporting requirements for some (*e.g.*, the “One Maryland” economic development tax credits) to one-time or periodic general or summary evaluation reports for others (*e.g.*, Job Creation Tax Credit, Research and Development Tax Credit). Reporting for one tax credit, the Heritage Structure Rehabilitation Tax Credit stands out as unique, with detailed, taxpayer-specific quarterly reporting required.

There is a requirement under current Maryland law for a biennial *Tax Expenditures Report* stating the estimated amount of reductions in revenues from tax exemptions. In concept, this report would provide a comprehensive “tax expenditure budget” identifying how much the State spends through various tax incentives and could provide information helpful to evaluate various economic development tax incentives. In practice, the information provided in the biennial *Tax Expenditures Report* is incomplete and lacks the specificity necessary to make it a useful tool for evaluating the effectiveness of various tax expenditures or for monitoring the annual amount of tax expenditures made by the State.

Section 7-119 of the State Finance and Procurement Article requires that for each “exemption from taxation,” DBM biennially shall report on the estimated amount by which the exemption reduces revenues, and shall “identify the person or the part of the population that benefits from the exemption.” In practice, the report does not identify any “persons” benefiting from any tax incentives and only very generally identifies “the part of the population that benefits” from each exemption. Although the law requiring the report only specifically covers “exemptions” and is limited to the individual income tax, sales and use tax, and other specified taxes, in practice, the report has also covered income tax credits and the corporate income tax, public service company franchise tax, and insurance premium tax.

In addition to tax confidentiality requirements that prevent the Comptroller from disclosing taxpayer-specific information, a variety of other factors limit the usefulness of the information provided by the Comptroller’s Office. In particular, the information provided by the Comptroller is much delayed. Tax returns are not due until some time after the end of the taxable year. Corporations routinely file extensions and/or amended returns so that the Comptroller may receive relatively complete information as late as two years beyond the end of the calendar year for which the information is sought. Also, provisions allowing for the carry forward of tax credits where the amount of the credit exceeds a taxpayer’s tax liability can obscure the amount of the credit being actually claimed for a particular credit.

Several tax credits contain at least some requirements that DBED or another agency responsible for administering a tax credit (*e.g.*, certifying eligibility for the credit)

provide periodic reports on the credit. The administering agency typically possesses much more information concerning the claimant than the Comptroller's Office and has the information long before the Comptroller receives any information. It is important to note that according to the Attorney General's Office, information provided to an agency other than the Comptroller by a taxpayer to get approval to claim a tax credit would not be subject to tax information confidentiality requirements. Therefore, any State agency providing authorizations for business entities to claim tax credits could be required to provide specific information on these entities and the credits authorized. Except for the Heritage credit, however, current State law does not mandate the reporting of specific information regarding who is entitled to claim tax credits and the amounts they are entitled to claim.

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 to report the number and wage level of jobs created or retained as a result of the incentive, and the total amount of assistance received from all economic assistance programs, as well as the business' performance with respect to the public purpose identified with the incentive. State agencies 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.

The Commonwealth of Pennsylvania adopted a law in 2004 that requires the Department of Community and Economic Development (DCED) to develop a financing strategy annually for economic development as part of a report to the legislature. DCED must gather recommendations from both business and community organizations in preparing the strategy, which must include the following:

- a financial audit or statement of operations for each development program;
- a description of performance measurements and accountability factors to be applied and the performance targets or goals to be met;
- a review of pending projects; and
- a list of the loans, grants, or credits approved for the programs during the fiscal year, as well as details regarding each loan, grant, or credit approved, including any penalties that were imposed by the department.

DCED also has a full-time performance monitoring director.

State law directs the Connecticut Department of Economic and Community Development (DECD) to submit an annual report about each new and outstanding active financial

assistance project, including names, address, and locations of recipients; the type of assistance; and the number of jobs projected and actually created.

The state also requires DECD to develop a public policy objective for each business assistance award it provides, including a statement from the applicant that it consulted with the municipality in which the project will be located and employee representatives or employees. Applicants must provide a reason for failure to consult with either the local jurisdiction or employee representative and must sign a nonbinding statement to identify objectives and how they will be met. DECD must report annually on the company's progress to achieve objectives, which is provided to the legislature, local government, and employee representatives.

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 would need to hire two full-time staff (one research assistant and one database administrator) to develop new tracking systems and outreach to gather necessary information from other State agencies and local governments. General fund expenditures for DBED alone would total approximately \$262,202 in fiscal 2006, which includes \$100,000 of contractual services for database development and \$112,275 for salaries and fringe benefits.

Salaries and Fringe Benefits	\$112,275
Database Development	100,000
Operating Expenses	<u>49,927</u>
Total FY 2006 State Expenditures	\$262,202

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: Similar bills were introduced as SB 502 and HB 1018 in the 2004 session. SB 502 was referred to interim study by the Budget and Taxation Committee. No action was taken on HB 1018 by the Economic Matters Committee. Similar bills were also introduced as SB 628 and HB 839 in 2003. These bills were heard in their respective houses by the Budget and Taxation Committee and by the Economic Matters Committee. Neither committee took any further action on the bills.

Cross File: SB 780 (Senator Lawlah, *et al.*) – Budget and Taxation.

Information Source(s): Comptroller's Office, Department of Business and Economic Development, State Department of Assessments and Taxation, Department of Legislative Services

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