

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 983 (Delegate Jones, *et al.*)
 Ways and Means

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 December 31 of each year.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: General fund expenditures could increase by \$268,500 in FY 2008. Future years reflect ongoing costs and inflation. Revenues would not be affected.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	268,500	173,600	182,000	190,800	200,100
Net Effect	(\$268,500)	(\$173,600)	(\$182,000)	(\$190,800)	(\$200,100)

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.

Small Business Effect: None.

Analysis

Bill Summary: Unless otherwise prohibited under federal law, the Unified Property Tax Exemption and Credit Report must 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.
- The total of property tax revenue not paid to the State in the previous fiscal year because of a property tax exemption or credit that is a development subsidy.

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, 2007.

The Unified Economic Development and Tax Incentive Report must 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 Economic Development Opportunities Account (Sunny Day Fund); (3) the Maryland Small Business Development Financing Authority; (4) the Maryland Industrial Development Financing Authority; (5) the Maryland Economic Adjustment Fund; and (6) the Enterprise Investment Fund.

The report must cover the previous fiscal year and contain:

- the name and address of the subsidy recipient;
- the number of jobs created, broken down by full-time positions, part-time positions, and temporary positions, when applicable;
- 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;
- the types and amounts of health insurance provided to employees at a project site, the number of employees covered by each type of insurance;
- 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
- 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, 2007.

Current Law: Several State agencies track some of the information addressed in the bills in various forms.

Department of Business and Economic Development

DBED is required by law to submit annual reports for all of its financing programs except the Maryland Economic Adjustment Fund and the Enterprise Investment Fund; these reports are available on DBED's web site. Since November 2005, DBED has been issuing annual reports for the Maryland Economic Adjustment Fund and the Enterprise Investment Fund, as well as for any other fund for which a report is not required by statute.

State law provides for 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. It should be noted that none of these 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 be required by the

legislation. However, DBED does currently provide additional information beyond what is mandated by law for these programs, 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>
MEDAAF	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.	Overview of fund including: company name; number of employees; and amount of investment. (Information provided as part of the Maryland Venture Fund Annual Report.)

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; Department of Legislative Services

In addition, DBED is also required by statute to submit annual reports to the General Assembly on four tax credits: (1) the Job Creation Tax Credit; (2) the Enterprise Zone Tax Credit; (3) the Research and Development Tax Credit; and (4) the Biotechnology Investment Tax Credit. Following is a summary of each report:

- Job Creation Tax Credit – This report contains information on the number of preliminary and final credit certificates issued, the aggregate number of jobs created and average annual wages, number of jobs by region and the amount of tax credits earned. The report issued for fiscal 2005 includes a list of the businesses that received final certification and the number of created jobs as reported on their application, and is currently available on DBED’s web site.
- Enterprise Zone Tax Credit – This report is submitted by DBED and the Comptroller and reports on the effectiveness of the credit. The report includes the following: (1) current status on the number and location of enterprise zones in the State of Maryland; (2) analysis of current year real property tax credits including the number of businesses, amount of investment, and reimbursement per capita, all by region; (3) the amount of income tax credits earned by year; (4) number of economically disadvantaged employees certified by year; (5) businesses in the zone by industry type; (6) analysis of credit usage over time; and (7) information provided by the enterprise zone administrators on the importance of the credits in attracting and retaining businesses. This report is available on DBED’s web site.
- Research and Development (R&D) Tax Credit – DBED must assess the cost of the R&D Tax Credit program and its success in increasing the level of investment in research and development activities and attracting and retaining businesses that engage in R&D in Maryland. The report must include for each individual or corporation approved for a credit: (1) the name and address and amount of the credit approved in the prior fiscal year; (2) the name of each individual or corporation and the aggregate amount of credits approved in all calendar years; and (3) a summary of all credits approved, including the total number of applicants in each calendar year, the total number of applications for which a tax credit was approved in each calendar year, and the total credits authorized for all calendar years.
- Biotechnology Investment Tax Credit – DBED is required to submit a report to the Governor and the General Assembly detailing specified information about the tax credit by January 10 of each year. The report must include for each initial tax credit certificate awarded: (1) the name of the qualified investor or qualified Maryland venture capital firm and the amount of credit awarded or allocated; (2) the name and address of the qualified Maryland biotechnology company that received the investment and the county where the biotechnology company is located; and (3) the dates of receipt and approval by DBED of all applications for initial tax credit certificates. The report must also summarize the total number of applicants for credits initial tax credit certificates in each calendar year, the

number of applications for which the initial tax credit certificates were issued in each calendar year, and the total initial tax credit certificates authorized.

Income Tax Credits for Businesses

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. Reporting requirements for 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, Maryland Mined Coal Credit, Long-Term Care Insurance Credit, Child and Dependent Care Credit, Quality Teacher Incentive Credit). However, reporting for the Heritage Structure Rehabilitation Tax Credit and the Biotechnology Investment Tax Credit stand out as unique, with detailed, taxpayer-specific quarterly reporting required.

Exhibit 2 outlines the reporting requirements for selected income tax credits for businesses.

Exhibit 2 Reporting Requirements for Selected Tax Incentives

<u>Credit/Incentive</u>	<u>Comments</u>
Heritage Structure Rehabilitation Tax Credit	Quarterly reports must be submitted containing detailed, taxpayer-specific data required; the Maryland Historic Trust must submit an annual report including project names and developers eligible for the credit as well as initial credit certificates and credit amounts.
Job Creation Tax Credit	DBED must submit an annual report providing information on the business entities certified as eligible for the credit for the previous year.
Research and Development Tax Credit	DBED must report annually on the administration of the credit, beginning December, 2005.
Enterprise Zone Tax Credit	Annual report to be submitted by DBED and the Comptroller assessing the credit’s effectiveness.
Green Building Tax Credit	The Maryland Energy Administration must report annually on taxpayers receiving the credit.
Biotechnology Tax Credit	DBED must report annually on the number of initial tax credit certificates; identify recipients and amount of credit certified.
Single Sales Factor Apportionment Formula	Businesses were required to provide specified information to the Comptroller so the General Assembly could receive information as the effects of the apportionment formula for 2001 and 2002.

Source: Department of Legislative Services

State Department of Assessments and Taxation

In terms of reporting on specific State property tax credits, SDAT provides aggregate information on the Homeowners' and Renters' Tax Credit programs in its annual report. The annual report issued by SDAT also includes general information regarding property tax exemptions, and this information is also listed on the department's web site.

Local governments are required by statute to report annually to SDAT: (1) the total value of property tax credits granted; (2) an itemized list of real property tax credits granted; and (3) an itemized list of personal property tax credits granted. SDAT reports that, with the exception of a few selected tax credits, these reports are not normally submitted by local governments.

One of the credits that local governments report on is the property tax credit for manufacturing personal property granted by five counties (Allegany, Garrett, Somerset, Wicomico, and Worcester); all other counties grant a property tax exemption for manufacturing personal property and do not report this information. In addition, counties that grant enterprise zone tax credits also submit reports on the amount of these credits issued. Finally, Montgomery County and Hagerstown submit information on the Businesses that Create New Jobs Tax Credit.

Other Tax Incentive Reporting

Current State law provides for a biennial Tax Expenditures Report, compiled by the Department of Budget and Management (DBM), stating the estimated amount of reductions in revenues from tax exemptions. In concept, this report should provide a comprehensive "tax expenditure budget" identifying how much the State spends on various tax incentives and could provide information helpful for evaluating various economic development tax incentives. In practice, the information provided is incomplete and lacks the specificity necessary to make it a useful tool for evaluating the amounts or effectiveness of various tax expenditures made by the State.

DBM is required to report on the estimated amount by which the exemption reduces revenues for each "exemption from taxation," and to "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 does not require it, 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 (discussed in more detail later), a variety of other factors limit the usefulness of the information provided by the Comptroller to DBM for this report. In particular, the information provided is much delayed, as 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. In addition, provisions allowing for the carry-forward of tax credits when the amount of the credit exceeds a taxpayer's tax liability can obscure the amount of the credit actually being claimed. This is becoming more problematic, as approximately 40% of tax year 2003 credits were carry-forwards (up from 10% or tax year 2001).

Several tax credit statutes contain a requirement 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 more information concerning the claimant than the Comptroller's Office and has the information long before the Comptroller receives it. Because information a taxpayer provided to an agency other than the Comptroller to be approved for a tax credit is not considered confidential under federal law, any State agency authorizing 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 and R&D credit, however, current State law does not mandate the reporting of information with this amount of specificity.

Under the Maryland Public Information Act, any records a public agency makes or receives when transacting public business are considered public records. However, State and federal laws protect the disclosure of specific taxpayer information and some company-specific data such as inventions and research.

Federal law allows State tax administrators to inspect tax return information, but only for the administration of State tax laws. SDAT advises that business information on business personal property returns, such as exemption amounts for inventory and research and development, is considered proprietary. The violation of federal privacy laws by disclosing tax information could eliminate the State's ability to obtain federal tax information for audits and other purposes.

The Comptroller notes that taxpayer confidentiality requirements would limit the information that could be released to the name and address of a subsidy recipient, except for credits claimed by pass-through entities; release of other information would be a violation of federal law. Disclosure of confidential tax data could result in the loss of access to the Internal Revenue Service data, which could in turn hinder tax compliance measures and ultimately cost the State a significant amount of revenues.

DBED advises that recipients of tax credits it administers, except for the R&D Tax Credit, have signed applications allowing DBED to release their names. However, these recipients have not agreed to allow DBED to release the specific tax credit amounts for which they have been certified. Due to Maryland's tax confidentiality laws and the Public Information Act's prohibition on releasing confidential financial information, DBED will not release the amount of the tax credit certified for a particular company. In the future, DBED may consider requiring all applicants for the Job Creation Tax Credit and the One Maryland Tax Credit to give permission for release of the amount of tax credits for which the applicant qualifies.

The Enterprise Zone Tax Credit also has a potential reporting difficulty. Because this program is administered by local jurisdictions, DBED does not know the identity of the Enterprise Zone Tax Credit applicants unless notified by the local administrators. Current law requires the various program administrators to notify SDAT and the Comptroller rather than DBED.

Background: The State of Maryland and local governments provide an array of economic development incentives to attract or maintain businesses. These incentives include: (1) loans, grants, and loan guarantees to small businesses; (2) loans to local governments in distressed jurisdictions; (3) capital project loans to businesses in specific industry sectors; and (4) conditional grants, loans, and job training funds for businesses proposing projects that meet certain statutory criteria.

Businesses are also eligible for a variety of State income and property 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). For example, it is estimated that in fiscal 2007, the State will provide approximately \$10.3 million in property tax credits for 693 businesses located in Maryland's 28 enterprise zones.

As the number of tax incentives have grown in recent years, so has public scrutiny of these incentives; some states now require more information from businesses about the assistance they receive to evaluate compliance with the conditions placed on receipt of the assistance. Advocacy and citizen groups have expressed concerns that information is either not available or collected among a variety of State and local agencies and is difficult to obtain.

As a result, bills have been introduced in every session since 2003 in response to calls for closer scrutiny of State assistance. The bills have, for the most part, been based on model legislation promoted by the American Federation of Labor – Congress of Industrial

Organizations (AFL-CIO), and have sought to establish comprehensive reporting of State business incentives.

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.

Accordingly, DBED would need to hire two full-time staff (one research assistant and one database administrator) to develop new tracking systems and to gather necessary information from other State agencies and local governments. Additional general fund expenditures for DBED would total \$268,547 in fiscal 2008, which includes \$100,000 for contractual services for database development.

Positions	2
Salaries and Fringe Benefits	\$118,058
Database Development	100,000
Operating Expenses	<u>50,489</u>
Total FY 2008 State Expenditures	\$268,547

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: Several similar bills have been introduced in prior sessions. HB 1492 was introduced in 2006 but the House Ways and Means Committee took no action. HB 1066 of 2005 was passed by the House, but no action was taken by the Senate Budget and Taxation Committee. SB 502 and HB 1018 were introduced in 2004. SB 502 was referred to interim study by Budget and Taxation. No action was taken on HB 1018 by the House Economic Matters Committee. SB 628 and HB 839 were introduced in 2003. These bills were heard in their respective houses by Budget and Taxation and by Economic Matters. Neither committee took any further action on the bills.

Cross File: SB 614 (Senator Jones, *et al.*) – Budget and Taxation.

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

Fiscal Note History: First Reader - March 7, 2007
ncs/hlb

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