HB 366

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 366 (The Speaker, *et al.*) (By Request – Administration)
Ways and Means and Economic Matters

BRAC Community Enhancement Act

This Administration bill establishes BRAC Revitalization and Incentive Zones in the State. The bill establishes eligibility criteria for the BRAC Zones, the factors the Department of Business and Economic Development is to consider when approving BRAC Zones, and the procedures that local subdivisions must follow to apply for them. No more than six BRAC Zones may be awarded each year. The bill also creates financial incentives for BRAC Zones, including (1) an income tax credit; (2) a personal property tax credit; and (3) one of three rebate options that consider real property tax collections.

The bill takes effect June 1, 2008. The income tax credits apply beginning January 1, 2008 and property tax provisions are applicable July 1, 2008.

Fiscal Summary

State Effect: Significant decrease in general fund revenues due to the income tax credit. General fund expenditures would increase as a result of the property tax credit and reimbursements to counties, as well as administrative costs to implement the new incentives beginning in FY 2009 (shown below). Transportation Trust Fund and Higher Education Investment Fund revenues would also decrease due to the income tax credit.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	101,300	68,900	72,200	75,600	79,200
Net Effect	($101,300)	($68,900)	($72,200)	($75,600)	($79,200)

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

Local Effect: Local revenues would decrease as a result of real and personal property tax losses. State funding would reimburse one-half of the property tax losses. Local property tax revenues and impact fee revenues could increase to the extent that property is taxed or payment agreement in lieu of a tax (PILOT) agreements are negotiated.

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

Analysis

Bill Summary:

BRAC Revitalization and Incentive Zones

In order to qualify for a designation as a BRAC Zone an area must • be located in a priority funding area (*i.e.*, smart growth); • be approved to be served by a water and sewer system; • be designated for mixed use development (including residential); and • have an average density of at least 3.5 units per acre in residential areas. Areas within one-half mile of a MARC station along the Penn, Camden, and Brunswick lines shall receive priority consideration.

Local jurisdictions submit applications for BRAC Zones to DBED. The application must • be submitted by the local jurisdiction's chief elected officer or governing body; • provide DBED with enough information on the 21 qualifying criteria to make a decision; • state if the local jurisdiction has examined the feasibility of creating educational or training opportunities in the BRAC Zone for employers and employees; • establish qualifying standards for the business entities that would receive incentives; and • set the local jurisdiction's preferences of the applicable tax benefits. An area within a municipal corporation may be included in a county's application with the consent of the municipal corporation.

DBED is to consider 21 criteria when considering whether to designate an area as a BRAC Zone. These include • whether the designation is consistent with the local jurisdiction's comprehensive plan; • if the area contains brownfields sites that are capable of being redeveloped; • how the area will be impacted by BRAC; • if the area has been designated an Enterprise Zone; • transportation options; • social and economic conditions (*e.g.*, unemployment, income level); and • the fiscal impact on the State.

The precise boundaries of BRAC Zones and the tax benefits available are determined only after an application is approved by DBED. Before a BRAC Zone designation, DBED must consult with and ask the advice of the BRAC subcabinet established under Chapter 6 of 2007.

DBED may designate an area a BRAC Zone within 60 days. DBED can designate up to six BRAC Zones in any calendar year, and a county may not have more than two areas designated as BRAC Zones.

Tax Benefits and Incentives

Tax benefits are provided for both the local jurisdictions and the business entities in or subsequently establishing operation within a BRAC Zone. In the application to DBED, each local jurisdiction requests the type of tax benefits it prefers for the BRAC Zone, which can include an income tax credit and a real and personal property tax credit for eligible businesses and one of the three State rebate options for local jurisdictions that utilize the property tax credit:

- eligible businesses receive an income tax credit of up to $4,500 of the wages paid to hire an economically disadvantaged employee, and $1,500 for an employee who is not economically disadvantaged;
- a property tax credit of 80% of the assessed value for new investments in nonresidential property made in the BRAC Zone; and
- one of the following rebate options:

  - the State would reimburse the local jurisdiction for half of the lost revenues from the property tax credit discussed above. Funding would be as provided in the State budget;

  - the State would rebate to the local jurisdictions 100% of the State property tax increment on the increased assessed value of qualified properties in the BRAC Zone to be used to repay Tax Increment Financing (TIF) bonds issued by the counties for infrastructure improvements in the BRAC Zone; or

  - if the BRAC Zone is located in an Enterprise Zone, the local jurisdiction would have the option to forgo providing the property tax credit to the business but still receive a rebate of 50% of the tax collected on the increased value of the qualified properties. The State rebate must be used by the local jurisdiction to repay TIF bonds used for infrastructure improvements in the BRAC Zone.

With certain exceptions, the incentives are available for a 10-year period following the date on which an area receives a BRAC Zone designation. Any law enacted after June 1, 2008 that reduces BRAC Zone benefits to businesses is not applicable to businesses located in the BRAC Zone prior to the effective date of the new law.

Existing businesses located in BRAC Zones before being designated as such, may only benefit for capital investments or any expansion of its labor force made after the BRAC Zone designation. Businesses located in a BRAC Zone after an area is designated a BRAC Zone qualify if the business creates new or additional jobs or makes capital investments. New businesses locating in a BRAC Zone must be certified by the local jurisdiction and meet applicable requirements and conditions for the benefits.

Other Benefits

Local jurisdictions and businesses in the BRAC Zone may receive priority consideration for financial assistance for projects or operations in the BRAC Zone. Financial assistance is provided by DBED, the Department of Housing and Community Development (DHCD), the Maryland Department of Planning, or any other appropriate State program.

Local Jurisdiction Reporting Requirements

On or before October 15, 2008 and on or before October 15 of each subsequent year, local jurisdictions with a BRAC Zone designation are to provide DBED with a report assessing the effectiveness of the tax benefits provided to the BRAC Zones and the businesses in the BRAC Zones. DBED and the Comptroller jointly assess the effectiveness of the tax benefits. Beginning December 15, 2008 and annually thereafter, DBED and the Comptroller are to submit a report to the Governor and the General Assembly outlining the findings and determining the benefits of the tax benefits.

Federal Enclave Property

Federal enclave property is real property or an interest in real property that is located within the defined boundaries of federally owned land where:

- the federal jurisdiction would preclude taxation by the State, and
- the federal government has waived its immunity from State property taxation by law or other form of consent.

The bill provides that the Maryland Department of Transportation and the local jurisdiction where the federal enclave property is located may jointly enter into a payment agreement in lieu of a tax (PILOT) agreement with the federal government or a private developer for federal enclave property. The federal enclave property would not be subject to State or local property taxes if a PILOT agreement is entered into by the parties. The parties, moreover, are to consider the total impact of the development on the State and local jurisdictions with regard to specific considerations.

Payments are made to a dedicated fund specifically designated in the PILOT agreement as a contribution to the cost of a specific public improvement associated with • the development of the federal property; or • the State, county, and if applicable, municipal corporation where the federal enclave property is located in the qualifying area, as stated in the agreement.

Current Law:

The Maryland Military Installation Council

In order to address an excess capacity of military facilities, the U.S. Congress created a process in 1990 known as Base Realignment and Closure (BRAC). The most recent round of plans regarding military installations nationwide became effective in November 2005.

In 2003, the State created the Maryland Military Installation Strategic Planning Council (Chapter 335), consisting of 19 representatives of State agencies and federal military installations, to serve as an advocate for military facilities located in Maryland and coordinate State agency planning in response to changes caused by BRAC. After the approval of the 2005 BRAC plans, the State renamed the council the Maryland Military Installation Council (MMIC) and extended the termination date of the council through December 31, 2011 (Chapter 634 of 2006). The 2006 law also increased the membership of the council to 22 members by including representatives of local liaison organizations. MMIC is staffed by DBED. At its meetings in 2007, MMIC addressed regional base realignment and closure preparedness by hearing briefings from all Maryland installations on their mission activities and on the workforce needs of incoming BRAC personnel. MMIC's annual report is due December 31 of each year.

BRAC Subcabinet

Chapter 6 of 2007 created a 10-member BRAC Subcabinet in State government chaired by the Lieutenant Governor. The subcabinet, comprised of eight State secretaries of cabinet departments and the Superintendent of Schools, is charged with a number of tasks, including:

- coordinating and overseeing the implementation of all State action to support the mission of military installations affected by BRAC;
- coordinating and overseeing the development of BRAC-related initiatives in various areas, including workforce readiness, education, business development, health care facilities and services, community infrastructure and growth, environmental stewardship, workforce housing, and transportation;
- working with local jurisdictions affected by BRAC to facilitate planning, coordination, and cooperation with the State;
- collaborating with and reviewing the recommendations of MMIC;
- working with Maryland's congressional delegation to obtain federal funds to support the missions of military installations in the State; and
- making policy and budget recommendations to strengthen State support of military installations in the State.

The subcabinet is required to submit an annual report and terminates December 31, 2011. The subcabinet is staffed primarily by DBED.

Joint Legislative Committee on BRAC

Chapter 469 of 2007 established the Joint Committee on Base Realignment and Closure consisting of six members of the House of Delegates and six members of the Senate. The committee is required to provide continuing legislative oversight of the State's response to BRAC-related opportunities and changes. In cooperation with local and State units, it must also oversee and participate in developing systems and processes that fast track the approval of BRAC-related:

- transportation infrastructure;
- water and sewer infrastructure;
- State and local planning processes;
- affordable housing options;
- education facilities, including public school and community college construction; and
- health care facilities and infrastructure.

Background:

2005 BRAC Impact on Maryland

The 2005 BRAC plans impact many of the federal military installations in the State, resulting in an estimated 19,536 to 20,836 direct new jobs and placing Maryland among the largest beneficiaries nationally. These changes at each of the State's installations are detailed in **Exhibit 1** and are expected to be phased in over a five- to six-year period. The bulk of the gains are expected at Aberdeen Proving Ground, Andrews Air Force Base, Fort Meade, and the National Naval Medical Center, and most of these jobs are projected to be medical professionals, engineers, and managers. An additional 40,000 or more indirect jobs could be created through contractors and related services. It is further estimated that Maryland will gain approximately 28,000 households by the time the BRAC process is complete.

Preparations by State Agencies

The BRAC Subcabinet held a number of public meetings throughout the State since May 2007 and reviewed the action plans submitted by the nine jurisdictions that will experience the greatest growth as a result of the 2005 BRAC – Anne Arundel, Baltimore, Cecil, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City. Based upon the local plans, the subcabinet prepared and will implement a statewide plan for legislative and budgetary BRAC priorities. The subcabinet released this comprehensive plan and submitted it to the Governor on November 19, 2007.

Under the coordination of MMIC, State agencies are taking steps to prepare for the significant influx of military personnel, civilian employees, contractors, and families in the affected areas. The Maryland Department of the Environment is engaged in assessing adequacy of water and wastewater systems and securing funding for necessary upgrades. The Maryland Department of Planning conducted a study of the employment and residential growth associated with BRAC-related changes at the affected military installations and the impact of that growth on housing supply and demand and water and sewer, power, fiber optic, transportation, and school systems. The Maryland State Department of Education has put in place a comprehensive plan to ensure that Maryland schools are ready for the children and families that will be part of BRAC. The Maryland Department of Transportation has assessed traffic and other transportation needs in the growth areas; held coordinating meetings with county planners, military alliances, and base personnel; and identified and begun work on specific BRAC-related traffic and transit projects. In addition, the Department of Housing and Community Development is working to develop and market home ownership and rental assistance programs for the expected new residents.

Exhibit 1
Impact of BRAC on Maryland
Proposed Base Changes and Estimated Employment Changes

Base	Proposed Base Changes	Estimated Employment Change per BRAC Model
Aberdeen Proving Ground (Harford County)	Absorb Army Test and Evaluation Command currently located in Alexandria, VA; become a center for electronic warfare research by absorbing functions currently performed at Ft. Monmouth, NJ and Ft. Belvoir, VA; absorb Army research institute now at Ft. Knox, KY	Gain of 10,426 jobs
Andrews Air Force Base (Prince George's County)	Relocation of Air Force District of Washington; realignment of Air Force headquarters from Arlington, VA; other moves	Gain of 2,000 jobs
Fort Meade (Anne Arundel County)	Absorb the Defense Information Systems Agency as well as the Army's adjudication and media activities	Gain of 6,000 jobs
Martin State Air Guard Station (Baltimore County)	Reassign 8 130J cargo planes to other bases	Loss of 237 jobs (loss of 8 aircraft)
Naval Station (Annapolis)	Minor realignment	Loss of 25 jobs
Flair Army Reserve Center (Frederick)	Closed	Loss of 37 jobs
Fort Detrick (Frederick)	Minor realignment	Gain of 185 jobs
National Naval Medical Center (Bethesda)	Close the Walter Reed Medical Center (WRMC) in Washington, DC and move several WRMC functions to the National Naval Medical Center	Gain of 1,200 – 2,500 jobs

Exhibit 1 (continued)

Base	Proposed Base Changes	Estimated Employment Change per BRAC Model
Naval Surface Weapons Station (White Oak, Montgomery County)	Minor changes	Gain of 11 jobs
Army Research Laboratory (Adelphi, Prince George's County)	Minor realignment	Loss of 82 jobs
Ewvra Sheppard Air Guard Station (Hagerstown)	Minor realignment	Gain of 17 jobs
Defense Finance and Accounting Service (Patuxent River)	Closed	Loss of 123 jobs
Naval Air Station (Patuxent River)	Minor changes	Gain of 201 jobs

Source: Department of Business and Economic Development

Preparations by Local Governments

The affected jurisdictions – Anne Arundel, Baltimore, Cecil, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City – have been actively engaged in BRAC preparation efforts. They have been meeting and working with MMIC and the subcabinet, and each has prepared a BRAC action plan. Many counties have established a web site relating to BRAC; created a BRAC office, task force, or implementing commission; and/or appointed a BRAC director. A number of the counties have also applied for and received federal grants to address BRAC-related issues such as transportation, housing, utilities, services, and education.

State Fiscal Effect:

Tax Credits and Incentives

The impact of this bill depends on several factors which are not known at this time; however, it is expected that there will be a significant effect on general fund revenues and expenditures and Transportation Trust Fund and Higher Education Investment Fund revenues. General fund, TTF, and HEIF revenues will decrease due to the income tax credits claimed against the State corporate income tax. Although the income tax credit is applicable beginning tax year 2008, it is assumed that BRAC Zones would not be designated until after July 1, 2008 or fiscal 2009.

General fund expenditures will increase as a result of the property tax credits and reimbursements to counties. The amount cannot be quantified because several factors have not been determined: • the locations of the BRAC Zones; • the number and magnitude of investments in each BRAC Zone; and • the location and time of introduction of new businesses, employee levels, and capital investments at each facility. Reports indicate that BRAC will bring as many as 60,000 jobs to the State, of which approximately 20,000 will be directly located on the affected military bases over the next 10 to 15 years, leaving approximately 40,000 jobs located elsewhere.

In an attempt to show an order of magnitude of the cost of the tax credits provided by the bill, **Exhibit 2** shows the potential impact of the credits for one qualifying business that locates in a BRAC Zone located in Anne Arundel, Harford, and Prince George's counties. The estimate assumes, for each business:

- $5 million investment in real property improvements;
- $1 million in personal property;
- 100 new individuals are employed, of whom five employees are economically disadvantaged; and
- a corporate income tax is filed.

This estimate assumes that each county grants the 80% property tax credit for both real and personal property. The State is required to reimburse the county for 50% of the amount of taxes that would have been collected had the credit not been in effect.

Exhibit 2
Potential Impact of Tax Credits Claimed by One Qualifying Business

County	Real Property	Personal Property	Income Tax	Total Benefit	Net State Impact	Net County Impact
Anne Arundel	$35,640	$17,820	$151,388	$204,84	($178,118)	($26,730)
Harford	43,280	21,640	151,388	216,30	(183,848)	(32,460)
Prince George's	52,760	26,380	151,388	230,528	(190,958)	(39,570)

The average net State impact for the three counties examined is approximately $184,000. Assuming 100 similar businesses (*i.e.*, 10,000 employees) would qualify for the credit, the net State impact for this estimate would be $18.4 million. Most of the credits would continue for 10 years, and unused income tax credits may be applied for 5 additional tax years.

Administrative Costs

State Expenditures: General expenditures could increase by an estimated $101,250 in fiscal 2009, which assumes a full year of costs given the bill's June 1, 2008 effective date. This estimate reflects the cost of hiring one administrative officer in DBED to handle BRAC Zone compliance and administrative work. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Comptroller programming costs of $33,600 are also included for processing new business tax credit claims.

Salary and Fringe Benefits	$60,095
Operating Expenses	7,555
One-time Programming	33,600
Total FY 2009 State Expenditures	**$101,250**

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover and • 2% annual increases in ongoing operating expenses.

Local Fiscal Effect: Local revenues will decrease by half of the cost of the real and personal property tax credits. Exhibit 2 shows potential revenue losses for local jurisdictions. The State is covering the other half of the loss in real and personal property tax revenues.

Local property tax revenues and impact fee revenues could increase to the extent that property is taxed or PILOT agreements are negotiated. However, at this time, the increase cannot be estimated as the number of potentially affected properties and their corresponding value is not known. The increase would also depend on the specific PILOT agreements. It is also possible that any PILOT agreement would only cover the cost of any county infrastructure improvements associated with these properties.

As a point of reference, a recent opinion of the Attorney General with regard to the taxation of federal property and interests in federal property resulting from BRAC indicates the following:

- That real property located within an area of exclusive federal jurisdiction on a military base and leased to a private developer is subject to State and local taxation to the extent that the federal government has waived its tax immunity – which it has under 10 U.S.C. 2667, which authorizes EULs (Enhanced Use Leases) on military installations.
- Whether a development within a federal enclave of exclusive jurisdiction would trigger impact fees may depend on whether the federal government has waived immunity as to excise taxes. Alternatively it may depend on whether the State regulatory regime including the impact fee existed at the time the property was ceded to the federal government or whether Congress later consented to that regulatory regime.
- That the analysis would apply to real property in an enclave of exclusive federal jurisdiction that is not on a military base, although some waiver provisions may only apply on military installations.

Additional Information

Prior Introductions: None.

Cross File: SB 206 (The President, *et al.*) (By Request – Administration) – Budget and Taxation.

Information Source(s): Department of Business and Economic Development, Comptroller's Office, Maryland Department of Transportation, Baltimore City, Department of Legislative Services

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