SB 206

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 206 (The President, *et al.*) (By Request – Administration)
Budget and Taxation 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 local subdivisions with approved BRAC Zones for 10 consecutive fiscal years beginning in fiscal 2010 equal to: 100% of the State property tax for any increase in the assessed value of qualifying property; and 50% of the local property tax for any increase in the local tax revenues collected on the increased value of qualifying property.

Funding for the incentives is as appropriated in the State budget each fiscal year up to $5 million. Incentive funding provided to local jurisdictions must be used for infrastructure improvements.

The bill takes effect June 1, 2008, although provisions related to establishing BRAC Zones and incentives take effect October 1, 2008.

Fiscal Summary

State Effect: General fund expenditures would increase beginning in FY 2010 as a result of the BRAC Zone property tax incentives for local jurisdictions and are expected to reach the $5 million limitation beginning in FY 2011. Administrative costs to implement the new incentives would begin in FY 2009.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	$0	$0	$0	$0	$0
GF Expenditure	50,700	2,568,900	5,072,200	5,075,600	5,079,200
Net Effect	($50,700)	($2,568,900)	($5,072,200)	($5,075,600)	($5,079,200)

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

Local Effect: Local property tax revenues and impact fee revenues could increase to the extent that property is taxed or payment 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. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

BRAC Revitalization and Incentive Zones

DBED may only designate an area as a BRAC Zone if the area • is located in a priority funding area (*i.e.*, smart growth); • is approved to be served by a water and sewer system; • is designated for mixed use development (including residential); and • has an average density of at least 3.5 units per acre in residential areas. The following areas receive priority consideration if located within one-half mile of a present or planned • MARC station along the Penn, Camden, or Brunswick lines; • Baltimore Metro Subway station; • Baltimore MTA Light Rail station; or • Metrorail system station in the State. An area that is of strategic importance to the economic development interests of a county may also 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 • state if the local jurisdiction has examined the feasibility of creating educational or training opportunities for employers and employees of business entities located or to be located in the proposed BRAC Zone.

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. DBED must consult with four specified departments before a BRAC Zone designation.

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. DBED may not designate a BRAC Zone until the county has entered into good faith negotiations for a PILOT with all private developers of federal enclave property in the area prior to being designated a BRAC Zone.

Except under certain circumstances, the bill prevents a BRAC Zone from receiving both enterprise and BRAC Zone benefits. The bill provides for BRAC Zone expansion and extraordinary expansions.

Tax Benefits and Incentives

The State provides two tax incentives to the local subdivisions:

- 100% of the increment in the State property tax on the increased value of qualified residential and commercial property in the BRAC Zone to the local subdivision; and
- 50% of the local tax revenue collected on the increased value of qualified residential and commercial property.

Qualified property is commercial or residential property that, as determined by DBED, enhances economic development in a BRAC Zone.

The total amount provided by the State to the local jurisdictions with BRAC Zones is provided for by any amount appropriated from the State budget and limited to $5 million annually. Fiscal payments by the State begin in fiscal 2010 and continue for 10 consecutive years. If the total amount awarded by DBED to be paid by the State is greater than the limitation, the allocations of payments to the BRAC Zones are provided for on a *pro rata* basis. The State Department of Assessments and Taxation will administer the payments.

Tax benefits provided by the State to the local jurisdictions must be used to pay for infrastructure improvements in the BRAC Zone and for the repayment of bonds, including tax increment financing bonds, which are issued for infrastructure improvements.

DBED must also prepare a report, in consultation with the State Department of Assessments and Taxation that outlines the enhanced use lease (EULs) projects, or other private development projects, on federal enclave property; the extent these projects may be subject to State and local property taxes; and the status of PILOT agreement negotiations between local jurisdictions, the State, and private developers for projects on federal enclave property. The report must provide recommendations, if any, that would encourage PILOT agreements for projects on federal enclave property. DBED submits the report to the Governor and specified committees by December 15, 2008.

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 to attract and retain businesses in the BRAC Zones. DBED assesses the effectiveness of the tax benefits. Beginning December 15, 2008 and annually thereafter, DBED submits a report to 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.

Local jurisdictions must initiate discussions to negotiate a PILOT agreement with a private developer of federal enclave property no later than 30 days after receiving written notice by the private developer or the federal government that a development has been proposed on the federal enclave property. Upon commencement of negotiations, the Maryland Department of Transportation (MDOT) must notify the Legislative Policy Committee within 30 days.

The local jurisdiction and MDOT, on behalf of the State, may jointly enter into a PILOT with a private developer; however, an agreement is not effective until approved by the federal government. Moreover, the federal enclave property is not subject to property tax if the developer enters into a PILOT agreement with the State and local jurisdiction.

If a PILOT agreement is reached with a private developer, the private developer makes any payment to the county tax collector. A PILOT payment may not exceed the property tax amount that would otherwise be due. Proceeds must be used to pay for infrastructure improvements in the BRAC Zone and may be used for the repayment of bonds, including tax increment financing bonds, issued for infrastructure improvements in the BRAC Zone.

The bill provides that a county tax collector distributes the PILOT agreement amount either • to a specific dedicated fund for public improvements associated with developing the federal enclave property; or • according to a *pro rata* amount set within the PILOT agreement to include State, county, and when applicable, a municipal corporation where the federal property is located. An agreement may abate or reduce previously imposed property taxes on the federal property.

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.

Enhanced Use Leases (EULs)

EULs allow military departments and defense agencies to lease underutilized land and property to public and private sector entities. EULs also allow a private developer to make improvements to the federal property and subsequently enter into leases with interested tenants *(e.g.*, federal contractors) who benefit from convenient, secure facilities in close proximity to federal agency clients. EUL proceeds are provided in the form of cash or in-kind services. Cash payments provide for maintenance and repair or environmental restoration; in-kind services include improvements, maintenance, protection, repair, and environmental restoration (generally limited to the lease property).

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.

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
Naval Surface Weapons Station (White Oak, Montgomery County)	Minor changes	Gain of 11 jobs

Base	Proposed Base Changes	Estimated Employment Change per BRAC Model
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 Expenditures:

Incentives

The bill provides State grants to local jurisdictions as a result of BRAC Zone development. Local jurisdictions with an area designated as a BRAC Zone may receive the equivalent of 100% of the increase in the State property tax and 50% of the increase in local property tax attributable to the increased value of the qualified property in the BRAC Zone. The bill provides grant amounts of up to $5 million beginning in fiscal 2010, providing the amounts are appropriated in the State budget.

Reliable estimates regarding the pace and amount of development to occur for any and all BRAC Zones cannot be provided at this time. Legislative Services notes that allocation of the full $5 million may not occur for a couple of years, depending on • how quickly BRAC Zones are developed and approved; • the amount and pace of the development; and • the actual assessed value of the development that occurs in each BRAC Zone.

Construction and development of a facility requires several steps. These include applying for and being issued environmental and construction permits, obtaining project financing, undertaking and completing of construction, and then final facility inspection and issuance of certificates of occupancy. It is after these steps occur that facilities are assessed and a property value established. As a result, a delay occurs between the time an area is granted BRAC Zone status and State grants are provided to the local jurisdiction to support infrastructure development.

DBED advises that it would take a couple of years for the BRAC Zone program to reach full maturity. As early as fiscal 2010, it is possible that areas of the State (*e.g.*, Aberdeen Proving Ground) that are presently undertaking the initial stages of construction for facilities could potentially qualify as BRAC Zones. However, DBED envisions that these property improvements would qualify for only a portion of the maximum funding authorized in fiscal 2010. DBED advises that the maximum amount of $5 million in BRAC Zone development grants could be awarded beginning in fiscal 2011 and each year thereafter.

Administrative Costs

General fund expenditures could increase by an estimated $50,738 in fiscal 2009, which reflects the October 1, 2008 effective date for provisions establishing BRAC Zones. This estimate includes 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.

Salary and Fringe Benefits	$45,071
Operating Expenses	5,666
Total FY 2009 State Expenditures	**$50,737**

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

Local Fiscal Effect: 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.

Additional Information

Prior Introductions: None.

Cross File: HB 366 (The Speaker, *et al.*) (By Request – Administration) – Ways and Means and Economic Matters.

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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