

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1213  
Ways and Means

(Delegate Haynes, *et al.*)

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Education - Broadening Options and Opportunity for Students and Teachers  
(BOOST) Program - Establishment

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This bill establishes a Broadening Options and Opportunity for Students and Teachers (BOOST) program within the Department of Commerce (DOC) to provide scholarships to eligible students who attend approved schools. The program will receive net funding of at least \$35.0 million, which is provided through the creation of a tax credit against the insurance premium tax or corporate income tax for companies that make designated contributions to the program. DOC can award a maximum of \$50.0 million in tax credits, which can be claimed beginning with tax year 2017. The bill provides for the application and certification process and creates a BOOST Authority within DOC.

The bill takes effect July 1, 2016, and terminates June 30, 2021.

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Fiscal Summary

**State Effect:** Net BOOST Fund (special fund) revenues increase by \$35.0 million in FY 2017 due to designated contributions received from eligible businesses and transfers specified by the bill. Cigarette Restitution Fund (CRF) revenues decrease by \$5.0 million in FY 2017 and increase by a corresponding amount in FY 2018 due to transfers specified by the bill. State revenues decrease by \$50.0 million in FY 2018 through 2020 due to credits claimed against the corporate income tax and insurance premium tax. BOOST Fund expenditures increase by \$7.0 million in FY 2017 for qualified scholarships and administrative costs. Future year estimates reflect estimated distributions from the fund and required transfers specified by the bill. General fund expenditures increase by \$32,000 due to one-time implementation costs at the Comptroller's Office.

(\$ in millions)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$35.0	\$0	\$0	\$0	\$0
GF/SF Rev.	\$0	(\$40.0)	(\$5.0)	(\$5.0)	\$0
GF Expenditure	\$0.0	\$0	\$0	\$0	\$0
SF Expenditure	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0
Net Effect	\$28.0	(\$47.0)	(\$12.0)	(\$12.0)	(\$7.0)

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

**Local Effect:** Local highway user revenues will decrease as a result of credits claimed against the corporate income tax. Local expenditures are not affected.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Program Overview*

DOC will solicit cash (designated contributions) from insurance companies and corporations through a competitive process overseen by an independent third party under contract with DOC. In exchange for the designated contributions received from the insurance companies and corporations, DOC will provide those companies with tax credits that can be used to offset taxes beginning with tax year 2017. The bill authorizes DOC to award a total of \$50.0 million in tax credits.

The designated contributions received from insurance companies and corporations are to be deposited into the BOOST Fund on June 1, 2017. The money deposited in the fund must be used to provide scholarships to eligible students attending eligible schools and to cover administrative expenses. An insurance company or corporation must request at least \$500,000 in tax credits. The amount of designated contributions proposed by insurance companies or corporations cannot be less than 70% of the requested amount of tax credits, unless the Secretary of Commerce determines a higher rate is consistent with current market conditions upon recommendation of the independent third party. If the minimum of 70 cents in designated contributions is contributed for each dollar of tax credits, a total of \$35.0 million will be raised.

#### *DOC Administration*

DOC is required to administer the BOOST Fund in consultation with the BOOST Authority and issue tax credit certificates consistent with the bidding process developed by the

independent third party under contract with DOC. DOC is also required to provide advice and counsel to the Authority on program administration.

DOC may purchase insurance or make other financial arrangements to ensure the availability of designated contributions committed by tax credit applicants. By November 1, 2020, DOC and the BOOST Authority must report to the Governor and the General Assembly specified information about the program.

### *BOOST Authority*

The bill establishes a BOOST Authority within DOC. Members of the Authority may not receive compensation but are entitled to reimbursement for expenses. The Authority's responsibilities include:

- obtaining services to promote the program, which include assisting schools and students complete any required program applications;
- establishing procedures necessary to implement the program;
- determining school and student eligibility; and
- calculating the value of scholarships.

The Authority must rank eligible students by family income as a percentage of the federal poverty level and award scholarships in ranked order beginning with students with the lowest family income relative to the federal poverty level. The maximum scholarship amount may not exceed the specified statewide average per pupil expenditure by the local education agencies, as calculated by the Maryland State Department of Education.

### *BOOST Fund*

Money deposited in the BOOST Fund may only be used to (1) provide scholarships to eligible students who attend an eligible school; (2) pay for program administrative costs; and (3) reimburse CRF as required by the bill. In addition to the designated contributions and revenue transferred from CRF, the fund consists of (1) money appropriated in the State budget; (2) investment earnings of the fund; and (3) money from any other source accepted for the benefit of the fund. Expenditures from the fund may only be made in accordance with the State budget. Any money remaining in the fund that is not allocated to scholarships for eligible students reverts to the general fund on July 1, 2021.

The bill requires the Governor to transfer \$5.0 million from CRF to the BOOST Fund by budget amendment in fiscal 2017 in order to cover program administrative costs. By September 1, 2017, \$5.0 million must be transferred from the BOOST Fund to CRF.

## *Tax Credits*

In order to claim a tax credit as proposed by the bill, an insurance company or corporation must be issued a tax credit certificate by DOC and contribute designated contributions on June 1, 2017. An eligible company is either (1) an insurance company or corporation that is authorized to do business in the State and has insurance premium tax liability or corporate income tax liability, respectively, as of October 1, 2016, or (2) a holding company that has at least one insurance company subsidiary authorized to do business in the State and makes a designated contribution on behalf of authorized subsidiaries.

Under procedures adopted by the independent third party selected by DOC, each tax credit applicant must make a timely and irrevocable offer for at least \$500,000 in tax credits. The deadline for tax credit applications is February 1, 2017, and DOC will notify each applicant by May 1, 2017, as to whether it has been approved.

An insurance company or corporation may claim credits beginning with tax year 2017 on a tax return filed after December 31, 2017. The credit claimed in each year cannot exceed the tax liability imposed in the year, and any unused amount may be carried forward to any other tax year. Tax credits may also be transferred subject to specified conditions.

An insurance company that provides designated contributions and claims tax credits is not required to factor in the reduction in tax liability caused by the tax credit for the purposes of policy ratemaking and also not required to pay any additional taxes as a result of the tax credit.

A tax credit applicant or insurance company affiliate may not (1) manage an eligible school; (2) beneficially own more than 15% of the ownership interest of an eligible school; or (3) control the direction of allocations to an eligible school or eligible student.

## *Eligible Schools and Students*

An eligible school may not provide education beyond the eighth grade and must (1) be certified by the State Board of Education; (2) administer student assessments in accordance with federal and State law; (3) agree to accept scholarships as full payment of a student's tuition and fees; (4) have eligible students comprise at least 5% of its enrollment; (5) not only provide a preK program; (6) certify its compliance with Title 20, Subtitle 6 of the State Government Article; and (7) not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation.

A student is eligible to receive scholarships if the student attends an eligible school, applies to the Authority, and is eligible for "free or reduced price meals."

## **Background:**

### *Tuition Tax Credit Programs in Other States*

According to the National Conference of State Legislatures, 16 states have established a tuition tax credit program as of January 2016. These programs, also known as scholarship tax credit programs, allow individuals and corporations to claim tax credits for donations to private nonprofit school tuition organizations that issue scholarships to eligible students. The scholarship allows a student to choose among a list of private schools, and sometimes public schools outside of the district, approved by the school tuition organization. The scholarship is used to pay tuition, fees, and other related expenses.

Of Maryland's surrounding states, Virginia and Pennsylvania offer similar tax credit programs. The Pennsylvania Opportunity Scholarship Tax Credit Program provides tax credits to eligible businesses contributing to opportunity scholarship organizations. These organizations use these contributions to provide tuition assistance to eligible students residing within underperforming school districts to attend another public school outside of the student's district or an eligible nonpublic school. Pennsylvania's Educational Improvement Tax Credit Program provides tax credits for businesses that contribute to eligible scholarship organizations at nonpublic schools or educational improvement organizations for "innovative programs" at public schools. A total of \$50 million in opportunity scholarship tax credits and \$100 million in educational improvement tax credits can be issued in each fiscal year.

The Virginia Education Improvement Scholarships Tax Credits Program provides tax credits for persons or businesses who donate to approved scholarship foundations that provide scholarships to eligible students attending certain nonpublic schools. The tax credit is equal to 65% of the donation. A total of \$25 million in tax credits may be issued in each fiscal year.

### *State Funding in Fiscal 2017 Budget*

The fiscal 2017 State budget includes \$5 million for grants to business entities equal to no more than 50% of the amount contributed by the business to a student assistance organization that provides financial assistance to students attending nonpublic schools. The nonpublic schools must meet the eligibility requirements to participate in the aid to nonpublic schools program for textbooks and computer hardware and software. The grants are funded from CRF. A student assistance organization must spend not less than 95% of eligible grant funds on financial assistance for qualified education expenses, provide funds to at least four eligible schools, and give priority to students eligible for free and reduced-priced meals. DOC is designated to administer the grant program. The funding is not contingent on legislation.

## *InvestMaryland Program*

Chapter 409 of 2011 established the InvestMaryland Program, a State-supported venture capital program. The program was funded through a tax credit auction similar to the auction proposed by the bill. Through the auction, DOC raised \$84 million in designated capital and solicited 189 bids from 24 companies, 11 of which submitted 15 winning bids and were awarded \$100 million in tax credits.

In its October 2015 audit of DOC, the Office of Legislative Audits found that DOC did not establish effective oversight over the tax credit auction established by the InvestMaryland Program, since it did not ensure that comprehensive procedures had been developed and adopted to govern the auction process. In addition, the bidding methodology used by DOC resulted in all of the winning bidders paying the same lowest accepted bid rate even though most winning bids exceeded that rate.

The [audit](#) is available on the Office of Legislative Audits website.

**State Fiscal Effect:** The bill (1) establishes the BOOST program to provide scholarships to eligible students; (2) provides funds to the program by allowing businesses that provide designated contributions to claim tax credits beginning in tax year 2017; and (3) requires specified transfers between the BOOST Fund and CRF. As a result, the net effect on State finances will be an increase of \$28.0 million in fiscal 2017 and a decrease of \$47.0 million in fiscal 2018. **Appendix 1** details the fiscal impact of the bill in fiscal 2017 through 2021.

## *BOOST Fund Revenues*

In exchange for receiving tax credits, insurance companies and corporations are required to provide designated contributions on June 1, 2017. It is assumed that the maximum amount of credits is awarded and the amount of contributions provided by businesses is equal to 70% of the total amount of tax credits awarded. BOOST Fund revenues will increase by at least \$40.0 million in fiscal 2017, reflecting designated contributions and a transfer of \$5.0 million from CRF. To the extent the auction raises additional funds beyond this amount, special fund revenues will be greater than estimated. If the auction raises an amount of contributions similar to that of the InvestMaryland program (84%), special fund revenues from the auction will increase by \$42.0 million in fiscal 2017. BOOST Fund revenues decrease by \$5.0 million in fiscal 2018 due to the required transfer to CRF specified by the bill.

## *CRF*

CRF revenues decrease by \$5.0 million in fiscal 2017 and increase by a corresponding amount in fiscal 2018 due to the transfers required by the bill.

### *Tax Credit Claims*

Tax credits can be claimed for any tax year beginning with tax year 2017 on a tax return filed after December 31, 2017. General fund, Transportation Trust Fund, and Higher Education Investment Fund revenues will decrease by a total of \$50 million beginning in fiscal 2018. The timing of this revenue loss depends on the tax year in which the credit is applied and cannot be accurately predicted. Assuming that 80% of the credits are claimed in tax year 2017 and 10% is claimed in each of tax year 2018 and 2019, State revenues will decrease by \$40.0 million in fiscal 2018, \$5.0 million in fiscal 2019, and \$5.0 million in fiscal 2020.

To the extent insurance companies and corporations adjust quarterly payments in anticipation of claiming credits, revenue losses will be different than estimated. The Maryland Insurance Administration has not responded to requests from the Comptroller's Office and the Department of Legislative Services on the timing of credit claims under the InvestMaryland Program.

### *BOOST Fund Expenditures*

The designated contribution received from an eligible business is to be deposited into the BOOST Fund on June 1, 2017, and can be used to pay for scholarships for eligible students and the administrative costs of the program. In addition, the bill requires the fund to repay CRF \$5.0 million in fiscal 2018.

DOC is required to administer the program and select an independent third party to establish the tax credit bidding process. Under the InvestMaryland program, the auction vendor was paid approximately \$270,000 for administering the auction. DOC will also require additional staff to implement the program. These administrative costs are to be covered by the BOOST fund and, as necessary, from the \$5.0 million transfer from CRF in fiscal 2017. For purposes of this fiscal note, it is assumed that the \$35 million in program expenditures will be evenly distributed over the five-year period.

### *State Education Aid Impact*

Tax credits can be claimed for contributions made to provide scholarship to attend eligible schools. To the extent that this financial assistance reduces public school enrollment beginning with the 2017-2018 school year, general fund expenditures for State education aid may decrease beginning in fiscal 2019. However, the bill states that it is the intent of the General Assembly that local school systems that have a decline in enrollment as a result of the program are eligible for a grant to mitigate a loss of State aid as calculated under Title 5, Subtitle 2 of the Education Article.

### *Comptroller Expenses*

The Comptroller's Office reports that it will incur a one-time expenditure increase of \$32,000 in fiscal 2017 to add the credit to the personal and corporate income tax forms. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Commerce, Comptroller's Office, Office of Legislative Audits, Department of Legislative Services

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## Appendix 1 –Fiscal Impact of Legislation Fiscal 2017-2021

<u>Expenditures</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
<b>General Fund Expenditures</b>					
Comptroller's Office	\$32,000	\$0	\$0	\$0	\$0
<b>Special Fund Expenditures</b>					
BOOST Fund	\$7,000,000	\$7,000,000	\$7,000,000	\$7,000,000	\$7,000,000
<b>Total Expenditures</b>	<b>\$7,032,000</b>	<b>\$7,000,000</b>	<b>\$7,000,000</b>	<b>\$7,000,000</b>	<b>\$7,000,000</b>
 <b><u>Revenues</u></b>					
<b>General/Special Fund Revenues</b>					
Tax Credit Claims	\$0	(\$40,000,000)	(\$5,000,000)	(\$5,000,000)	\$0
<b>Special Fund Revenues</b>					
BOOST Fund	\$40,000,000	(5,000,000)	0	0	0
CRF	(5,000,000)	5,000,000	0	0	0
<b>Total Revenues</b>	<b>\$35,000,000</b>	<b>(\$40,000,000)</b>	<b>(\$5,000,000)</b>	<b>(\$5,000,000)</b>	<b>\$0</b>
<b>Net Effect</b>	<b>\$27,968,000</b>	<b>(\$47,000,000)</b>	<b>(\$12,000,000)</b>	<b>(\$12,000,000)</b>	<b>(\$7,000,000)</b>