HB 363

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 363 (The Speaker, *et al.*) (By Request - Administration)
Ways and Means

More Jobs for Marylanders Act 2.0

This Administration bill extends the initial certification period for eligible projects under the More Jobs for Marylanders Program by three years, through May 2023. The maximum amounts that can be awarded annually against the State income tax and the sales and use tax are increased by $4.0 million and $1.0 million, respectively. The bill also allows specified nonmanufacturing businesses to qualify for the program (in addition to manufacturing businesses) under certain conditions, changes the definition of qualified distressed county (QDC), and makes other changes. **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: General fund expenditures increase beginning in FY 2020, escalating to $50 million in FY 2023, and continuing through FY 2032 at a total cost of $500 million. State revenues decrease beginning as early as FY 2019 as discussed below. **This bill may increase mandated appropriations beginning in FY 2020.**

($ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	(-)	$0.0	($0.1)	($0.1)	($0.2)
SF Revenue	(-)	($0.2)	($0.8)	($1.7)	($3.0)
GF Expenditure	$0	$5.0	$20.0	$35.0	$50.0
Net Effect	(-)	($5.2)	($20.9)	($36.9)	($53.2)

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

Local Effect: Local highway user revenues decrease beginning in FY 2020. Local expenditures are not affected.

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

Analysis

Bill Summary:

Changes to Program Benefits

The maximum tax credit certificates that the Department of Commerce (Commerce) may issue against the income tax in a fiscal year is increased from $9.0 million to $13.0 million. The maximum is likewise increased from $1.0 million to $2.0 million for sales and use tax refunds issued in a fiscal year. The tax credits and refunds, in addition to other program benefits, may be taken for 10 consecutive years.

Commerce must reserve 50% of income tax credits and 50% of sales and use tax refunds for manufacturing businesses, unless there are excess funds in a given fiscal year.

The income tax credit is limited to $11,250 per year for each qualified position. Under current law, there is no limit. In addition, a business entity is prohibited from simultaneously receiving benefits under the More Jobs for Marylanders Program and the Enterprise Zone Program.

Expansion of Eligible Business Activities

Eligibility criteria for the More Jobs for Marylanders Program are expanded beyond manufacturing businesses to allow designated businesses primarily engaged in a qualified activity to claim the tax benefits under the program, subject to specified conditions. "Qualified activity" means one of the following:

- mining
- transportation services
- communication services
- agriculture, forestry, or fishing
- research, development, or testing
- biotechnology related activities
- computer programming, information technology, or other computer-related activities
- central services for finance, real estate, or insurance
- the operation of central administrative offices
- the operation of company headquarters other than that of a professional sports organization
- warehousing
- business services

A business is not eligible for the tax benefits under the program if it is primarily engaged in a retail operation, the performance of personal services, or health care services.

A Tier I county may select up to three qualified activities for the program. Similar to existing requirements for a manufacturing business, eligibility criteria and tax benefits are determined by whether a designated business locates to the State or expands, where the location or expansion occurs, and how many jobs are created. Commerce may require verification of any information regarding whether a business entity is engaged in a qualified activity from the Department of Labor, Licensing, and Regulation (DLLR).

Eligibility for Full Program Benefits

Upon enrollment in the program, if a nonmanufacturing business is *new*, locates in a Tier I county, and creates five qualified jobs, then it is eligible for the full suite of program benefits (State income tax credit, State property tax credit, sales and use tax refund, certain business fee waivers) for 10 years. These are identical to the requirements for a manufacturing business under current law and the bill.

Eligibility for Partial Program Benefits

Upon enrollment in the program, if an *existing* nonmanufacturing business locates or expands in a Tier I county and creates at least five qualified positions, then it is eligible for the State income tax credit for 10 years. These are identical to the requirements for a manufacturing business under current law and the bill.

An *existing manufacturing* business that moves its facility to another county in the State and creates at least 10 additional qualified positions is also eligible for the State income tax credit. This repeals a general prohibition against such eligibility after June 1, 2017, and adds the requirement to create additional qualified positions.

Changes to Geographic Eligibility Definitions

The term "qualified distressed county" is renamed "Tier I county," which replaces the existing term in the program. The income-based standard for qualification is changed from less than 67% of statewide average per capita personal income to less than 75% of statewide median household income. The unemployment-based standard, under which a county must have an average rate of unemployment exceeding the statewide average by at least 150%, or 2 percentage points, remains unchanged. Both standards continue to be based on the most recent 24-month period for which data is available.

The authority for Commerce to add up to three counties, in addition to QDC, as a Tier I county is repealed. As under current law, a Tier II county is any county that doesn't qualify as a Tier I county.

Current Law/Background:

Manufacturing Tax Incentives

Chapter 149 of 2017 established the More Jobs for Marylanders Program, which provides (1) an income tax credit to certain new or existing qualifying manufacturers that create a minimum number of jobs; (2) additional incentives to qualifying new manufacturing businesses that create a minimum number of jobs within a county designated as a Tier I county; and (3) additional Section 179 expensing and bonus depreciation as allowed under federal income tax law for all manufacturers located in the State.

For the tax credits and sales tax refunds, Commerce may authorize a manufacturing business to receive program benefits for up to 10 consecutive years beginning with the year in which the business becomes eligible. The maximum amounts that can be awarded annually against the State income tax and the sales and use tax are $9.0 million and $1.0 million, respectively.

Commerce must administer the tax credit application, approval, and certification process and is required to submit an annual report to the General Assembly detailing specified information about the program.

Eligibility

A business must operate or conduct a trade or business that is primarily engaged in manufacturing, but this does not include refiners. Prior to taking the action that qualifies the business for the program, a business must notify Commerce of its intent to seek certification of an eligible project. A business must offer an ongoing job skills enhancement training program or postsecondary education program that is approved by Commerce. A business within a Tier I county must create at least 5 qualified positions and businesses within Tier II counties must create at least 10 qualified positions. Within 12 months of notifying Commerce of its intent to seek designation of an eligible project, a business entity must begin hiring employees to fill the qualified positions.

The income tax credit and sales and use tax refund may not be claimed by an existing business entity that moves a facility to another county on or after June 1, 2017. Commerce may not certify a business as eligible for the program after May 31, 2020. A business may not continue to qualify for the program if the number of qualified positions decreases below the total number in the first year in which the business qualified.

Tier I and Tier II County Designations

Businesses located in counties designated by Commerce as Tier I counties may qualify for additional incentives and lower minimum job creation requirements. Commerce may designate a county as a Tier I county if the county qualifies as a QDC. In addition, Commerce may designate up to three counties as Tier I counties that do not qualify as a QDC. Any county that is not designated as a Tier I county is considered a Tier II county.

Incentives – New Businesses in a Tier I County

A qualifying new manufacturing business in a Tier I county can claim the following benefits for up to 10 consecutive years.

- *Income Tax Credit:* A qualified business entity may claim a credit against the State income tax equal to the total wages paid for the qualified positions multiplied by 5.75%. If the value of the credit exceeds the tax liability imposed in the year, the business can claim a refund in the amount of the excess. Tax credits can be claimed beginning in tax year 2018.

- *Sales and Use Tax Refund:* All personal property and/or services purchased by a qualifying business entity for use at a manufacturing facility may qualify for a refund of the State sales and use tax for purchases made on or after January 1, 2018.

- *State Property Tax Credit:* The Act exempts 100% of the State property tax imposed on the real property that is owned by a qualifying business and located at the qualifying manufacturing facility beginning in fiscal 2018. The State Department of Assessments and Taxation (SDAT) must calculate the value of the credit in each year.

- *Corporate Filing Fees:* A qualified business entity is exempt from all business recording, filing, or special fees collected by SDAT.

The income tax credit may be claimed for up to 10 years by an existing manufacturing business operating an eligible business in either a Tier I or Tier II county if the business creates the required number of qualified positions at the eligible manufacturing facility.

Reserve Funds

The total amount of initial tax credit certificates issued by Commerce in each fiscal year generally cannot exceed $9.0 million. Beginning in fiscal 2019, the Governor must appropriate money to the More Jobs for Marylanders Tax Credit Reserve Fund. The

Governor must include an amount that is necessary to maintain the current level of manufacturing activity in the State and attract new manufacturing activity to the State. Any amount of money in the fund that is not expended in the fiscal year remains in the fund and must be rolled over into the next fiscal year.

The total amount of sales and use tax refunds issued by Commerce in each fiscal year generally cannot exceed $1.0 million. Beginning in fiscal 2019, the Governor must appropriate money to the More Jobs for Marylanders Sales and Use Tax Refund Reserve Fund. Any amount of money in the fund that is not expended in the fiscal year is transferred to the tax credit reserve fund.

Corporate Filing Fees

SDAT is the central repository of all records for business entity formation and filings, such as charters, limited liability companies, partnerships, and trusts. SDAT administers the State's annual corporate filing fee, as well as other business transaction fees. The fee is for the privilege of maintaining the legal entity's existence in the State and is generally equal to $300.

Sales and Use Tax

Businesses in Maryland are required to collect a 6% sales and use tax from taxable purchases, with a 9% tax imposed on sales of alcoholic beverages. The sale of tangible personal property is generally taxable except as otherwise provided by law, while most services are exempt from the tax. Manufacturing firms may qualify for several sales tax exemptions – for example, the sale of machinery, equipment, and other tangible personal property used directly and predominantly in a production activity is exempt.

Property Tax

The State real property tax rate is $0.112 per $100 of assessed value and the revenues are used to pay debt service on the State's general obligation bonds.

Qualified Distressed Counties

A QDC means a county with:

- an average unemployment rate that exceeded the State's average during the preceding 24-month period by either two percentage points or 150%; or
- a per capita personal income that may not exceed 67% of the State's average during the preceding 24-month period.

It also includes any county that no longer meets the unemployment and personal income criteria but has met at least one of the criteria at some point in the preceding 24-month period. Counties can enter and exit the program based on these criteria.

According to Commerce, Baltimore City and Allegany, Dorchester, Somerset, and Worcester counties are currently designated as QDCs. Baltimore City and Dorchester County currently qualify because they have met at least one of the criteria at some time during the preceding 24-month period. However, Baltimore City and Dorchester County will no longer qualify after June 30, 2018, unless the local jurisdiction meets either the unemployment or income criteria again.

State Revenues:

Corporate Filing Fees and State Property Tax

State revenues decrease as a result of additional qualified businesses claiming (1) a corporate filing fee exemption and (2) a State property tax credit for eligible real property beginning in fiscal 2020, concurrent with the expanded income and sales tax incentives.

Based on previous estimates for this activity and the anticipated increase in program activity due to the bill, State revenues may decrease by $162,000 in fiscal 2020, $870,000 in fiscal 2021, $1.9 million in fiscal 2022, and $3.2 million in fiscal 2023. Nearly 95% of the amount in any fiscal year is anticipated to be due to the State property tax credit. State revenues continue to decrease through fiscal 2032 as the 10-year program benefits continue to be taken by qualified businesses.

Change to Qualified Distressed County Eligibility

According to Commerce, altering the eligibility criteria for QDCs/Tier I counties adds Caroline, Garrett, Kent, Washington, and Wicomico counties, and readmits Baltimore City and Dorchester County prior to their grace period ending after June 30, 2018. This is in addition to the existing Allegany, Somerset, and Worcester counties that currently qualify and continue to do so under the bill.

The QDC definition affects the One Maryland tax credit, Maryland Economic Development Assistance Authority and Fund (MEDAAF), and the Maryland Industrial Financing Authority (MIDFA). A business must be in a QDC to qualify for the One Maryland Program. Fees paid under MIDFA are also less in QDCs.

Increasing QDC designations decreases State revenues to the extent that additional One Maryland credits, which are up to $5.5 million per project, are authorized. Special fund revenues may also decrease for Commerce due to fewer fees paid under MIDFA for projects located in QDCs. Both of these revenue effects may occur as early as fiscal 2019. Overall MEDAAF finances are likely unaffected, although funding may be reallocated between projects.

State Expenditures: General fund expenditures increase *in total* by $500 million from fiscal 2020 through fiscal 2032 to make reserve fund appropriations, as the 10-year program benefits continue to be taken by qualified businesses. Commerce, the Comptroller, SDAT, and DLLR can likely handle the bill's administrative requirements with existing budgeted resources.

Reserve Fund Appropriations

Under the bill, Commerce may issue certifications for an additional three years, through May 2023, and may issue an additional $4.0 million in income tax credits and $1.0 million in sales and use tax refunds annually. There are two reserve funds intended to offset the revenue losses that result from businesses claiming income tax credits and sales tax refunds. It is assumed that the amounts appropriated to the reserve funds each year fully offset the revenue impacts of the income and sales tax benefits.

Based on the strong initial interest in the program and the broad expansion of program eligibility under the bill, it is assumed that the program is funded so that Commerce may award the new maximum allowable tax credits ($13.0 million) and sales tax refunds ($2.0 million) annually from fiscal 2020 through fiscal 2023. For fiscal 2019 only, it is assumed that Commerce does not utilize the higher maximum credit amounts. This is consistent with the proposed fiscal 2019 State budget, which includes appropriations of $9 million and $1 million, respectively, to the income and sales tax reserve funds.

Therefore, as shown in **Exhibit 1**, general fund expenditures increase by $5.0 million in fiscal 2020, escalating to $50 million by fiscal 2023, from additional reserve fund appropriations. Additional reserve fund appropriations totaling $390 million continue through fiscal 2032 as the 10-year program benefits continue to be taken by qualified businesses. To the extent that the Governor provides less or no money to the reserve fund in any year, the increase in general fund expenditures will be less.

Exhibit 1
General Fund Appropriations for Income Tax Credit and Sales Tax Refunds
($ in Millions)
Fiscal 2019-2032

	Certification Year	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024-2032	Total
Current Law								
Income Tax	FY 19	$9	$9	$9	$9	$9	$45	**$90**
	FY 20		9	9	9	9	54	**90**
Sales Tax	FY 19	1	1	1	1	1	5	**10**
	FY 20		1	1	1	1	6	**10**
Current Law Total		**$10**	**$20**	**$20**	**$20**	**$20**	**$110**	**$200**
The Bill								
Income Tax	FY 19	$9	$9	$9	$9	$9	$45	**$90**
	FY 20		13	13	13	13	78	**130**
	FY 21			13	13	13	91	**130**
	FY 22				13	13	104	**130**
	FY 23					13	117	**130**
Sales Tax	FY 19	1	1	1	1	1	5	**10**
	FY 20		2	2	2	2	12	**20**
	FY 21			2	2	2	14	**20**
	FY 22				2	2	16	**20**
	FY 23					2	18	**20**
Bill Total		**$10**	**$25**	**$40**	**$55**	**$70**	**$500**	**$700**
Difference		**-**	**$5**	**$20**	**$35**	**$50**	**$390**	**$500**

Note: This estimate assumes Commerce certifies a total of $10 million in income tax credits and sales tax refunds in fiscal 2019, consistent with the Governor's proposed budget.

Source: Department of Legislative Services

Local Revenues: Local highway user revenues distributed to Baltimore City, counties, and municipalities decrease as a result of income tax credits claimed against the corporate income tax beginning in fiscal 2020.

Additional Information

Prior Introductions: None.

Cross File: SB 305 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

Information Source(s): Department of Commerce; Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2018
md/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: More Jobs for Marylanders 2.0

BILL NUMBER: SB 305/HB 363

PREPARED BY: Chris Carroll

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

____ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

__X__ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS