

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1260 (Delegate Lierman)
 Ways and Means

Economic and Community Development Tax Credits - Opportunity Zone
 Enhancement Program

This bill establishes the Opportunity Zone Enhancement Program, to be administered by the Department of Commerce (Commerce). Qualifying businesses with an opportunity zone may qualify for enhanced incentives under the following tax credit programs (1) job creation; (2) One Maryland; (3) enterprise zone; (4) biotechnology investment incentive; (5) cybersecurity investment incentive; (6) More Jobs for Marylanders; and (7) Regional Institution Strategic Enterprise Zone (RISE). In addition, the bill provides enhanced commercial and small commercial heritage structure rehabilitation tax credits. Commerce and the Maryland Historical Trust must adopt regulations implementing the bill. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund revenues may decrease by \$400,000 annually beginning in FY 2020 due to additional tax credit claims. General fund expenditures increase by \$109,900 due to implementation costs at Commerce. Future years reflect ongoing expenditures.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)
GF Expenditure	\$109,900	\$104,800	\$108,300	\$112,000	\$115,800
Net Effect	(\$509,900)	(\$504,800)	(\$508,300)	(\$512,000)	(\$515,800)

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

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

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill provides enhanced incentives to specified tax credits within areas that are currently designated as a federal opportunity zone under Section 1400Z-1 of the Internal Revenue Code. These enhanced incentives (Tier 1) are in addition to the standard credit provided under each program and in certain circumstances in addition to the enhanced additional credit available under each program. In addition, the program provides an additional enhancement (Tier 2) beyond the enhanced credit that is in addition to the standard and enhanced credit available under each program.

A qualified opportunity zone (QOZ) business or qualified opportunity fund (QOF) qualifies for a Tier 1 enhancement if it meets program requirements and provides specified information to Commerce. A QOZ business or QOF qualifies for a Tier 2 enhancement if (1) the entity meets Tier 1 requirements and (2) accountability to QOZ residents is maintained through their representation on any governing board or advisory board of the QOZ business; or a community benefits agreement is negotiated and agreed to by QOZ community groups and the QOZ that specifies a range of community benefits that the fund agrees to provide as part of the development project, including workforce development or local hiring requirements.

The enhanced incentives do not apply to (1) the enterprise zone property tax credit; (2) residential heritage structure rehabilitation tax credits; and (3) One Maryland tax credits unless the business hires at least 50 qualified employees.

Current Law:

Job Creation Tax Credit

The job creation tax credit provides a tax credit to businesses that expand or establish a facility in Maryland that results in the creation of new jobs. Businesses must be primarily engaged in a qualifying business activity. The new jobs must be full-time, permanent, filled, located in Maryland, and pay at least 120% of the State minimum wage. A business must notify Commerce of its intent to seek certification before hiring employees. A final application can be submitted to Commerce after a minimum number of jobs have been created and the jobs have been filled for at least 12 months.

An eligible business must create within a 24-month period at least 60 jobs. The job creation threshold is lowered to (1) 25 if the new jobs are created within a State priority funding area and (2) 10 if the jobs are created within a county with (a) an annual average employment of less than 75,000 or (b) a median household income that is less than two-thirds of the statewide median household income. Baltimore City and Allegany, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Garrett, Kent, Queen Anne's,

St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties currently meet one of these requirements.

The credit is equal to \$3,000 for each new job. An enhanced credit of \$5,000 can be claimed if the jobs are created within a revitalization area. A revitalization area includes (1) State enterprise zones; (2) federal empowerment zones; and (3) sustainable communities as designated by the Department of Housing and Community Development. Commerce can issue in each year a maximum of \$1.0 million in tax credits to a single taxpayer and a total of \$4.0 million in tax credits on a first-come, first-served basis.

One Maryland

Credits may be claimed for eligible project costs incurred to establish, relocate, or expand a business facility in a Tier I Maryland county. For a business that creates at least 50 qualified employees, the maximum credit is \$5.0 million. Baltimore City and Allegany, Caroline, Dorchester, Garrett, Kent, Somerset, Washington, Wicomico, and Worcester counties are currently designated as Tier 1 counties.

Enterprise Zone Income Tax Credit

The Enterprise Zone Income Tax Credit Program, established in 1982, is intended to encourage economic growth within economically distressed areas of the State and to increase employment of the chronically unemployed. Businesses located within a Maryland enterprise zone are eligible for local property tax credits and State income tax credits. Real property tax credits are 10-year credits against local real property taxes on a portion of the qualifying real property improvements in the enterprise zone. The income tax credit is based on wages paid to newly hired employees and can be taken over a one- to three-year period. The credits are based on the wages paid during the taxable year to each qualified employee and vary in value and length of time depending on whether the employee is certified from the Department of Labor, Licensing, and Regulation as being economically disadvantaged and if the business is located in a focus area.

Biotechnology Investment Incentive

Chapter 99 of 2005 established the biotechnology investment incentive tax credit program, which offers a refundable income tax credit for investments in qualified biotechnology companies. An investor who invests at least \$25,000 in a qualified Maryland biotechnology company can claim a credit equal to 50% of the investment, not to exceed \$250,000. If the qualified biotechnology company is located in Allegany, Dorchester, Garrett, or Somerset counties, the value of the credit for investments made in these companies is equal to 75% of the investment, not to exceed \$500,000.

Commerce administers the tax credit application and may not certify investments in a single biotechnology company that total more than 15% of the total appropriations to the reserve fund for that fiscal year. The total amount awarded in each year is generally limited to the amount appropriated to the program.

Cybersecurity Investment Incentive

Chapter 390 of 2013 established a refundable tax credit for investments in qualified cybersecurity companies. Commerce administers the tax credit application, approval, and certification process. The Governor is required to appropriate at least \$2 million to the reserve fund in each fiscal year. The total amount awarded in each year is generally limited to the amount appropriated to the program.

A qualified investor can claim a credit equal to 33% of a qualified investment, not to exceed \$250,000. Chapter 504 of 2016 increased the value of the tax credit if the qualified cybersecurity company in which an investment is made is located in Allegany, Dorchester, Garrett, or Somerset counties. The value of the credit for investments made in companies in these counties is equal to 50% of the investment, not to exceed \$500,000.

More Jobs for Marylanders

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. Commerce may not certify a business as eligible for the program after May 31, 2020.

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.

Baltimore City and Allegany, Baltimore, Caroline, Cecil, Dorchester, Garrett, Kent, Prince George's, Somerset, Washington, Wicomico, and Worcester counties are currently designated as Tier 1 counties.

Heritage Structure Rehabilitation

The Heritage Structure Rehabilitation Tax Credit Program provides tax credits for commercial, small commercial, and owner-occupied residential property rehabilitations. The value of the refundable credit is based on the type of rehabilitation undertaken and up to a percentage of qualified rehabilitation expenditures, as follows:

- 20% for the rehabilitation of a single-family, owner-occupied residence or a small commercial project; and
- 20% for the commercial rehabilitation of a certified historic structure or 25% if certain energy efficiency standards are met.

The value of the tax credit may not exceed (1) for a commercial rehabilitation (any building that is not a single-family, owner-occupied residence or small commercial project), \$3 million or the maximum amount specified under the initial credit certificate or (2) for all other rehabilitations, \$50,000. Applying for the credit is a three-part process that is administered by the Maryland Historical Trust (MHT) within the Maryland Department of Planning.

Commercial Program

The commercial program includes the rehabilitation of certified historic structures and is the largest component of the program. The commercial credit is a budgeted tax credit and the Governor must appropriate funds to the program annually through fiscal 2022. The Governor is not required to appropriate an amount to the reserve fund in each year. MHT awards credits through a competitive process, with the amount awarded each year generally limited to the amount appropriated to the program.

Small Commercial Project Program

Chapter 601 of 2014 established credit eligibility for certain small commercial projects. Applicants must apply to MHT in order to qualify and receive an initial credit certificate. MHT may award a maximum of \$4.0 million in credits between January 1, 2015, and June 30, 2022.

Regional Institution Strategic Enterprise Zone Program

Chapters 530 and 531 of 2014 established the RISE Zone Program. The program aims to promote economic and community development within communities anchored around a qualified institution. Qualified institutions include institutions of higher education (public and private four-year institutions and community colleges), nonprofit organizations affiliated with federal agencies, and regional higher education centers.

Businesses within a zone can qualify for an employment tax credit and a property tax credit for certain capital investments made within the zone. Qualified businesses may receive a five-year tax credit against local real property taxes imposed on the eligible assessment of qualified property owned by a business. A local government must grant the credit based on a specified percentage of assessment increases resulting from the value of real property improvements, which is calculated by the State Department of Assessments and Taxation.

A business receives an enhanced credit equal to 80% of the eligible assessment for the five-year period if the qualified property is within an enterprise zone and 100% of the eligible assessment if located within a focus area within the enterprise zone. A qualified business may also claim enterprise zone income tax credits.

Background: The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in distressed communities. Under the Act, states may nominate up to 25% of specified low-income census tracts for designation by the U.S. Treasury as Opportunity Zones. Maryland designated zones in 2018. The Administration has also established the [Opportunity Zone Leadership Task Force](#) by executive order to provide guidance and coordinate efforts related to Opportunity Zone investment.

The program offers three federal tax incentives related to capital gains: (1) a temporary tax deferral for capital gains reinvested in an Opportunity Fund; (2) a step up in basis for capital gains reinvested in an Opportunity Fund, which excludes up to 15% of the original capital gain from taxation; and (3) a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in an Opportunity Fund, if the investment is held for at least 10 years. More information on the tax incentives can be found on the Economic Innovation Group's [website](#).

Appendix – Federal Opportunity Zones shows the current federal opportunity zones in Maryland.

State Revenues: The bill provides enhanced tax credits if an entity meets the bill's requirements and is located within a QOZ. The entity must also meet the program requirements for each tax credit program, including any geographic restrictions. As a result, general fund revenues may decrease by \$400,000 annually beginning in fiscal 2020 as discussed below.

Applicable tax credits awarded under the job creation, biotechnology investment incentive, cybersecurity investment incentive, heritage structure rehabilitation, and More Jobs for Marylanders programs are subject to an annual appropriation or maximum limit. Providing enhanced tax credits will not materially impact State finances.

Enterprise zone income tax credits and One Maryland tax credits are not subject to an annual limitation. Of the 149 census tracts that have been designated as a federal opportunity zone, 72 are within a Tier 1 county under the One Maryland Program and 26 are partially or totally within an enterprise zone program. Based on the overlap between these programs, the enhancements provided under the bill, and the recent amount of credits awarded under current law, State revenues may decrease by an estimated \$400,000 annually beginning in fiscal 2020. Enterprise zone income tax credits may also be claimed in a RISE zone; however, as of August 2018 no income tax credits have been claimed.

State Expenditures: Commerce requires one program administrator to process and approve the tax credit applications each year. Therefore, general fund expenditures increase by \$109,900 in fiscal 2020. This estimate reflects the cost of hiring the administrator to certify tax credits and perform related tasks beginning July 1, 2019. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$104,390
Other Operating Expenses	<u>5,515</u>
Total FY 2020 Expenditures	\$109,905

Future year expenditures reflect full salary with annual increases and employee turnover as well as ongoing operating expenses.

Local Revenues: Local highway user revenues decrease beginning in fiscal 2020 as a result of any credits claimed against the corporate income tax. Based on the estimated amount of increased tax credits, the reduction is not expected to be significant. Local property tax revenues may decrease due to enhanced RISE zone property tax credits. As of August 2018, no businesses have qualified for the program’s property tax credit.

Small Business Effect: Small businesses that meet the bill’s requirements and receive enhanced tax credits will benefit. As discussed above, providing enhanced tax credits under the job creation, commercial heritage structure, biotechnology investment incentive, cybersecurity investment incentive, and More Jobs for Marylanders tax credit will not increase the total amount of credits that are awarded in each year. Accordingly, the bill will result in a reallocation of tax credits from other areas of the State to QOZs. Small businesses located in other parts of the State that may no longer receive tax credit benefits due to this reallocation will be negatively impacted by the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 581 (Senator Ferguson, *et al.*) - Budget and Taxation.

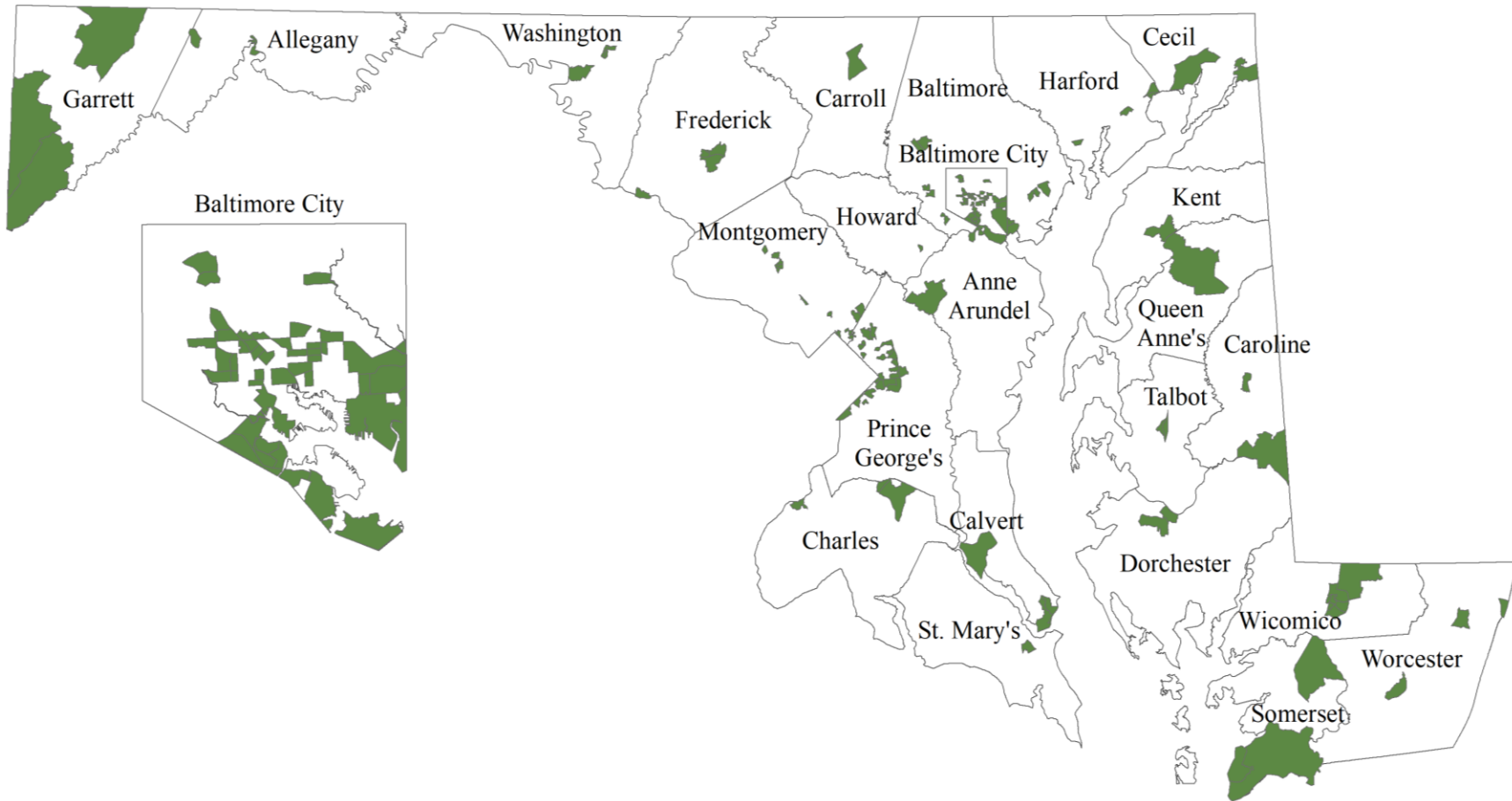
Information Source(s): Department of Commerce; Comptroller's Office; Maryland Department of Planning; Department of Legislative Services

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Analysis by: Robert J. Rehrmann

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Federal Opportunity Zones



Source: Department of Information Technology (MD iMap)