HB 1202

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1202 (Delegate Lehman, *et al.*)
Ways and Means

State Income and Property Tax Credits - Privately Operated Mass Transportation Project

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This bill creates a tax credit against the State income tax for a qualified business that is impacted by the construction of a privately operated mass transportation project. The refundable income tax credit is equal to the amount of business income lost during the taxable year as a result of the construction. The State must also grant a property tax credit against the State property tax imposed on real property that is located in an impacted area and owned by a qualified business. A privately operated mass transportation project includes a high-speed superconducting magnetic levitation system. **The bill takes effect June 1, 2019, and is applicable for tax year 2019 and beyond for the income tax credit and for fiscal 2020 and beyond for the property tax credit.**

Fiscal Summary

State Effect: Potential significant decrease in general and special fund revenues. General fund and Transportation Trust Fund (TTF) expenditures increase for the Comptroller and the Maryland Department of Transportation (MDOT) to implement the bill; however, this may be partially offset from TTF expenditures decreasing based on taxpayers claiming the income tax credit against the corporate income tax.

Local Effect: Local highway user revenues will decrease due to income tax credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Small businesses that experience business losses attributable to a construction project benefit from receiving an income tax credit and, if they own real property in the impacted area, a State property tax credit.

Analysis

Bill Summary: MDOT must certify qualified businesses and determine the date on which the certification will expire. A qualified business is a business certified by MDOT as being impacted by the construction of a privately operated mass transportation project. MDOT, in consultation with the Comptroller, must determine the amount of business income eligible for the credit. The bill specifies the application and certification processes for each credit. MDOT must adopt regulations to implement the bill.

Current Law: No similar State income or property tax credit exists. However, business losses can generally offset other types of income on federal and State income tax returns. A net operating loss (NOL) occurs when a taxpayer's business deductions exceeds income. Myriad special treatments occur; however, prior to the federal Tax Cuts and Jobs Act of 2017 (TCJA), those losses could generally be carried-back for two years and carried-forward for 20 years. When carried back, the NOL results in an amended tax return and a refund. When carried forward, the NOL serves to reduce or eliminate taxable income, and therefore tax, in future years.

Under the TCJA, after tax year 2017, excess business losses above specified limitations are no longer allowed in a current taxable year, except in the case of corporations. However, these excess business losses will be allowed to be carried forward and treated as part of the taxpayer's NOL carryforward. The TCJA eliminates the carry-back provision and limits the deduction to 80% of taxable income therefore reducing a taxpayer's ability to fully reduce income in future years. For losses incurred after tax year 2017, the carry-forward provision is allowed indefinitely.

Maryland has effectively decoupled from some of the special NOL provisions but generally permits the federal NOL deduction.

Property Taxes

The State property tax rate is $0.112 per $100 of an assessment. All State property tax revenues are credited to a special fund, the Annuity Bond Fund, dedicated exclusively to paying the debt service on State general obligation bonds. Local governments generally have the authority to set their own property tax rates.

Background:

Purple Line

The Purple Line is a 16.2-mile light rail line that will extend from Bethesda, in Montgomery County, to New Carrollton, in Prince George's County. The Purple Line will operate largely at street level in a combination of dedicated and semi-exclusive right-of-way, and also includes segments on elevated structures and in tunnels. The alignment for the Purple Line will provide direct connections to the Washington Metropolitan Area Transit Authority at Bethesda, Silver Spring, College Park, and New Carrollton. The project will also connect to all three Maryland Area Regional Commuter rail lines, Amtrak, and local bus routes. The project includes 21 stations, two storage and maintenance facilities, and 25 light rail vehicles. The Purple Line Project is currently in the construction phase, with revenue operations scheduled for December 31, 2022. The estimated project cost is $2.4 billion. The State has solicited a single private partner (concessionaire) who will be responsible for designing, constructing, operating, and maintaining the project, and the private partner will also help finance a portion of construction.

The National Center for Smart Growth (NCSG) notes that tax-exempt institutional land is a dominant feature of land use in the Purple Line corridor. NCSG notes that single-family residential is the dominant form of land use across the corridor while only 744 of acres are commercial land use out of 14,526 acres in the corridor.

Magnetic Levitation Trains – Generally

Unlike traditional steel wheel trains that travel along rails, magnetic levitation (Maglev) trains use superconducting magnets to levitate train cars. Magnets attached to the train interact with magnets along rails within a concrete guideway to propel the train. The U.S. Department of Energy (DOE) reports that a Maglev train can travel at speeds of up to 375 miles per hour with very little turbulence compared to steel wheel trains. DOE also notes that Maglev trains are safer than traditional trains; for example, traditional train derailments that result from cornering too quickly are nearly impossible. Several countries have implemented Maglev train systems, including Germany, Japan, and South Korea, and many others have explored the prospects of doing so.

History of Maglev in Maryland

The federal Transportation Equity Act for the 21st Century (TEA-21), which was signed into law in 1998, authorized federal funding to implement a Maglev system in the United States. Funding through TEA-21 lapsed in 2003 and, although the Act did not result in the implementation of a Maglev system, several states explored the costs and benefits of doing so. Maryland was particularly interested because a Maglev system could significantly reduce the travel time between Baltimore City and the District of Columbia.

MDOT began to devote funding to the development and evaluation of a Maglev system in fiscal 2001. At that time, the Federal Railroad Administration (FRA) and MDOT commenced the Environmental Impact Study (EIS) for the project, which is required by the National Environmental Policy Act.

The final EIS was never published, however, because State legislation enacted in 2003 and 2004 prohibited the funding of a Maglev project following the final report of the Task Force to Evaluate the Development and Construction of a Magnetic Levitation Transportation System. In its final report, which was issued in 2003, the task force noted that, among other challenges, a significant amount of funding would be required to implement a Maglev system in Maryland. As a result, during the 2003 session, the General Assembly prohibited spending any State funds to study, develop, or construct a Maglev system and required the enactment of legislation prior to any agreement to construct or operate such a system. During the 2004 session, these provisions were modified to prohibit any State or federal funding for any phase of a Maglev project after July 1, 2005. The Budget Reconciliation and Financing Act of 2011, however, repealed these prohibitions.

Current Status of Maglev in Maryland

The Baltimore-Washington Superconducting Magnetic Levitation (SCMAGLEV) Project, which has been proposed by a private company, is a proposed Maglev train system between Baltimore City and the District of Columbia, with an intermediate stop at the Baltimore/Washington International Thurgood Marshall Airport. In 2016, MDOT was awarded $27.8 million by FRA to conduct the required EIS, and that analysis is currently underway. The *Consolidated Transportation Program* for fiscal 2019 through 2024 estimates that the EIS will be completed in fiscal 2020. Additional information about the project can be found on the Baltimore-Washington SCMAGLEV Project website.

State Fiscal Effect:

Income Tax Credit

Tax credits can be claimed beginning in tax year 2019. State revenues will decrease as a result of income tax credits claimed by qualified businesses against the personal and corporate income tax. As a result, general fund, TTF, and Higher Education Investment Fund revenues will decrease by a potential significant amount. The amount of the State revenue loss depends on if a privately operated mass transportation project commences and the amount of the tax credit certified by MDOT in each year. Tax credits could be claimed as a result of construction of the Purple Line, a public-private partnership that will be privately operated and any future privately operated transportation project such as a Maglev train system between Baltimore City and the District of Columbia.

A portion of TTF revenues are used to provide capital transportation grants to local governments. To the extent that TTF revenues decrease as a result of taxpayers claiming the tax credit against the corporate income tax, TTF expenditures decrease by 13.5% of the TTF revenue decrease. TTF revenues also fund the State capital program; thus, a decrease in TTF revenues decreases expenditures for the State capital program.

Property Tax Credit

Special fund revenue for the Annuity Bond Fund will decrease as a result of establishing a State property tax credit. The revenue loss depends on the State property tax imposed on real property that is located in an impacted area and owned by a qualified business, which cannot be reliably estimated.

Debt service payments on the State's general obligation bonds are paid from the Annuity Bond Fund. Revenue sources for the fund include State property taxes, premium from bond sales, and repayments from certain State agencies, subdivisions, and private organizations. General funds may be appropriated directly to the Annuity Bond Fund to make up any differences between the debt service payments and funds available from property taxes and other sources. The fiscal 2020 State budget includes $1.3 billion for general obligation debt service costs, including $287.0 million in general funds, $1.0 billion in special funds from the Annuity Bond Fund, $6.9 million in transfer tax revenues, and $11.5 million in federal funds.

To offset the reduction in State property tax revenues, general fund expenditures could increase in an amount equal to the decrease in the Annuity Bond Fund revenues, or the State property tax rate would have to be increased to meet debt service payments. This assumes that the Annuity Bond Fund does not have an adequate fund balance to cover the reduction in State property tax revenues.

Administrative Expenses

The Comptroller's Office reports that it will incur a one-time expenditure increase of $35,000 in fiscal 2020 to add the income tax credit to the personal and corporate income tax credit forms. Additionally, the Comptroller's Office may incur significant additional costs to determine how much business loss is attributable to a construction project.

The State Department of Assessments and Taxation can likely implement the bill with existing resources since MDOT is responsible for certifying qualified businesses.

MDOT must provide qualified businesses with an application to substantiate the business income lost, provide certification to each qualified business, and coordinate with the Comptroller to determine the amount of business income eligible for credit. Thus, special fund expenditures increase by at least $404,800 in the year in which businesses are first impacted by a construction project. This estimate reflects the cost of hiring one contractual manager, two contractual administrators, and four contractual administrative officers to review applications; review, evaluate, and certify businesses; and oversee the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	7
Salaries and Fringe Benefits	$366,222
Operating Expenses	38,605
MDOT Expenditures	**$404,827**
Comptroller's Expenditures	**35,000**
Total State Expenditures	**$439,827**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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