SB 583

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 583 (Senator Ferguson)
Budget and Taxation

Income Tax - Affordable Housing Credit

This bill creates a tax credit against the State income tax for the owner of a low-income housing project that is a qualified development. The Secretary of Housing and Community Development may approve up to $8.0 million in aggregate tax credit certificate applications annually in fiscal 2020 through 2023. If less than the maximum credits are provided in any fiscal year, the excess amount may be carried forward and issued under tax credit certificates through fiscal 2023. The Secretary may not issue a tax credit certificate in an amount that would result in a qualified development receiving a percentage of the available credits that is greater than the percentage of specified available federal housing credits the qualified property is eligible for. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General and special fund revenues decrease by $8.0 million annually in FY 2021 through 2024. Special fund expenditures decrease by $78,800 annually for FY 2021 through 2024. General fund expenditures increase by $59,600 in FY 2020 for the Department of Housing and Community Development (DHCD) and further increase in FY 2021 for the Comptroller's Office. DHCD has ongoing personnel costs through FY 2023.

($ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	$0	($7.18)	($7.18)	($7.18)	($7.18)
SF Revenue	$0	($0.82)	($0.82)	($0.82)	($0.82)
GF Expenditure	$0.06	$0.09	$0.05	$0.05	$0
SF Expenditure	$0	($0.08)	($0.08)	($0.08)	($0.08)
Net Effect	($0.06)	($8.01)	($7.97)	($7.98)	($7.92)

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

Local Effect: Local highway user revenues decrease by approximately $78,800 annually in FY 2021 through 2024 as a result of credits claimed against the corporate income tax.

Small Business Effect: Minimal.

Analysis

Bill Summary: A qualified development is a low-income housing project, as defined by federal law, which is financed with tax-exempt bonds and located in the State. It must be subject to a recorded restrictive covenant requiring the property to be maintained and operated as low-income housing and be in compliance with Title VIII of the federal Civil Rights Act of 1968. An owner is a corporation or a member of a pass-through entity (PTE) that has an ownership interest in a qualified development.

The credit may be claimed in tax years 2020 through 2023 and it may not exceed the owner's State income tax for that taxable year. The taxpayer can carry forward any unused credit for up to nine succeeding tax years. Tax credit applications are approved on a first-come, first-served basis. The bill provides for the circumstances under which the credit may be rescinded or recaptured.

DHCD is required to approve tax credit applications and adopt regulations, in consultation with the Comptroller, to implement the credit. Additionally, DHCD must report to the Governor and the General Assembly each year on the usage and impact of the credit. The Comptroller must adopt regulations to specify procedures for a PTE member to claim the credit.

Current Law: 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.

Chapters 842 and 843 of 2018 altered the heritage structure rehabilitation commercial tax credit program by providing an additional 5% credit if the rehabilitation qualifies as affordable housing, which means a project or undertaking that has received an allocation of federal low-income housing tax credits (LIHTCs) by DHCD. 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 within the Maryland Department of Planning.

Background: LIHTC was created by the federal Tax Reform Act of 1986 to provide an incentive for the development and rehabilitation of affordable rental housing. These nonrefundable federal housing tax credits are awarded to developers of qualified rental projects via a competitive application process administered by state housing finance authorities. LIHTCs are first allocated to each state according to its population. In 2019, states received an LIHTC allocation of $2.75625 per person, with a minimum small population state allocation of $3,166,875. State housing agencies allocate credits to developers of rental housing according to federally required, but state created, Qualified Allocation Plans (QAPs). Federal law requires that the QAP give priority to projects that serve the lowest income households and that remain affordable for the longest period of time.

In order to be eligible for an LIHTC allocation, properties are required to meet certain tests that restrict both the amount of rent that is assessed to tenants and the income of eligible tenants. Two types of LIHTCs are available depending on the nature of the construction project. The 9% credit is generally reserved for new construction, while the 4% credit is typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds. Each year, for 10 years, a tax credit equal to roughly 4% or 9% of a project's qualified basis (cost of construction) is claimed.

Developers typically sell their tax credits to outside investors in exchange for equity in the project. Selling the tax credits reduces the debt developers would otherwise have to incur and the equity they would otherwise have to contribute. The LIHTC is estimated to cost the federal government an average of approximately $9.9 billion annually.

DHCD received 44 applications requesting $45.6 million in Rental Housing Funds and $61.9 million of LIHTC in the Spring 2018 Competitive Round. Three applications include requests for a total of $2.875 million in Partnership Rental Housing Program Funds. The 44 applications proposed to create or rehabilitate 2,513 family, 184 senior, and 421 special needs units in 11 counties and Baltimore City.

State Revenues: DHCD may approve a maximum of $8.0 million in credits annually in fiscal 2020 through 2023, but the tax credits may only be claimed in tax years 2020 through 2023. As a result, general fund revenues decrease by $7.2 million, Transportation Trust Fund (TTF) revenues decrease by $583,800, and Higher Education Investment Fund revenues decrease by $240,000 in fiscal 2021 through 2024. **Exhibit 1** shows the estimated State fiscal impacts resulting from the tax credit. It is assumed that DHCD awards the maximum amount of credits each year. The estimate also assumes that 50% of all credits are claimed against the personal income tax, with the remaining amount claimed against the corporate income tax.

Exhibit 1
Fiscal Impact
Fiscal 2021-2024

Revenues	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
General Fund	($7,176,200)	($7,176,200)	($7,176,200)	($7,176,200)
HEIF	(240,000)	(240,000)	(240,000)	(240,000)
TTF	(583,800)	(583,800)	(583,800)	(583,800)
Total Revenues	**($8,000,000)**	**($8,000,000)**	**($8,000,000)**	**($8,000,000)**
TTF Expenditures	**($78,800)**	**($78,800)**	**($78,800)**	**($78,800)**

HEIF: Higher Education Investment Fund
TTF: Transportation Trust Fund

State Expenditures: A portion of TTF revenues are used to provide capital transportation grants to local governments. Thus, any decrease in TTF revenues from corporate income tax revenues results in a 13.5% decrease in TTF expenditures to local governments. Accordingly, TTF expenditures decrease by $78,800 annually in fiscal 2021 through 2024 as shown in Exhibit 1. TTF revenues also fund the State capital program; thus, a decrease in TTF revenues decreases expenditures for the State capital program.

Administrative Expenses

The Comptroller's Office reports that it will incur a one-time expenditure increase of $34,000 in fiscal 2021 to add the credit to the personal and corporate income tax credit forms. This amount includes data processing changes to the income tax return processing and imaging systems and systems testing.

General fund expenditures at DHCD increase by $59,600 in fiscal 2020, which accounts for the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring a contractual administrator to oversee the program and to assist with processing applications. The estimate includes a salary, fringe benefits, grants, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Contractual Salary and Fringe Benefits	$54,085
Operating Expenses	5,515
Total FY 2020 State Expenditures	**$59,600**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses through fiscal 2023.

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

Local Revenues: Local governments receive a portion of corporate income tax revenues as local highway user revenues through capital transportation grants. Under this bill, local highway user revenues decrease by approximately $78,800 annually in fiscal 2021 through 2024 as a result of credits claimed against the corporate income tax.

Additional Information

Prior Introductions: None.

Cross File: HB 1290 (Delegates D. Barnes and Barve) - Ways and Means.

Information Source(s): Comptroller's Office; Department of Housing and Community Development; Congressional Research Service; Department of Legislative Services

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Analysis by: Heather N. Ruby

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