Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 398 (Delegate Feldmark)
Ways and Means

Economic Development Tax Credit Programs - Qualified Position and Qualified Employee - Definitions

This bill alters the requirements that must be met for a business to claim the employment income tax credits under the One Maryland, More Jobs for Marylanders, and Enterprise Zone programs. **The bill takes effect July 1, 2023, and applies to tax year 2023 and beyond.**

Fiscal Summary

State Effect: State revenues may increase, likely beginning in FY 2025, due to the altered eligibility requirements for the tax credits. General fund expenditures increase by $188,600 in FY 2024 and by $261,300 in FY 2028 due to implementation costs at the Department of Commerce. General fund expenditures may decrease, likely beginning in FY 2026, due to a reduction in More Jobs for Marylanders income tax credit appropriations.

Local Effect: Local highway user revenues may increase beginning in FY 2025 due to a reduction in tax credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The One Maryland, More Jobs for Marylanders, and Enterprise Zone programs allow a business that meets program requirements to claim an income tax credit with respect to each qualified position or employee reported by the business. Beginning on

October 1, 2023, the bill requires that a qualified position (1) provide career advancement training; (2) afford the employee the right to collectively bargain for wages and benefits; (3) provide paid leave; (4) is considered covered employment for purposes of unemployment insurance benefits; (5) entitles the employee to workers' compensation benefits; (6) offer employer-provided health insurance benefits with monthly premiums that do not exceed 8.5% of the employee's net monthly earnings; and (7) offer retirement benefits.

For the More Jobs for Marylanders program, the bill requires that a qualified position reported by a manufacturer must pay at least 150% of the State minimum wage. The minimum pay requirements under current law that apply to qualified positions within federal opportunity zones are not altered.

For the One Maryland and Enterprise Zone programs, a qualified position must pay at least:

- for an employee classification for which there is a prevailing wage rate, the prevailing wage; or
- for any other employee classification, 150% of the State minimum wage.

Current Law:

One Maryland Tax Credit

Chapter 303 of 1999 established the One Maryland economic development tax credit program to assist certain businesses that establish or expand a facility located within economically distressed counties (Tier I county). To qualify, a business must be primarily engaged in a qualifying activity or operate either a central administrative office or a company headquarters (other than the headquarters of a professional sports team). The eligible project generally must be located in a priority funding area. In Allegany, Garrett, Somerset, and Wicomico counties, a project may also be located within a federal opportunity zone. In addition, the project must create at least 10 jobs and result in at least $500,000 of capital expenditures. The jobs must be filled for at least 12 months, be full-time, and pay 120% of the State minimum wage.

More Jobs for Marylanders Program

Chapter 149 of 2017 established the More Jobs for Marylanders program, which after several modifications provides a refundable State income tax credit to certain businesses that create and maintain a minimum number of qualified jobs. For businesses certified beginning June 1, 2022, the credit is equal to 4.75% of the wages paid to each qualified position. Credits are available for manufacturing businesses, or other businesses if they are located in opportunity zones. Credits may be claimed for 5 or 10 years, depending on the location of the business. Commerce may issue up to $5.0 million in credit certificates in each of fiscal 2023 and 2024 and may not issue new tax credit certificates after May 31, 2024.

A business within a Tier I Area must create at least 10 qualified positions, and a business within a Tier II Area must create at least 20 qualified positions – additional requirements apply to both areas, including for required wages. Manufacturers must pay 150% of the minimum wage and other eligible businesses must pay at least $50,000 per year.

Enterprise Zone Income Tax Credit

The Enterprise Zone tax program is intended to encourage economic growth within economically distressed areas of the State and to increase employment of the chronically unemployed. Businesses located within an enterprise zone are eligible for local property tax credits and State income tax credits.

The income tax credit is 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 by the Maryland Department of Labor as being economically disadvantaged and if the business is located in a focus area. There are enhanced income tax credits available for businesses that are also located in opportunity zones.

To qualify for the credit, a business must hire at least one employee who (1) is hired after the business was located in the enterprise zone or after the enterprise zone was designated; (2) is employed by the business for at least 35 hours per week for 6 months (or 12 months in a focus area) before or during the taxable year in which the credit is taken; (3) spends at least 50% of the workday either in the enterprise zone/focus area or on an activity related to the enterprise zone/focus area; (4) is hired to fill a new position (or is a new employee or rehired after at least one year in a focus area); and (5) earns at least 120% of the State minimum wage.

Prevailing Wage Law

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate, subject to various specified conditions and exclusions. See the **Appendix – Maryland's Prevailing Wage Law** for more information.

State Revenues: The bill alters the requirements of the tax credit programs beginning with tax year 2023. General fund, Transportation Trust Fund, and Higher Education Investment Fund revenues may increase beginning in fiscal 2025 to the extent the new requirements decrease One Maryland and enterprise zone income tax credit claims. General fund expenditures may decrease beginning in fiscal 2026 due to a reduction in income tax credit appropriations for the More Jobs for Marylanders program.

State Expenditures: Commerce advises that existing staff already support a wide variety of financial incentive programs by accounting and managing all program activity of active client accounts, and ensuring that all compliance, legal, and financial obligations of program recipients are fulfilled. To support the administration of the features in the bill will add to these obligations and require additional staff. More specifically, Commerce advises that it requires two tax compliance officers to verify that tax credit applications meet the requirements specified by the bill. Therefore, general fund expenditures increase by $188,630 in fiscal 2024, which reflects a 90-day startup delay. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	$173,812
Operating Expenses	14,818
Total FY 2024 State Expenditures	**$188,630**

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

The Maryland Department of Labor and the Comptroller's Office can handle the bill's requirements with existing budgeted resources.

Small Business Effect: Small businesses must comply with the new compensation and employment requirements to qualify for income tax credits under the One Maryland, More Jobs for Marylanders, and Enterprise Zone programs. Notably, for the One Maryland and Enterprise Zone programs, the minimum hourly wage is increased from 120% of the State minimum wage to either the prevailing wage or 150% of the State minimum wage. Currently, under the More Jobs for Marylanders program, manufacturers must pay 150% of the minimum wage and other eligible businesses must pay at least $50,000 per year. Those businesses must still comply with the bill's other compensation and employment requirements, however.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1096 of 2022.

Designated Cross File: None.

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

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km/jrb

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Appendix – Maryland's Prevailing Wage Law

Contractors and subcontractors working on eligible public works projects in Maryland, including mechanical service contractors that are part of public works projects, must pay their employees the prevailing wage rate. "Public works" are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money.

Eligible public works projects are:

- those carried out by the State;
- any public work for which at least 25% of the money used for construction is State money; and
- specified projects in tax increment financing districts if the local governing body approves of the application of prevailing wages.

Any public works contract valued at less than $250,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government; (2) specified construction projects carried out by public service companies under order of the Public Service Commission; or (3) local House or Senate initiatives that receive State funds in the capital budget.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category based on annual surveys of contractors and subcontractors working on both public works and private construction projects.

The commissioner has the authority to enforce contractors' compliance with the prevailing wage law, including issuing a stop work order if the commissioner makes an initial determination that a contractor or subcontractor may have violated the prevailing wage requirements. Contractors found to have violated the prevailing wage law must pay restitution to the employees and liquidated damages to the public body in the amount of $20 a day for each laborer who is paid less than the prevailing wage or $250 per laborer per day if the employer knew or reasonably should have known of the obligation to pay the prevailing wage. If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may sue the employer to recover the difference between the prevailing wage and paid wage. The court may order the employer to pay double or triple damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard for the law.

The Governor must include at least $385,000 in the budget each year for the Prevailing Wage Unit within the Maryland Department of Labor (MDL).

The University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland, and the Maryland Stadium Authority (MSA) are all exempt from the prevailing wage law. However, USM, MSU, and MSA all voluntarily comply with prevailing wage requirements for contracts that exceed the $250,000 threshold.

History of the Prevailing Wage

The federal Davis-Bacon Act, originally enacted in 1931, requires contractors working on federal public works contracts valued at more than $2,000 to pay their employees the prevailing local wage for their labor class, as determined by the U.S. Secretary of Labor. The general intent of the law, and similar state and local laws, is to stabilize local wage rates by preventing unfair bidding practices and wage competition. Thirty-two states and the District of Columbia currently have prevailing wage laws; since 1979, nine states have repealed their prevailing wage laws.

Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969, the statute was amended to include State public works contracts of $500,000 or more. There have been periodic changes to the law and the definition of "prevailing wage." In 1983, the law was broadened to include public works projects in which the State funds 50% or more of the total project costs and 75% or more in the case of public schools. Chapter 208 of 2000 reduced the prevailing wage threshold for public schools from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects. Chapters 281 and 282 of 2014 further lowered the State funding threshold for school construction projects to 25% of total construction costs, thereby requiring the vast majority of public school construction projects in the State to pay the prevailing wage, subject to the $500,000 contract value threshold. Chapters 57 and 58 of 2021 lowered the State funding threshold for all public works projects (including school construction) to 25% of total construction costs and lowered the contract value threshold for payment of prevailing wages to $250,000; however, legislative bond initiatives that receive State funds in the capital budget are exempt from the requirement to pay prevailing wages.

The number of prevailing wage projects rose dramatically following the Great Recession and has remained high each year since. MDL advises that, during fiscal 2022, its prevailing wage unit monitored 921 projects, down slightly from 941 projects in fiscal 2021, but significantly higher than 496 in fiscal 2014. To accommodate the increase in projects, the number of prevailing wage investigators increased in fiscal 2016 from three to six; as of January 2023, there are five investigators in the unit.

Six Maryland jurisdictions – Allegany, Baltimore, Charles, Montgomery, and Prince George's counties and Baltimore City – have local prevailing wage laws requiring public works projects in the jurisdiction to pay prevailing wages.

Research on the Effects of Prevailing Wage on Contract Costs

The Department of Legislative Services (DLS) has reviewed research on the effect of prevailing wage laws on the cost of public works contracts and has found inconsistent and/or unreliable results. The primary challenge confronted by all prevailing wage researchers is identifying an appropriate "control group" consisting of projects of similar type, timing, and location that do not pay the prevailing wage. In most jurisdictions that require a prevailing wage, all projects of a specified type and size are subject to it, so there is no natural control group. Some researchers have compared project costs in states or localities before and after they adopted prevailing wage requirements, but their findings are clouded by the difference in time, during which construction costs changed and other factors were not consistent. Another deficiency in the research is that it almost always relies on project bid prices (*i.e.*, the anticipated cost prior to the beginning of construction) rather than actual final costs. As most construction projects experience change orders or cost overruns affecting their cost, reliance on bid prices negatively affects the validity of the findings. Therefore, research findings related to the effect of the prevailing wage on project costs are inconsistent and often inconclusive. A similar review of research conducted by MDL (at the time, the Department of Labor, Licensing, and Regulation) for the Task Force to Study the Applicability of the Maryland Prevailing Wage Law also concluded that "data limitations create difficulty for researchers on both sides of the issue."

Local school systems occasionally solicit side-by-side bids with and without prevailing wages to help them decide whether they want to accept the full State match (and, thus, be subject to the prevailing wage) or a lesser State match without being subject to the prevailing wage. Data provided to the Public School Construction Program by Anne Arundel, Carroll, Frederick, Howard, and Washington counties, from 2012 through 2015, shows that the cost differential between bids with and without prevailing wages for 266 individual bids submitted for 26 different school construction and renovation projects averaged 11.7%, with a range from 0% to 49%. As with other research data, these represent bid prices, not actual construction costs. An independent analysis of the Maryland side-by-side bid data concluded that factors other than prevailing wages, including bid timing and the level of competition for the bids, accounted for most of the differences between the prevailing wage and nonprevailing wage bids.

One area of the research in which there is a general consensus, and which is supported by the U.S. Bureau of Labor Statistics, is that labor costs represent between 20% and 30% of construction costs (with materials and site costs making up most of the rest). Therefore, a 10% gap between prevailing wages and market wages could theoretically increase total contract costs by about 2.5%, and a 20% gap in wages could increase total contract costs by about 6%. Given the empirical evidence that prevailing wages tend to be higher than nonprevailing wages and that labor costs are a significant portion of overall project costs, DLS believes that it is reasonable to expect that the prevailing wage requirement adds between 2% and 5% to the cost of a public works project. Given the inconsistency and inconclusiveness of the empirical research, however, actual effects may vary by project, with some projects exhibiting higher cost differences and others experiencing negligible differences.