Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1526 (Delegate Clippinger, *et al.*)
Economic Matters and Appropriations

Maryland Protecting Opportunities and Regional Trade (PORT) Act

This emergency bill requires the Maryland Department of Labor (MDL) and the Department of Commerce to establish temporary relief programs to provide assistance to specified individuals and businesses affected by the closure of the Port of Baltimore. Subject to review and comment by the Legislative Policy Committee (LPC), the Governor may transfer by budget amendment any amounts necessary to fund the temporary relief programs from the Revenue Stabilization Account (Rainy Day Fund). Any funds distributed to individuals or businesses under the bill must be distributed on or before June 30, 2025. The bill establishes legislative intent that federal funds made available for any purpose for which a program is established under the bill be used to supplant State funds and reimburse the Rainy Day Fund, as specified.

Fiscal Summary

State Effect: MDL and Commerce special fund revenues and expenditures increase by a significant, indeterminate amount in FY 2024 and 2025 due to the transfer of funds from the State Reserve Fund. To the extent transfers authorized under the bill reduce the Rainy Day Fund balance below 7.5% of estimated general fund revenues, general fund expenditures increase by up to $50.0 million in FY 2026 for purposes of a required appropriation; Rainy Day Fund revenues increase correspondingly. State revenues are further affected to the extent program spending is recovered in accordance with the bill and/or generates increased tax revenues.

Local Effect: Local tax revenues may be positively affected, as discussed below. Local expenditures are not directly affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: For purposes of the bill, “closure of the port” means either a cessation in the operations of or the inability to access the Port of Baltimore due to the collapse of the Francis Scott Key Bridge on March 26, 2024.

Maryland Department of Labor – Individual Assistance

MDL must, as soon as practicable, establish a temporary relief program to provide assistance to individuals who (1) regularly performed paid work at the Port of Baltimore; (2) are unable to work through no fault of their own due to the closure of the port; and (3) despite being able, available, and actively seeking work, do not qualify for unemployment insurance (UI) benefits under Title 8 of the Labor and Employment Article or any similar employer-provided benefit.

Department of Commerce

Assistance to Small Businesses, Trade Associations, and Specified Companies

Commerce must, as soon as practicable, establish a temporary relief program to provide assistance to small businesses, trade associations, or companies that contract with or are members of a trade association (1) the operations of which rely on access to or the operation of the port and are substantially hindered or halted entirely due to the closure of the port; (2) that, without the reopening of the port, are unable to retain their workforce at the same hours, rates of pay, and benefits in effect before the closure of the port; and (3) that are committed to continuing operations, to the fullest extent practicable, at the port once it reopens. A small business, trade association, or company that receives relief under the program must, to the fullest extent practicable, use the relief to maintain its workforce at the same hours, rates of pay, and benefits in effect before the closure of the port.

Assistance to Businesses with Diverted Operations

Commerce must, as soon as practicable, establish a temporary relief program to provide assistance to businesses (1) the operations of which primarily rely on the use of or access to the port, are substantially hindered or halted entirely due to the closure of the port, and are subsequently diverted to other regional ports and (2) that are committed to continuing operations, to the fullest extent practicable, at the port once it reopens.

Distribution of Funds, Repayment

In administering the temporary relief programs, MDL and Commerce must require an individual, business, trade association, or company that is compensated through indemnification or other similar means for the same purpose for which assistance is provided to repay any monetary assistance received under the applicable program within six months after the receipt of the nonprogram compensation. MDL and Commerce may make an assessment against an individual, business, trade association, or company to recapture any amounts owed.

Transfer of Funds from the Rainy Day Fund

After providing LPC at least seven days to review and comment, the Governor may transfer by budget amendment any amounts necessary to fund the temporary relief programs from the Rainy Day Fund to the expenditure accounts of MDL (for the temporary relief program for individuals), Commerce (for the temporary relief program for small businesses, trade associations, and specified companies), and the Economic Development Opportunities Program Account (Sunny Day Fund) (for the temporary relief program for businesses with diverted operations).

Use of Federal Funds

The bill expresses legislative intent that, if federal funds become available for any purpose for which a program is established under the bill, the federal funds may be used to (1) supplant, rather than supplement, any funds otherwise used for the programs established under the bill and (2) to the extent authorized by federal law, reimburse the Rainy Day Fund for any funds transferred in accordance with the bill.

Current Law:

Rainy Day Fund

The Rainy Day Fund (the common name for the Revenue Stabilization Account within the State Reserve Fund) was established for the purpose of retaining State revenues for future needs and reducing the need for future tax increases by moderating revenue growth. It is the goal of the State that 10% of estimated general fund revenues in each fiscal year be retained in the Rainy Day Fund.

In general, for each fiscal year, if the Rainy Day Fund’s balance is below 3.0% of the estimated general fund revenues for that fiscal year, the Governor must include in the State budget bill an appropriation to the fund equal to at least $100.0 million. If the fund’s balance is at least 3.0% but less than 7.5% of estimated general fund revenues for that fiscal year, the Governor must include an appropriation to the fund equal to the lesser of $50.0 million or whatever amount is required for the balance to exceed 7.5% of estimated general fund revenues for that fiscal year.

The Governor’s fiscal 2025 budget as introduced assumes a Rainy Day Fund balance of $2.3 billion (9.4% of estimated general fund revenues).

Sunny Day Fund

The Sunny Day Fund (the common name for the Economic Development Opportunities Program Account within the State Reserve Fund) was established for the purpose of maximizing extraordinary economic development opportunities (as defined by § 7-314 of the State Finance and Procurement Article) that are consistent with the State’s strategic plan for economic development and create or retain substantial employment. Commerce evaluates projects on a competitive basis and submits them to LPC for approval. After LPC approval, the Governor may transfer funds by budget amendment from the Sunny Day Fund to the expenditure account of the appropriate executive agency (generally Commerce). Any funds transferred from the Sunny Day Fund may be used only for extraordinary economic development opportunities that meet specified criteria and include performance requirements (including a performance requirement that utilizes a claw-back provision) and for specified administrative, legal, and actuarial expenses.

Upon submission to LPC of a proposed budget amendment to transfer funds from the Sunny Day Fund, the Governor must provide to LPC (1) a detailed description of the proposed use of the funds, the manner in which the proposed use meets the applicable criteria, the degree to which the proposed funds will advance statewide or local economic development strategies and objectives, and the degree to which available sources of federal, State, local, and private financial support have been sought and will be utilized; (2) the terms, conditions, and performance requirements of any grant or loan for which the funds are to be used; (3) a comprehensive economic analysis of the proposed use of the funds; (4) any other analysis or information requested by LPC; and (5) the date on which the executive agency expects to disburse the funds to the proposed recipient.

Small, Minority, and Women-Owned Businesses Account

Chapter 116 of 2021 expanded eligible uses of the Small, Minority, and Women-Owned Business Account (SMWOBA) to include grants to businesses in areas of the State that are declared to be federal disaster areas or that are subject to a federal or State declaration of emergency. In such circumstances, eligible fund managers may provide financial assistance in the form of a grant or by converting to a grant part or all of a previously provided loan. The amount of any grant or loan converted to a grant under the Act may not exceed $50,000 for a single business and may not exceed $10.0 million in aggregate in a fiscal year.

Commerce advises that the authorization established under Chapter 116 has been activated by the state of emergency declared by the Governor in response to the collapse of the

Francis Scott Key Bridge, and fund managers may issue grants in accordance with the authorization.

Unemployment Insurance

UI provides temporary, partial wage replacement benefits of up to $430 per week to eligible unemployed individuals. Subject to specified exceptions, to be eligible for UI benefits, an individual must be able to work, available for work, and actively seeking work. For a general overview of the State UI program, see the **Appendix – Unemployment Insurance**.

Work Sharing

The State's voluntary work sharing UI program provides an alternative to layoffs for employers facing periods of lowered economic activity. Under an approved work sharing plan, a participating employer must temporarily reduce the normal weekly work hours of employees within an affected unit by 10% to 60%; affected employees are eligible to receive partial UI benefits based on the percent reduction in normal weekly work hours to supplement lost wages.

Background:

Collapse of the Francis Scott Key Bridge

On March 26, 2024, the Francis Scott Key Bridge collapsed after being struck by a container vessel. The Governor has declared a state of emergency in response to the incident. Vessel traffic into and out of the Port of Baltimore has been indefinitely suspended. The multi-agency Key Bridge Response 2024 Unified Command led by the U.S. Coast Guard has begun efforts to clear the shipping channel. At this time, an estimated timeframe for resuming vessel operations at the Port of Baltimore is unavailable. To date, the Maryland Department of Transportation has received an initial $60.0 million in federal "quick release" Emergency Relief funds through the Federal Highway Administration's Emergency Relief program for eligible costs associated with debris removal, demolition, detours, emergency repairs, and design and reconstruction on Interstate 695 and the Francis Scott Key Bridge.

U.S. Small Business Administration Economic Injury Disaster Loan Declaration

The U.S. Small Business Administration has issued an Economic Injury Disaster Loan (EIDL) declaration for Maryland and specified surrounding areas in response to the Francis Scott Key Bridge collapse. Small businesses in the State and specified surrounding areas that are affected by the disaster may apply for federal low-interest EIDLs of up to

$2.0 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred.

Port of Baltimore

The Port of Baltimore is a vast industrial complex that encompasses 45 miles of shoreline and more than 3,000 waterfront acres. It includes 7 public terminals owned by the State, as well as 35 private terminals and marine facilities. In 2023, the Port of Baltimore ranked ninth among the nation's ports for tonnage and value of foreign cargo handled (52.3 million tons worth $80.8 billion) and ranked first in the nation for volume of autos and light trucks (over 847,000 vehicles), roll-on, roll-off heavy farm and construction machinery (1.3 million tons), and imported sugar and gypsum.

According to a March 2024 report on the economic impact of the Port of Baltimore, in 2023, cargo and cruise activity at the State-owned and private marine terminals generated approximately 20,000 direct jobs, 31,000 induced and indirect jobs, $5.3 billion in personal wage and salary income for Maryland residents, $3.9 billion in business revenue, and $647.1 million in State and local taxes.

State Fiscal Effect: As discussed above, the bill (1) requires MDL and Commerce to establish specified temporary relief programs for individuals and businesses affected by the closure of the Port of Baltimore and (2) subject to review and comment by LPC, authorizes the Governor to transfer by budget amendment any amounts necessary to pay for the temporary relief programs from the Rainy Day Fund. (Funds transferred from the Rainy Day Fund for purposes of the temporary relief program for businesses with diverted operations must be deposited in the Sunny Day Fund for subsequent transfer.) Any funds distributed under the bill must be distributed on or before June 30, 2025.

Special fund revenues and expenditures for MDL and Commerce increase correspondingly in fiscal 2024 and 2025 as funds are used to provide assistance to eligible individuals and businesses and to cover related administrative expenses. To the extent program funds are used to provide loans or are otherwise recovered or reimbursed in accordance with the bill, a portion of program spending is potentially recouped in future years.

However, the bill's precise effect on the Rainy Day Fund depends on a number of unknown factors, including (1) the scope and parameters of the programs established by MDL and Commerce in accordance with the bill; (2) the availability of federal funds for the same purposes; (3) the extent to which any such federal funds may be used to reimburse the Rainy Day Fund for funds transferred under the bill; (4) the availability of funds through indemnification or other means to those affected and any related repayment; and (5) the extent and duration of reduced operations at the Port of Baltimore. Thus, a reliable estimate is not feasible at this time. Nonetheless, the bill's potential effects on State finances and operations are analyzed further below. To the extent that transfers from the Rainy Day Fund authorized under the bill result in a Rainy Day Fund balance below 7.5% of estimated general fund revenues, general fund expenditures increase by up to $50.0 million in fiscal 2026 as required under § 7-311 of the State Finance and Procurement Article.

Department of Commerce

At this time, the number of business entities potentially eligible for assistance administered by Commerce under the bill is unknown. However, Commerce advises that the impact of the port closure on the business community is anticipated to be significant enough to necessitate the hiring of temporary contractual employees, as well as the procurement of an application database and additional DocuSign capacity for processing grant and/or loan documents. Related expenses have not been quantified at this time and are subject to the amount of funding made available to Commerce under the bill. Commerce administrative costs are potentially mitigated to the extent other State agencies are able to assist Commerce employees on a temporary basis – as was done to support Commerce operations during the implementation of COVID-19 emergency grant and loan programs.

The demand for temporary business relief under the bill is potentially mitigated to the extent that other federal, State, and private resources are available to support affected businesses and trade associations. As discussed above, eligible small businesses and nonprofit organizations in the State that are affected by the Key Bridge collapse may apply for federal EIDLs of up to $2.0 million by December 30, 2024, and the State may potentially qualify for other federal assistance. Additionally, SMWOBA fund managers have expanded authority to issue grants and convert loans to grants under the State emergency declaration.

Maryland Department of Labor

At this time, it is unclear how many individuals may be eligible for and seek assistance under the bill's provisions, and for what duration. It is assumed that the bill primarily affects self-employed individuals, who (unlike employees) are generally ineligible for UI benefits. A preliminary analysis by MDL suggests that fiscal 2024 and 2025 program expenditures, including administrative costs, may total an estimated $48.3 million, assuming a $700 biweekly benefit for as many as 10,000 individuals for 12 weeks.

However, actual expenditures under the bill may differ significantly from the above preliminary estimate based on the number of affected workers, the amount and duration of benefits provided under the bill, and the extent to which federal individual assistance is made available to the State in response to the Key Bridge incident. At this time, it is unclear whether the State may become eligible for federal Disaster Unemployment Assistance, which provides assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a presidentially declared major disaster and who are ineligible for regular UI benefits.

Rainy Day Fund

The projected fiscal 2025 fund balance for the Rainy Day Fund is at least $275.0 million above the 7.5% threshold that would trigger a maximum general fund appropriation of $50.0 million in fiscal 2026 to restore the fund balance to at least 7.5% of general fund revenues. This analysis does not project expenditures from the fund sufficient to drop the fund balance below that threshold. However, given the uncertainty of the circumstances underlying the analysis, it is possible that the fund balance drops below 7.5% of general fund revenues, requiring a general fund appropriation in fiscal 2026 to restore the fund balance to the appropriate level. Any such appropriation is not reflected in this analysis.

State Tax Revenues

State general and special fund tax revenues potentially increase to the extent that assistance provided to individuals and businesses under the bill sustains income and business activity that would have otherwise been lost in the absence of the bill. Any such effect cannot be reliably predicted at this time.

Local Revenues: Local tax revenues potentially increase to the extent that assistance provided to individuals and businesses under the bill sustains income and business activity that would have otherwise been lost in the absence of the bill. Any such effect cannot be reliably predicted at this time.

Small Business Effect: Small businesses affected by the port closure meaningfully benefit from financial assistance provided under the bill, which potentially allows these businesses to maintain their workforces and otherwise meet normal financial obligations during the port closure.

Additional Comments: The Department of Legislative Services has been advised by legal counsel that funds cannot be transferred from the Rainy Day Fund under the bill absent a corresponding provision in the State budget bill authorizing the Governor to process a budget amendment to transfer funds from the Rainy Day Fund in accordance with the bill. This fiscal and policy note assumes that such transfers, as envisioned by the bill, are authorized.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 1188 (Senators Ferguson and Salling) - Finance and Budget and Taxation.

Information Source(s): Department of Commerce; Maryland Department of Labor; Board of Public Works; Maryland State Treasurer's Office; Maryland Department of Transportation; Governor's Office; Comptroller's Office; Anne Arundel and Baltimore counties; Congressional Research Service; U.S. Small Business Administration; Department of Legislative Services

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Appendix – Unemployment Insurance

Program Overview

Unemployment Insurance (UI) provides temporary, partial wage replacement benefits of up to $430 per week to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for UI programs. Generally, funding for the program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Using federal tax revenues, the UI program is administered pursuant to state law by state employees. The Maryland Department of Labor's (MDL) Division of Unemployment Insurance administers the State's UI program.

Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Employer Contributions

Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse the Unemployment Insurance Trust Fund (UITF) for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claims history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

Exhibit 1 shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers and in other limited circumstances. State UI taxes and reimbursements are typically due quarterly; however, Chapter 39 of 2021 allowed employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorized the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a 2020 executive order, also prevented UI *claims* made during the COVID-19 pandemic from increasing an employer's taxes, although employers still paid broadly higher rates under Table F in 2021 and Table C in 2022 and 2023. With the UITF balance restored, the State is in Table A again in 2024.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

Tax Table	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages: Exceeds	Up to	Trust Fund Balance ($ in Millions): Exceeds	Up to	Then Next Year's Tax Rates Range from…: No Claims	Single Claim	Up to	Annual Tax Per Employee (Rate x $8,500): No Claims	Single Claim	Up to
A	5.00%	N/A	$1,074.6	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	967.2	$1,074.6	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	859.7	967.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	752.2	859.7	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	644.8	752.2	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	644.8	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2022 taxable wage base and are subject to modest changes each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly.

Table F was in effect in 2021 due to the COVID-19 pandemic; prior to that, Table A had been in effect since 2016. Table C was in effect in 2022 and 2023 pursuant to Chapter 73 of 2021, which also resulted in an $830 million infusion of federal funds into the trust fund in 2021. A preexisting State law requiring a federal solvency goal to be met prior to moving to a tax table with lower rates again applies beginning in 2024. The federal solvency goal, which is designed to ensure the State's ability to pay claims during periods of high unemployment, is approximately $1.7 billion and varies with the total wages paid in the State and benefits paid during recessions.

As of January 1, 2024, the trust fund balance was $1.9 billion.

Source: Department of Legislative Services

Benefit Payments

Generally, the weekly benefit amount a claimant is eligible for is based on the quarterly wages that the claimant was paid for covered employment in the calendar quarter of the claimant's base period in which those wages were highest. The base period is the first four of the last five completed calendar quarters immediately preceding the start of the benefit year, or, if the individual does not qualify under that definition, the four most recently completed calendar quarters immediately preceding the start of the benefit year.

Weekly benefit amounts range from $50 to $430 per week, based on earnings in the base period. There is also a dependent allowance of $8 per dependent, for up to five dependents, although the allowance cannot raise the weekly benefit amount above $430. The first $50 of any wages earned by an individual receiving UI benefits in a given week is disregarded for purposes of calculating the weekly benefit amount, after which the benefit payment is reduced dollar for dollar. These amounts do not adjust for inflation. Generally, during a benefit year, a claimant is entitled to 26 times the claimant's weekly benefit amount. During periods of high unemployment, extended benefits may also be available.

2021 Legislation Enhanced and Required Evaluation of the State Unemployment Insurance System

The unprecedented volume of claims and benefit payments due to COVID-19 strained the State UI system to its limit, which raised numerous concerns about the system's ability to effectively meet the needs of claimants and employers. Consequently, during the 2021 legislative session, the General Assembly required several system reforms, including an MDL-led study regarding various longer-term reforms.

Broadly, the new laws (1) required Table C to apply in 2022 and 2023; (2) made administrative changes to assist employers in paying their taxes, specifically allowing them to defer payments under certain circumstances; (3) exempted certain UI benefit payments from being subject to the State income tax; (4) temporarily modified benefit calculations to assist claimants working on a part-time basis; (5) made system administrative changes that must be implemented by MDL; and (6) enhanced the State's work sharing program, which allows an employee to continue working at reduced hours and obtain UI benefits under certain circumstances.