

Letter in Support of SB0228. Berman.pdf

Uploaded by: Berman, Sara

Position: FAV

January 18, 2021

The Honorable Paul Pinsky
Chair, Committee on Education, Health, and Environmental Affairs (EHEA)
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB0228, Capital Projects – High Performance and Green Buildings – Alterations (Green Building Restoration Act)

Dear Chairman Pinsky and Members of the EHEA Committee,

Thank you for the opportunity to provide you with my testimony for the amendment to Senate Bill 0228 on State K-12 school construction and the Maryland High Performance Green Building Program. This bill, as amended, will significantly strengthen green building in Maryland and will ensure healthy public schools for all students, teachers and staff and bring fiscal responsibility to school construction.

I am writing as the Chair of the Board for the Maryland Chapter of the US Green Building Council, a non-profit organization with nearly 9,000 member companies nationwide, and roughly 3,500 licensed professionals in Maryland. I am also a parent of a Baltimore City public school student. This bill was developed in coalition with AIA Baltimore, AIA Maryland, USGBC Maryland, and USGBC National. As a professional, MD resident and a parent I understand why green schools matter for the health of students and teachers and for the fiscal responsibility it provides through accountability.

This amendment restores K-12 construction requirements. In 2019, a last-minute change was inserted into the 21st Century Schools Act (HB1783 in 2019) requiring schools to follow a LEED Silver Guideline without requiring certification, small in wording, but very large in impact. This is a continuation of efforts from 2020 with the amendment to SB 655. The guidelines established by the Maryland Green Building Council in October 2019 are not equivalent to achieving LEED, Green Globes or IgCC certification. 2019 removed accountability or verification that the school will be built as a leadership standard high performing school which is a pivotal step in achieving building performance and return on investment. A savings of roughly \$0.10 per square foot, on typical project costs of approximately \$200 per square foot. This amendment allows for an additional path of following the IgCC, which does not have additional costs associated. For this fractional project cost, the USGBC or other certifying body conducts a full third-party review of

all features of the building, ensuring safe, healthy, and efficient schools and public buildings. The wording changes are as small as the project cost. This change in wording fundamentally changed how MD addresses K-12 schools. It required the Maryland Green Building Council to develop guidelines in conjunction with the Interagency School Commission for all K-12 schools. The restrictiveness of the new law compared to the original High Performance Green Building Program, is an additional burden on school districts. The new law is limited to only LEED Building, without certification for K-12 schools. As a sustainability professional representing USGBC, I want to see more options for schools to achieve green school construction, not fewer. This amendment restores the original High Performance Green Building Program which allows for LEED and includes Green Globes or the code supplement IgCC.

SB0228 aims to support all school districts in their path towards building better schools for students and teachers. In doing so it levels the playing field for school districts across the state. LEED credits for schools are tied in to access to public transit. Rural school districts are at a disadvantage. This bill amends the requirement for rural schools from “Silver” to “Certified” in order to forge an equitable path forward.

SB0228 as amended by Senator Hettleman promotes fiscal responsibility and ensures Maryland Schools remain competitive nationally. It ensures schools built through the 21st Century Schools Act sets students up for success academically through healthier and more effective learning environments. I urge the committee to support SB0228 through swift passage.

Sincerely,

A handwritten signature in black ink that reads "Sara Berman". The signature is written in a cursive, flowing style.

Sara Berman, LEED GA, GGP
Co-Chair USGBC Maryland MLAB

SB 288 - Carried Interest - Additional Tax.pdf

Uploaded by: Edwards, Donna

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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**SB 288 – Income Tax – Carried Interest – Additional Tax
Senate Budget and Taxation Committee
January 21, 2021**

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of SB 288 – Income Tax – Carried Interest – Additional Tax. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

Hedge fund and investment managers pay a lower tax rate than restaurant servers, state and county workers, nurses, bus operators, teachers, and everyone else in Maryland that works for a living. Carried interest income is taxed much lower than income derived from wages. This special treatment for those who make money by investing the income of others undermines the value of all our labor.

SB 288 corrects this inequality by applying a 17% state income surtax on the pass-through income that is attributable to investment management services provided in Maryland. Last year it was estimated that the State would gain an additional \$44 million per year in revenue, providing much needed resources to help fund priorities for our children, families, and communities.

Our tax laws reflect our values. The dignity of all workers should be honored and valued. Investment fund managers need to pay their fair share.

We urge a favorable report on SB 288.

Erica Payne SB288 MD Carried Interest Testimony.pd

Uploaded by: Payne, Erica

Position: FAV

PATRIOTIC MILLIONAIRES

Senator Guzzone
Miller Senate Office Building, 3 West Wing
11 Bladen St., Annapolis, MD 21401

January 19, 2021

Dear Chair Guzzone and other members of the Budget and Taxation Committee,

My name is Erica Payne. I am the founder and president of the Patriotic Millionaires, a nationwide network of high-net-worth Americans - including several in Maryland - who share a profound concern about economic inequality in our country, which has reached historic and destabilizing levels.

As their representative and a Maryland resident myself with an MBA from the Wharton Business School, I am here today to support SB0288, a critical piece of legislation that would close the carried interest loophole on a state level, and in the process would raise tens of millions of dollars a year in much-needed revenue for the state of Maryland without costing 99.9% of taxpayers a dime.

The carried interest loophole is a loophole in the federal tax code that allows private equity fund managers, some of the wealthiest people in the world who often earn millions of dollars a year, to incorrectly classify their earnings as capital gains rather than ordinary income.

In the process they cut their tax bill nearly in half, paying the capital gains rate, just 20%, rather than the top income tax rate of 37%. This leaves them paying a lower tax rate than their secretaries or the janitors who clean their offices, and in fact a lower top tax rate than anyone making more than \$40,000 a year in income.

This special tax break is entirely undeserved. The income that's classified as carried interest is just a fee that fund managers earn from their investors in exchange for managing their money. In any other industry this type of income would be taxed as normal income, but thanks to this loophole it's taxed at the lower capital gains rate.

The federal capital gains tax rate is lower than the income tax rate because the government believes that by incentivizing investment and risk-taking, it will spur growth. But fund managers invest no money of their own and take on no risks, they just manage

PATRIOTIC MILLIONAIRES

other people's investments. Their earnings meet none of the standard criteria to be classified as capital gains, and should not be taxed as such.

Private equity managers claim that while they might not invest money, they invest their time and expertise through something they call "sweat equity," which should qualify their earnings as capital gains. But the investment of time and expertise in exchange for payment is quite literally the definition of employment. Every person who has ever worked a day in their life has traded their time and expertise in exchange for money. This argument is clearly nonsense, yet it's the basis for the entire premise of giving carried interest special treatment.

This loophole is so ridiculous that even Donald Trump famously declared that people using the carried interest loophole were "getting away with murder." But when it came time for Republicans to rewrite the federal tax code when they passed the Tax Cuts and Jobs Act in 2017, they almost completely ignored the carried interest loophole. By closing this loophole on a state level, Maryland has a chance here to show the nation, and legislators in the nearly dozen other states that are considering similar legislation, that better things are possible.

And don't worry about whether or not millionaires are going to leave the state when you tax them - [study](#) after [study](#) shows that rich people don't actually move to avoid taxes. In fact, New York significantly raised taxes on millionaires a few years ago, but today the number of millionaires in the state is higher than it's ever been.

This should be a no-brainer. If we can raise tens of millions of dollars for housing, healthcare, education, or public safety by requiring a few hundred millionaires and billionaires to pay the tax rate they should have been paying all along, then we should do it.

Warmly,
Erica Payne
President and Founder of the Patriotic Millionaires

Carried Interest One Pger.pdf

Uploaded by: Pinsky, Paul

Position: FAV

PAUL G. PINSKY
Legislative District 22
Prince George's County

Chair
Education, Health, and
Environmental Affairs Committee



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The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

SB288 Closing the Carried Interest Loophole

Carried interest is a loophole in the tax code that allows the managers of hedge funds to pay a lower tax on their income.

A hedge fund manager takes 20 percent of all gains on the fund's investments. The tax code treats that income as a "long-term capital gain," which is taxed at a lower rate than ordinary income (which is 39.6% at the federal maximum).

This income really should be taxed at the normal rate of 39.6% because it is not a capital gain (selling stocks, etc. at a gain). Congress was supposed to fix this income tax loophole but has not done so and it is unclear whether they will plug the loophole. This bill would have these funds taxed at the normal rate 39.6% in Maryland until Congress moves ahead with plugging the loophole. According to the 2020 fiscal note It would raise over \$45 million in extra revenue in Maryland.

In 2016, Donald Trump, Hillary Clinton, Bernie Sanders, and Jeb Bush all called for closing a tax break known as the "carried interest loophole."

First: What is a hedge fund? Hedge funds are alternative investments using pooled funds that employ numerous different strategies to earn returns, for their investors. Hedge funds are aggressively managed with the goal of generating high returns. It is important to note that hedge funds require less regulations than mutual funds and other investment vehicles.

Hedge fund and private equity funds are structured as partnerships. The fund manager is the general partner of the funds, and the investors are limited partners. Investors supply the capital, and the fund manager supplies investment expertise. For the services the investment manager provides, he/she charges certain fees.

The problem comes from how that twenty percent performance fee is treated for tax purposes. It is clear that this twenty percent fee is compensation for services. According to the Tax Policy Center, the vast majority of tax analysts share this view.

But the hedge fund and private equity industries treat this investment advice as "carried interest" fees, a unique type of income for tax and accounting purposes – not a service income. **If we treated the performance fee as a fee for services, it would be federally taxed at the ordinary income level, where the highest marginal tax rate is currently 39.6%.**

Instead, fund managers treat this fee using the carried interest loophole claim as a capital gain rather than normal income. It clearly it is not. It is investment advice. They are managing other people's money. The

tax on capital gains is 20% not 39.6%. The difference of 17% may not sound like a lot of money, but it is estimated the federal tax revenue loss from the carried interest loophole is over \$18 billion per year.

State loophole-closing legislation aims to “repatriate” the revenue lost to the loophole back to the states where “carried interest” investment fees were assessed.

The simple method: a state-level 19.6% “carried interest fairness fee” that makes up for the federal-level revenue loss, with the money going to fund essential in-state needs. It is important to note that this bill just covers those entities that categorize their income as capital gains when it should be taxed at the rate for individual income.

This tax would sunset on the effective date when and if the federal government decides to close the carried interest loophole

TESTIMONY FOR SB0288 Income Tax - Carried Interest

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0288
INCOME TAX – CARRIED INTEREST – ADDITIONAL TAX**

Bill Sponsor: Senator Pinsky

Committee: Budget and Taxation

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0288 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

We pay people to manage our money. They need to make a living – we understand that. But everyone should pay their fair share of taxes. Why should hedge fund and private equity managers pay less taxes than everyone else?

Everyone should pay their fair share. Everyone. We need to get rid of the loopholes for the rich.

We support this bill and recommend a **FAVORABLE** report in committee.

SB 288 Carried Interest.pdf

Uploaded by: Riley, Denise

Position: FAV



A Union of Professionals
AFT-Maryland

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Marietta English
PRESIDENT

Kenya Campbell
SECRETARY-TREASURER

**Written Testimony to the Senate Budget & Taxation Committee
SB 288 - Income Tax - Carried Interest - Additional Tax
January 21, 2021**

SUPPORT

Good afternoon Chair Guzzone and members of the Committee. On behalf of AFT- Maryland's more than 20,000 state, municipal, and public education workers, we ask for a favorable report on SB 288.

As the statewide organization for the Baltimore Teachers Union (BTU), as well as unions representing thousands of state employees, AFT-Maryland supports bills that will help bring badly needed revenues into the state. With the increased funds, our state will in a better position to compete economically, provide a world-class public education system and meet the needs of our residents who rely on state services.

The proposed public school reform policies introduced by the Kirwan Commission and in the Blueprint for Maryland's Future, found that significant new resources must be committed to education to build our state's economy.

In order to accomplish this, all citizens and businesses must be willing to pay their fair share of taxes. Currently, the burden lays heavily on the middle class and lower income residents who pay higher taxes per capita than the wealthy. It is time for capital gains to be taxed fairly so the wealthy and businesses begin to pay their fair share.

It is for these reasons that we ask the committee give a favorable report to SB 288.

Marietta English
President

SB 288_MDCEP_FAV.pdf

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Position: FAV

It's Time for Wealthy Investment Managers to Pay their Fair Share

Position Statement Supporting Senate Bill 288

Given before the Senate Budget and Taxation Committee

Like thousands of other Maryland workers, from authors to restaurant servers, private equity and hedge fund managers are paid partly on the basis of their performance. Unlike other workers, wealthy fund managers pay a special, low tax rate on this income. This special treatment violates core principles of effective tax policy by taxing similar activities at different rates, shifting tax responsibility away from those who can best afford to pay, and eliminating revenue that could be used to support vital investments in public health, schools, and other priorities. The Maryland Center on Economic Policy supports Senate Bill 288, which would close this loophole and ask wealthy fund managers to pay their fair share.

Investors in private equity and hedge funds see better returns when the funds perform well and worse returns when the funds perform poorly. The managers of these funds do too, thanks to carried interest—the share of profits they receive as performance pay. Unlike investors, though, fund managers do not put their own money at risk. They are simply paid a larger or smaller amount for their work, depending on how well the fund performs.

However, the federal government taxes carried interest at the capital gains rate, which is ordinarily reserved for investors who risk their own money. This allows many highly paid investment managers to pay much less in taxes than other workers.ⁱ With a historically high share of income going to those at the very top, it does not make sense to give special tax breaks to wealthy finance professionals. Senate Bill 288 would close this loophole by allowing the state to collect revenue from Maryland taxpayers that would go to the federal government if it accurately classified carried interest as ordinary income.

The special treatment given to private equity and hedge fund managers weakens the economy by creating an inflated incentive to work in these industries. We do not give special tax breaks to doctors, engineers, or other highly skilled professionals, despite the essential work they do. Even other finance professionals pay ordinary income tax rates on bonuses and other types of performance pay, not the lower capital gains rate. This is why experts across the political spectrum have recommended closing the carried interest loophole.ⁱⁱ

Closing this loophole would also bring in badly needed revenue, allowing the state to make much-needed improvements in priorities like public health, schools, and child care. Based on past estimates by the Department of Legislative Services, Senate Bill 288 would likely raise \$40 million or more each year. Taxing wealthy investment managers accurately would mean more money for public health, Maryland schools, and health care. It is also likely to increase economic activity in Maryland, as money invested in public services immediately flows back into the economy. Wealthy fund managers, on the other hand, are more likely to sit on extra income that they have few uses for.ⁱⁱⁱ

While many beneficiaries of the carried interest loophole are opposed to closing it, the arguments they offer do not hold water:

- Fund managers are not unique in receiving pay that varies over time and therefore carries risk. Restaurant servers who work for tips, authors who earn royalties, and even other finance professionals who are paid bonuses all pay income taxes on their performance pay—not a special capital gains rate.
- Funds cannot easily pass taxes on to investors by charging higher fees. As the high fees associated with alternative investments have come under increasing scrutiny in recent years, the large institutional investors that dominate the market have become less willing to pay large sums without a clear benefit.^{iv}
- There is no reason to expect funds' performance to suffer because investment managers are taxed accurately. Managers will still be paid largely on the basis of performance, and market competition will still direct business to the highest-performing funds.
- Senate Bill 288 includes a provision that would allow the legislature to cancel the corrective tax it creates if the federal government closes the loophole, so there is no risk of taxing financial services twice in the future.
- While some investment managers would likely look for ways to avoid paying the corrective tax, this is a good reason to ensure the law is enforced appropriately—not a reason to exempt them from their responsibility to pay taxes.

The carried interest loophole allows wealthy investment managers to pay a lower tax rate on their income than the majority of workers, weakening the economy and costing billions of dollars in revenue nationwide each year. It's time to ask fund managers to pay their fair share by passing Senate Bill 288.

For these reasons, the Maryland Center on Economic Policy respectfully asks that the Senate Budget and Taxation Committee make a favorable report on Senate Bill 288.

Equity Impact Analysis: Senate Bill 288

Bill summary

Senate Bill 288 closes a tax loophole that currently allows investment fund managers to pay the special, lower capital gains tax rate on the portion of their compensation that is based on the success of the funds that they manage. This is the only industry that receives such tax benefits for its employees. Senate Bill 288 would close this

loophole by allowing the state to collect revenue from Maryland taxpayers that would go to the federal government if it accurately classified carried interest as ordinary income.

Background

The historical reasoning behind the lower capital gains tax rate was that individuals making investments in a new business, a new building, or the stock market are putting their own money at risk. Managers of private equity and hedge funds aren't putting their own money at risk. They are simply paid a larger or smaller amount for their work, depending on how well the fund performs.

There are many other types of industries where someone's pay is based at least in part on their performance, such as restaurant servers (who, analogously to fund managers, are often paid based on a "\$3.63 and 20%" rule), sales people working on commission, and even other types of finance professionals. Those in all other industries pay the regular personal income tax rate on their salaries, bonuses, and commission.

Closing the carried interest loophole could generate about \$40 million in revenue per year that could support new investments in Maryland schools or other community priorities. Such spending would create jobs and boost consumer demand today, as well as lay the groundwork for a strong economy in the long run.

Equity Implications

- More than 60 percent of capital gains income in Maryland goes to the wealthiest 1 percent of tax filers, a group in which private equity and hedge fund managers are significantly overrepresented.^v Providing special tax treatment for their income will predominately benefit the small minority of white families who hold nearly two-thirds of all household wealth nationwide.
- Closing the carried interest loophole would generate public resources that could be invested in things like public health, world-class schools, and sufficient child care assistance. Investing in these basics strengthens our economy and can dismantle the economic barriers that too often hold back Marylanders of color.

Impact

Senate Bill 122 would likely **improve racial and economic equity** in Maryland.

ⁱ For example, Mitt Romney, a private equity financier, famously paid only 14 percent of his \$22 million income in federal taxes in 2010. Lori Montgomery, Jia Lynn Yang, and Philip Rucker, "Mitt Romney Releases Tax Returns," *The Washington Post*, January 24, 2012, https://www.washingtonpost.com/politics/2012/01/23/gIOAj5bUMQ_story.html?utm_term=.6e61ef350161.

ⁱⁱ For example, conservative economist Greg Mankiw has written against the carried interest loophole. N. Gregory Mankiw, "The Taxation of Carried Interest," *Greg Mankiw's Blog*, 2007, <http://gregmankiw.blogspot.com/2007/07/taxation-of-carried-interest.html>.

ⁱⁱⁱ During a recession, the households with the most built-up assets spend only one-tenth as much of each additional dollar of income as families living paycheck to paycheck, according to research out of Johns Hopkins University. Christopher Carroll, Jiri Slacalek, Kiichi Tokunaka, and Matthew White, "The Distribution of Wealth and the Marginal Propensity to Consume," *Quantitative Economics* 8, 2017, <https://onlinelibrary.wiley.com/doi/epdf/10.3982/QE694>

^{iv} Suzanne Barlyn and Svea Herbst-Bayliss, "Mismanagement Cost NY Pension \$3.8 Billion over Eight Years: Regulator," *Reuters*, October 17, 2016, <http://www.reuters.com/article/us-new-york-pensions-idUSKBN12H210>.

^v While the small number of people in this group limits the precision of survey-based estimates, data from the 2013–2017 indicate that as many as one in eight Maryland financial managers in investment industries are in the state's wealthiest 1 percent of households and nearly one in four are in the wealthiest 1 percent nationwide.

AFSCME-SB288-FAV.pdf

Uploaded by: Smalls, Cindy

Position: FAV

Testimony
SB288 Income Tax – Carried Interest – Additional Tax
Budget & Taxation Committee
January 21st, 2021
Support

AFSCME Council 3 which representing 30,000 state and Higher Education employees supports SB 288.

Senate Bill 288 closes a tax loophole that currently allows investment fund managers to pay the lower capital gains tax rate on the portion of their compensation that is based on the success of the funds that they manage. This is the only industry that receives such tax benefits for its employees. Senate Bill 288 would close this loophole by allowing the state to collect revenue from Maryland taxpayers that would go to the federal government if it accurately classified carried interest as ordinary income.

The historical reasoning behind the lower capital gains tax rate was that individuals making investments in a new business, a new building, or the stock market are putting their own money at risk. Managers of private equity and hedge funds aren't putting their own money at risk. They are simply paid a larger or smaller amount for their work, depending on how well the fund performs.

There are many other types of industries where someone's pay is based at least in part on their performance, such as restaurant servers, sales people working on commission, and even other types of finance professionals. Those in all other industries pay the regular personal income tax rate on their salaries, bonuses, and commission.

Closing the carried interest loophole would generate about \$40 million in revenue per year that could support new investments in state agencies, Maryland schools or other community priorities. Such spending would create jobs and boost consumer demand today, as well as lay the groundwork for a strong economy in the long run.

The carried interest loophole allows wealthy investment managers to pay a lower tax rate on their income than the majority of workers, weakening the economy and costing billions of dollars in revenue nationwide each year. If we ask state and Higher Education employees pay their fair share in tax for earned work. It's time to ask fund managers to pay their fair share by passing Senate Bill 288

For these reasons, we urge you to a favorable report on Senate Bill 288.

SB288 - FAV - MSEA Zwerling.pdf

Uploaded by: Zwerling, Samantha

Position: FAV

Testimony SUPPORT of Senate Bill 288
Income Tax – Carried Interest – Additional Tax

Senate Budget and Taxation Committee
January 21, 2021

Samantha Zwerling
Government Relations

The Maryland State Education Association supports SB 288, which closes a tax loophole for hedge fund managers.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA supports passage of an adequate, sustainable, predictable revenue stream that will adequately fund both the operating and construction costs of our public schools. A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The Blueprint for Maryland's Future outlines improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

Implementing the Kirwan Commission's recommendations and making up for the learning loss, and social-emotional and behavioral health effects of the pandemic will take considerable resources. SB 288 is part of that funding solution.

MSEA urges a Favorable Report on Senate Bill 288.

SB0288 - Carried Interest - NAIOP Testimony B&T.pd

Uploaded by: Ballentine, Tom

Position: UNF



January 19, 2021

The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, MD 21401

Oppose: SB 288 – Carried Interest – Additional Tax

Dear Senator, Guzzone and Committee Members:

The NAIOP Maryland Chapters represent more than 700 companies involved in all aspects of commercial, industrial and mixed-use real estate. On behalf of our member companies, I am writing in opposition to SB 288 – Carried Interest Additional Tax.

Carried interest is a term that dates to the Renaissance merchants of Genoa, Pisa, Florence and Venice. Ship captains sent to carry goods around the world were provided an interest in the value of the cargo, a “carried interest.”

Although the concept of *carried interests* are often associated with stock investors, much of the real estate development that takes place today is within partnership entities. According to the IRS, real estate partnerships represent nearly 50 percent of the 3.7 million partnerships in the United States.

In real estate partnerships a *carried interest* is given by the limited partners to the general partner in return for the risks taken, pursuit costs and liabilities borne by that partner during the project. A general partner will often personally guarantee, development design and permit approvals, construction of the project, as well as payment of all debts. In addition, the general partner is at risk for all partnership liabilities such as environmental compliance, and any lawsuits.

SB 288 refers to, *carried interests* but the legislation would simply impose a 17% surtax on the income derived from “*investment management services*” conducted in Maryland. For example, if a real estate management company were to work on acquisitions, dispositions financing and property management, the members’ share of the income would be subject to an additional 17% surtax. Because real estate assets are often owned and managed by separate entities, the exemption in the bill would be insufficient. The bill would increase the tax burden on real estate activities that already pay a repeated series of sales, property, excise, transfer, recordation, and income taxes.

Real estate development, unlike some investments from industries that are the intended focus of the bill, results in the creation of a tangible, capital asset: a mixed-use community, an office building, a housing project, or a distribution warehouse. The investment in the underlying real estate asset gives rise to jobs, results in an increased state and local tax revenue and provides other community benefits through economic multiplier effects.

Applying SB 288’s tax surcharge to real estate would have negative policy implications:

- Increasing fixed development costs and frontloading those costs rather than deferring them by taking them out of capital gains after the project is stabilized would pressure partnerships to take on more debt to finance development.

- Willingness to take development risk is reduced by a tax surcharge. A 2013 study by Douglas Holtz-Eakin, former director of the nonpartisan Congressional Budget Office, found that *carried interest* legislation could result in reduced construction activity and decreased wages in the real estate industry.
- Reducing the flow of investment capital to real estate projects would be felt hardest by already difficult to finance projects such as urban redevelopment, affordable housing, or property with environmental contamination.
- The tax surcharge would apply to the distributions of partnership agreements drafted years, perhaps decades, earlier. This penalizes the patient, long-term build and hold business model most of our members follow.

Under current federal law, for investments held less than three years, capital appreciation is taxed as ordinary income; for investments held longer than 3-years it is taxed as long-term capital gain for all partners. SB 288 makes no distinction about the holding period and would impose the 17% tax on passthrough income that is federally taxed at the ordinary income rate.

Federal tax treatment of real estate related income and capital gains may significantly change under the tax reforms proposed by President-elect Joe Biden. An increase in the long-term capital gains rate from 23.8% to 43.4%. Elimination of the Qualified Business Income Deduction for real estate activities could increase the effective tax rate from 29.6% to as high as 39.6%.

For these reasons, NAIOP respectfully recommends your unfavorable report on SB 288.

Sincerely;



Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Senate Budget and Taxation Committee Members
Nick Manis – Manis, Canning Assoc.

SB 288_Income Tax_Carried Interest_Additional Tax_

Uploaded by: Griffin, Andrew

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 288

Income Tax—Carried Interest—Additional Tax

Senate Budget & Taxation Committee

Thursday, January 21, 2021

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and subsequent growth for Maryland businesses, employees, and families. Part of that work includes evaluating, promoting, and maintaining the best approaches for tax policy for the state.

What has come to be known as the “carried interest” issue is a U.S. federal income tax matter, not a Maryland state tax matter. This is because all types of income are taxed at the same tax rate in Maryland. Imposing an additional Maryland tax to make up for a federal tax difference between the capital gains tax rate versus other income tax rate will result in more than tripling the Maryland tax on this income. Simply put, this is bad state tax policy.

Carried interest is a financial term for the profit certain partners and limited liability company (LLC) members receive as a product of their invested capital or for the interest in the partnership or LLC received by these partners or members in connection with investment management activities they perform. As such, it is treated under the Internal Revenue Code as an investment taxable under the capital gains tax, and under Maryland’s tax statute as taxable income.

The federal tax code taxes capital gains separately because they are not salary. Rather, they are investments that can make or lose money. Because of that risk, they are taxed differently, including at a different tax rate. The way in which the tax is currently structured provides an incentive for individuals to invest. This investment helps to start businesses, advance technology and innovation and create the tools needed to help economic development overall.

Importantly, this income is already subject to full income tax in Maryland with respect to residents and nonresident members of pass-through entities. The issue is not one involving Maryland income tax, but one involving the difference in tax rates for U.S. income tax, i.e. the

rates for “ordinary income” versus “capital gain.” The bill’s proposed additional tax rate is even obvious in its derivation from the federal tax rates—rates in existence prior to recent federal tax changes. Ordinary income was taxed at a high of 39.6% and capital gains at 20%. There is no such different tax rate structure in Maryland—both ordinary income and capital gains are taxed at the same rate.

If passed, this bill would impose an exorbitant increase in tax, a 17% surtax, on income that is already taxed at Maryland’s full state-plus-local tax rate. Maryland’s income tax rates are already among the highest in the nation. “Carried interest” is a federal issue that is best addressed by the United States Congress under the Internal Revenue Code. It is not a Maryland tax issue.

Beyond all of this, we are in the midst of a global pandemic. To say that COVID-19 has had a tremendous, detrimental impact on Maryland’s economy would be an understatement, and there is plenty of reason to remain cautious and concerned about its lasting implications. Maryland businesses continue to struggle, and the Comptroller’s Office has estimated that approximately 30,000 businesses have either closed or will close permanently due to the pandemic. A period of major economic downturn and future uncertainty is not the time to implement tax measures that stand to negatively impact businesses that are already struggling to overcome the impact of COVID-19.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 288**.



IMC Testimony SB288-HB215 - Oppose.pdf

Uploaded by: Johansen, Michael

Position: UNF

Alan M. Rifkin
M. Celeste Bruce (MD, DC)
Liesel J. Schopler (MD, DC)
Rita J. Piel
Edgar P. Silver (1923-2014)
†Of Counsel
††Retired Emeritus

Arnold M. Weiner
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Stuart A. Cherry
Brad I. Rifkin

Scott A. Livingston (MD, DC)
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Michael A. Miller†

Joel D. Rozner (MD, DC)
Patrick H. Roddy
Laurence Levitan††
John C. Reith (Nonlawyer/Consultant)
Matthew Bohle (Nonlawyer/Consultant)
Obie L. Chinemere (Nonlawyer/Consultant)

INVEST IN MARYLAND COALITION

OPPOSES SB 288/HB 215

“Income Tax – Carried Interest – Additional Tax”

The Invest in Maryland Coalition is comprised of many segments of the Maryland financial advisory services industry. It was formed to advocate on legislative matters affecting the delivery of professional financial advisory services to Maryland businesses and individuals – those who rely on professionals to plan for retirement, grow their savings, maximize the value of their businesses and holdings, invest in new ventures, and generally protect their assets. The Invest in Maryland Coalition is opposed to legislation that would place new burdens on Maryland individuals, businesses, and the financial services industry – especially when those burdens are limited to the State of Maryland. State tax policy should incentivize, not discourage, growth and investment within state borders.

SB 288/HB 215 imposes an additional tax on ‘carried interest.’ The bill imposes a 17% tax on certain income derived from investment management services – on top of the existing state income tax of up to 5.5%. Further, the bill is applicable to tax year 2021 -- meaning the new tax applies to activity occurring prior to the bill’s July 1, 2021 effective date.

SB 288/HB 215 would hinder investment in Maryland. The new tax burden would have one of two effects, or both – first, investors would avoid Maryland focus their activities in other states where the tax does not apply; and second, the value of Maryland businesses and start-ups would fall. Relocation out of Maryland could occur – as the new tax arguably applies to Maryland based investment management companies even if their investments are out of state.

The proposed legislation also has a retroactive effect. Not only does the new tax apply to income generated in TY 2021 prior to the effective date, the bill would levy the new 17% tax on investment decisions made many years ago (at a time when the value of the deal was not subject to this unique tax treatment). This is an inherent unfairness that should be avoided when creating new tax policy.

The negative impacts of this legislation will be felt far beyond the financial services industry. Maryland will lose jobs, innovation, and even tax revenue as firms respond by de-investing in the State.

For all these reasons, we urge an unfavorable report on SB 288/HB 215.

For more information contact Mike Johansen mjohansen@rwllaw.com or John “JR” Reith at jreith@rwllaw.com or at 410-269-5066.

signed AIC Letter of Opposition to Maryland Carrie

Uploaded by: Lukso, Michael

Position: UNF



January 19, 2021

The Honorable Anne Kaiser
Chair, Ways and Means Committee
Maryland General Assembly
House Office Building, Room 131
6 Bladen St., Annapolis, MD 21401

The Honorable Guy J. Guzzone
Chair, Budget & Taxation Committee
Maryland State Senate
Miller Senate Office Building, 3 West Wing
11 Bladen St., Annapolis, MD 21401

Re: House Bill 215 and Senate Bill 288 – Income Tax – Carried Interest – Additional Tax

Dear Chair Kaiser and Chair Guzzone:

On behalf of the American Investment Council (“AIC”), I am writing to respectfully oppose HB 215 (Del. Carr) and SB 288 (Sen. Pinsky). This legislation represents a discriminatory tax increase that will drive financial services businesses and their high-paying jobs out of Maryland. It will also discourage risk capital that fuels many leading industries in the state.

The AIC is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. Our members are the world’s leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest. If this misguided legislative proposal is enacted, it will dramatically impede private equity and venture capital from investing in Maryland jobs, industries, and workers.

Specifically, this legislation will add a 17% surtax on top of the current ordinary state income tax for carried interest capital gains. This legislation will result in a 22.75% state income tax rate on carried interest in Maryland – a tax rate borne by no other category of income earned by any Maryland worker. This legislation is a punitive tax against returns on long-term investments made by private equity and venture capital. Carried interest capital gains are realized only by those investment partners who succeed in delivering substantial returns to their limited partner investors, who include state pension funds. It does not warrant such punitive and discriminatory treatment. Under Maryland law, carried interest capital gains is already taxed at the same rates as ordinary income. Maryland benefits enormously by having significant private equity and venture capital firms headquartered in the state and also through private equity and venture capital investments throughout the state. From 2014 to 2019, private equity invested nearly \$50 billion to help grow and strengthen 490 Maryland businesses and employ 148,000.¹ In 2018 alone, private equity provided \$10 billion in wages & benefits to Maryland constituents and \$17 billion in value added to the Maryland economy.²

Notably, Maryland pensions also benefit from private equity. With 195,000 members, Maryland State Retirement and Pension System has \$55 billion in assets under management and \$7.8 billion invested in private equity. Private equity is the top performing asset for the System, net of fees and carried interest— helping diversify the pension’s portfolio and ensure the retirement of the

¹ <https://www.investmentcouncil.org/private-equity-at-work/in-your-state/#maryland>

² See EY’s Economic Contribution of the US Private Equity Sector in 2018 Study, Table 3, available at <https://thisisprivateequity.com/>

Systems members. The System's annualized 5 year return for the private equity is 12.3%. Furthermore, the System committing nearly, "\$1.2 billion to developing managers that are minority and women-owned firms."⁴

This legislation will put private equity funds, venture capital funds, hedge funds, and other investors in Maryland at a competitive disadvantage with their out-of-state rivals and these in-state firms will be forced to leave in order to remain competitive. If passed, Maryland will be uncompetitive with New York, Nevada, Texas, and other states in the battle for top-quality investment talent. Maryland investment firms have been an integral part of Maryland's economic success. However, these firms and their managers do not have to be located in Maryland, nor do they have to invest in Maryland businesses.

Tech sector hubs like Seattle, Washington and Austin, Texas have no income tax. The consequences of this legislation are that Maryland-based funds will suffer under this measure making it more difficult for these firms to compete with firms based outside the state. A significant number of financial services businesses – and their high-paying jobs – will leave Maryland. This will shrink the tax base, produce less growth and revenue, and threaten Maryland's tech and bio-tech sectors.

Finally, we believe strongly that not only would Maryland not receive the estimated \$45 million per year in additional revenue the proponents of the bill predict, but also the state and localities will lose the substantial \$1.1 billion per year in tax revenue those individuals and firms are now paying.³

The AIC submits that it is counter-productive for Maryland to impose a punitive tax on carried interest and other investment management services income and we urge you to reject HB 215 and SB 288.

Respectfully submitted,



Brad Bailey
Senior Vice President

cc: Members of the Maryland State Assembly and State Senate

⁴ https://sra.maryland.gov/sites/main/files/file-attachments/2020_msrps_cafr-web_final.pdf?1609769114

³ See EY's Economic Contribution of the US Private Equity Sector in 2018 Study, Table 6, available at <https://thisisprivateequity.com/>

SB 288- Carried Interest Tax UNF.pdf

Uploaded by: Marczyk, Bernard

Position: UNF

Managed Funds Association

The Voice of the Global Alternative Investment Industry

Washington, D.C. | New York



January 21, 2021

The Honorable Guy Guzzone
Chairman, Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, Maryland 21401

Re: Oppose Senate Bill 288

Dear Chairman Guzzone and Members of the Committee:

Managed Funds Association (“MFA”) welcomes the opportunity to submit this written statement regarding SB 288, *Income Tax – Carried Interest – Additional Tax*. MFA represents the hedge fund and alternative investment industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA’s members manage a substantial portion of the approximately \$3.4 trillion invested in hedge funds around the world.

In Maryland, institutional investors, including pensions, university endowments, and charitable foundations, rely on hedge fund allocations to support retirement security, higher education, and the important work done by foundations and charities. They provide important options to investors seeking to increase portfolio returns with less risk, such as pension funds trying to meet monthly obligations to plan beneficiaries. The Maryland State Retirement and Pension System invests approximately \$4.01 billion in hedge funds to help provide secure retirements for its more than 186,000 plan participants¹. Johns Hopkins University Office of Investment Management invests approximately \$1.35 billion in hedge funds to help fund education opportunities for its more than 25,000 students². And Howard Hughes Medical Institute invests approximately \$4.07 billion in hedge funds, which helps fund its support of biomedical scientists and educators³.

MFA’s members are also a valuable component of the capital markets. Private investment companies, including hedge funds, provide liquidity and price discovery to capital markets, and capital to companies seeking to grow or improve their businesses.

MFA supports fair taxation of all businesses and investors and opposes discriminatory taxes that impose punitive tax rates on specific businesses for reasons other than sound tax policy. SB 288 fails to meet this test, imposing a punitive tax regime on private investment managers without a clear policy rationale. If SB 288 aims to address perceived gaps in the tax treatment of carried interest income, this bill stops short of that goal. Instead, the bill would increase the combined marginal tax rates on our members from the current 49.75 percent to 66.75 percent by applying the surtax to income that is already subject to the highest federal tax rates. Most hedge fund strategies hold assets for less than one year, meaning gains on those investments are taxed at the same rate as ordinary income. Similar to

¹ 2018 Survey Of Public Pensions: State & Local Datasets, United States Pension Bureau, 2018

² "Johns Hopkins University." U.S. News & World Report, 2019.

³ "About Us." Howard Hughes Medical Institute.

Managed Funds Association

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previous legislative proposals, the bill title suggests the proposed 17 percent surtax would be applied to carried interest income. However, notwithstanding some changes made to previous proposals, SB 288 would still apply a surtax on investment management services income that is unrelated to carried interest income, including fee income that is already taxed as ordinary income at the federal and state level.

The bill would impose a punitive 66.75 percent combined marginal tax rate on hedge fund managers based in Maryland, making business uneconomical. In addition, many out-of-state hedge fund managers will face the same excessive tax rate on the services they provide to Maryland investors. This will likely cause investment managers throughout the country to significantly limit the investment options for Maryland pensions, endowments, foundations, and other institutional investors that rely on these services to meet their obligations despite varying market conditions.

If Maryland were to enact the bill, it would be the first state in the country to impose this kind of surtax on the investment management industry, putting the state at a significant competitive disadvantage to other states. The tax, far from bringing in revenue to the state from “Wall Street” will likely have the reverse impact of making Maryland investors significantly less attractive participants in the capital markets and raising Maryland investor costs to meet current returns. Ultimately, the negative economic consequences of enacting SB 288 will outweigh the perceived tax revenue of the surtax.

In considering the likely effects of SB 288, we would like to share with policymakers how our members comply with the federal tax treatment of the income earned by hedge funds.

Hedge fund managers typically earn fee income (either based on assets under management or performance-based), which is taxed as ordinary income at the federal and state level, and they also can earn income that qualifies for treatment under the carried interest provisions. Despite the rhetoric, carried interest income is not automatically taxed at the lower long-term capital gains rate at the federal level. For most hedge fund managers, their carried interest income is taxed at ordinary income tax rates.

Under federal tax law following enactment of the Tax Cuts and Jobs Act, investment managers only pay long-term capital gains rates on their carried interest if the funds they manage own investments that generate capital gains income and the fund holds those investments for at least three years. Hedge funds typically do not hold investments for the three-year period necessary to generate long-term capital gains. As a result, the carried interest earned by hedge fund managers generally is taxed at ordinary income rates up to 37 percent at the federal level.

SB 288 would significantly limit the investment options for Maryland pensions, endowments, foundations, and other institutional investors making it more difficult for them to meet their obligations for their pensioners, students, and the local communities that depend on the generosity of Maryland foundations and charities. SB 288 would apply the 17 percent surtax on (1) investment management services income regardless of the federal tax rate paid on that income and (2) investment management services income that is unrelated to carried interest.

Managed Funds Association

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Washington, D.C. | New York



Because SB 288 would negatively impact Maryland's institutional investors and imposes a punitive tax rate with disparate treatment of hedge fund managers, MFA is unable to support the bill and encourages policymakers to oppose enactment of the legislation.

Sincerely,

Louis A. Costantino, Jr.
Executive Vice President and Managing Director,
Managed Funds Association

Cc: The Honorable Paul Pinsky

SB288.pdf

Uploaded by: Mitchell, Susan

Position: UNF



Senate Bill 288 - Income Tax - Carried Interest - Additional Tax

Position: Oppose

Maryland REALTORS® opposes SB 288 which suggests a 17% tax rate on “carried interest” rather than the existing capital gains rate which would be a significant tax increase.

SB 288 would require *carried interest* to be classified as ordinary income rather than a capital gain. A carried interest is an incentive or profits interest in a business arrangement that is larger as a share of the total return than the share of the initial investment – which also takes into consideration risk and management expertise. Currently, management fees for fund managers are already taxed at the current income tax rates and Maryland REALTORS® does not believe a carried interest loophole currently exists.

Maryland REALTORS encourages an unfavorable report of SB 288.

For more information, please contact bill.castelli@mdrealtor.org or susan.mitchell@mdrealtor.org or lisa.may@mdrealtor.org

SB288 - MoCo Chamber - Income Tax – Carried Intere

Uploaded by: Swanson, Tricia

Position: UNF



To Lead, Advocate and Connect as the Voice of Business

Senate Bill 288 - Income Tax – Carried Interest – Additional Tax

Budget and Taxation Committee

January 21, 2021

OPPOSE

Senate Bill 288 imposes a 17% State income tax on the distributive share or pro-rata share of a pass-through entity's (PTE) taxable income that is attributable to investment management services provided in the State. This tax does not apply if, during the taxable year, at least 80% of the average fair market value of the specified assets of the entity consist of real estate.

Carried interest is a financial term for the profit certain partners and limited liability company (LLC) members receive as a product of their invested capital or for the interest in the partnership or LLC received by these partners or members in connection with investment management activities they perform. As such, it is treated under the Internal Revenue Code as an investment taxable under the capital gains tax, and under Maryland's tax statute as taxable income.

This issue is a U.S. federal income tax matter, not a Maryland state tax matter. This is because all types of income are taxed at the same tax rate in Maryland. Imposing an additional Maryland tax to make up for a federal tax difference between the capital gains tax rate versus other income tax rate will result in more than tripling the Maryland tax on this income.

In 2020, two reports were commissioned to analyze the future of economic development in Montgomery County and Metro Maryland. Both reports ([An Economic Roadmap to Recovery & Long-Term Success](#) and James Chung, "Montgomery County at a Crossroads") spoke to the immense need for future investments through Venture Capital and capital gains, particularly in our Biotech, Quantum Computing, and Hospitality sectors. Montgomery County, and thereby the state, could see investments comparable to Boston and Silicon Valley but the state must pass policies that support this investment.

The Chamber continues to support a proposal to create a commission to analyze and make recommendations as to how to make Maryland's tax structure more business-friendly and economically competitive. This more comprehensive and strategic approach should be adopted, rather than a series of tax "one-offs" with little understood consequences.

For the aforementioned reasons, **the Chamber opposes Senate Bill 288 and respectfully urges an unfavorable report.**

The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our nearly 500 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.

Tricia Swanson, Vice President, Government Relations
Montgomery County Chamber of Commerce
301-738-0015 www.mcccmd.com