Maryland
DEPARTMENT OF COMMERCE

Wes Moore | Governor
Aruna Miller | Lt. Governor
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DATE: February 2, 2023
BILL NO: House Bill 148
BILL TITLE: Economic Development – Enterprise Zone Program – Alterations
COMMITTEE: House Ways and Means

House Bill 148 alters the Enterprise Zone Program in the following ways:

1) Designations and expansions:
    a. Limits the use of "reasonable proximity" for designating non-qualifying census tracts to when the non-qualifying tract has fewer than 1,500 individual residents
    b. Requires each census tract within an Enterprise Zone (other than ones that qualify for the "reasonable proximity" rule above) individually meet the qualification requirements
    c. Limits the Secretary of Commerce from designating a new enterprise zone or expansion if s/he "reasonably anticipates" that the aggregate amount of property credits claimed for the immediately preceding fiscal year may exceed $60 million.
    d. Allows for permitting an extraordinary expansion within a calendar year if the expansion "merits inclusion in an enterprise zone for a compelling economic reason" even if the expansion will cause property credits claimed to exceed $60 million.
2) Property and Income Tax Credit Caps
    a. Establishes annual income tax credit caps applicable only for business entities locating in the enterprise zone after the effective date of the bill. The annual caps provide: (1) a business entity may not claim more than $250,000 in tax credits in any taxable year and (2) the aggregate tax credit claimed by all business entities may not exceed $2 million in tax credits in any taxable year.
    b. Establishes an annual qualified property cap of $500,000 in property tax credits that is applicable only for business entities locating in the enterprise zone after the effective date of the bill. The cap is effective for all taxable years beginning after June 30, 2023.
3) Establishes a sunset date of January 1, 2031.

Enterprise Zone Program Background:
Enterprise Zones are a State-local partnership that allows local jurisdictions to prioritize areas for economic development. Designations of new zones or expansion of existing ones must meet, or be in reasonable proximity to an area that meet, a specific economic distress criterium:

- The average rate of unemployment in the area, or within a reasonable proximity to the area but in the same county, for the most recent 18-month period for which data available is at least 150% of the greater of the average rate of unemployment in either the State or the United States during that period; or

- The population in the area, or within a reasonable proximity to the area but in the same county, qualifies the area as a low-income poverty area; or
- At least 70% of the families in the area, or within a reasonable proximity to the area but in the same county, have incomes that are less than 80% of the median family income in the political subdivision that contains the area; or
- The population in the area, or within a reasonable proximity to the area but in the same county, decreased by 10% between the most recent two censuses, and the political subdivision can demonstrate to the Secretary's satisfaction that chronic abandonment or demolition of property is occurring in the area; or substantial property tax arrearages exist in the area.

The Secretary may not designate more than 6 zones in one year, and a county may not receive more than one designation or redesignation in a calendar year.

Local Enterprise Zone administrators generally agree that the Enterprise Zone real property tax credit is the most useful and effective tax credit available to businesses that locate or expand in an Enterprise Zone. Counties that have few other incentives to offer find that the property tax credits are central to implementing their economic development strategy. Several counties also noted that the credits are useful in retaining companies in the zone, as companies considering an expansion often decide to expand within the zone rather than move to another location outside of the zone, which could potentially send them to another county or even to another state.

Impact:
First, this bill prevents the Secretary from designating new zones if the Secretary "reasonably anticipates" the aggregate property tax credit claimed in the immediately preceding fiscal year exceeds $60 million. Under this new metric, the Secretary would not have been able to designate new zones or expansions in fiscal year 2022. This would have delayed the redesignation and expansion of Baltimore City's Enterprise Zone as well as the expansion of Cecil County's Zone.

The result of this change is that the more success the Enterprise Zone program has in incentivizing high-value investments by businesses across the state, the more likely the program is to be frozen. By freezing the ability to designate or expand a zone, this could possibly prevent a large-scale business investment within Maryland, such as an attraction of a new headquarters or a major plant expansion. Additionally, this places a burden on jurisdictions not currently participating in the program by making them unable to participate due to activity levels in other jurisdictions.

Second, the bill requires each State enterprise zone to overlay a federal census tract for the purpose of qualifying the area. This utilizes federal census data in a way in which it was not designed to be used, is highly restrictive and would invalidate many zones that are currently in existence, either partially or fully. The ability for jurisdictions to use adjacent census tracts that have populations lower than 1,500 to justify a Zone designation will not alleviate this issue, as there are only 40 Tracts with this population level out of 1,465 tracts in total, 18 of which are located in Baltimore City. Of these 40, 22 are already contained within a Zone (18 of which are in Baltimore City). A *preliminary* analysis of the Census Tracts underlying existing zones was created in 2022 using 2019 data to see how this new requirement would affect existing Zones.

This preliminary analysis shows that half of the existing acreage in current Enterprise Zones is located outside a Census Tract that may qualify for the program. This percentage ranges from 100 percent in Queen Anne's County to zero percent in Dorchester County. This analysis is attached below.

Third, the bill establishes a first come, first serve order to claim the income tax credit and it establishes caps on the allowable amount of income and property tax credits claimed by businesses in a given year. These new limitations would apply to any business entity that moves into the enterprise zone after the effective date of the bill. The first come, first serve order puts businesses against each other in the race to file first. The cap diminishes the enterprise zone program as an effective incentive tool for economic development because businesses are no longer guaranteed to receive the benefit of the credits that they have earned.

Overall, these proposed changes shift the rationale for designating new zones and expanding existing zones to one based on the taxable value of property in lieu of focusing on the economic distress within local jurisdictions that warrant the designation of a zone in the first place. A 2022 analysis showed that, while Enterprise Zones only cover 1.4 percent of the State's land area (87 thousand acres), they contain employment for 16 percent of all the State's workers (420 thousand as measured by the Census Bureau's LEHD program). For the 19 jurisdictions that use the program, that number rises to 18.5 percent, or almost one out of every five workers. While not all of these workers are employed by companies that have taken advantage of the program, the existence of the program in those areas has likely improved the business climate and helped those jurisdictions to retain and grow employment.

As noted previously, local jurisdictions and economic development professionals consider the Enterprise Zone tax credit to be a useful tool in incentivizing development and job creation in their jurisdictions. Commerce is opposed to HB 148 because it will limit the ability of the local jurisdictions to declare their own priority areas to incentivize investment and development. Strictly adhering to qualifying census tracts for designating or expanding a State enterprise zone undermines the complexities of economic development. Census tracts are delineated to provide a stable set of geographical units for the presentation of statistical data.[1] The bill uses the statistical data in absolution without regard to valid factual considerations contemplated by local jurisdictions in their application for designation or expansion including whether area is suitable for commercial development based on population density, infrastructure or transportation. Additionally, census tracts that meet the qualifications to be designated an Enterprise Zone may not contain commercially-zoned or developable land, thus rendering the program ineffective. By allowing the addition of adjacent land with appropriate zoning and development potential, the program enables revitalization and reinvestment in communities that include distressed areas. Ultimately, the proposed changes seek to reduce the fiscal impact of the enterprise zone program without regard to the individualized needs of local governments in their vision of economic redevelopment for their localities.

[1] https://www.federalregister.gov/documents/2018/11/13/2018-24567/census-tracts-for-the-2020-census-final-criteria

Qualification Status of Underlying Census Tracts

Jurisdiction	Acreage in Unqualified Tracts	Acreage in Qualified Tracts	Total Acres	Unqualified Percentage
Allegany	3,527	5,006	8,533	41.3%
Anne Arundel	256	159	415	61.7%
Baltimore	6,879	853	7,732	89.0%
Baltimore City	4,083	10,782	14,864	27.5%
Caroline	106	1,141	1,247	8.5%
Cecil	4,252	2,934	7,186	59.2%
Dorchester	1	2,517	2,518	0.0%
Frederick	1,598	298	1,896	84.3%
Garrett	369	247	616	60.0%
Harford	6,111	7,978	14,089	43.4%
Kent	6	1,080	1,086	0.5%
Montgomery	823	382	1,206	68.3%
Prince George's	4,944	3,567	8,511	58.1%
Queen Anne's	1,349	x	1,349	100.0%
Somerset	479	1,617	2,097	22.9%
Talbot	293	116	409	71.6%
Washington	4,664	1,613	6,277	74.3%
Wicomico	2,927	2,425	5,352	54.7%
Worcester	1,168	1,186	2,354	49.6%
Statewide	43,837	43,902	87,739	50.0%