

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 566

(Delegates Rosenberg and Lierman)

Ways and Means and Environment and
Transportation

Finance

Opportunity Zone Enhancement Program - Eligibility - Lead-Based Paint
Affected Properties

This bill alters the information that must be provided to the Department of Commerce in order to qualify for specified tax credit enhancements under the Opportunity Zone Enhancement Program to include information related to lead-based paint abatement in specified circumstances. **The bill takes effect July 1, 2020, and applies to all tax years beginning after December 31, 2019.**

Fiscal Summary

State Effect: General and/or special fund revenues may increase beginning in FY 2021 to the extent that the bill precludes some uncapped tax credits from being claimed; however, the overall effect on State revenues is anticipated to be minimal. Any operational impacts are minimal and absorbable within existing budgeted resources.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: In addition to other currently required project-related information, an applicant for an enhanced credit under the Opportunity Zone Enhancement Program must include, with respect to qualified opportunity zone (QOZ) business property that is an affected property and required to be registered with the Maryland Department of the Environment's (MDE) Lead Poisoning Prevention Program:

- proof of registration with MDE;
- if the property contains at least one residential rental unit, proof of certain lead inspections;
- if the property is an owner-occupied residential rental property, (1) proof that visual exterior or interior painted surfaces are free of chipping, flaking, or peeling lead-based paint and (2) a copy of passing test results for lead-contaminated dust; and
- verification that, for the substantial improvement performed in accordance with the federal opportunity zone program, replacement doors and windows are free of lead-based paint.

The above requirements do not apply if an applicant instead provides an affidavit to Commerce along with the enhanced credit application that the qualified opportunity zone business property is unoccupied, will be demolished within one year of the date of the application, and will remain unoccupied until the demolition is complete.

Current Law:

Opportunity Zone Enhancement Program

The Opportunity Zone Enhancement Program, administered by Commerce, provides enhanced incentives for qualifying businesses within a federal opportunity zone. Qualifying businesses within an opportunity zone may qualify for enhanced incentives under the following tax credit programs: (1) job creation; (2) One Maryland; (3) enterprise zone; (4) biotechnology investment incentive; (5) cybersecurity investment incentive; and (6) More Jobs for Marylanders. The enhanced incentives do not apply to (1) the enterprise zone property tax credit and (2) One Maryland tax credits unless the business hires at least 50 qualified employees.

Enhanced incentives can be claimed by a business that is within areas that are currently designated as a federal opportunity zone under Section 1400Z-1 of the Internal Revenue Code. These enhanced incentives (Level 1) are in addition to the standard credit provided under each program and in certain circumstances in addition to the enhanced additional credit available under each program. In addition, the program provides an additional enhancement (Level 2) beyond the enhanced credit.

A QOZ business or qualified opportunity fund (QOF) qualifies for a Level 1 enhancement if it meets program requirements and provides specified information to Commerce. A QOZ

business or QOF qualifies for a Level 2 enhancement if (1) the entity meets Level 1 requirements and (2) accountability to QOZ residents is maintained through their representation on any governing board or advisory board of the QOZ business; alternatively, a community benefits agreement or strategic industry partnership may be negotiated and agreed to by QOZ community groups and the QOF that specifies a range of community benefits that the fund agrees to provide as part of the development project, including workforce development or local hiring requirements. In addition, if a QOZ business is located entirely within a municipality, the municipality must approve the Level 2 enhancement. Otherwise, the county in which the QOZ business is located must approve the Level 2 enhancement.

A business must also satisfy each program's applicable eligibility requirements and investment and job creation minimums. For example, under the More Jobs for Marylanders Program, a manufacturing business must pay a qualified employee 120% of the State minimum wage and non-manufacturers must pay at least \$50,000. The job creation and One Maryland tax credits require a qualified employee to be paid 120% of the minimum wage and the enterprise zone income tax credit requires a qualified position to be paid 150% of the federal minimum wage.

The enhanced tax credits can be claimed beginning with tax year 2019.

Lead-based Paint

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. MDE serves as the coordinating agency of statewide efforts to eliminate childhood lead poisoning. Under the program, "affected property" means:

- a property constructed before 1950 that contains at least one rental dwelling unit;
- on and after January 1, 2015, a property constructed before 1978 that contains at least one rental unit; or
- any residential rental property for which the owner chooses to comply with the program.

In October 2015, the State released the *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning* (the 2015 targeting plan). The 2015 targeting plan and accompanying proposed regulations called for blood lead testing at 12 months and 24 months of age throughout the State. Previously, only children living in certain at-risk zip codes or who were enrolled in Medicaid were targeted for testing. These initiatives have significantly increased the number of children receiving blood lead testing statewide.

Background: The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in certain communities. Under the Act, states may nominate up to 25% of specified low-income census tracts for designation by the U.S. Treasury as opportunity zones. Maryland nominated its zones in March 2018, and the U.S. Treasury designated the zones in June 2018. The Administration has also established the [Opportunity Zone Leadership Task Force](#) by executive order to provide guidance and coordinate efforts related to opportunity zone investment.

The program offers three federal tax incentives related to capital gains: (1) a temporary tax deferral for capital gains reinvested in an Opportunity Fund; (2) a step up in basis for capital gains reinvested in an Opportunity Fund, which excludes up to 15% of the original capital gain from taxation; and (3) a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in an Opportunity Fund, if the investment is held for at least 10 years.

State Revenues: The bill alters eligibility criteria under the Opportunity Zone Enhancement Program to require that certain applicants provide proof that they are meeting specified lead paint abatement requirements. Most of the affected tax credits/programs are subject to an annual appropriation or maximum limit: the job creation, biotechnology investment incentive, cybersecurity investment incentive, and sales tax and income tax credits under the More Jobs for Marylanders program. The remaining credits/programs are not capped. Therefore, general and/or special fund revenues may increase beginning in fiscal 2021 to the extent that the bill precludes some uncapped credits from being claimed; however, the overall effect on State revenues is anticipated to be minimal. Commerce can handle any operational effects with existing staff and resources.

The Maryland Reduction of Lead Risk in Housing Act does not require owners of affected properties to install lead-based paint free replacement windows or doors, and the Act does not apply to owner-occupied housing. As such, MDE advises that it must revise current forms or create new forms for MDE-accredited lead paint inspectors and abatement service and training providers and provide related guidance documents to account for these differences. There may also be an increase in Public Information Act (PIA) requests seeking rental property registration and lead inspection certificate records, as well as lead-dust test results and paint survey analyses. However, any additional workload for modifying existing or creating new inspection forms and procedures as well as processing PIA requests can be handled with existing staff and resources.

Small Business Effect: Small businesses that have a reduction or elimination in benefits due to the change in program eligibility requirements are negatively impacted by the bill. In most programs, the eligibility changes may result in a reallocation of some tax credits which does not change the total amount of tax credits awarded. Small businesses that

continue to meet the requirements under the bill and would not otherwise receive a tax credit under current law due to program funding limitations benefit due to this reallocation.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 713 (Senator Carter, *et al.*) - Finance.

Information Source(s): Department of Commerce; Maryland Department of the Environment; Montgomery and Prince George's counties; Department of Legislative Services

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