

Chapter 175

(Senate Bill 70)

AN ACT concerning

Business and Economic Development – Enterprise Fund and Invest Maryland Program

FOR the purpose of altering the uses and composition of the Enterprise Fund in the Department of Business and Economic Development; authorizing the Department to acquire a certain ownership interest under certain circumstances; restricting to a certain percentage the Department's allocation of designated capital in certain side car funds under the Invest Maryland Program; requiring the Maryland Venture Fund Authority to consider whether the State's investment in an applicant for venture firm certification under the Invest Maryland Program would exceed a certain percentage of total investments in the applicant; expanding certain prohibitions to apply to a purchaser of tax credits under the Invest Maryland Program; prohibiting a certain report from including certain information; altering a certain reporting requirement; altering the method by which a venture firm may make a distribution that is not a qualified distribution; requiring the Comptroller to make certain payments into the Enterprise Fund and the General Fund under certain circumstances; altering certain information that must be included in a certain annual report by the Department; altering a certain definition; defining a certain term; making a conforming change; making this Act an emergency measure; and generally relating to the Enterprise Fund and Invest Maryland Program.

BY repealing and reenacting, without amendments,

Article – Economic Development

Section 5–602(a) and 6–501(f), (h), (k), (l), (m), (o), and (p)

Annotated Code of Maryland

(2008 Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – Economic Development

Section 5–602(b) and (g), 5–603(b), 6–501(n) and (p), 6–511, 6–518(a)(1), 6–520, 6–521(a), 6–522, and 6–529

Annotated Code of Maryland

(2008 Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Economic Development

5-602.

- (a) There is an Enterprise Fund in the Department.
- (b) The Department may use the Fund to:
 - (1) make a grant or loan, at the rate of interest set by the Department;
 - (2) provide equity investment financing for a business enterprise;
 - (3) guarantee a loan, equity, investment, or other private financing to expand the capital resources of a business enterprise;
 - (4) purchase advisory services and technical assistance to better support economic development; [and]
 - (5) **PAY THE DEPARTMENT'S OBLIGATIONS TO A VENTURE FIRM UNDER THE INVEST MARYLAND PROGRAM, AS PROVIDED UNDER § 6-522(C)(2)(I) OF THIS ARTICLE; AND**
 - (6) pay the administrative, legal, and actuarial expenses of the Department.
- (g) The Fund consists of:
 - (1) money appropriated by the State to the Fund;
 - (2) money made available to the Fund through federal programs or private contributions;
 - (3) repayment of principal of a loan made from the Fund;
 - (4) payment of interest on a loan made from the Fund;
 - (5) proceeds from the sale, disposition, lease, or rental by the Department of collateral related to financing that the Department provides under this subtitle;
 - (6) premiums, fees, royalties, interest, repayments of principal, and returns on investments paid to the Department by or on behalf of:
 - (i) a business enterprise in which the Department has made an investment under this subtitle; or

(ii) an investor providing an investment guaranteed by the Department under this subtitle;

(7) recovery of an investment made by the Department in a business enterprise under this subtitle, including an arrangement under which the Department's investment in the business enterprise is recovered through:

(i) a requirement that the Department receive a proportion of cash flow, commission, royalty, or payment on a patent; or

(ii) the repurchase from the Department of any evidence of financial participation, including a note, stock, bond, or debenture;

(8) repayment of a conditional grant extended by the Department;
[and]

(9) **MONEY DEPOSITED INTO THE FUND UNDER § 6-522(C)(2)(I) OF THIS ARTICLE; AND**

(10) any other money made available to the Department for the Fund.

5-603.

(b) (1) Whenever the Department is authorized by law to make a grant, including a grant from the Economic Development Opportunities Program Account authorized under § 7-314 of the State Finance and Procurement Article, the Department may use money appropriated for the grant to make an equity investment in a business enterprise.

(2) (I) [In] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,** IN making an equity investment under this subtitle, the Department may not acquire an ownership interest in an enterprise that exceeds 25%.

(II) **IN MAKING AN EQUITY INVESTMENT UNDER THIS SUBTITLE IN ONE OR MORE VENTURE OR PRIVATE EQUITY FIRMS, THE DEPARTMENT MAY ACQUIRE AN OWNERSHIP INTEREST EXCEEDING 25%.**

(3) Within 15 years after making an equity investment under this subtitle, the Department shall divest itself of that investment.

(4) The liability of the State and the Department in making an equity investment under this subtitle is limited to the amount of that investment.

(5) The Department shall adopt regulations governing equity investments under this subsection that specify:

(i) the types of business enterprises in which an investment may be made;

(ii) the basic standards an enterprise shall meet to qualify for an investment;

(iii) the amount of money available for investment; and

(iv) the criteria that the Department uses to make investment decisions.

6–501.

(f) “Designated capital” means the amount of money that a purchaser invests under the Program.

(h) “Financing Authority” means the Maryland Small Business Development Financing Authority under Title 5, Subtitle 5 of this article.

(k) “Program” means the Invest Maryland Program under this subtitle.

(l) “Purchaser” means:

(1) an insurance company that:

(i) is authorized to do business in the State;

(ii) has insurance premium tax liability; and

(iii) contributes designated capital to purchase an allocation of premium tax credits under the Program; or

(2) a holding company that:

(i) has at least one insurance company subsidiary authorized to do business in the State; and

(ii) is contributing designated capital on behalf of one or more of these subsidiaries.

(m) “Qualified business” means a business that, at the time of the first investment in the business under the Program:

(1) has its principal business operations located in the State and intends to maintain its principal business operations in the State after receiving an investment under the Program;

- (2) has agreed to use the qualified investment primarily to:
 - (i) support business operations in the State; or
 - (ii) in the case of a start-up company, establish and support business operations in the State;
- (3) has not more than 250 employees; and
- (4) is not primarily engaged in:
 - (i) retail sales;
 - (ii) real estate development;
 - (iii) the business of insurance, banking, or lending; or
 - (iv) the provision of professional services by accountants, attorneys, or physicians.

(n) (1) “Qualified distribution” means a distribution or payment by a venture firm **OF THE STATE’S PROPORTIONATE ALLOCATION OF COSTS** in connection with:

- (i) the reasonable costs and expenses of organizing and syndicating the venture firm, including fees paid for professional services, up to a maximum aggregate amount of \$125,000;
- (ii) reasonable and necessary fees paid for ongoing professional services, including legal and accounting services, related to the operation of the venture firm, up to a maximum aggregate amount of \$50,000 in a single year; and
- (iii) a yearly management fee in an amount that does not exceed 2.5% of the designated capital allocated to the venture firm.

- (2) “Qualified distribution” does not include:
 - (i) any amount paid to a purchaser or an affiliate of a purchaser; or
 - (ii) any costs and expenses related to lobbying or government relations.

(o) (1) “Qualified investment” means the direct or indirect investment of cash by the Enterprise Fund or the Financing Authority in a qualified business for the purchase of any of the following:

- (i) a share of stock or other equity interest;
- (ii) a debt instrument that is convertible into equity; or
- (iii) an equity participation instrument such as an option or warrant.

(2) A qualified investment includes the direct or indirect investment of cash by a venture firm based on the investment criteria set forth in this subtitle.

(p) **“SIDE CAR AFFILIATE” MEANS AN ENTITY CONTROLLED BY OR UNDER COMMON CONTROL WITH A VENTURE FIRM THAT IS FORMED SOLELY FOR THE PURPOSE OF INVESTING ALONGSIDE THE VENTURE FIRM.**

(Q) “Venture firm” means a partnership, corporation, trust, or limited liability company, whether organized on a profit or a not-for-profit basis, that is certified by the Department as meeting the criteria established under § 6–518 of this subtitle.

6–511.

(a) All designated capital from purchasers shall be deposited into the Enterprise Fund to be invested as provided in this subtitle.

(b) The Department shall allocate designated capital as follows:

(1) 67% to one or more venture firms to fund the making of qualified investments based on the criteria set forth in this subtitle, PROVIDED, THAT NOT MORE THAN 20% OF THIS AMOUNT MAY BE INVESTED IN THE SIDE CAR FUND AFFILIATES OF THE VENTURE FIRMS; and

(2) 33% to the Enterprise Fund, to be allocated:

(i) \$250,000 to the Rural Maryland Council for its operational expenses;

(ii) 75% of the remaining amount to fund the making of qualified investments in qualified businesses under the existing policies and procedures of the Enterprise Fund under Title 5, Subtitle 6 of this article; and

(iii) 25% of the remaining amount to the Financing Authority Equity Participation Investment Program, to be invested in qualified businesses in accordance with the policies and procedures of the Financing Authority under Title 5, Subtitle 5, Part V of this article.

(c) It is the goal of the State that a portion of the designated capital received under subsection (b)(2)(ii) of this section be used to make qualified investments in qualified businesses located in rural areas of the State.

(d) As soon as practicable after the Department receives each installment of designated capital, the Department and each venture firm that has been allocated designated capital shall enter into a contract under which the allocated amount of designated capital will be transferred by the Department to the venture firm for investment as provided in this subtitle.

(e) The Department shall secure the commitment of the purchasers in accordance with § 6-512 of this subtitle.

6-518.

(a) In selecting applicants for venture firm certification, the Authority shall consider:

(1) the management structure of the applicant, including:

(i) the investment experience of the principals;

(ii) the applicant's reputation in the venture firm industry and the applicant's ability to attract co-investment capital and syndicate investments in qualified businesses in the State;

(iii) the knowledge, experience, and capabilities of the applicant in subject areas relevant to venture-stage businesses in the State; [and]

(iv) the tenure and turnover history of principals and senior investment professionals of the applicant; AND

(V) WHETHER THE STATE'S INVESTMENT IN THE APPLICATION UNDER THIS PROGRAM WOULD EXCEED 15% OF THE TOTAL INVESTED IN THE APPLICANT BY ALL INVESTORS, INCLUDING INVESTMENTS IN ANY SIDE CAR FUND AFFILIATES;

6-520.

(a) [An insurance company] A PURCHASER or affiliate may not directly or indirectly:

- (1) manage a venture firm;
- (2) beneficially own, through rights, options, convertible interests, or otherwise, more than 15% of the voting securities or other voting ownership interest of a venture firm; or
- (3) control the direction of investments for a venture firm.

(b) Subsection (a) of this section applies whether or not the [insurance company] **PURCHASER** or affiliate is authorized to do business in the State.

6-521.

(a) Not later than [January] **MARCH** 31 of each year, each venture firm and the Financing Authority shall report to the Department:

- (1) the amount of designated capital remaining uninvested at the end of the preceding calendar year;
- (2) all qualified investments made during the preceding calendar year, including the number of employees of each business at the time the qualified investment was made and as of December 31 of that year;
- (3) for any qualified investment in which the venture firm or the Financing Authority no longer has a position as of the end of the calendar year, the number of employees of the business as of the date the investment was terminated; and
- (4) any other information the Department requires to ascertain the impact of the Program on the economy of the State.

6-522.

- (a) A venture firm may make a qualified distribution at any time.
- (b) To make a distribution that is not a qualified distribution, a venture firm ~~first~~ shall pay to the Comptroller [the total amount of the designated capital allocated to the venture firm] **THE VENTURE FIRM'S PRO RATA SHARE OF DISTRIBUTIONS MADE TO ALL LIMITED PARTNERS AS PROVIDED UNDER THE APPLICABLE PARTNERSHIP DOCUMENTS AND ANY AGREEMENT WITH THE DEPARTMENT.**
- (c) [After the venture firm has made the payment referred to in subsection (b) of this section, any additional nonqualified distributions shall be made:

- (1) 80% to the Comptroller; and
- (2) 20% to the owners of the venture firm.

(d) (1) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE** Comptroller shall distribute all payments received under this section to the General Fund within 30 days of receipt.

(2) (I) IF THE DEPARTMENT HAS AN OBLIGATION UNDER APPLICABLE VENTURE FIRM INVESTMENT DOCUMENTS TO RETURN TO THE VENTURE FIRM A PAYMENT PREVIOUSLY DISTRIBUTED TO THE COMPTROLLER, THE COMPTROLLER SHALL DEPOSIT AN AMOUNT EQUAL TO THAT PAYMENT INTO THE ENTERPRISE FUND TO COVER THE OBLIGATION.

(II) IF THE DEPARTMENT DETERMINES THAT THE MONEY DEPOSITED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS NO LONGER REQUIRED TO BE RETURNED TO A VENTURE FIRM UNDER THE APPLICABLE INVESTMENT DOCUMENTS, THE DEPARTMENT SHALL NOTIFY THE COMPTROLLER THAT THE MONEY MAY BE DISTRIBUTED TO THE GENERAL FUND.

6-529.

(a) (1) On or before January 1, 2013, and January 1 of each subsequent year, the Department shall submit a report on the implementation of the Program to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Budget and Taxation Committee and the House Ways and Means Committee.

(2) The Department shall publish the report on the Department's Web site in a publicly available format.

(3) The report published on the Web site ~~is not required to~~ **MAY NOT** include any proprietary or confidential information.

(b) The report shall include:

(1) with respect to each purchaser of premium tax credits under the Program:

- (i) the name of the purchaser of premium tax credits;
- (ii) the amount of premium tax credits allocated to the purchaser;

(iii) the amount of designated capital the purchaser contributed for the issuance of the tax credit certificate; and

(iv) the amount of any tax credits that have been transferred under § 6–514 of this subtitle;

(2) with respect to each venture firm that has received an allocation of designated capital:

(i) the name and address of the venture firm;

(ii) the names of the individuals making **DECISIONS ON BEHALF OF THE VENTURE FIRM TO MAKE** qualified investments under the Program;

(iii) the amount of designated capital received during the previous FISCAL year;

(iv) the cumulative amount of designated capital received;

(v) the amount of designated capital remaining uninvested at the end of the previous ~~calendar~~ FISCAL year;

(vi) the names and locations of qualified businesses receiving designated capital and the amount of each qualified investment;

(vii) FOR THE PREVIOUS FISCAL YEAR, the [annual performance of each qualified investment, including the investment's] **AGGREGATE** fair market value **OF ALL QUALIFIED INVESTMENTS** as calculated according to generally accepted accounting principles; and

(viii) the amount of any qualified distribution or nonqualified distribution taken during the ~~prior~~ PREVIOUS FISCAL year, including any management fee;

(3) with respect to the Enterprise Fund:

(i) the amount of designated capital received during the previous FISCAL year;

(ii) the cumulative amount of designated capital received;

(iii) the amount of designated capital remaining uninvested at the end of the ~~preceding calendar~~ PREVIOUS FISCAL year;

(iv) the names and locations of qualified businesses receiving designated capital and the amount of each qualified investment; and

(v) **FOR THE PREVIOUS FISCAL YEAR,** the [annual performance of each qualified investment, including the investment's] **AGGREGATE** fair market value **OF ALL QUALIFIED INVESTMENTS** as calculated [under Financial Accounting Standard 157 of the Financial Accounting Standards Board] **ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES;**

(4) with respect to the Financing Authority:

(i) the amount of designated capital received during the previous **FISCAL** year and the amount allocated to the Equity Participation Investment Program;

(ii) the cumulative amount of designated capital received;

(iii) the amount of designated capital remaining uninvested at the end of the ~~preceding calendar~~ **PREVIOUS FISCAL** year;

(iv) the names and locations of qualified businesses receiving designated capital and the amount of each qualified investment; and

(v) **FOR THE PREVIOUS FISCAL YEAR,** the [annual performance of each qualified investment, including the investment's] **AGGREGATE** fair market value **OF ALL QUALIFIED INVESTMENTS** as calculated under generally accepted accounting principles; and

(5) **FOR THE PREVIOUS FISCAL YEAR,** with respect to the qualified businesses in which venture firms, the Enterprise Fund, or the Financing Authority have invested:

(i) the classification of the qualified businesses according to the industrial sector and the size of the business;

(ii) the total number of jobs created in the State by the investment and the average wages paid for the jobs; and

(iii) the total number of jobs retained in the State as a result of the investment and the average wages paid for the jobs.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 2, 2013.