

# SENATE BILL 70

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EMERGENCY BILL  
(PRE-FILED)

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By: **Chair, Budget and Taxation Committee (By Request – Departmental –  
Business and Economic Development)**

Requested: November 5, 2012

Introduced and read first time: January 9, 2013

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development – Enterprise Fund and Invest**  
3 **Maryland Program**

4 FOR the purpose of altering the uses and composition of the Enterprise Fund in the  
5 Department of Business and Economic Development; authorizing the  
6 Department to acquire a certain ownership interest under certain  
7 circumstances; expanding certain prohibitions to apply to a purchaser of tax  
8 credits under the Invest Maryland Program; altering a certain reporting  
9 requirement; altering the method by which a venture firm may make a  
10 distribution that is not a qualified distribution; requiring the Comptroller to  
11 make certain payments into the Enterprise Fund and the General Fund under  
12 certain circumstances; altering certain information that must be included in a  
13 certain annual report by the Department; altering a certain definition; making  
14 this Act an emergency measure; and generally relating to the Enterprise Fund  
15 and Invest Maryland Program.

16 BY repealing and reenacting, without amendments,  
17 Article – Economic Development  
18 Section 5–602(a) and 6–501(f), (h), (k), (l), (m), (o), and (p)  
19 Annotated Code of Maryland  
20 (2008 Volume and 2012 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article – Economic Development  
23 Section 5–602(b) and (g), 5–603(b), 6–501(n), 6–520, 6–521(a), 6–522, and 6–529  
24 Annotated Code of Maryland  
25 (2008 Volume and 2012 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Economic Development**

4 5–602.

5 (a) There is an Enterprise Fund in the Department.

6 (b) The Department may use the Fund to:

7 (1) make a grant or loan, at the rate of interest set by the Department;

8 (2) provide equity investment financing for a business enterprise;

9 (3) guarantee a loan, equity, investment, or other private financing to  
10 expand the capital resources of a business enterprise;

11 (4) purchase advisory services and technical assistance to better  
12 support economic development; [and]

13 (5) **PAY THE DEPARTMENT’S OBLIGATIONS TO A VENTURE FIRM**  
14 **UNDER THE INVEST MARYLAND PROGRAM, AS PROVIDED UNDER §**  
15 **6–522(C)(2)(I) OF THIS ARTICLE; AND**

16 (6) pay the administrative, legal, and actuarial expenses of the  
17 Department.

18 (g) The Fund consists of:

19 (1) money appropriated by the State to the Fund;

20 (2) money made available to the Fund through federal programs or  
21 private contributions;

22 (3) repayment of principal of a loan made from the Fund;

23 (4) payment of interest on a loan made from the Fund;

24 (5) proceeds from the sale, disposition, lease, or rental by the  
25 Department of collateral related to financing that the Department provides under this  
26 subtitle;

27 (6) premiums, fees, royalties, interest, repayments of principal, and  
28 returns on investments paid to the Department by or on behalf of:

1 (i) a business enterprise in which the Department has made an  
2 investment under this subtitle; or

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

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

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

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

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

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

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

17 5-603.

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

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

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

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

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

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

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

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

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

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

10 6–501.

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

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

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

16           (l) “Purchaser” means:

17                   (1) an insurance company that:

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

19                           (ii) has insurance premium tax liability; and

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

22                   (2) a holding company that:

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

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

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

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

4           (2) has agreed to use the qualified investment primarily to:

5                   (i) support business operations in the State; or

6                   (ii) in the case of a start-up company, establish and support  
7 business operations in the State;

8           (3) has not more than 250 employees; and

9           (4) is not primarily engaged in:

10                   (i) retail sales;

11                   (ii) real estate development;

12                   (iii) the business of insurance, banking, or lending; or

13                   (iv) the provision of professional services by accountants,  
14 attorneys, or physicians.

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

18                   (i) the reasonable costs and expenses of organizing and  
19 syndicating the venture firm, including fees paid for professional services, up to a  
20 maximum aggregate amount of \$125,000;

21                   (ii) reasonable and necessary fees paid for ongoing professional  
22 services, including legal and accounting services, related to the operation of the  
23 venture firm, up to a maximum aggregate amount of \$50,000 in a single year; and

24                   (iii) a yearly management fee in an amount that does not exceed  
25 2.5% of the designated capital allocated to the venture firm.

26           (2) “Qualified distribution” does not include[:

27                   (i) any amount paid to a purchaser or an affiliate of a  
28 purchaser; or

29                   (ii)] any costs and expenses related to lobbying or government  
30 relations.

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

4 (i) a share of stock or other equity interest;

5 (ii) a debt instrument that is convertible into equity; or

6 (iii) an equity participation instrument such as an option or  
7 warrant.

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

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

14 6-520.

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

17 (1) manage a venture firm;

18 (2) beneficially own, through rights, options, convertible interests, or  
19 otherwise, more than 15% of the voting securities or other voting ownership interest of  
20 a venture firm; or

21 (3) control the direction of investments for a venture firm.

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

24 6-521.

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

27 (1) the amount of designated capital remaining uninvested at the end  
28 of the preceding calendar year;

29 (2) all qualified investments made during the preceding calendar year,  
30 including the number of employees of each business at the time the qualified  
31 investment was made and as of December 31 of that year;

1           (3) for any qualified investment in which the venture firm or the  
2 Financing Authority no longer has a position as of the end of the calendar year, the  
3 number of employees of the business as of the date the investment was terminated;  
4 and

5           (4) any other information the Department requires to ascertain the  
6 impact of the Program on the economy of the State.

7 6-522.

8           (a) A venture firm may make a qualified distribution at any time.

9           (b) To make a distribution that is not a qualified distribution, a venture firm  
10 first shall pay to the Comptroller [the total amount of the designated capital allocated  
11 to the venture firm] **THE VENTURE FIRM'S PRO RATA SHARE OF DISTRIBUTIONS  
12 MADE TO ALL LIMITED PARTNERS AS PROVIDED UNDER THE APPLICABLE  
13 PARTNERSHIP DOCUMENTS AND ANY AGREEMENT WITH THE DEPARTMENT.**

14           (c) [After the venture firm has made the payment referred to in subsection  
15 (b) of this section, any additional nonqualified distributions shall be made:

16                   (1) 80% to the Comptroller; and

17                   (2) 20% to the owners of the venture firm.

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

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

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

32 6-529.

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

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

7                   (3)   The report published on the Web site is not required to include any  
8 proprietary or confidential information.

9           (b)   The report shall include:

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

12                           (i)   the name of the purchaser of premium tax credits;

13                           (ii)   the amount of premium tax credits allocated to the  
14 purchaser;

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

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

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

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

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

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

27                           (iv)   the cumulative amount of designated capital received;

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

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

1 (vii) the [annual performance of each qualified investment,  
2 including the investment's] **AGGREGATE** fair market value **OF ALL QUALIFIED**  
3 **INVESTMENTS** as calculated according to generally accepted accounting principles;  
4 and

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

7 (3) with respect to the Enterprise Fund:

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

10 (ii) the cumulative amount of designated capital received;

11 (iii) the amount of designated capital remaining uninvested at  
12 the end of the preceding calendar year;

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

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

20 (4) with respect to the Financing Authority:

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

24 (ii) the cumulative amount of designated capital received;

25 (iii) the amount of designated capital remaining uninvested at  
26 the end of the preceding calendar year;

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

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

1                   (5)     with respect to the qualified businesses in which venture firms, the  
2     Enterprise Fund, or the Financing Authority have invested:

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

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

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

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