

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 483 (The President, *et al.*) (By Request - Administration)
 Education, Energy, and the Environment and
 Budget and Taxation

**Maryland Community Investment Corporation - Establishment (Housing and
 Community Development Financing Act of 2024)**

This Administration bill establishes the Maryland Community Investment Corporation as a body politic and corporate and as an instrumentality of the State. Generally, the purposes of the corporation are to (1) do all things necessary to qualify as a Community Development Entity (CDE) and apply for designation as such; (2) apply for an allocation of federal New Markets Tax Credits (NMTCs); and (3) make investments and financial assistance available to low-income communities in the State. The bill also expands the eligible uses of the Strategic Demolition and Smart Growth Impact Fund in the Department of Housing and Community Development (DHCD) to include debt payments and credit enhancement. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: The FY 2025 budget as introduced includes \$0.8 million in general funds for the corporation, contingent on legislation establishing the corporation. Thus, general fund expenditures increase by \$0.8 million in FY 2025. Future year expenditures assume continued funding at that level through FY 2029, under the assumptions discussed below; general fund expenditures may be less in future years to the extent that the corporation becomes self-sustaining. Nonbudgeted revenues and expenditures for the corporation increase significantly beginning as early as FY 2026.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
NonBud Rev.	\$0	-	-	-	-
GF Expenditure	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
NonBud Exp.	\$0	-	-	-	\$0
Net Effect	(\$0.8)	(\$0.8)	(\$0.8)	(\$0.8)	(\$0.8)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local governments benefit from greater flexibility in the use of Strategic Demolition and Smart Growth Impact funding. The bill does not otherwise directly affect local government finances or operations, as discussed below.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The Maryland Community Investment Corporation is established as a body politic and corporate and an instrumentality of the State, subject to specified conditions and requirements. The purposes of the corporation are to:

- do all things necessary to qualify as a CDE;
- apply to the U.S. Department of the Treasury to be designated as a CDE, as that term is defined in federal law;
- apply to the U.S. Department of the Treasury for an allocation of NMTCs;
- receive, make, and facilitate qualified equity investments and financial assistance available in low-income communities, as defined, in the State;
- allocate any NMTCs received by the corporation;
- coordinate with other qualified CDEs in the State to help ensure that low-income communities are receiving the maximum benefit of qualified equity investments;
- make investments and financial assistance available to low-income communities from the corporation's money or from any other source;
- build a long-term financial capacity and sustained investment in low-income communities in the State;
- coordinate and create pathways to follow-on financing in the State; and
- foster inclusive and diverse entrepreneurship and innovation throughout the State, which may include initiatives to raise awareness of programs to assist low-income communities.

General Administration

A board of directors is established to manage the corporation and its units and exercise its corporate powers, subject to specified requirements. Board members may not receive compensation but are entitled to reimbursement for travel expenses.

The board must appoint an advisory committee composed of members required for the corporation to qualify as a CDE. The board must establish related requirements for that

advisory committee. The board also has ongoing oversight and planning responsibilities, such as the development of a strategic plan and the establishment of certain personnel policies.

The corporation must (1) establish an investment committee and (2) adopt regulations establishing the responsibilities of the investment committee and the procedures for the appointment of investment committee members.

The corporation must employ a chief executive officer. The Department of Commerce and DHCD may provide staff to the corporation as provided in the State budget. The corporation may retain any necessary accountants, engineers, financial advisors, or other consultants.

The Attorney General is the legal advisor to the corporation and must assign to the corporation assistant Attorneys General. The Attorney General must designate one assistant Attorney General as general counsel to the corporation, subject to additional specified requirements. With the approval of the Attorney General, the corporation may retain any additional necessary attorneys.

The corporation is exempt from specified provisions of State law related to employment and procurement, although the corporation, board, and corporation employees are still subject to procurement policies and procedures for exempt units. The corporation is also subject to the Public Information Act. The board, officers and employees of the corporation, members of the investment committee, and members of the advisory committee are subject to the Public Ethics Law and must disclose specified employment or financial interests to the State Ethics Commission. The corporation is also exempt from State and local taxes.

The books and records of the corporation are subject to audit at any time by the State and each year by an independent auditor. The corporation must conduct an independent assessment of the board and the corporation every five years.

General Corporation Powers

Among other powers, the corporation may:

- accept loans, grants, investments, or assistance of any kind from the federal or State government, a local government, a college or university, or a private source;
- acquire, purchase, hold, lease as lessee, and use (1) a franchise, patent, or license or (2) any real, personal, mixed, tangible, or intangible property, or an interest thereof;
- sell, lease, transfer, license, assign, or dispose of property or a property interest that it acquires;

- fix and collect rates, rentals, fees, royalties, and charges for services and resources it provides or makes available;
- create, own, control, or be a member of a corporation, limited liability company, partnership, or other entity, whether operated for profit or not for profit;
- exercise power usually possessed by a private corporation in performing similar functions unless to do so would conflict with State law; and
- do all things necessary or convenient to carry out the bill.

Investments and Other Financial Transactions

Generally, the corporation may make qualified equity investments and other financial assistance available to projects in low-income communities if the investments are made on review and approval of a written application. The project must be located in the State. The corporation may also make investments under an agreement with the Board of Trustees for the State Retirement and Pension System (SRPS) under § 21-123.2 of the State Personnel and Pensions Article. (Under those provisions, investment of certain excess contributions to the State pension system are allowed to be made by the Maryland Technology Development Corporation (TEDCO) or another entity but must include a goal of 50% investment in commercialization of technology sponsored or created by a university in the State.)

In regard to any and all programs of the corporation, except as otherwise provided in the bill, the corporation must adopt regulations to govern investments that specify:

- the types of businesses and projects in which an investment may be made;
- the basic standards an enterprise must meet to qualify for an investment;
- the amount of money available for investment;
- the investment policy statement of the corporation that describes the procedures, criteria, investment philosophy, and guidelines for how the corporation's investment decisions will be made; and
- a process for considering whether investments help to foster inclusive and diverse entrepreneurship, including the corporation's support for low-income communities.

The corporation may:

- provide equity investment to a qualified business or project in the form of a grant, loan, tax credit allocation, or any other form of financial assistance to carry out its purposes;
- acquire, develop, improve, manage, market, license, sublicense, maintain, lease as lessor or lessee, or operate a project in the State to carry out its purposes; and

- acquire, directly or indirectly, from a person or political subdivision, by purchase, gift, or devise, any property, rights-of-way, franchises, easements, or other interests in land, including submerged land and riparian rights (1) as necessary or convenient to improve or operate a project to carry out its purposes and (2) on the terms and at the prices that the corporation considers reasonable.

Any income from the investment of money of the corporation, including investment proceeds and earnings, must be credited to the corporation.

Corporation Debt Is Not State Debt

A debt, claim, obligation, or liability of the corporation or any subsidiary is not (1) a debt, claim, obligation, or liability of the State, a unit or instrumentality of the State, or of a State officer or State employee or (2) a pledge of the credit of the State.

Reporting Requirements

By October 1 each year, the corporation must submit a report to the Governor and the General Assembly containing a complete operating and financial statement covering the corporation's operations, information on various corporation activities and initiatives, and information on the corporation's investments, among other things.

On a quarterly basis, the corporation must report to the Governor, the Joint Audit and Evaluation Committee, and the General Assembly; the report must include a list of the businesses and projects receiving support through programs administered by the corporation, including those receiving investments made under § 21-123.2 of the State Personnel and Pensions Article.

The corporation must also publish annual financial statements, audit reports, and policies of the board visibly on its website.

Current Law: The corporation is structured similarly to other statewide development entities, such as TEDCO and the Maryland Economic Development Corporation, although the latter has the express ability to issue bonds to finance projects.

Strategic Demolition and Smart Growth Impact Fund

Chapter 30 of 2016 established the Strategic Demolition and Smart Growth Impact Fund in DHCD. The fund is one of many programs at the department that provides funding for community development initiatives. The fund is authorized to provide grants and loans to government agencies and community development organizations for demolition, land assembly, architecture and engineering, and site development for revitalization projects in

an area designated as a sustainable community or specified qualified opportunity zones. In practice, the fund only provides grants.

Background: CDEs are entities certified by the U.S. Department of the Treasury to make loans or investments that stimulate community development. CDEs are funded through NMTCs: CDEs sell the tax credits to investors with federal income tax liabilities and use the funds raised by the sale to make debt or equity investments in entities located in qualified low-income communities. NMTCs are allocated based on a [competitive annual process](#), with \$5.0 billion dedicated to the program in 2023. Once a CDE receives an NMTC award, it has five years to utilize it. Many public jurisdictions have established quasi-governmental entities that have become CDEs to directly channel federal investment in their communities.

For purposes of NMTCs, “low-income community” means any population census tract with either (1) a poverty rate of at least 20% or (2) a median family income that does not exceed 80% of the statewide or metropolitan area (as applicable) median family income.

State Fiscal Effect:

Maryland Community Investment Corporation

The fiscal 2025 budget as introduced includes \$0.8 million in general funds for the corporation (as a pass-through in DHCD’s budget), contingent on legislation establishing the corporation. This bill satisfies that contingency, so general fund expenditures increase by \$0.8 million in fiscal 2025 to establish the corporation. This estimate assumes that level of funding is also provided in fiscal 2026 through 2029, at which point State support for the corporation may begin to decrease as the corporation relies on nonbudgeted funds available through its ongoing operations. It is assumed that this level of funding is sufficient to pay for the corporation’s overall administrative costs, including a chief executive officer and financial and accounting staff, although a portion of the costs are for assistance from State personnel, as discussed below. Direct corporation staff are not considered State employees.

The bill specifies that DHCD and Commerce may provide staff to the corporation as provided in the State budget. As the budget includes contingent funding for the corporation, it is assumed that those funds (and future discretionary funding) may be used to reimburse DHCD and/or Commerce for technical assistance provided during the corporation’s initial start-up phase in fiscal 2025 and 2026.

The bill establishes the Attorney General as the legal advisor to the corporation and requires the Attorney General to designate at least one assistant Attorney General to the corporation as general counsel. The Office of the Attorney General advises that NMTC

projects are complex financial transactions in which there are significant legal compliance and reporting requirements. The corporation requires a full-time counsel, and possibly another assistant Attorney General to assist the corporation with its application for an NMTC allocation, provide advice to the board, review project applications, set up corporate structures for each qualified project, make investments in qualified projects, prepare documents and provide closing support on transactions, and ensure compliance with all NMTCs requirements.

This estimate assumes that one assistant Attorney General, with sufficient experience and skills necessary to provide the level of legal services required, is assigned in fiscal 2025 and that, as is typical in such cases, the corporation pays for the associated personnel costs (estimated at approximately \$135,000 to \$156,000 annually).

Accordingly, consistent with the contingent funding in the fiscal 2025 budget as introduced, general fund expenditures increase by \$0.8 million in fiscal 2025, which reflects the bill’s July 1, 2024 effective date. This estimate reflects the cost of hiring one assistant Attorney General as general counsel to the corporation as well as the expenditure of remaining available funds for the corporation’s other administrative expenses, including reimbursement to DHCD and/or Commerce for staff assistance and payment of remaining administrative costs (for example, employing a chief executive officer, as required, who is not a State employee under the bill). It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses associated with the position.

Position	1.0
Salary and Fringe Benefits	\$140,938
Other Operating Expenses	7,526
Remainder for Other Administrative Expenses	<u>651,536</u>
Total FY 2025 Corporation Expenditures	\$800,000

Future year general fund expenditures reflect a full salary for the assistant Attorney General with annual increases and employee turnover as well as annual increases in ongoing operating expenses, plus about \$650,000 annually for other administrative expenses for the corporation, consistent with assumed State funding levels. General fund expenditures may increase by lesser amounts over time and eventually cease once the corporation is self-sustaining.

Based on the timing of the annual CDE and NMTC application process, the corporation may receive an allocation of NMTCs as early as fiscal 2026 – although the corporation would need to become certified and apply for an NMTC allocation within six months of being established. DHCD advises that multiple public CDEs have applied for NMTCs

within one year of being established. According to DHCD, on average, approximately 50% of CDEs that apply in the competitive round receive NMTC allocations, with an average award of \$50 million. NMTCs must then be sold (at a discount) to private investors.

Accordingly, nonbudgeted revenues for the corporation increase significantly – potentially by tens of millions of dollars – as early as fiscal 2026 from funds provided by private investors for NMTCs. Nonbudgeted expenditures increase beginning as early as fiscal 2026 as the corporation uses the funds to make debt or equity investments in entities located in qualified low-income communities. Over time, nonbudgeted revenues and expenditures increase as investment returns are realized and used to pay for the corporation’s administrative costs and provide further rounds of investment. The corporation may also apply for additional allocations of NMTCs in future years.

This estimate does not reflect any investments made by the corporation under an agreement with the Board of Trustees for SRPS, as authorized under the bill. Potential funds for such investments – excess pension contributions – are infrequent.

Strategic Demolition and Smart Growth Impact Fund

Altering the eligible uses of the Strategic Demolition and Smart Growth Impact Fund to include funding for debt payments and credit enhancement for revitalization projects in certain areas does not affect overall special fund expenditures, although existing grant funds may be reallocated among eligible purposes.

Local Fiscal Effect: Local governments benefit from greater flexibility in the use of Strategic Demolition and Smart Growth Impact funding. The bill does not otherwise directly affect local government finances or operations, although local governments may benefit from additional investments made by the corporation in their jurisdictions.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 599 (The Speaker, *et al.*) (By Request - Administration) - Environment and Transportation and Ways and Means.

Information Source(s): Department of Housing and Community Development; Department of Commerce; Office of the Attorney General; Comptroller’s Office; Department of General Services; Maryland Department of Planning; U.S. Department of the Treasury; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2024
rh/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Community Investment Corporation – Establishment
(Housing and Community Development Financing Act of 2024)

BILL NUMBER: SB0483

PREPARED BY: Brad Fallon

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation seeks to establish the Maryland Community Investment Corporation (“MCIC”) to be certified by the U.S. Treasury’s Community Development Financial Institutions Fund as a Community Development Entity (“CDE”). A CDE certification will allow the MCIC to compete for a share of \$5 billion through the competitive New market Tax Credit Program administered by the U.S. Treasury. Awards under the program will allow for investments in projects and low-income communities within Maryland. As such, this bill will have a significant positive economic impact.

Additionally, the legislation seeks to expand the qualified expenses under the Strategic Demolition and Smart Growth Impact fund to include debt payments and credit enhancements. This will allow for new redevelopment of projects statewide and in Baltimore City through Project CORE. As such, this legislation will have a significant positive economic impact.