

CF 6lr2453

By: ~~Senator Blount~~ Senators Blount, Hoffman, Cade, Currie, Pinsky, and Ruben
(Co-Chairman, Joint Committee on State Economic Development Initiatives)

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Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 19, 1996

CHAPTER _____

1 AN ACT concerning

2 **Economic Development Opportunities Program Fund**

3 FOR the purpose of expanding the Department of Business and Economic
4 Development's annual report to the Governor and the General Assembly
5 concerning the Economic Development Opportunities Program Fund to include
6 certain information about approved Fund projects; allowing the Legislative Policy
7 Committee to review and comment on the annual report; providing that the
8 Economic Development Opportunities Program Fund may be used only when
9 certain performance requirements are negotiated with and agreed to by a Fund
10 recipient and when an Economic Development Opportunities Program Fund
11 project meets the definition of "extraordinary impact" as adopted by the Legislative
12 Policy Committee; requiring the Department of Business and Economic
13 Development to establish a list of performance requirements subject to the review
14 and approval of the Legislative Policy Committee; requiring the Governor to
15 provide certain information about a proposed Economic Development
16 Opportunities Program Fund project to the Legislative Policy Committee prior to
17 Legislative Policy Committee approval of a funds transfer to an executive agency;
18 providing that funds transferred to an executive agency from the Economic
19 Development Opportunities Program Fund will revert back to the Fund under
20 certain circumstances; allowing the Governor to resubmit a request for a funds
21 transfer for any funds that have reverted back to the Economic Development
22 Opportunities Program Fund; defining a certain term; and generally relating to the
23 Economic Development Opportunities Program Fund.

24 BY repealing and reenacting, with amendments,
25 Article - State Finance and Procurement
26 Section 7-314

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1 Annotated Code of Maryland
2 (1995 Replacement Volume and 1995 Supplement)

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

5 **Article - State Finance and Procurement**

6 7-314.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) "Fund" means the Economic Development Opportunities Program
9 Fund.

10 (3) (I) "PERFORMANCE REQUIREMENT" MEANS A CONTRACTUAL
11 AGREEMENT BETWEEN AN EXECUTIVE AGENCY AND A FUND RECIPIENT THAT
12 REQUIRES THE FUND RECIPIENT TO MEET MINIMUM ECONOMIC DEVELOPMENT
13 OUTCOMES IN EXCHANGE FOR A GRANT OR A LOAN UNDER THIS SECTION.

14 (II) "PERFORMANCE REQUIREMENT" INCLUDES CLAW-BACK,
15 PENALTY, RECISION, AND RECALIBRATION CLAUSES THAT UTILIZE JOB CREATION,
16 CAPITAL INVESTMENT, AND OTHER MEASURES OF ECONOMIC DEVELOPMENT.

17 [(3)] (4) "Private sector enterprise" means any commercial, industrial,
18 educational, or research organization which is not a part of or controlled by a federal,
19 State, or local government agency.

20 [(4)] (5) "Executive agency" means an executive department or agency in
21 the Executive Branch of State government, including all offices of the Executive
22 Department or agency directly responsible to the Governor.

23 (6) "EXTRAORDINARY IMPACT" MEANS THE ATTRACTION OF A NEW
24 BUSINESS TO THE STATE OF MARYLAND OR THE MAINTENANCE OR THE EXPANSION
25 OF AN EXISTING MARYLAND BUSINESS THAT:

26 (I) MAINTAINS A STRONG FINANCIAL CONDITION AND MINIMAL
27 CREDIT RISK PROFILE;

28 (II) IS CAPABLE OF ACCESSING ALTERNATIVE SOURCES OF
29 FINANCING THROUGH THE BANKS OR CAPITAL MARKETS.

30 (III) SUPPORTS THE STATE'S STRATEGIC PLAN FOR ECONOMIC
31 DEVELOPMENT;

32 (IV) CREATES OR RETAINS SUBSTANTIAL EMPLOYMENT WITH
33 PARTICULAR ATTENTION PAID TO AREAS OF HIGH UNEMPLOYMENT; AND

34 (V) INVESTS IN CAPITAL AT A LEVEL EQUAL TO FIVE TIMES THE
35 GRANT OR LOAN OFFERED.

36 (b) Subject to the provisions of this section, the Economic Development
37 Opportunities Program Fund is established to maximize extraordinary economic
38 development opportunities.

1 (c) The Governor may provide an appropriation in the budget bill to the Fund for
2 a specific or general purpose or purposes.

3 (d) After notice to and approval by the Legislative Policy Committee, the
4 Governor may transfer funds by budget amendment from the Economic Development
5 Opportunities Program Fund to the expenditure account of the appropriate executive
6 agency.

7 (e) (1) The Fund is a continuing, nonlapsing fund which is not subject to §
8 7-302 of this subtitle.

9 (2) The Treasurer shall separately hold, and the Comptroller shall account
10 for, the Fund.

11 (3) The Fund shall be invested and reinvested in the same manner as other
12 State funds.

13 (4) Except as provided in paragraph (5) of this subsection, any investment
14 earnings shall be subject to § 7-311(d) of this subtitle.

15 (5) Any investment earnings on moneys transferred from the Fund to a
16 second continuing, nonlapsing fund may be retained to the credit of this second fund.

17 (f) (1) Moneys appropriated or credited to the Fund do not revert to the
18 Revenue Stabilization Account.

19 (2) Except as provided in paragraph (3) of this subsection, repayments of
20 principal or interest on any loan from the Fund, as provided in subsection (h) of this
21 section, shall be retained to the credit of the Fund.

22 (3) Repayments of principal or interest on any loan made from moneys
23 transferred from the Fund to a second continuing, nonlapsing fund may be retained to the
24 credit of the second fund.

25 (g) (1) The Department of Business and Economic Development shall report to
26 the Governor and, subject to § 2-1312 of the State Government Article, to the General
27 Assembly before January 1 of each year:

28 (I) the financial status of the program and a summary of its operations
29 for the preceding fiscal year;

30 (II) FOR THE PREVIOUS 3 FISCAL YEARS, THE STATUS OF FUND
31 DISBURSEMENTS FOR ECONOMIC DEVELOPMENT PROJECTS APPROVED BY THE
32 LEGISLATIVE POLICY COMMITTEE UNDER THIS SECTION; AND

33 (III) FOR THE PREVIOUS 3 FISCAL YEARS, THE STATUS OF JOB
34 CREATION, CAPITAL INVESTMENT, AND OTHER MEASURES OF ECONOMIC
35 DEVELOPMENT FOR EACH ECONOMIC DEVELOPMENT PROJECT APPROVED BY THE
36 LEGISLATIVE POLICY COMMITTEE UNDER THIS SECTION.

37 (2) IF THE JOB CREATION, CAPITAL INVESTMENT, AND OTHER
38 MEASURES OF ECONOMIC DEVELOPMENT DESCRIBED IN PARAGRAPH (2) OF THIS

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1 SUBSECTION ARE LOWER THAN NEGOTIATED ACCORDING TO SUBSECTION (H)(1) OF
2 THIS SECTION, THE REPORT SHALL CONTAIN AN EXPLANATION.

3 (3) UPON RECEIPT OF THE REPORT, THE LEGISLATIVE POLICY
4 COMMITTEE SHALL HAVE 60 DAYS TO REVIEW AND COMMENT ON THE REPORT,
5 DURING WHICH TIME THE DEPARTMENT OF BUSINESS AND ECONOMIC
6 DEVELOPMENT SHALL PROVIDE ANY ADDITIONAL INFORMATION REGARDING THIS
7 FUND AS REQUESTED BY THE LEGISLATIVE POLICY COMMITTEE.

8 (h) ~~Any~~ EXCEPT AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, ANY
9 funds transferred from the Economic Development Opportunities Program Fund shall be
10 used only for extraordinary economic development opportunities that:

11 (1) meet the criteria provided in this section; ~~AND~~

12 (2) INCLUDE PERFORMANCE REQUIREMENTS;

13 (3) IN ADDITION TO THE PERFORMANCE REQUIREMENTS UNDER ITEM
14 (2) OF THIS SUBSECTION, INCLUDE A SPECIFIC CLAW-BACK PROVISION REQUIRING
15 THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT TO RECAPTURE
16 FUNDS LOANED OR GRANTED IF THE RECIPIENT OF THOSE FUNDS DISCONTINUES
17 ALL OR A SIGNIFICANT PORTION OF BUSINESS ACTIVITIES WITHIN THE STATE; AND

18 (4) MEET THE DEFINITION OF AN "EXTRAORDINARY IMPACT" AS
19 PROVIDED IN SUBSECTION (A) OF THIS SECTION.

20 (I) AFTER CAREFUL CONSIDERATION OF THE ECONOMIC IMPACT, THE
21 LEGISLATIVE POLICY COMMITTEE MAY APPROVE AN ECONOMIC DEVELOPMENT
22 OPPORTUNITY THAT DOES NOT MEET THE DEFINITION OF "EXTRAORDINARY
23 IMPACT" OR CURRENT PERFORMANCE REQUIREMENTS IF THE DEPARTMENT OF
24 BUSINESS AND ECONOMIC DEVELOPMENT OFFERS A DETAILED JUSTIFICATION FOR
25 THE EXCEPTION.

26 (J) (1) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
27 SHALL SUBMIT ANNUALLY A SET OF MINIMUM PERFORMANCE REQUIREMENTS BY
28 JULY 1 OF EACH YEAR TO THE LEGISLATIVE POLICY COMMITTEE FOR ITS REVIEW
29 AND APPROVAL.

30 (2) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT
31 MAY MODIFY THESE PERFORMANCE REQUIREMENTS AS NEEDED UPON APPROVAL
32 FROM THE LEGISLATIVE POLICY COMMITTEE.

33 ~~(K)~~ (K) Subject to the provisions of this subtitle, funds transferred from the
34 Economic Development Opportunities Program Fund, to an executive agency, may be
35 loaned or granted for:

36 (1) assisting in the retention or expansion of existing privatesector
37 enterprises, public or private institutions, or federal research and development institutes;

38 (2) assisting in the establishment or attraction of private sector enterprises,
39 public or private institutions, or federal research and development institutes new to this
40 State; or

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1 (3) providing assistance where existing State or local programs lack
2 sufficient resources or are constrained by timing or program design from being utilized.

3 ~~(L)~~ Upon request for approval for the transfer of funds by budget
4 amendment from the Fund, the Governor shall provide, subject to § 2-1312 of the State
5 Government Article, to the Legislative Policy Committee:

6 (1) a detailed description of:

7 (i) the proposed use of the funds;

8 (ii) the manner in which the proposed use meets the criteria as set
9 forth in this section;

10 (iii) the degree to which the proposed use of funds will advance
11 statewide or local economic development strategies and objectives; and

12 (iv) the degree to which available sources of federal, State, local, and
13 private financial support has been sought and will be utilized;

14 (2) the [terms and conditions] TERMS, CONDITIONS, AND
15 PERFORMANCE REQUIREMENTS of any grant or loan for which the funds are to be used;

16 (3) a comprehensive economic analysis of the proposed use of the funds
17 which estimates:

18 (i) the economic impact to the State and the local jurisdictions
19 affected;

20 (ii) a minimum level of net economic benefits to the public sector; ~~and~~

21 (III) THE NUMBER OF JOBS EXPECTED TO BE CREATED AS A
22 RESULT OF THE PROPOSED ECONOMIC DEVELOPMENT PROJECT AND THE
23 PERCENTAGE OF THOSE JOBS THAT ARE EXPECTED TO BE HELD BY MARYLAND
24 RESIDENTS;

25 (IV) THE WAGE RATES AND BENEFIT PACKAGES FOR THE JOBS
26 EXPECTED TO BE CREATED AS A RESULT OF THE PROPOSED ECONOMIC
27 DEVELOPMENT PROJECT; AND

28 ~~(iii)~~ (V) any other appropriate financial or economic benefits;
29 [and]

30 (4) ANY RECORD THE LOAN OR GRANT APPLICANT HAS OF CREATING
31 JOBS IN EXCHANGE FOR PUBLIC EXPENDITURES WITHIN OR OUTSIDE THIS STATE;

32 (5) ANY PENDING ACTIONS OR ADJUDICATED VIOLATIONS TO ANY
33 STATE, LOCAL, OR FEDERAL GOVERNMENTAL ENTITY CONCERNING LABOR OR
34 ENVIRONMENTAL ISSUES THAT HAVE BEEN FILED AGAINST THE LOAN OR GRANT
35 APPLICANT;

36 ~~(4)~~ (6) any other analysis or information that is requested by the
37 Legislative Policy Committee; AND

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1 ~~(5)~~ (7) THE DATE ON WHICH THE EXECUTIVE AGENCY EXPECTS TO
2 DISBURSE THE FUNDS TO THE PROPOSED RECIPIENT.

3 ~~(K)~~ (M) IF AN EXECUTIVE AGENCY FAILS TO DISBURSE TRANSFERRED
4 FUNDS TO A RECIPIENT WITHIN 1 YEAR AFTER THE EXPECTED DISBURSEMENT
5 DATE PRESENTED TO THE LEGISLATIVE POLICY COMMITTEE UNDER SUBSECTION
6 (J) OF THIS SECTION, THE FUNDS WILL REVERT BACK TO THE FUND AND THE
7 GOVERNOR SHALL:

8 (1) RESUBMIT THE REQUEST TO THE LEGISLATIVE POLICY COMMITTEE
9 TO TRANSFER FUNDS BY BUDGET AMENDMENT TO THE FUND; AND

10 (2) PROVIDE THE LEGISLATIVE POLICY COMMITTEE WITH THE
11 INFORMATION REQUIRED UNDER SUBSECTION (J) OF THIS SECTION.

12 [(k)] ~~(L)~~ (N) Funds appropriated to the Economic Development Opportunities
13 Program Fund may not be loaned or granted for:

14 (1) substituting for funds from other State or local programs for which a
15 project may be eligible and sufficient resources exist;

16 (2) projects which are not likely to attract or retain employment
17 opportunities;

18 (3) funding projects located outside the State;

19 (4) construction or land acquisition by the Maryland Stadium Authority; or

20 (5) funding for any sports activity or facility.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 1996.