

HOUSE BILL 681

C8

3lr2119

By: **Delegates Fisher, Afzali, Dwyer, George, Myers, and Serafini**

Introduced and read first time: February 1, 2013

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Invest Maryland Program – Alteration of Program Requirements**

3 FOR the purpose of repealing the requirements of the Invest Maryland Program
4 regarding the allocation and use of designated capital by certain venture firms,
5 the Enterprise Fund, the Rural Maryland Council, and the Maryland Small
6 Business Development Financing Authority; repealing the Maryland Venture
7 Fund Authority in the Department of Business and Economic Development;
8 repealing all duties of the Authority; repealing all requirements of the Program
9 relating to venture firms; repealing certain Program reporting requirements;
10 requiring the Department to allocate designated capital in certain equal
11 amounts to the economic development unit of each county; requiring the
12 Department to include in a certain annual Program report certain information
13 on designated capital distributed to county economic development units; and
14 generally relating to altering the requirements of the Invest Maryland Program.

15 BY repealing

16 Article – Economic Development

17 Section 6–504 through 6–508 and the part “Part II. Maryland Venture Fund
18 Authority”; and 6–517 through 6–523 and the part “Part IV. Venture
19 Firms and Investments”

20 Annotated Code of Maryland

21 (2008 Volume and 2012 Supplement)

22 BY renumbering

23 Article – Economic Development

24 Section 6–511 through 6–514 and the part “Part III. Designated Capital”; and
25 6–526 through 6–529 and the part “Part V. Miscellaneous”, respectively
26 to be Section 6–504 through 6–507 and the part “Part II. Designated Capital”;
27 and 6–511 through 6–514 and the part “Part III. Miscellaneous”,
28 respectively

29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Volume and 2012 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Economic Development
4 Section 6–501
5 Annotated Code of Maryland
6 (2008 Volume and 2012 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Economic Development
9 Section 6–504 through 6–506, 6–511, and 6–514
10 Annotated Code of Maryland
11 (2008 Volume and 2012 Supplement)
12 (As enacted by Section 2 of this Act)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That Section(s) 6–504 through 6–508 and the part “Part II. Maryland
15 Venture Fund Authority”; and 6–517 through 6–523 and the part “Part IV. Venture
16 Firms and Investments” of Article – Economic Development of the Annotated Code of
17 Maryland be repealed.

18 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 6–511 through
19 6–514 and the part “Part III. Designated Capital”; and 6–526 through 6–529 and the
20 part “Part V. Miscellaneous”, respectively, of Article – Economic Development of the
21 Annotated Code of Maryland be renumbered to be Section(s) 6–504 through 6–507 and
22 the part “Part II. Designated Capital”; and 6–511 through 6–514 and the part
23 “Part III. Miscellaneous”, respectively.

24 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
25 read as follows:

26 Article – Economic Development

27 Part I. Definitions.

28 6–501.

29 (a) In this subtitle the following words have the meanings indicated.

30 (b) (1) “Affiliate” means:

31 (i) a person who, directly or indirectly, beneficially owns,
32 controls, or holds power to vote 15% or more of the outstanding voting securities or
33 other voting ownership interests of a venture firm or an insurance company; or

34 (ii) a person, 15% or more of whose outstanding voting
35 securities or other voting ownership interests is directly or indirectly beneficially

1 owned, controlled, or held with power to vote by a venture firm or an insurance
2 company.

3 (2) “Affiliate” does not include an insurance company that becomes a
4 purchaser in accordance with an allocation of investment tax credits under the
5 Program solely by reason of the allocation.

6 (c) “Allocation amount” means the total amount of tax credits allocated to a
7 purchaser.

8 (d) “Allocation date” means the date on which tax credits are allocated to a
9 purchaser under [§ 6–513] § 6–506 of this subtitle.

10 [(e) “Authority” means the Maryland Venture Fund Authority established
11 under § 6–504 of this subtitle.

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

14 [(g) “Enterprise Fund” means the Enterprise Fund under Title 5, Subtitle 6 of
15 this article.

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

18 (i) (F) “Insurance premium tax liability” means:

19 (1) any liability incurred by an insurance company under Title 6,
20 Subtitle 1 of the Insurance Article as of October 1, 2011; or

21 (2) if the liability referred to in item (1) of this subsection is eliminated
22 or reduced, any other tax liability that has been imposed by the State on the insurance
23 company as of October 1, 2011, not to exceed the amount of the liability eliminated or
24 reduced.

25 [(j) (G) “Premium tax credit” means a credit against insurance premium
26 tax liability offered to a purchaser under the Program.

27 [(k) (H) “Program” means the Invest Maryland Program under this
28 subtitle.

29 [(l) (I) “Purchaser” means:

30 (1) an insurance company that:

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

1 (ii) has insurance premium tax liability; and

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

4 (2) a holding company that:

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

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

9 **[(m)] (J)** “Qualified business” means a business that, at the time of the first
10 investment in the business under the Program:

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

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

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

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

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

19 (4) is not primarily engaged in:

20 (i) retail sales;

21 (ii) real estate development;

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

23 (iv) the provision of professional services by accountants,
24 attorneys, or physicians.

25 **[(n)] (1)** “Qualified distribution” means a distribution or payment by a
26 venture firm in connection with:

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

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

4 (iii) a yearly management fee in an amount that does not exceed
5 2.5% of the designated capital allocated to the venture firm.

6 (2) “Qualified distribution” does not include:

7 (i) any amount paid to a purchaser or an affiliate of a
8 purchaser; or

9 (ii) any costs and expenses related to lobbying or government
10 relations.

11 (o) **(K)** (1) “Qualified investment” means the direct or indirect
12 investment of cash by [the Enterprise Fund or the Financing Authority] **A COUNTY**
13 **ECONOMIC DEVELOPMENT UNIT** in a qualified business [for the purchase of any of
14 the following:

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

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

17 (iii) an equity participation instrument such as an option or
18 warrant.

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

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

25 Part II. Designated Capital.

26 6-504.

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

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

1 (1) 67% to one or more venture firms to fund the making of qualified
2 investments based on the criteria set forth in this subtitle; and

3 (2) 33% to the Enterprise Fund, to be allocated:

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

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

9 (iii) 25% of the remaining amount to the Financing Authority
10 Equity Participation Investment Program, to be invested in qualified businesses in
11 accordance with the policies and procedures of the Financing Authority under Title 5,
12 Subtitle 5, Part V of this article] **IN EQUAL YEARLY AMOUNTS TO THE ECONOMIC**
13 **DEVELOPMENT UNIT OF EACH COUNTY.**

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

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

22 (e) (C) The Department shall secure the commitment of the purchasers in
23 accordance with [§ 6-512] **§ 6-505** of this subtitle.

24 6-505.

25 (a) The [Authority] **DEPARTMENT** shall obtain the services of an
26 independent third party to conduct a bidding process in order to secure purchasers for
27 the Program as provided in this section.

28 (b) Using the procedures adopted by the independent third party, each
29 potential purchaser shall make a timely and irrevocable offer, subject only to the
30 Department's issuance to the purchaser of tax credit certificates, to make specified
31 contributions of designated capital to the Department on the dates specified in
32 [§ 6-513(a)] **§ 6-506(A)** of this subtitle.

33 (c) The offer shall include:

1 (1) the requested amount of tax credits, which may not be less than
2 \$1,000,000;

3 (2) the potential purchaser's specified contribution for each tax credit
4 dollar requested, which may not be less than the greater of:

5 (i) 70% of the requested dollar amount of tax credits; or

6 (ii) the percentage of the requested dollar amount of tax credits
7 that the Secretary, on the recommendation of the independent third party, determines
8 to be consistent with market conditions as of the offer date; and

9 (3) any other information the independent third party requires.

10 (d) (1) The deadline for submission of applications for tax credits is
11 February 1, 2012.

12 (2) Each potential purchaser shall receive a written notice from the
13 Department not later than May 1, 2012, indicating whether or not it has been
14 approved as a purchaser and, if so, the amount of tax credits allocated.

15 (e) The maximum amount of premium tax credits that may be allocated
16 under this subtitle for all years in which premium tax credits are allocated is
17 \$100,000,000.

18 6-506.

19 (a) Designated capital committed by a purchaser shall be paid to the
20 Enterprise Fund of the Department in three equal yearly installments due on June 1
21 of 2012, 2013, and 2014.

22 (b) On receipt of each installment of designated capital, the Department
23 shall issue to each purchaser a tax credit certificate representing a fully vested credit
24 against insurance premium tax liability equal to one-third of the total premium tax
25 credits allocated to the purchaser.

26 (c) The Department shall issue tax credit certificates to purchasers in
27 accordance with the bidding process selected by the independent third party on behalf
28 of the [Authority under § 6-512] **DEPARTMENT UNDER § 6-505** of this subtitle.

29 (d) The tax credit certificate shall state:

30 (1) the total amount of premium tax credits that the purchaser may
31 claim;

32 (2) the amount of designated capital that the purchaser has
33 contributed in return for the issuance of the tax credit certificate;

1 (3) the dates on which the tax credits will be available for use by the
2 purchaser;

3 (4) any penalties or other remedies for noncompliance;

4 (5) the procedures to be used for transferring the tax credits; and

5 (6) any other requirements the Department considers necessary.

6 (e) (1) A tax credit certificate may not be issued to any purchaser that
7 fails to make a contribution of designated capital within the time the Department
8 specifies.

9 (2) A purchaser that fails to make a contribution of designated capital
10 within the time the Department specifies shall be subject to a penalty equal to 10% of
11 the amount of designated capital that remains unpaid, payable to the Department
12 within 30 days after demand by the Department.

13 (3) The Department may offer to reallocate the defaulted designated
14 capital among the other purchasers, so that the result after reallocation is the same as
15 if the initial allocation had been performed without considering the premium tax
16 credit allocation to the defaulting purchaser.

17 (4) If the reallocation of designated capital results in the contribution
18 by another purchaser or purchasers of the amount of designated capital not
19 contributed by the defaulting purchaser, then the Department may waive the penalty
20 provided under this subsection.

21 (5) (i) A purchaser that fails to make a contribution of designated
22 capital within the time specified may avoid the imposition of the penalty by
23 transferring the allocation of tax credits to a new or existing purchaser within 30 days
24 after the due date of the defaulted installment.

25 (ii) Any transferee of an allocation of tax credits of a defaulting
26 purchaser under this section shall agree to make the required contribution of
27 designated capital within 30 days after the date of the transfer.

28 (6) (i) The Department in its sole discretion may purchase
29 insurance or make other financial arrangements in order to ensure the availability of
30 the full amount of designated capital committed by purchasers.

31 (ii) The Department shall disclose any purchase of insurance or
32 other similar financial arrangement under this paragraph in the annual report
33 required under [§ 6-529] § 6-514 of this subtitle.

34 Part III. Miscellaneous.

1 6-511.

2 (a) In any case under the insurance law of the State in which the assets of a
3 purchaser are examined or considered, the designated capital shall be treated as an
4 admitted asset, subject to the same financial rating as that held by the State.

5 (b) The Department shall submit the following to the Maryland Insurance
6 Administration:

7 (1) the names, addresses, and amount of designated capital to be
8 contributed and premium tax credits earned by each successful bidder within 30 days
9 after the close of the bidding process under [~~§ 6-512~~] **§ 6-505** of this subtitle;

10 (2) a copy of the tax credit certificate issued to each purchaser within
11 30 days after the issuance of the certificate under [~~§ 6-513~~] **§ 6-506** of this subtitle;

12 (3) the occurrence of a default by a purchaser; and

13 (4) the transfer of premium tax credits by a purchaser.

14 6-514.

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

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

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

23 (b) The report shall include:

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

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

27 (ii) the amount of premium tax credits allocated to the
28 purchaser;

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

1 (iv) the amount of any tax credits that have been transferred
2 under [§ 6-514] **§ 6-507** of this subtitle; AND

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

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

6 (ii) the names of the individuals making qualified investments
7 under the Program;

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

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

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

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

15 (vii) the annual performance of each qualified investment,
16 including the investment's fair market value as calculated according to generally
17 accepted accounting principles; and

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

20 (3) with respect to the Enterprise Fund:

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

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

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

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

28 (v) the annual performance of each qualified investment,
29 including the investment's fair market value as calculated under Financial Accounting
30 Standard 157 of the Financial Accounting Standards Board;

31 (4) with respect to the Financing Authority:

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

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

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

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

9 (v) the annual performance of each qualified investment,
10 including the investment's fair market value as calculated under generally accepted
11 accounting principles; and

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

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

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

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

20 **(2) WITH RESPECT TO THE ECONOMIC DEVELOPMENT UNIT OF**
21 **EACH COUNTY:**

22 **(I) THE AMOUNT OF DESIGNATED CAPITAL RECEIVED**
23 **DURING THE PREVIOUS YEAR;**

24 **(II) THE CUMULATIVE AMOUNT OF DESIGNATED CAPITAL**
25 **RECEIVED;**

26 **(III) THE AMOUNT OF DESIGNATED CAPITAL REMAINING**
27 **UNINVESTED AT THE END OF THE PRECEDING CALENDAR YEAR; AND**

28 **(IV) THE NAMES AND LOCATIONS OF QUALIFIED BUSINESSES**
29 **RECEIVING DESIGNATED CAPITAL AND THE AMOUNT OF EACH QUALIFIED**
30 **INVESTMENT.**

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2013.