

# SENATE BILL 70

C8

EMERGENCY BILL  
**ENROLLED BILL**

(3lr0011)

— *Budget and Taxation/Ways and Means* —

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

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

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; restricting to a certain percentage the Department's allocation of  
8 designated capital in certain side car funds under the Invest Maryland Program;  
9 requiring the Maryland Venture Fund Authority to consider whether the State's  
10 investment in an applicant for venture firm certification under the Invest  
11 Maryland Program would exceed a certain percentage of total investments in the  
12 applicant; expanding certain prohibitions to apply to a purchaser of tax credits  
13 under the Invest Maryland Program; prohibiting a certain report from including  
14 certain information; altering a certain reporting requirement; altering the

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*



1 method by which a venture firm may make a distribution that is not a qualified  
 2 distribution; requiring the Comptroller to make certain payments into the  
 3 Enterprise Fund and the General Fund under certain circumstances; altering  
 4 certain information that must be included in a certain annual report by the  
 5 Department; altering a certain definition; defining a certain term; making a  
 6 conforming change; making this Act an emergency measure; and generally  
 7 relating to the Enterprise Fund and Invest Maryland Program.

8 BY repealing and reenacting, without amendments,

9 Article – Economic Development

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

11 Annotated Code of Maryland

12 (2008 Volume and 2012 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Economic Development

15 Section 5–602(b) and (g), 5–603(b), 6–501(n) and (p), 6–511, 6–518(a)(1), 6–520,  
 16 6–521(a), 6–522, and 6–529

17 Annotated Code of Maryland

18 (2008 Volume and 2012 Supplement)

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

21 **Article – Economic Development**

22 5–602.

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

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

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

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

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

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

31 (5) **PAY THE DEPARTMENT’S OBLIGATIONS TO A VENTURE FIRM**  
 32 **UNDER THE INVEST MARYLAND PROGRAM, AS PROVIDED UNDER §**  
 33 **6–522(C)(2)(I) OF THIS ARTICLE; AND**

1           **(6)** pay the administrative, legal, and actuarial expenses of the  
2 Department.

3           (g) The Fund consists of:

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

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

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

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

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

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

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

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

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

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

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

25           (8) repayment of a conditional grant extended by the Department;

26 [and]

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

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

30 5-603.

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

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

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

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

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

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

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

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

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

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

25 6-501.

26 (f) "Designated capital" means the amount of money that a purchaser  
27 invests under the Program.

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

30 (k) "Program" means the Invest Maryland Program under this subtitle.

31 (l) "Purchaser" means:

1 (1) an insurance company that:

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

3 (ii) has insurance premium tax liability; and

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

6 (2) a holding company that:

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

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

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

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

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

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

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

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

21 (4) is not primarily engaged in:

22 (i) retail sales;

23 (ii) real estate development;

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

25 (iv) the provision of professional services by accountants,  
26 attorneys, or physicians.

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

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

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

10 (iii) a yearly management fee in an amount that does not exceed  
11 2.5% of the designated capital allocated to the venture firm.

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

13 (i) any amount paid to a purchaser or an affiliate of a  
14 purchaser; or

15 (ii)] any costs and expenses related to lobbying or government  
16 relations.

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

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

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

22 (iii) an equity participation instrument such as an option or  
23 warrant.

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

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

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

1 6-511.

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

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

5 (1) 67% to one or more venture firms to fund the making of qualified  
6 investments based on the criteria set forth in this subtitle, **PROVIDED, THAT NOT**  
7 **MORE THAN 20% OF THIS AMOUNT MAY BE INVESTED IN THE SIDE CAR FUND**  
8 **AFFILIATES OF THE VENTURE FIRMS; and**

9 (2) 33% to the Enterprise Fund, to be allocated:

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

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

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

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

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

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

29 6-518.

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

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

1                   (i) the investment experience of the principals;

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

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

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

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

13 6-520.

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

16                   (1) manage a venture firm;

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

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

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

23 6-521.

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

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

28                   (2) all qualified investments made during the preceding calendar year,  
29 including the number of employees of each business at the time the qualified  
30 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~~ **MAY NOT**  
8 include any 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 **FISCAL** 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~~ **FISCAL** year;

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

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

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

8 (3) with respect to the Enterprise Fund:

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

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

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

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

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

21 (4) with respect to the Financing Authority:

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

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

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

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

30 (v) FOR THE PREVIOUS FISCAL YEAR, the [annual  
31 performance of each qualified investment, including the investment's] **AGGREGATE**

1 fair market value **OF ALL QUALIFIED INVESTMENTS** as calculated under generally  
2 accepted accounting principles; and

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

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.