

SENATE BILL 70

C8

EMERGENCY BILL
(PRE-FILED)

3lr0011

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 2013

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; expanding certain prohibitions to apply to a purchaser of tax
8 credits under the Invest Maryland Program; prohibiting a certain report from
9 including certain information; altering a certain reporting requirement; altering
10 the method by which a venture firm may make a distribution that is not a
11 qualified distribution; requiring the Comptroller to make certain payments into
12 the Enterprise Fund and the General Fund under certain circumstances;
13 altering certain information that must be included in a certain annual report by
14 the Department; altering a certain definition; making a conforming change;
15 making this Act an emergency measure; and generally relating to the
16 Enterprise Fund and Invest Maryland Program.

17 BY repealing and reenacting, without amendments,
18 Article – Economic Development
19 Section 5–602(a) and 6–501(f), (h), (k), (l), (m), (o), and (p)
20 Annotated Code of Maryland
21 (2008 Volume and 2012 Supplement)

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.



1 BY repealing and reenacting, with amendments,
2 Article – Economic Development
3 Section 5–602(b) and (g), 5–603(b), 6–501(n), 6–520, 6–521(a), 6–522, and 6–529
4 Annotated Code of Maryland
5 (2008 Volume and 2012 Supplement)

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

8 **Article – Economic Development**

9 5–602.

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

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

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

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

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

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

18 (5) **PAY THE DEPARTMENT’S OBLIGATIONS TO A VENTURE FIRM**
19 **UNDER THE INVEST MARYLAND PROGRAM, AS PROVIDED UNDER §**
20 **6–522(C)(2)(I) OF THIS ARTICLE; AND**

21 (6) pay the administrative, legal, and actuarial expenses of the
22 Department.

23 (g) The Fund consists of:

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

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

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

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

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

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

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

8 (ii) an investor providing an investment guaranteed by the
9 Department under this subtitle;

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

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

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

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

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

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

22 5-603.

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

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

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

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

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

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

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

9 (ii) the basic standards an enterprise shall meet to qualify for
10 an investment;

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

12 (iv) the criteria that the Department uses to make investment
13 decisions.

14 6–501.

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

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

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

20 (l) “Purchaser” means:

21 (1) an insurance company that:

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

23 (ii) has insurance premium tax liability; and

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

26 (2) a holding company that:

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

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

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

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

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

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

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

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

13 (4) is not primarily engaged in:

14 (i) retail sales;

15 (ii) real estate development;

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

17 (iv) the provision of professional services by accountants,
18 attorneys, or physicians.

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

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

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

28 (iii) a yearly management fee in an amount that does not exceed
29 2.5% of the designated capital allocated to the venture firm.

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

1 (i) any amount paid to a purchaser or an affiliate of a
2 purchaser; or

3 (ii)] any costs and expenses related to lobbying or government
4 relations.

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

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

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

10 (iii) an equity participation instrument such as an option or
11 warrant.

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

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

18 6–520.

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

21 (1) manage a venture firm;

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

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

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

28 6–521.

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

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

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

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

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

12 6-522.

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

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

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

21 (1) 80% to the Comptroller; and

22 (2) 20% to the owners of the venture firm.

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

26 (2) (I) **IF THE DEPARTMENT HAS AN OBLIGATION UNDER
27 APPLICABLE VENTURE FIRM INVESTMENT DOCUMENTS TO RETURN TO THE
28 VENTURE FIRM A PAYMENT PREVIOUSLY DISTRIBUTED TO THE COMPTROLLER,
29 THE COMPTROLLER SHALL DEPOSIT AN AMOUNT EQUAL TO THAT PAYMENT
30 INTO THE ENTERPRISE FUND TO COVER THE OBLIGATION.**

31 (II) **IF THE DEPARTMENT DETERMINES THAT THE MONEY
32 DEPOSITED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS NO LONGER
33 REQUIRED TO BE RETURNED TO A VENTURE FIRM UNDER THE APPLICABLE
34 INVESTMENT DOCUMENTS, THE DEPARTMENT SHALL NOTIFY THE**

1 **COMPTROLLER THAT THE MONEY MAY BE DISTRIBUTED TO THE GENERAL**
2 **FUND.**

3 6-529.

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

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

10 (3) The report published on the Web site ~~is not required to~~ **MAY NOT**
11 include any proprietary or confidential information.

12 (b) The report shall include:

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

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

16 (ii) the amount of premium tax credits allocated to the
17 purchaser;

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

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

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

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

25 (ii) the names of the individuals making **DECISIONS ON**
26 **BEHALF OF THE VENTURE FIRM TO MAKE** qualified investments under the
27 Program;

28 (iii) the amount of designated capital received during the
29 previous **FISCAL** year;

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

1 (v) the amount of designated capital remaining uninvested at
2 the end of the previous ~~calendar~~ FISCAL year;

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

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

9 (viii) the amount of any qualified distribution or nonqualified
10 distribution taken during the ~~prior~~ PREVIOUS FISCAL year, including any
11 management fee;

12 (3) with respect to the Enterprise Fund:

13 (i) the amount of designated capital received during the
14 previous FISCAL year;

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

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

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

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

25 (4) with respect to the Financing Authority:

26 (i) the amount of designated capital received during the
27 previous FISCAL year and the amount allocated to the Equity Participation
28 Investment Program;

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

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.