

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Enrolled

Senate Bill 340

(Senator Kagan, *et al.*)

Finance

Ways and Means

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Maryland Technology Development Corporation - Investments and Operations

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This bill alters and establishes specified eligibility criteria for investments made by the Maryland Technology Development Corporation (TEDCO) to generally require that a business have and subsequently maintain a presence in the State, and it makes related changes. The bill also requires TEDCO to adopt regulations establishing an investment committee and authorizes the TEDCO board to appoint an advisory committee, subject to specified requirements. The Maryland Venture Fund Authority (MVFA) must meet at least quarterly to review TEDCO's investment policy and investment decisions for the InvestMaryland program. Several related reporting requirements are established, including that the Department of Legislative Services (DLS) review TEDCO's statute and make recommendations for clarity and consistency. **The bill takes effect June 1, 2019.**

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Fiscal Summary

**State Effect:** TEDCO and DLS can handle the bill's requirements with existing budgeted resources. Beginning as early as FY 2019, any impact on TEDCO expenditures and revenues largely depends on continued program demand and activities.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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Analysis

**Bill Summary:** The bill makes several changes to the eligibility criteria for investments made by TEDCO to generally require that a business have and subsequently maintain a presence in the State, and it makes related changes. The purposes of TEDCO are likewise expanded to focus on Maryland companies and benefits, in addition to inclusion and

diversity. Individual changes are discussed separately below. Many of these changes are consistent with the findings of a February 2019 fiscal compliance audit conducted by the Office of Legislative Audits (OLA) also discussed below.

### *General Regulations Related to Maryland Technology Development Corporation Programs*

In regard to any and all TEDCO programs, except as otherwise provided, TEDCO must adopt regulations to govern investments that specify:

- the types of qualified businesses 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;
- TEDCO’s investment policy statement that describes the procedures, criteria, investment philosophy, and guidelines for how TEDCO’s investment decisions will be made; and
- a process for the consideration of whether investments help to foster inclusive and diverse entrepreneurship, including TEDCO’s support for marketing and other efforts to raise awareness of programs to assist small, minority, and women-owned businesses.

### *Qualified Businesses – Generally*

For the purposes of TEDCO’s programs, except as otherwise provided in law, a “qualified business” means a business that, at the time of the first investment in the business under a TEDCO program:

- (1) has its principal business operations located in the State, has over half its workforce working in the State, and intends to maintain its principal business operations in the State after receiving an investment under the program or (2) is an approved business or start-up business and will, as a result of the investment, have a substantial economic impact in the State through job creation, capital investment, and contribution to the State’s technology ecosystem;
- has agreed to use the investment primarily to (1) support business operations in the State or (2) in the case of a start-up company, establish and support business operations in the State;
- has up to 250 employees; and
- is not primarily engaged in specified industries or activities.

This definition replaces “business enterprise” for the purposes of investments made from the Enterprise Fund.

### *Requirements for Equity Investment Financing*

Except for investments made under an agreement with the State Retirement and Pension System, TEDCO's general authority to make grants to or provide equity investment financing for technology-based businesses is modified to require that:

- the investments are made to a qualified business;
- the investments are made on review and approval of a written application that (1) contains sufficient information to verify that the qualified business has its principal business operations in the State or will have a substantial economic impact on the State and (2) contains a certification of the veracity of the information by an authorized signatory of the qualified business; and
- at least the number of members that constitutes a quorum of any fund or authority has been appointed under the requirements for that fund or authority.

### *Use of Funds by Venture Firms under the InvestMaryland Program*

Each venture firm that receives funds under the InvestMaryland program must use at least 50% of the allocated capital to make equity investments in qualified businesses within three years of receipt of the funds. For venture firms that have received an allocation before June 1, 2019, this requirement applies as of that date. In the event that a venture firm fails to meet this requirement, TEDCO must:

- rescind the allocation and authorization for that firm from the date of noncompliance and remove that firm's certification for participation in the program;
- cease making the payment of management and other fees to the venture fund from the date of noncompliance; and
- consult and coordinate with the Office of the Attorney General for the recovery of any funds, as may be necessary.

A reapplication period is established in the event previously allocated funds are recovered. Firms and related firms are disqualified for a period of two years after funds are rescinded.

### *Maryland Venture Fund Authority – Monthly Meetings and Additional Conflict of Interest Mitigation*

MVFA must meet at least monthly. In addition to existing prohibitions, a member of MVFA may not be employed by or hold any other employment relationship or financial interest that would impair the impartiality and independent judgment of the member. MVFA is also prohibited from having additional advisors or advisory boards, whether acting informally or formally constituted.

### *Advisory Committee and Investment Committee*

TEDCO must adopt regulations establishing an investment committee, and the TEDCO board may appoint an advisory committee, subject to specified conditions. Committee members are subject to the Public Ethics Law.

### *Additional Financial Disclosures*

The TEDCO board, TEDCO's officers and employees, members of the investment committee, and members of any advisory committee appointed must disclose to the State Ethics Commission whether they are employed by or have a financial interest in an entity that currently has or will apply for funds or an investment in a TEDCO program.

### *Enhanced Reporting*

TEDCO's annual report must also include:

- information related to TEDCO employees and their compensation;
- information on outreach, training, mentorship, support, and investment in minority and women-owned businesses;
- information on entities that have current investments and entities that received funding or investments in the current year on the (1) principal business operations; (2) number of employees in the State and the number of employees outside the State; (3) capital or other investments made in the State; and (4) proposed and actual job creation or capital investment in the State as a result of the investment or support;
- a list of businesses that have received funding that would no longer qualify as a qualified business; and
- information on the creation and appointments made to an advisory committee and its responsibilities.

In addition to the annual report, TEDCO must report quarterly to the Governor, the Maryland Economic Development Commission, the Joint Audit Committee, and the General Assembly. The report must include a list of the qualified businesses or other businesses receiving support through TEDCO's programs. For each business, the list must include (1) the number of employees in the State; (2) the number of employees outside the State; (3) the capital or other investments made in the State; and (4) proposed job creation or capital investment in the State as a result of the investment or support.

Finally, by December 1, 2019, TEDCO must report to the General Assembly on the status of its efforts to address the findings of a recent fiscal compliance audit conducted by OLA.

## *Statute Review by the Department of Legislative Services*

By December 1, 2019, DLS must review TEDCO's statute and make recommendations to the General Assembly on how to make the statute more clear, with consistent definitions, and whether there is language that can be repealed as duplicative or obsolete.

**Current Law:** There is no general definition for a qualified business for the purposes of receiving funding from one or more of TEDCO's programs, although TEDCO's statutory purposes include several explicit references to in-state activity. TEDCO's statutory purposes are to:

- assist in transferring to the private sector the results and products of scientific research and development conducted by colleges and universities;
- assist in commercializing those results and products;
- assist in commercializing technology developed in the private sector;
- foster the commercialization of research and development conducted by colleges, universities, and the private sector to create and sustain businesses throughout all regions of the State; and
- generally assist early-stage and start-up businesses in the State.

## *Enterprise Fund*

TEDCO may use the Enterprise Fund to:

- make a grant or loan, at the rate of interest set by TEDCO;
- provide equity investment financing for a business enterprise;
- guarantee a loan, equity, investment, or other private financing to expand the capital resources of a business enterprise;
- purchase advisory services and technical assistance to better support economic development;
- pay TEDCO's obligations to a venture firm under the InvestMaryland program; and
- pay TEDCO's administrative, legal, and actuarial expenses.

"Business enterprise" is not defined.

## *InvestMaryland Program*

Under the InvestMaryland program, a "qualified business" means a business that, at the time of the first investment in the business under the program:

- has its principal business operations located in the State and intends to maintain its principal business operations in the State after receiving an investment under the program;
- has agreed to use the qualified investment primarily to support business operations in the State or, in the case of a start-up company, establish and support business operations in the State;
- has up to 250 employees; and
- is not primarily engaged in specified industries or activities.

#### *Maryland Venture Fund Authority*

MVFA is composed of nine appointed members and must provide advice to TEDCO on the administration of the InvestMaryland program. There are no requirements related to the frequency of meetings.

**Background:** TEDCO is an independent entity established by the Maryland General Assembly in 1998 to facilitate the creation of technology companies and encourage collaboration between these emerging businesses and federal and State research laboratories. TEDCO also aims to promote new research activity and investments that lead to business development in Maryland.

#### *Enterprise Fund (Maryland Venture Fund) and the InvestMaryland Program*

In practice, the Enterprise Fund in statute is known as the Maryland Venture Fund (MVF) to the public. Chapter 141 of 2015 transferred the operation of MVF and the biotechnology grant program from the Department of Commerce.

MVF provides capital through equity purchases for start-up companies that are developing innovative technologies. Beginning in fiscal 2013, MVF also became the means for the implementation of the InvestMaryland program, which is a State-supported venture capital program funded through a tax credit auction. A portion of these funds are invested by TEDCO and a portion are invested by private venture funds on behalf of the State.

MVFA is defunct and has not met since at least the transfer of MVF to TEDCO.

Except for the Enterprise Fund/MVF, which is a special fund, State support for TEDCO's programs is typically in the form of general funds.

#### *Audit of the Maryland Technology Development Corporation*

The February 2019 fiscal compliance audit of TEDCO conducted by OLA contains three findings related to TEDCO's management of the Enterprise Fund/MVF, MVFA, and

the InvestMaryland program, including private venture funds that received money under the program. Specifically, OLA found:

- TEDCO had not adopted regulations for direct equity investments through MVF, as required by State law. Additionally, certain MVF investments tested by OLA were to companies whose principal place of business was not in Maryland at the time of the investment or who did not remain in Maryland after the investment, as required.
- TEDCO created a three-member advisory committee related to MVF to provide investment advice without establishing adequate policies and procedures regarding the committee's membership to prevent potential conflicts of interest; the advisory committee included members associated with certain venture firms that had received funding from MVF.
- TEDCO's monitoring of third-party venture firms receiving funding through MVF's InvestMaryland program was not sufficient. MVFA, which by statute was to provide such oversight, had been inactive for several years – with all of its members' appointments having expired.

The audit is available on OLA's [website](#).

### **State Fiscal Effect:**

#### *Administration*

The bill's new reporting requirements are fairly extensive and require TEDCO to create and maintain data on funding recipients on a quarterly basis. TEDCO must also adopt regulations and make other related administrative changes. However, TEDCO advises that it can generally handle the bill's additional monitoring and reporting requirements with existing staff and within existing administrative resources. To the extent this is not the case going forward, TEDCO administrative costs increase. Absent additional budgetary support, administrative costs reduce available programmatic funds.

Other administrative costs associated with the bill are minimal and absorbable within existing budgeted resources.

#### *Program Investments and Revenues*

Limiting the types of businesses that may receive funding from TEDCO may reduce general/special fund revenues and/or expenditures. Such a restriction could conceivably reduce interest in TEDCO investments, which reduces both expenditures (for investments) and revenues (from investment returns) going forward. The restriction could also reduce follow-on funding received by companies in which TEDCO invests, further reducing revenues. Conversely, special fund revenues/expenditures under the InvestMaryland

program may increase if venture firms do not meet the bill's in-state investment criteria, and a new round of capital is allocated. These effects could begin as early as fiscal 2019 but are likely to be more pronounced beginning in fiscal 2020. DLS cannot estimate the likelihood of such outcomes or the potential impact on TEDCO revenues and expenditures.

**Small Business Effect:** Small businesses that have received funding under the InvestMaryland program, or that receive funding from a different TEDCO program going forward, must comply with the bill's residency requirements. Conversely, the bill potentially allows for more available funding for in-state small businesses and focuses TEDCO investments on such businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 543 (Delegate Jones) - Ways and Means.

**Information Source(s):** Maryland Technology Development Corporation; Department of Legislative Services – Office of Legislative Audits; Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510