

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 340
Finance

(Senator Kagan, *et al.*)

Maryland Technology Development Corporation - Investments and Operations

This bill establishes a definition of “business enterprise” and specifies that the Maryland Technology Development Corporation (TEDCO) must require recovery of a grant, a loan, or an equity investment made from the Enterprise Fund to a “business enterprise” if, at any time within the three-year period following the investment award, the entity fails to maintain its status as such. “Business enterprise” is defined as a business that is technology-based and has over half of its workforce either residing or working in the State. The bill also requires the Maryland Venture Fund Authority (MVFA) to meet at least quarterly to review TEDCO’s investment policy and investment decisions for the InvestMaryland program.

Fiscal Summary

State Effect: TEDCO can handle the bill’s requirements with existing budgeted resources, under the assumptions discussed below. Beginning in FY 2020, any impact on special fund expenditures and revenues largely depends on continued program demand and activities.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law:

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 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. The Governor's proposed fiscal 2020 budget includes \$8.2 million in special funds for the Enterprise Fund/MVF: \$1.7 million for administrative costs and \$6.5 million for programmatic expenses.

Audit of the Maryland Technology Development Corporation

The February 2019 fiscal compliance audit of TEDCO conducted by the Office of Legislative Audits (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:

Administrative Expenditures

Since 2015, MVF has made 4 to 6 investments per year. As the bill creates a three-year period during which funds are subject to being clawed back, this eventually creates a pipeline of 12 to 18 MVF investments that must be monitored for compliance. The Department of Legislative Services (DLS) believes TEDCO can monitor that number of investments for compliance with existing staff and within existing administrative resources. Under this assumption, MVF administrative expenditures are unaffected.

DLS notes that TEDCO disagrees with this assessment. TEDCO advises that it requires one additional business analyst and one assistant Attorney General, at a combined annual cost of about \$325,000 annually (salaries, benefits, and a fixed cost allocation), to monitor compliance and recover funds from ineligible investments. Administrative costs reduce available programmatic funds.

Costs associated with reconstituting MVFA and holding quarterly meetings are minimal and absorbable within existing budgeted resources.

Program Investments and Revenues

Limiting the types of businesses that may receive funding from the Enterprise Fund/MVF may reduce special fund revenues and/or expenditures. Such a restriction could conceivably reduce interest in TEDCO investments, which reduces both special fund 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 special fund revenues. Conversely, special fund revenues may also increase from required claw backs. These effects could begin as early as fiscal 2020. TEDCO advises that these are the likely outcomes of the bill.

DLS cannot estimate the likelihood of such an outcome or the potential impact on special fund revenues and expenditures.

Prospective and Limited Application

This analysis assumes that the bill applies only prospectively and only for the purposes of the Enterprise Fund (where “business enterprise” is defined in the bill). To the extent this is not the case, the impact on TEDCO’s programs and investments is potentially greater.

Small Business Effect: Small businesses that receive funding from the Enterprise Fund/MVF going forward must comply with the bill’s residency requirements,

or be subject to a claw back of invested funds. Conversely, the bill potentially allows for more available funding for in-state small businesses.

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

Fiscal Note History: First Reader - February 11, 2019
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