

Department of Business and Economic Development  
401 East Pratt Street, 17<sup>th</sup> Floor  
Baltimore, Maryland 21202  
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FAX (410) 333-6931  
[frdickson@choosemaryland.org](mailto:frdickson@choosemaryland.org)

November 4, 2011

**Request for Proposals to Serve as a Venture Capital Selection consultant to the  
Department of Business and Economic Development in Connection with the  
Implementation of the Invest/Maryland Program**

**Responses are due November 18, 2011**

Dear Interested Party:

The Maryland Department of Business and Economic Development, a principal department of the State of Maryland (the "Department") is organized pursuant to Economic Development Article Sections 1-101, *et. seq.* of the Annotated Code of Maryland, as amended.

The Department is seeking venture capital firm selection services in connection with the implementation of the Invest/Maryland Program, Title 6, Subtitle 5 of the Economic Development Article, Annotated Code of Maryland.

**Description of Invest/Maryland Program.**

The Invest/Maryland Program was enacted in the 2011 legislative session (Chapter 409), adding Economic Development Article Sections 6-501 – 6-529 and Insurance Article Section 6-122 to the Annotated Code of Maryland (together, the "Invest/Maryland Act"). Under Economic Development Article Section 6-528, the Department is responsible for administering the Invest/Maryland Program.

The Invest/Maryland Program is a mechanism for raising investment capital by selling a maximum of \$100,000,000 in State income tax credits to insurance companies ("Purchasers") through an auction process and using the funds to make venture capital investments in qualifying Maryland companies. Auction proceeds will be payable to the Department by Purchasers in three equal annual installments due June 1 of 2012, 2013, and 2014, and Purchasers will receive a tax credit certificate from the Department in connection with the payment of each installment. Sixty-Seven percent (67%) of the funds will be allocated to outside venture capital firms selected by the Maryland Venture Fund Authority (MVFA) created under the Invest/Maryland Act, and thirty-three percent (33%) will be allocated to DBED's existing Enterprise Fund and Maryland Small Business Development Financing Authority. The tax credits may be taken by the Purchasers over five years beginning in calendar year 2015. The tax credit certificates are freely transferrable to other qualifying insurance companies.

### **Scope of Work.**

The Department is seeking to retain the services of a consultant (the “Contractor”) to assist and advise members of the Department and the Maryland Venture Fund Authority (MVFA) in connection with the evaluation and selection of Venture Capital firms applying to receive an investment from the Invest/Maryland Program. The Contractor will work closely with staff members of the Department, the MVFA, and other parties as necessary in the implementation of the Invest/Maryland Program.

**The scope of work approved by the MVFA on 10/27/2011 is detailed in Attachment A.**

### **Project Goals.**

The State is auctioning up to \$100M of premium insurance tax credits that are for sale to Insurance companies that have premium insurance taxes in the State of Maryland. The auction will yield a minimum of \$70M dollars of which 67% (or \$46.9M) will be allocated to Venture firms to invest on behalf of the State. The primary mission of the Invest/Maryland Program is to invest in early stage companies directly and through Venture firms as a limited partner in several venture funds. The two primary objectives for funds being invested into venture funds are to (1) provide a financial return to the State and (2) invest in Maryland based companies. The highest priority for the venture funds is to return capital and profits to the state. There are several other selection factors as described in the passed legislation and are detailed in **Attachment F – Invest/Maryland Program – Code Economic Development Article, Secs. 6-501 through 6-529**. Sections 6-517 and 6-518 focus on the certification and selection criteria to be used in selection and certifying venture firms.

Additional Invest/Maryland documents are included in **Attachment F**. These documents include (1) a 1-page description of the program (2) a power point presentation on Invest/Maryland, (3) a spreadsheet demonstrating the flow of funds from insurance companies and the associated tax credits in subsequent years and (4) the passed legislation HB173/SB180. These documents are to assist you in understanding the Invest/Maryland program and its intent.

### **General Conditions.**

The Contractor employed for this purpose will be paid by the Department from existing fund sources. The Contractor will be paid based on mutually negotiated terms. The Department will have staff to assist Contractor in executing tasks during the evaluation and selection process.

This RFP, all proposals, and the resulting contracts are subject to the Maryland Public Information Act. Offerors must specifically identify those portions of their proposals, if any, which they deem to include confidential, proprietary information or trade secrets and must provide justification why such material should not, upon request, be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6 of the Annotated Code of Maryland.

This RFP and any Contract entered into as a result hereof is not subject to the provisions of Division II of the Procurement Article or the State procurement regulations as set forth in COMAR Title 21 (collectively, the "Procurement Law"). Nonetheless, the requirements of the Procurement Law will be applied to this RFP and the Contract to the extent practicable and consistent with obtaining the best legal counsel for the State, all as determined in the sole discretion of the Contract Officer. The dispute resolution and appeal procedures contained in the Procurement Law will not apply to this solicitation.

We are not responsible for any expenses you may incur in connection with developing and submitting a proposal or for familiarizing yourself with the Department's statutes and programs, including the Invest/Maryland Program.

I am the sole point of contact for this RFP. **Questions about this RFP may be submitted to me by fax, no later than 4:00 p.m. on Friday, November 18, 2011, at (410) 333-6931 (fax).** Answers to questions will be provided to all interested parties. Answers will be provided, if possible, without disclosure of the identity of the person or party asking the question. There will be no pre-proposal conference.

The Department reserves the right to amend this RFP, and any amendments will be mailed or emailed to all interested persons. The Department also reserves the right to cancel this RFP, and notice of cancellation will be mailed or emailed to all interested persons.

The proposal must be submitted in a sealed envelope and/or emailed directly to [frdickson@choosemaryland.org](mailto:frdickson@choosemaryland.org). **All proposals will be forwarded to the MVFA for review and evaluation.**

We invite you to submit a written proposal so that we can formally consider you for this engagement. We will consider proposals submitted by joint ventures (of no more than two entities, please) so long as the joint venture arrangement meets the Department's needs. By submitting a proposal, you accept all of the terms and conditions of this RFP. If selected, you will be expected to enter into the Contract, the form of which is attached as **Attachment D**.

The terms and conditions of the Contract are not subject to negotiation. By submitting a response, you will be deemed to represent that your firm is not in arrears in the payment of any obligation due and owing the State, including the payment of taxes and employee benefits.

**Proposal.**

The Proposal shall include the following information and shall be presented in the following order:

- (1) Investment Strategy for Invest/Maryland
  - a. A description of the investment strategies that Invest/Maryland could deploy to meet the goals of the program.

- b. Marketing strategy and defined activities to reach venture firms that would be potential fits for the Invest/Maryland program.

(2) Proposed Project Plan

- a. Defined activities with timeframes, dates and milestones.
- b. Resources with resumes of potential members of your team working on this project.
- c. Timeframes based on passed legislation HB173/SB180 and Department/MVFA. Attachment B includes a DRAFT timeframe to use in creating your plan.

(3) Price

- a. Provide a price to execute the complete scope of work.
- b. Provide options on activities that may require a range of pricing, i.e. marketing activities to insurance companies, other.

A few expected deliverables created throughout the project would be:

1. A work plan defining the activities, dates, resources and any additional costs related to completing the scope of work.
2. An Investment Strategy for the venture funds.
3. An evaluation methodology with a matrix for evaluating prospective venture firms.

**Offeror specific details:**

Some of the items below should complement the previous items above and can be included as attachments in the proposal (i.e. resumes, etc.).

**Please provide the following:**

1. Legal name and principal place of business of the firm making the proposal. Please indicate whether the firm is a Minority Business Enterprise (MBE).
2. Name and address of the person designated as the contact person for purposes of this RFP and any resulting Contract. Please provide name, mailing address, email address, telephone number and fax number of the contact person.
3. Name, mailing address, email address, telephone number, and fax number of the individual who will head the team participating in this engagement
4. Name, Title and resume of individuals proposed to work on this project and their specific role and duties assigned to them on this project.
5. A detailed description of the Offeror's experience in the field of fund manager selection. Experience should include samples of previous engagements with deliverables included.

6. Names and telephone numbers of three clients (and respective contact persons for those clients) for whom you have provided services similar to those described in this RFP, with a brief description of the work performed. These persons will be considered as references and may be contacted by the Department/MVFA in its evaluation of the proposal.
7. Completion of the enclosed bid/proposal affidavit (Attachment B) and the conflict of interest affidavit (Attachment C).
8. Written affirmation that the person(s) submitting the proposal is/are authorized to do so on behalf of the Offeror and certification that, to the best of his or her knowledge, the information submitted in the proposal is accurate, complete, and correct as of the date of the proposal.

### **Evaluation and Selection.**

Proposals (and oral presentations, if any) will be evaluated based on the team's experience, resources dedicated to the project, approach, process and price proposed for this project. After reviewing the proposals, there may be additional discussions with Offerors, including a request for best and final offers.

Contract award will be made to that Offeror, or Offerors, whose proposal contains the combination of those criteria offering the best overall value to the State. Selection of the Contractor will be solely the decision of the MVFA with the final approval of the Secretary of the Department, and we reserve the right to reject any and all proposals, to waive informalities and minor irregularities in proposals, and to negotiate with any and all Offerors who submit them. MVFA may select the successful Offeror on the basis of initial written proposals without discussions with Offerors and without requesting a best and final offer, so please take care in submitting all pertinent information in your proposal. MVFA may select more than one Offeror to provide services under this RFP.

**An electronic version of your response to this Request for Proposals should be emailed to me at [frdickson@choosemaryland.org](mailto:frdickson@choosemaryland.org). If your electronic version is larger than 10MB, best to mail your response to 401 E. Pratt Street, 17<sup>th</sup> Floor, Baltimore, MD 21202, to arrive no later than 4:00 p.m. on November 18, 2011.**

The Department and MVFA reserve the right to meet with qualified Offerors to discuss this RFP and the Offeror's proposal and ability to perform the proposed contract.

If you have any questions, please submit them to me in writing, by facsimile, to (410) 333-6931. Thank you for your interest.

Very truly yours,

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Frank C. Dickson, III  
Program Manager, Maryland Venture Fund

**Attachments:**

- A - Scope of Work approved by MVFA on 10/27/2011
- B - Bid/Proposal Affidavit (to be completed and returned with Proposal)
- C - Conflict of Interest Affidavit (to be completed and returned with Proposal)
- D - Form Contract
- E - Form of Contract Affidavit
- F – Invest/Maryland documents

## **Attachment A – Scope of Work approved by MVFA on 10/27/11**

### **Venture Capital Consultant Selection Scope of Work**

#### **Overview**

MVFA (Maryland Venture Fund Authority) intends to hire a consultant to organize and execute the selection of venture capital firms to invest and manage a portion of the Invest/Maryland capital raise, approximately \$40-60M, on behalf of the State. The consultant will establish the application and evaluation processes and prepare written recommendations to the MVFA regarding venture capital firms, allocation amounts, oversight best practices, and fund reporting requirements.

The Authority will provide general investment objectives and criteria when the consultant begins. It is anticipated that the consultant will work with the Authority and with DBED staff to further shape and develop key objectives and criteria.

The primary focus of the selection of Venture Capital firms is the potential and strategy of the firm to generate returns. Secondary focus includes programs focused on stimulating and supporting the early stage companies and the economic benefit in their rationale for use of a consultant has several dimensions:

- Provision of “arm’s length” review process for the MVFA
- Conformance to stated Invest/Maryland investment goals and criteria
- Focus and experience brought to evaluation of capacity and capabilities

The structure of fund selection and allocation will be guided by language in the Invest/Maryland statute. Invest/Maryland allocations will generally go to existing funds managed by venture capital firms active in the region and State. In this scenario the State will be a limited partner and the relationship will be governed by a partnership agreement, subject to any specified State law requirements.

It is anticipated that the general partner (venture firm management) will earn a customary management fee and carried interest. The MVFA may additionally consider other permitted structures and organizations in the selection and allocation process. It is expected that the consultant will assist in exploration of all potential approaches.

#### *RFP considerations for the selection of a VC firm:*

##### *Fund metrics:*

- Potential selection criteria for firms: performance history, assets under management, industry focus, investment stage, geographic reach, management strengths/weaknesses, reporting capacity/willingness
- Optimal number of allocations/funds, MVFA ability to monitor

##### *Investment Strategy:*

- Performance metrics: overall return, revenues, employment, successful exits, etc.

- Investment lifecycle considerations (i.e. blend types of funds)
- How quickly money will be invested and time horizon of fund investments
- Industry focus/allocation

*Fund Structure:*

- Limited/GP partnership, other structures
- Leverage
- Step-in rights
- Legal review of documents

*Asset and Portfolio Management and Reporting*

- Development of reporting mechanics
- Potential for consultant to provide ongoing role in portfolio management
- Identification of common reporting content

*Relationships between Invest/Maryland funds, including DBED's Enterprise fund*

- Pipeline sharing and business development activities
- Investment strategy – common links, differences
- Co-investment guidelines

**Consultant Evaluation Criteria:**

Consultants are encouraged to submit proposals which detail:

**Experience:** Experience should detail the consultant's background and expertise in working with the Venture Capital industry, specifically any fund management experience. Knowledge of other state's initiatives and the benefits and pitfalls of prior approaches will be considered relevant.

**Geographic Experience:** The consultant should highlight their knowledge of Maryland specific initiatives and its background in State related investments.

**Strategy:** The consultant's approach and strategy in determining the best fit and blend of funds for the State of Maryland to invest. A solid investment strategy including fund blend and economic factors will be evaluated. Fee structure will be evaluated including recommendations for the ability for the state to recover money which is not invested properly.

**References:** The consultant's or firm's references and the resume of the specific principal that will be working on this project will be considered highly relevant.

**Cost:** The cost of the consultant's approach and any ongoing maintenance to manage the process will be considered. Special focus will be applied to the work to be performed after the selection of the VC firms.

**Timeframe**

January 15, 2012. Selection of a VC Fund Consultant

March 1, 2012 Finalized Statement of Work (SOW) for VC selection from the consultant

March 20, 2012 The SOW will be sent out to the certified VC funds

April 20, 2012 Proposals due from VC funds

May 2012 Interviews/Evaluations.

June 2012 DBED Secretary to start making awards to Venture Capital firms.

## **ATTACHMENT B - BID/PROPOSAL AFFIDAVIT**

### **A. AUTHORIZED REPRESENTATIVE**

#### **I HEREBY AFFIRM THAT:**

I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

### **B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES**

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;

- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

**I FURTHER AFFIRM THAT:**

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUB-CONTRACT AFFIRMATION**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**I. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the

aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**K. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses

- drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business' policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
  - (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or

- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

**I FURTHER AFFIRM THAT:**

- (1) The business named above is a (domestic \_\_\_ ) (foreign \_\_\_ ) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is: Name: \_\_\_\_\_ Address: \_\_\_\_\_.

(If not applicable, so state).

- (2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**M. CONTINGENT FEES**

**I FURTHER AFFIRM THAT:**

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

**N. ACKNOWLEDGEMENT**

**I ACKNOWLEDGE THAT** this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## **ATTACHMENT C - CONFLICT OF INTEREST AFFIDAVIT**

### **CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

- A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The bidder or offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):
- E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## **ATTACHMENT D – Form Contract**

To be provided at a later date.

**ATTACHMENT E – Form of Contract Affidavit**

To be provided at a later date.

## **ATTACHMENT F – Invest/Maryland documents**

Included in the following pages are

|  |          |
|--|----------|
| <b>Invest/Maryland – A 2011 Legislative Proposal</b>                     | 1 page   |
| <b>Invest/Maryland – Fueling Innovation, Creating Jobs (powerpoint)</b>  | 8 pages  |
| <b>Invest/Maryland Funding Plan – Cash flows in and out. (worksheet)</b> | 1 page   |
| <b>Invest/Maryland Program – passed legislation</b>                      | 15 pages |

# INVEST MARYLAND

## A 2011 Legislative Proposal

### Purpose

InvestMaryland is a premium tax credit program aimed at creating a public-private partnership to fuel venture capital investment in the state's innovation economy in order to:

- Revitalize early-stage venture capital competitiveness
- Recapitalize small and minority business enterprises
- Retool the State's economic development resources

### Goal

- Generate \$100 million investment funding
- Replenish Maryland Venture Fund
- Support Maryland's venture capital infrastructure
- Protect high potential growth companies in biotech, IT and clean technology

### Benefits

- Create thousands of high-paying, full-time jobs
- Develop an evergreen fund to continually support business development
- Delay fiscal impact until 2015
- Generate payroll, sales, business and corporate income tax revenues

The **Maryland Venture Fund** is a state-managed venture capital fund with over 13 years of experience in investing in Maryland-based businesses:

#### Fund highlights

- \$25 million in General Fund
- \$61 million returned to the Fund
- Invested \$51 million in more than 200 Maryland companies which employing 2,000 people

#### Venture Capital firms selection

- VC selection will be merit-based. Interested companies will be evaluated based on their investment management experience in early stage companies; proven results defined by profitable returns and growth metrics of portfolio companies and investment personnel.
- VCs will receive a capped management fee.
- Profit sharing will be based on a traditional venture fund model.

### How the program works

#### Program funding

- The State offers premium tax credits to insurance companies. For every \$1 offered, insurance providers that pay taxes to the State can receive an up-front discount on the credit for participating in the program.
- Insurance companies bid on tax credits by offering an amount per credit of \$.70 or higher.
- Investments up to \$100 million can be made.

#### Fund allocation

- Investments received from participating insurance companies are allocated into the **Maryland Venture Fund** and subsequently, Maryland-based private venture capital (VC) firms. A portion of the fund will be invested in the Maryland Small Business Development Financing Authority (MSBDFA).

#### Fund deployment

- The Maryland Venture Fund and participating venture capital firms will invest the money into qualified Maryland-based early-stage companies.

#### Tax credit distribution

- Participating insurance companies receive tax credits when the capital is contributed but may not begin using them until 2015.
- Tax credits will be issued starting in year 2015 at an amount of approximately one-fifth the total amount of committed tax credits (For example, if tax credits sell for \$.70 per \$1, the State will payout \$29 million per year for five years).

#### Profit sharing

- Participating private VCs must return 100% of the principal back to the State before making any profit sharing distributions.
- Profits are distributed based on a traditional venture fund model.

**?** Visit [www.ChooseMaryland.org](http://www.ChooseMaryland.org)

Sign up for the next **InvestMaryland Stakeholder's Meeting** and to post your comments, questions and recommendations. Sign up for InvestMaryland on Facebook. For information contact Frank Dickson at 410-767-6383 or Michelle D. Jackson at 410-767-6881.

**MARYLAND OF OPPORTUNITY.**

**Department of Business & Economic Development**

# INVEST MARYLAND

*Fueling Innovation, Creating Jobs*

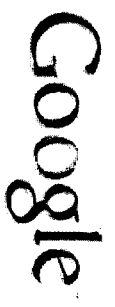
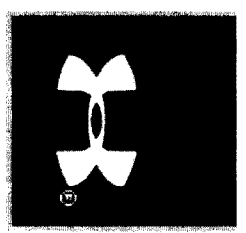
MARYLAND OF OPPORTUNITY.

MARTIN O'MALLEY | GOVERNOR

# INVEST MARYLAND

Fueling Innovation, Creating Jobs

## Venture-Backed Companies



MARYLAND OF OPPORTUNITY.

MARTIN O'MALLEY | GOVERNOR

# INVEST MARYLAND

Fueling Innovation, Creating Jobs

## What is InvestMARYLAND?

A public-private partnership aimed at injecting a minimum of \$70 million into Maryland-based, high growth potential companies and fuel venture capital investments into our innovation economy.

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1 2010 Kauffman Entrepreneurship Study

MARTIN O'MALLEY | GOVERNOR

# INVEST MARYLAND

Fueling Innovation, Creating Jobs

**Why is InvestMARYLAND important to our economy?  
...Jobs, Jobs, Jobs.**

## The Challenge

- Global economic crisis caused institutional investors to pull back on funding early stage companies
- As a result, funding is scarce and companies are selling assets or ceasing operations despite having a promising venture

## The Opportunity

- Maryland is #1 in basic sponsored research but 37<sup>th</sup> in entrepreneurship<sup>1</sup>; in order to reach full potential we must improve commercialization
- Maryland has a unique opportunity to play a catalytic role in growing the next generation of businesses and creating thousand of jobs

MARYLAND OF OPPORTUNITY.

1 2010 Kauffman Entrepreneurship Study

# INVEST MARYLAND

Fueling Innovation, Creating Jobs

**Why do we think this will work?**

***...We have a track record.***

## Maryland Venture Fund

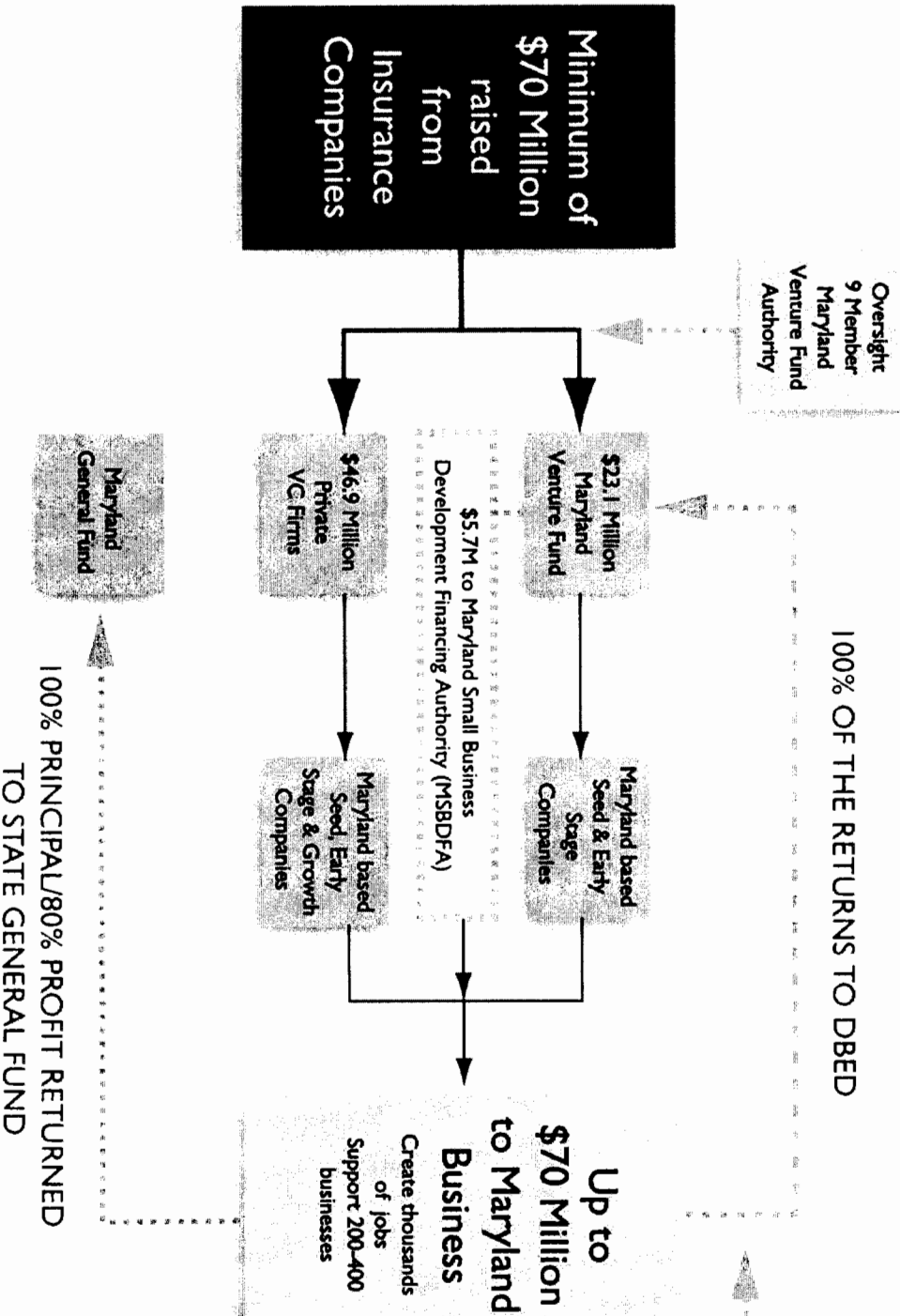
- Received \$25 million in General Funds
- \$61 million returned to the Fund
- Invested \$51 million in more than 200 Maryland companies and helped to create 2,000+ jobs

**MARYLAND OF OPPORTUNITY.**

MARTIN O'MALLEY | GOVERNOR

# INVEST MARYLAND

Fueling Innovation, Creating Jobs



MARYLAND OF OPPORTUNITY.™

Martin O'Malley, Governor • Anthony G. Brown, Jr. Governor

## **Next Steps/Timeline of Activities**

- Establish internal DBED working group
- April – May 2011: Develop implementation plan; manage tasks/deliverables
- Market Program to Stakeholders
- May 2011: Launch InvestMaryland “micro-site”; develop DBED’s outreach initiative
- Establish Maryland Venture Fund Authority (9 members)
- May – July 2011: Selection of Authority members; scheduling of meetings
- 3rd Party Consultant Selection
- July - Sept 2011: Coordinate Authority meetings to review RFPs; interview potential consultants and make final selection
- 3rd Party Consultant’s Deliverables
- Sept – Oct 2011: Tax credit auction & VC Selection guidelines designed/completed; available to general public (no later than Oct 31, 2011)
- Applications Due
- Jan – May 2012: Tax credit auction applications due Feb 1, 2012; VC applications due starting Jan 1, 2012
- Collection of Funds
- June 1, 2012, 13 & 14

**MARYLAND OPPORTUNITY.**

# **INVEST MARYLAND**

**Fueling Innovation, Creating Jobs**

# **Thank You**

**Become a fan of DBED's InvestMaryland  
Facebook page!**

**[www.facebook.com/InvestMaryland](http://www.facebook.com/InvestMaryland)**

**MARYLAND OF OPPORTUNITY.**

**MARTIN O'MALLEY | GOVERNOR**



## **INVEST MARYLAND PROGRAM**

### **Code Economic Development Article, secs. 6-501 through 6-529**

#### **Subtitle 5. Invest Maryland Program**

##### **PART I. DEFINITIONS**

§ 6-501. Definitions

§§ 6-502, 6-503

##### **PART II. MARYLAND VENTURE FUND AUTHORITY**

§ 6-504. Established

§ 6-505. Membership

§ 6-506. Chair; election of officers

§ 6-507. Quorum; compensation and reimbursement; public disclosure

§ 6-508. Advice and consultation with Department

§§ 6-509, 6-510

##### **PART III. DESIGNATED CAPITAL**

§ 6-511. General provisions

§ 6-512. Bidding process

§ 6-513. Tax credit certificate

§ 6-514. Premium tax

§§ 6-515, 6-516

##### **PART IV. VENTURE FIRMS AND INVESTMENTS**

§ 6-517. Independent third party

§ 6-518. Venture firm certification

§ 6-519. Qualified business

§ 6-520. Prohibitions of insurance company or affiliate

§ 6-521. Reports and audited financial statement

§ 6-522. Distributions

§ 6-523. Investment returns used to make additional qualified investments

§§ 6-524, 6-525

##### **PART V. MISCELLANEOUS**

§ 6-526. Miscellaneous provisions

§ 6-527. Applicability of other provisions

§ 6-528. Administration of subtitle and regulations

§ 6-529. Report on implementation of Program

**INVEST MARYLAND PROGRAM.**

**PART I. DEFINITIONS.**

**§ 6–501. Terms Defined.**

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

(b) (1) “Affiliate” means:

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

(ii) a person, 15% or more of whose outstanding voting securities or other voting ownership interests is directly or indirectly beneficially owned, controlled, or held with power to vote by a venture firm or an insurance company.

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

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

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

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

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

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

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

(i) “Insurance premium tax liability” means:

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

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

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

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

(l) “Purchaser” means:

(1) an insurance company that:

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

(ii) has insurance premium tax liability; and

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

(2) a holding company that:

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

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

(m) "Qualified business" means a business that, at the time of the first investment in the business under the Program:

(1) 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;

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

(i) support business operations in the State; or

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

(3) has not more than 250 employees; and

(4) is not primarily engaged in:

(i) retail sales;

(ii) real estate development;

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

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

(n) (1) "Qualified distribution" means a distribution or payment by a venture firm in connection with:

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

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

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

(2) "Qualified distribution" does not include:

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

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

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

- (i) a share of stock or other equity interest;
- (ii) a debt instrument that is convertible into equity; or
- (iii) an equity participation instrument such as an option or warrant.

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

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

**§ 6-502. Reserved.**

**§ 6-503. Reserved.**

## **PART II. MARYLAND VENTURE FUND AUTHORITY.**

**§ 6-504. Authority Established.**

There is a Maryland Venture Fund Authority in the Department.

**§ 6-505. Composition of Authority.**

(a) The Authority consists of the following nine members:

(1) seven members appointed by the Governor with the advice and consent of the Senate;

(2) one member appointed by the President of the Senate; and

(3) one member appointed by the Speaker of the House.

(b) (1) Of the seven members appointed by the Governor:

(i) 1. at least four shall have experience in working with companies that have raised investment capital for seed-stage to venture-stage companies or in providing professional services to the venture capital industry; and

2. one of the four members selected under item 1 of this item shall have experience in higher education research and development and technology transfer projects;

(ii) at least one shall have experience as a small business owner;

(iii) at least one shall have experience as a business executive that has raised venture capital investments; and

(iv) at least one shall be a resident of a rural county in the State.

(2) The Governor shall consider the geographic diversity of the State when appointing members.

(c) The members appointed by the President and the Speaker:

- (1) may not be elected officials; and
  - (2) shall have experience and expertise in venture capital investments.
- (d) Each member shall be a resident of the State.
- (e) (1) The term of a member is 4 years.
- (2) At the end of a term, a member continues to serve until a successor is appointed.
  - (3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.
  - (4) A member appointed by the Governor may be removed by the Governor with or without cause.
  - (5) The terms of the members are staggered as required by the terms provided for members of the Authority on July 1, 2011.
- (f) A member of the Authority may not have any financial interest in a purchaser, qualified business, or venture firm.

**SECTION 2. AND BE IT FURTHER ENACTED, That the initial terms of the Maryland Venture Capital Fund Authority appointed under § 6-505 of the Economic Development Article, as enacted by this Act, shall expire as follows:**

- (1) **three members in 2014; and**
- (2) **four members in 2015.**

**§ 6-506. Chair and Officers.**

- (a) The Governor shall appoint a chair from among the members.
- (b) The Authority shall determine the manner of election of officers and their terms of office.

**§ 6-507. Quorum.**

- (a) (1) Five members of the Authority are a quorum.
- (2) An act of the Authority must be approved by a majority vote of the members attending a meeting at which a quorum is present.
- (b) A member of the Authority:
  - (1) may not receive compensation as a member of the Authority; but
  - (2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (c) A member of the Authority shall file a public disclosure of financial interests as required under the Maryland Public Ethics Law.

**§ 6-508. Duties of Authority.**

The Authority shall provide advice to and consult with the Department in connection with the administration of the Program under this subtitle.

### **§ 6–511. Allocation of Designated Capital.**

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

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

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

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

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

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

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

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

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

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

### **§ 6–512. Independent Third Party -- Bidding Process to Secure Purchasers.**

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

(b) Using the procedures adopted by the independent third party, each potential purchaser shall make a timely and irrevocable offer, subject only to the Department's issuance to the purchaser of tax credit certificates, to make specified contributions of designated capital to the Department on the dates specified in § 6–513(a) of this subtitle.

(c) The offer shall include:

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

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

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

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

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

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

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

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

**§ 6-513. Payment and Reallocation of Designated Capital; Tax Credit Certificates.**

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

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

(c) The Department shall issue tax credit certificates to purchasers in accordance with the bidding process selected by the independent third party on behalf of the Authority under § 6-512 of this subtitle.

(d) The tax credit certificate shall state:

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

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

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

(4) any penalties or other remedies for noncompliance;

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

(6) any other requirements the Department considers necessary.

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

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

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

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

(5) (i) A purchaser that fails to make a contribution of designated capital within the time specified may avoid the imposition of the penalty by transferring the allocation of tax

credits to a new or existing purchaser within 30 days after the due date of the defaulted installment.

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

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

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

#### **§ 6-514. Premium Tax Credits.**

(a) (1) Subject to the restriction in paragraph (2) of this subsection, a purchaser may claim the premium tax credit on a premium tax return filed after December 31, 2014, for a taxable year that begins on or after January 1, 2014.

(2) In each calendar year from 2015 through 2019, a purchaser may claim up to 20% of the premium tax credit allocated to that purchaser.

(b) (1) The credit to be applied against insurance premium tax liability in any 1 year may not exceed the insurance premium tax liability of the purchaser for that taxable year.

(2) Any unused credit against insurance premium tax liability may be:

(i) carried forward indefinitely until the premium tax credits are used; and

(ii) used by the purchaser without restriction during any calendar year after 2019.

(3) On 30 days' advance notice to the Department, premium tax credits allocated to a purchaser under this subtitle may be transferred without further restriction to any other entity that:

(i) meets the definition of a purchaser;

(ii) is in good standing with the Maryland Insurance Administration; and

(iii) agrees to assume all of the transferor's obligations under the Program.

(c) A purchaser claiming a credit against insurance premium tax liability earned through an investment under the Program is not required to pay any additional tax as a result of claiming the credit.

(d) A purchaser is not required to reduce the amount of premium tax included by the purchaser in connection with rate-making for any insurance contract written in the State because of a reduction in the purchaser's insurance premium tax derived from the credit granted under this subtitle.

#### **§ 6-517. Independent Third Party – Bidding Process for Venture Firm Certification.**

(a) Subject to the approval of the Department, the Authority shall obtain the services of an independent third party to:

(1) establish application procedures for an entity to be certified as a venture firm; and

(2) review and evaluate applications for venture firm certification under this section.

(b) The independent third party selected by the Authority shall:

(1) review and evaluate the application, organizational documents, and business history of each applicant;

(2) evaluate whether the applicant is likely to achieve the investment criteria set forth in this subtitle; and

(3) recommend to the Authority which venture firms should receive allocations of designated capital under the Program.

(c) (1) On receiving the recommendations of the independent third party selected under subsection (a) of this section and subject to § 6–518 of this subtitle, the Authority shall select venture firms to receive allocations of designated capital that are consistent with the investment criteria set forth in this subtitle.

(2) The Authority shall ensure that the venture firms receiving designated capital for investment under this subtitle make investments in the State that equal or exceed the amount of designated capital received under this subtitle.

(3) Subject to the approval of the Department, the Authority may enter into written agreements, including partnership agreements and side agreements, that are necessary to carry out the purposes of this subtitle.

#### **§ 6–518. Venture Firm Certification – Selecting Applicants.**

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

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

(i) the investment experience of the principals;

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

(iii) the knowledge, experience, and capabilities of the applicant in subject areas relevant to venture–stage businesses in the State; and

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

(2) the applicant's investment strategy, including:

(i) the applicant's track record of investing in venture–stage businesses;

(ii) the applicant's history of attracting co–investment capital and syndicate investments;

(iii) the soundness of the applicant's investment strategy and the compatibility of that strategy with business opportunities in the State; and

(iv) the applicant's history of job creation through investment;

(3) the applicant's commitment to making investments, that to the fullest extent possible:

(i) create employment opportunities in the State;

(ii) lead to the growth of the State economy and qualified businesses in the State;

(iii) complement the research and development projects of State academic institutions; and

(iv) foster the development of technologies and industries that present opportunities for the growth of qualified businesses in the State; and

(4) the applicant's commitment to the State, including:

(i) the applicant's presence in the State through permanent local offices or affiliation with local investment firms;

(ii) the local presence of senior investment professionals;

(iii) the applicant's history of investing in venture-stage businesses in the State;

(iv) the applicant's ability to identify investment opportunities through working relationships with State research and development institutions and State-based businesses;

(v) the applicant's relationship with other venture firms in the region;

(vi) the applicant's history of investing in areas relevant to venture-stage businesses in the State; and

(vii) the applicant's commitment to investing a similar or greater amount of designated capital received under this subtitle in State-based ventures and qualified businesses.

(b) (1) An applicant shall file an application with the Department in the form required by the Department.

(2) The application shall include the applicant's most recent financial statements.

(3) The Department shall begin accepting applications for certification on or before January 1, 2012.

(4) An application for certification may not be accepted after May 1, 2012.

(c) To be certified as a venture firm:

(1) the applicant must have, at the time of application, an equity capitalization, net assets, or written commitments of at least \$500,000 in the form of cash or cash equivalents; and

(2) at least two principals or persons employed to direct the investment of the designated capital of the applicant must have at least 5 years of money management experience in the venture capital or private equity sectors.

(d) Not later than 90 days after an application is filed, the Secretary shall either:

(1) issue the certification; or

(2) refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal.

### **§ 6-519. Qualified Business.**

(a) (1) A business that is classified as a qualified business at the time of the first investment in the business by a venture firm, the Enterprise Fund, or the Financing Authority remains classified as a qualified business and may receive follow-on investments from a venture firm, the Enterprise Fund, or the Financing Authority.

(2) Except as provided in paragraph (3) of this subsection, a follow-on investment made under this subsection is a qualified investment even though the business does not meet the definition of a qualified business at the time of the follow-on investment.

(3) With respect to an investment by the Enterprise Fund or the Financing Authority, a follow-on investment does not qualify as a qualified investment if, at the time of the follow-on investment, the qualified business no longer has its principal business operations in the State.

(b) Each venture firm shall inform the Department in writing when the venture firm requires designated capital for investment or for the payment of approved fees and expenses.

### **§ 6-520. Insurance Company Constraints.**

(a) An insurance company or affiliate may not directly or indirectly:

(1) manage a venture firm;

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

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

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

### **§ 6-521. Annual Report.**

(a) Not later than January 31 of each year, each venture firm and the Financing Authority shall report to the Department:

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

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

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

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

(b) Not later than 180 days after the end of its fiscal year, each venture firm shall provide to the Department an audited financial statement that includes the opinion of an independent certified public accountant.

(c) Not later than 60 days after the sale or other disposition of a qualified investment, the selling venture firm or the Financing Authority shall provide to the Department a report on the

amount of the interest sold or disposed of and the consideration received for the sale or disposition.

**§ 6-522. Qualified Distribution.**

- (a) A venture firm may make a qualified distribution at any time.
- (b) To make a distribution that is not a qualified distribution, a venture firm first shall pay to the Comptroller the total amount of the designated capital allocated to the venture firm.
- (c) After the venture firm has made the payment referred to in subsection (b) of this section, any additional nonqualified distributions shall be made:
  - (1) 80% to the Comptroller; and
  - (2) 20% to the owners of the venture firm.
- (d) The Comptroller shall distribute all payments received under this section to the General Fund within 30 days of receipt.

**§ 6-523. Qualified Investment Returns.**

Investment returns resulting from the qualified investments made under the Program by the Enterprise Fund or the Financing Authority shall be used to make additional qualified investments in qualified businesses by the Enterprise Fund or the Financing Authority.

**§ 6-526. Admitted Assets; Maryland Insurance Administration Submission Requirements.**

- (a) In any case under the insurance law of the State in which the assets of a purchaser are examined or considered, the designated capital shall be treated as an admitted asset, subject to the same financial rating as that held by the State.
- (b) The Department shall submit the following to the Maryland Insurance Administration:
  - (1) the names, addresses, and amount of designated capital to be contributed and premium tax credits earned by each successful bidder within 30 days after the close of the bidding process under § 6-512 of this subtitle;
  - (2) a copy of the tax credit certificate issued to each purchaser within 30 days after the issuance of the certificate under § 6-513 of this subtitle;
  - (3) the occurrence of a default by a purchaser; and
  - (4) the transfer of premium tax credits by a purchaser.

**§ 6-527. Applicability of Laws.**

- (a) Except as provided in subsection (b) of this section, Division II of the State Finance and Procurement Article does not apply to a service that the Department obtains that is related to the investment, management, analysis, purchase, or sale of an asset of the Department in a transaction authorized under this subtitle.
- (b) The Department is subject to Title 12, Subtitle 4 of the State Finance and Procurement Article for services related to the investment, management, analysis, purchase, or sale of assets of the Department in any transaction authorized under this subtitle.

(c) Section 10–305 of the State Finance and Procurement Article does not apply to the sale, lease, transfer, exchange, or other disposition of real or personal property, including a share of stock in a business entity, that the Department acquires in a transaction authorized under this subtitle.

**§ 6–528. Adoption of Regulations.**

The Department shall administer this subtitle and may adopt regulations to carry out this subtitle.

**§ 6–529. Reporting Requirements.**

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

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

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

(b) The report shall include:

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

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

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

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

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

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

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

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

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

(iv) the cumulative amount of designated capital received;

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

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

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

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

(3) with respect to the Enterprise Fund:

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

(ii) the cumulative amount of designated capital received;

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

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

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

(4) with respect to the Financing Authority:

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

(ii) the cumulative amount of designated capital received;

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

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

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

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

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

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

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

**SECTION 3. AND BE IT FURTHER ENACTED That:**

(a) If the December 2011 report of the Board of Revenue Estimates indicates an increase in General Fund revenues for fiscal year 2012 over the revenues estimated in the March 2011 report as adjusted by the 2011 enacted legislation by at least \$70,000,000, the Governor shall submit a deficiency appropriation for the fiscal year 2012 budget to the Dedicated Purpose Account during the 2012 legislative session.

(b) The amount of the deficiency appropriation may not exceed \$70,000,000.

(c) If the General Assembly approves or modifies the deficiency appropriation, the maximum amount specified in § 6-512(e) of the Economic Development Article, as enacted by this Act, of the credits that may be allocated under this Act shall be reduced in an amount so that the resulting amount of designated capital as defined under § 6-501 of the Economic Development Article, as enacted by this Act, plus the amount of the deficiency appropriation, as approved by the General Assembly, is equal to the amount of designated capital that the auction would have otherwise resulted in if \$100,000,000 in credits were available for auction.

(d) The Governor is authorized to transfer by approved budget amendment from the Dedicated Purpose Account an amount equal to the approved deficiency appropriation to fund investments under this Act.

**SECTION 4. AND BE IT FURTHER ENACTED, That** it is the intent of the General Assembly that a portion of funds received under this Act be used to make qualified investments in qualified businesses located in rural counties of the State.

**SECTION 5. AND BE IT FURTHER ENACTED, That** this Act shall take effect July 1, 2011.