Agenda Item 8
March 5, 2013
Public Hearing

MEMORANDUM

March 1, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney
Jacob Sesker, Senior Legislative Analyst

SUBJECT: **Public Hearing:** Bill 3-13, Finance – Economic Development Fund – Equity Investments

Bill 3-13, Finance – Economic Development Fund – Equity Investments, sponsored by the Council President at the request of the County Executive, was introduced on February 5. A Planning, Housing and Economic Development Committee worksession is tentatively scheduled for March 11 at 2 p.m.

Background

The Maryland General Assembly enacted Chapter 710 of the 2010 Laws of Maryland authorizing the County to make an equity investment in a company located in, or relocating to, the County through the Economic Development Fund. This State enabling act took effect on October 1, 2010. Bill 3-13 would implement this authority.

The Bill would:

(1) authorize the County to make an equity investment in a company located in, or relocating to, the County through the Economic Development Fund;
(2) provide that the proceeds of an equity investment made by the County be used for certain purposes;
(3) limit the amount and type of ownership interest the County may acquire;
(4) require the County to post a notice of each equity investment on the County website within a certain period of time; and
(5) generally amend the laws governing the Economic Development Fund.

Under current law, the funds in the Economic Development Fund can only be used to aid the County's economic development through loans or grants to private employers located in or relocating to the County. Bill 3-13 would permit the County to make an equity investment in a company to aid the County's economic development. The Bill would limit the investment to no more than 25% ownership of the company and would prohibit the County from managing the company or assuming present or future liability for the company.

As described in the Executive's transmittal memo at ©7, the State of Maryland has successfully made equity investments in companies to aid Maryland's economic development. An equity investment, under appropriate circumstances, can result in a substantial financial return on investment when the company generates substantial profits or is sold. The potential return on an equity investment can be used to bolster the Economic Development Fund or support other County programs. An equity investment would follow the same review and approval procedures outlined in current law for grants or loans from the Economic Development Fund. Bill 3-13 would add this additional alternative to the County's economic development program.

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Bill No. 3-13
Concerning: Economic Development Fund – Equity Investments
Revised: February 27, 2013 Draft No. 5
Introduced: February 5, 2013
Expires: August 5, 2014
Enacted:
Executive:
Effective:
Sunset Date:
Ch. _____, Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

(1) authorize the County to make an equity investment in a company located in, or relocating to, the County;
(2) provide that the proceeds of an equity investment made by the County be used for certain purposes;
(3) limit the amount and type of ownership interest the County may acquire;
(4) require the County to post a notice of each equity investment on the County website within a certain period of time; and
(5) generally amend the laws governing the Economic Development Fund.

By amending
Montgomery County Code
Chapter 20, Finance
Sections 20-74 and 20-75

By adding
Montgomery County Code
Chapter 20, Finance
Section 20-75A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 20-74 and 20-75 are amended and Section 20-75A is added as follows:

20-74. Purpose of Fund.

(a) The purpose of the Fund is to aid the economic development of the County by assisting private employers who are located or plan to locate or substantially expand operations in the County.

(b) Assistance to a private employer from this Fund may take the form of:

(1) loans or grants of public funds as otherwise authorized by law;

(2) transfers of real or personal property as otherwise authorized by law;

(3) provision of services, when otherwise authorized, by a County agency; [or]

(4) plans, studies, or other technical assistance; or

(5) an equity investment as authorized by Section 20-75A.

(c) As used in this Article, "private employer" means any for-profit or nonprofit corporation or firm that is not owned, primarily funded, or controlled by a government agency. "Private employer" includes a lessor or supplier of real or personal property or services to a government agency.

20-75. Use of Fund.

* * *

(d) The Executive must not provide assistance to a private employer valued at more than $500,000 unless the grant, [or] loan, or equity investment is approved by the Council in a special or supplemental appropriation. The amount of any discount from market value in the sale of County property offered as part of the assistance must be included in the value of the assistance. The Executive must submit an economic development agreement to the Council within 60 days after all parties to the agreement execute it.

* * *

20-75A. Equity investments.

(a) Subject to Section 20-75, the County may make an equity investment through the Economic Development Fund in a company that is located in the County or that agrees to relocate its business to the County.

(b) The proceeds of an equity investment made under subsection (a) may be used for:

(1) working capital;

(2) salaries;

(3) marketing materials;

(4) acquisition of inventory, equipment, or real property;

(5) construction;

(6) renovation;

(7) leasehold improvements; or

(8) research and development.

(c) The County may not acquire an ownership interest exceeding 25% of any company.

(d) The terms of an equity investment must be set forth in a funding agreement that prohibits the County from:

(1) participating in the selection of the management of the company;

(2) overseeing the operation of the company; and

(3) assuming any present or future liability of the company.

(e) A funding agreement may be:

(1) an investment agreement;

(2) a limited partnership agreement;

(3) a preferred stock purchase agreement; or

(4) other documents that the County may require.

(f) The Director of Finance must:

(1) record the value of the equity investment in the County's Financial Statements consistent with Generally Accepted Accounting Principles;

(2) manage all equity investments acquired in accordance with the funding agreement and State and County law; and

(3) post notice of each equity investment made under this Section in a readily accessible and clearly identified location on the County website within 5 days after the date on which the County initiates the equity investment transaction.

(g) If an equity investment is liquidated through a sale or other disposition, the proceeds must be deposited in the County's general fund.

Approved:

Nancy Navarro, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 3-13
Economic Development - Equity Investment Companies

Problem:

Montgomery County created the Economic Development Fund (EDF) in 1995 to provide financial assistance and incentive to private employers who retain jobs in the County, and to stimulate the creation of new jobs.

The EDF focuses on high tech/biotech companies, manufacturing companies, businesses located in urban revitalization areas and other private employers providing the greatest public benefits. Since 1995, Montgomery County has disbursed more than $40 million through the EDF in the form of grants and loans to over 280 Montgomery County based companies, resulting in the retention or creation of over 30,000 jobs, and leveraging over $52 million in State funding and more than $1 billion in private investment. By the statutory requirements, the EDF cannot make an equity investment to private companies, but uses two forms of assistance; straight loan, or grant convertible to a loan.

The State of Maryland provides creative financing for business enterprises through its Department of Business and Economic Development, Maryland Technology Development Corporation and Maryland Economic Development Corporation. This can be in the form of a grant, loan, loan guarantee, insurance or an equity investment[1]. The State's ability to take an equity stake in companies receiving State funds has garnered substantial financial returns for Marylanders. A prime example of this is GeneLogic, which received funding from both the State – through an equity investment - and Montgomery County – through a loan. When the company was sold, Maryland's share of the profits exceeded $19 million - money that went back into State coffers. In contrast, Montgomery County received $15,000 back from its $188,000 convertible grant.

Through this bill, Montgomery County is simply seeking the right to benefit from any upswings in the companies that we provide financial assistance to, similar to the current abilities of the State.

As an equity shareholder, the County, like the State, will be able to reap a return on its strategic economic development investments when EDF recipients generate substantial profits from their products and services or their company is acquired. These economic returns, whether they are reinvested in the EDF to create a larger funding pool to support business and job growth or used to augment other economic development programs, will benefit Montgomery County.

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[1] The State cannot exceed a 25 percent ownership position and must divest investments within 15 years.

Goals & Objectives: In the 2010 Maryland General Assembly legislative session, the County worked hard to pass the State HB 891 to enable Montgomery County to adopt a local bill to add this important tool to augment its economic development and job creation.

The purpose of the attached bill is to enact this legislation at the County level. The provisions of the HB891 only allow the County to make equity investments through the County-funded EDF. It does not mandate Montgomery County to make such investments, permitting the County to make equity investment very strategically at its full discretion.

Coordination: Department of Economic Development, Department of Finance, The Office of the County Attorney.

Fiscal Impact: This legislation will use the same funds under the Economic Development Fund, and bears a similar risk to using a loan or a convertible grant to assist companies. As such, no immediate or direct fiscal impact can be gauged at this time.

Economic Impact: This legislation will allow the County's EDF to make a strategic equity investment to a select number of high-tech companies with a huge growth potential, where a conventional form of financial assistance such as a loan or grant is not suitable, or the County will forego an opportunity for a large financial return if the transaction is structured as a loan. Due to a highly speculative nature of the equity investment, not all transaction will be successful. However, the economic impact and the financial return from the successful transactions will more than offset the unsuccessful transactions.

Experience Elsewhere: The State of Maryland, through its Department of Business and Economic Development, has been operating a very successful equity investment program for over a decade and a half.

Source of Information: Peter Bang, Chief Operating Officer, Department of Economic Development, 240-777-2008; peter.bang@montgomerycountymd.gov

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 14, 2013

TO: Nancy Navarro, Council President

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Legislation Relating to the Economic Development Fund and Equity Investments

I am transmitting to Council for introduction a bill to authorize use of the Economic Development Fund (EDF) to make equity investments in private companies. I am also transmitting a Legislative Request Report, Fiscal Impact Statement and Economic Impact Statement for the bill.

In 2010, the State enacted a law (Chapter 710, Montgomery County - Investment Authority) that gave the County authority to use the EDF to make an equity investment in a private company. Prior to enactment of that State law, the County had no authority to use the EDF to make equity investments in private companies and was limited to providing two forms of assistance: (1) a straight loan; or (2) a grant convertible to a loan.

The State, through its Department of Business and Economic Development, currently provides creative financing for business enterprises that can be in the form of a grant, loan, loan guarantee, insurance or equity investment.[1] The State's ability to take an equity stake in companies receiving State funds has garnered substantial financial returns for State residents. A prime example of this is GeneLogic, which received funding from both the State, through an equity investment, and the County, through a loan. When the company was sold, the State's share of the profits exceeded $19 million – i.e., money that went back into State coffers. In contrast, the County received $15,000 back from its $188,000 convertible grant.

This bill would allow the County to benefit from any upswings in the companies to which we provide financial assistance, similar to the current State practice. As an equity shareholder, the County will be able to reap a return on its strategic economic development investments when EDF recipients generate substantial profits from their products and services or their companies are acquired. These economic returns, whether they are used to create a larger EDF funding pool to support business and job growth, augment other economic development programs, or support other County programs, will benefit County residents.

[1] The State cannot exceed a 25 percent ownership position and must divest investments within 15 years.

For more information on this proposed legislation, please contact Peter Bang in the Department of Economic Development at 240-777-2008.

Attachments (3)

c: Joe Beach, Director, Department of Finance
Marc Hansen, County Attorney
Jennifer Hughes, Director, Office of Management and Budget
Steve Silverman, Director, Department of Economic Development

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

November 9, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill XX-12 – Economic Development – Equity Investment Companies

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:hpv

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Peter Bang, Department of Economic Development
Michael Coveyou, Department of Finance
David Platt, Department of Finance
Alex Espinosa, Office of Management and Budget
Blaise DeFazio , Office of Management and Budget
Helen Vallone, Office of Management and Budget
Naeem Mia, Office of Management and Budget
Ayo Apollon, Office of Management and Budget

Fiscal Impact Statement
Council Bill XX-12 - Economic Development – Equity Investment Companies

1. **Legislative Summary**
   The proposed bill authorizes the County to:
   - make an equity investment in a company located in, or relocated to, Montgomery County;
   - provide that the proceeds of an equity investment made by the County be used for certain purposes;
   - limit the ownership interest the County may acquire to no more than 25%;
   - require that the terms of an equity investment be set forth in a funding agreement, including prohibiting the County from taking certain actions;
   - provide that a funding agreement may consist of other agreements or documents;
   - require the County to post a notice of each equity investment in a readily accessible and clearly identified location on the Montgomery County website within a certain period of time; and
   - generally address equity investments made by the County in certain businesses in the County.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**
   Due to uncertainties about which company the County will invest in, its value, and its economic performance, it is difficult to estimate the potential expenditures (the initial investment) or revenues that the County may derive from its equity investment.

   The proposed legislation will also use the same funds under the Economic Development Fund, and bears a similar risk to using a loan or a convertible grant to assist companies. As such, no immediate or direct fiscal impact can be gauged at this time due to uncertainties in estimating the risk.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
   See item #2 above.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**
   Not applicable. This bill does not affect retiree pension or group insurance costs.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**
   The bill does not authorize future spending.

6. **An estimate of the staff time needed to implement the bill.**
   No additional staff time is needed to implement the bill as the existing staff will still conduct similar due diligence on applicant companies.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**
   New staff is not required but the existing staff responsibilities will include posting notices of any completed transactions on the County website to comply with the bill.

8. **An estimate of costs when an additional appropriation is needed.**
   Not applicable.

9. ***A description of any variable that could affect revenue and cost estimates.***
   Revenues and cost estimates are determined by the selected company's value and economic performance. These variables are difficult to estimate without determining which company the County will choose to invest in.

10. ***Ranges of revenue or expenditures that are uncertain or difficult to project.***
    Revenues and costs are affected by the selected company's value and economic performance. These variables are difficult to estimate without determining which company the County will choose to invest in.

11. ***If a bill is likely to have no fiscal impact, why that is the case.***
    Not applicable.

12. **Other fiscal impacts or comments.**
    None.

13. **The following contributed to and concurred with this analysis:**
    Peter Bang, Department of Economic Development
    Helen P. Vallone, Office of Management and Budget
    Naeem Mia, Office of Management and Budget

JHughes

Jennifer A. Hughes, Director
Office of Management and Budget

11/13/12
Date

(11)

Economic Impact Statement
Council Bill xx-12, Economic Development – Equity Investment Companies

Background:

This Bill authorizes the County to make equity investments in companies through the Economic Development Fund (EDF), limited to an ownership stake of 25% of the company. The bill could have an economic impact if it results in higher, unexpected, paybacks (through the increased value of the equity) from companies that perform very well. The impact could be in the form of funding more EDF transactions, whether taking an equity interest or not, thereby increasing the number of companies that the County can provide EDF incentives.

1. The sources of information, assumptions, and methodologies used.

The information available currently is only anecdotal as to the economic impact of the proposed legislation. There is not sufficient experience with this type of incentive to use as a basis for an economic impact forecast.

2. A description of any variable that could affect economic impact statements.

The economic impact depends on the change in the number and value of EDF incentives granted because of the change in the law, compared to the number of EDF incentives that would have been given without the change in the law. The proposed legislation may cause the County to provide EDF incentives to companies that it would not have, absent this change and in so doing may affect the impact on spending, employment, and other economic variables

3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

The bill could increase the number of companies that the County gives EDF incentives, which could increase employment, spending, saving, investment, income and property values in the County. The impact would depend on the specifics of each individual EDF incentive.

4. If a bill is likely to have no economic impact, why is that the case?

Not applicable.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.

Joseph F. Beach, Director
Department of Finance

11-5-12
Date