

2023 -- H 6003

LC002231

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND SMALL
BUSINESS DEVELOPMENT FUND

Introduced By: Representatives O'Brien, McEntee, Craven, Caldwell, Dawson, Serpa,
Bennett, Diaz, Corvese, and Vella-Wilkinson

Date Introduced: March 01, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-64.33-2 and 42-64.33-4 of the General Laws in Chapter 42-64.33
2 entitled "The Rhode Island Small Business Development Fund" are hereby amended to read as
3 follows:

4 **42-64.33-2. Definitions.**

5 (a) As used in this chapter:

6 (1) "Affiliate" means an entity that directly, or indirectly, through one or more
7 intermediaries, controls, or is controlled by, or is under common control with another entity. For
8 the purposes of this chapter, an entity is "controlled by" another entity if the controlling entity
9 holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has
10 control over the day-to-day operations of the controlled entity by contract or by law.

11 (2) "Applicable percentage" means zero percent (0%) for the first three (3) credit allowance
12 dates, and twenty-one and one-half percent (21.5%) for the fourth, fifth, and sixth credit allowance
13 dates.

14 (3) "Capital investment" means any equity or debt investment in a small business
15 development fund by a small business fund investor that:

16 (i) Is acquired after July 5, 2019, at its original issuance solely in exchange for cash;

17 (ii) Has one hundred percent (100%) of its cash purchase price used by the small business
18 development fund to make qualified investments in eligible businesses located in this state within

1 three (3) years of the initial credit allowance date; and

2 (iii) Is designated by the small business development fund as a capital investment under
3 this chapter and is certified by the corporation pursuant to § 42-64.33-4. This term shall include
4 any capital investment that does not meet the provisions of § 42-64.33-4(a) if the investment was
5 a capital investment in the hands of a prior holder.

6 (4) “Corporation” means the Rhode Island commerce corporation.

7 (5) “Credit allowance date” means the date on which a capital investment is made and each
8 of the five (5) anniversary dates of the date thereafter.

9 (6) “Eligible business” means a business that, at the time of the initial qualified investment
10 in the company:

11 (i) Has less than two hundred fifty (250) employees;

12 (ii) Has not more than fifteen million dollars (\$15,000,000) in net income from the
13 preceding tax year;

14 (iii) Has its principal business operations in this state; and

15 (iv) Is engaged in industries related to clean energy, biomedical innovation, life sciences,
16 information technology, software, cyber physical systems, cybersecurity, data analytics, defense,
17 shipbuilding, maritime, composites, advanced business services, design, food, manufacturing,
18 transportation, distribution, logistics, arts, education, hospitality, tourism, or, if not engaged in the
19 industries, the corporation makes a determination that the investment will be beneficial to the
20 economic growth of the state.

21 (7) “Eligible distribution” means:

22 (i) A distribution of cash to one or more equity owners of a small business fund investor to
23 fully or partially offset a projected increase in the owner’s federal or state tax liability, including
24 any penalties and interest, related to the owner’s ownership, management, or operation of the small
25 business fund investor;

26 (ii) A distribution of cash as payment of interest and principal on the debt of the small
27 business fund investor or small business development fund; or

28 (iii) A distribution of cash related to the reasonable costs and expenses of forming,
29 syndicating, managing, and operating the small business fund investor or the small business
30 development fund, or a return of equity or debt to affiliates of a small business fund investor or
31 small business development fund. The distributions may include reasonable and necessary fees paid
32 for professional services, including legal and accounting services, related to the formation and
33 operation of the small business development fund.

34 (8) “Jobs created” means a newly created position of employment that was not previously

1 located in the state at the time of the qualified investment in the eligible business and requiring a
2 minimum of thirty five (35) hours worked each week, measured each year by subtracting the
3 number of full-time, thirty-five hours-per-week (35) employment positions at the time of the initial
4 qualified investment in the eligible business from the monthly average of full-time, thirty-five
5 hours-per-week (35) employment positions for the applicable year. The number shall not be less
6 than zero.

7 (9) “Jobs retained” means a position requiring a minimum of thirty five (35) hours worked
8 each week that existed prior to the initial qualified investment. Retained jobs shall be counted each
9 year based on the monthly average of full-time, thirty-five hours-per-week (35) employment
10 positions for the applicable year. The number shall not exceed the initial amount of retained jobs
11 reported and shall be reduced each year if employment at the eligible business concern drops below
12 that number.

13 (10) “Minority business enterprise” means an eligible business which is certified by the
14 Rhode Island office of diversity, equity and opportunity as being a minority or women business
15 enterprise or which self-certifies that it meets the eligibility criteria of a minority business enterprise
16 as defined under the Rhode Island department of administration’s rules 220-RICR-80-10-1.

17 (11) “Principal business operations” means the location where at least sixty percent (60%)
18 of a business’s employees work or where employees who are paid at least sixty percent (60%)
19 percent of the business’s payroll work. A business that has agreed to relocate employees using the
20 proceeds of a qualified investment to establish its principal business operations in a new location
21 shall be deemed to have its principal business operations in the new location if it satisfies these
22 requirements no later than one hundred eighty (180) days after receiving a qualified investment.

23 (12) “Purchase price” means the amount paid to the small business development fund that
24 issues a capital investment that shall not exceed the amount of capital investment authority certified
25 pursuant to § 42-64.33-4.

26 (13) “Qualified investment” means any investment in an eligible business or any loan to
27 an eligible business with a stated maturity date of at least one year after the date of issuance,
28 excluding revolving lines of credit and senior secured debt unless the eligible business has a credit
29 refusal letter or similar correspondence from a depository institution or a referral letter or similar
30 correspondence from a depository institution referring the business to a small business development
31 fund; provided that, with respect to any one eligible business, the maximum amount of investments
32 made in the business by one or more small business development funds, on a collective basis with
33 all of the businesses’ affiliates, with the proceeds of capital investments shall be twenty percent
34 (20%) of the small business development fund’s capital investment authority, exclusive of

1 investments made with repaid or redeemed investments or interest or profits realized thereon. An
2 eligible business, on a collective basis with all of the businesses' affiliates, is prohibited from
3 receiving more than four million dollars (\$4,000,000) in investments from one or more small
4 business development funds with the proceeds of capital investments.

5 (14) "Small business development fund" means an entity certified by the corporation under
6 § 42-64.33-4.

7 (15) "Small business fund investor" means an entity that makes a capital investment in a
8 small business development fund.

9 (16) "State" means the state of Rhode Island.

10 (17) "State tax liability" means any liability incurred by any entity under § 44-17-1 et seq.

11 **42-64.33-4. Application, approval and allocations.**

12 (a) A small business development fund that seeks to have an equity or debt investment
13 certified as a capital investment and eligible for credits under this chapter shall apply to the
14 corporation. The corporation shall begin accepting applications within ninety (90) days of July 5,
15 2019. The small business development fund shall include the following:

16 (1) The amount of capital investment requested;

17 (2) A copy of the applicant's or an affiliate of the applicant's license as a rural business
18 investment company under 7 U.S.C. § 2009cc, or as a small business investment company under
19 15 U.S.C. § 681, and a certificate executed by an executive officer of the applicant attesting that
20 the license remains in effect and has not been revoked;

21 (3) Evidence that, as of the date the application is submitted, the applicant or affiliates of
22 the applicant have invested at least one hundred million dollars (\$100,000,000) in nonpublic
23 companies;

24 (4) An estimate of the number of jobs that will be created or retained in this state as a result
25 of the applicant's qualified investments;

26 (5) A business plan that includes a strategy for reaching out to and investing in minority
27 business enterprises and a revenue impact assessment projecting state and local tax revenue to be
28 generated by the applicant's proposed qualified investment prepared by a nationally recognized,
29 third-party, independent economic forecasting firm using a dynamic economic forecasting model
30 that analyzes the applicant's business plan over the ten (10) years following the date the application
31 is submitted to the corporation; and

32 (6) A nonrefundable application fee of five thousand dollars (\$5,000), payable to the
33 corporation.

34 (b) Within thirty (30) days after receipt of a completed application, the corporation shall

1 grant or deny the application in full or in part. The corporation shall deny the application if:

2 (1) The applicant does not satisfy all of the criteria described in subsection (a) of this
3 section;

4 (2) The revenue impact assessment submitted with the application does not demonstrate
5 that the applicant's business plan will result in a positive economic impact on this state over a ten-
6 year (10) period that exceeds the cumulative amount of tax credits that would be issued to the
7 applicant if the application were approved; or

8 (3) The corporation has already approved the maximum amount of capital investment
9 authority under subsection (g) of this section.

10 (c) If the corporation denies any part of the application, it shall inform the applicant of the
11 grounds for the denial. If the applicant provides any additional information required by the
12 corporation or otherwise completes its application within fifteen (15) days of the notice of denial,
13 the application shall be considered completed as of the original date of submission. If the applicant
14 fails to provide the information or fails to complete its application within the fifteen-day (15)
15 period, the application remains denied and must be resubmitted in full with a new submission date.

16 (d) If the application is deemed to be complete and the applicant deemed to meet all of the
17 requirements of subsections (a) and (b), the corporation shall certify the proposed equity or debt
18 investment as a capital investment that is eligible for credits under this chapter, subject to the
19 limitations contained in subsection (g) of this section. The corporation shall provide written notice
20 of the certification to the small business development fund.

21 (e) The corporation shall certify capital investments in the order that the applications were
22 received by the corporation. Applications received on the same day shall be deemed to have been
23 received simultaneously.

24 (f) For applications that are complete and received on the same day, the corporation shall
25 certify applications in proportionate percentages based upon the ratio of the amount of capital
26 investments requested in an application to the total amount of capital investments requested in all
27 applications.

28 (g) The corporation shall certify sixty-five million dollars (\$65,000,000) in capital
29 investments pursuant to this section; provided that not more than twenty million dollars
30 (\$20,000,000) may be allocated to any individual small business development fund certified under
31 this section except that the corporation in its discretion may allocate more than twenty million
32 dollars (\$20,000,000) to a small business development fund or its affiliate that has already fully
33 deployed an allocation certified under this section.

34 (h) Within sixty (60) days of the applicant receiving notice of certification, the small

1 business development fund shall issue the capital investment to and receive cash in the amount of
2 the certified amount from a small business fund investor. At least forty-five percent (45%) of the
3 small business fund investor's capital investment shall be composed of capital raised by the small
4 business fund investor from sources, including directors, members, employees, officers, and
5 affiliates of the small business fund investor, other than the amount of capital invested by the
6 allocatee claiming the tax credits in exchange for the allocation of tax credits; provided that at least
7 ten percent (10%) of the capital investment shall be derived from the small business investment
8 fund's managers. The small business development fund shall provide the corporation with evidence
9 of the receipt of the cash investment within sixty-five (65) days of the applicant receiving notice of
10 certification. If the small business development fund does not receive the cash investment and issue
11 the capital investment within the time period following receipt of the certification notice, the
12 certification shall lapse and the small business development fund shall not issue the capital
13 investment without reapplying to the corporation for certification. Lapsed certifications revert to
14 the authority and shall be reissued pro rata to applicants whose capital investment allocations were
15 reduced pursuant to this chapter and then in accordance with the application process.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND SMALL
BUSINESS DEVELOPMENT FUND

1 This act would expand on the definition of a minority business as a business which self-
2 certifies that it meets the eligibility criteria of a minority business enterprise as defined under the
3 Rhode Island department of administration's rules 220-RICR-80-10-1. Additionally, this act would
4 allow a corporation in its discretion to allocate more than twenty million dollars (\$20,000,000) to
5 a small business development fund or its affiliate that has already fully deployed an allocation
6 certified under this section.

7 This act would take effect upon passage.

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