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LC004944

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ESTABLISHING A SMALL  
BUSINESS DEVELOPMENT FUND

Introduced By: Senators Conley, Sosnowski, DiPalma, Seveney, and Lombardo

Date Introduced: March 20, 2018

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND  
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 64.33

4 THE RHODE ISLAND SMALL BUSINESS DEVELOPMENT FUND

5 **42-64.33-1. Short title.**

6 This chapter shall be known and may be cited as the "Rhode Island Small Business  
7 Development Fund."

8 **42-64.33-2. Findings and purpose.**

9 (a) It is hereby found that across the nation, small businesses account for up to sixty-six  
10 percent (66%) of all new jobs created annually. The Rhode Island economy is no different.  
11 Consequently, a need exists for a small business development program that complements existing  
12 traditional lending and investment sources to fill the widening gap of financing largely  
13 unavailable to the state's many small businesses and startups. Through the establishment of the  
14 small business development fund, Rhode Island will attract private investment dollars for "Main  
15 Street" small businesses and stimulate growth across a breadth of industries including future-  
16 oriented industries strategically identified as promising potential sources of sustainable economic  
17 growth for Rhode Island.

18 (b) Small and startup businesses in this state have found it difficult to attract capital

1 necessary to make investments that would stimulate economic development activity and create  
2 new jobs for the citizens of the state. Consequently, a need exists to attract capital that promotes  
3 the retention and expansion of existing jobs, stimulates the creation of new jobs, attracts new  
4 business and industry to the state, and stimulates growth in businesses that are prepared to make  
5 meaningful investments and foster job creation.

6 (c) Through the establishment of a small business development fund tax credit program,  
7 Rhode Island can take steps to attract capital to stimulate venture, growth, and expansion-stage  
8 investment, retain and attract new business and industry to the state, create good-paying jobs, and  
9 stimulate growth in startup businesses and other businesses that are poised for growth.

10 **42-64.33-3. Definitions.**

11 (a) As used in this chapter:

12 (1) “Affiliate” means an entity that directly, or indirectly, through one or more  
13 intermediaries, controls, or is controlled by, or is under common control with another entity. For  
14 the purposes of this chapter, an entity is “controlled by” another entity if the controlling entity  
15 holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or  
16 has control over the day-to-day operations of the controlled entity by contract or by law.

17 (2) “Applicable percentage” means zero percent (0%) for the first three (3) credit  
18 allowance dates, and twenty-one and one-half percent (21.5%) for the fourth, fifth, and sixth  
19 credit allowance dates.

20 (3) “Capital investment” means any equity investment in a small business development  
21 fund by a small business fund investor that:

22 (i) Is acquired after the effective date of this chapter at its original issuance solely in  
23 exchange for cash;

24 (ii) Has one hundred percent (100%) of its cash purchase price used by the small business  
25 development fund to make qualified investments in eligible businesses located in this state within  
26 three (3) years of the initial credit allowance date; and

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

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

33 (5) “Department” means the Rhode Island commerce corporation.

34 (6) “Eligible business” means a business that, at the time of the initial qualified

1 investment in the company:

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

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

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

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

12 (7) "Eligible distribution" means:

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

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

19 (iii) A distribution of cash related to the reasonable costs and expenses of forming,  
20 syndicating, managing, and operating the small business fund investor or the small business  
21 development fund, or a return of equity to affiliates of a small business fund investor or small  
22 business development fund. The distributions may include reasonable and necessary fees paid for  
23 professional services, including legal and accounting services, related to the formation and  
24 operation of the small business development fund.

25 (8) "Jobs created" means a newly created position of employment that was not previously  
26 located in the state at the time of the qualified investment in the eligible business and requiring a  
27 minimum of thirty five (35) hours worked each week, measured each year by subtracting the  
28 number of employment positions at the time of the initial qualified investment in the eligible  
29 business from the monthly average of employment positions for the applicable year. The number  
30 shall not be less than zero.

31 (9) "Jobs retained" means a position requiring a minimum of thirty five (35) hours  
32 worked each week that existed prior to the initial qualified investment. Retained jobs shall be  
33 counted each year based on the monthly average of employment positions for the applicable year.  
34 The number shall not exceed the initial amount of retained jobs reported and shall be reduced

1 each year if employment at the eligible business concern drops below that number.

2 (10) "Principal business operations" means the location where at least sixty percent  
3 (60%) of a business's employees work or where employees who are paid at least sixty percent  
4 (60%) percent of the business's payroll work. A business that has agreed to relocate employees  
5 using the proceeds of a qualified investment to establish its principal business operations in a new  
6 location shall be deemed to have its principal business operations in the new location if it satisfies  
7 these requirements no later than one hundred eighty (180) days after receiving a qualified  
8 investment.

9 (11) "Purchase price" means the amount paid to the small business development fund that  
10 issues a capital investment which shall not exceed the amount of capital investment authority  
11 certified pursuant to § 42-64.33-5.

12 (12) "Qualified investment" means any investment in an eligible business or any loan to  
13 an eligible business with a stated maturity date of at least one year after the date of issuance,  
14 excluding revolving lines of credit and senior secured debt unless the eligible business has a  
15 credit refusal letter or similar correspondence from a depository institution or a referral letter or  
16 similar correspondence from a depository institution referring the business to a small business  
17 development fund; provided that, with respect to any one eligible business, the maximum amount  
18 of investments made in the business by one or more small business development funds, on a  
19 collective basis with all of the businesses' affiliates, with the proceeds of capital investments shall  
20 be twenty percent (20%) of the small business development fund's capital investment authority,  
21 exclusive of investments made with repaid or redeemed investments or interest or profits realized  
22 thereon. An eligible business, on a collective basis with all of the businesses' affiliates, is  
23 prohibited from receiving more than four million dollars (\$4,000,000) in investments from one or  
24 more small business development funds with the proceeds of capital investments.

25 (13) "Small business development fund" means an entity certified by the department  
26 under § 42-64.33-5.

27 (14) "Small business fund investor" means an entity that makes a capital investment in a  
28 small business development fund.

29 (15) "State" means the state of Rhode Island and Providence Plantations.

30 (16) "State tax liability" means any liability incurred by any entity under § 44-17-1 et  
31 seq., § 27-2-17 or, if the taxes are eliminated or reduced, the term shall also mean any tax liability  
32 imposed on an entity or other person that had tax liability under the laws of this state.

33 **42-64.33-4. Tax credit established.**

34 (a) Upon making a capital investment in a small business development fund, a small

1 business fund investor earns a vested right to a credit against the entity's state tax liability that  
2 may be utilized on each credit allowance date of the capital investment in an amount equal to the  
3 applicable percentage for the credit allowance date multiplied by the purchase price paid to the  
4 small business development fund for the capital investment. The amount of the credit claimed by  
5 a small business fund investor shall not exceed the amount of the entity's state tax liability for the  
6 tax year for which the credit is claimed. Any amount of credit that a small business investor is  
7 prohibited from claiming in a taxable year as a result of this section may be carried forward for  
8 use in any subsequent taxable year. It is the intent of this chapter that a small business investor  
9 claiming a credit under this section is not required to pay any additional tax that may arise as a  
10 result of claiming the credit.

11 (b) No credit claimed under this section shall be refundable or saleable on the open  
12 market. Credits earned by or allocated to a partnership, limited liability company, or S  
13 corporation may be allocated to the partners, members, or shareholders of the entity for their  
14 direct use in accordance with the provisions of any agreement among the partners, members, or  
15 shareholders, and a small business development fund must notify the department of the names of  
16 the entities that are eligible to utilize credits pursuant to an allocation of credits or a change in  
17 allocation of credits or due to a transfer of a capital investment upon the allocation, change, or  
18 transfer. The allocation shall be not considered a sale for purposes of this section. Interest in a  
19 partnership, limited liability company, or S corporation may be earned by the purchase of an  
20 equity interest in the partnership, limited liability company or S corporation or the purchase of a  
21 debt instrument issued by the partnership, limited liability company, or S corporation.

22 **42-64.33-5. Application, approval and allocations.**

23 (a) A small business development fund that seeks to have an equity investment certified  
24 as a capital investment and eligible for credits under this chapter shall apply to the department.  
25 The department shall begin accepting applications within ninety (90) days of the effective date of  
26 this chapter. The small business development fund shall include the following:

27 (1) The amount of capital investment requested;

28 (2) A copy of the applicant's or an affiliate of the applicant's license as a rural business  
29 investment company under 7 U.S.C. § 2009cc, or as a small business investment company under  
30 15 U.S.C. § 681, and a certificate executed by an executive officer of the applicant attesting that  
31 the license remains in effect and has not been revoked;

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

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

3           (5) A business plan that includes a revenue impact assessment projecting state and local  
4 tax revenue to be generated by the applicant's proposed qualified investment prepared by a  
5 nationally recognized, third-party, independent economic forecasting firm using a dynamic  
6 economic forecasting model that analyzes the applicant's business plan over the ten (10) years  
7 following the date the application is submitted to the department; and

8           (6) A nonrefundable application fee of five thousand dollars (\$5,000), payable to the  
9 department.

10           (b) Within thirty (30) days after receipt of a completed application, the department shall  
11 grant or deny the application in full or in part. The department shall deny the application if:

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

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

18           (3) The department has already approved the maximum amount of capital investment  
19 authority under subsection (f) of this section.

20           (c) If the department denies any part of the application, it shall inform the applicant of the  
21 grounds for the denial. If the applicant provides any additional information required by the  
22 department or otherwise completes its application within fifteen (15) days of the notice of denial,  
23 the application shall be considered completed as of the original date of submission. If the  
24 applicant fails to provide the information or fails to complete its application within the fifteen  
25 (15) day period, the application remains denied and must be resubmitted in full with a new  
26 submission date.

27           (d) If the application is complete, the department shall certify the proposed equity  
28 investment as a capital investment that is eligible for credits under this chapter, subject to the  
29 limitations contained in subsection (g) of this section. The department shall provide written notice  
30 of the certification to the small business development fund.

31           (e) The department shall certify capital investments in the order that the applications were  
32 received by the department. Applications received on the same day shall be deemed to have been  
33 received simultaneously.

34           (f) For applications that are complete and received on the same day, the department shall

1 certify applications in proportionate percentages based upon the ratio of the amount of capital  
2 investments requested in an application to the total amount of capital investments requested in all  
3 applications.

4 (g) The department shall certify sixty-five million dollars (\$65,000,000) in capital  
5 investments pursuant to this section; provided that not more than twenty million dollars  
6 (\$20,000,000) may be allocated to any individual small business development fund certified  
7 under this section.

8 (h) Within sixty (60) days of the applicant receiving notice of certification, the small  
9 business development fund shall issue the capital investment to and receive cash in the amount of  
10 the certified amount from a small business fund investor. At least forty-five percent (45%) of the  
11 small business fund investor's capital investment shall be composed of capital raised by the small  
12 business fund investor from sources, including directors, members, employees, officers, and  
13 affiliates of the small business fund investor, other than the amount of capital invested by the  
14 allocatee claiming the tax credits in exchange for the allocation of tax credits; provided that at  
15 least ten percent (10%) of the capital investment shall be derived from the small business  
16 investment fund's managers. The small business development fund shall provide the department  
17 with evidence of the receipt of the cash investment within sixty-five (65) days of the applicant  
18 receiving notice of certification. If the small business development fund does not receive the cash  
19 investment and issue the capital investment within the time period following receipt of the  
20 certification notice, the certification shall lapse and the small business development fund shall not  
21 issue the capital investment without reapplying to the department for certification. Lapsed  
22 certifications revert to the authority and shall be reissued pro rata to applicants whose capital  
23 investment allocations were reduced pursuant to § 42-64.33-5(f) and then in accordance with the  
24 application process.

25 **42-64.33-6. Tax credit recapture and exit.**

26 (a) The department may recapture, from a small business fund investor that claimed the  
27 credit on a tax return, the credit allowed under § 42-64.33-5 if:

28 (1) The small business development fund does not invest one hundred (100%) percent of  
29 its capital investment authority in qualified investments in this state within three (3) years of the  
30 first credit allowance date;

31 (2) The small business development fund, after satisfying subsection (a)(1) of this  
32 section, fails to maintain qualified investments equal to one hundred (100%) percent of its capital  
33 investment authority until the sixth anniversary of the initial credit allowance date. For the  
34 purposes of this subsection, a qualified investment is considered maintained even if the qualified

1 investment was sold or repaid so long as the small business development fund reinvests an  
2 amount equal to the capital returned or recovered by the small business development fund from  
3 the original investment, exclusive of any profits realized, in other qualified investments in this  
4 state within twelve (12) months of the receipt of the capital. Amounts received periodically by a  
5 small business development fund shall be treated as continually invested in qualified investments  
6 if the amounts are reinvested in one or more qualified investments by the end of the following  
7 calendar year. A small business development fund shall not be required to reinvest capital  
8 returned from qualified investments after the fifth anniversary of the initial credit allowance date,  
9 and the qualified investments shall be considered held continuously by the small business  
10 development fund through the sixth anniversary of the initial credit allowance date;

11 (3) The small business development fund, before exiting the program in accordance with  
12 § 42-64.33-6(e), makes a distribution or payment that results in the small business development  
13 fund having less than one hundred percent (100%) of its capital investment authority invested in  
14 qualified investments in this state or available for investment in qualified investments and held in  
15 cash and other marketable securities; or

16 (4) The small business development fund violates subsection (d) of this section.

17 (b) Recaptured credits and the related capital investment authority revert to the  
18 department and shall be reissued pro rata to applicants whose capital investment allocations were  
19 reduced pursuant to subsection (g) of this section and then in accordance with the application  
20 process.

21 (c) Enforcement of each of the recapture provisions of subsection (a) of this section shall  
22 be subject to a six (6) month cure period. No recapture shall occur until the small business  
23 development fund has been given notice of noncompliance and afforded six (6) months from the  
24 date of the notice to cure the noncompliance.

25 (d) No eligible business that receives a qualified investment under this chapter, or any  
26 affiliates of the eligible business, may directly or indirectly:

27 (1) Own or have the right to acquire an ownership interest in a small business  
28 development fund or member or affiliate of a small business development fund, including, but not  
29 limited to, a holder of a capital investment issued by the small business development fund; or

30 (2) Loan to or invest in a small business development fund or member or affiliate of a  
31 small business development fund, including, but not limited to, a holder of a capital investment  
32 issued by a small business development fund, where the proceeds of the loan or investment are  
33 directly or indirectly used to fund or refinance the purchase of a capital investment under this  
34 chapter.



1 (e) On or after the sixth anniversary of the initial credit allowance date, a small business  
2 development fund may apply to the department to exit the program and no longer be subject to  
3 regulation under this chapter. The department shall respond to the exit application within thirty  
4 (30) days of receipt. In evaluating the exit application, the fact that no credits have been  
5 recaptured and that the small business development fund has not received a notice of recapture  
6 that has not been cured pursuant to subsection (c) of this section shall be sufficient evidence to  
7 prove that the small business development fund is eligible for exit. The department shall not  
8 unreasonably deny an exit application submitted under this subsection. If the exit application is  
9 denied, the notice shall include the reasons for the determination.

10 (f) If the number of jobs created or retained by the eligible businesses that received  
11 qualified investments from the small business development fund, calculated pursuant to reports  
12 filed by the small business development fund pursuant to § 42-64.33-8, is:

13 (1) Less than sixty percent (60%) of the amount projected in the approved small business  
14 development fund's business plan filed as part of its application for certification under § 42-  
15 64.33-5, then the state shall receive thirty percent (30%) of any distribution or payment to an  
16 equity holder in an approved small business development fund in excess of eligible distributions;  
17 or

18 (2) Greater than sixty percent (60%) but less than one hundred percent (100%) of the  
19 amount projected in the approved small business development fund's business plan filed as part  
20 of its application for certification under § 42-64.33-5, then the state shall receive fifteen percent  
21 (15%) of any distribution or payment to an equity holder in an approved small business  
22 development fund in excess of eligible distributions.

23 (g) At the time a small business development fund applies to the department to exit the  
24 program, it shall calculate the aggregate internal rate of return of its qualified investments. If the  
25 small business development fund's aggregate internal rate of return on its qualified investments at  
26 exit exceeds ten percent (10%), then, after eligible distributions, the state shall receive ten percent  
27 (10%) of any distribution or payment in excess of the aggregate ten percent (10%) internal rate of  
28 return to an equity holder in an approved small business development fund.

29 (h) The department shall not revoke a tax credit certificate after the small business  
30 development fund's exit from the program.

31 **42-64.33-7. Request for determination.**

32 (a) A small business development fund, before making a qualified investment, may  
33 request from the department a written opinion as to whether the business in which it is proposed  
34 to invest is an eligible business. The department, not later than the fifteenth business day after the

1 date of receipt of the request, shall notify the small business development fund of its  
2 determination. If the department fails to notify the small business development fund by the  
3 fifteenth business day of its determination, the business in which the small business development  
4 fund proposes to invest shall be considered an eligible business.

5 **42-64.33-8. Reporting obligations.**

6 (a) Each small business development fund shall submit a report to the department and the  
7 division of taxation on or before the fifth business day after the second anniversary of the closing  
8 date. The report shall provide documentation as to the small business development fund's  
9 qualified investments and include:

10 (1) A bank statement evidencing each qualified investment;

11 (2) The name, location, and industry of each business receiving a qualified investment,  
12 including either the determination letter set forth in § 42-64.33-7 or evidence that the business  
13 qualified as an eligible business at the time the investment was made; and

14 (3) The number of employment positions created or retained as a result of the small  
15 business development fund's qualified investments as of the last day of the preceding calendar  
16 year;

17 (b) On or before the last day of February of each year following the year in which the  
18 report required in subsection (a) of this section is due, the small business development fund shall  
19 submit an annual report to the department and the division of taxation including the following:

20 (1) The number of employment positions created or retained as a result of the small  
21 business development fund's qualified investments as of the last day of the preceding calendar  
22 year;

23 (2) The average annual salary of the positions described in subsection (b)(1) of this  
24 section; and

25 (3) The follow-on capital investment that has occurred along with or after the small  
26 business development fund's investment as of the last day of the preceding calendar year.

27 (c) A copy of the reports required under this section must also be sent concurrently to the  
28 speaker of the house, president of the senate, house finance chairperson, senate finance  
29 chairperson, and the general treasurer.

30 **42-64.33-9. Rules and regulations.**

31 The department and division of taxation may issue reasonable rules and regulations,  
32 consistent with this chapter, as are necessary to carry out the intent and purpose and  
33 implementation of the responsibilities under this chapter.

1 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 - ESTABLISHING A SMALL  
BUSINESS DEVELOPMENT FUND

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1           This act would establish a small business development fund designed to encourage the  
2 formation of private capital investment by federally licensed investment companies in  
3 underserved small businesses, leveraged by delayed, at-risk stream of tax credits applicable  
4 against insurance premium and retaliatory taxes that can be recaptured for noncompliance with  
5 program investment requirements. Monetary penalties would exist if job creation and retention  
6 projections would be missed, and the state shares in profits above a certain level of fund returns.  
7 Investments would be designated for targeted growth industries for the state, and would be  
8 required to be diversified – no one small business would receive more than four (\$4,000,000)  
9 million or twenty percent (20%) of a fund’s investment authority. The investment funds would  
10 report annually, and the program would terminate after six (6) years.

11           This act would take effect upon passage.

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