

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2011 Legislative Session

Bill No. CB-4-2011

Chapter No. 22

Proposed and Presented by The Chair (by request – County Executive)

Introduced by Council Members Franklin, Turner, Toles, Harrison, Olson, and Campos

Co-Sponsors _____

Date of Introduction October 4, 2011

BILL

1 AN ACT concerning

2 Economic Development Incentive Fund

3 For the purpose of establishing an Economic Development Incentive Fund (the “Fund”);
4 specifying the purpose and uses of the Fund; providing for the financing and administration of
5 the Fund; and generally providing for the Fund.

6 BY adding to:

7 SUBTITLE 10. FINANCE AND TAXATION.

8 Sections 10-283 – 10-288,

9 The Prince George's County Code

10 (2007 Edition, 2010 Supplement).

11 WHEREAS, Prince George’s County has numerous economic development assets,
12 including a workforce that is better educated and better compensated than the nation as a whole,
13 more than 15 significant federal facilities, breakthrough commercial developments, the State’s
14 flagship university and other higher education assets, key proximity to the nation’s capital, an
15 excellent transportation infrastructure with numerous Transit Oriented Development
16 opportunities, and a coveted Triple-A bond rating; and

17 WHEREAS, despite these assets, the data is irrefutable that Prince George’s County’s
18 economy has lagged behind that of other jurisdictions the Washington Metropolitan area and in a
19 Maryland, with fewer jobs in 2011 than in 2000, comparably more residents having to commute
20 out of the County for employment, less development around Metro stations than our neighbors
21 have enjoyed, and overall fewer jobs for the citizens of the County than can be justified; and

1 WHEREAS, in order to reverse these trends and allow Prince George’s County to realize
2 its full potential, the County must grow its commercial tax base and reduce reliance on
3 residential taxes, and attract new jobs and local employment opportunities for its citizens;

4 WHEREAS, as part of a broad new strategy for economic development that includes
5 improvements to the permit process, greater clarity of agency roles and a commitment to
6 outstanding customer service, and broader support for businesses to encourage private
7 investment and quality development, Prince George’s County needs a powerful new economic
8 development tool that will permit the County to compete with neighboring jurisdictions;

9 WHEREAS, the Economic Development Incentive Fund (EDI Fund) will allow Prince
10 George’s County to support development opportunities and job retention and job attraction by
11 providing critically needed financial assistance to projects that “but for” this public/private
12 partnership will not occur and where market forces do not create the incentive to sustain private
13 investments; and

14 WHEREAS, in particular, the EDI Fund should be used strategically to support developed
15 tier and gateway communities, transit oriented development, and local, minority, and small
16 businesses, among other important priorities; now therefore

17 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
18 Maryland, that Sections 10-283 through 10-288 of the Prince George's County Code be and the
19 same are hereby added:

20 **SUBTITLE 10. FINANCE AND TAXATION.**

21 **DIVISION 16. ECONOMIC DEVELOPMENT INCENTIVE FUND.**

22 **Sec. 10-283. Fund established.**

23 There is a non-lapsing Economic Development Incentive Fund.

24 **Sec. 10-284. Purposes and uses.**

25 (a) In general. The purposes of the Fund are to:

26 (1) assist in the retention of existing industry and commerce in the County and in the
27 attraction of new industry and commerce to the County;

28 (2) create new jobs and retain existing jobs for County residents;

29 (3) broaden the local tax base, particularly the commercial tax base;

30 (4) promote economic development and the growth of the Prince George’s County
31 economy, with a special strategic focus on the developed tier and gateway communities that have

1 suffered from a lack of investment and economic development and those areas where market
 2 dynamics do not create sufficient economic incentives to sustain private sector development;

3 (5) promote local, minority, and small businesses in the County; and

4 (6) encourage:

5 (A) Transit-Oriented Development, which shall be defined under this Division as
 6 a development or project located within one-half (1/2) of a mile in distance of a Washington
 7 Metropolitan Area Transit Authority (WMATA) transit station or a Maryland Area Regional
 8 Commuter (MARC) station, as measured from the main entrance of the building to the nearest
 9 entrance of the transit station;

10 (B) a balanced local economy; and

11 (C) international resources and trade to promote job growth, business attraction,
 12 and retention for County businesses and residents;

13 (b) Financial assistance.

14 (1) The Fund may provide financial assistance in the form of loans, guarantees,
 15 conditional loans and grants for the benefit of existing and potential industrial and commercial
 16 businesses in Prince George's County to finance:

17 (A) land, buildings, machinery and equipment, and other associated costs; and

18 (B) working capital, including operating expenses, training expenses, relocation
 19 expenses, and permit fees, if the monies funded are reasonably necessary and used to enhance
 20 the overall health and position of the business.

21 (2) The County's financial assistance under this Division may supplement other
 22 federal and State financial assistance programs.

23 (c) Leveraging funding. The Fund may be used for equity investments, and to participate
 24 with other government agencies or private sector institutions to leverage funding for special
 25 projects.

26 (d) Funding priority. In the administration of the Fund, priority shall be given to economic
 27 investment and redevelopment in the Developed Tier of the County and to Transit-Oriented
 28 Development.

29 (e) Economic strategy. The administration of the Fund shall be consistent with:

30 (1) the County's strategy for economic development, as established by the County
 31 Executive: prioritizing Transit-Oriented Development, revitalization of established communities,

1 and major corridors;

2 (2) established policy and goals previously identified through the General Plan
3 approved by the District Council.

4 (f) Financial incentives policy. In the administration of the fund, special priority shall be
5 given to:

6 (1) Projects that maximize Local Minority Business Enterprise (“LMBE”)
7 participation; and

8 (2) Projects that expand and significantly strengthen employment opportunities for
9 County residents.

10 **Sec. 10-285. Financing the Fund.**

11 (a) Sources. The Fund may be financed from:

12 (1) current expense funds;

13 (2) any contributions, donations, or appropriations by the United States, the State of
14 Maryland, any other political jurisdiction, or any private entity;

15 (3) interest income;

16 (4) fees or other charges levied on loan or grant recipients; and

17 (5) any other funds designated and provided by the County.

18 (b) Treatment. Monies provided by the County to the Fund under Subsection (a) of this
19 Section shall be treated as a transfer to the Fund.

20 (c) Repayments. The Director of Finance shall deposit in the Fund the monies collected
21 for principal and interest on the loans and any authorized loan charges and fees on transactions
22 authorized under this Division.

23 (d) Non-lapsing. The Fund shall continue from year to year.

24 **Sec. 10-286. Administration of the Fund.**

25 (a) Administration. The Chief Administrative Officer, or his designee, shall administer
26 the Fund according to accepted principles of sound accounting and fiscal management.

27 (b) Financial Advisory Committee. The Chief Administrative Officer shall constitute and
28 convene a Financial Advisory Committee (“FAC”) to aid in the review of and provide credit
29 guidance regarding financial assistance applications.

30 (1) The FAC shall be composed of seven independent financial services professionals
31 who are residents of the County and are experienced and skilled in banking, finance, real estate,

1 commercial development, accounting, or business.

2 (2) The County Council shall provide the names of five nominees to the County
 3 Executive, from which the Chief Administrative Officer shall select not less than three members
 4 of the FAC.

5 (3) The Chief Administrative Officer shall accept nominations for the remaining
 6 membership on the FAC from the business community and the general public.

7 (4) Members of the FAC:

8 (A) (i) If nominated by the Chief Administrative Officer, serve at the pleasure
 9 of the Chief Administrative Officer; or

10 (ii) If nominated by the County Council, serve at the pleasure of the
 11 County Council;

12 (B) serve for a term of five (5) years;

13 (C) shall affirmatively recuse themselves from the review of any project where
 14 they or any family member have any financial interest or where any potential conflict of interest
 15 may arise; and

16 (D) shall disclose any conflict of interest under Paragraph (C) of this Subsection.

17 (c) Determination of rates and terms. The Chief Administrative Officer, or his designee,
 18 shall approve the rates to be charged and the terms for the financial assistance provided under
 19 this Division.

20 (d) Determination of accounting methods. The Chief Administrative Officer, or his
 21 designee, shall determine the terms of and the method and procedures for accounting for:

22 (1) financial assistance from the Fund; and

23 (2) payments by or charges against the Fund.

24 (e) Collection of accounts and records. The Director of Finance, or his designee, shall:

25 (1) collect repayments on accounts, subject to the terms and conditions contained in
 26 the financial assistance documents; and

27 (2) maintain records in accordance with generally accepted accounting principles.

28 (f) (1) The Office of Management and Budget shall regularly review the performance of
 29 financial assistance awards from the Fund for compliance with the terms and conditions
 30 negotiated by the Chief Administrative Officer.

31 (2) If LMBE goals or requirements are part of an award of financial assistance from

1 the Fund, in collaboration with the Office of Management and Budget, the County’s Minority
 2 Business Enterprise (“MBE”) Compliance Officer may review the performance of financial
 3 assistance awards for compliance with those goals or requirements.

4 **Sec. 10-287. Financial assistance – application and approval.**

5 (a) Applicants to use form. An applicant for financial assistance shall apply on a form
 6 required by the Chief Administrative Officer, or his designee.

7 (b) Form. The financial assistance application form shall require an applicant to supply
 8 information necessary to evaluate the requested financial assistance including:

- 9 (1) need;
- 10 (2) financial ability of the applicant;
- 11 (3) sources of repayment;
- 12 (4) proposed project costs and expenditures for which assistance is sought;
- 13 (5) fair value of completed projects;
- 14 (6) normal or useful life of equipment or buildings;
- 15 (7) security for the transaction;
- 16 (8) contribution to the economy of the County; and
- 17 (9) any other information that may be appropriate or useful in evaluating the

18 application.

19 (c) Review and approval by the Chief Administrative Officer. The Chief Administrative
 20 Officer or his designee:

21 (1) shall review financial assistance applications for need and financial ability of the
 22 applicant;

23 (2) shall receive guidance from the FAC in making the determination of whether the
 24 application contains sound financial projections, proper collateralization/securitization, and
 25 proper protections of the County’s financial interests; and

26 (3) may approve a financial assistance application up to the amount requested, if
 27 sufficient monies exist in the Fund.

28 (d) Approval criteria. The criteria for approval of financial assistance from the Fund shall
 29 include, but not be limited to, the following:

- 30 (1) the expected benefit to, or impact on, the County’s commercial tax base;
- 31 (2) the estimated number of County residents expected to be hired as a result of the

1 financial assistance from the Fund, and the percentage of the overall hiring consisting of County
2 residents; and

3 (3) the ability of the prospective applicant to leverage financial assistance with other
4 funds.

5 (e) Notice of intent to the Council.

6 (1) The Chief Administrative Officer or his designee shall notify the County Council
7 in writing of the intent to award financial assistance from the Fund by filing the terms of the
8 proposed agreement with the Clerk of the County Council.

9 (2) (A) Except for grants or conditional loans in an amount over \$250,000, within
10 seven (7) calendar days of receipt of the agreement by the Clerk of the County Council, the
11 County Council may provide written comments to the Chief Administrative Officer, or his
12 designee.

13 (B) Not less than seven (7) calendar days after submission of the notice of intent
14 under this Subsection, the Chief Administrative Officer, or his designee, may grant the award
15 and shall provide written notice to the Clerk of the County Council of the final terms of the
16 agreement, or of a decision not to proceed with the award.

17 (3) (A) For grants or conditional loans in an amount over \$250,000, within seven
18 (7) calendar days of receipt of the agreement by the Clerk of the County Council, the County
19 Council may provide written comments or notice of objection to the award to the Chief
20 Administrative Officer, or his designee.

21 (B) If the Chief Administrative Officer, or his designee, does not receive written
22 notice expressing the County Council's objection to a grant or conditional loan in an amount
23 over \$250,000 within seven (7) calendar days after receipt by the Clerk of the County Council of
24 the notice of intent provided under this Subsection, the Chief Administrative Officer, or his
25 designee:

26 (i) may grant the award; and

27 (ii) shall provide written notice to the Clerk of the County Council of the
28 final terms of the agreement or of a decision not to proceed with the award.

29 (C) If the Chief Administrative Officer, or his designee receives written notice
30 expressing the County Council's objection to a grant or conditional loan in an amount over
31 \$250,000 within seven (7) calendar days after the receipt by the Clerk of the County Council of

1 the notice of intent provided under this Subsection, the provisions of Subparagraph (D) of this
 2 Subsection apply.

3 (D) (i) Within seven (7) calendar days of any submission of written notice
 4 expressing objection to the Chief Administrative Officer's, or his designee's, intent to award a
 5 grant or conditional loan in an amount over \$250,000, the County Council in writing shall
 6 approve or disapprove of the Chief Administrative Officer's, or his designee's, intent to provide
 7 financial assistance from the Fund.

8 (ii) If within seven (7) calendar days of any submission of written notice
 9 expressing objection to the Chief Administrative officer's, or his designee's, intent to award a
 10 grant or conditional loan in an amount over \$250,000 the County Council disapproves the award,
 11 the Chief Administrative Officer shall not grant the award.

12 (iii) If after seven (7) calendar days of any submission of written notice
 13 expressing objection to Chief Administrative Officer's, or his designee's, intent to award a grant
 14 or conditional loan in an amount over \$250,000, the County Council does not approve or
 15 disapprove of the award, the Chief Administrative Officer, or his designee:

16 (aa) may grant the award; and

17 (bb) shall provide written notice to the Clerk of the County Council of
 18 the final terms of the agreement or of a decision not to proceed with the award.

19 (4) If the Chief Administrative Officer, or his designee, grants an award of financial
 20 assistance from the Fund pursuant to Sections 10-288(a)(6) ("other uses") or 10-288(b)(2) (loans
 21 in excess of 10 years) of this Division, the Chief Administrative Officer, or his designee, shall
 22 provide written notice to the County Council consistent with the provisions of Paragraph (3) of
 23 this Subsection.

24 **Sec. 10-288. Financial assistance – requirements.**

25 (a) Limits. The Chief Administrative Officer, or his designee, may make an award of
 26 financial assistance from the Fund in the form of a loan, guarantee, or grant to businesses for the
 27 cost of:

28 (1) the acquisition of land and buildings;

29 (2) the construction, reconstruction, rehabilitation, repair, and improvement of
 30 buildings;

31 (3) the cost of acquisition of machinery and equipment;

- 1 (4) working capital;
- 2 (5) equity investments; and
- 3 (6) other uses as determined to be appropriate by the Chief Administrative Officer or
- 4 his designee.

5 (b) Term - Maximum of 10 years.

6 (1) The term of a loan or guarantee made under this Division may not exceed 10

7 years.

8 (2) Exception. The 10-year term limitation under Subsection (b) (1) of this Section

9 may be waived and not apply to funding for special projects that are a significant economic

10 opportunity consistent with the Fund's purpose.

11 (c) Security for loans and guarantees. To perfect and protect the County's financial

12 position, the Chief Administrative Officer, or his designee, shall require the recipient of a loan or

13 guarantee under this Division to secure the loan or guarantee by:

- 14 (1) Appropriate notes;
- 15 (2) Security agreements;
- 16 (3) Financing statements;
- 17 (4) Equity pledges;
- 18 (5) Mortgages or deeds of trust; or
- 19 (6) Any other documents or instruments.

20 (d) Compliance with Conditions of Award. If a recipient of financial assistance from the

21 Fund fails to comply with the terms and conditions of an award, any renegotiation of the award

22 or the exercise of any clawback provisions requiring full or partial repayment of the financial

23 assistance that are part of the award are subject to the provisions of Section 10-287(e) of this

24 Division.

25 (e) Annual examination of books.

26 (1) The Chief Administrative Officer, or his designee, may require the recipient of

27 financial assistance under this Division to have an annual audit of its books, accounts, and

28 records by a certified public accountant.

29 (2) The recipient shall deliver copies of the audit to the Chief Administrative Officer,

30 or his designee, and to the County Auditor.

31 (3) If the recipient fails to arrange the audit, the Chief Administrative Officer, or his

1 designee, may examine, at the expense of the recipient, the accounts and books of the recipient,
 2 including its receipts, disbursements, contracts, leases, investments, and any other matters
 3 relating to its finances, operation, and affairs.

4 (f) Report to Council.

5 (1) The Chief Administrative Officer, or his designee, shall provide each member of
 6 the County Council with a quarterly report that outlines the financial assistance that has been
 7 provided and the overall performance of the Fund.

8 (2) The report prepared by the Chief Administrative Officer shall include information
 9 about the compliance of the award recipient with the terms and conditions of the award and the
 10 provisions of this Title, including compliance with the provisions of Sec. 10-284 (Purposes and
 11 Priorities of the Fund) of this Title.

12 (g) County Auditor Reviews for Compliance. The County Auditor may regularly review
 13 the performance of financial assistance awards from the Fund for compliance with the terms and
 14 conditions negotiated by the Chief Administrative Officer.

15 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 16 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 17 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 18 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
 19 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
 20 Act, since the same would have been enacted without the incorporation in this Act of any such
 21 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

22 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
 23 calendar days after it becomes law.

Adopted this 1st day of November, 2011.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Ingrid M. Turner
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.