

HOUSE No. 4705

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act establishing the Massachusetts growth capital corporation..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding any general or special law to the contrary, the terms
2 “Massachusetts Community Development Finance Corporation”, “Economic Stabilization
3 Trust”, or “Massachusetts Technology Development Corporation”, wherever any of them
4 appears in a general or special law, shall mean the Massachusetts Growth Capital Corporation.

5 SECTION 2. Sections 8, 9, 10, 11, 12, 13, 14, and 15 of chapter 23D of the General
6 Laws are hereby repealed.

7 SECTION 3. Chapter 40G of the General Laws is hereby repealed.

8 SECTION 4. Chapter 40F of the General Laws is hereby amended by striking out the
9 words “Massachusetts Community Development Finance Corporation” wherever they appear
10 and inserting in place thereof the following words:- Massachusetts Growth Capital Corporation.

11 SECTION 5. Said chapter 40F is hereby further amended by striking out the word
12 “CDFC” wherever it appears and inserting in place thereof the following word:- GCC.

13 SECTION 6. Section 1 of said chapter 40F, as appearing in the 2008 Official edition, is
14 hereby amended by striking out the definition of “Community development corporation or
15 “CDC””, and inserting in its place the following definition:-

16 “Community Development Corporation” or “CDC”, a non-profit corporation organized
17 under chapter 180 of the General Laws, designated as a 501(c)(3) tax-exempt organization by the
18 Internal Revenue Service and which:

19 (a) focuses a substantial majority of its efforts on serving one or more specific
20 neighborhoods or municipalities, a region of the commonwealth, or a constituency that is
21 economically disadvantaged;

22 (b) has as its purpose to engage local residents and businesses to work together to
23 undertake community development programs, projects and activities which develop and improve
24 urban, rural and suburban communities in sustainable ways that create and expand economic
25 opportunities for low and moderate income people;

26 (c) demonstrates to the department of housing and community development that the
27 CDC's constituency, including low and moderate income people, is meaningfully represented on
28 the board of directors of the organization. In making this determination, the department shall
29 consider the following criteria (1) the percentage, if any, of the board is elected by the general
30 membership; (2) the percentage of the board members are residents of the service area; (3) the
31 percentage of board members that are people of low or moderate income; (4) the racial and
32 ethnic composition of the board in comparison to the racial and ethnic composition of the
33 community being serve; (5) other mechanisms, including committees, membership meetings,
34 that the organization uses to ensure that their constituency has a meaningful role in the

35 governance and direction of the organization; and (6) other criteria as determined by the
36 department.

37 SECTION 7. Said section 1 of said chapter 40F, as so appearing, is hereby further
38 amended by striking out the definition of “Corporation”, and inserting in its place the following
39 definition:-

40 “Corporation” or “GCC”, the Massachusetts Growth Capital Corporation established by
41 section 2.

42 SECTION 8. Said section 1 of said chapter 40F, as so appearing, is hereby further
43 amended by inserting after the definition of “Costs of projects” the following 2 definitions:-

44 “Equity investment” shall include any of the following types of investment activity: (a) a
45 purchase of stock, (b) a purchase of a partnership interest, (c) a purchase of a limited liability
46 company membership interest, or (d) a loan made on such terms that it has sufficient
47 characteristics of equity.

48 “Financial products” shall include loans, equity investments and other similar financing
49 activities including the purchase of loans originated by a certified community development
50 financial institution, the provision of loan guarantees, or the provision of surety bond guarantees.

51 SECTION 9. Said section 1 of said chapter 40F, as so appearing, is hereby further
52 amended by striking out the definition of “Primary employment”.

53 SECTION 10. Said section 1 of said chapter 40F, as so appearing, is hereby further
54 amended by striking out the definition of “Project” and inserting in place thereof the following 2
55 definitions:-

56 “Project”, shall mean making available financial products to small businesses or non-
57 profit corporations.

58 “Small business”, shall mean any business that has less than 250 full-time equivalent
59 employees.

60 SECTION 11. Said section 1 of said chapter 40F, as so appearing, is hereby further
61 amended by striking the definition of “Target area” and inserting in place thereof the following:-

62 “Target area” shall mean any contiguous geographic area in which the project is located
63 and which is either (1) an economic target area designated pursuant to section 3D of chapter
64 23A; (2) the service area of community development corporation; or (3) a zip code whose
65 current unemployment rate exceeds the state unemployment rate by at least twenty-five per cent
66 or whose mean household income is at or below 80 per cent of the state mean household income
67 as of the most recent decennial census.

68 SECTION 12. Said chapter 40F is hereby amended by striking out section 2 and
69 inserting in place thereof the following:-

70 Section 2. (a) There shall be a body politic and corporate to be known as the
71 Massachusetts Growth Capital Corporation or GCC. The GCC is hereby constituted a public
72 instrumentality and the exercise by the GCC of the powers conferred by this chapter shall be
73 deemed to be the performance of an essential governmental function.

74 The GCC is hereby placed in the executive office of housing and economic development
75 but shall not be subject to the supervision and control of any executive office, department,

76 division, commission, board, bureau or agency except to the extent and in the manner provided
77 by law.

78 (b) The purpose of the GCC is to provide financing and technical assistance to small
79 businesses in order to: promote economic prosperity and job creation in every region of the
80 commonwealth; create, develop and sustain economically diverse communities in urban, rural
81 and suburban areas of the commonwealth; and, support low and moderate income people having
82 access to a full range of economic opportunities.

83 (c) The corporation shall consist of 11 directors, 1 of whom shall be the secretary of
84 housing and economic development and who shall serve as chair, 1 of whom shall be the
85 undersecretary for business development, 1 of whom shall be the undersecretary of housing and
86 community development, and 1 of whom shall be the secretary of administration and finance, or
87 their respective designees. The governor shall appoint the remaining 7 members, 1 of whom shall
88 be experienced in community economic development and be employed by a community
89 development corporation as defined under this chapter, 1 of whom shall represent the
90 Massachusetts Association of Community Development Corporations, 1 of whom shall have
91 experience in venture capital or private equity, 1 of whom shall be an practicing or retired
92 attorney with relevant business financing experience, 1 of whom shall have relevant business
93 banking experience, 1 of whom shall be a small business owner, and 1 of whom shall be a
94 representative of organized labor. Each member appointed by the governor shall serve a term of
95 5 years, except that in making his initial appointments the governor shall appoint 2 members to
96 serve for a term of 3 years, 2 members for a term of 4 years, and 3 members for a term of 5
97 years.

98 (d) Any person appointed to fill a vacancy in the office of a member shall be appointed in
99 a like manner and shall serve for only the unexpired term. Any member shall be eligible for
100 reappointment. Any member may be removed from his appointment by the governor only for
101 good cause. The directors shall annually elect one of their members as vice-chairman and
102 designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer
103 shall keep a record of the proceedings of the corporation and shall be the custodian of all books,
104 documents, and papers filed with the corporation, the minute books of the corporation and of its
105 official seal.

106 (e) Six of the directors of the corporation shall constitute a quorum and 6 affirmative
107 votes shall be necessary for the transaction of business or the exercise of any power or function
108 of the corporation. Each director shall be entitled to reimbursement for his actual and necessary
109 expenses incurred in the performance of his official duties.

110 (f) The corporation, its directors, officers, and employees shall be subject to sections 1 to
111 4, inclusive, of chapter 268A, except that the corporation may purchase from, sell to, borrow
112 from, loan to, contract with or otherwise deal with any person in which any director of the
113 partnership is in any way interested or involved; provided, however, that such interest or
114 involvement is disclosed in advance to the members of the board and recorded in the minutes of
115 the board; and provided, further, that no director having such an interest or involvement may
116 participate in any decision of the board relating to such person. Employment by the
117 commonwealth or service in any agency thereof shall not be deemed to be such an interest or
118 involvement.

119 (g) The president of the corporation shall be appointed and his salary established by the
120 board of directors. The president shall be the chief administrative and operational officer of the
121 corporation and shall direct and supervise administrative affairs and the general management of
122 the corporation. The president may employ other employees designated by the board of directors,
123 shall attend meetings of the board of directors, shall cause copies to be made of all minutes and
124 other records and documents of the corporation and shall certify that such copies are true copies,
125 and all persons dealing with the corporation may rely upon such certification.

126 (h) All officers and employees of the corporation having access to its cash and negotiable
127 securities shall give bond to the corporation at its expense in such amounts and with such surety
128 as the board may prescribe. The persons required to give bond may be included in one or more
129 blanket or scheduled bonds.

130 (i) Directors shall not be liable to the commonwealth, to the agency or to any other
131 person as a result of their activities, whether ministerial or discretionary, as such directors,
132 except for willful dishonesty or intentional violations of the law. The corporation may purchase
133 liability insurance for directors, officers, and employees, and may indemnify said persons against
134 claims of others.

135 (j) Any documentary materials, data, or conversations made or received by any directors
136 or employee of the corporation and consisting of, or to the extent that such materials, data, or
137 conversations consist of, trade secrets or commercial or financial information regarding the
138 operation of any business conducted by an applicant for assistance which the corporation is
139 empowered to render or regarding the competitive position of such applicant in a particular field
140 of endeavor, shall not be public records of the corporation and specifically shall not be subject to

141 section 10 of chapter 66. Any discussion or consideration of such trade secrets or commercial or
142 financial information may be held by the directors in executive session closed to the public
143 notwithstanding chapter 30A, but the purpose of any such executive session shall be set forth in
144 the official minutes of the corporation and no business which is directly related to such purpose
145 shall be transacted nor shall any vote be taken in such an executive session.

146 SECTION 13. Section 3 of chapter 40F, as so appearing, is hereby amended by striking
147 clauses (o) through (r) and inserting in place thereof following 14 clauses:-

148 (o) Receive and accept from any federal or state agency and any other public or private
149 entity, grants, loans or advances for or in aid of the purposes of this chapter, and receive and
150 accept contributions from any source of either money, property, labor or other things of value, to
151 be held, used and applied for said purposes.

152 (p) Create, issue, buy and sell stock and other capital participation instruments; to hold
153 such stock and capital participation instruments and to underwrite the creation of a capital market
154 for these securities.

155 (q) Provide and pay for such advisory services and technical assistance as may be
156 necessary or desirable to carry out the purposes of this act.

157 (r) Make loans or grants to, or otherwise finance or invest in any business to further the
158 purposes of this chapter; provided however, that such financing complies with this chapter; and
159 further provided that such loans or grants may be made to community development corporations
160 or other community based nonprofit entities for the purpose of such corporations or entities
161 providing financing to businesses.

162 (s) Provide loan guarantees to public or private entities for the purpose of causing such
163 entities to provide financing to any business, in furtherance of the purposes of this chapter.

164 (t) Establish and collect such fees, charges, and interest rates as the corporation
165 determines to be reasonable.

166 (u) Require, by contract in any financing agreement, or otherwise, specific operational
167 activities, financial actions, or management changes, as conditions for the receipt of any loan,
168 financing, or investment from the trust.

169 (v) Buy, hold and sell qualified securities.

170 (w) Finance, conduct, or cooperate in financing or conducting technological, business,
171 financial, or other investigations which are related to or likely to lead to business and economic
172 development by making and entering into contracts and other appropriate arrangements,
173 including the provision of grants, loans, and other forms of assistance.

174 (x) Solicit, study, and assist in the preparation of, business plans and proposals of new or
175 established small businesses suitable for support by the corporation.

176 (y) Provide technical assistance and training programs to small businesses, with a focus
177 on serving existing and new businesses with 50 employees or fewer and small businesses located
178 in target areas or participating in a project, as defined by this chapter.

179 (z) Participate as a general partner or limited partner in a limited partnership; and to
180 participate as a member or manager in a limited liability company.

181 (aa) In addition to the powers enumerated in paragraph (p), create and issue shares which
182 any person, firm or corporation may purchase. Each share issued shall be in the form of non-

183 voting common stock with each share having a par value of 10 dollars. The total value of the
184 shares issued shall not exceed 25 million dollars.

185 (bb) Exercise any other powers or rights or responsibilities of a corporation organized
186 under chapter 156B.

187 Under no circumstances shall any debt obligation issued pursuant to this section, stock or
188 capital participation instrument created pursuant to this section or share issued pursuant to this
189 section, shall be or become an indebtedness or obligation of the commonwealth, and it shall be
190 plainly stated on the face of each bond, capital participation instrument, share or other evidence
191 of indebtedness that it does not constitute an indebtedness or obligation of the Commonwealth of
192 Massachusetts but is payable solely from the revenues or income of the Massachusetts growth
193 capital corporation.

194 SECTION 14. Section 4 of chapter 40F, as so appearing, is hereby amended by striking
195 out the third, fourth, and fifth paragraphs.

196 SECTION 15. Said chapter 40F is hereby further amended by inserting section 4A the
197 following 3 sections:-

198 Section 4B. The GCC, subject to the restrictions as set forth in this section, may
199 participate in a project. The GCC shall find and incorporate in the official records of the GCC
200 that:

201 (a) the project will be of a public benefit such that:

202 (1) The project is reasonably expected to support or promote community economic
203 development, revitalization, or stability, or the creation or expansion of a business sector whose

204 success will enhance the economic development of a target area as defined by this chapter, or
205 gateway municipalities, as defined by section 3A of chapter 23A; or

206 (2) The project will enhance the quality of life and promote employment
207 opportunities for low and moderate income residents of the commonwealth; or,

208 (3) The project will promote the creation or retention of jobs; or,

209 (4) The project will support the creation or retention of jobs or businesses in the
210 manufacturing and emerging technologies sectors.

211 Thirty percent of all GCC financing over a 3-year period shall be invested in projects
212 under clauses (1) or (2), but the board of directors may amend this percentage by a 2/3 vote.

213 (b) The GCC determines that its participation is necessary because funding for the project
214 is unavailable in the traditional capital markets.

215 (c) Provision has been made in contract for adequate reporting of financial and other data
216 to the GCC. Such provisions may include a requirement for an annual or other periodic audit of
217 the project books.

218 Such findings when adopted by the GCC shall be conclusive.

219 Section 4C. The department of housing and community development shall certify non-
220 profit organizations as community development corporations consistent with criteria set forth in
221 section 1 and shall establish and maintain a list of organizations that have been certified as
222 CDCs. These organizations must be recertified at least once every 4 years.

223 Section 4D. The GCC shall file an annual report on December 15 of each year with the
224 governor, the speaker of the house of representatives, the president of the senate, the chairs of the
225 house and senate committees on ways and means, the chairs of the joint committee on housing,
226 and the chairs of the joint committee on community development and small business, detailing
227 the following:

228 (a) a list of certified CDCs in the commonwealth;

229 (b) a summary of programs, initiatives or partnerships operated by the GCC that provide
230 funding to support CDCs and their programs, projects and initiatives, and otherwise help CDCs
231 advance the purposes of this chapter; and

232 (c) recommendations, if any, for action that would enhance the ability of CDCs to
233 advance the purposes of this chapter.

234 SECTION 16. Section 14 of chapter 167 of the General Laws, as so appearing, is hereby
235 amended by striking out, in line 22, the words “and 30” and inserting in place thereof the
236 following words:-, 30 and 30A.

237 SECTION 17. Section 2 of chapter 167F of the General Laws, as so appearing, is hereby
238 amended by inserting after paragraph 30 the following paragraph:-

239 30A. To participate in the activities of the Massachusetts capital growth corporation
240 established by chapter 40F, by making capital available for an investment or deposit in or grant
241 to the corporation, an affiliate or subsidiary of the corporation, or any fund managed by the
242 corporation.

243 SECTION 18. Section 8 of chapter 324 of the acts of 1987 is hereby repealed.

244 SECTION 19. Notwithstanding any general or special law to the contrary, the
245 comptroller shall promptly transfer \$15,000,000 of the Emerging Technology Fund, established
246 pursuant to chapter 141 of the acts of 2003, to the Commonwealth Capital Growth Corporation,
247 established pursuant to chapter 40F of the General Laws.

248 SECTION 20. (a) Notwithstanding any general or special law to the contrary, this
249 section shall facilitate the orderly transfer of employees, proceedings, rules and regulations,
250 property and legal obligations of the following functions of state government from the
251 Community Development Finance Corporation, the Economic Stabilization Trust, and the
252 Massachusetts Technology Development Corporation as the transferor agencies, to the
253 Massachusetts Growth Capital Corporation, as the transferee agency;

254 (b) To the extent that employees of the transferor agency, including those who were
255 appointed immediately before the effective date of this act and who hold permanent appointment
256 in positions classified under chapter 31 of the General Laws or have tenure in their positions as
257 provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold
258 confidential positions, are transferred to the respective transferee agency, such transfers shall be
259 effected without interruption of service within the meaning of said section 9A of said chapter 31,
260 without impairment of seniority, retirement or other rights of the employee, and without
261 reduction in compensation or salary grade, notwithstanding any change in title or duties resulting
262 from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and
263 benefits, and without change in union representation or certified collective bargaining unit as
264 certified by the state division of labor relations or in local union representation or affiliation. Any
265 collective bargaining agreement in effect immediately before the transfer date shall continue in
266 effect and the terms and conditions of employment therein shall continue as if the employees had

267 not been so transferred. The reorganization shall not impair the civil service status of any such
268 reassigned employee who immediately before the effective date of this act either holds a
269 permanent appointment in a position classified under chapter 31 of the General Laws or has
270 tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding
271 any other general or special law to the contrary, all such employees shall continue to retain their
272 right to collectively bargain pursuant to chapter 150E of the General Laws and shall be
273 considered employees for the purposes of said chapter 150E. Nothing in this section shall be
274 construed to confer upon any employee any right not held immediately before the date of said
275 transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension,
276 discharge, layoff, or abolition of position not prohibited before such date.

277 (c) All petitions, requests, investigations and other proceedings appropriately and duly
278 brought before the transferor agency or duly begun by the transferor agency and pending before
279 it before the effective date of this act, shall continue unabated and remain in force, but shall be
280 assumed and completed by the transferee agency.

281 (d) All orders, rules and regulations duly made and all approvals duly granted by the
282 transferor agency, which are in force immediately before the effective date of this act, shall
283 continue in force and shall thereafter be enforced, until superseded, revised, rescinded or
284 canceled, in accordance with law, by the transferee agency.

285 (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other
286 property, both personal and real, including all such property held in trust, which immediately
287 before the effective date of this act are in the custody of the transferor agency, shall be
288 transferred to the transferee agency.

289 (f) All duly existing contracts, leases and obligations of the transferor agency shall
290 continue in effect but shall be assumed by the transferee agency. No existing right or remedy of
291 any character shall be lost, impaired or affected by this act.