

HOUSE BILL 98

Unofficial Copy
C8

2000 Regular Session
(01r0089)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Chairman, Economic Matters Committee (Departmental -
Housing and Community Dev.) and Delegates Brown and Walkup**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 98

1 AN ACT concerning

2 **Department of Housing and Community Development - Neighborhood**
3 **Business Development Program - Capital Access Program**

4 FOR the purpose of creating a capital access program in the Neighborhood Business
5 Development Program to encourage private sector loans to certain small
6 businesses; requiring that lenders enrolling loans under the Program enter into
7 a certain agreement with the Department of Housing and Community
8 Development; providing for participating lenders to establish certain loan
9 reserve accounts; authorizing the Department to use moneys from the
10 Neighborhood Business Development Fund for contributions to loan reserve
11 accounts established under the Program; providing for certain exemptions from
12 State law; requiring the Department to adopt certain regulations; and generally
13 relating to the Neighborhood Business Development Program and the
14 Department of Housing and Community Development.

15 BY repealing and reenacting, with amendments,

1 Article 83B - Department of Housing and Community Development
2 Section 4-201 through 4-208
3 Annotated Code of Maryland
4 (1998 Replacement Volume and 1999 Supplement)

5 BY adding to
6 Article 83B - Department of Housing and Community Development
7 Section 4-207
8 Annotated Code of Maryland
9 (1998 Replacement Volume and 1999 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article 83B - Department of Housing and Community Development**

13 4-201.

14 (A) The Neighborhood Business Development Program is hereby created
15 within the Department, for the following purposes:

16 (1) To assist in the development, redevelopment, or expansion of small
17 business enterprises in designated neighborhoods;

18 (2) To stimulate investment by the private sector in designated
19 neighborhoods;

20 (3) To invest in small business revitalization projects in designated
21 neighborhoods; and

22 (4) To stimulate the participation of local jurisdictions in developing and
23 expanding small business enterprises in designated neighborhoods.

24 (B) THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM INCLUDES THE
25 BUSINESS DEVELOPMENT PROGRAM AND THE CAPITAL ACCESS PROGRAM.

26 4-202.

27 (a) In this subtitle the following words have the meanings indicated.

28 (b) "Designated neighborhood" means a geographically defined area of a local
29 jurisdiction which is designated as an eligible neighborhood in accordance with §
30 4-203(b) of this subtitle.

31 (c) "Development costs" means the costs incurred for the construction or
32 rehabilitation of a neighborhood business development project, including the costs of:

33 (1) Necessary studies, surveys, plans, and specifications;

1 (2) Architectural, engineering, or other special services related to
2 construction or rehabilitation, including flood plain studies, environmental audits,
3 and critical area or wetland assessments;

4 (3) Acquisition of land and improvements;

5 (4) Site preparation;

6 (5) Construction, reconstruction, and rehabilitation;

7 (6) Acquisition of machinery, equipment, and furnishings;

8 (7) Essential start-up operating costs, including working capital and
9 initial occupancy expenses;

10 (8) Indemnity and surety bonds and premiums on insurance; and

11 (9) Other necessary fees and temporary relocation expenses.

12 (d) "Fund" means the Neighborhood Business Development Fund.

13 (e) "Local jurisdiction" means a municipal corporation or county.

14 (f) "Nonprofit organization" means a corporation, foundation, or other legal
15 entity that specifies in its charter or bylaws that no part of the net earnings may
16 inure to the benefit of any private shareholder or individual holding any interest in
17 such entity.

18 (g) ["Program" means the Neighborhood Business Development Program.

19 (h)] "Project" means a neighborhood business development project which
20 receives financial assistance from the Neighborhood Business Development Fund.

21 [(i)] (H) "Small business" means a business that employs a number of
22 employees or has annual receipts no greater than limits set forth in regulations by the
23 Department which shall not exceed the standards set by the federal Small Business
24 Administration.

25 4-203.

26 (a) THERE IS A BUSINESS DEVELOPMENT PROGRAM WITHIN THE
27 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM.

28 (B) To qualify for financial assistance under the BUSINESS DEVELOPMENT
29 Program, a neighborhood business development project must be located in a
30 designated neighborhood.

31 [(b)] (C) Local jurisdictions may designate one or more eligible neighborhoods
32 with the concurrence of the Secretary of the Department, taking into consideration
33 the following factors:

- 1 (1) The availability, cost, and condition of business facilities;
- 2 (2) The age and number of abandoned structures;
- 3 (3) The age and number of substandard structures;
- 4 (4) The income of residents relative to State or regional median incomes,
5 including the number of persons who are welfare recipients or unemployed;
- 6 (5) The extent of unemployment and the availability in the area of jobs
7 for residents of the designated neighborhood;
- 8 (6) The need for financing for small businesses in order to upgrade the
9 social and economic conditions of the designated neighborhood;
- 10 (7) The neighborhood development or redevelopment strategy of the local
11 jurisdiction for the designated neighborhood and any plans and financial commitment
12 of the local jurisdiction to undertake improvements in the designated neighborhood;
13 and
- 14 (8) Other standards and criteria deemed relevant by the Department as
15 set forth in regulations, including standards established for other relevant State or
16 federal Programs.

17 4-204.

18 (a) Financial assistance under the BUSINESS DEVELOPMENT Program may be
19 provided to a small business in any of the following forms:

- 20 (1) Grant;
- 21 (2) Loan;
- 22 (3) Reduction in the principal obligation of or rate of interest payable on
23 a loan or portion of a loan;
- 24 (4) Prepayment of interest on a subordinate or superior loan or portion of
25 a loan;
- 26 (5) Assurance;
- 27 (6) Guarantee; or
- 28 (7) Any other form of credit enhancement.

29 (b) The Department shall review all applications for financial assistance.

30 (c) Applications shall be submitted by an applicant, which may be a for profit
31 or nonprofit small business.

32 (d) To qualify for financial assistance, the application must demonstrate that:

1 (1) The project has significant commitments for funding from other
2 private and nonstate public sources that are sufficient to complete the project with
3 the funds from the Neighborhood Business Development [Program] FUND;

4 (2) The financial assistance from the Neighborhood Business
5 Development Fund is the least amount necessary to make the project financially
6 feasible;

7 (3) The project is ready to proceed upon funding of financial assistance
8 from the BUSINESS DEVELOPMENT Program; and

9 (4) The local jurisdiction adopted a local resolution, or its authorized
10 designee delivered a letter to the BUSINESS DEVELOPMENT Program, expressing
11 support for the project.

12 4-205.

13 The Department shall:

14 (1) Manage, supervise, and administer the BUSINESS DEVELOPMENT
15 Program;

16 (2) Adopt rules and regulations to carry out the BUSINESS
17 DEVELOPMENT Program in conformance with statutory requirements; and

18 (3) For each category of financing described under § 4-204(a) of this
19 subtitle, establish minimum percentages or amounts of private and non-state public
20 funding that the applicant is required to secure before the Department may
21 determine that the applicant is qualified for the BUSINESS DEVELOPMENT Program.
22 4-206.

23 (a) Financial assistance UNDER THE BUSINESS DEVELOPMENT PROGRAM
24 may be used to finance a portion of the development costs of a neighborhood business
25 development project.

26 (b) The financial assistance shall be on such terms as the Department deems
27 necessary to make the enterprise financially feasible.

28 (c) Financial assistance under the [Neighborhood] Business Development
29 Program may be secured, at the discretion of the Department, by a mortgage lien or
30 other security instrument, which may be subordinate to other security interests.

31 (d) The Department may:

32 (1) Modify the rate of interest, the time or amount of payment, or any
33 other term of a grant or loan in order to facilitate the successful completion or
34 operation of a project; and

35 (2) Contract for services relating to the BUSINESS DEVELOPMENT
36 Program.

1 4-207.

2 (A) (1) THERE IS A CAPITAL ACCESS PROGRAM WITHIN THE
3 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM TO STIMULATE PRIVATE
4 SECTOR LENDING TO SMALL BUSINESSES THROUGHOUT THE STATE.

5 (2) THE CAPITAL ACCESS PROGRAM IS DESIGNED TO ENCOURAGE
6 PRIVATE LENDERS TO PROVIDE FOR A RESERVE OF FUNDS AS ADDITIONAL
7 SECURITY FOR PRIVATE SECTOR LOANS MADE UNDER THIS SECTION.

8 (B) THE DEPARTMENT MAY ENTER INTO A CAPITAL ACCESS PROGRAM
9 PARTICIPATION AGREEMENT WITH EACH LENDER ELIGIBLE TO PARTICIPATE IN THE
10 CAPITAL ACCESS PROGRAM.

11 (C) TO BE ELIGIBLE TO PARTICIPATE IN THE CAPITAL ACCESS PROGRAM, A
12 LENDER SHALL:

13 (1) BE A FEDERALLY INSURED FINANCIAL INSTITUTION, AS DEFINED IN
14 § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE, OR OTHER INSTITUTION
15 REGULATED BY THE COMMISSIONER OF FINANCIAL REGULATION; AND

16 (2) ENTER INTO A PARTICIPATION AGREEMENT WITH THE DEPARTMENT
17 UNDER WHICH THE LENDER:

18 (I) SHALL AGREE TO:

19 1. ENROLL IN THE CAPITAL ACCESS PROGRAM LOANS MADE
20 TO ELIGIBLE SMALL BUSINESSES;

21 2. ESTABLISH A LOAN RESERVE ACCOUNT WITH A
22 FEDERALLY INSURED FINANCIAL INSTITUTION AS ADDITIONAL SECURITY TO COVER
23 LOSSES SUSTAINED BY THE LENDER ON ANY LOANS ENROLLED BY THE LENDER;
24 AND

25 3. CONTRIBUTE FUNDS TO THE LOAN RESERVE ACCOUNT
26 FOR EACH LOAN ENROLLED IN THE CAPITAL ACCESS PROGRAM; AND

27 (II) MAY COMMINGLE IN THE RESERVE ACCOUNT ANY
28 CONTRIBUTIONS MADE FOR ANY LOANS ENROLLED BY THE LENDER WITH THE
29 CAPITAL ACCESS PROGRAM.

30 (D) TO BE ELIGIBLE FOR A LOAN ~~TO BE ENROLLED~~ UNDER THE CAPITAL
31 ACCESS PROGRAM, A BORROWER SHALL:

32 (1) BE A SMALL BUSINESS THAT MEETS THE ELIGIBILITY
33 REQUIREMENTS SET OUT IN THE CAPITAL ACCESS PROGRAM PARTICIPATION
34 AGREEMENT BETWEEN THE BORROWER'S LENDER AND THE DEPARTMENT; AND

35 (2) AGREE WITH THE LENDER TO CONTRIBUTE FUNDS TO THE LOAN
36 RESERVE ACCOUNT ESTABLISHED BY THE LENDER.

1 (E) (1) THE DEPARTMENT MAY USE MONEYS FROM THE FUND TO MAKE
2 CONTRIBUTIONS TO LOAN RESERVE ACCOUNTS ESTABLISHED UNDER SUBSECTION
3 (C) OF THIS SECTION.

4 (2) CONTRIBUTIONS BY THE DEPARTMENT SHALL BE EXEMPT FROM
5 THE REQUIREMENTS OF TITLE 6, SUBTITLE 2, AND TITLES 11 THROUGH 17, OF THE
6 STATE FINANCE AND PROCUREMENT ARTICLE.

7 (3) CONTRIBUTIONS MADE FROM THE FUND IN ANY FISCAL YEAR MAY
8 NOT EXCEED \$1 MILLION.

9 (F) (1) THE ENROLLMENT OF A LOAN UNDER THE CAPITAL ACCESS
10 PROGRAM DOES NOT PLEDGE THE FAITH, CREDIT, OR TAXING POWER OF THE STATE,
11 THE DEPARTMENT, THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM, OR
12 THE FUND.

13 (2) THE STATE, THE DEPARTMENT, THE NEIGHBORHOOD BUSINESS
14 DEVELOPMENT PROGRAM, AND THE FUND SHALL NOT BE LIABLE FOR ANY LOSSES
15 SUSTAINED BY A LENDER ON AN ENROLLED LOAN EXCEPT TO THE EXTENT OF THE
16 LOAN RESERVE ACCOUNT ESTABLISHED UNDER THE CAPITAL ACCESS PROGRAM BY
17 THE LENDER.

18 (G) A PROJECT FINANCED BY A LOAN ENROLLED UNDER THE CAPITAL
19 ACCESS PROGRAM SHALL BE LOCATED IN A PRIORITY FUNDING AREA AS REQUIRED
20 UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE
21 FOR STATE-FUNDED NEIGHBORHOOD REVITALIZATION PROJECTS UNDER THIS
22 ARTICLE.

23 (H) (1) A LENDER SHALL TREAT A DEFAULT ON A LOAN ENROLLED UNDER
24 THE CAPITAL ACCESS PROGRAM NO DIFFERENTLY THAN THE LENDER TREATS
25 DEFAULTS ON OTHER LOANS MADE OR HELD BY THE LENDER.

26 (2) AS A CONDITION FOR WITHDRAWAL BY A LENDER FROM A RESERVE
27 ACCOUNT TO COVER LOSSES ON A DEFAULT UNDER AN ENROLLED LOAN, THE
28 DEPARTMENT MAY REQUIRE A LENDER WHOSE LOSSES ON A LOAN HAVE BEEN
29 COVERED IN FULL BY THE RESERVE ACCOUNT TO AGREE TO ASSIGN TO THE
30 DEPARTMENT, OR TO SUBROGATE THE DEPARTMENT TO, ANY OF THE LENDER'S
31 RIGHT, TITLE, AND INTEREST IN AND TO THE LOAN AND ANY COLLATERAL,
32 SECURITY, OR OTHER RIGHT OF RECOVERY IN CONNECTION WITH THE LOAN.

33 (I) FOLLOWING A DEFAULT UNDER A LOAN ENROLLED UNDER THE CAPITAL
34 ACCESS PROGRAM, THE DEPARTMENT, IN ITS NAME OR IN THE NAME OF THE
35 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM, MAY ACQUIRE, HOLD,
36 IMPROVE, OPERATE PENDING SALE OR OTHER DISPOSITION, SELL, ASSIGN,
37 EXCHANGE, TRANSFER, CONVEY, LEASE, MORTGAGE, OR OTHERWISE DISPOSE OF OR
38 ENCUMBER REAL OR PERSONAL PROPERTY OR ANY INTEREST THEREIN, OR ANY
39 EVIDENCE OF INDEBTEDNESS PLEDGED AS COLLATERAL FOR THE LOAN,
40 NOTWITHSTANDING THE PROVISIONS OF TITLES 10 THROUGH 17 OF THE STATE
41 FINANCE AND PROCUREMENT ARTICLE.

1 (J) THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY
2 OUT THE CAPITAL ACCESS PROGRAM.

3 [4-207.]4-208.

4 (a) The NEIGHBORHOOD BUSINESS DEVELOPMENT Program shall be
5 operated with moneys in the Neighborhood Business Development Fund, which Fund
6 shall be a continuing, nonlapsing special fund consisting of:

7 (1) Moneys appropriated by the State for the Neighborhood Business
8 Development Program;

9 (2) Any repayment or prepayment of financial assistance [loaned] under
10 THIS SUBTITLE OR UNDER THE STATE ACTION LOANS FOR TARGETED AREAS
11 PROGRAM UNDER the former Subtitle 6, Title 4 of this article; [and]

12 (3) Moneys transferred to the Fund from any other fund as provided for
13 in this article; AND

14 (4) ANY OTHER MONEYS RECEIVED BY THE NEIGHBORHOOD BUSINESS
15 DEVELOPMENT PROGRAM UNDER THIS SUBTITLE.

16 (b) The Department shall use the Fund to provide financial assistance to
17 small businesses and to pay expenses of the NEIGHBORHOOD BUSINESS
18 DEVELOPMENT Program.

19 (c) The State Treasurer shall hold and the State Comptroller shall account for
20 the Neighborhood Business Development Fund. The Fund shall be invested and
21 reinvested. Any investment earnings shall be paid into the Fund.

22 (d) At any time following the first 8 months of any fiscal year, the Department
23 may transfer, subject to approval of the Legislative Policy Committee and subject to
24 the provisions of § 7-209 of the State Finance and Procurement Article,
25 unencumbered moneys in the Neighborhood Business Development Fund to any other
26 fund established under Title 2 of this article.

27 [4-208.] 4-209.

28 (a) A person may not knowingly make or cause any false statement or report
29 to be made in any document required to be furnished to the Department by any
30 agreement relating to [a loan] FINANCIAL ASSISTANCE UNDER THE NEIGHBORHOOD
31 BUSINESS DEVELOPMENT PROGRAM.

32 (b) A person applying for financial assistance UNDER THE NEIGHBORHOOD
33 BUSINESS DEVELOPMENT PROGRAM may not knowingly make or cause any false
34 statement or report to be made for the purpose of influencing the action of the
35 Department on an application or for the purpose of influencing any action of the
36 Department affecting financial assistance already provided.

1 (c) Any person who violates any provision of subsection (a) or (b) of this
2 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
3 \$50,000 or imprisonment not exceeding 5 years or both.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect October 1, 2000.