

SENATE BILL 318

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By: **Senators Exum, Britt, Conway, Currie, Della, Garagiola, Gladden, Jones, Kelley, Klausmeier, McFadden, Middleton, Muse, and Pugh**

Introduced and read first time: January 31, 2007

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Small Business Development Financing Authority – Financing**
3 **Limitations**

4 FOR the purpose of altering certain limitations on lending, guarantees, and equity
5 participation financing by the Maryland Small Business Development
6 Financing Authority in certain transactions; altering the maximum amount of a
7 loan that the Authority may make using the Contract Financing Fund; altering
8 the maximum amount of a loan guarantee that the Authority may make using
9 the Guaranty Fund; altering the scope of contracts for which the Authority may
10 act as a surety and guarantee losses incurred by certain sureties under the
11 Small Business Surety Bond Program; altering certain limitations on the
12 amount of equity and investment that the Authority may own in certain
13 businesses and franchises under the equity participation financing program;
14 altering certain limitations on the qualifications of certain enterprises and
15 principals seeking to acquire certain existing businesses in connection with
16 equity participation financing provided by the Authority; and generally relating
17 to the Maryland Small Business Development Financing Authority.

18 BY repealing and reenacting, with amendments,
19 Article 83A – Department of Business and Economic Development
20 Section 5–1022(a), 5–1024(a), 5–1029(a), 5–1035(a) and (d)(1), and 5–1046
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article 83A – Department of Business and Economic Development**

4 5–1022.

5 (a) The Authority may utilize the Contract Financing Fund to guarantee a
6 loan made to an applicant only if:

7 (1) The applicant meets the qualifications required by this subtitle;

8 (2) The loan is to be used to perform a contract, the majority of
9 funding for which is provided by the federal government or a state government, a local
10 government, or a utility regulated by the Public Service Commission;

11 (3) The part of the loan to be guaranteed does not exceed [\$1,000,000]
12 **\$2,000,000**; and

13 (4) The loan to be guaranteed is to be used for:

14 (i) Working capital; or

15 (ii) Equipment needed to perform the contract, the cost of which
16 can be repaid from contract proceeds, if the Authority has entered into an agreement
17 with the applicant necessary to secure the loan or guaranty.

18 5–1024.

19 (a) The Authority may utilize the Contract Financing Fund to lend money to
20 an applicant only if:

21 (1) The applicant meets the requirements of this subtitle;

22 (2) The loan does not exceed [\$1,000,000] **\$2,000,000**;

23 (3) The loan is to be used to perform a contract, the majority of
24 funding for which is provided by the federal government or a state government, a local
25 government, or a utility regulated by the Public Service Commission; and

26 (4) The loan is to be used for:

1 (i) Working capital; or

2 (ii) Equipment needed to perform the contract, the cost of which
3 can be repaid from contract proceeds, if the Authority has entered into an agreement
4 with the applicant necessary to secure the loan.

5 5–1029.

6 (a) The Authority may utilize the Guaranty Fund to guarantee up to 80
7 percent of the principal of and interest on a long-term loan made by a financial
8 institution to an applicant only if:

9 (1) The applicant meets the requirements of § 5–1025 and has not
10 violated any provisions of § 5–1031 of this subtitle;

11 (2) The loan amount is not less than \$5,000 and the maximum amount
12 payable by the Authority under its guarantee does not exceed [\$1,000,000]
13 **\$2,000,000;**

14 (3) The purposes for which the loan is to be used include:

15 (i) Working capital;

16 (ii) Refinancing existing debt of the applicant;

17 (iii) The acquisition and related installation of machinery or
18 equipment;

19 (iv) Necessary improvements to real property leased or owned in
20 fee simple by the applicant; or

21 (v) The acquisition of real property to be owned in fee simple by
22 the applicant if:

23 1. The real property is to be used in the operation of the
24 applicant's trade or business for which the loan and guarantee are sought; and

25 2. A lien is placed on the real property by the financial
26 institution or the Authority;

27 (4) The loan shall mature in not more than 10 years from the date of
28 closing of the loan; and

1 (5) The rate of interest on the loan is no greater than the rate of
2 interest determined by the Authority to be the monthly weighted average of the prime
3 lending rate, plus 2 percent, prevailing from time to time in the City of Baltimore on
4 unsecured commercial loans.

5 5–1035.

6 (a) Subject to the restrictions of this Part VI, the Authority, on application,
7 may guarantee any surety up to the lesser of 90 percent or \$1,350,000 of its losses
8 incurred under a bid bond, a payment bond, or a performance bond on any contract[,
9 the majority of the funding for which is provided] **FINANCED** by the federal
10 government or a state government, a local [government] **GOVERNMENT, A**
11 **COMMERCIAL ENTERPRISE**, or a utility regulated by the Public Service Commission.

12 (d) (1) The Authority may execute and perform bid, performance, and
13 payment bonds as a surety for the benefit of a principal in connection with any
14 contract[, the majority of the funding for which is provided] **FINANCED** by the federal
15 government or a state government, a local government, **A COMMERCIAL**
16 **ENTERPRISE**, or a utility regulated by the Public Service Commission.

17 5–1046.

18 (a) Under the Program, the Authority may provide equity participation
19 financing, including the purchase of qualified securities issued by a franchise, by a
20 technology–based business, or by an enterprise acquiring an existing business, only
21 after the enterprise has submitted an application that contains a business plan,
22 including:

23 (1) A description of the franchisor, technology–based business, other
24 business, or existing business and its management, product, and market;

25 (2) A statement of the amount, immediacy of need, and projected use
26 of the capital required;

27 (3) A statement of the potential economic impact of the purchase;

28 (4) Information that relates to the satisfaction of the applicant’s
29 requirements of subsections (f) and (g) of this section; and

30 (5) Any other information the Authority requires.

1 (b) Under the Program, any equity participation financing shall satisfy the
2 following requirements:

3 (1) The Authority may not:

4 (i) 1. Own securities representing more than [45] **50**
5 percent of the voting stock of any franchise, technology-based business, or other
6 business; or

7 2. Own an interest greater than [45] **50** percent in any
8 franchise, technology-based business, or other business; or

9 (ii) 1. Own securities representing more than [25] **50**
10 percent of the voting stock of any enterprise acquiring an existing business; or

11 2. Own an interest greater than [25] **50** percent in any
12 enterprise acquiring an existing business.

13 (2) The amount of the Authority's equity participation financing may
14 not exceed:

15 (i) 1. [\$1,000,000] **\$2,000,000** for any franchise; or

16 2. [45] **50** percent of the total initial investment in the
17 franchise;

18 (ii) 1. [\$1,000,000] **\$2,000,000** for any enterprise acquiring
19 an existing business; or

20 2. [25] **50** percent of the total investment in the
21 enterprise acquiring an existing business; or

22 (iii) [\$1,000,000] **\$2,000,000** for a technology-based business or
23 other business.

24 (3) (i) The Authority shall find that there is a reasonable
25 probability that the Authority will recover its initial investment and an adequate
26 return on investment.

27 (ii) The Authority's investment shall be recoverable within:

- 1 1. 7 years of the equity participation financing in a
2 franchise;
- 3 2. 7 years of the equity participation financing in an
4 enterprise acquiring an existing business;
- 5 3. 10 years of the equity participation financing in a
6 technology-based business; or
- 7 4. 7 years of the equity participation financing in any
8 other type of business.

9 (4) The Authority's recovery shall be the greater of the current value
10 of the percentage of the equity investment in the enterprise or the amount of the
11 initial investment in the enterprise.

12 (5) The value of the business entity at the time of recovery shall be
13 determined after obtaining at least 1 independent appraisal of the value from an
14 appraiser selected from a list of at least 3 appraisers supplied by the Authority.

15 (c) The liability of the State and of the Authority in providing equity
16 participation financing is limited to its investments under the Program.

17 (d) When [applying] **AN ENTERPRISE APPLIES** to the Authority to acquire
18 an existing business, [an enterprise shall have the following minimum qualifications:

19 (1) The enterprise or its principals shall have:

20 (i) A minimum net worth of at least \$75,000 pledged as
21 security;

22 (ii) At least \$75,000 in equity investment; or

23 (iii) A combination of a minimum net worth pledged as security
24 and an equity investment, totaling at least \$75,000; and

25 (2) The] **THE** enterprise or its principals shall have had 3 or more
26 years of successful experience with demonstrated achievements and management
27 responsibilities.

28 (e) When being acquired, the existing business shall meet the following
29 minimum qualifications:

1 (1) The existing business shall have been in existence for at least 5
2 years;

3 (2) The existing business shall have been profitable for at least 2 of
4 the previous 3 years;

5 (3) The existing business shall have sufficient cash flow to service the
6 debt and ensure adequate return of the Authority's investment;

7 (4) The existing business shall have the capacity for growth and job
8 creation;

9 (5) The existing business shall have its principal place of business in
10 Maryland; and

11 (6) The existing business shall have a strong customer base.

12 (f) If the applicant enterprise is an individual, the applicant shall satisfy the
13 Authority that:

14 (1) The applicant is of good moral character;

15 (2) As determined from creditors, employers, and other individuals
16 who have personal knowledge of the applicant, the applicant has a reputation for
17 financial responsibility;

18 (3) The applicant is a resident of Maryland or the applicant's principal
19 place of business is in Maryland; and

20 (4) The applicant is unable to obtain adequate business financing on
21 reasonable terms through normal lending channels because the applicant:

22 (i) Belongs to a group that historically has been deprived of
23 access to normal economic or financial resources because of race, color, creed, sex,
24 religion, or national origin;

25 (ii) Has an identifiable physical handicap that severely limits
26 the ability of the applicant to obtain financial assistance, but does not limit the ability
27 of the applicant to perform the contract or other activity for which the applicant would
28 be receiving financial assistance;

1 (iii) Has any other social or economic impediment that is beyond
2 the personal control of the applicant, such as lack of formal education or financial
3 capacity or geographical or regional economic distress but that does not limit the
4 ability of the applicant to perform the contract or other activity for which the applicant
5 would be receiving financial assistance; or

6 (iv) Does not meet the established credit or investment criteria
7 of at least one financial institution.

8 (g) If the applicant enterprise is other than a sole proprietorship, at least 51
9 percent of the enterprise shall be owned by individuals who meet the qualifications for
10 applicants under subsection (f) of this section.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2007.