

HOUSE BILL 583

C8

4lr1450

By: **Delegate Davis**

Introduced and read first time: January 29, 2014

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2014

CHAPTER _____

1 AN ACT concerning

2 ~~**Maryland Small Business Development Financing Authority Investment**~~
3 ~~**and Recovery Limits**~~

4 **Economic Development – Equity Participation Investment Program – Small**
5 **Businesses**

6 FOR the purpose of repealing the definitions of “franchise” and “technology-based
7 business”; making certain conforming changes to certain findings of the General
8 Assembly, the purpose of the Equity Participation Investment Program, the
9 authority of the Maryland Small Business Development Financing Authority,
10 and the contents of a certain business plan; repealing certain distinctions in the
11 amount the Authority may invest in certain enterprises using equity
12 participation financing; altering the amount the Authority may invest using
13 equity participation financing; repealing certain distinctions in the time period
14 over which the Authority’s investment is recoverable; altering the
15 circumstances under which the value of a certain business entity is determined
16 after obtaining a certain independent appraisal; and generally relating to ~~the~~
17 ~~Maryland Small Business Development Financing Authority~~ small businesses
18 and the Equity Participation Investment Program.

19 BY repealing and reenacting, with amendments,
20 Article – Economic Development
21 Section 5–549, 5–550, 5–553, 5–556, and 5–557(a)
22 Annotated Code of Maryland
23 (2008 Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article – Economic Development
3 Section 5–551, 5–552, and 5–554
4 Annotated Code of Maryland
5 (2008 Volume and 2013 Supplement)

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

8 **Article – Economic Development**

9 5–549.

10 (a) In this part the following words have the meanings indicated.

11 (b) (1) “Enterprise” means a business entity proposing to carry on a
12 business in the State that meets the requirements of § 5–526 of this subtitle.

13 (2) “Enterprise” includes:

14 (i) a sole proprietorship;

15 (ii) a partnership;

16 (iii) a limited partnership;

17 (iv) a corporation; or

18 (v) a joint venture.

19 (c) “Equity participation financing” includes investment or guaranty of
20 investment in an enterprise.

21 (d) “Existing business” means a business whose board of directors or owners
22 approve the sale of the business to an enterprise receiving equity participation
23 financing.

24 [(e) (1) “Franchise” has the meaning stated in § 14–201 of the Business
25 Regulation Article.

26 (2) “Franchise” includes only franchise offerings that are registered or
27 exempt under the Maryland Franchise Registration and Disclosure Law.]

28 [(f) (E) “Fund” means the Equity Participation Investment Program Fund.

29 [(g) (F) “Program” means the Equity Participation Investment Program.

1 **[(h)] (G)** “Qualified security” means:

2 (1) a note, bond, debenture, or other evidence of indebtedness;

3 (2) stock or other form of equity participation;

4 (3) a certificate of interest or participation in a profit-sharing
5 agreement;

6 (4) an investment contract;

7 (5) a certificate of deposit for a security;

8 (6) a certificate of interest or participation in a patent or patent
9 application or in royalty or other payments under a patent or patent application; or

10 (7) an interest or instrument commonly known as a “security” or a
11 certificate for, receipt for, guaranty of, or option, warrant, or right to subscribe to or
12 purchase a qualified security.

13 **[(i)** “Technology-based business” means a commercial or industrial
14 enterprise engaged in the application of scientific knowledge to practical purposes in a
15 particular field for a profit.]

16 **(H)** “SMALL BUSINESS” MEANS A BUSINESS THAT IS CLASSIFIED AS A
17 SMALL BUSINESS UNDER THE U.S. SMALL BUSINESS ADMINISTRATION SIZE
18 STANDARDS.

19 5-550.

20 (a) The General Assembly finds that:

21 (1) [franchises and technology-based] SMALL businesses have proven
22 to be a fast growing and reliable form of successful business expansion and successful
23 new business creation;

24 (2) [franchises and technology-based] SMALL businesses play a major
25 role in the economy of the State and have been a continuing source of increasing tax
26 revenues and job opportunities;

27 (3) the growth of [franchises, technology-based businesses, and other]
28 SMALL businesses should be encouraged and should be an integral part of the State’s
29 economic development effort;

1 (4) socially or economically disadvantaged individuals often lack
2 adequate capital and are unable to obtain financing from financial institutions or
3 venture capital firms to begin and develop a [franchise, a technology-based business,
4 or other type of] **SMALL** business, or to purchase an existing business; and

5 (5) promoting the creation and viability of [franchises and
6 technology-based businesses, the development of other businesses,] **SMALL**
7 **BUSINESSES** and the purchase of existing businesses by socially or economically
8 disadvantaged individuals is in the public interest.

9 (b) The purposes of the Equity Participation Investment Program are to:

10 (1) encourage and help socially or economically disadvantaged
11 individuals to create and develop [franchises, technology-based businesses, and other]
12 **SMALL** businesses and acquire existing businesses in the State; and

13 (2) assist small businesses that, because they do not meet the
14 established credit criteria of financial institutions, cannot obtain adequate business
15 financing on reasonable terms through normal financing channels.

16 5-551.

17 There is an Equity Participation Investment Program in the Department.

18 5-552.

19 The Authority shall administer the Program.

20 5-553.

21 The Authority may:

22 (1) provide equity participation financing to help socially or
23 economically disadvantaged individuals in the State create and develop [franchises,
24 technology-based businesses, and other] **SMALL** businesses and acquire existing
25 businesses;

26 (2) buy, hold, and sell qualified securities;

27 (3) prepare, publish, and distribute technical studies, reports, and
28 other materials with or without charge; and

29 (4) provide and pay for advisory services and technical assistance that
30 are necessary or desirable to carry out the Program.

31 5-554.

1 There is an Equity Participation Investment Program Fund.

2 5–556.

3 (a) The Authority may provide equity participation financing under the
4 Program only after the enterprise submits an application that contains a business
5 plan that meets the requirements of subsection (b) of this section.

6 (b) The business plan of an enterprise shall include:

7 (1) a description of the [franchise, technology–based business, other
8 business,] **SMALL BUSINESS** or existing business and its management, product, and
9 market;

10 (2) a statement of the amount, immediacy of need, and projected use of
11 the capital required;

12 (3) a statement of the potential economic impact of the purchase;

13 (4) information that relates to the satisfaction of the applicant’s
14 requirements of § 5–557(d) and (e) of this subtitle; and

15 (5) any other information the Authority requires.

16 5–557.

17 (a) (1) Under the Program the Authority may not:

18 (i) own securities representing more than 49% of the voting
19 stock of a [franchise, technology–based business, or other] **SMALL** business or own an
20 interest greater than 49% in a [franchise, technology–based business, or other] **SMALL**
21 business; or

22 (ii) own securities representing more than 49% of the voting
23 stock of an enterprise acquiring an existing business or own an interest greater than
24 49% in an enterprise acquiring an existing business.

25 (2) The amount of the Authority’s equity participation financing in an
26 enterprise may not exceed[:

27 (i) the lesser of:

28 1.] \$2,000,000 [for a franchise; or

29 2. 49% of the total initial investment in the franchise;

1 (ii) the lesser of:

2 1. \$2,000,000 for an enterprise acquiring an existing
3 business; or

4 2. 49% of the total investment in the enterprise
5 acquiring an existing business; or

6 (iii) \$2,000,000 for a technology-based business].

7 (3) Before providing equity participation financing, the Authority shall
8 find that there is a reasonable probability that the Authority will recover its initial
9 investment and an adequate return on investment from the equity participation
10 financing.

11 (4) The Authority's investment shall be recoverable within[:

12 (i)] 7 years after the equity participation financing [in a
13 franchise, an enterprise acquiring an existing business, or any other type of business;
14 or

15 (ii) 10 years after the equity participation financing in a
16 technology-based business].

17 (5) The Authority's recovery shall be the greater of:

18 (i) the current value of the percentage of the equity investment
19 in the enterprise; or

20 (ii) the amount of the initial investment in the enterprise.

21 (6) [The] **IF THERE IS A DISPUTE BETWEEN THE BORROWER AND**
22 **THE AUTHORITY AS TO THE** value of the business entity at the time of recovery, **THE**
23 **VALUE** shall be determined after obtaining at least one independent appraisal of the
24 value from an appraiser selected from a list of at least three appraisers supplied by the
25 Authority.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 ~~October~~ July 1, 2014.