

Chapter 70

(Senate Bill 661)

AN ACT concerning

Economic Development – Equity Participation Investment Program – Small Businesses

FOR the purpose of ~~altering the purpose of the Equity Participation Investment Program to assist small businesses; altering the types of businesses of which the Maryland Small Business Development Financing Authority is prohibited from owning more than a certain percentage of securities or in which the Authority is prohibited from having an ownership interest that exceeds a certain percentage; altering the maximum amount of the Authority's equity participation financing in a certain enterprise; altering the length of time within which the Authority's investment shall be recoverable; repealing certain defined terms; repealing the definitions of "franchise" and "technology-based business"; making certain conforming changes to certain findings of the General Assembly, the purpose of the Equity Participation Investment Program, the authority of the Maryland Small Business Development Financing Authority, and the contents of a certain business plan; repealing certain distinctions in the amount the Authority may invest in certain enterprises using equity participation financing; altering the amount the Authority may invest using equity participation financing; repealing certain distinctions in the time period over which the Authority's investment is recoverable; altering the circumstances under which the value of a certain business entity is determined after obtaining a certain independent appraisal;~~ and generally relating to small businesses and the Equity Participation Investment Program.

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

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

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

Article – Economic Development

5–549.

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

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

(2) “Enterprise” includes:

- (i) a sole proprietorship;
- (ii) a partnership;
- (iii) a limited partnership;
- (iv) a corporation; or
- (v) a joint venture.

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

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

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

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

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

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

[(h)] (G) “Qualified security” means:

- (1) a note, bond, debenture, or other evidence of indebtedness;
- (2) stock or other form of equity participation;
- (3) a certificate of interest or participation in a profit-sharing agreement;

- (4) an investment contract;
- (5) a certificate of deposit for a security;
- (6) a certificate of interest or participation in a patent or patent application or in royalty or other payments under a patent or patent application; or
- (7) an interest or instrument commonly known as a "security" or a certificate for, receipt for, guaranty of, or option, warrant, or right to subscribe to or purchase a qualified security.

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

(H) "SMALL BUSINESS" MEANS A BUSINESS THAT IS CLASSIFIED AS A SMALL BUSINESS UNDER THE U.S. SMALL BUSINESS ADMINISTRATION SIZE STANDARDS.

5-550.

- (a) The General Assembly finds that:
 - (1) [franchises and technology-based] **SMALL** businesses have proven to be a fast growing and reliable form of successful business expansion and successful new business creation;
 - (2) [franchises and technology-based] **SMALL** businesses play a major role in the economy of the State and have been a continuing source of increasing tax revenues and job opportunities;
 - (3) the growth of [franchises, technology-based businesses, and other] **SMALL** businesses should be encouraged and should be an integral part of the State's economic development effort;
 - (4) socially or economically disadvantaged individuals often lack adequate capital and are unable to obtain financing from financial institutions or venture capital firms to begin and develop a [franchise, a technology-based business, or other type of] **SMALL** business, or to purchase an existing business; and
 - (5) promoting the creation and viability of ~~[franchises and technology-based businesses, the development of other]~~ **SMALL** ~~businesses,~~ **SMALL BUSINESSES** and the purchase of existing businesses by socially or economically disadvantaged individuals is in the public interest.

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

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

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

5-551.

There is an Equity Participation Investment Program in the Department.

5-552.

The Authority shall administer the Program.

5-553.

The Authority may:

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

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

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

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

5-554.

There is an Equity Participation Investment Program Fund.

5-556.

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

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

- (1) a description of the ~~franchise, technology-based business, other business,~~ **SMALL BUSINESS** or existing ~~SMALL~~ business and its management, product, and market;
- (2) a statement of the amount, immediacy of need, and projected use of the capital required;
- (3) a statement of the potential economic impact of the purchase;
- (4) information that relates to the satisfaction of the applicant's requirements of § 5-557(d) and (e) of this subtitle; and
- (5) any other information the Authority requires.

5-557.

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

- (i) own securities representing more than 49% of the voting stock of a ~~franchise, technology-based business, or other~~ **SMALL** business or own an interest greater than 49% in a ~~franchise, technology-based business, or other~~ **SMALL** business; or
- (ii) own securities representing more than 49% of the voting stock of an enterprise acquiring an existing business or own an interest greater than 49% in an enterprise acquiring an existing business.

(2) The amount of the Authority's equity participation financing in an enterprise may not exceed~~1:~~

~~(i) the lesser of:~~

~~1. \$2,000,000 for a franchise; or~~

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

~~(ii) the lesser of:~~

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

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

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

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

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

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

~~(ii) 10 years after the equity participation financing in a technology-based business]~~ **7 YEARS.**

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

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

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

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

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

Approved by the Governor, April 8, 2014.