

(PRE-FILED)

CF 7lr1577

**By: Delegates Harrison and Rawlings**

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Introduced and read first time: January 8, 1997

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 1997

## CHAPTER \_\_\_\_

1 AN ACT concerning

**2 MSBDFA - Management Group Contract and Equity Participation Investment Program**

3 FOR the purpose of authorizing the Department of Business and Economic Development  
 4 to extend the expiration date of a certain management contract to administer the  
 5 programs of the Maryland Small Business Development Financing Authority;  
 6 authorizing the Department of Business and Economic Development to renew a  
 7 certain management contract to administer the programs of the Maryland Small  
 8 Business Development Financing Authority; requiring the Department to include  
 9 certain performance standards in any extension or renewal of the management  
 10 contract to administer the programs of the Maryland Small Business Development  
 11 Financing Authority; increasing the maximum amount of the Maryland Small  
 12 Business Development Financing Authority's participation in franchises through the  
 13 Equity Participation Investment Program; removing a certain annual cap for total  
 14 financing under the Equity Participation Investment Program; ~~removing a certain~~  
 15 ~~net worth~~ altering a certain requirement necessary to apply for certain financing  
 16 from the Equity Participation Investment Program; altering the percentage of  
 17 business ownership by certain persons required to qualify for the Equity  
 18 Participation Investment Program; and generally relating to the Maryland Small  
 19 Business Development Financing Authority.

20 BY repealing and reenacting, with amendments,

21 Article 83A - Department of Business and Economic Development

22 Section 5-1009 and 5-1046

23 Annotated Code of Maryland

24 (1995 Replacement Volume and 1996 Supplement)

25 BY repealing and reenacting, without amendments,

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1 Article 83A - Department of Business and Economic Development  
2 Section 5-1025(b) and (c)  
3 Annotated Code of Maryland  
4 (1995 Replacement Volume and 1996 Supplement)

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

7 **Article 83A - Department of Business and Economic Development**

8 5-1009.

9 (a) The Authority exercises its powers and performs its duties subject to the  
10 authority of the Secretary.

11 (b) (1) The Department may contract for and engage the services of some or all  
12 of the Authority staff, who shall have organized themselves as a private Maryland  
13 corporation, to administer the programs of the Maryland Small Business Development  
14 Financing Authority for a period of 3 years.

15 (2) The Department [has the option to renew this contract for 2 years.]  
16 MAY:

17 (I) EXTEND THE EXPIRATION DATE OF THE INITIAL CONTRACT  
18 TO JUNE 30, 2002; AND

19 (II) RENEW THE EXTENDED CONTRACT FOR ~~TWO~~ ONE  
20 ADDITIONAL 5-YEAR ~~TERMS~~ TERM.

21 (3) ANY EXTENSION OR RENEWAL CONTRACT SHALL INCLUDE  
22 STANDARDS TO EVALUATE THE PERFORMANCE OF THE PRIVATE CONTRACTOR IN  
23 RENDERING SERVICES UNDER THE CONTRACT.

24 ~~(3)~~ (4) The corporation may use the name Maryland Small Business  
25 Development Financing Agency, MSBDFA, Inc. or any close approximation of that name.

26 5-1025.

27 (b) If the applicant is an individual, the applicant shall satisfy the Authority that:

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

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

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

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

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

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

8 (iii) Has any other social or economic impediment that is beyond the  
9 personal control of the applicant, such as lack of formal education or financial capacity or  
10 geographical or regional economic distress but that does not limit the ability of the  
11 applicant to perform the contract or other activity for which the applicant would be  
12 receiving financial assistance.

13 (c) If the applicant is other than a sole proprietorship, at least 70 percent of the  
14 business enterprise shall be owned by individuals who meet the qualifications for  
15 applicants under subsection (b) of this section.

16 5-1046.

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

21 (1) A description of the franchisor, technology-based business, or existing  
22 business and its management, product, and market;

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

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

26 (4) Information that relates to the satisfaction of the applicant's  
27 requirements of [§ 5-1025] SUBSECTIONS (F) AND (G) of this [subtitle] SECTION; and

28 (5) Any other information the Authority requires.

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

31 (1) The Authority may not:

32 (i) 1. Own securities representing more than 45 percent of the  
33 voting stock of any franchise or technology-based business; or

34 2. Own an interest greater than 45 percent in any franchise or  
35 technology-based business; or

36 (ii) 1. Own securities representing more than 25 percent of the  
37 voting stock of any enterprise acquiring an existing business; or



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1 (2) The enterprise or its principals shall have had 3 or more years of  
2 successful experience with demonstrated achievements and management responsibilities.

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

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

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

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

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

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

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

14 (F) IF THE APPLICANT ENTERPRISE IS AN INDIVIDUAL, THE APPLICANT  
15 SHALL SATISFY THE AUTHORITY THAT:

16 (1) THE APPLICANT IS OF GOOD MORAL CHARACTER;

17 (2) AS DETERMINED FROM CREDITORS, EMPLOYERS, AND OTHER  
18 INDIVIDUALS WHO HAVE PERSONAL KNOWLEDGE OF THE APPLICANT, THE  
19 APPLICANT HAS A REPUTATION FOR FINANCIAL RESPONSIBILITY;

20 (3) THE APPLICANT IS A RESIDENT OF MARYLAND OR THE APPLICANT'S  
21 PRINCIPAL PLACE OF BUSINESS IS IN MARYLAND; AND

22 (4) THE APPLICANT IS UNABLE TO OBTAIN ADEQUATE BUSINESS  
23 FINANCING ON REASONABLE TERMS THROUGH NORMAL LENDING CHANNELS  
24 BECAUSE THE APPLICANT:

25 (I) BELONGS TO A GROUP THAT HISTORICALLY HAS BEEN  
26 DEPRIVED OF ACCESS TO NORMAL ECONOMIC OR FINANCIAL RESOURCES BECAUSE  
27 OF RACE, COLOR, CREED, SEX, RELIGION, OR NATIONAL ORIGIN;

28 (II) HAS AN IDENTIFIABLE PHYSICAL HANDICAP THAT SEVERELY  
29 LIMITS THE ABILITY OF THE APPLICANT TO OBTAIN FINANCIAL ASSISTANCE, BUT  
30 DOES NOT LIMIT THE ABILITY OF THE APPLICANT TO PERFORM THE CONTRACT OR  
31 OTHER ACTIVITY FOR WHICH THE APPLICANT WOULD BE RECEIVING FINANCIAL  
32 ASSISTANCE; OR

33 (III) HAS ANY OTHER SOCIAL OR ECONOMIC IMPEDIMENT THAT IS  
34 BEYOND THE PERSONAL CONTROL OF THE APPLICANT, SUCH AS LACK OF FORMAL  
35 EDUCATION OR FINANCIAL CAPACITY OR GEOGRAPHICAL OR REGIONAL  
36 ECONOMIC DISTRESS BUT THAT DOES NOT LIMIT THE ABILITY OF THE APPLICANT  
37 TO PERFORM THE CONTRACT OR OTHER ACTIVITY FOR WHICH THE APPLICANT  
38 WOULD BE RECEIVING FINANCIAL ASSISTANCE.

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1 (G) IF THE APPLICANT ENTERPRISE IS OTHER THAN A SOLE  
2 PROPRIETORSHIP, AT LEAST 51 PERCENT OF THE ENTERPRISE SHALL BE OWNED BY  
3 INDIVIDUALS WHO MEET THE QUALIFICATIONS FOR APPLICANTS UNDER  
4 SUBSECTION (F) OF THIS SECTION.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 1997.