
By: Senators Young, Trotter, and McFadden

Introduced and read first time: January 22, 1997

Assigned to: Finance

A BILL ENTITLED

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; increasing the maximum amount of the
9 Maryland Small Business Development Financing Authority's participation in
10 franchises through the Equity Participation Investment Program; removing a certain
11 annual cap for total financing under the Equity Participation Investment Program;
12 removing a certain net worth requirement necessary to apply for certain financing
13 from the Equity Participation Investment Program; altering the percentage of
14 business ownership by certain persons required to qualify for the Equity
15 Participation Investment Program; and generally relating to the Maryland Small
16 Business Development Financing Authority.

17 BY repealing and reenacting, with amendments,
18 Article 83A - Department of Business and Economic Development
19 Section 5-1009 and 5-1046
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article 83A - Department of Business and Economic Development
24 Section 5-1025(b) and (c)
25 Annotated Code of Maryland
26 (1995 Replacement Volume and 1996 Supplement)

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

2

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

2 5-1009.

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

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

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

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

13 (II) RENEW THE EXTENDED CONTRACT FOR TWO ADDITIONAL
14 5-YEAR TERMS.

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

17 5-1025.

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

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

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

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

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

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

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

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

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

4 5-1046.

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

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

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

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

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

16 (5) Any other information the Authority requires.

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

19 (1) The Authority may not:

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

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

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

26 2. Own an interest greater than 25 percent in any enterprise
 27 acquiring an existing business.

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

30 (i) 1. [§100,000] \$500,000 for any franchise; or

31 2. 45 percent of the total initial investment in the franchise;

32 (ii) 1. \$500,000 for any enterprise acquiring an existing business; or

33 2. 25 percent of the total investment in the enterprise acquiring
 34 an existing business; or

35 (iii) \$500,000 for a technology-based business.

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1 [(3) The total amount of equity participation financing disbursed may not
2 exceed \$3,000,000 for a calendar year.]

3 [(4)] (3) (i) The Authority shall find that there is a reasonable
4 probability that the Authority will recover its initial investment and an adequate return on
5 investment.

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

7 1. 7 years of the equity participation financing in a franchise;

8 2. 7 years of the equity participation financing in an enterprise
9 acquiring an existing business; or

10 3. 10 years of the equity participation financing in a
11 technology-based business.

12 [(5)] (4) The Authority's recovery shall be the greater of the current value
13 of the percentage of the equity investment in the enterprise or the amount of the initial
14 investment in the enterprise.

15 [(6)] (5) The value of the business entity at the time of recovery shall be
16 determined after obtaining at least 1 independent appraisal of the value from an
17 appraiser selected from a list of at least 3 appraisers supplied by the authority.

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

20 (d) When applying to the Authority to acquire an existing business, an enterprise
21 [shall have the following minimum qualifications:

22 (1) The enterprise or its principals shall have a minimum net worth of at
23 least \$75,000 pledged as security; and

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

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

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

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

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

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

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

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

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

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

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

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

9 (4) THE APPLICANT IS UNABLE TO OBTAIN ADEQUATE BUSINESS
10 FINANCING ON REASONABLE TERMS THROUGH NORMAL LENDING CHANNELS
11 BECAUSE THE APPLICANT:

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

15 (II) HAS AN IDENTIFIABLE PHYSICAL HANDICAP THAT SEVERELY
16 LIMITS THE ABILITY OF THE APPLICANT TO OBTAIN FINANCIAL ASSISTANCE, BUT
17 DOES NOT LIMIT THE ABILITY OF THE APPLICANT TO PERFORM THE CONTRACT OR
18 OTHER ACTIVITY FOR WHICH THE APPLICANT WOULD BE RECEIVING FINANCIAL
19 ASSISTANCE; OR

20 (III) HAS ANY OTHER SOCIAL OR ECONOMIC IMPEDIMENT THAT IS
21 BEYOND THE PERSONAL CONTROL OF THE APPLICANT, SUCH AS LACK OF FORMAL
22 EDUCATION OR FINANCIAL CAPACITY OR GEOGRAPHICAL OR REGIONAL
23 ECONOMIC DISTRESS BUT THAT DOES NOT LIMIT THE ABILITY OF THE APPLICANT
24 TO PERFORM THE CONTRACT OR OTHER ACTIVITY FOR WHICH THE APPLICANT
25 WOULD BE RECEIVING FINANCIAL ASSISTANCE.

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

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