

## CF HB 85

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**By: Senators Young, Trotter, and McFadden**

Introduced and read first time: January 22, 1997

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 1997

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## 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,

26 Article 83A - Department of Business and Economic Development

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1 Section 5-1025(b) and (c)  
2 Annotated Code of Maryland  
3 (1995 Replacement Volume and 1996 Supplement)

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

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

7 5-1009.

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

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

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

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

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

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

23 ~~(3)~~ (4) The corporation may use the name Maryland Small Business  
24 Development Financing Agency, MSBDFA, Inc. or any close approximation of that name.

25 5-1025.

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

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

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

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

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

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

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

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

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

13 5-1046.

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

- 18 (1) A description of the franchisor, technology-based business, or existing  
 19 business and its management, product, and market;
- 20 (2) A statement of the amount, immediacy of need, and projected use of the  
 21 capital required;
- 22 (3) A statement of the potential economic impact of the purchase;
- 23 (4) Information that relates to the satisfaction of the applicant's  
 24 requirements of [§ 5-1025] SUBSECTIONS (F) AND (G) of this [subtitle] SECTION; and
- 25 (5) Any other information the Authority requires.

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

- 28 (1) The Authority may not:
  - 29 (i) 1. Own securities representing more than 45 percent of the  
 30 voting stock of any franchise or technology-based business; or
  - 31 2. Own an interest greater than 45 percent in any franchise or  
 32 technology-based business; or
  - 33 (ii) 1. Own securities representing more than 25 percent of the  
 34 voting stock of any enterprise acquiring an existing business; or
  - 35 2. Own an interest greater than 25 percent in any enterprise  
 36 acquiring an existing business.

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

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- 1 (i) 1. [~~\$100,000~~] \$500,000 for any franchise; or
- 2 2. 45 percent of the total initial investment in the franchise;
- 3 (ii) 1. \$500,000 for any enterprise acquiring an existing business; or
- 4 2. 25 percent of the total investment in the enterprise acquiring
- 5 an existing business; or
- 6 (iii) \$500,000 for a technology-based business.

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

9 [(4)] (3) (i) The Authority shall find that there is a reasonable  
10 probability that the Authority will recover its initial investment and an adequate return on  
11 investment.

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

- 13 1. 7 years of the equity participation financing in a franchise;
- 14 2. 7 years of the equity participation financing in an enterprise
- 15 acquiring an existing business; or
- 16 3. 10 years of the equity participation financing in a
- 17 technology-based business.

18 [(5)] (4) The Authority's recovery shall be the greater of the current value  
19 of the percentage of the equity investment in the enterprise or the amount of the initial  
20 investment in the enterprise.

21 [(6)] (5) The value of the business entity at the time of recovery shall be  
22 determined after obtaining at least 1 independent appraisal of the value from an  
23 appraiser selected from a list of at least 3 appraisers supplied by the authority.

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

26 (d) When applying to the Authority to acquire an existing business, an enterprise  
27 ~~shall~~ have the following minimum qualifications:

28 (1) The enterprise or its principals shall have ~~a~~:

29 (I) A minimum net worth of at least \$75,000 pledged as security; and

30 (II) AT LEAST \$75,000 IN EQUITY INVESTMENT; OR

31 (III) A COMBINATION OF A MINIMUM NET WORTH PLEDGED AS  
32 SECURITY AND AN EQUITY INVESTMENT, TOTALING AT LEAST \$75,000; AND

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

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

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

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

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

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

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

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

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

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

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

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

18 (4) THE APPLICANT IS UNABLE TO OBTAIN ADEQUATE BUSINESS  
19 FINANCING ON REASONABLE TERMS THROUGH NORMAL LENDING CHANNELS  
20 BECAUSE THE APPLICANT:

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

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

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

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

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