

SENATE BILL 136

Unofficial Copy
C8

1999 Regular Session
(9lr0191)

ENROLLED BILL

-- Budget and Taxation/Economic Matters --

Introduced by **The President (Administration) and Senators McFadden,
Currie, Lawlah, and Middleton**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Competitive Advantage Financing Fund**

3 FOR the purpose of creating the Maryland Competitive Advantage Financing Fund as
4 a nonlapsing fund within the Department of Business and Economic
5 Development; providing for the management of the Fund; specifying what
6 moneys may constitute the Fund; authorizing the Department to use moneys in
7 the Fund for certain purposes subject to certain requirements and restrictions;
8 authorizing the Department to set the terms and conditions for loan financing
9 assistance; providing that the Fund is a growth-related project for the purposes
10 of determining priorities for State funding of capital projects; requiring the
11 Department to convene a certain study panel; requiring certain reports; defining
12 certain terms; providing for the termination of this Act; and generally relating to
13 the Maryland Competitive Advantage Financing Fund.

14 BY adding to
15 Article 83A - Department of Business and Economic Development

1 Section 5-1301 through 5-1305, inclusive, to be under the new subtitle "Subtitle
2 13. Maryland Competitive Advantage Financing Fund"
3 Annotated Code of Maryland
4 (1998 Replacement Volume)

5 BY repealing and reenacting, with amendments,
6 Article - State Finance and Procurement
7 Section 5-7B-01(d)(1)(iii)
8 Annotated Code of Maryland
9 (1995 Replacement Volume and 1998 Supplement)

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

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

13 **SUBTITLE 13. MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND.**

14 5-1301.

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) "FUND" MEANS THE MARYLAND COMPETITIVE ADVANTAGE FINANCING
18 FUND.

19 ~~(C) "ECONOMICALLY DISADVANTAGED INDIVIDUAL" MEANS AN INDIVIDUAL~~
20 ~~WITH A NET WORTH EXCLUDING THE VALUE OF THE BUSINESS OF LESS THAN~~
21 ~~\$500,000.~~

22 ~~(C)~~ (C) "FINANCIAL ASSISTANCE" MEANS:

23 (1) LOANS;

24 (2) LOAN GUARANTEES;

25 (3) INTEREST SUBSIDIES; AND

26 (4) INCENTIVES TO PRIVATE LENDERS OR ANY OTHER FINANCIAL
27 ASSISTANCE DESIGNED TO SECURE BUSINESS LOANS FROM FINANCIAL
28 INSTITUTIONS.

29 ~~(E) "PRIORITY FUNDING AREA" HAS THE MEANING STATED IN § 5-7B-02 OF~~
30 ~~THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

31 ~~(F)~~ (D) "SMALL BUSINESS" MEANS A BUSINESS THAT AT THE TIME OF
32 APPLICATION HAS:

33 (1) ~~NET SALES~~ NET SALES REVENUES OF LESS THAN \$1,000,000 PER YEAR; AND

1 (2) FEWER THAN 100 FULL-TIME EMPLOYEES.

2 ~~(G)~~ (E) ~~(4)~~ "WORKING CAPITAL" MEANS FUNDS TO BE USED FOR CURRENT
3 OPERATIONS OF A BUSINESS.

4 ~~(2)~~ ~~"WORKING CAPITAL" INCLUDES FUNDS FOR SUPPLIES, MATERIALS,~~
5 ~~LABOR, RENT, SOFTWARE, MARKETING, INSURANCE, AND FEES FOR PROFESSIONAL~~
6 ~~SERVICES.~~

7 5-1302.

8 (A) THERE IS A MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND IN
9 THE DEPARTMENT.

10 (B) THE PURPOSE OF THE FUND IS TO PROVIDE FINANCIAL ASSISTANCE FOR
11 THE DEVELOPMENT AND EXPANSION OF SMALL ~~AND ECONOMICALLY~~
12 ~~DISADVANTAGED INDIVIDUALS~~ BUSINESSES IN THE STATE.

13 (C) ~~(4)~~ THE SECRETARY SHALL MANAGE AND ADMINISTER THE FUND.

14 ~~(2)~~ ~~THE SECRETARY MAY DELEGATE THE AUTHORITY TO MAKE~~
15 ~~FINANCING DECISIONS TO ANY BOARD OR AUTHORITY IN THE DEPARTMENT.~~

16 (D) (1) THE FUND IS A CONTINUING, NONLAPSING FUND WHICH IS NOT
17 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

18 (2) THE TREASURER SHALL SEPARATELY HOLD AND THE COMPTROLLER
19 SHALL ACCOUNT FOR THE FUND.

20 (3) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO
21 THE FUND.

22 (E) THE FUND MAY CONSIST OF ANY OF THE FOLLOWING:

23 (1) MONEYS APPROPRIATED BY THE STATE TO THE FUND;

24 (2) MONEYS MADE AVAILABLE TO THE FUND THROUGH FEDERAL
25 PROGRAMS OR PRIVATE CONTRIBUTIONS;

26 (3) PREMIUMS, FEES, PENALTIES, INTEREST PAYMENTS, AND PRINCIPAL
27 PAYMENTS RELATED TO FINANCIAL ASSISTANCE PROVIDED FROM THE FUND;

28 (4) PROCEEDS FROM THE SALE, DISPOSITION, LEASE, OR RENTAL OF
29 COLLATERAL RELATED TO ANY FINANCIAL ASSISTANCE PROVIDED FROM THE FUND;

30 (5) APPLICATION OR OTHER FEES PAID TO THE PROGRAM IN
31 CONNECTION WITH THE PROCESSING OF REQUESTS FOR ASSISTANCE; AND

32 (6) ANY OTHER MONEYS MADE AVAILABLE TO THE FUND.

1 5-1303.

2 (A) THE DEPARTMENT MAY USE MONEYS IN THE FUND TO:

3 (1) PROVIDE FINANCIAL ASSISTANCE TO ELIGIBLE APPLICANTS; AND

4 (2) PAY EXPENSES FOR ADMINISTRATIVE, ACTUARIAL, LEGAL, AND
5 TECHNICAL SERVICES FOR THE PROGRAM.

6 (B) SUBJECT TO THE RESTRICTIONS OF THIS SUBTITLE, THE DEPARTMENT
7 MAY PROVIDE FINANCIAL ASSISTANCE FROM THE FUND TO A BUSINESS THAT:

8 (1) IS A SMALL BUSINESS; ~~AND~~

9 ~~(2) HAS MADE REASONABLE EFFORTS TO OBTAIN FINANCIAL~~
10 ~~ASSISTANCE ON REASONABLE TERMS FROM OTHER SOURCES; AND~~

11 ~~(2) IS LOCATED IN A PRIORITY FUNDING AREA;~~

12 ~~(3) IS OWNED BY ECONOMICALLY DISADVANTAGED INDIVIDUALS;~~

13 ~~(4) HAS APPLIED FOR AND BEEN DENIED A LOAN BY A FINANCIAL~~
14 ~~INSTITUTION; AND~~

15 ~~(5) (2) (3)~~ MEETS THE QUALIFICATIONS REQUIRED BY THIS
16 SUBTITLE.

17 (C) TO APPLY FOR FINANCIAL ASSISTANCE, AN APPLICANT SHALL SUBMIT AN
18 APPLICATION TO THE DEPARTMENT ON THE FORM THAT THE DEPARTMENT
19 REQUIRES.

20 (D) THE APPLICATION SHALL INCLUDE:

21 (1) A DETAILED BUSINESS PLAN, INCLUDING:

22 (I) AN ITEMIZATION OF KNOWN AND ESTIMATED COSTS;

23 (II) THE TOTAL AMOUNT OF INVESTMENT REQUIRED; AND

24 (III) THE AMOUNT OF FINANCIAL ASSISTANCE REQUESTED FROM
25 THE DEPARTMENT;

26 (2) THE AMOUNT OF FUNDS AVAILABLE TO THE APPLICANT WITHOUT
27 FINANCIAL ASSISTANCE FROM THE DEPARTMENT;

28 (3) INFORMATION RELATING TO THE FINANCIAL STATUS OF THE
29 APPLICANT, INCLUDING:

30 (I) A CURRENT BALANCE SHEET;

31 (II) A PROFIT AND LOSS STATEMENT;

1 (III) CREDIT REFERENCES; AND

2 (IV) EVIDENCE THAT THE APPLICANT AND THE OWNERS ARE
3 FINANCIALLY RESPONSIBLE, INCLUDING A STATEMENT OR EVIDENCE THAT
4 NEITHER THE APPLICANT NOR ANY OF ITS OWNERS:

5 1. ~~HAVE~~ HAS FILED FOR BANKRUPTCY IN THE 7 YEARS
6 PRECEDING THE APPLICATION;

7 2. ~~HAVE~~ HAS ANY EXISTING LIENS OR JUDGMENTS; AND

8 3. CURRENTLY ~~OWE~~ OWES ANY STATE OR FEDERAL TAXES
9 THAT WERE NOT PAID WHEN DUE;

10 (4) ~~IF THE APPLICANT IS NOT AN INDIVIDUAL,~~ INFORMATION SHOWING
11 THE FINANCIAL STATUS OF EACH OWNER OF THE APPLICANT, INCLUDING:

12 (I) A CURRENT BALANCE SHEET;

13 (II) AN INCOME STATEMENT; AND

14 (III) CREDIT REFERENCES; ~~AND~~

15 ~~(5) EVIDENCE THAT THE APPLICANT HAS MADE REASONABLE EFFORTS~~
16 ~~TO OBTAIN FINANCIAL ASSISTANCE ON REASONABLE TERMS FROM OTHER~~
17 ~~SOURCES; AND~~

18 ~~(5) EVIDENCE THAT THE APPLICANT HAS REQUESTED A LOAN FOR THE~~
19 ~~SAME PURPOSE FROM A FINANCIAL INSTITUTION AND THE REQUEST HAS BEEN~~
20 ~~DECLINED; AND~~

21 ~~(6)~~ ~~(5)~~ (6) ANY OTHER RELEVANT INFORMATION THAT THE
22 DEPARTMENT REQUESTS.

23 5-1304.

24 (A) EXCEPT AS PROVIDED IN THIS SUBTITLE, THE DEPARTMENT MAY SET THE
25 TERMS AND CONDITIONS FOR LOANS, LOAN GUARANTEES, AND ANY OTHER
26 FINANCIAL ASSISTANCE PROVIDED UNDER THIS SUBTITLE.

27 (B) THE DEPARTMENT MAY REQUIRE ANY SECURITY OR GUARANTEE FOR
28 FINANCIAL ASSISTANCE AS IT DEEMS APPROPRIATE.

29 (C) THE AMOUNT OF ANY FINANCIAL ASSISTANCE SHALL NOT BE LESS THAN
30 \$10,000 AND SHALL NOT EXCEED \$100,000.

31 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
32 TERM OF ANY LOAN OR OTHER FINANCIAL ASSISTANCE MAY NOT EXCEED 10 YEARS.

1 (2) IF MORE THAN 50% OF THE PROCEEDS OF A LOAN MADE FROM THE
2 FUND ARE USED FOR WORKING CAPITAL, THE TERM OF THE LOAN MAY NOT EXCEED
3 1 YEAR, UNLESS:

4 (I) AT THE END OF 1 YEAR, THE DEPARTMENT REVIEWS THE
5 BORROWERS' PERFORMANCE AND FINANCIAL CONDITION AND DETERMINES THAT A
6 1-YEAR EXTENSION OF THE TERM IS APPROPRIATE; AND

7 (II) IN THE CASE OF A LOAN TERM THAT IS EXTENDED FOR AN
8 ADDITIONAL YEAR, AT THE END OF THE ADDITIONAL YEAR, THE DEPARTMENT
9 REPEATS THE REVIEW AND DETERMINES THAT AN ADDITIONAL 1-YEAR EXTENSION
10 IS APPROPRIATE.

11 (3) THE TERM OF A LOAN MADE UNDER PARAGRAPH (2) OF THIS
12 SUBSECTION MAY NOT EXCEED 3 YEARS.

13 (E) THE APPLICANT MUST PROVIDE AT LEAST 10% OF THE TOTAL PROJECT
14 COSTS OR CAPITAL NEEDED.

15 (F) FUNDS MADE AVAILABLE THROUGH FINANCIAL ASSISTANCE MAY BE
16 USED ONLY TO FINANCE COSTS INCURRED FOR:

17 (1) ACQUISITION OR CONSTRUCTION OF A BUILDING OR REAL ESTATE;

18 (2) ACQUISITION, CONSTRUCTION, OR INSTALLATION OF MACHINERY,
19 EQUIPMENT, FURNISHINGS, FIXTURES, LEASEHOLD IMPROVEMENTS, OR SITE
20 IMPROVEMENTS; OR

21 (3) WORKING CAPITAL.

22 (G) IF AN APPLICANT VIOLATES ANY PROVISION OF THE FINANCIAL
23 ASSISTANCE DOCUMENTS OR CEASES TO MEET THE REQUIREMENTS OF THIS
24 SUBTITLE, THE DEPARTMENT MAY:

25 (1) WITHHOLD FROM THE APPLICANT FURTHER ADVANCES OF
26 FINANCIAL ASSISTANCE UNTIL THE APPLICANT COMPLIES WITH THE AGREEMENT
27 OR REQUIREMENTS; AND

28 (2) EXERCISE ANY OTHER REMEDY FOR WHICH THE FINANCIAL
29 ASSISTANCE DOCUMENTS PROVIDE.

30 (H) THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY
31 OUT THE PROVISIONS OF THIS SUBTITLE.

32 5-1305.

33 (A) THE STATE TREASURER SHALL REPORT ANNUALLY TO THE DEPARTMENT
34 AS TO:

35 (1) THE STATUS OF THE MONEY INVESTED UNDER THIS SUBTITLE;

1 (2) THE MARKET VALUE OF THE ASSETS IN THE FUND AS OF THE DATE
2 OF THE REPORT; AND

3 (3) THE INTEREST RECEIVED FROM INVESTMENTS FOR THE FUND
4 DURING THE PERIOD COVERED BY THE REPORT.

5 (B) THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO §
6 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY BEFORE
7 JANUARY 1 OF EACH YEAR ON THE NUMBER, AMOUNT, USE, AND ECONOMIC
8 BENEFITS OF FINANCIAL ASSISTANCE PROVIDED UNDER THIS SUBTITLE.

9 **Article - State Finance and Procurement**

10 5-7B-01.

11 (d) (1) "Growth-related project" means only the items set forth below:

12 (iii) funding by the Department of Business and Economic
13 Development under any of the following:

14 1. the Maryland Industrial Land Act, authorized under
15 Article 83A, Title 5, Subtitle 7 of the Code;

16 2. the Maryland Industrial and Commercial Redevelopment
17 Fund, authorized under Article 83A, Title 5, Subtitle 8 of the Code;

18 3. the Maryland Industrial Development Financing
19 Authority, authorized under Article 83A, Title 5, Subtitle 9 of the Code;

20 4. the Maryland Small Business Development Financing
21 Authority, authorized under Article 83A, Title 5, Subtitle 10 of the Code;

22 5. the Maryland Energy Financing Act, authorized under
23 Article 83A, Title 6, Subtitle 4 of the Code; [and]

24 6. the Economic Development Opportunities Program Fund,
25 authorized under § 7-314 of this article; AND

26 7. THE MARYLAND COMPETITIVE ADVANTAGE FINANCING
27 FUND, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 13 OF THE CODE;

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
29 Business and Economic Development shall convene a study panel during the 1999
30 Interim, to be staffed by the Department, which includes members of the Senate of
31 Maryland, appointed by the President of the Senate, members of the House of
32 Delegates, appointed by the Speaker of the House, representatives of the Maryland
33 Economic Development Commission, and representatives of the business community.
34 The study panel shall review the consolidation of its current financing funds and
35 financing funding models. The Department shall report on the study panel's

1 recommendations and provide draft legislation, as necessary, by December 1, 1999 to
2 allow for consideration during the 2000 legislative session.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 1999. It shall remain effective for a period of ~~1 year~~ 2 years and, at the end of
5 June 30, ~~2000~~ 2001, with no further action required by the General Assembly, this Act
6 shall be abrogated and of no further force and effect.