

SENATE BILL 136

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C8

1999 Regular Session
9lr0191
CF 9lr0212

By: **The President (Administration) and Senators McFadden, Currie,
Lawlah, and Middleton**

Introduced and read first time: January 22, 1999
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 26, 1999

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
16 Section 5-1301 through 5-1305, inclusive, to be under the new subtitle "Subtitle
17 13. Maryland Competitive Advantage Financing Fund"
18 Annotated Code of Maryland
19 (1998 Replacement Volume)

20 BY repealing and reenacting, with amendments,
21 Article - State Finance and Procurement
22 Section 5-7B-01(d)(1)(iii)
23 Annotated Code of Maryland
24 (1995 Replacement Volume and 1998 Supplement)

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

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

4 SUBTITLE 13. MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND.

5 5-1301.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) "FUND" MEANS THE MARYLAND COMPETITIVE ADVANTAGE FINANCING
9 FUND.

10 ~~(C) "ECONOMICALLY DISADVANTAGED INDIVIDUAL" MEANS AN INDIVIDUAL~~
11 ~~WITH A NET WORTH EXCLUDING THE VALUE OF THE BUSINESS OF LESS THAN~~
12 ~~\$500,000.~~

13 ~~(D)~~ (C) "FINANCIAL ASSISTANCE" MEANS:

14 (1) LOANS;

15 (2) LOAN GUARANTEES;

16 (3) INTEREST SUBSIDIES; AND

17 (4) INCENTIVES TO PRIVATE LENDERS OR ANY OTHER FINANCIAL
18 ASSISTANCE DESIGNED TO SECURE BUSINESS LOANS FROM FINANCIAL
19 INSTITUTIONS.

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

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

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

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

26 ~~(G)~~ (E) (1) "WORKING CAPITAL" MEANS FUNDS TO BE USED FOR CURRENT
27 OPERATIONS OF A BUSINESS.

28 (2) "WORKING CAPITAL" INCLUDES FUNDS FOR SUPPLIES, MATERIALS,
29 LABOR, RENT, SOFTWARE, MARKETING, INSURANCE, AND FEES FOR PROFESSIONAL
30 SERVICES.

1 5-1302.

2 (A) THERE IS A MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND IN
3 THE DEPARTMENT.

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

7 (C) (1) THE SECRETARY SHALL MANAGE AND ADMINISTER THE FUND.

8 (2) THE SECRETARY MAY DELEGATE THE AUTHORITY TO MAKE
9 FINANCING DECISIONS TO ANY BOARD OR AUTHORITY IN THE DEPARTMENT.

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

12 (2) THE TREASURER SHALL SEPARATELY HOLD AND THE COMPTROLLER
13 SHALL ACCOUNT FOR THE FUND.

14 (3) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO
15 THE FUND.

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

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

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

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

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

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

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

27 5-1303.

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

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

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

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

3 (1) IS A SMALL BUSINESS; AND

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

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

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

8 ~~(5)~~ (2) MEETS THE QUALIFICATIONS REQUIRED BY THIS SUBTITLE.

9 (C) TO APPLY FOR FINANCIAL ASSISTANCE, AN APPLICANT SHALL SUBMIT AN
10 APPLICATION TO THE DEPARTMENT ON THE FORM THAT THE DEPARTMENT
11 REQUIRES.

12 (D) THE APPLICATION SHALL INCLUDE:

13 (1) A DETAILED BUSINESS PLAN, INCLUDING:

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

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

16 (III) THE AMOUNT OF FINANCIAL ASSISTANCE REQUESTED FROM
17 THE DEPARTMENT;

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

20 (3) INFORMATION RELATING TO THE FINANCIAL STATUS OF THE
21 APPLICANT, INCLUDING:

22 (I) A CURRENT BALANCE SHEET;

23 (II) A PROFIT AND LOSS STATEMENT;

24 (III) CREDIT REFERENCES; AND

25 (IV) EVIDENCE THAT THE APPLICANT AND THE OWNERS ARE
26 FINANCIALLY RESPONSIBLE, INCLUDING A STATEMENT OR EVIDENCE THAT
27 NEITHER THE APPLICANT NOR ANY OF ITS OWNERS:

28 1. ~~HAVE~~ HAS FILED FOR BANKRUPTCY IN THE 7 YEARS
29 PRECEDING THE APPLICATION;

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

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

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

5 (I) A CURRENT BALANCE SHEET;

6 (II) AN INCOME STATEMENT; AND

7 (III) CREDIT REFERENCES; AND

8 (5) ~~EVIDENCE THAT THE APPLICANT HAS REQUESTED A LOAN FOR THE~~
9 ~~SAME PURPOSE FROM A FINANCIAL INSTITUTION AND THE REQUEST HAS BEEN~~
10 ~~DECLINED; AND~~

11 (6) (5) ANY OTHER RELEVANT INFORMATION THAT THE DEPARTMENT
12 REQUESTS.

13 5-1304.

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

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

19 (C) THE AMOUNT OF ANY FINANCIAL ASSISTANCE SHALL NOT BE LESS THAN
20 \$10,000 AND SHALL NOT EXCEED \$100,000.

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

23 (2) ~~IF MORE THAN 50% OF THE PROCEEDS OF A LOAN MADE FROM THE~~
24 ~~FUND ARE USED FOR WORKING CAPITAL, THE TERM OF THE LOAN MAY NOT EXCEED~~
25 ~~1 YEAR, UNLESS:~~

26 (I) ~~AT THE END OF 1 YEAR, THE DEPARTMENT REVIEWS THE~~
27 ~~BORROWERS' PERFORMANCE AND FINANCIAL CONDITION AND DETERMINES THAT A~~
28 ~~1-YEAR EXTENSION OF THE TERM IS APPROPRIATE; AND~~

29 (II) ~~IN THE CASE OF A LOAN TERM THAT IS EXTENDED FOR AN~~
30 ~~ADDITIONAL YEAR, AT THE END OF THE ADDITIONAL YEAR, THE DEPARTMENT~~
31 ~~REPEATS THE REVIEW AND DETERMINES THAT AN ADDITIONAL 1-YEAR EXTENSION~~
32 ~~IS APPROPRIATE.~~

33 (3) ~~THE TERM OF A LOAN MADE UNDER PARAGRAPH (2) OF THIS~~
34 ~~SUBSECTION MAY NOT EXCEED 3 YEARS.~~

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

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

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

6 (2) ACQUISITION, CONSTRUCTION, OR INSTALLATION OF MACHINERY,
7 EQUIPMENT, FURNISHINGS, FIXTURES, LEASEHOLD IMPROVEMENTS, OR SITE
8 IMPROVEMENTS; OR

9 (3) WORKING CAPITAL.

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

13 (1) WITHHOLD FROM THE APPLICANT FURTHER ADVANCES OF
14 FINANCIAL ASSISTANCE UNTIL THE APPLICANT COMPLIES WITH THE AGREEMENT
15 OR REQUIREMENTS; AND

16 (2) EXERCISE ANY OTHER REMEDY FOR WHICH THE FINANCIAL
17 ASSISTANCE DOCUMENTS PROVIDE.

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

20 5-1305.

21 (A) THE STATE TREASURER SHALL REPORT ANNUALLY TO THE DEPARTMENT
22 AS TO:

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

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

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

28 (B) THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO §
29 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY BEFORE
30 JANUARY 1 OF EACH YEAR ON THE NUMBER, AMOUNT, USE, AND ECONOMIC
31 BENEFITS OF FINANCIAL ASSISTANCE PROVIDED UNDER THIS SUBTITLE.

32 **Article - State Finance and Procurement**

33 5-7B-01.

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

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

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

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

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

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

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

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
18 Business and Economic Development shall convene a study panel during the 1999
19 Interim, to be staffed by the Department, which includes members of the Senate of
20 Maryland, appointed by the President of the Senate, members of the House of
21 Delegates, appointed by the Speaker of the House, representatives of the Maryland
22 Economic Development Commission, and representatives of the business community.
23 The study panel shall review the consolidation of its current financing funds and
24 financing funding models. The Department shall report on the study panel's
25 recommendations and provide draft legislation, as necessary, by December 1, 1999 to
26 allow for consideration during the 2000 legislative session.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 July 1, 1999. It shall remain effective for a period of 1 year and, at the end of June 30,
29 2000, with no further action required by the General Assembly, this Act shall be
30 abrogated and of no further force and effect.