

HOUSE BILL 98

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2000 Regular Session
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(PRE-FILED)

By: **Chairman, Economic Matters Committee (Departmental - Housing and
Community Dev.)**

Requested: November 15, 1999

Introduced and read first time: January 12, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Housing and Community Development - Neighborhood**
3 **Business Development Program - Capital Access Program**

4 FOR the purpose of creating a capital access program in the Neighborhood Business
5 Development Program to encourage private sector loans to certain small
6 businesses; requiring that lenders enrolling loans under the Program enter into
7 a certain agreement with the Department of Housing and Community
8 Development; providing for participating lenders to establish certain loan
9 reserve accounts; authorizing the Department to use moneys from the
10 Neighborhood Business Development Fund for contributions to loan reserve
11 accounts established under the Program; providing for certain exemptions from
12 State law; requiring the Department to adopt certain regulations; and generally
13 relating to the Neighborhood Business Development Program and the
14 Department of Housing and Community Development.

15 BY repealing and reenacting, with amendments,
16 Article 83B - Department of Housing and Community Development
17 Section 4-201 through 4-208
18 Annotated Code of Maryland
19 (1998 Replacement Volume and 1999 Supplement)

20 BY adding to
21 Article 83B - Department of Housing and Community Development
22 Section 4-207
23 Annotated Code of Maryland
24 (1998 Replacement Volume and 1999 Supplement)

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

Article 83B - Department of Housing and Community Development

2 4-201.

3 (A) The Neighborhood Business Development Program is hereby created
4 within the Department, for the following purposes:

5 (1) To assist in the development, redevelopment, or expansion of small
6 business enterprises in designated neighborhoods;

7 (2) To stimulate investment by the private sector in designated
8 neighborhoods;

9 (3) To invest in small business revitalization projects in designated
10 neighborhoods; and

11 (4) To stimulate the participation of local jurisdictions in developing and
12 expanding small business enterprises in designated neighborhoods.

13 (B) THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM INCLUDES THE
14 BUSINESS DEVELOPMENT PROGRAM AND THE CAPITAL ACCESS PROGRAM.

15 4-202.

16 (a) In this subtitle the following words have the meanings indicated.

17 (b) "Designated neighborhood" means a geographically defined area of a local
18 jurisdiction which is designated as an eligible neighborhood in accordance with §
19 4-203(b) of this subtitle.

20 (c) "Development costs" means the costs incurred for the construction or
21 rehabilitation of a neighborhood business development project, including the costs of:

22 (1) Necessary studies, surveys, plans, and specifications;

23 (2) Architectural, engineering, or other special services related to
24 construction or rehabilitation, including flood plain studies, environmental audits,
25 and critical area or wetland assessments;

26 (3) Acquisition of land and improvements;

27 (4) Site preparation;

28 (5) Construction, reconstruction, and rehabilitation;

29 (6) Acquisition of machinery, equipment, and furnishings;

30 (7) Essential start-up operating costs, including working capital and
31 initial occupancy expenses;

32 (8) Indemnity and surety bonds and premiums on insurance; and

1 (9) Other necessary fees and temporary relocation expenses.

2 (d) "Fund" means the Neighborhood Business Development Fund.

3 (e) "Local jurisdiction" means a municipal corporation or county.

4 (f) "Nonprofit organization" means a corporation, foundation, or other legal
5 entity that specifies in its charter or bylaws that no part of the net earnings may
6 inure to the benefit of any private shareholder or individual holding any interest in
7 such entity.

8 (g) ["Program" means the Neighborhood Business Development Program.

9 (h)] "Project" means a neighborhood business development project which
10 receives financial assistance from the Neighborhood Business Development Fund.

11 [(i)] (H) "Small business" means a business that employs a number of
12 employees or has annual receipts no greater than limits set forth in regulations by the
13 Department which shall not exceed the standards set by the federal Small Business
14 Administration.

15 4-203.

16 (a) THERE IS A BUSINESS DEVELOPMENT PROGRAM WITHIN THE
17 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM.

18 (B) To qualify for financial assistance under the BUSINESS DEVELOPMENT
19 Program, a neighborhood business development project must be located in a
20 designated neighborhood.

21 [(b)] (C) Local jurisdictions may designate one or more eligible neighborhoods
22 with the concurrence of the Secretary of the Department, taking into consideration
23 the following factors:

24 (1) The availability, cost, and condition of business facilities;

25 (2) The age and number of abandoned structures;

26 (3) The age and number of substandard structures;

27 (4) The income of residents relative to State or regional median incomes,
28 including the number of persons who are welfare recipients or unemployed;

29 (5) The extent of unemployment and the availability in the area of jobs
30 for residents of the designated neighborhood;

31 (6) The need for financing for small businesses in order to upgrade the
32 social and economic conditions of the designated neighborhood;

33 (7) The neighborhood development or redevelopment strategy of the local
34 jurisdiction for the designated neighborhood and any plans and financial commitment

1 of the local jurisdiction to undertake improvements in the designated neighborhood;
2 and

3 (8) Other standards and criteria deemed relevant by the Department as
4 set forth in regulations, including standards established for other relevant State or
5 federal Programs.

6 4-204.

7 (a) Financial assistance under the BUSINESS DEVELOPMENT Program may be
8 provided to a small business in any of the following forms:

9 (1) Grant;

10 (2) Loan;

11 (3) Reduction in the principal obligation of or rate of interest payable on
12 a loan or portion of a loan;

13 (4) Prepayment of interest on a subordinate or superior loan or portion of
14 a loan;

15 (5) Assurance;

16 (6) Guarantee; or

17 (7) Any other form of credit enhancement.

18 (b) The Department shall review all applications for financial assistance.

19 (c) Applications shall be submitted by an applicant, which may be a for profit
20 or nonprofit small business.

21 (d) To qualify for financial assistance, the application must demonstrate that:

22 (1) The project has significant commitments for funding from other
23 private and nonstate public sources that are sufficient to complete the project with
24 the funds from the Neighborhood Business Development [Program] FUND;

25 (2) The financial assistance from the Neighborhood Business
26 Development Fund is the least amount necessary to make the project financially
27 feasible;

28 (3) The project is ready to proceed upon funding of financial assistance
29 from the BUSINESS DEVELOPMENT Program; and

30 (4) The local jurisdiction adopted a local resolution, or its authorized
31 designee delivered a letter to the BUSINESS DEVELOPMENT Program, expressing
32 support for the project.

1 4-205.

2 The Department shall:

3 (1) Manage, supervise, and administer the BUSINESS DEVELOPMENT
4 Program;

5 (2) Adopt rules and regulations to carry out the BUSINESS
6 DEVELOPMENT Program in conformance with statutory requirements; and

7 (3) For each category of financing described under § 4-204(a) of this
8 subtitle, establish minimum percentages or amounts of private and non-state public
9 funding that the applicant is required to secure before the Department may
10 determine that the applicant is qualified for the BUSINESS DEVELOPMENT Program.
11 4-206.

12 (a) Financial assistance UNDER THE BUSINESS DEVELOPMENT PROGRAM
13 may be used to finance a portion of the development costs of a neighborhood business
14 development project.

15 (b) The financial assistance shall be on such terms as the Department deems
16 necessary to make the enterprise financially feasible.

17 (c) Financial assistance under the [Neighborhood] Business Development
18 Program may be secured, at the discretion of the Department, by a mortgage lien or
19 other security instrument, which may be subordinate to other security interests.

20 (d) The Department may:

21 (1) Modify the rate of interest, the time or amount of payment, or any
22 other term of a grant or loan in order to facilitate the successful completion or
23 operation of a project; and

24 (2) Contract for services relating to the BUSINESS DEVELOPMENT
25 Program.

26 4-207.

27 (A) (1) THERE IS A CAPITAL ACCESS PROGRAM WITHIN THE
28 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM TO STIMULATE PRIVATE
29 SECTOR LENDING TO SMALL BUSINESSES THROUGHOUT THE STATE.

30 (2) THE CAPITAL ACCESS PROGRAM IS DESIGNED TO ENCOURAGE
31 PRIVATE LENDERS TO PROVIDE FOR A RESERVE OF FUNDS AS ADDITIONAL
32 SECURITY FOR PRIVATE SECTOR LOANS MADE UNDER THIS SECTION.

33 (B) THE DEPARTMENT MAY ENTER INTO A CAPITAL ACCESS PROGRAM
34 PARTICIPATION AGREEMENT WITH EACH LENDER ELIGIBLE TO PARTICIPATE IN THE
35 CAPITAL ACCESS PROGRAM.

1 (C) TO BE ELIGIBLE TO PARTICIPATE IN THE CAPITAL ACCESS PROGRAM, A
2 LENDER SHALL:

3 (1) BE A FEDERALLY INSURED FINANCIAL INSTITUTION, AS DEFINED IN
4 § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE, OR OTHER INSTITUTION
5 REGULATED BY THE COMMISSIONER OF FINANCIAL REGULATION; AND

6 (2) ENTER INTO A PARTICIPATION AGREEMENT WITH THE DEPARTMENT
7 UNDER WHICH THE LENDER:

8 (I) SHALL AGREE TO:

9 1. ENROLL IN THE CAPITAL ACCESS PROGRAM LOANS MADE
10 TO ELIGIBLE SMALL BUSINESSES;

11 2. ESTABLISH A LOAN RESERVE ACCOUNT WITH A
12 FEDERALLY INSURED FINANCIAL INSTITUTION AS ADDITIONAL SECURITY TO COVER
13 LOSSES SUSTAINED BY THE LENDER ON ANY LOANS ENROLLED BY THE LENDER;
14 AND

15 3. CONTRIBUTE FUNDS TO THE LOAN RESERVE ACCOUNT
16 FOR EACH LOAN ENROLLED IN THE CAPITAL ACCESS PROGRAM; AND

17 (II) MAY COMMINGLE IN THE RESERVE ACCOUNT ANY
18 CONTRIBUTIONS MADE FOR ANY LOANS ENROLLED BY THE LENDER WITH THE
19 CAPITAL ACCESS PROGRAM.

20 (D) TO BE ELIGIBLE FOR A LOAN TO BE ENROLLED UNDER THE CAPITAL
21 ACCESS PROGRAM, A BORROWER SHALL:

22 (1) BE A SMALL BUSINESS THAT MEETS THE ELIGIBILITY
23 REQUIREMENTS SET OUT IN THE CAPITAL ACCESS PROGRAM PARTICIPATION
24 AGREEMENT BETWEEN THE BORROWER'S LENDER AND THE DEPARTMENT; AND

25 (2) AGREE WITH THE LENDER TO CONTRIBUTE FUNDS TO THE LOAN
26 RESERVE ACCOUNT ESTABLISHED BY THE LENDER.

27 (E) (1) THE DEPARTMENT MAY USE MONEYS FROM THE FUND TO MAKE
28 CONTRIBUTIONS TO LOAN RESERVE ACCOUNTS ESTABLISHED UNDER SUBSECTION
29 (C) OF THIS SECTION.

30 (2) CONTRIBUTIONS BY THE DEPARTMENT SHALL BE EXEMPT FROM
31 THE REQUIREMENTS OF TITLE 6, SUBTITLE 2, AND TITLES 11 THROUGH 17, OF THE
32 STATE FINANCE AND PROCUREMENT ARTICLE.

33 (3) CONTRIBUTIONS MADE FROM THE FUND IN ANY FISCAL YEAR MAY
34 NOT EXCEED \$1 MILLION.

35 (F) (1) THE ENROLLMENT OF A LOAN UNDER THE CAPITAL ACCESS
36 PROGRAM DOES NOT PLEDGE THE FAITH, CREDIT, OR TAXING POWER OF THE STATE,

1 THE DEPARTMENT, THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM, OR
2 THE FUND.

3 (2) THE STATE, THE DEPARTMENT, THE NEIGHBORHOOD BUSINESS
4 DEVELOPMENT PROGRAM, AND THE FUND SHALL NOT BE LIABLE FOR ANY LOSSES
5 SUSTAINED BY A LENDER ON AN ENROLLED LOAN EXCEPT TO THE EXTENT OF THE
6 LOAN RESERVE ACCOUNT ESTABLISHED UNDER THE CAPITAL ACCESS PROGRAM BY
7 THE LENDER.

8 (G) A PROJECT FINANCED BY A LOAN ENROLLED UNDER THE CAPITAL
9 ACCESS PROGRAM SHALL BE LOCATED IN A PRIORITY FUNDING AREA AS REQUIRED
10 UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE
11 FOR STATE-FUNDED NEIGHBORHOOD REVITALIZATION PROJECTS UNDER THIS
12 ARTICLE.

13 (H) (1) A LENDER SHALL TREAT A DEFAULT ON A LOAN ENROLLED UNDER
14 THE CAPITAL ACCESS PROGRAM NO DIFFERENTLY THAN THE LENDER TREATS
15 DEFAULTS ON OTHER LOANS MADE OR HELD BY THE LENDER.

16 (2) AS A CONDITION FOR WITHDRAWAL BY A LENDER FROM A RESERVE
17 ACCOUNT TO COVER LOSSES ON A DEFAULT UNDER AN ENROLLED LOAN, THE
18 DEPARTMENT MAY REQUIRE A LENDER WHOSE LOSSES ON A LOAN HAVE BEEN
19 COVERED IN FULL BY THE RESERVE ACCOUNT TO AGREE TO ASSIGN TO THE
20 DEPARTMENT, OR TO SUBROGATE THE DEPARTMENT TO, ANY OF THE LENDER'S
21 RIGHT, TITLE, AND INTEREST IN AND TO THE LOAN AND ANY COLLATERAL,
22 SECURITY, OR OTHER RIGHT OF RECOVERY IN CONNECTION WITH THE LOAN.

23 (I) FOLLOWING A DEFAULT UNDER A LOAN ENROLLED UNDER THE CAPITAL
24 ACCESS PROGRAM, THE DEPARTMENT, IN ITS NAME OR IN THE NAME OF THE
25 NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM, MAY ACQUIRE, HOLD,
26 IMPROVE, OPERATE PENDING SALE OR OTHER DISPOSITION, SELL, ASSIGN,
27 EXCHANGE, TRANSFER, CONVEY, LEASE, MORTGAGE, OR OTHERWISE DISPOSE OF OR
28 ENCUMBER REAL OR PERSONAL PROPERTY OR ANY INTEREST THEREIN, OR ANY
29 EVIDENCE OF INDEBTEDNESS PLEDGED AS COLLATERAL FOR THE LOAN,
30 NOTWITHSTANDING THE PROVISIONS OF TITLES 10 THROUGH 17 OF THE STATE
31 FINANCE AND PROCUREMENT ARTICLE.

32 (J) THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY
33 OUT THE CAPITAL ACCESS PROGRAM.

34 [4-207.]4-208.

35 (a) The NEIGHBORHOOD BUSINESS DEVELOPMENT Program shall be
36 operated with moneys in the Neighborhood Business Development Fund, which Fund
37 shall be a continuing, nonlapsing special fund consisting of:

38 (1) Moneys appropriated by the State for the Neighborhood Business
39 Development Program;

1 (2) Any repayment or prepayment of financial assistance [loaned] under
2 THIS SUBTITLE OR UNDER THE STATE ACTION LOANS FOR TARGETED AREAS
3 PROGRAM UNDER the former Subtitle 6, Title 4 of this article; [and]

4 (3) Moneys transferred to the Fund from any other fund as provided for
5 in this article; AND

6 (4) ANY OTHER MONEYS RECEIVED BY THE NEIGHBORHOOD BUSINESS
7 DEVELOPMENT PROGRAM UNDER THIS SUBTITLE.

8 (b) The Department shall use the Fund to provide financial assistance to
9 small businesses and to pay expenses of the NEIGHBORHOOD BUSINESS
10 DEVELOPMENT Program.

11 (c) The State Treasurer shall hold and the State Comptroller shall account for
12 the Neighborhood Business Development Fund. The Fund shall be invested and
13 reinvested. Any investment earnings shall be paid into the Fund.

14 (d) At any time following the first 8 months of any fiscal year, the Department
15 may transfer, subject to approval of the Legislative Policy Committee and subject to
16 the provisions of § 7-209 of the State Finance and Procurement Article,
17 unencumbered moneys in the Neighborhood Business Development Fund to any other
18 fund established under Title 2 of this article.

19 [4-208.] 4-209.

20 (a) A person may not knowingly make or cause any false statement or report
21 to be made in any document required to be furnished to the Department by any
22 agreement relating to [a loan] FINANCIAL ASSISTANCE UNDER THE NEIGHBORHOOD
23 BUSINESS DEVELOPMENT PROGRAM.

24 (b) A person applying for financial assistance UNDER THE NEIGHBORHOOD
25 BUSINESS DEVELOPMENT PROGRAM may not knowingly make or cause any false
26 statement or report to be made for the purpose of influencing the action of the
27 Department on an application or for the purpose of influencing any action of the
28 Department affecting financial assistance already provided.

29 (c) Any person who violates any provision of subsection (a) or (b) of this
30 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
31 \$50,000 or imprisonment not exceeding 5 years or both.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
33 effect October 1, 2000.