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By: **Senators Exum, Britt, Conway, Currie, Gladden, Hogan, Hughes, Jones, Kelley, Lawlah, and McFadden**

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Assigned to: Finance

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Committee Report: Favorable

Senate action: Adopted

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Economic Development - Maryland Small Business Development Financing**  
3 **Authority**

4 FOR the purpose of altering the maximum amount of certain loan guarantees from  
5 the Contract Financing Fund by the Maryland Small Business Development  
6 Financing Authority; altering certain limitations on certain guarantees of  
7 sureties by and on certain bonds of the Authority under the Small Business  
8 Surety Bond Program; altering the scope of businesses that the Authority may  
9 assist under the Equity Participation Investment Program; establishing and  
10 altering certain limitations for investments by the Authority under that  
11 Program; authorizing the Department of Business and Employment  
12 Development to renew, extend, and modify certain contracts for the  
13 administration of certain programs of the Authority; providing for the payment  
14 of certain recoveries of investments and grant payments from the Enterprise  
15 Fund into certain funds of the Authority in a certain manner; and generally  
16 relating to the Maryland Small Business Development Financing Authority.

17 BY repealing and reenacting, without amendments,  
18 Article 83A - Department of Business and Economic Development  
19 Section 5-502(b)  
20 Annotated Code of Maryland  
21 (2003 Replacement Volume and 2004 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article 83A - Department of Business and Economic Development  
24 Section 5-1009(b), 5-1022(a), 5-1024(a), 5-1035(a) and (d), 5-1042, 5-1043,

1 5-1045, and 5-1046(a) and (b)  
2 Annotated Code of Maryland  
3 (2003 Replacement Volume and 2004 Supplement)

4 BY adding to  
5 Article 83A - Department of Business and Economic Development  
6 Section 5-1049 to be under the new part "Part IX. Miscellaneous Receipts  
7 Payable"  
8 Annotated Code of Maryland  
9 (2003 Replacement Volume and 2004 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 5-502.

14 (b) The Fund may consist of any of the following:

15 (1) Moneys appropriated by the State to the Fund;

16 (2) Moneys made available to the Fund through appropriate federal  
17 programs or private contributions;

18 (3) Income from investments that the State Treasurer makes from  
19 moneys in the Fund;

20 (4) Repayments of principal and interest from loans made from the  
21 Fund;

22 (5) Proceeds from the sale, disposition, lease or rental by the  
23 Department of collateral related to any financing provided by the Department under  
24 this subtitle;

25 (6) Premiums, fees, royalties, and repayments of principal, interest and  
26 investment paid to the Department by or on behalf of a business enterprise in which  
27 the Department has made an equity investment, or by or on behalf of an investor  
28 providing an investment guaranteed by the Department under this subtitle;

29 (7) Recovery of any equity investment made by the Department in a  
30 business enterprise, including any arrangement under which the Department's  
31 investment in the business enterprise is recovered through:

32 (i) A requirement that the Department receive a proportion of cash  
33 flow, commissions, royalties, or payments on a patent; or

34 (ii) The repurchase from the Department of any evidence of equity  
35 participation, such as notes, stocks, bonds or debentures;

1 (8) Repayments received from conditional grants extended by the  
2 Department; and

3 (9) Any other moneys made available to the Department.

4 5-1009.

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

9 (2) The Department may:

10 (i) Extend the expiration date of the initial contract to June 30,  
11 2002; [and]

12 (ii) Renew the CONTRACT extended [contract] UNDER ITEM (I) OF  
13 THIS PARAGRAPH for one additional 5-year term;

14 (III) EXTEND THE TERMINATION DATE OF THE CONTRACT IN  
15 EFFECT AS OF JUNE 30, 2007 TO JUNE 30, 2012, AND MODIFY THAT EXTENDED  
16 CONTRACT AS NEEDED; AND

17 (IV) RENEW THE CONTRACT EXTENDED UNDER ITEM (III) OF THIS  
18 PARAGRAPH FOR UP TO TWO ADDITIONAL 5-YEAR TERMS, AND MODIFY THAT  
19 RENEWED AND EXTENDED CONTRACT AS NEEDED.

20 (3) Any extension or renewal contract shall include standards to  
21 evaluate the performance of the private contractor in rendering services under the  
22 contract.

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

26 5-1022.

27 (a) The Authority may utilize the Contract Financing Fund to guarantee a  
28 loan made to an applicant only if:

29 (1) The applicant meets the qualifications required by this subtitle;

30 (2) The loan is to be used to perform a contract, the majority of funding  
31 for which is provided by the federal government or a state government, a local  
32 government, or a utility regulated by the Public Service Commission;

33 (3) The part of the loan to be guaranteed does not exceed [\$500,000]  
34 \$1,000,000; and

35 (4) The loan to be guaranteed is to be used for:

- 1 (i) Working capital; or
- 2 (ii) Equipment needed to perform the contract, the cost of which
- 3 can be repaid from contract proceeds, if the Authority has entered into an agreement
- 4 with the applicant necessary to secure the loan or guaranty.

5 5-1024.

6 (a) The Authority may utilize the Contract Financing Fund to lend money to

7 an applicant only if:

- 8 (1) The applicant meets the requirements of this subtitle;
- 9 (2) The loan does not exceed [\$500,000] \$1,000,000;
- 10 (3) The loan is to be used to perform a contract, the majority of funding
- 11 for which is provided by the federal government or a state government, a local
- 12 government, or a utility regulated by the Public Service Commission; and

13 (4) The loan is to be used for:

- 14 (i) Working capital; or
- 15 (ii) Equipment needed to perform the contract, the cost of which
- 16 can be repaid from contract proceeds, if the Authority has entered into an agreement
- 17 with the applicant necessary to secure the loan.

18 5-1035.

19 (a) Subject to the restrictions of this Part VI, the Authority, on application,

20 may guarantee any surety up to the lesser of 90 percent or [\$900,000] \$1,350,000 of its

21 losses incurred under a bid bond, a payment bond, or a performance bond on any

22 contract, the majority of the funding for which is provided by the federal government

23 or a state government, a local government or a utility regulated by the Public Service

24 Commission.

25 (d) (1) The Authority may execute and perform bid, performance, and

26 payment bonds as a surety for the benefit of a principal in connection with any

27 contract, the majority of the funding for which is provided by the federal government

28 or a state government, a local government, or a utility regulated by the Public Service

29 Commission.

30 (2) The bonds:

- 31 (i) May not exceed [\$750,000] \$1,000,000 each; and
- 32 (ii) Shall be subject to the approval of the Authority, based on the
- 33 bond worthiness of the principal as determined by the Authority on review of an
- 34 application.

1 (3) The monetary limit in this subsection does not apply if the sources of  
2 funding for the bonds are grants.

3 5-1042.

4 The General Assembly finds that:

5 (1) Franchises and technology-based businesses have proven to be a fast  
6 growing and reliable form of successful business expansion and successful new  
7 business creation;

8 (2) Franchises and technology-based businesses play a major role in the  
9 economy of the State of Maryland and have been a continuing source of increasing tax  
10 revenues and job opportunities;

11 (3) The growth of [franchises and] FRANCHISES, technology-based  
12 businesses, AND OTHER BUSINESSES should be encouraged in the State's economy  
13 and should be an integral part of the State's economic development effort;

14 (4) Socially or economically disadvantaged persons often lack adequate  
15 capital and are unable to obtain financing from financial institutions or venture  
16 capital firms to begin and develop a [franchise or] FRANCHISE, a technology-based  
17 business, OR OTHER TYPE OF BUSINESS, or to purchase an existing business; and

18 (5) It is in the interest of the public welfare and purpose to promote the  
19 creation and viability of franchises and technology-based businesses, THE  
20 DEVELOPMENT OF OTHER BUSINESSES, and the purchase of existing businesses, by  
21 socially or economically disadvantaged persons.

22 5-1043.

23 The purpose of the Equity Participation Investment Program is:

24 (1) To encourage and aid in the creation and development of [franchises  
25 and] FRANCHISES, technology-based businesses, AND OTHER BUSINESSES, and in  
26 the acquisition of existing businesses, in the State by socially or economically  
27 disadvantaged persons; and

28 (2) To assist small businesses that, because they do not meet the  
29 established credit criteria of financial institutions, are unable to obtain adequate  
30 business financing on reasonable terms through normal financing channels.

31 5-1045.

32 For the purposes of administering the Program, the Authority may:

33 (1) Provide equity participation financing for the establishment and  
34 development of [franchises and] FRANCHISES, technology-based businesses, AND  
35 OTHER BUSINESSES, and the acquisition of existing businesses, by socially or  
36 economically disadvantaged persons in the State;

- 1           (2)     Buy, hold, and sell qualified securities;
- 2           (3)     Prepare, publish, and distribute, with or without charge as the  
3 Authority may determine, technical studies, reports, and other materials it considers  
4 appropriate; and
- 5           (4)     Provide and pay for any advisory services and technical assistance  
6 necessary or desirable to carry out the purposes of the Program.

7 5-1046.

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

- 13           (1)     A description of the franchisor, technology-based business, OTHER  
14 BUSINESS, or existing business and its management, product, and market;
- 15           (2)     A statement of the amount, immediacy of need, and projected use of  
16 the capital required;
- 17           (3)     A statement of the potential economic impact of the purchase;
- 18           (4)     Information that relates to the satisfaction of the applicant's  
19 requirements of subsections (f) and (g) of this section; and
- 20           (5)     Any other information the Authority requires.

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

23           (1)     The Authority may not:

- 24                   (i)     1.     Own securities representing more than 45 percent of the  
25 voting stock of any [franchise or] FRANCHISE, technology-based business, OR OTHER  
26 BUSINESS; or
- 27                                 2.     Own an interest greater than 45 percent in any [franchise  
28 or] FRANCHISE, technology-based business, OR OTHER BUSINESS; or
- 29                   (ii)    1.     Own securities representing more than 25 percent of the  
30 voting stock of any enterprise acquiring an existing business; or
- 31                                 2.     Own an interest greater than 25 percent in any enterprise  
32 acquiring an existing business.

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

1 (i) 1. [\$500,000] \$1,000,000 for any franchise; or  
 2 2. 45 percent of the total initial investment in the franchise;

3 (ii) 1. [\$500,000] \$1,000,000 for any enterprise acquiring an  
 4 existing business; or

5 2. 25 percent of the total investment in the enterprise  
 6 acquiring an existing business; or

7 (iii) [\$500,000] \$1,000,000 for a technology-based business OR  
 8 OTHER BUSINESS.

9 (3) (i) The Authority shall find that there is a reasonable probability  
 10 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  
 15 enterprise acquiring an existing business; [or]

16 3. 10 years of the equity participation financing in a  
 17 technology-based business; OR

18 4. 7 YEARS OF THE EQUITY PARTICIPATION FINANCING IN  
 19 ANY OTHER TYPE OF BUSINESS.

20 (4) The Authority's recovery shall be the greater of the current value of  
 21 the percentage of the equity investment in the enterprise or the amount of the initial  
 22 investment in the enterprise.

23 (5) The value of the business entity at the time of recovery shall be  
 24 determined after obtaining at least 1 independent appraisal of the value from an  
 25 appraiser selected from a list of at least 3 appraisers supplied by the Authority.

26 PART IX. MISCELLANEOUS RECEIPTS PAYABLE.

27 5-1049.

28 (A) NOTWITHSTANDING § 5-502(B) OF THIS TITLE OR ANY OTHER LAW, THE  
 29 FOLLOWING MONEY SHALL BE PAYABLE INTO THE FUNDS UNDER THIS SUBTITLE:

30 (1) ANY RECOVERY OF INVESTMENTS MADE UNDER § 5-503 OF THIS  
 31 TITLE THAT WERE FUNDED BY A TRANSFER OF MONEY FROM THE FUNDS UNDER  
 32 THIS SUBTITLE TO THE ENTERPRISE FUND, INCLUDING AN INVESTMENT IN MMG  
 33 VENTURES LLP; AND

1           (2)     ANY REPAYMENT OF A GRANT MADE UNDER § 5-503 OF THIS TITLE  
2 THAT WAS FUNDED BY A TRANSFER OF MONEY FROM THE FUNDS UNDER THIS  
3 SUBTITLE TO THE ENTERPRISE FUND.

4     (B)     THE AUTHORITY SHALL DETERMINE THE PROPORTION OF THE RECOVERY  
5 OR REPAYMENT PAYABLE UNDER SUBSECTION (A) OF THIS SECTION THAT SHALL BE  
6 DEPOSITED INTO EACH OF THE FUNDS UNDER THIS SUBTITLE.

7     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 July 1, 2005.