# CHAPTER 635

**(House Bill 989)**

AN ACT concerning

**Maryland Small Business Development Financing Authority – Financing Limitations**

FOR the purpose of altering certain limitations on lending, guarantees, and equity participation financing by the Maryland Small Business Development Financing Authority in certain transactions; altering the maximum amount of a loan guarantee that the Authority may make using the Contract Financing Fund; altering the maximum amount of a loan guarantee that the Authority may make using the Guaranty Fund; altering the scope of contracts for which the Authority may act as a surety and guarantee losses incurred by certain sureties under the Small Business Surety Bond Program and certain limitations; altering certain limitations on the amount of equity and investment that the Authority may own in certain businesses and franchises under the equity participation financing program; altering certain limitations on the qualifications of certain enterprises and principals seeking to acquire certain existing businesses in connection with equity participation financing provided by the Authority; *requiring that certain reports include a certain evaluation; requiring that the Authority submit certain reports to certain committees of the General Assembly;* providing for the effective date of certain provisions of this Act; and generally relating to the Maryland Small Business Development Financing Authority.

BY repealing and reenacting, with amendments,
Article 83A – Department of Business and Economic Development
Section 5–1022(a), 5–1024(a), 5–1029(a), 5–1035(a) and (d)(1), and 5–1046
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,
Article 83A – Department of Business and Economic Development
Section 5–1035(a)
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)
(As enacted by Section 1 of this Act)

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

**Article 83A – Department of Business and Economic Development**

5–1022.

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

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

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

(3) The **[**part of the loan to be guaranteed**]** **MAXIMUM AMOUNT PAYABLE BY THE AUTHORITY UNDER ITS GUARANTEE** does not exceed **[**$1,000,000**]** **$2,000,000**; and

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

(i) Working capital; or

(ii) Equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan or guaranty.

5–1024.

(a) The Authority may utilize the Contract Financing Fund to lend money to an applicant only if:

(1) The applicant meets the requirements of this subtitle;

(2) The loan does not exceed **[**$1,000,000**]** **$2,000,000**;

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

(4) The loan is to be used for:

(i) Working capital; or

(ii) Equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan.

5–1029.

(a) The Authority may utilize the Guaranty Fund to guarantee up to 80 percent of the principal of and interest on a long–term loan made by a financial institution to an applicant only if:

(1) The applicant meets the requirements of § 5–1025 and has not violated any provisions of § 5–1031 of this subtitle;

(2) The loan amount is not less than $5,000 and the maximum amount payable by the Authority under its guarantee does not exceed **[**$1,000,000**]** **$2,000,000**;

(3) The purposes for which the loan is to be used include:

(i) Working capital;

(ii) Refinancing existing debt of the applicant;

(iii) The acquisition and related installation of machinery or equipment;

(iv) Necessary improvements to real property leased or owned in fee simple by the applicant; or

(v) The acquisition of real property to be owned in fee simple by the applicant if:

1. The real property is to be used in the operation of the applicant's trade or business for which the loan and guarantee are sought; and

2. A lien is placed on the real property by the financial institution or the Authority;

(4) The loan shall mature in not more than 10 years from the date of closing of the loan; and

(5) The rate of interest on the loan is no greater than the rate of interest determined by the Authority to be the monthly weighted average of the prime lending rate, plus 2 percent, prevailing from time to time in the City of Baltimore on unsecured commercial loans.

5–1035.

(a) Subject to the restrictions of this Part VI, the Authority, on application, may guarantee any surety up to the lesser of 90 percent or **[**$1,350,000**]** **$5,000,000** of its losses incurred under a bid bond, a payment bond, or a performance bond on any contract**[**, the majority of the funding for which is provided**]** **FINANCED** by the federal government or a state government, a local **[**government**]** **GOVERNMENT, A PRIVATE ENTITY,** or a utility regulated by the Public Service Commission.

(d) (1) The Authority may execute and perform bid, performance, and payment bonds as a surety for the benefit of a principal in connection with any contract**[**, the majority of the funding for which is provided**]** **FINANCED** by the federal government or a state government, a local government, **A PRIVATE ENTITY,** or a utility regulated by the Public Service Commission.

5–1046.

(a) Under the Program, the Authority may provide equity participation financing, including the purchase of qualified securities issued by a franchise, by a technology–based business, **[**or**]** by an enterprise acquiring an existing business, **OR BY ANY OTHER TYPE OF BUSINESS,** only after the enterprise has submitted an application that contains a business plan, including:

(1) A description of the franchisor, technology–based business, other business, or existing business and its management, product, and market;

(2) A statement of the amount, immediacy of need, and projected use of the capital required;

(3) A statement of the potential economic impact of the purchase;

(4) Information that relates to the satisfaction of the applicant's requirements of subsections (f) and (g) of this section; and

(5) Any other information the Authority requires.

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

(1) The Authority may not:

(i) 1. Own securities representing more than **[**45**] 49** percent of the voting stock of any franchise, technology–based business, or other business; or

2. Own an interest greater than **[**45**] 49** percent in any franchise, technology–based business, or other business; or

(ii) 1. Own securities representing more than **[**25**] 49** percent of the voting stock of any enterprise acquiring an existing business; or

2. Own an interest greater than **[**25**] 49** percent in any enterprise acquiring an existing business.

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

(i) 1. **[**$1,000,000**] $2,000,000** for any franchise; or

2. **[**45**] 49** percent of the total initial investment in the franchise;

(ii) 1. **[**$1,000,000**] $2,000,000** for any enterprise acquiring an existing business; or

2. **[**25**] 49** percent of the total investment in the enterprise acquiring an existing business; or

(iii) **[**$1,000,000**] $2,000,000** for a technology–based business or other business.

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

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

1. 7 years of the equity participation financing in a franchise;

2. 7 years of the equity participation financing in an enterprise acquiring an existing business;

3. 10 years of the equity participation financing in a technology–based business; or

4. 7 years of the equity participation financing in any other type of business.

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

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

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

(d) When **[**applying**]** **AN ENTERPRISE APPLIES** to the Authority to acquire an existing business, **[**an**]** **THE** enterprise **OR ITS PRINCIPALS** shall **[**have**]** **MEET** the following minimum qualifications:

(1) The enterprise or its principals shall have**[**:

(i) A minimum net worth of at least $75,000 pledged as security;

(ii) At least $75,000 in equity investment; or

(iii) A combination of a minimum net worth pledged as security and**]** an equity investment**[**, totaling at least $75,000**]** **EQUAL TO AT LEAST 5 PERCENT OF THE TOTAL COST OF THE ACQUISITION**; and

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

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

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

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

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

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

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

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

(f) If the applicant enterprise is an individual, the applicant shall satisfy the Authority that:

(1) The applicant is of good moral character;

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

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

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

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

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

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

(iv) Does not meet the established credit or investment criteria of at least one financial institution.

(g) If the applicant enterprise is other than a sole proprietorship, at least 51 percent of the enterprise shall be owned by individuals who meet the qualifications for applicants under subsection (f) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

**Article 83A – Department of Business and Economic Development**

5–1035.

(a) Subject to the restrictions of this Part VI, the Authority, on application, may guarantee any surety up to the lesser of 90 percent or **[**$5,000,000**]** **$1,350,000** of its losses incurred under a bid bond, a payment bond, or a performance bond on any contract financed by the federal government or a state government, a local government, a private entity, or a utility regulated by the Public Service Commission.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of the termination provision specified in Section 4 of Chapter 299 of the Acts of the General Assembly of 2006. This Act may not be interpreted to have any effect on that termination provision.

<u>*SECTION 4. AND BE IT FURTHER ENACTED, That the Maryland Small Business Development Financing Authority shall:*</u>

<u>*(1) include in the annual reports required to be made by December 31, 2007, and December 31, 2008, under Article 83A, § 5–1011 of the Code an evaluation of the*</u>

*impact of the changes enacted by Section 1 of this Act in the levels of assistance the Authority may provide, on:*

*(i) the number and amounts of loans and guarantees made by the Authority during the periods covered by the reports; and*

*(ii) the ability of the Authority to adequately assist eligible businesses under each financing program administered by the Authority; and*

*(2) provide the annual reports to the Senate Finance Committee and the House Economic Matters Committee.*

SECTION ~~4.~~ *5.* AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 3 of this Act, this Act shall take effect October 1, 2007.

**Approved by the Governor, May 17, 2007.**