

CHAPTER 73

(House Bill 406)

AN ACT concerning

Business and Economic Development – Financing Transactions

FOR the purpose of authorizing the Department of Business and Economic Development to expend funds and take certain actions to protect the interests of the Department in certain financing transactions; authorizing the Department to receive certain repayments and returns on investment for certain financings made to local governments from the Maryland Economic Development Assistance Fund without triggering certain new financing requirements; providing for the effective date of certain provisions of this Act; providing for the termination of certain provisions of this Act; and generally relating to financing transactions of the Department of Business and Economic Development.

BY adding to

Article 83A – Department of Business and Economic Development
Section 5–107
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,

Article 83A – Department of Business and Economic Development
Section 5–1405
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Economic Development
Section 5–107
Annotated Code of Maryland
(As enacted by Chapter 306 (H.B. 1050) of the Acts of the General Assembly of 2008)

BY repealing and reenacting, with amendments,

Article – Economic Development
Section 5–319(c)
Annotated Code of Maryland
(As enacted by Chapter 306 (H.B. 1050) of the Acts of the General Assembly of 2008)

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

5–107.

THE DEPARTMENT MAY TAKE ALL REASONABLE ACTIONS TO PROTECT THE INTERESTS OF THE DEPARTMENT IN ITS INVESTMENTS, COLLATERAL, LOANS, GRANTS, AND OTHER PROPERTY OR INTERESTS RELATING TO FINANCING TRANSACTIONS, INCLUDING EXPENDING FUNDS FROM ITS GENERAL AND SPECIAL FUNDS TO ACQUIRE, DISPOSE OF, OPERATE, PROTECT, ENHANCE, OR MAINTAIN COLLATERAL OR LIENS.

5–1405.

(a) The Department may use moneys in the Fund to:

(1) Provide financial assistance to eligible applicants; and

(2) Pay expenses for administrative, actuarial, legal, and technical services for the Fund.

(b) Financial assistance from the Fund may be used only to finance costs incurred for:

(1) Acquisition or construction of a building or real estate, and associated development and carrying costs;

(2) Acquisition, construction, or installation of machinery, equipment, furnishings, fixtures, leasehold improvements, site improvements, or infrastructure improvements, including rail line enhancements on or to the site of an economic development project, and associated development and carrying costs;

(3) Working capital for significant strategic economic development opportunities, arts and entertainment enterprises, or arts and entertainment projects;

(4) Redevelopment of qualified brownfields sites;

(5) (i) Except as provided in item (ii) of this paragraph, up to 50% of the costs of renovations, construction, or purchase of real property, fixtures, or equipment related to a child care facility, but not for refinancing existing loans, working capital, supplies, or inventory; or

(ii) A business that has received or will receive a day care loan insured by the Maryland Industrial Development Financing Authority; such businesses shall be limited to financial assistance from the Fund of not more than 20% of the costs described in item (i) of this paragraph;

(6) If supported by a resolution adopted by the governing body of the jurisdiction in which a project may be located, costs of feasibility studies;

(7) Up to 50% of the costs of preparing a county's or municipality's strategy or plan for economic development, not to exceed a total of \$50,000 in a 3-year period; and

(8) Any project intended to assist businesses in areas declared federal disaster areas, but only if the Fund received an application for financial assistance within 1 year after the declaration of the federal disaster area.

(c) (1) Financial assistance from the Fund:

(i) May not exceed the lesser of \$10,000,000 or 20% of the Fund balance;

(ii) Except as provided in item (iii) of this paragraph, may not exceed 70% of the total costs of the project being financed;

(iii) May constitute 100% of the total costs of the project being financed if:

1. The recipient is the Maryland Economic Development Corporation;

2. The financial assistance is for an arts and entertainment enterprise or arts and entertainment project; or

3. The financial assistance is for a qualified distressed county project;

(iv) If a loan for a significant strategic economic development opportunity or for a specialized economic development opportunity, shall carry an interest rate below the market rate of interest, as determined by the Department;

(v) If a loan for a local economic development opportunity or to a local government for a project that is not in a qualified distressed county, shall carry an interest rate not exceeding one-eighth of one percent plus the net interest cost of the most recent State general obligation bond issue preceding the approval of the loan;

(vi) Shall not bear a rate of interest less than 3% unless the project funded by a loan is located in an area of high unemployment or the Department determines that the borrower is carrying out a compelling economic development initiative;

(vii) If a loan for a qualified distressed county project, shall carry a rate of interest determined by the Department or the Authority; and

(viii) May not be used to refinance existing debt.

(2) Loans from the Fund may not be for a term exceeding:

(i) For working capital – 3 years;

(ii) For financing machinery, equipment, furnishings, or fixtures – the lesser of 15 years or the useful life of the asset, as determined by the Department;

(iii) For financing the construction or acquisition of buildings and real estate – 25 years; and

(iv) For financial assistance for redevelopment of a qualified brownfields site or a qualified distressed county project – a term approved by the Department or the Authority.

(3) For loans from the Fund the Department may:

(i) Waive interest during the first 2 years of a loan term; or

(ii) Upon a default by the borrower, impose an interest rate that exceeds the limits set forth in paragraph (1) of this subsection.

(4) Proceeds of investments from the Fund may be expended only on costs described in subsection (b) of this section.

(d) To be eligible for financial assistance from the Fund, an applicant must be:

(1) An individual, private business, not for profit entity, or local government which:

(i) Must use the requested financial assistance for a project in an eligible industry sector, unless the applicant is a local government intending to use the financial assistance to carry out a project that:

1. Does not benefit a particular private sector entity; or

2. Is located in a qualified distressed county;

(ii) Intends to use the requested financial assistance for a project that has a strong potential for expanding or retaining employment opportunities in the State; and

(iii) Submits to the Department an application containing:

1. Any information the Department or the Authority deems necessary in evaluating the request for financial assistance; and

2. For a qualified distressed county project, the following, in form and content acceptable to the Department:

A. A marketing plan designed to market the project to prospective businesses;

B. A statement of planned marketing expenditures as a percent of the total financial assistance amount requested; and

C. A plan for the project that is consistent with the county's local strategic economic development plan as to the location and type of project; or

(2) A local economic development fund that meets the criteria set forth in § 5-1407 of this subtitle.

(e) Subject to the restrictions of this subtitle, the Department or the Authority shall impose such terms and conditions on financial assistance provided from the Fund as either deems appropriate.

(f) For a local economic development opportunity, the local government of the jurisdiction in which the project is located must provide:

(1) A formal resolution of the governing body of the jurisdiction in which the project is located endorsing the financial assistance to be provided from the Fund; and

(2) Either or both of the following, as determined by the Department or the Authority, to evidence its support of the project:

(i) A guarantee, secured by the full faith and credit of the county or municipality in which the project is located, of all or a portion of the amount of the financial assistance; or

(ii) The financing of a portion of the costs of the project equal to at least 10% of the financial assistance to be provided from the Fund.

(g) (1) Financial assistance provided to a local government must be approved by a formal resolution of:

(i) The governing body of the jurisdiction in which the project is located; or

(ii) Except as provided in paragraph (2) of this subsection, if the recipient of the financial assistance is the Maryland Economic Development Corporation, its Board of Directors.

(2) If the recipient of the financial assistance is the Maryland Economic Development Corporation for a qualified distressed county project, the financial assistance must be approved by formal resolutions of both the board of directors of the Maryland Economic Development Corporation and the governing body of the jurisdiction in which the project is located.

(3) A project that is funded by a grant from the Fund to a local government, and carried out by the local government, must be consistent with the strategy or plan for economic development of the county or municipality in which the project is located.

(4) IF THE DEPARTMENT PROVIDES FINANCIAL ASSISTANCE TO A LOCAL GOVERNMENT FOR A PROJECT, AN INTEREST IN THAT PROJECT IS LATER TRANSFERRED TO A THIRD PARTY, AND THE TRANSFER OF THE INTEREST IS FINANCED BY THE LOCAL GOVERNMENT:

(I) THE LOCAL GOVERNMENT MAY ASSIGN THE FINANCING DOCUMENTS TO THE DEPARTMENT AS A REPAYMENT OF OR RETURN ON THE DEPARTMENT'S FINANCIAL ASSISTANCE TO THE LOCAL GOVERNMENT; AND

(II) THE ASSIGNMENT MAY NOT BE DEEMED A NEW FINANCING UNDER THIS SUBTITLE.

(h) (1) Financial assistance from the Fund not exceeding \$2,500,000 may be approved by the Secretary.

(2) Financial assistance from the Fund exceeding \$2,500,000 shall be approved by the Authority.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, the Secretary may approve financial assistance exceeding \$2,500,000 for a qualified distressed county project.

(i) The Department shall periodically review its portfolio in an effort to ensure:

- (1) Equitable funds distribution among Maryland's counties;
- (2) Adequate funding for qualified distressed county projects; and

(3) That no particular qualified distressed county benefits disproportionately from financial assistance to qualified distressed counties under this subtitle.

(j) The Department shall report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly before January 1 of each year on the number, amount, use, and economic benefits of financial assistance awarded under this subtitle.

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

Article – Economic Development

5-107.

THE DEPARTMENT MAY TAKE ALL REASONABLE ACTIONS TO PROTECT THE INTERESTS OF THE DEPARTMENT IN ITS INVESTMENTS, COLLATERAL, LOANS, GRANTS, AND OTHER PROPERTY OR INTERESTS RELATING TO FINANCING TRANSACTIONS, INCLUDING EXPENDING FUNDS FROM ITS GENERAL AND SPECIAL FUNDS TO ACQUIRE, DISPOSE OF, OPERATE, PROTECT, ENHANCE, OR MAINTAIN COLLATERAL OR LIENS.

5-319.

(c) (1) Except as provided in paragraph (2) of this subsection, financial assistance provided to a local government or the Corporation for a project shall be approved by a formal resolution of:

(i) the governing body of the jurisdiction in which the project is located; or

(ii) if the recipient of the financial assistance is the Corporation, its board of directors.

(2) If the recipient of the financial assistance is the Corporation for a qualified distressed county project, the financial assistance shall be approved by

formal resolutions of both the board of directors of the Corporation and the governing body of the jurisdiction in which the project is located.

(3) A project that is funded by a grant from the Fund to a local government or the Corporation, and carried out by the local government or the Corporation, shall be consistent with the strategy or plan for economic development of the county or municipal corporation in which the project is located.

(4) IF THE DEPARTMENT PROVIDES FINANCIAL ASSISTANCE TO A LOCAL GOVERNMENT FOR A PROJECT, AN INTEREST IN THAT PROJECT IS LATER TRANSFERRED TO A THIRD PARTY, AND THE TRANSFER OF THE INTEREST IS FINANCED BY THE LOCAL GOVERNMENT:

(I) THE LOCAL GOVERNMENT MAY ASSIGN THE FINANCING DOCUMENTS TO THE DEPARTMENT AS A REPAYMENT OF OR RETURN ON THE DEPARTMENT'S FINANCIAL ASSISTANCE TO THE LOCAL GOVERNMENT; AND

(II) THE ASSIGNMENT MAY NOT BE CONSIDERED A NEW FINANCING UNDER THIS SUBTITLE.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of Chapter 306 (H.B. 1050) of the Acts of the General Assembly of 2008. If Section 2 of this Act takes effect, Section 1 of this Act shall be abrogated and of no further force and effect.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 3 of this Act, this Act shall take effect July 1, 2008.

Approved by the Governor, April 8, 2008.