

Chapter 585

(Senate Bill 792)

AN ACT concerning

~~State Procurement – Banking Services Preference~~ Linked Deposit Program for Small Businesses – Lend Local Act of 2012

FOR the purpose of ~~requiring the State Treasurer, when deciding whether to designate or make an agreement with a financial institution to provide certain banking services to the State or an agency of the State, to consider whether the financial institution is operating in the State with certain total assets and commits to make loans to small businesses in the State in an aggregate amount of at least a certain percentage of certain incremental funds; and generally relating to the procurement of banking services by the State~~ establishing a Linked Deposit Program for Small Businesses in the Department of Housing and Community Development for a certain purpose; specifying that certain loans qualify under the Program; requiring the Department of Housing and Community Development to confirm with the Department of General Services that certain loans are made to certain businesses; requiring the Department of Housing and Community Development to establish certain procedures for a certain notification; requiring the Department of Housing and Community Development to receive loan applications from small businesses and forward loan applications to lenders; requiring the Department of Housing and Community Development to require small businesses to notify the Department of Housing and Community Development concerning final loan disposition; requiring the Department of Housing and Community Development to report annually to the Governor, the Treasurer, and the General Assembly on the overall performance of the Program; authorizing the Treasurer to establish the Program for investment of deposits in certain financial institutions; authorizing the Treasurer to make certain interest bearing deposits; authorizing the Treasurer to accept a rate that is a certain percent below current market rates or a certain index; authorizing the Treasurer to use up to a certain amount to make certain interest bearing deposits; requiring the Treasurer to reduce a certain loan amount on a certain notification; prohibiting a certain small business from being considered unqualified for certain purposes under certain circumstances; providing that a certain loan is not a debt of the State or a pledge of the credit of the State; providing that the Treasurer and the State are not liable to certain financial institutions for certain payments of a loan assisted by a linked deposit; authorizing the Treasurer and the Department of Housing and Community Development to adopt certain regulations; requiring the Treasurer to meet with representatives from the Maryland banking industry and certain related stakeholders for certain purposes; requiring the Treasurer to report to the General Assembly on or before a certain date; and generally

relating to the establishment of a Linked Deposit Program for Small Businesses.

~~BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 6–201(a), (b), (c), and (f)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)~~

~~BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–203
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)~~

BY adding to
Article – State Finance and Procurement
Section 6–212
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

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

Article – State Finance and Procurement

~~6–201.~~

- ~~(a) In this subtitle the following words have the meanings indicated.~~
- ~~(b) “Banking institution” means an institution that is incorporated under the laws of the State as a State bank, trust company, or savings bank.~~
- ~~(c) “Financial institution” means:~~
- ~~(1) any banking institution;~~
 - ~~(2) any national banking association;~~
 - ~~(3) an institution that is incorporated under the laws of any other state as a bank; and~~
 - ~~(4) an institution that is incorporated under the laws of this State or of the United States as a savings and loan association.~~

~~(f) "National banking association" means an institution that is incorporated under federal law as a bank.~~

~~6-203.~~

~~(a) The Treasurer shall give 15% of the weight of the decision to the standards established in this section in deciding whether to:~~

~~(1) designate a financial institution as a depository for State money under § 6-205 of this subtitle; and~~

~~(2) make an agreement with a financial institution for a banking service under § 6-220 of this subtitle.~~

~~(b) (1) The Treasurer shall consider whether the financial institution received a rating of "needs improvement" or "substantial noncompliance" in its most recent examination under the federal Community Reinvestment Act of 1977, P.L. Number 95-128.~~

~~(2) If a financial institution operates in a state other than Maryland, the Treasurer shall consider Maryland-specific information that is provided within the assessment area section of the Community Reinvestment Act report.~~

~~(c) (1) The Treasurer shall consider whether, during the previous 5 years, a court in Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.~~

~~(2) The Treasurer may consider whether, during the previous 5 years, a court outside Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.~~

~~(3) The Treasurer may determine how to assess a violation under paragraph (1) or (2) of this subsection if the violation was committed by:~~

~~(i) an affiliate of the financial institution; or~~

~~(ii) an entity acquired by the financial institution.~~

~~(d) The Treasurer shall consider whether the financial institution has demonstrated that during the previous 5 years, the financial institution has:~~

~~(1) successfully made loans in Maryland through State or federal lending programs designed to assist small and minority-owned businesses;~~

~~(2) had an active outreach program to assist small and minority owned businesses through which the financial institution has made efforts in Maryland; and~~

~~(3) established strategic partnerships in Maryland with entities whose mission is to provide technical assistance to small and minority owned businesses.~~

~~(E) THE TREASURER SHALL CONSIDER WHETHER THE FINANCIAL INSTITUTION:~~

~~(1) IS OPERATING IN THE STATE WITH TOTAL ASSETS OF LESS THAN \$5,000,000,000; AND~~

~~(2) COMMITS TO MAKE LOANS TO SMALL BUSINESSES IN THE STATE IN AN AGGREGATE AMOUNT OF AT LEAST 200% OF THE INCREMENTAL FUNDS THAT ARE DEPOSITED BY THE TREASURER.~~

6-212.

(A) (1) THERE IS A LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES IN THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

(2) THE PURPOSE OF THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES IS TO STIMULATE OPPORTUNITIES FOR SMALL BUSINESSES TO HAVE ACCESS TO CREDIT BY ASSISTING THESE BUSINESSES IN OBTAINING LOANS AT LOWER THAN MARKET INTEREST RATES.

(B) A LOAN QUALIFIES UNDER THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES IF THE LOAN:

(1) SATISFIES THE LENDING CRITERIA OF THE FINANCIAL INSTITUTION;

(2) HAS A TERM NOT EXCEEDING 10 YEARS;

(3) IS MADE TO A SMALL BUSINESS QUALIFIED UNDER TITLE 14, SUBTITLE 5 OF THIS ARTICLE;

(4) HAS AN INTEREST RATE THAT IS 2 PERCENTAGE POINTS BELOW THE INTEREST RATE THE FINANCIAL INSTITUTION WOULD CHARGE FOR A LOAN FOR A SIMILAR PURPOSE AND A SIMILAR TERM; AND

(5) HAS POINTS OR FEES CHARGED AT LOAN CLOSING NOT EXCEEDING 1 PERCENT OF THE LOAN AMOUNT.

(C) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT SHALL:

(1) CONFIRM WITH THE DEPARTMENT OF GENERAL SERVICES THAT EACH LOAN UNDER THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES IS MADE TO A BUSINESS THAT QUALIFIES AS A SMALL BUSINESS;

(2) ESTABLISH PROCEDURES FOR NOTIFICATION BY THE DEPARTMENT OF GENERAL SERVICES IF A BUSINESS THAT HAS AN OUTSTANDING BALANCE OF A LOAN UNDER THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES NO LONGER QUALIFIES AS A SMALL BUSINESS;

(3) REQUIRE SMALL BUSINESSES AND LENDERS TO NOTIFY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CONCERNING FINAL LOAN DISPOSITION; AND

(4) REPORT ANNUALLY TO THE GOVERNOR, THE TREASURER, AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON OVERALL PERFORMANCE OF THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES.

(D) THE TREASURER MAY ESTABLISH THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES FOR INVESTMENT OF DEPOSITS IN ANY FINANCIAL INSTITUTION THAT:

(1) THE TREASURER HAS DESIGNATED AS A DEPOSITORY FOR STATE MONEY; AND

(2) MAKES A LOAN IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(E) (1) THE TREASURER MAY MAKE ONE OR MORE INTEREST BEARING DEPOSITS THAT ARE EQUAL TO:

(I) THE AMOUNT OF THE LOAN MADE BY THE FINANCIAL INSTITUTION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION; OR

(II) THE AGGREGATE AMOUNT OF TWO OR MORE LOANS MADE BY ONE OR MORE FINANCIAL INSTITUTIONS IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(2) IN MAKING AN INTEREST BEARING DEPOSIT UNDER THIS SUBSECTION, THE TREASURER MAY ACCEPT A RATE THAT IS 2 PERCENTAGE POINTS BELOW CURRENT MARKET RATES OR AN INDEX SELECTED BY THE TREASURER.

(3) THE TREASURER MAY USE UP TO \$50,000,000 TO MAKE INTEREST BEARING DEPOSITS IN AN AMOUNT EQUIVALENT TO THE AMOUNT FINANCIAL INSTITUTIONS LOAN TO QUALIFIED SMALL BUSINESSES.

(F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON NOTIFICATION BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT THAT A SMALL BUSINESS PARTICIPATING IN THE LINKED DEPOSIT PROGRAM FOR SMALL BUSINESSES NO LONGER QUALIFIES AS A SMALL BUSINESS UNDER TITLE 14, SUBTITLE 5 OF THIS ARTICLE, THE TREASURER SHALL REDUCE THE AMOUNT OF THE INTEREST BEARING DEPOSIT WITH THE PARTICIPATING FINANCIAL INSTITUTION BY THE OUTSTANDING BALANCE OF THE LOAN MADE UNDER THIS SECTION TO THE SMALL BUSINESS THAT NO LONGER QUALIFIES UNDER TITLE 14, SUBTITLE 5 OF THIS ARTICLE.

(2) A SMALL BUSINESS THAT LOSES ITS QUALIFICATION DUE TO REVENUE OR EMPLOYEE GROWTH MAY NOT BE CONSIDERED UNQUALIFIED FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION.

(G) (1) A LOAN ASSISTED BY A LINKED DEPOSIT IS NOT A DEBT OF THE STATE OR A PLEDGE OF THE CREDIT OF THE STATE.

(2) THE TREASURER AND THE STATE ARE NOT LIABLE TO ANY FINANCIAL INSTITUTION FOR PAYMENT OF THE PRINCIPAL OR INTEREST ON A LOAN ASSISTED BY A LINKED DEPOSIT.

(H) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE TREASURER MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The State Treasurer shall meet with representatives from the Maryland banking industry and any related stakeholders and identify:

(1) impediments to participating in the procurement process for the selection of designated State depositories, including State agency and linked-deposit programs; and

(2) any possible solutions to any impediments identified under item (1) of this subsection.

(b) On or before December 31, 2012, the Treasurer shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the results of the meetings with representatives from the Maryland banking industry and any related stakeholders to the General Assembly.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 22, 2012.