

# HOUSE BILL 583

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By: **Delegate Davis**

Introduced and read first time: January 29, 2014

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Small Business Development Financing Authority – Investment**  
3 **and Recovery Limits**

4 FOR the purpose of repealing the definitions of “franchise” and “technology-based  
5 business”; making certain conforming changes to certain findings of the General  
6 Assembly, the purpose of the Equity Participation Investment Program, the  
7 authority of the Maryland Small Business Development Financing Authority,  
8 and the contents of a certain business plan; repealing certain distinctions in the  
9 amount the Authority may invest in certain enterprises using equity  
10 participation financing; altering the amount the Authority may invest using  
11 equity participation financing; repealing certain distinctions in the time period  
12 over which the Authority’s investment is recoverable; altering the  
13 circumstances under which the value of a certain business entity is determined  
14 after obtaining a certain independent appraisal; and generally relating to the  
15 Maryland Small Business Development Financing Authority.

16 BY repealing and reenacting, with amendments,  
17 Article – Economic Development  
18 Section 5–549, 5–550, 5–553, 5–556, and 5–557(a)  
19 Annotated Code of Maryland  
20 (2008 Volume and 2013 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – Economic Development  
23 Section 5–551, 5–552, and 5–554  
24 Annotated Code of Maryland  
25 (2008 Volume and 2013 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Economic Development**

2 5–549.

3 (a) In this part the following words have the meanings indicated.

4 (b) (1) “Enterprise” means a business entity proposing to carry on a  
5 business in the State that meets the requirements of § 5–526 of this subtitle.

6 (2) “Enterprise” includes:

7 (i) a sole proprietorship;

8 (ii) a partnership;

9 (iii) a limited partnership;

10 (iv) a corporation; or

11 (v) a joint venture.

12 (c) “Equity participation financing” includes investment or guaranty of  
13 investment in an enterprise.14 (d) “Existing business” means a business whose board of directors or owners  
15 approve the sale of the business to an enterprise receiving equity participation  
16 financing.17 [(e) (1) “Franchise” has the meaning stated in § 14–201 of the Business  
18 Regulation Article.19 (2) “Franchise” includes only franchise offerings that are registered or  
20 exempt under the Maryland Franchise Registration and Disclosure Law.]

21 [(f) (E) “Fund” means the Equity Participation Investment Program Fund.

22 [(g) (F) “Program” means the Equity Participation Investment Program.

23 [(h) (G) “Qualified security” means:

24 (1) a note, bond, debenture, or other evidence of indebtedness;

25 (2) stock or other form of equity participation;

26 (3) a certificate of interest or participation in a profit-sharing  
27 agreement;

1 (4) an investment contract;

2 (5) a certificate of deposit for a security;

3 (6) a certificate of interest or participation in a patent or patent  
4 application or in royalty or other payments under a patent or patent application; or

5 (7) an interest or instrument commonly known as a “security” or a  
6 certificate for, receipt for, guaranty of, or option, warrant, or right to subscribe to or  
7 purchase a qualified security.

8 [(i) “Technology–based business” means a commercial or industrial  
9 enterprise engaged in the application of scientific knowledge to practical purposes in a  
10 particular field for a profit.]

11 (H) “SMALL BUSINESS” MEANS A BUSINESS THAT IS CLASSIFIED AS A  
12 SMALL BUSINESS UNDER THE U.S. SMALL BUSINESS ADMINISTRATION SIZE  
13 STANDARDS.

14 5–550.

15 (a) The General Assembly finds that:

16 (1) [franchises and technology–based] SMALL businesses have proven  
17 to be a fast growing and reliable form of successful business expansion and successful  
18 new business creation;

19 (2) [franchises and technology–based] SMALL businesses play a major  
20 role in the economy of the State and have been a continuing source of increasing tax  
21 revenues and job opportunities;

22 (3) the growth of [franchises, technology–based businesses, and other]  
23 SMALL businesses should be encouraged and should be an integral part of the State’s  
24 economic development effort;

25 (4) socially or economically disadvantaged individuals often lack  
26 adequate capital and are unable to obtain financing from financial institutions or  
27 venture capital firms to begin and develop a [franchise, a technology–based business,  
28 or other type of] SMALL business, or to purchase an existing business; and

29 (5) promoting the creation and viability of [franchises and  
30 technology–based businesses, the development of other businesses,] SMALL  
31 BUSINESSES and the purchase of existing businesses by socially or economically  
32 disadvantaged individuals is in the public interest.

33 (b) The purposes of the Equity Participation Investment Program are to:

1 (1) encourage and help socially or economically disadvantaged  
2 individuals to create and develop [franchises, technology-based businesses, and other]  
3 **SMALL** businesses and acquire existing businesses in the State; and

4 (2) assist small businesses that, because they do not meet the  
5 established credit criteria of financial institutions, cannot obtain adequate business  
6 financing on reasonable terms through normal financing channels.

7 5-551.

8 There is an Equity Participation Investment Program in the Department.

9 5-552.

10 The Authority shall administer the Program.

11 5-553.

12 The Authority may:

13 (1) provide equity participation financing to help socially or  
14 economically disadvantaged individuals in the State create and develop [franchises,  
15 technology-based businesses, and other] **SMALL** businesses and acquire existing  
16 businesses;

17 (2) buy, hold, and sell qualified securities;

18 (3) prepare, publish, and distribute technical studies, reports, and  
19 other materials with or without charge; and

20 (4) provide and pay for advisory services and technical assistance that  
21 are necessary or desirable to carry out the Program.

22 5-554.

23 There is an Equity Participation Investment Program Fund.

24 5-556.

25 (a) The Authority may provide equity participation financing under the  
26 Program only after the enterprise submits an application that contains a business  
27 plan that meets the requirements of subsection (b) of this section.

28 (b) The business plan of an enterprise shall include:

1 (1) a description of the [franchise, technology-based business, other  
2 business,] **SMALL BUSINESS** or existing business and its management, product, and  
3 market;

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

6 (3) a statement of the potential economic impact of the purchase;

7 (4) information that relates to the satisfaction of the applicant's  
8 requirements of § 5-557(d) and (e) of this subtitle; and

9 (5) any other information the Authority requires.

10 5-557.

11 (a) (1) Under the Program the Authority may not:

12 (i) own securities representing more than 49% of the voting  
13 stock of a [franchise, technology-based business, or other] **SMALL** business or own an  
14 interest greater than 49% in a [franchise, technology-based business, or other] **SMALL**  
15 business; or

16 (ii) own securities representing more than 49% of the voting  
17 stock of an enterprise acquiring an existing business or own an interest greater than  
18 49% in an enterprise acquiring an existing business.

19 (2) The amount of the Authority's equity participation financing in an  
20 enterprise may not exceed[:

21 (i) the lesser of:

22 1.] \$2,000,000 [for a franchise; or

23 2. 49% of the total initial investment in the franchise;

24 (ii) the lesser of:

25 1. \$2,000,000 for an enterprise acquiring an existing  
26 business; or

27 2. 49% of the total investment in the enterprise  
28 acquiring an existing business; or

29 (iii) \$2,000,000 for a technology-based business].

1           (3) Before providing equity participation financing, the Authority shall  
2 find that there is a reasonable probability that the Authority will recover its initial  
3 investment and an adequate return on investment from the equity participation  
4 financing.

5           (4) The Authority's investment shall be recoverable within[:

6                   (i)] 7 years after the equity participation financing [in a  
7 franchise, an enterprise acquiring an existing business, or any other type of business;  
8 or

9                   (ii) 10 years after the equity participation financing in a  
10 technology-based business].

11           (5) The Authority's recovery shall be the greater of:

12                   (i) the current value of the percentage of the equity investment  
13 in the enterprise; or

14                   (ii) the amount of the initial investment in the enterprise.

15           (6) [The] **IF THERE IS A DISPUTE BETWEEN THE BORROWER AND**  
16 **THE AUTHORITY AS TO THE** value of the business entity at the time of recovery, **THE**  
17 **VALUE** shall be determined after obtaining at least one independent appraisal of the  
18 value from an appraiser selected from a list of at least three appraisers supplied by the  
19 Authority.

20           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2014.