

# SENATE BILL 661

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By: **Senators Pugh, Jones–Rodwell, and Muse**

Introduced and read first time: January 31, 2014

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development – Equity Participation Investment Program – Small**  
3 **Businesses**

4 FOR the purpose of altering the purpose of the Equity Participation Investment  
5 Program to assist small businesses; altering the types of businesses of which the  
6 Maryland Small Business Development Financing Authority is prohibited from  
7 owning more than a certain percentage of securities or in which the Authority is  
8 prohibited from having an ownership interest that exceeds a certain percentage;  
9 altering the maximum amount of the Authority’s equity participation financing  
10 in a certain enterprise; altering the length of time within which the Authority’s  
11 investment shall be recoverable; repealing certain defined terms; and generally  
12 relating to small businesses and the Equity Participation Investment Program.

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

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

20 **Article – Economic Development**

21 5–549.

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Enterprise” includes:

2 (i) a sole proprietorship;

3 (ii) a partnership;

4 (iii) a limited partnership;

5 (iv) a corporation; or

6 (v) a joint venture.

7 (c) “Equity participation financing” includes investment or guaranty of  
8 investment in an enterprise.

9 (d) “Existing business” means a business whose board of directors or owners  
10 approve the sale of the business to an enterprise receiving equity participation  
11 financing.

12 [(e) (1) “Franchise” has the meaning stated in § 14–201 of the Business  
13 Regulation Article.

14 (2) “Franchise” includes only franchise offerings that are registered or  
15 exempt under the Maryland Franchise Registration and Disclosure Law.]

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

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

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

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

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

21 (3) a certificate of interest or participation in a profit-sharing  
22 agreement;

23 (4) an investment contract;

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

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

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

4           [(i) “Technology-based business” means a commercial or industrial  
5 enterprise engaged in the application of scientific knowledge to practical purposes in a  
6 particular field for a profit.]

7 5-550.

8           (a) The General Assembly finds that:

9           (1) [franchises and technology-based] **SMALL** businesses have proven  
10 to be a fast growing and reliable form of successful business expansion and successful  
11 new business creation;

12           (2) [franchises and technology-based] **SMALL** businesses play a major  
13 role in the economy of the State and have been a continuing source of increasing tax  
14 revenues and job opportunities;

15           (3) the growth of [franchises, technology-based businesses, and other]  
16 **SMALL** businesses should be encouraged and should be an integral part of the State’s  
17 economic development effort;

18           (4) socially or economically disadvantaged individuals often lack  
19 adequate capital and are unable to obtain financing from financial institutions or  
20 venture capital firms to begin and develop a [franchise, a technology-based business,  
21 or other type of] **SMALL** business, or to purchase an existing business; and

22           (5) promoting the creation and viability of [franchises and  
23 technology-based businesses, the development of other] **SMALL** businesses, and the  
24 purchase of existing businesses by socially or economically disadvantaged individuals  
25 is in the public interest.

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

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

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

33 5-553.

1 The Authority may:

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

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

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

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

11 5-556.

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

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

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

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

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

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

23 (5) any other information the Authority requires.

24 5-557.

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

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

1                   (ii) own securities representing more than 49% of the voting  
2 stock of an enterprise acquiring an existing business or own an interest greater than  
3 49% in an enterprise acquiring an existing business.

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

6                   (i) the lesser of:

7                   1. \$2,000,000 for a franchise; or

8                   2. 49% of the total initial investment in the franchise;

9                   (ii) the lesser of:

10                   1. \$2,000,000 for an enterprise acquiring an existing  
11 business; or

12                   2. 49% of the total investment in the enterprise  
13 acquiring an existing business; or

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

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

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

20                   (i) 7 years after the equity participation financing in a  
21 franchise, an enterprise acquiring an existing business, or any other type of business;  
22 or

23                   (ii) 10 years after the equity participation financing in a  
24 technology-based business] **7 YEARS.**

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

26                   (i) the current value of the percentage of the equity investment  
27 in the enterprise; or

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

29                   (6) [The] **IF THERE IS A DISPUTE BETWEEN THE BORROWER AND**  
30 **THE AUTHORITY AS TO THE** value of the business entity at the time of recovery, **THE**

1 VALUE shall be determined after obtaining at least one independent appraisal of the  
2 value from an appraiser selected from a list of at least three appraisers supplied by the  
3 Authority.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 July 1, 2014.