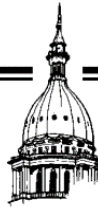




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 1108 (as enacted)  
Sponsor: Senator Darwin L. Booher  
Senate Committee: Banking and Financial Institutions  
House Committee: Banking and Financial Services

**PUBLIC ACT 358 of 2012**

Date Completed: 3-6-13

**CONTENT****The bill amended the Michigan BIDCO Act to do the following:**

- **Include a business development enterprise as a BIDCO if it meets certain criteria.**
- **Authorize the board of the Michigan Strategic Fund (MSF) to designate a Michigan corporation or limited liability company as a qualified business development enterprise.**
- **Provide that a business development enterprise may not be licensed under the Act unless it receives that designation.**
- **Require a business development enterprise to have a minimum net worth and firm financing commitments of at least \$25.0 million.**
- **Require the business plan of a business development enterprise to include the objective of providing "public benefit".**
- **Require the board of a business development enterprise to have at least three members, and require one-third to be designated by the MSF board.**
- **Establish reporting requirements.**

The bill defines "public benefit" as making capital available, or facilitating the availability of capital, to businesses in this State that have 750 or fewer employees, with the intent to create or retain employment opportunities for Michigan residents, stabilize or increase the State's tax base, or support the redevelopment of facilities for use by small businesses.

The bill took effect on December 13, 2012.

**Business Development Enterprise BIDCO**

The Act provides for the licensure and regulation of business and industrial development companies (BIDCOs). Only a Michigan corporation or a Michigan limited liability company (LLC) may apply for a license, and the Commissioner of the Office of Financial and Insurance Regulation is responsible for licensure. A licensed BIDCO may provide managerial assistance to businesses; offer them financing assistance, including Small Business Administration loans and the extension of credit; and acquire and hold control of businesses, under certain conditions.

The bill includes in the term "BIDCO" a business development enterprise, and defines "business development enterprise" as a business and industrial development company that meets all of the following criteria:

- Has as part of its business plan the objective of providing public benefit.
- Is licensed under the Act.
- Is designated as a qualified business development enterprise by the MSF.

**MSF Designation**

The bill allows the board of the MSF to designate a Michigan corporation or a Michigan limited liability company as a qualified business development enterprise. The Commissioner may not grant a license to an applicant for a business development enterprise license if the applicant has not

applied for and received this designation from the MSF board.

An application for designation as a qualified business development enterprise must include all of the following:

- A copy of the application for a license and supporting documentation submitted to the Commissioner.
- A copy of the applicant's articles of incorporation and bylaws if the applicant is a corporation, or its articles or organization and operating agreement if it is an LLC.
- Documentation satisfactory to the MSF board that the applicant meets the bill's net worth requirement.
- Information about the background and business experience of the applicant's directors, officers, managers, and controlling persons.
- A summary business plan, including at least three years of detailed financial projections and other relevant information.
- Any other information the MSF board considers relevant.

In determining whether to designate a corporation or LLC as a qualified business development enterprise, the board must apply the following criteria:

- Whether the size and composition of the applicant's board meet the bill's requirements.
- Whether the business plan of the enterprise includes providing a public benefit acceptable to the MSF board.
- Whether the enterprise has demonstrated to the board's satisfaction that it will meet any transparency, reporting, and accountability requirements the board establishes by rule with respect to the enterprise's public policy objective or objectives.
- Whether the applicant's directors, officers, managers, and controlling persons have sufficient experience to demonstrate to the board's satisfaction that they are able to implement the proposed business plan of the enterprise.

The MSF board must notify the Commissioner if it designates a Michigan corporation or LLC a qualified business development enterprise.

### Net Worth Requirement

The Act sets minimum net worth amounts that an applicant for licensure is required to have. Under the bill, the Commissioner must require an applicant to demonstrate that it will have the specified net worth when it begins transacting business.

As a rule, the Act requires an applicant to have a minimum net worth of not less than \$1.0 million and not more than \$10.0 million. The Commissioner, however, may require a minimum net worth of less than \$1.0 million but not less than \$500,000 under certain circumstances.

Under the bill, if the applicant is applying for a license as a business development enterprise, it must demonstrate a minimum net worth and firm financing commitments of at least \$25.0 million.

### Board of Directors

The Act requires a licensee to have a board of directors that consists of at least seven members. Under the bill, this applies to a licensee that is not a business development enterprise.

The board of a licensee that is a business development enterprise must have at least three directors. At least one-third of the board members must be individuals designated by the MSF board.

### Reporting Requirements

The bill requires a business development enterprise to report to the MSF at least annually. The enterprise must report the following information for each business it supported, by providing or facilitating the securing of capital, in the preceding five-year period:

- The total amount of private capital secured by the business from its support.
- The estimated number of jobs the business created or retained.
- An estimate of the State and local tax collections attributable to its support of that business.

The bill also requires the Commissioner to give the MSF board an annual summary

report containing its assessment of the financial condition of each business development enterprise. At a minimum, the report must include an assessment of the enterprise's ability to fund its operations in the future.

A business development enterprise must give the Commissioner any information he or she reasonably requests in connection with his or her assessment of the enterprise's financial condition and the preparation of the Commissioner's report to the board.

#### Licensee Name

The Act requires the name of each licensee to include the word "BIDCO". The bill exempts a business development enterprise from this requirement.

MCL 487.1104 et al.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The bill increases the responsibilities of the Michigan Strategic Fund, which is authorized to designate an eligible company as a business development enterprise. This will entail evaluation of proposals, ongoing oversight, and appointment of at least one-third of the members of the business development enterprise board of directors. The Michigan Economic Development Corporation (MEDC), which provides the staff for the Michigan Strategic Fund, has indicated that a business development enterprise will act to improve the availability of credit for medium-size companies. The MEDC anticipates using money from the Jobs for Michigan Investment Fund (the permanent fund that receives returns from 21<sup>st</sup> Century Jobs Trust Fund projects and designated revenue from one Indian gaming compact) to provide a portion of the capital for a business development enterprise. The Michigan Strategic Fund board is authorized to allocate the net income of the Jobs for Michigan Investment Fund to 21<sup>st</sup> Century Programs permitted by statute, which include loan enhancements, investments, the Michigan Business Development Program, and the Community Revitalization Program. The MEDC estimated revenue to the Jobs for Michigan Investment Fund at about \$30.0 million in FY 2011-12 and

projected a closing balance in that Fund of approximately \$20.0 million at the end of FY 2011-12.

Fiscal Analyst: Elizabeth Pratt

#### S1112\S1108es.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.