

SENATE BILL No. 1108

(As amended May 31, 2012)

May 1, 2012, Introduced by Senators BOOHER, HUNTER, PAPPAGEORGE and SMITH and referred to the Committee on Banking and Financial Institutions.

<<A bill to amend 1986 PA 89, entitled "Michigan BIDCO act," by amending the title and sections 104, 105, 106, 203, 301, 303, 401, and 403 (MCL 487.1104, 487.1105, 487.1106, 487.1203, 487.1301, 487.1303, 487.1401, and 487.1403), sections 104, 105, 106, 301, 303, 401, and 403 as amended by 1997 PA 150, and by adding sections 304 and 304a.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to promote economic development by providing for the licensing and regulation of business and industrial development corporations; **TO PRESCRIBE THE POWERS AND DUTIES OF CERTAIN PUBLIC OFFICERS AND AGENCIES; TO PROVIDE FOR THE PROMULGATION OF RULES;** to provide **REMEDIES AND** penalties; and to repeal ~~certain~~ acts and

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1 parts of acts.

2 Sec. 104. (1) "Affiliate" means, if used with respect to a
3 specified person other than a natural person, a person controlling
4 or controlled by that specified person, or a person controlled by a
5 person ~~who~~**THAT** also controls the specified person.

6 (2) "BIDCO" means a business and industrial development
7 company licensed under this act. **THE TERM INCLUDES A BUSINESS**
8 **DEVELOPMENT ENTERPRISE.**

9 (3) "BUSINESS DEVELOPMENT ENTERPRISE" MEANS A BUSINESS AND
10 INDUSTRIAL DEVELOPMENT COMPANY THAT MEETS ALL OF THE FOLLOWING:

11 (A) HAS AS PART OF ITS BUSINESS PLAN THE **<<OBJECTIVE OF PROVIDING**
12 **PUBLIC BENEFIT.**

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15 (B) IS LICENSED UNDER THIS ACT.

16 (C) IS DESIGNATED AS A QUALIFIED BUSINESS DEVELOPMENT
17 ENTERPRISE BY THE MICHIGAN STRATEGIC FUND UNDER SECTION 304.

18 (4) ~~(3)~~"Business firm" means a person that transacts business
19 on a regular and continual basis, or a person that proposes to
20 transact business on a regular and continual basis.

21 (5) ~~(4)~~"Commissioner" means the commissioner of the ~~financial~~
22 ~~institutions bureau of the department of consumer and industry~~
23 ~~services.~~ **OFFICE OF FINANCIAL AND INSURANCE REGULATION IN THE**
24 **DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.**

25 (6) ~~(5)~~"Control" means, if used with respect to a specified
26 person, the power to direct or cause the direction of, directly or
27 indirectly through 1 or more intermediaries, the management and

1 policies of that specified person, whether by contract, other than
2 a commercial contract for goods or nonmanagement services, or
3 otherwise. A natural person ~~shall not be~~ **IS NOT** considered to
4 control a person solely ~~on account of being~~ **BECAUSE HE OR SHE IS** a
5 director, officer, manager, or employee of that person. A person
6 ~~who,~~ **THAT**, directly or indirectly, has the power to vote or direct
7 the voting of 20% or more of the total ownership vote ~~, shall be~~ **IS**
8 rebuttably presumed to control that entity.

9 (7) ~~(6)~~ "Controlling person" means, if used with respect to a
10 specified person, a person ~~who~~ **THAT** controls that specified person,
11 directly or indirectly through 1 or more intermediaries.

12 Sec. 105. (1) "Incorporating statute" means the business
13 corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, the
14 nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192,
15 or the Michigan limited liability company act, 1993 PA 23, MCL
16 450.4101 to 450.5200.

17 (2) "Insolvent" means a licensee that ceases to pay its debts
18 in the ordinary course of business, that cannot pay its debts as
19 they become due, or whose liabilities exceed its assets.

20 (3) "Interests of the licensee" includes the interests of
21 shareholders of a licensee organized as a Michigan corporation and
22 members of a licensee organized as a Michigan limited liability
23 company.

24 (4) "License" means a license issued under this act
25 authorizing a Michigan corporation or Michigan limited liability
26 company to transact business as a BIDCO. **THE TERM INCLUDES A BIDCO**
27 **LICENSE ISSUED TO A BUSINESS DEVELOPMENT ENTERPRISE.**

1 (5) "Licensee" means a Michigan corporation or Michigan
2 limited liability company ~~which is licensed~~ **THAT HOLDS A LICENSE**
3 under this act.

4 (6) "Manager" means a person designated by the members of a
5 Michigan limited liability company to manage the limited liability
6 company as provided in its articles of organization or an operating
7 agreement.

8 (7) "Member" means a person ~~with~~ **THAT HAS AN** ownership
9 interest in a BIDCO organized as a Michigan limited liability
10 company.

11 (8) "Michigan corporation" means a corporation incorporated
12 under the business corporation act, 1972 PA 284, MCL 450.1101 to
13 450.2098, or the nonprofit corporation act, 1982 PA 162, MCL
14 450.2101 to 450.3192.

15 (9) "Michigan limited liability company" means a limited
16 liability company organized under the Michigan limited liability
17 company act, 1993 PA 23, MCL 450.4101 to 450.5200.

18 (10) "Michigan nonprofit corporation" means a corporation
19 incorporated under the nonprofit corporation act, 1982 PA 162, MCL
20 450.2101 to 450.3192.

21 (11) **"MICHIGAN STRATEGIC FUND" MEANS THE MICHIGAN STRATEGIC**
22 **FUND AS DESCRIBED IN THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270,**
23 **MCL 125.2001 TO 125.2094.**

<<Sec. 106. (1) "Officer" means either of the following:

(a) If used with respect to a corporation, ~~a person~~ **AN**
INDIVIDUAL WHO IS appointed or designated as an officer of that
corporation by or under applicable law or the articles of
incorporation or bylaws of that corporation, or ~~a person~~ **AN**
INDIVIDUAL who performs **FUNCTIONS** with respect to that corporation
~~functions~~ **THAT ARE** usually performed by an officer of a corporation.

(b) If used with respect to a specified person other than
~~a natural person~~ **AN INDIVIDUAL** or a corporation, ~~a person~~ **AN**
INDIVIDUAL who performs **FUNCTIONS** with respect to that specified
person ~~functions~~ **THAT ARE** usually performed by an officer of a

corporation ~~with respect to~~ **FOR** that corporation.

(2) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner. Order includes a condition of a license and an agreement made by a person with the commissioner under this act.

(3) "Owner" means a shareholder of a BIDCO organized as a Michigan corporation or a member of a BIDCO organized as a Michigan limited liability company.

(4) "Person" means an individual, proprietorship, joint venture, partnership, limited liability company, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government, or any other organization. If used with respect to acquiring control of or controlling a specified person, person includes a combination of 2 or more persons acting in concert.

(5) "Principal owner" means a person that owns, directly or indirectly, of record or beneficially, stock or membership interest representing 10% or more of the outstanding stock or membership interest of a corporation or limited liability company.

(6) "PUBLIC BENEFIT" MEANS MAKING CAPITAL AVAILABLE, OR FACILITATING THE AVAILABILITY OF CAPITAL, TO BUSINESSES IN THIS STATE THAT HAVE 750 OR FEWER EMPLOYEES, THE INTENT OF WHICH IS TO CREATE OR RETAIN EMPLOYMENT OPPORTUNITIES FOR RESIDENTS OF THIS STATE, STABILIZE OR INCREASE THE TAX BASE OF THIS STATE, OR SUPPORT THE REDEVELOPMENT OF FACILITIES FOR USE BY SMALL BUSINESSES.

(7) ~~(6)~~ "Subject person" means a controlling person, subsidiary or affiliate of a licensee, a director, officer, manager, or employee of a licensee or of a controlling person, subsidiary or affiliate of a licensee, or any other person ~~who~~ **THAT** participates in the conduct of the business of a licensee.

(8) ~~(7)~~ "Subsidiary" means, if used with respect to a licensee, a company or business firm that the licensee holds control of as permitted by section 507(1)(b), (c), or (d).

(9) ~~(8)~~ "Total ownership vote" means, if used with respect to a corporation, the total outstanding shares of stock entitled to vote and, if used with respect to a Michigan limited liability company, the total vote of the members entitled to vote.

(10) ~~(9)~~ "This act" includes an order issued or rule promulgated under this act.>>

24 Sec. 203. (1) ~~An application filed with the commissioner under~~
 25 ~~this act shall be in such a form and contain such information as~~
 26 ~~the commissioner may require.~~ **AN APPLICANT FOR A LICENSE UNDER THIS**
 27 **ACT SHALL FILE AN APPLICATION WITH THE COMMISSIONER. SUBJECT TO**

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1 SUBSECTION (2), THE COMMISSIONER SHALL ESTABLISH THE FORM OF THE
2 APPLICATION AND THE INFORMATION THE APPLICANT MUST PROVIDE ON OR
3 WITH THE APPLICATION FORM.

4 (2) FOR PURPOSES OF SECTION 303, AN APPLICATION FOR A LICENSE
5 UNDER THIS ACT SHALL INCLUDE A BUSINESS PLAN. IF THE APPLICANT IS
6 APPLYING FOR A LICENSE AS A BUSINESS DEVELOPMENT ENTERPRISE, THE
7 BUSINESS PLAN MUST INCLUDE THE <<OBJECTIVE OF PROVIDING PUBLIC
8 BENEFIT. >>

9 Sec. 301. A Michigan corporation or Michigan limited liability
10 company may apply to the commissioner for licensure as a BIDCO. ~~A~~
11 LICENSE UNDER THIS ACT. A person ~~other than~~ THAT IS NOT a Michigan
12 corporation or Michigan limited liability company shall not apply
13 for, AND THE COMMISSIONER SHALL NOT GRANT, a license UNDER THIS
14 ACT.

15 Sec. 303. (1) After a review of information regarding the
16 directors, officers, managers, and controlling persons of the
17 applicant, a review of the applicant's business plan, including at
18 least 3 years of detailed financial projections and other relevant
19 information, and a review of additional information considered
20 relevant by the commissioner, the commissioner shall approve an
21 application for a license if, and only if, the commissioner
22 determines all of the following:

23 (a) The applicant has a net worth, or firm financing
24 commitments that demonstrate that the applicant will have a net
25 worth when the applicant begins transacting business as a BIDCO, in
26 liquid form available to provide financing assistance, that is
27 adequate for the applicant to transact business as a BIDCO, as

1 determined under subsection (2).

2 (b) Each director, officer, manager, and controlling person of
3 the applicant is of good character and sound financial standing, is
4 competent to perform his or her functions with respect to the
5 applicant, and that the directors, officers, and managers of the
6 applicant are collectively adequate to manage the business of the
7 applicant as a ~~BIDCO-LICENSEE~~.

8 (c) It is reasonable to believe that the applicant, if
9 licensed, will comply with this act.

10 (d) The applicant has reasonable promise of being a viable,
11 ongoing BIDCO and of satisfying the basic objectives of its
12 business plan.

13 (e) If the applicant is or will be a Michigan limited
14 liability company, the applicant's operating agreement and business
15 plan are consistent with the objectives of promoting the stability
16 and viability of the applicant and will not impede the ability of
17 the applicant to retain any earnings or increases to fund balances
18 and borrow funds to support the applicant's continued operations.
19 The applicant's operating agreement or articles of organization
20 shall contain provisions as the commissioner considers necessary to
21 satisfy this subsection.

22 **(F) IF THE APPLICANT IS APPLYING FOR A LICENSE AS A BUSINESS**
23 **DEVELOPMENT ENTERPRISE, THE APPLICANT HAS BEEN DESIGNATED AS A**
24 **QUALIFIED BUSINESS DEVELOPMENT ENTERPRISE BY THE MICHIGAN STRATEGIC**
25 **FUND UNDER SECTION 304.**

26 (2) In determining if the applicant has a net worth or firm
27 financing commitments adequate to transact business as a BIDCO

1 **UNDER SUBSECTION (1) (A)**, the commissioner shall consider the types
2 and variety of financing assistance that the applicant plans to
3 provide, the experience that the directors, officers, managers, and
4 controlling persons of the applicant have in providing financing
5 assistance and managerial assistance to business firms, the
6 financial projections and other relevant information from the
7 applicant's business plan, and whether the applicant intends to
8 operate as a profit or nonprofit corporation or as a limited
9 liability company. ~~Except as otherwise provided in this act, FOR~~
10 **PURPOSES OF SUBSECTION (1) (A)**, the commissioner shall require **THAT**
11 **THE APPLICANT DEMONSTRATE THAT THE APPLICANT WILL HAVE A NET WORTH**
12 **WHEN IT BEGINS TRANSACTING BUSINESS THAT MEETS 1 OF THE FOLLOWING:**

13 (A) **UNLESS SUBDIVISION (B) OR (C) APPLIES**, a minimum net worth
14 of not less than \$1,000,000.00 and not more than \$10,000,000.00.

15 (B) The commissioner may require a minimum net worth of less
16 than \$1,000,000.00, but not less than \$500,000.00, if, in the
17 context of the applicant's business plan, the initial
18 capitalization amount is adequate for the applicant to transact
19 business as a BIDCO because of special circumstances including, but
20 not limited to, funded overhead, low overhead, or specialized
21 opportunities.

22 (C) **IF THE APPLICANT IS APPLYING FOR A LICENSE AS A BUSINESS**
23 **DEVELOPMENT ENTERPRISE, A MINIMUM NET WORTH AND FIRM FINANCING**
24 **COMMITMENTS OF NOT LESS THAN \$25,000,000.00.**

25 (3) For the purposes of subsection (1), the commissioner may
26 find any of the following:

27 (a) That a director, officer, manager, or controlling person

1 of an applicant is not of good character if the director, officer,
2 manager, or controlling person, or a director, officer, or manager
3 of a controlling person, has been convicted of or has pleaded nolo
4 contendere to a crime involving fraud or dishonesty.

5 (b) That it is not reasonable to believe that an applicant, if
6 licensed, will comply with this act, if the applicant has been
7 convicted of or has pleaded nolo contendere to a crime involving
8 fraud or dishonesty.

9 (4) For purposes of subsection (1), subsection (3) shall not
10 be considered to be the only grounds upon which the commissioner
11 may find that a director, officer, manager, or controlling person
12 of an applicant is not of good character or that it is not
13 reasonable to believe that an applicant, if licensed, will comply
14 with this act.

15 **SEC. 304. (1) BEGINNING JANUARY 1, 2012, THE BOARD OF THE**
16 **MICHIGAN STRATEGIC FUND MAY DESIGNATE A MICHIGAN CORPORATION OR**
17 **MICHIGAN LIMITED LIABILITY COMPANY AS A QUALIFIED BUSINESS**
18 **DEVELOPMENT ENTERPRISE UNDER THIS SECTION. THE COMMISSIONER SHALL**
19 **NOT GRANT A LICENSE TO AN APPLICANT FOR A LICENSE AS A BUSINESS**
20 **DEVELOPMENT ENTERPRISE UNDER THIS ACT IF THE APPLICANT HAS NOT**
21 **APPLIED FOR AND RECEIVED A DESIGNATION AS A QUALIFIED BUSINESS**
22 **DEVELOPMENT ENTERPRISE FROM THE BOARD OF THE MICHIGAN STRATEGIC**
23 **FUND.**

24 (2) AN APPLICATION FOR DESIGNATION AS A QUALIFIED BUSINESS
25 DEVELOPMENT ENTERPRISE SHALL INCLUDE ALL OF THE FOLLOWING:

26 (A) A COPY OF THE APPLICATION AND SUPPORTING DOCUMENTATION
27 SUBMITTED TO THE COMMISSIONER UNDER SECTION 301.

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1 (B) A COPY OF THE APPLICANT'S ARTICLES OF INCORPORATION AND
2 BYLAWS IF THE APPLICANT IS A MICHIGAN CORPORATION, OR ITS ARTICLES
3 OR ORGANIZATION AND OPERATING AGREEMENT IF THE APPLICANT IS A
4 MICHIGAN LIMITED LIABILITY COMPANY,

5 (C) DOCUMENTATION SATISFACTORY TO THE BOARD OF THE MICHIGAN
6 STRATEGIC FUND THAT THE APPLICANT MEETS THE NET WORTH REQUIREMENTS
7 OF SECTION 303(2)(C).

8 (D) INFORMATION CONCERNING THE BACKGROUND AND BUSINESS
9 EXPERIENCE OF THE DIRECTORS, OFFICERS, MANAGERS, AND CONTROLLING
10 PERSONS OF THE APPLICANT.

11 (E) A SUMMARY BUSINESS PLAN, INCLUDING AT LEAST 3 YEARS OF
12 DETAILED FINANCIAL PROJECTIONS AND OTHER RELEVANT INFORMATION.

13 (F) ANY OTHER INFORMATION CONSIDERED RELEVANT BY THE BOARD OF
14 THE MICHIGAN STRATEGIC FUND.

15 (3) THE BOARD OF THE MICHIGAN STRATEGIC FUND SHALL APPLY THE
16 FOLLOWING CRITERIA IN DETERMINING WHETHER TO DESIGNATE A MICHIGAN
17 CORPORATION OR MICHIGAN LIMITED LIABILITY COMPANY A QUALIFIED
18 BUSINESS DEVELOPMENT ENTERPRISE:

19 (A) WHETHER THE SIZE AND COMPOSITION OF THE BOARD OF THE
20 APPLICANT MEETS SECTION 403.

21 (B) WHETHER THE BUSINESS PLAN OF THE ENTERPRISE INCLUDES <<
22 PROVIDING A PUBLIC BENEFIT>> ACCEPTABLE TO THE BOARD OF
23 THE MICHIGAN STRATEGIC FUND.

24 (C) WHETHER THE APPLICANT HAS DEMONSTRATED TO THE SATISFACTION
25 OF THE BOARD OF THE MICHIGAN STRATEGIC FUND THAT IT WILL MEET ANY
26 TRANSPARENCY, REPORTING, AND ACCOUNTABILITY REQUIREMENTS
27 ESTABLISHED BY THE BOARD BY RULE WITH RESPECT TO THE PUBLIC POLICY

1 OBJECTIVE OR OBJECTIVES OF THE ENTERPRISE.

2 (D) WHETHER THE DIRECTORS, OFFICERS, MANAGERS, AND CONTROLLING
3 PERSONS OF THE APPLICANT HAVE SUFFICIENT EXPERIENCE TO DEMONSTRATE
4 TO THE SATISFACTION OF THE BOARD OF THE MICHIGAN STRATEGIC FUND
5 THAT THEY HAVE THE ABILITY TO IMPLEMENT THE PROPOSED BUSINESS PLAN
6 OF THE ENTERPRISE.

7 (4) FOR PURPOSES OF SECTION 303(1)(F), THE BOARD OF THE
8 MICHIGAN STRATEGIC FUND SHALL NOTIFY THE COMMISSIONER IF IT
9 DESIGNATES A MICHIGAN CORPORATION OR MICHIGAN LIMITED LIABILITY
10 COMPANY A QUALIFIED BUSINESS DEVELOPMENT ENTERPRISE UNDER THIS
11 SECTION.

12 SEC. 304A. (1) A BUSINESS DEVELOPMENT ENTERPRISE SHALL REPORT
13 TO THE MICHIGAN STRATEGIC FUND AT LEAST ANNUALLY THE FOLLOWING
14 INFORMATION FOR EACH BUSINESS IT SUPPORTED, BY PROVIDING OR
15 FACILITATING THE SECURING OF CAPITAL, IN THE PRECEDING 5-YEAR
16 PERIOD:

17 (A) THE TOTAL AMOUNT OF PRIVATE CAPITAL SECURED BY THE
18 BUSINESS FROM ITS SUPPORT.

19 (B) THE ESTIMATED NUMBER OF JOBS THE BUSINESS CREATED OR
20 RETAINED.

21 (C) AN ESTIMATE OF THE STATE AND LOCAL TAX COLLECTIONS
22 ATTRIBUTABLE TO ITS SUPPORT OF THAT BUSINESS.

23 (2) THE COMMISSIONER SHALL PROVIDE TO THE MICHIGAN STRATEGIC
24 FUND AN ANNUAL SUMMARY REPORT CONTAINING ITS ASSESSMENT OF THE
25 FINANCIAL CONDITION OF EACH BUSINESS DEVELOPMENT ENTERPRISE. THE
26 COMMISSIONER SHALL ESTABLISH THE FORM AND CONTENTS OF THE REPORT.
27 AT A MINIMUM, THE REPORT SHALL INCLUDE AN ASSESSMENT OF THE

1 BUSINESS DEVELOPMENT ENTERPRISE'S ABILITY TO FUND ITS OPERATIONS IN
2 THE FUTURE.

3 (3) A BUSINESS DEVELOPMENT ENTERPRISE SHALL PROVIDE THE
4 COMMISSIONER ANY INFORMATION HE OR SHE REASONABLY REQUESTS IN
5 CONNECTION WITH HIS OR HER ASSESSMENT OF THE FINANCIAL CONDITION OF
6 THE BUSINESS DEVELOPMENT ENTERPRISE AND THE PREPARATION OF THE
7 REPORT DESCRIBED IN SUBSECTION (2).

8 Sec. 401. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2), THE
9 name of each licensee shall include the word "BIDCO".

10 (2) A BUSINESS DEVELOPMENT ENTERPRISE IS NOT REQUIRED TO
11 INCLUDE THE WORD "BIDCO" IN ITS NAME.

12 (3) A licensee shall not transact business under a name other
13 than its name.

14 Sec. 403. (1) A licensee shall have a board of directors.

15 (2) The board of directors of ~~each~~ A licensee THAT IS NOT A
16 BUSINESS DEVELOPMENT ENTERPRISE shall consist of not ~~less than~~ AT
17 LEAST 7 directors. ALL OF THE FOLLOWING APPLY TO THE BOARD OF
18 DIRECTORS OF A LICENSEE THAT IS A BUSINESS DEVELOPMENT ENTERPRISE:

19 (A) THE BOARD SHALL CONSIST OF AT LEAST 3 DIRECTORS.

20 (B) AT LEAST 1/3 OF THE MEMBERS OF THE BOARD SHALL BE
21 INDIVIDUALS DESIGNATED BY THE BOARD OF THE MICHIGAN STRATEGIC FUND.

22 (3) If the licensee is a Michigan limited liability company,
23 the board may consist of members who are not managers of the
24 licensee.

25 (4) ~~(2)~~ The board of directors of a licensee shall hold a
26 meeting ~~not less than~~ AT LEAST once each calendar quarter.