

HOUSE BILL No. 5169

November 10, 2011, Introduced by Reps. Barnett, Meadows, Brown, Segal, Liss, Slavens, Lindberg, Townsend, Switalski, Irwin and Howze and referred to the Committee on Banking and Financial Services.

A bill to provide for the organization, regulation, and certification of business development corporations; to provide for the powers and duties of business development corporations and their stockholders, directors, and loan participants; and to prescribe the powers and duties of certain state governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "business development corporation act".

3 Sec. 3. As used in this act:

4 (a) "Business development corporation" means a Michigan
5 corporation certified by the state treasurer under this act.

6 (b) "Financial institution" means any of the following:

1 (i) A state or national bank, state or federal savings and loan
2 association, state-chartered developmental authority, or state or
3 federal credit union.

4 (ii) An insurance corporation that is authorized by law to
5 transact the business of insurance in this state.

6 (iii) A wholly owned subsidiary of a bank, savings and loan
7 association, authority, credit union, or insurance corporation
8 described in subparagraph (i) or (ii).

9 (c) "Loan participant" means a person that is 1 of the lenders
10 in a loan participation agreement.

11 (d) "Loan participation agreement" means an agreement between
12 2 or more loan participants under which the loan participants
13 together agree to make a commercial loan to a person that conducts
14 business in this state and that originally sought a loan from 1 of
15 the loan participants.

16 (e) "Michigan corporation" means a corporation incorporated
17 under the business corporation act, 1972 PA 284, MCL 450.1101 to
18 450.2098, or the nonprofit company act, 1982 PA 162, MCL 450.2101
19 to 450.3192.

20 (f) "Person" means an individual, sole proprietorship,
21 partnership, limited liability company, or corporation.

22 (g) "Qualified loan transaction" means a commercial loan made
23 pursuant to a loan participation agreement and certified as a
24 qualified loan transaction by the state treasurer under section
25 5(2).

26 Sec. 5. (1) For purposes of establishing eligibility for the
27 exemption described in section 625(1)(d) of the income tax act of

1 1967, 1967 PA 281, MCL 206.625, the state treasurer may certify a
2 Michigan corporation that meets all of the following as a business
3 development corporation:

4 (a) The corporation has at least 3 shareholders and each
5 shareholder is a financial institution.

6 (b) If a person owns 50% or more of the shares or other
7 ownership interests of a shareholder of the corporation, that
8 person does not own 50% or more of the shares or other ownership
9 interests of another shareholder of the corporation.

10 (c) The articles of incorporation of the corporation include
11 all of the following as part of the purposes of the corporation:

12 (i) To facilitate loan participation agreements that provide
13 loans to commercial borrowers.

14 (ii) To conduct other activities designed to increase access to
15 commercial loans to businesses in this state.

16 (d) The articles of incorporation provide for a board of
17 directors for the corporation that meets the requirements of
18 section 11.

19 (2) For purposes of establishing eligibility for the exemption
20 described in section 625(1)(d) of the income tax act of 1967, 1967
21 PA 281, MCL 206.625, the state treasurer may certify that a
22 commercial loan facilitated by a business development corporation
23 and made pursuant to a loan participation agreement is a qualified
24 loan transaction.

25 Sec. 7. (1) A business development corporation is subject to
26 and has all of the powers and privileges conferred by this act and
27 to 1 of the following:

1 (a) The business corporation act, 1972 PA 284, MCL 450.1101 to
2 450.2098, if the corporation is incorporated under that act.

3 (b) The nonprofit corporation act, 1982 PA 162, MCL 450.2101
4 to 450.3192.

5 Sec. 9. (1) A business development corporation may receive a
6 proposal for a loan participation agreement from a shareholder or
7 any other source.

8 (2) If the board of directors of a business development
9 corporation determine that a proposal for a loan participation
10 agreement meets the purposes described in section 5(1)(c), the
11 board shall offer the shareholders of the corporation the
12 opportunity to participate in the loan participation agreement as a
13 loan participant and may offer other persons the opportunity to
14 participate as loan participants in the loan participation
15 agreement.

16 Sec. 11. (1) A business development corporation shall be
17 governed by a board of directors that consists of 1 director
18 appointed by each shareholder.

19 (2) The board of directors of a business development
20 corporation shall appoint officers and may employ or engage any
21 employees or agents it determines are appropriate to fulfill the
22 purposes of the corporation and the requirements of this act.

23 (3) The board of directors of a business development
24 corporation may provide for the formation of a loan committee, and
25 the powers of that loan committee, in its bylaws.

26 Sec. 13. (1) The state treasurer may review the books and
27 records of a business development corporation as part of his or her

1 determination of the corporation's initial or continued eligibility
2 for certification under this act.

3 (2) A business development corporation shall provide the state
4 treasurer with a copy of each loan participation agreement for
5 purposes of his or her determination of the loan transaction's
6 eligibility for certification as a qualified loan transaction under
7 section 5(2).

8 Sec. 15. Loan participation agreements shall not be granted or
9 denied based on the race, religion, color, national origin, age,
10 gender, height, weight, marital status, physical or mental
11 disability, sexual orientation, gender identity or expression, or
12 genetic information of any of the proposed borrowers.

13 Enacting section 1. This act does not take effect unless
14 Senate Bill No. ____ or House Bill No. 5170 (request no. 01420'11) of
15 the 96th Legislature is enacted into law.