

Act No. 358
Public Acts of 2012
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Booher, Hunter, Pappageorge and Smith

ENROLLED SENATE BILL No. 1108

AN ACT to amend 1986 PA 89, entitled "An act to promote economic development by providing for the licensing and regulation of business and industrial development corporations; to provide penalties; and to repeal certain acts and parts of acts," 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 acts and parts of acts.

Sec. 104. (1) "Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person that also controls the specified person.

(2) "BIDCO" means a business and industrial development company licensed under this act. The term includes a business development enterprise.

(3) "Business development enterprise" means a business and industrial development company that meets all of the following:

(a) Has as part of its business plan the objective of providing public benefit.

(b) Is licensed under this act.

(c) Is designated as a qualified business development enterprise by the Michigan strategic fund under section 304.

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

(5) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of licensing and regulatory affairs.

(6) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through 1 or more intermediaries, the management and policies of that specified person, whether by contract, other than a commercial contract for goods or nonmanagement services, or otherwise. A natural person is not considered to control a person solely because he or she is a director, officer, manager, or employee of that person. A person that, directly or indirectly, has the power to vote or direct the voting of 20% or more of the total ownership vote is rebuttably presumed to control that entity.

(7) “Controlling person” means, if used with respect to a specified person, a person that controls that specified person, directly or indirectly through 1 or more intermediaries.

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

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

(3) “Interests of the licensee” includes the interests of shareholders of a licensee organized as a Michigan corporation and members of a licensee organized as a Michigan limited liability company.

(4) “License” means a license issued under this act authorizing a Michigan corporation or Michigan limited liability company to transact business as a BIDCO. The term includes a BIDCO license issued to a business development enterprise.

(5) “Licensee” means a Michigan corporation or Michigan limited liability company that holds a license under this act.

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

(7) “Member” means a person that has an ownership interest in a BIDCO organized as a Michigan limited liability company.

(8) “Michigan corporation” means a corporation incorporated under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(9) “Michigan limited liability company” means a limited liability company organized under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

(10) “Michigan nonprofit corporation” means a corporation incorporated under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(11) “Michigan strategic fund” means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

Sec. 106. (1) “Officer” means either of the following:

(a) If used with respect to a corporation, 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 an individual who performs functions with respect to that corporation that are usually performed by an officer of a corporation.

(b) If used with respect to a specified person other than an individual or a corporation, an individual who performs functions with respect to that specified person that are usually performed by an officer of a corporation 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) “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 that participates in the conduct of the business of a licensee.

(8) “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) "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) "This act" includes an order issued or rule promulgated under this act.

Sec. 203. (1) An applicant for a license under this act shall file an application with the commissioner. Subject to subsection (2), the commissioner shall establish the form of the application and the information the applicant must provide on or with the application form.

(2) For purposes of section 303, an application for a license under this act shall include a business plan. If the applicant is applying for a license as a business development enterprise, the business plan must include the objective of providing public benefit.

Sec. 301. A Michigan corporation or Michigan limited liability company may apply to the commissioner for a license under this act. A person that is not a Michigan corporation or Michigan limited liability company shall not apply for, and the commissioner shall not grant, a license under this act.

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

(a) The applicant has a net worth, or firm financing commitments that demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO, as determined under subsection (2).

(b) Each director, officer, manager, and controlling person of the applicant is of good character and sound financial standing, is competent to perform his or her functions with respect to the applicant, and that the directors, officers, and managers of the applicant are collectively adequate to manage the business of the applicant as a licensee.

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

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

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

(f) If the applicant is applying for a license as a business development enterprise, the applicant has been designated as a qualified business development enterprise by the Michigan strategic fund under section 304.

(2) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO under subsection (1)(a), the commissioner shall consider the types and variety of financing assistance that the applicant plans to provide, the experience that the directors, officers, managers, and controlling persons of the applicant have in providing financing assistance and managerial assistance to business firms, the financial projections and other relevant information from the applicant's business plan, and whether the applicant intends to operate as a profit or nonprofit corporation or as a limited liability company. For purposes of subsection (1)(a), the commissioner shall require that the applicant demonstrate that the applicant will have a net worth when it begins transacting business that meets 1 of the following:

(a) Unless subdivision (b) or (c) applies, a minimum net worth of not less than \$1,000,000.00 and not more than \$10,000,000.00.

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

(c) If the applicant is applying for a license as a business development enterprise, a minimum net worth and firm financing commitments of not less than \$25,000,000.00.

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

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

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

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

Sec. 304. (1) Beginning January 1, 2012, the board of the Michigan strategic fund may designate a Michigan corporation or Michigan limited liability company as a qualified business development enterprise under this section. The commissioner shall not grant a license to an applicant for a license as a business development enterprise under this act if the applicant has not applied for and received a designation as a qualified business development enterprise from the board of the Michigan strategic fund.

(2) An application for designation as a qualified business development enterprise shall include all of the following:

(a) A copy of the application and supporting documentation submitted to the commissioner under section 301.

(b) A copy of the applicant's articles of incorporation and bylaws if the applicant is a Michigan corporation, or its articles or organization and operating agreement if the applicant is a Michigan limited liability company.

(c) Documentation satisfactory to the board of the Michigan strategic fund that the applicant meets the net worth requirements of section 303(2)(c).

(d) Information concerning the background and business experience of the directors, officers, managers, and controlling persons of the applicant.

(e) A summary business plan, including at least 3 years of detailed financial projections and other relevant information.

(f) Any other information considered relevant by the board of the Michigan strategic fund.

(3) The board of the Michigan strategic fund shall apply the following criteria in determining whether to designate a Michigan corporation or Michigan limited liability company a qualified business development enterprise:

(a) Whether the size and composition of the board of the applicant meets section 403.

(b) Whether the business plan of the enterprise includes providing a public benefit acceptable to the board of the Michigan strategic fund.

(c) Whether the applicant has demonstrated to the satisfaction of the board of the Michigan strategic fund that it will meet any transparency, reporting, and accountability requirements established by the board by rule with respect to the public policy objective or objectives of the enterprise.

(d) Whether the directors, officers, managers, and controlling persons of the applicant have sufficient experience to demonstrate to the satisfaction of the board of the Michigan strategic fund that they have the ability to implement the proposed business plan of the enterprise.

(4) For purposes of section 303(1)(f), the board of the Michigan strategic fund shall notify the commissioner if it designates a Michigan corporation or Michigan limited liability company a qualified business development enterprise under this section.

Sec. 304a. (1) A business development enterprise shall report to the Michigan strategic fund at least annually the following information for each business it supported, by providing or facilitating the securing of capital, in the preceding 5-year period:

(a) The total amount of private capital secured by the business from its support.

(b) The estimated number of jobs the business created or retained.

(c) An estimate of the state and local tax collections attributable to its support of that business.

(2) The commissioner shall provide to the Michigan strategic fund an annual summary report containing its assessment of the financial condition of each business development enterprise. The commissioner shall establish the form and contents of the report. At a minimum, the report shall include an assessment of the business development enterprise's ability to fund its operations in the future.

(3) A business development enterprise shall provide the commissioner any information he or she reasonably requests in connection with his or her assessment of the financial condition of the business development enterprise and the preparation of the report described in subsection (2).

Sec. 401. (1) Except as provided in subsection (2), the name of each licensee shall include the word "BIDCO".

(2) A business development enterprise is not required to include the word "BIDCO" in its name.

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

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

(2) The board of directors of a licensee that is not a business development enterprise shall consist of at least 7 directors. All of the following apply to the board of directors of a licensee that is a business development enterprise:

(a) The board shall consist of at least 3 directors.

(b) At least 1/3 of the members of the board shall be individuals designated by the board of the Michigan strategic fund.

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

(4) The board of directors of a licensee shall hold a meeting at least once each calendar quarter.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor