

HOUSE BILL No. 4315

February 15, 1991, Introduced by Reps. Joe Young, Jr., Harrison, Berman, Hunter, Saunders, Clack, Dobronski, DeMars, Clarke, Leland, Varga, Kilpatrick, Joe Young, Sr. and Gubow and referred to the Committee on Corporations and Finance.

A bill to provide loans to minority and woman business enterprises; to create a minority and woman development financing board within the department of commerce; to prescribe its powers and duties; to create certain accounts and loan funds within the state treasury; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "minority and woman business enterprise loan act".

3 Sec. 2. As used in this act:

4 (a) "Board" means the minority and woman development financ-
5 ing board created under section 3.

6 (b) "Financial institution" means a bank, trust company,
7 insurance company, savings and loan association, building and
8 loan association, corporation, partnership, federal lending

1 agency, foundation, or other institution engaged in lending or
2 investing funds for industrial or business purposes.

3 (c) "Project" means any real or personal property connected
4 with or a part of an industrial, commercial, distribution, or
5 research facility to be acquired, constructed, reconstructed,
6 enlarged, improved, furnished, or equipped with the aid of the
7 board as provided in this act for industrial, commercial, distri-
8 bution, or research development of the state.

9 (d) "Mortgage" means the lien imposed on a project by a
10 mortgage on real property, or by a financing statement on per-
11 sonal property, or a combination of a mortgage and financing
12 statement if a project consists of both real and personal
13 property.

14 (e) "Mortgagor" means the principal user of a project or the
15 person, corporation, partnership, or association unconditionally
16 guaranteeing performance by the principal user of its obligations
17 under the mortgage.

18 (f) "Minority business enterprise" means an individual,
19 partnership, corporation, or joint venture of any kind that, for
20 not less than 1 year before being awarded a contract, is and has
21 been owned and controlled by both of the following:

22 (i) A United States citizen.

23 (ii) A resident of this state who is a member of a disadvan-
24 taged group including, but not limited to, Blacks, Native
25 Americans, Hispanics, and Asians.

26 (g) "Minority contractor" means a person who is both a
27 contractor and an owner of a minority business enterprise.

1 (h) "Owned and controlled" means that at least 51% of the
2 business, including corporate stock if a corporation, is owned by
3 persons who belong to 1 or more of the groups set forth in subdi-
4 vision (f) or (j) and that those persons have control over both
5 the management and day to day operations of the business and an
6 interest in the capital, assets, and profits and losses of the
7 business proportionate to their percentage of ownership.

8 (i) "Surety company" means a company that is authorized by
9 the insurance commissioner to issue construction contract bonds
10 as surety.

11 (j) "Woman business enterprise" means an individual, part-
12 nership, corporation, or joint venture of any kind that, for not
13 less than 1 year before being awarded a contract, is and has been
14 owned and controlled by both of the following:

15 (i) A United States citizen.

16 (ii) A resident of this state who is a woman.

17 (k) "Woman contractor" means a person who is both a contrac-
18 tor and an owner of a woman business enterprise.

19 Sec. 3. (1) The minority and woman development financing
20 board is created within the department of commerce.

21 (2) The board shall consist of 7 members who shall include,
22 but not be limited to, women and minorities appointed by the gov-
23 ernor with the advice and consent of the senate. The members
24 shall be selected because of their knowledge, understanding, and
25 experience in industrial, business, and commercial financing;
26 suretyship; construction; and the problems of minority or woman

1 business enterprises. Not more than 4 board members shall be of
2 the same political party.

3 (3) Terms of office for members shall be 3 years, commencing
4 on the first day of January and ending on December 31, except
5 that of the original 7 members, 3 shall be appointed for 2 years
6 and 2 shall be appointed for 1 year. Each member shall hold
7 office from the date of appointment until the end of the term for
8 which the member was appointed.

9 (4) A member shall be eligible for reappointment.

10 (5) A vacancy on the board shall be filled in the same
11 manner as the original appointment for the remainder of the unex-
12 pired term.

13 (6) Members shall serve without compensation but shall be
14 paid their actual and necessary expenses while engaged in the
15 business of the board.

16 (7) The board shall annually elect 1 of its members as
17 chairperson and another as vice-chairperson.

18 (8) Four members shall constitute a quorum. A quorum shall
19 be required for all action taken by the board.

20 (9) The business which the board may perform shall be con-
21 ducted at a public meeting of the board held in compliance with
22 the open meetings act, Act No. 267 of the Public Acts of 1976,
23 being sections 15.261 to 15.275 of the Michigan Compiled Laws.
24 Public notice of the time, date, and place of the meeting shall
25 be given in the manner required by Act No. 267 of the Public Acts
26 of 1976.

1 (10) Except as provided in section 9(2), a writing prepared,
2 owned, used, in the possession of, or retained by the board in
3 the performance of an official function shall be made available
4 to the public in compliance with the freedom of information act,
5 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
6 15.246 of the Michigan Compiled Laws.

7 Sec. 4. Before the first day of February each year, the
8 board shall report to the governor and legislature on its minor-
9 ity and woman business development loan program and the minority
10 and woman contractors bonding program for the preceding calendar
11 year. Each report shall set forth a complete operating and
12 financial statement covering the board's operations for the pro-
13 gram during the year. The accounts of the board shall be subject
14 to annual audits by the state auditor general or a certified
15 public accountant appointed by the auditor general.

16 Sec. 5. (1) The board shall do all of the following:

17 (a) Maintain a principal office in the city of Lansing.

18 (b) Establish procedures for the review and approval of loan
19 applications. The procedures shall include provisions for deter-
20 mining the facts required by section 9.

21 (c) Promulgate rules and adopt guidelines under the adminis-
22 trative procedures act of 1969, Act No. 306 of the Public Acts of
23 1969, being sections 24.201 to 24.328 of the Michigan Compiled
24 Laws, for all of the following:

25 (i) To regulate the business of the board.

26 (ii) To require proposed borrowers to utilize certified
27 public accountants, business or technical advisors, or financial

1 consultants as a condition for receiving loans and allow
2 borrowers to compensate those persons, regardless of whether they
3 are required to be employed, from interest payments owed to the
4 board on loans.

5 (iii) To govern the approval of the persons the borrower
6 seeks to hire or compensate if the requirement of subparagraph
7 (ii) applies or if compensation is sought.

8 (iv) For the acceptance of requests for grant assistance
9 from private nonprofit corporations that are established to pro-
10 vide business, technical, or financial assistance to minority or
11 woman business enterprises.

12 (d) Provide technical assistance to private nonprofit corpo-
13 rations that are established to provide business, technical, and
14 financial assistance to minority or woman business enterprises in
15 seeking grants from individuals, private and public corporations,
16 and the federal government or any agency of the federal govern-
17 ment, if the purpose of the grants is to provide working capital
18 to minority or woman business enterprises.

19 (e) Hire staff, consultants, and agents and fix their
20 compensation.

21 (f) Receive and accept grants, gifts, and contributions of
22 money, property, labor, and other things of value to be held,
23 used, and applied only for the purpose for which the grants,
24 gifts, and contributions are made from individuals, the federal
25 government, the state, and a political subdivision of the state.
26 The board may agree to repay a contribution of money or to return
27 property contributed or its value at times, in amounts, and on

1 terms and conditions, excluding the payment of interest, as the
2 board determines at the time the contribution is made. The board
3 may evidence the obligations by notes, bonds, or other written
4 instruments.

5 (g) Sue and be sued in its own name. Actions against the
6 board shall be brought in Ingham county circuit court or the
7 county in which the cause of action arises.

8 (h) Establish funds with the state treasurer in addition to
9 the loan fund created under section 13.

10 (i) Invest money in the funds it establishes under subdivi-
11 sion (h) that is in excess of current needs in notes, bonds, or
12 other obligations that are direct obligations of or are guaran-
13 teed by the federal government, in certificates of deposit, or in
14 other withdrawable accounts of banks, trust companies, and build-
15 ing and loan or savings and loan associations organized under
16 state or federal law. The board may credit the income or sell
17 the investments at its discretion.

18 (j) Acquire in the name of the board property of any kind or
19 character in accordance with this act by purchase, purchase at
20 foreclosure, or exchange on terms and in a manner the board con-
21 siders proper.

22 (k) Maintain, protect, repair, improve, and insure property
23 the board has acquired and dispose of it by sale, exchange, or
24 lease for the consideration and on terms and in a manner the
25 board considers proper. The board may not operate property as a
26 business except as lessor of the property.

1 (2) The board shall make grants with sufficient controls and
2 reporting requirements, as determined by the board, to ensure the
3 proper use of the grants.

4 Sec. 6. (1) If the cost of a contract for the maintenance,
5 protection, repair, or improvement of property of the board,
6 other than compensation for personal services, involves an expen-
7 diture of more than \$1,000.00, the board shall enter into a writ-
8 ten contract with the lowest bidder after advertisement for not
9 less than 4 consecutive weeks in a newspaper of general circula-
10 tion in the county where the contract, or some substantial part
11 of it, is to be performed, and in other publications as the board
12 determines. The notice shall state the general character of the
13 work and the general character of the materials to be furnished,
14 the place where plans and specifications of the work contracted
15 for may be examined, and the time and place of receiving bids.

16 (2) Each bid for a contract for the construction, demoli-
17 tion, alteration, repair, or reconstruction of an improvement
18 shall contain the full name of every person interested in it and
19 shall meet the requirements of section 1 of Act No. 213 of the
20 Public Acts of 1963, being section 129.201 of the Michigan
21 Compiled Laws.

22 (3) Each bid for a contract, except as provided in subsec-
23 tion (2), shall contain the full name of each person or company
24 interested in the contract and shall be accompanied by bond or
25 certified check on a solvent bank, in the amount at 10% of the
26 bid, that if the bid is accepted a contract will be entered into
27 and the performance of its proposal secured. The board may

1 reject any and all bids. A surety bond, approved by the board,
2 shall be required of all contractors in an amount equal to at
3 least 100% of the contract price, conditioned upon faithful per-
4 formance of the contract.

5 Sec. 7. All expenses and obligations incurred by the board
6 in carrying out its powers and in exercising its duties under
7 this act are payable from revenues, other receipts, or income of
8 the board, from grants, gifts, or contributions, from funds
9 established in accordance with this act, or from general revenue
10 funds appropriated by the legislature for operating expenses of
11 the board. This act does not authorize the board to incur
12 indebtedness or to impose liability on the state or a political
13 subdivision of the state.

14 Sec. 8. The board shall consider an application for a loan
15 only after state certification that the applicant is a minority
16 or woman business enterprise and that the applicant satisfies all
17 criteria regarding eligibility for assistance under section 9 and
18 all rules of the board.

19 Sec. 9. (1) The board may lend money from the fund estab-
20 lished by section 13 to minority and woman business enterprises
21 for the purpose of funding minority and woman business enter-
22 prises and for the purpose of procuring or improving real or per-
23 sonal property, or both, for the establishment, location, or
24 expansion of retail, service, industrial, commercial, distribu-
25 tion, or research facilities in the state, if the board finds all
26 of the following facts:

1 (a) The project is economically sound and will benefit the
2 people of the state by increasing opportunities for employment,
3 strengthening the economy of the state, and expanding minority or
4 woman business enterprises.

5 (b) The proposed minority or woman business enterprise bor-
6 rower is unable to finance the proposed project at comparable
7 terms through financial channels other than the board.

8 (c) The value of the project is, or upon completion of the
9 project will be, at least equal to the total amount of the money
10 expended in the procurement or improvement of the project and of
11 which amount 1 or more financial institutions or other governmen-
12 tal entities have loaned not less than 50%.

13 (d) The amount to be loaned will not exceed 40% of the total
14 amount expended in the procurement or improvement of the
15 project.

16 (e) The amount to be loaned will be adequately secured by a
17 first or second mortgage upon the project, and by mortgages,
18 leases, liens, assignments, or pledges on or of other property or
19 contracts as the board requires.

20 (f) The proposed minority or woman business enterprise bor-
21 rower has not defaulted on a previous loan from the board, and a
22 full or limited partner, major shareholder, or holder of an
23 equity interest of the proposed minority or woman business enter-
24 prise borrower has not defaulted on a loan from the board.

25 (g) The proposed minority or woman business enterprise bor-
26 rower will be able to compete successfully in the private sector
27 if it obtains the necessary financial, technical, or managerial

1 support through the board or other identified and acceptable
2 sources. In determining whether a minority or woman business
3 enterprise borrower will be able to compete successfully, the
4 board shall give favorable consideration to factors such as the
5 successful completion of or participation in courses of study
6 providing financial, technical, or managerial skills related to
7 the operation of the business by the woman or the economically
8 disadvantaged individual, owner, or partner, and the prior suc-
9 cess of the individual, owner, or partner in personal, career, or
10 business activities, as well as to other factors identified by
11 the board.

12 (2) Financial statements and financial data submitted to the
13 board in connection with a loan application, or information taken
14 from those statements or data for any purpose, shall not be open
15 to public inspection and shall not be subject to the freedom of
16 information act, Act No. 442 of the Public Acts of 1976, being
17 sections 15.231 to 15.246 of the Michigan Compiled Laws.

18 (3) The board shall approve or disapprove a loan application
19 within 60 days after receiving the application.

20 Sec. 10. (1) Fees, charges, rates of interest, times of
21 payment of interest and principal, and other terms, conditions,
22 and provisions of the loans made by the board shall be estab-
23 lished as the board determines to be appropriate and in further-
24 ance of the purpose for which the loans are made. A mortgage
25 lien securing money loaned by the board may be subordinate to a
26 mortgage lien securing money loaned by a financial institution,
27 but shall be superior to that securing money loaned or expended

1 by any other corporation or person. The funds used in making
2 loans shall be disbursed upon order of the board.

3 (2) The board may permit interest payments owed to the
4 board, in whole or in part, to be used by borrowers to compensate
5 certified public accountants, business or technical advisors, or
6 financial consultants required by the board to be employed or
7 approved.

8 Sec. 11. The board shall not enter into an agreement for
9 granting a loan or insuring a mortgage unless the agreement spec-
10 ifies that all wages paid to laborers and mechanics employed for
11 work on projects shall be paid at the prevailing rates of wages
12 of laborers and mechanics for the class of work called for by the
13 project, which wages shall be determined in accordance with the
14 requirements of Act No. 166 of the Public Acts of 1965, being
15 sections 408.551 to 408.558 of the Michigan Compiled Laws, for
16 determination of prevailing wage rates. However, if a nonpublic
17 user beneficiary of the project undertakes, as part of the
18 project, construction to be performed by its regular bargaining
19 unit using employees who are covered under a collective bargain-
20 ing agreement which was in existence before the date of the com-
21 mitment instrument undertaking to insure a mortgage or grant a
22 loan, then the rate of pay provided under the collective bargain-
23 ing agreement may be paid to the employees. The requirements of
24 this section shall not apply if the federal government or any of
25 its agencies furnishes by loan or grant all or a part of the
26 funds used in connection with the project and prescribes

1 predetermined minimum wages to be paid to laborers and
2 mechanics.

3 Sec. 12. The board shall not be required to pay taxes upon
4 its property or assets, upon property acquired or used by the
5 board under this act, or upon income from its property or
6 assets. This exemption does not apply to property belonging to
7 the board while it is in the possession of a private person and
8 used for private purposes for profit.

9 Sec. 13. (1) The minority and woman development loan fund
10 of the board is created as a revolving fund within the state
11 treasury and shall consist of all money designated by the board
12 for the purpose of making loans authorized under section 9.

13 (2) All money received under this act shall be trust funds,
14 to be held and applied solely as provided in this act.

15 Sec. 14. If a default occurs with respect to a loan or
16 lease, the board shall take action as it considers proper in the
17 circumstances to enforce and protect its rights which may include
18 an appropriate action at law or in equity, enforcement or waiver
19 of a provision of a mortgage or security agreement or lease, or
20 reinstatement of a forfeited or canceled right, title, or
21 privilege.

22 Sec. 15. All money, funds, properties, and assets acquired
23 by the board shall be held by the board in trust to carry out its
24 powers and duties, shall be used as provided in this act, and
25 shall at no time be part of other public funds.

26 Sec. 16. A person who intentionally misrepresents himself
27 or herself as owning, controlling, operating, or participating in

1 a minority or woman business enterprise for the purpose of
2 obtaining funds, contracts, subcontracts, services, or other ben-
3 efits under this act is guilty of a felony, punishable by impris-
4 onment for not more than 4 years, or a fine of not more than
5 \$2,000.00, or both.

6 Sec. 17. (1) The minority and woman contractors bonding
7 special account is established as a revolving fund in the state
8 treasury, consisting of money appropriated by the legislature for
9 this purpose; all grants, gifts, and contributions received under
10 section 5; all premiums charged and collected in accordance with
11 section 18; all money recovered following defaults; and any other
12 money obtained by the board for the purposes of this section and
13 section 18. The fund shall be administered by the board. Money
14 in the account shall be held by the board in trust for the pur-
15 poses of this section and section 18 and shall at no time be part
16 of public funds.

17 (2) Claims against the state arising from defaults shall be
18 payable from the minority and woman contractors bonding special
19 account. This section or section 18 does not grant or pledge to
20 any obligee or other person any state money other than the money
21 in the minority and woman contractors bonding special account or
22 money available to the special account upon request of the
23 board.

24 (3) The minority and woman contractors bonding program
25 administrative special account is established in the state trea-
26 sury consisting of all money appropriated to the account. All
27 expenses of the board in carrying out the purposes of this

1 section and section 18 shall be paid from this administrative
2 special account.

3 Sec. 18. (1) The board may execute construction contract
4 bonds as surety for minority and woman contractors as principals,
5 on construction contracts with the state, a political subdivision
6 or instrumentality of the state, or a person as the obligee. The
7 board as surety may exercise all the rights and powers of a com-
8 pany authorized by the insurance commissioner to execute con-
9 struction contract bonds as surety but shall not be subject to
10 any requirements of a surety company under the insurance code of
11 1956, Act No. 218 of the Public Acts of 1956, being sections
12 500.100 to 500.8302 of the Michigan Compiled Laws, nor to any
13 rules of the insurance commissioner.

14 (2) The board shall promulgate rules establishing procedures
15 for application for construction contract bonds by minority and
16 woman contractors and for review and approval of applications in
17 accordance with the administrative procedures act of 1969, Act
18 No. 306 of the Public Acts of 1969, being sections 24.201 to
19 24.328 of the Michigan Compiled Laws. The board shall review
20 each application in accordance with the rules and, based on the
21 bond worthiness of each applicant, may approve all qualified
22 applicants.

23 (3) The rules of the board shall require that a minority or
24 woman contractor be denied a bond by 2 surety companies in order
25 to apply to the board for a bond.

26 (4) The rules promulgated by the board shall require a
27 contractor to pay a bond premium established by the board which

1 does not exceed 2% of the penal sum of the bond. All premiums
2 paid by minority and woman contractors shall be paid into the
3 minority and woman contractors bonding special account.

4 (5) The penal sum amounts of all outstanding bonds issued by
5 the board shall not exceed the amount of funds in the minority
6 and woman contractors bonding special account.

7 (6) The insurance commissioner shall provide technical and
8 professional assistance considered necessary by the board.

9 Sec. 19. This act shall not take effect unless Senate Bill
10 No. _____ or House Bill No. 4316 (request no. 01314'91) of the
11 86th Legislature is enacted into law.