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SFA



BILL ANALYSIS

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Senate Bill 495 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Philip E. Hoffman
Committee: Financial Services

Date Completed: 7-14-97

RATIONALE

The Michigan BIDCO Act (Public Act 89 of 1986) authorized in the State the operation of business and industrial development corporations (BIDCOs), with the purpose of promoting economic development. The Act introduced the concept of a new form of investment or financing company to meet the needs of newly established, nontraditional firms, such as those involved in computer software development and high technology experimentation, that may not have the collateral or assets required for conventional bank financing. Under the Act, a BIDCO may offer managerial assistance to a beginning company, and is allowed to offer various forms of financial aid, including Small Business Administration loans, and to sell the guaranteed portion of these loans. A BIDCO bases its lending decisions on a company's management, cashflow, and performance potential, rather than on its hard assets, and thereby meets the needs of moderate-risk, moderate-return businesses that cannot offer the high yields or products in which venture capitalists typically are interested.

Currently, the BIDCO Act applies only to corporations. Since the Act was passed, however, new forms of business entities, such as limited liability companies (LLCs), have been authorized to operate in Michigan. Some members of the business community have proposed that BIDCOs be allowed to reorganize as limited liability companies, since that type of business enjoys greater tax advantages and less exposure to liability than other forms of business entities. For example, while corporate income is taxed at the corporate level and then taxed again at the investor level if distributed to shareholders, one level of taxation is eliminated for LLCs. Under Federal tax law, LLC members pay taxes on company profits only at the personal level, and may deduct certain business losses that otherwise do not "pass through" to individual shareholders in a corporation. Some

people believe that BIDCOs should be able to avail themselves of the business advantages of operating as an LLC.

CONTENT

The bill would amend the Michigan BIDCO Act to allow licensure under the Act of a limited liability company (LLC).

Currently, the Act provides that a Michigan corporation may apply to the "Commissioner" (the Director of the Financial Institutions Bureau) for licensure as a BIDCO (or business and industrial development *corporation*). Under the bill, a Michigan corporation or a Michigan limited liability company could apply for licensure as a BIDCO (or business and industrial development *company*). The bill would change terminology throughout the Act that is specific to corporations so that the terms would apply to a corporation or an unincorporated company, such as an LLC. (For instance, the term "shareholders" would be replaced with "owners".)

Application for Licensure

The Act requires that the Commissioner approve an application for licensure as a BIDCO if, and only if, he or she determines certain facts. The bill would add to those criteria, if the applicant were or would be an LLC, that the applicant's operating agreement and business plan were consistent with the objectives of promoting the applicant's stability and viability and would not impede the applicant's ability 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 would have to contain provisions that the Commissioner considered necessary to satisfy this requirement.

Board of Directors

The Act requires that the board of directors of each BIDCO consist of not less than seven directors. The bill also specifies that a BIDCO would have to have a board of directors. If the licensee were an LLC, the board could consist of members who were not managers of the BIDCO.

Dissolution of a BIDCO

The Act provides that, upon approval of two-thirds of its board of directors and after complying with the Act's notice provisions, a BIDCO licensee may apply to the Commissioner to have the Commissioner accept the surrender of the BIDCO's license. Under the bill, that provision would apply only to a corporation that was a BIDCO licensee. If a BIDCO licensee that was an LLC dissolved and met the Act's notice requirements, it would have to apply to the Commissioner to surrender its BIDCO license. The bill specifies that a corporation BIDCO licensee could not dissolve and a limited liability company BIDCO licensee could not complete the winding up of its affairs until the Commissioner had accepted the surrender of the BIDCO's license.

The Act requires that, not less than 60 days before filing an application with the Commissioner to surrender a BIDCO license, a licensee notify its shareholders and creditors of its intention to file the application. The bill would remove the 60-day requirement and mandate, instead, that upon the dissolution of a BIDCO organized as an LCC or before the dissolution of a BIDCO organized as a corporation, the licensee notify its owners and creditors of the dissolution and intent to file a BIDCO surrender application.

MCL 487.1102 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In recent years, individuals wishing to organize a business or those already in business have looked to a new form of business entity, the limited liability company, that combines the best features of two other business forms: the partnership and the corporation. An LLC provides its "members" (i.e., those with an interest in the company) with

protection against personal liability for the debts of the business, and offers them flexibility in structuring a company's internal organization, management, and procedures. In addition, an LLC is able to secure the same Federal tax treatment as a partnership. In 1993, Michigan joined a national trend by allowing the formation of LLCs within the State. Public Act 323 of 1994 expanded the concept to permit a limited liability company to merge with any other business entity; and Public Act 410 of 1994 established an alternative to LLCs by allowing certain professional firms to operate as limited liability partnerships, a business form that offers some of the advantages of the limited liability company but is better suited for professional service firms. The significant advantages enjoyed by LLCs should also be extended to BIDCOs, in order to limit the exposure to liability of a BIDCO's investors and reduce the BIDCO's tax burden. Such a measure would make the operation of a BIDCO a more attractive business enterprise. The financial gains of operating a BIDCO as an LLC could, in turn, be passed on to investors or used to increase the BIDCO's economic development capacity.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would allow a BIDCO to reorganize as a limited liability company in accordance with the Michigan Limited Liability Company Act. There are currently nine licensed BIDCOs in Michigan that would be eligible for this type of reorganization. According to the Department of Consumer and Industry Services, Financial Institutions Bureau, this bill would have no fiscal impact on the State, as the revenue generated from the BIDCO licensing fees would be at a level to cover the administrative costs incurred by the Bureau.

Fiscal Analyst: M. Tyszkiewicz

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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.