

SENATE No. 1604

By Mr. McKinnon, a petition (accompanied by bill, Senate, No. 1604) of Allan R. McKinnon, B. Joseph Tully, John W. Olver and members of the House of Representatives, for legislation to create the Massachusetts community development finance corporation. Urban Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT CREATING THE MASSACHUSETTS COMMUNITY DEVELOPMENT FINANCE CORPORATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The Massachusetts General Laws are hereby amended by
2 inserting after Chapter 40E the following new chapter:

3 CHAPTER 40F

4 *Section 1. Definitions*

5 For the purposes of this chapter the following terms shall
6 have the following meaning unless the context clearly indi-
7 cates otherwise:—

8 (a) "corporation" shall mean the Massachusetts Community
9 Development Finance Corporation (hereafter referred to as
10 CDFC).

11 (b) "Community Development Corporation" (or C.D.C.)
12 shall mean a quasi public not-for-profit corporation organized
13 under Chapter 180 of the Massachusetts General Laws, to
14 carry out certain public purposes and with by-laws providing
15 that

16 (1) it is organized to operate within a specified geograph-
17 ic area coincident with existing geo-political boundaries and

18 (2) that membership in the corporation shall be open to
19 all residents of the area who are eighteen years or older,
20 and

21 (3) that its officers and Board of Directors shall be elected
22 by the membership, and

23 (4) that the said elections shall be held so that officers are

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24 elected at least every two years and directors on a rotating
25 basis at least every three years.

26 Any existing geo-political boundary — precinct, ward, town,
27 representative district, senatorial district, city or county —
28 shall be acceptable except that under no circumstances shall
29 any designated area include a population in excess of one hun-
30 dred thousand as reported in the most recent United States
31 Census. Elections for officers and directors held pursuant to
32 this section shall be held in accordance with policies adopted
33 by the Board of Directors of the CDFC.

34 (c) "Small business" shall mean any business that has
35 either: average gross sales of less than \$7,500,000/year for
36 the most recent two fiscal years, or has less than two hun-
37 dred and fifty full time employees, except that businesses
38 primarily engaged in wholesaling shall be considered eligible
39 if their average gross annual sales for the most recent two
40 fiscal years do not exceed \$15,000,000.

41 (d) "Small Business Investment Corporation" (or SBIC)
42 shall mean a Massachusetts corporation organized to provide
43 capital to small businesses in the Commonwealth and licensed
44 according to the provisions of the Small Business Investment
45 Act — Public Law 669, 85th Congress., 2nd session., as
46 amended.

47 (e) "Target area" shall mean any contiguous geographic
48 area which is 1) a decadent, substandard or blighted open
49 area as defined in Chapter 121A of the General Laws, and 2)
50 in which according to the most recent United States Census,
51 the average household income is reported to be at least 15%
52 lower than that reported for the Boston SMSA; or any con-
53 tiguous geographic area in which the Board of Directors find
54 and publish that substantial conditions of blight, economic
55 depression, and widespread reliance on public assistance exist.

56 (f) "Project" shall mean any commercial, industrial or real
57 estate business or other economic development activity under-
58 taken in a "target area", and designed to reduce conditions
59 of blight, economic depression, or widespread reliance on pub-
60 lic assistance.

61 (g) "Costs of a project" shall mean any and all costs asso-
62 ciated with the design, planning and implementation of a "proj-

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63 ect" undertaken in a "target area". Such costs may include
64 but are not limited to: the costs of planning and design; op-
65 tions to buy feasibility or other studies; venture capital, con-
66 struction, and working capital; and any other costs determined
67 by the Directors of the corporation to be necessary to the pur-
68 poses of this act.

69 (h) "Capital participation investments" shall include pur-
70 chase of stock, both common and preferred, convertible secur-
71 ities, warrants, subscriptions, options to acquire, capital loans,
72 and working capital or inventory loans, royalties, and any
73 other lawful derivations of the foregoing.

74 *Section 2. Declaration of Public Necessity*

75 It is hereby found and declared that there exists in parts of
76 the Commonwealth substandard, decadent, or blighted open
77 areas; that each such area is inimical to the safety, health,
78 morals and welfare of the residents of the area and the Com-
79 monwealth, decreases the value of private investments and
80 threatens the sources of public revenue; that because of the
81 economic and social interdependence of communities, the eco-
82 nomic and industrial development of cities and towns of the
83 Commonwealth is substantially impaired; that there exists in
84 the Commonwealth a condition of substantial and persistent
85 unemployment and underemployment seriously aggravated by
86 an unacceptably low level of economic activity in such areas;
87 that the redevelopment of such areas requires the stimulation
88 of private investment therein; that community development
89 corporations in Massachusetts have themselves invested sub-
90 stantial funds in development projects in such areas and ex-
91 perience difficulty in undertaking additional such projects by
92 reason of the inadequacy of investment funds; that the fur-
93 ther activity of such community development corporations is
94 necessary to the redevelopment of such areas; that the provi-
95 sion of capital to small businesses in such areas is necessary
96 to their redevelopment; that the menace of such areas is be-
97 yond remedy and control solely by regulatory process in the
98 exercise of the police power and cannot be dealt with effec-
99 tively by the ordinary operations of private enterprise with-
100 out the aids provided herein; that increasing the number of
101 development projects in decadent, substandard and blighted

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102 open areas, providing capital to community development corp-
103 orations and small businesses within such areas, and stimulat-
104 ing private investment in such businesses and areas are public
105 uses and purposes for which public money may be ex-
106 pended.

107 *Section 3. Massachusetts Community Development Finance*
108 *Corporation*

109 There is hereby created by a body politic and corporate to
110 be known as the Massachusetts Community Development Fi-
111 nance Corporation (CDFC). The CDFC is hereby constituted
112 a public instrumentality and the exercise by the CDFC of
113 the powers conferred by this act shall be deemed and held to
114 be the performance of an essential governmental function.

115 The CDFC is hereby placed in the Department of Com-
116 munity Affairs but shall not be subject to the supervision or
117 control of the Department of Community Affairs or of any
118 board, bureau or agency of the Commonwealth except as spe-
119 cifically provided in this act.

120 The Corporation shall consist of seven directors to be ap-
121 pointed by the Governor, and shall include persons experi-
122 enced in venture capital, investment finance and community
123 economic development. At least three of the directors of the
124 corporation shall be persons from target areas and members
125 of community development corporations. Each appointed
126 member shall serve at the pleasure of the governor but shall
127 be appointed for a term of 5 years, except that in making his
128 initial appointments the governor shall appoint 1 member to
129 serve for a term of 1 year, 1 member for a term of 2 years, 2
130 members for terms of 3 years, 2 members for terms of 4 years,
131 and 1 member for a term of 5 years. Any person appointed
132 to fill a vacancy shall serve for only the unexpired term. Any
133 member shall be eligible for reappointment. Any member may
134 be removed from his appointment by the governor only for
135 good cause. The governor shall appoint the chairman of the
136 corporation who shall be a member of the board. The direc-
137 tors shall annually elect one of their members as vice-chair-
138 man and secretary-treasurer who shall keep a record of the
139 proceedings of the corporation and shall be the custodian of
140 all books, documents, and papers filed with the corporation

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141 and of the minute books of the corporation and its official seal.
142 Four of the directors of the corporation then in office shall
143 constitute a quorum and four affirmative votes shall be neces-
144 sary for the transaction of any business or the exercise of any
145 power or function of the corporation. Each director shall be
146 entitled to reimbursement for his or her actual and necessary
147 expenses incurred in the performance of his official duties.

148 The corporation, its directors, officers, and employees shall
149 be subject to the provisions of section one through four of
150 chapter 268A except that the corporation may purchase from,
151 sell to, borrow from, loan to, contract with or otherwise deal
152 with any public not-for-profit community development cor-
153 poration organized to carry out the purposes of this act of
154 which any director of the corporation is a member or officer
155 provided that such interest is disclosed in the minutes of the
156 corporation and provided further that no director having such
157 a financial interest may participate in any decision affecting
158 such transaction.

159 The President of the corporation shall be appointed by the
160 Board of Directors. The President shall be the chief adminis-
161 trative and operational officer of the corporation and shall
162 direct and supervise administrative affairs and the general
163 management of the corporation. The president may employ
164 such other employees as shall be designated by the board of
165 directors; and shall attend all meetings of the board; he shall
166 cause copies to be made of all minutes and other records and
167 documents of the corporation to the effect that such copies
168 are true copies, and all persons dealing with the corporation
169 may rely upon such certificates.

170 *Section 4. General grant of powers*

171 (a) Adopt by-laws for the regulation of its affairs and
172 the conduct of its business.

173 (b) Adopt an official seal.

174 (c) Sue and be sued in its own name.

175 (d) Make and execute contracts and all other instruments
176 necessary or convenient for the exercise of its power and func-
177 tions.

178 (e) Acquire, hold and dispose of personal property for its
179 corporate purposes.

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180 (f) Enter into agreements or other transactions with any
181 federal or state agency.

182 (g) Acquire real property, or an interest therein, by pur-
183 chase of foreclosure, where such acquisition is necessary or
184 appropriate to protect any investment or loan in which the
185 agency has an interest; to sell, transfer and convey any such
186 property to a buyer and in the event such sale, transfer or
187 conveyance cannot be effected with reasonable promptness or
188 at a reasonable price, to lease such property to a tenant.

189 (h) Invest any funds held in reserves or sinking funds, or
190 any funds not required for immediate disbursement, in such
191 investments as may be lawful for fiduciaries in the common-
192 wealth.

193 (i) Borrow money by the making of notes and the issuance
194 of bonds including tax exempt revenue bonds and secure such
195 bonds by the pledge of revenues, mortgages and notes of
196 others.

197 (j) Employ a president, who shall be the chief executive
198 officer of the corporation, and such other agents, employees,
199 professional and business advisers as may from time to time
200 be necessary in its judgment and to fix their compensation
201 The president, professional advisers and business advisers shall
202 not be subject to the provision of chapter thirty-one or sec-
203 tion nine A of chapter thirty.

204 (k) Appear in its own behalf before boards, commissions,
205 departments or other agencies of government, municipal, state
206 or federal.

207 (l) Procure insurance against any loss in connection with
208 its property in such amounts, and from such insurers, as may
209 be necessary or desirable.

210 (m) consent, subject to the provisions of any contract with
211 noteholders or bondholders, whenever it deems it necessary or
212 desirable in the fulfillment of the purposes of this act, to the
213 modification, with respect to rate of interest, time of payment
214 or any installment of principal or interest, or any other terms,
215 of any mortgage, mortgage loan, mortgage loan commitment,
216 contract or agreement of any kind to which the MHFA is a
217 party.

218 (n) do any and all things necessary or convenient to carry

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219 out its purposes and exercise the powers expressly given and
220 granted in this act.

221 (o) Accept gifts or grants or loans of funds or property or
222 financial or other aid from any federal or state agency or
223 private fund.

224 (p) Create, issue, buy and sell stock and other capital par-
225 ticipation instruments; to hold such stock and capital partici-
226 pation instruments and to underwrite the creation of a capital
227 market for these securities in a manner which provides first
228 offer of resale to the community development corporation,
229 business or residents of the target area and which is designed
230 to enhance development of capital ownership in the target
231 area.

232 (q) Provide and pay for such advisory services and tech-
233 nical assistance as may be necessary or desirable to carry out
234 the purposes of this act.

235 *Section 5. Public investment*

236 The Treasurer and Receiver General is hereby directed to
237 purchase shares of the Corporation in the amount of \$10,000,-
238 000. The Treasurer and Receiver General is further directed
239 to sell or cause the sale of \$10,000,000 in general obligation
240 bonds of the Commonwealth to finance said purchase. Such
241 bonds shall have such maturities and bear such interest as may
242 be determined by the Treasurer consistent with Section 3 Act
243 62 of the amended Constitution of the Commonwealth.

244 In return for the \$10,000,000 investment the Commonwealth
245 shall receive 1,000,000 shares of Class A Common Stock in
246 the corporation. These shares shall have no par value and
247 shall constitute the entire issue of Class A Common Stock.

248 The Corporation shall hold the \$10,000,000 proceeds in an
249 account or accounts separate from other funds. The Corpora-
250 tion shall use the \$10,000,000 for only two purposes: 1) to
251 purchase capital participation instruments from Community
252 Development Corporations only when the Board of the CDFC
253 finds that the Community Development Corporation will use
254 the funds in support of a project consistent with the purposes
255 of this act; and 2) to pay for the normal business expenses
256 associated with the day to day operation of the CDFC.

257 Before a capital participation instrument may be purchased,

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258 the Board of Directors of the CDFC must find that all funds
259 given to a community development corporation will be used
260 for the purposes of planning, acquiring or developing a busi-
261 ness, real estate or other project; that there is a reasonable
262 expectation that the project will be successful; that the bene-
263 fits, including increased employment and improved standard of
264 living, shall primarily accrue to residents of the target area;
265 and that each of the requirements of a community develop-
266 ment corporation and target area as defined in section 1 have
267 been fulfilled.

268 *Section 6. Subsidiary Special Small Business Investment*
269 *Corporation*

270 Because of the critical importance of small business to the
271 economic development of the Commonwealth and to blighted
272 substandard and decadent target areas, the CDFC is specific-
273 ally authorized to establish a Special Small Business Invest-
274 ment Corporation. This subsidiary Small Business Investment
275 Corporation shall provide equity capital and loans to stand-up,
276 acquire or expand small businesses which carry out the pur-
277 poses of this act.

278 Two and one half million dollars are hereby appropriated
279 from the general funds to the CDFC for initial investment in
280 the subsidiary Special Small Business Investment Corporation.
281 None of the proceeds derived from the investment provided
282 for in section 5 above shall be used to support the establish-
283 ment or operation of this subsidiary Special Small Business
284 Investment Corporation.

285 Twenty-five per cent of the total funds available to the
286 Small Business Investment Corporation shall be set aside for
287 investments in Community Development Corporations or proj-
288 ects undertaken by Community Development Corporations
289 which are eligible to execute capital participation instruments
290 with the CDFC under the provisions of section 5 of this act.

291 *Section 7. Liberal construction*

292 This act, being necessary for the welfare of the Common-
293 wealth and its inhabitants shall be liberally construed to effect
294 the purposes thereof.

295 *Section 8. Annual report*

296 The chairman of the Board of Directors shall on the third

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297 Monday of January each year submit to the governor, to the
298 clerk of the House of Representatives and to the clerk of the
299 Senate an annual report of the authority's activities.

300 *Section 9. Audit*

301 The accounts and books of the CDFC, including its receipts,
302 disbursements, contracts, mortgages, investments and other
303 matters relating to its finances, operations and affairs shall
304 be examined and audited from time to time by the State
305 Auditor.

306 *Section 10. Severability*

307 The provisions of this act are severable and if any of its
308 provisions shall be held unconstitutional by any court or com-
309 petent jurisdiction, the decisions of such court shall not affect
310 or impair any of the remaining provisions.

From the Reader of the Conference on Alternative State & Local Public Policies held June 10-13, 1976 in Austin, Texas. The reader was edited and compiled by Derek Shearer, California Public Policy Center Los Angeles, California and Lee Webb, Professor of Public Policy, Goddard College Plainfield, Vermont.

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