

CHAPTER 135

AN ACT

Relating to the creation of the Alaska State Development Corporation; and providing for an effective date.

(S.B. 153)

Be it enacted by the Legislature of the State of Alaska:

Article I

Organization of Development Corporation

Section 1. **Purpose.** The purpose of this Act is to create an instrumentality of the state to develop, stimulate and advance the business prosperity and economic welfare of Alaska and its citizens. This shall be accomplished by providing critically needed investment capital for development loans to encourage and assist the wholesome development of new business and industry in Alaska and to rehabilitate and expand existing business and industry. By providing development loans to all types of business activity, whether of an industrial, agricultural or recreational nature, the economic stability of the state will be strengthened, the employment opportunities of its citizens enlarged, and their standard of living and general welfare enhanced.

Sec. 2. **Alaska State Development Corporation.** The Alaska state development corporation, hereafter referred to as the corporation, is established as a public corporation of the State of Alaska. The Corporation is an instrumentality of the state, but has a legal existence independent of and separate from the state.

Sec. 3. **Board of Directors.** a. The Alaska state development corporation board of directors, hereafter referred to as the board, shall conduct the business of the corporation.

b. The board consists of the commissioner of commerce and six residents of Alaska appointed by the governor, who shall serve at his pleasure. Membership on the board shall be on a non-partisan basis with due regard given to representation from the different regions of Alaska, at least one member being appointed from each major senatorial district, if a qualified appointee in the opinion of the Governor resides in each such district. One-half of the appointed members shall be active in the banking business and the

other half shall be from other professions, but should have extensive knowledge of financial matters. The appointment of members to the board shall be confirmed by the legislature meeting in joint session. Newly appointed members are qualified to act and to receive compensation between the time of their appointment and the time of confirmation or rejection by the legislature.

c. The term of service for an appointed member of the board is four years. The terms of two appointed members shall expire on February 1 of each year. At the time of the initial appointments, the governor shall designate which members have been appointed for a one, two, or three year term. It is the intent of this Act that the terms of the appointed members be staggered to insure continuity of experience. A member appointed by the governor to fill a vacancy occurring other than by expiration of a term shall serve for the unexpired term of the member he succeeds.

d. At the time of the appointment of a member to the board, or should there be reason to do so while a member, he shall declare privately, in writing, to the governor and the board any financial or business interest he has, which might conflict with the public nature of his membership on the board. If there is a serious conflict, he may be asked by the board to abstain from decisions resulting in a conflict or to resign from the board. Any loan or contract of the corporation which is otherwise valid shall not be invalid because of any personal interest therein on the part of any board member; provided, that such interest is so declared and that said board member abstains from decisions pertaining to such loan or contract.

Sec. 4. **Organization of Board.** a. Within 90 days after the effective date of this Act, the governor shall appoint the board. Public employees are not eligible for appointment to the board. Within 14 days after the last of the original appointments, the board shall meet and organize by electing from its members a president,

who shall also be chairman of the board; a vice president, who shall preside in the absence of the president; and a secretary. At the first regular meeting of every odd-numbered year, the board shall elect new officers.

b. Members of the board receive no salary, but shall receive the per diem established by law for other boards and shall be paid for their necessary travel expenses.

c. The attorney general shall be the legal counsel for the corporation. He shall advise the corporation in legal matters and represent it in suits.

d. The meetings of the board shall be public except for purposes of discussing and passing on loan applications. Five members shall constitute a quorum for the transaction of business, unless the by-laws require a larger number; provided, however, due notice shall have been given to all members.

e. The board shall keep minutes of its meetings and send certified copies to the governor.

Sec. 5. Executive Vice President. The board may employ an executive vice president to manage the corporation. He shall be professionally trained and experienced in the performance of his duties. The selection of the executive vice president is subject to the approval of the governor. The executive vice president may not have any financial or business interest that might conflict with the management of the corporation in the best public interest. The board may delegate to the executive vice president the powers and duties it deems proper.

Sec. 6. Powers and Duties of the Corporation. The corporation has, but is not limited to, the following powers:

- (1) to have perpetual existence as a corporation;
- (2) to adopt, alter, and use a seal;
- (3) to adopt, amend and repeal by-laws and regulations governing the business of the corporation;
- (4) to sue and be sued;
- (5) to appoint officers, employees and agents and to vest in them the powers and

duties that the corporation may deem proper; provided, that employees shall be bonded;

(6) to make contracts and to execute all instruments necessary or convenient in the exercise of its corporate powers;

(7) to make loans in participation with financial institutions to any person, firm, corporation, joint stock company, association or trust, and to establish and regulate the terms of these loans;

(8) to acquire in any lawful manner by purchase, lease, bequest, devise, gift or as may be acquired by the satisfaction of debts or the foreclosure of mortgages, and to hold, maintain, use, operate and convey any real or personal property;

(9) to borrow money and to issue bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, for any of its corporate purposes or for the purpose of funding, refunding, paying or discharging any of its outstanding or assumed bonds or obligations, and to enter into agreements and contracts concerning these obligations; and the corporation may secure the payment of its obligations by pledge or mortgage, or other lien, on any or all of its contracts, revenues, income or property; provided, however, that the corporation may not incur any secondary liability by way of guaranty or endorsement of the obligations of any other corporation or legal entity;

(10) to accept grants or loans from, and to enter into contracts with, the federal government, the State of Alaska, or any of its political subdivisions;

(11) to qualify for and participate in federal programs of the type provided by the Small Business Investment Act of 1958 and to that end to comply with the provisions of any federal program when necessary;

(12) to lease, alienate and dispose of any of its property;

(13) to acquire, hold and dispose of stocks, memberships, contracts, bonds or other interests in other corporations or legal entities, and to exercise any powers or rights, in connection with these interests, as may be specific in contracts or agreements and as allowed by law concerning the satisfaction of debts;

(14) to do whatever may be necessary to carry out the powers granted by this Act or other acts of the Alaska legislature, or the laws and regulations of the federal government; provided, however, that the corporation shall have no power to pledge the credit or the taxing power of the State of Alaska or any of its political subdivisions, nor shall the State of Alaska or its political subdivisions be liable for the debts of the corporation.

Sec. 7. Submission of Reports. Before December 1 of each year the board shall submit to the governor and the legislature a report which shall describe the board's operations, fiscal transactions, financial condition, and future plans. The report shall be in a comprehensive form, which may be prescribed by the governor.

Sec. 8. Audit and Examination of Records. The board shall have its financial records audited annually. The annual audit shall be conducted by the legislative auditor. If an audit conducted by a certified public accountant is satisfactory in the judgment of the legislative auditor, it may be accepted in lieu of the state audit. The legislative auditor may prescribe the form and content of the financial records of the board and may have access to these records at any time. In addition, the state bank examiner shall examine the records of the corporation annually.

Sec. 9. Loan Advisory Committees. The board may establish loan advisory committees in the different regions of the state, who shall serve without pay or per diem. The purpose of these committees shall be to make recommendations to and generally advise the board.

Sec. 10. Location of Corporation. The corporation shall have its principal office at the state capital, but may have offices at other locations in the state as determined by the board.

Article II

Finances of Corporation

Sec. 20. Initial Capital. Appropriations and loans from the state general fund necessary for the initial operation of the corporation are authorized.

Sec. 21. Debenture Certificates. a. There shall be three classes of negotiable debenture certificates, which shall have

graduated call features, issued by the corporation.

(1) "Class A certificates" shall be issued as evidence of indebtedness of the corporation through private and public sales. The maximum face value of class A certificates that may be sold shall be \$15,000,000.00. Class A certificates shall be backed by the full resources and credit of the corporation, and they shall take priority in the payment of principal and interest to class B and C certificates. \$1,000,000.00 in class A certificates shall be sold to banks, financial institutions and other investors at a 3½ percent interest rate prior to the commencement of loan activities by the corporation, and prior to a public offering of the balance of \$14,000,000.00 of class A certificates at an interest rate no greater than 4½ percent. The general procedure for the sale of class A certificates shall be determined by the board; provided, however, that the class A certificates outstanding at any time shall not exceed five times the face value of class B certificates outstanding.

(2) "Class B certificates" shall be issued as evidence of indebtedness of the corporation through private and public sales. The maximum value of class B certificates that may be sold shall be \$3,000,000.00. Class B certificates shall be backed by the full resources and credit of the corporation and they shall take priority in the payment of principal and interest to class C certificates. At least \$500,000.00 in class B certificates shall be sold at a 4 percent interest rate prior to the commencement of loan activities by the corporation, and prior to the sale of the remaining class B certificates, which shall bear an interest rate no greater than 5½ percent.

(3) "Class C certificates" shall be accepted by a borrower of funds from the corporation at the time of a development loan. The borrower shall accept these certificates in lieu of cash from a development loan and in an amount equal to 5 percent of the face value of the loan. The funds represented by the class C certificates shall be deposited by the corporation in a time deposit account, and shall earn interest at the maximum rate allowed by banking regulations. The funds represented by class C certificates shall constitute a reserve for possible loan losses, which shall not be drawn against unless the corpora-

tion has exhausted the reserve funds provided by Sec. 23 of this Act. Class C certificates shall not be issued when corporate money is invested in accordance with Secs. 23 e. and 27 b. of this Act.

b. The corporation shall provide a legal opinion, from a recognized private source, concerning class A and B certificates without cost to the underwriter.

c. The annual report of the corporation provided in Sec. 7 shall be available without cost to any certificate holder.

d. The certificates of the corporation shall be lawful investment and may be accepted as security for all fiduciary, trust, and public funds of the State of Alaska or its political subdivisions.

Sec. 22. Commencement of Corporate Activities. The corporation shall place \$1,000,000.00 from the sale of class A certificates and \$500,000.00 from the sale of class B certificates, as provided in Sec. 21 (1) and (2), in a trust fund. At the time the trust fund contains \$1,500,000.00, the board shall certify this fact and may commence its corporate activities as provided by this Act.

Sec. 23. Corporation Funds. a. The corporation shall have a general income fund. All interest received from loans shall be credited to this fund. Expenses of the corporation, including interest payments on class A, B, and C certificates, shall be charged to this fund.

b. The corporation shall have a principal reserve fund. All repayments of principal from loans made by the corporation shall be credited to this fund. The board, while arranging the loans of the corporation, shall maintain sufficient money in this fund to amortize class A certificates. There shall also be maintained in the principal reserve fund a sinking fund for class B certificates. When three years amortization for class A certificates is accumulated and when a sinking fund for class B certificates is established, surplus money may be transferred to the development loan fund.

c. The corporation shall have a loan loss reserve fund. The board shall annually credit to this fund a sum equal to one-fourth percent of all outstanding loans. Loan losses shall be charged to the loan loss reserve fund. Recovery of a loan loss, charged to the fund, shall be credited to

this fund. Money in the general income fund in excess to the estimated expenses of the following fiscal year shall be transferred to the loan loss reserve fund.

d. The corporation shall have a development loan fund. Money not required by other funds shall be credited to this fund. Loans of the corporation, as provided by this Act, shall be charged to the development loan fund.

e. The income, reserve and development loan funds of the corporation may be deposited in a bank or trust company having its principal place of business in the State of Alaska; or invested in obligations of the United States of America, the State of Alaska, and its political subdivisions; provided, however, that these obligations shall be secured by the general taxing power of the obligor.

Sec. 24. Remedies of Holders of Debenture Certificates. a. the board may provide in covenants and agreements with the holders of its certificates any remedies that may be reasonable and not in violation of the law or contrary to any of the provisions of this Act.

b. The underwriters may appoint a trustee outside the state. He may have the fiduciary duties of observing the maintenance of debenture covenants and other agreements.

c. In the event that the corporation defaults in the payment of the principal or interest on any debentures or fails or refuses to comply with any agreement made with holders of its debentures, the holders of these debentures may bring an action in the superior court of Alaska to enforce their rights in accordance with the following provisions:

(1) 30 days prior to initiating an action in the superior court the plaintiff shall give notice in writing to the corporation, the legislature, the attorney general, and the governor.

(2) A receiver appointed by the court to collect the revenues of the corporation in satisfaction of a debt may not sell, assign, mortgage or otherwise dispose of any assets belonging to the corporation.

Sec. 25. Limitation of State Power. The state pledges that it will do nothing to diminish or impair the power of the corporation so as to affect the security of

the corporation's financial obligations. The state further pledges that it will do nothing to alter the powers of the corporation which would be inconsistent with contractual agreements between the corporation and the federal government.

Sec. 26. Tax Exemption. The purpose of the corporation, as an instrumentality of the state, is to benefit the people of Alaska by increasing their commerce, prosperity and general well-being. Because the corporation has this purpose, it is free of all taxes and assessments in the State of Alaska. Debenture certificates issued by the corporation, their transfer, and their income shall also be free of taxes and assessments.

Sec. 27. Corporate Lending and Limitations. a. The corporation may accept applications for development loans and extend credit on the basis of no greater than 90 percent participation by the corporation and no less than 10 percent participation by a bank or banks. The corporation and the participating bank or banks shall share the same ratable interest from, and collateral securing, a loan.

b. The corporation may, with surplus funds, participate with banks on the same basis as Sec. 27 a. in existing, short term, non-development loans. The intention of this provision is to permit the corporation to utilize funds not solicited for development purposes and to receive income to meet its financial obligations.

c. The rate of interest charged for the corporation's share of a development loan shall be determined by the board; provided, that it shall be no greater than 7 percent.

d. The rate of interest charged by a participating bank may be determined by the participating bank; provided, that it shall be no greater than the legal contract rate of interest as set by state law.

e. The maximum term of a development loan shall be 20 years; provided, however, that the term of a loan shall in no instance extend beyond the final maturity date of the class A and class B certificates.

f. Development loans shall be applied for and presented to the corporation for approval through the participating bank.

g. Loans shall be administered by the

participating bank, and for this service a bank may charge the borrower a reasonable loan fee. In addition to this fee, the corporation shall enter into a servicing agreement with a participating bank, which may provide a participating bank with a fee equal to one-quarter of one percent interest on the corporation's share of the loan.

h. To safeguard the records of the corporation, participating banks shall make duplicates of all documents, retaining one copy, and providing the corporation with the other copy. This copy shall be deposited with a bank or trust company located in Alaska.

i. The corporation may have no more than 10 percent of the face value of outstanding class A and B certificates or \$750,000.00, whichever is the lower amount, outstanding at a time to any one borrower. The borrowing of individuals who hold a controlling interest in a borrowing company shall be added to the debt of the company in determining this limitation.

j. The board shall make a loan only when it is reasonably certain that the loan shall be repaid. In making this determination, the directors shall consider the proposed collateral, the integrity and management ability of the borrower, and the borrower's past and prospective earnings.

k. Before approving a development loan, the board shall consider the purpose of the loan. Only loans that are economically advantageous to the State of Alaska and the general public welfare shall be approved.

l. The board shall make a development loan to a responsible borrower only when credit is not elsewhere readily available on reasonable terms. Before granting a development loan, the board shall endeavor, so far as it is reasonable possible, to ascertain that the first opportunity to grant the loan has been given to banking or financial institutions in the State of Alaska.

m. The board may promulgate rules and regulations concerning loan policy and procedure; provided, however, that these rules may not conflict with any indenture agreements or provisions of this Act.

Sec. 28. Additional Securities. The legislature may amend this Act to permit the corporation to issue additional series of securities; provided, however, that addi-

tional securities may not rely on assets accumulated in connection with the issuance of any previous series of securities, except when reserves provided by covenants, this Act, or subsequent legislation have been met.

Sec. 29. **Dissolution.** The corporation, after the payment in full of its debentures and other obligations or after depositing in a trust sufficient money to secure the payment of its obligations, may dissolve by the majority vote of its directors fol-

lowed by the confirmation of the legislature. The effective date of dissolution shall be the date of confirmation by the legislature or on a date determined by the legislature at the time of confirmation. Assets remaining after the liabilities and obligations of the corporation have been satisfied shall be deposited to the credit of the general fund of the State of Alaska.

Sec. 30. **Effective Date.** This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 24, 1961

CHAPTER 136

AN ACT

Relating to the tax on motor fuel; amending Sec. 48-5-2 (a) and (b), ACLA 1949, as amended by Ch. 80, SLA 1951, Ch. 47, SLA 1955, Ch. 27, SLA 1957, and Ch. 134, SLA 1957; amending Sec. 2, Ch. 47, SLA 1955, as amended by Ch. 27, SLA 1957; and providing an effective date.

(C.S.H.B. 6)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 48-5-2 (a) and (b), ACLA 1949, as amended by Ch. 80, SLA 1951, Ch. 47, SLA 1955, Ch. 27, SLA 1957 and Ch. 134, SLA 1957, is amended to read as follows:

Sec. 48-5-2. Tax Levy on Transfers or Consumption of Motor Fuel: Deposit and Expenditure of Monies Collected: Collection at Time of Sale: Remission to Tax Commissioner: Statement. (a) There is hereby levied a tax of five (5¢) cents per gallon on all motor fuel sold and delivered, or otherwise transferred, within the State of Alaska; except (1) that the tax on aviation gasoline shall be three (3¢) cents per gallon, (2) the tax on motor fuel used in engines for the propulsion of boats and watercrafts of all descriptions shall be two (2¢) cents per gallon, and (3) the tax on all aviation fuel other than gasoline shall be one and one-half (1½¢) cents per gallon.

(b) There is hereby levied a tax of five (5¢) cents per gallon on all motor fuel consumed by any user as above set forth; except (1) that the tax on aviation gasoline consumed shall be three (3¢) cents per gallon, (2) the tax on motor fuel used in engines for the pro-

pulsion of boats and watercrafts of all descriptions shall be two (2¢) cents per gallon, and (3) the tax on all aviation fuel other than gasoline shall be one and one-half (1½¢) cents per gallon.

Sec. 2. Sec. 2, Ch. 47, SLA 1955 as amended by Ch. 27, SLA 1957 is amended to read as follows:

Sec. 2. Refund for Nonhighway Use of Fuel. Any person who uses motor fuel, except aviation fuel or motor fuel used in engines for the propulsion of boats and watercrafts of all descriptions for the purpose of operating any internal combustion engine not used in nor in conjunction with any motor vehicle licensed to be operated over or along any of the public highways, roads, trails, and streets, and as the motive power thereof, upon which the motor fuel tax has been paid, shall be entitled to and shall receive a refund of three (3¢) cents per gallon, provided that the entire tax levied by this Act shall be refunded to the purchaser on that portion of all motor fuel used in a foreign country on which duty is paid when such motor fuel is sold and delivered in Alaska for non-highway use in a foreign country. The Tax Commissioner shall establish the necessary regulations and prescribe ap-