



LAWS OF ALASKA

1966

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Chapter No.:

162

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- * Section 1. AS 44 is amended by adding a new chapter to read:
CHAPTER 60. SMALL BUSINESS DEVELOPMENT CORPORATION OF ALASKA.

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 44.60.010. PURPOSE. The purpose of this chapter is to create a further instrumentality of the state to develop, stimulate, and advance the business prosperity and economic welfare of Alaska and its citizens and to relieve seasonal unemployment problems in Alaska by assisting the new financing of industrial and manufacturing plant construction, conversion or expansion, including the acquisition of land, by means of loans, where critically needed, to local development companies of a portion of the cost of such construction, conversion, expansion or acquisition to the extent necessary to secure a loan for a portion of the cost by the Small Business Administration pursuant to 15 U.S.C. sec. 696 (Section 502 of the Act of Congress entitled "Small

Business Investment Company Act of 1958" as amended). By providing loans for such types of business activity 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. 44.60.020. SMALL BUSINESS DEVELOPMENT CORPORATION OF ALASKA. The Small Business Development Corporation of Alaska is a public corporation, and a political subdivision, of the state. The corporation is an instrumentality of the state within the Department of Commerce, but has a legal existence independent of and separate from the state.

Sec. 44.60.030. GOVERNING BODY. The corporation's board of directors shall conduct the business of the corporation.

Sec. 44.60.040. APPOINTMENT AND COMPOSITION OF BOARD. The board consists of six residents of the state none of whom may be public employees or officials, and the commissioner of commerce. Members of the board are appointed by the governor and serve at his pleasure. Appointments to the board shall be made without regard to political affiliation and shall represent the state's geographic and economic interests.

Sec. 44.60.050. CONFLICT OF INTERESTS. Upon appointment and during his term of office, a board member 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, the board may ask him to abstain from decisions resulting in a conflict or to resign

from the board.

Sec. 44.60.060. COMPENSATION AND EXPENSES. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 44.60.070. LEGAL ADVISER. The attorney general is the legal counsel for the corporation. He shall advise the corporation in legal matters and represent it in suits.

Sec. 44.60.080. PUBLIC BOARD MEETINGS. The meetings of the board are public except meetings to discuss and pass on loan applications.

Sec. 44.60.090. QUORUM AND NOTICE OF MEETINGS. Four members, which may include the commissioner of commerce, constitute a quorum for the transaction of business unless the bylaws require a larger number, except that notice of a meeting of the board must be given to each member.

Sec. 44.60.100. MINUTES OF MEETINGS. The board shall keep minutes of each meeting and send a certified copy to the governor.

Sec. 44.60.110. EXECUTIVE VICE PRESIDENT. The board may employ an executive vice president to manage the corporation. He must be professionally trained and experienced in the performance of his duties. His selection 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 powers and duties to the executive vice president.

Sec. 44.60.120. EMPLOYEES' BONDS. The corporation shall bond its employees. The amount of a bond is determined by

the board.

ARTICLE 2. POWERS.

Sec. 44.60.130. POWERS. (a) In the effectuation of its corporate purposes stated in sec. 10 of this chapter, the corporation may

- (1) exist continuously as a corporation;
- (2) adopt a seal;
- (3) adopt bylaws and regulations governing the business of the corporation;
- (4) sue and be sued;
- (5) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;
- (7) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;
- (8) borrow money and issue secured and unsecured evidence of indebtedness, including negotiable revenue debentures, for a corporate purpose, or fund, refund, pay, or discharge outstanding obligations, and enter into agreements and contracts concerning these obligations;
- (9) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property, except that it may not incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity, except endorsement of checks, bank

drafts, or other commercial paper in the ordinary course of business;

(10) accept grants on loans from and contract with the federal government, the state, or its political subdivisions, and to that end comply with the provisions of federal, state, or local programs when necessary;

(11) lease, alienate, and dispose of property;

(12) acquire, hold, and dispose of stocks, memberships, contracts, bonds, or other interests in another corporation or legal entity, and exercise the powers or rights in connection with these interests which are provided in contracts or agreements and which are allowed by law concerning the satisfaction of debts;

(13) do what is necessary to carry out the powers granted by this chapter or other laws of the state, or the laws and regulations of the federal government.

(b) The corporation may not pledge the credit or the taxing power of the state or its political subdivisions. The state and its political subdivisions are not liable for the debts of the corporation.

Sec. 44.60.140. ANNUAL REPORT. Before December 1 of each year, the board shall submit to the governor and the legislature a comprehensive report describing the operations, fiscal transactions, financial condition, and future plans of the board. The governor may prescribe the form of the report.

Sec. 44.60.150. ANNUAL AUDITS. (a) The board shall have its financial records audited annually. The legislative auditor shall conduct the annual audit. If an audit conducted by a certified public accountant is satisfactory in the

judgment of the legislative auditor, it may be accepted instead 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.

(b) The state bank examiner shall examine the records of the corporation at least annually.

ARTICLE 3. FINANCIAL PROVISIONS.

Sec. 44.60.160. CAPITAL. Appropriations and loans from the state general fund necessary for the operation of the corporation are authorized.

Sec. 44.60.170. BONDS, NOTES, AND DEBENTURES. The corporation may issue negotiable bonds, notes and debentures in such principal amounts as is considered necessary to provide sufficient funds for achieving its corporate purposes stated in sec. 10 of this chapter, including the payment of interest of bonds of the corporation, the establishment of reserves to secure bonds, notes and debentures, and all other expenditures of the corporation incidental to and necessary or convenient to carry out the corporate purposes.

Sec. 44.60.190. NATURE OF CORPORATION OBLIGATIONS. Except as otherwise expressly provided by the corporation, every issue of its notes, debentures or bonds is a general obligation of the corporation payable out of any revenues or money of the corporation, subject only to agreements with the holders of particular notes, debentures or bonds pledging particular receipts or revenues.

Sec. 44.60.290. NEGOTIABILITY OF OBLIGATIONS. Whether or not the notes, debentures, or bonds are of the form and character to be negotiable instruments under the provisions of

the negotiable instruments law, the notes, debentures or bonds of the corporation are negotiable instruments within the meaning of and for the purposes of the negotiable instruments law.

Sec. 44.60.210. AUTHORIZATION AND CONTENTS OF ISSUANCE.

The notes, debentures, and bonds shall be authorized by resolution of the board of directors of the corporation. The notes, debentures, and bonds shall bear the date or dates, and mature at the time or times in the case of a note or debenture or renewals not to exceed five years from the date of issue of the original note or debenture, and in the case of a bond, not to exceed 50 years from the date of issue, as the resolution or resolutions may provide. The notes, debentures, and bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, be executed in the manner, be payable in the medium of payment at the place or places, be subject to the terms of redemption and carry the registration pledges which the resolution or resolutions may provide.

Sec. 44.60.220. ADDITIONAL PROVISIONS OF RESOLUTION

AUTHORIZING OBLIGATIONS. The resolutions authorizing issuance of notes, debentures or bonds may contain provisions which shall be a part of the contract with the holder as to

(1) pledging all or part of the money received in payment of the loans made by the corporation and interest on the loans, and other money received or to be received, to secure the payment of the notes, debentures or bonds or of any issue of them subject to existing agreements with bondholders or noteholders, or debenture holders;

(2) pledging all or a part of the assets of the

corporation, including any mortgages or other documents or agreements, to secure the payment of the notes, debentures or bonds or any issue of notes, debentures, or bonds, subject to existing agreements with noteholders, debenture holders, or bondholders;

(3) the application, use and disposition of the revenues and receipts to be derived by the corporation from its loans;

(4) the setting aside of reserves or sinking funds and the regulation and disposition of them;

(5) limitations on the purpose to which the proceeds of sale of notes, debentures or bonds may be applied and pledging the proceeds to secure the payment of notes, debentures or bonds or of an issue of them;

(6) limitations on the issuance of additional notes, debentures or bonds, the terms upon which additional notes, debentures or bonds may be issued and secured, or the refunding of outstanding or other notes, debentures or bonds;

(7) the procedure, if any, by which the terms of a contract with noteholders, bondholders or debenture holders may be amended or abrogated, the amount of notes, debentures, or bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(8) vesting in a trustee or trustees the property, rights, powers, and duties in trust as the corporation may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders under this section, and limiting or abrogating the right of the bondholders to appoint a trustee under this section, or

limiting the rights, powers and duties of the trustee;

(9) the replacement of lost, destroyed or mutilated bonds, notes and debentures;

(10) any other matter which affects the security or protects the notes, bonds or debentures.

Sec. 44.60.230. MANNER OF SALE. The notes, debentures, and bonds of the corporation may be sold at public or private sale at a price determined by the corporation.

Sec. 44.60.240. NONLIABILITY OF CORPORATION MEMBERS. The members of the corporation and persons executing the notes, debentures or bonds are not liable personally on the notes, debentures or bonds or subject to personal liability or accountability by reason of their issuance. It is the intention of the legislature that a pledge made with respect to the bonds, notes or debentures shall be valid and binding from the time the pledge is made that the money or property so pledged thereafter received by the corporation shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether the parties have notice thereof. Either the resolution, trust indenture or any other instrument by which a pledge is made may be recorded.

Sec. 44.60.250. NONLIABILITY OF STATE. The state is not liable on notes, bonds or debentures of the corporation and the notes, bonds, or debentures are not a debt of the state.

Sec. 44.60.260. RIGHTS OF OBLIGATION HOLDERS. Subject

to contractual limitations or restrictions under secs. 170-250 of this chapter, the holder of bonds, notes or debentures, in addition to other remedies, may by appropriate action, require the corporation to carry out its covenants and agreements made with or for the holder's benefit.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 44.60.270. SMALL BUSINESS DEVELOPMENT REVOLVING FUND. There is established a small business development revolving fund which shall be administered by the board of directors exclusively for the purposes of this chapter. The fund is composed of money appropriated by the legislature to the corporation for the purposes of this chapter. Expenditures may be made from this fund for the administration of this chapter as well as for the loans authorized by the provisions of this chapter. The corporation may pledge any money in this fund to secure the payment of any bonds, notes or debentures issued under this chapter.

Sec. 44.60.280. REPAYMENT TO GENERAL FUND. All money made available to the small business development revolving fund from the general fund of the state is a loan from the general fund. All surplus at the end of a fiscal year over amounts made available to the fund from the general fund of the state shall be repaid to the general fund until the loan is repaid in full. Repayments need not begin until after the first five complete fiscal years after the fund is created.

Sec. 44.60.290. INVESTMENTS BY ASSOCIATION. The corporation shall place money held in the reserve funds or in the small business development revolving fund in one or more of the following: deposits in banks or trust companies having

their principal places of business in the United States; or obligations of the United States, the state, or its political subdivisions if the obligations are secured by the general taxing power of the obligor.

Sec. 44.60.300. TAX EXEMPTION. Because 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, the corporation is exempt from all taxes and assessments in the state. Bonds, notes and debentures issued by the corporation, their transfer and their income are exempt from all taxes and assessments in the state.

Sec. 44.60.310. CORPORATION'S INTEREST. The rate of interest charged for the corporation's share of a development loan shall be determined by the board and may exceed the legal contract rate of interest as set by state law, but the average rate of interest of the loan shall not exceed the legal rate of interest. The corporation may also charge reasonable loan commitment fees.

Sec. 44.60.320. GENERAL LIMITATIONS ON LOANS. (a) In making loans, the board shall consider the proposed collateral, the purpose of the loan, the integrity and management ability of the borrower, and the borrower's past and prospective earnings.

(b) the board may make only loans that are economically advantageous to the state and the general public welfare. No loans shall be made unless the local development company has obtained a firm commitment, satisfactory to the corporation, from the Small Business Administration under the provisions

of the Small Business Investment Company Act of 1958 as amended (15 U.S.C. sec. 696) and from other sources for the total cost of the project, exclusive of loans requested from the corporation.

(c) The board may make a development loan to a responsible borrower only if other credit, in addition to that of the Small Business Administration, is not readily available on reasonable terms. Before making a loan, the board shall determine, so far as it is reasonably possible, that the first opportunity to grant the loan is given to banking or financial institutions of the state and that the Alaska State Development Corporation cannot or does not desire to make the loan.

Sec. 44.60.330. DISSOLUTION. After payment in full of its debentures and other obligations or after depositing in a trust sufficient money to secure the payment of its obligations, the board may dissolve the corporation by the majority vote of its directors. Dissolution is not effective until the legislature confirms it. The effective date of dissolution is the date the legislature confirms the dissolution or a date determined by the legislature at the time of confirmation. Assets remaining after satisfaction of liabilities and obligations of the corporation shall be deposited to the credit of the general fund of the state.

Sec. 44.60.340. REGULATIONS. The board may adopt regulations or bylaws to implement the purposes of this chapter.

Sec. 44.60.350. SEVERABILITY. The provisions of this chapter are severable and if a provision is held invalid by a court of competent jurisdiction, the invalidation shall not

affect or impair any of the remaining provisions.

Sec. 44.60.360. EXPENSES. The corporation shall bear all of its own expenses.

Sec. 44.60.370. BOARD MAY EMPLOY PERSONNEL. The board may appoint other officers, hire employees and agents, and engage professional and technical services and advice upon employment or independent contract basis. The board shall prescribe the duties and compensation of association personnel.

Sec. 44.60.380. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The personnel of the association are in the exempt state service under AS 39.25.110.

Sec. 44.60.390. DEFINITION. In this chapter, the term "local development companies" has the meaning ascribed to it in the Act of Congress entitled the "Small Business Investment Company Act of 1958," as amended.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.