



LAWS OF ALASKA

1967

Source

Chapter No.

SB 187 am

94

AN ACT

Relating to a Business and Industrial Development Corporation;
and providing for an effective date.

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

* Section 1. AS 10 is amended by adding a new chapter to read:

CHAPTER 35. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION ACT.

Sec. 10.35.010. INCORPORATORS. Three or more persons, who are residents of this state, who desire to create an industrial development corporation under this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges provided in this chapter, may be incorporated by filing articles of incorporation in the office of the commissioner of commerce as provided in this chapter.

Sec. 10.35.020. ASSISTANCE OF COMMISSIONER OF ECONOMIC DEVELOPMENT. The commissioner of economic development shall assist the incorporators in forming the corporation and shall meet with and advise the corporation's board of directors.

Sec. 10.35.030. ARTICLES OF INCORPORATION. (a) The articles of incorporation shall contain:

(1) the name of the corporation, which shall include the words "Industrial Development Corporation of the State of Alaska";

(2) the location of the principal office of the

corporation, but the corporation may have offices in other places within the state fixed by the board of directors;

(3) the purposes for which the corporation is organized, which shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of this state and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state;

(4) the names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the by-laws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation; any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers; and any provision governing the issuance of stock certificates to replace lost or destroyed certificates;

(6) the amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each; the aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business and shall not be less than \$1,000.

(b) The articles of incorporation shall be in writing subscribed by not less than three natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in duplicate originals in the office of the commissioner of commerce for approval.

(c) The commissioner of commerce shall not approve articles of incorporation for a corporation organized under this chapter until a total of at least seven financial institutions authorized to do business within this state have agreed in writing to become members of the corporation, and the agreement in writing is filed with the commissioner of

commerce together with the articles of incorporation. When the articles of incorporation have been filed in the office of the commissioner of commerce and approved by him, he shall

- (1) endorse on each duplicate original the word "filed," and the date of the filing;
- (2) file one duplicate original in his office;
- (3) issue a certificate of incorporation and affix the other duplicate original to it;
- (4) return to the incorporators or their representative the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed.

(d) Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated.

Sec. 10.35.040. GENERAL POWERS. In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by AS 10.05.009, the corporation shall, subject to the restrictions and limitations contained in this chapter, have the following powers:

- (1) to elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur a secondary liability by way of guaranty or endorsement of the obligations of a person, firm, corporation, joint stock company, association or trust, or in any other manner;
- (2) to borrow money from its members and the Small Business Administration and any other federal agency for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder or member approval;
- (3) to make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for the loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;
- (4) to purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or

otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(5) to acquire the good will, business, rights, real and personal property and other assets, or any part thereof, or interest therein, of any persons, firms, corporation, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of the person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(6) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(7) to mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in subsecs. (4), (5), or (6) as security for the payment of any part of the purchase price thereof;

(8) to cooperate with and avail itself of the facilities of the United States Department of Commerce, the state Department of Economic Development, and any other state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part of the state;

(9) to do whatever is necessary or convenient to carry out the powers expressly granted in this chapter.

Sec. 10.35.050. AUTHORIZATION OF MEMBERS. (a) Notwithstanding any rule at common law or provision of a general or special law or provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) A natural person, domestic corporation, foreign corporation authorized to transact business in the state, insurance company, or a financial institution which becomes a member of the corporation, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of the

corporation or bonds, securities or other evidence of indebtedness created by the corporation; and while the owner of shares of capital stock of the corporation may exercise all the rights, powers and privileges of ownership, all without the approval of any regulatory authority of the state except as otherwise provided in this chapter. The amount of capital stock of the corporation which may be acquired by a member may not exceed 10 per cent of the loan limit of the member.

(2) A financial institution may become a member of the corporation and make loans to the corporation as provided in this chapter.

(b) The amount of capital stock of the corporation which a member may acquire under the authority granted in this section is in addition to the amount of capital stock in corporations which the member may otherwise be authorized to acquire.

Sec. 10.35.060. ADMISSION TO MEMBERSHIP. A financial institution may request membership in the corporation by making application to the board of directors on the form and in the manner the board of directors require, and membership becomes effective upon acceptance of the application by the board.

Sec. 10.35.070. LOANS BY MEMBERS. (a) Each member of the corporation shall make loans to the corporation when called upon it to do so on the terms and other conditions approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand dollar amount nearest to the amount computed under this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by the member, shall not exceed

(A) 20 per cent of the total amount then outstanding on loans to the corporation by all members, including in the total amount outstanding amounts validly called for loan but not yet loaned;

(B) the following limit, to be determined as of the time the member becomes a member on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the state insurance commissioner: two and one-half per cent of the capital and surplus of a commercial bank or trust company; one-half of one per cent of the total

outstanding loans made by a savings and loan association or building and loan association; two and one-half per cent of the capital and unassigned surplus of a stock insurance company, except a fire insurance company; two and one-half per cent of the unassigned surplus of a mutual insurance company, except a fire insurance company; one-tenth of one per cent of the assets of a fire insurance company; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to (a)(3)(A) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding loans made by the member to the corporation and the investment in capital stock of the corporation held by the member at the time of the call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one per cent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans. The prime rate of interest is defined in this chapter as the rate of interest normally paid by banks or lending institutions.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made after notice of the intended withdrawal of the member.

Sec. 10.35.080. DURATION OF MEMBERSHIP. Membership in the corporation is for the duration of the corporation, but upon written notice given to the corporation five years in advance, a member may withdraw from membership in the corporation at the expiration date of the notice.

Sec. 10.35.090. POWERS OF STOCKHOLDERS AND MEMBERS. The stockholders and the members of the corporation have the following powers of the corporation:

(1) to determine the number of and elect directors as provided in sec. 120 of this chapter;

(2) to make, amend, and repeal bylaws;

(3) to amend this charter as provided in sec. 110 of this chapter;

(4) to dissolve the corporation as provided in sec. 180 of this chapter;

(5) to do all things necessary or desirable to secure aid, assistance loans and other financing from any financial institutions, and from any agency established under the Small Business Investment Act of 1958, Public Law

85-699, 85th Congress, or other similar federal laws now or hereafter enacted;

(6) to exercise other of the powers of the corporation consistent with this chapter which may be conferred on the stockholders and the members by the bylaws.

Sec. 10.35.100. VOTING BY MEMBERS AND STOCKHOLDERS.

(a) On all matters requiring action by the stockholders and the members of the corporation, the stockholders and members shall vote separately by classes, and except as otherwise provided in this chapter, these matters require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting are entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled.

(b) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that a member having a loan limit of more than \$1,000 shall have one additional vote, in person or by proxy, for each additional \$1,000 which the member is authorized to have outstanding on loans to the corporation at any one time as determined under sec. 70(a)(3)(B) of this chapter.

Sec. 10.35.110. AMENDMENT OF ARTICLES. (a) The articles of incorporation may be amended by the vote of the stockholders and the members of the corporation, voting separately by classes. Amendments must be approved by the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled. No amendment of the articles of incorporation shall be made which is inconsistent with the general purposes expressed in this chapter or which authorizes an additional class of capital stock to be issued, or which eliminates or curtails the right of the commissioner of administration to examine the corporation or the obligation of the corporation to make reports as provided in sec. 150 of this chapter. No amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes a change in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in this chapter, or affects a member's voting rights as provided in this chapter, shall be made without the consent of each member affected by the amendment.

(b) Within 30 days after a meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting out the amendment and due adoption of the amendment, shall be submitted in duplicate originals to the commissioner of commerce who shall examine them, and if he finds that they conform to the requirements of this chapter, shall

(1) endorse on each duplicate original the word "filed," and the date of the filing;

- (2) file one duplicate original in his office;
 - (3) issue a certificate of amendment and affix the other duplicate original to it;
 - (4) return to the corporation or its representative the certificate of amendment, together with the duplicate articles of amendment affixed.
- (c) Upon the issuance of a certificate of amendment by the commissioner of commerce, the amendment becomes effective.

Sec. 10.35.120. DIRECTORS AND OFFICERS. (a) The business and affairs of the corporation shall be conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and other officers and agents the corporation by its bylaws may authorize. The board of directors shall consist of a number not less than seven nor more than 21, determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except those that are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies on the board of directors. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, which shall be held during the month of January or, if no annual meeting can be held in the year of incorporation, then within 90 days after the approval of the articles of incorporation at a special meeting. At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors, and the stockholders shall elect the remaining directors. The directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and a vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

(b) Directors and officers shall not be responsible for losses unless they are occasioned by the willful misconduct of the directors and officers.

Sec. 10.35.130. EARNED SURPLUS. Each year the corporation shall set apart as earned surplus not less than 10 per cent of its net earnings for the preceding fiscal year until the surplus equals one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus is less than the required amount, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for reserves the directors consider desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

Sec. 10.35.140. DESIGNATION OF DEPOSITORY. The corporation shall not deposit any of its funds in a banking institution unless the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of a director who is an officer or director of the depository. The corporation shall not receive money on deposit.

Sec. 10.35.150. EXAMINATIONS. The corporation shall be examined at least once annually by the commissioner of administration and shall make reports of its condition not less than annually to the commissioner and more frequently upon call of the commissioner, who in turn shall make copies of the reports available to the commissioner of commerce and the governor. The corporation shall also furnish other information which may from time to time be required by the commissioner of administration. The corporation shall pay the actual cost of the examinations.

Sec. 10.35.160. FIRST MEETING OF CORPORATION. (a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting. A copy of the notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. The first meeting may be held without notice upon agreement in writing signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of the notice or of the unanimous agreement of the incorporators.

(b) At the first meeting, the incorporators shall choose, by ballot, a temporary clerk, adopt bylaws, elect directors by ballot, and act upon other matters within the powers of the corporation. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. A majority of the incorporators, but not less than three, shall be a quorum for the transaction of business.

Sec. 10.35.170. DURATION OF CORPORATION. The duration of the corporation shall be 50 years, subject, however, to the right of the stockholders and the members to dissolve the corporation before the expiration of that period as provided in sec. 180 of this chapter.

Sec. 10.35.180. DISSOLUTION OF CORPORATION. The corporation may upon the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled dissolve the corporation. Upon dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors of the corporation have been paid in full.

Sec. 10.35.190. PROHIBITION OF PLEDGE OF CREDIT OF STATE. The credit of the state may not be pledged to a corporation organized under the provisions of this chapter.

Sec. 10.35.200. CORPORATION A "STATE DEVELOPMENT COMPANY." A corporation organized under the provisions of this chapter shall be a state development company, as

defined in the Small Business Investment Act of 1958, 72 Stat. 689 (1958) 15 U.S.C. secs. 661 - 696, or any other similar federal legislation, and shall be authorized to operate on a statewide basis.

Sec. 10.35.210. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "corporation" means the Alaska business and industrial development corporation created under this chapter;

(2) "financial institution" means a banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(3) "member" means a financial institution authorized to do business within this state which undertakes to lend money to a corporation created under this chapter, upon its call, and in accordance with this chapter;

(4) "board of directors" means the board of directors of the corporation created under this chapter;

(5) "loan limit" means for any member, the maximum amount permitted to be outstanding at one time on loans made by the member to the corporation, as determined under this chapter.

Sec. 10.35.220. SHORT TITLE. This chapter may be cited as the Business and Industrial Development Corporation Act.

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