

SENATE BILL NO. 173(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Amended: 5/4/03

Introduced: 4/4/03

A BILL

FOR AN ACT ENTITLED

1 "An Act repealing statutes pertaining to the Alaska Science and Technology Foundation
2 and transferring money in the foundation's endowment; repealing statutes relating to
3 the BIDCO assistance program; repealing statutes pertaining to the international trade
4 and business endowment and transferring money in the international trade and business
5 endowment; transferring oversight administration of outstanding Alaska Science and
6 Technology Foundation loans and grants to the Alaska Industrial Development and
7 Export Authority; establishing an Alaska BIDCO assistance program to be
8 administered by the Department of Community and Economic Development; and
9 making conforming amendments."

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

11 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
12 to read:

1 FINDINGS. The legislature finds that it is in the best interest of the state to

2 (1) eliminate the Alaska Science and Technology Foundation, transfer the
3 oversight administration of outstanding foundation grants provided to foundation grantees
4 before the effective date of this Act to the Alaska Industrial Development and Export
5 Authority, and transfer the balance of the money in the foundation endowment fund to the
6 general fund;

7 (2) transfer the oversight administration of outstanding BIDCO assistance
8 loans and grants provided to borrowers and grantees before the effective date of this Act to
9 the Alaska Industrial Development and Export Authority;

10 (3) establish the Alaska BIDCO assistance program, to be administered by the
11 Department of Community and Economic Development; and

12 (4) eliminate the international trade and business endowment and transfer the
13 balance of the money in that fund to the general fund.

14 * **Sec. 2.** AS 10.13.040(b) is amended to read:

15 (b) Unless the BIDCO receives a loan under AS 37.17.500 - 37.17.690
16 [AS 37.17.200 - 37.17.390], the department may not establish a minimum net worth
17 for a BIDCO under this section of less than \$1,500,000. If the BIDCO, as part of its
18 initial capitalization, receives a loan under AS 37.17.500 - 37.17.690 [AS 37.17.200 -
19 37.17.390], the minimum net worth of the BIDCO may be \$500,000, excluding
20 organization costs paid for or owed by the BIDCO.

21 * **Sec. 3.** AS 10.13.930(c) is amended to read:

22 (c) Notwithstanding (a) of this section, the department may furnish
23 information that is confidential under (a) of this section to the Alaska **Industrial**
24 **Development and Export Authority** [SCIENCE AND TECHNOLOGY
25 FOUNDATION ESTABLISHED UNDER AS 37.17.010] if the information is related
26 to a BIDCO that has received assistance under **former** AS 37.17.200 - 37.17.390 [OR
27 TO A PERSON WHO IS SEEKING ASSISTANCE UNDER AS 37.17.200 -
28 37.17.390].

29 * **Sec. 4.** AS 37.10.085(d) is amended to read:

30 (d) This section does not apply to

31 (1) the financial assistance program established under AS 37.17.500 -

1 **37.17.690** [AS 37.17.200 - 37.17.390]; or

2 (2) investments of the assets of the public employees' retirement
3 system established under AS 39.35 or the teachers' retirement system established
4 under AS 14.25, to the extent the investments are made in the stocks, bonds, and other
5 securities of

6 (A) a corporation licensed under AS 10.13; or

7 (B) a corporation attempting to become licensed under
8 AS 10.13 if the corporation intends to use the proceeds to fulfill the tasks
9 necessary to become licensed under AS 10.13.

10 * **Sec. 5.** AS 37.17 is amended by adding new sections to read:

11 **Article 5. Alaska BIDCO Assistance Program.**

12 **Sec. 37.17.500. Purposes of Alaska BIDCO assistance program.** The
13 purposes of AS 37.17.500 - 37.17.690 include

14 (1) administering the Alaska BIDCO assistance program related to
15 loans and other financial assistance made or provided under AS 37.17.500 -
16 37.17.690;

17 (2) assisting in the formation and capitalization of one or more
18 BIDCOs that have a highly qualified management team and a good business plan, and
19 that are designed to operate in a profit-oriented, market-disciplined manner, with
20 excellent prospects for long-term financial success and viability;

21 (3) promoting economic development by providing a new source of
22 risk capital and management assistance for businesses, especially small and medium
23 sized businesses, in geographic areas throughout the state, including businesses in
24 rural areas and distressed areas, and including minority owned businesses;

25 (4) using state resources to attract other capital resources; and

26 (5) promoting the successful operation of BIDCOs.

27 **Sec. 37.17.510. Alaska BIDCO fund.** The Alaska BIDCO fund is
28 established in the general fund. The fund consists of appropriations made to the fund
29 by the legislature and repayments of loans made under AS 37.17.500 - 37.17.690. The
30 fund is administered by the department under AS 37.17.500 - 37.17.690.

31 **Sec. 37.17.520. Use of money in Alaska BIDCO fund.** (a) From the money

1 in the Alaska BIDCO fund, the department may make loans or other financial
 2 assistance, as authorized under AS 37.17.520 - 37.17.690, to assist in the formation,
 3 capitalization, and operation of corporations that are licensed under AS 10.13.

4 (b) The department may not authorize new financial assistance under
 5 AS 37.17.500 - 37.17.690 without the approval of the legislature.

6 **Sec. 37.17.530. BIDCO capitalization loans.** Subject to AS 37.17.520(b), a
 7 BIDCO capitalization loan for the initial capitalization of a BIDCO shall be made
 8 under the terms and conditions that the department determines to be appropriate and
 9 that are consistent with AS 37.17.500 - 37.17.690.

10 **Sec. 37.17.540. Loan commitment conditions.** (a) When issuing a
 11 commitment to make a BIDCO capitalization loan, the department shall make the loan
 12 closing contingent on

13 (1) the BIDCO receiving a license under AS 10.13, which may occur
 14 simultaneously with the loan closing;

15 (2) the BIDCO satisfying the capitalization requirements of
 16 AS 37.17.550; and

17 (3) other conditions that the department may impose.

18 (b) The department may not issue a loan commitment under this section unless
 19 the department determines that the prospective BIDCO satisfies high quality
 20 evaluation standards as determined by the department. The evaluation standards must
 21 include the following findings:

22 (1) the loan is likely to substantially promote the purposes of
 23 AS 37.17.500 - 37.17.690;

24 (2) the BIDCO's prospective management team is highly qualified to
 25 manage the BIDCO;

26 (3) the BIDCO's business plan is a good business plan that, together
 27 with the management team, promotes confidence in the prospects for the long-term
 28 financial success and viability of the BIDCO; and

29 (4) if the department issues a loan commitment to the BIDCO, it is
 30 probable that the BIDCO will be able to satisfy the capitalization requirements of
 31 AS 37.17.550.

1 **Sec. 37.17.550. Initial capitalization of BIDCO.** (a) Subject to
2 AS 37.17.520(b), the initial capitalization of a BIDCO to which the department makes
3 a BIDCO capitalization loan must include

4 (1) at least \$500,000 in equity investment in the BIDCO, in addition to
5 any organization costs paid for or owed by the BIDCO;

6 (2) the BIDCO capitalization loan; and

7 (3) additional capital in an amount required by the department and on
8 terms and conditions acceptable to the department; the additional capital may be in the
9 form of debt, grants, equity investment in addition to the minimum equity investment
10 requirement of \$500,000 under (1) of this subsection, or a combination of debt, grants,
11 and the equity investment.

12 (b) The minimum equity investment under (a)(1) of this section must be fully
13 received by the BIDCO before or at closing of the BIDCO capitalization loan. The
14 BIDCO capitalization loan shall be fully disbursed to the BIDCO at closing. The
15 additional capital shall also be fully disbursed at closing; however, if the department is
16 satisfied that there is a firm commitment for the additional capital on terms acceptable
17 to the department, that the source for the additional capital will deliver on the firm
18 commitment, and that the documents evidencing the additional capital have been
19 executed and include terms acceptable to the department, the additional capital may be
20 disbursed to the BIDCO on a phased-in basis on terms acceptable to the department.

21 **Sec. 37.17.560. Subordination of BIDCO capitalization loan.** A BIDCO
22 capitalization loan may be subordinated to the additional capital required under
23 AS 37.17.550(a)(3).

24 **Sec. 37.17.570. BIDCO capitalization loan repayment and interest.** (a) A
25 BIDCO capitalization loan must be structured so that the full amount of the principal
26 is due in a lump sum at the end of the loan term.

27 (b) Interest on a BIDCO capitalization loan accrues during the loan term and
28 is due at the end of the loan term.

29 **Sec. 37.17.580. BIDCO capitalization loan credits.** (a) A BIDCO
30 capitalization loan must include a formula that allows the BIDCO to earn credits to
31 reduce the interest and principal owed on the loan. The formula shall be based on

1 increasing jobs and sales in some or all of the businesses financed by the BIDCO and
 2 on sustaining the increases. To the extent the department determines appropriate, the
 3 department may also provide credits in situations where the BIDCO clearly
 4 demonstrates to the department that jobs would have been lost if the BIDCO had not
 5 provided financing assistance.

6 (b) The department shall establish procedures and guidelines for the
 7 certification by the department of credits earned by a BIDCO under this section,
 8 including the circumstances under which the department may deny the credits. Within
 9 the guidelines, the specific decisions regarding the granting or denial of the credits are
 10 left to the discretion of the department.

11 **Sec. 37.17.590. Implementation of BIDCO capitalization loan program.**

12 (a) The department shall implement the program for making BIDCO capitalization
 13 loans under AS 37.17.500 - 37.17.690 in a manner designed to encourage financing
 14 assistance by BIDCOs to businesses throughout the state. Through the use of one or
 15 more formulas designed under AS 37.17.580, the department shall provide special
 16 incentives to encourage the financing of businesses located in distressed areas,
 17 including distressed rural areas, and the financing of minority owned businesses. In
 18 this subsection,

19 (1) "minority owned business" means a business that is owned,
 20 controlled, and operated by an individual who is a member of a minority and in which
 21 more than 50 percent of the net profit or loss attributable to the business accrues to a
 22 member of a minority;

23 (2) "member of a minority" includes a person who is black, Hispanic,
 24 or Alaska Native.

25 (b) When determining under (a) of this section whether an area is distressed or
 26 how distressed an area is, the department may use, individually or in combination,
 27 factors that may include unemployment, poverty, lack of access to the state highway
 28 system, lack of access to a marine transportation system, or other factors the
 29 department determines to be appropriate.

30 **Sec. 37.17.600. Terms of BIDCO capitalization loans.** When determining
 31 the amount or range of amount for a BIDCO capitalization loan, the term to maturity

1 of the loan, the interest rate for the loan, the additional capital requirements for the
 2 loan, and the formula for earning credits under the loan, the department shall consider
 3 the following objectives:

4 (1) that the BIDCO will have adequate capitalization to support a
 5 highly qualified management team, to implement a business plan that, when combined
 6 with the management team, will promote confidence in the prospects of the BIDCO
 7 for long-term financial success and viability, and to otherwise promote the purposes of
 8 AS 37.17.500 - 37.17.690;

9 (2) that the additional capital requirement is in an amount that
 10 encourages the BIDCO to raise as much capital as feasible from sources other than the
 11 BIDCO capitalization loan, without unduly hindering the ability of the BIDCO to
 12 become operational;

13 (3) that the formula for earning credits under AS 37.17.580, combined
 14 with the other terms and conditions of the loan, will be designed so that with a
 15 reasonable performance by the BIDCO, the BIDCO will be able to earn sufficient
 16 credits to reduce the amount of principal and interest owed on the loan to zero by or
 17 before the end of the loan term; and

18 (4) that the formula for earning credits under AS 37.17.580, combined
 19 with the other terms and conditions of the loan, is sufficiently challenging that the
 20 special incentives provided by the credits allowed under AS 37.17.580 remain in
 21 effect for the longest feasible time during the loan term as is consistent with meeting
 22 the other objectives identified in this section.

23 **Sec. 37.17.610. Access to meetings and information.** While a BIDCO loan
 24 is outstanding and the obligations of the BIDCO to the department remain
 25 undischarged, the BIDCO shall allow the department to have a representative present
 26 at all meetings of the BIDCO's board of directors and of the BIDCO's shareholders, to
 27 receive all notices and information sent to the board of directors or the shareholders, to
 28 have the same access to information about the BIDCO as the directors have and as the
 29 shareholders have, and to receive additional reports or information from the BIDCO
 30 that the department reasonably requests.

31 **Sec. 37.17.620. BIDCO operation limitation.** While a BIDCO loan is

1 outstanding and the obligations of the BIDCO to the department remain undischarged,
 2 the BIDCO may not provide financing assistance to businesses located outside the
 3 state. If a business assisted by the BIDCO has multi-state or multi-national operations,
 4 the location of the business is where the largest economic benefit of the financing
 5 assistance transaction made by the BIDCO to the business is likely to occur.

6 **Sec. 37.17.630. Surrender of BIDCO license.** While a BIDCO loan is
 7 outstanding and the obligations of the BIDCO to the department are not discharged,
 8 the BIDCO may not surrender its license under AS 10.13 without the written consent
 9 of the department.

10 **Sec. 37.17.640. Closing assistance.** If determined by the department to be
 11 advisable, the department may use money in the Alaska BIDCO fund to provide
 12 assistance to a person to complete the tasks necessary for the person to achieve a
 13 closing on a BIDCO capitalization loan. The department may provide the assistance
 14 on the terms and conditions that the department determines appropriate.

15 **Sec. 37.17.650. Confidentiality.** In order to promote the purposes of
 16 AS 37.17.500 - 37.17.690, the department may establish policies under which it will
 17 keep confidential proprietary information submitted to the department by an applicant
 18 for a loan or other financial assistance under AS 37.17.500 - 37.17.690 and by a
 19 BIDCO that has received a loan or other financial assistance under AS 37.17.500 -
 20 37.17.690. The information that is determined to be confidential under this section is
 21 not a public record under AS 40.25.110 - 40.25.220.

22 **Sec. 37.17.660. Subsequent loans.** Subject to the provisions of
 23 AS 37.17.520(b), if the department determines that a BIDCO, after receiving a
 24 BIDCO capitalization loan, has performed well financially and in promoting the
 25 purposes of AS 37.17.500 - 37.17.690, and if more than four years have elapsed since
 26 the loan was made, the department may make an additional loan to the BIDCO, on the
 27 terms and conditions that the department considers appropriate.

28 **Sec. 37.17.690. Definitions.** In AS 37.17.500 - 37.17.690,

29 (1) "additional capital" means the additional capital required under
 30 AS 37.17.550(a)(3);

31 (2) "BIDCO" means a corporation licensed under AS 10.13;

1 (3) "BIDCO capitalization loan" means a loan made under
2 AS 37.17.530 for the initial capitalization of a BIDCO;

3 (4) "BIDCO loan" means a BIDCO capitalization loan or a subsequent
4 loan made under AS 37.17.660;

5 (5) "department" means the Department of Community and Economic
6 Development.

7 * **Sec. 6.** AS 44.33.020 is amended by adding a new paragraph to read:

8 (44) administer the Alaska BIDCO assistance program under
9 AS 37.17.500 - 37.17.690 and adopt regulations to carry out the provisions of those
10 statutes.

11 * **Sec. 7.** AS 44.88.080 is amended by adding new paragraphs to read:

12 (27) to oversee the administration of outstanding grants awarded by the
13 Alaska Science and Technology Foundation under former AS 37.17.010 - 37.17.110;

14 (28) to oversee the administration of outstanding BIDCO assistance
15 grants and loans made by the Alaska Science and Technology Foundation under
16 former AS 37.17.200 - 37.17.390.

17 * **Sec. 8.** AS 37.17.010, 37.17.020, 37.17.030, 37.17.040, 37.17.050, 37.17.060, 37.17.070,
18 37.17.080, 37.17.090, 37.17.100, 37.17.110, 37.17.200, 37.17.210, 37.17.220, 37.17.225,
19 37.17.230, 37.17.240, 37.17.250, 37.17.260, 37.17.270, 37.17.280, 37.17.290, 37.17.300,
20 37.17.310, 37.17.320, 37.17.330, 37.17.340, 37.17.350, 37.17.360, 37.17.390, 37.17.400,
21 37.17.410, 37.17.420, 37.17.430, 37.17.440; AS 39.25.110(25); and AS 44.99.030(a)(11) are
22 repealed.

23 * **Sec. 9.** Subject to appropriation, the money in the Alaska science and technology
24 endowment established in former AS 37.17.020 is transferred to the general fund.

25 * **Sec. 10.** Subject to appropriation, the money in the international trade and business
26 endowment established in former AS 37.17.440 is transferred to the general fund.

27 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSITION PROVISIONS. (a) Notwithstanding the amendment or repeal of a
30 statute by this Act, regulations that were adopted under authority of those statutes and that
31 were in effect on the day before the effective date of this Act remain in effect and may

1 (1) be implemented and enforced by the Department of Community and
2 Economic Development as necessary to carry out the functions assigned to it by this Act, until
3 regulations adopted by that department to implement this Act take effect;

4 (2) continue to be implemented and enforced by the Alaska Industrial
5 Development and Export Authority as necessary to carry out the functions assigned to it by
6 this Act.

7 (b) AS 37.17.090(g) and (i), as those statutes appeared on the day before the effective
8 date of this Act, continue to apply to a grant and a grantee under former AS 37.17.010 -
9 37.17.110 until those former statutes by their own terms would no longer apply to the grant or
10 grantee. However, the fair and reasonable return required to be paid by a grantee under
11 former AS 37.17.090(g) and under the terms of the respective grant agreement shall be paid
12 into the general fund. On the effective date of this Act, any security interest or ownership
13 interest acquired under former AS 37.17.090(g) is transferred from the Alaska Science and
14 Technology Foundation to the Alaska Industrial Development and Export Authority as
15 successor in interest.

16 (c) AS 37.17.090(g), 37.17.230 - 37.17.330, 37.17.350, and 37.17.390, as those
17 statutes appeared on the day before the effective date of this Act, continue to apply to a
18 BIDCO that received a loan or other financial assistance under former AS 37.17.200 -
19 37.17.390 before the effective date of this Act until those former statutes by their own terms
20 no longer would apply to that BIDCO. However, the fair and reasonable return required to be
21 paid by a BIDCO grantee under former AS 37.17.090(g), former AS 37.17.225, and under the
22 terms of the respective grant agreement shall be paid into the general fund.

23 (d) Contracts, rights, liabilities, and obligations created by or under a law amended or
24 repealed by this Act, and in effect on the day before the effective date of this Act, remain in
25 effect notwithstanding this Act's taking effect.