

BY SENATORS POLLOCK, LOGAN  
B. PHILLIPS, MCNEALY,  
V. PHILLIPS, SMITH AND OWEN

1 IN THE SENATE

2 SENATE BILL NO. 153

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the creation of the  
7 Alaska State Development Corporation; and  
8 providing for an effective date."

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

10 ARTICLE I

11 ORGANIZATION OF DEVELOPMENT CORPORATION

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

24 Sec. 2. ALASKA STATE DEVELOPMENT CORPORATION. The Alaska  
25 state development corporation, hereafter referred to as the cor-  
26 poration, is established as a public corporation of the State of  
27 Alaska. The corporation is an instrumentality of the state, but  
28 has a legal existence independent of and separate from the state.

29 Sec. 3. BOARD OF DIRECTORS. a. The Alaska state develop-  
SB 153 as amended

1 ment corporation board of directors, hereafter referred to as  
2 the board, shall conduct the business of the corporation.

3       b. The board consists of the commissioner of commerce and  
4 six residents of Alaska appointed by the governor, who shall  
5 serve at his pleasure. Membership on the board shall be on a  
6 non-partisan basis with due regard given to representation from  
7 the different regions of Alaska, at least one member being appointed  
8 from each major senatorial district, if a qualified appointee in  
9 the opinion of the Governor resides in each such district. One-  
10 half of the appointed members shall be active in the banking  
11 business and the other half shall be from other professions, but  
12 should have extensive knowledge of financial matters. The appoint-  
13 ment of members to the board shall be confirmed by the legislature  
14 meeting in joint session. Newly appointed members are qualified  
15 to act and to receive compensation between the time of their appoint-  
16 ment and the time of confirmation or rejection by the legislature.

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

26       d. At the time of the appointment of a member to the board,  
27 or should there be reason to do so while a member, he shall declare  
28 privately, in writing, to the governor and the board any financial  
29 or business interest he has, which might conflict with the public

1 nature of his membership on the board. If there is a serious  
2 conflict, he may be asked by the board to abstain from decisions  
3 resulting in a conflict or to resign from the board. Any loan or  
4 contract of the corporation which is otherwise valid shall not be  
5 invalid because of any personal interest therein on the part of any  
6 board member; provided, that such interest is so declared and that  
7 said board member abstains from decisions pertaining to such loan  
8 or contract.

9       Sec. 4. ORGANIZATION OF BOARD. a. Within 90 days after  
10 the effective date of this Act, the governor shall appoint the  
11 board. Public employees are not eligible for appointment to the  
12 board. Within 14 days after the last of the original appointments,  
13 the board shall meet and organize by electing from its members a  
14 president, who shall also be chairman of the board; a vice presi-  
15 dent, who shall preside in the absence of the president; and a  
16 secretary. At the first regular meeting of every odd-numbered  
17 year, the board shall elect new officers.

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

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

24       d. The meetings of the board may be private or public. Five  
25 members shall constitute a quorum for the transaction of business,  
26 unless the by-laws require a larger number; provided, however,  
27 due notice shall have been given to all members.

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

1           Sec. 5. EXECUTIVE VICE PRESIDENT. The board may employ an  
2 executive vice president to manage the corporation. He shall be  
3 professionally trained and experienced in the performance of his  
4 duties. The selection of the executive vice president is subject  
5 to the approval of the governor. The executive vice president  
6 may not have any financial or business interest that might con-  
7 flict with the management of the corporation in the best public  
8 interest. The board may delegate to the executive vice president  
9 the powers and duties it deems proper.

10           Sec. 6. POWERS AND DUTIES OF THE CORPORATION. The corpora-  
11 tion has, but is not limited to, the following powers:

12                   (1) to have perpetual existence as a corporation;

13                   (2) to adopt, alter, and use a seal;

14                   (3) to adopt, amend and repeal by-laws and regulations  
15 governing the business of the corporation;

16                   (4) to sue and be sued;

17                   (5) to appoint officers, employees and agents and to  
18 vest in them the powers and duties that the corporation may deem  
19 proper; provided, that employees shall be bonded;

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

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

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

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

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

16           (11) to qualify for and participate in federal pro-  
17 grams of the type provided by the Small Business Investment Act  
18 of 1958 and to that end to comply with the provisions of any  
19 federal program when necessary;

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

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

28           (14) to do whatever may be necessary to carry out the  
29 powers granted by this Act or other acts of the Alaska

1 legislature, or the laws and regulations of the federal government,  
2 provided, however, that the corporation shall have no power to  
3 pledge the credit or the taxing power of the State of Alaska or  
4 any of its political subdivisions, nor shall the State of Alaska  
5 or its political subdivisions be liable for the debts of the  
6 corporation.

7       Sec. 7. SUBMISSION OF REPORTS. Before December 1 of each  
8 year the board shall submit to the governor and the legislature  
9 a report which shall describe the board's operations, fiscal  
10 transactions, financial condition, and future plans. The report  
11 shall be in a comprehensive form, which may be prescribed by the  
12 governor.

13       Sec. 8. AUDIT AND EXAMINATION OF RECORDS. The board shall  
14 have its financial records audited annually. The annual audit  
15 shall be conducted by the legislative auditor. If an audit con-  
16 ducted by a certified public accountant is satisfactory in the  
17 judgment of the legislative auditor, it may be accepted in lieu  
18 of the state audit. The legislative auditor may prescribe the  
19 form and content of the financial records of the board and may  
20 have access to these records at any time. In addition, the  
21 state bank examiner shall examine the records of the corporation  
22 annually.

23       Sec. 9. LOAN ADVISORY COMMITTEES. The board may establish  
24 loan advisory committees in the different regions of the state,  
25 who shall serve without pay or per diem. The purpose of these  
26 committees shall be to make recommendations to and generally  
27 advise the board.

28       Sec. 10. LOCATION OF CORPORATION. The corporation shall  
29 have its principal office at the state capital, but may have

1 offices at other locations in the state as determined by the  
2 board.

3 ARTICLE II

4 FINANCES OF CORPORATION

5 Sec. 20. INITIAL CAPITAL. Appropriations and loans from  
6 the state general fund necessary for the initial operation of  
7 the corporation are authorized.

8 Sec. 21. DEBENTURE CERTIFICATES. a. There shall be three  
9 classes of negotiable debenture certificates, which shall have  
10 graduated call features, issued by the corporation.

11 (1) "Class A certificates" shall be issued as evidence  
12 of indebtedness of the corporation through private and public  
13 sales. The maximum face value of class A certificates that may  
14 be sold shall be \$15,000,000.00. Class A certificates shall be  
15 backed by the full resources and credit of the corporation, and  
16 they shall take priority in the payment of principal and interest  
17 to class B and C certificates. \$1,000,000.00 in class A certi-  
18 ficates shall be sold to banks, financial institutions and other  
19 investors at a  $3\frac{1}{2}$  percent interest rate prior to the commencement  
20 of loan activities by the corporation, and prior to a public  
21 offering of the balance of \$14,000,000.00 of class A certificates  
22 at an interest rate no greater than  $4\frac{1}{2}$  percent. The general  
23 procedure for the sale of class A certificates shall be deter-  
24 mined by the board; provided, however, that the class A certifi-  
25 cates outstanding at any time shall not exceed five times the  
26 face value of class B certificates outstanding.

27 (2) "Class B certificates" shall be issued as evidence  
28 of indebtedness of the corporation through private and public  
29 sales. The maximum value of class B certificates that may be

1 sold shall be \$3,000,000.00. Class B certificates shall be back-  
2 ed by the full resources and credit of the corporation and they  
3 shall take priority in the payment of principal and interest to  
4 class C certificates. At least \$500,000.00 in class B certifi-  
5 cates shall be sold at a 4 percent interest rate prior to the  
6 commencement of loan activities by the corporation, and prior to  
7 the sale of the remaining class B certificates, which shall bear  
8 an interest rate no greater than 5½ percent.

9 (3) "Class C certificates" shall be accepted by a  
10 borrower of funds from the corporation at the time of a development  
11 loan. The borrower shall accept these certificates in lieu of  
12 cash from a development loan and in an amount equal to 5 percent of  
13 the face value of the loan. The funds represented by the class C  
14 certificates shall be deposited by the corporation in a time de-  
15 posit account, and shall earn interest at the maximum rate allowed  
16 by banking regulations. The funds represented by class C certifi-  
17 cates shall constitute a reserve for possible loan losses, which  
18 shall not be drawn against unless the corporation has exhausted  
19 the reserve funds provided by Sec. 23 of this Act. Class C cer-  
20 tificates shall not be issued when corporate money is invested in  
21 accordance with Secs. 23 e. and 27 b. of this Act.

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

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

27 d. The certificates of the corporation shall be lawful in-  
28 vestment and may be accepted as security for all fiduciary, trust,  
29 and public funds of the State of Alaska or its political sub-

1 divisions.

2           Sec. 22. COMMENCEMENT OF CORPORATE ACTIVITIES. The cor-  
3 poration shall place \$1,000,000.00 from the sale of class A cer-  
4 tificates and \$500,000.00 from the sale of class B certificates,  
5 as provided in Sec. 21 (1) and (2), in a trust fund. At the time  
6 the trust fund contains \$1,500,000.00, the board shall certify  
7 this fact and may commence its corporate activities as provided by  
8 this Act.

9           Sec. 23. CORPORATION FUNDS. a. The corporation shall have  
10 a general income fund. All interest received from loans shall be  
11 credited to this fund. Expenses of the corporation, including  
12 interest payments on class A, B, and C certificates, shall be  
13 charged to this fund.

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

24           c. The corporation shall have a loan loss reserve fund. The  
25 board shall annually credit to this fund a sum equal to one-fourth  
26 percent of all outstanding loans. Loan losses shall be charged  
27 to the loan loss reserve fund. Recovery of a loan loss, charged  
28 to the fund, shall be credited to this fund. Money in the general  
29 income fund in excess to the estimated expenses of the following

1 fiscal year shall be transferred to the loan loss reserve fund.

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

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

13 Sec. 24. REMEDIES OF HOLDERS OF DEBENTURE CERTIFICATES. a.  
14 The board may provide in covenants and agreements with the holders  
15 of its certificates any remedies that may be reasonable and not in  
16 violation of the law or contrary to any of the provisions of this  
17 Act.

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

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

27 (1) 30 days prior to initiating an action in the  
28 superior court the plaintiff shall give notice in writing to the  
29 corporation, the legislature, the attorney general, and the

1 governor.

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

6 Sec. 25. LIMITATION OF STATE POWER. The state pledges that  
7 it will do nothing to diminish or impair the power of the corpora-  
8 tion so as to affect the security of the corporation's financial  
9 obligations. The state further pledges that it will do nothing  
10 to alter the powers of the corporation which would be inconsis-  
11 tent with contractual agreements between the corporation and the  
12 federal government.

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

20 Sec. 27. CORPORATE LENDING AND LIMITATIONS. a. The cor-  
21 poration may accept applications for development loans and extend  
22 credit on the basis of no greater than 90 percent participation  
23 by the corporation and no less than 10 percent participation by a  
24 bank or banks. The corporation and the participating bank or  
25 banks shall share the same ratable interest from, and collateral  
26 securing, a loan.

27 b. The corporation may, with surplus funds, participate with  
28 banks on the same basis as Sec. 27 a. in existing, short term,  
29 non-development loans. The intention of this provision is to

1 permit the corporation to utilize funds not solicited for develop-  
2 ment purposes and to receive income to meet its financial obli-  
3 gations.

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

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

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

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

17 g. Loans shall be administered by the participating bank,  
18 and for this service a bank may charge the borrower a reasonable  
19 loan fee. In addition to this fee, the corporation shall enter  
20 into a servicing agreement with a participating bank, which may  
21 provide a participating bank with a fee equal to one-quarter of  
22 one percent interest on the corporation's share of the loan.

23 h. To safeguard the records of the corporation, participat-  
24 ing banks shall make duplicates of all documents, retaining one  
25 copy, and providing the corporation with the other copy. This  
26 copy shall be deposited with a bank or trust company located in  
27 Alaska.

28 i. The corporation may have no more than 10 percent of the  
29 face value of outstanding class A and B certificates or

1 \$750,000.00, whichever is the lower amount, outstanding at a time  
2 to any one borrower. The borrowing of individuals who hold a  
3 controlling interest in a borrowing company shall be added to the  
4 debt of the company in determining this limitation.

5 j. The board shall make a loan only when it is reasonably  
6 certain that the loan shall be repaid. In making this determina-  
7 tion, the directors shall consider the proposed collateral, the  
8 integrity and management ability of the borrower, and the borrow-  
9 er's past and prospective earnings.

10 k. Before approving a development loan, the board shall  
11 consider the purpose of the loan. Only loans that are economi-  
12 cally advantageous to the State of Alaska and the general public  
13 welfare shall be approved.

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

20 m. The board may promulgate rules and regulations concern-  
21 ing loan policy and procedure; provided, however, that these  
22 rules may not conflict with any indenture agreements or provi-  
23 sions of this Act.

24 Sec. 28. ADDITIONAL SECURITIES. The legislature may amend  
25 this Act to permit the corporation to issue additional series of  
26 securities; provided, however, that additional securities may not  
27 rely on assets accumulated in connection with the issuance of any  
28 previous series of securities, except when reserves provided by  
29 covenants, this Act, or subsequent legislation have been met.

1           Sec. 29. DISSOLUTION. The corporation, after the payment  
2 in full of its debentures and other obligations or after depositing  
3 in a trust sufficient money to secure the payment of its  
4 obligations, may dissolve by the majority vote of its directors  
5 followed by the confirmation of the legislature. The effective  
6 date of dissolution shall be the date of confirmation by the  
7 legislature or on a date determined by the legislature at the  
8 time of confirmation. Assets remaining after the liabilities and  
9 obligations of the corporation have been satisfied shall be  
10 deposited to the credit of the general fund of the State of  
11 Alaska.

12           Sec. 30. EFFECTIVE DATE. This Act takes effect on the day  
13 after its passage and approval or on the day it becomes law  
14 without such approval.

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