

Introduced: 4/1/65
Referred: Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST

2 HOUSE BILL NO. 276

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

12 ARTICLE 1. CREATION AND ORGANIZATION

13 Sec. 44.60.010. PURPOSE. The purpose of this chapter
14 is to create a further instrumentality of the state to de-
15 velop, stimulate, and advance the business prosperity and
16 economic welfare of Alaska and its citizens and to relieve
17 seasonal unemployment problems in Alaska by assisting the new
18 financing of industrial and manufacturing plant construction,
19 conversion or expansion, including the acquisition of land
20 therefor, by means of loans, where critically needed, to
21 local development companies of a portion of the cost of such
22 construction, conversion, expansion or acquisition to the
23 extent necessary to secure a loan for a portion of such cost
24 by the Small Business Administration pursuant to 15 U.S.C.
25 § 696 (Section 502 of the Act of Congress entitled "Small
26 Business Investment Company Act of 1958" as amended). By
27 providing loans for such types of business activity the
28 economic stability of the state will be strengthened, the
29 employment opportunities of its citizens enlarged, and their

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1 standard of living and general welfare enhanced.

2 Sec. 44.60.020. SMALL BUSINESS DEVELOPMENT CORPORATION
3 OF ALASKA. The Small Business Development Corporation of
4 Alaska is a public corporation, and a political subdivision,
5 of the state. The corporation is an instrumentality of the
6 state within the Department of Commerce, but has a legal exist-
7 ence independent of and separate from the state.

8 Sec. 44.60.030. GOVERNING BODY. The corporation's
9 board of directors shall conduct the business of the corpora-
10 tion.

11 Sec. 44.60.040. COMPOSITION OF BOARD. The board con-
12 sists of the persons duly appointed and serving as members
13 from time to time of the board of directors of the Alaska
14 State Development Corporation. The persons elected from time
15 to time as officers of the Alaska State Development Corpora-
16 tion shall hold the same offices in the Small Business Devel-
17 opment Corporation of Alaska. The president of the Alaska
18 State Development Corporation shall also serve as chairman of
19 the board of the Small Business Development Corporation of
20 Alaska. The duties and powers imposed on the board of direc-
21 tors by this chapter are entirely separate and apart from the
22 duties and powers imposed on the board of directors by
23 AS 44.59.

24 Sec. 44.60.050. CONFLICT OF INTERESTS. Upon appoint-
25 ment and during his term of office, a board member shall
26 declare privately in writing to the governor and the board
27 any financial or business interest he has which might con-
28 flict with the public nature of his membership on the board.
29 If there is a serious conflict, the board may ask him to

1 abstain from decisions resulting in a conflict or to resign
2 from the board. A loan or contract of the corporation which
3 is otherwise valid is not invalid because of a personal inter-
4 est of a board member in it if the interest is declared and
5 the board member abstains from decisions pertaining to the
6 loan or contract.

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

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

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

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

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

24 Sec. 44.60.110. EXECUTIVE VICE PRESIDENT. The board
25 may employ an executive vice president to manage the corpora-
26 tion. He must be professionally trained and experienced in
27 the performance of his duties. His selection is subject to
28 the approval of the governor. The executive vice president
29 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. The executive vice president may also be the executive vice president of the Alaska State Development Corporation.

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 AS 44.60.010, 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

1 and contracts concerning these obligations;

2 (9) secure the payment of its obligations by pledge
3 or mortgage or other lien on its contracts, revenues, income,
4 or property, except that it may not incur secondary liability
5 by guaranty or endorsement of the obligations of another cor-
6 poration or legal entity, except endorsement of checks, bank
7 drafts, or other commercial paper in the ordinary course of
8 business;

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

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

14 (12) acquire, hold, and dispose of stocks, member-
15 ships, contracts, bonds, or other interests in another corpor-
16 ation or legal entity, and exercise the powers or rights in
17 connection with these interests which are provided in con-
18 tracts or agreements and which are allowed by law concerning
19 the satisfaction of debts;

20 (13) do what is necessary to carry out the powers
21 granted by this chapter or other acts of the Alaska legisla-
22 ture, or the laws and regulations of the federal government.

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

27 Sec. 44.60.140. ANNUAL REPORT. Before December 1 of
28 each year, the board shall submit to the governor and the
29 legislature a comprehensive report describing the operations,

1 fiscal transactions, financial condition, and future plans of
2 the board. The governor may prescribe the form of the report.

3 Sec. 44.60.150. ANNUAL AUDITS. (a) The board shall
4 have its financial records audited annually. The legislative
5 auditor shall conduct the annual audit. If an audit conducted
6 by a certified public accountant is satisfactory in the judg-
7 ment of the legislative auditor, it may be accepted instead of
8 the state audit. The legislative auditor may prescribe the
9 form and content of the financial records of the board and
10 may have access to these records at any time.

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

13 ARTICLE 3. FINANCIAL PROVISIONS

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

17 Sec. 44.60.170. BONDS, NOTES, AND DEBENTURES. The cor-
18 poration may issue negotiable bonds, notes and debentures in
19 such principal amounts as is considered necessary to provide
20 sufficient funds for achieving its corporate purposes stated
21 in AS 44.60.010, including the payment of interest of bonds
22 of the corporation, the establishment of reserves to secure
23 bonds, notes and debentures, and all other expenditures of
24 the corporation incidental to and necessary or convenient to
25 carry out said corporate purposes.

26 Sec. 44.60.190. NATURE OF CORPORATION OBLIGATIONS.
27 Except as otherwise expressly provided by the corporation,
28 every issue of its notes, debentures or bonds is a general
29 obligation of the corporation payable out of any revenues or

1 money of the corporation, subject only to agreements with the
2 holders of particular notes, debentures or bonds pledging
3 particular receipts or revenues.

4 Sec. 44.60.200. NEGOTIABILITY OF OBLIGATIONS. Whether
5 or not the notes, debentures, or bonds are of the form and
6 character to be negotiable instruments under the provisions of
7 the negotiable instruments law, the notes, debentures or bonds
8 of the corporation are negotiable instruments within the mean-
9 ing of and for the purposes of the negotiable instruments law.

10 Sec. 44.60.210. AUTHORIZATION AND CONTENTS OF ISSUANCE.
11 The notes, debentures, and bonds shall be authorized by reso-
12 lution of the board of directors of the corporation. The
13 notes, debentures, and bonds shall bear the date or dates,
14 and mature at the time or times, in the case of a note or
15 debenture or renewals not to exceed five years from the date
16 of issue of the original note or debenture, and in the case
17 of a bond, not to exceed 50 years from the date of issue, as
18 the resolution or resolutions may provide. The notes, debent-
19 ures, and bonds shall bear interest at the rate or rates, be
20 in the denominations, be in the form, either coupon or regis-
21 tered, be executed in the manner, be payable in the medium of
22 payment at the place or places, be subject to the terms of
23 redemption and carry such registration pledges as the resolu-
24 tion or resolutions may provide.

25 Sec. 44.60.220. ADDITIONAL PROVISIONS OF RESOLUTION
26 AUTHORIZING OBLIGATIONS. The resolutions authorizing issu-
27 ance of notes, debentures or bonds may contain provisions
28 which shall be a part of the contract with the holder as to
29 (1) pledging all or part of the money received in

1 payment of the loans made by the corporation and interest on
2 such loans, and other money received or to be received, to
3 secure the payment of the notes, debentures or bonds or of
4 any issue of them subject to existing agreements with bond-
5 holders or noteholders, or debenture holders;

6 (2) pledging all or a part of the assets of the
7 corporation, including any mortgages or other documents or
8 agreements, to secure the payment of the notes, debentures or
9 bonds or any issue of notes, debentures, or bonds, subject to
10 existing agreements with noteholders, debenture holders, or
11 bondholders;

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

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

17 (5) limitations on the purpose to which the pro-
18 ceeds of sale of notes, debentures or bonds may be applied
19 and pledging the proceeds to secure the payment of notes,
20 debentures or bonds or of any issue thereof;

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

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

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

8 (9) the replacement of lost, destroyed or muti-
9 lated bonds, notes and debentures;

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

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

15 Sec. 44.60.240. NONLIABILITY OF CORPORATION MEMBERS.
16 The members of the corporation and persons executing the
17 notes, debentures or bonds are not liable personally on the
18 notes, debentures or bonds or subject to personal liability
19 or accountability by reason of their issuance. It is the
20 intention of the legislature that any pledge made in respect
21 of such bonds, notes or debentures shall be valid and binding
22 from the time when the pledge is made that the money or
23 property so pledged thereafter received by the corporation
24 shall immediately be subject to the lien of such pledge with-
25 out any physical delivery thereof or further act; and that
26 the lien of any such pledge shall be valid and binding as
27 against all parties having claims of any kind in tort, con-
28 tract or otherwise against the corporation, irrespective of
29 whether such parties have notice thereof. Either the

1 resolution, trust indenture or any other instrument by which
2 a pledge is made may be recorded.

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

7 Sec. 44.60.260. RIGHTS OF OBLIGATION HOLDERS. Subject
8 to contractual limitations or restrictions under secs. 170-
9 250 of this chapter, the holder of bonds, notes or debentures,
10 in addition to other remedies, may by appropriate action,
11 require the corporation to carry out its covenants and agree-
12 ments made with or for the holder's benefit.

13 ARTICLE 4. GENERAL PROVISIONS

14 Sec. 44.60.270. SMALL BUSINESS DEVELOPMENT REVOLVING
15 FUND. There is established a small business development
16 revolving fund which shall be administered by the board of
17 directors exclusively for the purposes of this chapter. The
18 fund is composed of money appropriated by the legislature to
19 the corporation for the purposes of this chapter. Expendi-
20 tures may be made from this fund for the administration of
21 this chapter as well as for the loans authorized by the pro-
22 visions of this chapter. The corporation may pledge any
23 money in this fund to secure the payment of any bonds, notes
24 or debentures issued pursuant to this chapter.

25 Sec. 44.60.280. REPAYMENT TO GENERAL FUND. All money
26 made available to the small business development revolving
27 fund from the general fund of the state is a loan from the
28 general fund. All surplus at the end of a fiscal year over
29 amounts made available to the fund from the general fund of

1 the state shall be repaid to the general fund until the loan
2 is repaid in full. Repayments need not begin until after the
3 first five complete fiscal years after the fund is created.

4 Sec. 44.60.290. INVESTMENTS BY ASSOCIATION. The corpor-
5 ation shall place money held in the reserve funds or in the
6 small business development revolving fund in one or more of
7 the following: deposits in banks or trust companies having
8 their principal places of business in the United States; or
9 obligations of the United States, the state, or its political
10 subdivisions if the obligations are secured by the general
11 taxing power of the obligor.

12 Sec. 44.60.300. TAX EXEMPTION. Because the purpose of
13 the corporation, as an instrumentality of the state, is to
14 benefit the people of Alaska by increasing their commerce,
15 prosperity, and general well-being, the corporation is exempt
16 from all taxes and assessments in the state. Bonds, notes
17 and debentures issued by the corporation, their transfer and
18 their income are exempt from all taxes and assessments in the
19 state.

20 Sec. 44.60.310. CORPORATION'S INTEREST. The rate of
21 interest charged for the corporation's share of a development
22 loan shall be determined by the board and may exceed the legal
23 contract rate of interest as set by state law. The corpora-
24 tion may also charge reasonable loan commitment fees.

25 Sec. 44.60.320. GENERAL LIMITATIONS ON LOANS. (a) In
26 making loans, the board shall consider the proposed collat-
27 eral, the purpose of the loan, the integrity and management
28 ability of the borrower, and the borrower's past and pro-
29 spective earnings.

1 (b) the board may make only loans that are economically
2 advantageous to the state and the general public welfare. No
3 loans shall be made unless the local development company has
4 obtained a firm commitment, satisfactory to the corporation,
5 from the Small Business Administration under the provisions
6 of the Small Business Investment Company Act of 1958 as
7 amended (15 U.S.C. § 696) and from other sources for the
8 total cost of the project, exclusive of any loans requested
9 from the corporation.

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

19 Sec. 44.60.330. DISSOLUTION. After payment in full of
20 its debentures and other obligations or after depositing in
21 a trust sufficient money to secure the payment of its obliga-
22 tions, the board may dissolve the corporation by the majority
23 vote of its directors. Dissolution is not effective until
24 the legislature confirms it. The effective date of dissolu-
25 tion is the date the legislature confirms the dissolution or
26 a date determined by the legislature at the time of confirma-
27 tion. Assets remaining after satisfaction of liabilities and
28 obligations of the corporation shall be deposited to the
29 credit of the general fund of the state.

1 Sec. 44.60.340. REGULATIONS. The board may adopt regu-
2 lations or bylaws to implement the purposes of this Act.

3 Sec. 44.60.350. SEVERABILITY. The provisions of this
4 chapter are severable and if a provision is held invalid by
5 a court of competent jurisdiction, the invalidation shall not
6 affect or impair any of the remaining provisions.

7 Sec. 44.60.360. EXPENSES. The corporation shall bear
8 all of its own expenses, providing, however, that to the
9 extent that the facilities or personnel of the Alaska State
10 Development Corporation are utilized by the corporation, the
11 corporation shall bear such portions of said expenses as is
12 fairly attributable to the corporation. The determination
13 of expenses fairly attributable to the corporation shall be
14 made by the independent auditors of the corporation and of
15 the Alaska State Development Corporation in accordance with
16 generally acceptable accounting principles consistently
17 applied.

18 Sec. 44.60.370. DEFINITION. As used in this chapter,
19 the term "local development companies" shall have the meaning
20 ascribed to the same in the Act of Congress entitled the
21 "Small Business Investment Company Act of 1958," as amended.

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