

Introduced: 3/16/67
Referred: Commerce
and Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 187

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a Business and Industrial
7 Development Corporation; and providing for an
8 effective date."

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

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

11 CHAPTER 35. BUSINESS AND INDUSTRIAL

12 DEVELOPMENT CORPORATION ACT

13 Sec. 10.35.010. INCORPORATORS. Three or more persons, who are
14 residents of this state, who desire to create an industrial develop-
15 ment corporation under this chapter for the purpose of promoting,
16 developing, and advancing the prosperity and economic welfare of the
17 state and, to that end, to exercise the powers and privileges herein-
18 after provided, may be incorporated by filing articles of incorpora-
19 tion in the office of the commissioner of commerce as provided in
20 this chapter.

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

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

- 27 (1) the name of the corporation, which shall include the
28 words "Industrial Development Corporation of the State of Alaska";
29 (2) the location of the principal office of the corporation,

1 but such corporation may have offices in such other places within
2 the state as may be fixed by the board of directors;

3 (3) the purposes for which the corporation is organized,
4 which shall be to promote, stimulate, develop, and advance the
5 business prosperity and economic welfare of the State of Alaska
6 and its citizens; to encourage and assist through loans, investments
7 or other business transactions in the location of new business and
8 industry in this state and to rehabilitate and assist existing
9 business and industry; to stimulate and assist in the expansion of
10 all kinds of business activity which will tend to promote the
11 business development and maintain the economic stability of this
12 state, provide maximum opportunities for employment, encourage thrift,
13 and improve the standard of living of the citizens of this state;
14 to cooperate and act in conjunction with other organizations, public
15 or private, in the promotion and advancement of industrial, com-
16 mercial, agricultural, and recreational developments in this state;
17 and to provide financing for the promotion, development, and conduct
18 of all kinds of business activity in this state;

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

24 (5) any provision which the incorporators may choose to
25 insert for the regulation of the business and for the conduct of
26 the affairs of the corporation; any provision creating, dividing,
27 limiting, and regulating the powers of the corporation, the directors,
28 stockholders or any class of the stockholders, including, but not
29 limited to a list of the officers; and any provision governing the

1 issuance of stock certificates to replace lost or destroyed certi-
2 ficates;

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

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

17 (c) The commissioner of commerce shall not approve articles of
18 incorporation for a corporation organized under this chapter until
19 a total of at least seven financial institutions authorized to do
20 business within this state have agreed in writing to become members
21 of said corporation, and the agreement in writing is filed with the
22 commissioner of commerce together with the articles of incorporation.
23 When the articles of incorporation have been filed in the office of
24 the commissioner of commerce and approved by him, he shall

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

27 (2) file one duplicate original in his office;

28 (3) issue a certificate of incorporation and affix the
29 other duplicate original to it;

1 (4) return to the incorporators or their representative
2 the certificate of incorporation, together with the duplicate
3 original of the articles of incorporation affixed.

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

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

14 (1) to elect, appoint, and employ officers, agents, and
15 employees; to make contracts and incur liabilities for any of the
16 purposes of the corporation; provided, that the corporation shall
17 not incur any secondary liability by way of guaranty or endorsement
18 of the obligations of any person, firm, corporation, joint stock
19 company, association or trust, or in any other manner;

20 (2) to borrow money from its members and the Small
21 Business Administration and any other federal agency for any of the
22 purposes of the corporation; to issue therefor its bonds, debentures,
23 notes or other evidences of indebtedness, whether secured or un-
24 secured, and to secure the same by mortgage, pledge, deed of trust or
25 other lien on its property, franchises, rights, and privileges of
26 every kind and nature, or any part thereof or interest therein,
27 without securing stockholder or member approval;

28 (3) to make loans to any person, firm, corporation,
29 joint-stock company, association or trust, and to establish and

1 regulate the terms and conditions with respect to any such loans and
2 the charges for interest and service connected therewith; provided,
3 however, that the corporation shall not approve any application for
4 a loan unless and until the person applying for the loan shall show
5 that he has applied for the loan through ordinary banking channels
6 and that the loan has been refused by at least one bank or other
7 financial institution;

8 (4) to purchase, receive, hold, lease, or otherwise
9 acquire, and to sell, convey, transfer, lease, or otherwise dispose
10 of real and personal property, together with such rights and privi-
11 leges as may be incidental and appurtenant thereto and the use
12 thereof, including, but not restricted to any real or personal
13 property acquired by the corporation from time to time in the
14 satisfaction of debts or enforcement of obligations;

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

28 (6) to acquire, subscribe for, own, hold, sell, assign,
29 transfer, mortgage, pledge or otherwise dispose of the stock, shares,

1 bonds, debentures, notes or other securities and evidences of
2 interest in, or indebtedness of any person, firm, corporation,
3 joint-stock company, association or trust, and while the owner or
4 holder thereof to exercise all the rights, powers, and privileges of
5 ownership, including the right to vote thereon;

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

10 (8) to cooperate with and avail itself of the facilities
11 of the United States Department of Commerce, the State Department of
12 Economic Development, and any other state or federal governmental
13 agencies; and to cooperate with and assist, and otherwise encourage
14 organizations in the various communities of the state in the pro-
15 motion, assistance, and development of the business prosperity and
16 economic welfare of such communities or of this state or of any
17 part of the state;

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

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

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

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

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

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

15 Sec. 10.35.060. ADMISSION TO MEMBERSHIP. A financial institu-
16 tion may request membership in the corporation by making application
17 to the board of directors on the form and in the manner the board of
18 directors require, and membership becomes effective upon acceptance
19 of the application by the board.

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

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

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

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

5 (A) twenty per cent of the total amount then out-
6 standing on loans to the corporation by all members, including
7 in the total amount outstanding amounts validly called for loan
8 but not yet loaned;

9 (B) the following limit, to be determined as of the
10 time the member becomes a member on the basis of the audited
11 balance sheet of the member at the close of its fiscal year
12 immediately preceding its application for membership, or in the
13 case of an insurance company, its last annual statement to the
14 state insurance commissioner: two and one half per cent of the
15 capital and surplus of a commercial bank or trust company; one
16 half of one per cent of the total outstanding loans made by a
17 savings and loan association or building and loan association;
18 two and one half per cent of the capital and unassigned surplus
19 of a stock insurance company, except a fire insurance company;
20 two and one half per cent of the unassigned surplus of a mutual
21 insurance company, except a fire insurance company; one tenth
22 of one per cent of the assets of a fire insurance company; and
23 such limits as may be approved by the board of directors of the
24 corporation for other financial institutions.

25 (4) Subject to paragraph (a)(3)(A) of this section, each
26 call made by the corporation shall be prorated among the members of
27 the corporation in substantially the same proportion that the adjusted
28 loan limit of each member bears to the aggregate of the adjusted loan
29 limits of all members. The adjusted loan limit of a member shall be

1 the amount of the member's loan limit, reduced by the balance of out-
2 standing loans made by the member to the corporation and the investment
3 in capital stock of the corporation held by the member at the time of
4 the call.

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

13 (b) A member shall not be obligated to make any loans to the cor-
14 poration pursuant to calls made after notice of the intended withdrawal
15 of the member.

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

20 Sec. 10.35.090. POWERS OF STOCKHOLDERS AND MEMBERS. The stock-
21 holders and the members of the corporation have the following powers
22 of the corporation:

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

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

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

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

1 (5) to do all things necessary or desirable to secure
2 aid, assistance loans and other financing from any financial institu-
3 tions, and from any agency established under the Small Business
4 Investment Act of 1958, Public Law 85-699, 85th Congress, or other
5 similar federal laws now or hereafter enacted;

6 (6) to exercise such other of the powers of the corporation
7 consistent with this Act as may be conferred on the stockholders and
8 the members by the bylaws.

9 Sec. 10.35.100. VOTING BY MEMBERS AND STOCKHOLDERS. (a) On
10 all matters requiring action by the stockholders and the members of
11 the corporation, the stockholders and members shall vote separately
12 by classes, and except as otherwise provided in this chapter, such
13 matters require the affirmative vote of a majority of the votes to
14 which the stockholders present or represented at the meeting are
15 entitled and the affirmative vote of a majority of the votes to
16 which the members present or represented at the meeting are entitled.

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

25 Sec. 10.35.110. AMENDMENT OF ARTICLES. (a) The articles of
26 incorporation may be amended by the vote of the stockholders and the
27 members of the corporation, voting separately by classes. Amendments
28 must be approved by the affirmative vote of two thirds of the votes
29 to which the stockholders are entitled and two thirds of the votes to

1 which the members are entitled. No amendment of the articles of
2 incorporation shall be made which is inconsistent with the general
3 purposes expressed in this chapter or which authorizes any additional
4 class of capital stock to be issued, or which eliminates or curtails
5 the right of the commissioner of administration to examine the
6 corporation or the obligation of the corporation to make reports as
7 provided in sec. 150 of this chapter. No amendment of the articles
8 of incorporation which increases the obligation of a member to make
9 loans to the corporation, or makes any change in the principal amount,
10 interest rate, maturity date, or in the security or credit position
11 of any outstanding loan of a member to the corporation, or affects
12 a member's right to withdraw from membership as provided herein, or
13 affects a member's voting rights as provided herein, shall be made
14 without the consent of each member affected by the amendment.

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

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

24 (2) file one duplicate original in his office;

25 (3) issue a certificate of amendment and affix the other
26 duplicate original to it;

27 (4) return to the corporation or its representative the
28 certificate of amendment, together with the duplicate articles of
29 amendment affixed.

1 (c) Upon the issuance of a certificate of amendment by the
2 commissioner of commerce, the amendment becomes effective.

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

1 elected by the stockholders shall be filled by the directors elected
2 by the stockholders.

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

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

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

23 Sec. 10.35.150. EXAMINATIONS. The corporation shall be
24 examined at least once annually by the commissioner of administration
25 and shall make reports of its condition not less than annually to the
26 commissioner and more frequently upon call of the commissioner, who
27 in turn shall make copies of the reports available to the commissioner
28 of commerce and the governor. The corporation shall also furnish such
29 other information as may from time to time be required by the

1 commissioner of administration. The corporation shall pay the actual
2 cost of said examinations.

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

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

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

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

29 Sec. 10.35.190. PROHIBITION OF PLEDGE OF CREDIT OF STATE. The

1 credit of the state may not be pledged to any corporation organized
2 under the provisions of this chapter.

3 Sec. 10.35.200. CORPORATION.A "STATE DEVELOPMENT COMPANY."

4 Any corporation organized under the provisions of this chapter shall
5 be a state development company, as defined in the Small Business
6 Investment Act of 1958, 72 Stat. 689 (1958) 15 U.S.C. §§ 661 - 696,
7 or any other similar federal legislation, and shall be authorized to
8 operate on a statewide basis.

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

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

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

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

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

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

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

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