

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 536
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE B.DAVIS

Introduced: 3/18/92

Referred: Labor & Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to business and industrial development corporations; and providing for
2 an effective date."

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

4 * Section 1. AS 06 is amended by adding a new chapter to read:

5 CHAPTER 50. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS.

6 ARTICLE 1. PURPOSES AND LICENSING.

7 Sec. 06.50.010. PURPOSES. The purposes of this Act are to

8 (1) promote economic development by encouraging the formation of business and
9 industrial development corporations to help meet the financing assistance and management
10 assistance needs of businesses in the state;

11 (2) establish a system of licensing, regulation, and enforcement that will enable
12 business and industrial development corporations to satisfy eligibility requirements to participate
13 in the program of the Small Business Administration under 15 U.S.C. 636(a) and other programs
14 for which they may be eligible;

1 (3) provide for business and industrial development corporations a system of
2 licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and
3 mismanagement, and to promote competent management, accurate record keeping, and
4 appropriate communication with shareholders;

5 (4) facilitate equity investments in business and industrial development
6 corporations and the borrowing of money by business and industrial development corporations;
7 and

8 (5) increase the confidence of prospective equity investors in and prospective debt
9 sources for business and industrial development corporations.

10 Sec. 06.50.015. QUALIFICATIONS FOR BIDCO LICENSE. The department shall issue
11 a license to operate as a BIDCO to a corporation

12 (1) that submits an application to the department;

13 (2) that is incorporated under AS 10.06 or AS 10.20, or that has been issued a
14 certificate of authority under AS 10.06 or AS 10.20 to transact business in the state; to qualify
15 for a license an applicant may not be a subsidiary unless the parent corporation is an insurer
16 regulated under AS 21 or a financial institution;

17 (3) that has the net worth required under AS 06.50.030;

18 (4) whose directors, officers, and controlling persons satisfy the criteria under
19 AS 06.50.050;

20 (5) that demonstrates to the department that it is reasonable to believe that the
21 corporation will comply with this chapter;

22 (6) that demonstrates to the department a reasonable promise of being a viable,
23 ongoing BIDCO and of satisfying the basic objectives of the corporation's BIDCO business plan;
24 and

25 (7) that satisfies the other application requirements established by the department.

26 Sec. 06.50.020. APPLICATION PROCEDURE. The department shall establish by
27 regulation the information and forms to be used for the application. The information must
28 include information on the directors, officers, and controlling persons of the applicant, the
29 applicant's business plan, including at least three years of detailed financial projections and other
30 relevant information, and additional information considered relevant by the department.

31 Sec. 06.50.030. REQUISITE NET WORTH. (a) Except as otherwise provided in (b)

1 of this section, in order to receive a license, an applicant must demonstrate that the applicant has
2 a net worth of at least \$1,000,000 in securities that are at least A-rated by a nationally recognized
3 rating firm.

4 (b) The department may allow a minimum net worth of less than \$1,000,000, but not less
5 than \$250,000, if, in the context of the applicant's business plan, the initial capitalization amount
6 is adequate for the applicant to transact business as a BIDCO because of special circumstances,
7 including funded overhead, low overhead, or specialized opportunities, or the applicant has
8 applied for and is likely to receive a loan under AS 44.88.600 - 44.88.690.

9 Sec. 06.50.040. DETERMINATION OF NET WORTH. (a) When determining if an
10 applicant has a net worth or firm financing commitments adequate to transact business as a
11 BIDCO, the department shall consider

12 (1) the types and variety of financing assistance that the applicant plans to
13 provide;

14 (2) the experience that the directors, officers, and controlling persons of the
15 applicant have in providing financing and managerial assistance to businesses;

16 (3) the financial projections and other relevant information from the applicant's
17 business plan; and

18 (4) whether the applicant intends to operate as a profit or nonprofit corporation.

19 (b) The net worth requirement may be satisfied by firm financing commitments that
20 demonstrate that the applicant will have the required net worth when the applicant begins
21 transacting business as a BIDCO.

22 Sec. 06.50.045. ASSETS OF SUBSIDIARIES. If an applicant is a subsidiary, the assets
23 to be used by the applicant to fund the BIDCO may not exceed three percent of the assets of the
24 parent corporation, except that if the parent corporation is an insurer regulated under AS 21, the
25 assets to be used by the applicant to fund the BIDCO may not exceed 10 percent of the assets
26 of the parent corporation.

27 Sec. 06.50.050. CRITERIA FOR DIRECTORS, OFFICERS, AND CONTROLLING
28 PERSONS. (a) An applicant must demonstrate that each director, officer, and controlling person
29 of the applicant is

30 (1) of good character and sound financial standing;

31 (2) competent to perform the director's or officer's functions for the applicant;

1 and

2 (3) when considered collectively with the other directors, officers, and controlling
3 persons, adequate to manage the business of the applicant as a BIDCO.

4 (b) The department may determine that a director, officer, or controlling person of an
5 applicant is not of good character if the director, officer, or controlling person, or a director or
6 officer of a controlling person, has had an administrative sanction imposed under 31 U.S.C.
7 3801 - 3812 (Program Fraud Civil Remedies Act of 1986) for an offense under 15 U.S.C. 645,
8 or has been convicted of a crime involving fraud or dishonesty, including conviction for an
9 offense under 15 U.S.C. 645 and conviction based on a guilty plea or plea of nolo contendere.

10 Sec. 06.50.060. DETERMINATION OF FUTURE NONCOMPLIANCE. The department
11 may determine that it is not reasonable to believe that an applicant would comply with this
12 chapter if licensed, if the applicant has been convicted of a crime involving fraud or dishonesty,
13 including conviction based on a guilty plea or plea of nolo contendere.

14 Sec. 06.50.070. PRELIMINARY APPROVAL OF APPLICATION. (a) Upon request
15 the department may grant preliminary approval of a license to an applicant before the applicant
16 has obtained the necessary equity investment commitments or has identified the applicant's
17 directors and officers.

18 (b) When granting preliminary approval, the department shall indicate that final approval
19 is conditioned on the department's review of the applicant's completed fund-raising, including
20 the controlling persons, and the completed roster of directors and officers.

21 (c) If the department has granted preliminary approval of a license, the department may,
22 before granting final approval, request an updated balance sheet and other information that the
23 department considers relevant.

24 Sec. 06.50.080. DENIAL OF APPLICATION. If the department denies a license the
25 department shall provide the applicant with a written statement explaining the basis for the denial.

26 Sec. 06.50.090. DISPLAY OF LICENSE. A licensee shall post the license in a
27 conspicuous place in the licensee's principal office.

28 Sec. 06.50.100. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A
29 licensee may not transfer or assign its license.

30 Sec. 06.50.110. SURRENDER OF LICENSE. (a) Upon approval by a two-thirds vote
31 of its board of directors and after complying with (b) and (c) of this section, a licensee may apply

1 to the department to have the department accept the surrender of the licensee's license. If the
2 department determines that the requirements of this section have been satisfied, the department
3 shall approve the application unless the department determines that the purpose of the application
4 is to evade a current or prospective action by the department under AS 06.50.730 - 06.50.860.

5 (b) Not less than 60 days before filing an application under (a) of this section, a licensee
6 shall notify all of its shareholders and creditors of its intention to file the application. Each
7 creditor shall be notified of the right to comment to the department. Each shareholder shall be
8 notified of the right to file with the licensee an objection to the proposed surrender of the license
9 within the 60-day period and shall be advised that, if the shareholder files an objection, the
10 shareholder may also send a copy of the objection to the department.

11 (c) If shareholders representing 20 percent of the outstanding voting securities of the
12 licensee file an objection with the licensee, the licensee may not proceed with the application
13 unless the application is approved by a vote of shareholders representing two-thirds of the
14 outstanding voting securities of the licensee.

15 ARTICLE 2. CORPORATE MATTERS.

16 Sec. 06.50.120. CORPORATE NAME. (a) The corporate name of a licensee must
17 include the word "BIDCO". A licensee may not transact business under a name other than its
18 corporate name.

19 (b) Before being issued a license, a state corporation that proposes to apply for a license
20 or that applies for a license may perform, under a name that indicates that the corporation is a
21 business and industrial development corporation, the acts necessary to apply for and obtain a
22 license and otherwise prepare to begin business as a licensee. The corporation may not represent
23 that it is a licensee until after the license has been obtained.

24 Sec. 06.50.130. BOARD OF DIRECTORS. (a) The board of directors of a licensee
25 must have at least seven directors.

26 (b) The board of directors shall hold at least one meeting each calendar quarter.

27 (c) If the licensee is a subsidiary, at least three of the directors must be persons who are
28 not directors or employees of the parent corporation.

29 Sec. 06.50.140. NOTICE OF OFFICER AND DIRECTOR CHANGES. Within 30 days
30 of each of the following events, the licensee shall notify the department in writing of the event
31 and provide additional information that the department requires:



- 1 (1) the death, resignation, or removal of a director or officer;
- 2 (2) the election of a director; or
- 3 (3) the appointment of an officer.

4 Sec. 06.50.150. DIVIDENDS. (a) A licensee may not pay or obligate itself to pay a
 5 cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent
 6 with a dividend policy that has been adopted by the licensee and approved by the department.

7 (b) When approving dividend policies under this section, the department shall consider
 8 the special characteristics of a BIDCO and what is necessary to protect the licensee against
 9 unsafe or unsound acts that could threaten the viability of the licensee as an ongoing BIDCO.

10 (c) The department may at any time withdraw a previous approval of a dividend policy
 11 if the department determines that the withdrawal is necessary to prevent unsafe or unsound acts.

12 Sec. 06.50.160. STOCK BUY-BACK. A licensee may not buy back or obligate itself
 13 to buy back a share of equity interest from a shareholder without the prior approval of the
 14 department.

15 ARTICLE 3. TRANSACTION OF BUSINESS.

16 Sec. 06.50.170. OFFICES. (a) A licensee shall maintain at least one office in this state.

17 (b) A licensee may not maintain an office outside this state.

18 (c) The location of each office of a licensee shall be reasonably accessible to the public.

19 (d) A licensee shall post in a conspicuous place at each of the licensee's offices a sign
 20 that bears the corporate name of the licensee.

21 (e) At each of a licensee's offices, the licensee shall maintain personnel who are
 22 competent to conduct the business of the office.

23 (f) A licensee may not establish, relocate, or close an office unless the licensee has given
 24 the department written notice.

25 Sec. 06.50.180. BUSINESS OF LICENSEE. A licensee may not engage in a business
 26 other than providing financing assistance and management assistance to businesses.

27 Sec. 06.50.190. GENERAL POWERS. In addition to the other powers given by this
 28 chapter and the powers conferred on the licensee by the laws under which it is incorporated that
 29 are not inconsistent with this chapter, a licensee may

- 30 (1) borrow money and otherwise incur indebtedness for the licensee's purposes,
- 31 including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness;

1 a licensee's indebtedness may be secured or unsecured, and may involve equity features,
2 including provisions for conversion to stock and warrants to purchase stock;

3 (2) make contracts;

4 (3) incur and pay necessary and incidental operating expenses;

5 (4) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or
6 otherwise acquire or dispose of real or personal property, and the rights and privileges that are
7 incidental and appurtenant to the transactions, if the real or personal property is for the licensee's
8 use in operating the licensee's business or if the real or personal property is acquired by the
9 licensee from time to time in satisfaction of debts or the enforcement of obligations;

10 (5) make donations for charitable, educational, research, or similar purposes;

11 (6) provide financial assistance and establish the terms and conditions of the
12 financial assistance;

13 (7) implement a reasonable and prudent policy for conserving and investing the
14 licensee's money before the money is used to provide financing assistance to business or to pay
15 the expenses of the licensee;

16 (8) exercise the incidental powers that are necessary, convenient, or reasonably
17 related to providing financing assistance and management assistance to businesses.

18 Sec. 06.50.200. FINANCING ASSISTANCE FORM, TERMS, AND CONDITIONS. A
19 licensee may determine the form, terms, and conditions for the financing assistance that it will
20 provide.

21 Sec. 06.50.210. FINANCING ASSISTANCE ALLOWED. The financing assistance that
22 a licensee may provide includes

23 (1) loans;

24 (2) purchase of debt instruments;

25 (3) straight equity investments including the purchase of common stock or
26 preferred stock;

27 (4) debt with equity features including warrants to purchase stock, convertible
28 debentures, or receipt of a percent of net income or sales;

29 (5) royalty-based financing;

30 (6) debt guarantees;

31 (7) property leasing.

1 **Sec. 06.50.220. PURCHASE OF SECURITIES.** Unless prohibited by regulations of the
2 department, a licensee may purchase the securities of a business either directly, or indirectly
3 through an underwriter.

4 **Sec. 06.50.230. PARTICIPATION IN GOVERNMENTAL PROGRAMS.** (a) A licensee
5 may participate in the program of the Small Business Administration under 15 U.S.C. 636(a), or
6 other federal, state, or local government program for which the licensee is eligible and that has
7 as the program's function the provision or facilitation of financing assistance or management
8 assistance to businesses.

9 (b) If a licensee participates in a program referred to in (a) of this section, the licensee
10 shall comply with the requirements of the program.

11 **Sec. 06.50.240. SCOPE OF MANAGEMENT ASSISTANCE.** When providing
12 management assistance, a licensee may provide management advice, management services,
13 technical advice, and technical services.

14 **Sec. 06.50.250. LIMITATION TO PURPOSES OF BUSINESS.** Financing assistance
15 and management assistance provided by a licensee to a business shall be for the business
16 purposes of the business.

17 **Sec. 06.50.270. CONTROL OF OTHER BUSINESSES.** A licensee may not hold control
18 of another business, except as provided under AS 06.50.280 - 06.50.330. In this section,
19 "licensee" includes the licensee in concert with

20 (1) a director, officer, principal shareholder, or affiliate of the licensee;

21 (2) another licensee; or

22 (3) a director, officer, principal shareholder, or affiliate of another licensee.

23 **Sec. 06.50.280. CONTROL OF ASSISTED BUSINESS.** (a) A licensee that provides
24 financing assistance to a business may acquire and hold control of the business to the extent
25 necessary to protect the licensee's interest as a creditor of, or investor in, the business.

26 (b) Unless the department approves a longer period, a licensee holding control of a
27 business under this section shall divest itself of the control as soon as practicable, or within five
28 years after acquiring the interest, whichever is sooner.

29 (c) If a licensee anticipates acquiring and holding control of a business under (a) of this
30 section, the licensee shall file with the department a plan for acquiring and holding control of the
31 business. The plan must include at least

1 (1) the reasons why it is necessary for the licensee to acquire and hold control
2 of the business;

3 (2) the percentage that the licensee plans to own of the outstanding voting
4 securities of the business;

5 (3) the licensee's proposed course of action upon obtaining control of the
6 business;

7 (4) the length of time the licensee anticipates that it will be necessary to hold
8 control of the business.

9 Sec. 06.50.290. CONTROL OF SMALL BUSINESS INVESTMENT COMPANY. With
10 the approval of the department, a licensee may acquire and hold control of a corporation that is
11 licensed as a small business investment company under 15 U.S.C. 662 - 697c (Small Business
12 Investment Program).

13 Sec. 06.50.300. CONTROL OF LOCAL DEVELOPMENT COMPANY. With the
14 approval of the department, a licensee may acquire and hold control of a business that is a local
15 development company under 15 U.S.C. 662 - 697c (Small Business Investment Program),
16 whether or not the development company is or may become certified by the Small Business
17 Administration under 15 U.S.C. 697.

18 Sec. 06.50.310. CONTROL OF BUSINESS PROVIDING FINANCING ASSISTANCE
19 AND MANAGEMENT ASSISTANCE. With the approval of the department, a licensee may
20 acquire and hold control of another business that is engaged only in the business of providing
21 financing assistance and management assistance to businesses.

22 Sec. 06.50.320. CONTROL OF OTHER BUSINESSES. (a) With the approval of the
23 department, a licensee may acquire and hold control of a business not otherwise allowed under
24 AS 06.50.270 - 06.50.310.

25 (b) The department may not approve an application under (a) of this section unless the
26 department determines that

27 (1) the acquisition and control will not cause the amount of the licensee's
28 investments in businesses covered by this section to exceed 15 percent of the assets of the
29 licensee; and

30 (2) in the department's judgment the approval will promote the purposes of this
31 chapter.

1 (c) An approval under (a) of this section may not be for a period of more than three
2 years, unless the department determines that a longer period is necessary and consistent with the
3 purposes of this chapter.

4 Sec. 06.50.330. APPROVAL WITHOUT ORDER. If the department fails to issue an
5 order approving or denying an application under AS 06.50.280, 06.50.290, or 06.50.300 within
6 60 days from receipt by the department of an application, the application shall be considered as
7 approved by the department.

8 Sec. 06.50.340. BUSINESS PRACTICE STANDARD. (a) A licensee shall transact its
9 business in a safe and sound manner and shall maintain itself in a safe and sound condition.

10 (b) In determining whether a licensee is transacting business in a safe and sound manner,
11 the department may not consider the risk of providing financing assistance to a business, unless
12 the department determines that the risk is great enough to demonstrate gross mismanagement
13 when compared with the return that can be realistically expected.

14 (c) Notwithstanding the other provisions of this section, the department may

15 (1) if the amount of the financing assistance is unduly large in relation to the total
16 assets or the total shareholder equity of the licensee, determine that a licensee's financing
17 assistance to a single business or group of affiliated businesses violates (a) of this section or
18 constitutes an unsafe or unsound act;

19 (2) require that a licensee maintain a reserve in the amount of anticipated losses;

20 (3) require that a licensee have in effect a written financing assistance policy
21 approved by the licensee's board of directors, including credit evaluation and other matters; the
22 department may not require that a licensee adopt a financing assistance policy that contains
23 standards that prevent the licensee from exercising needed flexibility in evaluating and structuring
24 financing assistance to businesses on an individual basis.

25 Sec. 06.50.350. PROHIBITION OF CONFLICT OF INTEREST. A conflict of interest
26 that does or could impair the impartial judgment of a director or employee of a licensee is
27 prohibited.

28 Sec. 06.50.360. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST. A person
29 shall disclose a potential conflict of interest that occurs in a transaction in the financing
30 documents of the transaction or, if the transaction does not involve financing assistance, in
31 another appropriate document, if the person

1 (1) participates in a decision of a licensee relating to the transaction; and

2 (2) knows of a potential conflict of interest involving the transaction.

3 Sec. 06.50.370. POTENTIAL CONFLICTS OF INTEREST DEFINED. (a) In
4 AS 06.50.350 - 06.50.360, licensee transactions that involve a potential conflict of interest include

5 (1) providing financing assistance to a principal shareholder of the licensee, to a
6 person controlled by a principal shareholder of the licensee, or to a director, officer, partner,
7 relative, controlling person, or affiliate of a principal shareholder of the licensee;

8 (2) providing financing assistance to a business to which one or more of the
9 following provides or plans to provide contemporaneous financing assistance:

10 (A) a principal shareholder of the licensee;

11 (B) a director, officer, partner, relative, controlling person, or affiliate of
12 a principal shareholder of a licensee;

13 (C) an affiliate of a principal shareholder of a licensee; or

14 (D) a person controlled by a principal shareholder of the licensee;

15 (3) providing financing assistance to a business that has or is expected to have
16 a substantial business relationship with another business that has a director, officer, or controlling
17 person who is also

18 (A) a director, officer, or controlling person of the licensee; or

19 (B) the spouse of a director, officer, or controlling person of the licensee;

20 (4) providing financing assistance to a business if the business, or a director,
21 officer, or controlling person of the business contemporaneously has lent or will lend money to
22 an associate of the licensee;

23 (5) providing financing assistance for the purchase of property of an associate or
24 principal shareholder of the licensee;

25 (6) selling or otherwise transferring an asset of the licensee to an associate or
26 principal shareholder of the licensee.

27 (b) In this section, "relative" means a parent, child, sibling, spouse, grandparent,
28 grandchild, nephew, niece, aunt, or uncle, or a relative of the same degree through marriage.

29 Sec. 06.50.380. ENCUMBRANCE OF PROPERTY. Except with the approval of the
30 department, a licensee may not provide a lien on or security interest in the licensee's property
31 for the purpose of securing an obligation of another person or an obligation incurred for the

1 benefit of another person.

2 **ARTICLE 4. MERGERS AND ACQUISITIONS.**

3 **Sec. 06.50.400. ACQUIRING CONTROL OF A LICENSEE.** Except as otherwise
4 provided under AS 06.50.270 - 06.50.330, a person may not acquire control of a licensee without
5 the prior approval of the department.

6 **Sec. 06.50.410. APPLICATION TO ACQUIRE CONTROL.** (a) The department shall
7 approve an application to acquire control of a licensee under AS 06.50.400 if the department
8 determines that

9 (1) the applicant and the directors and officers of the applicant are of good
10 character and sound financial standing;

11 (2) it is reasonable to believe that the applicant will comply with this chapter; and

12 (3) the plans, if any, of the applicant to make a major change in the business,
13 corporate structure, or management of the licensee are not detrimental to the safety and soundness
14 of the licensee.

15 (b) If, after notice and a hearing, the department determines that the criteria for approval
16 in (a) of this section have not been satisfied, the department shall deny the application.

17 **Sec. 06.50.420. DETERMINATIONS.** (a) When the department is reviewing an
18 application under AS 06.50.410, the department may determine that an

19 (1) applicant or a director or officer of an applicant is not of good character if the
20 person has been convicted of a crime involving fraud or dishonesty, including a conviction based
21 on a guilty plea or plea of nolo contendere;

22 (2) applicant's plan to make a major change in the management of a licensee is
23 detrimental to the safety and soundness of the licensee if the plan provides for a person to
24 become a director or officer of the licensee and the person has been convicted of a crime
25 involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo
26 contendere.

27 (b) The conditions described in (a) of this section are not the only conditions upon which
28 the department may determine that an applicant or a director or an officer of an applicant is not
29 of good character or that an applicant's plan to make a major change in the management of a
30 licensee is detrimental to the safety and soundness of the licensee.

31 **Sec. 06.50.430. MERGER.** A licensee may not merge with another corporation unless

1 the merger is approved by the department, and, if the licensee is not the surviving corporation,
2 the surviving corporation is a licensee.

3 Sec. 06.50.440. PURCHASE. A licensee may not purchase all or substantially all of the
4 business of another person unless the purchase is approved by the department.

5 Sec. 06.50.450. SALE. A licensee may not sell all or substantially all of the licensee's
6 business or of the business of an office of the licensee to another person unless the purchaser is
7 a licensee and the sale is approved by the department.

8 Sec. 06.50.460. DEPARTMENT APPROVAL. The department may not approve a
9 merger, purchase, or sale under AS 06.50.430 - 06.50.450 unless the department determines that

10 (1) the merger, purchase, or sale will be safe and sound with respect to the
11 acquiring licensee;

12 (2) upon consummation of the merger, purchase, or sale, it is reasonable to
13 believe that the acquiring licensee will comply with this chapter;

14 (3) the merger, purchase, or sale will not have a major detrimental effect on
15 competition in the providing of financial assistance or management assistance to businesses, or,
16 if there will be a detrimental effect, the merger, purchase, or sale is necessary in the interests of
17 the safety and soundness of a party to the merger, purchase, or sale, or is otherwise, on balance,
18 in the public interest.

19 ARTICLE 5. REGULATION, REPORTING, AND EXAMINATION.

20 Sec. 06.50.470. ADMINISTRATION. (a) The department shall administer this chapter.
21 The department may issue orders and adopt regulations that, in the opinion of the department,
22 are necessary to execute, enforce, and achieve the purposes of this chapter. Adoption of regu-
23 lations under this chapter is subject to the Administrative Procedure Act (AS 44.62).

24 (b) The department shall adopt regulations relating to

- 25 (1) diversity requirements;
26 (2) debt-equity ratio;
27 (3) control of other businesses;
28 (4) asset quality;
29 (5) the boards of directors;
30 (6) accounting requirements;
31 (7) conflicts of interest.

1 Sec. 06.50.480. **CONDITIONS OF ORDER OR LICENSE.** When the department issues
2 an order or license under this chapter, the department may impose conditions that the department
3 determines are necessary to carry out the purposes of this chapter.

4 Sec. 06.50.490. **DECLARATORY RULINGS.** The department may provide to an
5 interested person a declaratory ruling on a provision of this chapter.

6 Sec. 06.50.500. **JUDICIAL REVIEW.** A final order, decision, license, or other official
7 act of the department under this chapter is subject to judicial review by the superior court under
8 the applicable rules of court.

9 Sec. 06.50.510. **INVESTIGATIONS.** The department may make public or private
10 investigations inside or outside the state that the department considers necessary to determine
11 whether to approve an application for a license, to determine whether a person has violated or
12 is about to violate this chapter, to aid in the enforcement of this chapter, or to aid in issuing an
13 order or adopting a regulation under this chapter.

14 Sec. 06.50.520. **INVESTIGATIVE POWERS.** For the purposes of an investigation,
15 examination, or other proceeding under this chapter, the department may administer oaths and
16 affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require
17 the production of books, papers, correspondence, memoranda, agreements, and other documents
18 or records that the department considers relevant or material to the proceeding.

19 Sec. 06.50.530. **FAILURE TO COMPLY.** If a person fails to comply with a subpoena
20 issued by the department under this chapter or to testify with respect to a matter covered by this
21 chapter, the superior court may issue an order requiring the attendance of the person and the
22 giving of testimony or production of evidence.

23 Sec. 06.50.540. **SERVICE OF PROCESS.** If the department is authorized to make
24 service of process in connection with a noncriminal administrative proceeding under this chapter,
25 the department may make the service by registered or certified mail.

26 Sec. 06.50.550. **FEES.** A person shall pay the department
27 (1) \$2,500 for filing an application for a license;
28 (2) \$1,250 for filing an application for approval to acquire control of a licensee;
29 (3) \$1,250 for filing an application for approval for a merger, purchase, or sale
30 under AS 06.50.430 - 06.50.460; if two or more applications relating to the same merger,
31 purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing

1 **\$1,250 by the number of the applications;**

2 (4) **\$2,500 each calendar year at the time established by the department, if the**
3 **person is a licensee;**

4 (5) **a fee established by the department for the examination of a licensee or a**
5 **subsidiary of a licensee; the department shall base the fee on the number of examiner hours used**
6 **for the examination and the travel expenses involved; the department shall bill examiner time at**
7 **a rate between \$25 and \$40 an hour; the fee shall be paid within 10 days after receiving a**
8 **statement from the department.**

9 **Sec. 06.50.560. FEE PAYMENT AND REFUNDS. A fee for filing an application with**
10 **the department shall be paid at the time the application is filed with the department and is not**
11 **refundable.**

12 **Sec. 06.50.580. RECORD AND REPORT REQUIREMENTS. (a) A licensee shall make**
13 **and keep books, accounts and other records in the form and manner, at the place, and for the**
14 **period of time that the department establishes by regulation.**

15 (b) **A licensee, affiliate of a licensee, and a subsidiary of a licensee shall file with the**
16 **department the reports that the department requires. A report must be in the form and contain**
17 **the information that the department requires.**

18 (c) **The department may require by order that a licensee include an asset on the licensee's**
19 **books and records at a valuation that represents the current value of the asset.**

20 (d) **Not later than 90 days after the close of the calendar year, or a longer period if**
21 **established by the department, a licensee shall file with the department an audit report containing**

22 (1) **for a licensee that is organized under AS 10.06, or that has been issued a**
23 **certificate of authority under AS 10.06 to transact business in the state, financial statements,**
24 **including a balance sheet, statement of income or loss, statement of changes in capital accounts,**
25 **and statement of changes in financial position for, or as of the end of, the calendar year, prepared**
26 **with an audit by an independent certified public accountant in accordance with generally accepted**
27 **accounting principles;**

28 (2) **for a licensee that has been incorporated under AS 10.20 or that has been**
29 **issued a certificate of authority under AS 10.20 to transact business in the state, financial**
30 **statements that are comparable to the statements required by (1) of this subsection;**

31 (3) **a report, certificate, or opinion of the independent certified public accountant**

1 who performs the audit, stating that the financial statements were prepared in accordance with
2 generally accepted accounting principles; and

3 (4) other information that the department requires.

4 Sec. 06.50.590. RECORDS AND REPORTS KEPT BY OTHERS. (a) If a person other
5 than a licensee makes or keeps all or part of the books, accounts, or other records of the licensee,
6 this chapter applies to the person with respect to the books, accounts, and other records to the
7 same extent as if the person were the licensee.

8 (b) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or
9 part of the books, accounts, or other records of the affiliate or subsidiary, this chapter applies to
10 the person with respect to the books, accounts, and other records to the same extent as if the
11 person were the affiliate or subsidiary.

12 (c) If the department considers it expedient, the department may require a licensee to
13 obtain the approval of the department before permitting another person to make or keep all or
14 part of the books, accounts, or other records of the licensee.

15 Sec. 06.50.600. INFORMATION ON ECONOMIC DEVELOPMENT EFFECT. Each
16 year the department shall publish and provide to the legislature information on the effect of this
17 chapter on promoting economic development in the state. The information must include
18 aggregate statistics on

19 (1) the number and dollar amount of the financing assistance made by licensees
20 to businesses;

21 (2) the number and dollar amount of the financing assistance made by licensees
22 to businesses; the amounts shall be organized into broad categories based on the types of industry
23 involved; the standard industrial classification manual may be used for the categories;

24 (3) the number and dollar amount of the financing assistance made by licensees
25 to minority-owned businesses and to businesses owned by women; and

26 (4) estimates of the number of jobs created or retained.

27 Sec. 06.50.610. EXAMINATION OF LICENSEES AND SUBSIDIARIES. (a) The
28 department may at any time examine a licensee or a subsidiary of a licensee. Licensure under
29 this chapter constitutes implied consent to examination by the department.

30 (b) The department shall examine a licensee at least once during each calendar year.

31 (c) At the department's request the following persons shall provide to the department the

1 books, accounts, and records of a licensee or a licensee's subsidiary and shall otherwise facilitate
2 the department's examination of the licensee to the fullest extent possible:

3 (1) a director, officer, or employee of a licensee being examined by the
4 department;

5 (2) a director, officer, or employee of a subsidiary of a licensee being examined
6 by the department;

7 (3) a person having custody of the books, accounts, or records of a licensee being
8 examined by the department;

9 (4) a person having custody of the books, accounts, or records of a subsidiary of
10 a licensee being examined by the department.

11 (d) The department may retain a certified public accountant, attorney, appraiser, or other
12 person to assist the department in the examination of a licensee or a subsidiary of a licensee if
13 the department determines that the assistance is necessary. Within 10 days after receipt of a
14 statement from the department, the licensee being examined shall pay the fees of a person
15 retained by the department under this subsection.

16 ARTICLE 6. CERTAIN UNLAWFUL ACTIVITIES.

17 Sec. 06.50.620. MISREPRESENTATION. (a) Except as otherwise provided in
18 AS 06.50.120, a person transacting business in the state who is not a licensee may not knowingly
19 use a name or title that indicates that the person is a business and industrial development
20 corporation or otherwise represent that the person is a BIDCO or a licensee.

21 (b) A licensee may not knowingly misrepresent the meaning or effect of its license.

22 Sec. 06.50.640. INSPECTION OR COPYING REFUSAL. A person having custody of
23 all or part of the books, accounts, or other records of a licensee may not knowingly refuse to
24 allow the department, upon request, to inspect or make copies of the records.

25 Sec. 06.50.660. FINANCING ASSISTANCE TO ASSOCIATES OF LICENSEE. A
26 licensee may not directly or indirectly provide financing assistance to an associate of the licensee.

27 Sec. 06.50.670. FINANCING ASSISTANCE TO DISCHARGE OBLIGATION TO
28 ASSOCIATE OF LICENSEE. A licensee may not directly or indirectly provide financing
29 assistance to discharge, or to free money for use in discharging, part or all of an obligation to
30 an associate of the licensee. This section does not apply to a transaction of an associate of a
31 licensee in the normal course of the associate's business involving a line of credit or financing

1 assistance with a term of not more than five years.

2 Sec. 06.50.680. CONTEMPORANEOUS FINANCING ASSISTANCE. (a) If the terms
3 on which a licensee provides financing assistance to a business are less favorable to the licensee
4 than the terms on which an associate of the licensee provides financing assistance to the business,
5 the licensee may not directly or indirectly provide the assistance to the business within one year
6 before or after the associate provides assistance.

7 (b) If the financing assistance provided by the licensee's associate is of a different kind
8 from the financing assistance provided by the licensee, the burden is on the licensee to prove that
9 the terms on which the licensee provided the financing assistance were at least as favorable to
10 the licensee as the terms on which the associate provided the assistance.

11 (c) This section does not apply

12 (1) if the associate is a controlling person of the licensee and is also the only
13 shareholder of the licensee;

14 (2) if the associate is a subsidiary of the licensee;

15 (3) to a transaction of an associate of a licensee in the normal course of the
16 associate's business involving either a line of credit or financing assistance with a term of not
17 more than five years.

18 Sec. 06.50.690. COMPENSATION OF ASSOCIATE. (a) An associate of a licensee
19 may not directly or indirectly receive from a person to whom the licensee provides financing
20 assistance

21 (1) compensation in connection with the providing of the financing assistance; or

22 (2) other things of value for procuring, influencing, or attempting to procure or
23 influence the licensee's action with respect to providing the financing assistance.

24 (b) This section does not apply to the receipt of fees by an associate of a licensee for
25 bona fide closing services performed by the associate if

26 (1) the associate, with the consent and knowledge of the person to whom the
27 financing assistance is provided, is designated by the licensee to perform the services;

28 (2) the services are appropriate and necessary under the circumstances;

29 (3) the fees for the services are approved as reasonable by the licensee; and

30 (4) the fees for the services are collected by the licensee on behalf of the
31 associate.

1 (c) In (b) of this section, "closing services" means services performed in connection with
2 the providing of financing assistance and includes appraising property and preparing credit
3 reports; "closing services" does not include a service that is performed after providing the
4 financing assistance.

5 Sec. 06.50.700. EXEMPTIONS. (a) If the department finds that the exemption is in the
6 public interest and that the regulation of the person, transaction, or class is not necessary for the
7 purposes of this chapter, the department may exempt a person or transaction or class of persons
8 or transactions from AS 06.50.660 - 06.50.690.

9 (b) The department may make an exemption under (a) of this section by order or
10 regulation. The exemption may be unconditional or upon specified terms and conditions and for
11 specified periods.

12 (c) When making an exemption under (a) of this section, the department shall consider
13 the applicable conflict of interest provisions of federal law or regulation governing federal
14 financing programs.

15 Sec. 06.50.710. CRIMINAL PENALTY. (a) A person who knowingly commits an act
16 that violates AS 06.50.620 - 06.50.700 is guilty of a class C felony.

17 (b) This section does not apply to an act committed or omitted in good faith in
18 conformity with an order, regulation, declaratory ruling, or written interpretative opinion of the
19 department, even if the order, regulation, declaratory ruling, or written interpretative opinion is
20 later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid.

21 Sec. 06.50.720. RELATIONSHIP TO OTHER CRIMINAL PROVISIONS. This chapter
22 does not limit the power of the state to prosecute a person for an act that constitutes a crime
23 under another statute.

24 ARTICLE 7. ENFORCEMENT.

25 Sec. 06.50.730. INJUNCTION AND ENFORCED COMPLIANCE. If, in the opinion
26 of the department, a person has violated this chapter, or if there is reasonable cause to believe
27 that a person is about to violate this chapter, the department may bring an action in superior court
28 to enjoin the violation or to enforce compliance with this chapter. Upon a proper showing, a
29 restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and
30 a receiver or a conservator may be appointed for the defendant or the defendant's assets.

31 Sec. 06.50.740. CEASE AND DESIST ORDERS FOR UNLICENSED PERSONS. If

1 the department finds that a person has violated or that there is reasonable cause to believe that
2 the person is about to violate AS 06.50.120(b) or 06.50.620(a), the department may order the
3 person to cease and desist from the violation unless and until the person is issued a license under
4 this chapter.

5 Sec. 06.50.750. CEASE AND DESIST ORDERS FOR VIOLATIONS BY LICENSEES.

6 After notice and a hearing, if the department determines that a licensee or a subject person of a
7 licensee has violated or is violating, or that there is reasonable cause to believe that the licensee
8 or subject person is about to violate this chapter, the department may order the licensee or subject
9 person to cease and desist from the action. The order may require the licensee or subject person
10 to take affirmative action to correct a condition resulting from the action.

11 Sec. 06.50.760. CEASE AND DESIST ORDERS FOR UNSAFE AND UNSOUND

12 ACTS. After notice and a hearing, if the department determines that a licensee or subject person
13 of a licensee has engaged in or that there is a reasonable cause to believe that the licensee or
14 subject person is about to engage in an unsafe or unsound act with respect to the business of the
15 licensee, the department may order the licensee or subject person to cease and desist from the
16 action. The order may require the licensee or subject person to take affirmative action to correct
17 a condition resulting from the action.

18 Sec. 06.50.770. OTHER CEASE AND DESIST ORDERS. If the department determines

19 that a factor set out in AS 06.50.750 - 06.50.760 is true with respect to a licensee or subject
20 person of a licensee and that the action or violation is likely to cause the insolvency or
21 substantial dissipation of the assets or earnings of the licensee, is likely to seriously weaken the
22 condition of the licensee, or is likely to otherwise seriously prejudice the interests of the licensee
23 before the completion of proceedings conducted under AS 06.50.750 - 06.50.760, the department
24 may order the licensee or subject person to cease and desist from the action or violation. The
25 order may require the licensee or subject person to take affirmative action to correct a condition
26 resulting from the action or violation.

27 Sec. 06.50.780. REMOVAL AND SUSPENSION ORDERS IN CASES OF VIOLATION

28 OR BREACH OF DUTY. (a) The department may issue an order removing a subject person
29 of a licensee from office with the licensee and prohibiting the subject person from further
30 participating in any manner in the conduct of the business of the licensee if the department
31 determines after notice and a hearing that

1 (1) the person has violated this chapter or another applicable law, has engaged
2 in an unsafe or unsound act with respect to the business of the licensee, or has engaged in an act
3 that constitutes a breach of the person's fiduciary duty;

4 (2) the act, violation, or breach of fiduciary duty has caused or is likely to cause
5 substantial financial loss or other damage to the licensee, has seriously prejudiced or is likely to
6 seriously prejudice the interest of the licensee, or the person has received financial gain by reason
7 of the act, violation, or breach of fiduciary duty; and

8 (3) the act, violation, or breach of fiduciary duty involves dishonesty on the part
9 of the person, demonstrates the person's gross negligence with respect to the business of the
10 licensee, or demonstrates the person's wilful disregard for the safety and soundness of the
11 licensee.

12 (b) The department may issue an order removing a subject person of the licensee from
13 office with the licensee and prohibiting the subject person from further participating in any
14 manner in the conduct of the business of the licensee, except with the prior consent of the
15 department if, after notice and a hearing, the department determines that, by engaging or
16 participating in an act with respect to a financial or other business institution that resulted in
17 substantial financial loss or other damage, the subject person of a licensee demonstrated

18 (1) dishonesty or a wilful or continuing disregard for the safety and soundness
19 of the financial or other business institution; and

20 (2) unfitness to continue as a subject person of the licensee or to participate in
21 conducting the business of the licensee.

22 (c) The department may immediately issue an order suspending a subject person of a
23 licensee from the person's office, if any, with the licensee and prohibiting the subject person
24 from further participating in any manner in the conduct of the business of the licensee except
25 with the consent of the department, if the department determines that

26 (1) the factors in (a) or (b) of this section are true with respect to the person; and

27 (2) an immediate order is necessary to protect the interests of the licensee or the
28 public.

29 Sec. 06.50.790. REMOVAL AND SUSPENSION ORDERS IN CASES OF
30 INDICTMENT OR CONVICTION. (a) If the department determines that a subject person of
31 a licensee has been indicted by a grand jury or has been bound over for trial by a court for a

1 crime involving dishonesty or breach of trust, and that the continuation of the person as a subject
2 person of the licensee may threaten the interests of the licensee or may threaten to impair public
3 confidence in the licensee, the department may issue an order suspending the person from the
4 person's office, if any, with the licensee and prohibiting the person from further participating in
5 any manner in the conduct of the business of the licensee until the person's charge has been
6 disposed of.

7 (b) If the department determines that a subject person or former subject person of a
8 licensee to whom an order was issued under (a) of this section, or another subject person of a
9 licensee, has been convicted of a crime involving dishonesty or breach of trust, and that the
10 continuation or resumption of the person as a subject person of the licensee may threaten the
11 interests of the licensee, the department may issue an order suspending or removing the person
12 from the person's office, if any, with the licensee and prohibiting the person from further
13 participating in any manner in the conduct of the business of the licensee, except with the prior
14 consent of the department.

15 (c) The failure to convict a subject person who is charged with a crime involving
16 dishonesty or breach of trust does not prevent the department from issuing an order to the person
17 under another provision of this chapter.

18 Sec. 06.50.800. HEARINGS ON ORDERS. (a) Within 30 days after an order is issued
19 under AS 06.50.740, 06.50.770, 06.50.780(c), or 06.50.790, the licensee or subject person of a
20 licensee to whom the order is directed may file with the department an application for a hearing
21 on the order.

22 (b) If the department fails to begin a hearing within 15 business days after the application
23 is filed or within a longer period to which the licensee or subject person consents, the order shall
24 be considered rescinded.

25 (c) After the hearing, the department shall affirm, modify, or rescind the order.

26 (d) A person to whom an order is issued under this section may apply to the department
27 to modify or rescind the order. The department may not modify or rescind the order unless the
28 department determines that it is in the public interest to do so and that it is reasonable to believe
29 that the person will comply with this chapter.

30 (e) The right of a licensee or subject person to whom an order is issued under
31 AS 06.50.740, 06.50.770, 06.50.780(c), or 06.50.790 to an interlocutory review of the order is

1 not affected by the failure of the licensee or subject person to apply to the department for a
2 hearing on the order issued under this section.

3 **Sec. 06.50.810. DISCLOSURE TO SHAREHOLDERS.** If the department determines
4 that the results of a department communication or order addressed to the licensee or to a subject
5 person of the licensee should be disclosed to the licensee's shareholders, the department may
6 require the licensee to make the disclosure in the form and manner determined by the department.

7 **Sec. 06.50.820. MEETINGS OF DIRECTORS AND SHAREHOLDERS CALLED BY**
8 **DEPARTMENT.** (a) If the department considers it expedient, the department may call a
9 meeting of the board of directors or of the shareholders of a licensee.

10 (b) The department shall send notification of the time, place, and purpose of the meeting
11 not less than five days before the meeting to each director, if a directors' meeting, or to each
12 shareholder, if a shareholders' meeting, either by personal service or by registered or certified
13 mail sent to the person's last known address as shown in the records of the department.

14 (c) The licensee shall pay the notice and meeting expenses for a meeting of shareholders
15 called under (a) of this section.

16 **Sec. 06.50.830. ORDERS RESTRICTING ADDITIONAL FINANCING ASSISTANCE.**

17 (a) The department may issue an order directing a licensee to refrain from providing additional
18 financing assistance to businesses if, in the opinion of the department, the order is necessary to
19 protect the interests of the licensee or the public, and if, after notice and a hearing, the
20 department determines that

21 (1) the licensee or a controlling person, subsidiary, or affiliate of the licensee has
22 violated this chapter or another applicable law;

23 (2) the licensee is conducting the licensee's business in an unsafe and unsound
24 manner;

25 (3) the licensee is in a condition that makes it unsafe or unsound for the licensee
26 to transact business;

27 (4) the licensee has ceased to transact business as a BIDCO;

28 (5) the licensee is insolvent;

29 (6) the licensee has suspended payment of the licensee's obligations, has made
30 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's
31 inability to pay the licensee's debts as the debts become due;

1 (7) the licensee has applied for an adjudication of bankruptcy, reorganization,
2 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law,
3 an involuntary petition in bankruptcy against the person has not been dismissed in 90 days, or
4 a person has applied for the relief under the law against a licensee and the relief has been granted
5 or the licensee has by an affirmative act approved of or consented to the action; or

6 (8) a fact or condition exists that would have been grounds for denying the
7 licensee a license if the fact or condition had existed when the licensee applied for the license.

8 (b) If the department determines that a factor in (a) of this section is true with respect
9 to a licensee and that it is necessary for the protection of the interests of the licensee or the
10 public that the department immediately prevent the licensee from providing additional financing
11 assistance to businesses, the department may issue the order without a hearing.

12 (c) If the department consents, a licensee that has been the subject of an order under (a)
13 or (b) of this section may resume providing financing assistance to businesses under the
14 conditions that the department prescribes.

15 (d) A person to whom an order is issued under (a) or (b) of this section may apply to
16 the department to modify or rescind the order. The department may not grant the application
17 unless the department determines that it is in the interest of the public to do so and that it is
18 reasonable to believe that the person will comply with this chapter.

19 Sec. 06.50.840. TAKING POSSESSION OF LICENSEE. (a) If the department finds
20 that a factor in AS 06.50.830 is true with respect to a licensee and that it is necessary for the
21 protection of the interests of the licensee or of the public, the department may take immediate
22 possession of the property and business of the licensee and appoint a conservator for the licensee.

23 (b) The department may appoint as conservator one of the employees of the division of
24 banking, securities, and corporations of the department or another competent and disinterested
25 person. The division shall be reimbursed out of the assets of the conservatorship for all money
26 expended by the division in connection with the conservatorship. Upon the approval of the
27 department, the expenses of the conservatorship paid for by the division shall be paid out of the
28 assets of the licensee. Payment of the division expenses shall take priority over other payments
29 from the assets and shall be fully paid before a final distribution is made.

30 (c) Under the direction of the department, the conservator shall take possession of the
31 books, records, and assets of the licensee and shall take other action that is necessary to conserve

1 the assets of the licensee or to ensure payment of obligations of the licensee pending further
2 disposition of the licensee's business.

3 (d) At an appropriate time, the department may terminate the conservatorship and permit
4 the licensee to resume the transaction of the licensee's business subject to the terms, conditions,
5 restrictions, and limitations the department prescribes.

6 Sec. 06.50.850. RECEIVERSHIP. (a) The department may apply to the superior court
7 for the appointment of a receiver for a licensee, if the department determines that the licensee
8 should be liquidated because

9 (1) the licensee is insolvent;

10 (2) the licensee has suspended payment of the licensee's obligations, has made
11 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's
12 inability to pay the licensee's debts as the debts become due;

13 (3) the licensee has applied for an adjudication of bankruptcy, reorganization,
14 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law;

15 (4) a person has applied for the relief described under (3) of this subsection
16 against a licensee and the licensee has by an affirmative act approved of or consented to the
17 action or the relief has been granted; or

18 (5) the licensee is in a condition that makes it unsafe or unsound for the licensee
19 to transact business.

20 (b) If a receiver is appointed under (a) of this section, the receiver shall liquidate the
21 property and business of the licensee.

22 Sec. 06.50.860. CIVIL PENALTY. (a) If after notice and a hearing the department finds
23 that a person has violated this chapter, the department may order the person to pay to the
24 department a civil penalty in the amount the department specifies. The civil penalty may not
25 exceed \$1,000 for each violation, or in the case of a continuing violation, \$1,000 for each day
26 the violation continues.

27 (b) This section does not apply to an act committed or omitted in good faith in
28 conformity with an order, regulation, declaratory ruling, or written interpretative opinion of the
29 department, even if the order, regulation, declaratory ruling, or written interpretative opinion is
30 later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid.

31 (c) The provisions of (a) of this section are in addition to, and not alternative to, the

1 other provisions of this chapter that authorize the department to issue orders or to take other
2 action on account of a violation of this chapter.

3 (d) A person who is convicted under AS 06.50.710 of a violation of AS 06.50.620 -
4 06.50.700 is not liable for the civil penalty under (a) of this section for the violation.

5 (e) A person who pays a civil penalty under (a) of this section for a violation of
6 AS 06.50.620 - 06.50.700 is not liable to prosecution under AS 06.50.710 for the violation.

7 **ARTICLE 8. GENERAL PROVISIONS.**

8 **Sec. 06.50.870. CONSTRUCTION OF CHAPTER.** This chapter shall be liberally
9 construed to accomplish its purposes.

10 **Sec. 06.50.880. APPLICATION OF ADMINISTRATIVE PROCEDURES ACT TO**
11 **PROCEEDINGS.** A proceeding under AS 06.50.860 is subject to the Administrative Procedure
12 Act (AS 44.62). Except as otherwise provided in this chapter, other proceedings and actions
13 under this chapter are exempt from AS 44.62.

14 **Sec. 06.50.885. APPEALS.** A final order of an administrative proceeding under
15 AS 06.50.740 - 06.50.790, 06.50.830, 06.50.840, or 06.50.860 may be appealed to the superior
16 court.

17 **Sec. 06.50.890. PROVISIONS OF LICENSEE'S INCORPORATION.** Except as
18 otherwise provided in this section, the provisions of the law under which a licensee is
19 incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts
20 with a provision of this chapter, this chapter controls.

21 **Sec. 06.50.900. ASSOCIATES.** (a) In AS 06.50.350 - 06.50.370 and 06.50.660 -
22 06.50.690, a person who is an associate within six months before or after a licensee provides
23 financing assistance shall be considered to be an associate as of the date the licensee provides
24 the assistance.

25 (b) If a licensee, in order to protect the licensee's interests, designates a person to serve
26 as a director of, officer of, or in a management capacity of a business to which the licensee
27 provides financial assistance, the person may not, on that account, be considered to be an
28 associate under AS 06.50.350 - 06.50.370 or 06.50.660 - 06.50.690. This subsection does not
29 apply if the person has, directly or indirectly, another financial interest in the business or if the
30 person, at any time before the licensee provides the financing assistance, served as a director of,
31 officer of, or in another capacity in the management of the business for a period of 30 days or

1 more.

2 Sec. 06.50.910. OTHER LICENSES. A state corporation that is licensed under this
3 chapter may apply for and be issued a license under another law of the state, federal government,
4 or of another state in the United States unless the transaction of business by the corporation as
5 a licensee under the other license would violate this chapter or would be contrary to the purposes
6 of this chapter.

7 Sec. 06.50.920. EXEMPTION. A licensee is not subject to the other provisions of this
8 title.

9 Sec. 06.50.990. DEFINITIONS. (a) In this chapter,

10 (1) "affiliate" means, if used with respect to a nonnatural person, a person who
11 controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled
12 by a person who also controls the nonnatural person;

13 (2) "associate" means, if used with respect to a licensee,

14 (A) a controlling person, director, officer, agent, or advisor of the licensee;
15 in this paragraph, "advisor" means a person who regularly provides legal, accounting, or
16 management services, including management advice, to a licensee;

17 (B) a director, officer, or partner of a person referred to in (A) of this
18 paragraph;

19 (C) a person who controls, is controlled by, or is under common control
20 with a person referred to in (A) of this paragraph, directly or indirectly through an
21 intermediary;

22 (D) a close relative of a person referred to in (A) of this paragraph; in this
23 subparagraph, "close relative" means a parent, child, sibling, or spouse, or a relative of
24 the same degree through marriage;

25 (E) a person of which a person referred to in (A) - (D) of this paragraph
26 is a director or officer;

27 (F) a person in which a person referred to in (A) - (D) of this paragraph,
28 or a combination of the persons acting in concert, owns or controls, directly or indirectly,
29 a 20 percent or greater equity interest;

30 (3) "BIDCO" means a business and industrial development corporation;

31 (4) "business" means a person who transacts or proposes to transact business on

- 1 a regular and continuous basis;
- 2 (5) "control" means, if used with respect to a specific person, the power to direct
3 or cause the direction of, directly or indirectly through an intermediary, the management and
4 policies of the person, through the ownership of voting interests, by contract other than a
5 commercial contract for goods or nonmanagement services, or by other means; a natural person
6 is not considered to control another person solely because the natural person is a director, officer,
7 or employee of the other person; a person is rebuttably presumed to control a corporation if the
8 person directly or indirectly owns of record, holds beneficially with power to vote, or holds
9 proxies with discretionary authority to vote, 20 percent or more of the then outstanding voting
10 securities issued by a corporation;
- 11 (6) "controlling person" means, if used with respect to a specific person, a person
12 who controls the specific person, directly or indirectly through an intermediary;
- 13 (7) "corporate name" means the name of a corporation in its articles of
14 incorporation;
- 15 (8) "department" means the Department of Commerce and Economic
16 Development;
- 17 (9) "financial institution" means a bank regulated under AS 06.05, a mutual
18 savings bank established under AS 06.15, a savings association established under AS 06.30, a
19 credit union established under AS 06.45, a national bank established under 12 U.S.C. 21 - 213,
20 a federal home loan bank established under 12 U.S.C. 1421 - 1449, or a federal credit union
21 established under 12 U.S.C. 1751 - 1795k;
- 22 (10) "insolvent" means not paying debts in the ordinary course of business, not
23 paying debts as they become due, or liabilities exceeding assets;
- 24 (11) "interests of the licensee" includes the interests of the shareholders of the
25 licensee;
- 26 (12) "license" means a license issued under this chapter authorizing a state
27 corporation to transact business as a BIDCO;
- 28 (13) "licensee" means a state corporation that is licensed under this chapter to
29 transact business as a BIDCO;
- 30 (14) "officer" means
31 (A) with respect to a corporation, a person appointed or designated as an

1 officer of the corporation by or under applicable law or the corporation's articles of
2 incorporation or bylaws, or a person who performs with respect to the corporation the
3 functions usually performed by an officer of a corporation;

4 (B) with respect to a specific person other than a natural person or a
5 corporation, a person who performs for the specific person the functions usually
6 performed by an officer of a corporation for a corporation;

7 (15) "order" means an approval, consent, authorization, exemption, denial,
8 prohibition, or requirement applicable to a specific case and issued by the department, including
9 a license condition and an agreement made by a person with the department under this chapter;

10 (16) "person" includes a government and an agency of a government; when used
11 with respect to acquiring control of or controlling a specific person, "person" includes a
12 combination of two or more persons acting in concert;

13 (17) "principal shareholder" means a person who owns, directly or indirectly, of
14 record or beneficially, securities representing 10 percent or more of the outstanding voting
15 securities of a corporation;

16 (18) "state corporation" means a corporation that is incorporated under AS 10.06
17 or AS 10.20 or a foreign corporation that has been issued a certificate of authority under
18 AS 10.06 or AS 10.20 to transact business in the state;

19 (19) "subject person" means

20 (A) a controlling person, subsidiary, or affiliate of a licensee;

21 (B) a director, officer, or employee of a licensee or of a controlling
22 person, subsidiary, or affiliate of a licensee;

23 (C) another person who participates in the conduct of the business of a
24 licensee; or

25 (D) if used with respect to a licensee, a company or business of which the
26 licensee holds control under AS 06.50.280 - 06.50.320.

27 (b) In AS 06.50.270 - 06.50.320, "hold control" means to directly or indirectly own, of
28 record or beneficially, a percentage of a business's voting equity interests that is more than

29 (1) 40 percent of the outstanding voting equity interests if the business has
30 outstanding voting equity interests held by fewer than 50 persons;

31 (2) 25 percent of the outstanding voting equity interests if the business has

1 outstanding voting equity interests held by 50 or more persons.

2 (c) In AS 06.50.780 - 06.50.790, "office" means, when used with respect to a licensee,
3 the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

4 Sec. 06.50.995. SHORT TITLE. This chapter may be cited as the Alaska BIDCO Act.

5 * Sec. 2. AS 44.88 is amended by adding new sections to read:

6 ARTICLE 7A. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION PROGRAM.

7 Sec. 44.88.600. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION
8 FUND. The business and industrial development corporation fund is established in the authority.
9 The fund consists of appropriations made to the fund by the legislature, money or other assets
10 transferred to the fund by the authority, and repayments of loans made under AS 44.88.600 -
11 44.88.690.

12 Sec. 44.88.605. USE OF MONEY IN FUND. Subject to the requirements of
13 AS 44.88.600 - 44.88.690, the authority shall use the money in the fund to make loans for the
14 capitalization of corporations licensed to operate as business and industrial development
15 corporations under AS 06.50.

16 Sec. 44.88.610. LOAN AMOUNTS. The amount of a loan may not be less than
17 \$750,000 or more than \$3,000,000.

18 Sec. 44.88.615. APPLICATION FOR LOAN. An applicant for a loan shall submit an
19 application to the authority on the form and containing the information that the authority requires
20 by regulation.

21 Sec. 44.88.620. TERM OF LOANS. The term of a loan may not exceed 10 years.

22 Sec. 44.88.625. INTEREST ON LOANS. (a) The authority shall establish a loan interest
23 rate that does not exceed the rate that results from taking the yield on 10-year United States
24 treasury bonds, adding one percentage point to the yield, and rounding the result off to the
25 nearest one-quarter of a percentage point. The rate shall be established as of the date the loan
26 is made.

27 (b) The interest on a loan accrues on the principal of the loan, but the interest is not
28 compounded.

29 Sec. 44.88.630. CAPITALIZATION REQUIREMENTS. (a) In order to receive a loan,
30 the corporation shall, at the time the loan is made, have received capitalization in an amount that
31 equals at least 50 percent of the amount of the loan. This capitalization is in addition to the net

1 worth demonstrated by the corporation under AS 06.50.030, unless the corporation was
2 incorporated under former AS 10.10 and was not required to satisfy AS 06.50.030 in order to be
3 licensed under AS 06.50.

4 (b) If the matching capitalization creates indebtedness of the corporation, the matching
5 capitalization may have a maturity of less than 10 years and must satisfy the terms established
6 by the authority.

7 (c) The matching capitalization shall be

8 (1) fully disbursed at closing; or

9 (2) may be phased in after the closing of the loan if

10 (A) the sources of the matching capitalization have irrevocably committed
11 themselves to fully disburse the matching capitalization to the corporation;

12 (B) the schedule for the disbursement under (A) of this paragraph is
13 established and all of the matching capitalization will be disbursed to the corporation
14 within three years after the loan is made; and

15 (C) the corporation provides proof satisfactory to the authority that the
16 sources of the matching capitalization will be able to fulfill their commitment under (A) -
17 (B) of this paragraph.

18 (d) In this section, "matching capitalization" means the additional capitalization that is
19 required under (a) of this section to equal at least 50 percent of the loan.

20 Sec. 44.88.635. REPAYMENT OF LOANS. A corporation shall repay a loan made
21 under AS 44.88.605 and the interest on the loan in a lump sum 10 years after the loan is made.

22 Sec. 44.88.640. LOAN AGREEMENT. The loan agreement between the authority and
23 the corporation must contain at least

24 (1) an authorization for the authority to be present at all meetings of the
25 corporation's board and all shareholder meetings, to receive all corporation notices and
26 information sent to the board or the shareholders, and to have the same access to corporation
27 information as the directors and shareholders have;

28 (2) a prohibition against the corporation providing financial assistance under
29 AS 06.50 to businesses that are located outside the state;

30 (3) if the corporation is a rural corporation, an agreement by the corporation to
31 attempt to focus on providing financial assistance under AS 06.50 to business firms located in

1 rural areas of the state;

2 (4) if the corporation is a historically underutilized business corporation, an
3 agreement by the corporation to attempt to focus on providing financial assistance under
4 AS 06.50 to historically underutilized businesses and to businesses in distressed areas;

5 (5) a prohibition against the corporation repurchasing, or obligating itself to
6 repurchase, the corporation's stock, unless the authority gives its prior approval;

7 (6) a prohibition against the corporation, within five years of the receipt of the
8 loan, selling its stock or consenting to the transfer of its stock without the prior approval of the
9 authority; and

10 (7) a prohibition against the corporation surrendering its license under AS 06.50
11 unless the corporation is not viable and intends to liquidate.

12 Sec. 44.88.645. REDUCTION OF LOAN OBLIGATION. (a) The authority shall reduce
13 the amount of a loan made to a rural corporation by giving the corporation credits for

14 (1) the jobs created by the corporation in the rural businesses to which the
15 corporation provides financial assistance under AS 06.50;

16 (2) the increased sales activity caused by the financial assistance provided under
17 AS 06.50 by the corporation to rural businesses;

18 (3) sustaining the job or sales activity increase under (1) or (2) of this subsection.

19 (b) The authority shall reduce the amount of a loan to a historically underutilized
20 business corporation by giving the corporation credits for

21 (1) the jobs created by the corporation in a historically underutilized business to
22 which the corporation provides financial assistance under AS 06.50;

23 (2) the jobs created by the loan recipient in a business to which it provides
24 financial assistance under AS 06.50 and that is located in a distressed area;

25 (3) the increased sales activity in a historically underutilized business caused by
26 the financial assistance provided under AS 06.50 by the corporation to the business;

27 (4) the increased sales activity in a business located in a distressed area if the
28 activity is caused by the financial assistance provided under AS 06.50 by the corporation to the
29 business;

30 (5) sustaining the job and sales activity increase under (1) - (4) of this subsection.

31 (c) For each job created under (a)(1), (b)(1), or (b)(2) of this section, the loan recipient

1 shall receive a credit of between \$500 and \$2,500 calculated on a yearly basis.

2 (d) The credit for increased sales activity under (a)(2) of this section shall be calculated
3 by multiplying the annual sales activity increase by a percentage, not to exceed five percent, that
4 is determined by the authority to reflect how rural the area is where the rural business is located.
5 A business located in the most rural area receives the highest percentage.

6 (e) The credit for increased sales activity under (b)(3) and (4) of this section shall be
7 determined by multiplying the annual sales activity increase by a percentage not to exceed five
8 percent that is determined by the authority to reflect how distressed the area is where the business
9 that receives financial assistance from the corporation is located. A business located in the most
10 distressed area receives the highest percentage.

11 (f) To receive a credit under this section, the corporation shall file an application with
12 the authority each year. The application must be accompanied by a certification by the
13 corporation that the credits were earned and affidavits certifying the jobs and sales data on which
14 the application is based. The authority may deny the credits if it determines that the bases for
15 the credit do not exist, that the loan on which the corporation bases the credit could have been
16 obtained by the business from financial institutions that are not licensed under AS 06.50, that the
17 financial assistance provided under AS 06.50 by the corporation was not for a significant amount,
18 or that the financial assistance provided under AS 06.50 by the corporation did not have a
19 meaningful relation to the increase in jobs or sales.

20 (g) The credits under this section shall be applied first to the interest that has accrued on
21 the loan and then to the principal of the loan.

22 Sec. 44.88.650. SUBSEQUENT LOANS. Unless a corporation has successfully repaid
23 a loan, either in cash or by credits under AS 44.88.645, the corporation may not receive another
24 loan under AS 44.88.600 - 44.88.690.

25 Sec. 44.88.655. DETERMINATION OF RURAL AND DISTRESSED AREAS. The
26 authority shall determine which geographical areas in the state are rural or distressed and the
27 degree to which the areas are rural or distressed. When determining whether an area is rural, the
28 authority shall consider, among the other characteristics of the area, the population of the area
29 and the access of the area to the state highway and marine highway systems. When determining
30 whether an area is distressed, the authority shall consider, among the other characteristics of the
31 area,

- 1 (1) the percentage of the population whose income is below poverty level; and
2 (2) whether the area is experiencing a population decline.

3 Sec. 44.88.690. DEFINITIONS. In AS 44.88.600 - 44.88.690, unless the context requires
4 otherwise,

5 (1) "corporation" means a corporation licensed to operate as a business and
6 industrial development corporation under AS 06.50;

7 (2) "distressed area" means a geographical area, including an area within a
8 municipality, that is determined by the authority under AS 44.88.655 to be distressed;

9 (3) "fund" means the business and industrial development fund created under
10 AS 44.88.610;

11 (4) "historically underutilized business corporation" means a corporation that is
12 owned, controlled, and operated by individuals who are members of a minority and in which
13 more than 50 percent of the net profit or loss attributable to the corporation accrues to
14 shareholders who are members of a minority; in this paragraph, "member of a minority" means
15 a person who is black, Hispanic, oriental, Eskimo, or American Indian;

16 (5) "loan" means a loan made under AS 44.88.600 - 44.88.690;

17 (6) "rural area" means an area, including an area within a municipality, of the
18 state that is determined by the authority under AS 44.88.655 to be rural;

19 (7) "rural business" means a business whose principal office is located in a rural
20 area;

21 (8) "rural corporation" means a corporation whose main business office is located
22 in a rural area.

23 * Sec. 3. AS 44.88.070 is amended by adding a new paragraph to read:

24 (7) making loans under AS 44.88.600 - 44.88.690 to business and industrial
25 development corporations licensed under AS 06.50.

26 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

27 (26) implement the business and industrial development corporation loan program
28 under AS 44.88.600 - 44.88.690.

29 * Sec. 5. AS 44.88.085 is amended by adding a new subsection to read:

30 (i) The authority shall adopt regulations necessary to implement AS 44.88.600 -
31 44.88.690.

1 * Sec. 6. AS 10.10 is repealed.

2 * Sec. 7. APPLICATION OF PROVISIONS TO EXISTING CORPORATIONS. (a) A corporation
3 that is incorporated as a business and industrial development corporation under former AS 10.10 and that
4 is in existence on January 1, 1993, is licensed to transact business as a business and industrial
5 development corporation under AS 06.50, enacted by sec. 1 of this Act.

6 (b) Except as otherwise expressly provided by this Act, AS 06.50, enacted by sec. 1 of this Act,
7 applies on and after January 1, 1993, to the actions taken on or after January 1, 1993, by a director,
8 officer, shareholder, affiliate, subsidiary, subject person, or controlling person of a corporation that is
9 authorized under (a) of this section to transact business as a business and industrial development
10 corporation under AS 06.50.

11 (c) Except as otherwise expressly provided by this Act, a section of AS 06.50, enacted by sec.
12 1 of this Act, that governs the acts, contracts, or other transactions of a corporation or its directors,
13 officers, shareholders, affiliates, subsidiaries, subject persons, or controlling persons applies only to acts,
14 contracts, or transactions occurring on or after January 1, 1993, and the provisions of former AS 10.10
15 govern the acts, contracts, or transactions occurring before January 1, 1993.

16 (d) In AS 06.50.120(a), enacted by sec. 1 of this Act, the requirement to include "BIDCO" in
17 the name of a person licensed under AS 06.50 does not apply to a corporation that has been incorporated
18 under former AS 10.10 before January 1, 1993, that is in existence on January 1, 1993, and whose name
19 includes the words "Industrial Development Corporation of the State of Alaska."

20 * Sec. 8. EXISTING ACTIONS. AS 06.50, enacted by sec. 1 of this Act, does not affect a cause
21 of action that accrues before January 1, 1993.

22 * Sec. 9. This Act takes effect January 1, 1993.