

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 536 (FINANCE) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/12/92
Offered: 5/6/92

Sponsor(s): REPRESENTATIVE B.DAVIS

SENATORS Collins, Sturgulewski, Menard, Pearce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain business development corporations."**

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

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

4 **CHAPTER 13. BIDCOS.**

5 **ARTICLE 1. PURPOSES AND LICENSING.**

6 **Sec. 10.13.010. PURPOSES. The purposes of this chapter are to**

7 **(1) promote economic development by encouraging the formation of one or more**
8 **BIDCOs to help meet the financing assistance and management assistance needs of businesses**
9 **in the state;**

10 **(2) establish a system of licensing, regulation, and enforcement to enable a**
11 **BIDCO to satisfy the eligibility requirements for participating in programs that further the**
12 **purposes of the BIDCO;**

13 **(3) encourage capital sources to invest in and lend money to BIDCOs by**
14 **providing for BIDCOs a system of licensing, regulation, and enforcement designed to prevent**

1 fraud, conflict of interest, and mismanagement, and to promote competent management, accurate
2 record keeping, and appropriate communication with shareholders;

3 (4) safeguard the general reputation of BIDCOs in order to increase the
4 confidence of prospective equity investors in and prospective debt sources for BIDCOs.

5 Sec. 10.13.020. QUALIFICATIONS FOR BIDCO LICENSE. The department shall issue
6 a license to operate as a BIDCO to a corporation that is incorporated under AS 10.06, or that has
7 been issued a certificate of authority under AS 10.06 to transact business in the state, and that
8 submits an application to the department, if the department determines that

9 (1) the applicant has the net worth required under AS 10.13.040;

10 (2) the directors, officers, and controlling persons of the applicant satisfy the
11 criteria under AS 10.13.050;

12 (3) it is reasonable to believe that the corporation will comply with this chapter;

13 (4) the applicant has a reasonable promise of being a viable, ongoing BIDCO,
14 satisfying the basic objectives of the corporation's business plans, and achieving long-term
15 financial success.

16 Sec. 10.13.030. APPLICATION PROCEDURE. When applying for a license, an
17 applicant shall provide the information required by the department in the form required by the
18 department. The information must include information on the directors, officers, and controlling
19 persons of the applicant, the applicant's business plan, including at least 10 years of detailed
20 financial projections and other relevant information, and additional information considered
21 relevant by the department.

22 Sec. 10.13.040. REQUISITE NET WORTH. (a) In order to receive a license, an
23 applicant must demonstrate to the satisfaction of the department that the applicant has raised
24 sufficient capital so that

25 (1) the net worth of the BIDCO is expected to be adequate, in the context of its
26 business plan, to support the BIDCO's management team and to achieve an appropriate spreading
27 of the risk involved in the BIDCO's provisions of financing assistance; and

28 (2) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO,
29 satisfying the basic objectives of its business plan and achieving long-term financial success.

30 (b) Unless the BIDCO receives a loan under AS 37.17.200 - 37.17.390, the department
31 may not establish a minimum net worth for a BIDCO under this section of less than \$1,500,000.

1 If the BIDCO, as part of its initial capitalization, receives a loan under AS 37.17.200 - 37.17.390,
2 the minimum net worth of the BIDCO may be \$500,000, excluding organization costs paid for
3 or owed by the BIDCO.

4 Sec. 10.13.050. CRITERIA FOR DIRECTORS, OFFICERS, AND CONTROLLING
5 PERSONS. (a) A license may only be issued if the department determines that each director,
6 officer, and controlling person of the applicant is

- 7 (1) of good character and sound financial standing;
8 (2) competent to perform the director's or officer's functions for the applicant;

9 and

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

12 (b) The department may determine that a director, officer, or controlling person of an
13 applicant is not of good character. Bases the department may use to make that determination
14 include proof that the director, officer, or controlling person, or a director or officer of a
15 controlling person has

16 (1) had an administrative sanction imposed under 31 U.S.C. 3801 - 3812 (Program
17 Fraud Civil Remedies Act of 1986) for an offense under 15 U.S.C. 645; or

18 (2) been convicted of a crime involving fraud or dishonesty, including a
19 conviction for an offense under 15 U.S.C. 645; in this paragraph, "conviction" includes a
20 conviction based on a guilty plea or plea of nolo contendere.

21 Sec. 10.13.060. DETERMINATION OF FUTURE NONCOMPLIANCE. The department
22 may determine that it is not reasonable to believe that an applicant would comply with this
23 chapter if licensed. Bases the department may use to make that determination include proof that
24 the applicant has been convicted of a crime involving fraud or dishonesty, including a conviction
25 based on a guilty plea or plea of nolo contendere.

26 Sec. 10.13.070. DENIAL OF APPLICATION. If the department denies a license the
27 department shall provide the applicant with a written statement explaining the reasons for the
28 denial.

29 Sec. 10.13.080. DISPLAY OF LICENSE. A licensee shall post the license in a
30 conspicuous place in the licensee's principal office.

31 Sec. 10.13.090. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A

1 licensee may not transfer or assign its license.

2 **Sec. 10.13.100. SURRENDER OF LICENSE.** (a) Upon approval by a two-thirds vote
3 of its board of directors and after complying with (b) and (c) of this section, a licensee may apply
4 to the department to have the department accept the surrender of the licensee's license. If the
5 department determines that the requirements of this section have been satisfied, the department
6 shall approve the application unless the department determines that the purpose of the application
7 is to evade a current or prospective action by the department under AS 10.13.700 - 10.13.830.

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

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

18 **ARTICLE 2. CORPORATE MATTERS.**

19 **Sec. 10.13.120. CORPORATE NAME.** (a) The corporate name of a licensee must
20 include the word "BIDCO" or "Bidco." A licensee may not transact business under a name other
21 than its corporate name.

22 (b) Before being issued a license, a corporation that proposes to apply for a license or
23 that applies for a license may perform, under a name that indicates that the corporation is a
24 corporation licensed under this chapter, the acts necessary to apply for and obtain a license and
25 otherwise prepare to begin business as a licensee. The corporation may not represent that it is
26 a licensee until after the license has been obtained.

27 **Sec. 10.13.130. BOARD OF DIRECTORS.** (a) The board of directors of a licensee
28 must have at least seven directors.

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

30 **Sec. 10.13.140. NOTICE OF OFFICER AND DIRECTOR CHANGES.** Within 30 days
31 of each of the following events, the licensee shall notify the department in writing of the event

1 and provide any additional information that the department requires:

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

5 Sec. 10.13.150. DIVIDENDS. (a) A licensee may not pay or obligate itself to pay a
6 cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent
7 with a dividend policy that has been adopted by the licensee and approved by the department.

8 (b) When approving dividend policies under this section, the department shall consider
9 the special characteristics of BIDCOs and the diverse range of dividend policies that are
10 potentially appropriate for a BIDCO, without allowing the licensee to engage in unsafe or
11 unsound acts that could threaten the viability of the licensee as an ongoing BIDCO by eroding
12 its capital base.

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

15 Sec. 10.13.160. STOCK BUY-BACK. A licensee may not buy back or obligate itself
16 to buy back a share of equity interest from a shareholder without the prior approval of the
17 department.

18 ARTICLE 3. TRANSACTION OF BUSINESS.

19 Sec. 10.13.170. OFFICES. (a) A licensee shall maintain at least one office in this state.

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

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

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

24 (e) If a licensee establishes, relocates, or closes an office, the licensee shall give the
25 department written notice within 30 days of the event.

26 Sec. 10.13.180. BUSINESS OF LICENSEE. A licensee may not engage in a business
27 other than providing financing assistance and management assistance to businesses.

28 Sec. 10.13.190. GENERAL POWERS. In addition to the other powers given by this
29 chapter and the powers conferred on the licensee by the laws under which it is incorporated that
30 are not inconsistent with this chapter, a licensee may

- 31 (1) borrow money and otherwise incur indebtedness for the licensee's purposes,

1 including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness;
2 a licensee's indebtedness may be secured or unsecured, and may involve equity features,
3 including provisions for conversion to stock and warrants to purchase stock;

4 (2) make contracts;

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

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

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

12 (6) provide financing assistance and management assistance to businesses and
13 establish the terms and conditions of the assistance;

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

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

19 Sec. 10.13.200. FINANCING ASSISTANCE FORM, TERMS, AND CONDITIONS. A
20 licensee may determine the form, terms, and conditions for the financing assistance that it will
21 provide.

22 Sec. 10.13.210. FINANCING ASSISTANCE ALLOWED. The financing assistance that
23 a licensee may provide includes

24 (1) loans;

25 (2) purchase of debt instruments;

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

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

30 (5) royalty-based financing;

31 (6) debt guarantees;

1 (7) property leasing.

2 Sec. 10.13.220. PARTICIPATION IN GOVERNMENTAL PROGRAMS. (a) A licensee
3 may participate in a federal, state, or local government program for which the licensee is eligible
4 and that has as the program's function the provision or facilitation of financing assistance or
5 management assistance to businesses.

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

8 Sec. 10.13.230. SCOPE OF MANAGEMENT ASSISTANCE. When providing
9 management assistance, a licensee may provide management advice, management services,
10 technical advice, and technical services.

11 Sec. 10.13.240. LIMITATION TO PURPOSES OF BUSINESS. Financing assistance
12 and management assistance provided by a licensee to a business may only be for the business
13 purposes of the business.

14 Sec. 10.13.250. CONTROL OF OTHER BUSINESSES. A licensee may not hold control
15 of another business, except as provided under AS 10.13.260 - 10.13.280. In this section,
16 "licensee" includes the licensee in concert with a director, officer, controlling person, or affiliate
17 of the licensee.

18 Sec. 10.13.260. CONTROL OF ASSISTED BUSINESS. (a) A licensee that has
19 provided financing assistance to a business may acquire and hold control of the business to the
20 extent it becomes necessary to protect the licensee's interest as a creditor of, or investor in, the
21 business.

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

25 (c) Within 30 days after a licensee exercises its authority to acquire and hold control of
26 a business under this section, the licensee shall notify the department of the action. The
27 notification must include the reasons why it is necessary for the licensee to acquire and hold
28 control of the business and the length of time the licensee anticipates that it may be necessary
29 to hold control of the business.

30 Sec. 10.13.270. CONTROL OF BUSINESS PROVIDING FINANCING ASSISTANCE
31 AND MANAGEMENT ASSISTANCE. With the approval of the department, a licensee may

1 acquire and hold control of another business that is engaged only in the business of providing
2 financing assistance and management assistance to businesses.

3 Sec. 10.13.280. CONTROL OF OTHER BUSINESSES. (a) With the approval of the
4 department, a licensee may acquire and hold control of a business not otherwise allowed under
5 AS 10.13.250 - 10.13.270.

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

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

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

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

16 Sec. 10.13.285. "HOLD CONTROL" DEFINED. In AS 10.13.250 - 10.13.280, "hold
17 control" means to directly or indirectly own, of record or beneficially, 50 percent or more of a
18 business's outstanding voting equity interests.

19 Sec. 10.13.290. BUSINESS PRACTICE STANDARD. (a) A licensee shall transact its
20 business in a safe and sound manner and shall maintain itself in a safe and sound condition.

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

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

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

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

31 (3) require that a licensee have in effect a written financing assistance policy

1 approved by the licensee's board of directors, including credit evaluation and other matters; the
2 department may not require that a licensee adopt a financing assistance policy that contains
3 standards that prevent the licensee from exercising needed flexibility in evaluating and structuring
4 financing assistance to businesses on an individual basis.

5 Sec. 10.13.300. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST. A person
6 shall disclose a potential conflict of interest that occurs in a transaction in the financing
7 documents of the transaction or, if the transaction does not involve financing assistance, in
8 another appropriate document, if the person

- 9 (1) participates in a decision of a licensee relating to the transaction; and
10 (2) knows of a potential conflict of interest involving the transaction.

11 Sec. 10.13.310. TERMS WHERE POTENTIAL CONFLICT OF INTEREST IS
12 INVOLVED. If a licensee provides financing assistance to a business or engages in another
13 business transaction, and if the assistance or transaction involves a potential conflict of interest,
14 the terms and conditions under which the licensee provides the assistance or engages in the
15 transaction may not be less favorable to the licensee than the terms and conditions that would
16 be required by the licensee in the ordinary course of business if the assistance or transaction did
17 not involve a potential conflict of interest.

18 Sec. 10.13.320. POTENTIAL CONFLICTS OF INTEREST DEFINED. (a) In
19 AS 10.13.300 - 10.13.310, licensee transactions that involve a potential conflict of interest include

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

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

25 (A) a principal shareholder of the licensee;

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

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

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

30 (3) providing financing assistance to a business that has or is expected to have
31 a substantial business relationship with another business that has a director, officer, or controlling

- 1 person who is also
- 2 (A) a director, officer, or controlling person of the licensee; or
- 3 (B) the spouse of a director, officer, or controlling person of the licensee;
- 4 (4) providing financing assistance to a business if the business, or a director,
- 5 officer, or controlling person of the business contemporaneously has lent or will lend money to
- 6 an associate of the licensee;
- 7 (5) providing financing assistance for the purchase of property of an associate or
- 8 principal shareholder of the licensee;
- 9 (6) selling or otherwise transferring an asset of the licensee to an associate or
- 10 principal shareholder of the licensee.

11 (b) In this section, "relative" means a parent, child, sibling, spouse, grandparent,

12 grandchild, nephew, niece, aunt, or uncle, or a relative of the same degree through marriage.

13 ARTICLE 4. MERGERS AND ACQUISITIONS.

14 Sec. 10.13.400. ACQUIRING CONTROL OF A LICENSEE. A person may not acquire

15 control of a licensee without the prior approval of the department.

16 Sec. 10.13.410. APPLICATION TO ACQUIRE CONTROL. (a) The department shall

17 approve an application to acquire control of a licensee under AS 10.13.400 if the department

18 determines that

19 (1) the applicant and the directors and officers of the applicant are of good

20 character and sound financial standing;

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

22 (3) the plans, if any, of the applicant to make a major change in the business,

23 corporate structure, or management of the licensee are not detrimental to the safety and soundness

24 of the licensee.

25 (b) If, after notice and a hearing, the department determines that the criteria for approval

26 in (a) of this section have not been satisfied, the department shall deny the application.

27 Sec. 10.13.420. DETERMINATIONS. (a) When the department is reviewing an

28 application under AS 10.13.410, the department may determine that an

29 (1) applicant or a director or officer of an applicant is not of good character if the

30 person has been convicted of a crime involving fraud or dishonesty, including a conviction based

31 on a guilty plea or plea of nolo contendere;

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

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

10 Sec. 10.13.430. MERGER. A licensee may not merge with another corporation unless
11 the merger is approved by the department, and, if the licensee is not the surviving corporation,
12 the surviving corporation is a licensee.

13 Sec. 10.13.440. PURCHASE. A licensee may not purchase all or substantially all of the
14 business of another person unless the purchase is approved by the department.

15 Sec. 10.13.450. SALE. A licensee may not sell all or substantially all of the licensee's
16 business or of the business of an office of the licensee to another person unless the purchaser is
17 a licensee and the sale is approved by the department.

18 Sec. 10.13.460. DEPARTMENT APPROVAL. The department may not approve a
19 merger, purchase, or sale under AS 10.13.430 - 10.13.450 unless the department determines that

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

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

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

29 ARTICLE 5. REGULATION, REPORTING, AND EXAMINATION.

30 Sec. 10.13.470. ADMINISTRATION. The department shall administer this chapter. The
31 department may issue orders and may adopt regulations that, in the opinion of the department,

1 are necessary to execute, enforce, and achieve the purposes of this chapter. Adoption of
2 regulations under this chapter is subject to the AS 44.62 (Administrative Procedure Act).

3 Sec. 10.13.480. **CONDITIONS OF ORDER OR LICENSE.** When the department issues
4 an order or license under this chapter, the department may impose conditions that the department
5 determines are necessary to carry out the purposes of this chapter.

6 Sec. 10.13.490. **DECLARATORY RULINGS.** The department may provide to an
7 interested person a declaratory ruling on a provision of this chapter.

8 Sec. 10.13.500. **JUDICIAL REVIEW.** A final order, decision, license, or other official
9 act of the department under this chapter is subject to judicial review by the superior court under
10 the applicable rules of court.

11 Sec. 10.13.510. **INVESTIGATIONS.** The department may make public or private
12 investigations inside or outside the state that the department considers necessary to determine
13 whether to approve an application for a license, to determine whether a person has violated or
14 is about to violate this chapter, to aid in the enforcement of this chapter, or to aid in issuing an
15 order or adopting a regulation under this chapter.

16 Sec. 10.13.520. **INVESTIGATIVE POWERS.** For the purposes of an investigation,
17 examination, or other proceeding under this chapter, the department may administer oaths and
18 affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require
19 the production of books, papers, correspondence, memoranda, agreements, and other documents
20 or records that the department considers relevant or material to the proceeding.

21 Sec. 10.13.530. **FAILURE TO COMPLY.** If a person fails to comply with a subpoena
22 issued by the department under this chapter or to testify with respect to a matter covered by this
23 chapter, the superior court may issue an order requiring the attendance of the person and the
24 giving of testimony or production of evidence.

25 Sec. 10.13.540. **SERVICE OF PROCESS.** If the department is authorized to make
26 service of process in connection with a noncriminal administrative proceeding under this chapter,
27 the department may make the service by registered or certified mail.

28 Sec. 10.13.550. **FEES.** A person shall pay the department

- 29 (1) \$2,500 for filing an application for a license;
30 (2) \$1,250 for filing an application for approval to acquire control of a licensee;
31 (3) \$1,250 for filing an application for approval for a merger, purchase, or sale

1 under AS 10.13.430 - 10.13.460; if two or more applications relating to the same merger,
2 purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing
3 \$1,250 by the number of the applications;

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

6 (5) a fee established by the department for the examination of a licensee or a
7 subsidiary of a licensee; the fee shall be paid within 30 days after receiving a statement from the
8 department; a fee established under this paragraph must include

9 (A) the proportionate part of the salaries and cost of employee benefits of
10 the examiners while conducting the examination and while preparing the examination
11 report; and

12 (B) the transportation costs and per diem costs of each examiner while
13 away from the examiner's duty station.

14 Sec. 10.13.560. FEE PAYMENT AND REFUNDS. A fee for filing an application with
15 the department shall be paid at the time the application is filed with the department and is not
16 refundable.

17 Sec. 10.13.570. RECORD AND REPORT REQUIREMENTS. (a) A licensee shall make
18 and keep books, accounts, and other records in the form and manner, at the place, and for the
19 period of time that the department establishes.

20 (b) A licensee, affiliate of a licensee, and a subsidiary of a licensee shall file with the
21 department the reports that the department requires. A report must be in the form and contain
22 the information that the department requires.

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

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

27 (1) financial statements, including a balance sheet, statement of income or loss,
28 statement of changes in capital accounts, and statement of changes in financial position for, or
29 as of the end of, the calendar year, prepared with an audit by an independent certified public
30 accountant in accordance with generally accepted accounting principles;

31 (2) 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 (3) other information that the department may require.

4 Sec. 10.13.580. 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. 10.13.590. 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. 10.13.600. 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. PROHIBITED ACTIVITIES.

17 Sec. 10.13.610. MISREPRESENTATION. (a) Except as otherwise provided in
18 AS 10.13.120, 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 BIDCO or otherwise represent that the
20 person is a BIDCO or a licensee.

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

22 Sec. 10.13.620. 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. 10.13.630. 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. 10.13.640. 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. 10.13.650. 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. 10.13.660. 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 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, and the licensee pays
31 the associate.

1 **Sec. 10.13.740. OTHER CEASE AND DESIST ORDERS.** If the department determines
2 that a factor set out in AS 10.13.720 - 10.13.730 is true with respect to a licensee or subject
3 person of a licensee and that the action or violation is likely to cause the insolvency or
4 substantial dissipation of the assets or earnings of the licensee, is likely to seriously weaken the
5 condition of the licensee, or is likely to otherwise seriously prejudice the interests of the licensee
6 before the completion of proceedings conducted under AS 10.13.720 - 10.13.730, the department
7 may order the licensee or subject person to cease and desist from the action or violation. The
8 order may require the licensee or subject person to take affirmative action to correct a condition
9 resulting from the action or violation.

10 **Sec. 10.13.750. REMOVAL AND SUSPENSION ORDERS IN CASES OF VIOLATION**
11 **OR BREACH OF DUTY.** (a) The department may issue an order removing a subject person
12 of a licensee from office with the licensee and prohibiting the subject person from further
13 participating in any manner in the conduct of the business of the licensee if the department
14 determines after notice and a hearing that

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

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

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

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

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

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

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

9 (1) the factors in (a) or (b) of this section are true with respect to the person; and
10 (2) an immediate order is necessary to protect the interests of the licensee or the
11 public.

12 (d) In this section, "office" means, when used with respect to a licensee, the position of
13 director, officer, or employee of the licensee or of a subsidiary of the licensee.

14 Sec. 10.13.760. REMOVAL AND SUSPENSION ORDERS IN CASES OF
15 INDICTMENT OR CONVICTION. (a) If the department determines that a subject person of
16 a licensee has been indicted by a grand jury or has been bound over for trial by a court for a
17 crime involving dishonesty or breach of trust, and that the continuation of the person as a subject
18 person of the licensee may threaten the interests of the licensee or may threaten to impair public
19 confidence in the licensee, the department may issue an order suspending the person from the
20 person's office, if any, with the licensee and prohibiting the person from further participating in
21 any manner in the conduct of the business of the licensee until the person's charge has been
22 disposed of.

23 (b) If the department determines that a subject person or former subject person of a
24 licensee to whom an order was issued under (a) of this section, or another subject person of a
25 licensee, has been convicted of a crime involving dishonesty or breach of trust, and that the
26 continuation or resumption of the person as a subject person of the licensee may threaten the
27 interests of the licensee, the department may issue an order suspending or removing the person
28 from the person's office, if any, with the licensee and prohibiting the person from further
29 participating in any manner in the conduct of the business of the licensee, except with the prior
30 consent of the department.

31 (c) The failure to convict a subject person who is charged with a crime involving

1 dishonesty or breach of trust does not prevent the department from issuing an order to the person
2 under another provision of this chapter.

3 (d) In this section, "office" has the meaning given in AS 10.13.750.

4 Sec. 10.13.770. HEARINGS ON ORDERS. (a) Within 30 days after an order is issued
5 under AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760, the licensee or subject person of a
6 licensee to whom the order is directed may file with the department an application for a hearing
7 on the order.

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

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

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

16 (e) The right of a licensee or subject person to whom an order is issued under
17 AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760 to an interlocutory review of the order is
18 not affected by the failure of the licensee or subject person to apply to the department for a
19 hearing on the order issued under this section.

20 Sec. 10.13.780. DISCLOSURE TO SHAREHOLDERS. If the department determines
21 that the results of a department communication or order addressed to the licensee or to a subject
22 person of the licensee should be disclosed to the licensee's shareholders, the department may
23 require the licensee to make the disclosure in the form and manner determined by the department.

24 Sec. 10.13.790. MEETINGS OF DIRECTORS AND SHAREHOLDERS CALLED BY
25 DEPARTMENT. (a) If the department considers it expedient, the department may call a
26 meeting of the board of directors or of the shareholders of a licensee.

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

31 (c) The licensee shall pay the notice and meeting expenses for a meeting of shareholders

1 called under (a) of this section.

2 **Sec. 10.13.800. ORDERS RESTRICTING ADDITIONAL FINANCING ASSISTANCE.**

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

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

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

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

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

14 (5) the licensee is insolvent;

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

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

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

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

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

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

5 Sec. 10.13.810. TAKING POSSESSION OF LICENSEE. (a) If the department finds
6 that a factor in AS 10.13.800 is true with respect to a licensee and that it is necessary for the
7 protection of the interests of the licensee or of the public, the department may take immediate
8 possession of the property and business of the licensee and appoint a conservator for the licensee.

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

16 (c) Under the direction of the department, the conservator shall take possession of the
17 books, records, and assets of the licensee and shall take other action that is necessary to conserve
18 the assets of the licensee or to ensure payment of obligations of the licensee pending further
19 disposition of the licensee's business.

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

23 Sec. 10.13.820. RECEIVERSHIP. (a) The department may apply to the superior court
24 for the appointment of a receiver for a licensee, if the department determines that the licensee
25 should be liquidated because

26 (1) the licensee is insolvent;

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

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

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

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

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

8 Sec. 10.13.830. CIVIL PENALTY. (a) If after notice and a hearing the department finds
9 that a person has violated this chapter, the department may order the person to pay to the
10 department a civil penalty in the amount the department specifies. The civil penalty may not
11 exceed \$1,000 for each violation, or in the case of a continuing violation, \$1,000 for each day
12 the violation continues.

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

17 (c) The provisions of (a) of this section are in addition to, and not alternative to, the
18 other provisions of this chapter that authorize the department to issue orders or to take other
19 action on account of a violation of this chapter.

20 ARTICLE 8. GENERAL PROVISIONS.

21 Sec. 10.13.850. CONSTRUCTION OF CHAPTER. This chapter shall be liberally
22 construed to accomplish its purposes.

23 Sec. 10.13.860. APPLICATION OF ADMINISTRATIVE PROCEDURES ACT TO
24 PROCEEDINGS. A proceeding under AS 10.13.830 is subject to AS 44.62 (Administrative
25 Procedure Act). Except as otherwise provided in this chapter, other proceedings and actions
26 under this chapter are exempt from AS 44.62.

27 Sec. 10.13.870. APPEALS. A final order of an administrative proceeding under
28 AS 10.13.710 - 10.13.760, 10.13.800, 10.13.810, or 10.13.830 may be appealed to the superior
29 court.

30 Sec. 10.13.880. PROVISIONS OF LICENSEE'S INCORPORATION. Except as
31 otherwise provided in this section, the provisions of the law under which a licensee is

1 incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts
2 with a provision of this chapter, this chapter controls.

3 Sec. 10.13.890. ASSOCIATES. (a) In AS 10.13.300 - 10.13.320 and 10.13.630 -
4 10.13.660, a person who is an associate within six months before or after a licensee provides
5 financing assistance shall be considered to be an associate as of the date the licensee provides
6 the assistance.

7 (b) If a licensee, in order to protect the licensee's interests, designates a person to serve
8 as a director of, officer of, or in a management capacity of a business to which the licensee
9 provides financial assistance, the person may not, on that account, be considered to be an
10 associate under AS 10.13.300 - 10.13.310 or 10.13.630 - 10.13.660. This subsection does not
11 apply if the person has, directly or indirectly, another financial interest in the business or if the
12 person, at any time before the licensee provides the financing assistance, served as a director of,
13 officer of, or in another capacity in the management of the business for a period of 30 days or
14 more.

15 Sec. 10.13.900. OTHER LICENSES. A corporation that is licensed under this chapter
16 may apply for and be issued a license under another law of the state, federal government, or of
17 another state in the United States unless the transaction of business by the corporation as a
18 licensee under the other license would violate this chapter or would be contrary to the purposes
19 of this chapter.

20 Sec. 10.13.910. EXEMPTION. A licensee is not subject to the provisions of AS 06.

21 Sec. 10.13.920. AUTHORITY OF DEPARTMENT. The provisions of this chapter
22 relating to conflicts of interest do not limit the authority of the department to determine that an
23 act involves a conflict of interest and is therefore an unsafe or unsound act.

24 Sec. 10.13.930. CONFIDENTIALITY. (a) The commissioner, deputies, and other
25 employees of the department may not disclose information acquired by them in the discharge of
26 their duties under this chapter except to the extent disclosure of the information is required by
27 law, other than the public records provisions of AS 09.25.110 - 09.25.220, or is required by court
28 order.

29 (b) Notwithstanding (a) of this section, the department may disclose information that is
30 confidential under (a) of this section if the department determines that disclosure of the
31 information is necessary to promote the public interest. This subsection does not authorize the

1 disclosure of information acquired by the department in the course of an examination of a
2 licensee.

3 (c) Notwithstanding (a) of this section, the department may furnish information that is
4 confidential under (a) of this section to the Alaska Science and Technology Foundation
5 established under AS 37.17.010 if the information is related to a BIDCO that has received
6 assistance under AS 37.17.200 - 37.17.390 or to a person who is seeking assistance under
7 AS 37.17.200 - 37.17.390.

8 (d) A BIDCO may provide to a current or prospective creditor or shareholder of the
9 BIDCO a copy of an examination report on the BIDCO made by the department under this
10 chapter.

11 Sec. 10.13.990. DEFINITIONS. In this chapter,

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

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

16 (A) a controlling person, director, or officer of the 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 corporation that is licensed under this chapter to provide
31 financial and management assistance to businesses;

1 (4) "business" means a person who transacts or proposes to transact business on
2 a regular and continual basis;

3 (5) "control" means, if used with respect to a specific person, the power to direct
4 or cause the direction of, directly or indirectly through an intermediary, the management and
5 policies of the person, through the ownership of voting interests, by contract other than a
6 commercial contract for goods or nonmanagement services, or by other means; a natural person
7 is not considered to control another person solely because the natural person is a director, officer,
8 or employee of the other person; a person is rebuttably presumed to control a corporation if the
9 person directly or indirectly owns of record, holds beneficially with power to vote, or holds
10 proxies with discretionary authority to vote, 20 percent or more of the then outstanding voting
11 securities issued by a corporation;

12 (6) "controlling person" means, if used with respect to a specific person, a person
13 who controls the specific person, directly or indirectly through an intermediary;

14 (7) "corporate name" means the name of a corporation in its articles of
15 incorporation;

16 (8) "department" means the Department of Commerce and Economic
17 Development;

18 (9) "insolvent" means not paying debts in the ordinary course of business, not
19 paying debts as they become due, or liabilities exceeding assets;

20 (10) "interests of the licensee" includes the interests of the shareholders of the
21 licensee;

22 (11) "license" means a license issued under this chapter;

23 (12) "licensee" means a corporation that is licensed under this chapter;

24 (13) "officer" means

25 (A) with respect to a corporation, a person appointed or designated as an
26 officer of the corporation by or under applicable law or the corporation's articles of
27 incorporation or bylaws, or a person who performs with respect to the corporation the
28 functions usually performed by an officer of a corporation;

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

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

4 (15) "person" includes a government and an agency of a government; when used
5 with respect to acquiring control of or controlling a specific person, "person" includes a
6 combination of two or more persons acting in concert;

7 (16) "principal shareholder" means a person who owns, directly or indirectly, of
8 record or beneficially, securities representing 10 percent or more of the outstanding voting
9 securities of a corporation;

10 (17) "subject person" means

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

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

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

16 (D) if used with respect to a licensee, a company or business of which the
17 licensee holds control under AS 10.13.260 - 10.13.280.

18 Sec. 10.13.995. SHORT TITLE. This chapter may be cited as the Alaska BIDCO Act.

19 * Sec. 2. AS 37.17 is amended by adding new sections to read:

20 ARTICLE 2. BIDCO ASSISTANCE PROGRAM.

21 Sec. 37.17.200. PURPOSES OF BIDCO ASSISTANCE PROGRAM. The purposes of
22 AS 37.17.200 - 37.17.390 include

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

27 (2) promoting economic development by providing a new source of risk capital
28 and management assistance for businesses, especially small and medium sized businesses, in
29 geographic areas throughout the state, including businesses in rural areas and distressed areas,
30 and including minority owned businesses;

31 (3) using state resources to attract other capital resources; and

1 (4) promoting the successful operation of BIDCOs.

2 Sec. 37.17.210. BIDCO FUND. The BIDCO fund is established in the Alaska Science
3 and Technology Foundation. The fund consists of appropriations made to the fund by the
4 legislature and repayments of loans made under AS 37.17.200 - 37.17.390.

5 Sec. 37.17.220. USE OF MONEY IN BIDCO FUND. (a) From the money in the
6 BIDCO fund, the foundation may make loans or other financial assistance, as authorized under
7 AS 37.17.220 - 37.17.390, to assist in the formation, capitalization, and operation of corporations
8 that are licensed under AS 10.13.

9 (b) The foundation may not authorize new financial assistance under AS 37.17.200 -
10 37.17.390 after June 30, 1996, without the approval of the legislature.

11 Sec. 37.17.230. BIDCO CAPITALIZATION LOANS. A BIDCO capitalization loan for
12 the initial capitalization of a BIDCO shall be made under the terms and conditions that the
13 foundation determines to be appropriate and that are consistent with AS 37.17.200 - 37.17.390.

14 Sec. 37.17.240. LOAN COMMITMENT CONDITIONS. (a) When issuing a
15 commitment to make a BIDCO capitalization loan, the foundation shall make the loan closing
16 contingent on

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

19 (2) the BIDCO satisfying the capitalization requirements of AS 37.17.250; and

20 (3) other conditions that the foundation may impose.

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

24 (1) the loan is likely to substantially promote the purposes of AS 37.17.200 -
25 37.17.390;

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

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

31 (4) if the foundation issues a loan commitment to the BIDCO, it is probable that

1 the BIDCO will be able to satisfy the capitalization requirements of AS 37.17.250.

2 Sec. 37.17.250. INITIAL CAPITALIZATION OF BIDCO. (a) The initial capitalization
3 of a BIDCO to which the foundation makes a BIDCO capitalization loan must include

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

6 (2) the BIDCO capitalization loan; and

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

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

19 Sec. 37.17.260. SUBORDINATION OF BIDCO CAPITALIZATION LOAN. A BIDCO
20 capitalization loan may be subordinated to the additional capital required under
21 AS 37.17.250(a)(3).

22 Sec. 37.17.270. BIDCO CAPITALIZATION LOAN PAYMENT AND INTEREST. (a)
23 A BIDCO capitalization loan must be structured so that the full amount of the principal is due
24 in a lump sum at the end of the loan term.

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

27 Sec. 37.17.280. BIDCO CAPITALIZATION LOAN CREDITS. (a) A BIDCO
28 capitalization loan must include a formula that allows the BIDCO to earn credits to reduce the
29 interest and principal owed on the loan. The formula shall be based on increasing jobs and sales
30 in some or all of the businesses financed by the BIDCO and on sustaining the increases. To the
31 extent the foundation determines appropriate, the foundation may also provide credits in situations

1 where the BIDCO clearly demonstrates to the foundation that jobs would have been lost if the
2 BIDCO had not provided financing assistance.

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

7 Sec. 37.17.290. IMPLEMENTATION OF BIDCO CAPITALIZATION LOAN
8 PROGRAM. (a) The foundation shall implement the program for making BIDCO capitalization
9 loans under AS 37.17.200 - 37.17.390 in a manner designed to encourage financing assistance
10 by BIDCOs to businesses throughout the state. Through the use of one or more formulas
11 designed under AS 37.17.280, the foundation shall provide special incentives to encourage the
12 financing of businesses located in distressed areas, including distressed rural areas, and the
13 financing of minority owned businesses. In this subsection, "minority owned business" means
14 a business that is owned, controlled, and operated by an individual who is a member of a
15 minority and in which more than 50 percent of the net profit or loss attributable to the business
16 accrues to a member of a minority; in this paragraph, "member of a minority" includes a person
17 who is black, Hispanic, or Alaska Native.

18 (b) When determining under (a) of this section whether an area is distressed or how
19 distressed an area is, the foundation may use, individually or in combination, factors that may
20 include unemployment, poverty, lack of access to the state highway system, lack of access to a
21 marine transportation system, or other factors the foundation determines to be appropriate.

22 Sec. 37.17.300. TERMS OF BIDCO CAPITALIZATION LOANS. When determining
23 the amount or range of amount for a BIDCO capitalization loan, the term to maturity of the loan,
24 the interest rate for the loan, the additional capital requirements for the loan, and the formula for
25 earning credits under the loan, the foundation shall consider the following objectives:

26 (1) that the BIDCO will have adequate capitalization to support a highly qualified
27 management team, to implement a business plan that, when combined with the management team,
28 will promote confidence in the prospects of the BIDCO for long-term financial success and
29 viability, and to otherwise promote the purposes of AS 37.17.200 - 37.17.390;

30 (2) that the additional capital requirement is in an amount that encourages the
31 BIDCO to raise as much capital as feasible from sources other than the BIDCO capitalization

1 loan, without unduly hindering the ability of the BIDCO to become operational;

2 (3) that the formula for earning credits under AS 37.17.280, combined with the
3 other terms and conditions of the loan, will be designed so that with a reasonable performance
4 by the BIDCO, the BIDCO will be able to earn sufficient credits to reduce the amount of
5 principal and interest owed on the loan to zero by or before the end of the loan term; and

6 (4) that the formula for earning credits under AS 37.17.280, combined with the
7 other terms and conditions of the loan, is sufficiently challenging that the special incentives
8 provided by the credits allowed under AS 37.17.280 remain in effect for the longest feasible time
9 during the loan term as is consistent with meeting the other objectives identified in this section.

10 Sec. 37.17.310. ACCESS TO MEETINGS AND INFORMATION. While a BIDCO loan
11 is outstanding and the obligations of the BIDCO to the foundation remain undischarged, the
12 BIDCO shall allow the foundation to have a representative present at all meetings of the
13 BIDCO's board of directors and of the BIDCO's shareholders, to receive all notices and
14 information sent to the board of directors or the shareholders, to have the same access to
15 information about the BIDCO as the directors have and as the shareholders have, and to receive
16 additional reports or information from the BIDCO that the foundation reasonably requests.

17 Sec. 37.17.320. BIDCO OPERATION LIMITATION. While a BIDCO loan is
18 outstanding and the obligations of the BIDCO to the foundation remain undischarged, the BIDCO
19 may not provide financing assistance to businesses located outside the state. If a business
20 assisted by the BIDCO has multi-state or multi-national operations, the location of the business
21 is where the largest economic benefit of the financing assistance transaction made by the BIDCO
22 to the business is likely to occur.

23 Sec. 37.17.330. SURRENDER OF BIDCO LICENSE. While a BIDCO loan is
24 outstanding and the obligations of the BIDCO to the foundation are not discharged, the BIDCO
25 may not surrender its license under AS 10.13 without the written consent of the foundation.

26 Sec. 37.17.340. CLOSING ASSISTANCE. If determined by the foundation to be
27 advisable, the foundation may use money in the BIDCO fund to provide assistance to a person
28 to complete the tasks necessary for the person to achieve a closing on a BIDCO capitalization
29 loan. The foundation may provide the assistance on the terms and conditions that the foundation
30 determines appropriate.

31 Sec. 37.17.350. CONFIDENTIALITY. In order to promote the purposes of

1 AS 37.17.200 - 37.17.390, the foundation may establish policies under which it will keep
2 confidential proprietary information submitted to the foundation by an applicant for a loan or
3 other financial assistance under AS 37.17.200 - 37.17.390 and by a BIDCO that has received a
4 loan or other financial assistance under AS 37.17.200 - 37.17.390. The information that is
5 determined to be confidential under this section is not a public record under AS 09.25.110 -
6 09.25.220.

7 Sec. 37.17.360. SUBSEQUENT LOANS. If the foundation determines that a BIDCO,
8 after receiving a BIDCO capitalization loan, has performed well financially and in promoting the
9 purposes of AS 37.17.200 - 37.17.390, and if more than four years have elapsed since the loan
10 was made, the foundation may make an additional loan to the BIDCO, on the terms and
11 conditions that the foundation considers appropriate.

12 Sec. 37.17.390. DEFINITIONS. In AS 37.17.200 - 37.17.390,

13 (1) "additional capital" means the additional capital required under
14 AS 37.17.250(a)(3);

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

16 (3) "BIDCO capitalization loan" means a loan made under AS 37.17.230 for the
17 initial capitalization of a BIDCO;

18 (4) "BIDCO loan" means a BIDCO capitalization loan or a subsequent loan made
19 under AS 37.17.360;

20 (5) "foundation" means the Alaska Science and Technology Foundation
21 established under AS 37.17.010.

22 * Sec. 3. AS 06.05.270(a) is amended to read:

23 (a) In addition to loans and acquisitions expressly authorized by this chapter, a state bank
24 may deal in, underwrite, and invest in for its own account

25 (1) direct or guaranteed obligations of the United States, either directly or in the
26 form of securities of, or other interests in, an open-end management type investment company
27 or investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of
28 1940), if

29 (A) the portfolio of the investment company or investment trust is limited
30 to obligations of the United States government and repurchase agreements fully
31 collateralized by the obligations; and

1 (B) the investment company or investment trust takes delivery of the
2 collateral directly or through an authorized custodian;

3 (2) general obligations of the State of Alaska and its political subdivisions;

4 (3) general obligations of a state of the United States or its political subdivisions;

5 (4) revenue obligations of the State of Alaska or its political subdivisions subject
6 to the limitation of (b) of this section;

7 (5) revenue obligations of a state of the United States or its political subdivisions
8 subject to the limitation of (b) of this section;

9 (6) obligations of instrumentalities of the United States government including, but
10 not limited to Federal Intermediate Credit Banks, Federal Land Banks, the Federal National
11 Mortgage Association, and Banks for Cooperatives;

12 (7) commercial paper of prime or equivalent quality as rated by a recognized
13 national rating service subject to the limitation of (b) of this section;

14 (8) secured corporate obligations rated within the three highest grades of a
15 national rating service subject to the limitation of (b) of this section;

16 (9) obligations of the International Bank for Reconstruction and Development, the
17 Inter-American Development Bank, or the African Development Bank, subject to the limitation
18 of (b) of this section;

19 (10) stock in the Federal National Mortgage Association, a Federal Reserve Bank,
20 or a Federal Home Loan Bank;

21 (11) the stocks, bonds, and other securities of

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

23 (B) a corporation attempting to become licensed under AS 10.13 if the
24 corporation intends to use the proceeds to fulfill the tasks necessary to become
25 licensed under AS 10.13.

26 * Sec. 4. AS 06.05.270(b) is amended to read:

27 (b) A state bank may not underwrite or invest for its own account an amount exceeding
28 15 percent of its combined capital, surplus and undivided profits in any one issue of securities
29 authorized in (a)(4) and (5) of this section or with any one obligor of the securities authorized
30 in (a)(7), (8), [AND] (9), and (11) of this section.

31 * Sec. 5. AS 06.15.240 is amended to read:

1 Sec. 06.15.240. INVESTMENTS AUTHORIZED. Subject to the provisions of this
2 chapter and regulations under this chapter, a mutual bank may invest in

3 (1) obligations of the United States and those for which the faith of the United
4 States is pledged to provide for the payment of the interest and principal, obligations for which
5 annual contributions to be paid under [PURSUANT TO] contract by the United States
6 government or any of its instrumentalities in accordance with an Act of Congress entitled the
7 "Housing Act of 1949," are pledged as security for the payment of the interest and principal, and
8 obligations of any agency of the United States;

9 (2) obligations of any state of the United States and those for which the faith of
10 any state of the United States is pledged to provide for the payment of the interest and principal;

11 (3) obligations of a city, village, town, county, department, agency, district,
12 authority, commission or other public body of any state of the United States, subject to the
13 exercise of the same degree of care and prudence that persons prompted by self-interest generally
14 exercise in their own affairs;

15 (4) any property improvement note issued under the provisions of Title I of the
16 National Housing Act and any other real property improvement note in a principal amount not
17 in excess of \$15,000, not including interest;

18 (5) obligations of the Dominion of Canada or provinces of the Dominion of
19 Canada payable in United States funds;

20 **(6) the stocks, bonds, and other securities of**

21 **(A) a corporation licensed under AS 10.13; or**

22 **(B) a corporation attempting to become licensed under AS 10.13 if the**
23 **corporation intends to use the proceeds to fulfill the tasks necessary to become**
24 **licensed under AS 10.13.**

25 * Sec. 6. AS 06.25.170 is amended to read:

26 Sec. 06.25.170. PURCHASE AND SALE OF SECURITIES. A trust company may
27 purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities.
28 When money or security for money is borrowed or received on deposit, or for investment, the
29 bonds or obligations of the trust company may be given, but it may not issue bills to circulate
30 as money. **In this section. "stocks, bills of exchange, bonds, mortgages, and other securities"**
31 **include the stocks, bills of exchange, bonds, mortgages, and other securities of**

- 1 **(1) a corporation licensed under AS 10.13; or**
2 **(2) a corporation attempting to become licensed under AS 10.13 if the**
3 **corporation intends to use the proceeds to fulfill the tasks necessary to become licensed**
4 **under AS 10.13.**

5 * Sec. 7. AS 06.30.610 is amended to read:

6 Sec. 06.30.610. INVESTMENTS IN SECURITIES. An association may invest in the
7 following securities:

8 (1) obligations of, or guaranteed as to principal and interest by, the United States
9 or this state without limitation;

10 (2) stock of a Federal Home Loan Bank of which it is eligible to be a member
11 and in obligations or consolidated obligations of any Federal Home Loan Bank;

12 (3) stock or obligations of the Federal Savings and Loan Insurance Corporation;

13 (4) stock or obligations of a national mortgage association or its successor;

14 (5) demand, time, or savings deposits with a bank or trust company whose
15 deposits are insured by the Federal Deposit Insurance Corporation;

16 (6) stock or obligations of any corporation or agency of the United States or this
17 state, or in deposits of the corporation or agency [THEREWITH] to the extent that the
18 corporation or agency assists in furthering or facilitating the association's purposes or powers;

19 (7) savings accounts of an association operating under this chapter and of a
20 federal savings and loan association;

21 (8) evidence of indebtedness that is a general obligation of a city, town, village,
22 school district, or other municipal or political subdivision of this state;

23 (9) other stocks, securities, or obligations that the commissioner approves and
24 places on a published list; an association investing in securities listed by the commissioner is not
25 required to dispose of the securities if at a later time the commissioner removes the securities
26 from the list;

27 **(10) the stocks, bonds, and other securities of**

28 **(A) a corporation licensed under AS 10.13; or**

29 **(B) a corporation attempting to become licensed under AS 10.13 if the**
30 **corporation intends to use the proceeds to fulfill the tasks necessary to become**
31 **licensed under AS 10.13.**

1 * Sec. 8. AS 06.45.060(7) is amended to read:

2 (7) invest its funds

3 (A) in loans exclusively to members;

4 (B) in obligations of the United States or securities fully guaranteed as to
5 principal and interest by the United States;

6 (C) in loans to other credit unions in the total amount not exceeding 25
7 percent of its paid-in and unimpaired capital and surplus in accordance with regulations
8 adopted by the commissioner;

9 (D) in shares or accounts of savings and loan associations or mutual
10 savings banks that are insured by the Federal Savings and Loan Insurance Corporation
11 or the Federal Deposit Insurance Corporation;

12 (E) in obligations issued by banks for cooperatives, federal land banks,
13 federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank
14 Board, or a corporation designated in 31 U.S.C. 9101 as a wholly owned federal
15 government corporation; in obligations, participations, or other instruments of or issued
16 by or fully guaranteed as to principal and interest by the Federal National Mortgage
17 Association or the Government National Mortgage Association; in mortgages, obligations,
18 or other securities that [WHICH] are or have been sold by the Federal Home Loan
19 Mortgage Corporation under 12 U.S.C. 1454 or 12 U.S.C. 1455 (Federal Home Loan
20 Mortgage Corporation Act) [SECS. 305 OR 306 OF THE FEDERAL HOME LOAN
21 MORTGAGE CORPORATION ACT]; or in obligations or other instruments or securities
22 of the Student Loan Marketing Association;

23 (F) in participation certificates evidencing beneficial interests in
24 obligations, or in the right to receive interest and principal collections from obligations,
25 that [WHICH] have been subjected by one or more federal agencies to a trust or trusts
26 for which an executive department, agency, or instrumentality of the United States or its
27 head has been named to act as trustee;

28 (G) in shares or deposits of a central credit union in which such
29 investments are authorized by the board of directors of the credit union making the
30 investment;

31 (H) in shares, share certificates, or share deposits of federally insured

1 credit unions;

2 (I) in the shares, stocks, or obligations of another organization providing
3 services that are associated with the routine operations of credit unions, up to one percent
4 of the total paid-in and unimpaired capital and surplus of the credit union with the
5 approval of the commissioner; [AND]

6 (J) in the capital stock of the National Credit Union Central Liquidity
7 Facility; and

8 (K) in the stocks, bonds, and other securities of

9 (i) a corporation licensed under AS 10.13; or

10 (ii) a corporation attempting to become licensed under
11 AS 10.13 if the corporation intends to use the proceeds to fulfill the tasks
12 necessary to become licensed under AS 10.13;

13 * Sec. 9. AS 37.10.085(a) is amended to read:

14 (a) Except as provided in (c) or (d) of this section, neither the state nor a political
15 subdivision of the state may

16 (1) make a subscription to the capital stock of a corporation;

17 (2) lend its credit for the use of a corporation; or

18 (3) borrow money for the use of a corporation.

19 * Sec. 10. AS 37.10.085 is amended by adding a new subsection to read:

20 (d) This section does not apply to

21 (1) the financial assistance program established under AS 37.17.200 - 37.17.390;

22 or

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

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

27 (B) a corporation attempting to become licensed under AS 10.13 if the
28 corporation intends to use the proceeds to fulfill the tasks necessary to become licensed
29 under AS 10.13.

30 * Sec. 11. AS 37.17.010(b) is amended to read:

31 (b) The purposes [PURPOSE] of the foundation are [IS] to

- 1 **(1) promote and enhance through basic and applied research: economic**
2 **development and technological innovation in Alaska; public health; telecommunications; and**
3 **sustained growth and development of Alaskan scientific and engineering capabilities;**
4 **(2) implement the BIDCO assistance program under AS 37.17.200 - 37.17.390.**