

HOUSE BILL REPORT

SHB 2339

As Passed House:

February 7, 2006

Title: An act relating to business development companies and the participation of financial institutions and nondepository lenders in economic development within the state.

Brief Description: Regulating business development companies and the participation of financial institutions and nondepository lenders in economic development within the state.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby, Roach and Chase; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/12/06, 1/18/06 [DPS].

Floor Activity:

Passed House: 2/7/06, 97-0.

Brief Summary of Substitute Bill

- Changes the name of industrial development corporations to business development corporations.
- Changes the requirements for incorporation of a business development corporation.
- Changes the structure of stockholder and corporate governance.
- Expands the corporate powers.
- Provides structures for examination authority, regulatory oversight, confidentiality and fees that are parallel to those used in the regulation of state chartered banks.
- Gives the Director of the Department of Financial Institutions broad rule making authority.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; O'Brien, Santos, Serben, Simpson, Strow and Williams.

Minority Report: Do not pass. Signed by Representatives Tom, Assistant Ranking Minority Member and Newhouse.

Staff: Jon Hedegard (786-7127).

Background:

Chapter 31.24 RCW, addressing industrial development corporations, was adopted in 1963. The stated purpose of a corporation established under the chapter is to promote, stimulate, develop, and advance the business prosperity and economic welfare of Washington and its citizens.

Requirements for incorporation.

A minimum of 15 persons are required to incorporate. A majority of the incorporators must be Washington residents. The Secretary of State must not approve the articles of incorporation unless a combination of at least ten financial institutions and insurers authorized to do business in the state agree to loan money to the corporation.

Powers of the corporation.

Included in the powers of a corporation are the abilities to:

- elect, appoint, and employ officers, agents, and employees;
- make contracts and incur liabilities. However, it can only borrow from members (financial institutions or banks that had agreed to lend money prior to incorporation) and it cannot incur any secondary liability by guaranteeing the debts of another;
- issue bonds, debentures, notes, or other evidence of indebtedness;
- secure the evidence of indebtedness;
- make loans if the prospective borrower has been refused by at least one financial institution;
- purchase, lease, or sell real or personal property;
- acquire the business, rights or assets of another;
- acquire, improve, and dispose of land;
- acquire stock, shares, bonds, notes, or other evidence of indebtedness; and
- other acts necessary or convenient to carry out the express powers in Chapter 31.24 RCW.

Governance by the stockholders and members.

Stockholders and the members (the lender institutions and insurers) share governance responsibilities. Together they elect directors, adopt and repeal bylaws, amend the articles of incorporation, and vote on matters requiring action. When a vote is taken, it requires a majority of the stockholders present and a majority of the members present.

Examination of licensees under Chapter 31.40 RCW.

The Director of the Department of Financial Institutions (Director) must examine licensee under chapter 31.40 RCW at least annually.

Summary of Substitute Bill:

Business development company defined.

A "business development company" is defined as a company created to engage in activities authorized under the act. A business development company is either a:

- "general business development company" which can engage in any activity authorized under the act; or
- "historic business development company" which is organized to stimulate the preservation of historic buildings or historic commercial areas or neighborhoods. These companies may only engage in activities consistent with their charter.

Numerous additional definitions are provided.

Requirements for incorporation.

A minimum of five incorporators is required. A majority of incorporators must be Washington domiciles or residents. Three of the incorporators must be federally insured depository institutions. There is no requirement that at least 10 financial institutions or insurers agree to lend money to the company. Business development companies must be incorporated with the Secretary of State and chartered with the Department of Financial Institutions (DFI).

Among the items that an applicant must include in requesting a charter from the Director are:

- a statement of the purpose of the charter;
- a business plan satisfactory to the Director, including a plan to assess stockholders in the event that is necessary;
- the proposed articles of incorporation;
- the proposed bylaws;
- other information required by the Director;
- a filing fee and application review fee established by the Director; and
- certification to the satisfaction of the Director that a minimum of initial capital has been procured. The minimum amount of capital is determined by the Director who may consider the purpose of the initial capital and the suitability and sufficiency of the capital in relation to the applicant's business plan.

The Director has 90 days after submission of a completed application to approve it and issue a charter or disapprove it. The Director may disapprove an application or specify in writing how the application can be reformed in a way that will be approved. After approval, the director must transmit the articles of incorporation to the Secretary of State for filing.

Fees.

The Director may collect fees from an applicant or a business development company. The fee requirements must be consistent with the requirements regarding banks in Title 30 RCW. The fees may be established for application, application review and examination of business development companies.

Powers of the corporation.

In addition to the powers of an industrial development corporation, a business development company may:

- borrow from any lender;
- make qualified loans (borrowers no longer need to have been turned down by another financial institution) and qualified investments;
- facilitate and arrange qualified participation loans by qualified loan participants; and
- partially fund qualified participation loans.

Governance by the stockholders.

The concept of members is not included in the business development structure. The corporation is governed by stockholders in a more standard fashion. The specifics for quorum, voting, and such processes are set out. There may only be one class of stockholders.

Corporate governance.

The board of directors must meet at least quarterly. Directors and committees may meet by conference call. Directors and officers are liable for gross negligence.

Safety and soundness and dividends.

The Director may adopt rules to limit the amount of a dividend and the time and manner of declaring a dividend. If the Director determines that a company has a policy of declaring dividends that is unsafe and unsound, the Director may issue a cease and desist order.

Lending and investment cap for a sole borrower.

The aggregate limit of qualified loans, qualified investment and funding participation in qualified participation loans by a business development company to a single borrower or business in relation to a business development project may not exceed 25 percent of the combined capital, surplus and undivided profits of a business development company. The Director may approve of an initial or amended business plan that exceeds the cap. The Director may adopt rules that enable a company to exceed the cap.

Insider trading.

A business development company may not make an "insider transaction" unless it has been approved or ratified by its board of directors. Any insider transaction is subject to the examination and enforcement authority of the DFI.

Minimum Standards for Capital, Surplus and Undivided Profits.

A business development company must maintain an amount of minimum capital, surplus and undivided profits that the Director deems safe and sound. The capital-to-asset ratio of a business development company must be no less than 10 percent.

Depositing funds.

A business development company may deposit funds in any institution. A company must not accept deposits or acts as a depository institution.

Examination.

The Director has the same power and authority to examine as is exercised over banks in Title 30 RCW. The Director must examine each business development company at least every 24 months. The Director could examine a company more frequently.

Insolvency and liquidation.

The insolvency and liquidation of a business development company must be done in the same manner as a state chartered commercial bank under Chapter 30.44 RCW.

Supervisory authority.

The Director has the same power and authority over a business development company, in the same manner as over state chartered commercial banks under Title 30 RCW. This includes the ability to exercise supervisory direction, conservatorship, and to issue cease and desist orders.

Mergers of business development companies and conversion.

Two or more business development companies in the same manner as for state chartered commercial banks under Chapter 30.49 RCW subject to the approval of the Director.

Historic business development companies and general business development companies.

A historic business development company must be formed for one of the specified purposes. It is not allowed to engage in broad economic and business promotion. A general business development company may engage in broad economic and business promotion or in the activities of a historic business development company.

A historic business development company can convert to a general business development company upon approval of the Director. A request for conversion must include proposed articles of incorporation, bylaws, and a business plan. Standards for review are set forth.

Conversion of development credit corporation and other corporations under Title 23B RCW to business development company charter.

A development credit corporation chartered under Chapter 31.20 RCW or any other corporation chartered under Title 23B RCW may convert to a business development company. The requirements are generally parallel to establishing a business development corporation.

Confidentiality of examination records and results.

Business development companies receive the same level of confidentiality for examination records and results as exists for state-chartered commercial banks.

Chartering as or converting to a limited liability corporation.

Business development companies are allowed to be organized or convert to limited liability companies to the same extent and subject to the same limitations as at state chartered commercial banks.

Relationship between business development companies, federally guaranteed small business lenders (Chapter 31.40 RCW) and guaranteed agricultural lenders (Chapter 31.35 RCW).

Applicants may submit simultaneous applications for charter/license as a business development company and either a federally guaranteed small business lender (Chapter 31.40 RCW) or guaranteed agricultural lender (Chapter 31.35 RCW), or both. The DFI must treat such simultaneous applications as one application.

If a dual charter/license is granted, the DFI may only perform joint, simultaneous examinations of dual charter/licensees.

The fees for a joint applicant or joint licensee may only be those fees provided for in Chapter 31.24 RCW.

Technical corrections to reconcile different RCW Chapters.

To reconcile Chapter 31.24 RCW with Chapter 31.35 RCW and Chapter 31.40 RCW, certain provisions of Chapter 31.24 supersede any contrary provisions in the other chapters.

Examination of licensees under Chapter 31.40 RCW.

The Director must examine licensee under Chapter 31.40 RCW at least every 24 months. Licensees are federally guaranteed small business lenders.

The Director has broad authority to adopt rules to carry out the purposes of the bill.

Several sections are repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a request bill from the Department of Financial Institutions (DFI). In March of 2005, the DFI began a review of our laws with the goal of reducing the burden of regulation and encouraging economic development. Chapter 31.24 RCW provides an opportunity to do both. The chapter was enacted in 1963 to encourage economic development. Unfortunately, it has not done the job. There is only one known entity that has ever been created under this chapter since 1963. That entity has been dormant for many years. A Spokane company has been trying to qualify under the current framework for several years. Our experience with that company has lead to a detailed review of the laws and we have identified where we can modernize and improve them to make them easier to comply with. We sent a draft of the bill to all possible stakeholders. The support for the revision of this chapter is overwhelming. The bill changes how a corporation is created and governed. The new processes are easier and simpler. The regulatory oversight parallels bank standards with a few exceptions, notably the capitalization standards. An entity created under the chapter is a for-profit organization. It could serve to aid in economic development in rural or urban areas. The financial community supports the bill. The DFI worked with stakeholders across the state throughout the summer. There is considerable interest in the concept,

particularly by institutions located in rural areas. This bill is good for economic development across Washington.

Testimony Against: None.

Persons Testifying: Joe Vincent, Department of Financial Institutions; and Denny Eliason, Washington Bankers Association.

Persons Signed In To Testify But Not Testifying: None.