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SENATE BILL 6168

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State of Washington

59th Legislature

2006 Regular Session

By Senators Fairley, Benton, Keiser, Benson, Prentice, Franklin, Brandland, Berkey and Schmidt; by request of Department of Financial Institutions

Read first time 01/09/2006. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to business development companies and the  
2 participation of financial institutions and nondepository lenders in  
3 economic development within the state; amending RCW 31.24.010,  
4 31.24.020, 31.24.030, 31.24.070, 31.24.080, 31.24.090, 31.24.100,  
5 31.24.110, 31.24.120, 31.24.130, 31.24.140, 31.24.150, 31.24.170,  
6 31.24.190, and 31.40.090; adding new sections to chapter 31.24 RCW;  
7 adding a new section to chapter 31.35 RCW; adding a new section to  
8 chapter 31.40 RCW; and repealing RCW 31.24.040, 31.24.050, 31.24.060,  
9 and 31.24.180.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 31.24 RCW  
12 to read as follows:

13 The legislature finds, declares, and intends that:

14 (1) There exists substantial and growing need in Washington state  
15 to enhance the availability of financial assistance for small business  
16 and to improve the economy of the localities within this state;

17 (2) The department, which is charged with (a) the regulation of  
18 business development corporations, under this chapter, (b) the  
19 regulation of financial institutions and other financial entities as

1 defined in this chapter, and (c) nondepository lenders engaged in  
2 guaranteed small business and agricultural lending, under chapters  
3 31.40 and 31.35 RCW, is among those state agencies critical to meeting  
4 the needs addressed in subsection (1) of this section; and

5 (3) It is necessary to assist the department in meeting the needs  
6 addressed in subsection (1) of this section and to improve its  
7 administration and regulation of this chapter and chapters 31.35 and  
8 31.40 RCW.

9 **Sec. 2.** RCW 31.24.010 and 1963 c 162 s 1 are each amended to read  
10 as follows:

11 ~~((As used in this chapter, the following words and phrases, unless  
12 differently defined or described, shall have the meanings and  
13 references as follows:~~

14 ~~(1) Corporation means a Washington industrial development  
15 corporation created under this chapter.~~

16 ~~(2) Financial institution means any banking corporation or trust  
17 company, national banking association, savings and loan association,  
18 insurance company or related corporation, partnership, foundation, or  
19 other institution engaged primarily in lending or investing funds.~~

20 ~~(3) Member means any financial institution authorized to do  
21 business within this state which shall undertake to lend money to a  
22 corporation created under this chapter, upon its call, and in  
23 accordance with the provisions of this chapter.~~

24 ~~(4) Board of directors means the board of directors of the  
25 corporation created under this chapter.~~

26 ~~(5) Loan limit means for any member, the maximum amount permitted  
27 to be outstanding at one time on loans made by such member to the  
28 corporation, as determined under the provisions of this chapter.))~~

29 The definitions in this section apply throughout this chapter  
30 unless the context clearly requires otherwise.

31 (1) "Applicant" means a person who files with the director an  
32 application for organization as, or conversion to doing business as, a  
33 business development company under this chapter, or who is making  
34 application for a material change that requires approval of the  
35 director under this chapter.

36 (2) "Assessable stock" means any stock or class of stock, or equity

1 interest or class of equity interest, in a business development company  
2 that:

3 (a) Has been authorized pursuant to the articles of incorporation  
4 of the business development company as approved by the department;

5 (b) Has been created pursuant to an authorized plan of assessment;

6 (c) Has been agreed to by a stockholder pursuant to the  
7 stockholder's subscription or similar agreement; and

8 (d) Has been disclosed as being subject to assessment on the face  
9 of the stock certificates or certificates of equity interest.

10 (3) "Board of directors" means the board of directors of a business  
11 development company created under this chapter.

12 (4) "Borrower" means a person, including a controlling person of  
13 such person, who obtains a qualified loan from a business development  
14 company.

15 (5) "Business" means a person, including a controlling person of  
16 such person, who obtains a qualified loan or qualified investment, or  
17 both, from a business development company.

18 (6) "Business development company" means a company created for the  
19 purpose of engaging in any activity authorized by this chapter. A  
20 "business development company" created under this chapter is either:

21 (a) A "general business development company," which is a business  
22 development company that may engage in any activity authorized by this  
23 chapter; or

24 (b) A "historic business development company," which is a business  
25 development company organized to encourage and stimulate the  
26 preservation of historic buildings or historic commercial areas or  
27 neighborhoods, and may only engage in activities consistent with the  
28 purposes of the limited charter as set forth in RCW 31.24.190.

29 (7) "Business development project" means a project controlled by a  
30 business, in which a business development company may make a qualified  
31 investment, qualified loan, or both.

32 (8) "Control," "controlled," or "controls," in relation to a  
33 borrower or business, has the same meaning as "control of a bank" has  
34 under Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed  
35 on the effective date of this section, or such subsequent date as may  
36 be provided by the department by rule, consistent with the purposes of  
37 this chapter.

1       (9) "Controlling person" means a person, including an executive  
2 officer or director as defined in Federal Reserve Regulation O, 12  
3 C.F.R. Sec. 215.2, as it existed on the effective date of this section,  
4 or such subsequent date as may be provided by the department by rule,  
5 consistent with the purposes of this chapter, who controls a borrower  
6 or business.

7       (10) "Department" means the Washington state department of  
8 financial institutions, or its successor.

9       (11) "Director" means the director of the department of financial  
10 institutions, unless used in the context of a member of the board of  
11 directors of a business development company created under this chapter.

12       (12) "Financial institution" means any federally chartered or  
13 state-chartered bank or trust company, savings bank or savings and loan  
14 association, or credit union.

15       (13) "Insider transaction" means a transaction between a business  
16 development company and a person who is (a) an affiliate of a business  
17 development company or (b) an executive officer, director, or principal  
18 shareholder, or a related interest of, such a person. As used in this  
19 subsection, "affiliate," "executive officer," "director," "principal  
20 shareholder," and "related interest" have the same meaning, in relation  
21 to a business development company, as such terms have in relation to a  
22 member bank pursuant to Federal Reserve Regulation O, 12 C.F.R. Sec.  
23 215.2, as it existed on the effective date of this section, or such  
24 subsequent date as may be provided by the department by rule,  
25 consistent with the purposes of this chapter.

26       (14) "Other financial entity" means an insurance company authorized  
27 to do business in Washington state, or any other company, limited  
28 liability company, partnership, limited partnership, or foundation,  
29 other than a financial institution, engaged as a primary activity in  
30 the business of lending or investing funds, and which holds a charter  
31 or license from an applicable federal or state regulatory authority to  
32 engage in such activity.

33       (15) "Person" means a natural person, partnership, limited  
34 partnership, limited liability company, corporation, association,  
35 foundation, or other legal or commercial entity.

36       (16) "Plan of assessment" means a plan for assessment of  
37 stockholders, or a class of stockholders, which is part of the business  
38 plan of a business development company that has been approved by the

1 department, and which provides for the periodic, equal assessment of  
2 all stockholders, or an affected class of stockholders, according to  
3 their interest in the business development company, as provided for in  
4 section 7 of this act.

5 (17) "Qualified investment" means any equity investment, or debt  
6 investment other than a qualified loan, authorized by this chapter to  
7 be made by a business development company to a business:

8 (a) The principal intent of which:

9 (i) In the case of a general business development company, is to  
10 promote or enhance small business or improvement of the economy of one  
11 or more localities within this state, consistent with the general  
12 intent and purpose of a business development company, as set forth in  
13 section 1 of this act, and with its approved business plan; or

14 (ii) In the case of a historic business development company, is to  
15 promote and/or enhance the special purpose and intent of a historic  
16 business development company as set forth in RCW 31.24.190, consistent  
17 with its approved business plan; and

18 (b) Which investment, at the time of its origination, has a  
19 reasonable likelihood of being used for such purpose.

20 (18) "Qualified loan" means any loan authorized by this chapter to  
21 be made by a business development company to a borrower:

22 (a) The principal intent of which:

23 (i) In the case of a general business development company, is to  
24 promote or enhance small business or improvement of the economy of one  
25 or more localities within this state, consistent with the general  
26 intent and purpose of this chapter, and with its approved business  
27 plan; or

28 (ii) In the case of a historic business development company, is to  
29 promote or enhance the special purpose and intent of a historic  
30 business development company as set forth in RCW 31.24.190, consistent  
31 with its approved business plan; and

32 (b) Which loan, at the time of its origination, has a reasonable  
33 likelihood of being used for such purpose.

34 (19) "Qualified loan participant" means a financial institution or  
35 other financial entity, as defined in this section, who participates as  
36 a funder of a qualified participation loan.

37 (20) "Qualified participation loan" means a loan to a borrower or  
38 business, in relation to a business development project, made, in whole

1 or in part, by one or more financial institutions or other financial  
2 entities, which has been facilitated, arranged, or partially funded by  
3 a business development company.

4 (21) "Stock" means, in relation to a business development company,  
5 any stock or equity interest, of whatever class, in a business  
6 development company.

7 (22) "Stockholder" means, in relation to a stockholder of a  
8 business development company, any person authorized either by Title 23B  
9 RCW to be a shareholder of a corporation or by chapter 25.15 RCW and  
10 this chapter to hold an equity interest in a limited liability company,  
11 and may include, without limitation, a financial institution or other  
12 financial entity.

13 **Sec. 3.** RCW 31.24.020 and 1974 ex.s. c 16 s 1 are each amended to  
14 read as follows:

15 ~~((Fifteen or more persons, a majority of whom shall be residents of~~  
16 ~~this state, who may desire to create an industrial development~~  
17 ~~corporation under the provisions of this chapter, for the purpose of~~  
18 ~~promoting, developing and advancing the prosperity and economic welfare~~  
19 ~~of the state and, to that end, to exercise the powers and privileges~~  
20 ~~hereinafter provided, may be incorporated by filing in the office of~~  
21 ~~the secretary of state, as hereinafter provided, articles of~~  
22 ~~incorporation. The articles of incorporation shall contain:~~

23 ~~(1) The name of the corporation, which shall include the words~~  
24 ~~"Development Corporation of Washington."~~

25 ~~(2) The location of the principal office of the corporation, but~~  
26 ~~such corporation may have offices in such other places within the state~~  
27 ~~as may be fixed by the board of directors.~~

28 ~~(3) The purposes for which the corporation is founded, which shall~~  
29 ~~be to promote, stimulate, develop and advance the business prosperity~~  
30 ~~and economic welfare of Washington and its citizens; to encourage and~~  
31 ~~assist through loans, investments or other business transactions in the~~  
32 ~~location of new business and industry in this state and to rehabilitate~~  
33 ~~and assist existing business and industry; to stimulate and assist in~~  
34 ~~the expansion of all kinds of business activity which will tend to~~  
35 ~~promote the business development and maintain the economic stability of~~  
36 ~~this state, provide maximum opportunities for employment, encourage~~  
37 ~~thrift, and improve the standard of living of citizens of this state;~~

1 similarly, to cooperate and act in conjunction with other  
2 organizations, public or private, in the promotion and advancement of  
3 industrial, commercial, agricultural and recreational developments in  
4 this state; and to provide financing for the promotion, development,  
5 and conduct of all kinds of business activity in this state.

6 (4) The names and post office addresses of the members of the first  
7 board of directors, who, unless otherwise provided by the articles of  
8 incorporation or the bylaws, shall hold office for the first year of  
9 existence of the corporation or until their successors are elected and  
10 have qualified.

11 (5) Any provision which the incorporators may choose to insert for  
12 the regulation of the business and for the conduct of the affairs of  
13 the corporation and any provision creating, dividing, limiting and  
14 regulating the powers of the corporation, the directors, stockholders  
15 or any class of the stockholders, including, but not limited to a list  
16 of the officers, and provisions governing the issuance of stock  
17 certificates to replace lost or destroyed certificates.

18 (6) The amount of authorized capital stock and the number of shares  
19 into which it is divided, the par value of each share and the amount of  
20 capital with which it will commence business and, if there is more than  
21 one class of stock, a description of the different classes; the names  
22 and post office addresses of the subscribers of stock and the number of  
23 shares subscribed by each. The aggregate of the subscription shall be  
24 the minimum amount of capital with which the corporation shall commence  
25 business which shall not be less than fifty thousand dollars. The  
26 articles of incorporation may also contain any provision consistent  
27 with the laws of this state for the regulation of the affairs of the  
28 corporation.

29 (7) The articles of incorporation shall be in writing, subscribed  
30 by not less than five natural persons competent to contract and  
31 acknowledged by each of the subscribers before an officer authorized to  
32 take acknowledgments and filed in the office of the secretary of state  
33 for approval. A duplicate copy so subscribed and acknowledged may also  
34 be filed.

35 (8) The articles of incorporation shall recite that the corporation  
36 is organized under the provisions of this chapter.

37 The secretary of state shall not approve articles of incorporation  
38 for a corporation organized under this chapter until a total of at

1 ~~least ten national banks, state banks, savings banks, industrial~~  
2 ~~savings banks, federal savings and loan associations, domestic building~~  
3 ~~and loan associations, or insurance companies authorized to do business~~  
4 ~~within this state, or any combination thereof, have agreed in writing~~  
5 ~~to become members of said corporation; and said written agreement shall~~  
6 ~~be filed with the secretary of state with the articles of incorporation~~  
7 ~~and the filing of same shall be a condition precedent to the approval~~  
8 ~~of the articles of incorporation by the secretary of state. Whenever~~  
9 ~~the articles of incorporation shall have been filed in the office of~~  
10 ~~the secretary of state and approved by him and all taxes, fees and~~  
11 ~~charges, have been paid, as required by law, the subscribers, their~~  
12 ~~successors and assigns shall constitute a corporation, and said~~  
13 ~~corporation shall then be authorized to commence business, and stock~~  
14 ~~thereof to the extent herein or hereafter duly authorized may from time~~  
15 ~~to time be issued.))~~

16 (1) Five or more persons, a majority of whom are residents of this  
17 state and three of which are federally insured depository institutions,  
18 who desire to charter a business development company under this  
19 chapter, may incorporate as a business development company by filing  
20 with the director an application for a business development company  
21 charter, which application contains the following:

22 (a) A cover letter requesting a charter as a business development  
23 company under authority of this chapter, and specifying the purpose of  
24 the requested charter;

25 (b) A business plan satisfactory to the director, including a plan  
26 of assessment in the event that applicant seeks to assess stockholders,  
27 or a class of stockholders, as provided for in section 7 of this act;

28 (c) Proposed articles of incorporation, in form and substance  
29 consistent with the requirements of subsection (4) of this section;

30 (d) Proposed bylaws, in form and substance consistent with the  
31 requirements of this chapter;

32 (e) A filing fee and application review fee as established by the  
33 director consistent with section 5 of this act; and

34 (f) All other relevant information as is necessary to satisfy the  
35 director that such proposed business development company has a  
36 reasonable likelihood of (i) fulfilling the purposes of this chapter  
37 and (ii) operating in a safe and sound manner.



1       (2) In addition to all other requirements of an application, the  
2 director shall not grant final approval of an application for  
3 organization as a business development company under this chapter, and  
4 a business development company shall not commence business, until the  
5 applicant certifies to the satisfaction of the director, that a minimum  
6 amount of initial capital has been subscribed for, which minimum amount  
7 of capital is subject to the determination of the director, who may  
8 consider (a) the intended purpose of initial capital and (b) the  
9 suitability and sufficiency of the amount of initial capital in  
10 relation to the applicant's proposed business plan.

11       (3) The articles of incorporation must be in writing, signed by all  
12 the incorporators and their representatives and acknowledged before an  
13 officer authorized to take acknowledgments.

14       (4) The articles of incorporation shall contain:

15       (a) The name of the business development company, which must  
16 include the word "Development";

17       (b) A recital that the business development company is organized  
18 under this chapter;

19       (c) The location of the principal office of the business  
20 development company, but the company may have offices in other places  
21 within the state as may be fixed by the board of directors;

22       (d) The purposes for which the business development company is  
23 founded, which, except for a historic business development company as  
24 authorized by RCW 31.24.190, are:

25       (i) To promote, stimulate, develop, and advance the business  
26 prosperity and economic welfare of Washington and its citizens;

27       (ii) To encourage and assist through financing, investments, or  
28 other business transactions, in the location of new business and  
29 industry in this state and to rehabilitate and assist existing business  
30 and industry;

31       (iii) To stimulate and assist in the expansion of business activity  
32 which will tend to promote the business development and maintain the  
33 economic stability of this state, provide maximum opportunities for  
34 employment, encourage thrift, and improve the standard of living of  
35 citizens of this state;

36       (iv) To cooperate and act in conjunction with other organizations,  
37 public or private, in the promotion and advancement of industrial,

1 commercial, agricultural, and/or recreational developments in this  
2 state; and

3 (v) To provide financing for the promotion, development, and  
4 conduct of business activity in this state;

5 (e) The names and mailing addresses of the members of the first  
6 board of directors, who, unless otherwise provided by the articles of  
7 incorporation or the bylaws, shall hold office for the first year of  
8 existence of the business development company or until their successors  
9 are elected and have qualified;

10 (f) Any provision which the incorporators may choose to insert for  
11 the regulation of the business and for the conduct of the affairs of  
12 the business development company;

13 (g) Any provision creating, dividing, limiting, and regulating the  
14 powers of the business development company, the directors, stockholders  
15 or any class of the stockholders, including a designation of the  
16 officers, and provisions governing the issuance of stock certificates  
17 to replace lost or destroyed certificates;

18 (h) The amount of authorized capital stock and the number of shares  
19 into which it is divided, the par value of each share, and the amount  
20 of capital with which it will commence business;

21 (i) A statement indicating whether capital stock or any class of  
22 capital stock shall be assessable stock as part of a plan of  
23 assessment;

24 (j) The names and mailing addresses of the subscribers of stock and  
25 the number of shares subscribed by each;

26 (k) Any other provision consistent with the laws of this state for  
27 the regulation of the affairs of the business development company, and  
28 Title 23B RCW; and

29 (l) The signatures of each of the incorporators, who must be the  
30 same persons making application for a business development company  
31 charter as identified in subsection (1) of this section.

32 (5) The director has ninety days from submission of a completed  
33 application to approve it and issue a certificate of authority. If the  
34 director finds that the application is insufficient, the director may  
35 either disapprove the application or respond by specifying in writing  
36 what changes and modifications, consistent with this chapter, will be  
37 necessary to approve such application.

1        NEW SECTION. Sec. 4. A new section is added to chapter 31.24 RCW  
2 to read as follows:

3        (1) The director shall present the articles of incorporation, after  
4 approval by the director, to the secretary of state for filing.

5        (2) An applicant is not authorized to commence and maintain  
6 business as a business development company under this chapter until  
7 having received a certificate of authority from the department to  
8 conduct business as a business development company.

9        NEW SECTION. Sec. 5. A new section is added to chapter 31.24 RCW  
10 to read as follows:

11        The director may, consistent with the requirements for banks under  
12 Title 30 RCW, collect from an applicant or business development  
13 company, as applicable, application fees, application review fees,  
14 periodic examination fees, and similar fees and charges, as may be  
15 reasonable for the safe and sound regulation and promotion of business  
16 development companies under this chapter.

17        **Sec. 6.** RCW 31.24.030 and 1991 c 72 s 49 are each amended to read  
18 as follows:

19        In furtherance of its purposes and in addition to the powers now or  
20 hereafter conferred on business corporations by (~~the provisions of~~)  
21 Title 23B RCW(~~, the corporation shall,~~) and upon limited liability  
22 companies by chapter 25.15 RCW, as applicable, a business development  
23 company has, subject to the restrictions and limitations (~~herein~~  
24 ~~contained, have~~) in this section, the following powers:

25        (1) To assess stockholders, or a class of stockholders, of the  
26 business development company, if authorized by the articles of  
27 incorporation and approved by the department pursuant to a plan of  
28 assessment as provided for in section 7 of this act;

29        (2) To make qualified loans to borrowers in relation to business  
30 development projects;

31        (3) To make qualified investments in businesses in relation to  
32 business development projects;

33        (4) To facilitate and arrange qualified participation loans by  
34 qualified loan participants to borrowers in relation to business  
35 development projects;

1       (5) To participate in the partial funding of qualified  
2 participation loans;  
3       (6) To elect, appoint, and employ officers, agents, and employees;  
4       (7) To make contracts and incur liabilities for any of the purposes  
5 of the ((corporation:—PROVIDED, That the corporation)) business  
6 development company. However, a business development company shall not  
7 incur any secondary liability by way of guaranty or endorsement of the  
8 obligations of any person, firm, ((corporation, joint stock)) company,  
9 association, or trust, or in any other manner((-));  
10       ((+2)) (8) To the extent permitted by other applicable law, to  
11 borrow money from ((its members and)) the federal small business  
12 administration and any other similar federal or state agency, for any  
13 of the purposes of ((the corporation)) a business development company;  
14       (9) To borrow money from a financial institution or other financial  
15 entity;  
16       (10) To issue ((therefor its)) bonds, debentures, notes, or other  
17 evidence of indebtedness, whether secured or unsecured, and to secure  
18 the same by mortgage, pledge, deed of trust, or other lien on its  
19 property, franchises, rights, and privileges of every kind and nature  
20 or any part ((thereof)) or interest therein, without securing  
21 stockholder ((or member)) approval((:—PROVIDED, That no loan to the  
22 corporation shall be secured in any manner unless all outstanding loans  
23 to the corporation shall be secured equally and ratably in proportion  
24 to the unpaid balance of such loans and in the same manner.  
25       (3) To make loans to any person, firm, corporation, joint stock  
26 company, association or trust, and to establish and regulate the terms  
27 and conditions with respect to any such loans and the charges for  
28 interest and service connected therewith:—PROVIDED, That the  
29 corporation shall not approve any application for a loan unless and  
30 until the person applying for said loan shall show that he has applied  
31 for the loan through ordinary banking channels and that the loan has  
32 been refused by at least one bank or other financial institution.));  
33       ((+4)) (11) To purchase, receive, hold, lease, or otherwise  
34 acquire, and to sell, convey, transfer, lease, or otherwise dispose of  
35 real and personal property, together with such rights and privileges as  
36 may be incidental and appurtenant thereto and the use thereof,  
37 including, but not restricted to, any real or personal property

1 acquired by the (~~(corporation from time to time)~~) business development  
2 company in the satisfaction of debts or enforcement of  
3 obligations(~~(-)~~);

4 (~~(+5)~~) (12) To acquire the good will, business, rights, real and  
5 personal property, and other assets, or any part thereof, or interest  
6 therein, of any persons, firms, corporations, (~~(joint stock companies)~~)  
7 limited liability companies, partnerships, limited partnerships,  
8 associations, or trusts, and to assume, undertake, or pay the  
9 obligations, debts, and liabilities of any such person, firm,  
10 corporation, (~~(joint stock company)~~) limited liability company,  
11 partnership, limited partnership, association, or trust;

12 (13) To acquire improved or unimproved real estate for the purpose  
13 of constructing industrial plants or other business establishments  
14 thereon or for the purpose of disposing of such real estate to others  
15 for the construction of industrial plants or other business  
16 establishments; and to acquire, construct or reconstruct, alter,  
17 repair, maintain, operate, sell, convey, transfer, lease, or otherwise  
18 dispose of industrial plants or business establishments(~~(-)~~);

19 (~~(+6)~~) (14) To acquire, subscribe for, own, hold, sell, assign,  
20 transfer, mortgage, pledge, or otherwise dispose of the stock, shares,  
21 bonds, debentures, notes, or other securities and evidences of interest  
22 in, or indebtedness of, any person, firm, (~~(corporation, joint stock~~  
23 ~~company)~~) limited liability company, partnership, limited partnership,  
24 association, or trust, and while the owner or holder thereof to  
25 exercise all the rights, powers, and privileges of ownership, including  
26 the right to vote thereon(~~(-)~~);

27 (~~(+7)~~) (15) To mortgage, pledge, or otherwise encumber any  
28 property, right or things of value, acquired pursuant to the powers  
29 contained in subsections (~~(+4), (5), or (6)~~) (11), (12), and (14) of  
30 this section, as security for the payment of any part of the purchase  
31 price thereof(~~(-)~~);

32 (~~(+8)~~) (16) To cooperate with and avail itself of the facilities  
33 and assistance programs of the United States department of commerce,  
34 the United States department of the treasury, the United States  
35 department of housing and urban development, the department of  
36 community, trade, and economic development, and any other similar state  
37 or federal governmental agencies; and to cooperate with and assist, and  
38 otherwise encourage organizations in the various communities of the

1 state in the promotion, assistance, and development of the business  
2 prosperity and economic welfare of such communities or of this state or  
3 of any part thereof(~~(-)~~); and

4 ~~((9))~~ (17) To do all acts and things necessary or convenient to  
5 carry out the powers expressly granted in this chapter.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 31.24 RCW  
7 to read as follows:

8 (1) As part of a business plan approved by the department, an  
9 applicant or business development company may seek to maintain capital  
10 for purposes of making qualified investments and qualified loans by  
11 periodically assessing its stockholders, or a class of stockholders,  
12 according to a plan of assessment and as agreed upon by affected  
13 stockholders by subscription or similar agreement.

14 (2) A plan of assessment may provide for:

15 (a) Stockholders, or a class of stockholders, making, when called  
16 upon, additional paid-in capital in exchange for additional equity;  
17 and/or

18 (b) Stockholders, or a class of stockholders, making, when called  
19 upon, loans or other debt financing to the business development company  
20 in exchange for an agreement of repayment.

21 (3) A plan of assessment shall provide for equal treatment by the  
22 board of directors of all stockholders, or members of a class of  
23 stockholders, subject to assessment.

24 (4) In the case of the approval of a plan of assessment, or the  
25 examination of the administration of an ongoing plan of assessment, in  
26 which assessable stock is held by a financial institution that is also  
27 regulated by the department, the department may condition its approval  
28 of the implementation or continued administration of a plan of  
29 assessment as to the affected financial institution on whether the  
30 safety and soundness of such financial institution is or may become  
31 unimpaired, or on whether an assessment of such financial institution  
32 has not or will not result, in a material adverse affect on the  
33 classification of such financial institution, or its lending or  
34 investment portfolio. The authority of the department pursuant to this  
35 subsection shall be in addition to all other authority of the  
36 department under this chapter or any other applicable law, and  
37 notwithstanding any other law to the contrary.

1       **Sec. 8.** RCW 31.24.070 and 1963 c 162 s 7 are each amended to read  
2 as follows:

3       (1) The stockholders (~~and the members~~) of the (~~corporation~~  
4 ~~shall~~) business development company have the following powers (~~of the~~  
5 ~~corporation~~):

6       ~~((1))~~ (a) To determine the number of and elect directors as  
7 provided in RCW 31.24.090;

8       ~~((2))~~ (b) To make, amend, and repeal bylaws;

9       ~~((3))~~ (c) To amend (~~this charter~~) the articles of incorporation  
10 as provided in RCW 31.24.080;

11       ~~((4))~~ (d) To dissolve the (~~corporation~~) company as provided in  
12 RCW 31.24.150;

13       ~~((5))~~ (e) To do all things necessary or desirable to secure aid,  
14 assistance, loans, and other financing from any financial institutions,  
15 and from any agency established under (~~the small business investment~~  
16 ~~act of 1958, public law 85-699, 85th congress, or other similar~~)  
17 federal laws (~~now or hereafter enacted~~);

18       ~~((6))~~ (f) To exercise such other (~~of the~~) powers (~~of the~~  
19 ~~corporation~~) consistent with this chapter as may be conferred on the  
20 stockholders (~~and the members~~) by the bylaws.

21       (2) As to all matters requiring action by the stockholders (~~and~~  
22 ~~the members~~) of the (~~corporation, said~~) business development  
23 company, the stockholders (~~and said members~~) shall vote (~~separately~~  
24 ~~thereon by classes~~), and, except as otherwise (~~herein~~) provided,  
25 such matters shall require the affirmative vote of a majority of the  
26 votes to which the stockholders present or represented at the meeting  
27 shall be entitled (~~and the affirmative vote of a majority of the votes~~  
28 ~~to which the members present or represented at the meeting shall be~~  
29 ~~entitled~~).

30       (3) Each stockholder shall have one vote, in person or by proxy,  
31 for each share of capital stock held (~~by him, and each member shall~~  
32 ~~have one vote, in person or by proxy, except that any member having a~~  
33 ~~loan limit of more than one thousand dollars shall have one additional~~  
34 ~~vote, in person or by proxy, for each additional one thousand dollars~~  
35 ~~which such member is authorized to have outstanding on loans to the~~  
36 ~~corporation at any one time as determined under subsection (3)(b) of~~  
37 ~~RCW 31.24.050~~).

1       (4) The capital stock of stockholders of a business development  
2 company is nonassessable, unless authorized by the department pursuant  
3 to a plan of assessment which has been approved by the director as  
4 provided for in section 7 of this act.

5       (5) Except as permitted by a plan of assessment providing for a  
6 class of assessable stock pursuant to section 7 of this act or as may  
7 otherwise be established by rule, all stock is a single class of voting  
8 common stock.

9       (6) The director may, subject to examination authority, determine  
10 that a policy of declaring dividends for stockholders by a particular  
11 business development company constitutes an unsafe and unsound practice  
12 as to such business development company. If the practice is determined  
13 to be unsafe and unsound, the director may instruct such a business  
14 development company to cease and desist the declaration and grant of  
15 such dividends.

16       (7) The department may, at the option of the director, adopt rules,  
17 consistent with principles of safety and soundness, that, while not  
18 prohibiting dividends to stockholders in general, may limit the amount  
19 of such dividends and the time and manner of declaring them.

20       NEW SECTION. Sec. 9. A new section is added to chapter 31.24 RCW  
21 to read as follows:

22       Unless part of an initial or amended business plan approved by the  
23 director, or as may otherwise be provided by rule adopted pursuant to  
24 RCW 31.24.120(3), the aggregate limit of qualified loans, qualified  
25 investment, and partial funding of qualified participation loans by a  
26 business development company to a single borrower or business, in  
27 relation to a business development project, shall not exceed  
28 twenty-five percent of the combined capital, surplus, and undivided  
29 profits of the business development company.

30       NEW SECTION. Sec. 10. A new section is added to chapter 31.24 RCW  
31 to read as follows:

32       (1) A business development company may not be a party to, nor  
33 engage in, an insider transaction, unless such an insider transaction  
34 is approved or ratified by its board of directors, exclusive of the  
35 vote of any interested director.



1 (2) Any insider transaction is subject to the examination and  
2 enforcement authority of the department under this chapter.

3 **Sec. 11.** RCW 31.24.080 and 1994 c 92 s 235 are each amended to  
4 read as follows:

5 ~~((The articles of incorporation may be amended by the votes of the  
6 stockholders and the members of the corporation, voting separately by  
7 classes, and such amendments shall require approval by the affirmative  
8 vote of two thirds of the votes to which the stockholders shall be  
9 entitled and two thirds of the votes to which the members shall be  
10 entitled: PROVIDED, That no amendment of the articles of incorporation  
11 which is inconsistent with the general purposes expressed herein or  
12 which authorizes any additional class of capital stock to be issued, or  
13 which eliminates or curtails the right of the director to examine the  
14 corporation or the obligation of the corporation to make reports as  
15 provided in RCW 31.24.120, shall be made: PROVIDED, FURTHER, That no  
16 amendment of the articles of incorporation which increases the  
17 obligation of a member to make loans to the corporation, or makes any  
18 charge in the principal amount, interest rate, maturity date, or in the  
19 security or credit position of an outstanding loan of a member to the  
20 corporation, or affects a member's right to withdraw from membership as  
21 provided herein, or affects a member's voting rights as provided  
22 herein, shall be made without the consent of each membership affected  
23 by such amendment.~~

24 ~~Within thirty days after any meeting at which an amendment of the  
25 articles of incorporation has been adopted, articles of amendment  
26 signed and sworn to by the president, treasurer, and a majority of the  
27 directors, setting forth such amendment and due adoption thereof, shall  
28 be submitted to the secretary of state, who shall examine them and if  
29 he finds that they conform to the requirements of this chapter, shall  
30 so certify and endorse his or her approval thereon. Thereupon, the  
31 articles of amendment shall be filed in the office of the secretary of  
32 state and no such amendment shall take effect until such articles of  
33 amendment shall have been filed as aforesaid.))~~

34 (1) The articles of incorporation of a business development company  
35 may be amended by the affirmative vote of two-thirds of the votes to  
36 which the stockholders are entitled, subject to the written approval of  
37 the director.

1       (2) Within thirty days after an amendment of the articles of  
2 incorporation has been adopted and approved by the director, the  
3 articles of amendment shall be filed in the office of the secretary of  
4 state by the director. An amendment shall not take effect until it has  
5 been so filed.

6       **Sec. 12.** RCW 31.24.090 and 1974 ex.s. c 16 s 3 are each amended to  
7 read as follows:

8       (1) The business and affairs of ((the corporation)) a business  
9 development company shall be managed and conducted by a board of  
10 directors, a president, ((a vice president,)) a secretary, a treasurer,  
11 and such other officers and such agents as the ((corporation)) company  
12 by its bylaws shall authorize. A single authorized individual may  
13 jointly hold the offices of secretary and treasurer. The president and  
14 the treasurer may not be the same person.

15       (2) The board of directors shall consist of such number, not less  
16 than ((eleven)) five nor more than ((twenty-one)) nine, as shall be  
17 determined in the first instance by the incorporators and thereafter  
18 annually by ((the members and)) the stockholders of the ((corporation))  
19 business development company. The board of directors:

20       (a) May exercise all the powers of the ((corporation)) business  
21 development company, except ((such as are)) those conferred upon the  
22 stockholders by law or by the bylaws of the ((corporation upon the  
23 stockholders or members and)) business development company; and

24       (b) Shall choose and appoint all the agents and officers of the  
25 ((corporation)) business development company and fill all vacancies  
26 except vacancies in the office of director which shall be filled as  
27 ((hereinafter)) provided in subsections (3) and (4) of this section.

28       (3) The board of directors shall be elected in the first instance  
29 by the incorporators and thereafter at the annual meeting, the day and  
30 month of which shall be established by the bylaws ((of the  
31 corporations)), or, if no annual meeting shall be held in the year of  
32 incorporation, then within ninety days after the approval of the  
33 articles of incorporation at a special meeting as ((hereinafter))  
34 provided in subsection (4) of this section.

35       (4) At each annual meeting, or at each special meeting held as  
36 provided in subsection (3) of this section, the ((members))  
37 stockholders of ((the corporation)) a business development company

1 shall elect (~~two-thirds~~) all of the board of directors (~~and the~~  
2 ~~stockholders shall elect the remaining directors~~). The directors  
3 shall hold office until the next annual meeting of the (~~corporation~~)  
4 business development company, or special meeting (~~held in lieu of the~~  
5 ~~annual meeting~~). The authority of the directors commences immediately  
6 after the election and continues until their successors are elected and  
7 qualified, unless sooner removed in accordance with the provisions of  
8 the bylaws. Any vacancy in the office of a director (~~elected by the~~  
9 ~~members~~) shall be filled by the remaining directors (~~elected by the~~  
10 ~~members, and any vacancy in the office of a director elected by the~~  
11 ~~stockholders shall be filled by the directors elected by the~~  
12 ~~stockholders~~) at a regular meeting or special meeting called for that  
13 purpose. The director appointed to fill such vacancy shall serve until  
14 the next annual meeting, resignation, or removal according to law.

15 (5) Directors and officers shall not be responsible for losses  
16 unless the same shall have been occasioned by the (~~wilful~~) gross  
17 negligence or willful misconduct of such directors and officers.

18 (6) The board of directors shall conduct regular meetings at least  
19 every quarter and may hold special meetings as called for pursuant to  
20 the bylaws.

21 (7) Unless otherwise restricted by the articles of incorporation or  
22 bylaws, members of the board of directors of a business development  
23 company or any committee designated by the board of directors may  
24 participate in a meeting of such board or committee by means of a  
25 conference telephone or similar communications equipment, in which all  
26 persons participating in the meeting can hear each other at the same  
27 time. Participation by such means shall constitute presence, in  
28 person, at a meeting.

29 **Sec. 13.** RCW 31.24.100 and 1963 c 162 s 10 are each amended to  
30 read as follows:

31 (~~Each year the corporation shall set apart as earned surplus not~~  
32 ~~less than ten percent of its net earnings for the preceding fiscal year~~  
33 ~~until such surplus shall be equal in value to one half of the amount~~  
34 ~~paid in on the capital stock then outstanding. Whenever the amount of~~  
35 ~~surplus established herein shall become impaired, it shall be built up~~  
36 ~~again to the required amount in the manner provided for its original~~  
37 ~~accumulation. Net earnings and surplus shall be determined by the~~

1 ~~board of directors, after providing for such reserves as said directors~~  
2 ~~deem desirable, and the determination of the directors made in good~~  
3 ~~faith shall be conclusive on all persons.))~~

4 (1) A business development company shall maintain an amount of  
5 minimum capital, surplus, and undivided profits that, based upon the  
6 determination of the director, shall be deemed safe and sound for each  
7 business development company. However, the minimum ratio of paid-in  
8 capital to total assets, inclusive of all qualified loans and qualified  
9 investments, shall be and remain no less than eight percent.

10 (2) Subject to subsection (1) of this section, minimum capital,  
11 surplus, undivided profits, and net earnings shall be determined by the  
12 board of directors, subject to the exercise of prudent business  
13 judgment.

14 **Sec. 14.** RCW 31.24.110 and 1963 c 162 s 11 are each amended to  
15 read as follows:

16 ~~((The corporation shall not deposit any of its funds in any banking~~  
17 ~~institution unless such institution has been designated as a depository~~  
18 ~~by a vote of a majority of the directors present at an authorized~~  
19 ~~meeting of the board of directors, exclusive of any director who is an~~  
20 ~~officer or director of the depository so designated. The corporation))~~  
21 A business development company shall not receive money on deposit.

22 **Sec. 15.** RCW 31.24.120 and 1994 c 92 s 236 are each amended to  
23 read as follows:

24 ~~((The corporation shall be examined at least once annually by the~~  
25 ~~director and shall make reports of its condition not less than annually~~  
26 ~~to the director and more frequently upon call of the director, who in~~  
27 ~~turn shall make copies of such reports available to the state insurance~~  
28 ~~commissioner and the governor; and the corporation shall also furnish~~  
29 ~~such other information as may from time to time be required by the~~  
30 ~~director and secretary of state. The corporation shall pay the actual~~  
31 ~~cost of the examinations. The director shall exercise the same power~~  
32 ~~and authority over corporations organized under this chapter as is now~~  
33 ~~exercised over banks and trust companies by the provisions of the Title~~  
34 ~~30 RCW, where the provisions of Title 30 RCW are not in conflict with~~  
35 ~~this chapter.))~~

1 (1) The director shall exercise the same power and authority over  
2 business development companies organized under this chapter as  
3 exercised over banks and trust companies under Title 30 RCW, to the  
4 extent Title 30 RCW does not conflict with this chapter.

5 (2) A business development company shall be examined at least once  
6 every twenty-four months by the director and shall make reports of its  
7 condition not less than annually to the director, and more frequently  
8 in the discretion of the director. The business development company  
9 shall pay the actual cost of the examinations.

10 (3) To assure the safety and soundness of business development  
11 companies and to fulfill the purposes of this chapter, the director  
12 may, by examination, rule, and interpretation, establish and enforce  
13 safety and soundness and examination standards, for all operations and  
14 activities of and related to business development companies.

15 **Sec. 16.** RCW 31.24.130 and 1963 c 162 s 13 are each amended to  
16 read as follows:

17 (1) The first meeting of ((the corporation)) a business development  
18 company shall be called by a notice signed by three or more of the  
19 incorporators, stating the time, place, and purpose of the meeting, a  
20 copy of which notice shall be mailed, or delivered, to each  
21 incorporator at least five days before the day appointed for the  
22 meeting. ((Said)) The first meeting may be held without such notice  
23 upon agreement in writing to that effect signed by all the  
24 incorporators. ((There shall be recorded in the minutes of the  
25 meeting)) A copy of ((said)) the notice or ((of such)) unanimous  
26 agreement of the incorporators shall be recorded in the minutes of the  
27 first meeting.

28 (2) At ((such)) the first meeting, the incorporators shall  
29 ((organize by the choice, by ballot, of a temporary clerk; by the  
30 adoption of bylaws, by the election by ballot of directors; and by  
31 action upon such other matters within the powers of the corporation as  
32 the incorporators may see fit.)), consistent with Title 23B RCW:

33 (a) Choose a temporary recording secretary;

34 (b) Adopt bylaws;

35 (c) Elect directors; and

36 (d) Engage in other business within the powers of the business  
37 development company as the incorporators present may see fit.

1       ~~(3) Upon being sworn in at the first meeting, the temporary ((clerk~~  
2 ~~shall be sworn and)) recording secretary shall make and attest a record~~  
3 of the proceedings. ~~((Ten))~~

4       ~~(4) At least five~~ of the incorporators shall ~~((be))~~ constitute a  
5 quorum for the transaction of business at a first meeting.

6       **Sec. 17.** RCW 31.24.140 and 1963 c 162 s 14 are each amended to  
7 read as follows:

8       Unless otherwise provided in the articles of incorporation, the  
9 period of duration of ~~((the corporation))~~ a business development  
10 company shall be perpetual, subject, however, to the right of the  
11 stockholders ~~((and the members))~~ to dissolve the ~~((corporation prior to~~  
12 ~~the expiration of said period))~~ business development company as  
13 provided in RCW 31.24.150.

14       **Sec. 18.** RCW 31.24.150 and 1991 c 72 s 50 are each amended to read  
15 as follows:

16       ~~((The corporation may))~~ A business development company, upon the  
17 affirmative vote of two-thirds of the votes ~~((to which))~~ of the  
18 stockholders entitled to vote their shares, shall ~~((be entitled and~~  
19 ~~two-thirds of the votes to which the member shall be entitled))~~  
20 dissolve ~~((said corporation))~~ the business development company as  
21 provided by Title 23B RCW, ~~((insofar as))~~ to the extent that Title 23B  
22 RCW is not in conflict with ~~((the provisions of))~~ this chapter. Upon  
23 ~~((any))~~ dissolution of the ~~((corporation))~~ business development  
24 company, none of the ~~((corporation's))~~ business development company's  
25 assets shall be distributed to the stockholders until all sums due the  
26 ~~((members of the corporation as))~~ creditors thereof have been paid in  
27 full.

28       **Sec. 19.** RCW 31.24.170 and 1963 c 162 s 17 are each amended to  
29 read as follows:

30       Any ~~((corporation))~~ business development company organized under  
31 ~~((the provisions of))~~ this chapter shall be a state development  
32 company, as ~~((defined in))~~ authorized under Title V of the small  
33 business investment act of 1958, Public Law 85-699, ~~((85th congress))~~  
34 15 U.S.C. Sec. 695, as amended, or any other similar federal

1 legislation(~~(, and shall be authorized to operate on a statewide~~  
2 ~~basis))~~).

3 **Sec. 20.** RCW 31.24.190 and 1973 1st ex.s. c 90 s 2 are each  
4 amended to read as follows:

5 (1) In addition to the purposes specified in RCW 31.24.020(~~(+2)~~  
6 ~~[(3)] an industrial development corporation~~) a historic business  
7 development company may be formed for one or more of the following  
8 purposes:

9 (a) To encourage and stimulate the preservation of historic  
10 buildings or historic commercial areas or neighborhoods by returning  
11 them to economically productive uses which are compatible with or  
12 enhance the historic character of such buildings (~~(or)), commercial~~  
13 areas, or neighborhoods;

14 (b) To stimulate and assist in the development of business or other  
15 activities which have an impact upon the preservation of historic  
16 buildings (~~(or)), commercial areas, or neighborhoods;~~

17 (c) To cooperate and act in conjunction with other organizations,  
18 public or private, in the promotion and advancement of historical  
19 preservation activities; and

20 (d) To provide financing through loans, investments of other  
21 business transactions for the promotion, development, and conduct of  
22 all kinds of business activity (~~(which)) that~~ encourages or relates to  
23 historic preservation. (~~(An industrial development corporation created~~  
24 to carry out the purposes of this section))

25 (2) A historic business development company shall not engage in the  
26 broad economic and business promotion activities permitted by (~~(RCW~~  
27 31.24.020(3) which are not related to the purposes of this section.  
28 Any such industrial development corporation shall in all other respects  
29 be subject to the provisions of this chapter)) a general business  
30 development company.

31 (3) A general business development company may, in addition to all  
32 other activities permitted by this chapter, engage in those activities  
33 specifically permitted of a historic business development company  
34 organized under subsection (1) of this section.

35 NEW SECTION. **Sec. 21.** A new section is added to chapter 31.24 RCW  
36 to read as follows:

1 Chapter 30.44 RCW applies to the insolvency and liquidation of a  
2 business development company organized under this chapter.

3 NEW SECTION. **Sec. 22.** A new section is added to chapter 31.24 RCW  
4 to read as follows:

5 The director has the same power and authority to exercise  
6 supervisory direction and conservatorship of, and to issue cease and  
7 desist orders upon, a business development company organized under this  
8 chapter, as the director has in regard to a bank under Title 30 RCW.

9 NEW SECTION. **Sec. 23.** A new section is added to chapter 31.24 RCW  
10 to read as follows:

11 (1) Subject to written approval of the director, one or more  
12 general business development companies may merge into or consolidate  
13 with each other consistent with chapter 30.49 RCW.

14 (2) Upon ninety days advance application to and written approval of  
15 the director, a historic business development company may convert its  
16 charter to that of a general business development company. An  
17 application for conversion shall contain a cover letter requesting  
18 conversion, the proposed articles of amendments and bylaws amendments,  
19 a modified business plan, and other relevant information in form and  
20 substance similar to the requirements of a de novo application for a  
21 general business development company as provided in RCW 31.24.020. In  
22 making a determination of whether to approve or deny such a conversion,  
23 the director shall consider:

24 (a) The historic performance and safety and soundness of the  
25 historic business development company;

26 (b) Whether the conversion to a general business development  
27 company will have a likelihood of continuing to fulfill the purposes of  
28 this chapter;

29 (c) Whether the applicant will have a likelihood of remaining safe  
30 and sound as a general business development company and pursuant to its  
31 proposed modified business plan; and

32 (d) Whether the proposed conversion would serve, or otherwise not  
33 detract from, the needs and convenience of the community served by the  
34 business development company.



1        NEW SECTION.    **Sec. 24.**    A new section is added to chapter 31.24 RCW  
2 to read as follows:

3        (1) Notwithstanding any other provision of this chapter, a  
4 development credit corporation created under chapter 31.20 RCW, or any  
5 other company incorporated under Title 23B RCW, may convert to a  
6 business development company by filing an application with the  
7 department and receiving written approval of the director within ninety  
8 days of the date the application is received.

9        (2) In addition to all other requirements of a business development  
10 company pursuant to this chapter, the director shall not approve an  
11 application for conversion of a development credit corporation unless:

12        (a) A minimum of three stockholders of such corporation are  
13 financial institutions;

14        (b) The majority of outstanding shares of common stock of such  
15 corporation are held by financial institutions;

16        (c) The articles of incorporation of such a corporation are amended  
17 to conform to the requirements of RCW 31.24.020;

18        (d) The bylaws of such a corporation are amended to conform to the  
19 requirements of this chapter;

20        (e) The business plan of the corporation is consistent with the  
21 requirements of this chapter and has been approved by the director; and

22        (f) The corporation otherwise satisfies the director that all other  
23 requirements of a business development company under this chapter have  
24 been met. However, such a corporation is not required to have had a  
25 minimum of five incorporators at the time it originally was  
26 incorporated with the secretary of state, as provided for in RCW  
27 31.24.020(1).

28        (3) Upon approval by the director of the corporation's application  
29 for conversion, the amended articles of incorporation, as approved by  
30 the director, shall be filed by the director with the secretary of  
31 state in the same manner provided for the filing of initial articles of  
32 incorporation under section 4 of this act. Such corporation shall not  
33 commence operation as a business development company until the director  
34 has issued such corporation a certificate of authority to conduct  
35 business as a business development company.

36        NEW SECTION.    **Sec. 25.**    A new section is added to chapter 31.24 RCW  
37 to read as follows:

1 The existing privileges, immunities, and requirements of  
2 confidentiality and disclosure with respect to examination records and  
3 information obtained by the director in conducting examinations, which  
4 are applicable to banks, as set forth in RCW 30.04.075, apply to  
5 examination records and information obtained by the director in  
6 conducting examinations of business development companies organized  
7 under this chapter.

8 NEW SECTION. **Sec. 26.** A new section is added to chapter 31.24 RCW  
9 to read as follows:

10 Notwithstanding any other provision of this chapter, a business  
11 development company organized under this chapter may be chartered as a  
12 limited liability company, or may convert to doing business as a  
13 limited liability company, to the same extent and subject to the same  
14 terms and conditions as permitted for a bank organized under Title 30  
15 RCW, including, without limitation, requirements related to director  
16 approval, operational matters, corporate governance, and restrictions  
17 on complete dissociation. However:

18 (1) The rights of stockholders, as defined in this chapter,  
19 supersede the provisions of Title 30 RCW to the contrary; and

20 (2) The limited liability company agreement, or other governing  
21 charter document of the limited liability company, must contain the  
22 same or substantially similar recitals as required in RCW 31.24.020  
23 with respect to business purpose, organizational authority, board of  
24 directors, management, and limitations on liability of directors and  
25 officers.

26 NEW SECTION. **Sec. 27.** A new section is added to chapter 31.24 RCW  
27 to read as follows:

28 (1) An applicant may apply simultaneously for both a business  
29 development company charter, under this chapter, and for a license as  
30 a nondepository lender of federally guaranteed small business loans,  
31 under chapter 31.40 RCW.

32 (2) An applicant may apply simultaneously for both a business  
33 development company charter, under this chapter, and for a license as  
34 a nondepository lender of guaranteed agricultural loans, under chapter  
35 31.35 RCW.

1 (3) Notwithstanding any provisions of this chapter or chapter 31.35  
2 or 31.40 RCW, applications presented to the director as set forth in  
3 subsections (1) and (2) of this section shall be considered and  
4 evaluated by the director as one application, and an applicant:

5 (a) If granted a business development company charter based on a  
6 joint application as provided in subsections (1) and (2) of this  
7 section, shall pay fees and charges only as required by this chapter  
8 and be subject to joint and simultaneous application review and  
9 periodic examination; and

10 (b) If denied a business development company charter when having  
11 made a joint application as provided in subsections (1) and (2) of this  
12 section, shall pay fees and charges only as required by this chapter.

13 (4) An existing business development company organized under this  
14 chapter may apply for either a license, under chapter 31.35 RCW, or a  
15 license, under chapter 31.40 RCW, or both; and, if granted, the  
16 business development company, as a dual licensee, shall then pay fees  
17 and charges only as required by this chapter and be subject to joint  
18 and simultaneous application review and periodic examination.

19 NEW SECTION. **Sec. 28.** A new section is added to chapter 31.35 RCW  
20 to read as follows:

21 Section 27 (2) through (4) of this act supersede any contrary  
22 provision of this chapter.

23 NEW SECTION. **Sec. 29.** A new section is added to chapter 31.40 RCW  
24 to read as follows:

25 Section 27 (1), (3), and (4) of this act supersede any contrary  
26 provision of this chapter.

27 **Sec. 30.** RCW 31.40.090 and 1994 c 92 s 268 are each amended to  
28 read as follows:

29 (1) The director shall examine each licensee not less than once  
30 (~~each year~~) every twenty-four months.

31 (2) The director may with or without notice and at any time during  
32 regular business hours examine a licensee or a subsidiary of a  
33 licensee.

34 (3) A director, officer, or employee of a licensee or of a  
35 subsidiary of a licensee being examined by the director or a person

1 having custody of any of the books, accounts, or records of the  
2 licensee or of the subsidiary shall otherwise facilitate the  
3 examination so far as it is in his or her power to do so.

4 (4) If in the director's opinion it is necessary in the examination  
5 of a licensee, or of a subsidiary of a licensee, the director may  
6 retain any certified public accountant, attorney, appraiser, or other  
7 person to assist the director. The licensee being examined shall pay  
8 the fees of a person retained by the director under this subsection.

9 NEW SECTION. **Sec. 31.** A new section is added to chapter 31.24 RCW  
10 to read as follows:

11 The director has broad administrative authority and discretion to  
12 adopt rules to carry out the purposes of this chapter.

13 NEW SECTION. **Sec. 32.** A new section is added to chapter 31.24 RCW  
14 to read as follows:

15 This chapter shall be known and may be cited as the "business  
16 development company act."

17 NEW SECTION. **Sec. 33.** The following acts or parts of acts are  
18 each repealed:

19 (1) RCW 31.24.040 (Organizations authorized to acquire, hold and  
20 dispose of corporate bonds, securities, stock, etc.--Membership--Rights  
21 and powers--Limitation on stock ownership) and 1963 c 162 s 4;

22 (2) RCW 31.24.050 (Membership by financial institutions--Loans to  
23 corporation by members--Limitations--Interest) and 1974 ex.s. c 16 s 2,  
24 1973 1st ex.s. c 90 s 1, & 1963 c 162 s 5;

25 (3) RCW 31.24.060 (Membership--Duration--Withdrawal) and 1963 c 162  
26 s 6; and

27 (4) RCW 31.24.180 (Calendar year adopted as fiscal year) and 1963  
28 c 162 s 18.

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