

Chapter 31.24 RCW
INDUSTRIAL DEVELOPMENT CORPORATIONS

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Economic development finance authority: RCW 43.163.080.

RCW 31.24.005 Findings—Declarations—Intent. The legislature finds, declares, and intends that:

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

(2) The department, which is charged with (a) the regulation of business development corporations, under this chapter, (b) the regulation of financial institutions and other financial entities as defined in this chapter, and (c) nondepository lenders engaged in guaranteed small business and agricultural lending, under chapters 31.40 and 31.35 RCW, is among those state agencies critical to meeting the needs addressed in subsection (1) of this section; and

(3) It is necessary to assist the department in meeting the needs addressed in subsection (1) of this section and to improve its administration and regulation of this chapter and chapters 31.35 and 31.40 RCW. [2006 c 87 s 1.]

RCW 31.24.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Assessable stock" means any stock or class of stock, or equity interest or class of equity interest, in a business development company that:

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

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

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

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

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

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

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

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

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

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

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

(8) "Control," "controlled," or "controls," in relation to a borrower or business, has the same meaning as "control of a bank" has under Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

(9) "Controlling person" means a person, including an executive officer or director as defined in Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter, who controls a borrower or business.

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

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

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

(13) "Insider transaction" means a transaction between a business development company and a person who is (a) an affiliate of a business development company or (b) an executive officer, director, or principal shareholder, or a related interest of, such a person. As used in this subsection, "affiliate," "executive officer," "director," "principal shareholder," and "related interest" have the same meaning, in relation to a business development company, as such terms have in relation to a member bank pursuant to Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

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

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

(16) "Plan of assessment" means a plan for assessment of stockholders, or a class of stockholders, which is part of the business plan of a business development company that has been approved by the department, and which provides for the periodic, equal assessment of all stockholders, or an affected class of stockholders, according to their interest in the business development company, as provided for in RCW 31.24.066.

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

(a) The principal intent of which:

(i) In the case of a general business development company, is to promote or enhance small business or improvement of the economy of one or more localities within this state, consistent with the general

intent and purpose of a business development company, as set forth in RCW 31.24.005, and with its approved business plan; or

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

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

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

(a) The principal intent of which:

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

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

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

(19) "Qualified loan participant" means a financial institution or other financial entity, as defined in this section, or any other person engaged in the business of lending, who participates as a funder of a qualified participation loan.

(20) "Qualified participation loan" means a loan to a borrower or business, in relation to a business development project, made, in whole or in part[,] by qualified loan participants, which has been facilitated, arranged, or partially funded by a business development company.

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

(22) "Stockholder" means, in relation to a stockholder of a business development company, any person authorized either by Title 23B RCW to be a shareholder of a corporation or by chapter 25.15 RCW and this chapter to hold an equity interest in a limited liability company, and may include, without limitation, a financial institution or other financial entity. [2006 c 87 s 2; 1963 c 162 s 1.]

RCW 31.24.020 Application—Contents—Articles of incorporation—Fees—Initial capital—Approval.

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

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

(b) A business plan satisfactory to the director, including a plan of assessment in the event that applicant seeks to assess

stockholders, or a class of stockholders, as provided for in RCW 31.24.066;

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

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

(e) A filing fee and application review fee as established by the director consistent with RCW 31.24.025; and

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

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

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

(4) The articles of incorporation shall contain:

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

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

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

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

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

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

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

(iv) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and/or recreational developments in this state; and

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

(e) The names and mailing addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of

existence of the business development company or until their successors are elected and have qualified;

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

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

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

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

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

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

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

(5) The director has ninety days from submission of a completed application to approve it and issue a certificate of authority. If the director finds that the application is insufficient, the director may either disapprove the application or respond by specifying in writing what changes and modifications, consistent with this chapter, will be necessary to approve such application. [2006 c 87 s 3; 1974 ex.s. c 16 s 1; 1963 c 162 s 2.]

RCW 31.24.023 Filing articles of incorporation—Receipt of certificate of authority. (1) The director shall present the articles of incorporation, after approval by the director, to the secretary of state for filing.

(2) An applicant is not authorized to commence and maintain business as a business development company under this chapter until having received a certificate of authority from the department to conduct business as a business development company. [2006 c 87 s 4.]

RCW 31.24.025 Fees—Director's discretion. The director may, consistent with the requirements for banks under *Title 30 RCW, collect from an applicant or business development company, as applicable, application fees, application review fees, periodic examination fees, and similar fees and charges, as may be reasonable for the safe and sound regulation and promotion of business development companies under this chapter. [2006 c 87 s 5.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

RCW 31.24.030 Corporate powers. In furtherance of its purposes and in addition to the powers now or hereafter conferred on business

corporations by Title 23B RCW and upon limited liability companies by chapter 25.15 RCW, as applicable, a business development company has, subject to the restrictions and limitations in this section, the following powers:

(1) To assess stockholders, or a class of stockholders, of the business development company, if authorized by the articles of incorporation and approved by the department pursuant to a plan of assessment as provided for in RCW 31.24.066;

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

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

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

(5) To participate in the partial funding of qualified participation loans;

(6) To elect, appoint, and employ officers, agents, and employees;

(7) To make contracts and incur liabilities for any of the purposes of the business development company. However, a business development company shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, company, association, or trust, or in any other manner;

(8) To the extent permitted by other applicable law, to borrow money from the federal small business administration and any other similar federal or state agency, for any of the purposes of a business development company;

(9) To borrow money from a financial institution or other financial entity;

(10) To issue bonds, debentures, notes, or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest therein, without securing stockholder approval;

(11) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the business development company in the satisfaction of debts or enforcement of obligations;

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

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

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

(15) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (11), (12), and (14) of this section, as security for the payment of any part of the purchase price thereof;

(16) To cooperate with and avail itself of the facilities and assistance programs of the United States department of commerce, the United States department of the treasury, the United States department of housing and urban development, the department of commerce, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof; and

(17) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. [2023 c 470 s 2012; 2006 c 87 s 6; 1991 c 72 s 49; 1985 c 466 s 42; 1983 c 3 s 51; 1963 c 162 s 3.]

Explanatory statement—2023 c 470: See note following RCW 10.99.030.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

RCW 31.24.066 Plan of assessment—Purpose—Requirements—

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

(2) A plan of assessment may provide for:

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

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

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

(4) In the case of the approval of a plan of assessment, or the examination of the administration of an ongoing plan of assessment, in which assessable stock is held by a financial institution that is also regulated by the department, the department may condition its approval of the implementation or continued administration of a plan of assessment as to the affected financial institution on whether the safety and soundness of such financial institution is or may become

unimpaired, or on whether an assessment of such financial institution has not or will not result, in a material adverse affect on the classification of such financial institution, or its lending or investment portfolio. The authority of the department pursuant to this subsection shall be in addition to all other authority of the department under this chapter or any other applicable law, and notwithstanding any other law to the contrary. [2006 c 87 s 7.]

RCW 31.24.070 Powers of stockholders—Voting rights—Proxy voting—Plan of assessment—Dividends—Rules. (1) The stockholders of the business development company have the following powers:

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

(b) To make, amend, and repeal bylaws;

(c) To amend the articles of incorporation as provided in RCW 31.24.080;

(d) To dissolve the company as provided in RCW 31.24.150;

(e) To do all things necessary or desirable to secure aid, assistance, loans, and other financing from any financial institutions, and from any agency established under federal laws;

(f) To exercise such other powers consistent with this chapter as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the business development company, the stockholders shall vote, and, except as otherwise provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held.

(4) The capital stock of stockholders of a business development company is nonassessable, unless authorized by the department pursuant to a plan of assessment which has been approved by the director as provided for in RCW 31.24.066.

(5) Except as permitted by a plan of assessment providing for a class of assessable stock pursuant to RCW 31.24.066 or as may otherwise be established by rule, all stock is a single class of voting common stock.

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

(7) The department may, at the option of the director, adopt rules, consistent with principles of safety and soundness, that, while not prohibiting dividends to stockholders in general, may limit the amount of such dividends and the time and manner of declaring them. [2006 c 87 s 8; 1963 c 162 s 7.]

RCW 31.24.073 Aggregate limit on loans and investments—Single borrower or business. Unless part of an initial or amended business plan approved by the director, or as may otherwise be provided by rule adopted pursuant to RCW 31.24.120(3), the aggregate limit of qualified

loans, qualified investment, and partial funding of qualified participation loans by a business development company to a single borrower or business, in relation to a business development project, shall not exceed twenty-five percent of the combined capital, surplus, and undivided profits of the business development company. [2006 c 87 s 9.]

RCW 31.24.075 Insider transactions. (1) A business development company may not be a party to, nor engage in, an insider transaction, unless such an insider transaction is approved or ratified by its board of directors, exclusive of the vote of any interested director.

(2) Any insider transaction is subject to the examination and enforcement authority of the department under this chapter. [2006 c 87 s 10.]

RCW 31.24.080 Amendment of articles of incorporation—Director's approval—Filing. (1) The articles of incorporation of a business development company may be amended by the affirmative vote of two-thirds of the votes to which the stockholders are entitled, subject to the written approval of the director.

(2) Within thirty days after an amendment of the articles of incorporation has been adopted and approved by the director, the articles of amendment shall be filed in the office of the secretary of state by the director. An amendment shall not take effect until it has been so filed. [2006 c 87 s 11; 1994 c 92 s 235; 1963 c 162 s 8.]

RCW 31.24.090 Board of directors—Officers and agents—Powers—Election—Meetings. (1) The business and affairs of a business development company shall be managed and conducted by a board of directors, a president, a secretary, a treasurer, and such other officers and such agents as the company by its bylaws shall authorize. A single authorized individual may jointly hold the offices of secretary and treasurer. The president and the treasurer may not be the same person.

(2) The board of directors shall consist of such number, not less than five nor more than nine, as shall be determined in the first instance by the incorporators and thereafter annually by the stockholders of the business development company. The board of directors:

(a) May exercise all the powers of the business development company, except those conferred upon the stockholders by law or by the bylaws of the business development company; and

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

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

(4) At each annual meeting, or at each special meeting held as provided in subsection (3) of this section, the stockholders of a business development company shall elect all of the board of directors. The directors shall hold office until the next annual meeting of the business development company, or special meeting. The authority of the directors commences immediately after the election and continues until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director shall be filled by the remaining directors at a regular meeting or special meeting called for that purpose. The director appointed to fill such vacancy shall serve until the next annual meeting, resignation, or removal according to law.

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

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

(7) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of a business development company or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment, in which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting. [2006 c 87 s 12; 1974 ex.s. c 16 s 3; 1963 c 162 s 9.]

RCW 31.24.100 Minimum capital, surplus, undivided profits, and net earnings. (1) A business development company shall maintain an amount of minimum capital, surplus, and undivided profits that, based upon the determination of the director, shall be deemed safe and sound for each business development company. However, the minimum ratio of paid-in capital to total assets, inclusive of all qualified loans and qualified investments, shall be and remain no less than eight percent.

(2) Subject to subsection (1) of this section, minimum capital, surplus, undivided profits, and net earnings shall be determined by the board of directors, subject to the exercise of prudent business judgment. [2006 c 87 s 13; 1963 c 162 s 10.]

RCW 31.24.110 No receipt of money on deposit. A business development company shall not receive money on deposit. [2006 c 87 s 14; 1963 c 162 s 11.]

RCW 31.24.120 Examinations by director of financial institutions—Reports—Authority of director. (1) The director shall exercise the same power and authority over business development companies organized under this chapter as exercised over banks and trust companies under *Title 30 RCW, to the extent *Title 30 RCW does not conflict with this chapter.

(2) A business development company shall be examined at least once every twenty-four months by the director and shall make reports of its condition not less than annually to the director, and more

frequently in the discretion of the director. The business development company shall pay the actual cost of the examinations.

(3) To assure the safety and soundness of business development companies and to fulfill the purposes of this chapter, the director may, by examination, rule, and interpretation, establish and enforce safety and soundness and examination standards, for all operations and activities of and related to business development companies. [2006 c 87 s 15; 1994 c 92 s 236; 1963 c 162 s 12.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

RCW 31.24.130 First meeting—Notice—Duties of incorporators.

(1) The first meeting of a business development company shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. The first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. A copy of the notice or unanimous agreement of the incorporators shall be recorded in the minutes of the first meeting.

(2) At the first meeting, the incorporators shall, consistent with Title 23B RCW:

- (a) Choose a temporary recording secretary;
- (b) Adopt bylaws;
- (c) Elect directors; and

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

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

(4) At least five of the incorporators shall constitute a quorum for the transaction of business at a first meeting. [2006 c 87 s 16; 1963 c 162 s 13.]

RCW 31.24.140 Duration of business development company. Unless otherwise provided in the articles of incorporation, the period of duration of a business development company shall be perpetual, subject, however, to the right of the stockholders to dissolve the business development company as provided in RCW 31.24.150. [2006 c 87 s 17; 1963 c 162 s 14.]

RCW 31.24.150 Dissolution—Method—Distribution of assets. A business development company, upon the affirmative vote of two-thirds of the votes of the stockholders entitled to vote their shares, shall dissolve the business development company as provided by Title 23B RCW, to the extent that Title 23B RCW is not in conflict with this chapter. Upon dissolution of the business development company, none of the business development company's assets shall be distributed to the stockholders until all sums due the creditors thereof have been paid in full. [2006 c 87 s 18; 1991 c 72 s 50; 1983 c 3 s 52; 1963 c 162 s 15.]

RCW 31.24.160 Credit of state not pledged. Under no circumstances shall the credit of the state of Washington be pledged to any corporation organized under the provisions of this chapter. [1963 c 162 s 16.]

RCW 31.24.170 Business development companies designated state development companies. Any business development company organized under this chapter shall be a state development company, as authorized under Title V of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. Sec. 695, as amended, or any other similar federal legislation. [2006 c 87 s 19; 1963 c 162 s 17.]

RCW 31.24.190 Formation of historic business development company for purpose of preservation of historic buildings, areas, or neighborhoods. (1) In addition to the purposes specified in RCW 31.24.020 a historic business development company may be formed for one or more of the following purposes:

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

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

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

(d) To provide financing through loans, investments of other business transactions for the promotion, development, and conduct of all kinds of business activity that encourages or relates to historic preservation.

(2) A historic business development company shall not engage in the broad economic and business promotion activities permitted by a general business development company.

(3) A general business development company may, in addition to all other activities permitted by this chapter, engage in those activities specifically permitted of a historic business development company organized under subsection (1) of this section. [2006 c 87 s 20; 1973 1st ex.s. c 90 s 2.]

RCW 31.24.200 Insolvency and liquidation—Chapter 30.44 RCW. *Chapter 30.44 RCW applies to the insolvency and liquidation of a business development company organized under this chapter. [2006 c 87 s 21.]

***Reviser's note:** Chapter 30.44 RCW was recodified as chapter 30A.44 RCW pursuant to 2014 c 37 s 4, effective January 5, 2015.

RCW 31.24.205 Supervisory direction and conservatorship. The director has the same power and authority to exercise supervisory direction and conservatorship of, and to issue cease and desist orders upon, a business development company organized under this chapter, as

the director has in regard to a bank under *Title 30 RCW. [2006 c 87 s 22.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

RCW 31.24.210 Mergers or consolidations—Application—Approval.

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

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

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

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

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

(d) Whether the proposed conversion would serve, or otherwise not detract from, the needs and convenience of the community served by the business development company. [2006 c 87 s 23.]

***Reviser's note:** Chapter 30.49 RCW was recodified as chapter 30A.49 RCW pursuant to 2014 c 37 s 4, effective January 5, 2015.

RCW 31.24.215 Conversion of development credit corporation—Application—Approval—Filing of articles—Certificate of authority.

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

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

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

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

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

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

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

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

(3) Upon approval by the director of the corporation's application for conversion, the amended articles of incorporation, as approved by the director, shall be filed by the director with the secretary of state in the same manner provided for the filing of initial articles of incorporation under RCW 31.24.023. Such corporation shall not commence operation as a business development company until the director has issued such corporation a certificate of authority to conduct business as a business development company. [2006 c 87 s 24.]

RCW 31.24.220 Confidentiality and disclosure—Examinations. The existing privileges, immunities, and requirements of confidentiality and disclosure with respect to examination records and information obtained by the director in conducting examinations, which are applicable to banks, as set forth in *RCW 30.04.075, apply to examination records and information obtained by the director in conducting examinations of business development companies organized under this chapter. [2006 c 87 s 25.]

***Reviser's note:** RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 s 4, effective January 5, 2015.

RCW 31.24.225 Business as a limited liability company. Notwithstanding any other provision of this chapter, a business development company organized under this chapter may be chartered as a limited liability company, or may convert to doing business as a limited liability company, to the same extent and subject to the same terms and conditions as permitted for a bank organized under *Title 30 RCW, including, without limitation, requirements related to director approval, operational matters, corporate governance, and restrictions on complete dissociation. However:

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

(2) The limited liability company agreement, or other governing charter document of the limited liability company, must contain the same or substantially similar recitals as required in RCW 31.24.020 with respect to business purpose, organizational authority, board of directors, management, and limitations on liability of directors and officers. [2006 c 87 s 26.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

RCW 31.24.230 Simultaneous applications—Business development company and nondepository lender of certain loans—Procedure—Fees.

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

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

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

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

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

(4) An existing business development company organized under this chapter may apply for either a license, under chapter 31.35 RCW, or a license, under chapter 31.40 RCW, or both; and, if granted, the business development company, as a dual licensee, shall then pay fees and charges only as required by this chapter and be subject to joint and simultaneous application review and periodic examination. [2006 c 87 s 27.]

RCW 31.24.235 Rule making. The director has broad administrative authority and discretion to adopt rules to carry out the purposes of this chapter. [2006 c 87 s 31.]

RCW 31.24.901 Short title. This chapter shall be known and may be cited as the "business development company act." [2006 c 87 s 32.]