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COMMITTEE REPORT

March 25, 2015

**S. 389**

Introduced by Senator Lourie

S. Printed 3/25/15--S.

Read the first time January 29, 2015.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 389) to amend Chapter 37, Title 33, Code of Laws of South Carolina, 1976, relating to South Carolina business development corporations, so as to further provide for the manner, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND CHAPTER 37, TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SOUTH CAROLINA BUSINESS DEVELOPMENT CORPORATIONS, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH THESE CORPORATIONS ARE ORGANIZED, REGULATED, AND PERMITTED TO OPERATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 37, Title 33 of the 1976 Code is amended to read:

“CHAPTER 37

Business Development Corporations

Article 1

General Provisions

Section 33‑37‑10. As used in this chapter:

(1) ‘Corporation’ means a South Carolina business development corporation created pursuant to this chapter.

(2) ‘Area of operations’ means the geographical area in which the corporation is authorized to transact business pursuant to this chapter which includes, but is not limited to, South Carolina, North Carolina, Georgia, Florida, Alabama, Virginia, and Tennessee.

(~~2~~3) ‘Financial institution’ means any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, federal or state agency, or other institution engaged primarily in lending or investing funds including, without limitation, the Small Business Administration, an agency of the United States Government.

(~~3~~4) ‘Member’ means a financial institution authorized to do business in this State which undertakes to lend money to a corporation created pursuant to this chapter, upon its call and as provided by this chapter.

(~~4~~5) ‘Board of directors’ means the board of directors of the corporation created pursuant to this chapter.

(~~5~~6) ‘Loan call’ means the right of the corporation to call for loans by the members to the corporation as provided in Section 33‑37‑460 of this chapter.

(~~6~~7) ‘Loan call agreement’ means the loan agreement between the corporation and its members describing the terms, conditions, and loan limits of the corporation’s right to make loan calls to its members.

(~~7~~8) ‘Loan limit’ means, for a member, the maximum amount subject to loan call at any one time by the corporation to the member as provided in the loan call agreement.

Section 33‑37‑20. The corporation shall not deposit any of its funds in any banking institution unless ~~such~~ the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

Section 33‑37‑30. ~~The corporation shall not receive money on deposit.~~ RESERVED

Section 33‑37‑40. ~~Each year the corporation shall set apart as earned surplus not less than ten per cent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as the directors deem desirable, and the directors’ determination made in good faith shall be conclusive on all persons.~~ RESERVED

Section 33‑37‑50. The corporation may have offices in ~~such~~ those places within or outside of the State, other than the location of the principal office as set forth in the declaration of charter as required in Section 33‑37‑210, as may be fixed by the board of directors.

Section 33‑37‑60. Under no circumstances is the credit of the State pledged in this chapter.

Section 33‑37‑70. The corporation and its subsidiary corporation are not subject to taxes based upon or measured by income which are levied now or later by the State. The securities, evidences of indebtedness, and shares of the capital stock issued by the corporation and its subsidiary corporation, their transfer, income from them, and deposits of financial institutions invested in them are free at all times from taxation within the State. The corporation and its subsidiary corporation are not subject to a corporation license tax or fee imposed by Chapter 20, ~~of~~ Title 12. Notwithstanding the above provisions, should the corporation or any of the corporation’s subsidiaries apply for and receive a charter to operate as a bank, then the corporation or the subsidiary chartered as a bank is subject to all taxes or license fees applicable to banks.

Section 33‑37‑80. Any stockholder, member, or other holder of any securities, evidences of indebtedness, or shares of the capital stock of the corporation or any of its subsidiaries who realizes a loss from the sale, redemption or other disposition of any securities, evidences of indebtedness, or shares of the capital stock of the corporation, including any such loss realized on a partial or complete liquidation of the corporation, and who is not entitled to deduct such loss in computing any of ~~such~~ the stockholder’s, member’s or other holder’s taxes to the State, ~~shall~~ must be entitled to credit against any taxes subsequently becoming due to the State from ~~such~~ the stockholder, member or other holder a percentage of such loss equivalent to the highest rate of tax assessed for the year in which the loss occurs upon mercantile and business corporations.

Article 3

Charter and Amendments; Organization; Powers

Section 33‑37‑210. Twenty‑five or more persons, a majority of whom shall be residents of this State, who may desire to create a business development corporation under the provisions of this chapter for the purpose of promoting, developing and advancing the prosperity and economic welfare of the State and, to that end, to exercise the powers and privileges provided in this chapter, may be incorporated in the following manner. ~~Such~~ Those persons shall, by declaration of charter filed with the Secretary of State, under their hands and seals, set forth:

(1) the name of the corporation, which shall include the words “Business Development Corporation of South Carolina”;

(2) the location of the principal office of the corporation; and

(3) the purposes for which the corporation is founded, which ~~shall include the following: The purposes of the corporation shall~~ must be to: (i) promote, stimulate, develop, and advance the business prosperity and economic welfare of ~~this State~~ the corporation’s area of operations and its citizens; (ii) ~~to~~ encourage and assist through loans, investments or other business transactions, in the location of new business and industry in ~~this State~~ its area of operations, and to rehabilitate and assist existing business and industry; ~~and so~~ (iii) ~~to~~ stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of ~~this State~~ its area of operations, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of ~~this~~ ~~State~~ its area of operations; (iv) ~~similarly, to~~ cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in ~~this State~~ its area of operations; and (v) ~~to~~ provide financing for the promotion, development, and conduct of all kinds of business activity in ~~this~~ ~~State~~ its area of operations. However, in no event shall the corporation or its subsidiaries use state or federal funds provided for use exclusively in South Carolina in any other state as long as the programs providing these funds exist in South Carolina.

Section 33‑37‑220. The declaration of charter shall ~~set forth~~ state:

(a) the amount of total authorized capital stock and the number of shares in which it is divided~~,~~;

(b) the par value of each share~~,~~;

(c) the amount of capital stock with which the corporation will commence business~~,~~;

(d) if there is more than one class of stock, a description of the different classes; and

(e) the names and post‑office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription ~~shall be~~ is the amount of capital with which the corporation will commence business. The declaration of charter may also contain any provision consistent with the laws of this State for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The declaration of charter ~~shall~~ must be in accordance with the provisions of Section 33‑2‑102.

Section 33‑37‑230. If a corporation organized pursuant to this chapter shall fail to begin business within three years from the effective date of its charter, then the charter shall become null and void.

Section 33‑37‑240. The first meeting of the corporation ~~shall~~ must 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~~ the notice ~~shall~~ must 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. There ~~shall~~ must be recorded in the minutes of the meeting a copy of the notice or ~~of such~~ the unanimous agreement of the incorporators.

At ~~such~~ the first meeting the incorporators shall organize by ~~the choice~~ choosing by ballot ~~of~~ a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon ~~such~~ those other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk ~~shall~~ must be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business.

Section 33‑37‑250. In furtherance of the purposes for which the corporation is founded and in addition to the powers conferred on business corporations by this title, the corporation, subject to the restrictions and limitations contained in this chapter, may:

(1) elect, appoint, and employ officers, agents, and employees;

(2) make contracts and incur liabilities for any of the purposes of the corporation, except that the corporation may not incur secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint‑stock company, association, or trust, or in any other manner;

(3) borrow money only from (i) the members, (ii) the Small Business Administration, an agency of the United States Government, and (iii) other lending sources approved by the board of directors of the corporation for the purposes of the corporation, issue its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and secure them by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature, or any part of them or interest in them, without securing stockholder or member approval. Except as provided in Section 33‑37‑465 and item (9) ~~of this section~~, a loan to the corporation may not be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of the loans and in the same manner;

(4) make loans or participate with the Small Business Administration, an agency of the United States Government, in loans to any person, firm, corporation, joint‑stock company, association, or trust and establish and regulate the terms and conditions of the loans and the charges for interest and service connected with them~~, except that the corporation may not approve an application for a loan without a showing by the person applying for the loan that he applied for the loan through ordinary banking channels and the loan was refused by at least one bank or other financial institution~~;

(5) purchase, receive, hold, lease, or otherwise acquire and sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with rights and privileges incidental and appurtenant to it and the use of it including, but not limited to, real or personal property acquired by the corporation in the satisfaction of debts or enforcement of obligations;

(6) acquire all or part of the good will, business rights, real and personal property, and other assets, of any persons, firms, corporations, joint‑stock companies, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of the person, firm, corporation, joint‑stock company, association, or trust;

(7) acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of it to others for the construction of industrial plants or other business establishments, and to transfer, lease, or otherwise dispose of industrial plants or business establishments;

(8) 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, corporation, joint‑stock company, association, or trust, and to exercise all the rights, powers, and privileges of ownership, including the right to vote, while the owner or holder;

(9) mortgage, pledge, or otherwise encumber a property right or thing of value acquired pursuant to the powers contained in items (5) through (8) ~~of this section~~, as security for the payment of a part of the purchase price of it;

(10) cooperate with and avail itself of the facilities of the Department of Commerce and similar governmental agencies, including the Small Business Administration, an agency of the United States Government, and 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 those communities or of ~~this State~~ the corporation’s area of operations or of any part of them; and

~~(11)~~ ~~organize and incorporate pursuant to this title a subsidiary corporation as the board of directors finds necessary, appropriate, or convenient to carry out the powers and purposes expressly granted and provided for in this chapter, which subsidiary corporation has the powers described in this section in addition to all other powers conferred on business corporations by this title; and~~

(~~12~~11) do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

Section 33‑37‑260. The charter may be amended by the votes of the stockholders and the members of the corporation voting separately by classes. The amendments require approval by the affirmative vote of two thirds of the votes to which the stockholders are entitled and two thirds of the votes to which the members are entitled. Provisions of the charter setting forth the classes and authorized shares of stock of the corporation may be amended by the affirmative vote of a majority of the votes to which the stockholders are entitled. If the charter so provides, the board of directors shall have the authority to set the terms of a class or series of stock as provided by Section 33‑6‑102. No amendment of the charter which is inconsistent with the general purposes expressed in this chapter or which eliminates or curtails the right of the Secretary of State to examine the corporation or the obligation of the corporation to make reports as provided by law may be made without amendment of this chapter. No amendment of the charter which increases the obligation of a member to make loans to the corporation, makes a change in the principal amount, interest rate, or maturity date or in the security or credit position of an outstanding loan of a member to the corporation, affects a member’s right to withdraw from membership as provided in Section 33‑37‑430, or affects a member’s voting rights as provided in Sections 33‑37‑440 and 33‑37‑450 may be made without the consent of each member affected by the amendment.

Section 33‑37‑270. Within thirty days after any meeting at which an amendment of the charter has been adopted, articles of amendment signed and sworn to by the president, treasurer and a majority of the directors, setting forth ~~such~~ the amendment and the due adoption ~~thereof~~ of the amendment, ~~shall~~ must be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval ~~thereon~~ on it. Thereupon, the articles of amendment ~~shall~~ must be filed in the office of the Secretary of State, and no such amendment shall take effect until ~~such~~ the articles of amendment ~~shall~~ have been filed as ~~aforesaid~~ as required above.

Section 33‑37‑280. In addition to the powers conferred on the corporation by Section 33‑37‑250, the corporation may organize and incorporate or create pursuant to this title one or more subsidiary business entities as the board of directors may direct, and these entities shall have all those powers conferred on or permitted to them by this title or, subject to required regulatory approval, Title 34. However, these subsidiary entities are not subject to any restrictions or limitations provided for in this chapter which are applicable to the corporation, except those restrictions and limitations as may be included in the subsidiary entity’s articles of incorporation or other applicable governing documents.

Article 5

Members and Stockholders; Loans to Corporation

Section 33‑37‑410. In addition to other persons and notwithstanding any provision of general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this State, including without implied limitation, public utility companies and insurance and casualty companies, foreign corporations licensed to do business in the State, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and while owners of the stock may exercise all the rights, powers, and privileges of ownership, including the right to vote on it, all without the approval of a regulatory authority of the State.

(2) All financial institutions may become members of the corporation and make loans to the corporation as provided in this chapter.

(3) A financial institution which does not become a member of the corporation may not acquire any shares of the capital stock of the corporation. In the event a nonmember financial institution becomes an owner of shares in the corporation but does not become a member, these shares shall automatically become nonvoting shares and may not be considered for the purpose of determining a quorum.

(4) Each financial institution which becomes a member of the corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and while owners of the stock may exercise all the rights, powers, and privileges of ownership, including the right to vote on it, all without the approval of a regulatory authority of the State. The amount of the capital stock of the corporation which may be acquired by a member pursuant to the authority granted in this section may not exceed five percent of the capital and surplus of the member. The amount of capital stock of the corporation which a member may acquire pursuant to the authority granted in this section is in addition to the amount of capital stock in corporations which the member otherwise is authorized to acquire. A shareholder may acquire or hold more than ten percent of the outstanding shares of the corporation, however all shares in excess of ten percent automatically become nonvoting shares.

Section 33‑37‑420. Any financial institution may request membership in the corporation by making application to the board of directors on ~~such~~ that form and in ~~such~~ that manner as the board of directors may require, and the membership ~~shall become~~ becomes effective upon acceptance of ~~such~~ the application by the board.

Section 33‑37‑430. Membership in the corporation ~~shall~~ must be for the duration of the corporation; provided, that upon written notice given to the corporation three years in advance a member may withdraw from membership in the corporation at the expiration date of ~~such~~ the notice.

Section 33‑37‑440. The stockholders and the members of the corporation shall have the following powers of the corporation:

(1) to elect directors;

(2) to make, amend and repeal bylaws;

(3) to amend the charter; and

(4) to exercise ~~such other of the~~ those powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

Section 33‑37‑450. (A) As to all matters requiring action by the members and the stockholders of the corporation, the members and the holders of each class of stock, of which there are then shares authorized and outstanding for which votes are entitled to be cast, shall vote separately on the matters by classes and, except as otherwise provided in this chapter, these matters require the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled and the affirmative vote of a majority of the votes entitled to be cast with respect to the shares of each class of stock of which there are holders present or represented at the meeting.

(B) Unless otherwise provided in the charter of the corporation, each stockholder has one vote, in person or by proxy, for each share of capital stock held by him, and each member has one vote, in person or by proxy. However, a member having a loan limit of more than one thousand dollars has one additional vote, in person or by proxy, for each additional one thousand dollars of the member’s loan limit as determined pursuant to the loan call agreement with the corporation as provided in Section 33‑37‑460.

Section 33‑37‑460. Each member of the corporation must make loans to the corporation when called upon pursuant to a written loan call agreement approved by the board of directors of the corporation and entered into between the corporation and all members. The loan call agreement must describe the mutual agreement of the corporation and the members as to the loan limits of each member, the method for determining the loan limits, the terms and conditions of each member’s rights and obligations pertaining to loan calls by the corporation, and the corporation’s rights to make loan calls of the members. The loan call agreement may be modified and amended unilaterally by the corporation only for the purpose of adding new members as parties to the loan call agreement if the new members execute and deliver addendums to the loan call agreement binding them to all terms, conditions, and loan limits of the agreement. The corporation and any member may agree mutually to increase the loan limit of the member if all other members have the opportunity to increase their loan limits in the same proportion or percentage relative to their original loan limits as provided in the loan call agreement. The loan call agreement is subject to the following further conditions and limitations:

(1) All loan limits must be established at the thousand dollar amount nearest to the amount computed in accordance with this section.

(2) A loan to the corporation under the loan call agreement may not be made if, immediately after the loan, the total amount of the obligations of the corporation under the loan call agreement exceeds ten times the greater of the net worth of the corporation or the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by a member at any one time under the loan call agreement may not exceed:

(a) ten percent of the total amount then outstanding or committed, or both, under the loan call agreement; or

(b) any federal or state statutory or regulatory limitations applicable to the members.

(4) Subject to item (3)(a), each loan call made by the corporation must be prorated among the members of the corporation in substantially the same proportion that the loan limit of each member bears to the aggregate of the loan limits of all members. Loan calls may require all members to fund the loan call contemporaneously with the loan call or, alternatively, may require that the loan call be funded on a revolving basis in periodic disbursements by groups of members as designated by the corporation on a rotating basis so that, in a single loan call, the disbursement by one designated group may retire at a future date the outstanding balance of another group of members.

(5) All loans to the corporation by members must be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation which are freely transferable at all times. For administrative purposes, loans made by members pursuant to loan calls by the corporation must be funded by one or more members, designated by the corporation, which shall sell participation interests to other members in the proportions provided in this section.

(6) A member is not obligated to make loans to the corporation pursuant to calls made after the withdrawal of the member.

Section 33‑37‑465. A member may make short‑term loans to the corporation independently of the loan calls made pursuant to Section 33‑37‑460. These short‑term loans are not subject to the limitations and restrictions described in Section 33‑37‑460. When the purpose of the short‑term loan is to provide funds to the corporation for disbursement of a loan, the corporation may grant to the member funding the short‑term loan a security interest in or collateral assignment of the loan on the condition that the security interest or collateral assignment is terminated upon payment of the short‑term loan.

Section 33‑37‑470. The board of directors have the power to issue shares of capital stock of the corporation in the classes, series, and denominations set forth in the charter of the corporation, to the same extent and subject to the same restrictions as are otherwise applicable to business corporations organized under the laws of South Carolina under Chapters 1 through 20 of this title. However, the corporation may not issue shares of any series or class of stock with rights, restrictions, or other attributes which would impair or limit the rights of members under this chapter or impair or limit the rights given to stockholders generally under this chapter.

Article 7

Directors and Officers

Section 33‑37‑610. The business and affairs of the corporation ~~shall~~ must be managed and conducted by a board of directors, a president and treasurer and ~~such~~ those other officers and ~~such~~ agents as the corporation by its bylaws shall authorize.

Section 33‑37‑620. The board of directors shall consist of such number, not more than twenty‑one, as ~~shal~~l must be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except ~~such~~ those as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director, which ~~shall~~ must be filled as provided in Section 33‑37‑630. The board of directors ~~shall~~ must be elected as provided in Section 33‑37‑630.

Section 33‑37‑630. The board of directors must be elected in the first instance by the incorporators and after that time at each annual meeting of the corporation or, if no annual meeting is held in any year, at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the members of the corporation shall elect two thirds of the board of directors, and the stockholders shall elect the remaining directors in the manner prescribed in the charter of the corporation. The directors must hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. A vacancy in the office of a director elected by the members must be filled by the directors elected by the members, and a vacancy in the office of a director elected by the stockholders must be filled by the directors elected by the stockholders.

Section 33‑37‑640. Directors and officers ~~shall~~ are not ~~be~~ responsible for losses unless the losses ~~shall~~ have been occasioned by the wilful misconduct of ~~such~~ those directors and officers.

Article 9

Application of General Corporation Law

Section 33‑37‑910. Chapters 1 through 20 of this title apply to every corporation organized pursuant to this chapter, except as otherwise provided in Chapters 1 through 20 of this title or by this chapter. If there is a conflict between the provisions of Chapters 1 through 20 of this title and Chapter 37 with respect to a corporation organized under this chapter, this chapter controls.

Article 10

Capital Access Program

Section 33‑37‑1010. For purposes of this article:

(1) ‘CAP’ means the capital access program created in this article.

(2) ‘BDC’ means Business Development Corporation of South Carolina.

(3) ‘Financial institution’ means a bank, trust company, savings bank, savings and loan association, or cooperative bank chartered by the State or a national banking association, federal savings and loan association, or federal savings bank, if that financial institution has offices located in South Carolina.

(4) ‘Participating financial institution’ means a financial institution participating in the capital access program.

(5) ‘Small business’ means:

(a) a retail or service business with annual sales not exceeding two million dollars;

(b) a wholesale business with annual sales not exceeding five million dollars;

(c) a manufacturing business with no more than fifty employees; or

(d) another business with annual revenue not exceeding two million dollars.

(6) ‘State fund’ and ‘state fund account’ means the funds appropriated by the General Assembly of South Carolina for the CAP, provided to BDC as custodian for the State of South Carolina, and deposited by BDC into one or more interest‑bearing trust accounts maintained by it as custodian for the State of South Carolina.

(7) ‘Loss reserve account’ means one or more interest‑ bearing trust accounts maintained by BDC for holding and administering the loan loss reserve pursuant to this article.

Section 33‑37‑1020. (A) Upon appropriation of funds by the General Assembly for the CAP in the minimum initial sum of two million five hundred thousand dollars, those funds and funds resulting from later appropriations to the state fund must be provided to BDC for deposit in the state fund account.

(B) BDC shall establish the CAP to provide a loan loss reserve from the state fund to assist participating financial institutions making loans to small businesses located in South Carolina that otherwise find it difficult to obtain regular bank financing.

(C) The assistance must be provided by BDC through transfers by it from a state fund account into a loss reserve account maintained by, in the name of, and controlled by BDC as custodian to provide loan loss reserves for loans made to those small businesses.

Section 33‑37‑1030. A financial institution desiring to become a participating financial institution shall execute an agreement in a form BDC prescribes, containing the terms and provisions provided in Section 33‑37‑1040 and other terms and provisions BDC considers necessary or appropriate.

Section 33‑37‑1040. A participating financial institution originating a loan to a small business pursuant to this article shall:

(1) use its existing business and banking network to market and perpetuate the CAP so as to promote economic development among small businesses in South Carolina;

(2) provide financing to small businesses for their business purposes including, without limitation, expansion, start‑up, purchase of fixed assets or inventory, facility or technology upgrading, and working capital;

(3) limit loans outstanding to one small business borrower pursuant to this article and the CAP to an aggregate balance outstanding of two hundred fifty thousand dollars or a lesser amount the BDC determines, in the exercise of its discretion for the benefit of the CAP and the small business community at large in this State;

(4) limit loans made pursuant to this article and under the CAP to those that are not guaranteed or otherwise assisted by another governmental entity or program;

(5) set aside an amount of at least one and one‑half percent but no more than three and one‑half percent of the principal amount of the loan, into the loss reserve account;

(6) obtain from the small business an amount equal to the reserve contribution made by the participating financial institution with respect to the loan;

(7) forward the funds collected and determined pursuant to items (5) and (6) ~~of this section~~ to BDC for deposit into the loss reserve account together with a written report in the form and with the content BDC prescribes; and

(8) report annually to BDC, in the manner and with the supporting information BDC prescribes, the outstanding balance of loans made by it pursuant to the CAP, and a projection and estimate of loans it anticipates making pursuant to the program in the succeeding year.

Section 33‑37‑1050. After receipt of the funds and report provided in Section 33‑37‑1040(7) ~~of this article~~, BDC shall transfer from the state fund account to the loss reserve account an amount equal to one hundred fifty percent of the total of the contributions of the participating financial institution and the small business. BDC shall maintain accurate records to determine the allocation and allocable share of each participating financial institution in and to the loan loss reserves in the loss reserve account and shall provide a report of the allocation to each participating financial institution annually. BDC also shall provide the report to a participating financial institution upon its written request during the year, but not more often than quarterly, and to the South Carolina Department of Commerce quarterly. In addition, the BDC shall provide an internal quarterly report on the project job creation and capital investment associated with each loan.

Section 33‑37‑1060. If the participating financial institution suffers a loss on a loan made pursuant to the CAP and this article, it may request that all or a portion of its allocated loan reserve in the loss reserve account be applied to the loan. Upon receipt by BDC of a certification of loss by the participating financial institution, BDC shall release the funds in the account to repay the loan in whole or in part, in an amount not to exceed the actual loss incurred by the participating financial institution. BDC shall prescribe the form and content of the certification report.

Section 33‑37‑1070. Earnings or interest from the principal of the state fund account and the loss reserve account must be paid monthly to BDC. In the event the interest paid to the BDC amounts to less than fifty thousand dollars in any year, the difference between the amount paid from interest and fifty thousand dollars must be paid to the BDC from the state fund account, if available, in January of the following year:

(1) as compensation for its administration and management of the CAP and the accounts; and

(2) for economic development in South Carolina for the purposes and within the meanings set forth in this chapter and in the corporate charter of BDC.

Section 33‑37‑1080. If a participating financial institution that elects to discontinue its participation in the CAP has funds on deposit in the loss reserve account, the funds must be forfeited by the institution to the state fund and used in the CAP as loss reserves as provided in this article.

Section 33‑37‑1090. An independent certified public accountant, as elected annually by the Board of Directors of the BDC, shall conduct an annual certified audit of its management, administration, and recordkeeping in connection with the CAP and provide the audit to the South Carolina Board of Financial Institutions upon its request, the General Assembly upon its request, and the South Carolina Department of Commerce. Annual reports to the South Carolina Department of Commerce and the General Assembly also must include projected capital investment and job creation associated with each CAP loan provided.

Section 33‑37‑1100. If a loan is not made by participating financial institutions for three consecutive years and the General Assembly does not appropriate additional funds for the program for those three consecutive years, BDC may pay over to the participating financial institutions their allocable shares of funds in the loss reserve account and pay over to the State of South Carolina, as directed by the South Carolina Board of Financial Institutions, funds held in the state fund account.”

SECTION 2. This act takes effect upon approval by the Governor.

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