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CHAPTER 39

County Business Development Corporations

ARTICLE 1

General Provisions

**SECTION 33‑39‑10.** Definitions.

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

 (1) “Corporation” means a county business development corporation created under this chapter;

 (2) “Financial institution” means any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation or other institution engaged primarily in lending or investing funds;

 (3) “Member” means any financial institution authorized to do business within this State which shall undertake to lend money to a corporation created under this chapter, upon its call, and in accordance with the provisions of this chapter;

 (4) “Board of directors” means the board of directors of the corporation created under this chapter; and

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

HISTORY: 1962 Code Section 12‑1201; 1960 (51) 1907.

**SECTION 33‑39‑20.** Deposit of funds.

 The corporation shall not deposit any of its funds in any banking institution unless such 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.

HISTORY: 1962 Code Section 12‑1202; 1960 (51) 1907.

**SECTION 33‑39‑30.** Corporation shall not accept deposits.

 The corporation shall not receive money on deposit.

HISTORY: 1962 Code Section 12‑1203; 1960 (51) 1907.

**SECTION 33‑39‑40.** Establishment and maintenance of surplus.

 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.

HISTORY: 1962 Code Section 12‑1204; 1960 (51) 1907.

**SECTION 33‑39‑50.** Credit of county is not pledged.

 Under no circumstances is the credit of the county pledged in this chapter.

HISTORY: 1962 Code Section 12‑1205; 1960 (51) 1907.

**SECTION 33‑39‑60.** Corporation and its securities exempt from taxes.

 The corporation shall not be subject to any taxes based upon or measured by income which are now or may be hereafter levied by the State; and the securities, evidences of indebtedness and shares of the capital stock issued by the corporation established under the provisions of this chapter, their transfer, income therefrom and deposits of financial institutions invested therein shall at all times be free from taxation within the State.

HISTORY: 1962 Code Section 12‑1206; 1960 (51) 1907.

**SECTION 33‑39‑70.** Tax credit for nondeductible losses arising from sale and other disposition of securities of corporation.

 Any stockholder, member or other holder of any securities, evidences of indebtedness or shares of the capital stock of the corporation 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 stockholder’s, member’s or other holder’s taxes to the State shall be entitled to credit against any taxes subsequently becoming due to the State from such 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.

HISTORY: 1962 Code Section 12‑1207; 1960 (51) 1907.

ARTICLE 3

Charter and Amendments; Organization; Powers

**SECTION 33‑39‑210.** Filing declaration of charter; contents.

 Ten or more persons, a majority of whom shall be residents of the same county of the 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 county and, to that end, to exercise the powers and privileges provided in this chapter, may be incorporated in the following manner. Such 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 \_ County”;

 (2) The location of the principal office of the corporation within the county; and

 (3) The purposes for which the corporation is founded, which shall include the following: To promote, stimulate, develop and advance the business prosperity and economic welfare of the county in which formed and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in the county and to rehabilitate and assist existing business and industry; and so 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 the county, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the county; 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 the county; and to provide financing for the promotion, development and conduct of all kinds of business activity in the county.

HISTORY: 1962 Code Section 12‑1221; 1960 (51) 1907.

**SECTION 33‑39‑220.** Additional contents of declaration of charter.

 The declaration of charter shall set forth (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 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 be in accordance with the provisions of Section 33‑2‑102.

HISTORY: 1962 Code Section 12‑1222; 1960 (51) 1907.

Code Commissioner’s Note

The reference in subsection (e) to Section 33‑37‑30 was changed to Section 33‑2‑102 at the direction of the Code Commissioner to reflect the recodification by 1988 Act No. 444, Section 2.

**SECTION 33‑39‑230.** Charter shall be void unless business begun within three years.

 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.

HISTORY: 1962 Code Section 12‑1223; 1960 (51) 1907.

**SECTION 33‑39‑240.** Calling first meeting; organization; quorum.

 The first meeting of the corporation 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. There shall be recorded in the minutes of the meeting a copy of the notice or of such unanimous agreement of the incorporators.

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

HISTORY: 1962 Code Section 12‑1224; 1960 (51) 1907.

**SECTION 33‑39‑250.** Powers.

 In furtherance of the purposes for which the corporation is founded and in addition to the powers conferred on business corporations by the provisions of this Title, the corporation shall, subject to the restrictions and limitations contained in this chapter, have the following powers:

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

 (2) To make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any 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) To borrow money from the members only, for any of the purposes of the corporation, to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure them by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature of any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

 (4) To make loans to any person, firm, corporation, joint‑stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for such loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

 (5) 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 corporation from time to time in the satisfaction of debts or enforcement of obligations;

 (6) 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, joint‑stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint‑stock company, association or trust;

 (7) 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 transfer, lease, or otherwise dispose of industrial plants or business establishments;

 (8) 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, corporation, joint‑stock company, 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;

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

 (10) To cooperate with and avail itself of the facilities of the State Development Board and any similar governmental agencies, and to cooperate with and assist and otherwise encourage organizations in the various communities of the county in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of the county; and

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

HISTORY: 1962 Code Section 12‑1225; 1960 (51) 1907.

**SECTION 33‑39‑260.** Amendment of charter.

 The charter may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two thirds of the votes to which the stockholders shall be entitled and two thirds of the votes to which the members shall be entitled; provided, that no amendment of the charter which is inconsistent with the general purposes expressed in this chapter, which authorizes any additional class of capital stock to be issued 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 shall be made without amendment of this chapter; and provided, further, that no amendment of the charter which increases the obligation of a member to make loans to the corporation, makes any change in the principal amount, interest rate or maturity date or in the security or credit position of any outstanding loan of a member to the corporation, affects a member’s right to withdraw from membership as provided in Section 33‑39‑430 or affects a member’s voting rights as provided in Sections 33‑39‑440 and 33‑39‑450 shall be made without the consent of each member affected by such amendment.

HISTORY: 1962 Code Section 12‑1226; 1960 (51) 1907.

**SECTION 33‑39‑270.** Approval by Secretary of State and filing of articles of amendment.

 Within thirty days after any meeting at which 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 amendment and the due adoption thereof, shall 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. Thereupon, the articles of amendment shall be filed in the office of the Secretary of State, and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

HISTORY: 1962 Code Section 12‑1227; 1960 (51) 1907.

ARTICLE 5

Members and Stockholders; Loans to Corporation

**SECTION 33‑39‑410.** Who may become members, stockholders or bondholders.

 Notwithstanding any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures, (a) all domestic corporations organized for the purpose of carrying on business within this State, including without implied limitation any 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 any bonds, securities or other evidences of indebtedness created by or the shares of the capital stock of the corporation and while owners of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State; (b) all financial institutions may become members of the corporation and make loans to the corporation as provided in this chapter; (c) a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation; and (d) each financial institution which becomes a member of the corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by or the shares of the capital stock of the corporation and while owners of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

HISTORY: 1962 Code Section 12‑1241; 1960 (51) 1907.

**SECTION 33‑39‑420.** Application for membership.

 Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and the membership shall become effective upon acceptance of such application by the board.

HISTORY: 1962 Code Section 12‑1242; 1960 (51) 1907.

**SECTION 33‑39‑430.** Duration of membership; withdrawal.

 Membership in the corporation shall 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 notice.

HISTORY: 1962 Code Section 12‑1243; 1960 (51) 1907.

**SECTION 33‑39‑440.** Powers of stockholders and members.

 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 powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

HISTORY: 1962 Code Section 12‑1244; 1960 (51) 1907.

**SECTION 33‑39‑450.** Voting by stockholders and members.

 As to all matters requiring action by the stockholders and the members of the corporation, the stockholders and the members shall vote separately thereon by classes, and, except as otherwise provided in this chapter, 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 and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

 Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined under item (3) (b) of Section 33‑39‑460.

HISTORY: 1962 Code Section 12‑1245; 1960 (51) 1907.

**SECTION 33‑39‑460.** Loans to corporation by members.

 Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

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

 (2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times 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 any member at any one time, when added to the amount of the investment in capital stock of the corporation then held by such member, shall not exceed

 (a) twenty per cent of the total amount then outstanding on loans to the corporation by all members, including in the total amount outstanding amounts validly called for loan but not yet loaned, or

 (b) the following limits, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the director of the Department of Insurance or his designee:

 (i) two per cent of the capital and surplus of commercial banks and trust companies,

 (ii) one per cent of the total outstanding loans made by a building and loan association, provided, however, that any business development corporation created pursuant to this chapter may in its charter or by appropriate amendment thereto provide that the loan limit of a building and loan association member shall be only one half of one per cent of the total outstanding loans made by such building and loan association member,

 (iii) one per cent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies,

 (iv) one per cent of the unassigned surplus of mutual insurance companies, except fire insurance companies,

 (v) one tenth of one per cent of the assets of fire insurance companies and

 (vi) such limits as may be approved by the board of directors of the corporation for other financial institutions.

 (4) Subject to item (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member’s loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

 (5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation which shall be freely transferable at all times and which shall bear interest at a rate of not less than one quarter of one per cent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

 (6) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of the member.

HISTORY: 1962 Code Section 12‑1246; 1960 (51) 1907; 1993 Act No. 181, Section 523.

ARTICLE 7

Directors and Officers

**SECTION 33‑39‑610.** Management of corporation.

 The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer and such other officers and such agents as the corporation by its bylaws shall authorize.

HISTORY: 1962 Code Section 12‑1261; 1960 (51) 1907.

**SECTION 33‑39‑620.** Board of directors; membership; powers.

 The board of directors shall consist of such number, not more than seven, as shall 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 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 be filled as provided in Section 33‑39‑630.

HISTORY: 1962 Code Section 12‑1262; 1960 (51) 1907.

**SECTION 33‑39‑630.** Election of directors; vacancies.

 The board of directors shall be elected initially by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting shall be 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 four directors and the stockholders shall elect the remaining three. The directors shall 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 qualify, unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

HISTORY: 1962 Code Section 12‑1263; 1960 (51) 1907.

**SECTION 33‑39‑640.** Liability for losses.

 Directors and officers shall not be responsible for losses unless the losses shall have been occasioned by the wilful misconduct of such directors and officers.

HISTORY: 1962 Code Section 12‑1264; 1960 (51) 1907.