

## **CHAPTER 10-30 DEVELOPMENT CORPORATIONS**

### **10-30-01. Organization.**

1. Any ten or more natural persons who are residents of this state may form a state development corporation by complying with the conditions prescribed in this chapter.
2. They shall subscribe and acknowledge a certificate specifying:
  - a. The name, the general nature of its business, and the principal place of transacting its business. The name must distinguish the corporation from all other corporations authorized to do business in the state and contain the words "state development corporation".
  - b. The period of its duration, which must be perpetual.
  - c. The name and residence of each incorporator.
  - d. The names and addresses of those composing this board until the first election.
  - e. The highest amount of indebtedness or liability to which the corporation shall be subject.
3. The certificate may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, members, and stockholders.

### **10-30-02. Purposes - Loans from Bank of North Dakota.**

The purpose of the corporation is to assist, encourage, and through the cooperative efforts of the institutions and corporations which from time to time become members thereof, develop and advance the business prosperity and economic welfare of this state; to encourage and assist in the location of new business and industry in this state and to rehabilitate existing business and industry; 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 and provide maximum opportunities for employment; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to furnish money and credit to approved and deserving applicants for the promotion, development, and conduct of all kinds of business activity in this state, thereby establishing a source of credit not otherwise readily available therefor. In furtherance of these purposes, the Bank of North Dakota is authorized to make loans to the corporation.

### **10-30-03. Incorporation.**

Upon the filing of the articles of incorporation with the secretary of state, the secretary of state shall issue to the corporation over the great seal of the state of North Dakota a certificate that the articles containing the required state of facts have been filed in the secretary of state's office. Thereupon the persons signing the articles, and their associates and successors, shall be a body corporate by the name and for the purposes stated in such articles.

### **10-30-04. Powers of investment corporations.**

In furtherance of the purposes for which such corporation is organized, and in addition to the powers conferred by the general laws relating to business corporations, any such corporation shall, subject to the restrictions and limitations herein contained, have the power to:

1. Borrow money and otherwise incur indebtedness for any of the purposes of the corporation; to issue its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, therefor 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 thereof.
2. Lend money to, and to guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation, limited liability company, or association, and to establish and regulate the

- terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith.
3. Purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as the board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.
  4. Acquire, by purchase or otherwise, the goodwill, business, rights, real and personal property, and other assets, or any part thereof, of such persons, firms, corporations, limited liability companies, joint-stock companies, associations, or trusts as may be in furtherance of the corporate purposes provided herein, and to assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any such person, firm, corporation, limited liability company, joint-stock company, association, or trust; 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, in furtherance of the corporate purposes provided herein, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.
  5. Acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, membership interests, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, limited liability company, 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.
  6. Cooperate with and avail itself of the facilities of the department of commerce division of economic development and finance and any other similar governmental agencies; and to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

**10-30-05. Business Corporation Act to apply.**

The provisions of chapter 10-19.1 apply to state development corporations as applicable and not inconsistent with this chapter.

**10-30-06. Capitalization.**

The capital stock of the corporation is six thousand shares of no par value, which must be issued for fifty dollars per share in cash, and four thousand shares of no par value, which may be issued for the current book value in cash.

**10-30-07. Board of directors.**

1. All the corporate powers of the corporation shall be exercised by a board of not less than fifteen elected directors who shall be residents of North Dakota and, except in the case of the first board, representative of the various sections of the state as determined in the bylaws. The number of directors and their term of office shall be determined in the bylaws. If any vacancy occurs in the board of directors through death, resignation, or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation.
2. The first board of directors shall adopt bylaws, which remain effective until amended or repealed by action of a subsequent board.
3. The first annual meeting shall be held at a date to be fixed by the board of directors as soon as reasonably possible after a minimum of twenty-five percent of the capital stock of the corporation shall have been paid into its treasury. The annual meeting

shall be called in the manner provided by the bylaws. At the first annual meeting, and at each annual meeting thereafter, a majority of the elected directors shall be elected by a vote of the nonstockholder members of the corporation hereinafter provided for, and the remaining elected directors shall be elected by a vote of the stockholder members. The stockholder members shall have one vote for each share of stock. The nonstockholder members shall each have one vote, and each nonstockholder member having a loan limit as herein defined of more than ten thousand dollars shall have one additional vote in such election.

**10-30-08. Nonstockholder members - Loan limitation.**

1. The nonstockholder members of the corporation are those national or state banks, savings banks, savings and loan associations, trust companies, stock or mutual insurance companies, the Bank of North Dakota, credit unions, and other financial institutions that apply for membership in the corporation, and membership becomes effective upon the acceptance of the application by the board of directors. Each member of the corporation shall lend money to the corporation when called upon by it to do so on the terms and other conditions as are approved from time to time by a majority of the directors.
2. The total amount of loans by any member at any one time shall not exceed the following limit, determined on the basis of the balance sheet of that member at the close of its second preceding fiscal year, as certified by its proper officers:
  - a. For commercial banks and trust companies and the Bank of North Dakota, two and one-half percent of capital and surplus.
  - b. For savings banks, two and one-half percent of one-half of the total surplus accounts.
  - c. For savings and loan associations and credit unions, two and one-half percent of the guaranty funds, surplus, and undivided profits.
  - d. For stock insurance companies, two and one-half percent of the capital and surplus.
  - e. For mutual insurance companies, two and one-half percent of the guaranty funds or of the surplus, whichever is applicable.
  - f. For other nonstockholder members, comparable limits approved by the board of directors.
3. All loan limits must be established at the thousand dollar amount nearest to the amount computed in accordance with subsection 2. All calls of funds which nonstockholder members are committed to lend to the corporation must be prorated by the corporation among the nonstockholder members in the same proportion that the individual lines of credit bear to the aggregate lines of credit. Upon sixty days' written notice, a member of the corporation may withdraw from membership in the corporation at the expiration date of the notice, and after that expiration date, is free of obligations except those accrued before the expiration date.

**10-30-09. Earned surplus.**

Each year, the corporation shall set apart all of its net earnings as retained earnings. The corporation shall hold part of the retained earnings as a reserve for bad debts. The corporation may use the rest of the retained earnings in the course of its business. The amount held as a reserve for bad debts must be at least the amount recommended by the firm of certified public accountants that the board of directors approves to audit the corporation's financial statements. The board shall establish procedures for investing funds held as a reserve for bad debts.

**10-30-10. Obligation limitation.**

At no time shall the total obligations of the corporation exceed twenty times the amount of the paid-in capital and surplus, not including earned surplus.

**10-30-11. Deposit of funds - Loans.**

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, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. No loans shall be made directly or indirectly to any officer of the corporation or to any firm of which such officer is a member or officer.

**10-30-12. Loans - Investment by applicant.**

Any person, firm, or limited liability company who applies for a loan or obtains money from the development corporation shall be required to invest in the stock of the corporation in an amount to be fixed by the board of directors of not less than two percent nor more than five percent of the funds obtained. The requirement of this section may be waived by a majority vote of the board of directors for unusual circumstances or when a loan or obligation is insured or guaranteed in whole or in part by the state or federal government or any agency of either. The board may provide for repurchase of a borrower's stock when the loan has been repaid in full.

**10-30-13. Pre-emptive right not authorized.**

The holders of capital stock as such shall have no pre-emptive or preferential right to purchase or subscribe for any part of the unissued capital stock of the corporation of any class or for any new issue of stock of any class, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of any class of the corporation, now or hereafter authorized or issued.

**10-30-14. Notes or obligations - Legal investments.**

Notwithstanding any other statute, the notes or other interest-bearing obligations of a state development corporation, issued in accordance with this chapter and the articles of incorporation and the bylaws of the corporation, are legal investments for any banks, savings and loan associations, trust companies, or other financial institutions which become members of the corporation. The Bank of North Dakota and the North Dakota mill and elevator are each authorized to purchase capital stock and become members of the corporation.