

Chapter 13

Business Development Corporations

16-13-1 Organization of development corporations under Utah Revised Business Corporation Act -- Corporate name.

Corporations to conduct a development business as specified in this act may be formed under the provisions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, and all the rights, privileges, and powers and all the duties and obligations of such corporations and of the officers and stockholders thereof shall be as provided in Title 16, Chapter 10a, Utah Revised Business Corporation Act, except as otherwise provided in this act. The name of any corporation organized in accordance with the provisions of this act shall include the words "business development corporation."

Amended by Chapter 6, 1992 Special Session 3

Amended by Chapter 6, 1992 Special Session 3

16-13-2 Definitions.

As used in this act:

- (1) The words "financial institution" mean any corporation engaged in a banking business, loan and trust company, or corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.
- (2) The word "lender" means any person, partnership, association, corporation including any financial institution and any corporation, agency or instrumentality organized or authorized by an act of Congress which lends money to a corporation organized in accordance with this act upon its call and in accordance with the provisions of this chapter.
- (3) The words "loan limit" mean for any lender the total of the maximum amount prescribed to be outstanding at one time on loans made by such lender to a corporation organized under this act and the amount of the investment in the capital stock of such corporation then held by such lender, as determined under the provisions of this act, and the amount of the investment in the capital stock of such corporation then held by such lender, as determined under the provisions of this act.
- (4) The words "development corporation" means a corporation organized in accordance with the provisions of this act.

Amended by Chapter 55, 1979 General Session

16-13-3 Purposes of development corporation.

The purposes of a development corporation shall include the following:

The purposes of a development corporation shall be to assist, promote, encourage and, through the cooperative efforts of the institutions and corporations which, from time to time, shall become lenders thereto, to develop and advance the business prosperity and economic welfare of the state and its citizens; to encourage and assist in the location of new business and industry in the 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 the state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the state; 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 the state; to furnish either equity capital, debt capital, or both, to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity in the state, thereby establishing a source of capital and credit not otherwise readily available for such purposes.

Amended by Chapter 55, 1979 General Session

16-13-4 General powers of business development corporation.

In furtherance of the purposes of a development corporation, and in addition to the powers conferred on corporations by Title 16, Chapter 10a, Utah Revised Business Corporation Act, such corporation, subject to the restrictions and limitations contained in this act, shall have the following powers:

- (1) To borrow money from lenders, and otherwise incur indebtedness for any of its purposes; 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) To lend money to, and to guarantee, indorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation, 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; provided, however, that the corporation may not approve any application for a loan unless and until the applicant shall have shown that the applicant has applied for the loan through ordinary financial channels and that the loan has been refused by at least one financial institution doing business in this state and, in the ordinary course of its business, granting loans similar in amount and kind to the requested loan.
- (3) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its 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, but not restricted to, any real or personal property acquired by such corporation from time to time in the satisfaction of debts or enforcement of obligations.
- (4) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, of such persons, firms, corporations, 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, 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, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.
- (5) 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, but nothing herein provided shall authorize the holding of securities of or otherwise engaging directly or indirectly in a business where such holding of securities or engaging in business is not authorized for corporations by general law.

- (6) To cooperate with and avail itself of the facilities of state departments and other government agencies; and to cooperate with and assist, and otherwise encourage, local organizations in the various communities in the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of the state.

Amended by Chapter 218, 2010 General Session

Amended by Chapter 378, 2010 General Session

16-13-5 Bonds or securities, capital stock of development corporations -- Authority to purchase, hold, or dispose of -- Rights of holders -- Rights of financial institutions.

- (1) All persons, firms, partnerships, associations, trusts and domestic and foreign corporations organized or authorized to do business in this state, including, without implied limitation, all financial institutions, public utility corporations and insurance corporations, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness created by a development corporation, and to exercise all the rights, powers and privileges of ownership thereof, all without the approval of any regulatory authority of the state.
- (2) All persons, firms, partnerships, associations, trusts, domestic and foreign corporations organized or authorized to do business in this state, including without implied limitation all public utility corporations and insurance corporations, other than financial institutions, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any of the shares of the capital stock of a development corporation, and while owners of said 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.
- (3) All financial institutions are hereby authorized to become lenders to development corporations and to make loans to the corporations as provided herein, without the approval of any regulatory authority of the state.
- (4) A financial institution is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by the corporation in accordance with its provisions for the call of loans, and any of the shares of the capital stock of the corporation, and while owners thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote, all without 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 lender pursuant to the authority granted herein may not exceed 10% of the loan limit of such lender. The amount of capital stock of the corporation which any lender is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such lender may otherwise be authorized to acquire.

Amended by Chapter 378, 2010 General Session

16-13-8 Board of directors -- Number and election of members.

The board of directors of a development corporation shall be of such number in multiples of three, but not less than six, as shall be determined in the first instance by the articles of incorporation and thereafter annually by the stockholders of the corporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Said persons shall hold office until the first annual meeting of the corporation

and until their successors have been elected and qualified. At the first annual meeting of a development corporation and at each annual meeting thereafter, 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 thereof, the shareholders shall elect the directors. The directors shall hold office until the next annual meeting, after their elections, and until their successors are elected and qualified unless sooner removed.

Any vacancy in the office of a director shall be filled by the remaining directors.

Amended by Chapter 55, 1979 General Session

16-13-9 Requirement before commencing business -- Cash consideration for shares -- Minimum stated capital.

A development corporation incorporated after July 1, 1979, may not transact any business or incur any indebtedness, except as is incidental to its organization or to obtain subscriptions to or payment for its shares, until there has been paid in for the issuance of shares consideration in cash of at least \$300,000. A development corporation shall have a stated capital of not less than \$300,000.

Amended by Chapter 378, 2010 General Session

16-13-10 Amount of net earnings set apart as earned surplus.

Each year a development corporation shall set apart as earned surplus not less than 10% of its net earnings for its preceding fiscal year until such surplus is equal in value to one-half of the amount paid in on the shares of the corporation then outstanding. Whenever the amount of surplus so established shall become impaired, it shall be restored to the required amount in the manner hereinbefore provided. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

Enacted by Chapter 27, 1965 General Session

16-13-11 Designation of depository.

A development corporation may 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. A development corporation may not receive money on deposit.

Amended by Chapter 378, 2010 General Session

16-13-12 Licensing, supervision, and examination by commissioner of financial institutions -- Fees.

A development corporation shall be licensed, supervised, and examined by the commissioner of financial institutions and shall make such report of its condition from time to time as the commissioner shall require. A development corporation shall pay a fee determined by the commissioner pursuant to Section 63J-1-504 for a license and for each examination.

Amended by Chapter 183, 2009 General Session

