

CHAPTER 289

FLORIDA INDUSTRIAL DEVELOPMENT CORPORATION

- 289.011 Definitions.
- 289.021 Industrial Development Corporation; incorporation.
- 289.031 Special corporate powers.
- 289.041 Securities of Industrial Development Corporation, authorized financial transactions.
- 289.051 Membership of financial institutions; loans to corporation, limitations.
- 289.061 Membership duration; withdrawal.
- 289.071 Powers of stockholders and members.
- 289.081 Amendments to articles of incorporation.
- 289.091 Conduct of corporation business and affairs.
- 289.101 Surplus.
- 289.111 Corporation depository.
- 289.121 Periodic examinations; reports.
- 289.131 Meetings.
- 289.141 Corporative existence.
- 289.151 Dissolution.
- 289.161 Credit of state.
- 289.171 Federal Small Business Investment Act, applicability.
- 289.181 Tax exemptions, credits, or privileges.
- 289.191 Occupational license tax.
- 289.201 Fiscal year.

289.011 Definitions.—As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation" means a Florida Industrial Development Corporation created under this act.

(2) "Financial institution" means any banking corporation or trust company, savings 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 act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors" means the board of directors of the corporation created under this act.

(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 act.

History.—s. 1, ch. 61-177.

289.021 Industrial Development Corporation; incorporation.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this act, 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 hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(a) The name of the corporation, which shall include the words "Industrial Development Corporation of Florida."

(b) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

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

(d) The names and post-office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(e) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders, or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors.

(f) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; 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 minimum amount of capital with which the corporation shall commence business which shall not be less than \$100,000. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(g) The articles of incorporation shall be in writing, subscribed by not less than nine natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take

acknowledgments and filed in the Department of State for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(h) The articles of incorporation shall recite that the corporation is organized under the provisions of this act.

(2) The Department of State shall not approve articles of incorporation for a corporation organized under this act until a total of at least 15 national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation. The written agreement shall be filed with the Department of State with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the Department of State. Whenever the articles of incorporation shall have been filed in the Department of State and approved by it, and all filing fees and taxes prescribed by chapter 608, have been paid, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.

History.—s. 2, ch. 61-177, ss. 10, 35, ch. 69-106.

Note.—Chapter 75-250 repealed chapter 608, relating to corporations.

289.031 Special corporate powers.—In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations generally by the provisions of general statute, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint, and employ officers, agents, and employees and to make contracts and incur liabilities for any of the purposes of the corporation; but the corporation may 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.

(2) To borrow money from its members or the Small Business Administration or any other similar federal agency for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and 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 or interest therein, without securing stockholder or member approval; but no loan to the corporation may be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) 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; but the corporation may not approve any application for a loan unless and until the person applying for the loan shows that he or she 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.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of, real property 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.

(5) To acquire the good will, business, rights, real property and personal property, and other assets, or any part thereof or interest therein, of any person, firm, corporation, joint stock company, association, or trust and to assume, undertake, 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 to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) 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.

(7) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsection (4), subsection (5), or subsection (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Division of Economic Development of the Department of Commerce, and any other similar state or federal governmental agency and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

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

History.—s. 3, ch. 61-177, ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 120, ch. 79-400; s. 21, ch. 83-216; s. 237, ch. 95-148.

289.041 Securities of Industrial Development Corporation, authorized financial transactions.—Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) Any person including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trusts, 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, or the shares of the capital stock of, the 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 except as otherwise provided in this act; provided, however, that 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.

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein.

(3) Each financial institution which becomes a member of the corporation is 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, or the shares of the capital stock of the 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; 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 10 percent of the loan limit of such member.

(4) 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.—s. 4, ch. 61-177.

289.051 Membership of financial institutions; loans to corporation, limitations.—

(1) 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 said board of directors may require, and membership shall become effective upon acceptance of such application by said board. 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:

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

(b) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed the greater of the following:

1. Twenty times the aggregate of the amount then paid in on the outstanding capital stock of the corporation and the retained earnings of the corporation.

2. Twenty times the amount then paid in on the outstanding capital stock of the corporation.

(c) 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 the capital stock of the corporation then held by such member, shall not exceed:

1. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including, in said total amount outstanding, amounts validly called for loan but not yet loaned.

2. The following limit, 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 Department of Insurance: 2.5 percent of the capital and surplus of commercial banks and trust companies; 0.5 percent of the total outstanding loans made by savings and loan associations and building and loan associations; 2.5 percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; 2.5 percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; 0.1 percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(2) Subject to subparagraph (1)(c)1., 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.

(3) 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 1 percent 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.

History.—s. 5, ch. 61-177; s. 1, ch. 67-316; ss. 13, 35, ch. 69-106; s. 1, ch. 76-77; s. 1, ch. 80-235.

289.061 Membership duration; withdrawal.—Membership in the corporation shall be for the duration of the corporation; provided, that upon written notice given to the corporation 5 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice. A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member.

History.—s. 6, ch. 61-177.

289.071 Powers of stockholders and members.—

(1) The stockholders and the members of the corporation shall have the following powers of the corporation:

(a) To determine the number of and elect directors as provided in s. 289.091;

(b) To make, amend and repeal bylaws;

(c) To amend this charter as provided in s. 289.081;

(d) To dissolve the corporation as provided in s. 289.151;

(e) To do all things necessary or desirable to secure aid, assistance loans, and other financing from any financial institution, and from any agency established under the Small Business Investment Act of 1958, Pub. L. No. 85-699, 85th Congress, or other similar federal laws now or hereafter enacted;

(f) To exercise such other of the powers of the corporation consistent with this act as may be conferred on the stockholders and the members by the bylaws.

(2) As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him or her, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than \$1,000 shall have one additional vote, in person or by proxy, for each additional \$1,000 which such member is authorized to have outstanding on loans to the corporation at any one time as determined under s. 289.051(1)(c)2.

History.—s. 7, ch. 61-177; s. 238, ch. 95-148.

289.081 Amendments to articles of incorporation.

(1) The articles of incorporation 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. No amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein, or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the Department of Banking and Finance to examine the corporation or the obligation of the corporation to make reports as provided in s. 289.121, shall be made. No amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which an amendment of the articles of incorporation 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 due adoption thereof, shall be submitted to the Department of State, which shall examine them and if it finds that they conform to the requirements of this act, shall so certify and endorse its approval thereon. Thereupon, the articles of amendment shall be filed in the Department of State and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

History.—s. 8, ch. 61-177; ss. 10, 12, 35, ch. 69-106.

289.091 Conduct of corporation business and affairs.—

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

(2) The board of directors shall consist of such number, not less than 15 nor more than 21, 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 hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, which annual meeting shall be held during the month of January, or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles of incorporation at a special meeting as hereinafter provided.

(3) At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

(4) 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.

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

History.—s. 9, ch. 61-177.

289.101 Surplus.—Each year the corporation shall set apart as earned surplus not less than 10 percent 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 again to the required amount in the manner provided for its original accumula-

tion. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

History.—s. 10, ch. 61-177.

289.111 Corporation depository.—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. The corporation shall not receive money on deposit.

History.—s. 11, ch. 61-177.

289.121 Periodic examinations; reports.—The corporation shall be examined at least once annually by the Department of Banking and Finance and shall make reports of its condition not less than annually to said department and more frequently upon call of the department, which in turn shall make copies of such reports available to the Department of Insurance and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance and Department of State. The corporation shall pay the actual cost of said examinations. The Department of Banking and Finance shall exercise the same power and authority over corporations organized under this act as is exercised over financial institutions under the provisions of the financial institutions codes, when such codes are not in conflict with this act.

History.—s. 12, ch. 61-177; ss. 10, 12, 13, 35, ch. 69-106; s. 200, ch. 92-303.

289.131 Meetings.—

(1) 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 5 days before the day appointed for the meeting. Said 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 said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting, the incorporators shall organize by the choice, by ballot, 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. Ten of the incorporators shall be a quorum for the transaction of business.

History.—s. 13, ch. 61-177.

289.141 Corporative existence.—The period of duration of the corporation shall be 50 years, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in s. 289.151.

History.—s. 14, ch. 61-177.

289.151 Dissolution.—The corporation may, upon 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, dissolve such corporation as provided by chapter 607, insofar as chapter 607 is not in conflict with the provisions of this act. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.—s. 15, ch. 61-177; s. 22, ch. 83-216.

289.161 Credit of state.—Under no circumstances shall the credit of Florida be pledged to any corporation organized under the provisions of this act.

History.—s. 16, ch. 61-177.

289.171 Federal Small Business Investment Act, applicability.—Any corporation organized under the provisions of this act shall be a state development company, as defined in the Small Business Investment Act of 1958, Pub. L. No. 85-699, 85th Congress, or any other similar federal legislation, and shall be authorized to operate on a statewide basis.

History.—s. 17, ch. 61-177.

289.181 Tax exemptions, credits, or privileges.—Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by s. 201.10 or by any other general law are granted to corporations organized pursuant to this act.

History.—s. 18, ch. 61-177; s. 18, ch. 91-221.

289.191 Occupational license tax.—Every corporation organized and engaged in business under the provisions of this act shall pay an annual state occupational license tax of \$50.

History.—s. 19, ch. 61-177; s. 19, ch. 91-221.

289.201 Fiscal year.—Corporations organized under this act shall adopt the calendar year as their fiscal year.

History.—s. 20, ch. 61-177.