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SENATE FILE 2071  
BY COMMITTEE ON SMALL BUSINESS  
AND ECONOMIC DEVELOPMENT

(formerly 55B# 2023)  
*Appropriation (p. 12)*

Passed Senate, Date \_\_\_\_\_

Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the establishment of economic development  
2 finance corporations to assist in providing financing for  
3 small business development by providing loan guarantees,  
4 letters of credit, equity financing, underwriting for public  
5 offerings, and providing for and making an appropriation of  
6 state matching funds.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2071

1 Section 1. NEW SECTION. 496D.1 TITLE OF ACT.

2 This chapter shall be known and may be cited as the "Iowa  
3 Business Development Finance Act".

4 Sec. 2. NEW SECTION. 496D.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise  
6 requires, the term:

7 1. "Business development finance corporation" means a  
8 corporation organized pursuant to this chapter and for the  
9 purpose of assisting small businesses in any phase of business  
10 or product development in the state of Iowa by the loaning of  
11 money to and investing money in the business, and otherwise  
12 organizing for the purposes in section 496D.5.

13 2. "Financial institution" means a bank, trust company,  
14 savings and loan association, insurance company or related  
15 corporation, partnership, foundation or other institution  
16 licensed to do business in the state of Iowa and engaged  
17 primarily in lending or investing funds or any private or  
18 public retirement fund.

19 3. "Member" means a financial institution which shall  
20 undertake to lend money to a business development finance  
21 corporation upon its call and in accordance with section  
22 496D.9.

23 4. "Board of directors" means members of the board of  
24 directors of a business development finance corporation  
25 constituted under section 496D.13 in office from time to time.

26 5. "Loan limit" means, for any member, the maximum amount  
27 permitted to be outstanding at any one time on loans made by  
28 the member to a business development finance corporation, as  
29 determined in this chapter.

30 6. "Department" means the Iowa department of economic  
31 development or any agency which succeeds to the functions of  
32 the Iowa department of economic development.

33 7. "Small business" means a business which meets the  
34 United States small business administration's definition of  
35 small business for that type of business.

1     Sec. 3. NEW SECTION. 496D.3 AUTHORIZED CORPORATIONS.

2     There is authorized to be incorporated under chapter 496A,  
3 business development finance corporations which meet and  
4 comply with the requirements of this chapter. These  
5 corporations shall be subject to and have the powers and  
6 privileges conferred by this chapter and those provisions of  
7 chapter 496A which are not inconsistent with and to the extent  
8 not restricted or limited by the provisions of this chapter.  
9 A corporation shall not be deemed incorporated pursuant to and  
10 under this chapter unless the incorporation is approved by the  
11 department and unless its articles of incorporation provide  
12 that it is incorporated pursuant to this chapter. To assure a  
13 broad base from which corporations may obtain loans from  
14 members, the department at its discretion may limit the number  
15 of corporations organized and existing pursuant to this  
16 chapter to one or more corporations.

17     Sec. 4. NEW SECTION. 496D.4 OFFICES.

18     A business development finance corporation may have offices  
19 in places within the state of Iowa as may be fixed by the  
20 board of directors.

21     Sec. 5. NEW SECTION. 496D.5 PURPOSES.

22     The purposes of a business development finance corporation  
23 shall be limited to those provided in this section and shall  
24 be to promote, stimulate, develop and advance small business  
25 prosperity of the state of Iowa and its citizens; to encourage  
26 and assist through loans, investments, or other business  
27 transactions, the location of new small businesses in the  
28 state; to rehabilitate and assist existing small businesses in  
29 this state; to stimulate and assist in the expansion of any  
30 kind of business activity which would tend to promote small  
31 business development and maintain the economic stability of  
32 this state, provide maximum opportunities for employment,  
33 encourage thrift, and improve the standard of living of the  
34 citizens of this state; to co-operate and act in conjunction  
35 with other organizations, public or private, in the promotion

1 and advancement of small business development in this state;  
2 and to provide financing for the promotion, development, and  
3 conduct of all kinds of small business activity in this state.

4 Sec. 6. NEW SECTION. 496D.6 POWERS.

5 A business development finance corporation shall, subject  
6 to the restrictions and limits contained in this chapter, have  
7 the following powers:

8 1. To provide letters of credit or guarantees to small  
9 businesses for any phase of product or business development,  
10 not to exceed thirty percent of the total loan amount.

11 2. To provide equity financing to small businesses for any  
12 phase of business or product development.

13 3. To provide loans for small businesses in any phase of  
14 product or business development when serviced by an Iowa  
15 financial institution. However, a direct loan shall not be  
16 provided unless the small business has been turned down for a  
17 similar loan by at least two financial institutions.

18 4. To underwrite the public offering of shares by small  
19 businesses.

20 5. To request, as a condition of participation or  
21 assistance, royalty, equity ownership, or fees, as it  
22 determines appropriate, for its assistance.

23 6. To make contracts and incur liabilities for any of the  
24 purposes of the corporation.

25 7. To borrow money either from its members or pursuant to  
26 lending arrangements entered into under the authority granted  
27 in subsection 9, or both from its members and pursuant to said  
28 lending arrangements, and to issue its bonds, debentures,  
29 notes or other evidences of indebtedness, whether secured or  
30 unsecured, and when necessary to secure the same by mortgage,  
31 pledge, deed of trust, or other lien on its property,  
32 franchises, rights and privileges of every kind and nature, or  
33 any part thereof or interest therein, without securing  
34 shareholder or member approval. However, no loan to the  
35 corporation shall be secured in any manner unless all

1 outstanding loans to the corporation, and for which loan or  
2 loans no subordination agreement has been entered into between  
3 the respective loan maker and the corporation, shall be  
4 secured equally and ratably in proportion to the unpaid  
5 balance of the loans and in the same manner.

6 8. To do all acts and things necessary or convenient to  
7 carry out the powers expressly granted in this chapter and  
8 such other powers not in conflict with this chapter granted  
9 under chapter 496A.

10 9. To enter into lending arrangements with state and  
11 federal agencies or instrumentalities whereby the corporation  
12 may participate in lending operations or secure guarantees or  
13 qualify under applicable laws to further state or federal  
14 lending programs by becoming a participant therein.

15 10. To accept broker deposits from member institutions.

16 Sec. 7. NEW SECTION. 496D.7 STOCK -- LIMITATIONS.

17 Capital stock shall be issued only on receipt by each  
18 business development finance corporation of cash in an amount  
19 not less than the par value as may be determined by the board  
20 of directors. A shareholder of a business development finance  
21 corporation shall not be entitled as of right to purchase or  
22 subscribe for any unissued or treasury shares of the  
23 corporation, and the shareholder shall not be entitled as of  
24 right to purchase or subscribe for any bonds, notes,  
25 certificates of indebtedness, debentures, or other obligations  
26 convertible into shares of the corporation.

27 Sec. 8. NEW SECTION. 496D.8 STOCKHOLDERS PRIVILEGES.

28 Notwithstanding any rule at common law or any provision of  
29 any general or special law or any provision in their  
30 respective articles of incorporation, agreements of  
31 association, or trust indentures:

32 1. A person is authorized to acquire, purchase, hold,  
33 sell, assign, transfer, mortgage, pledge or otherwise dispose  
34 of any bond, security or other evidences of indebtedness  
35 created by, or the shares of the capital stock of, business

1 development finance corporations, and while owners of said  
2 shares to exercise all the rights, powers and privileges of  
3 ownership, including the right to vote thereon, all without  
4 the approval of any regulatory agency of this state.

5 2. A financial institution is authorized to become a  
6 member of a business development finance corporation and to  
7 make loans to the corporation.

8 3. A financial institution which does not become a member  
9 of a business development finance corporation shall not be  
10 permitted to acquire any shares of the capital stock of the  
11 corporation.

12 4. Each financial institution which becomes a member of a  
13 business development finance corporation is authorized to  
14 acquire, purchase, hold, sell, assign, mortgage, pledge, or  
15 otherwise dispose of, bonds, securities or other evidences of  
16 indebtedness created by, or the shares of the capital stock  
17 of, the business development finance corporation, of which it  
18 is a member and while owners of such shares to exercise all  
19 rights, powers and privileges of ownership, including the  
20 right to vote thereon, all without the approval of any  
21 regulatory agency of this state. However, the amount of the  
22 capital stock of a business development finance corporation  
23 which may be acquired by any member pursuant to the authority  
24 granted in this subsection, shall not exceed ten percent of  
25 the loan limit of the member. The amount of capital stock of  
26 a corporation which a member is authorized to acquire pursuant  
27 to the authority granted in this subsection, is in addition to  
28 the amount of capital stock in other corporations which the  
29 member may otherwise be authorized to acquire. However, a  
30 financial institution shall not become a shareholder or member  
31 of more than one business development finance corporation.

32 Sec. 9. NEW SECTION. 496D.9 LOAN PROCEDURES.

33 A financial institution may request membership in a  
34 business development finance corporation by making application  
35 to the board of directors of the corporation on forms and in

1 the manner as the board of directors may require, and  
2 membership shall become effective upon acceptance of the  
3 application by the board. Each member of a business  
4 development finance corporation may make loans to the  
5 corporation as and when called upon by that corporation to do  
6 so on terms and conditions as shall be approved from time to  
7 time by the board of directors subject to the following:

8 1. All loan limits shall be established at the thousand  
9 dollar amount nearest the amount computed in accordance with  
10 this section.

11 2. A loan to the corporation shall not be made if  
12 immediately thereafter the total amount of the obligations of  
13 the corporation calling for the loan would exceed ten times  
14 the amount then paid in on the outstanding capital stock of  
15 the corporation.

16 3. The total amount outstanding at any one time on loans  
17 to a corporation made by a member of the corporation when  
18 added to the amount of the investment in the capital stock of  
19 the corporation and held by the member, shall not exceed the  
20 lesser of:

21 a. Twenty percent of the total amount then outstanding on  
22 loans to the corporation by all members, including in that  
23 total amount outstanding amounts validly called for loan but  
24 not yet loaned.

25 b. The limit, to be determined as of the time the member  
26 becomes a member, on the basis of the audited balance sheet of  
27 the member at the close of its fiscal year immediately  
28 preceding its application for membership, as follows:

29 (1) Banks and trust companies -- five percent of the paid-  
30 in capital, surplus, and undivided profits.

31 (2) Savings and loan associations -- two percent of the  
32 general reserve account, surplus and undivided profits.

33 (3) Stock life insurance companies -- one percent of  
34 capital and unassigned surplus.

35 (4) Mutual life insurance companies -- one percent of the

1 unassigned surplus.

2 (5) All other insurance companies -- one-tenth of one  
3 percent of the assets.

4 (6) Other financial institutions -- such limits as may be  
5 approved by the board of directors of the business development  
6 finance corporation.

7 However, the lending limit of a member shall not exceed  
8 five hundred thousand dollars.

9 4. Each call for loan shall be prorated among the members  
10 in substantially the same proportion that the adjusted loan  
11 limit of each member bears to the aggregate of the adjusted  
12 loan limits of all members. The adjusted loan limit of a  
13 member shall be the amount of the member's loan limit, reduced  
14 by the balance of outstanding obligations of the corporation  
15 to the member and the investment in capital stock of the  
16 corporation held by the member at the time of the call.

17 5. All loans to a corporation by a member shall be  
18 evidenced by registered bonds, debentures, notes, or other  
19 evidences of indebtedness of the corporation, which shall be  
20 freely transferable by the registered holder thereof on the  
21 books of the corporation.

22 Sec. 10. NEW SECTION. 496D.10 DURATION OF MEMBERSHIP.

23 Membership in a business development finance corporation  
24 shall be for the duration of the respective corporation.  
25 However, upon written notice given to the corporation five  
26 years in advance a member may withdraw from membership in the  
27 corporation at the expiration date of the notice. A financial  
28 institution may at any time withdraw from membership without  
29 such notice in the event of its merger with another financial  
30 institution, after commencement of proceedings for voluntary  
31 or involuntary dissolution, receivership, or reorganization  
32 pursuant to or by operation of federal or state law or in the  
33 event of conversion from a state financial institution to a  
34 federal financial institution or the reverse. If there shall  
35 be a legislative amendment of this chapter affecting the

1 rights and obligations of the members and shareholders or  
2 otherwise affecting the articles of incorporation of the  
3 corporation which shall not have been approved by the members  
4 and shareholders within the time set forth and in the manner  
5 provided in this chapter, a member not approving the amendment  
6 may immediately withdraw from membership upon giving written  
7 notice to the corporation not later than ninety days from the  
8 effective date of the amendment. A member shall not be  
9 obligated to make loans to a corporation pursuant to calls  
10 made subsequent to the withdrawal of the member from the  
11 corporation.

12 Sec. 11. NEW SECTION. 496D.11 POWERS OF SHAREHOLDERS.

13 The shareholders and the members of the business  
14 development finance corporation shall have the following  
15 powers of the corporation:

16 1. Those powers granted in chapter 496A which are not  
17 inconsistent with this chapter.

18 2. To determine the number and elect directors as provided  
19 in this chapter.

20 3. To amend the articles of incorporation as provided in  
21 this chapter.

22 4. To dissolve the corporation as provided in this  
23 chapter.

24 5. To exercise other powers of the corporation as may be  
25 conferred on the shareholders and the members by the bylaws.  
26 As to all matters requiring action by the shareholders and the  
27 members of the corporation, the shareholders and the members  
28 shall vote separately thereon by classes and, except as may be  
29 otherwise provided in this chapter, approval of the matters  
30 shall require the affirmative vote of a majority of the votes  
31 to which the shareholders present or represented at the  
32 meeting are entitled, and the affirmative vote of a majority  
33 of the votes to which the members present or represented at  
34 the meeting are entitled. Each shareholder shall have one  
35 vote, in person or by proxy, for each share of capital stock

1 held by the shareholder, and each member shall have one vote,  
2 in person or by proxy, except that any member having a loan  
3 limit of more than one thousand dollars shall have one  
4 additional vote, in person or by proxy, for each additional  
5 one thousand dollars which the member is authorized to have  
6 outstanding on loans to the corporation at any one time as  
7 determined in this chapter.

8 Sec. 12. NEW SECTION. 496D.12 ARTICLES AMENDED.

9 The articles of incorporation of a business development  
10 finance corporation may be amended by the votes of the  
11 shareholders and the members voting separately by classes. An  
12 amendment shall require approval by the affirmative vote of  
13 two-thirds of the votes to which the shareholders shall be  
14 entitled and two-thirds of the votes to which the members  
15 shall be entitled. An amendment shall not be made which is  
16 inconsistent with this chapter, authorizes an additional class  
17 or classes of shares of capital stock, or eliminates or  
18 curtails the authority of the department with respect to the  
19 corporation. Without the consent of each of the members  
20 affected, an amendment shall not be made which increases the  
21 obligation of a member to make loans to the corporation; makes  
22 any change in the principal amount, interest rate, maturity  
23 date, or in the security or credit position of an outstanding  
24 loan of a member to the corporation; affects a member's right  
25 to withdraw from membership, as provided in this chapter; or  
26 affects a member's voting rights in the corporation. Within  
27 thirty days after a meeting at which amendment of the articles  
28 has been adopted, articles of amendment signed and sworn to by  
29 the president, secretary, and majority of the directors,  
30 setting forth the amendment and the due adoption of them,  
31 shall be submitted to the director of the department who shall  
32 examine them, and if the director finds that they conform to  
33 the requirements of this chapter, shall certify and endorse  
34 the director's approval of them. Thereupon, the articles of  
35 amendment shall be filed in the office of the secretary of

1 state in the manner set forth and as provided in chapter 496A  
2 and the amendment shall not take effect until the articles of  
3 amendment shall have been approved and filed as provided in  
4 this section. Within sixty days after the effective date of a  
5 legislative amendment affecting the rights and obligations of  
6 the members and shareholders or otherwise affecting the  
7 articles of incorporation, the approval of the legislative  
8 amendments shall be voted on by the shareholders and the  
9 members of the corporation at a meeting duly called for that  
10 purpose. If the legislative amendment is not approved by the  
11 affirmative vote of two-thirds of the votes to which the  
12 shareholders shall be entitled and two-thirds of the votes to  
13 which the members shall be entitled, a member voting against  
14 the approval of the legislative amendment shall have the right  
15 to withdraw from membership as provided in this chapter.  
16 Within thirty days after any meeting at which a legislative  
17 amendment affecting the articles of incorporation of a  
18 corporation has been voted on, a certificate filed and sworn  
19 to by the secretary or other recording officer of the  
20 corporation setting forth the action taken at the meeting with  
21 respect to the amendment shall be submitted to the director of  
22 the department and upon receipt of the approval shall be filed  
23 in the office of the secretary of state.

24 Sec. 13. NEW SECTION. 496D.13 BOARD OF DIRECTORS.

25 The board of directors shall consist of not less than  
26 fifteen members as shall be determined in the first instance  
27 by the incorporators and thereafter annually by the members  
28 and the shareholders at each annual meeting or at a special  
29 meeting held in lieu of the annual meeting. At each annual  
30 meeting or at a special meeting held in lieu of the annual  
31 meeting, the members of each corporation shall elect two-  
32 thirds of the board of directors and the shareholders shall  
33 elect the remaining directors. The directors shall hold  
34 office until the next annual meeting of the corporation or  
35 special meeting held in lieu of the annual meeting after their

1 election, and until their successors are elected and qualify  
2 unless sooner removed in accordance with the provisions of the  
3 bylaws. A vacancy in the office of a director elected by the  
4 members shall be filled by the directors elected by the  
5 members, and a vacancy in the office of a director elected by  
6 the shareholders shall be filled by the directors elected by  
7 the shareholders.

8 If the corporation receives assistance from the business  
9 development finance corporation assistance fund under section  
10 496D.19, the board of directors shall include the director of  
11 the department, the treasurer of state, and the state  
12 secretary of agriculture as ex officio voting members.

13 Notwithstanding any provisions of law to the contrary,  
14 officers and directors of insurance companies and other  
15 financial institutions may be members of the board of  
16 directors of a corporation organized for the purposes of this  
17 chapter to which the insurance company or other financial  
18 institution may make a loan or may make an investment.

19 Sec. 14. NEW SECTION. 496D.14 EARNED SURPLUS SET ASIDE.

20 Each year each business development finance corporation  
21 shall set apart as earned surplus not less than ten percent of  
22 its net earnings for the preceding fiscal year until the  
23 surplus shall be equal in value to one-half of the amount paid  
24 in on the capital stock then outstanding. Whenever the amount  
25 of surplus established shall become impaired, it shall be  
26 built up again to the required amount in the manner provided  
27 for its original accumulation. Net earnings and surplus shall  
28 be determined by the board of directors, after providing for  
29 the reserves as the directors deem desirable, and the  
30 directors' determination made in good faith shall be  
31 conclusive on all persons.

32 Sec. 15. NEW SECTION. 496D.15 DEPOSIT OF FUNDS.

33 A business development finance corporation shall not  
34 deposit any of its funds in a financial institution unless the  
35 institution has been designated as a depository by a vote of a

1 majority of the directors present at an authorized meeting of  
2 the board of directors exclusive of a director who is an  
3 officer or director of the depository designated. The  
4 corporation shall not receive money on deposit.

5 Sec. 16. NEW SECTION. 496D.16 REPORTS TO DEPARTMENT OF  
6 ECONOMIC DEVELOPMENT.

7 Each business development finance corporation is subject to  
8 the examination of the department and shall make reports of  
9 its condition not less than annually to the department. The  
10 department shall make copies of the reports available to the  
11 commissioner of insurance and the superintendent of banking.  
12 Each corporation shall also furnish other information as the  
13 department may require. The department may request the  
14 superintendent of banking to examine the condition of a  
15 corporation and to submit a report on the examination to the  
16 department and the commissioner of insurance.

17 Sec. 17. NEW SECTION. 496D.17 CERTIFICATE TO DO BUSINESS  
18 AND RECEIVE STATE ASSISTANCE.

19 Upon the approval of the department as required in this  
20 chapter and the issuance of a certificate as provided in  
21 chapter 496A, a business development finance corporation shall  
22 be authorized to commence business and to issue stock to the  
23 extent authorized in its articles of incorporation. Upon  
24 approval and issuance of a certificate as provided in section  
25 496D.19, the business development finance corporation is  
26 entitled to state assistance from the business development  
27 finance corporation assistance fund.

28 Sec. 18. NEW SECTION. 496D.18 DISSOLUTION.

29 A business development finance corporation may be dissolved  
30 upon the affirmative vote of two-thirds of the votes to which  
31 the shareholders shall be entitled and two-thirds of the votes  
32 to which the members shall be entitled. Upon dissolution of a  
33 business development finance corporation, the corporation's  
34 assets shall not be distributed to the shareholders until all  
35 sums due the members of the corporation as creditors have been

1 paid in full.

2 Sec. 19. NEW SECTION. 496D.19 STATE ASSISTANCE FUND.

3 1. There is created in the treasurer of state's office a  
4 "business development finance corporation assistance fund".

5 The fund shall consist of all appropriations, grants, or gifts  
6 received by the treasurer specifically for assistance under  
7 this chapter and revenues designated in section 98.35 to be  
8 deposited in the fund. Moneys in this fund are appropriated  
9 for and shall be used to match, on a dollar-for-dollar basis,  
10 the amount of capital investment made by financial  
11 institutions and persons that are not financial institutions  
12 under section 496D.7 in the capital stock of a qualified  
13 business development finance corporation. However, the  
14 treasurer shall not provide matching funds in any one year in  
15 excess of five million dollars. If the amount of investments  
16 to be matched exceeds the five million dollar limit in any  
17 year, including amounts carried forward from a previous year,  
18 the excess shall be carried forward until matching funds have  
19 been provided.

20 2. A business development finance corporation may apply  
21 for assistance under subsection 1 and shall be qualified to  
22 receive the assistance if it meets the following criteria:

23 a. The corporation has received the approval of the  
24 department to commence business and issue stock as required in  
25 this chapter.

26 b. The corporation has provided in its articles of  
27 incorporation or bylaws that three of the members of the board  
28 of directors shall consist of the director of the department,  
29 the treasurer of state, and the state secretary of  
30 agriculture.

31 c. The corporation's policies have been reviewed and  
32 approved by the financial assistance division of the  
33 department.

34 d. The director issued a certificate for assistance. This  
35 certificate must be applied for annually along with a report

1 of the following year's activities and recommendations for  
2 statutory changes the corporation deems appropriate.

3 3. The requirement for the matching by the state of  
4 capital investments in a business development finance  
5 corporation shall be provided solely from moneys in the  
6 business development finance corporation assistance fund and  
7 does not constitute an indebtedness or other liability of the  
8 state or a pledge of the faith or credit of the state other  
9 than of the assistance fund.

10 4. Loan guarantees or other credit enhancements made by a  
11 business development finance corporation for which the state  
12 has contributed matching funds under this section shall be  
13 supported only by the moneys committed or contributed to the  
14 corporation. A loan guarantee agreement or other credit  
15 enhancement made by a corporation is not an obligation of the  
16 state, except to the extent of moneys previously contributed  
17 to the corporation from the fund. A corporation shall not  
18 pledge the credit or taxing power of the state and shall not  
19 make its obligations payable out of any moneys other than  
20 those committed or contributed to the corporation.

21 Sec. 20. Section 98.35, Code 1987, is amended to read as  
22 follows:

23 98.35 TAX AND FEES PAID TO GENERAL FUND.

24 The proceeds derived from the sale of stamps and the  
25 payment of taxes, fees and penalties provided for under this  
26 chapter, and the permit fees received from all permits issued  
27 by the department, shall be credited to the general fund of  
28 the state, except as otherwise provided in this section. All  
29 permit fees provided for in this chapter and collected by  
30 cities in the issuance of permits granted by the cities shall  
31 be paid to the treasurer of the city where the permit is  
32 effective, or to another city officer as designated by the  
33 council, and credited to the general fund of the city. Permit  
34 fees so collected by counties shall be paid to the county  
35 treasurer. Two and one-half cents of the first five cents

1 received from the sale of each stamp and the payment of the  
2 tax on each pack of cigarettes or little cigars shall be  
3 deposited into the business development finance corporation  
4 assistance fund created in section 496D.19.

5 Sec. 21. As of the effective date of this Act,  
6 corporations shall no longer be incorporated under the pro-  
7 visions of chapter 496B. Corporations incorporated under  
8 chapter 496B that are in existence on the effective date of  
9 this Act shall reincorporate under the provisions of chapter  
10 496D established in this Act or be dissolved as provided under  
11 chapter 496B by July 1, 1990.

12 EXPLANATION

13 The bill provides for the incorporation of business  
14 development finance corporations, similar to the provisions of  
15 chapter 496B for the incorporation of economic development  
16 corporations, to provide financing for the promotion,  
17 development, and conduct of all kinds of small business  
18 activity in the state. The financial assistance will be  
19 provided from the capital of the finance corporation, loans  
20 made to it from members of the corporation, and matching funds  
21 provided by the state. The capital of the corporation is  
22 obtained by the sale of shares to financial and nonfinancial  
23 entities. Financial institutions, which include insurance  
24 companies and public and private pension funds, are the only  
25 entities that may become members of the corporation and can  
26 commit themselves to making loans to it. The state will match  
27 on a dollar-for-dollar basis the contributions to capital of  
28 the corporation made through the purchase of the shares of the  
29 corporation if the corporation agrees to have as part of its  
30 board of directors the director of the department of economic  
31 development, the treasurer of state, and the state secretary  
32 of agriculture and its policies have been reviewed and  
33 approved by the department of economic development. The  
34 state's match will come from a special fund set up for that  
35 purpose. This fund will include any moneys appropriated to it

1 and one-half of the first five cents received by the state  
2 from the sale of each stamp for and the payment of the tax on  
3 each pack of cigarettes. The maximum amount the state will  
4 match in a fiscal year shall not exceed \$5,000,000 or 10% of  
5 the capital investment made in the corporation, whichever is  
6 the lower.

7 The bill takes effect July 1, 1988, and after that date no  
8 economic development corporation shall be incorporated under  
9 chapter 496B. Existing chapter 496B corporations will have to  
10 reincorporate under this Act or be dissolved by July 1, 1990.

11 SIMILAR TO SSB 2023 (LSB 7599IS)

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SENATE FILE 2071

S-5520

1 Amend Senate File 2071 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 28.131 TITLE OF ACT.

5 This division shall be known and may be cited as  
6 the "Iowa Business Development Finance Act".

7 Sec. 2. NEW SECTION. 28.132 DEFINITIONS.

8 As used in this division, unless the context  
9 otherwise requires, the term:

10 1. "Corporation" means the business development  
11 finance corporation organized pursuant to this  
12 division and for the purpose of assisting businesses  
13 in any phase of business or product development in the  
14 state of Iowa by the loaning of money to and investing  
15 money in the business, and otherwise organizing for  
16 the purposes in section 28.133.

17 2. "Financial institution" means a bank, trust  
18 company, savings and loan association, insurance  
19 company or related corporation, partnership,  
20 foundation or other institution licensed to do  
21 business in the state of Iowa and engaged primarily in  
22 lending or investing funds or any private or public  
23 retirement fund.

24 3. "Member" means a financial institution which  
25 has been accepted for membership in the corporation in  
26 accordance with section 28.137.

27 4. "Board" means the board of directors of the  
28 corporation constituted under section 28.143 in office  
29 from time to time.

30 5. "Public director" means a member of the board  
31 representing the state of Iowa.

32 6. "Private director" means a member of the board  
33 representing the shareholders of the corporation.

34 7. "Department" means the Iowa department of  
35 economic development or any agency which succeeds to  
36 the functions of the Iowa department of economic  
37 development.

38 8. "Business" means a business which meets the  
39 United States small business administration's  
40 definition of small business for that type of  
41 business, except a business whose primary activity is  
42 retail sales.

43 Sec. 3. NEW SECTION. 28.133 PURPOSES.

44 The purposes of the corporation shall be limited to  
45 those provided in this section and shall be to  
46 promote, stimulate, develop and advance business  
47 prosperity of the state of Iowa and its citizens; to  
48 encourage and assist through loans, investments, or  
49 other business transactions, the location of new  
50 businesses in the state; to rehabilitate and assist

1 existing businesses in this state; to stimulate and  
2 assist in the expansion of any kind of business  
3 activity which would tend to promote business  
4 development and maintain the economic stability of  
5 this state, provide maximum opportunities for  
6 employment, encourage thrift, and improve the standard  
7 of living of the citizens of this state; to co-operate  
8 and act in conjunction with other organizations,  
9 public or private, in the promotion and advancement of  
10 business development in this state; and to provide  
11 financing for the promotion, development, and conduct  
12 of all kinds of business activity in this state, in  
13 situations in which assistance would not otherwise be  
14 reasonably available from commercial sources.

15 This division being necessary for the welfare of  
16 this state and its inhabitants, shall be liberally  
17 construed to effect its purposes.

18 Sec. 4. NEW SECTION. 28.134 POWERS.

19 The corporation shall, subject to the restrictions  
20 and limits contained in this division, have the  
21 following powers:

22 1. To provide letters of credit or guarantees to  
23 businesses for any phase of product or business  
24 development, not to exceed thirty percent of the total  
25 loan amount.

26 2. To provide equity financing to businesses for  
27 any phase of business or product development.

28 3. To provide loans for businesses in any phase of  
29 product or business development when serviced by an  
30 Iowa financial institution.

31 4. To underwrite the public offering of shares by  
32 businesses.

33 5. To request, as a condition of participation or  
34 assistance, royalty, equity ownership, or fees, as it  
35 determines appropriate, for its assistance.

36 6. To make contracts and incur liabilities for any  
37 of the purposes of the corporation.

38 7. To borrow money and to issue its bonds,  
39 debentures, notes or other evidences of indebtedness,  
40 whether secured or unsecured, and when necessary to  
41 secure the same by mortgage, pledge, deed of trust, or  
42 other lien on its property, franchises, rights and  
43 privileges of every kind and nature, or any part  
44 thereof or interest therein, without securing  
45 shareholder approval.

46 8. To do all acts and things necessary or  
47 convenient to carry out the powers expressly granted  
48 in this division and such other powers not in conflict  
49 with this division granted under chapter 496A.

50 9. To enter into lending arrangements with state

1 and federal agencies or instrumentalities whereby the  
2 corporation may participate in lending operations or  
3 secure guarantees or qualify under applicable laws to  
4 further state or federal lending programs by becoming  
5 a participant therein.

6 10. To accept broker deposits from financial  
7 institutions.

8 11. To use not more than five percent of its funds  
9 for management assistance.

10 Sec. 5. NEW SECTION. 28.135 STOCK --

11 LIMITATIONS.

12 Capital stock shall be issued only on receipt by  
13 the corporation of cash in an amount not less than the  
14 par value as may be determined by the board. A  
15 shareholder of the corporation shall not be entitled  
16 as of right to purchase or subscribe for any unissued  
17 or treasury shares of the corporation, and the  
18 shareholder shall not be entitled as of right to  
19 purchase or subscribe for any bonds, notes,  
20 certificates of indebtedness, debentures, or other  
21 obligations convertible into shares of the  
22 corporation.

23 Sec. 6. NEW SECTION. 28.136 STOCKHOLDERS

24 PRIVILEGES.

25 Notwithstanding any rule at common law or any  
26 provision of any general or special law or any  
27 provision in their respective articles of  
28 incorporation, agreements of association, or trust  
29 indentures; a person is authorized to acquire,  
30 purchase, hold, sell, assign, transfer, mortgage,  
31 pledge or otherwise dispose of any bond, security or  
32 other evidences of indebtedness created by, or the  
33 shares of the capital stock of, the corporation, and  
34 while owners of said shares to exercise all the  
35 rights, powers and privileges of ownership, including  
36 the right to vote thereon, all without the approval of  
37 any regulatory agency of this state.

38 Sec. 7. NEW SECTION. 28.137 CORPORATION

39 MEMBERSHIP.

40 1. A financial institution is authorized to become  
41 a member of the corporation and to make loans to the  
42 corporation.

43 2. A financial institution may request membership  
44 in the corporation by making application to the board  
45 on forms and in the manner as the board may require  
46 and membership shall become effective upon acceptance  
47 of the application by the board.

48 3. Each financial institution which becomes a  
49 member of the corporation is authorized to acquire,  
50 purchase, hold, sell, assign, mortgage, pledge, or

1 otherwise dispose of, bonds, securities or other  
2 evidences of indebtedness created by, or the shares of  
3 the capital stock of, the corporation, of which it is  
4 a member and while owners of such shares to exercise  
5 all rights, powers and privileges of ownership,  
6 including the right to vote thereon, all without the  
7 approval of any regulatory agency of this state. The  
8 amount of capital stock of the corporation which a  
9 member is authorized to acquire is in addition to the  
10 amount of capital stock in other corporations which  
11 the member may otherwise be authorized to acquire.

12 Sec. 8. NEW SECTION. 28.138 ELIGIBILITY TO  
13 PARTICIPATE.

14 A financial institution is not eligible to receive  
15 benefits from the corporation unless it becomes a  
16 shareholder, a member, or both. If, as determined by  
17 the president of the corporation, there is an  
18 insufficient number of eligible financial institutions  
19 to ensure reasonable access by businesses to  
20 assistance by the corporation, the board may designate  
21 additional eligible financial institutions.

22 Sec. 9. NEW SECTION. 28.139 LOAN TO THE  
23 CORPORATION BY MEMBERS.

24 Each member of the corporation may make loans to  
25 the corporation as and when called upon by the  
26 corporation to do so on terms and conditions as shall  
27 be approved from time to time by the board subject to  
28 the following:

29 1. All loan limits shall be established at the  
30 thousand dollar amount nearest the amount computed in  
31 accordance with this section.

32 2. A loan to the corporation shall not be made if  
33 immediately thereafter the total amount of the  
34 obligations of the corporation calling for the loan  
35 would exceed ten times the amount then paid in on the  
36 outstanding capital stock of the corporation.

37 3. The total amount outstanding at any one time on  
38 loans to the corporation made by a member of the  
39 corporation when added to the amount of the investment  
40 in the capital stock of the corporation and held by  
41 the member, shall not exceed the lesser of:

42 a. Twenty percent of the total amount then  
43 outstanding on loans to the corporation by all  
44 members, including in that total amount outstanding  
45 amounts validly called for loan but not yet loaned.

46 b. The limit, to be determined as of the time the  
47 member becomes a member, on the basis of the audited  
48 balance sheet of the member at the close of its fiscal  
49 year immediately preceding its application for  
50 membership, as follows:

- 1 (1) Banks and trust companies -- five percent of
- 2 the paid-in capital, surplus, and undivided profits.
- 3 (2) Savings and loan associations -- two percent
- 4 of the general reserve account, surplus and undivided
- 5 profits.
- 6 (3) Stock life insurance companies -- one percent
- 7 of capital and unassigned surplus.
- 8 (4) Mutual life insurance companies -- one percent
- 9 of the unassigned surplus.
- 10 (5) All other insurance companies -- one-tenth of
- 11 one percent of the assets.
- 12 (6) Other financial institutions -- such limits as
- 13 may be approved by the board of the business
- 14 development finance corporation.

15 4. Each call for loan shall be prorated among the

16 members in substantially the same proportion that the

17 adjusted loan limit of each member bears to the

18 aggregate of the adjusted loan limits of all members.

19 The adjusted loan limit of a member shall be the

20 amount of the member's loan limit, reduced by the

21 balance of outstanding obligations of the corporation

22 to the member and the investment in capital stock of

23 the corporation held by the member at the time of the

24 call.

25 5. All loans to the corporation by a member shall

26 be evidenced by registered bonds, debentures, notes,

27 or other evidences of indebtedness of the corporation,

28 which shall be freely transferable by the registered

29 holder thereof on the books of the corporation.

30 Sec. 10. NEW SECTION. 28.140 DURATION OF

31 MEMBERSHIP.

32 Membership in the corporation shall be for the

33 duration of the corporation. However, upon written

34 notice given to the corporation five years in advance

35 a member may withdraw from membership in the

36 corporation at the expiration date of the notice. A

37 financial institution may at any time withdraw from

38 membership without such notice in the event of its

39 merger with another financial institution, after

40 commencement of proceedings for voluntary or

41 involuntary dissolution, receivership, or

42 reorganization pursuant to or by operation of federal

43 or state law or in the event of conversion from a

44 state financial institution to a federal financial

45 institution or the reverse. If there shall be a

46 legislative amendment of this division affecting the

47 rights and obligations of the members and shareholders

48 or otherwise affecting the articles of incorporation

49 of the corporation which shall not have been approved

50 by the public and private directors within the time

1 set forth and in the manner provided in this division,  
2 a member may immediately withdraw from membership upon  
3 giving written notice to the corporation not later  
4 than ninety days from the effective date of the  
5 amendment. A member shall not be obligated to make  
6 loans to the corporation pursuant to calls made  
7 subsequent to the withdrawal of the member from the  
8 corporation.

9 Sec. 11. NEW SECTION. 28.141 POWERS OF  
10 SHAREHOLDERS.

11 The shareholders of the corporation shall have the  
12 following powers of the corporation:

13 1. Those powers granted in chapter 496A which are  
14 not inconsistent with this division.

15 2. To elect the private directors as provided in  
16 this division.

17 3. To exercise other powers of the corporation as  
18 may be conferred on the shareholders by the bylaws.

19 As to all matters requiring action by the  
20 shareholders of the corporation, except as may be  
21 otherwise provided in this division, approval of the  
22 matters shall require the affirmative vote of a  
23 majority of the votes to which the shareholders  
24 present or represented at the meeting are entitled.  
25 Each shareholder shall have one vote, in person or by  
26 proxy, for each share of capital stock held by the  
27 shareholder.

28 Sec. 12. NEW SECTION. 28.142 ARTICLES AMENDED.

29 The articles of incorporation of the corporation  
30 may be amended by a majority vote of both the public  
31 and private directors. An amendment shall not be made  
32 which is inconsistent with this division, authorizes  
33 an additional class or classes of shares of capital  
34 stock, or eliminates or curtails the authority of the  
35 department with respect to the corporation. Without  
36 the consent of each of the members affected, an  
37 amendment shall not be made which increases the  
38 obligation of a member to make loans to the  
39 corporation; makes any change in the principal amount,  
40 interest rate, maturity date, or in the security or  
41 credit position of an outstanding loan of a member to  
42 the corporation; affects a member's right to withdraw  
43 from membership, as provided in this division; or  
44 affects a member's voting rights, if the member is a  
45 shareholder, in the corporation. Within thirty days  
46 after a meeting at which amendment of the articles has  
47 been adopted, articles of amendment signed and sworn  
48 to by the president, secretary, and majority of the  
49 directors, setting forth the amendment and the due  
50 adoption of them, shall be submitted to the director

1 of the department who shall examine them, and if the  
2 director finds that they conform to the requirements  
3 of this division, shall certify and endorse the  
4 director's approval of them. Thereupon, the articles  
5 of amendment shall be filed in the office of the  
6 secretary of state in the manner set forth and as  
7 provided in chapter 496A and the amendment shall not  
8 take effect until the articles of amendment shall have  
9 been approved and filed as provided in this section.

10 Within sixty days after the effective date of a  
11 legislative amendment affecting the rights and  
12 obligations of the members and shareholders or  
13 otherwise affecting the articles of incorporation, the  
14 approval of the legislative amendment shall be voted  
15 on by the public and private directors of the  
16 corporation at a meeting duly called for that purpose.

17 Within thirty days after any meeting at which a  
18 legislative amendment affecting the articles of  
19 incorporation of the corporation has been voted on, a  
20 certificate filed and sworn to by the secretary or  
21 other recording officer of the corporation setting  
22 forth the action taken at the meeting with respect to  
23 the amendment shall be submitted to the director of  
24 the department and upon receipt of the approval shall  
25 be filed in the office of the secretary of state.

26 Sec. 13. NEW SECTION. 28.143 BOARD OF DIRECTORS.

27 1. The board shall consist of twelve directors,  
28 seven of which represent the public and five of which  
29 represent the shareholders. The seven public  
30 directors consist of:

- 31 a. The director of the department.
- 32 b. The director of the Iowa finance authority.
- 33 c. The president of the Iowa product development  
34 corporation.
- 35 d. The superintendent of banking.
- 36 e. The superintendent of savings and loans.
- 37 f. The commissioner of insurance.
- 38 g. The treasurer of state.

39 2. The director of the department shall serve as  
40 chairperson of the board and the president of the Iowa  
41 product development corporation shall serve as vice  
42 chairperson of the board.

43 3. Within sixty days of the effective date of this  
44 division, the chairperson shall convene the public  
45 directors for the purpose of organizing the  
46 corporation under chapter 496A.

47 4. Within sixty days of the completion of the  
48 initial stock offering, the chairperson shall convene  
49 a meeting of the shareholders for the purpose of the  
50 initial election of the private directors. The

1 private directors hold office until the next annual  
2 meeting of the corporation or special meeting held in  
3 lieu of the annual meeting after their election, and  
4 until their successors are elected and qualify unless  
5 sooner removed in accordance with the bylaws. A  
6 vacancy in the office of a director elected by the  
7 shareholders shall be filled by the other directors  
8 elected by the shareholders.

9 5. If stock is not issued and private directors  
10 are not elected, all powers of the board shall be  
11 exercised by the public directors.

12 Notwithstanding any provisions of law to the  
13 contrary, officers and directors of insurance  
14 companies and other financial institutions may be  
15 members of the board of the corporation organized for  
16 the purposes of this division to which the insurance  
17 company or other financial institution may make a loan  
18 or may make an investment.

19 Sec. 14. NEW SECTION. 28.144 PRESIDENT OF THE  
20 CORPORATION.

21 The president of the corporation shall be the  
22 director of the division of finance of the department.  
23 Administrative and staff support shall be furnished by  
24 the division of finance of the department.

25 Sec. 15. NEW SECTION. 28.145 APPLICATIONS FOR  
26 FINANCIAL ASSISTANCE.

27 1. Applications for financial assistance shall be  
28 forwarded by a business in conjunction with an  
29 eligible financial institution or by a city, county,  
30 or local community economic development corporation on  
31 behalf of a business, together with an application fee  
32 prescribed by the corporation, to the president of the  
33 corporation. The president, after preparing the  
34 necessary records for the corporation, shall forward  
35 each application to the staff of the corporation for  
36 an investigation and report concerning the  
37 advisability of approving the financial assistance for  
38 the business and concerning any other factors found  
39 relevant by the corporation. The investigation and  
40 report shall include information as deemed necessary  
41 by the president.

42 2. Criteria for assistance shall be developed by  
43 the president with approval of the board and  
44 consistent with the strategic plan for state economic  
45 growth prepared by the Iowa economic development  
46 board.

47 3. The president shall award assistance in  
48 consultation with the board upon review and rating of  
49 each application by the staff of the corporation.

50. 4. Appeals of the president's decisions concerning

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1 awards of assistance shall be heard by the board.

2 However, the president's decision cannot be reversed

3 except by a majority vote of the directors.

4 Sec. 16. NEW SECTION. 28.146 EARNED SURPLUS SET  
5 ASIDE.

6 Net earnings and surplus shall be determined by the  
7 board, after providing for the reserves as the  
8 directors deem desirable, and the directors'  
9 determination made in good faith shall be conclusive  
10 on all persons.

11 Sec. 17. NEW SECTION. 28.147 REPORTS TO GOVERNOR  
12 AND GENERAL ASSEMBLY.

13 The corporation shall submit annually a record of  
14 its operations and condition to the governor and  
15 general assembly. The department may request the  
16 superintendent of banking to examine the condition of  
17 the corporation and submit a report to the department,  
18 copies of which shall also be sent to the governor and  
19 general assembly.

20 Sec. 18. NEW SECTION. 28.148 STATE ASSISTANCE  
21 FUND.

22 There is created in the treasurer of state's office  
23 a "business development finance corporation assistance  
24 fund". The fund shall consist of all appropriations,  
25 grants, or gifts received by the treasurer  
26 specifically for assistance under this division.  
27 Moneys in this fund are appropriated to the  
28 corporation for the purposes stated in this division.

29 Sec. 19. The Code editor shall codify new sections  
30 28.131 through 28.148 as a separate division of  
31 chapter 28."

32 2. Title page, line 1, by inserting after the  
33 word "of" the following: "the".

34 3. Title page, line 2, by striking the word  
35 "corporations" and inserting the following:  
36 "corporation".

37 4. Title page, by striking lines 5 and 6 and  
38 inserting the following: "offerings, and creating a  
39 state assistance fund."

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BY LEONARD BOSWELL

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