

*See Commerce Bill Amended from 555100
Do Bill 5/27 (8.1.27)*

MAR 6 1980

Place On Calendar

HOUSE FILE 2513

BY COMMITTEE ON COMMERCE

(Formerly Study Bill 724)

Substituted for S.B. 2348

Passed House, Date 3-18-76 (A.982) Passed Senate, Date 4/2/80 (P.1241)

Vote: Ayes 93 Nays 0 Vote: Ayes 48 Nays 0

Approved May 22, 1980

*Re-passed House 4/16/80 (S. 1637)
75-0*

A BILL FOR

1 An Act creating an industrial loan corporation thrift
2 certificate guaranty fund, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. TITLE. This Act shall be known
2 and may be cited as the "Iowa Industrial Loan Corporation
3 Thrift Guaranty Act."

4 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act
5 unless the context otherwise requires:

6 1. "Industrial loan corporation" means a corporation
7 licensed under chapter five hundred thirty-six A (536A) of
8 the Code.

9 2. "Auditor" means the auditor of state.

10 3. "Guaranty corporation" means the corporation created
11 pursuant to section four (4) of this Act.

12 4. "Member" means an industrial loan corporation which
13 is required by section five (5) of this Act to be a member
14 of the guaranty corporation.

15 5. "Thrift certificates" means senior indebtedness issued
16 to and in the hands of the general public, and includes thrift
17 certificates, installment thrift certificates, certificates
18 of indebtedness, promissory notes, or similar evidences of
19 indebtedness.

20 6. "Independent activity" means an activity other than
21 one directed solely at increasing guarantee coverage under
22 section seven (7) of this Act.

23 7. "Capital impairments", or "impaired capital" means
24 the failure of a member to comply with the capital stock
25 requirements of section five hundred thirty-six A point eight
26 (536A.8) of the Code.

27 8. "Insolvency" means the inability of a member to pay
28 its debts and obligations as they become due.

29 Sec. 3. NEW SECTION. PURPOSE. It is the purpose of the
30 guaranty corporation to guarantee payment of thrift
31 certificates issued by a member up to ten thousand dollars
32 for each account, subject to the limitations of this Act.

33 Sec. 4. NEW SECTION. ESTABLISHMENT OF GUARANTY
34 CORPORATION.

35 1. Within ninety days after the effective date of this

1 Act, industrial loan corporations which are required by section
2 five (5) of this Act to participate as members shall establish
3 a corporation under chapter five hundred four A (504A) of
4 the Code to operate under the name "Industrial Loan Thrift
5 Guaranty Corporation of Iowa".

6 2. The guaranty corporation established under subsection
7 one (1) of this section shall adopt a plan of organization
8 and operation which may be amended from time to time. The
9 guaranty corporation may promulgate regulations prescribing
10 terms and conditions relative to the issuance of thrift
11 certificates by members.

12 Sec. 5. NEW SECTION. PARTICIPATION--MEMBERSHIP ASSESSMENT.

13 1. Each industrial loan corporation which has issued and
14 outstanding thrift certificates shall participate as a member
15 in the guaranty corporation in accordance with this Act and
16 with the bylaws established by the board of directors of the
17 guaranty corporation. An industrial loan corporation which
18 is required by this section to participate as a member shall
19 pay a membership assessment, to be paid into the guarantee
20 fund, in an amount determined according to the following
21 schedule:

22 a. Two thousand five hundred dollars for a member which
23 at any time has issued and outstanding thrift certificates
24 in an amount of two hundred fifty thousand dollars or less.

25 b. Five thousand dollars for a member which at any time
26 has issued and outstanding thrift certificates in an amount
27 greater than two hundred fifty thousand dollars, but not more
28 than one million dollars.

29 c. Ten thousand dollars for a member which at any time
30 has issued and outstanding thrift certificates in an amount
31 greater than one million dollars.

32 Each industrial loan corporation which has issued and
33 outstanding thrift certificates as of the effective date of
34 this Act shall pay the membership assessment to the guaranty
35 corporation within thirty days after the date of its

1 incorporation. Each industrial loan corporation which
2 initially issues thrift certificates after the effective date
3 of this Act shall pay the membership assessment within thirty
4 days after the thrift certificates are issued. When the
5 amount which has been paid by a member as the membership
6 assessment becomes less than the amount which is required
7 by this subsection, the member shall pay the deficiency within
8 ninety days after the date when the deficiency arises.

9 2. An industrial loan company is exempt from participation
10 as a member of the guaranty corporation so long as it does
11 not have issued and outstanding thrift certificates. An
12 industrial loan company which has issued and outstanding
13 thrift certificates as of the effective date of this Act shall
14 be exempt from participation as a member of the guaranty
15 corporation if it files an undertaking with the auditor that
16 it will not issue thrift certificates and that it will redeem
17 existing thrift certificate obligations within ninety days
18 after the effective date of this Act, and if it redeems
19 existing thrift certificate obligations within the ninety-
20 day period.

21 Sec. 6. NEW SECTION. RULES OF AUDITOR. If the auditor
22 finds that for any reason a suitable plan of organization
23 and operation of the guaranty corporation is not adopted
24 within six months after the effective date of this Act, or
25 if at any time thereafter the guaranty corporation fails to
26 adopt suitable amendments to the plan of operation, the auditor
27 shall adopt rules pursuant to chapter seventeen A (17A) of
28 the Code which may be necessary or advisable to accomplish
29 the purposes of this of this Act. Rules adopted by the auditor
30 shall continue in force until either modified by subsequent
31 rule or superseded by a plan submitted by the guaranty
32 corporation and approved by the auditor.

33 Sec. 7. NEW SECTION. GUARANTEE OF THRIFT CERTIFICATES.
34 Thrift certificates of a member of the guaranty corporation
35 shall be guaranteed by the guaranty corporation as follows:

1 1. With respect to single ownership obligations in any
2 one member:

3 a. Funds owned by an individual and invested in the manner
4 set forth in this subsection shall be added together and
5 guaranteed up to ten thousand dollars in the aggregate.

6 b. Individual accounts invested in one or more accounts
7 in the individual's own name shall be guaranteed up to ten
8 thousand dollars in the aggregate.

9 c. Funds owned by a principal and invested in one or more
10 accounts in the name or names of agents or nominees shall
11 be added to any individual accounts of the principal and
12 guaranteed up to ten thousand dollars in the aggregate.

13 d. Accounts held by a guardian, custodian, or conservator
14 for the benefit of his ward or for the benefit of a minor
15 under a Uniform Gifts to Minors Act and invested in one or
16 more accounts in the name of the guardian, custodian, or
17 conservator shall be added to any individual accounts of the
18 ward or minor and guaranteed up to ten thousand dollars in
19 the aggregate.

20 2. With respect to testamentary accounts in any one member:

21 a. Funds owned by an individual and invested in a revocable
22 trust account, tentative trust account, payable-on-death
23 account, or similar account evidencing an intention that on
24 his or her death the funds shall belong to a named beneficiary,
25 shall be guaranteed up to ten thousand dollars in the aggregate
26 as to each such named beneficiary, separately from any other
27 accounts of the owner.

28 b. Accounts in any one member held by executors or
29 administrators which are funds of a decedent held in the name
30 of the decedent or in the name of the executor or administrator
31 of the decedent's estate and invested in one or more accounts,
32 shall be guaranteed up to ten thousand dollars in the
33 aggregate, separately from the individual accounts of the
34 beneficiaries of the estate or of the executor or
35 administrator.

1 3. With respect to corporation or partnership accounts
2 in any one member, accounts of a corporation or partnership
3 which is engaged in an independent activity shall be guaranteed
4 up to ten thousand dollars in the aggregate. For guarantee
5 purposes an account of a corporation or partnership which
6 is not engaged in an independent activity shall be deemed
7 to be owned by the person or persons owning the corporation
8 or comprising the partnership and the interest of each person
9 in the account shall be added to any other accounts
10 individually owned by that person and guaranteed up to ten
11 thousand dollars in the aggregate.

12 4. With respect to accounts of unincorporated associations,
13 accounts in any one member which are accounts of an
14 unincorporated association engaged in an independent activity
15 shall be guaranteed up to ten thousand dollars in the
16 aggregate. For guarantee purposes an account of an
17 unincorporated association which is not engaged in an
18 independent activity shall be deemed to be owned by the persons
19 comprising the association and the interest of each owner
20 in the account shall be added to any other accounts
21 individually owned by that person and guaranteed up to ten
22 thousand dollars in the aggregate.

23 5. With respect to joint accounts in any one member:

24 a. Accounts owned jointly, whether as joint tenants with
25 right of survivorship, as tenants by the entirety, or as
26 tenants in common, shall be guaranteed separately from accounts
27 individually owned by the co-owners.

28 b. A joint account shall be deemed to exist for purposes
29 of guarantee of accounts only if each co-owner has personally
30 executed an account signature card and possesses redemption
31 rights.

32 c. An account owned jointly which does not qualify as
33 a joint account for purposes of guarantee of accounts shall
34 be treated as owned by the named persons as individuals, and
35 the actual ownership interest of each such person in the

1 account shall be added to any other accounts individually
2 owned by that person and guaranteed up to ten thousand dollars
3 in the aggregate.

4 d. All joint accounts owned by the same combination of
5 individuals shall first be added together and guaranteed up
6 to ten thousand dollars in the aggregate.

7 e. The interests of each co-owner in all joint accounts
8 owned by different combinations of individuals shall then
9 be added together and guaranteed up to ten thousand dollars
10 in the aggregate.

11 6. Trust accounts in any one member which are trust
12 interests for the same beneficiary invested in accounts
13 established pursuant to valid trust arrangements created by
14 the same settlor or grantor shall be added together and
15 guaranteed up to ten thousand dollars in the aggregate,
16 separately from other accounts of the trustee of the trust
17 funds or the settlor or beneficiary of the trust arrangements.

18 Sec. 8. NEW SECTION. GUARANTEE FUND.

19 1. The guaranty corporation shall establish and maintain
20 a guarantee fund which shall consist of the membership
21 assessments under section five (5) of this Act, plus the
22 assessments under subsections two (2) and three (3) of this
23 section.

24 2. Beginning with the year in which this Act takes effect,
25 the members of the guaranty corporation shall be subject to
26 an assessment on May first of each year. The amount of the
27 annual assessment is determined by the amount in the fund
28 on December thirty-first of the prior year, net of any demands
29 made by the auditor under section eleven (11) of this Act
30 and remaining unpaid at such December thirty-first, as follows:
31 If the net amount in the fund is less than the greater of
32 two million dollars or two percent of the total thrift
33 certificates of all members, the annual assessment for each
34 member shall equal one-fourth of one percent of the member's
35 thrift certificates which are outstanding on December thirty-

1 first of the year prior to the levy; and if the net amount
2 in the fund exceeds the greater of two million dollars or
3 two percent of the aggregate thrift certificates of all
4 members, no annual assessment shall be made.

5 3. If upon liquidation of a member the amount available
6 in the guaranty fund is insufficient to pay up to ten thousand
7 dollars for each thrift certificate obligation specified in
8 section seven (7) of this Act, the auditor may make demand
9 upon the guaranty corporation for advance payment of annual
10 assessments to become due in such amounts as required to meet
11 the deficiency, but not exceeding two times the maximum
12 assessment that could have been levied on each member on the
13 prior May first as the annual assessment if the net amount
14 in the fund the preceding December thirty-first had been less
15 than the greater of two million dollars or two percent of
16 the total thrift certificates of all members. Any amount
17 prepaid by a member shall be credited against subsequent
18 annual assessments, and the member shall pay the balance of
19 the annual assessments thus due, if any, or shall be refunded
20 any amount overpaid as a result of the advance assessment.
21 At no time shall a member be required to be prepaid in excess
22 of two years.

23 Sec. 9. NEW SECTION. NOTICE OF ASSESSMENT. The guaranty
24 corporation shall send a written notice of assessment to each
25 member assessed within ten days after the levy of an annual
26 or advance assessment. The amount assessed shall be paid
27 to the guaranty corporation by the member not later than
28 thirty days following the date the notice of assessment is
29 mailed.

30 Sec. 10. NEW SECTION. DEFAULTED ASSESSMENTS--ACTIONS
31 TO ENFORCE. In the event a member fails to pay when due the
32 membership assessment, or a deficiency in the membership
33 assessment, or an annual or advance assessment, the guaranty
34 corporation shall report the default in writing to the auditor
35 within two business days after the default, and shall within

1 thirty days after the default bring an action in law or in
2 equity to enforce payment. If the guaranty corporation does
3 not bring an action within the time specified, the auditor
4 may bring an action to enforce payment. The auditor also
5 may revoke the right of a member to issue thrift certificates
6 when the member is in default in paying assessments when due.

7 Sec. 11. NEW SECTION. PAYMENTS FROM GUARANTEE FUND--
8 DEFICIENCIES.

9 1. When the property and business of a member has been
10 liquidated or is in the process of liquidation by the auditor
11 and the proceeds of liquidation are insufficient to pay up
12 to ten thousand dollars for each thrift certificate obligation
13 specified in section seven (7) of this Act, the guaranty
14 corporation shall pay each deficiency at the direction of
15 and in amounts as specified by the auditor, and within one
16 hundred twenty days from the date the auditor makes demand
17 for payment. If the total funds available from the guaranty
18 corporation at the time of demand are insufficient to pay
19 in full the amounts required by section seven (7) of this
20 Act, the amount paid toward each obligation shall be reduced
21 ratably in proportion to the amount by which the fund is
22 deficient. Thereafter further payments shall be made in
23 accordance with the directions of the auditor and as additional
24 funds are paid into the guarantee fund from assessments and
25 income accrued on them. When the thrift certificate
26 obligations are paid, the account of each member of the
27 guaranty corporation shall be reduced by an amount which is
28 of the same relation to the total amount paid as the account
29 balance of the member is to the sum of account balances of
30 all members. The guaranty corporation has a claim against
31 a member which has been liquidated or which is in the process
32 of liquidation and the assets of the member for any thrift
33 certificate obligations paid under this section.

34 2. The auditor shall not direct the guaranty corporation
35 to pay in one calendar year any thrift certificate obligations

1 that exceed in the aggregate the total amount in the fund
2 after allowance for all amounts to be added to the fund during
3 the year by assessment as provided in this Act.

4 Sec. 12. NEW SECTION. AUDITOR MAY MANAGE CORPORATION.

5 Whenever it appears to the auditor that the guaranty
6 corporation has violated its articles of incorporation or
7 a law of this state; has not paid amounts as directed by the
8 auditor of state pursuant to section eleven (11) of this Act,
9 has invested its funds in violation of section fourteen (14)
10 of this Act, has not levied assessments as required by sections
11 five (5), eight (8) and nine (9) of this Act, has not
12 diligently prosecuted an action to enforce payment as required
13 by section ten (10) of this Act, has violated a provision
14 of this Act, or has neglected or refused to submit its books,
15 papers, and affairs for the inspection of an examiner, the
16 auditor may issue and serve upon the guaranty corporation
17 a notice containing a statement of the facts constituting
18 the alleged violation or violations and fixing a time and
19 place at which a hearing will be held to determine whether
20 the auditor should take possession of the property and business
21 of the guaranty corporation and retain possession until the
22 guaranty corporation satisfies the auditor that it will operate
23 in conformity with the provisions of this Act. During the
24 time the auditor has possession of the guaranty corporation,
25 the auditor shall perform the duties and carry out the
26 obligations of the guaranty corporation.

27 Sec. 13. NEW SECTION. JUDICIAL REVIEW. Actions of the
28 auditor under section twelve (12) of this Act shall be subject
29 to judicial review under the provisions of chapter seventeen
30 A (17A) of the Code. The district court for Polk county has
31 exclusive jurisdiction of judicial review proceedings under
32 this section.

33 Sec. 14. NEW SECTION. INVESTMENTS OF GUARANTEE FUND.

34 1. The guaranty corporation may invest its funds only
35 as provided by rules promulgated by the auditor. The auditor

1 shall promulgate rules which are reasonably necessary for
2 the purpose of preserving reasonable liquidity of the guarantee
3 fund.

4 2. Income from investments shall be recorded in an income
5 account and shall be used to defray expenses of administration.
6 Income from investments that exceeds an amount determined
7 by the board of directors to be adequate to provide for current
8 expenses may be credited to members' accounts. Each member's
9 account shall receive credit ratably, based on member account
10 balances. Income received by the guaranty corporation, whether
11 or not credited to members' accounts, shall be subject to
12 a demand of the auditor made under section eleven (11) of
13 this Act, except as to that portion reserved by the board
14 of directors for expenses of administration during the calendar
15 year.

16 3. Expenses of administration that exceed income from
17 investments at the end of the fiscal year of the guarantee
18 corporation shall be charged to members' accounts. Each
19 member's account shall be charged ratably based on member
20 account balances for the amount of the excess of expenses
21 over income.

22 Sec. 15. NEW SECTION. POWER OF AUDITOR--MANAGEMENT OF
23 MEMBER.

24 1. In addition to other remedies provided in this Act,
25 the auditor may take over the management of the property and
26 business of a member for reasonable cause, including but not
27 limited to fraud, impairment of capital, violation of this
28 Act, or revocation of a member's industrial loan license for
29 any of the reasons stated in section five hundred thirty-six
30 A point eighteen (536A.18) of the Code.

31 2. Actions of the auditor under subsection one (1) of
32 this section shall be subject to judicial review under the
33 provisions of chapter seventeen A (17A) of the Code. The
34 aggrieved member may institute proceedings for judicial review
35 in the county in which its principal place of business is

1 located.

2 3. Upon assuming management of the property and business
3 of a member under this section, the auditor may operate and
4 direct the affairs of the member in its regular course of
5 business, collect amounts due to the member, and do other
6 acts necessary to conduct the affairs of the member and to
7 conserve or protect its assets, property and business.

8 4. The auditor shall thereafter manage the property and
9 business of the member until such time as he or she may
10 relinquish to the member the management thereof, upon such
11 conditions as the auditor may prescribe, or until the affairs
12 of the member be finally dissolved as provided in section
13 five hundred thirty-six A point nineteen (536A.19) of the
14 Code.

15 Sec. 16. NEW SECTION. LIQUIDATION OF MEMBER--AUDITOR
16 AS RECEIVER. If when managing a member under section fifteen
17 (15) of this Act the auditor concludes that the member is
18 insolvent or should be dissolved for any other reason
19 enumerated in section fifteen (15), subsection one (1), of
20 this Act, the auditor shall petition the district court for
21 the county in which the principal place of business of the
22 member is located to appoint a receiver for the member. Upon
23 the petition of the auditor under this section, or in any
24 other case where appointment of a receiver for a member is
25 sought by any person, the district court may appoint the
26 auditor as receiver of the member, to serve without bond.
27 The attorney general shall represent the auditor in all
28 proceedings connected with the receivership.

29 Sec. 17. NEW SECTION. NOTICE TO GUARANTY CORPORATION.
30 The auditor of state shall give prompt notice to the guaranty
31 corporation when for any cause the auditor takes possession
32 of the property and business of a member to manage its affairs,
33 and shall give further prompt notice when he or she determines
34 to liquidate the property and business of a member.

35 Sec. 18. NEW SECTION. REGULATION. The operation of the

1 guaranty corporation shall at all times be subject to the
2 supervision of the auditor. The auditor may at any time
3 investigate the affairs and examine the books, accounts,
4 records, and files of the guaranty corporation. The auditor
5 shall have free access to the offices, books, accounts, papers,
6 records, files, safes, and vaults of the guaranty corporation.

7 The corporation shall pay to the auditor such fees as may
8 be established by the auditor by rule under chapter seventeen
9 A (17A) of the Code for the recovery of administrative costs
10 and expenses incurred in the discharge of the duties imposed
11 upon the auditor by this Act. Recoverable costs and expenses
12 shall include, but not be limited to costs and expenses for
13 salaries, expenses and travel for employees, and additional
14 office facilities, supplies and equipment required in the
15 administration of this Act. The fees shall include an annual
16 fee to cover the ordinary annual expenses of the auditor in
17 the administration of this Act and such special fees as may
18 be necessary for the recovery of extraordinary expenses.
19 Rules of the auditor shall specify when the fees are to be
20 paid by the corporation, and shall provide for the giving
21 of notice of fees which are to become due. Failure to pay
22 a required fee within ten days after the due date shall subject
23 the corporation to an additional fee equal to five percent
24 of the amount assessed for each day the payment is delinquent.

25 Sec. 19. NEW SECTION. APPEAL TO AUDITOR. A member
26 aggrieved by an action or decision of the guaranty corporation
27 may appeal to the auditor within thirty days from the action
28 or decision.

29 Sec. 20. NEW SECTION. NONTRANSFERABILITY OF MEMBERSHIPS.
30 Memberships in the guaranty corporation are nontransferable,
31 and the guaranty corporation and memberships in the guaranty
32 corporation are exempt from the provisions of chapter five
33 hundred two (502) of the Code.

34 Sec. 21. NEW SECTION. ADVERTISEMENTS.

35 1. The guaranty corporation shall not cause or permit

1 to be advertised, printed, displayed, published, distributed,
2 or broadcast, in any manner, a statement or representation
3 with regard to its plan of operation without first obtaining
4 the written approval of the auditor.

5 2. All advertising by a member with regard to its
6 membership in the guaranty corporation shall include the
7 following statement: "Thrift certificates are protected up
8 to a maximum of ten thousand dollars by the Industrial Loan
9 Thrift Guaranty Corporation of Iowa, a private corporation,
10 regulated by the state of Iowa."

11 3. All advertising of members with regard to thrift
12 certificates shall comply with such reasonably necessary rules
13 as the guaranty corporation may adopt to prevent the use of
14 false, misleading or deceptive advertising practices.

15 Sec. 22. NEW SECTION. LIST OF COMPANIES--REPORTS.

16 1. In order to permit the guaranty corporation to fulfill
17 its obligations under this Act, and notwithstanding the
18 provisions of sections five hundred thirty-six A point fifteen
19 (536A.15) and five hundred thirty-seven point two thousand
20 three hundred four (537.2304) of the Code to the contrary,
21 the auditor shall furnish to the guaranty corporation a list
22 of all industrial loan corporations which have outstanding
23 thrift certificate obligations; and the auditor shall promptly
24 furnish to the guaranty corporation one copy of all reports
25 of each of these industrial loan corporations filed with the
26 auditor, excluding examination reports and responses to
27 examinations.

28 2. Each member, annually and within ninety days of the
29 close of its fiscal year, shall file with the guaranty
30 corporation and the auditor a report of an audit performed
31 in accordance with generally accepted auditing standards and
32 certified by a certified public accountant licensed to practice
33 in the state of Iowa.

34 3. The guaranty corporation may submit reports and make
35 recommendations to the auditor regarding the affairs or

1 financial condition of a member. In addition, the guaranty
2 corporation shall have the authority to select and direct
3 an independent certified public accountant licensed to practice
4 in the state of Iowa to audit the financial condition of a
5 member, the report of which shall be provided only to the
6 board of directors of the guaranty corporation and the auditor.
7 The member shall allow access to the records and other
8 information requested by the guaranty corporation during the
9 audit. The cost and expenses of the audit or examination
10 shall be paid by the guaranty corporation. These reports,
11 actions, and recommendations shall be kept confidential.

12 4. There shall be no liability on the part of, and no
13 cause of action of any manner shall arise against, the guaranty
14 corporation or its members, directors, officers, employees
15 or agents, or the auditor for actions or statements made by
16 them respecting reports or recommendations made under the
17 authority of this section.

18 Sec. 23. NEW SECTION. EXEMPTIONS.

19 1. Securities of an industrial loan company issued in
20 a transaction which is an exempt transaction within the meaning
21 of section five hundred two point two hundred three (502.203),
22 subsection nine (9), of the Code are not thrift certificates,
23 and shall bear a statement that they are not guaranteed by
24 the Iowa industrial loan corporation thrift guaranty Act.

25 2. The guaranty corporation is not an insurance corporation
26 and is not transacting insurance business. The organization,
27 operation and liquidation of the guaranty corporation are
28 exempt from title twenty (XX) of the Code.

29 Sec. 24. NEW SECTION. SUBORDINATED DEBT. Subordinated
30 debt of a member shall not be construed as thrift certificates
31 and securities representing subordinated debt shall bear a
32 statement that they are not guaranteed by the Iowa industrial
33 loan corporation thrift guaranty Act. At the time of issue
34 subordinated debt shall not exceed two times the total amount
35 of capital, surplus, and undivided profits of the member.

1 Sec. 25. CAPITAL IMPAIRMENT.

2 1. The guarantees provided in this Act do not apply to
3 the obligations of an industrial loan corporation, the capital
4 of which is impaired on the effective date of this Act until
5 such time as the capital impairment is eliminated.

6 2. For purposes of subsection one (1) of this section,
7 an audit performed by a certified public accountant licensed
8 to practice in the state of Iowa for an industrial loan
9 licensee's fiscal year immediately preceding the effective
10 date of this Act shall be conclusive as to whether the capital
11 of the industrial loan corporation is impaired on the effective
12 date of this Act.

13 Sec. 26. NEW SECTION. STATEMENT OF CONDITION. Each
14 member shall by April thirtieth of each year prepare a
15 statement of its condition as of the close of the preceding
16 calendar year. Each member shall make copies of its statement
17 of condition available to the general public at each of its
18 places of business. The auditor by rule may prescribe minimum
19 content of the statement of condition.

20 Sec. 27. Section five hundred two point two hundred two
21 (502.202), Code 1979, as amended by Acts of the Sixty-eighth
22 General Assembly, 1979 Session, chapter one hundred twenty
23 (120), sections five (5) and six (6), is amended by adding
24 the following new subsection:

25 NEW SUBSECTION. Any security representing a thrift
26 certificate of an industrial loan company which is a member
27 of the industrial loan thrift guaranty corporation of Iowa.

28 Sec. 28. LEGISLATIVE INTENT. Because of the increase
29 in the issuance by industrial loan corporations of thrift
30 certificates, these being essential to the well-being and
31 prosperity of the state and the inhabitants of it, it is the
32 intent of the general assembly to provide by this Act for
33 an adequate guarantee of thrift certificates issued by
34 industrial loan corporations.

35 Sec. 29. This Act shall take effect January first following

1 its enactment.

2

EXPLANATION

3 This bill requires the establishment of a guaranty
4 corporation under the nonprofit corporation act for the purpose
5 of guaranteeing recovery by holders of thrift certificates
6 issued by industrial loan corporations, of up to a maximum
7 of ten thousand dollars per account. Thrift certificates
8 which are covered include all senior debt issued to the general
9 public. All industrial loan corporations which issue these
10 thrift certificates are required to be members of the guaranty
11 corporation. An initial assessment of from \$2,500 to \$10,000
12 is made of all members, depending on the amount of outstanding
13 thrift certificates. Annual assessments at the rate of 1/4
14 of 1% of the amount of each member's outstanding thrift
15 certificates are made until the guaranty fund exceeds the
16 greater of \$2,000,000 or 2% of all members' outstanding thrift
17 certificates. The corporation's board of directors may invest
18 the funds under rules issued by the auditor of state.

19 Members must furnish an annual certified audit to the
20 auditor of state and the guaranty corporation; and the guaranty
21 corporation may direct independent audits to be made of any
22 member and may make recommendations to the auditor of state
23 for the protection of holders of thrift certificates and the
24 guaranty fund.

25 When the auditor of state determines that a member must
26 be liquidated and that the member's assets are insufficient
27 to pay holders of its thrift certificates at least \$10,000
28 for each obligation as defined in section 7 of the bill, the
29 auditor of state makes demand of the guaranty corporation
30 to pay the guarantees. Should the guaranty fund be
31 insufficient, the bill provides for assessment of members
32 to make up the deficiency.

33 By amendment to chapter 502, the bill exempts from
34 registration thrift certificate securities of members of the
35 Iowa thrift guaranty corporation. The guaranty corporation

1 is exempted from state insurance laws.

2 The bill authorizes the auditor of state to take over the
3 operation of the guaranty corporation, or an industrial loan
4 company which has issued thrift certificates, upon the
5 occurrence of certain situations which might jeopardize the
6 soundness of the guarantee fund or the industrial loan company.

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LSB 4307H 68

lb/sc/14

FISCAL NOTE
 House File 2513
 Requested by Representative Conlon
 March 7, 1980

In compliance with a written request there is hereby submitted a Fiscal Note for H. F. 2513 pursuant to Joint Rule 16.

House File 2513, An Act creating an industrial loan corporation thrift certificate guaranty fund, and providing penalties.

This bill requires the establishment of a guaranty corporation under the nonprofit corporation act for the purpose of guaranteeing recovery by holders of thrift certificates issued by industrial loan corporations, of up to a maximum of \$10,000 per account. Thrift certificates which are covered include all senior debt issued to the general public. All industrial loan corporations which issue these thrift certificates are required to be members of the guaranty corporation. An initial assessment of from \$2,500 to \$10,000 is made of all members, depending on the amount of outstanding thrift certificates. Annual assessments at the rate of 1/4 of 1% of the amount of each member's outstanding thrift certificates are made until the guaranty fund exceeds the greater of \$2,000,000 or 2% of all members' outstanding thrift certificates. The corporation's board of directors may invest the funds under rules issued by the auditor of state.

This legislation would require an additional examiner be hired in the Auditor of State's office. The examinations made by the Auditor of State are paid for by the industry into a revolving fund from which all department expenses are paid.

	FY'81			FY'82		
	Current Law	H.F. 2513	Incr.	Current Law	H.F. 2513	Incr.
<u>Revenue</u>						
License Fees	\$ 17,000	17,000	-0-	17,000	17,000	-0-
Examination Fees	74,000	92,000	18,000	77,700	96,600	18,900
Reimbursed Expense	14,000	16,000	2,000	14,700	16,800	2,100
Total Revenue	\$105,000	125,000	20,000	109,400	130,400	21,000
<u>Expenditures</u>						
Personal Services	\$ 85,000	103,000	18,000	89,250	108,150	18,900
Operating Exp.	20,000	22,000	2,000	21,000	23,100	2,100
Total Expendit.	\$105,000	125,000	20,000	110,250	131,250	21,000

Net Effect: None

FILED MARCH 18, 1980

BY GERRY D. RANKIN
 Legislative Fiscal Bureau

HOUSE FILE 2513

H-5540

- 1 Amend House File 2513 as follows:
2 1. Page 1, line 31, by striking the word "ten"
3 and inserting in lieu thereof the word "forty".
4 2. Page 4, line 5, by striking the word "ten"
5 and inserting in lieu thereof the word "forty".
6 3. Page 4, line 7, by striking the word "ten"
7 and inserting in lieu thereof the word "forty".
8 4. Page 4, line 12, by striking the word "ten"
9 and inserting in lieu thereof the word "forty".
10 5. Page 4, line 18, by striking the word "ten"
11 and inserting in lieu thereof the word "forty".
12 6. Page 4, line 25, by striking the word "ten"
13 and inserting in lieu thereof the word "forty".
14 7. Page 4, line 32, by striking the word "ten"
15 and inserting in lieu thereof the word "forty".
16 8. Page 5, line 4, by striking the word "ten"
17 and inserting in lieu thereof the word "forty".
18 9. Page 5, line 10, by striking the word "ten"
19 and inserting in lieu thereof the word "forty".
20 10. Page 5, line 15, by striking the word "ten"
21 and inserting in lieu thereof the word "forty".
22 11. Page 5, line 21, by striking the word "ten"
23 and inserting in lieu thereof the word "forty".
24 12. Page 6, line 2, by striking the word "ten"
25 and inserting in lieu thereof the word "forty".
26 13. Page 6, line 6, by striking the word "ten"
27 and inserting in lieu thereof the word "forty".
28 14. Page 6, line 9, by striking the word "ten"
29 and inserting in lieu thereof the word "forty".
30 15. Page 6, line 15, by striking the word "ten"
31 and inserting in lieu thereof the word "forty".
32 16. Page 6, line 32, by striking the word "two"
33 million dollars or two percent" and inserting in lieu
34 thereof the words "eight million dollars or eight
35 percent".
36 17. Page 6, line 34, by striking the words "one-
37 fourth of".
38 18. Page 7, lines 2 and 3, by striking the words
39 "two million dollars or two percent" and inserting
40 in lieu thereof the words "eight million dollars or
41 eight percent".
42 19. Page 7, line 6, by striking the word "ten"
43 and inserting in lieu thereof the word "forty".
44 20. Page 7, line 15, by striking the words "two
45 million dollars or two percent" and inserting in lieu
46 thereof the words "eight million dollars or eight
47 percent".
48 21. Page 8, line 12, by striking the word "ten"
49 and inserting in lieu thereof the word "forty".
50 22. Page 13, line 8, by striking the word "ten"

Page 2

1 and inserting in lieu thereof the word "forty".

H-5540 FILED
MARCH 17, 1980

BY GETTINGS of Wapello

A-*Law 3/16 (p. 981)*
B-*Law 3/16 (p. 982)*

HOUSE FILE 2513

H-5561

1 Amend House File 2513 as follows:

2 1. Page 2, line 11, by inserting after the word
3 "members" the words ", which shall not take effect
4 until they have been submitted to and adopted by the
5 auditor as rules pursuant to chapter seventeen A (17A)
6 of the Code".

7 2. Page 3, by striking lines 21 through 26 and
8 inserting in lieu thereof the following:

9 "Sec. 6. NEW SECTION. RULES OF AUDITOR. The
10 auditor".

11 3. Page 13, line 10, by inserting after the word
12 "Iowa" the words "; however thrift certificates are
13 not guaranteed by the state of Iowa".

14 4. Page 15, by inserting after line 19 the
15 following:

16 "Sec. NEW SECTION. LIABILITIES. The state
17 of Iowa is not liable for any actions or omissions
18 of the auditor in administering the Iowa industrial
19 loan corporation thrift guaranty Act. Members of
20 the guaranty corporation shall be liable for losses
21 incurred as a result of such actions or omissions.
22 The guaranty corporation shall defend the auditor
23 of state and employees of the auditor against any
24 action commenced against any of them individually
25 as a result of acts or omissions arising from the
26 administration of the Act, and shall indemnify and
27 hold them harmless for any losses caused by such acts
28 or omissions."

29 5. By renumbering sections and correcting internal
30 references.

H-5561 FILED MARCH 18, 1980

*Referred to committee rules
for consideration. Date 3/19 (A. 782)*

BY WELSH of Dubuque

HOUSE FILE 2513

S-5556

1 Amend House File 2513 as passed by the House as
2 follows:

3 1. Page 2, line 11, by inserting after the word
4 "members" the words ", which shall not take effect
5 until they have been submitted to and adopted by the
6 auditor as rules pursuant to chapter seventeen A (17A)
7 of the Code".

8 2. Page 3, by striking lines 21 through 26 and
9 inserting in lieu thereof the following:

10 "Sec. 6. NEW SECTION. RULES OF AUDITOR. The
11 auditor".

12 3. Page 13, line 10, by inserting after the word
13 "Iowa" the words "; however thrift certificates are
14 not guaranteed by the state of Iowa".

15 4. Page 15, by inserting after line 19 the
16 following:

17 "Sec. _____. NEW SECTION. LIABILITIES. The state
18 of Iowa is not liable for any actions or omissions
19 of the auditor in administering the Iowa industrial
20 loan corporation thrift guaranty Act. Members of
21 the guaranty corporation shall be liable for losses
22 incurred as a result of such actions or omissions.
23 The guaranty corporation shall defend the auditor
24 of state and employees of the auditor against any
25 action commenced against any of them individually
26 as a result of acts or omissions arising from the
27 administration of the Act, and shall indemnify and
28 hold them harmless for any losses caused by such acts
29 or omissions."

30 5. By renumbering sections.

S-5556 FILED

MARCH 27, 1980

Adopted 4/2 (p. 124)

BY COMMITTEE ON COMMERCE

EDGAR H. HOLDEN, CHAIRPERSON

SENATE AMENDMENT TO
HOUSE FILE 2513

H-5901

1 Amend House File 2513 as passed by the House as
2 follows:

3 1. Page 2, line 11, by inserting after the word
4 "members" the words ", which shall not take effect
5 until they have been submitted to and adopted by the
6 auditor as rules pursuant to chapter seventeen A (17A)
7 of the Code".

8 2. Page 3, by striking lines 21 through 26 and
9 inserting in lieu thereof the following:

10 "Sec. 6. NEW SECTION. RULES OF AUDITOR. The
11 auditor".

12 3. Page 13, line 10, by inserting after the word
13 "Iowa" the words "; however thrift certificates are
14 not guaranteed by the state of Iowa".

15 4. Page 15, by inserting after line 19 the
16 following:

17 "Sec. ____ . NEW SECTION. LIABILITIES. The state
18 of Iowa is not liable for any actions or omissions
19 of the auditor in administering the Iowa industrial
20 loan corporation thrift guaranty Act. Members of
21 the guaranty corporation shall be liable for losses
22 incurred as a result of such actions or omissions.

23 The guaranty corporation shall defend the auditor
24 of state and employees of the auditor against any
25 action commenced against any of them individually
26 as a result of acts or omissions arising from the
27 administration of the Act, and shall indemnify and
28 hold them harmless for any losses caused by such acts
29 or omissions."

30 5. By renumbering sections.

H-5901 FILED
APRIL 8, 1980

RECEIVED FROM THE SENATE

House concurred 4/16 (p. 1627)

HOUSE FILE 2513

AN ACT

CREATING AN INDUSTRIAL LOAN CORPORATION THRIFT CERTIFICATE
GUARANTY FUND, AND PROVIDING PENALTIES.

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

Section 1. NEW SECTION. TITLE. This Act shall be known and may be cited as the "Iowa Industrial Loan Corporation Thrift Guaranty Act."

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

- 1. "Industrial loan corporation" means a corporation licensed under chapter five hundred thirty-six A (536A) of the Code.
- 2. "Auditor" means the auditor of state.
- 3. "Guaranty corporation" means the corporation created pursuant to section four (4) of this Act.
- 4. "Member" means an industrial loan corporation which is required by section five (5) of this Act to be a member of the guaranty corporation.
- 5. "Thrift certificates" means senior indebtedness issued to and in the hands of the general public, and includes thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness.
- 6. "Independent activity" means an activity other than one directed solely at increasing guarantee coverage under section seven (7) of this Act.
- 7. "Capital impairments", or "impaired capital" means the failure of a member to comply with the capital stock requirements of section five hundred thirty-six A point eight (536A.8) of the Code.

8. "Insolvency" means the inability of a member to pay its debts and obligations as they become due.

Sec. 3. NEW SECTION. PURPOSE. It is the purpose of the guaranty corporation to guarantee payment of thrift certificates issued by a member up to ten thousand dollars for each account, subject to the limitations of this Act.

Sec. 4. NEW SECTION. ESTABLISHMENT OF GUARANTY CORPORATION.

1. Within ninety days after the effective date of this Act, industrial loan corporations which are required by section five (5) of this Act to participate as members shall establish a corporation under chapter five hundred four A (504A) of the Code to operate under the name "Industrial Loan Thrift Guaranty Corporation of Iowa".

2. The guaranty corporation established under subsection one (1) of this section shall adopt a plan of organization and operation which may be amended from time to time. The guaranty corporation may promulgate regulations prescribing terms and conditions relative to the issuance of thrift certificates by members, which shall not take effect until they have been submitted to and adopted by the auditor as rules pursuant to chapter seventeen A (17A) of the Code.

Sec. 5. NEW SECTION. PARTICIPATION--MEMBERSHIP ASSESSMENT.

1. Each industrial loan corporation which has issued and outstanding thrift certificates shall participate as a member in the guaranty corporation in accordance with this Act and with the bylaws established by the board of directors of the guaranty corporation. An industrial loan corporation which is required by this section to participate as a member shall pay a membership assessment, to be paid into the guarantee fund, in an amount determined according to the following schedule:

- a. Two thousand five hundred dollars for a member which at any time has issued and outstanding thrift certificates in an amount of two hundred fifty thousand dollars or less.
- b. Five thousand dollars for a member which at any time

has issued and outstanding thrift certificates in an amount greater than two hundred fifty thousand dollars, but not more than one million dollars.

c. Ten thousand dollars for a member which at any time has issued and outstanding thrift certificates in an amount greater than one million dollars.

Each industrial loan corporation which has issued and outstanding thrift certificates as of the effective date of this Act shall pay the membership assessment to the guaranty corporation within thirty days after the date of its incorporation. Each industrial loan corporation which initially issues thrift certificates after the effective date of this Act shall pay the membership assessment within thirty days after the thrift certificates are issued. When the amount which has been paid by a member as the membership assessment becomes less than the amount which is required by this subsection, the member shall pay the deficiency within ninety days after the date when the deficiency arises.

2. An industrial loan company is exempt from participation as a member of the guaranty corporation so long as it does not have issued and outstanding thrift certificates. An industrial loan company which has issued and outstanding thrift certificates as of the effective date of this Act shall be exempt from participation as a member of the guaranty corporation if it files an undertaking with the auditor that it will not issue thrift certificates and that it will redeem existing thrift certificate obligations within ninety days after the effective date of this Act, and if it redeems existing thrift certificate obligations within the ninety-day period.

Sec. 6. NEW SECTION. RULES OF AUDITOR. The auditor shall adopt rules pursuant to chapter seventeen A (17A) of the Code which may be necessary or advisable to accomplish the purposes of this Act. Rules adopted by the auditor shall continue in force until either modified by subsequent rule or superseded by a plan submitted by the guaranty corporation and approved by the auditor.

Sec. 7. NEW SECTION. GUARANTEE OF THRIFT CERTIFICATES. Thrift certificates of a member of the guaranty corporation shall be guaranteed by the guaranty corporation as follows:

1. With respect to single ownership obligations in any one member:
 - a. Funds owned by an individual and invested in the manner set forth in this subsection shall be added together and guaranteed up to ten thousand dollars in the aggregate.
 - b. Individual accounts invested in one or more accounts in the individual's own name shall be guaranteed up to ten thousand dollars in the aggregate.
 - c. Funds owned by a principal and invested in one or more accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and guaranteed up to ten thousand dollars in the aggregate.
 - d. Accounts held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and invested in one or more accounts in the name of the guardian, custodian, or conservator shall be added to any individual accounts of the ward or minor and guaranteed up to ten thousand dollars in the aggregate.
2. With respect to testamentary accounts in any one member:
 - a. Funds owned by an individual and invested in a revocable trust account, tentative trust account, payable-on-death account, or similar account evidencing an intention that on his or her death the funds shall belong to a named beneficiary, shall be guaranteed up to ten thousand dollars in the aggregate as to each such named beneficiary, separately from any other accounts of the owner.
 - b. Accounts in any one member held by executors or administrators which are funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and invested in one or more accounts, shall be guaranteed up to ten thousand dollars in the aggregate, separately from the individual accounts of the

beneficiaries of the estate or of the executor or administrator.

3. With respect to corporation or partnership accounts in any one member, accounts of a corporation or partnership which is engaged in an independent activity shall be guaranteed up to ten thousand dollars in the aggregate. For guarantee purposes an account of a corporation or partnership which is not engaged in an independent activity shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership and the interest of each person in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

4. With respect to accounts of unincorporated associations, accounts in any one member which are accounts of an unincorporated association engaged in an independent activity shall be guaranteed up to ten thousand dollars in the aggregate. For guarantee purposes an account of an unincorporated association which is not engaged in an independent activity shall be deemed to be owned by the persons comprising the association and the interest of each owner in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

5. With respect to joint accounts in any one member:

a. Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, or as tenants in common, shall be guaranteed separately from accounts individually owned by the co-owners.

b. A joint account shall be deemed to exist for purposes of guarantee of accounts only if each co-owner has personally executed an account signature card and possesses redemption rights.

c. An account owned jointly which does not qualify as a joint account for purposes of guarantee of accounts shall be treated as owned by the named persons as individuals, and

the actual ownership interest of each such person in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

d. All joint accounts owned by the same combination of individuals shall first be added together and guaranteed up to ten thousand dollars in the aggregate.

e. The interests of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and guaranteed up to ten thousand dollars in the aggregate.

6. Trust accounts in any one member which are trust interests for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor or grantor shall be added together and guaranteed up to ten thousand dollars in the aggregate, separately from other accounts of the trustee of the trust funds or the settlor or beneficiary of the trust arrangements.

Sec. 8. NEW SECTION. GUARANTEE FUND.

1. The guaranty corporation shall establish and maintain a guarantee fund which shall consist of the membership assessments under section five (5) of this Act, plus the assessments under subsections two (2) and three (3) of this section.

2. Beginning with the year in which this Act takes effect, the members of the guaranty corporation shall be subject to an assessment on May first of each year. The amount of the annual assessment is determined by the amount in the fund on December thirty-first of the prior year, net of any demands made by the auditor under section eleven (11) of this Act and remaining unpaid at such December thirty-first, as follows: If the net amount in the fund is less than the greater of two million dollars or two percent of the total thrift certificates of all members, the annual assessment for each member shall equal one-fourth of one percent of the member's thrift certificates which are outstanding on December thirty-

first of the year prior to the levy; and if the net amount in the fund exceeds the greater of two million dollars or two percent of the aggregate thrift certificates of all members, no annual assessment shall be made.

3. If upon liquidation of a member the amount available in the guaranty fund is insufficient to pay up to ten thousand dollars for each thrift certificate obligation specified in section seven (7) of this Act, the auditor may make demand upon the guaranty corporation for advance payment of annual assessments to become due in such amounts as required to meet the deficiency, but not exceeding two times the maximum assessment that could have been levied on each member on the prior May first as the annual assessment if the net amount in the fund the preceding December thirty-first had been less than the greater of two million dollars or two percent of the total thrift certificates of all members. Any amount prepaid by a member shall be credited against subsequent annual assessments, and the member shall pay the balance of the annual assessments thus due, if any, or shall be refunded any amount overpaid as a result of the advance assessment. At no time shall a member be required to be prepaid in excess of two years.

Sec. 9. NEW SECTION. NOTICE OF ASSESSMENT. The guaranty corporation shall send a written notice of assessment to each member assessed within ten days after the levy of an annual or advance assessment. The amount assessed shall be paid to the guaranty corporation by the member not later than thirty days following the date the notice of assessment is mailed.

Sec. 10. NEW SECTION. DEFAULTED ASSESSMENTS--ACTIONS TO ENFORCE. In the event a member fails to pay when due the membership assessment, or a deficiency in the membership assessment, or an annual or advance assessment, the guaranty corporation shall report the default in writing to the auditor within two business days after the default, and shall within thirty days after the default bring an action in law or in

equity to enforce payment. If the guaranty corporation does not bring an action within the time specified, the auditor may bring an action to enforce payment. The auditor also may revoke the right of a member to issue thrift certificates when the member is in default in paying assessments when due.

Sec. 11. NEW SECTION. PAYMENTS FROM GUARANTEE FUND--DEFICIENCIES.

1. When the property and business of a member has been liquidated or is in the process of liquidation by the auditor and the proceeds of liquidation are insufficient to pay up to ten thousand dollars for each thrift certificate obligation specified in section seven (7) of this Act, the guaranty corporation shall pay each deficiency at the direction of and in amounts as specified by the auditor, and within one hundred twenty days from the date the auditor makes demand for payment. If the total funds available from the guaranty corporation at the time of demand are insufficient to pay in full the amounts required by section seven (7) of this Act, the amount paid toward each obligation shall be reduced ratably in proportion to the amount by which the fund is deficient. Thereafter further payments shall be made in accordance with the directions of the auditor and as additional funds are paid into the guarantee fund from assessments and income accrued on them. When the thrift certificate obligations are paid, the account of each member of the guaranty corporation shall be reduced by an amount which is of the same relation to the total amount paid as the account balance of the member is to the sum of account balances of all members. The guaranty corporation has a claim against a member which has been liquidated or which is in the process of liquidation and the assets of the member for any thrift certificate obligations paid under this section.

2. The auditor shall not direct the guaranty corporation to pay in one calendar year any thrift certificate obligations that exceed in the aggregate the total amount in the fund after allowance for all amounts to be added to the fund during the year by assessment as provided in this Act.

Sec. 12. NEW SECTION. AUDITOR MAY MANAGE CORPORATION. Whenever it appears to the auditor that the guaranty corporation has violated its articles of incorporation or a law of this state; has not paid amounts as directed by the auditor of state pursuant to section eleven (11) of this Act, has invested its funds in violation of section fourteen (14) of this Act, has not levied assessments as required by sections five (5), eight (8) and nine (9) of this Act, has not diligently prosecuted an action to enforce payment as required by section ten (10) of this Act, has violated a provision of this Act, or has neglected or refused to submit its books, papers, and affairs for the inspection of an examiner, the auditor may issue and serve upon the guaranty corporation a notice containing a statement of the facts constituting the alleged violation or violations and fixing a time and place at which a hearing will be held to determine whether the auditor should take possession of the property and business of the guaranty corporation and retain possession until the guaranty corporation satisfies the auditor that it will operate in conformity with the provisions of this Act. During the time the auditor has possession of the guaranty corporation, the auditor shall perform the duties and carry out the obligations of the guaranty corporation.

Sec. 13. NEW SECTION. JUDICIAL REVIEW. Actions of the auditor under section twelve (12) of this Act shall be subject to judicial review under the provisions of chapter seventeen A (17A) of the Code. The district court for Polk county has exclusive jurisdiction of judicial review proceedings under this section.

Sec. 14. NEW SECTION. INVESTMENTS OF GUARANTEE FUND.

1. The guaranty corporation may invest its funds only as provided by rules promulgated by the auditor. The auditor shall promulgate rules which are reasonably necessary for the purpose of preserving reasonable liquidity of the guarantee fund.

2. Income from investments shall be recorded in an income account and shall be used to defray expenses of administration. Income from investments that exceeds an amount determined by the board of directors to be adequate to provide for current expenses may be credited to members' accounts. Each member's account shall receive credit ratably, based on member account balances. Income received by the guaranty corporation, whether or not credited to members' accounts, shall be subject to a demand of the auditor made under section eleven (11) of this Act, except as to that portion reserved by the board of directors for expenses of administration during the calendar year.

3. Expenses of administration that exceed income from investments at the end of the fiscal year of the guarantee corporation shall be charged to members' accounts. Each member's account shall be charged ratably based on member account balances for the amount of the excess of expenses over income.

Sec. 15. NEW SECTION. POWER OF AUDITOR--MANAGEMENT OF MEMBER.

1. In addition to other remedies provided in this Act, the auditor may take over the management of the property and business of a member for reasonable cause, including but not limited to fraud, impairment of capital, violation of this Act, or revocation of a member's industrial loan license for any of the reasons stated in section five hundred thirty-six A point eighteen (536A.18) of the Code.

2. Actions of the auditor under subsection one (1) of this section shall be subject to judicial review under the provisions of chapter seventeen A (17A) of the Code. The aggrieved member may institute proceedings for judicial review in the county in which its principal place of business is located.

3. Upon assuming management of the property and business of a member under this section, the auditor may operate and direct the affairs of the member in its regular course of

business, collect amounts due to the member, and do other acts necessary to conduct the affairs of the member and to conserve or protect its assets, property and business.

4. The auditor shall thereafter manage the property and business of the member until such time as he or she may relinquish to the member the management thereof, upon such conditions as the auditor may prescribe, or until the affairs of the member be finally dissolved as provided in section five hundred thirty-six A point nineteen (536A.19) of the Code.

Sec. 16. NEW SECTION. LIQUIDATION OF MEMBER--AUDITOR AS RECEIVER. If when managing a member under section fifteen (15) of this Act the auditor concludes that the member is insolvent or should be dissolved for any other reason enumerated in section fifteen (15), subsection one (1), of this Act, the auditor shall petition the district court for the county in which the principal place of business of the member is located to appoint a receiver for the member. Upon the petition of the auditor under this section, or in any other case where appointment of a receiver for a member is sought by any person, the district court may appoint the auditor as receiver of the member, to serve without bond. The attorney general shall represent the auditor in all proceedings connected with the receivership.

Sec. 17. NEW SECTION. NOTICE TO GUARANTY CORPORATION. The auditor of state shall give prompt notice to the guaranty corporation when for any cause the auditor takes possession of the property and business of a member to manage its affairs, and shall give further prompt notice when he or she determines to liquidate the property and business of a member.

Sec. 18. NEW SECTION. REGULATION. The operation of the guaranty corporation shall at all times be subject to the supervision of the auditor. The auditor may at any time investigate the affairs and examine the books, accounts, records, and files of the guaranty corporation. The auditor shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of the guaranty corporation.

The corporation shall pay to the auditor such fees as may be established by the auditor by rule under chapter seventeen A (17A) of the Code for the recovery of administrative costs and expenses incurred in the discharge of the duties imposed upon the auditor by this Act. Recoverable costs and expenses shall include, but not be limited to costs and expenses for salaries, expenses and travel for employees, and additional office facilities, supplies and equipment required in the administration of this Act. The fees shall include an annual fee to cover the ordinary annual expenses of the auditor in the administration of this Act and such special fees as may be necessary for the recovery of extraordinary expenses. Rules of the auditor shall specify when the fees are to be paid by the corporation, and shall provide for the giving of notice of fees which are to become due. Failure to pay a required fee within ten days after the due date shall subject the corporation to an additional fee equal to five percent of the amount assessed for each day the payment is delinquent.

Sec. 19. NEW SECTION. APPEAL TO AUDITOR. A member aggrieved by an action or decision of the guaranty corporation may appeal to the auditor within thirty days from the action or decision.

Sec. 20. NEW SECTION. NONTRANSFERABILITY OF MEMBERSHIPS. Memberships in the guaranty corporation are nontransferable, and the guaranty corporation and memberships in the guaranty corporation are exempt from the provisions of chapter five hundred two (502) of the Code.

Sec. 21. NEW SECTION. ADVERTISEMENTS.

1. The guaranty corporation shall not cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner, a statement or representation with regard to its plan of operation without first obtaining the written approval of the auditor.

2. All advertising by a member with regard to its membership in the guaranty corporation shall include the following statement: "Thrift certificates are protected up

to a maximum of ten thousand dollars by the Industrial Loan Thrift Guaranty Corporation of Iowa, a private corporation, regulated by the state of Iowa; however thrift certificates are not guaranteed by the state of Iowa."

3. All advertising of members with regard to thrift certificates shall comply with such reasonably necessary rules as the guaranty corporation may adopt to prevent the use of false, misleading or deceptive advertising practices.

Sec. 22. NEW SECTION. LIST OF COMPANIES--REPORTS.

1. In order to permit the guaranty corporation to fulfill its obligations under this Act, and notwithstanding the provisions of sections five hundred thirty-six A point fifteen (536A.15) and five hundred thirty-seven point two thousand three hundred four (537.2304) of the Code to the contrary, the auditor shall furnish to the guaranty corporation a list of all industrial loan corporations which have outstanding thrift certificate obligations; and the auditor shall promptly furnish to the guaranty corporation one copy of all reports of each of these industrial loan corporations filed with the auditor, excluding examination reports and responses to examinations.

2. Each member, annually and within ninety days of the close of its fiscal year, shall file with the guaranty corporation and the auditor a report of an audit performed in accordance with generally accepted auditing standards and certified by a certified public accountant licensed to practice in the state of Iowa.

3. The guaranty corporation may submit reports and make recommendations to the auditor regarding the affairs or financial condition of a member. In addition, the guaranty corporation shall have the authority to select and direct an independent certified public accountant licensed to practice in the state of Iowa to audit the financial condition of a member, the report of which shall be provided only to the board of directors of the guaranty corporation and the auditor. The member shall allow access to the records and other

information requested by the guaranty corporation during the audit. The cost and expenses of the audit or examination shall be paid by the guaranty corporation. These reports, actions, and recommendations shall be kept confidential.

4. There shall be no liability on the part of, and no cause of action of any manner shall arise against, the guaranty corporation or its members, directors, officers, employees or agents, or the auditor for actions or statements made by them respecting reports or recommendations made under the authority of this section.

Sec. 23. NEW SECTION. EXEMPTIONS.

1. Securities of an industrial loan company issued in a transaction which is an exempt transaction within the meaning of section five hundred two point two hundred three (502.203), subsection nine (9), of the Code are not thrift certificates, and shall bear a statement that they are not guaranteed by the Iowa industrial loan corporation thrift guaranty Act.

2. The guaranty corporation is not an insurance corporation and is not transacting insurance business. The organization, operation and liquidation of the guaranty corporation are exempt from title twenty (XX) of the Code.

Sec. 24. NEW SECTION. SUBORDINATED DEBT. Subordinated debt of a member shall not be construed as thrift certificates and securities representing subordinated debt shall bear a statement that they are not guaranteed by the Iowa industrial loan corporation thrift guaranty Act. At the time of issue subordinated debt shall not exceed two times the total amount of capital, surplus, and undivided profits of the member.

Sec. 25. CAPITAL IMPAIRMENT.

1. The guarantees provided in this Act do not apply to the obligations of an industrial loan corporation, the capital of which is impaired on the effective date of this Act until such time as the capital impairment is eliminated.

2. For purposes of subsection one (1) of this section, an audit performed by a certified public accountant licensed to practice in the state of Iowa for an industrial loan

licensee's fiscal year immediately preceding the effective date of this Act shall be conclusive as to whether the capital of the industrial loan corporation is impaired on the effective date of this Act.

Sec. 26. NEW SECTION. STATEMENT OF CONDITION. Each member shall by April thirtieth of each year prepare a statement of its condition as of the close of the preceding calendar year. Each member shall make copies of its statement of condition available to the general public at each of its places of business. The auditor by rule may prescribe minimum content of the statement of condition.

Sec. 27. NEW SECTION. LIABILITIES. The state of Iowa is not liable for any actions or omissions of the auditor in administering the Iowa industrial loan corporation thrift guaranty Act. Members of the guaranty corporation shall be liable for losses incurred as a result of such actions or omissions. The guaranty corporation shall defend the auditor of state and employees of the auditor against any action commenced against any of them individually as a result of acts or omissions arising from the administration of the Act, and shall indemnify and hold them harmless for any losses caused by such acts or omissions.

Sec. 28. Section five hundred two point two hundred two (502.202), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter one hundred twenty (120), sections five (5) and six (6), is amended by adding the following new subsection:

NEW SUBSECTION. Any security representing a thrift certificate of an industrial loan company which is a member of the industrial loan thrift guaranty corporation of Iowa.

Sec. 29. LEGISLATIVE INTENT. Because of the increase in the issuance by industrial loan corporations of thrift certificates, these being essential to the well-being and prosperity of the state and the inhabitants of it, it is the intent of the general assembly to provide by this Act for an adequate guarantee of thrift certificates issued by industrial loan corporations.

Sec. 30. This Act shall take effect January first following its enactment.

WILLIAM B. HARBOR
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2513, Sixty-eighth General Assembly.

BRUCE GRAHAM
Assistant Chief Clerk of the House

Approved May 22, 1980

ROBERT D. RAY
Governor