



SPONSOR: Sen. Townsend & Rep. B. Short
Sens. Bonini, Bushweller, Hansen, Henry, Pettyjohn,
Sokola; Rep. Paradee

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 211

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO THE CREATION AND REGULATION OF BUSINESS DEVELOPMENT BANKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 10, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 10. ~~CONSUMER CREDIT BANKS~~ BUSINESS DEVELOPMENT BANKS

Subchapter I. General Provisions.

~~§ 1001–1005. Definitions; applicability of other laws; taxation; reserved power of State to amend or repeal chapter; corporate name.~~

§ 1001. Scope; construction.

(a) This chapter provides for the creation of business development banks, chartered under the laws of this State, which are limited purpose banks authorized to engage in the following activities:

(1) Extending loans or other financing in an amount greater than \$5,000 to business entities, the proceeds of which are to be used solely for commercial purposes and not for personal, family, or household purposes.

(2) Obtaining any form of collateral or security interest of any kind in real or personal property of any type to secure loans or other financing in whole or in part.

(3) Providing management consulting, referral, and counseling services to clients.

(4) Accepting savings and time deposits in amounts of \$100,000 or greater, but not demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others.

(b) A business development bank may have only one location open to the general public in the State of Delaware.

§ 1002. Applicability of other laws.

All of the following apply to a corporation formed under this chapter, to the extent not inconsistent with this chapter:

(1) It is known as a "business development bank."

(2) It is subject to regulation by the State Bank Commissioner to the same extent as a bank organized under Chapter 7 of this title.

(3) It is deemed and held to be subject to this title, and to any other general law of this State making provision for the regulation of banks, or for the regulation and governance of corporations established under Title 8.

§ 1003. Taxation.

A business development bank is subject to the same taxation as fixed by the laws of this State for banks and trust companies.

§ 1004. Reserved power of State to amend or repeal chapter.

(a) The General Assembly may amend or repeal this chapter, but the General Assembly's amendment or repeal may not take away or repeal any remedy against a business development bank, or its officers, for any liability previously incurred.

(b) This chapter and all amendments to this chapter are part of the charter or certificate of incorporation of a business development bank.

§ 1005. Corporate name.

(a) A business development bank may not use the words "savings" or "trust" in its title or name.

(b) A business development bank must include the word "bank" in its name and the suffix "BDB" after its chosen name.

Subchapter II. Formation.

~~§§ 1010–1024. Incorporation by banks and bank holding companies; articles of association; contents and execution; notice of intention to incorporate; publication; application for certificate of public convenience and advantage; determination of public convenience; organization meeting; notice; proceedings; articles of organization — Contents; approval; filing; certificate of incorporation; commencement of corporate existence; certificate authorizing transaction of business; revocation of charter for failure to commence business within 6 months; fees; prohibition against new consumer credit banks on or after September 29, 1995.~~

§ 1010. Incorporators.

Any person, general or limited partnership, limited liability company, association, or corporation, singly or jointly with others, and without regard to that person's or entity's residence, domicile, or state of incorporation or formation, may, upon the execution of written articles of association and upon compliance with this chapter, form a business development bank, with the powers conferred by this chapter.

§ 1011. Articles of association; contents and execution.

52 (a) The articles of association of a business development bank must be executed by the incorporator,
53 acknowledged, set forth the intention of forming a business development bank, and specifically state all of the following
54 about the business development bank:

55 (1) The name by which it is to be known.

56 (2) The purpose for which it is formed.

57 (3) The city or town where its single place of business in this State. that is open to the general public, is to be
58 located.

59 (4) The amount of its capital stock, and the number of shares into which it is to be divided.

60 (5) The number of its directors, which may not be less than 5.

61 (6) Whether it is to have perpetual existence, and if not, the time when its existence is to cease.

62 (7) Whether the private property of the stockholders is to be subject to the payment of corporate debts, and if
63 so, to what extent.

64 (b) The articles of association may also contain other provisions defining, limiting, and regulating the powers of
65 the business development bank, the powers and duties of the directors, and the powers of the stockholders, if such
66 provisions are consistent with the object, purpose, and provisions of this chapter and are not in conflict with this Code or
67 any other general law of this State relating to banks.

68 § 1012. Notice of intention to incorporate; publication.

69 (a) An incorporator of a business development bank shall give notice to the State Bank Commissioner of the
70 incorporator's intention to form a business development bank.

71 (b) The notice of intention required under this section must be published at least once a week, for 2 successive
72 weeks, in 1 or more newspapers, at least 1 of which must be published in the county where the business development
73 bank's office is proposed to be located.

74 (c) The notice of intention required under this section must contain all of the following information about the
75 business development bank:

76 (1) The name of the incorporator organizing it.

77 (2) Its proposed name.

78 (3) The city or town where it is proposed to be located.

79 (4) The amount of its capital stock.

80 (d)(1) The State Bank Commissioner shall prescribe the form of the notice of intention required under this section
81 and shall designate the newspapers in which notice under this section is to be published.

(2) An incorporator of a business development bank shall provide the notice of intention required under this section in the form prescribed by the State Bank Commissioner.

§ 1013. Application for certificate of public convenience and advantage.

Within 60 days after the second publication of the notice of intention under § 1012 of this title, but not before the expiration of 20 days from the date of the second publication, an incorporator shall apply to the State Bank Commissioner for a certificate that public convenience and advantage will be promoted by the establishment of the business development bank.

§ 1014. Determination of public convenience.

(a) Upon an application under § 1013 of this title, the State Bank Commissioner shall consider and determine the following:

(1) Whether public convenience and advantage would be promoted by the establishment of the business development bank.

(2) Whether the terms and provisions of the articles of association and the proposed business development bank's location and plan of operation are in compliance with this chapter.

(b) In making a determination under subsection (a) of this section, the State Bank Commissioner shall consider all of the following:

(1) The experience of the incorporator in the commercial lending business and with respect to the acceptance and administration of time deposits.

(2) The quality of management and past financial performance under paragraph (b)(1) of this section, if applicable.

(3) Other matters the Commissioner deems relevant.

(c) The State Bank Commissioner shall issue or refuse to issue a certificate in accordance with the Commissioner's determination under subsection (a) and (b) of this section.

(d)(1) If the Commissioner issues the certificate, the incorporator shall hold the first meeting and follow the procedure prescribed by § 1015 of this title.

(2) If the State Bank Commissioner refuses to issue a certificate, no further proceedings may be had, but the application may be renewed after 1 year from the date of the refusal.

§ 1015. Organizational meeting; notice; proceedings.

(a) At the organizational meeting or at any adjournment of the organizational meeting, the incorporator shall do all of the following:

(1) Appoint a temporary secretary for purposes of the organizational meeting.

(2) Adopt bylaws for the business development bank.

(3) Elect, in such matter as the bylaws determine, directors, a president, a secretary, and such other officers for the business development bank as the bylaws prescribe.

(b) All the officers elected under paragraph (a)(3) of this section must be sworn to the faithful performance of their duties.

(c) The temporary secretary shall make and attest to a record of the proceedings until the secretary has been chosen and sworn, including a record of the choice and qualification of the secretary.

§ 1016. Articles of organization — Contents.

The president and a majority of the directors elected at the organizational meeting of the business development bank shall make, sign, and make oath to a certificate, known as the articles of organization, which includes all of the following:

(1) A true copy of the articles of association.

(2) The name of the subscriber to the articles of association.

(3) The name, residence, and post office address of each of the officers of the business development bank.

(4) The date of the organizational meeting and the successive adjournments of the organizational meeting, if any.

§ 1017. Articles of organization — Approval.

(a) The president of the proposed business development bank shall submit the articles of organization, together with the records of the proposed business development bank, to the State Bank Commissioner.

(b) The State Bank Commissioner shall examine the documents submitted under subsection (a) of this section, and may require amendment of the documents or additional information as the Commissioner considers proper or necessary.

(c) If the State Bank Commissioner finds that the provisions of law have been complied with, the Commissioner shall endorse the Commissioner's approval upon the articles of organization.

§ 1018. Articles of organization — Filing.

The president of the business development bank shall file with the Secretary of State the articles of organization approved by the State Bank Commissioner within 30 days after the date of approval.

§ 1019. Certificate of incorporation.

(a) Upon the filing of the articles of organization as required by § 1018 of this title, the Secretary of State shall issue a certificate of incorporation in the following form:

142 STATE OF DELAWARE

143 Be it known that whereas (the name of the incorporator) has (have) executed articles of association with the
144 intention of forming, pursuant to the provisions of Chapter 10 of this title of the Code, a corporation under the name of (the
145 name of the corporation), for the purpose (the purpose declared in the articles of association), with a capital stock of (the
146 amount fixed in the articles of association), and having its sole place of business open to the general public in the State of
147 Delaware in (the city or town where its place of business will be located) and has (have) complied with the laws of this
148 State in such case made and provided, as appears from the articles of organization of the corporation, duly approved by the
149 State Bank Commissioner and on file in this office, now therefore, I (the name of the Secretary of State), Secretary of State
150 of Delaware, do hereby certify that (the name of the incorporator), and such entity's successors and assigns, is (are) legally
151 organized and established as, and is (are) hereby made, an existing corporation under the name of (name of the
152 corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law
153 appertain thereto.

154 Witness my official signature hereunto subscribed, and the Great Seal of the State of Delaware hereunto affixed,
155 this _____ day of _____ in the year _____ (the date of the filing of the articles of organization).

156 (b)(1) The Secretary of State shall do all of the following upon payment of the costs and charges for the certificate
157 of incorporation:

158 a. Sign the certificate of incorporation and cause the Great Seal of the State to be affixed to the certificate
159 of incorporation.

160 b. Deliver the certificate of incorporation to the business development bank together with a certified copy
161 of the articles of organization that contains the endorsement of the State Bank Commissioner.

162 (2) The Secretary of State shall keep on file a certified copy of the certificate of incorporation and the articles
163 of organization for each business development bank. The certificate of incorporation and the articles of organization
164 containing the endorsement of the State Bank Commissioner must be recorded in the office of the recorder of deeds for
165 the county in which the business development bank's place of business is to be located.

166 (c) All of the following documents issued with respect to a business development bank are admissible as evidence
167 in all courts of this State and together constitute sufficient evidence of the valid existence of the corporate entity:

168 (1) A certificate of incorporation, or a copy of the certificate of incorporation duly certified by the Secretary
169 of State.

170 (2) A certified copy of the articles of organization containing the endorsement of the State Bank
171 Commissioner.

(3) A certificate of the recorder of deeds for the county in which the certificate of incorporation and articles of organization are recorded, under the State Bank Commissioner's hand and seal of office, stating that the certificate and articles of organization have been recorded in the office of the recorder, or a copy of the record duly certified by the recorder.

§ 1020. Commencement of corporate existence.

(a)(1) Upon the issuance of the certificate of incorporation by the Secretary of State and the recording of the certificate and articles of organization under § 1019 of this title, the incorporator named in the certificate, any successors and assigns, constitute a body corporate from the date of the certificate and for the purposes and by the name set forth in the certificate.

(2) A business development bank exists subject to dissolution, revocation, or forfeiture of the franchise under this chapter, this Code, or any other law of this State relating to the dissolution, revocation, or forfeiture of the charter or franchise of banks or trust companies.

(b) A business development bank may not do any business until it has secured a certificate authorizing transaction of business from the State Bank Commissioner under § 1021 of this title.

§ 1021. Certificate authorizing transaction of business.

(a)(1) A business development bank shall file a certified copy of the certificate of incorporation and of the articles of organization containing the endorsement of the State Bank Commissioner with the State Bank Commissioner.

(2) The president and the cashier or treasurer of the business development bank shall certify to the State Bank Commissioner the names and addresses of the stockholders and the number of shares owned by the stockholder when the whole capital stock of the business development bank has been issued.

(b) If the State Bank Commissioner receives the certification under paragraph (a)(2) of this section, the Commissioner shall issue a certificate authorizing the business development bank to transact business if all of the following apply:

(1) The business development bank has complied with all of the requirements of this Code and any other applicable laws.

(2) After an examination of the method of payment of the capital stock by the State Bank Commissioner it appears that the whole capital stock stated in the articles of association has been paid through one of the following:

a. Cash.

b. A transfer of other assets to the business development bank.

c. An exchange of equity.

(c) A business development bank may not transact business until a certificate authorizing transaction of business has been granted.

§ 1022. Revocation of charter for failure to commence business within 6 months.

A business development bank shall, within 6 months from the date of its incorporation, be actively engaged in the business for which it was created or its certificate of incorporation and corporate franchise are deemed and held to be revoked.

§ 1023. Fees.

(a) The Secretary of State shall collect the following fees, for the use of the State:

(1) For making and issuing the certificate of incorporation, \$10.

(2) For making the certified copy of the articles of organization, \$10.

(3) For making the certified copy of the certificate of incorporation to be kept on file in the office of the Secretary of State and for filing and indexing the same and the articles of organization in said office, \$5.

(4) For supplying any additional certified copy of the certificate of incorporation or articles of organization requested by the business development bank, \$5.

(b)(1) Before issuing the certificate authorizing the business development bank to begin the transaction of business, the State Bank Commissioner shall collect from the business development bank, for the use of the State, the sum of \$5,750.

(2) In addition, an incorporator of a business development bank applying for a certificate of public convenience and advantage shall pay an investigation fee of \$1,150. The investigation fee is not refundable and must be submitted with the application.

Subchapter III. Conduct of Internal Corporate Affairs.

§§ 1030–1040. Bylaws; directors; stockholders' meetings; voting rights of stockholders; minimum capital stock and surplus; par value of capital stock; payment for and issuance thereof; increase and reduction in such stock; stockholders' liability; dividends; amendment of charter or certificate of incorporation; merger and consolidation — Authorized; procedure; acquisition of assets and assumption of liabilities; Commissioner's approval; title to property.

§ 1030. Bylaws; adoption, amendment, and repeal.

(a) A business development bank may adopt bylaws for the proper management of its affairs, and may establish regulations controlling the assignment and transfer of its shares.

(b) A business development bank's first set of bylaws must be adopted at the organizational meeting, as provided under § 1015 of this title. Thereafter, the stockholders may make, alter, or repeal bylaws; however, a business development bank may, in the articles of association, confer all of these powers upon the directors.

§ 1031. Directors; number, quorum, term, vacancies, and oath.

(a) A board of directors shall manage the business of a business development bank organized under this chapter.

(1) The number of directors that constitute the whole board may be specified in the articles of association, but the articles of association must provide for at least 5 directors.

(2) The bylaws must prescribe how many directors constitute a quorum for the transaction of business.

(b)(1) The directors elected at the organizational meeting under § 1015 of this title hold office until the succeeding annual meeting of the stockholders and until the directors' successors are duly chosen and qualified. Thereafter, the directors shall be elected at the annual meeting of the stockholders or at an adjournment of the annual meeting.

(2) A vacancy on the board of directors is filled by a majority of the remaining directors, even if the number of remaining directors is less than a quorum. A director chosen under this paragraph (b)(2) of this section holds office until the next annual election and until the director's successor is duly elected and qualified.

(c) Each director of a business development bank must be sworn to the faithful performance of duties.

§ 1032. Stockholders' meetings.

(a) Stockholders' meetings must be held at a place, either within or without this State, designated by the bylaws or in the manner provided for in the bylaws. If the bylaws do not provide for a place for stockholders' meetings, a meeting is to occur at the business development bank's office in this State.

(1) The bylaws must set the time of the annual meeting of the stockholders and may provide for special or called stockholders' meetings.

(2) This subsection does not apply to the meeting of any incorporator referred to in § 1015 of this title.

(b) A stockholders' meeting may be adjourned and at such adjourned meeting, any business may be transacted that could have been acted on at the meeting which was adjourned.

(c) The bylaws may prescribe the number of shares that are to be represented at any stockholders' meeting to constitute a quorum. If the bylaws do not provide for the number of shares that constitute a quorum, any number of shares represented at a stockholders' meeting is sufficient to transact business at the meeting.

§ 1033. Voting rights of stockholders.

(a) At a stockholders' meeting, a stockholder is entitled to 1 vote in person or by proxy for each share of the capital stock held by the stockholder on all issues on which the stockholder is entitled to vote.

(b) A stockholder may not vote based on a stock that has been transferred on the books of the business development bank within the 20 days preceding the stockholders' meeting.

§ 1034. Par value of capital stock; payment for and issuance of capital; increase and reduction in capital stock.

(a) A business development bank's capital stock must be divided into shares of a stated par value.

(b) A business development bank may not transact business until the whole amount of its capital stock is subscribed for and actually paid for through one of the following:

(1) Cash.

(2) A transfer of other assets to the business development bank.

(3) An exchange of equity.

(c) A business development bank may not issue capital stock until the par value of the stock is fully paid in cash.

(d) A business development bank may, subject to the approval of the State Bank Commissioner, increase or reduce its capital stock as provided under § 1037 of this title.

§ 1035. Stockholders' liability.

The private property of the stockholders is not subject to the payment of the corporate debts unless otherwise expressly provided in the articles of association.

§ 1036. Dividends.

The directors of a business development bank may declare dividends on common or preferred stock of so much of the net profits of the business development bank as they judge expedient.

§ 1037. Amendment of charter or certificate of incorporation.

(a) A business development bank may only amend its charter or certificate of incorporation under this section.

(b)(1) A business development bank created under this chapter may amend its charter or certificate of incorporation to do any of the following:

a. Add to or subtract from its corporate powers and purposes, if the additional corporate power or purpose is authorized or contemplated under this chapter.

b. Increase or decrease its authorized capital stock, if the State Bank Commissioner has approved the increase or decrease.

c. Change the number or par value of its shares of stock.

d. Change its corporate title, if the amended corporate title complies with § 1005 of this title.

e. Increase or decrease its number of directors, if the amended number of directors is not less than 5.

(2) An amendment under paragraph (b)(1) of this section may be made by 1 certificate of amendment.

(3) An amendment may not contain a provision that is prohibited in an original certificate of incorporation granted or issued under this chapter.

(c) The procedure for amending the charter or certificate of incorporation of a business development bank, and the manner of making and effecting the amendment, is as prescribed in Subchapter VIII of Chapter 1 of Title 8 for the amendment of the certificate of incorporation of a corporation having a capital stock.

(d) The Secretary of State may not receive or file a certificate of amendment, and the certificate of amendment is not effective, unless the proposed certificate of amendment has been submitted to the State Bank Commissioner and approved both in substance and in form by the Commissioner.

§ 1038. Merger, consolidation, or conversion — Commissioner's approval; procedure.

(a) A business development bank may not merge or consolidate with any other entity or convert into a national bank or other entity, unless the State Bank Commissioner approves of the merger, consolidation, or conversion both in substance and in form.

(b) The procedure for merger, consolidation, or conversion of a business development bank, and the legal effect and manner of making and effecting the merger, consolidation, or conversion, is as prescribed by the State Bank Commissioner, subject to the other provisions of this title.

(c) The Secretary of State may not receive or file an agreement of merger or consolidation of a business development bank, and the agreement of merger or consolidation is not effective, unless the agreement of merger or consolidation has been submitted to the State Bank Commissioner and approved both in substance and in form by the Commissioner.

(d) The State Bank Commissioner may require a business development bank to furnish the Commissioner with information as to the assets and liabilities and the condition of any business development bank or other entity involved in the proposed merger, consolidation, or conversion.

(e) The State Bank Commissioner may deny a merger, consolidation, or conversion if the Commissioner finds that the transaction would substantially weaken any business development bank involved in the merger, consolidation, or conversion.

§ 1039. Acquisition of assets and assumption of liabilities; Commissioner's approval; title to property.

(a) No one may acquire all or substantially all of the assets, or assume all or substantially all of the liabilities, of any business development bank, whether the business development bank is then doing business or has ceased to do business or has surrendered its charter or has dissolved, unless the agreement for such acquisition or assumption has been submitted to the State Bank Commissioner and approved both in substance and in form by the Commissioner.

(b) The State Bank Commissioner may require a business development bank to furnish the Commissioner with information as to the assets and liabilities and the condition of any business development bank or other entity involved in such acquisition of assets or assumption of liabilities.

(c) The State Bank Commissioner may deny a proposed acquisition or assumption contemplated under this section if the Commissioner finds that the transaction would substantially weaken any business development bank involved in the transaction.

(d) Title to the property of a business development bank does not pass if the transaction is in violation of this section.

Subchapter IV. Powers, ~~Conditions~~ Conditions, and Prohibitions

~~§§ 1051–1055. Powers and limitations; office in State; business practices; required number of employees within State; revocation of authority to transact business.~~

~~§ 1056 Merger with or conversion into national bank.~~

§ 1040. Powers and limitations.

(a) A business development bank may possess or exercise any of the following powers:

(1) To sue and be sued, complain, and defend in any court of law or equity.

(2) To make, hold, purchase, mortgage or lease, or sell or otherwise dispose of, such real or personal property as is necessary or appropriate for the conduct of its business.

(3) To borrow money.

(4) To extend loans or other financing in an amount greater than \$5,000 to business entities, which is to be used solely for commercial purposes and not for personal, family, or household purposes.

(5) To obtain any form of collateral or security interest of any kind in real or personal property of any type to secure loans or other financing extended under paragraph (a)(4) of this section, in whole or in part.

(6) To provide management consulting, referral, and counseling services, including consulting, referral, and counseling on financial, economic, accounting, employee benefits, data and payment processing matters, and similar matters, either directly or indirectly through an affiliated or unaffiliated business entity, to its customers.

(7) To accept savings and time deposits in amounts of not less than \$100,000, if the deposits are insured by the Federal Deposit Insurance Corporation such that the business development bank qualifies as an insured depository institution, as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c).

(8) To create and, except for directors' qualifying shares, to own all of the capital stock of 1 or more subsidiary corporations that engage only in activities permitted by this chapter, which subsidiary corporation may not

exercise the deposit-taking authority granted under paragraph (a)(7) of this section and may not operate an office open to the general public.

(9) Subject to the limitations under subsection (b) of this section, generally use, exercise, and enjoy all powers, rights, privileges, and franchises as are usual or incident to carrying on such business of banking as is permitted under this chapter, or as are necessary or proper for maintaining its corporate existence and transacting the business of the business development bank.

(b) A business development bank may not possess or exercise any of the following powers:

(1) To act as a fiduciary of any kind, including as an executor, administrator, guardian, conservator, trustee by will or other instrument, receiver, or attorney-in-fact.

(2) To make consumer loans or extend credits by knowingly making any loan or otherwise knowingly extending financing that is to be used for personal, family, or household purposes.

(3) To accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, or deposits of any type other than savings or time deposits of money in an amount equal to or greater than \$100,000.

(4) To do any business not authorized by subsection (a) of this section.

(5) To offer or provide safekeeping services, such as safe deposit box rental. The holding or controlling of collateral for any loan or other financing extended by a business development bank under this chapter does not constitute the offering or provision of safekeeping services.

(6) To establish more than 1 location open to the general public. Nothing contained in this chapter is intended to prevent a business development bank from owning or leasing real property that will not be open to the general public, including property to house employees, records, or data processing facilities.

§ 1041. Office in this State.

(a) A business development bank shall have a single office in this State that is open to the general public and accepts deposits.

(b) At the office required under subsection (a) of this section, a business development bank shall do all of the following:

(1) Maintain records and books of accounts as the State Bank Commissioner may, by regulation, require.

(2) Employ such persons as it may require to review and act upon applications for extensions of credit permitted by § 1040 of this title.

§ 1042. Revocation of authority to transact business.

380 (a) If the State Bank Commissioner determines that a business development bank is engaging in an activity
381 prohibited by § 1040 of this title, or has more than 1 office in this State that is open to the general public, the Commissioner
382 may issue an order to the business development bank requiring it to take steps to cure the violation by a date certain.

383 (b) If the State Bank Commissioner determines that a business development bank has failed to timely comply with
384 any order issued under subsection (a) of this section, the Commissioner shall revoke the business development bank's
385 authority to transact business in this State.

386 (1) An order under this section may be effective no earlier than 10 days nor later than 30 days after issuance.

387 (2)a. Upon the effective date of an order under this section, the business development bank shall cease all
388 business activity of any kind in this State, unless the order has been suspended or set aside under subsection (c) of this
389 section or withdrawn by the State Bank Commissioner.

390 b. Notwithstanding paragraph (b)(2)a. of this section, the business development bank shall maintain a
391 registered office in this State for the purpose of accepting service of legal process.

392 (c) Notwithstanding any other provision of law, the Court of Chancery has exclusive original jurisdiction of any
393 judicial review of an order issued under subsection (b) of this section.

394 (1) A business development bank may seek review under this subsection within 1 year of the date of an order
395 under subsection (b) of this section.

396 (2) The Court of Chancery's review of an order under subsection (b) of this section is de novo.

397 (3) If the Court of Chancery determines that, at the time an order under subsection (b) of this section was
398 issued it was valid, the Court shall specifically enforce the order.

399 (4) The Court of Chancery may, in the exercise of its equitable jurisdiction in appropriate cases, suspend the
400 operation of an order issued under subsection (b) of this section while judicial review of such order proceeds.

401 (5) An order issued under subsection (a) of this section is not subject to judicial review.

402 Section 2. Amend § 701, Title 5 of the Delaware Code by making deletions as shown by strike through and
403 insertions as shown by underline as follows:

404 § 701. Establishment of banks and trust companies; savings banks and national banks.

405 Except as specifically provided by ~~Chapter 15 or Chapter 10~~, Chapter 15, or Chapter 16 of this title, banks and
406 trust companies shall be established or created in this State under and in accordance with this chapter. This chapter shall
407 not, however, apply to national banks, except as otherwise provided in subchapters VI and VII of this chapter. The terms
408 "bank" or "banks," when used in this chapter, do not include such national banks, except as otherwise provided in
409 subchapters VI and VII of this chapter. Furthermore, the provisions of this chapter specifically relating to capital stock or

stockholders of a bank organized under this chapter shall not apply to a corporation without capital stock doing a savings bank business.

Section 3. Amend § 749, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 749. Amendment of charter.

(a) Banks and trust companies heretofore or hereafter created by or under this Code or any other special act or general law of this State, except as provided in ~~Chapters 15~~ Chapters 10, 15, or 16 of this title, shall hereafter amend their charters, certificates of incorporation, certificates of formation or articles of association by and under this section.

(b) Any bank or trust company in this State whether created under this chapter or by special act of the General Assembly (but not under ~~Chapters 15~~ Chapters 10, 15, or 16 of this title), may, from time to time, when and as desired, amend its charter, certificate of incorporation or articles of association relating to the regulation and governance of corporations established under Title 8, or, in the case of a trust company that is a limited liability company, its certificate of formation or articles of association relating to regulation and governance of limited liability companies formed under Title 6, in each case where the same are not inconsistent with the express provisions of this chapter, including, but not limited to, addition to its corporate powers and purposes, or diminution thereof, or both (provided such additional corporate power or purpose to be such as is authorized or contemplated under any of the provisions of this chapter); or by increasing or decreasing its authorized capital stock (provided that such increase or decrease be expressly approved by the State Bank Commissioner, and provided also that the capital stock shall not be reduced below the amount prescribed by § 745 of this title); by changing the number or par value of its shares of stock; or by changing its corporate title (provided that the word "savings" shall not be used in the amended title, and provided further that no corporation not authorized to do a trust company business shall use the word "trust" in its amended title); and by increasing or decreasing its number of directors (provided that in no case shall the whole number of directors be less than 5). Any or all such changes or alterations may be effected by 1 certificate of amendment. No amendment shall contain a provision which would not have been lawful and proper to insert in an original charter, certificate of incorporation, certificate of formation or articles of association adopted granted or issued under this chapter, but nothing contained in this section shall prohibit the increase in capital stock of a trust company organized prior to February 28, 1933 and authorized by a certificate issued by the State Bank Commissioner to transact the business of a trust company on January 1, 1997, to any amount which may be less than required in § 745 of this title. In the case of an increase of capital stock, the amendment may provide that the increased stock may in whole or in part be disposed of without being offered to the stockholders, but in no case shall any stock be issued except upon payment in full in cash.

440 Section 4. Amend § 768, Title 5 of the Delaware Code by making deletions as shown by strike through and
441 insertions as shown by underline as follows:

442 § 768. Loans on security of and purchase of its own capital stock.

443 No corporation established under this chapter or under Chapter 10 or Chapter 15 of this title shall directly or
444 indirectly make a loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of
445 such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good
446 faith. The stock so purchased or acquired shall, within 6 months after its purchase or acquisition, be sold or disposed of at
447 public or private sale. Notwithstanding the foregoing, the Commissioner may approve the purchase by such a corporation
448 of the shares of its own capital stock, subject to such terms and conditions, if any, as the Commissioner may require.

SYNOPSIS

This Act authorizes the creation and regulation of a new type of limited-purpose bank, the "Business Development Bank." Modeled on Delaware's successful credit card bank laws, this Act would allow Business Development Banks, or "BDBs," to concentrate their resources in the commercial lending space, leverage technology and expertise, and partner with existing banks to serve a broader spectrum of small to medium-sized businesses. This Act would limit the permissible activities of the BDBs to ensure that they cannot compete with existing banks for consumer customers or to provide several other forms of bank or trust services.

Author: Senator Townsend