

# *Missouri Revised Statutes*

## **Chapter 349 Industrial Development Corporations**

August 28, 2010

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### **Definitions.**

349.010. As used in sections 349.010 to 349.100, unless the context otherwise requires, the following words and terms shall have the meanings indicated:

(1) "Corporations" means any authority organized pursuant to the provisions of sections 349.010 to 349.100;

(2) "County and municipality". "County" means any county in the state. "Municipality" means any city, incorporated town or village in the state;

(3) "Governing body" shall mean the board or body in which the general legislative powers of the county or municipality are vested;

(4) "Project" means the construction, extension, and improvement of public roads or the purchase, construction, extension and improvement of plants, buildings, structures, or facilities, whether or not now in existence, including the real estate, used or to be used as a factory, assembly plant, manufacturing plant, processing plant, fabricating plant, distribution center, warehouse building, public facility, waterborne vessels excepting commercial passenger vessels for hire in a city not within a county built prior to 1950, office building, for-profit or not-for-profit hospital, not-for-profit nursing or retirement facility or combination thereof, physical fitness, recreational, indoor and resident outdoor facilities operated by not-for-profit organizations, commercial or agricultural facility, or facilities for the prevention, reduction or control of pollution. Included in all of the above shall be any required fixtures, equipment and machinery. Excluded are facilities designed for the sale or distribution to the public of electricity, gas, water or telephone, together with any other facilities for cable television and those commonly classified as public utilities. Projects of a municipal authority must be located wholly within the incorporated limits of the municipality except that such projects may be located outside the corporate limits of such municipality and within the county in which the municipality is located with permission of the governing body of the county. Projects of a county authority must be located within an unincorporated area of such county except that such projects may be located within the incorporated limits of a municipality within such county, when approved by the governing body of the municipality.

(L. 1977 S.B. 267 § 1, A.L. 1980 H.B. 1582 & 1277, A.L. 1982 S.B. 681, A.L. 1985 S.B. 282, A.L. 1996 H.B. 1237, A.L. 2010 H.B. 1595)

### **Promotion of commercial and industrial development, powers of governing bodies of cities and counties.**

349.012. The governing body shall have the power to spend its funds to promote commercial and industrial development and, in order to achieve such promotion, to engage in any activities, either on its own or in conjunction and by contract with any not-for-profit organization, which it deems necessary to carry on such promotional work.

(L. 1980 H.B. 1582 & 1277, A.L. 1991 S.B. 246)

**No eminent domain.**

349.015. Any corporation subject to sections 349.010 to 349.100 is prohibited the power of eminent domain.

(L. 1977 S.B. 267 § 2)

**Agricultural operations not authorized.**

349.020. No corporation shall itself be authorized to operate any manufacturing, industrial or commercial enterprise or conduct an agricultural operation as prohibited by chapter 350.

(L. 1977 S.B. 267 § 3)

**Who may be incorporators.**

349.025. Whenever any number of natural persons, not less than three, each of whom shall be a duly qualified elector of and taxpayer in the county or municipality, shall file with the governing body thereof an application in writing seeking permission to apply for the incorporation of an industrial development corporation of such county or municipality to develop commercial, industrial, agricultural or manufacturing facilities, the governing body shall proceed to consider such application. If the governing body shall by appropriate order or resolution duly adopted find and determine that it is wise, expedient, necessary or advisable that the corporation be formed and shall authorize the persons making such application to proceed to form such corporation and shall approve the form of articles of incorporation proposed to be used in organizing the corporation, then the persons making such application shall execute, acknowledge and file articles of incorporation for the corporation as hereinafter provided. No corporation may be formed unless such application shall have first been filed with the governing body of the county or municipality and the governing body shall have adopted an order or resolution as provided in this section.

(L. 1977 S.B. 267 § 4)

**Articles of incorporation, form and contents of.**

349.030. The articles of incorporation shall set forth

(1) The names and residences of the applicants together with a recital that each of them is an elector of and taxpayer in the county or municipality;

(2) The name of the corporation, which shall be "The Industrial Development Authority of the ..... of ....." (the blank spaces to be filled in with the name of the county or municipality, including the proper designation thereof as county, city, town or village) if such name shall be available for use by the corporation and if not available then the incorporators shall designate some other similar name that is available;

(3) A recital that permission to organize the corporation had been granted by order or resolution duly adopted by the governing body of the county or municipality and the date of the adoption of such order or resolution;

(4) The location of the principal office of the corporation (which shall be in the county or municipality);

- (5) The purpose for which the corporation is proposed to be organized;
- (6) The number of directors of the corporation;
- (7) The period, if any, for the duration of the corporation;
- (8) Any other matter which the applicants may choose to insert therein which shall not be inconsistent with this chapter or with the laws of the state of Missouri. The articles of incorporation shall be subscribed and acknowledged by each of the applicants before an officer authorized by the laws of Missouri to take acknowledgments to deeds.

(L. 1977 S.B. 267 § 5)

#### **Articles, where filed--secretary of state to issue certificate, when.**

349.035. When executed and acknowledged in conformity with section 349.030 above, the articles of incorporation shall be filed with the secretary of state. The secretary of state shall thereupon examine the articles of incorporation and, if he finds that the recitals contained therein are correct, that the requirements of section 349.030 above have been complied with, and that the name is not identical with or so nearly similar to that of another corporation already in existence in this state as to lead to confusion and uncertainty, he shall approve the articles of incorporation, issue a certificate of incorporation and record the same in an appropriate book or record in his office. When such articles have been so approved, the certificate of incorporation issued and the same filed, the applicants shall constitute a public corporation under the name set out in the articles of incorporation.

(L. 1977 S.B. 267 § 6)

#### **Articles, how amended.**

349.040. The articles of incorporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the articles of incorporation in the first instance. Any such amendment shall be effected in the following manner: The members of the board of directors of the corporation shall file with the governing body of the county or municipality an application in writing seeking permission to amend the articles of incorporation, specifying in such application the amendment proposed to be made. Such governing body shall consider such application and, if they find it is wise, expedient, necessary or advisable that the proposed amendment be made and shall authorize the same to be made and shall approve the form of the proposed amendment, then the persons making such application shall execute an instrument embodying the amendment specified in such application, and shall file the same with the secretary of state. The proposed amendment shall be subscribed and acknowledged by each member of the board of directors before an officer authorized by the laws of Missouri to take acknowledgments to deeds. Such secretary of state shall thereupon examine the proposed amendment and, if he finds that the requirements of this section have been complied with and the proposed amendment is within the scope of what might be included in the original articles of incorporation, he shall approve the amendment and record it in an appropriate book in his office. When such amendment has been so made, filed and approved, it shall thereupon become effective and the articles of incorporation shall thereupon be amended to the extent provided in the amendment. The articles of incorporation shall not be amended except in the manner provided in this section.

(L. 1977 S.B. 267 § 7)

#### **Board of directors, qualifications, appointment, terms--requirements for Lewis County.**

349.045. 1. Except as provided in subsection 2 of this section, the corporation shall have a board of directors in which all the powers of the corporation shall be vested and which shall consist of any number of directors, not less than five, all of whom shall be duly qualified electors of and taxpayers in the county or municipality; except that, for any industrial development corporation formed by any municipality located wholly within any county of the second, third, or fourth classification, directors may be qualified taxpayers in and registered voters of such county. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in and about the performance of their duties hereunder. The directors shall be resident taxpayers for at least one year immediately prior to their appointment. No director shall be an officer or employee of the county or municipality. All directors shall be appointed by the chief executive officer of the county or municipality with the advice and consent of a majority of the governing body of the county or municipality, and in all counties, other than a city not within a county and counties with a charter form of government, the appointments shall be made by the county commission and they shall be so appointed that they shall hold office for staggered terms. At the time of the appointment of the first board of directors the governing body of the municipality or county shall divide the directors into three groups containing as nearly equal whole numbers as may be possible. The first term of the directors included in the first group shall be two years, the first term of the directors included in the second group shall be four years, the first term of the directors in the third group shall be six years; provided, that if at the expiration of any term of office of any director a successor thereto shall not have been appointed, then the director whose term of office shall have expired shall continue to hold office until a successor shall be appointed by the chief executive officer of the county or municipality with the advice and consent of a majority of the governing body of the county or municipality. The successors shall be resident taxpayers for at least one year immediately prior to their appointment.

2. A corporation in a county of the third classification without a township form of government and with more than ten thousand four hundred but fewer than ten thousand five hundred inhabitants shall have a board of directors in which all the powers of the corporation shall be vested and which shall consist of a number of directors not less than the number of townships in such county. All directors shall be duly qualified electors of and taxpayers in the county. Each township within the county shall elect one director to the board. Additional directors may be elected to the board to succeed directors appointed to the board as of the effective date of this section\* if the number of directors on the effective date of this section\* exceeds the number of townships in the county. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors shall be resident taxpayers for at least one year immediately prior to their election. No director shall be an officer or employee of the county. Upon the expiration of the term of office of any director appointed to the board prior to the effective date of this section\*, a director shall be elected to succeed him or her; provided that if at the expiration of any term of office of any director a successor thereto shall not have been elected, then the director whose term of office shall have expired shall continue to hold office until a successor shall be elected. The successors shall be resident taxpayers for at least one year immediately prior to their election.

(L. 1977 S.B. 267 § 8, A.L. 1980 H.B. 1582 & 1277, A.L. 2003 H.B. 351, A.L. 2005 H.B. 40 merged with H.B. 58)

\*Effective 5-13-05 (H.B. 40) 8-28-05 (H.B. 58)

### **Powers of corporation.**

349.050. The corporation is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate its purposes, including but not limited to the following:

- (1) To adopt bylaws and rules for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal;
- (3) To sue and be sued;

- (4) To promote and solicit industrial and economic development projects as authorized by section 349.010 and to make and execute leases, contracts, releases, compromises and other instruments necessary or convenient for the exercise of its powers or to carry out its purposes;
- (5) To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more projects, including all real and personal properties which the board of directors of the corporation may deem necessary in connection therewith and regardless of whether or not any such projects shall then be in existence;
- (6) To lease to others any of its projects and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have an option to purchase the project; or
- (7) To sell, assign, mortgage, grant a security interest in, exchange, donate and convey any or all of its properties whenever its board of directors shall find such action to be in furtherance of the purposes for which the corporation was organized;
- (8) To loan the proceeds of the bonds or temporary notes hereinafter authorized to provide for the purchase, construction, extension, and improvement of projects;
- (9) To issue bonds and temporary notes as hereinafter provided;
- (10) To employ and pay compensation to such employees and agents, including attorneys, and others of like professional skills and abilities, as the board of directors shall deem necessary for the business of the corporation;
- (11) To invest any funds not required for immediate disbursement in obligations of the state of Missouri or of the United States or any agency or instrumentality thereof, or in bank certificates of deposit;
- (12) To acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder;
- (13) To receive and accept appropriations, gifts and grants and to utilize or dispose of the same to carry out its purposes;
- (14) To collect rentals, fees, and other charges in connection with its services or for the use of any project;
- (15) To sell at private sale any of its property or projects to any private corporation, person, firm, or to any public body, political subdivision or municipal corporation on such terms as it deems advisable including the right to receive for such sale the note or notes of any such person to whom the sale is made. Any such sale shall provide for payments adequate to pay the principal of and interest and premiums, if any, on the bonds issued to finance such project or portion thereof. Any such sale may provide for the construction of the project by the purchaser of the project. It shall not be necessary for a corporation to acquire title to any project.

(L. 1977 S.B. 267 § 9, A.L. 1980 H.B. 1582 & 1277)

**CROSS REFERENCES:**

Bi-state development agency, bonds of, investment in authorized, 70.377

Savings accounts in insured savings and loan associations, investment in authorized, 369.194

**General and business corporation law applicable--exceptions.**

349.052. The general and business corporation law of Missouri, chapter 351, shall be applicable to industrial



development corporations organized pursuant to this chapter except that any provision of this chapter shall take precedence over any provision of chapter 351 which conflicts with it.

(L. 1978 S.B. 761 § 349.025)

### **Revenue bonds, issuance, provisions, sale.**

349.055. The corporation may at any time issue revenue bonds for the purpose of paying any part of the cost of any project or part thereof. Every issue of its bonds shall be payable out of the property and revenues of the corporation which may be pledged, assigned, mortgaged, or in which a security interest is granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds shall be authorized by resolution of the corporation, shall bear such date or dates, and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify. Such bonds shall be in such denomination, bear interest at such rate, be in such form, either coupon or registered, be issued in such manner, be payable in such place or places and be subject to redemption as such resolution may provide. The bonds of the corporation may be sold at either public or private sale, at such price or prices as the corporation shall determine, but at not less than ninety-five percent of the principal amount thereof and at an interest rate not in excess of the maximum rate, if any, applicable to general and business corporations.

(L. 1977 S.B. 267 § 10, A.L. 1980 H.B. 1582 & 1277)

### **Notes, issuance, provisions, sale.**

349.060. Pending the issuance of bonds, the corporation may issue notes payable from the proceeds of such bonds or from such other sources as the corporation may specify as in the case of bonds. Such notes shall mature in not more than five years and shall be sold at public or private sale as the corporation may specify at not less than ninety-five percent of the principal amount thereof and at an interest rate not in excess of the maximum rate, if any, applicable to general and business corporations. The other details with respect to such notes shall be determined by the corporation as in the case of bonds.

(L. 1977 S.B. 267 § 11, A.L. 1980 H.B. 1582 & 1277)

### **Renewal notes, issued when, how.**

349.065. The corporation may from time to time issue renewal notes or refund any bonds by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partially to refund bonds then outstanding and partially for any other purpose. Renewal notes or refunding bonds may be sold at public or private sale and the proceeds applied to the purchase, redemption, or payment of the notes or bonds to be refunded.

(L. 1977 S.B. 267 § 12)

### **Resolutions authorizing issuance of bonds or notes, provisions authorized in.**

349.070. Any resolution authorizing any notes or bonds may contain such provisions, covenants and agreements subject to any provisions, covenants and agreements with the holders of bonds or notes then outstanding as the corporation determines necessary, such provisions, covenants and agreements may include but shall not be

limited to:

- (1) Pledging, assigning, mortgaging, or granting a security interest in all or any part of the property and revenues of the corporation or any part thereof, to secure the payment of the notes or bonds or of any issue thereof;
- (2) The use and disposition of the property or revenues of the corporation or any part thereof;
- (3) The fixing of rents, fees and other charges and the pledging of the same and of the revenues of the corporation so that the same will be sufficient to pay the cost of operation, maintenance and repair of any project and the principal of and interest on notes or bonds secured by the pledge of such revenues;
- (4) Establishing reasonable reserves to secure the payment of such notes and bonds;
- (5) Limitations on the issuance of additional notes or bonds and the terms upon which the same may be issued and secured.

(L. 1977 S.B. 267 § 13, A.L. 1980 H.B. 1582 & 1277)

### **Trust agreements authorized.**

349.075. A resolution of the corporation authorizing the issuance of any notes or bonds or any issue thereof may provide that such notes or bonds shall be secured by a trust agreement between the corporation and a corporate trustee, vesting in such trustee such property, rights, powers and duties in trust as the corporation may determine. Any such trust agreement may pledge, assign, mortgage, or grant a security interest in the property in revenues of the corporation, or any part thereof, to secure payment of any notes or bonds. Any such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper, including covenants relating to the acquisition and construction of projects and the maintenance, repair and operation thereof, the rentals and other charges to be imposed for the use of any project, the custody and application of all moneys relating thereto. Such trust agreement may contain such other provisions as the corporation determines reasonable and necessary for the security of the noteholders and bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be considered as a part of the cost of the operation of the project.

(L. 1977 S.B. 267 § 14, A.L. 1980 H.B. 1582 & 1277)

### **Individuals not liable on notes or bonds.**

349.080. Neither the directors of any corporation nor any person executing the bonds or notes shall be liable personally on the bonds or notes by reason of the issuance thereof. Bonds and notes issued under this section by a corporation created by or pursuant to sections 349.010 to 349.100 shall not be a debt of the county, the municipality or the state and neither the county, the municipality or the state shall be liable thereon nor in any event shall such notes or bonds be payable out of any funds or properties other than those acquired for the purposes of this law, and such bonds and notes shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(L. 1977 S.B. 267 § 15)

### **Notes and bonds declared to be approved investments for fiduciaries.**

349.085. The notes and bonds of the corporation are securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, trust companies, savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

(L. 1977 S.B. 267 § 16)

### **Projects not tax exempt, exceptions--bond and note interest is exempt, exception.**

349.090. Projects acquired, constructed, reconstructed, enlarged, improved, furnished, equipped, maintained, repaired, operated, leased, financed or sold by the corporation pursuant to sections 349.010 to 349.100 shall be subject to all real and tangible personal property taxes and assessments of the state of Missouri, and any county, municipality or any governmental subdivision thereof except hospitals which are exempt from taxation under article X, section 6 (1) of the Constitution of the State of Missouri, or other projects which are exempted or relieved from such real property taxes and assessments pursuant to any constitutional or statutory provision. Bonds and notes of the corporation are declared to be issued for an essential public and governmental purpose and to be public instrumentalities, and interest thereon and income therefrom shall be exempt from taxation except for death and gift taxes on transfers.

(L. 1977 S.B. 267 § 17, A.L. 1984 S.B. 434, A.L. 1985 S.B. 282)

### **Dissolution of corporation, effect of.**

349.095. Upon termination or dissolution, all rights and properties of the corporation shall pass to and be vested in the county or municipality of incorporation, subject to the rights of bondholders, noteholders, and other creditors. Except that no county or municipality nor the citizens thereof shall be subject to any tax assessment or financial liability to any bondholder, noteholder and any other creditor nor shall any county or municipality be permitted to expend any public moneys for the payment of any indebtedness of bonds, notes, or any other claims by creditors of any nature. Any and all indebtedness, whether by bond, note or any creditor claim, shall be paid exclusively from the revenues, if any, from such terminated or dissolved corporation.

(L. 1977 S.B. 267 § 18)

### **Disclaimer as to impairment of other powers of political subdivisions.**

349.100. Nothing herein contained shall impair or affect the power or jurisdiction of the municipality, county, township, or school districts in which the corporations organized hereunder are located, and such corporations shall conform to applicable regulations of any governmental authority having jurisdiction therein.

(L. 1977 S.B. 267 § 19)

### **Annual report, contents.**

349.105. No later than January thirty-first of each year, the issuing authority shall file a report with the department of economic development on the previous year's issuances, which report shall contain only the following information:



- (1) The name and address of the issuing entity;
- (2) The name, address, age, and type of business of the beneficiary firm;
- (3) The amount, term, interest rate, and date of issuance of the bonds issued;
- (4) The name and address of the underwriter, if any, of such bonds;
- (5) A copy of the guaranty instrument, if any;
- (6) The size, by assets and previous year's sales, and the current number of employees, of the beneficiary firm;
- (7) A copy of the preliminary official statement used when offering the bonds for sale;
- (8) The estimated number of new jobs to be generated by the proposed project;
- (9) A list of the use of bond proceeds, including whether the purpose of the project and the funds generated by the issuance of such bonds is to open a new business, build a branch plant, expand an existing facility or acquire an existing business;
- (10) The estimated total cost of the project.

(L. 1982 H.B. 1411 & 1587, A.L. 1983 S.B. 316)

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