CS FOR HOUSE BILL NO. 246(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 6/17/16
Referred: First Supplemental Calendar
Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act creating the oil and gas infrastructure development program and the oil and gas infrastructure development fund in the Alaska Industrial Development and Export Authority; relating to the interest rates of the Alaska Industrial Development and Export Authority; relating to the sustainable energy transmission and supply development and Arctic infrastructure development programs of the Alaska Industrial Development and Export Authority; relating to dividends from the Alaska Industrial Development and Export Authority; and adding definitions for 'oil and gas development infrastructure' and 'proven reserves.'"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.88.088(a) is amended to read:

(a) The authority shall adopt a policy for payment of a dividend from the revolving fund, the Alaska Industrial Development and Export Authority sustainable
energy transmission and supply development fund (AS 44.88.660), [AND] the Arctic infrastructure development fund (AS 44.88.810), and the oil and gas infrastructure development fund (AS 44.88.860) to the state each fiscal year. The dividends for a fiscal year shall be made available by the authority before the end of that fiscal year. The authority shall notify the commissioner of revenue when the dividends for a fiscal year are available for appropriation. The amount of the dividend payable from the

(1) revolving fund for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the revolving fund for the base fiscal year; however, in no event, may the dividend payable from the revolving fund for a fiscal year exceed the total unrestricted net income of the revolving fund for the base year;

(2) Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660) for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for the base fiscal year; however, the dividend payable from the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for a fiscal year may not exceed the total unrestricted net income of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for the base year;

(3) Arctic infrastructure development fund (AS 44.88.810) for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the Arctic infrastructure development fund for the base fiscal year; however, the dividend payable from the Arctic infrastructure development fund for a fiscal year may not exceed the total unrestricted net income of the Arctic infrastructure development fund for the base year;

(4) oil and gas infrastructure development fund (AS 44.88.860) for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the oil and gas infrastructure development fund for the base fiscal year; however, the dividend payable from the oil and gas infrastructure development fund for a fiscal year may not exceed the total unrestricted net income of the oil and gas infrastructure development fund for the base year.
* Sec. 2. AS 44.88.088(b)(2) is amended to read:

(2) "net income" means the change in net position, or the equivalent term under generally accepted accounting principles, of the revolving fund, the change in net position of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660), [OR] the change in net position of the Arctic infrastructure development fund (AS 44.88.810), or the change in net position of the oil and gas infrastructure development fund (AS 44.88.860) as set out in the audited financial statements of the authority for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, or impairment losses on development projects financed under AS 44.88.172;

* Sec. 3. AS 44.88.088(b)(3) is amended to read:

(3) "unrestricted net income" means the unrestricted change in net position, or the equivalent term under generally accepted accounting principles, of the revolving fund, the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660), [OR] the Arctic infrastructure development fund (AS 44.88.810), or the oil and gas infrastructure development fund (AS 44.88.860) as set out in the audited financial statements of the authority for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, or impairment losses on development projects financed under AS 44.88.172.

* Sec. 4. AS 44.88.159(a) is amended to read:

(a) The interest rate on a loan made with [PURCHASED FROM] the proceeds of tax-exempt bonds secured by the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660) under AS 44.88.650 - 44.88.690 [OR BY] the Arctic infrastructure development fund (AS 44.88.810) under AS 44.88.800 - 44.88.840, or the oil and gas infrastructure development fund (AS 44.88.860) under AS 44.88.850 - 44.88.890 or a loan participation purchased from the proceeds of tax-exempt bonds or expected by the authority to be purchased from the proceeds of tax-exempt bonds under AS 44.88.155 shall be determined under the regulations adopted by the authority
under AS 44.88.085 [AS 44.88.085(g)(2)(C)] and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on tax-exempt bonds of the authority plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

* Sec. 5. AS 44.88.159(b) is amended to read:

(b) The interest rate on a loan made with [PURCHASED FROM] the proceeds of taxable bonds secured by the (1) Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660) under AS 44.88.650 - 44.88.690; (2) [OR BY THE] Arctic infrastructure development fund (AS 44.88.810) under AS 44.88.800 - 44.88.840; or (3) oil and gas infrastructure development fund (AS 44.88.860) under AS 44.88.850 - 44.88.890 or a loan participation purchased from the proceeds of taxable bonds under AS 44.88.155 or expected by the authority to be purchased from the proceeds of taxable bonds under AS 44.88.155 shall be determined under the regulations adopted by the authority under AS 44.88.085 [AS 44.88.085(g)(2)(C)] and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on taxable bonds of the authority, plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

* Sec. 6. AS 44.88.159(d) is amended to read:

(d) The provisions of this section apply only to a loan participation purchased under AS 44.88.155 - 44.88.159 or to a loan made under AS 44.88.650 - 44.88.690; [OR] 44.88.800 - 44.88.840, or 44.88.850 - 44.88.890.

* Sec. 7. AS 44.88.159(e) is amended to read:

(e) The interest rate on a loan made under AS 44.88.650 - 44.88.690; [OR] 44.88.800 - 44.88.840, or 44.88.850 - 44.88.890 or a loan participation purchased directly from the assets of the authority shall be determined under the regulations adopted by the authority under AS 44.88.085 [AS 44.88.085(g)(2)(C)] and shall be not less than the total of a percentage as determined by the authority to represent the allocable expenses of operation and costs of loan origination and servicing, plus the
cost of funds. In this subsection,

(1) "comparable financial security" means a type or category of financial security the authority identifies in the regulations adopted by the authority under AS 44.88.085 [AS 44.88.085(g)(2)(C)] that has a term and financial conditions comparable to the term and financial conditions of a loan participation or a loan made under AS 44.88.650 - 44.88.690, or 44.88.800 - 44.88.840, or 44.88.850 - 44.88.890 and for which a regularly published, nationally recognized market index is available;

(2) "cost of funds" means the earnings, expressed as an annual interest rate, the authority would receive on a comparable financial security, and, for a loan participation or a loan made under AS 44.88.650 - 44.88.690, or 44.88.800 - 44.88.840, or 44.88.850 - 44.88.890 with a fixed interest rate, the cost of funds must equal or exceed the minimum interest rate;

(3) "minimum interest rate" means the five-year return on investment funds of the authority, expressed as an annual interest rate, achieved by all internal and external investment managers of the authority combined.

* Sec. 8. AS 44.88.159(f) is amended to read:

(f) In determining an interest rate under the regulations adopted by the authority under AS 44.88.085 [AS 44.88.085(g)(2)(C)], the authority may determine to disregard the minimum interest rate required under (a), (b), or (e) of this section for a loan participation purchased by the authority or a loan made under AS 44.88.650 - 44.88.690, or 44.88.800 - 44.88.840, or 44.88.850 - 44.88.890 to resolve lending limits or reserve restrictions imposed on the financial institution and may instead determine to retain the interest rate existing at the time the authority makes the loan or purchases the authority's loan participation.

* Sec. 9. AS 44.88.159 is amended by adding a new subsection to read:

(h) In regulations adopted under AS 44.88.085, the authority may establish differing interest rates or methods for setting interest rates for each of its programs, depending on the creditworthiness of the borrower, the risks of and security provided for the financing provided under each program, comparable market rates, and other factors the authority determines relevant in setting the interest rates for each program.
* Sec. 10. AS 44.88.690(a) is amended to read:

(a) Unless the authority has obtained legislative approval by law, the authority may not use the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund established in AS 44.88.660 to

(1) make a loan for more than the lesser of

(A) 50 percent [ONE-THIRD] of the capital cost of qualified energy development; or

(B) $100,000,000;

(2) make a loan guarantee if the amount of the guarantee exceeds $25,000,000 [$20,000,000]; or

(3) purchase or acquire gas reserves or a gas lease or become a working interest owner of a natural gas lease.

* Sec. 11. AS 44.88.840(a) is amended to read:

(a) Unless the authority has obtained legislative approval by law, the authority may not use the Arctic infrastructure development fund established in AS 44.88.810 to make

(1) a loan for more than the lesser of

(A) 50 percent [ONE-THIRD] of the capital cost of an Arctic infrastructure development; or

(B) $100,000,000; or

(2) a loan guarantee if the amount of the guarantee exceeds $25,000,000 [$20,000,000].

* Sec. 12. AS 44.88 is amended by adding new sections to read:

**Article 10A. Oil and Gas Infrastructure Development.**

Sec. 44.88.850. Oil and gas infrastructure development program. The oil and gas infrastructure development program is created in the authority to promote and provide financing for oil and gas infrastructure development.

Sec. 44.88.860. Oil and gas infrastructure development fund. The oil and gas infrastructure development fund is established in the authority. The fund consists of appropriations made to the fund by the legislature and unrestricted loan repayments, interest, or other income earned on loans, investments, or assets of the fund. The fund
is not an account in the revolving fund established in AS 44.88.060, and the authority shall account for the fund separately from the revolving fund. The authority may create additional accounts in the fund. Subject to agreements made with the holders of the authority's bonds or with other persons, the authority may transfer amounts in an account in the fund to another account in the fund. Amounts deposited in the fund may be pledged to the payment of bonds of the authority or expended for the purposes of AS 44.88.850 - 44.88.890. The authority has the powers and responsibilities established in AS 37.10.071 with respect to the investment of amounts held in the fund.

Sec. 44.88.870. Use of fund balance. Subject to the requirements of AS 44.88.850 - 44.88.890, the authority may use money in the oil and gas infrastructure development fund (AS 44.88.860) for oil and gas infrastructure development under AS 48.88.880 and to pay dividends under AS 44.88.088.

Sec. 44.88.880. Oil and gas infrastructure development; powers and duties of the authority. (a) Subject to the limitations of AS 44.88.890, for oil and gas infrastructure development, the authority may

(1) use the oil and gas infrastructure development fund (AS 44.88.860) to finance oil and gas infrastructure development, guarantee loans or bonds for oil and gas infrastructure development, and establish reserves;

(2) acquire a lien or security interest on real or personal property with respect to an oil and gas infrastructure development and, if necessary to protect the authority's financial interest, acquire or foreclose on the real or personal property;

(3) defer principal payments or capitalize interest on financing provided for oil and gas infrastructure development;

(4) contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program; and

(5) subject to AS 44.88.090, borrow money and issue bonds.

(b) The authority shall adopt regulations to implement AS 44.88.850 - 44.88.890, including

(1) a process for originating financing for an oil and gas infrastructure
development;

(2) a process for confirming the existence of proven reserves sufficient to authorize financing;

(3) requirements and fees for financing oil and gas infrastructure development; and

(4) fiscal controls and accounting procedures for the oil and gas infrastructure development fund (AS 44.88.860).

Sec. 44.88.890. Limitations on financing. (a) Unless the authority has obtained legislative approval by law, the authority may not use the oil and gas infrastructure development fund established in AS 44.88.860 to

(1) provide financing that constitutes more than the lesser of

(A) 50 percent of the capital cost of an oil and gas infrastructure development; or

(B) $100,000,000; or

(2) guarantee a loan for an oil and gas infrastructure development if the amount of the guarantee exceeds $25,000,000.

(b) The authority may not provide financing for an oil and gas infrastructure development unless all participants in the oil and gas field covenant with the authority that

(1) the authority will not be responsible for costs incurred in connection with dismantlement, removal, or remediation of the oil and gas infrastructure development; and

(2) after the date of the authority's financing commitment, the participants will not take, apply for, or accept a tax credit under AS 43.55.023 for expenditures on the oil and gas infrastructure development financed under AS 44.88.880.

(c) Financing under AS 44.88.880 is limited to the projected life of the oil and gas infrastructure development, which may not be more than 30 years.

(d) The authority may not provide financing under AS 44.88.880 if the loan-to-value ratio at the time of financing exceeds 75 percent; the value of proven reserves that are included in the value must be calculated using the lesser of
(1) the average price of oil or gas actually paid during the 12-month period immediately preceding the time of financing, reduced by 10 percent; or

(2) the price of oil or gas forecast by the Department of Revenue for the 12-month period immediately following the time of financing, reduced by 10 percent.

* Sec. 13. AS 44.88.900 is amended by adding new paragraphs to read:

(20) "oil and gas infrastructure development" means the acquisition, construction, or installation of and engineering for the construction or installation of a road, pad, camp, processing facility, gathering system, or other on-site improvement or equipment for an oil or gas field located in the state that has been explored and for which proven reserves have been established;

(21) "proven reserves" means those quantities of petroleum, whether developed or undeveloped, that, by analysis of geological and engineering data, can be estimated with reasonable certainty to be commercially recoverable from a given date forward, from known reservoirs, and under current economic conditions, operating methods, and government regulations.