

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/11/12

Referred: Today's Calendar

Sponsor(s): SENATORS MCGUIRE, Davis, Giessel, Menard, Wagoner, Dyson, Huggins, Ellis, Thomas, Meyer, Stedman, Wielechowski, Egan, Hoffman

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the sustainable energy transmission and supply development**
2 **program in the Alaska Industrial Development and Export Authority; relating to the**
3 **interest rates of the Alaska Industrial Development and Export Authority; and relating**
4 **to taxes paid on interests in property owned by the Alaska Industrial Development and**
5 **Export Authority and to the local contribution for public education funding related to**
6 **that property."**

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

8 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 SHORT TITLE. This Act may be known as the Alaska Sustainable Strategy for
11 Energy Transmission and Supply (ASSETS) Act.

12 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

1 LEGISLATIVE INTENT. The legislature intends to appropriate, during fiscal years
2 2013 and 2014, amounts that total \$250,000,000 to carry out the purposes of this Act.

3 * **Sec. 3.** AS 14.17.410(b) is amended to read:

4 (b) Public school funding consists of state aid, a required local contribution,
5 and eligible federal impact aid determined as follows:

6 (1) state aid equals basic need minus a required local contribution and
7 90 percent of eligible federal impact aid for that fiscal year; basic need equals the sum
8 obtained under (D) of this paragraph, multiplied by the base student allocation set out
9 in AS 14.17.470; district adjusted ADM is calculated as follows:

10 (A) the ADM of each school in the district is calculated by
11 applying the school size factor to the student count as set out in AS 14.17.450;

12 (B) the number obtained under (A) of this paragraph is
13 multiplied by the district cost factor described in AS 14.17.460;

14 (C) the ADMs of each school in a district, as adjusted
15 according to (A) and (B) of this paragraph, are added; the sum is then
16 multiplied by the special needs factor set out in AS 14.17.420(a)(1) and the
17 high school vocational education factor set out in AS 14.17.420(a)(3);

18 (D) the number obtained for intensive services under
19 AS 14.17.420(a)(2) and the number obtained for correspondence study under
20 AS 14.17.430 are added to the number obtained under (C) of this paragraph;

21 (E) notwithstanding (A) - (C) of this paragraph, if a school
22 district's ADM adjusted for school size under (A) of this paragraph decreases
23 by five percent or more from one fiscal year to the next fiscal year, the school
24 district may use the last fiscal year before the decrease as a base fiscal year to
25 offset the decrease, according to the following method:

26 (i) for the first fiscal year after the base fiscal year
27 determined under this subparagraph, the school district's ADM adjusted
28 for school size determined under (A) of this paragraph is calculated as
29 the district's ADM adjusted for school size, plus 75 percent of the
30 difference in the district's ADM adjusted for school size between the
31 base fiscal year and the first fiscal year after the base fiscal year;

(ii) for the second fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 50 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the second fiscal year after the base fiscal year;

(iii) for the third fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 25 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the third fiscal year after the base fiscal year;

(F) the method established in (E) of this paragraph is available to a school district for the three fiscal years following the base fiscal year determined under (E) of this paragraph only if the district's ADM adjusted for school size determined under (A) of this paragraph for each fiscal year is less than the district's ADM adjusted for school size in the base fiscal year;

(G) the method established in (E) of this paragraph does not apply to a decrease in the district's ADM adjusted for school size resulting from a loss of enrollment that occurs as a result of a boundary change under AS 29;

(2) the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district, excluding property owned by the Alaska Industrial Development and Export Authority that is exempt from city or borough tax, as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection.

* **Sec. 4.** AS 14.17.410(c) is amended to read:

(c) In addition to the local contribution required under (b)(2) of this section, a

city or borough school district in a fiscal year may make a local contribution of not more than the greater of

(1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district, excluding property owned by the Alaska Industrial Development and Export Authority that is exempt from city or borough tax, as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or

(2) 23 percent of the district's basic need for the fiscal year under (b)(1) of this section.

* **Sec. 5.** AS 14.17.490(b) is amended to read:

(b) A city or borough school district is not eligible for additional funding authorized under (a) of this section unless, during the fiscal year in which the district receives funding under (a) of this section, the district received a local contribution equal to at least the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district, excluding property owned by the Alaska Industrial Development and Export Authority that is exempt from city or borough tax, as of January 1 of the second preceding fiscal year as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110.

* **Sec. 6.** AS 44.88.010(a) is amended to read:

(a) The legislature finds, determines, and declares that

(1) there exist areas of the state in which seasonal and nonseasonal unemployment exist;

(2) this unemployment is a serious menace to the health, safety, and general welfare, not only to the people in those areas, but also to the people of the entire state;

(3) the state lacks the basic manufacturing, industrial, energy, export, small business, and business enterprises and the other facilities referred to in this subsection necessary to permit adequate development of its natural resources and the balanced growth of its economy;

1 (4) the establishment and expansion of industrial, manufacturing,
 2 energy, export, small business, and business enterprises in the state [ALASKA] and
 3 the other facilities referred to in this subsection are essential to the development of the
 4 natural resources and the long-term economic growth of the state, and will directly and
 5 indirectly alleviate unemployment in the state;

6 (5) the expansion of export trade is vital to the health and growth of the
 7 state's economy;

8 (6) many state [ALASKA] businesses could benefit from additional
 9 financial and technical assistance with respect to the exportation of their products and
 10 services;

11 (7) the [UNITED STATES] Export-Import Bank of the United States
 12 has been mandated by the Export-Import Bank Act Amendments of 1983 to provide
 13 technical assistance and export financing support to small businesses in cooperation
 14 with state export finance agencies;

15 (8) Alaska-based exporters can be effectively assisted through the
 16 establishment, as part of the Alaska Industrial Development and Export Authority, of
 17 an export financing program designed to work with the [U.S.] Export-Import Bank of
 18 the United States and other federal, state, and private institutions;

19 (9) the achievement of the goal of full employment, and of
 20 establishment and continuing operation and development of industrial, manufacturing,
 21 energy, export, small business, and business enterprises in the state will be accelerated
 22 and facilitated by the creation of an instrumentality of the state with powers to incur
 23 debt, to own and operate facilities, to make and insure loans to finance and to assist
 24 private lenders to make loans to finance the establishment, operation, and development
 25 of industrial, manufacturing, energy, export, small business, and business enterprises;

26 (10) it is in the public interest to promote the prosperity and general
 27 welfare of all citizens of the state by

28 (A) stimulating commercial and industrial growth and
 29 expansion by encouraging an increase of private investment by banks,
 30 investment houses, insurance companies, and other financial institutions,
 31 including pension and retirement funds, to help satisfy the need for economic

1 expansion;

2 (B) encouraging the production of raw materials and goods for
3 export, the expansion of exports and raw materials and goods, and the
4 rendering of services abroad by residents of the state through the establishment
5 of a program that provides financial assistance in cooperation with federal,
6 state, and private institutions for these purposes in the form provided in this
7 chapter;

8 (C) creating the Alaska Industrial Development and Export
9 Authority with the powers necessary to accomplish the objectives stated in this
10 paragraph, including the power to issue taxable and tax-exempt bonds and to
11 acquire ownership interests in projects as provided in this chapter;

12 (11) it is in the state's interest to import private capital to create new
13 economic activity which would not otherwise take place in the state.

14 * **Sec. 7.** AS 44.88.010(b) is amended to read:

15 (b) It is declared to be the policy of the state, in the interests of promoting the
16 health, security, and general welfare of all the people of the state, and a public
17 purpose, to increase job opportunities and otherwise to encourage the economic
18 growth of the state, including the development of its natural resources, through the
19 establishment and expansion of manufacturing, industrial, energy, export, small
20 business, and business enterprises and the other facilities referred to in (a) of this
21 section by creating the Alaska Industrial Development and Export Authority with the
22 powers, duties, and functions as provided in this chapter.

23 * **Sec. 8.** AS 44.88.155(d) is amended to read:

24 (d) A loan participation purchased by the authority with assets of the
25 enterprise development account or with proceeds of bonds secured by assets of the
26 enterprise development account

27 (1) may not exceed \$20,000,000; however, in the case of a loan
28 participation for qualified energy development [A POWER TRANSMISSION
29 INTERTIE], the loan participation may exceed \$20,000,000 with legislative approval;

30 (2) may not be purchased unless

31 (A) the project applicant is not, or, if the applicant is not a

single proprietorship, all members of the business enterprise or enterprises constituting the project applicant are not, in default on another loan made by the state or by a public corporation of the state; and

(B) at least 10 percent of the principal amount of the loan is retained by the loan originator, **or the loan is for financing improvements in energy efficiency;**

(3) may not be purchased if the loan to be purchased exceeds 75 percent of the appraised value of the collateral offered as security for the loan unless the amount of the loan in excess of this limit is federally insured or guaranteed or is insured by a qualified mortgage insurance company, except that the loan to be purchased under this paragraph may not exceed the total of loan proceeds used to refinance an existing debt plus the cost of new construction, expansion, or acquisition unless the proceeds from the additional amounts of the loan to be purchased are restricted to uses approved by the authority to finance commercial activity in the state by a business enterprise;

(4) may not be purchased if the participation in the loan to be purchased is for a term longer than the following, except that a loan under (A) or (C) of this paragraph may not have a term longer than three-quarters of the authority's estimate of the life of the collateral offered as security for the loan:

(A) 40 years from the date the loan is made in the case of a loan participation for a project described in AS 44.88.900(9)(E);

(B) 50 years from the date the loan is made in the case of a loan participation for **qualified energy development** [A POWER TRANSMISSION INTERTIE];

(C) 25 years from the date the loan is made in the case of a loan participation for other projects;

(5) may be made only if the participation in the loan to be purchased contains amortization provisions; the amortization provisions

(A) must be complete and satisfactory to the authority and require periodic payments by the borrower;

(B) may allow the loan originator to amortize the portion of the

loan retained by the loan originator using a shorter amortization schedule than the amortization schedule for the portion of the loan held by the authority if

(i) in the authority's opinion, the project financed can support the increased debt service; and

(ii) the accelerated amortization schedule is required to induce the originator to make the loan;

(6) may be made only if the participation in the loan to be purchased is in the form and contains the terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, acceleration of maturity, secondary liens, and other matters the authority prescribes; and

(7) may be made only if the participation in the loan to be purchased is secured as to repayment by a mortgage or other security instrument in the manner the authority determines is feasible to assure timely repayment under the loan documents entered into with the borrower.

* **Sec. 9.** AS 44.88.155(g) is amended to read:

(g) Notwithstanding any other provision of this section, the authority may waive or modify the requirements of this section as it considers appropriate and prudent in order to finance a project if the authority intends to own the project or in order to finance qualified energy development [A POWER TRANSMISSION INTERTIE PROJECT].

* **Sec. 10.** AS 44.88.159(a) is amended to read:

(a) The interest rate on a loan purchased from the proceeds of tax-exempt bonds secured by the sustainable energy transmission and supply development fund (AS 44.88.710) under AS 44.88.700 - 44.88.740 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(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

1 authority to represent the allocable expenses of operation, costs of issuance, and loan
2 servicing costs.

3 * **Sec. 11.** AS 44.88.159(b) is amended to read:

4 (b) The interest rate on a loan purchased from the proceeds of taxable
5 bonds secured by the sustainable energy transmission and supply development
6 fund (AS 44.88.710) under AS 44.88.700 - 44.88.740 or a loan participation
7 purchased from the proceeds of taxable bonds under AS 44.88.155 or expected by the
8 authority to be purchased from the proceeds of taxable bonds under AS 44.88.155
9 shall be determined under the regulations adopted by the authority under
10 AS 44.88.085(g)(2)(C) and shall be not less than the cost of funds to the authority. In
11 this subsection, "cost of funds" means the true interest cost expressed as a rate on
12 taxable bonds, plus an additional percentage as determined by the authority to
13 represent the allocable expenses of operation, costs of issuance, and loan servicing
14 costs.

15 * **Sec. 12.** AS 44.88.159(d) is amended to read:

16 (d) The provisions of this section apply only to a loan participation purchased
17 under AS 44.88.155 - 44.88.159 or to a loan made under AS 44.88.700 - 44.88.740.

18 * **Sec. 13.** AS 44.88.159(e) is amended to read:

19 (e) The interest rate on a loan made under AS 44.88.700 - 44.88.740 or a
20 loan participation purchased directly from the assets of the authority shall be
21 determined under the regulations adopted by the authority under
22 AS 44.88.085(g)(2)(C) and shall be not less than the total of a percentage as
23 determined by the authority to represent the allocable expenses of operation and costs
24 of loan origination and servicing, plus the cost of funds. In this subsection,

25 (1) "comparable financial security" means a type or category of
26 financial security the authority identifies in the regulations adopted by the authority
27 under AS 44.88.085(g)(2)(C) that has a term and financial conditions comparable to
28 the term and financial conditions of a loan participation or a loan made under
29 AS 44.88.700 - 44.88.740 and for which a regularly published, nationally recognized
30 market index is available;

31 (2) "cost of funds" means the earnings, expressed as an annual interest

1 rate, the authority would receive on a comparable financial security, and, for a loan
 2 participation **or a loan made under AS 44.88.700 - 44.88.740** with a fixed interest
 3 rate, the cost of funds must equal or exceed the minimum interest rate;

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

7 * **Sec. 14.** AS 44.88.159(f) is amended to read:

8 (f) In determining an interest rate under the regulations adopted by the
 9 authority under AS 44.88.085(g)(2)(C), the authority may determine to disregard the
 10 minimum interest rate required under (a), (b), or (e) of this section for a loan
 11 participation purchased by the authority **or a loan made under AS 44.88.700 -**
 12 **44.88.740** to resolve lending limits or reserve restrictions imposed on the financial
 13 institution and may instead determine to retain the interest rate existing at the time the
 14 authority **makes the loan or** purchases **the authority's loan participation** [A
 15 PORTION OF THE LOAN].

16 * **Sec. 15.** AS 44.88.159(g) is amended to read:

17 (g) The authority may, in the regulations adopted by the authority under
 18 AS 44.88.085(g)(2)(C), establish a program to pay to borrowers of loan participations
 19 determined by the authority to meet sufficient job creation, rural development,
 20 **renewable energy development,** or other economic development criteria incentive
 21 rate rebates of not more than one percent of the interest rate charged on the authority's
 22 portion of a loan participation. The following standards apply to the program:

23 (1) the payment of an incentive rate rebate may reduce the interest rate
 24 to a rate that is less than the minimum interest rate required under (a), (b), or (e) of this
 25 section;

26 (2) the authority may not commit to pay an incentive rate rebate for a
 27 proposed loan participation if the total of the amount of the proposed loan
 28 participation plus the combined outstanding balance of all loan participations for
 29 which the authority has committed to pay incentive rate rebates would exceed five
 30 percent of the total of the amount of the proposed loan participation plus the combined
 31 outstanding balance of all loan participations of the authority;

1 (3) an incentive rate rebate may not accrue for more than five years
2 after the date the loan participation is purchased;

3 (4) the authority may establish a separate account for the incentive rate
4 rebate program.

5 * **Sec. 16.** AS 44.88 is amended by adding new sections to read:

6 **Article 7A. Sustainable Energy Transmission and Supply.**

7 **Sec. 44.88.700. Sustainable energy transmission and supply development**
8 **program.** The sustainable energy transmission and supply development program is
9 created in the authority to promote and provide financing for qualified energy
10 development in the state to alleviate unemployment and contribute to the state's
11 economic welfare, economic diversity, and economic development.

12 **Sec. 44.88.710. Alaska Industrial Development and Export Authority**
13 **sustainable energy transmission and supply development fund.** The Alaska
14 Industrial Development and Export Authority sustainable energy transmission and
15 supply development fund is established in the authority. The development fund
16 consists of appropriations made to the development fund by the legislature, money or
17 other assets transferred to the development fund by the authority, and unrestricted loan
18 repayments, interest, or other income earned on loans, investments, or assets of the
19 development fund. The development fund is not an account in the revolving loan fund
20 established in AS 44.88.060, and the authority shall account for the development fund
21 separately from the revolving fund. The authority may create additional accounts in
22 the development fund. Subject to agreements made with the holders of the authority's
23 bonds or with other persons, the authority may transfer amounts in an account in the
24 development fund to another account in the development fund. Amounts deposited in
25 the development fund may be pledged to the payment of bonds of the authority or
26 expended for the purposes of AS 44.88.700 - 44.88.740. The authority has the powers
27 and responsibilities established in AS 37.10.071 with respect to the investment of
28 amounts held in the development fund.

29 **Sec. 44.88.720. Use of fund balance.** Subject to the requirements of
30 AS 44.88.710 - 44.88.740, the authority may use money in the Alaska Industrial
31 Development and Export Authority sustainable energy transmission and supply

1 development fund to assist in the construction, improvement, rehabilitation, and
 2 expansion of qualified energy development.

3 **Sec. 44.88.730. Qualified energy development; powers and duties of the**
 4 **authority.** (a) Subject to the limitations of AS 44.88.740, for qualified energy
 5 development, the authority may

6 (1) use the Alaska Industrial Development and Export Authority
 7 sustainable energy transmission and supply development fund to finance qualified
 8 energy development, insure project obligations, guarantee loans or bonds, and
 9 establish reserves;

10 (2) acquire real or personal property by purchase, transfer, or
 11 foreclosure when the acquisition is necessary to protect the authority's interest in
 12 financing;

13 (3) defer principal payments or capitalize interest on qualified energy
 14 development financing;

15 (4) subject to AS 36.30.085(e), enter into lease agreements, sales-
 16 lease-back agreements, build-operate-transfer, and operate-transfer agreements, or any
 17 similar project financing agreement for a qualified energy development;

18 (5) enter into agreements with government entities for the transfer and
 19 control of infrastructure, facilities, rights-of-way, and studies;

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

23 (7) subject to AS 44.88.090, borrow money and issue bonds; and

24 (8) pay off the principal of and interest on bonds issued by a
 25 municipality to acquire, construct, improve, or equip a public utility if the municipality
 26 continues to pay the authority the bond payments due under the terms of the bonds; the
 27 authority shall retain the payments from the municipality in a sinking fund, and the
 28 municipality may apply to use the funds for qualified energy development.

29 (b) The authority shall adopt regulations to implement AS 44.88.700 -
 30 44.88.740, including

31 (1) an application process for acquiring financing under this section;

(2) qualifications for qualified energy development projects applying for financing under this section; and

(3) fiscal controls and accounting procedures for the development fund.

Sec. 44.88.740. Limitations on financing. (a) Unless the authority has obtained legislative approval by law, the authority may not finance or participate in financing of

(1) more than one-third of the capital cost of qualified energy development; or

(2) a loan guarantee that exceeds \$20,000,000.

(b) Financing under AS 44.88.730 is limited to the life of qualified energy development, which may not be more than

(1) 30 years; or

(2) 50 years for a transmission line or hydroelectric qualified energy development.

* **Sec. 17.** AS 44.88.900 is amended by adding new paragraphs to read:

(15) "development fund" means the sustainable energy transmission and supply development fund created in AS 44.88.710;

(16) "qualified energy development" means a project in the state that involves

(A) transmission, generation, conservation, storage, or distribution of heat or electricity;

(B) liquefaction, regasification, distribution, storage, or use of natural gas;

(C) distribution or storage of refined petroleum products.

* **Sec. 18.** Sections 2 and 8, ch. 10, SLA 2010, are repealed.

* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. References to "this chapter" in AS 44.88 apply to sec. 16 of this Act and so should not be changed.