

SENATE BILL NO. 66

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/24/11

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act creating a new markets tax credit assistance guarantee and loan program**
2 **within the Alaska Industrial Development and Export Authority; and providing for an**
3 **effective date."**

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

5 * **Section 1.** AS 44.88.155(c) is amended to read:

(c) Money and other assets of the enterprise development account may be used to secure bonds of the authority issued to finance the purchase of loans for projects, [OR MAY BE USED] to purchase participation in the loans for projects, or to fund a new markets tax credit assistance guarantee or loan under AS 44.88.700 - 44.88.799.

11 * Sec. 2. AS 44.88 is amended by adding a new article to read:

Article 8. New Markets Tax Credit Assistance Program.

Sec. 44.88.700. New markets tax credit assistance guarantees and loans. (a)

14 Subject to the requirements of AS 44.88.700 - 44.88.799, the authority may

- (1) guarantee new markets tax credit assistance leveraged loans; and
- (2) make new markets tax credit assistance leveraged loans.

(b) New markets tax credit assistance guarantees and loans are limited to projects within the state for which new markets tax credits are allocated by a qualified community development entity.

(c) The authority shall determine that the project will promote economic development in the state before guaranteeing a leveraged loan or making a leveraged loan under AS 44.88.700 - 44.88.799.

(d) The authority may agree to restrictions and guidelines arising from the federal new markets tax credit program, including for the seven year tax credit period of the new markets tax credit project

- (1) interest only payments on the leveraged loan;
- (2) substantially all capital to remain invested in the project;
- (3) acceptable collateral may be an interest in a qualified community entity or an investment entity rather than in the project; and
- (4) substantive restrictions on foreclosure of collateral.

Sec. 44.88.710. Effect of guarantee. (a) A guarantee under AS 44.88.700 - 44.88.799 does not create a debt or liability of the state.

(b) A guarantee under AS 44.88.700(a)(1) may not be terminated, canceled, or revoked except under its terms. A guarantee held by a participating financial institution is presumed to be valid.

Sec. 44.88.715. Qualifications of applicant for new loan guarantee. (a) A business enterprise which qualifies for new markets tax credits for a project may apply for a loan guarantee under AS 44.88.700(a)(1).

(b) The authority may establish additional applicant qualifications by regulation. These qualifications may vary depending upon the type of business the applicant is engaged in.

Sec. 44.88.720. Application loan guarantee. An applicant for a loan guarantee shall provide information that the authority may require by regulation. The authority may require submission of an economic benefit analysis prepared by a person acceptable to the authority.

Sec. 44.88.730. Conditions of loan guarantee. (a) The authority may guarantee a loan under AS 44.88.700 - 44.88.799 if the

(1) loan

(A) is commercially reasonable;

(B) contains payment provisions satisfactory to the authority;

and

(C) is secured by acceptable collateral;

(2) project

(A) is allocated new markets tax credits by a qualified development entity;

(B) promotes economic development in the state; and

(C) is not a housing project;

(3) borrower demonstrates the ability to repay the loan from either or both of the following:

(A) net cash flow from the borrower;

(B) proceeds from the sale of current assets that are collateral for the sale, or receipt of proceeds from the sale, is an event that creates a contingent obligation; in this subparagraph, "current asset" means assets that will be or could be converted into cash in the normal operation of the business within one year;

(4) term of the loan does not exceed 10 years;

(5) loan is originated with and serviced by a financial institution.

(b) The authority may provide a guarantee for up to 100 percent of a loan that qualifies under AS 44.88.700 - 44.88.799.

Sec. 44.88.740. Servicing of guaranteed loans. (a) The financial institution that holds a loan guaranteed by the authority under AS 44.88.700 - 44.88.799 shall

(1) service the loan;

(2) exercise diligence in collecting amounts due under the loan; and

(3) comply with all requirements of the loan guarantee agreement.

30 (b) Amounts received toward satisfaction of a default on a loan guaranteed
31 under AS 44.88.700 - 44.88.799 shall be allocated between the lender and the fund

1 according to the guaranteed percentage of the loan until the principal balance and
2 accrued interest have been repaid.

3 **Sec. 44.88.750. New markets tax credit assistance leveraged loan.** (a) The
4 authority may make a new markets tax credit assistance leveraged loan under
5 AS 44.88.700(a)(2) only if the authority determines that an applicant for a new
6 markets tax credit assistance guarantee is unable to obtain a leveraged loan from a
7 financial institution under commercially reasonable terms. Before making the
8 determination, the authority shall require the applicant to document that at least two
9 financial institutions have reviewed an application for a leveraged loan for which the
10 authority would issue a new markets tax credit assistance guarantee for the loan, and
11 either rejected the application or approved the application subject to terms the
12 authority determines are commercially unreasonable. The authority may require the
13 applicant to submit applications for a leveraged loan to one or more additional
14 financial institutions.

15 (b) Subject to (a) of this section, the authority may make a new markets tax
16 credit assistance leveraged loan under AS 44.88.700 - 44.88.799 to the applicant to
17 finance a portion of the project using funds from the enterprise development account
18 (AS 44.88.155).

19 **Sec. 44.88.760. Limitations of guarantees and leveraged loans.** The
20 combined outstanding principal balance of loan guarantees and loans under
21 AS 44.88.700 - 44.88.799 may not exceed \$50,000,000.

22 **Sec. 44.88.770. Powers of the authority.** The authority may
23 (1) adopt regulations to implement AS 44.88.700 - 44.88.799;
24 (2) establish terms and conditions for loan guarantees and loans,
25 subject to the requirements of AS 44.88.700 - 44.88.799;
26 (3) make and execute contracts and other instruments to implement
27 AS 44.88.700 - 44.88.799;
28 (4) charge reasonable fees and interest rates that the authority may
29 establish by regulation for the service it provides under AS 44.88.700 - 44.88.799;
30 (5) acquire real or personal property by purchase, transfer, or
31 foreclosure when the acquisition is necessary to protect the authority's interest in a

1 loan or a loan guarantee;

2 (6) exercise any other power necessary to implement AS 44.88.700 -
3 44.88.799; and

4 (7) to the extent the authority considers it to be in its best interest to do
5 so, use money to pay expenses relating to the liquidation of collateral securing loans
6 guaranteed or made by the authority under AS 44.88.700 - 44.88.799.

7 **Sec. 44.88.799. Definitions.** In AS 44.88.700 - 44.88.799,

8 (1) "federal new markets tax credit program" means the program
9 administered by the Community Development Financial Institutions Fund which
10 arises out of Section 45D of the Internal Revenue Code (26 U.S.C. 45D) and related
11 regulations;

12 (2) "new markets tax credit" means tax credits which arise out of
13 Section 45D of the Internal Revenue Code (26 U.S.C. 45D) and related regulations;

14 (3) "new markets tax credit assistance leveraged loan" and "leveraged
15 loan" mean a loan made into an investment entity, the proceeds of which, together
16 with other funds including tax credit equity, are invested as a qualified equity
17 investment in a qualified community development entity which will use the funds to
18 finance a project for which the entity allocates new markets tax credits;

19 (4) "qualified community development entity" has the same meaning
20 mean as the term is defined in Section 45D(c) of the Internal Revenue Code
21 (26 U.S.C. 45D(c)) and related regulations; and

22 (5) "qualified equity investment" means an equity investment in a
23 qualified community development entity which satisfies the conditions described in
24 Section 45D(b) of the Internal Revenue Code (26 U.S.C. 45D(b)) and related
25 regulations.

26 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).