

HB 90
Sectional Analysis

Section 1. Section 1 (page 1, lines 5 – 7) amends AS 44.88.095(a) to exclude refunding and conduit revenue bonds from the \$400,000,000 maximum amount of bonds the Alaska Industrial Development and Export Authority (the “Authority”) may issue during any 12-month period. The maximum bond limits restrict the amount of bonds AIDEA may issue in any 12-month period to fund development finance projects, or to raise funds to purchase loan participations or for other program purposes. The maximum bond limits should not apply to refunding and conduit revenue bonds as each promotes the Authority’s economic development mission without significantly increasing the Authority’s financial obligation on outstanding bond debt. Applying the maximum bond limits to refunding and conduit revenue bonds may preclude the Authority from issuing bonds for worthy economic development purposes.

Refunding bonds refinance existing bonds with the proceeds of new bonds. Typically, the new bonds provide more favorable terms, absent which there would rarely be reason to refund. For example, the more favorable terms could be lower interest rates that will reduce interest costs paid by the Authority or the project developer, and provide economic benefit. Other than an incremental increase to fund reserves and pay for the costs and expenses of issuing the bonds, refunding bonds do not increase the amount of outstanding bond debt.

Conduit revenue bond proceeds finance the acquisition or construction of projects that promote economic development in Alaska. The Authority has no financial obligation to pay conduit revenue bonds. These bonds are payable solely by the project developer and related parties, primarily from revenue generated by the project.

Section 2. Section 2 (page 1, line 8 – page 2, line 6) amends AS 44.88.095(g) to accomplish two things. First, Section 2 will authorize the Authority to issue most bonds without further legislative approval; the sole exception being bonds in excess of \$10,000,000 to assist in the financing of a development project under AS 44.88.172 – AS 44.88.177. This amendment would reinstate the Authority’s ability to issue bonds that existed before a July 1, 2007, statutory sunset. The Authority currently requires legislative approval to issue any bonds, excepting refunding and conduit revenue bonds. The amendments to AS 44.88.095(g) would eliminate the sunset and enable the Authority to again issue most bonds without legislative approval. The Authority will still require

legislative approval to issue bonds in excess of \$10,000,000 to assist in the financing of development projects, excluding refunding bonds.

Second, Section 2 will expressly clarify in statute that the Authority may use proceeds from refunding bonds to fund reserves and finance certain costs and expenses associated with issuing the refunding bonds. AS 44.88.095(g) currently empowers the Authority to issue refunding bonds, but does not provide sufficient clarity required by bond markets to enable proceeds from the refunding bonds to be used to pay more than the outstanding balance of the existing bonds. The proposed amendments, if enacted, will enable the Authority to issue refunding bonds, the proceeds from which can be used to pay both the outstanding balance of the existing bonds and the costs of refinancing, funding reserves, and other costs related to issuing refunding bonds. The ability to use refunding bond proceeds to pay these additional costs is anticipated to reduce the cost of financing, which would provide a direct economic benefit to project developers or the Authority.

Sections 3, 5 and 6. Sections 3, 5 and 6 (page 2, lines 7 – 29 and page 3, lines 1 - 9) amend AS 44.88.215 and AS 44.88.900 to clarify that certain records and information provided to the Authority are confidential, and establish processes for the Authority to determine confidentiality.

AS 44.88.215 assists the mission of the Authority by assuring persons supplying records or information, and borrowers and applicants (e.g., of loan participations and development finance projects) that certain records and information they provide to the Authority will be kept confidential. The Authority has heard concerns from borrowers, applicants and project developers that AS 44.88.215 does not clearly establish that the Authority can retain the confidentiality of certain types of documents. Sections 3, 5 and 6 attempt to address these concerns in two ways.

First, the amendments clarify that certain types of records and information are confidential. Section 3 amends AS 44.88.215(a) to identify specific types of trade secrets that are confidential. Section 6 amends AS 44.88.900 to further clarify existing statutory language by adding a definition for “trade secrets” using the Alaska Uniform Trade Secrets Act (AS 45.50.940(3)), which defines "trade secret" to mean:

information that (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Second, the amendments establish processes for the Executive Director of the Authority to determine the confidentiality of specific records and information. Currently, records and information that meet the statutory criteria of AS 44.88.215(a) are confidential and

not public records under AS 44.88.215(c). Because there is no process to determine confidentiality, the status of any specific document remains uncertain unless and until the Authority receives a public records request. Under the processes established within Sections 3 and 5, the applicant or borrower must request confidentiality, and make an adequate showing to the Executive Director that the documents meet the statutory criteria of AS 44.88.215(a). The Executive Director then must determine whether the records meet the statutory criteria. This determination can be made when records and information is provided to the Authority, so that applicants and borrowers have greater assurance that information they believe to be confidential or proprietary will remain confidential.

Section 4. Section 4 (page 2, line 30 – page 3, line 3) is unnecessary and should be deleted from the bill. Attached is a proposed amendment to delete Section 4.

Section 7. Section 7 (page 3, lines 10 – 14) gives instruction to the revisor of statutes to make technical changes to the catchline heading of AS 44.88.215 to reflect amendments made by the bill.

Section 8. Section 8 (page 3, line 15) will make the Act effective on July 1, 2009.