HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/16/13
Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to development project financing by the Alaska Industrial Development and Export Authority; relating to the dividends from the Alaska Industrial and Export Authority; authorizing the Alaska Industrial Development and Export Authority to provide financing and issue bonds for a liquefied natural gas production system and natural gas distribution system; and providing for an effective date."

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

*** Section 1.** 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 exists;

(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;

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

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

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

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

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

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

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

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

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

(C) creating the Alaska Industrial Development and Export Authority with the powers necessary to accomplish the objectives stated in this paragraph, including the power to issue taxable and tax-exempt bonds**,** [AND TO] acquire ownership interests in projects**, and provide development project financing** as provided in this chapter;

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

*** Sec. 2.** AS 44.88.070 is amended to read:

Sec. 44.88.070. Purpose of the authority. The purpose of the authority is to promote, develop, and advance the general prosperity and economic welfare of the people of **the state** [ALASKA], to relieve problems of unemployment, and to create additional employment by

(1) providing various means of financing and means of facilitating the financing, in cooperation with federal, state, and private institutions, of industrial, manufacturing, export, small business, and business enterprises and the other facilities referred to in AS 44.88.010(a) in the state;

(2) owning and operating **or providing development project financing for** the enterprises and other facilities described in AS 44.88.172;

(3) fostering the expansion of exports of [ALASKA] goods, services, and raw materials **of the state**;

(4) cooperating and acting in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state;

(5) establishing a source of funding credit guarantees and insurance, not otherwise available, to support export development;

(6) providing and cooperating or participating with federal, state, and private institutions to provide actual and potential **state** [ALASKA] exporters, particularly small- and medium-sized exporters, with financial assistance in support of export transactions.

*** Sec. 3.** AS 44.88.080 is amended to read:

Sec. 44.88.080. Powers of the authority. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

(1) to sue and be sued;

(2) to have a seal and alter it at pleasure;

(3) to make and alter bylaws for its organization and internal management;

(4) to adopt regulations governing the exercise of its corporate powers;

(5) to acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift, or lease;

(6) to lease to others a project acquired by it for the rentals and upon the terms and conditions the authority may consider advisable, including, without limitation, provisions for options to purchase or renew;

(7) to issue bonds and otherwise to incur indebtedness, in accordance with AS 44.88.090, in order to pay the cost of a project or development projects or in order to provide money for the authority's purposes under this chapter; the authority may also secure payment of the bonds or other indebtedness as provided in this chapter;

(8) to sell, by installment sale or otherwise, exchange, donate, convey, or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the authority, the action is in furtherance of its

corporate purposes;

(9) to accept gifts, grants, or loans from, and enter into contracts or other transactions regarding them, with a federal agency or an agency or instrumentality of the state, a municipality, private organization, or other source;

(10) to deposit or invest its funds, subject to agreements with bondholders;

(11) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this chapter;

(12) to purchase or insure loans to finance the costs of manufacturing, industrial, and business enterprise projects;

(13) to enter into loan agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(14) to acquire, manage, and operate projects as the authority considers necessary or appropriate to serve a public purpose;

(15) to assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(16) to accept gifts, grants, or loans from a federal agency, from an agency or instrumentality of the state or of a municipality, or from any other source;

(17) to enter into contracts or other transactions with a federal agency, with an agency or instrumentality of the state or of a municipality, or with a private organization or other entity consistent with the exercise of any power under this chapter;

(18) to facilitate the expansion of a secondary market for the resale of federally or commercially insured loans made to finance the costs of projects in **the state** [ALASKA] held by federal and state chartered financial institutions or by the Alaska Commercial Fishing and Agriculture Bank;

(19) to charge fees or other forms of remuneration for the use or possession of the projects described in (14) of this section in accordance with the agreements described in (11) and (17) of this section, other agreements pertaining to the projects, covenants, or representations made in bond documents pertaining to the

projects, or regulations of the authority pertaining to the projects;

(20) to participate with government or private industry in programs for technical assistance, loans, technology, transfer, or other programs related to the exportation of [ALASKA] goods, services, or raw materials **of the state** with respect to its financing activities;

(21) to provide export finance training for office staff and other individuals involved in export finance assistance, including the training sessions that may be provided by the United States Export-Import Bank or other organizations;

(22) to coordinate to the maximum extent possible its efforts to promote the export of [ALASKA] goods, services, and raw materials **of the state** with programs and goals of the United States Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, and other private and public programs designed to provide export assistance and export-related financing;

(23) to guarantee loans related to qualified export transactions under regulations adopted by the authority;

(24) to provide financing assistance, in cooperation with federal, state, and private institutions, as provided in this chapter for small business enterprises;

(25) to make cooperative agreements with the Department of Transportation and Public Facilities, acting on behalf of the international airports revenue fund established under AS 37.15.430, to acquire, equip, operate, maintain, construct, or install facilities that will enhance the competitiveness of the international airports, including a cooperative agreement to lend amounts from the international airport revenue fund to finance the development or improvement of utilities serving the airports;

(26) to screen potential applicants for a new business incentive grant and recommend the award of the grants under AS 45.81.020;

(27) to oversee the administration of outstanding grants awarded by the Alaska Science and Technology Foundation under former AS 37.17.010 - 37.17.110;

(28) to oversee the administration of outstanding BIDCO assistance grants and loans made by the Alaska Science and Technology Foundation under

former AS 37.17.200 - 37.17.390;

(29) to guarantee loans made to the Alaska Insurance Guaranty Association (AS 21.80.040), with these guarantees limited to loans necessary to make the association financially able to meet cash flow needs up to a maximum outstanding principal balance at any time of $30,000,000;

(30) with legislative approval and notwithstanding AS 44.88.060, to purchase from the Alaska Energy Authority as an investment of the revolving fund, loans of the power project fund established under AS 42.45.010;

(31) to consider, when exercising the powers listed in this section, the interests of local governments impacted by the authority's activities to share in the benefits of these activities, with appropriate consideration of the authority's ability to meet debt obligations, issue new debt, and fulfill the authority's purposes**;**

(32) to provide development project financing for all or a portion of the cost of a development project as provided in AS 44.88.172.

*** Sec. 4.** AS 44.88.088(a) is amended to read:

(a) The authority shall adopt a policy for payment of **dividends** [A DIVIDEND] to the state each fiscal year **from the revolving fund and from the sustainable energy transmission and supply development fund**. [THE AMOUNT OF THE DIVIDEND FOR A FISCAL YEAR MAY NOT BE LESS THAN 25 PERCENT NOR MORE THAN 50 PERCENT OF THE NET INCOME OF THE AUTHORITY FOR THE BASE FISCAL YEAR. IN NO EVENT, HOWEVER, SHALL THE DIVIDEND FOR A FISCAL YEAR EXCEED THE TOTAL UNRESTRICTED NET INCOME OF THE AUTHORITY FOR THE BASE FISCAL YEAR.] The **dividends** [DIVIDEND] 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** [DIVIDEND] for a fiscal year **are** [IS] available for appropriation. **The amount of the dividend payable from the**

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

*** Sec. 5.** AS 44.88.088(b) is amended to read:

(b) In this section,

(1) "base fiscal year" means the fiscal year ending two years before the end of the fiscal year in which the payment is made;

(2) "net income" means the [AUTHORITY'S] change in net **position, or the equivalent term under generally accepted accounting principles, of the revolving fund or the change in net position of the sustainable energy transmission and supply development fund** [ASSETS] 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;

(3) "unrestricted net income" means the [AUTHORITY'S] unrestricted change in net **position, or the equivalent term under generally accepted accounting principles, of the revolving fund or the sustainable energy transmission and supply development fund** [ASSETS] 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. 6.** AS 44.88.105(d) is amended to read:

(d) The chairman of the authority shall annually, **not** [NO] later than January 2, certify in writing to the governor and the legislature the amount, if any, required to restore a capital reserve fund to the capital reserve fund requirement. The legislature may appropriate to the authority the amount certified by the chairman of

the authority. The authority shall deposit the amounts appropriated under this subsection during a fiscal year in the proper capital reserve fund. Nothing in this section creates a debt or liability of the state. In this subsection, "capital reserve fund" means a capital reserve fund that

(1) is created under this section on or before January 1, 1989;

(2) secures refunding bonds if the refunding bonds are issued to refund bonds that are secured by a capital reserve fund created under this section on or before January 1, 1989; [OR]

(3) secures bonds issued on or after August 11, 1993**,** for a power transmission intertie**; or**

(4) secures bonds issued on or after July 1, 2013, for a qualified energy development the authority finances under AS 44.88.650 - 44.88.690.

*** Sec. 7.** AS 44.88.172(a) is amended to read:

(a) The economic development account is established in the revolving fund. The economic development account consists of money or assets appropriated, loaned, or transferred to the authority for deposit in the account and other money or assets deposited in the account by the authority. While money is on deposit in the economic development account, the money may be used [ONLY] to finance, acquire, manage, and operate development projects that the authority intends to own and operate **or to provide development project financing for development projects the authority does not intend to own and operate**. In this subsection,

(1) "operate" includes operation directly by the authority, by an agent of the authority, or by a person as determined under an agreement between the authority and other owners of the development project;

(2) "own" includes ownership by the authority of all or a percentage of a development project; or all or a percentage of the shares of a corporation or membership in a limited liability company for which the development project is the sole asset of the corporation or limited liability company.

*** Sec. 8.** AS 44.88.172 is amended by adding a new subsection to read:

(d) The authority shall adopt regulations to implement this section. The regulations may include provisions on the application process, application fees,

interest rates, other charges and fees, terms, conditions, security, and other requirements for development projects the authority undertakes or development project financing the authority provides.

*** Sec. 9.** AS 44.88.900 is amended by adding a new paragraph to read:

(17) "development project financing" means the authority making a direct loan or issuing a guarantee of a loan, note, debt, or other financial obligation to fund or assist in funding a development project the authority does not intend to own and operate.

*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE APPROVAL; FINANCING OF LIQUIFIED NATURAL GAS PRODUCTION AND DISTRIBUTION FACILITIES. (a) The Alaska Industrial Development and Export Authority, through the sustainable energy transmission and supply fund established in AS 44.88.660, may provide financing up to a maximum principal amount of $275,000,000 for the development, construction, and installation of, and the start-up costs of operation and maintenance for, a liquefied natural gas production plant, system, and affiliated infrastructure on the North Slope and a natural gas distribution system and affiliated infrastructure within the Fairbanks North Star Borough.

(b) As a part of the financing authorized in (a) of this section, the Alaska Industrial Development and Export Authority may issue bonds under AS 44.88.090 that are secured by a capital reserve fund established under AS 44.88.105. Notwithstanding AS 44.88.105, in establishing a capital reserve fund for the bonds, the authority is not required to determine that the capital reserve fund is necessary to enhance the marketability of the bonds. The capital reserve fund shall be managed by the authority as provided in AS 44.88.105. The principal amount of the bonds authorized in this section may not exceed $150,000,000 plus the cost of capitalized interest, bond counsel fees, trustee fees, rating fees, financial advisor fees, escrow costs, and other bond issuance costs that are deemed reasonable and appropriate by the authority.

(c) Notwithstanding the interest rate requirements of AS 44.88.159, the interest rate the authority may charge for any financing authorized in (a) of this section that is provided from money of the sustainable energy transmission and supply fund may not exceed three

percent or the current market rate for commercial loans at time of issuance of the bonds, whichever is less. Notwithstanding the interest rate requirements of AS 44.88.159, the interest rate that the authority may charge for any financing authorized in (a) of this section that is provided from the proceeds of bonds authorized under this section may not exceed the interest rate to be paid on the bonds, plus an allowance that the authority shall establish for its administrative expenses; however, the allowance for administrative expenses may not exceed 25 basis points. Notwithstanding any contrary provision of law, the interest rate limitations of this subsection supersede and replace any other requirements of law regarding the interest rates that the authority may charge for the financing authorized in (a) of this section.

(d) The authorization of (a) of this section constitutes legislative approval for the authority exceeding the limitations of AS 44.88.690 in providing the financing approved in (a) of this section. In providing the financing authorized under (a) of this section, the authority may waive any limitations or requirements of its regulations that are otherwise applicable to the sustainable energy transmission and supply fund.

(e) The bonds authorized by this section may not be considered in calculating the authority's bonding limitation for a 12-month period under AS 44.88.095(a).

(f) The authorization to issue bonds this section grants expires as of June 30, 2018, if not utilized by the issuance of bonds before that date. Expiration of the authorization to issue bonds does not affect bonds that the authority issues under this section prior to July 1, 2018.

(g) In this section,

(1) "authority" means the Alaska Industrial Development and Export Authority;

(2) "financing" means any method of providing funds for a qualified energy development under AS 44.88.650 - 44.88.690 or any combination of the methods of providing funds for a qualified energy development under AS 44.88.650 - 44.88.690.

*** Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).