

SENATE CS FOR CS FOR HOUSE BILL NO. 386(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/11/98

Offered: 5/11/98

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the financing authority, programs, operations, and projects
2 of the Alaska Industrial Development and Export Authority; and providing for
3 an effective date."

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

5 * Section 1. AS 44.88.090(e) is amended to read:

6 (e) Before issuing bonds, the authority shall provide for consideration at least
7 sufficient, in the judgment of the authority, to pay the principal of and interest on the
8 bonds as they become due and to create and maintain the reserves for the payments
9 that the authority considers necessary or desirable, and to meet all obligations in
10 connection with the lease or agreement and all costs necessary to service the bonds,
11 unless the lease or agreement provides that the obligations are to be met or costs are
12 to be paid by a party other than the authority. If the bonds are being issued to finance
13 a project or projects under AS 44.88.155 - 44.88.159, then the consideration shall be
14 provided by lease or other agreement regarding the project or projects. If the bonds

are being issued to finance a development project or development projects under AS 44.88.172 - 44.88.177, then the consideration shall be provided by lease or other agreement regarding the development project or development projects. [IF THE BONDS ARE BEING ISSUED TO PROVIDE MONEY TO FINANCE, GUARANTEE, OR INSURE AN EXPORTING TRANSACTION UNDER AS 44.88.300 - 44.88.390, THEN THE CONSIDERATION SHALL BE PROVIDED BY AGREEMENT WITH THE EXPORTER.]

* **Sec. 2.** AS 44.88.090(h) is amended to read:

(h) The authority may combine, for the purposes of a single offering, bonds financing more than one project or development project under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, AND BONDS ISSUED TO PROVIDE MONEY TO FINANCE, GUARANTEE, OR INSURE AN EXPORTING TRANSACTION UNDER AS 44.88.300 - 44.88.390].

* **Sec. 3.** AS 44.88.095(g) is amended to read:

(g) Before July 1, 2000 [1998], the authority may issue bonds in an amount greater than \$10,000,000 to assist in the financing of a development project under AS 44.88.172 - 44.88.177 only with legislative approval. Beginning July 1, 2000 [1998], and thereafter, without prior legislative approval, the authority may not issue bonds, except refunding bonds.

* **Sec. 4.** AS 44.88.100 is amended to read:

Sec. 44.88.100. Trust indentures and trust agreements. In the discretion of the authority, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee (hereinafter in this section referred to as "trust agreement") by means of which the authority may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the authority may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations, and agreements as to

1 (A) the application, investment, deposit, use, and disposition of
 2 the proceeds of bonds of the authority or of money or other property of the
 3 authority or in which it has an interest;

4 (B) the fixing and collection of rents or other consideration for
 5 [,] and the other terms to be incorporated in a lease or contract of sale of a
 6 project or development project financed under AS 44.88.155 - 44.88.159 or
 7 44.88.172 - 44.88.177 [, OR OF A FACILITY THAT IS PART OF AN
 8 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
 9 UNDER AS 44.88.300 - 44.88.390];

10 (C) the assignment by the authority of its rights in the lease or
 11 contract of sale of a project or development project financed under
 12 AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR OF A FACILITY
 13 THAT IS PART OF AN EXPORTING TRANSACTION FINANCED,
 14 GUARANTEED, OR INSURED UNDER AS 44.88.300 - 44.88.390] or in a
 15 mortgage or other security interest created with respect to a project or
 16 development project financed under AS 44.88.155 - 44.88.159 or 44.88.172 -
 17 44.88.177 [, OR WITH RESPECT TO A FACILITY THAT IS PART OF AN
 18 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
 19 UNDER AS 44.88.300 - 44.88.390] to a trustee for the benefit of bondholders;

20 (D) the terms and conditions upon which additional bonds of
 21 the authority may be issued;

22 (E) the vesting in a trustee of rights, powers, duties, funds, or
 23 property in trust for the benefit of bondholders, including, without limitation,
 24 the right to enforce payment, performance, and all other rights of the authority
 25 or of the bondholders under a lease, contract of sale, mortgage, security
 26 agreement, or trust agreement with respect to a project or development project
 27 financed under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR
 28 WITH RESPECT TO A FACILITY THAT IS A PART OF AN EXPORTING
 29 TRANSACTION FINANCED, GUARANTEED, OR INSURED UNDER
 30 AS 44.88.300 - 44.88.390] by mandamus or other proceeding or by taking
 31 possession of by agent or otherwise and operating a project or facility and

1 collecting rents or other consideration and applying the same in accordance
 2 with the trust agreement;

3 (2) pledge, mortgage, or assign money, leases, agreements, property,
 4 or other assets of the authority either presently in hand or to be received in the future,
 5 or both; and

6 (3) provide for any other matters of like or different character which
 7 in any way affect the security or protection of the bonds.

8 * **Sec. 5.** AS 44.88.130 is amended to read:

9 **Sec. 44.88.130. Pledge of the state.** The state pledges to and agrees with the
 10 holders of bonds issued under this chapter and with the federal agency that lends or
 11 contributes funds in respect to a project or development project financed under
 12 AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR IN RESPECT TO AN
 13 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
 14 UNDER AS 44.88.300 - 44.88.390] that the state will not limit or alter the rights and
 15 powers vested in the authority by this chapter to fulfill the terms of a contract made
 16 by the authority with the holders or federal agency and that the state will not in any
 17 way impair the rights and remedies of the holders until the bonds, together with the
 18 interest on them with interest on unpaid installments of interest, and all costs and
 19 expenses in connection with an action or proceeding by or on behalf of the holders are
 20 fully met and discharged. The authority is authorized to include this pledge and
 21 agreement of the state, insofar as it refers to holders of bonds of the authority, in a
 22 contract with the holders and, insofar as it relates to a federal agency, in a contract
 23 with the federal agency.

24 * **Sec. 6.** AS 44.88.155(d) is amended to read:

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

28 (1) may not exceed \$10,000,000; however, in the case of a loan
 29 participation for a power transmission intertie, the loan participation may exceed
 30 \$10,000,000 with legislative approval;

31 (2) may not be purchased unless

(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 20 percent of the principal amount of the loan is retained by the loan originator;

(3) may not be purchased if the loan to be purchased exceeds [THE COST OF THE PROJECT OR] 75 percent of the appraised value of the **collateral offered as security for the loan** [PROJECT, WHICHEVER IS LESS,] 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 in no event may the loan to be purchased under this paragraph exceed the total of loan proceeds used to refinance an existing debt plus the cost of new construction, expansion, or acquisition;**

(4) may not be purchased if the participation in the loan to be purchased is for a term longer than **the following, except that in no event may a loan under (A) or (C) of this subparagraph 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 [PROJECT OR 25 YEARS FROM THE DATE THE LOAN IS MADE, WHICHEVER IS EARLIER; HOWEVER,] in the case of a loan participation for a power transmission intertie;

(C) 25 years from the date the loan is made in the case of a loan participation for other projects [, THE TERM MAY NOT BE LONGER THAN 50 YEARS FROM THE DATE THE LOAN IS MADE];

(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 [A] loan documents [AGREEMENT] entered into with the borrower.

* **Sec. 7.** AS 44.88.190(c) is amended to read:

(c) A loan participation purchased or financed by the authority is exempt from the provisions of AS 45.45.010. [A GUARANTEE EXTENDED UNDER AS 44.88.300 OR INSURANCE PROVIDED UNDER AS 44.88.390 DOES NOT CONSTITUTE INSURANCE FOR THE PURPOSES OF AS 21.03.010.]

* **Sec. 8.** AS 44.88 is amended by adding a new section to read:

Sec. 44.88.215. Confidentiality of information. (a) In order to promote the purposes of AS 44.88, unless the records were a matter of public record before submittal to the authority, the following records, files, and information shall be kept confidential upon the request of the person supplying the information or upon the request of the project, bond, loan, or guarantee applicant or borrower:

(1) income tax returns;

(2) financial statements, profit-and-loss statements, and cash flow projections, except the information required by the authority to calculate debt service coverage on the loan;

- 1 (3) financial business plans;
- 2 (4) credit reports from consumer reporting agencies and other credit
- 3 information obtained from banks, creditors, or other credit reporting entities;
- 4 (5) trade secrets;
- 5 (6) appraisals, except the name of the appraiser, the date of the
- 6 appraisal, and the fair market value determined for the property appraised;
- 7 (7) market surveys and marketing strategy information; and
- 8 (8) any information required to be kept confidential by a federal law
- 9 or regulation or by state law.

10 (b) Information compiled by the authority from information described in (a)

11 of this section shall be kept confidential unless disclosure is authorized by the person

12 supplying the information and by the project, bond, loan, or guarantee applicant or

13 borrower.

14 (c) The information that is determined to be confidential under (a) or (b) of

15 this section is not a public record under AS 09.25.110 - 09.25.220.

16 (d) Nothing in this section shall prevent a legislator from reviewing

17 information otherwise confidential under this section if the legislator has a valid

18 legislative purpose for reviewing the information and if the legislator agrees to

19 maintain the confidentiality of the information.

20 * **Sec. 9.** AS 44.88.500 is repealed and reenacted to read:

21 **Sec. 44.88.500. Business and export assistance guarantees.** Subject to the

22 requirements of AS 44.88.500 - 44.88.599, the authority may

- 23 (1) guarantee new business and export assistance loans; and
- 24 (2) guarantee new business and export assistance loans made to
- 25 refinance existing loans.

26 * **Sec. 10.** AS 44.88 is amended by adding a new section to read:

27 **Sec. 44.88.502. Effect of guarantee.** (a) A guarantee under AS 44.88.500 -

28 44.88.599 does not create a debt or liability of the state.

29 (b) A guarantee under AS 44.88.500 may not be terminated, canceled, or

30 revoked except under its terms. A guarantee held by a participating financial

31 institution is presumed to be valid.

(c) A guarantee or portion of a guarantee under AS 44.88.500 that relates to an export transaction must guarantee against commercial and political loss, in whole or in part, of principal and interest. The authority may require the borrower to obtain insurance against some or all of the loss guaranteed under AS 44.88.500. In this subsection, "political loss" means a loss incurred as a result of

(1) a political risk that would be insurable under an export credit insurance policy issued by the Export-Import Bank of the United States; or

(2) any other political risk that is actually insured under insurance the authority requires the borrower to obtain.

* **Sec. 11.** AS 44.88.505(a) is amended to read:

(a) A business enterprise may apply for a new loan guarantee under **AS 44.88.500(1)** [AS 44.88.500(a)(1)].

* **Sec. 12.** AS 44.88.515 is amended to read:

Sec. 44.88.515. Qualifications of applicant for debt refinancing guarantee.

A business enterprise may apply under **AS 44.88.500(2)** [AS 44.88.500(a)(2)] to guarantee the refinancing of existing debt.

* **Sec. 13.** AS 44.88.525 is amended to read:

Sec. 44.88.525. Conditions of debt refinancing guarantee. The authority may not guarantee refinanced debt

(1) unless the refinancing

(A) is necessary to extend substantial debt payments over a longer period of time, thereby improving the applicant's net cash flow and working capital position consistent with the useful life of the assets being refinanced;

(B) assists with short-term debt or cash expenditures when lenders will not extend reasonable longer terms to the applicant; and

(C) creates additional economic opportunity or improves the viability of the borrower rather than just reducing the liability of the lender; or

(2) unless the refinancing is necessary to place a permanent loan subsequent to an interim loan for financing [CONSTRUCTION] of the project.

* **Sec. 14.** AS 44.88.535(a) is amended to read:

(a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the

(1) loan

(A) is commercially reasonable;

(B) contains **payment** [AMORTIZATION] provisions satisfactory to the authority;

(C) is secured by adequate collateral; however, the authority may waive on a case-by-case basis the requirement of collateral for a loan guarantee of \$100,000 or less for which the proposed loan **term** [AMORTIZATION PERIOD] does not exceed five years, but the ability to waive the requirement of this subparagraph or the grant of a waiver does not prevent the financial institution that holds the loan guaranteed by the authority from requiring reasonable collateral for the loan;

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

(A) net cash flow from the borrower [PROVIDES ADEQUATE COVERAGE FOR THE DEBT SERVICE ON THE LOAN]; **and**

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

(3) term of the loan does not exceed 20 years;

(4) loan is originated with and serviced by a state chartered or federally chartered financial institution;

(5) portion of the loan not guaranteed by the authority is held by the originating financial institution or another institution approved by the authority;

(6) loan is made to a business with a majority interest held by state residents; and

(7) loan guarantee provides a benefit to the borrower.

* **Sec. 15.** AS 44.88.535(c) is amended to read:

(c) The authority may guarantee the payment of interest on the guaranteed

1 portion of a loan

2 (1) in the manner established by the authority by regulation; and

3 (2) for a period of time not to exceed

4 (A) 90 days for loans or parts of loans not made to support
5 an export transaction;

6 (B) 180 days for loans or parts of loans made for a post-
7 shipment loan guarantee to support an export transaction; in this
8 subparagraph, "post-shipment loan guarantee" means a guarantee, or
9 portion of a guarantee, that becomes effective after the export contract
10 date that shipment of the related goods or raw materials or provision of
11 the related services begins; or

12 (C) 270 days for loans or parts of loans made for a pre-
13 shipment loan guarantee to support an export transaction; in this
14 subparagraph, "pre-shipment loan guarantee" means a guarantee, or part
15 of a guarantee, that becomes effective before the export contract date that
16 shipment of the related goods or raw materials or provision of the related
17 services begins.

18 * Sec. 16. AS 44.88.545 is amended to read:

19 **Sec. 44.88.545. Limitations of guarantees with respect to borrowers.** The
20 authority may not provide a guarantee

21 (1) of more than \$1,000,000;

22 (2) to an individual borrower that cumulatively, with the outstanding
23 principal balance of other authority guaranteed indebtedness of that borrower,
24 exceeds \$1,000,000 [OF GUARANTEED INDEBTEDNESS].

25 * Sec. 17. AS 44.88.555(b) is amended to read:

26 (b) Amounts received toward satisfaction of a default on a loan guaranteed
27 under AS 44.88.500 - 44.88.599 shall be allocated between the lender and the fund
28 according to the guaranteed percentage of the loan until the principal balance and
29 accrued interest have [HAS] been repaid.

30 * Sec. 18. AS 44.88.560 is amended to read:

31 **Sec. 44.88.560. Powers of the authority.** The authority may

- 1 (1) adopt regulations to implement AS 44.88.500 - 44.88.599;
- 2 (2) establish terms and conditions for loan guarantees and refinancing
- 3 agreements subject to the requirements of AS 44.88.500 - 44.88.599;
- 4 (3) make and execute contracts and other instruments to implement
- 5 AS 44.88.500 - 44.88.599;
- 6 (4) charge reasonable fees that the authority may establish by
- 7 regulation
- 8 [(A) ONE PERCENT OF THE AMOUNT GUARANTEED] for
- 9 the service it provides under AS 44.88.500 - 44.88.599; [AND
- 10 (B) ANY OTHER REASONABLE FEE THAT THE
- 11 AUTHORITY MAY ESTABLISH BY REGULATION;]
- 12 (5) acquire real or personal property by purchase, transfer, or
- 13 foreclosure when the acquisition is necessary to protect the authority's interest in a loan
- 14 or a loan guarantee;
- 15 (6) exercise any other power necessary to implement AS 44.88.500 -
- 16 44.88.599; and
- 17 (7) to the extent the authority considers it to be in its best interest to
- 18 do so, use money to pay expenses relating to the liquidation of collateral securing
- 19 loans guaranteed by the authority.

20 * **Sec. 19.** AS 44.88.599 is amended by adding a new paragraph to read:

- 21 (3) "export transaction" means a contract for the sale of goods, services,
- 22 or raw materials that includes a term that requires the goods, services, or raw
- 23 materials, in whole or in part, to be shipped to or provided in a foreign country.

24 * **Sec. 20.** AS 44.88.900(9) is amended to read:

- 25 (9) "project" means
- 26 (A) a plant or facility used or intended for use in connection
- 27 with making, processing, preparing, transporting, or producing in any manner,
- 28 goods, products, or substances of any kind or nature or in connection with
- 29 developing or utilizing a natural resource, or extracting, smelting, transporting,
- 30 converting, assembling, or producing in any manner, minerals, raw materials,
- 31 chemicals, compounds, alloys, fibers, commodities and materials, products, or

1 substances of any kind or nature;

2 (B) a plant or facility used or intended for use in connection
3 with a business enterprise;

4 (C) commercial activity by a business enterprise;

5 (D) a plant or facility demonstrating technological advances of
6 new methods and procedures and prototype commercial applications for the
7 exploration, development, production, transportation, conversion, and use of
8 energy resources;

9 (E) infrastructure for a new tourism destination facility or for
10 the expansion of a tourism destination facility; **in this subparagraph,**
11 **"tourism destination facility" does not include a hotel or other overnight**
12 **lodging facility;**

13 (F) a plant or facility, other than a plant or facility described in
14 (D) of this paragraph, for the generation, transmission, development,
15 transportation, conversion, or use of energy resources;

16 * **Sec. 21.** AS 44.88.085(h), 44.88.300, 44.88.310, 44.88.320, 44.88.330, 44.88.340,
17 44.88.350, 44.88.360, 44.88.370, and 44.88.390 are repealed.

18 * **Sec. 22.** Section 4, ch. 162, SLA 1988, as amended by sec. 4, ch. 25, SLA 1991, sec. 4,
19 ch. 27, SLA 1993, and sec. 20, ch. 111, SLA 1996, is repealed.

20 * **Sec. 23.** TRANSFER OF ASSETS. Assets of the export insurance account
21 (AS 44.88.390(a)) are transferred to the Alaska Industrial Development and Export Authority
22 revolving fund (AS 44.88.060) on July 1, 1998.

23 * **Sec. 24.** LEGISLATIVE APPROVALS. (a) The Alaska Industrial Development and
24 Export Authority may issue bonds to finance the expansion, improvement, and modification
25 of the existing port facilities owned by the authority with respect to the DeLong Mountain
26 transportation system and to finance the construction of new facilities to be owned by the
27 authority related to the DeLong Mountain transportation system or may finance these projects
28 by other means available to the authority. The principal amount of the bonds and other
29 financing provided by the authority may not exceed \$80,000,000.

30 (b) The Alaska Industrial Development and Export Authority may issue bonds to
31 finance the improvement and expansion of the existing port facilities located at the City of

1 Nome, Alaska, to be owned by the authority, or may finance the project by other means
 2 available to the authority. The principal amount of the bonds and other financing provided
 3 by the authority may not exceed \$30,000,000.

4 (c) The Alaska Industrial Development and Export Authority may issue bonds to
 5 finance the development of a railroad right-of-way within a railroad and utility corridor from
 6 near the village of Healy along the general alignment of the Stampede Trail to the eastern
 7 boundary of Denali National Park, or may finance this project by other means available to the
 8 authority. The principal amount of the bonds and other financing provided by the authority
 9 may not exceed \$28,000,000.

10 (d) The Alaska Industrial Development and Export Authority may issue bonds to
 11 finance the construction and improvement of the Hatcher Pass Ski Resort, phase 1, located in
 12 the Matanuska-Susitna Borough, or may finance the project by other means available to the
 13 authority. The principal amount of the bonds and other financing provided by the authority
 14 may not exceed \$15,000,000.

15 (e) Subsections (a) - (d) of this section constitute the legislative approvals as or if
 16 required by AS 44.88.095(g), as amended by sec. 3 of this Act.

17 * **Sec. 25. RIGHT-OF-WAY FOR RAILROAD AND UTILITY CORRIDOR.** (a) The
 18 Department of Natural Resources shall grant to the Alaska Industrial Development and Export
 19 Authority on the terms the department determines to be appropriate, and as may be more
 20 particularly described by the authority, a right-of-way comprised of the land described under
 21 (b) of this section for the purpose of financing a project under AS 44.88 to enable Kantishna
 22 Holdings, Inc. and its successors and assigns in interest, or Kantishna Holdings, Inc. or its
 23 successors and assigns in interest, to develop a railroad and utility corridor comprised of the
 24 land described under (b) of this section. The right-of-way grant to the authority may not
 25 impair current valid property rights within the land described under (b) of this section.

26 (b) The right-of-way grant to the authority under (a) of this section must run from
 27 near the village of Healy along the general alignment of the Stampede Trail to the eastern
 28 boundary of Denali National Park, and must proceed through the following cadastral units:

- 29 (1) Township 12 South, Range 7 West
 30 Section 7;
 31 (2) Township 12 South, Range 8 West

1 Sections 7, 11, 12, and 14 - 23;

2 (3) Township 12 South, Range 9 West

3 Sections 1 - 18, inclusive;

4 (4) Township 12 South, Range 10 West

5 Sections 1 - 18, inclusive;

6 (5) Township 12 South, Range 11 West

7 Sections 11, 15 - 22

8 Sections 27 - 30: N 1/2.

9 (c) The right-of-way developed for the project described under (a) of this section must
10 be 300 feet in width plus any ancillary land necessary for the development.

11 (d) If the right-of-way developed for the project described under (a) of this section
12 uses less than all of the land contained in the right-of-way granted to the authority under (a)
13 of this section, the authority's right-of-way shall be modified to exclude the land not needed
14 for the project.

15 (e) In this section, "authority" means the Alaska Industrial Development and Export
16 Authority.

17 * **Sec. 26.** Section 22 of this Act takes effect June 30, 1998.

18 * **Sec. 27.** Except as provided in sec. 26 of this Act, this Act takes effect July 1, 1998.