



January 28, 2009

The Honorable Joe Paskvan
Chair, Senate Labor & Commerce Committee
Alaska State Legislature
State Capitol, Room 7
Juneau, Alaska 99801-1182

RE: SB 84 "An Act relating to bonding limitations and confidentiality of records and information of the Alaska Industrial Development and Export Authority; and providing for an effective date."

Dear Senator Paskvan,

On January 26, 2009, SB 84 (Companion Bill HB 90) was introduced by the Governor through the Senate Rules committee and referred to your committee. The goal of this legislation is: to exclude refunding and conduit revenue bonds from AIDEA's \$400 million 12-month bonding limitation; to remove the previous statutory sunset date; to authorize AIDEA to issue most bonds without further legislative approval, without changing the requirement for legislative approval of bonds in excess of \$10 million for development finance projects; to clarify that AIDEA may use proceeds from refunding bonds to finance certain costs and expenses associated with issuing the refunding bonds; and to clarify that certain records and information provided to AIDEA are confidential.

There is a proposed amendment to delete Section 4 of the bill because Section 4 is unnecessary.

We respectfully request you to schedule SB 84 for hearing in your committee, and we urge favorable action on this bill. The related zero-fiscal note is attached. We will be happy to meet with you and other members of the committee to provide any other information you may require. Thank you for considering our request.

Sincerely,

Ted Leonard
Executive Director

Attachments (5)

SENATE BILL NO. 84

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/09

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to bonding limitations and confidentiality of records and information
2 of 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 44.88.095(a) is amended to read:

6 (a) The authority may not issue bonds in a 12-month period in an amount that
7 exceeds \$400,000,000, excluding refunding and conduit revenue bonds.

8 * Sec. 2. AS 44.88.095(g) is amended to read:

9 (g) The [BEFORE JULY 1, 2007, THE] authority may issue bonds in an
10 amount greater than \$10,000,000 to assist in the financing of a development project
11 under AS 44.88.172 - 44.88.177 only if approved by law, excluding refunding
12 bonds. Refunding bonds may be issued without further approval by law in a
13 principal amount sufficient to provide funds for the payment of all bonds to be
14 refunded by them, and, in addition, for the payment of all other amounts that the

1 authority considers appropriate in connection with the refunding, including
 2 expenses incident to the redeeming, calling, retiring, or paying of the outstanding
 3 bonds, the funding of reserves, and the issuance of the refunding bonds [WITH
 4 LEGISLATIVE APPROVAL. BEGINNING JULY 1, 2007, AND THEREAFTER,
 5 WITHOUT PRIOR LEGISLATIVE APPROVAL, THE AUTHORITY MAY NOT
 6 ISSUE BONDS, EXCEPT REFUNDING AND CONDUIT REVENUE BONDS].

7 * **Sec. 3.** AS 44.88.215(a) is amended to read:

8 (a) In order to promote the purposes of AS 44.88, unless the records or
 9 information were a matter of public record before submittal to the authority, the
 10 following records [, FILES,] and information shall be kept confidential if [UPON THE
 11 REQUEST OF] the person supplying the records or information or [UPON THE
 12 REQUEST OF] the project, bond, loan, or guarantee applicant or borrower requests
 13 confidentiality and makes an adequate showing to the executive director of the
 14 authority that the records or information are:

- 15 (1) income tax returns;
- 16 (2) financial statements, profit-and-loss statements, and cash flow
 17 projections, except the information required by the authority to calculate debt service
 18 coverage on the loan;
- 19 (3) financial business plans;
- 20 (4) credit reports from consumer reporting agencies and other credit
 21 information obtained from banks, creditors, or other credit reporting entities;
- 22 (5) trade secrets, including confidential proprietary information
 23 and confidential information about products, pricing, or manufacturing or
 24 business processes;
- 25 (6) appraisals, except the name of the appraiser, the date of the
 26 appraisal, and the fair market value determined for the property appraised;
- 27 (7) market surveys and marketing strategy information; or [AND]
- 28 (8) any information required to be kept confidential by a federal law or
 29 regulation or by state law.

30 * **Sec. 4.** AS 44.88.215(b) is amended to read:

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

1 this section shall be kept confidential unless disclosure is authorized by the person
2 supplying the information and by the project, bond, loan, or guarantee applicant or
3 borrower.

4 * **Sec. 5.** AS 44.88.215(c) is amended to read:

5 (c) The records and information that the executive director of the authority
6 determines [IS DETERMINED] to be confidential under (a) or (b) of this section are
7 [IS] not [A] public records [RECORD] under AS 40.25.110 - 40.25.220.

8 * **Sec. 6.** AS 44.88.900 is amended by adding a new paragraph to read:

9 (14) "trade secret" has the meaning given in AS 45.50.940.

10 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 REVISOR'S INSTRUCTION. The revisor of statutes shall change the catchline of
13 AS 44.88.215 from "Confidentiality of information" to "Confidentiality of records and
14 information."

15 * **Sec. 8.** This Act takes effect July 1, 2009.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): 0043-CED-AIDEA-12-12-08

Dept. Affected: DCCED

Title AIDEA bonding limitations and confidentiality of records

RDU AIDEA (125)

Component AIDEA Operations

Sponsor Request of the Governor

Requester _____ Component Number 1234

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill excludes refunding and conduit bonds from AIDEA's \$400 million 12-month bonding limitation; removes, rather than extends the previous statutory sunset date, the legislative approval requirement for bonds issued including the refunding of development finance projects; this bill does not change the requirement of legislative approval for bonds in excess of \$10 million for development finance projects; clarifies that AIDEA may finance certain costs and expenses associated with refunding bonds of development finance projects with the refunding bond proceeds; amends AIDEA's confidentiality statute to clarify the confidentiality of certain records and the processes for determining confidentiality.

This bill has no operational fiscal impact on AIDEA.

Prepared by: Sara Fisher-Goad, Deputy Director - Operation
 Division Alaska Development and Export Authority
 Approved by: Emil R. Notti, Commissioner
Commerce, Community, and Economic Development

Phone 907-771-3012
 Date/Time 12-12-08 3:00pm
 Date 12/12/2008

SB 84
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.

January 28, 2009

Contact Person for SB 84:

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Witness List:

Ted Leonard
AIDEA Executive Director

Available to provide additional information if necessary:

Valorie Walker
AIDEA Deputy Director – Finance

Teleconference location if necessary:

AIDEA Headquarters - Anchorage

Governor's transmittal letter dated January 23:

Dear President Stevens:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to bonding limitations and confidentiality of records and information of the Alaska Industrial Development and Export Authority (AIDEA).

This bill would accomplish five things. Section 1 of the bill would exclude refunding and conduit revenue bonds from the 12-month bond limit of the Authority. AS 44.88.095(a) precludes AIDEA from issuing more than \$400,000,000 of bonds during any 12-month period. Enactment of the bill would ensure that the 12-month bond limit would never preclude AIDEA from issuing refunding bonds to refinance existing development finance project debt on more favorable terms, or from issuing conduit revenue bonds for which AIDEA has no financial obligation to pay. Conduit revenue bonds are payable by the project developer and related parties, primarily from revenue generated by the project.

Section 2 of the bill would eliminate the sunset of the statutory ability of AIDEA issuing bonds. AS 44.88.095(g) severely limits the ability of AIDEA to issue bonds. Before the July 1, 2007 statutory sunset, AS 44.88.095(g) authorized AIDEA 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 - 44.88.177. That authorization to issue bonds ended on July 1, 2007, with the statutory sunset. AIDEA currently requires legislative approval to issue any bonds, excepting refunding and conduit revenue bonds. Section 2 of the bill would amend AS 44.88.095(g) to eliminate the sunset and enable AIDEA to again issue most bonds without legislative approval. AIDEA 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.

Section 2 of the bill would also expressly clarify in statute that AIDEA may use proceeds from refunding bonds to finance certain costs and expenses associated with issuing the refunding bonds.

01-26-2009

Senate Journal

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AS 44.88.095(g) empowers AIDEA to issue refunding bonds for development projects, 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 bill, if enacted, would enable AIDEA 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 for development projects. 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.

Sections 3 and 4 of the bill would amend AS 44.88.215 to clarify confidential records and information of AIDEA, and processes for determining confidentiality. AS 44.88.215 assists the mission of

AIDEA by assuring borrowers, applicants, and project developers that certain records and information provided to AIDEA will be kept confidential. AIDEA has heard complaints from borrowers, applicants, and project developers because AS 44.88.215 does not clearly establish that AIDEA can retain the confidentiality of certain types of documents. Sections 5 and 6 of the bill attempt to address these concerns by clarifying that certain types of records and information are confidential, defines "trade secrets" using the Alaska Uniform Trade Secrets Act to clarify existing statutory language, and establishes processes for the executive director of AIDEA to determine confidentiality of records and information.

Finally, Section 8 of the bill would make the Act effective on July 1, 2009.

I urge your prompt and favorable action on this measure.

Sincerely,
/s/
Sarah Palin
Governor