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CS FOR HOUSE BILL NO. 357( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PRUITT, Foster, Costello, Olson, Thompson, Petersen, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

"An Act establishing the sustainable energy transmission and supply development program in the Alaska Industrial Development and Export Authority; and relating to the interest rates of the Alaska Industrial Development and Export Authority."

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

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Alaska Sustainable Strategy for Energy Transmission and Supply (ASSETS) Act.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. The legislature intends to appropriate, during fiscal years 2013 and 2014, amounts that total $250,000,000 to carry out the purposes of this Act.

* **Sec. 3.** 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 exist;

(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** [ALASKA] 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** [ALASKA] businesses could benefit from additional financial and technical assistance with respect to the exportation of their products and services;

(7) the [UNITED STATES] 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 [U.S.] 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 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. 4.** AS 44.88.010(b) is amended to read:

(b) It is declared to be the policy of the state, in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, **energy,** export, small business, and business enterprises and the other facilities referred to in (a) of this section by creating the Alaska Industrial Development and Export Authority with the powers, duties, and functions as provided in this chapter.

* **Sec. 5.** AS 44.88.105(d) is amended to read:

(d) The **chair** [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 **chair** [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 **an energy project** [A POWER TRANSMISSION INTERTIE].

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

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

(1) may not exceed $20,000,000; however, in the case of a loan participation for **an energy project** [A POWER TRANSMISSION INTERTIE], the loan participation may exceed $20,000,000 with legislative approval;

(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 10 percent of the principal amount of the loan is retained by the loan originator**, or the loan is for financing improvements in energy efficiency**;

(3) may not be purchased if the loan to be purchased exceeds 75

percent of the appraised value of the collateral offered as security for the loan 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 the loan to be purchased under this paragraph may not exceed the total of loan proceeds used to refinance an existing debt plus the cost of new construction, expansion, or acquisition unless the proceeds from the additional amounts of the loan to be purchased are restricted to uses approved by the authority to finance commercial activity in the state by a business enterprise;

(4) may not be purchased if the participation in the loan to be purchased is for a term longer than the following, except that a loan under (A) or (C) of this paragraph may not 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 in the case of a loan participation for **<u>an energy project</u>** [A POWER TRANSMISSION INTERTIE];

(C) 25 years from the date the loan is made in the case of a loan participation for other projects;

(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 loan documents entered into with the borrower.

* **Sec. 7.** AS 44.88.155(g) is amended to read:

(g) Notwithstanding any other provision of this section, the authority may waive or modify the requirements of this section as it considers appropriate and prudent in order to finance a project if the authority intends to own the project or in order to finance **an energy** [A POWER TRANSMISSION INTERTIE] project.

* **Sec. 8.** AS 44.88.159(a) is amended to read:

(a) The interest rate on **a loan purchased from the proceeds of tax-exempt bonds secured by the sustainable energy transmission and supply development fund (AS 44.88.710) under AS 44.88.700 - 44.88.740 or** a loan participation purchased from the proceeds of tax-exempt bonds or expected by the authority to be purchased from the proceeds of tax-exempt bonds **under AS 44.88.155** shall be determined under the regulations adopted by the authority under AS 44.88.085(g)(2)(C) and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on tax-exempt bonds of the authority plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

* **Sec. 9.** AS 44.88.159(b) is amended to read:

(b) The interest rate on **a loan purchased from the proceeds of taxable bonds secured by the sustainable energy transmission and supply development fund (AS 44.88.710) under AS 44.88.700 - 44.88.740 or** a loan participation purchased from the proceeds of taxable bonds **under AS 44.88.155** or expected by the authority to be purchased from the proceeds of taxable bonds **under AS 44.88.155** shall be determined under the regulations adopted by the authority under AS 44.88.085(g)(2)(C) and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on taxable bonds, plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

* **Sec. 10.** AS 44.88.159(d) is amended to read:

(d) The provisions of this section apply only to a loan participation purchased under AS 44.88.155 - 44.88.159 **or to an energy loan made under AS 44.88.700 - 44.88.740**.

* **Sec. 11.** AS 44.88.159(e) is amended to read:

(e) The interest rate on **an energy loan made under AS 44.88.700 - 44.88.740 or** a loan participation purchased directly from the assets of the authority shall be determined under the regulations adopted by the authority under AS 44.88.085(g)(2)(C) and shall be not less than the total of a percentage as determined by the authority to represent the allocable expenses of operation and costs of loan origination and servicing, plus the cost of funds. In this subsection,

(1) "comparable financial security" means a type or category of financial security the authority identifies in the regulations adopted by the authority under AS 44.88.085(g)(2)(C) that has a term and financial conditions comparable to the term and financial conditions of a loan participation **or an energy loan made under AS 44.88.700 - 44.88.740** and for which a regularly published, nationally recognized market index is available;

(2) "cost of funds" means the earnings, expressed as an annual interest rate, the authority would receive on a comparable financial security, and, for a loan participation **or an energy loan made under AS 44.88.700 - 44.88.740** with a fixed interest rate, the cost of funds must equal or exceed the minimum interest rate;

(3) "minimum interest rate" means the five-year return on investment funds of the authority, expressed as an annual interest rate, achieved by all internal and external investment managers of the authority combined.

* **Sec. 12.** AS 44.88.159(f) is amended to read:

(f) In determining an interest rate under the regulations adopted by the authority under AS 44.88.085(g)(2)(C), the authority may determine to disregard the minimum interest rate required under (a), (b), or (e) of this section for a loan participation purchased by the authority **or an energy loan made under AS 44.88.700 - 44.88.740** to resolve lending limits or reserve restrictions imposed on the financial institution and may instead determine to retain the interest rate existing at the time the authority **makes the loan or** purchases **the authority's loan participation** [A PORTION OF THE LOAN].

* **Sec. 13.** AS 44.88.159(g) is amended to read:

(g) The authority may, in the regulations adopted by the authority under AS 44.88.085(g)(2)(C), establish a program to pay to borrowers of loan participations determined by the authority to meet sufficient job creation, rural development, **renewable energy development,** or other economic development criteria incentive rate rebates of not more than one percent of the interest rate charged on the authority's portion of a loan participation. The following standards apply to the program:

(1) the payment of an incentive rate rebate may reduce the interest rate to a rate that is less than the minimum interest rate required under (a), (b), or (e) of this section;

(2) the authority may not commit to pay an incentive rate rebate for a proposed loan participation if the total of the amount of the proposed loan participation plus the combined outstanding balance of all loan participations for which the authority has committed to pay incentive rate rebates would exceed five percent of the total of the amount of the proposed loan participation plus the combined outstanding balance of all loan participations of the authority;

(3) an incentive rate rebate may not accrue for more than five years after the date the loan participation is purchased;

(4) the authority may establish a separate account for the incentive rate rebate program.

* **Sec. 14.** AS 44.88 is amended by adding new sections to read:

Article 7A. Sustainable Energy Transmission and Supply.

Sec. 44.88.700. Sustainable energy transmission and supply development

program. The sustainable energy transmission and supply development program is created in the authority to promote and provide financing for energy projects in the state to alleviate unemployment and contribute to the state's economic welfare, economic diversity, and economic development.

Sec. 44.88.710. Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund. The Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund is established in the authority. The development fund consists of appropriations made to the development fund by the legislature, money or other assets transferred to the development fund by the authority, and unrestricted loan repayments, interest, or other income earned on loans, investments, or assets of the development fund. The development fund is not an account in the revolving loan fund established in AS 44.88.060, and the authority shall account for the development fund separately from the revolving fund. The authority may create additional accounts in the development fund. Subject to agreements made with the holders of the authority's bonds or with other persons, the authority may transfer amounts in an account in the development fund to another account in the development fund. Amounts deposited in the development fund may be pledged to the payment of bonds of the authority or expended for the purposes of AS 44.88.700 - 44.88.740. The authority has the powers and responsibilities established in AS 37.10.071 with respect to the investment of amounts held in the development fund.

Sec. 44.88.720. Use of fund balance. Subject to the requirements of AS 44.88.710 - 44.88.740, the authority may use money in the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund to assist in the construction, improvement, rehabilitation, and expansion of energy projects.

Sec. 44.88.730. Energy projects; powers and duties of the authority. (a) Subject to the limitations of AS 44.88.740, for energy projects the authority may

(1) use the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund to finance qualified projects, insure project obligations, guarantee loans or bonds, and establish reserves;

(2) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in financing;

(3) defer principal payments or capitalize interest on energy project financing;

(4) subject to AS 36.30.085(e), enter into lease agreements, sales-lease-back agreements, build-operate-transfer, and operate-transfer agreements, or any similar project financing agreement for a qualified energy project;

(5) enter into agreements with government entities for the transfer and control of infrastructure, facilities, rights-of-way, and studies;

(6) contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program; and

(7) subject to AS 44.88.090, borrow money and issue bonds.

(b) The authority shall adopt regulations to implement AS 44.88.700 - 44.88.740, including

(1) an application process for acquiring financing under this section;

(2) qualifications for an energy project applying for financing under this section; and

(3) fiscal controls and accounting procedures for the development fund.

Sec. 44.88.740. Limitations on financing. (a) Unless the authority has obtained legislative approval by law, the authority may not finance or participate in financing of

(1) more than one-third of the capital cost of an energy project; or

(2) a loan guarantee that exceeds $20,000,000.

(b) Financing under AS 44.88.730 is limited to the life of an energy project, which may not be more than

(1) 30 years; or

(2) 50 years for a transmission line or hydroelectric energy project.

* **Sec. 15.** AS 44.88.900 is amended by adding new paragraphs to read:

(15) "development fund" means the sustainable energy transmission and supply development fund created in AS 44.88.710;

(16) "energy project" means a project in the state that involves

(A) transmission, generation, storage, or distribution of heat or electricity;

(B) liquefaction, regasification, distribution, storage, or use of natural gas;

(C) conversion of natural gas, coal, or biomass to liquids;

(D) processing, refining, or upgrading of oil;

(E) distribution or storage of refined petroleum products; or

(F) enhanced oil recovery or carbon sequestration.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. References to "this chapter" in AS 44.88 apply to sec. 14 of this Act and so should not be changed.