

SENATE CS FOR CS FOR HOUSE BILL NO. 526(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 5/2/96

Referred: Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

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; providing an
3 exemption from the procurement code for certain projects of the authority; and
4 providing for an effective date."

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

6 * **Section 1.** AS 36.30.850(b) is amended by adding a new paragraph to read:

7 (34) contracts of the Alaska Industrial Development and Export
8 Authority made with the developer of an integrated transportation and port facility
9 owned by the authority.

10 * **Sec. 2.** AS 44.88 is amended by adding a new section to article 3 to read:

11 Sec. 44.88.088. PAYMENT OF DIVIDEND TO STATE. The authority shall
12 adopt a policy for the payment of a portion of the unrestricted net income of the
13 authority to the general fund as a dividend each fiscal year. The amount of the
14 dividend for a fiscal year may not be less than 40 percent of the net income of the

1 authority for that fiscal year, unless that amount exceeds the total unrestricted net
2 income of the authority for that year, in which case, the amount of the dividend equals
3 the total unrestricted net income of the authority for that fiscal year. The dividend for
4 a fiscal year shall be paid before the end of the immediately following fiscal year. For
5 purposes of applying this section, income of the authority is "net income" or
6 "unrestricted net income" based upon how the income is treated in the latest audited
7 financial statement of the authority.

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

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

14 * **Sec. 4.** AS 44.88.159(a) is amended to read:

15 (a) The interest rate on a loan **participation purchased** [FINANCED] from
16 the proceeds of tax-exempt bonds or expected by the authority to be **purchased**
17 [FINANCED] from the proceeds of tax-exempt bonds is equal to the cost of funds to
18 the authority. In this subsection "cost of funds" means the true interest cost expressed
19 as a rate on tax-exempt bonds of the authority plus an additional percentage as
20 determined by the authority to represent the allocable expenses of operation, costs of
21 issuance, and loan servicing.

22 * **Sec. 5.** AS 44.88.159(b) is amended to read:

23 (b) The interest rate on a loan **participation purchased** [FINANCED] from
24 the proceeds of taxable bonds or expected by the authority to be **purchased**
25 [FINANCED] from the proceeds of taxable bonds is equal to the cost of funds to the
26 authority. In this subsection "cost of funds" means the true interest cost expressed as
27 a rate on taxable bonds, plus an additional percentage as determined by the authority
28 to represent the allocable expenses of operation, costs of issuance, and loan servicing
29 costs.

30 * **Sec. 6.** AS 44.88.159(e) is amended to read:

31 (e) The interest rate on a loan **participation purchased** [FINANCED] directly

1 from the assets of the authority shall be determined under the regulations adopted by
2 the authority under AS 44.88.085(g)(2)(C). **However, the interest rate on a loan**
3 **participation purchased from assets of the authority may not be less than the rate**
4 **determined**

5 **(1) under (a) of this section if the project is of a type that could be**
6 **funded with tax-exempt bonds; or**

7 **(2) under (b) of this section if the project is of a type that could not**
8 **be funded with tax-exempt bonds.**

9 * Sec. 7. AS 44.88.205(b) is amended to read:

10 (b) To further ensure effective budgetary decision making by the legislature,
11 the authority shall

12 (1) annually review the authority's assets to determine whether assets
13 of the authority exceed an amount required to fulfill the purposes of the authority as
14 defined in this chapter; in making its review, [THE MEMBERS OF] the authority shall
15 determine whether, and to what extent, assets in excess of the amount required to
16 fulfill the purposes of the authority during at least the next fiscal year are available
17 without

18 (A) breaching any agreement entered into by the authority;

19 (B) materially impairing the operations or financial integrity of
20 the authority; or

21 (C) materially affecting the ability of the authority to fulfill the
22 authority's purposes set out in AS 44.88.070; and

23 (2) **make available** [PRESENT] to the legislature by January 10 of
24 each year a complete accounting of all assets of the authority and a report of the
25 review and determination made under (1) of this subsection; the accounting shall be
26 audited by the auditor who conducts the audit required by AS 44.88.200 and must
27 include a full description of all loan interest and principal payments and program
28 receipts, including

29 (A) loan commitment fees received by or accrued to the
30 authority during the preceding fiscal year; [,] and

31 (B) all income earned on assets of the authority during that

1 period.

2 * **Sec. 8.** AS 44.88.500(a) is amended to read:

3 (a) [THE BUSINESS ASSISTANCE FUND IS ESTABLISHED IN THE
4 AUTHORITY FROM MONEY IN THE AUTHORITY'S RESERVES DESIGNATED
5 BY THE AUTHORITY FOR THE PURPOSE.] Subject to the requirements of
6 AS 44.88.500 - 44.88.599, the authority may [USE MONEY IN THE FUND]

7 (1) [TO] guarantee new business assistance loans; and

8 (2) [TO] guarantee new business assistance loans made to refinance
9 existing loans.

10 * **Sec. 9.** AS 44.88.530 is amended to read:

11 Sec. 44.88.530. APPLICABILITY OF PROVISIONS. AS 44.88.535 -
12 44.88.560 apply to

13 [(1)] new loan guarantees and refinancing guarantees under
14 AS 44.88.500 [AS 44.88.500(a)(1); AND

15 (2) DEBT REFINANCING GUARANTEES UNDER
16 AS 44.88.500(a)(2)].

17 * **Sec. 10.** AS 44.88.535 is amended to read:

18 Sec. 44.88.535. CONDITIONS OF LOAN GUARANTEE. (a) The authority
19 may guarantee a loan under AS 44.88.500 - 44.88.599 if the

20 (1) loan

21 (A) is commercially reasonable;

22 (B) contains amortization provisions satisfactory to the
23 authority;

24 (C) is secured by adequate collateral; however, the authority
25 may waive on a case-by-case basis the requirement of collateral for a loan
26 guarantee of \$100,000 [\$75,000] or less for which the proposed loan
27 amortization period does not exceed five years, but the ability to waive the
28 requirement of this subparagraph or the grant of a waiver does not prevent the
29 financial institution that holds the loan guaranteed by the authority from
30 requiring reasonable collateral for the loan;

31 (2) net cash flow from the borrower provides adequate coverage for the

1 debt service on the loan;

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

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

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

8 (6) **proceeds of the loan will be used** [IS MADE] to **benefit** a business
9 **conducted in the** [WITH A MAJORITY INTEREST HELD BY] state [RESIDENTS];
10 and

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

12 (b) The authority may provide a guarantee [FROM THE FUND

13 (1)] of **up to** 80 percent of a loan [OF \$50,000 OR LESS] that qualifies
14 under AS 44.88.500 - 44.88.599. **The** [;

15 (2) FOR UP TO 80 PERCENT OF A LOAN OF MORE THAN
16 \$50,000 THAT QUALIFIES UNDER AS 44.88.500 - 44.88.599; THE] ratio of the
17 guarantee to the outstanding principal of the loan may not increase over the term of
18 the loan.

19 (c) The authority may [NOT] guarantee the payment of interest on the
20 guaranteed portion of a loan **in the manner established by the authority by**
21 **regulation and for a period of time not to exceed 90 days.**

22 * **Sec. 11.** AS 44.88.540 is amended to read:

23 Sec. 44.88.540. LIMITATIONS OF GUARANTEES [FROM THE FUND].

24 The authority may not **issue a total of more than** [GUARANTEE]

25 (1) [A TOTAL OF MORE THAN] \$50,000,000 of **loan guarantees**
26 [LOANS];

27 (2) [MORE THAN] \$25,000,000 of **loan guarantees** [LOANS] in
28 which the amount of the loan guarantee exceeds \$500,000.

29 * **Sec. 12.** AS 44.88.550(a) is amended to read:

30 (a) The maximum interest rate **that may be charged by a financial**
31 **institution** on a loan guaranteed by the authority is two and three-quarters percentage

1 points above the prime rate.

2 * **Sec. 13.** AS 44.88.560 is amended to read:

3 Sec. 44.88.560. POWERS OF THE AUTHORITY. The authority may

4 (1) adopt regulations to implement AS 44.88.500 - 44.88.599;

5 (2) establish terms and conditions for loan guarantees and refinancing
6 agreements subject to the requirements of AS 44.88.500 - 44.88.599;

7 (3) make and execute contracts and other instruments to implement
8 AS 44.88.500 - 44.88.599;

9 (4) charge

10 (A) one percent of the amount guaranteed for the service it
11 provides under AS 44.88.500 - 44.88.599; and

12 (B) any other reasonable fee that the authority may establish by
13 regulation;

14 (5) acquire real or personal property by purchase, transfer, or
15 foreclosure when the acquisition is necessary to protect **the authority's** [AN] interest
16 in **a loan or a loan guarantee** [THE FUND];

17 (6) exercise any other power necessary to implement AS 44.88.500 -
18 44.88.599; and

19 (7) to the extent the authority considers it to be in its best interest to
20 do so, use money [IN THE BUSINESS ASSISTANCE FUND] to pay expenses
21 relating to the liquidation of collateral securing loans guaranteed by the **authority**
22 [BUSINESS ASSISTANCE FUND].

23 * **Sec. 14.** AS 44.88.599(2) is amended to read:

24 (2) "prime rate" means the lowest **United States** money center prime
25 rate of interest that is published in the Wall Street Journal.

26 * **Sec. 15.** AS 44.88.900(3) is amended to read:

27 (3) "development project" has the meaning given to "project" in (9)(A)
28 **and (D) - (F)** [, (D), AND (E)] of this section;

29 * **Sec. 16.** AS 44.88.900(7) is repealed and reenacted to read:

30 (7) "loan participation" means the purchase of a portion of a loan from
31 a financial institution if the financial institution has obtained a commitment from the

1 authority to purchase the portion of that loan before the financial institution has
2 disbursed money as part of the loan to the borrower;

3 * **Sec. 17.** AS 44.88.900(9) is amended to read:

4 (9) "project" means

5 (A) a plant or facility used or intended for use in connection
6 with making, processing, preparing, transporting, or producing in any manner,
7 goods, products, or substances of any kind or nature or in connection with
8 developing or utilizing a natural resource, or extracting, smelting, transporting,
9 converting, assembling, or producing in any manner, minerals, raw materials,
10 chemicals, compounds, alloys, fibers, commodities and materials, products, or
11 substances of any kind or nature;

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

14 (C) commercial activity by a **business** [SMALL] enterprise;

15 (D) a plant or facility demonstrating technological advances of
16 new methods and procedures and prototype commercial applications for the
17 exploration, development, production, transportation, conversion, and use of
18 energy resources;

19 (E) infrastructure for a new tourism destination facility or for
20 the expansion of a tourism destination facility;

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

24 * **Sec. 18.** Section 2(a), ch. 27, SLA 1993 is amended to read:

25 Sec. 2. (a) The Alaska Industrial Development and Export Authority may
26 issue bonds to finance the acquisition, design, and construction of a port facility and
27 related loading and conveyor equipment related to the development and operation of
28 a **bulk commodity loading and shipping terminal. The terminal may be located**
29 **anywhere within Cook Inlet. The facility will be** [DIRECT REDUCTION IRON
30 ORE PROCESSING FACILITY FOR USE BY THE MIDREX CORPORATION, TO
31 BE LOCATED AT POINT MACKENZIE AND] owned by the authority. The

1 principal amount of the bonds may not exceed \$50,000,000.

2 * **Sec. 19.** Section 4, ch. 162, SLA 1988, as amended by sec. 4, ch. 25, SLA 1991, and
3 sec. 4, ch. 27, SLA 1993, is amended to read:

4 Sec. 4. AS 44.88.500 - 44.88.599 are repealed July 1, **1998** [1996].

5 * **Sec. 20.** AS 44.88.542, 44.88.599(1), and 44.88.900(14) are repealed.

6 * **Sec. 21.** Section 1, ch. 27, SLA 1993, is repealed.

7 * **Sec. 22.** TRANSITION. (a) On the effective date of this Act, assets of the business
8 assistance fund (AS 44.88.500(a)) shall be transferred to the Alaska Industrial Development
9 and Export Authority revolving fund (AS 44.88.060).

10 (b) The first dividend payment to the state under AS 44.88.088, enacted by sec. 2 of
11 this Act, is due during fiscal year 1997 based upon unrestricted net income of the Alaska
12 Industrial Development and Export Authority for fiscal year 1996.

13 * **Sec. 23.** (a) The Alaska Industrial Development and Export Authority (AIDEA) may
14 issue bonds to finance the expansion, improvement, and modification of the existing port
15 facilities owned by AIDEA with respect to the DeLong Mountain transportation system and
16 to finance the construction of new facilities to be owned by AIDEA related to the DeLong
17 Mountain transportation system, or may finance these projects by other means available to
18 AIDEA. The principal amount of the bonds and other financing provided by AIDEA may not
19 exceed \$85,000,000.

20 (b) Before bonds or notes authorized under (a) of this section may be issued, the
21 Alaska Industrial Development and Export Authority shall comply with AS 44.88.173 and
22 shall incorporate into the final finance plan and agreement for the project the following terms
23 and conditions:

24 (1) Cominco, Ltd., is required to agree in writing that Cominco, Ltd., will pay
25 for all or a portion of the operation and maintenance of facilities constructed, expanded,
26 improved, or modified as part of the project based on the use Cominco Alaska makes of the
27 facilities compared to the use made by others;

28 (2) a toll schedule, which may include adjustments related to the price of zinc,
29 is established for use of facilities constructed, expanded, improved, or modified as part of the
30 project that

31 (A) ensures full repayment of and a reasonable return on the state's

1 entire investment in the project;

2 (B) ensures an additional return on AIDEA's investment made under
3 this section that is commensurate with the return earned on the original DeLong
4 Mountain Transportation System project and the risks assumed by AIDEA;

5 (C) guarantees equitable access to the facilities by all users and
6 potential users, including access to private property and access for travel necessary and
7 related to resource exploration and development for which valid permits have been
8 obtained and travel in support of resource exploration and development;

9 (3) reasonable access to the port and road is guaranteed to all users and
10 potential users.

11 (c) Subsection (a) of this section constitutes the legislative approval required by
12 AS 44.88.095(g).

13 * **Sec. 24.** (a) Upon approval of the Alaska Industrial Development and Export Authority
14 (AIDEA), AIDEA may acquire the Snettisham hydroelectric project and related assets from
15 the Alaska Power Administration.

16 (b) AIDEA may issue bonds to finance the acquisition of the Snettisham hydroelectric
17 project and related assets, or may finance the acquisition by other means available to AIDEA.
18 The principal amount of the bonds and other financing provided by AIDEA to finance the
19 acquisition of the Snettisham hydroelectric project may not exceed \$100,000,000.

20 (c) To secure bonds issued under (b) of this section, AIDEA may establish a capital
21 reserve fund with respect to those bonds under AS 44.88.105. If AIDEA establishes a capital
22 reserve fund as provided in this subsection, the executive director of AIDEA shall annually,
23 no later than January 2 of each year, certify in writing to the governor and the legislature the
24 amount, if any, required to restore the capital reserve fund to the capital reserve fund
25 requirement as defined in AS 44.88.105(h). The legislature may appropriate to AIDEA the
26 amount so certified by the executive director of AIDEA. AIDEA shall deposit the amounts
27 appropriated under this subsection during a fiscal year in the capital reserve fund. Nothing
28 in this section creates a debt or liability of the state.

29 (d) Subsection (b) of this section grants the legislative approval required by
30 AS 44.88.095(g).

31 * **Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).