

HOUSE BILL NO. 386

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/6/98

Referred: Finance

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

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

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

9 (h) The authority may combine, for the purposes of a single offering, bonds
 10 financing more than one project or development project under AS 44.88.155 -
 11 44.88.159 or 44.88.172 - 44.88.177 [, AND BONDS ISSUED TO PROVIDE MONEY
 12 TO FINANCE, GUARANTEE, OR INSURE AN EXPORTING TRANSACTION
 13 UNDER AS 44.88.300 - 44.88.390].

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

15 (g) The [BEFORE JULY 1, 1998, THE] authority may issue bonds in an
 16 amount greater than \$10,000,000 to assist in the financing of a development project
 17 under AS 44.88.172 - 44.88.177 only with legislative approval. [BEGINNING
 18 JULY 1, 1998, AND THEREAFTER, WITHOUT PRIOR LEGISLATIVE
 19 APPROVAL, THE AUTHORITY MAY NOT ISSUE BONDS, EXCEPT
 20 REFUNDING BONDS.]

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

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

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

1 and agreements as to

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

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

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

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

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

1 possession of by agent or otherwise and operating a project or facility and
 2 collecting rents or other consideration and applying the same in accordance
 3 with the trust agreement;

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

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

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

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

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

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

29 (1) may not exceed \$10,000,000; however, in the case of a loan
 30 participation for a power transmission intertie, the loan participation may exceed
 31 \$10,000,000 with legislative approval;

1 (2) may not be purchased unless

2 (A) the project applicant is not, or, if the applicant is not a
3 single proprietorship, all members of the business enterprise or enterprises
4 constituting the project applicant are not, in default on another loan made by
5 the state or by a public corporation of the state; and

6 (B) at least 20 percent of the principal amount of the loan is
7 retained by the loan originator;

8 (3) may not be purchased if the loan to be purchased exceeds [THE
9 COST OF THE PROJECT OR] 75 percent of the appraised value of the **collateral**
10 **offered as security for the loan** [PROJECT, WHICHEVER IS LESS], unless the
11 amount of the loan in excess of this limit is federally insured or guaranteed or is
12 insured by a qualified mortgage insurance company; **however the loan to be**
13 **purchased may not exceed the total of loan proceeds used to refinance an existing**
14 **debt plus the cost of new construction, expansion, or acquisition;**

15 (4) may not be purchased if the participation in the loan to be
16 purchased is for a term longer than three-quarters of the authority's estimate of the life
17 of the **collateral offered as security for the loan** [PROJECT] or 25 years from the
18 date the loan is made, whichever is earlier; however, in the case of a loan participation
19 for a power transmission intertie, the term may not be longer than 50 years from the
20 date the loan is made;

21 (5) may be made only if the participation in the loan to be purchased
22 contains amortization provisions; the amortization provisions

23 (A) must be complete and satisfactory to the authority and
24 require periodic payments by the borrower;

25 (B) may allow the loan originator to amortize the portion of the
26 loan retained by the loan originator using a shorter amortization schedule than
27 the amortization schedule for the portion of the loan held by the authority if

28 (i) in the authority's opinion, the project financed can
29 support the increased debt service; and

30 (ii) the accelerated amortization schedule is required to
31 induce the originator to make the loan;

1 (6) may be made only if the participation in the loan to be purchased
 2 is in the form and contains the terms and provisions with respect to insurance, repairs,
 3 alterations, payment of taxes and assessments, default reserves, delinquency charges,
 4 default remedies, acceleration of maturity, secondary liens, and other matters the
 5 authority prescribes; and

6 (7) may be made only if the participation in the loan to be purchased
 7 is secured as to repayment by a mortgage or other security instrument in the manner
 8 the authority determines is feasible to assure timely repayment under **the** [A] loan
 9 **documents** [AGREEMENT] entered into with the borrower.

10 * **Sec. 7.** AS 48.88.190(c) is amended to read:

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

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

16 **Sec. 44.88.215. Confidentiality of information.** (a) In order to promote the
 17 purposes of AS 44.88, the authority may establish, by regulation, standards and
 18 procedures under which information submitted to or compiled by the authority
 19 regarding the identity, background, finances, marketing plans, trade secrets, or other
 20 proprietary or commercially sensitive information regarding an applicant, borrower,
 21 guarantor, or project is kept confidential. The information that is determined to be
 22 confidential under this section is not a public record under AS 09.25.110 - 09.25.220.

23 (b) The standards and procedures adopted under (a) of this section shall
 24 provide that the following information submitted to or compiled by the authority are
 25 public records under AS 09.25.110 - 09.25.220 after the authority receives a formal
 26 application for the bond, loan, loan participation, or guarantee:

27 (1) the identity of the project, bond, loan, or guarantee applicant and
 28 borrower;

29 (2) the identity of the participating bank;

30 (3) the details of the bond, loan, or guarantee, including the amount of
 31 the loan or guarantee, proposed loan terms, interest rates, bank participation

1 agreements, proposed personal guarantees, the identity and appraised value of proposed
2 collateral, and current loan status;

3 (4) a description of the proposed project, facility, or other anticipated
4 object of the proceeds of the bond, loan, or guarantee;

5 (5) a description of any project, facility, or other property of which the
6 authority is anticipated to become the owner; and

7 (6) a description of the public benefits anticipated to be derived from
8 the project, bond, loan, or guarantee, including the region or regions of this state, or
9 areas outside of this state, that are intended to benefit directly or indirectly.

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

11 **Sec. 44.88.500. Business and export assistance guarantees.** Subject to the
12 requirements of AS 44.88.500 - 44.88.599, the authority may

13 (1) guarantee new business and export assistance loans; and

14 (2) guarantee new business and export assistance loans made to
15 refinance existing loans.

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

17 **Sec. 44.88.502. Effect of guarantee.** (a) A guarantee under AS 44.88.500 -
18 44.88.599 does not create a debt or liability of the state.

19 (b) A guarantee under AS 44.88.500 may not be terminated, canceled, or
20 revoked, except under its terms. A guarantee held by a participating financial
21 institution is presumed to be valid.

22 (c) A guarantee or portion of a guarantee under AS 44.88.500 that relates to
23 an export transaction shall guarantee against commercial and political loss, in whole
24 or in part, of principal and interest. The authority may require the borrower to obtain
25 insurance against some or all of the loss guaranteed under AS 44.88.500.

26 (d) In this section, "political loss" means a loss incurred as a result of a
27 political risk that would be insurable under an export credit insurance policy issued by
28 the Export-Import Bank of the United States, or as a result of any other political risk
29 that is actually insured under insurance the authority requires the borrower to obtain.

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

31 (a) A business enterprise may apply for a new loan guarantee under

1 AS 44.88.500(1) [AS 44.88.500(a)(1)].

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

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

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

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

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

9 (1) unless the refinancing

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

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

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

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

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

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

22 (1) loan

23 (A) is commercially reasonable;

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

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

1 from requiring reasonable collateral for the loan;

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

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

6 (B) **proceeds from the sale of current assets that are**
 7 **collateral for the loan if the sale, or receipt of proceeds from the sale, is an**
 8 **event that creates a payment obligation;**

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

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

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

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

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

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

18 (c) The authority may guarantee the payment of interest on the guaranteed
 19 portion of a loan **as follows:**

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

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

22 (A) 90 days **for loans, or parts of loans, not made to support**
 23 **an export transaction;**

24 (B) **180 days for loans, or parts of loans, made for a post-**
 25 **shipment loan guarantee to support an export transaction; or**

26 (C) **270 days for loans, or parts of loans, made for a pre-**
 27 **shipment loan guarantee to support an export transaction.**

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

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

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

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

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

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

9 * **Sec. 18.** AS 88.560 is amended to read:

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

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

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

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

16 (4) charge **reasonable fees that the authority may establish by**
 17 **regulation**

18 [(A) ONE PERCENT OF THE AMOUNT GUARANTEED] for
 19 the service it provides under AS 44.88.500 - 44.88.599; [AND

20 (B) ANY OTHER REASONABLE FEE THAT THE
 21 AUTHORITY MAY ESTABLISH BY REGULATION;]

22 (5) acquire real or personal property by purchase, transfer, or
 23 foreclosure when the acquisition is necessary to protect the authority's interest in a
 24 loan or a loan guarantee;

25 (6) exercise any other power necessary to implement AS 44.88.500 -
 26 44.88.599; and

27 (7) to the extent the authority considers it to be in its best interest to
 28 do so, use money to pay expenses relating to the liquidation of collateral securing
 29 loans guaranteed by the authority.

30 * **Sec. 19.** AS 44.88.599 is amended by adding new paragraphs to read:

31 (3) "current asset" means property that will be or could be converted

1 into cash in the normal operation of a business within one year.

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

5 (5) "post-shipment loan guarantee" means a guarantee, or portion of a
6 guarantee, that becomes effective after the export contract date that shipment of the
7 related goods or raw materials or provision of the related services begins;

8 (6) "pre-shipment loan guarantee" means a guarantee, or part of a
9 guarantee, that becomes effective before the export contract date that shipment of the
10 related goods or raw materials or provision of the related services begins.

11 * **Sec. 20.** AS 44.88.085(h), 44.88.300, 44.88.310, 44.88.320, 44.88.330, 44.88.340,
12 44.88.350, 44.88.360, 44.88.370, and 44.88.390 are repealed.

13 * **Sec. 21.** Section 4, ch. 162, SLA 1988, as amended by sec. 4, ch. 25, SLA 1991, sec. 4,
14 ch. 27, SLA 1993, and sec. 20, ch.111, SLA 1996, is repealed.

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

18 * **Sec. 23.** Sections 3 and 21 of this Act take effect June 30, 1998.

19 * **Sec. 24.** Except as provided in sec. 23 of this Act, this Act takes effect July 1, 1998.