

**CS FOR HOUSE BILL NO. 386(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/4/98

Referred: Rules

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

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) Before July 1, 2003 [1998], the authority may issue bonds in an amount  
 16 greater than \$10,000,000 to assist in the financing of a development project under  
 17 AS 44.88.172 - 44.88.177 only with legislative approval. Beginning July 1, 2003  
 18 [1998], and thereafter, without prior legislative approval, the authority may not issue  
 19 bonds, except refunding bonds.

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

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

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

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

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

7 (3) may not be purchased if the loan to be purchased exceeds [THE  
 8 COST OF THE PROJECT OR] 75 percent of the appraised value of the **collateral**  
 9 **offered as security for the loan** [PROJECT, WHICHEVER IS LESS,] unless the  
 10 amount of the loan in excess of this limit is federally insured or guaranteed or is  
 11 insured by a qualified mortgage insurance company, **except that in no event may the**  
 12 **loan to be purchased under this paragraph exceed the total of loan proceeds used**  
 13 **to refinance an existing debt plus the cost of new construction, expansion, or**  
 14 **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 44.88.190(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, unless the records were a matter of public record before  
 18 submittal to the authority, the following records, files, and information shall be kept  
 19 confidential upon the request of the person supplying the information or upon the  
 20 request of the project, bond, loan, or guarantee applicant or borrower:

21 (1) income tax returns;

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

25 (3) financial business plans;

26 (4) credit reports from consumer reporting agencies and other credit  
 27 information obtained from banks, creditors, or other credit reporting entities;

28 (5) trade secrets;

29 (6) appraisals, except the name of the appraiser, the date of the  
 30 appraisal, and the fair market value determined for the property appraised;

31 (7) market surveys and marketing strategy information; and

1 (8) any information required to be kept confidential by a federal law  
2 or regulation or by state law.

3 (b) Information compiled by the authority from information described in (a)  
4 of this section shall be kept confidential unless disclosure is authorized by the person  
5 supplying the information and by the project, bond, loan, or guarantee applicant or  
6 borrower.

7 (c) The information that is determined to be confidential under (a) or (b) of  
8 this section is not a public record under AS 09.25.110 - 09.25.220.

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

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

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

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

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

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

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

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

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

28 (2) any other political risk that is actually insured under insurance the  
29 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; in this subparagraph, "current  
 9 asset" means property that will be or could be converted into cash in the  
 10 normal operation of a business within one year;

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

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

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

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

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

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

20 (c) The authority may guarantee the payment of interest on the guaranteed  
 21 portion of a loan

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

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

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

26 (B) 180 days for loans or parts of loans made for a post-  
 27 shipment loan guarantee to support an export transaction; in this  
 28 subparagraph, "post-shipment loan guarantee" means a guarantee, or  
 29 portion of a guarantee, that becomes effective after the export contract  
 30 date that shipment of the related goods or raw materials or provision of  
 31 the related services begins; or

1                                    **(C) 270 days for loans or parts of loans made for a pre-**  
 2                                    **shipment loan guarantee to support an export transaction; in this**  
 3                                    **subparagraph, "pre-shipment loan guarantee" means a guarantee, or part**  
 4                                    **of a guarantee, that becomes effective before the export contract date that**  
 5                                    **shipment of the related goods or raw materials or provision of the related**  
 6                                    **services begins.**

7        \* **Sec. 16.** AS 44.88.545 is amended to read:

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

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

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

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

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

19        \* **Sec. 18.** AS 44.88.560 is amended to read:

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

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

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

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

26                                    (4) charge **reasonable fees that the authority may establish by**  
 27                                    **regulation**

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

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

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

4 (6) exercise any other power necessary to implement AS 44.88.500 -  
5 44.88.599; and

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

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

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

13 \* **Sec. 20.** AS 44.88.085(h), 44.88.300, 44.88.310, 44.88.320, 44.88.330, 44.88.340,  
14 44.88.350, 44.88.360, 44.88.370, and 44.88.390 are repealed.

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

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

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

27 (b) The Alaska Industrial Development and Export Authority may issue bonds to  
28 finance the improvement and expansion of the existing port facilities located at the City of  
29 Nome, Alaska, to be owned by the authority, or may finance the project by other means  
30 available to the authority. The principal amount of the bonds and other financing provided  
31 by the authority may not exceed \$30,000,000.

1 (c) Subsections (a) and (b) of this section constitute the legislative approvals required  
2 by AS 44.88.095(g).

3 \* **Sec. 24.** Section 21 of this Act takes effect June 30, 1998.

4 \* **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect July 1, 1998.