

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/24/12

Referred: Finance

Sponsor(s): SENATORS MCGUIRE, Davis, Giessel, Menard, Wagoner, Dyson, Huggins, Ellis, Thomas, Meyer, Stedman, Wielechowski, Egan, Hoffman

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

11 LEGISLATIVE INTENT. The legislature intends to appropriate, during fiscal years
12 2013 and 2014, amounts that total \$250,000,000 to carry out the purposes of this Act.

13 * **Sec. 3.** AS 44.88.010(a) is amended to read:

14 (a) The legislature finds, determines, and declares that

1 (1) there exist areas of the state in which seasonal and nonseasonal
2 unemployment exist;

3 (2) this unemployment is a serious menace to the health, safety, and
4 general welfare, not only to the people in those areas, but also to the people of the
5 entire state;

6 (3) the state lacks the basic manufacturing, industrial, **energy**, export,
7 small business, and business enterprises and the other facilities referred to in this
8 subsection necessary to permit adequate development of its natural resources and the
9 balanced growth of its economy;

10 (4) the establishment and expansion of industrial, manufacturing,
11 **energy**, export, small business, and business enterprises in **the state** [ALASKA] and
12 the other facilities referred to in this subsection are essential to the development of the
13 natural resources and the long-term economic growth of the state, and will directly and
14 indirectly alleviate unemployment in the state;

15 (5) the expansion of export trade is vital to the health and growth of the
16 state's economy;

17 (6) many **state** [ALASKA] businesses could benefit from additional
18 financial and technical assistance with respect to the exportation of their products and
19 services;

20 (7) the [UNITED STATES] Export-Import Bank **of the United States**
21 has been mandated by the Export-Import Bank Act Amendments of 1983 to provide
22 technical assistance and export financing support to small businesses in cooperation
23 with state export finance agencies;

24 (8) Alaska-based exporters can be effectively assisted through the
25 establishment, as part of the Alaska Industrial Development and Export Authority, of
26 an export financing program designed to work with the [U.S.] Export-Import Bank **of**
27 **the United States** and other federal, state, and private institutions;

28 (9) the achievement of the goal of full employment, and of
29 establishment and continuing operation and development of industrial, manufacturing,
30 **energy**, export, small business, and business enterprises in the state will be accelerated
31 and facilitated by the creation of an instrumentality of the state with powers to incur

1 debt, to own and operate facilities, to make and insure loans to finance and to assist
 2 private lenders to make loans to finance the establishment, operation, and development
 3 of industrial, manufacturing, energy, export, small business, and business enterprises;

4 (10) it is in the public interest to promote the prosperity and general
 5 welfare of all citizens of the state by

6 (A) stimulating commercial and industrial growth and
 7 expansion by encouraging an increase of private investment by banks,
 8 investment houses, insurance companies, and other financial institutions,
 9 including pension and retirement funds, to help satisfy the need for economic
 10 expansion;

11 (B) encouraging the production of raw materials and goods for
 12 export, the expansion of exports and raw materials and goods, and the
 13 rendering of services abroad by residents of the state through the establishment
 14 of a program that provides financial assistance in cooperation with federal,
 15 state, and private institutions for these purposes in the form provided in this
 16 chapter;

17 (C) creating the Alaska Industrial Development and Export
 18 Authority with the powers necessary to accomplish the objectives stated in this
 19 paragraph, including the power to issue taxable and tax-exempt bonds and to
 20 acquire ownership interests in projects as provided in this chapter;

21 (11) it is in the state's interest to import private capital to create new
 22 economic activity which would not otherwise take place in the state.

23 * **Sec. 4.** AS 44.88.010(b) is amended to read:

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

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

2 (d) The **chair** [CHAIRMAN] of the authority shall annually, **not** [NO] later
 3 than January 2, certify in writing to the governor and the legislature the amount, if
 4 any, required to restore a capital reserve fund to the capital reserve fund requirement.
 5 The legislature may appropriate to the authority the amount certified by the **chair**
 6 [CHAIRMAN] of the authority. The authority shall deposit the amounts appropriated
 7 under this subsection during a fiscal year in the proper capital reserve fund. Nothing in
 8 this section creates a debt or liability of the state. In this subsection, "capital reserve
 9 fund" means a capital reserve fund that

10 (1) is created under this section on or before January 1, 1989;

11 (2) secures refunding bonds if the refunding bonds are issued to refund
 12 bonds that are secured by a capital reserve fund created under this section on or before
 13 January 1, 1989; or

14 (3) secures bonds issued on or after August 11, 1993, for **an energy**
 15 **project** [A POWER TRANSMISSION INTERTIE].

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

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

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

23 (2) may not be purchased unless

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

28 (B) at least 10 percent of the principal amount of the loan is
 29 retained by the loan originator, **or the loan is for financing improvements in**
 30 **energy efficiency**;

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

1 percent of the appraised value of the collateral offered as security for the loan unless
 2 the amount of the loan in excess of this limit is federally insured or guaranteed or is
 3 insured by a qualified mortgage insurance company, except that the loan to be
 4 purchased under this paragraph may not exceed the total of loan proceeds used to
 5 refinance an existing debt plus the cost of new construction, expansion, or acquisition
 6 unless the proceeds from the additional amounts of the loan to be purchased are
 7 restricted to uses approved by the authority to finance commercial activity in the state
 8 by a business enterprise;

9 (4) may not be purchased if the participation in the loan to be
 10 purchased is for a term longer than the following, except that a loan under (A) or (C)
 11 of this paragraph may not have a term longer than three-quarters of the authority's
 12 estimate of the life of the collateral offered as security for the loan:

13 (A) 40 years from the date the loan is made in the case of a
 14 loan participation for a project described in AS 44.88.900(9)(E);

15 (B) 50 years from the date the loan is made in the case of a loan
 16 participation for an energy project [A POWER TRANSMISSION
 17 INTERTIE];

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

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

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

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

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

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

31 (6) may be made only if the participation in the loan to be purchased is

1 in the form and contains the terms and provisions with respect to insurance, repairs,
 2 alterations, payment of taxes and assessments, default reserves, delinquency charges,
 3 default remedies, acceleration of maturity, secondary liens, and other matters the
 4 authority prescribes; and

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

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

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

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

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

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

27 (b) The interest rate on **a loan purchased from the proceeds of taxable**
 28 **bonds secured by the sustainable energy transmission and supply development**
 29 **fund (AS 44.88.710) under AS 44.88.700 - 44.88.740 or** a loan participation
 30 purchased from the proceeds of taxable bonds **under AS 44.88.155** or expected by the
 31 authority to be purchased from the proceeds of taxable bonds **under AS 44.88.155**

1 shall be determined under the regulations adopted by the authority under
 2 AS 44.88.085(g)(2)(C) and shall be not less than the cost of funds to the authority. In
 3 this subsection, "cost of funds" means the true interest cost expressed as a rate on
 4 taxable bonds, plus an additional percentage as determined by the authority to
 5 represent the allocable expenses of operation, costs of issuance, and loan servicing
 6 costs.

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

8 (d) The provisions of this section apply only to a loan participation purchased
 9 under AS 44.88.155 - 44.88.159 **or to an energy loan made under AS 44.88.700 -**
 10 **44.88.740.**

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

12 (e) The interest rate on **an energy loan made under AS 44.88.700 -**
 13 **44.88.740 or** a loan participation purchased directly from the assets of the authority
 14 shall be determined under the regulations adopted by the authority under
 15 AS 44.88.085(g)(2)(C) and shall be not less than the total of a percentage as
 16 determined by the authority to represent the allocable expenses of operation and costs
 17 of loan origination and servicing, plus the cost of funds. In this subsection,

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

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

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

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

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

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

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

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

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

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

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

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

30 **Article 7A. Sustainable Energy Transmission and Supply.**

31 **Sec. 44.88.700. Sustainable energy transmission and supply development**

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

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

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

27 **Sec. 44.88.730. Energy projects; powers and duties of the authority.** (a)
28 Subject to the limitations of AS 44.88.740, for energy projects the authority may
29 (1) use the Alaska Industrial Development and Export Authority
30 sustainable energy transmission and supply development fund to finance qualified
31 projects, insure project obligations, guarantee loans or bonds, and establish reserves;

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

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

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

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

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

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

15 (b) The authority shall adopt regulations to implement AS 44.88.700 -
 16 44.88.740, including

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

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

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

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

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

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

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

29 (1) 30 years; or

30 (2) 50 years for a transmission line or hydroelectric energy project.

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

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

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

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

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

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

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

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

11 (F) enhanced oil recovery or carbon sequestration.

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

14 REVISOR'S INSTRUCTION. References to "this chapter" in AS 44.88 apply to sec.
15 14 of this Act and so should not be changed.