

**CS FOR SENATE BILL NO. 66(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/18/11

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act creating a new markets tax credit assistance guarantee and loan program**  
2 **within the Alaska Industrial Development and Export Authority and relating to the**  
3 **program; and providing for an effective date."**

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

5 \* **Section 1.** AS 44.88.155(c) is amended to read:

6 (c) Money and other assets of the enterprise development account may be used  
7 to secure bonds of the authority issued to finance the purchase of loans for projects,  
8 [OR MAY BE USED] to purchase participation in the loans for projects, **or to fund a**  
9 **new markets tax credit assistance guarantee or loan under AS 44.88.700 -**  
10 **44.88.799.**

11 \* **Sec. 2.** AS 44.88 is amended by adding new sections to read:

12 **Article 8A. New Markets Tax Credit Assistance Guarantee and Loan Program.**

13 **Sec. 44.88.700. New markets tax credit assistance guarantees and loans. (a)**

14 Subject to the requirements of AS 44.88.700 - 44.88.799, the authority may

1 (1) guarantee new markets tax credit assistance leveraged loans; and

2 (2) make new markets tax credit assistance leveraged loans.

3 (b) New markets tax credit assistance guarantees and loans are limited to  
4 projects in the state for which new markets tax credits are allocated by a qualified  
5 community development entity.

6 (c) The authority shall determine that the project will promote economic  
7 development in the state before guaranteeing a leveraged loan or making a leveraged  
8 loan under AS 44.88.700 - 44.88.799.

9 (d) The authority may agree to restrictions and guidelines arising from the  
10 federal new markets tax credit program, including, for the seven-year tax credit period  
11 of the new markets tax credit project,

12 (1) that interest only payments be made on the leveraged loan;

13 (2) that substantially all capital remain invested in the project;

14 (3) that acceptable collateral may be an interest in a qualified  
15 community development entity or an investment entity rather than in the project; and

16 (4) substantive restrictions on foreclosure of collateral.

17 **Sec. 44.88.710. Effect of guarantee.** (a) A guarantee under AS 44.88.700 -  
18 44.88.799 does not create a debt or liability of the state.

19 (b) A guarantee under AS 44.88.700(a)(1) may not be terminated, cancelled,  
20 or revoked except under its terms. A guarantee held by a participating financial  
21 institution is presumed to be valid.

22 **Sec. 44.88.715. Qualifications of applicant for new loan guarantee.** (a) A  
23 business enterprise that qualifies for new markets tax credits for a project may apply  
24 for a loan guarantee under AS 44.88.700(a)(1).

25 (b) The authority may establish additional applicant qualifications by  
26 regulation. Those qualifications may vary depending on the type of business in which  
27 the applicant is engaged.

28 **Sec. 44.88.720. Application for loan guarantee.** An applicant for a loan  
29 guarantee shall provide information that the authority may require by regulation. The  
30 authority may require submission of an economic benefit analysis prepared by a  
31 person acceptable to the authority.

1           **Sec. 44.88.730. Conditions of loan guarantee.** (a) The authority may  
2 guarantee a loan under AS 44.88.700 - 44.88.799 if the

3                   (1) loan

4                           (A) is commercially reasonable;

5                           (B) contains payment provisions satisfactory to the authority;

6           and

7                           (C) is secured by acceptable collateral;

8                   (2) project

9                           (A) is allocated new markets tax credits by a qualified  
10 community development entity;

11                           (B) promotes economic development in the state; and

12                           (C) is not a housing project;

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

15                           (A) net cash flow of the borrower;

16                           (B) proceeds from the sale of current assets that are collateral  
17 for the loan if the sale or receipt of proceeds from the sale is an event that  
18 creates a payment obligation; in this subparagraph, "current asset" means  
19 property that will be or could be converted into cash within one year in the  
20 normal operation of a business;

21                   (4) term of the loan does not exceed 10 years;

22                   (5) loan is originated with and serviced by a financial institution.

23           (b) The authority may provide a guarantee for up to 100 percent of a loan that  
24 qualifies under AS 44.88.700 - 44.88.799.

25           **Sec. 44.88.740. Servicing of guaranteed loans.** (a) The financial institution  
26 that holds a loan guaranteed by the authority under AS 44.88.700 - 44.88.799 shall

27                   (1) service the loan;

28                   (2) exercise diligence in collecting amounts due under the loan; and

29                   (3) comply with all requirements of the loan guarantee agreement.

30           (b) Amounts received toward satisfaction of a default on a loan guaranteed  
31 under AS 44.88.700 - 44.88.799 shall be allocated between the lender and the

1 revolving fund according to the guaranteed percentage of the loan until the principal  
2 balance and accrued interest have been repaid.

3 **Sec. 44.88.750. New markets tax credit assistance leveraged loan.** (a) The  
4 authority may make a new markets tax credit assistance leveraged loan under  
5 AS 44.88.700(a)(2) only if the authority determines that an applicant for a new  
6 markets tax credit assistance guarantee is unable to obtain a leveraged loan from a  
7 financial institution under commercially reasonable terms. Before making the  
8 determination, the authority shall require the applicant to document that at least two  
9 financial institutions have reviewed an application for a leveraged loan for which the  
10 authority would issue a new markets tax credit assistance guarantee for the loan, and  
11 either rejected the application or approved the application subject to terms the  
12 authority determines are commercially unreasonable. The authority may require the  
13 applicant to submit applications for a leveraged loan to one or more additional  
14 financial institutions.

15 (b) Subject to (a) of this section, the authority may make a new markets tax  
16 credit assistance leveraged loan under AS 44.88.700 - 44.88.799 to the applicant to  
17 finance a portion of the project using funds from the enterprise development account  
18 (AS 44.88.155).

19 **Sec. 44.88.760. Limitations of guarantees and leveraged loans.** The  
20 combined outstanding principal balance of loan guarantees and loans under  
21 AS 44.88.700 - 44.88.799 may not exceed \$40,000,000.

22 **Sec. 44.88.770. Powers of the authority.** The authority may

- 23 (1) adopt regulations to implement AS 44.88.700 - 44.88.799;
- 24 (2) establish terms and conditions for loan guarantees and loans,  
25 subject to the requirements of AS 44.88.700 - 44.88.799;
- 26 (3) make and execute contracts and other instruments to implement  
27 AS 44.88.700 - 44.88.799;
- 28 (4) charge reasonable fees and interest rates that the authority may  
29 establish by regulation for the service it provides under AS 44.88.700 - 44.88.799;
- 30 (5) acquire real or personal property by purchase, transfer, or  
31 foreclosure when the acquisition is necessary to protect the authority's interest in a

1 loan or a loan guarantee;

2 (6) exercise any other power necessary to implement AS 44.88.700 -  
3 44.88.799; and

4 (7) to the extent the authority considers it to be in its best interest to do  
5 so, use money to pay expenses relating to the liquidation of collateral securing loans  
6 guaranteed or made by the authority under AS 44.88.700 - 44.88.799.

7 **Sec. 44.88.799. Definitions.** In AS 44.88.700 - 44.88.799,

8 (1) "federal new markets tax credit program" means the program  
9 administered by the Community Development Financial Institutions Fund that arises  
10 out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;

11 (2) "new markets tax credit" means tax credits that arise out of 26  
12 U.S.C. 45D (Internal Revenue Code) and related regulations;

13 (3) "new markets tax credit assistance leveraged loan" and "leveraged  
14 loan" mean a loan made into an investment entity, the proceeds of which, together  
15 with other funds, including tax credit equity, are invested as a qualified equity  
16 investment in a qualified community development entity that will use the funds to  
17 finance a project for which the entity allocates new markets tax credits;

18 (4) "qualified community development entity" has the meaning given  
19 in 26 U.S.C. 45D(c) (Internal Revenue Code) and related regulations;

20 (5) "qualified equity investment" means an equity investment in a  
21 qualified community development entity that satisfies the conditions described in 26  
22 U.S.C. 45D(b) (Internal Revenue Code) and related regulations.

23 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).