

HOUSE CS FOR CS FOR SENATE BILL NO. 66(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/14/12

Referred: Rules

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; extending a mandatory exemption from municipal property taxes for certain
4 assets of the Alaska Industrial Development and Export Authority; relating to an Alaska
5 Energy Authority loan; providing for an effective date by amending the effective dates
6 of sec. 2, ch. 10, SLA 2010, and sec. 2, ch. 71, SLA 2010; and providing for an effective
7 date."

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

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

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

44.88.799.

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

Article 8A. New Markets Tax Credit Assistance Guarantee and Loan Program.**Sec. 44.88.700. New markets tax credit assistance guarantees and loans. (a)**

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

- (1) guarantee new markets tax credit assistance leveraged loans; and
- (2) make new markets tax credit assistance leveraged loans.

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

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

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

- (1) that interest only payments be made on the leveraged loan;
- (2) that substantially all capital remain invested in the project;
- (3) that acceptable collateral may be an interest in a qualified community development entity or an investment entity rather than in the project; and
- (4) substantive restrictions on foreclosure of collateral.

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

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

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

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

1 the applicant is engaged.

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

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

8 (1) loan

9 (A) is commercially reasonable;

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

11 and

12 (C) is secured by acceptable collateral;

13 (2) project

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

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

17 (C) is not a housing project;

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

20 (A) net cash flow of the borrower;

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

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

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

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

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

- 1 (1) service the loan;
- 2 (2) exercise diligence in collecting amounts due under the loan; and
- 3 (3) comply with all requirements of the loan guarantee agreement.

4 (b) Amounts received toward satisfaction of a default on a loan guaranteed
5 under AS 44.88.700 - 44.88.799 shall be allocated between the lender and the
6 revolving fund according to the guaranteed percentage of the loan until the principal
7 balance and accrued interest have been repaid.

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

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

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

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

- 28 (1) adopt regulations to implement AS 44.88.700 - 44.88.799;
- 29 (2) establish terms and conditions for loan guarantees and loans,
30 subject to the requirements of AS 44.88.700 - 44.88.799;
- 31 (3) make and execute contracts and other instruments to implement

1 AS 44.88.700 - 44.88.799;

2 (4) charge reasonable fees and interest rates that the authority may
3 establish by regulation for the service it provides under AS 44.88.700 - 44.88.799;

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

7 (6) exercise any other power necessary to implement AS 44.88.700 -
8 44.88.799; and

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

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

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

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

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

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

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

28 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **LEGISLATIVE APPROVAL OF LOAN FROM THE POWER PROJECT FUND.**
31 Provided the Alaska Energy Authority approves a loan for the Metlakatla Power and Light,

1 Triangle Lake hydroelectric project, the legislature authorizes the Alaska Energy Authority to
2 loan an amount not to exceed \$26,000,000 from the power project fund (AS 42.45.010) for
3 the Metlakatla Power and Light, Triangle Lake hydroelectric project. This section constitutes
4 legislative approval under AS 42.45.010(j) for a loan from the fund that exceeds \$5,000,000.

5 * **Sec. 4.** Section 8, ch. 10, SLA 2010, is amended to read:

6 Sec. 8. Section 2, ch. 10, SLA 2010, [OF THIS ACT] takes effect
7 November 30, 2017 [2012].

8 * **Sec. 5.** Section 10, ch. 71, SLA 2010, is amended to read:

9 Sec. 10. Section 2, ch. 71, SLA 2010, [OF THIS ACT] takes effect
10 November 30, 2017 [2012].

11 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).