

Amended: 5/5/89

go0799hH

Offered: 5/4/89

Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 123 (Judiciary) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the AIDEA policy for financial  
7 support to certain entities and making technical  
8 changes in its statutes; defining accounts and limit-  
9 ing transfers between accounts created in, and apply-  
10 ing laws relating to the investment of surplus state  
11 money to investments of, the AIDEA revolving fund;  
12 prohibiting joint ownership of projects; setting  
13 limits on bonding, including requiring local approval  
14 of certain projects, requiring bonding, requiring  
15 public hearings, and prohibiting after January 1,  
16 1991, the issuance of bonds, other than refunding  
17 bonds, without prior legislative approval; relating  
18 to capital reserve funds; deleting certain accounts  
19 of the authority; limiting certain loans purchased  
20 with assets or proceeds of bonds secured by assets of  
21 the enterprise development account to \$10,000,000 and  
22 to where 20 percent of the principal is retained by  
23 the originator while the loan is outstanding; relat-  
24 ing to delinquent loans; establishing limitations on  
25 the economic development account; limiting loan guar-  
26 antees to borrowers to \$1,000,000 and no more than 80  
27 percent of the loan guaranteed; authorizing payment  
28 of certain liquidation costs; including transporta-  
29 tion and development projects under the definition of

1 'project'; repealing various AIDEA provisions; and  
2 providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 44.88.010(a)(9) is amended to read:

5 (9) the achievement of the goal of full employment, and of  
6 establishment and continuing operation and development of industrial,  
7 manufacturing, export, small business, and business enterprises in the  
8 state [, INCLUDING, WITHOUT LIMITATION, FACILITIES FOR TRANSPORTATION,  
9 FACILITIES FOR POLLUTION CONTROL AND WASTE DISPOSAL, FACILITIES FOR  
10 THE LOCAL FURNISHING OF GAS, FACILITIES FOR WATER, FACILITIES FOR  
11 INDUSTRIAL PARKS, MASS COMMUTING VEHICLES, FACILITIES FOR LOCAL DIS-  
12 TRICT HEATING OR COOLING, PARKING FACILITIES, OR A STORAGE OR TRAINING  
13 FACILITY RELATING TO A PLANT OR FACILITY,] will be accelerated and  
14 facilitated by the creation of an instrumentality of the state with  
15 powers to incur debt, to own and operate facilities, to make and  
16 insure loans to finance [,] and to assist private lenders to make  
17 loans to finance [,] the establishment, operation, and development of  
18 industrial, manufacturing, export, small business, and business enter-  
19 prises [, INCLUDING, WITHOUT LIMITATION, FACILITIES FOR TRANSPORTA-  
20 TION, FACILITIES FOR POLLUTION CONTROL AND WASTE DISPOSAL, FACILITIES  
21 FOR THE LOCAL FURNISHING OF GAS, FACILITIES FOR WATER, FACILITIES FOR  
22 INDUSTRIAL PARKS, MASS COMMUTING VEHICLES, FACILITIES FOR LOCAL DIS-  
23 TRICT HEATING OR COOLING, PARKING FACILITIES, OR A STORAGE OR TRAINING  
24 FACILITY RELATING TO A PLANT OR FACILITY];

25 \* Sec. 2. AS 44.88.010(c) is amended to read:

26 (c) It is further declared to be the policy of the state, in the  
27 interests of promoting the health, security, and general welfare of  
28 all the people of the state, and a public purpose of the state, to  
29 accomplish the objectives set out in (b) of this section through the

1 provision of financial support to a [IN COOPERATION WITH] federal,  
2 state, municipal, or [AND] private entity [INSTITUTIONS FOR THE PUR-  
3 POSE OF INCREASING THE EXPORT OF ALASKA GOODS, TALENT, RAW MATERIALS,  
4 AND SERVICES].

5 \* Sec. 3. AS 44.88.060 is amended to read:

6 Sec. 44.88.060. ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AU-  
7 THORITY REVOLVING FUND. The Alaska Industrial Development and Export  
8 Authority revolving fund is established in the authority. The revolv-  
9 ing fund consists of appropriations made to the revolving fund by the  
10 legislature, money or other assets transferred to the revolving fund  
11 by the authority, and unrestricted payments on loans made or purchased  
12 by the authority. Unless otherwise expressly stated, the accounts  
13 created in this chapter are accounts in the revolving fund. The  
14 authority may create additional accounts either in the revolving fund  
15 or outside the revolving fund. Subject to agreements made with the  
16 holders of the authority's bonds or with other persons, the authority  
17 may transfer amounts in an account in the revolving fund to another  
18 account in the revolving fund. Amounts deposited in the revolving  
19 fund may be pledged to the payment of bonds of the authority or ex-  
20 pended for the purposes of the authority under this chapter. The  
21 authority has the powers and responsibilities established in AS 37.-  
22 10.071 with respect to the investment of amounts held in the revolving  
23 fund.

24 \* Sec. 4. AS 44.88.080(14) is amended to read:

25 (14) to acquire, manage, and operate projects as the au-  
26 thority considers necessary or appropriate to serve a public purpose  
27 or to exercise its powers under this chapter;

28 \* Sec. 5. AS 44.88 is amended by adding a new section to read:

29 Sec. 44.88.082. JOINT OWNERSHIP PROHIBITED. The authority may

1 not enter into an agreement for joint ownership of a project.

2 \* Sec. 6. AS 44.88.090(a) is amended to read:

3 (a) The [SUBJECT TO (g) OF THIS SECTION, THE] authority may  
4 borrow money and may issue bonds, including but not limited to bonds  
5 on which the principal and interest are payable

6 (1) exclusively from the income and receipts or other money  
7 derived from the project or development project financed with the  
8 proceeds of the bonds or derived from the exporter or exporting trans-  
9 action financed, guaranteed, or insured with the proceeds of the  
10 bonds;

11 (2) exclusively from the income and receipts or other money  
12 derived from designated projects or development projects or other  
13 sources whether or not they are financed, insured, or guaranteed in  
14 whole or in part with the proceeds of the bonds; or

15 (3) from its income and receipts or other assets generally,  
16 or a designated part or parts of them.

17 \* Sec. 7. AS 44.88 is amended by adding a new section to read:

18 Sec. 44.88.095. BONDING LIMITATIONS. (a) The authority may not  
19 issue bonds in a 12-month period in an amount that exceeds  
20 \$400,000,000.

21 (b) The authority may not issue revenue bonds, other than re-  
22 funding bonds, to purchase a loan for a project under AS 44.88.155 -  
23 44.88.159, to acquire a development project under AS 44.88.172 -  
24 44.88.177 or to provide money to finance, guarantee, or insure an  
25 exporting transaction under AS 44.88.300 - 44.88.390 in an amount  
26 greater than \$50,000,000 during any 12-month period unless the issu-  
27 ance is included separately in the estimates required in the report of  
28 the authority under AS 44.88.210(b) and unless the legislature, by  
29 law, approves the issuance.

1           (c) Before entering into a lease or other agreement under  
2 AS 44.88.090(e) regarding a project for which the authority agrees to  
3 issue bonds in an amount in excess of \$6,000,000, there must be filed  
4 with the authority a certified copy of a resolution of the governing  
5 body of the political subdivision of the state, if any, in which the  
6 project is to be located, consenting to the location of the project.  
7 The consent need only refer to the general nature of the project  
8 ultimately to be acquired, as set out in a request of the proposed  
9 project applicant. Before entering into a lease or other agreement  
10 under AS 44.88.090(e) regarding a project, the authority shall find,  
11 on the basis of all information reasonably available to it, that

12           (1) the project and its development under this chapter will  
13 be economically advantageous to the state and the general public  
14 welfare and will contribute to the economic growth of the state;

15           (2) the project applicant is financially responsible;

16           (3) provision to meet increased demand upon public facili-  
17 ties that might result from the project is reasonably assured; and

18           (4) the project will provide, or retain, employment reason-  
19 ably related to the amount of the financing by the authority, con-  
20 sidering the amount of investment per employee for comparable facil-  
21 ities and other relevant factors.

22           (d) Before adopting a resolution approving a project to be  
23 financed under AS 44.88.172 for which bonds must be issued, the au-  
24 thority shall, on the basis of all information reasonably available to  
25 it, make findings, with respect to the project, as described in  
26 (c)(1) - (4) of this section, and also find that

27           (1) the project is economically and financially feasible  
28 and able to produce revenue adequate to repay the bonds or loans with  
29 which it is financed;

1           (2) the project complies with applicable law; and

2           (3) issuance of the bonds is not expected to adversely  
3 affect the ability of the state or any political subdivision of the  
4 state to market other bonds.

5           (e) Before entering into an agreement to finance or to develop a  
6 proposed project financed under AS 44.88.172 for which bonds must be  
7 issued, the authority shall obtain the approval of each Regional  
8 Resource Advisory Council appointed under AS 44.88.174 or municipality  
9 in the area in which the proposed project is to be located. Approval  
10 under this subsection must be evidenced by a certified copy of a  
11 resolution of the council or of the governing body of the municipal-  
12 ity. Before considering a resolution regarding the approval or re-  
13 jection of the development or financing of a proposed project under  
14 this subsection, a Regional Resource Advisory Council shall conduct a  
15 public hearing in the region. If a proposed project is located in a  
16 municipality, the governing body of the municipality shall conduct a  
17 hearing on the proposed project.

18           (f) Before entering into an agreement to finance or to develop a  
19 proposed project financed under AS 44.88.172 for which bonds must be  
20 issued, the authority shall compile and make available to the public a  
21 document that summarizes the projected economic, social, and environ-  
22 mental effects of the project; and, in conjunction with the Department  
23 of Fish and Game, the Department of Natural Resources, the Department  
24 of Environmental Conservation, and the Department of Labor, the au-  
25 thority shall conduct a public hearing on the projected effects of the  
26 project.

27           (g) Without prior legislative approval, the authority may not  
28 issue bonds in an amount greater than \$10,000,000 to assist in the  
29 financing of a development project under AS 44.88.172 - 44.88.177.

1 \* Sec. 8. AS 44.88.095(g) is repealed and reenacted to read:

2 (g) The authority may not issue bonds, other than refunding  
3 bonds, without securing the prior approval of the legislature.

4 \* Sec. 9. AS 44.88.105(a) is amended to read:

5 (a) For the purpose of securing one or more issues of its bonds,  
6 the authority may establish one or more special funds, called "capital  
7 reserve funds", and shall pay into those capital reserve funds the  
8 proceeds of the sale of its bonds and other money which may be made  
9 available to the authority from other sources for the purposes of the  
10 capital reserve funds. A capital reserve fund may be established only  
11 if the authority determines that the establishment of the fund would  
12 enhance the marketability of the bonds [, AND IF THOSE COSTS OF A  
13 PROJECT, AS DEFINED IN AS 44.88.900, WHICH ARE TO BE FINANCED WITH THE  
14 PROCEEDS OF THE BONDS, DO NOT EXCEED \$10,000,000]. Money in a capital  
15 reserve fund, except as provided in this section, may be used as  
16 required only for (1) the payment of the principal of, and interest  
17 on, bonds or of the sinking fund payments with respect to those bonds;  
18 (2) the purchase or redemption of the bonds; or (3) the payment of a  
19 redemption premium required to be paid when the bonds are redeemed  
20 before maturity. However, money in a capital reserve fund may not be  
21 withdrawn if the withdrawal would reduce the amount in the capital  
22 reserve fund to less than the capital reserve fund requirement, except  
23 for the purpose of making payment, when due, of principal, interest,  
24 redemption premiums on the bonds, and sinking fund payments when other  
25 money of the authority is not available for the payments. Income or  
26 interest earned by, or increment to, a capital reserve fund, from the  
27 investment of all or part of the fund, may be transferred by the  
28 authority to other funds or accounts of the authority if the transfer  
29 does not reduce the amount of the capital reserve fund below the

1 capital reserve fund requirement.

2 \* Sec. 10. AS 44.88.105(d) is amended to read:

3 (d) With respect to a capital reserve fund created under this  
4 section on or before January 1, 1989, the [THE] chairman of the au-  
5 thority shall annually, no later than January 2, certify in writing to  
6 the governor and the legislature the amount, if any, required to  
7 restore the [A] capital reserve fund to the capital reserve fund  
8 requirement. The legislature may appropriate to the authority the  
9 amount certified by the chairman of the authority. The authority  
10 shall deposit the amounts appropriated under this subsection during a  
11 fiscal year in the proper capital reserve fund. Nothing in this  
12 section creates a debt or liability of the state.

13 \* Sec. 11. AS 44.88.155(b) is amended to read:

14 (b) The authority may establish in the enterprise development  
15 account the [A SMALL ENTERPRISE LOAN ACCOUNT, A LOAN INSURANCE AC-  
16 COUNT, AND OTHER] accounts it considers appropriate.

17 \* Sec. 12. AS 44.88.155(c) is amended to read:

18 (c) Money and other assets of the enterprise development account  
19 may be used to secure bonds of the authority issued to finance the  
20 purchase of loans for projects [AND SHALL BE HELD AND INVESTED BY THE  
21 AUTHORITY IN ACCORDANCE WITH AS 37.10.071] or shall be used to pur-  
22 chase loans for projects.

23 \* Sec. 13. AS 44.88.155(d) is amended to read:

24 (d) A loan purchased in whole or in part by the authority with  
25 assets of the enterprise development account or with proceeds of bonds  
26 secured by assets of the enterprise development account, other than a  
27 loan which is financed with the proceeds of bonds of the authority and  
28 secured only by a project applicant or a project,

29 (1) may not exceed

1 [(A)] \$10,000,000; [OR  
2 (B) \$500,000 IF THE LOAN IS PURCHASED UNDER AS 44.88.-  
3 158;]

4 (2) may not exceed the cost of the project or 75 percent of  
5 the appraised value of the project, whichever is less, unless the  
6 amount of the loan in excess of this limit is federally insured or  
7 guaranteed or is insured by a qualified mortgage insurance company;

8 (3) may not be for a term longer than three-quarters of the  
9 authority's estimate of the life of the project or 25 years from the  
10 date the loan is made, whichever is earlier;

11 (4) shall contain complete amortization provisions satis-  
12 factory to the authority requiring periodic payments by the borrower;

13 (5) shall be in the form and contain the terms and provi-  
14 sions with respect to insurance, repairs, alterations, payment of  
15 taxes and assessments, default reserves, delinquency charges, default  
16 remedies, acceleration of maturity, secondary liens, and other matters  
17 the authority prescribes;

18 (6) shall be secured as to repayment by a mortgage or other  
19 security instrument in the manner the authority determines is feasible  
20 to assure timely repayment under a loan agreement entered into with  
21 the borrower;

22 (7) may not be made unless

23 (A) at least 20 [10] percent of the principal amount  
24 of the loan is retained by the originator of the loan as long as  
25 the loan is outstanding; or

26 (B) 100 percent of the principal amount of the loan is  
27 guaranteed by the United States or an agency or instrumentality  
28 of the United States;

29 (8) must be

1 (A) [AT LEAST PARTIALLY GUARANTEED BY THE UNITED  
2 STATES OR AN AGENCY OR INSTRUMENTALITY OF THE UNITED STATES,  
3 SUBJECT TO THE PROVISIONS OF AS 44.88.158;

4 (B)] financed from the proceeds of bonds; or

5 (B) [(C)] expected by the authority to be financed  
6 from the proceeds of bonds.

7 \* Sec. 14. AS 44.88.165 is repealed and reenacted to read:

8 Sec. 44.88.165. DELINQUENT LOANS. The authority shall adopt  
9 regulations to describe the circumstances under which it will discon-  
10 tinue purchasing loans from a financial institution because of exces-  
11 sive delinquencies among the loans previously purchased by the author-  
12 ity from the financial institution. In adopting the regulations, the  
13 authority must consider the authority's delinquency experience with  
14 loans it purchased from all financial institutions. The authority may  
15 include in the regulations other remedies it considers appropriate as  
16 alternatives to the discontinuance of purchasing loans from the finan-  
17 cial institution.

18 \* Sec. 15. AS 44.88.172(a) is amended to read:

19 (a) The economic development account is established in the  
20 revolving fund. The economic development account consists of money or  
21 assets appropriated, loaned, or transferred to the authority for  
22 deposit in the account [,] and other money or assets deposited in the  
23 account by the authority. While money is on deposit in the economic  
24 development account, the money [THE ACCOUNT] may be used only to  
25 finance, acquire, manage, and operate development projects that the  
26 authority intends to own and operate. The term "operate" includes  
27 operation directly by the authority [,] or by an agent of the author-  
28 ity.

29 \* Sec. 16. AS 44.88.585(b) is amended to read:

1 (b) The authority may provide a guarantee from the fund for up  
2 to 80 [70] percent of a loan that qualifies under AS 44.88.500 -  
3 44.88.599. The ratio of the guarantee to the outstanding principal of  
4 the loan may not increase over the term of the loan.

5 \* Sec.17. AS 44.88.545 is amended to read:

6 Sec. 44.88.545. LIMITATIONS OF GUARANTEES WITH RESPECT TO BOR-  
7 ROWERS. The authority may not provide a guarantee

8 (1) [A LOAN] of more than \$1,000,000;

9 (2) [LOANS] to an individual borrower that cumulatively  
10 exceeds [EXCEED] \$1,000,000 of guaranteed indebtedness.

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

12 Sec. 44.88.560. POWERS OF THE AUTHORITY. The authority may

13 (1) adopt regulations to implement AS 44.88.500 - 44.88.-  
14 599;

15 (2) establish terms and conditions for loan guarantees and  
16 refinancing agreements subject to the requirements of AS 44.88.500 -  
17 44.88.599;

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

20 (4) charge

21 (A) [(i)] one percent of the amount guaranteed for the  
22 service it provides under AS 44.88.500 - 44.88.599; and

23 (B) [(ii)] any other reasonable fee that the authority  
24 may establish by regulation;

25 (5) acquire real or personal property by purchase, trans-  
26 fer, or foreclosure when the acquisition is necessary to protect an  
27 interest in the fund; and

28 (6) exercise any other power necessary to implement AS 44.-  
29 88.500 - 44.88.599;

1           (7) to the extent the authority considers it to be in its  
2           best interest to do so, use money in the business assistance fund to  
3           pay expenses relating to the liquidation of collateral securing loans  
4           guaranteed by the business assistance fund.

5 \* Sec. 19. AS 44.88.900(4) is repealed and reenacted to read:

6           (4) "development project" has the meaning given to "proj-  
7           ect" in (9)(A) of this section;

8 \* Sec. 20. AS 44.88.900(9) is amended to read:

9           (9) "project" means

10           (A) a plant or facility used or intended for use

11           [[i)] in connection with making, processing, pre-  
12           paring, transporting, or producing in any manner, goods,  
13           products, or substances of any kind or nature or in connec-  
14           tion with developing or utilizing a natural resource, or  
15           extracting, smelting, transporting, converting, assembling,  
16           or producing in any manner, minerals, raw materials, chemi-  
17           cals, compounds, alloys, fibers, commodities and materials,  
18           products, or substances of any kind or nature;

19           [(ii) AS AN INDUSTRIAL PARK; IN CONNECTION WITH  
20           TRANSPORTATION; FOR THE PREVENTION, LIMITATION OR CONTROL OF  
21           POLLUTION; FOR THE DISPOSAL OF SEWAGE OR SOLID WASTE; FOR  
22           THE LOCAL FURNISHING OF GAS; FOR THE FURNISHING OF WATER; AS  
23           OR IN CONNECTION WITH MASS COMMUTING VEHICLES; FOR LOCAL  
24           DISTRICT HEATING OR COOLING; AS A PARKING FACILITY; OR AS A  
25           STORAGE OR TRAINING FACILITY DIRECTLY RELATED TO A PLANT OR  
26           FACILITY DESCRIBED IN THIS PARAGRAPH;]

27           (B) a plant or facility used or intended for use in  
28           connection with a business enterprise;

29           (C) commercial activity by a small enterprise;

1     \* Sec. 21. AS 44.88.090(g), 44.88.090(i), 44.88.105(e), 44.88.105(g),  
2 44.88.157, 44.88.158, 44.88.159(c), 44.88.160, 44.88.172(b), 44.88.172(c),  
3 44.88.175, 44.88.176, 44.88.212(a), and 44.88.900(3) are repealed.  
4     \* Sec. 22. AS 44.88.095(b) is repealed.  
5     \* Sec. 23. Sections 8 and 21 of this Act take effect January 1, 1991.  
6     \* Sec. 24. Sections 1 - 7 and 9 - 20 of this Act take effect immedi-  
7 ately under AS 01.10.070(c).