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Source

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Chapter No.

51

AN ACT

Relating to the financing authority of the Alaska Industrial Development and Export Authority; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 10, 1992

Actual Effective Date: Section 4 takes effect July 1, 1995; remainder of Act takes effect June 11, 1992

AN ACT

1 Relating to the financing authority of the Alaska Industrial Development and Export Authority; and
2 providing for an effective date.

3

4 * Section 1. PURPOSE. The purpose of this Act is to

5 (1) eliminate a blanket prohibition against the Alaska Industrial Development and Export
6 Authority's ability to issue bonds, other than refunding bonds, without securing the prior approval of the
7 legislature and to restore, until June 30, 1995, a provision of law giving the Authority the ability to issue
8 its bonds to assist in the financing of a development project without prior legislative approval if the
9 proposed bond issue does not exceed \$10,000,000;

10 (2) modify the requirements and restrictions imposed on the use of money in the Alaska
11 Industrial Development and Export Authority's enterprise development account to permit the Authority
12 to improve its capacity to serve as the primary source of secondary project financing in the state;

13 (3) modify the interest rate restriction applicable to the loans guaranteed by the Alaska
14 Industrial Development and Export Authority; and

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1 (4) improve the Alaska Industrial Development and Export Authority's ability to support
2 the state's expanding tourism industry.

3 * Sec. 2. AS 44.88.085(g) is amended to read:

4 (g) The authority shall adopt regulations necessary for the following purposes in
5 connection with its programs for the financing of projects under AS 44.88.155 - 44.88.159:

6 (1) determination of borrower eligibility;

7 (2) loan guidelines and terms, including

8 (A) [, BUT NOT LIMITED TO,] maximum loan amounts;

9 (B) [AND] required loan-to-value ratios; and

10 (C) a method for determining loan interest rates for the loans that are
11 financed directly from the assets of the authority [, BUT EXCLUDING LOAN
12 INTEREST RATES];

13 (3) characteristics of projects eligible for loans or purchase of loans; and

14 (4) the qualifications of loan originators and servicers and the method of
15 allocating amounts available for the purchase of loans.

16 * Sec. 3. AS 44.88.095(g) is repealed and reenacted to read:

17 (g) Without prior legislative approval, the authority may not issue bonds in an amount
18 greater than \$10,000,000 to assist in the financing of a development project under AS 44.88.172 -
19 44.88.177.

20 * Sec. 4. AS 44.88.095(g) is repealed and reenacted to read:

21 (g) Without prior legislative approval, the authority may not issue bonds, except
22 refunding bonds.

23 * Sec. 5. AS 44.88.155(c) is amended to read:

24 (c) Money and other assets of the enterprise development account may be used to secure
25 bonds of the authority issued to finance the purchase of loans for projects or may [SHALL] be
26 used to purchase participation in the loans for projects.

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

28 (d) A loan participation purchased [IN WHOLE OR IN PART] by the authority with
29 assets of the enterprise development account or with proceeds of bonds secured by assets of the
30 enterprise development account [, OTHER THAN A LOAN WHICH IS FINANCED WITH THE
31 PROCEEDS OF BONDS OF THE AUTHORITY AND SECURED ONLY BY A PROJECT

1 APPLICANT OR A PROJECT,]

2 (1) may not exceed \$10,000,000;

3 (2) may not be purchased unless

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

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

10 (3) may not be purchased if the loan to be purchased exceeds [EXCEED] the
11 cost of the project or 75 percent of the appraised value of the project, whichever is less, unless
12 the amount of the loan in excess of this limit is federally insured or guaranteed or is insured by
13 a qualified mortgage insurance company;

14 (4) [(3)] may not be purchased if the participation in the loan to be purchased
15 is for a term longer than three-quarters of the authority's estimate of the life of the project or 25
16 years from the date the loan is made, whichever is earlier;

17 (5) may be made only if the participation in the loan to be purchased
18 contains [(4) SHALL CONTAIN] amortization provisions; the amortization provisions

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

21 (B) may allow the loan originator to amortize the portion of the loan
22 retained by the loan originator using a shorter amortization schedule than the amortization
23 schedule for the portion of the loan held by the authority if (i) in the authority's opinion,
24 the project financed can support the increased debt service; and (ii) the accelerated
25 amortization schedule is required to induce the originator to make the loan;

26 (6) may [(5) SHALL] be made only if the participation in the loan to be
27 purchased is in the form and contains [CONTAIN] the terms and provisions with respect to
28 insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency
29 charges, default remedies, acceleration of maturity, secondary liens, and other matters the
30 authority prescribes; and

31 (7) may [(6) SHALL] be made only if the participation in the loan to be

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1 purchased is secured as to repayment by a mortgage or other security instrument in the manner
2 the authority determines is feasible to assure timely repayment under a loan agreement entered
3 into with the borrower [;

4 (7) MAY NOT BE MADE UNLESS

5 (A) THE PROJECT APPLICANT IS NOT, OR, IF THE APPLICANT IS
6 NOT A SINGLE PROPRIETORSHIP, ALL MEMBERS OF THE BUSINESS
7 ENTERPRISE OR ENTERPRISES CONSTITUTING THE PROJECT APPLICANT ARE
8 NOT, IN DEFAULT ON ANOTHER LOAN MADE BY THE STATE OR BY A
9 PUBLIC CORPORATION OF THE STATE; AND

10 (B) WITH RESPECT TO THE LOAN, (i) AT LEAST 20 PERCENT OF
11 THE PRINCIPAL AMOUNT OF THE LOAN IS RETAINED BY THE LOAN
12 ORIGINATOR; OR (ii) 100 PERCENT OF THE PRINCIPAL AMOUNT OF THE
13 LOAN IS GUARANTEED BY THE UNITED STATES OR AN AGENCY OR
14 INSTRUMENTALITY OF THE UNITED STATES;

15 (8) MUST BE

16 (A) FINANCED FROM THE PROCEEDS OF BONDS; OR

17 (B) EXPECTED BY THE AUTHORITY TO BE FINANCED FROM THE
18 PROCEEDS OF BONDS].

19 * Sec. 7. AS 44.88.155(h) is amended to read:

20 (h) The provisions of this section apply only with respect to a loan participation
21 [LOANS] purchased [OR MADE] by the authority for projects under AS 44.88.155 - 44.88.159.

22 * Sec. 8. AS 44.88.159(d) is amended to read:

23 (d) The provisions of this section apply only to a loan participation purchased [LOANS
24 FINANCED] under AS 44.88.155 - 44.88.159.

25 * Sec. 9. AS 44.88.159 is amended by adding a new subsection to read:

26 (e) The interest rate on a loan financed directly from the assets of the authority shall be
27 determined under the regulations adopted by the authority under AS 44.88.085(g)(2)(C).

28 * Sec. 10. AS 44.88.190(c) is amended to read:

29 (c) A loan participation purchased or financed by the authority [IN WHOLE OR IN
30 PART] is exempt from the provisions of AS 45.45.010. A guarantee extended under
31 AS 44.88.300 or insurance provided under AS 44.88.390 does not constitute insurance for the

1 purposes of AS 21.03.010.

2 * Sec. 11. AS 44.88.535(a) is amended to read:

3 (a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the
4 (1) loan

5 (A) is commercially reasonable;

6 (B) contains amortization provisions satisfactory to the authority;

7 (C) is secured by adequate collateral; however, the authority may waive
8 on a case-by-case basis the requirement of collateral for a loan guarantee of \$75,000
9 [\$50,000] or less for which the proposed loan amortization period does not exceed five
10 years, but the ability to waive the requirement of this subparagraph or the grant of a
11 waiver does not prevent the financial institution that holds the loan guaranteed by the
12 authority from requiring reasonable collateral for the loan;

13 (2) net cash flow from the borrower provides adequate coverage for the debt
14 service on the loan;

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

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

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

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

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

22 * Sec. 12. AS 44.88.550 is amended to read:

23 Sec. 44.88.550. INTEREST ON GUARANTEED LOAN. The maximum interest rate
24 on a loan guaranteed by the authority is

25 [(1) FOR A LOAN GUARANTEE THAT EXCEEDS 65 PERCENT OF THE
26 LOAN, ONE AND ONE-HALF PERCENTAGE POINTS ABOVE THE PRIME RATE ON THE
27 DAY THE LOAN GUARANTEE IS MADE; AND

28 (2) FOR A LOAN GUARANTEE THAT IS EQUAL TO OR LESS THAN 65
29 PERCENT OF THE LOAN,] two and three-quarters percentage points above the prime rate [ON
30 THE DAY THE LOAN GUARANTEE IS MADE].

31 * Sec. 13. AS 44.88.550 is amended by adding a new subsection to read:

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1 (b) If provision is made in the loan guarantee agreement, the interest rate on a loan
2 guaranteed by the authority may increase or decrease in accordance with the changes in the prime
3 rate.

4 * Sec. 14. AS 44.88.900(4) is amended to read:

5 (4) "development project" has the meaning given to "project" in (9)(A), (D), and
6 (E) of this section;

7 * Sec. 15. AS 44.88.900(9) is amended to read:

8 (9) "project" means

9 (A) a plant or facility used or intended for use in connection with making,
10 processing, preparing, transporting, or producing in any manner, goods, products, or
11 substances of any kind or nature or in connection with developing or utilizing a natural
12 resource, or extracting, smelting, transporting, converting, assembling, or producing in any
13 manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and
14 materials, products, or substances of any kind or nature;

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

17 (C) commercial activity by a small enterprise;

18 (D) a plant or facility demonstrating technological advances of new
19 methods and procedures and prototype commercial applications for the exploration,
20 development, production, transportation, conversion, and use of energy resources;

21 (E) infrastructure for a new tourism destination facility or the
22 expansion of a tourism destination facility;

23 * Sec. 16. AS 44.88.900 is amended by adding a new paragraph to read:

24 (15) "loan participation" means the purchase of a portion of an existing loan from
25 a bank if the bank

26 (A) approved the loan to the borrower after the effective date of this
27 paragraph; and

28 (B) has obtained from the corporation a prior commitment to participate
29 in the making of that loan before the loan to the borrower is closed.

30 * Sec. 17. Section 4 of this Act takes effect July 1, 1995.

31 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect immediately under

1 AS 01.10.070(c).