



LAWS OF ALASKA

1996

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SCS CSHB 526(FIN) am S

Chapter No.

111

AN ACT

Relating to the financing authority, programs, operations, and projects of the Alaska Industrial Development and Export Authority; providing an exemption from the procurement code for certain projects of the 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 27, 1996

Actual Effective Date: June 28, 1996

AN ACT

1 Relating to the financing authority, programs, operations, and projects of the Alaska Industrial
2 Development and Export Authority; providing an exemption from the procurement code for
3 certain projects of the authority; and providing for an effective date.

4

5 * **Section 1.** FINDINGS, POLICY, AND INTENT. It is the policy and intent of the
6 legislature that the financial integrity of the Alaska Industrial Development and Export
7 Authority remain secure so the authority can continue to fulfill its vital economic development
8 mission for the state. The legislature finds that this Act fulfills this intent.

9 * **Sec. 2.** AS 36.30.850(b) is amended by adding a new paragraph to read:

10 (34) contracts of the Alaska Industrial Development and Export
11 Authority made with the developer of an integrated transportation and port facility
12 owned by the authority.

13 * **Sec. 3.** AS 44.88 is amended by adding a new section to article 3 to read:

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1 Sec. 44.88.088. PAYMENT OF DIVIDEND TO STATE. (a) The authority
2 shall adopt a policy for payment of a dividend to the state each fiscal year. The
3 amount of the dividend for a fiscal year may not be less than 25 percent nor more than
4 50 percent of the net income of the authority for the base fiscal year. In no event,
5 however, shall the dividend for a fiscal year exceed the total unrestricted net income
6 of the authority for the base fiscal year. The dividend for a fiscal year shall be made
7 available by the authority before the end of that fiscal year. The authority shall notify
8 the commissioner of revenue when the dividend for a fiscal year is available for
9 appropriation.

10 (b) In this section,

11 (1) "base fiscal year" means the fiscal year ending two years before the
12 end of the fiscal year in which the payment is made;

13 (2) "net income" means the authority's net income as set out in the
14 audited financial statements of the authority for the base fiscal year;

15 (3) "unrestricted net income" means the authority's unrestricted net
16 income as set out in the audited financial statements of the authority for the base fiscal
17 year.

18 * Sec. 4. AS 44.88.095(g) is amended to read:

19 (g) Before July 1, 1998, the authority may issue bonds in an amount
20 greater than \$10,000,000 to assist in the financing of a development project under
21 AS 44.88.172 - 44.88.177 only with legislative approval. Beginning July 1, 1998,
22 and thereafter, without [WITHOUT] prior legislative approval, the authority may not
23 issue bonds, except refunding bonds.

24 * Sec. 5. AS 44.88.159(a) is amended to read:

25 (a) The interest rate on a loan participation purchased [FINANCED] from
26 the proceeds of tax-exempt bonds or expected by the authority to be purchased
27 [FINANCED] from the proceeds of tax-exempt bonds is equal to the cost of funds to
28 the authority. In this subsection "cost of funds" means the true interest cost expressed
29 as a rate on tax-exempt bonds of the authority plus an additional percentage as
30 determined by the authority to represent the allocable expenses of operation, costs of
31 issuance, and loan servicing.

1 * Sec. 6. AS 44.88.159(b) is amended to read:

2 (b) The interest rate on a loan participation purchased [FINANCED] from
3 the proceeds of taxable bonds or expected by the authority to be purchased
4 [FINANCED] from the proceeds of taxable bonds is equal to the cost of funds to the
5 authority. In this subsection "cost of funds" means the true interest cost expressed as
6 a rate on taxable bonds, plus an additional percentage as determined by the authority
7 to represent the allocable expenses of operation, costs of issuance, and loan servicing
8 costs.

9 * Sec. 7. AS 44.88.159(e) is amended to read:

10 (e) The interest rate on a loan participation purchased [FINANCED] directly
11 from the assets of the authority shall be determined under the regulations adopted by
12 the authority under AS 44.88.085(g)(2)(C). However, the interest rate on a loan
13 participation purchased from assets of the authority may not be less than the rate
14 determined

15 (1) under (a) of this section if the project is of a type that could be
16 funded with tax-exempt bonds; or

17 (2) under (b) of this section if the project is of a type that could not
18 be funded with tax-exempt bonds.

19 * Sec. 8. AS 44.88.205(b) is amended to read:

20 (b) To further ensure effective budgetary decision making by the legislature,
21 the authority shall

22 (1) annually review the authority's assets to determine whether assets
23 of the authority exceed an amount required to fulfill the purposes of the authority as
24 defined in this chapter; in making its review, [THE MEMBERS OF] the authority shall
25 determine whether, and to what extent, assets in excess of the amount required to
26 fulfill the purposes of the authority during at least the next fiscal year are available
27 without

28 (A) breaching any agreement entered into by the authority;

29 (B) materially impairing the operations or financial integrity of
30 the authority; or

31 (C) materially affecting the ability of the authority to fulfill the

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1 authority's purposes set out in AS 44.88.070; and

2 (2) **make available** [PRESENT] to the legislature by January 10 of
3 each year a complete accounting of all assets of the authority and a report of the
4 review and determination made under (1) of this subsection; the accounting shall be
5 audited by the auditor who conducts the audit required by AS 44.88.200 and must
6 include a full description of all loan interest and principal payments and program
7 receipts, including

8 (A) loan commitment fees received by or accrued to the
9 authority during the preceding fiscal year; [,] and

10 (B) all income earned on assets of the authority during that
11 period.

12 * Sec. 9. AS 44.88.500(a) is amended to read:

13 (a) [THE BUSINESS ASSISTANCE FUND IS ESTABLISHED IN THE
14 AUTHORITY FROM MONEY IN THE AUTHORITY'S RESERVES DESIGNATED
15 BY THE AUTHORITY FOR THE PURPOSE.] Subject to the requirements of
16 AS 44.88.500 - 44.88.599, the authority may [USE MONEY IN THE FUND]

17 (1) [TO] guarantee new **business assistance** loans; and

18 (2) [TO] guarantee **new business assistance** loans made to refinance
19 existing loans.

20 * Sec. 10. AS 44.88.530 is amended to read:

21 Sec. 44.88.530. APPLICABILITY OF PROVISIONS. AS 44.88.535 -
22 44.88.560 apply to

23 [(1)] new loan guarantees **and refinancing guarantees** under
24 **AS 44.88.500** [AS 44.88.500(a)(1); AND

25 (2) DEBT REFINANCING GUARANTEES UNDER
26 AS 44.88.500(a)(2)].

27 * Sec. 11. AS 44.88.535 is amended to read:

28 Sec. 44.88.535. CONDITIONS OF LOAN GUARANTEE. (a) The authority
29 may guarantee a loan under AS 44.88.500 - 44.88.599 if the

30 (1) loan

31 (A) is commercially reasonable;

1 (B) contains amortization provisions satisfactory to the
2 authority;

3 (C) is secured by adequate collateral; however, the authority
4 may waive on a case-by-case basis the requirement of collateral for a loan
5 guarantee of \$100,000 [\$75,000] or less for which the proposed loan
6 amortization period does not exceed five years, but the ability to waive the
7 requirement of this subparagraph or the grant of a waiver does not prevent the
8 financial institution that holds the loan guaranteed by the authority from
9 requiring reasonable collateral for the loan;

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

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

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

15 (5) portion of the loan not guaranteed by the authority is held by the
16 originating financial institution or another [FINANCIAL] institution approved by the
17 authority;

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

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

21 (b) The authority may provide a guarantee [FROM THE FUND

22 (1)] of up to 80 percent of a loan [OF \$50,000 OR LESS] that qualifies
23 under AS 44.88.500 - 44.88.599. The [;

24 (2) FOR UP TO 80 PERCENT OF A LOAN OF MORE THAN
25 \$50,000 THAT QUALIFIES UNDER AS 44.88.500 - 44.88.599; THE] ratio of the
26 guarantee to the outstanding principal of the loan may not increase over the term of
27 the loan.

28 (c) The authority may [NOT] guarantee the payment of interest on the
29 guaranteed portion of a loan in the manner established by the authority by
30 regulation and for a period of time not to exceed 90 days.

31 * Sec. 12. AS 44.88.540 is amended to read:

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1 Sec. 44.88.540. LIMITATIONS OF GUARANTEES [FROM THE FUND].

2 The authority may not issue a total of more than [GUARANTEE]

3 (1) [A TOTAL OF MORE THAN] \$50,000,000 of loan guarantees
4 [LOANS];

5 (2) [MORE THAN] \$25,000,000 of loan guarantees [LOANS] in
6 which the amount of the loan guarantee exceeds \$500,000.

7 * Sec. 13. AS 44.88.550(a) is amended to read:

8 (a) The maximum interest rate that may be charged by a financial
9 institution on a loan guaranteed by the authority is two and three-quarters percentage
10 points above the prime rate.

11 * Sec. 14. 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 - 44.88.599;

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

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

18 (4) charge

19 (A) one percent of the amount guaranteed for the service it
20 provides under AS 44.88.500 - 44.88.599; and

21 (B) any other reasonable fee that the authority may establish by
22 regulation;

23 (5) acquire real or personal property by purchase, transfer, or
24 foreclosure when the acquisition is necessary to protect the authority's [AN] interest
25 in a loan or a loan guarantee [THE FUND];

26 (6) exercise any other power necessary to implement AS 44.88.500 -
27 44.88.599; and

28 (7) to the extent the authority considers it to be in its best interest to
29 do so, use money [IN THE BUSINESS ASSISTANCE FUND] to pay expenses
30 relating to the liquidation of collateral securing loans guaranteed by the authority
31 [BUSINESS ASSISTANCE FUND].

1 * Sec. 15. AS 44.88.599(2) is amended to read:

2 (2) "prime rate" means the lowest United States money center prime
3 rate of interest that is published in the Wall Street Journal.

4 * Sec. 16. AS 44.88.900(3) is amended to read:

5 (3) "development project" has the meaning given to "project" in (9)(A)
6 and (D) - (F) [, (D), AND (E)] of this section;

7 * Sec. 17. AS 44.88.900(7) is repealed and reenacted to read:

8 (7) "loan participation" means the purchase of a portion of a loan from
9 a financial institution if the financial institution has obtained a commitment from the
10 authority to purchase the portion of that loan before the financial institution has
11 disbursed money as part of the loan to the borrower;

12 * Sec. 18. AS 44.88.900(9) is amended to read:

13 (9) "project" means

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

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

23 (C) commercial activity by a business [SMALL] enterprise;

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

28 (E) infrastructure for a new tourism destination facility or for
29 the expansion of a tourism destination facility;

30 (F) a plant or facility, other than a plant or facility described in
31 (D) of this paragraph, for the generation, transmission, development,

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1 transportation, conversion, or use of energy resources;

2 * Sec. 19. Section 2(a), ch. 27, SLA 1993, is amended to read:

3 Sec. 2. (a) The Alaska Industrial Development and Export Authority may
4 issue bonds to finance the acquisition, design, and construction of a port facility and
5 related loading and conveyor equipment related to the development and operation of
6 a **bulk commodity loading and shipping terminal. The terminal may be located**
7 **anywhere within Cook Inlet. The facility will be** [DIRECT REDUCTION IRON
8 ORE PROCESSING FACILITY FOR USE BY THE MIDREX CORPORATION, TO
9 BE LOCATED AT POINT MACKENZIE AND] owned by the authority. The
10 principal amount of the bonds may not exceed \$50,000,000.

11 * Sec. 20. Section 4, ch. 162, SLA 1988, as amended by sec. 4, ch. 25, SLA 1991, and
12 sec. 4, ch. 27, SLA 1993, is amended to read:

13 Sec. 4. AS 44.88.500 - 44.88.599 are repealed July 1, **1998** [1996].

14 * Sec. 21. AS 44.88.542, 44.88.599(1), and 44.88.900(14) are repealed.

15 * Sec. 22. Section 1, ch. 27, SLA 1993, is repealed.

16 * Sec. 23. TRANSITION. (a) On the effective date of this Act, assets of the business
17 assistance fund (AS 44.88.500(a)) shall be transferred to the Alaska Industrial Development
18 and Export Authority revolving fund (AS 44.88.060).

19 (b) The first dividend payment to the state under AS 44.88.088, enacted by sec. 3 of
20 this Act, shall be made available during fiscal year 1997 based upon net income and
21 unrestricted net income of the Alaska Industrial Development and Export Authority for fiscal
22 year 1995.

23 * Sec. 24. (a) The Alaska Industrial Development and Export Authority (AIDEA) may
24 issue bonds to finance the expansion, improvement, and modification of the existing port
25 facilities owned by AIDEA with respect to the DeLong Mountain transportation system and
26 to finance the construction of new facilities to be owned by AIDEA related to the DeLong
27 Mountain transportation system, or may finance these projects by other means available to
28 AIDEA. The principal amount of the bonds and other financing provided by AIDEA may not
29 exceed \$85,000,000.

30 (b) Before bonds or notes authorized under (a) of this section may be issued, the
31 Alaska Industrial Development and Export Authority shall comply with AS 44.88.173 and

1 shall incorporate into the final finance plan and agreement for the project the following terms
2 and conditions:

3 (1) Cominco, Ltd., is required to agree in writing that Cominco, Ltd., will pay
4 for all or a portion of the operation and maintenance of facilities constructed, expanded,
5 improved, or modified as part of the project based on the use Cominco Alaska makes of the
6 facilities compared to the use made by others;

7 (2) a toll schedule, which may include adjustments related to the price of zinc,
8 is established for use of facilities constructed, expanded, improved, or modified as part of the
9 project that

10 (A) ensures full repayment of and a reasonable return on the state's
11 entire investment in the project;

12 (B) ensures an additional return on AIDEA's investment made under
13 this section that is commensurate with the return earned on the original DeLong
14 Mountain transportation system project and the risks assumed by AIDEA;

15 (C) guarantees equitable access to the facilities by all users and
16 potential users, including access to private property and access for travel necessary and
17 related to resource exploration and development for which valid permits have been
18 obtained and travel in support of resource exploration and development;

19 (3) reasonable access to the port and road is guaranteed to all users and
20 potential users.

21 (c) Subsection (a) of this section constitutes the legislative approval required by
22 AS 44.88.095(g).

23 * Sec. 25. (a) Upon approval of the Alaska Industrial Development and Export Authority
24 (AIDEA), AIDEA may acquire the Snettisham hydroelectric project and related assets from
25 the Alaska Power Administration.

26 (b) AIDEA may issue bonds to finance the acquisition of the Snettisham hydroelectric
27 project and related assets, or may finance the acquisition by other means available to AIDEA.
28 The principal amount of the bonds and other financing provided by AIDEA to finance the
29 acquisition of the Snettisham hydroelectric project may not exceed \$100,000,000.

30 (c) To secure bonds issued under (b) of this section, AIDEA may establish a capital
31 reserve fund with respect to those bonds under AS 44.88.105. If AIDEA establishes a capital

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1 reserve fund as provided in this subsection, the executive director of AIDEA shall annually,
2 no later than January 2 of each year, certify in writing to the governor and the legislature the
3 amount, if any, required to restore the capital reserve fund to the capital reserve fund
4 requirement as defined in AS 44.88.105(h). The legislature may appropriate to AIDEA the
5 amount so certified by the executive director of AIDEA. AIDEA shall deposit the amounts
6 appropriated under this subsection during a fiscal year in the capital reserve fund. Nothing
7 in this section creates a debt or liability of the state.

8 (d) Subsection (b) of this section grants the legislative approval required by
9 AS 44.88.095(g).

10 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).