

Chapter 44.88 ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

Article 01. CREATION AND ORGANIZATION

Sec. 44.88.010. Legislative finding and policy. (a) The legislature finds, determines, and declares that

(1) there exist areas of the state in which seasonal and nonseasonal unemployment exists;

(2) this unemployment is a serious menace to the health, safety, and general welfare, not only to the people in those areas, but also to the people of the entire state;

(3) the state lacks the basic manufacturing, industrial, energy, export, small business, and business enterprises and the other facilities referred to in this subsection necessary to permit adequate development of its natural resources and the balanced growth of its economy;

(4) the establishment and expansion of industrial, manufacturing, energy, export, small business, and business enterprises in the state and the other facilities referred to in this subsection are essential to the development of the natural resources and the long-term economic growth of the state, and will directly and indirectly alleviate unemployment in the state;

(5) the expansion of export trade is vital to the health and growth of the state's economy;

(6) many state businesses could benefit from additional financial and technical assistance with respect to the exportation of their products and services;

(7) the Export-Import Bank of the United States has been mandated by the Export-Import Bank Act Amendments of 1983 to provide technical assistance and export financing support to small businesses in cooperation with state export finance agencies;

(8) Alaska-based exporters can be effectively assisted through the establishment, as part of the Alaska Industrial Development and Export Authority, of an export financing program designed to work with the Export-Import Bank of the United States and other federal, state, and private institutions;

(9) the achievement of the goal of full employment and of establishment and continuing operation and development of industrial, manufacturing, energy, export, small business, and business enterprises in the state will be accelerated and facilitated by the creation of an instrumentality of the state with powers to incur debt, to own and operate facilities, and to make and insure loans to finance and to assist private lenders to make loans to finance the establishment, operation, and

development of industrial, manufacturing, energy, export, small business, and business enterprises;

(10) it is in the public interest to promote the prosperity and general welfare of all citizens of the state by

(A) stimulating commercial and industrial growth and expansion by encouraging an increase of private investment by banks, investment houses, insurance companies, and other financial institutions, including pension and retirement funds, to help satisfy the need for economic expansion;

(B) encouraging the production of raw materials and goods for export, the expansion of exports and raw materials and goods, and the rendering of services abroad by residents of the state through the establishment of a program that provides financial assistance in cooperation with federal, state, and private institutions for these purposes in the form provided in this chapter;

(C) creating the Alaska Industrial Development and Export Authority with the powers necessary to accomplish the objectives stated in this paragraph, including the power to issue taxable and tax-exempt bonds, to acquire ownership interests in projects, and to provide development project financing as provided in this chapter;

(11) it is in the state's interest to import private capital to create new economic activity that would not otherwise take place in the state.

(b) It is declared to be the policy of the state, in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, energy, export, small business, and business enterprises and the other facilities referred to in (a) of this section by creating the Alaska Industrial Development and Export Authority with the powers, duties, and functions as provided in this chapter.

(c) It is further declared to be the policy of the state, in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose of the state, to accomplish the objectives set out in (b) of this section through the provision of financial support to a federal, state, municipal, or private entity.

Sec. 44.88.020. Creation of authority. There is created the Alaska Industrial Development and Export Authority. The authority is a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce, Community, and Economic Development, but with separate and independent legal existence.

Sec. 44.88.030. Membership of authority. (a) The membership of the authority consists of

(1) the commissioner of revenue and the commissioner of commerce, community, and economic development; and

(2) five public members appointed by the governor, each of whom has expertise in private sector business or industry, or both, and possesses demonstrated leadership skills.

(b) If a commissioner described in (a)(1) of this section is unable to attend a meeting of the authority, the commissioner may, by an instrument in writing filed with the authority, designate a deputy or assistant to act in the commissioner's place as a member at the meeting. For all purposes of this chapter, the designee is a member of the authority at the meeting.

(c) Public members of the authority described in (a)(2) of this section serve at the pleasure of the governor for two-year terms.

(d) If a vacancy occurs in the membership of the authority, the governor shall immediately appoint a member for the unexpired portion of the term.

Sec. 44.88.040. Chairman and vice-chairman. The members of the authority shall elect a chairman from among themselves. A vice-chairman may be elected by the authority from among its other members. The vice-chairman presides over all meetings in the absence of the chairman and has other duties which the authority may direct.

Sec. 44.88.050. Meetings, compensation, officers, and employees.

(a) A majority of the members of the authority constitutes a quorum for the transaction of business or the exercise of a power or function at a meeting of the authority. In case of a tie vote on a motion or resolution pending before the authority the motion or resolution shall be presented to the governor and if approved, is considered adopted by the authority. The authority may meet and transact business by electronic media if (1) public notice of the time and locations where the meeting will be held by electronic media has been given in the same manner as if the meeting were held in a single location; (2) participants and members of the public in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and (3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to participants and to the public. A meeting by electronic media as provided in this subsection has the same legal effect as a meeting in person.

(b) The public members of the authority receive \$100 compensation for each day spent on official business of the authority and may be reimbursed by the authority for actual and necessary expenses at the same rate paid to members of state boards under [AS 39.20.180](#).

(c) The authority may appoint persons as officers it considers advisable, including an executive director, and may employ professional advisors, counsel, technical experts, agents, and other employees it considers advisable. The executive director and employees of the authority are in the exempt service under [AS 39.25](#).

(d) The authority shall keep minutes of each meeting and send a certified copy to the governor and to the Legislative Budget and Audit Committee.

Sec. 44.88.060. Alaska Industrial Development and Export Authority revolving fund. The Alaska Industrial Development and Export Authority revolving fund is established in the authority. The revolving fund consists of appropriations made to the revolving fund by the legislature, money or other assets transferred to the revolving fund by the authority, and unrestricted payments on loans made or purchased by the authority. Unless otherwise expressly stated, the accounts created in this chapter are accounts in the revolving fund. The authority may create additional accounts either in the revolving fund or outside the revolving fund. Subject to agreements made with the holders of the authority's bonds or with other persons, the authority may transfer amounts in an account in the revolving fund to another account in the revolving fund. Amounts deposited in the revolving fund may be pledged to the payment of bonds of the authority or expended for the purposes of the authority under this chapter. The authority has the powers and responsibilities established in [AS 37.10.071](#) with respect to the investment of amounts held in the revolving fund.

Article 02. PURPOSE AND POWERS

Sec. 44.88.070. Purpose of the authority. The purpose of the authority is to promote, develop, and advance the general prosperity and economic welfare of the people of the state, to relieve problems of unemployment, and to create additional employment by

(1) providing various means of financing and means of facilitating the financing, in cooperation with federal, state, and private institutions, of industrial, manufacturing, energy, export, small business, and business enterprises and the other facilities referred to in [AS 44.88.010\(a\)](#) in the state;

(2) owning and operating or providing development project financing for the enterprises and other facilities described in [AS 44.88.172](#);

(3) fostering the expansion of exports of goods, services, and raw materials of the state;

(4) cooperating and acting in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state;

(5) establishing a source of funding credit guarantees and insurance, not otherwise available, to support export development;

(6) providing and cooperating or participating with federal, state, and private institutions to provide actual and potential state exporters, particularly small- and medium-sized exporters, with financial assistance in support of export transactions.

Sec. 44.88.080. Powers of the authority. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

(1) to sue and be sued;

(2) to have a seal and alter it at pleasure;

(3) to make and alter bylaws for its organization and internal management;

(4) to adopt regulations governing the exercise of its corporate powers;

(5) to acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift, or lease;

(6) to lease to others a project acquired by it for the rentals and upon the terms and conditions the authority may consider advisable, including, without limitation, provisions for options to purchase or renew;

(7) to issue bonds and otherwise to incur indebtedness, in accordance with [AS 44.88.090](#), in order to pay the cost of a project or development projects or in order to provide money for the authority's purposes under this chapter; the authority may also secure payment of the bonds or other indebtedness as provided in this chapter;

(8) to sell, by installment sale or otherwise, exchange, donate, convey, or encumber, in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;

(9) to accept gifts, grants, or loans from, and enter into contracts or other transactions regarding them with, a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or other source;

(10) to deposit or invest its funds, subject to agreements with bondholders;

(11) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this chapter;

(12) to purchase or insure loans to finance the costs of manufacturing, industrial, and business enterprise projects;

(13) to enter into loan agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(14) to acquire, manage, and operate projects as the authority considers necessary or appropriate to serve a public purpose;

(15) to assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(16) to accept gifts, grants, or loans from a federal agency, from an agency or instrumentality of the state or of a municipality, or from any other source;

(17) to enter into contracts or other transactions with a federal agency, with an agency or instrumentality of the state or of a municipality, or with a private organization or other entity consistent with the exercise of any power under this chapter;

(18) to facilitate the expansion of a secondary market for the resale of federally or commercially insured loans made to finance the costs of projects in the state held by federal and state chartered financial institutions or by the Alaska Commercial Fishing and Agriculture Bank;

(19) to charge fees or other forms of remuneration for the use or possession of the projects described in (14) of this section in accordance with the agreements described in (11) and (17) of this section, other agreements pertaining to the projects, covenants, or representations made in bond documents pertaining to the projects, or regulations of the authority pertaining to the projects;

(20) to participate with government or private industry in programs for technical assistance, loans, technology, transfer, or other programs related to the exportation of goods, services, or raw materials of the state with respect to its financing activities;

(21) to provide export finance training for office staff and other individuals involved in export finance assistance, including the training sessions that may be provided by the United States Export-Import Bank or other organizations;

(22) to coordinate to the maximum extent possible its efforts to promote the export of goods, services, and raw materials of the state with programs and goals of the United States Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, and other private and public programs designed to provide export assistance and export-related financing;

(23) to guarantee loans related to qualified export transactions under regulations adopted by the authority;

(24) to provide financing assistance, in cooperation with federal, state, and private institutions, as provided in this chapter for small business enterprises;

(25) to make cooperative agreements with the Department of Transportation and Public Facilities, acting on behalf of the international airports revenue fund established under [AS 37.15.430](#), to acquire, equip, operate, maintain, construct, or install facilities that will enhance the competitiveness of the international airports, including a cooperative agreement to lend amounts from the international airports revenue fund to finance the development or improvement of utilities serving the airports;

(26) to screen potential applicants for a new business incentive grant and recommend the award of the grants under [AS 45.81.020](#);

(27) to oversee the administration of outstanding grants awarded by the Alaska Science and Technology Foundation under former [AS 37.17.010](#) - 37.17.110;

(28) to oversee the administration of outstanding BIDCO assistance grants and loans made by the Alaska Science and Technology Foundation under former [AS 37.17.200](#) - 37.17.390;

(29) to guarantee loans made to the Alaska Insurance Guaranty Association ([AS 21.80.040](#)), with these guarantees limited to loans necessary to make the association financially able to meet cash flow needs up to a maximum outstanding principal balance at any time of \$30,000,000;

(30) with legislative approval and notwithstanding [AS 44.88.060](#), to purchase from the Alaska Energy Authority as an investment of the revolving fund, loans of the power project fund established under [AS 42.45.010](#);

(31) to consider, when exercising the powers listed in this section, the interests of local governments affected by the authority's activities to share in the benefits of these activities, with appropriate consideration of the authority's ability to meet debt obligations, issue new debt, and fulfill the authority's purposes;

(32) to provide development project financing for all or a portion of the cost of a development project as provided in [AS 44.88.172](#).

Sec. 44.88.085. Administrative procedure. (a) Except for [AS 44.62.310](#) - 44.62.319 (Open Meetings Act), the provisions of the Administrative Procedure Act regarding the adoption of regulations ([AS 44.62.040](#) - 44.62.320) do not apply to the authority. The authority shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chairman of the authority shall submit the regulation adopted to the chairman of the Administrative Regulation Review Committee under [AS 24.20.400](#) - 24.20.460.

(b) The authority may adopt regulations under this section by motion or by resolution or in any other manner permitted by its bylaws.

(c) The authority may adopt regulations to carry out the purposes of this chapter and shall adopt regulations as provided in (g) of this section.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the authority shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the authority. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the subject of the proposed action. On the date and at the time and place designated in the notice, the authority shall give each interested person or an authorized representative of the person, or both, the opportunity to present statements, arguments, or contentions orally or in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The authority shall consider all relevant matter presented to it before taking the proposed action on the regulation. At a hearing under this subsection, the authority may continue or postpone the hearing to a time and place determined by the authority and announced at the hearing before taking the action to continue or postpone the hearing. A regulation adopted, amended, or repealed by the authority may vary from the informative summary specified in this subsection if the subject matter of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to assure that members of the public are reasonably notified of the subject matter of the proposed action in order for them to determine whether their interests could be affected by the authority's proposed action on that subject.

(e) The adoption, amendment, or repeal of a regulation may be made as an emergency regulation if, in the order of adoption, the authority states the facts constituting the emergency and makes a finding that the adoption of the regulation is necessary for the immediate preservation of the orderly operation of the authority's programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation; however, upon adoption of an emergency regulation under this subsection, the authority shall, within 10 days after that adoption, publish notice of the adoption in accordance with the notice procedures specified in (d) of this section. An emergency regulation adopted under this subsection may not remain in effect for more than 120 days unless, before the expiration of that period, the authority adopts that regulation as a permanent regulation in accordance with the procedures specified in (d) of this section.

(f) A regulation adopted under this section takes effect immediately upon its adoption by the authority or at another time specified by the authority in its order of adoption.

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

- (1) determination of borrower eligibility;
 - (2) loan guidelines and terms, including
 - (A) maximum loan amounts;
 - (B) required loan-to-value ratios; and
 - (C) a method for determining loan interest rates;
 - (3) characteristics of projects eligible for loans or purchase of loans;
- and
- (4) the qualifications of loan originators and servicers and the method of allocating amounts available for the purchase of loans.

(h) *[Repealed, Sec. 21 ch 109 SLA 1998].*

Article 03. FINANCIAL PROVISIONS

Sec. 44.88.088. Payment of dividend to state. (a) The authority shall adopt a policy for payment of a dividend from the revolving fund, the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)), and the Arctic infrastructure development fund (AS 44.88.810) to the state each fiscal year. The dividends for a fiscal year shall be made available by the authority before the end of that fiscal year. The authority shall notify the commissioner of revenue when the dividends for a fiscal year are available for appropriation. The amount of the dividend payable from the

(1) revolving fund for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the revolving fund for the base fiscal year; however, in no event, may the dividend payable from the revolving fund for a fiscal year exceed the total unrestricted net income of the revolving fund for the base year;

(2) Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)) for a fiscal year may not be less than 25 percent nor more than 50 percent of the net income of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for the base fiscal year; however, the dividend payable from the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for a fiscal year may not exceed the total unrestricted net income of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund for the base year;

(3) Arctic infrastructure development fund (AS 44.88.810) for a fiscal year may not be less than 25 percent nor more than 50 percent of the net

income of the Arctic infrastructure development fund for the base fiscal year; however, the dividend payable from the Arctic infrastructure development fund for a fiscal year may not exceed the total unrestricted net income of the Arctic infrastructure development fund for the base year.

(b) In this section,

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

(2) "net income" means the change in net position, or the equivalent term under generally accepted accounting principles, of the revolving fund, the change in net position of the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)), or the change in net position of the Arctic infrastructure development fund (AS 44.88.810) as set out in the audited financial statements of the authority for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, or impairment losses on development projects financed under [AS 44.88.172](#);

(3) "unrestricted net income" means the unrestricted change in net position, or the equivalent term under generally accepted accounting principles, of the revolving fund, the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)), or the Arctic infrastructure development fund (AS 44.88.810) as set out in the audited financial statements of the authority for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, or impairment losses on development projects financed under [AS 44.88.172](#).

Sec. 44.88.090. Bonds of the authority. (a) The authority may borrow money and may issue bonds, including but not limited to bonds on which the principal and interest are payable

(1) exclusively from the income and receipts or other money derived from the project or development project financed with the proceeds of the bonds or derived from the exporter or exporting transaction financed, guaranteed, or insured with the proceeds of the bonds;

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

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

(b) Bonds shall be authorized by resolution of the authority, and be dated and shall mature as the resolution may provide, except that a bond may not mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either

coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption which the resolution or a subsequent resolution may provide.

(c) All bonds, regardless of form or character, shall be negotiable instruments for all the purposes of [AS 45.01](#) - [AS 45.08](#), [AS 45.12](#), [AS 45.14](#), and [AS 45.29](#) (Uniform Commercial Code).

(d) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(e) Before issuing bonds, the authority shall provide for consideration at least sufficient, in the judgment of the authority, to pay the principal of and interest on the bonds as they become due and to create and maintain the reserves for the payments that the authority considers necessary or desirable, and to meet all obligations in connection with the lease or agreement and all costs necessary to service the bonds, unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority. If the bonds are being issued to finance a project or projects under [AS 44.88.155](#) - 44.88.159, then the consideration shall be provided by lease or other agreement regarding the project or projects. If the bonds are being issued to finance a development project or development projects under [AS 44.88.172](#) - 44.88.177, then the consideration shall be provided by lease or other agreement regarding the development project or development projects.

(f) The superior court shall have jurisdiction to hear and determine suits, actions, or proceedings relating to the authority, including suits, actions, or proceedings brought to foreclose or otherwise enforce a mortgage, pledge, assignment, or security interest or brought by or for the benefit or security of a holder of its bonds or by a trustee for or other representative of the holders.

(g) *[Repealed, Sec. 23 ch 123 SLA 1990].*

(h) The authority may combine, for the purposes of a single offering, bonds financing more than one project or development project under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177.

(i) *[Repealed, Sec. 23 ch 123 SLA 1990].*

Sec. 44.88.095. Bonding limitations. (a) The authority may not issue bonds in a 12-month period in an amount that exceeds \$400,000,000, excluding refunding bonds.

(b) *[Repealed, Sec. 24 ch 123 SLA 1990].*

(c) Before entering into a lease or other agreement under [AS 44.88.090](#)(e) regarding a project for which the authority agrees to issue bonds in an amount in excess of \$6,000,000, there must be filed with the authority a

certified copy of a resolution of the governing body of the political subdivision of the state, if any, in which the project is to be located, consenting to the location of the project. The consent need only refer to the general nature of the project ultimately to be acquired, as set out in a request of the proposed project applicant. Before entering into a lease or other agreement under [AS 44.88.090](#)(e) regarding a project, the authority shall find, on the basis of all information reasonably available to it, that

- (1) the project and its development under this chapter will be economically advantageous to the state and the general public welfare and will contribute to the economic growth of the state;
- (2) the project applicant is financially responsible;
- (3) provision to meet increased demand upon public facilities that might result from the project is reasonably assured; and
- (4) the project will provide, or retain, employment reasonably related to the amount of the financing by the authority, considering the amount of investment per employee for comparable facilities and other relevant factors.

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

- (1) the project is economically and financially feasible and able to produce revenue adequate to repay the bonds or loans with which it is financed;
- (2) the project complies with applicable law; and
- (3) issuance of the bonds is not expected to adversely affect the ability of the state or any political subdivision of the state to market other bonds.

(e) Before entering into an agreement to finance or to develop a proposed project financed under [AS 44.88.172](#) for which bonds must be issued, the authority shall obtain the approval of each Regional Resource Advisory Council appointed under [AS 44.88.174](#) or municipality in the area in which the proposed project is to be located. Approval under this subsection must be evidenced by a certified copy of a resolution of the council or of the governing body of the municipality. Before considering a resolution regarding the approval or rejection of the development or financing of a proposed project under this subsection, a Regional Resource Advisory Council shall conduct a public hearing in the region. If a proposed project is located in a municipality, the governing body of the municipality shall conduct a hearing on the proposed project.

(f) Before entering into an agreement to finance or to develop a proposed project financed under [AS 44.88.172](#) for which bonds must be issued, the authority shall compile and make available to the public a document that summarizes the projected economic, social, and environmental effects of the

project; and, in conjunction with the Department of Fish and Game, the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Labor and Workforce Development, the authority shall conduct a public hearing on the projected effects of the project.

(g) The authority may issue bonds in an amount greater than \$10,000,000 to assist in the financing of a development project under [AS 44.88.172](#) - 44.88.177 only if approved by law, excluding refunding bonds. Refunding bonds may be issued without further approval by law in a principal amount sufficient to provide funds for the payment of all bonds to be refunded by them and, in addition, for the payment of all other amounts that the authority considers appropriate in connection with the refunding, including expenses incident to the redeeming, calling, retiring, or paying of the outstanding bonds, the funding of reserves, and the issuance of the refunding bonds.

Sec. 44.88.100. Trust indentures and trust agreements. In the discretion of the authority, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee (hereinafter in this section referred to as "trust agreement") by means of which the authority may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the authority may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations, and agreements as to

(A) the application, investment, deposit, use, and disposition of the proceeds of bonds of the authority or of money or other property of the authority or in which it has an interest;

(B) the fixing and collection of rents or other consideration for and the other terms to be incorporated in a lease or contract of sale of a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177;

(C) the assignment by the authority of its rights in the lease or contract of sale of a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177 or in a mortgage or other security interest created with respect to a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177 to a trustee for the benefit of bondholders;

(D) the terms and conditions upon which additional bonds of the authority may be issued;

(E) the vesting in a trustee of rights, powers, duties, funds, or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance, and all other rights of the authority or of the bondholders under a lease, contract of sale, mortgage, security agreement, or trust agreement with respect to a project or development project financed under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 by mandamus or other proceeding or by taking possession of by agent or otherwise and operating a project or facility and collecting rents or other consideration and applying the same in accordance with the trust agreement;

(2) pledge, mortgage, or assign money, leases, agreements, property, or other assets of the authority either presently in hand or to be received in the future, or both; and

(3) provide for any other matters of like or different character which in any way affect the security or protection of the bonds.

Sec. 44.88.105. Capital reserve funds and capital reserve fund requirement.

(a) For the purpose of securing one or more issues of its bonds, the authority may establish one or more special funds, called "capital reserve funds", and shall pay into those capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the authority from other sources for the purposes of the capital reserve funds. A capital reserve fund may be established only if the authority determines that the establishment of the fund would enhance the marketability of the bonds. Money in a capital reserve fund, except as provided in this section, may be used as required only for (1) the payment of the principal of, and interest on, bonds or of the sinking fund payments with respect to those bonds; (2) the purchase or redemption of the bonds; or (3) the payment of a redemption premium required to be paid when the bonds are redeemed before maturity. However, money in a capital reserve fund may not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and sinking fund payments when other money of the authority is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund, from the investment of all or part of the fund, may be transferred by the authority to other funds or accounts of the authority if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

(b) If the authority decides to issue bonds secured by a capital reserve fund, the bonds may not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless the authority, at the time of issuance of the bonds, deposits in the capital reserve fund from the

proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the fund, is not less than the capital reserve fund requirement.

(c) In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the fund is invested shall be valued by a reasonable method established by the authority by resolution. Valuation shall include the amount of interest earned or accrued as of the date of the valuation.

(d) The chair of the authority shall annually, not later than January 2, certify in writing to the governor and the legislature the amount, if any, required to restore a capital reserve fund to the capital reserve fund requirement. The legislature may appropriate to the authority the amount certified by the chair of the authority. The authority shall deposit the amounts appropriated under this subsection during a fiscal year in the proper capital reserve fund. Nothing in this section creates a debt or liability of the state. In this subsection, "capital reserve fund" means a capital reserve fund that

(1) is created under this section on or before January 1, 1989;

(2) secures refunding bonds if the refunding bonds are issued to refund bonds that are secured by a capital reserve fund created under this section on or before January 1, 1989;

(3) secures bonds issued on or after August 11, 1993, for a power transmission intertie; or

(4) secures bonds issued on or after July 1, 2013, for a qualified energy development project financed under [AS 44.88.650](#) - 44.88.690.

(e) *[Repealed, Sec. 23 ch 123 SLA 1990]*.

(f) The authority may establish reserve funds, other than capital reserve funds, to secure one or more issues of its bonds. The authority may deposit in a reserve fund established under this subsection the proceeds of sale of its bonds and other money which may be made available from any other source. A reserve fund established under this subsection must comply with (a) - (c) of this section. The authority may allow a reserve fund established under this subsection to be depleted without complying with (d) of this section.

(g) *[Repealed, Sec. 23 ch 123 SLA 1990]*.

(h) In this section, "capital reserve fund requirement" means the amount required to be on deposit in the capital reserve fund as of the date of computation as determined by resolution of the authority.

Sec. 44.88.110. Validity of pledge. It is the intention of the legislature that a pledge made in respect of bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the authority shall immediately be subject to the lien

of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, or effective against the parties.

Sec. 44.88.120. Nonliability on bonds. (a) Neither the members of the authority nor a person executing the bonds are liable personally on the bonds or are subject to personal liability or accountability by reason of the issuance of the bonds.

(b) The bonds issued by the authority do not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the authority, but shall be payable solely from the income and receipts or other funds or property of the authority. The authority may not pledge the faith or credit of the state or of a political subdivision of the state, except the authority, to the payment of a bond and the issuance of a bond by the authority does not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond.

Sec. 44.88.130. Pledge of the state. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency that lends or contributes funds in respect to a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177 that the state will not limit or alter the rights and powers vested in the authority by this chapter to fulfill the terms of a contract made by the authority with the holders or federal agency and that the state will not in any way impair the rights and remedies of the holders until the bonds, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the authority, in a contract with the holders and, insofar as it relates to a federal agency, in a contract with the federal agency.

Sec. 44.88.140. Exemption from taxation. (a) Except as provided in [AS 29.45.030\(a\)\(1\)](#), the real and personal property of the authority and its assets, income, and receipts are declared to be the property of a political subdivision of the state and, together with any project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177,

and a leasehold interest created in a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177, devoted to an essential public and governmental function and purpose, and the property, assets, income, receipts, project, development project, and leasehold interests shall be exempt from all taxes and special assessments of the state or a political subdivision of the state, including, without limitation, all boroughs, cities, municipalities, school districts, public utility districts, and other taxing units. All bonds of the authority are declared to be issued by a political subdivision of the state and for an essential public and governmental purpose and to be a public instrumentality, and the bonds, and the interest on them, the income from them and the transfer of the bonds, and all assets, income, and receipts pledged to pay or secure the payments of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. Nothing in this section affects or limits an exemption from license fees, property taxes, or excise, income, or any other taxes, provided under any other law, nor does it create a tax exemption with respect to the interest of any business enterprise or other person, other than the authority, in any property, assets, income, receipts, project, development project, or lease whether or not financed under this chapter. By January 10 of each year, the authority shall submit to the governor a report describing the nature and extent of the tax exemption of the property, assets, income, receipts, project, development project, and leasehold interests of the authority under this section. The authority shall notify the legislature that the report is available.

(b) An applicant or proposed applicant under this chapter and the local political subdivision may enter into agreements providing for payments in lieu of taxes, computed on a formula basis or otherwise. The agreement may provide that the payments be made to the local political subdivision or to any other taxing unit of the state including, without limitation, a borough, city, municipality, school district or public utility district, the area of which is coterminous in whole or in part with that of the local political subdivision.

(c) *[Repealed, Sec. 126 ch 6 SLA 1984].*

(d) In this section, "local political subdivision" means the political subdivision of the state in which a project or development project financed under [AS 44.88.155](#) - 44.88.159 or 44.88.172 - 44.88.177 is or is to be located.

Sec. 44.88.150. Bonds legal investments for fiduciaries. The bonds of the authority are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all

banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

Sec. 44.88.155. Enterprise development account. (a) The enterprise development account is established in the revolving fund. The enterprise development account is a trust fund for the uses and purposes of this chapter. The enterprise development account consists of money or assets appropriated or transferred to the authority and other money or assets deposited in it by the authority.

(b) The authority may establish in the enterprise development account the accounts it considers appropriate.

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

(d) A loan participation purchased by the authority with assets of the enterprise development account or with proceeds of bonds secured by assets of the enterprise development account

(1) may not exceed \$20,000,000; however, in the case of a loan participation for qualified energy development, the loan participation may exceed \$20,000,000 with legislative approval;

(2) may not be purchased unless

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

(B) at least 10 percent of the principal amount of the loan is retained by the loan originator, or the loan is for financing improvements in energy efficiency;

(3) may not be purchased if the loan to be purchased exceeds 75 percent of the appraised value of the collateral offered as security for the loan unless the amount of the loan in excess of this limit is federally insured

or guaranteed or is insured by a qualified mortgage insurance company, except that the loan to be purchased under this paragraph may not exceed the total of loan proceeds used to refinance an existing debt plus the cost of new construction, expansion, or acquisition unless the proceeds from the additional amounts of the loan to be purchased are restricted to uses approved by the authority to finance commercial activity in the state by a business enterprise;

(4) may not be purchased if the participation in the loan to be purchased is for a term longer than the following, except that a loan under (A) or (C) of this paragraph may not have a term longer than three-quarters of the authority's estimate of the life of the collateral offered as security for the loan:

(A) 40 years from the date the loan is made in the case of a loan participation for a project described in [AS 44.88.900\(11\)\(E\)](#);

(B) 50 years from the date the loan is made in the case of a loan participation for qualified energy development;

(C) 25 years from the date the loan is made in the case of a loan participation for other projects;

(5) may be made only if the participation in the loan to be purchased contains amortization provisions; the amortization provisions

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

(B) may allow the loan originator to amortize the portion of the loan retained by the loan originator using a shorter amortization schedule than the amortization schedule for the portion of the loan held by the authority if

(i) in the authority's opinion, the project financed can support the increased debt service; and

(ii) the accelerated amortization schedule is required to induce the originator to make the loan;

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

(7) may be made only if the participation in the loan to be purchased is secured as to repayment by a mortgage or other security instrument in the manner the authority determines is feasible to assure timely repayment under the loan documents entered into with the borrower.

(e) The authority may adopt regulations for the administration of the enterprise development account including, without limitation, provisions for fees and agreements relating to application, loan commitment, servicing, and origination of loans by other lenders.

(f) The authority may enter into agreements as to the use of the money in the enterprise development account, including without limitation, trust or custody arrangements with banks or trust companies. It may also pledge, assign, or grant the agreement, interests under an agreement, or interests in the enterprise development account as may be necessary or appropriate to provide for payment and security for bonds of the authority issued to finance the purchase by the authority of loans for projects.

(g) Notwithstanding any other provision of this section, the authority may waive or modify the requirements of this section as it considers appropriate and prudent in order to finance a project if the authority intends to own the project or in order to finance qualified energy development.

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

Sec. 44.88.156. Multi-family housing loan account. [Repealed, Sec. 44 ch 42 SLA 1987]. Repealed or Renumbered

Sec. 44.88.157. , 44.88.158. Loan insurance and loan insurance account; small business enterprise loan account. [Repealed, Sec. 23 ch 123 SLA 1990]. Repealed or Renumbered

Sec. 44.88.159. Interest rates. (a) The interest rate on a loan purchased from the proceeds of tax-exempt bonds secured by the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)) under [AS 44.88.650](#) - 44.88.690 or by the Arctic infrastructure development fund (AS 44.88.810) under AS 44.88.800 – 44.88.840 or a loan participation purchased from the proceeds of tax-exempt bonds or expected by the authority to be purchased from the proceeds of tax-exempt bonds under [AS 44.88.155](#) shall be determined under the regulations adopted by the authority under [AS 44.88.085](#)(g)(2)(C) and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on tax-exempt bonds of the authority plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

(b) The interest rate on a loan purchased from the proceeds of taxable bonds secured by the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)) under [AS 44.88.650](#) - 44.88.690 or by the Arctic infrastructure development fund (AS 44.88.810) under AS 44.88.800 – 44.88.840 or a loan participation purchased from the proceeds of taxable bonds under [AS 44.88.155](#) or expected by the authority to be purchased from the proceeds

of taxable bonds under [AS 44.88.155](#) shall be determined under the regulations adopted by the authority under [AS 44.88.085\(g\)\(2\)\(C\)](#) and shall be not less than the cost of funds to the authority. In this subsection, "cost of funds" means the true interest cost expressed as a rate on taxable bonds, plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

(c) *[Repealed, Sec. 23 ch 123 SLA 1990].*

(d) The provisions of this section apply only to a loan participation purchased under [AS 44.88.155](#) - 44.88.159 or to a loan made under [AS 44.88.650](#) - 44.88.690 or 44.88.800 - 44.88.840.

(e) The interest rate on a loan made under [AS 44.88.650](#) - 44.88.690 or 44.88.800 - 44.88.840 or a loan participation purchased directly from the assets of the authority shall be determined under the regulations adopted by the authority under [AS 44.88.085\(g\)\(2\)\(C\)](#) and shall be not less than the total of a percentage as determined by the authority to represent the allocable expenses of operation and costs of loan origination and servicing, plus the cost of funds. In this subsection,

(1) "comparable financial security" means a type or category of financial security the authority identifies in the regulations adopted by the authority under [AS 44.88.085\(g\)\(2\)\(C\)](#) that has a term and financial conditions comparable to the term and financial conditions of a loan participation or a loan made under [AS 44.88.650](#) - 44.88.690 or 44.88.800 - 44.88.840 and for which a regularly published, nationally recognized market index is available;

(2) "cost of funds" means the earnings, expressed as an annual interest rate, the authority would receive on a comparable financial security, and, for a loan participation or a loan made under [AS 44.88.650](#) - 44.88.690 or 44.88.800 - 44.88.840 with a fixed interest rate, the cost of funds must equal or exceed the minimum interest rate;

(3) "minimum interest rate" means the five-year return on investment funds of the authority, expressed as an annual interest rate, achieved by all internal and external investment managers of the authority combined.

(f) In determining an interest rate under the regulations adopted by the authority under [AS 44.88.085\(g\)\(2\)\(C\)](#), the authority may determine to disregard the minimum interest rate required under (a), (b), or (e) of this section for a loan participation purchased by the authority or a loan made under [AS 44.88.650](#) - 44.88.690 or 44.88.800 - 44.88.840 to resolve lending limits or reserve restrictions imposed on the financial institution and may instead determine to retain the interest rate existing at the time the authority makes the loan or purchases the authority's loan participation.

(g) The authority may, in the regulations adopted by the authority under [AS 44.88.085\(g\)\(2\)\(C\)](#), establish a program to pay to borrowers of loan

participations determined by the authority to meet sufficient job creation, rural development, Arctic infrastructure development, renewable energy development, or other economic development criteria incentive rate rebates of not more than one percent of the interest rate charged on the authority's portion of a loan participation. The following standards apply to the program:

(1) the payment of an incentive rate rebate may reduce the interest rate to a rate that is less than the minimum interest rate required under (a), (b), or (e) of this section;

(2) the authority may not commit to pay an incentive rate rebate for a proposed loan participation if the total of the amount of the proposed loan participation plus the combined outstanding balance of all loan participations for which the authority has committed to pay incentive rate rebates would exceed five percent of the total of the amount of the proposed loan participation plus the combined outstanding balance of all loan participations of the authority;

(3) an incentive rate rebate may not accrue for more than five years after the date the loan participation is purchased;

(4) the authority may establish a separate account for the incentive rate rebate program.

Article 04. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 44.88.160. Findings of the authority. [Repealed, Sec. 23 ch 123 SLA 1990]. Repealed or Renumbered

Sec. 44.88.165. Delinquent loans. The authority shall adopt regulations to describe the circumstances under which it will discontinue purchasing loans from a financial institution because of excessive delinquencies among the loans previously purchased by the authority from the financial institution. In adopting the regulations, the authority must consider the authority's delinquency experience with loans it purchased from all financial institutions. The authority may include in the regulations other remedies it considers appropriate as alternatives to the discontinuance of purchasing loans from the financial institution.

Sec. 44.88.170. Purchase of project and leases. (a) Nothing in this chapter prevents the inclusion in a lease or other agreement relating to a project of a provision granting the right to purchase the project, or to renew or extend the lease or agreement, upon the terms and conditions which may be provided for in the lease or agreement.

(b) A lease with respect to a project may provide for two or more lessees

with the legal relationship between themselves and the authority which the authority may approve, including without limitation, provisions to the effect that the obligations of the lessees under the lease for payment of rental or otherwise between themselves and the authority are several, joint, or joint and several and that the lessees lease the project as tenants-in-common, or otherwise.

Sec. 44.88.172. Economic development account. (a) The economic development account is established in the revolving fund. The economic development account consists of money or assets appropriated, loaned, or transferred to the authority for deposit in the account and other money or assets deposited in the account by the authority. While money is on deposit in the economic development account, the money may be used to finance, acquire, manage, and operate development projects that the authority intends to own and operate or to provide development project financing for development projects the authority does not intend to own and operate. In this subsection,

(1) "operate" includes operation directly by the authority, by an agent of the authority, or by a person as determined under an agreement between the authority and other owners of the development project;

(2) "own" includes ownership by the authority of all or a percentage of a development project or all or a percentage of the shares of a corporation or membership in a limited liability company for which the development project is the sole asset of the corporation or limited liability company.

(b) *[Repealed, Sec. 23 ch 123 SLA 1990].*

(c) *[Repealed, Sec. 23 ch 123 SLA 1990].*

(d) The authority shall adopt regulations to implement this section. The regulations may include provisions for the application process, application fees, interest rates, other charges and fees, terms, conditions, security, and other requirements for development projects the authority undertakes or development project financing the authority provides.

Sec. 44.88.173. Finance plan. (a) Before approving a project financed under [AS 44.88.172](#), the authority shall prepare a finance plan. The finance plan must include an estimate of the total cost of the project, and a description of the sources of money that will be used to finance the total cost of the project. The finance plan must also include an estimate of the operational costs of the completed project, as well as a description of the source of the money that is to be used to pay the operational costs.

(b) The authority shall give preference to a project that does not require financial assistance from the state. If the authority determines that a project requires state financial assistance, and if the authority further determines that it is desirable to finance the project, the authority shall recommend a

method of financing that minimizes cost to the state. A finance plan required under (a) of this section must identify the method of financing that minimizes the cost to the state.

(c) The authority shall submit a finance plan prepared under this section to the state bond committee, the governor, and the legislature before issuing bonds or otherwise incurring debt for the project. If a project requires financial assistance from the state, the state financial assistance must be available before bonds are issued for the project.

Sec. 44.88.174. Regional resource advisory council. (a) Within 30 days after the authority adopts a resolution certifying that a project in the unorganized borough is eligible for financing under [AS 44.88.172](#), the governor shall appoint a Regional Resource Advisory Council in the area of the state where the project is to be located and for which a regional housing authority has been established under [AS 18.55.996](#). The purpose of a council is to assist the authority in reviewing a project that has been proposed for development in its area of the state.

(b) A Regional Resource Advisory Council consists of five members registered to vote in the region. The governor shall appoint the members to reflect the economic and geographic diversity of the region. Council members serve three-year terms at the pleasure of the governor, except that the initial members may be appointed for less than three years so that the term of at least one of the members expires each year. The governor shall appoint a chairperson who shall call meetings as required and preside over the deliberations of the council. A majority of the council constitutes a quorum for conducting the business of the council.

(c) Members of a Regional Resource Advisory Council do not receive compensation for their services on the council, but are entitled to per diem and travel expenses authorized by law for state boards and commissions under [AS 39.20.180](#).

Sec. 44.88.175. Requirements prior to approval of projects. *[Repealed, Sec. 23 ch 123 SLA 1990].* Repealed or Renumbered

Sec. 44.88.176. Hearing to consider proposed project. *[Repealed, Sec. 23 ch 123 SLA 1990].* Repealed or Renumbered

Sec. 44.88.177. Operation of projects. If a project is financed under [AS 44.88.172](#), the authority shall solicit the review and advice of the Regional Resource Advisory Council or governing body in the area in which a project is located before the execution of contracts, agreements, resolutions, or other matters that directly concern the development, maintenance, and operation of a project.

Sec. 44.88.178. Creation of subsidiaries. The authority may create one or more subsidiary corporations for the purpose of acquiring, constructing, owning, operating, or financing a project financed under [AS 44.88.172](#). A subsidiary corporation created under this section may be incorporated under [AS 10.20.146](#) - 10.20.166. The authority may transfer assets of the authority to a subsidiary created under this section. A subsidiary created under this section may borrow money and issue bonds as evidence of that borrowing, and has all the powers of the authority that the authority grants to it. Unless otherwise provided by the authority, the debts, liabilities, and obligations of a subsidiary corporation created under this section are not the debts, liabilities, or obligations of the authority.

Sec. 44.88.180. Conflicts of interest. (a) A member of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the member is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that may be a party to the contract or lease. A resolution of the authority that is approved by a majority of the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.

(b) *[Repealed, Sec. 82 ch 41 SLA 2009].*

Sec. 44.88.190. Operation of certain statutes excepted. (a) The authority may not be considered or constitute (1) a political subdivision of the state as the term is used in [AS 37.10.085](#), (2) a municipal corporation or political subdivision of the state as the terms are used in [AS 29](#), or (3) except as provided in [AS 44.88.205](#), a state agency as the term is used in [AS 37](#), but for all other purposes the authority constitutes a political subdivision and an instrumentality of the state as provided in this chapter.

(b) The funds, income, or receipts of the authority may not be considered or constitute money of the state, nor may real property in which the authority has an interest be considered land owned in fee by the state or to which the state may become entitled or in any way land belonging to the state, or state land referred to in Art. VIII of the Alaska Constitution.

(c) A loan participation purchased or financed by the authority is exempt from the provisions of [AS 45.45.010](#).

Sec. 44.88.200. Annual audit. The authority shall have its financial records audited annually by the legislative auditor or by a certified public accountant approved by the legislative auditor. The legislative auditor may prescribe the form and content of the financial records of the authority and shall have access to these records at any time.

Sec. 44.88.205. Compliance with executive budget act; authority finances. (a) The operating budget of the authority is subject to [AS 37.07](#) (Executive Budget Act).

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

(1) annually review the authority's assets to determine whether assets of the authority exceed an amount required to fulfill the purposes of the authority as defined in this chapter; in making its review, the authority shall determine whether, and to what extent, assets in excess of the amount required to fulfill the purposes of the authority during at least the next fiscal year are available without

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

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

(C) materially affecting the ability of the authority to fulfill the authority's purposes set out in [AS 44.88.070](#); and

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

(A) loan commitment fees received by or accrued to the authority during the preceding fiscal year; and

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

Sec. 44.88.210. Reports and publications. (a) By January 10 of each year, the authority shall publish a report for distribution to the governor, legislature, and the public. The authority shall notify the legislature that the report is available. The report shall be written in easily understandable language. The report must include a financial statement audited by an independent outside auditor, a statement of the authority's investments under this chapter including an appraisal of the investments at market value, a comparison of the authority's performance with the goals of the authority and the levels of bonding and investment activities anticipated in the previous year's report under (b) of this section, and any other information the members of the authority believe would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the authority shall be published in at least one newspaper in each judicial district. The authority may also publish other reports it considers desirable to carry out its purpose.

(b) The authority must include in its annual report under (a) of this section

(1) an estimate of the investment activity of the authority under this chapter for the following 12-month period; and

(2) an estimate of the amount of bonds to be issued during the following 12-month period.

Sec. 44.88.212. Fees charged by authority; prepayments. (a)

[Repealed, Sec. 23 ch 123 SLA 1990].

(b) The commitment fee for a loan commitment by the authority may not exceed two percent of the principal amount of the loan.

(c) The authority may not limit, or charge a fee or penalty for, prepayment of a loan after five years from the inception of the loan.

Sec. 44.88.215. Confidentiality of records and information. (a) In

order to promote the purposes of this chapter, unless the records or information were a matter of public record before submittal to the authority, the following records and information shall be kept confidential if the person supplying the records or information or the project, bond, loan, or guarantee applicant or borrower requests confidentiality and makes an adequate showing to the executive director of the authority that the records or information are

(1) income tax returns;

(2) financial statements, profit-and-loss statements, and cash flow projections, except the information required by the authority to calculate debt service coverage on the loan;

(3) financial business plans;

(4) credit reports from consumer reporting agencies and other credit information obtained from banks, creditors, or other credit reporting entities;

(5) trade secrets, including confidential proprietary information and confidential information about products, pricing, or manufacturing or business processes;

(6) appraisals, except the name of the appraiser, the date of the appraisal, and the fair market value determined for the property appraised;

(7) market surveys and marketing strategy information; or

(8) any information required to be kept confidential by a federal law or regulation or by state law.

(b) Information compiled by the authority from information described in (a) of this section shall be kept confidential unless disclosure is authorized by the person supplying the information and by the project, bond, loan, or guarantee applicant or borrower.

(c) The records and information that the executive director of the authority determines to be confidential under (a) or (b) of this section are not public records under [AS 40.25.110](#) - 40.25.220.

(d) Nothing in this section shall prevent a legislator from reviewing

information otherwise confidential under this section if the legislator has a valid legislative purpose for reviewing the information and if the legislator agrees to maintain the confidentiality of the information.

Sec. 44.88.220. [Renumbered as AS 44.88.900]. Repealed or Renumbered

Sec. 44.88.300. - 44.88.370. Export assistance. [Repealed, Sec. 21 ch 109 SLA 1998]. Repealed or Renumbered

Sec. 44.88.380. Personal liability. An officer, employee, or agent of the authority may not be held personally liable in a civil action for damages for an act done or omitted in good faith while performing the functions of office, employment, or agency under this chapter.

Sec. 44.88.390. Export insurance account. [Repealed, Sec. 21 ch 109 SLA 1998]. Repealed or Renumbered

Article 05. SMALL BUSINESS ECONOMIC DEVELOPMENT REVOLVING LOAN FUND

Sec. 44.88.400. Creation of a small business economic development revolving loan fund. There is created in the authority a small business economic development revolving loan fund to carry out the purposes of AS 44.88.400 - 44.88.430, including the administration of a revolving loan fund qualified to receive revolving loan fund grants from the United States Economic Development Administration (EDA) under Title IX of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 et seq.). All money granted to the authority by the United States Economic Development Administration, all money appropriated to the fund, all principal and interest payments, and all money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on loans made under AS 44.88.400 - 44.88.430 shall be paid into the small business economic development revolving loan fund.

Sec. 44.88.410. Special account established. (a) There is established as a special account within the small business economic development revolving loan fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The authority may expend money credited to the foreclosure expense account when necessary to protect the authority's security interest in collateral on loans made under AS 44.88.420 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 44.88.420. Powers and duties of the authority. (a) The authority may

- (1) accept United States Economic Development Administration revolving fund grants;
- (2) make loans to eligible applicants under the United States Economic Development Administration Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED) programs;
- (3) designate agents and delegate powers to them as necessary;
- (4) adopt regulations necessary to carry out its functions and to administer programs under United States Economic Development Administration guidelines, including regulations to establish reasonable fees for services provided;
- (5) establish amortization plans for the repayment of loans that may include extensions; and
- (6) charge and collect the fees established under this subsection.

(b) *[Repealed, Sec. 28 ch 90 SLA 1991].*

Sec. 44.88.430. Disposal of property acquired by default or foreclosure. The authority shall dispose of property acquired through default or foreclosure on a loan made under [AS 44.88.400](#) - 44.88.430. Disposal shall be made in a manner that serves the best interests of the state and may include the amortization of payments over a period of years.

Article 06. BUSINESS AND EXPORT ASSISTANCE PROGRAM

Sec. 44.88.500. Business and export assistance guarantees. Subject to the requirements of [AS 44.88.500](#) - 44.88.599, the authority may

- (1) guarantee new business and export assistance loans; and
- (2) guarantee new business and export assistance loans made to refinance existing loans.

Sec. 44.88.502. Effect of guarantee. (a) A guarantee under [AS 44.88.500](#) - 44.88.599 does not create a debt or liability of the state.

(b) A guarantee under [AS 44.88.500](#) may not be terminated, canceled, or revoked except under its terms. A guarantee held by a participating financial institution is presumed to be valid.

(c) A guarantee or portion of a guarantee under [AS 44.88.500](#) that relates to an export transaction must guarantee against commercial and political loss, in whole or in part, of principal and interest. The authority may require the borrower to obtain insurance against some or all of the loss guaranteed under [AS 44.88.500](#). In this subsection, "political loss" means a loss incurred as a result of

(1) a political risk that would be insurable under an export credit insurance policy issued by the Export-Import Bank of the United States; or
(2) any other political risk that is actually insured under insurance the authority requires the borrower to obtain.

Sec. 44.88.505. Qualifications of applicant for new loan guarantee. (a) A business enterprise may apply for a new loan guarantee under [AS 44.88.500](#)(1).

(b) The authority may establish additional applicant qualifications by regulation. These qualifications may vary depending upon the type of business the applicant is engaged in.

Sec. 44.88.510. Application for new loan guarantee. An applicant for a new loan guarantee shall provide information that the authority may require by regulation. The authority may require submission of an economic benefit analysis prepared by a person acceptable to the authority.

Sec. 44.88.515. Qualifications of applicant for debt refinancing guarantee. A business enterprise may apply under [AS 44.88.500](#)(2) to guarantee the refinancing of existing debt.

Sec. 44.88.520. Application for debt refinancing guarantee. An applicant for a debt refinancing guarantee shall provide the information that the authority may require by regulation.

Sec. 44.88.525. Conditions of debt refinancing guarantee. The authority may not guarantee refinanced debt

(1) unless the refinancing
(A) is necessary to extend substantial debt payments over a longer period of time, thereby improving the applicant's net cash flow and working capital position consistent with the useful life of the assets being refinanced;
(B) assists with short-term debt or cash expenditures when lenders will not extend reasonable longer terms to the applicant; and
(C) creates additional economic opportunity or improves the viability of the borrower rather than just reducing the liability of the lender;
or

(2) unless the refinancing is necessary to place a permanent loan subsequent to an interim loan for financing of the project.

Sec. 44.88.530. Applicability of [AS 44.88.535](#) - 44.88.560. [AS 44.88.535](#) - 44.88.560 apply to new loan guarantees and refinancing guarantees under [AS 44.88.500](#).

Sec. 44.88.535. Conditions of loan guarantee. (a) The authority may guarantee a loan under [AS 44.88.500](#) - 44.88.599 if the

(1) loan

(A) is commercially reasonable;

(B) contains payment provisions satisfactory to the authority;

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

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

(A) net cash flow from the borrower; and

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

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

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

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

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

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

(b) The authority may provide a guarantee of up to 80 percent of a loan that qualifies under [AS 44.88.500](#) - 44.88.599. The ratio of the guarantee to the outstanding principal of the loan may not increase over the term of the loan.

(c) The authority may guarantee the payment of interest on the guaranteed portion of a loan

(1) in the manner established by the authority by regulation; and

(2) for a period of time not to exceed

(A) 90 days for loans or parts of loans not made to support an export transaction;

(B) 180 days for loans or parts of loans made for a post-shipment loan guarantee to support an export transaction; in this subparagraph, "post-shipment loan guarantee" means a guarantee, or portion of a

guarantee, that becomes effective after the export contract date that shipment of the related goods or raw materials or provision of the related services begins; or

(C) 270 days for loans or parts of loans made for a pre-shipment loan guarantee to support an export transaction; in this subparagraph, "pre-shipment loan guarantee" means a guarantee, or part of a guarantee, that becomes effective before the export contract date that shipment of the related goods or raw materials or provision of the related services begins.

Sec. 44.88.540. Limitations of guarantees. The authority may not issue a total of more than

- (1) \$50,000,000 of loan guarantees;
- (2) \$25,000,000 of loan guarantees in which the amount of the loan guarantee exceeds \$500,000.

Sec. 44.88.542. Discounted loan purchases. [Repealed, Sec. 21 ch 111 SLA 1996]. Repealed or Renumbered

Sec. 44.88.545. Limitations of guarantees with respect to borrowers.

The authority may not provide a guarantee

- (1) of more than \$1,000,000;
- (2) to an individual borrower that cumulatively, with the outstanding principal balance of other authority guaranteed indebtedness of that borrower, exceeds \$1,000,000.

Sec. 44.88.550. Interest on guaranteed loan. (a) The maximum interest rate that may be charged by a financial institution on a loan guaranteed by the authority is two and three-quarters percentage points above the prime rate.

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

Sec. 44.88.555. Servicing of guaranteed loans. (a) The financial institution that holds a loan guaranteed by the authority under [AS 44.88.500](#) - 44.88.599 shall

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

(b) Amounts received toward satisfaction of a default on a loan guaranteed under [AS 44.88.500](#) - 44.88.599 shall be allocated between the lender and the fund according to the guaranteed percentage of the loan until the principal balance and accrued interest have been repaid.

Sec. 44.88.560. Powers of the authority. The authority may

- (1) adopt regulations to implement [AS 44.88.500](#) - 44.88.599;
- (2) establish terms and conditions for loan guarantees and refinancing agreements subject to the requirements of [AS 44.88.500](#) - 44.88.599;
- (3) make and execute contracts and other instruments to implement [AS 44.88.500](#) - 44.88.599;
- (4) charge reasonable fees that the authority may establish by regulation for the service it provides under [AS 44.88.500](#) - 44.88.599;
- (5) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in a loan or a loan guarantee;
- (6) exercise any other power necessary to implement [AS 44.88.500](#) - 44.88.599; and
- (7) to the extent the authority considers it to be in its best interest to do so, use money to pay expenses relating to the liquidation of collateral securing loans guaranteed by the authority.

Sec. 44.88.570. Distribution of loans. The authority shall distribute guarantees of new loans and guarantees of loans made to refinance existing loans under [AS 44.88.500](#) - 44.88.599 to all regions of the state in an equitable manner.

Sec. 44.88.599. Definitions. In [AS 44.88.500](#) - 44.88.599

- (1) "export transaction" means a contract for the sale of goods, services, or raw materials that includes a term that requires the goods, services, or raw materials, in whole or in part, to be shipped to or provided in a foreign country.
- (2) "prime rate" means the lowest United States money center prime rate of interest that is published in the Wall Street Journal.

Article 07. RURAL DEVELOPMENT INITIATIVE FUND

Sec. 44.88.600. Rural development initiative fund. The rural development initiative fund is created in the authority outside of the revolving fund. The rural development initiative fund is a fund for the uses and purposes of [AS 44.88.600](#) - 44.88.620. The rural development initiative fund consists of money or assets appropriated or transferred to the authority for the purposes of this section, and of loan repayments, interest, or other income earned on loans or investments of the fund. In addition, the authority may deposit other assets into the fund if the total value of those deposits does not exceed \$2,000,000. The authority, in its discretion, may transfer money or other assets from the rural development initiative fund to the revolving fund.

Sec. 44.88.610. Rural development loans. (a) The authority may use money from the rural development initiative fund to make loans of up to \$150,000 to a person, or loans of up to \$300,000 to two or more persons, to be used for working capital, equipment, construction, or other commercial purposes by a business located in a community with a population of 5,000 or less that is not connected by road or rail to Anchorage or Fairbanks, or with a population of 2,000 or less that is connected by road or rail to Anchorage or Fairbanks. For purposes of this subsection,

(1) "community" means a city as defined in [AS 29.71.800](#) or a place in the unorganized borough that is not incorporated as a city and in which 25 or more individuals reside as a social unit; and

(2) "connected by road" does not include a connection by the Alaska marine highway system.

(b) The authority shall require collateral for each loan made under this section and shall require that a reasonable amount of money from other nonstate sources be committed for use on any project or enterprise for which money from a loan will be used. The authority by regulation may establish other conditions for loans. The authority shall by regulation establish rates of interest that are not less than four percent a year and terms of repayment for loans made under this section.

Sec. 44.88.620. Disposal of property acquired by default or foreclosure. The authority shall dispose of property acquired through default or foreclosure of a loan made from the rural development initiative fund. Disposal shall be made in a competitive manner that serves the best interests of the state, and may include the amortization of payments over a period of years. Proceeds from the disposal of property under this section shall be deposited into the fund.

Article 08. SUSTAINABLE ENERGY TRANSMISSION AND SUPPLY

Sec. 44.88.650. Sustainable energy transmission and supply development program. The sustainable energy transmission and supply development program is created in the authority to promote and provide financing for qualified energy development in the state to alleviate unemployment and contribute to the state's economic welfare, economic diversity, and economic development.

Sec. 44.88.660. Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund. The Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund is established in the authority.

The development fund consists of appropriations made to the development fund by the legislature, money or other assets transferred to the development fund by a vote of the members of the authority under AS 44.88.050 from any other fund controlled by the authority, and unrestricted loan repayments, interest, or other income earned on loans, investments, or assets of the development fund. The development fund is not an account in the revolving fund established in [AS 44.88.060](#), and the authority shall account for the development fund separately from the revolving fund. The authority may create additional accounts in the development fund. Subject to agreements made with the holders of the authority's bonds or with other persons, the authority may transfer amounts in an account in the development fund to another account in the development fund. Amounts deposited in the development fund may be pledged to the payment of bonds of the authority or expended for the purposes of [AS 44.88.650](#) - 44.88.690. The authority has the powers and responsibilities established in [AS 37.10.071](#) with respect to the investment of amounts held in the development fund.

Sec. 44.88.670. Use of fund balance. Subject to the requirements of [AS 44.88.650](#) - 44.88.690, the authority may use money in the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)) to assist in the construction, improvement, rehabilitation, and expansion of qualified energy development.

Sec. 44.88.680. Qualified energy development; powers and duties of the authority. (a) Subject to the limitations of [AS 44.88.690](#), for qualified energy development, the authority may

- (1) use the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund ([AS 44.88.660](#)) to finance qualified energy development, insure project obligations, guarantee loans or bonds, and establish reserves;
- (2) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in financing;
- (3) defer principal payments or capitalize interest on qualified energy development financing;
- (4) subject to [AS 36.30.085\(e\)](#), enter into lease agreements, sales-lease-back agreements, build-operate-transfer and operate-transfer agreements, or any similar project financing agreement for a qualified energy development;
- (5) enter into agreements with government entities for the transfer and control of infrastructure, facilities, rights-of-way, and studies;

(6) contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program;

(7) subject to [AS 44.88.090](#), borrow money and issue bonds; and

(8) pay off the principal of and interest on bonds issued by a municipality to acquire, construct, improve, or equip a public utility if the municipality continues to pay the authority the bond payments due under the terms of the bonds; the authority shall retain the payments from the municipality in a sinking fund, and the municipality may apply to use the funds for qualified energy development.

(b) The authority shall adopt regulations to implement [AS 44.88.650](#) - 44.88.690, including

(1) an application process for acquiring financing under this section;

(2) qualifications for qualified energy development projects applying for financing under this section; and

(3) fiscal controls and accounting procedures for the development fund.

Sec. 44.88.690. Limitations on financing. (a) Unless the authority has obtained legislative approval by law, the authority may not use the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund established in AS 44.88.660 to make

(1) a loan for more than one-third of the capital cost of qualified energy development; or

(2) a loan guarantee if the amount of the guarantee exceeds \$20,000,000.

(b) Financing under [AS 44.88.680](#) is limited to the life of qualified energy development, which may not be more than

(1) 30 years; or

(2) 50 years for a transmission line or hydroelectric qualified energy development.

(c) Notwithstanding (a) of this section, the authority may use the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund established in AS 44.88.660 as security for a bond guarantee.

Article 09. 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 the applicant is engaged.

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

Sec. 44.88.730. Conditions of loan guarantee. (a) The authority may guarantee a loan under [AS 44.88.700](#) - 44.88.799 if the

- (1) loan
 - (A) is commercially reasonable;
 - (B) contains payment provisions satisfactory to the authority; and
 - (C) is secured by acceptable collateral;

- (2) project
 - (A) is allocated new markets tax credits by a qualified community development entity;
 - (B) promotes economic development in the state; and
 - (C) is not a housing project;
 - (3) borrower demonstrates the ability to repay the loan from either or both of the following:
 - (A) net cash flow of the borrower;
 - (B) proceeds from the sale of current assets that are collateral for the loan if the sale or receipt of proceeds from the sale is an event that creates a payment obligation; in this subparagraph, "current asset" means property that will be or could be converted into cash within one year in the normal operation of a business;
 - (4) term of the loan does not exceed 10 years;
 - (5) loan is originated with and serviced by a financial institution.
- (b) The authority may provide a guarantee for up to 100 percent of a loan that qualifies under [AS 44.88.700](#) - 44.88.799.

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

- (1) service the loan;
 - (2) exercise diligence in collecting amounts due under the loan; and
 - (3) comply with all requirements of the loan guarantee agreement.
- (b) Amounts received toward satisfaction of a default on a loan guaranteed under [AS 44.88.700](#) - 44.88.799 shall be allocated between the lender and the revolving fund according to the guaranteed percentage of the loan until the principal balance and accrued interest have been repaid.

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

- (b) Subject to (a) of this section, the authority may make a new markets

tax credit assistance leveraged loan under [AS 44.88.700](#) - 44.88.799 to the applicant to finance a portion of the project using funds from the enterprise development account ([AS 44.88.155](#)).

Sec. 44.88.760. Limitations of guarantees and leveraged loans. The combined outstanding principal balance of loan guarantees and loans under [AS 44.88.700](#) - 44.88.799 may not exceed \$40,000,000.

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

- (1) adopt regulations to implement [AS 44.88.700](#) - 44.88.799;
- (2) establish terms and conditions for loan guarantees and loans, subject to the requirements of [AS 44.88.700](#) - 44.88.799;
- (3) make and execute contracts and other instruments to implement [AS 44.88.700](#) - 44.88.799;
- (4) charge reasonable fees and interest rates that the authority may establish by regulation for the service it provides under [AS 44.88.700](#) - 44.88.799;
- (5) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in a loan or a loan guarantee;
- (6) exercise any other power necessary to implement [AS 44.88.700](#) - 44.88.799; and
- (7) to the extent the authority considers it to be in its best interest to do so, use money to pay expenses relating to the liquidation of collateral securing loans guaranteed or made by the authority under [AS 44.88.700](#) - 44.88.799.

Sec. 44.88.799. Definitions. In [AS 44.88.700](#) - 44.88.799,

- (1) "federal new markets tax credit program" means the program administered by the Community Development Financial Institutions Fund that arises out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;
- (2) "new markets tax credit" means tax credits that arise out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;
- (3) "new markets tax credit assistance leveraged loan" and "leveraged loan" mean a loan made into an investment entity, the proceeds of which, together with other funds, including tax credit equity, are invested as a qualified equity investment in a qualified community development entity that will use the funds to finance a project for which the entity allocates new markets tax credits;
- (4) "qualified community development entity" has the meaning given in 26 U.S.C. 45D(c) (Internal Revenue Code) and related regulations;
- (5) "qualified equity investment" means an equity investment in a

qualified community development entity that satisfies the conditions described in 26 U.S.C. 45D(b) (Internal Revenue Code) and related regulations.

Article 09A. ARCTIC INFRASTRUCTURE DEVELOPMENT

Sec. 44.88.800. Arctic infrastructure development program. The Arctic infrastructure development program is created in the authority to promote and provide financing for Arctic infrastructure development.

Sec. 44.88.810. Arctic infrastructure development fund. The Arctic infrastructure development fund is established in the authority. The fund consists of appropriations made to the fund by the legislature, money or other assets transferred to the fund by a majority vote of the members of the authority under AS 44.88.050 from any other fund controlled by the authority, and unrestricted loan repayments, interest, or other income earned on loans, investments, or assets of the fund. The fund is not an account in the revolving fund established in AS 44.88.060, and the authority shall account for the fund separately from the revolving fund. The authority may create additional accounts in the fund. Subject to agreements made with the holders of the authority's bonds or with other persons, the authority may transfer amounts in an account in the fund to another account in the fund. Amounts deposited in the fund may be pledged to the payment of bonds of the authority or expended for the purposes of AS 44.88.800 - 44.88.840. The authority has the powers and responsibilities established in AS 37.10.071 with respect to the investment of amounts held in the fund.

Sec. 44.88.820. Use of fund balance. Subject to the requirements of AS 44.88.800 - 44.88.840, the authority may use money in the Arctic infrastructure development fund (AS 44.88.810) for Arctic infrastructure development.

Sec. 44.88.830. Qualified infrastructure development; powers and duties of the authority. (a) Subject to the limitations of AS 44.88.840, for Arctic infrastructure development, the authority may

(1) use the Arctic infrastructure development fund (AS 44.88.810) to finance Arctic infrastructure development, insure project obligations, guarantee loans or bonds, and establish reserves;

(2) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in financing;

(3) defer principal payments or capitalize interest on Arctic infrastructure development;

(4) subject to AS 36.30.085(e), enter into lease agreements, sales lease-back agreements, build-operate-transfer and operate-transfer agreements, or any similar project financing agreement for a qualified Arctic infrastructure development;

(5) enter into agreements with government entities for the transfer and control of infrastructure, facilities, rights-of-way, and studies;

(6) contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program; and

(7) subject to AS 44.88.090, borrow money and issue bonds.

(b) The authority shall adopt regulations to implement AS 44.88.800 - 44.88.840, including

(1) a process for acquiring financing under this section;

(2) qualifications for Arctic infrastructure development projects applying for financing under this section; and

(3) fiscal controls and accounting procedures for the fund.

Sec. 44.88.840. Limitations on financing. (a) Unless the authority has obtained legislative approval by law, the authority may not use the Arctic infrastructure development fund established in AS 44.88.810 to make

(1) a loan for more than one-third of the capital cost of an Arctic infrastructure development; or

(2) a loan guarantee if the amount of the guarantee exceeds \$20,000,000.

(b) Financing under AS 44.88.830 is limited to the projected life of the Arctic infrastructure development, which may not be more than 40 years.

(c) Notwithstanding (a) of this section, the authority may use the Arctic infrastructure development fund established in AS 44.88.810 as security for a bond guarantee.

(d) The authority may guarantee a loan under AS 44.88.830 if the loan is made to a business with a majority interest held by state residents.

Article 10. GENERAL PROVISIONS

Sec. 44.88.900. Definitions. In this chapter,

(1) "authority" means the Alaska Industrial Development and Export Authority created by this chapter;

(2) "business enterprise" means a single proprietorship, cooperative, corporation, firm, partnership, or other association of persons organized in any manner, for any credit worthy business purpose;

(3) "development fund" means the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund created in [AS 44.88.660](#);

(4) "development project" has the meaning given to "project" in (10)(A) and (D) - (H) of this section;

(5) "development project financing" means money loaned by the authority or a guarantee of a loan, note, debt, or other financial obligation issued by the authority to fund or assist in funding a development project the authority does not intend to own and operate;

(6) "federal agency" means the United States and any officer, department, agency or instrumentality of the United States;

(7) "governing body of a political subdivision" means, when used with respect to the location of a project, the council of a city if the project is to be located in a city in the unorganized borough, or the assembly if the project is to be located in an organized borough or a unified municipality;

(8) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy property;

(9) "loan participation" means the purchase of a portion of a loan from a financial institution if

(A) the financial institution has obtained a commitment from the authority to purchase the portion of that loan before the financial institution has disbursed money as part of the loan to the borrower; or

(B) the authority determines that purchasing a portion of a preexisting loan will resolve lending limits or reserve restrictions imposed on the financial institution by law or a state or federal regulatory agency, or by the financial institution if the internal lending limit or reserve restriction is acceptable to the authority;

(10) "plant" or "facility" means real property, whether above or below mean high water, or an interest in it, and the buildings, improvements, and structures constructed or to be constructed on or in it, and may include roads, fixtures, machinery, and equipment on it or in it, and tangible personal property, regardless of whether the tangible personal property is attached to or connected with real property, if the owner has agreed not to remove the tangible personal property permanently from the state for the period the authority sets; "plant" or "facility" does not include work in process or stock in trade;

(11) "project" means

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

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

(C) commercial activity by a business enterprise;

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

(E) infrastructure for a new tourism destination facility or for the expansion of a tourism destination facility; in this subparagraph, "tourism destination facility" does not include a hotel or other overnight lodging facility;

(F) a plant or facility, other than a plant or facility described in (D) of this paragraph, for the generation, transmission, development, transportation, conversion, or use of energy resources;

(G) a plant or facility that enhances, provides for, or promotes economic development with respect to transportation, communications, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research;

(H) a plant or facility used or intended for use as a federal facility, including a United States military, national guard, or coast guard facility;

(I) infrastructure for an area that is designated as a military facility zone under [AS 26.30](#);

(12) "project applicant" means a business enterprise or enterprises proposing to

(A) use or occupy a project; or

(B) agree to permit others to use or occupy a project;

(13) "project cost" or "cost of a project" means all or any part of the aggregate costs determined by the authority to be necessary to finance the construction, expansion, or acquisition of a project, including without limitation the cost of acquiring real or tangible personal property, and, in connection with real property, the cost of constructing buildings and improvements, the cost of constructing means of access to and from the project, the cost of constructing extensions of utility systems to the site of the project; the cost of a project includes, without limitation, the cost of financing the project, interest charges before, during or after construction, expansion, or acquisition of the project, costs related to the determination of the feasibility, planning, design or engineering of the project and, to the extent determined necessary by the authority, administrative expenses, the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction, expansion, or acquisition;

(14) "qualified energy development" means a development in the state that involves

(A) transmission, generation, conservation, storage, or distribution of heat or electricity;

(B) liquefaction, regasification, distribution, storage, or use of natural gas except a natural gas pipeline project for transporting natural gas from the North Slope or Cook Inlet to market;

(C) distribution or storage of refined petroleum products;

(15) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(16) "revolving fund" means the Alaska Industrial Development and Export Authority revolving fund created in [AS 44.88.060](#);

(17) "trade secret" has the meaning given in [AS 45.50.940](#);

(18) "Arctic" means the area of the state north of the Arctic Circle, north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers, all contiguous seas, including the Arctic Ocean, and the Beaufort, Bering, and Chukchi Seas, and the Aleutian Chain;

(19) "Arctic infrastructure development" means

(A) the construction, improvement, rehabilitation, or expansion of a facility

(i) in the Arctic to aid in development or meet emergency response needs; or

(ii) in the state if the construction, improvement, rehabilitation, or expansion supports or furthers the development of a facility in the Arctic; or

(B) the purchase, construction, improvement, rehabilitation, or expansion of a shore-based plant, facility, equipment, or assets used in support of a fishery in the Arctic.