3 AAC is amended by adding a new chapter to read:

Chapter 103: Arctic Infrastructure Development Program

Section

10. Scope of chapter.

20. Eligible projects.

30. Financing limitations.

40. Eligible applicants.

50. Application process.

60. Preliminary application.

70. Full application.

80. Terms of financing.

90. Loan committee.

100. Board review.

110. Application evaluation standards.

120. Interest rates and other loan terms.

130. Guarantee fees.

140. Other fees and charges.

150. Appeal of rejection.

160. Closing and disbursement of funds.

170. Post-closing matters.

900. Definitions.

3 AAC 103.010. Scope of chapter. This chapter applies to applications for financing under, and the authority's administration of, the Arctic infrastructure development program and fund established by AS°44.88.800 - 44.88.840. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.810 AS 44.88.830
AS 44.88.800 AS 44.88.820 AS 44.88.840

3 AAC 103.020. Eligible projects. The authority may make a loan or issue a bond, or guarantee a loan or bond, under this chapter to finance an Arctic infrastructure development. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.030. Financing limitations. The authority may not provide a loan for an Arctic infrastructure development in excess of the capital cost limitation of AS 44.88.840(a)(1), or the dollar amount limitation of AS 44.88.840(a)(2), unless the legislature has approved exceeding the limitation. The authority will not provide financing for an Arctic infrastructure development for a term longer than is authorized under AS 44.88.840(b). (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.830 AS 44.88.840

3 AAC 103.040. Eligible applicants. An applicant may be an individual, municipal government, tribe, or business or other entity that is organized in any manner. To the extent required under state law, an applicant seeking financing under the Arctic infrastructure

development program and fund must be authorized to do business in the state and hold a valid state business license. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.050. Application process. The application process for seeking financing under the Arctic infrastructure development program and fund is a two-step procedure using first the submission of a preliminary application form. If the authority determines, based on the preliminary application, that the Arctic infrastructure development is eligible for financing under the Arctic infrastructure development program and fund, the authority may request the applicant submit a full application. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.060. Preliminary application. (a) An applicant seeking financing under the Arctic infrastructure development program and fund may apply by completing a preliminary application. The preliminary application must be on a form supplied by the authority describing the nature of the Arctic infrastructure development, its location, size, and ownership. There is no fee for the submission of a preliminary application. The authority will review the preliminary application and advise the applicant whether to proceed with a full application.

(b) If the authority has not requested that an applicant submit a full application within 90 days after the applicant submitted the preliminary application, the preliminary application will be deemed to be denied. An applicant whose preliminary application is expressly denied by the

authority, or whose preliminary application is deemed to be denied under this subsection, may nevertheless elect to submit a full application to the authority so long as the applicant does so no later than 20 working days after the date of the denial. Submission of a full application shall be an applicant's sole remedy for the authority denying a preliminary application or failing to act on a preliminary application. If an applicant does not submit a full application within the required time period after the preliminary application is denied or deemed to be denied, the matter will be forever closed and the applicant will be entitled to no further consideration of it. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.070. Full application. A full application for financing under the Arctic infrastructure development program must be submitted to the authority on the form the authority has approved. The authority may require the applicant to include with the completed full application form any or all of the following:

(1) a letter of transmittal;

(2) current balance sheet and profit and loss statement for the applicant, not more than 90 days old; a fiscal-year balance sheet and profit and loss statement for the prior three years of operation of the applicant; current balance sheet and federal income tax return for the prior two years for any proposed guarantors and co-borrowers;

(3) copies of the applicant's federal income tax returns for the prior three years;

(4) a statement of all outstanding indebtedness of the applicant;

(5) proof of ownership of land on which the Arctic infrastructure development is to be sited, or a copy of the lease or other real property documents for the land related to the Arctic infrastructure development;

(6) a detailed description of the Arctic infrastructure development, including detailed legal description of all real property and detailed specifications for all tangible personal property that will be part of the Arctic infrastructure development;

(7) a detailed estimate of the cost of construction, improvement, rehabilitation, or expansion of the Arctic infrastructure development;

(8) an estimate of number of construction and permanent jobs to be created or retained by the Arctic infrastructure development;

(9) a copy of any pre-existing appraisals estimating the value of the real property where the Arctic infrastructure development is located;

(10) a financial feasibility analysis in a form and with a level of detail satisfactory to the authority;

(11) agreements or the terms for agreements in support of the financial feasibility analysis that the applicant reasonably expects to obtain must be provided for review;

(12) an environmental risk assessment satisfactory to the authority, followed by an environmental audit at the level specified by the authority, if required by the authority;

(13) a detailed development schedule, to include site selection, geotechnical investigation, schedule for and status of processes under 42 U.S.C. 4321 - 4347 (National Environmental Policy Act of 1969) ("NEPA"), status of project permits, including wetlands, wildlife impacts, and archeological data; the full application must include a discussion of

whether NEPA requires an environmental impact statement or environmental assessment, and schedule for any level of NEPA activities and issuance of a record of decision;

(14) a public benefit statement enumerating the community and statewide benefits that the proposed Arctic infrastructure development will create, which may include:

(A) improvement of environment;

(B) reduction in flow of money out of communities;

(C) economic development; and

(D) attraction of job creating industries to communities or regions;

(15) any other information the authority requests. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830

AS 44.88.800

3 AAC 103.080. Terms of financing. (a) The principal amount of a loan may not exceed one-third of the appraised value of the collateral for the loan or guarantee, and a loan guarantee may not exceed $20,000,000.

(b) Any financing the authority provides must be secured by a mortgage that is a first lien on the real property in fee simple or on a leasehold estate or an easement where the infrastructure development is located. The authority may review and approve other security provisions and arrangements as well as encumbrances against the real property that do not affect the authority's security.

(c) Any financing the authority provides must be secured by a first position security interest in the applicant's rights under, and the proceeds of, any contract for sales, leases, or rentals from the infrastructure development.

(d) Any financing for infrastructure development as an Artic infrastructure development project must require amortization provisions and require periodic payments by the borrower. The term for a financing may not exceed the following calculated from the date the financing is made:

(1) a financing to an Arctic infrastructure development project may not exceed the limitations established in AS 44.88.840(b); and

(2) in no case may the term of a financing under the Arctic infrastructure development program and fund exceed the remaining estimated economic life of the collateral for the loan.

(e) Before closing a transaction where construction of the improvements in part or whole has taken place, the authority will require a statement in writing from

(1) the author of the appraisal the authority has obtained regarding the Arctic infrastructure development, or another appraiser acceptable to the authority, that construction was substantially completed according to the plans and specifications contemplated in the appraisal and that the completed value is at least equal to an amount which would meet the requirements of (a) of this section;

(2) an authorized municipal, borough, or state official that the buildings and structures are fit for occupancy and that the occupancy, buildings, and structures conform to all requirements of federal, state, borough, and municipal law and regulations; or if there is no authorized official for the location in which the structure will be located, or if requested by the authority, a registered architect or professional engineer that the property serving as security for the loan is structurally sound and that the buildings or structures conform to applicable building standards.

(f) The terms and conditions of any land lease or easement that secures financing for an infrastructure development are subject to the approval of the authority. The term of the lease or easement must exceed the effective term of the financing by at least 10 years. However, the authority may approve a land lease or easement for a shorter term if there is an irrevocable option to renew the lease or easement that is acceptable in the sole discretion of the authority.

(g) Unless waived by the authority, the applicant shall obtain insurance coverage for the improvements on the real property from responsible companies in such amounts and against such risks as is satisfactory to the authority. The applicant shall obtain and pay for an American Land Title Association (ALTA) title insurance loan or encumbrance policy if real property or a real property encumbrance, such as an easement or right of way, is involved. The authority may require endorsements to the title insurance policy where applicable.

(h) The authority may, in its discretion, provide financing for infrastructure development under the Artic infrastructure development program, in cases in which the security for the financing will be subordinate to a lien or security interest in favor of senior financing on the Arctic infrastructure development if

(1) one of the following is satisfied:

(A) the infrastructure development is currently financed by the authority under one or more of its programs;

(B) the financing will be secured by real property that has sufficient value to provide security for the subordinate financing;

(C) the subordinate financing is for expansion and improvements of an existing infrastructure development at the time of the application; and

(2) the applicant demonstrates to the satisfaction of the authority that the additional debt can be repaid from the revenue earned by the collateral offered as security for the subordinate financing.

(i) If required by the authority, the applicant must obtain a guarantee for repayment of the financing the authority provides from the following persons:

(1) a partner or member of the applicant;

(2) a joint venture with the applicant;

(3) any stockholder of the capital stock of the applicant;

(4) the parent entity if the applicant is a subsidiary; or

(5) any such other credit support from any such other party as the authority may accept.

(j) In any financing agreement, the authority may require the applicant to provide covenants regarding the applicant's organization, operations, or finances. Any financing the authority provides that is in the form of a guarantee may be limited in duration or dollar amount, and may be subject to other conditions and restrictions, as the authority in its discretion determines to be appropriate. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.840
AS 44.88.800 AS 44.88.830

3 AAC 103.090. Loan committee. (a) Once the authority determines that a complete application for an eligible project has been submitted for review, the authority will notify the applicant in writing that the application is deemed complete.

(b) After payment of the application fee, a completed application will be reviewed by a loan committee for the purpose of making a recommendation to the board regarding the requested financing. The loan committee for the Arctic infrastructure development program and fund will consist of one or more of the authority's employees the executive director may designate. With the executive director's approval, the loan committee may engage and consult professional advisors in considering an application.

(c) The loan committee may request modifications to the completed application or changes in the terms of the requested financing.

(d) The loan committee's approval of the completed application will constitute a recommendation to the board for its approval of the requested financing. The loan committee's rejection of a completed application will constitute a recommendation to the board that the requested financing be rejected. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.100. Board review. (a) An application the loan committee approves will be placed on the agenda for consideration at the next available board meeting. An application the loan committee rejects will not be put on the agenda for the board's consideration unless the applicant requests board consideration. To request board consideration, an applicant must file an appeal in accordance with 3 AAC 103.150.

(b) The board may accept or reject the application regardless of the loan committee's recommendation. The decision of the board to accept or reject an application will constitute the final decision of the authority on the application.

(c) If the board approves an application, the authority will issue to the applicant a commitment letter to finance the Arctic infrastructure development. The applicant must accept the commitment letter in writing within 20 working days after its issuance. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.110. Application evaluation standards. (a) The authority may approve or reject a full application for financing under the Arctic infrastructure development program and fund by evaluating the following:

(1) whether the application requirements of this chapter have been met;

(2) the applicant's credit standing;

(3) the economic and financial viability of the proposed Arctic infrastructure development;

(4) the impact of the proposed infrastructure development on the portfolio of the Arctic infrastructure development program and fund, considering the concentration by industry area, technology, and geographic region and the concentration of financing provided to a single borrower and related obligors with respect to all of the authority's financing programs;

(5) whether and the extent to which the financing is consistent with the fulfillment of the purposes of the Arctic infrastructure development program and fund established in AS 44.88.800; and

(6) any other commercially reasonable underwriting criteria the authority, in its discretion, determines to be pertinent to the application, given the terms of the financing or the nature of the applicant or the proposed infrastructure development.

(b) In evaluating the factors of subsection (a), the authority may treat more favorably than otherwise would be the case an Arctic infrastructure development that will provide employment in an area of chronic or high unemployment. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.120. Interest rates and other loan terms. (a) The initial interest rate on the Arctic infrastructure development program financing will be set at the time the authority issues an Arctic infrastructure development program financing commitment letter. The initial interest rate will be no less than 250 basis points above the interest rate paid on the securities of the United States Treasury that have a maturity date comparable to the term of the authority's financing. In the event that no United States Treasury security is directly comparable in maturity to the authority's development project financing, the authority may use the United States Treasury security the authority in its discretion determines to be as directly comparable as possible. The authority will establish the initial interest rate for the financing based on the authority's evaluation of the relative risk of the transaction. In evaluating the risk of the transaction, the authority may consider the nature of the project applicant and its creditworthiness; the nature of the development project and its financial strengths or weaknesses; the size, length, and other terms of the financing; the collateral for the financing; and any other factors the authority reasonably determines to bear on the risk in the transaction.

(b) The authority may charge a fixed interest rate for the entire term of the financing or the authority may require that the rate of interest on the financing be adjusted from time to time at intervals the authority decides are appropriate. The authority will select a fixed or adjustable interest rate for the financing, establish the intervals for adjusting the interest rate, and determine the method by which the interest rate is adjusted based on the authority's evaluation of the risk of the transaction and based on the practices of private commercial lenders with respect to comparable financing. In the commitment letter for the Arctic infrastructure development program financing the authority provides to the project applicant, the authority will state whether the rate of interest is fixed or adjustable, the intervals for adjusting the interest rate, and the method by which the interest rate is to be adjusted.

(c) The authority may require a prepayment fee for an Arctic infrastructure development program financing. The prepayment fee will be in the amount the authority determines is appropriate and will be stated in the commitment letter for the Arctic infrastructure development program financing. The authority will not charge a prepayment fee on any prepayment that occurs later than five years after the date of the finance closing or as specified in the covenants of bonds issued for the Arctic infrastructure development program financing.

(d) In setting the terms and conditions of financing under this section, the authority may treat more favorably than otherwise would be the case an Arctic infrastructure development that will provide employment in an area of chronic or high unemployment. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.130. Guarantee fees. (a) For any financing under the Arctic infrastructure development program and fund that is in the form of a guarantee, the applicant must pay the authority a guarantee fee in the amount the authority in its discretion determines to be appropriate. The authority will inform the applicant of the guarantee fee in the commitment letter issued for a guaranty.

(b) The authority may set the guarantee fee as a one-time fixed amount, a one-time percentage of the amount guaranteed, a recurring annual fixed amount, a recurring annual percentage of the amount guaranteed, or a combination of these kinds of amounts. In setting a guarantee fee, the authority will consider the following:

(1) the amount and duration of the guarantee and any other conditions of the guarantee;

(2) the nature and credit standing of the applicant;

(3) the nature and economic and financial viability of the infrastructure development;

(4) the security provided to the authority for the issuance of the guaranty;

(5) the risk to the authority in providing the guaranty;

(6) the financial benefit the applicant or the Arctic infrastructure development receives from the authority's guaranty; and

(7) any other commercially reasonable factors the authority determines to have a bearing on setting the guarantee fee.

(c) In setting the fee for a guarantee under this section, the authority may treat more favorably than otherwise would be the case an Arctic infrastructure development that will

provide employment in an area of chronic or high unemployment. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.140. Other fees and charges. (a) Upon the issuance of written notification by the authority to the applicant that the application is complete, an application fee in the amount described in (b) of this section is due. No application will be given further consideration without payment of this fee. The application fee shall be non-refundable but may be credited against the commitment fee if the requested financing is approved.

(b) The application fee shall be

(1) for a loan or guarantee of less than $10,000,000 - $5,000 fee;

(2) for a loan or guarantee of between $10,000,000 and $20,000,000 - $10,000 fee;

(3) for a loan or a guarantee in excess of $20,000,000 - $20,000 fee.

(c) A commitment fee is due upon the applicant accepting a commitment letter the authority has provided. The commitment fee is one percent of the principal amount of the financing the authority is providing. The commitment fee is non-refundable. Upon the applicant's acceptance of the authority's commitment letter in writing, the authority will credit the non-refundable application fee against the commitment fee.

(d) At the closing of any type of financing, the applicant must pay for all transaction costs of the closing and must reimburse the authority for its costs of underwriting and closing the financing. These costs may include the following:

(1) third-party legal costs, including bond counsel;

(2) costs for credit reports, title reports, title insurance and endorsements, appraisals and the authority's travel expenses incurred as part of the underwriting and closing process;

(3) financial advisor costs and professional and consultant fees;

(4) trustee fees, custodial fees, and other financial and administrative expenses;

(5) escrow agent fees, recording fees, and other expenses as may be incurred in the closing process.

(e) The applicant may elect to pay the costs required by (d) of this section from the proceeds of the financing. The applicant may elect to be reimbursed for the commitment fee from the proceeds of the financing. The applicant may elect to pay any guarantee fees due at the time of closing from the proceeds of the financing.

(f) After the commitment letter is issued and prior to the closing, the authority will provide the applicant with an estimate of the closing costs. The estimate will not be binding on the authority. Actual costs shall be charged to the applicant. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.150. Appeal of rejection. An applicant for any financing that submitted a final application which is not approved by the authority may appeal to the board by filing a written notice of appeal with the executive director not later than 20 working days after being notified in writing of the rejection. The board may allow the applicant to make a presentation on

its appeal or the board may limit its consideration of the appeal to the documents submitted to the authority by the applicant before the date of the rejection of the application. The decision of the board to reject an appeal will constitute the authority's final decision on the application. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.160. Closing and disbursement of funds. Upon written certification by both the authority and the applicant that all provisions of the commitment letter have been satisfied, the financing will be scheduled for closing and, if a loan transaction, for disbursement of proceeds. If the financing is a guarantee, then the authority, at the time of closing, will deliver its guarantee to the applicant, or where appropriate, to the applicant's third-party lender or bond trustee or to the closing agent handling the financing transaction between the applicant and its third-party lender. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.840
AS 44.88.800

3 AAC 103.170. Post-closing matters. The authority may require in the financing agreement or other closing documents signed by the applicant that the applicant periodically provide financial, operational, or other information to the authority over the term of the financing. The authority, or its designated agent, may periodically review the Arctic infrastructure development and may require the applicant to

(1) permit an on-site visit and inspection of the Arctic infrastructure development by the authority or its agent;

(2) provide updated financial, operational or other information on the applicant or the Arctic infrastructure development. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830
AS 44.88.800

3 AAC 103.900. Definitions.

(1) "Arctic" has the meaning given in AS 44.88.900;

(2) "appraised value" means any valuation methodology acceptable to the authority, including comparable sale valuation, replacement cost valuation and produced by any third-party evaluators deemed appropriate by the authority;

(3) "authority" means the Alaska Industrial Development and Export Authority;

(4) "board" means the board of the Alaska Industrial Development and Export Authority;

(5) "capital costs" means the one-time costs associated with the acquisition or construction of an Arctic infrastructure development, including the price of purchased assets such as land, equipment, or other materials incorporated into the facility, the cost of site preparation, permits, construction of the facility and designing and planning the construction, and the cost of financing, including legal, financial, underwriting, insurance, and other transactional expenses as may necessarily be incurred; capital costs may also include interest payments financed during the construction and start-up period of the Arctic infrastructure development;

(6) "executive director" means the executive director of the Alaska Industrial Development and Export Authority;

(7) "financing" means either a loan or a guarantee of a loan or bond or a financing arrangement subject to the limitations of financing in AS 44.88.840;

(8) "guarantee" means an agreement pledging assets of the Arctic infrastructure development program fund to pay the regularly scheduled principal and interest due on a loan or bond made for an Arctic infrastructure development, subject to conditions set out in the guarantee;

(9) "loan" means an extension of credit by the authority or a third-party lender to an applicant or for an Arctic infrastructure development;

(10) "mortgage" means a mortgage, deed of trust, or other security instrument encumbering real property or an interest in real property;

(11) "Arctic infrastructure development" has the meaning given in AS 44.88.900.

(12) "Arctic Infrastructure development program and fund" means the Arctic infrastructure development program and fund established by AS 44.88.800 - 44.88.840;

(13) "working day" does not include a Saturday, Sunday, or a state holiday. (Eff. ____/____/____, Register ____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.840
AS 44.88.800 AS 44.88.830 AS 44.88.900
AS 44.88.810