

**CHAPTER 99
COMMERCIAL AND INDUSTRIAL
FINANCING**

3 AAC 99.100. SCOPE OF ARTICLE. 3 AAC 99.100 – 3 AAC 99.160 apply to applications submitted to the Alaska Industrial Development and Export Authority for financing of a project under the conduit revenue bond program. In 3 AAC 99.100 – 3 AAC 99.160, “conduit revenue bond program” means the authority’s program of financing or participating in the financing of projects through the issuance of bonds the interest of which may or may not be excluded from gross income for federal tax purposes under the Internal Revenue Code of 1986, as amended, and which are not in any way a liability of the authority. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 11/1/99, Register 153)

Authority: AS 44.88.080 AS 44.88.085 AS 44.88.090

3 AAC 99.110. APPLICATION; ELIGIBILITY RESOLUTION.

(a) To request the authority’s assistance under the conduit revenue bond program, a person must submit an application to the authority on a form provided by the authority. The application must be signed by the applicant and, if known at the time of submission of the application, by a proposed purchaser of the bonds.

(b) The application must contain information sufficient to allow the authority to determine whether the proposed project and the applicant appear to be eligible to participate in the program under AS 44.88 and whether interest on the authority’s bonds issued for the proposed project would be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986. The applicant must submit a nonrefundable \$500 fee to the authority with the application.

(c) The authority will review the application and will make a preliminary determination of whether the proposed project and applicant are eligible to participate in the conduit revenue bond program under AS 44.88 and whether interest on the authority’s bonds issued for the project would be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986.

(d) If the authority determines under (c) of this section that the proposed project and applicant are

eligible to participate in the conduit revenue bond program under AS 44.88 and that interest on the authority’s bonds issued for the project would be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, the authority will continue to process the application as provided in this subsection. The authority will transmit a summary of the application and its preliminary determination to the board of directors. If the board of directors determines to authorize the authority to continue the application process with the applicant, the board will adopt an eligibility resolution. An eligibility resolution is a statement of intent by the authority to issue revenue bonds if conditions specified in the resolution are satisfied by the applicant. The authority will notify the applicant of the action taken by the board of directors.

(e) If the authority determines under (c) of this section that the proposed project and applicant are eligible to participate in the conduit revenue bond program under AS 44.88 but that interest on the authority’s bonds issued for the project would not be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, the authority will notify the applicant of such determinations and will continue to process the application as provided in 3 AAC 99.120.

(f) If the authority determines under (c) of this section that the proposed project or applicant is not eligible to participate in the conduit revenue bond program under AS 44.88, the authority will notify the applicant of such determination. The applicant may appeal that determination to the board of directors by delivering to the authority a notice of appeal. The authority must receive the notice of appeal not more than 30 days after the date on which the authority notified the applicant of its determination. The authority will transmit the notice of appeal, a summary of the application, and the authority’s preliminary determination to the board of directors. The board of directors will make the final determination of whether to reject the application of ineligibility or to proceed with processing the application under 3 AAC 99.120. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153)

Authority: AS 44.88.080 AS 44.88.085

IMPORTANT NOTE TO READER

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3 AAC 99.120. APPLICATION COMPLETION.

(a) The authority will, in its discretion, issue bonds to finance or participate in the financing of the project only after completion of the application process as described in this section. The applicant must provide information requested by the authority and must notify the authority of any change in the project or the applicant that occurs after the original submission of the application that may affect the eligibility of the project or the applicant for participation in the program under AS 44.88. The authority will, in its discretion, request information that the authority considers necessary or appropriate to permit preparation of the necessary loan and bond documents. The authority will work with the applicant and the bond purchaser to prepare substantially completed drafts of the loan and bond documents for the applicant's project for presentation to the board under 3 AAC 99.130.

(b) The authority will terminate the application process at any time and in its discretion if the authority determines that either the project or the applicant is not eligible for participation in the program under AS 44.88 or if the authority determines that the applicant has failed to provide the information required by (a) of this section or if the authority determines that the applicant has failed to cooperate with the authority sufficiently to permit preparation of the documents described in (a) of this section. The authority will notify the applicant of the termination of the application process. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 99.130. REVIEW BY AUTHORITY.

(a) If the authority determines that the applicant has satisfied the application requirements in 3 AAC 99.120, the authority will transmit the application, any other information necessary, and a recommendation to the board for its review. The authority will also transmit to the board with the application substantially completed drafts of the loan and bond documents to which the authority will be a party and which impose significant legal obligations on the authority.

(b) The board will review the application and, in its discretion, approve, reject, or postpone the application. If the board postpones an application,

the authority will work with the applicant to obtain additional information or materials necessary to permit the board to make a final determination with respect to the application.

(c) If the board disapproves an application, the authority will notify the applicant of the disapproval.

(d) If the board approves an application, the authority will enter into an agreement in writing with the applicant and the bond purchaser that financing will be provided for the project under terms and conditions specified by the authority. If a project approved by the authority requires the issuance of revenue bonds that exceed \$6,000,000, the agreement must include a condition that the applicant obtain and file with the authority a certified copy of a resolution consenting to the location of the project passed by the governing body of the political subdivision, if any, in which the project is located. If the project approved by the authority requires legislative approval, the agreement will be conditioned upon receipt of that approval.

(e) If required under the Internal Revenue Code of 1986, as amended, before the authority issues bonds for a project, the authority will hold a public hearing concerning the project. After the public hearing is completed and before the authority issues the bonds, the Governor must certify that the public hearing was conducted in compliance with the Internal Revenue Code of 1986, as amended, and must approve the issuance of bonds. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 7/19/91, Register 119; am 11/1/99, Register 153)

Authority: AS 44.88.080 AS 44.88.095

3 AAC 99.135. DOCUMENTATION. The authority's bond counsel shall prepare all documents required and be responsible for the closing of the transaction. (Eff. 11/30/90, Register 118)

Authority: AS 44.88.080 AS 44.88.095

3 AAC 99.140. COSTS AND FINANCING FEES

(a) At the time the authority issues bonds to provide financing for a project under 3 AAC 99.100 – 3 AAC 99.160, the applicant shall pay an issuance fee determined as follows:

(1) if the bonds are subject to the volume cap provisions of 26 U.S.C. 147, the issuance fee is equal to one percent of the first \$1,000,000 of the principal amount of those bonds, one-half of one percent of the

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next \$4,000,000 of the principal amount of those bonds, one-quarter of one percent of the next \$10,000,000 of the principal amount of those bonds, and one-tenth of one percent of the principal amount of those bonds issued in excess of \$15,000,000;

(2) if the bonds are not subject to the volume cap provision of 26 U.S.C. 147, the issuance fee is equal to three-quarters of the amount described in 3 AAC 99.140(a)(1);

(3) if a portion of the bonds is subject to the volume cap of 26 U.S.C. 147 and a portion is not, the issuance fee is equal to the sum of the issuance fee determined under (1) of this subsection for the portion of the bonds that is subject to the volume cap provisions of 26 U.S.C. 147 and the issuance fee determined under (2) of this subsection for the remaining portion of the bonds.

(b) A person may apply to the authority to modify the terms of its pending application with the authority or to take an action relating to a bond previously issued by the authority. If the request is to modify the terms of a pending application and if the modification, in the sole determination of the authority, requires action by the board, the applicant shall pay to the authority a fee of \$200. If the request is for the authority to take an action relating to outstanding bonds and the authority, in its discretion, elects to take such action or, under the applicable documentation, is required to take such action, the applicant shall pay the reasonable costs of the authority, including costs for authority personnel, bond counsel costs, and other costs.

(c) An applicant shall pay other costs and fees prescribed by law or agreement that are not provided in (a) of this section. These costs or fees may include the issuance of bonds, financial advisor fees, bond counsel fees, and other expenses of the authority related to bond issuance. (In effect before 1988; am 1/11/88, Register 106; am 9/25/92, Register 124; am 11/1/99, Register 153)

Authority: AS 44.88.080 AS 44.88.085 AS 44.88.212

3 AAC 99.150. REVIEW BY FINANCIAL ADVISOR. Repealed 1/11/88.

3 AAC 99.160. COMPOSITE BOND ISSUE.

(a) If the authority intends to issue more than \$1,000,000 in principal amount of tax-exempt bonds for a project under the tax-exempt loan participation program (3 AAC 99.200 – 3 AAC 99.290), the

project is eligible for a composite bond issue subject to approval by the authority, the originator, and the borrower.

(b) In a composite bond issue, the authority will issue bonds to finance all or part of the amount of the total loan to the borrower from the originator not financed under the tax-exempt loan participation program as described in (a) of this section. The originator shall purchase bonds issued under this subsection and must agree to retain those bonds as long as the total loan is outstanding.

(c) The issuance of bonds under (b) of this section is subject to the provisions of 3 AAC 99.100 – 3 AAC 99.140, except with regard to the financing fee. The financing fee for bonds issued under (b) of this section is one-half percent for the first \$1,000,000 of the principal amount of the bonds issued and one-quarter percent of the principal amount of the revenue bonds issued in excess of the first \$1,000,000. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118)

Authority: AS 44.88.080 AS 44.88.085 AS 44.88.155

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