



# LAWS OF ALASKA

1967

Source

Chapter No.

CSHB 14 am

64

## AN ACT

Creating the Alaska Industrial Development Authority as a public corporation and political subdivision of the state with power to issue bonds to provide funds to acquire and construct manufacturing and industrial plants throughout the state for sale or lease to business enterprises and otherwise defining the purposes and powers and functions of the authority; and providing for an effective date.

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

\*Section 1. AS 44 is amended by adding a new chapter to read:

#### CHAPTER 61.

#### ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY.

#### ARTICLE 1. CREATION AND ORGANIZATION.

#### Sec. 44.61.010. 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 exist;
- (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 and industrial enterprises necessary to permit adequate development of its natural resources and the balanced growth of its economy;
- (4) the establishment of industrial and manufacturing plants in Alaska is 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 achievement of the goal of full employment, and of establishment and continuing operation and development of industrial and manufacturing plants in the state, will be accelerated and facilitated by the creation of an instrumentality of the state with powers to incur debt for acquiring or constructing industrial and manufacturing plants for private operation and thus provide financial assistance for the establishment, operation and development of these plants on a basis offsetting in whole or in part the construction, marketing or other costs involved in the projects.

(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 of manufacturing and industrial enterprises by creating the public corporation with power, duties and functions as provided in this chapter.

Sec. 44.61.020. CREATION OF AUTHORITY. There is created the Alaska Industrial Development Authority. The authority shall be a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Economic Development, but with separate and independent legal existence.

Sec. 44.61.030. MEMBERSHIP OF THE AUTHORITY. (a) The membership of the authority shall consist of the commissioner of commerce, the commissioner of economic development and the commissioner of natural resources, serving ex officio. If a state officer who is a member of the authority is unable for any reason to attend a meeting of the authority, he may by an instrument in writing filed with the authority, designate his deputy or assistant commissioner to act in his place as a member at the meeting. For all purposes of this chapter the designee shall be a member of the authority at the meeting.

(b) After each time a certified copy of the resolution of the governing body of the political subdivision of the state, if any, in which a project is to be located consenting to a location as provided in sec. 160 of this chapter is filed with the authority, and the authority has made the findings regarding the project set out in the section, the governing body may by resolution appoint three persons who shall in connection only with subsequent action by the authority found by the chairman to concern the project, constitute membership of the authority. Persons so appointed shall be residents of the political subdivision and may be members of its governing body, and shall be considered members of the authority for purposes of sec. 50 of this chapter only in connection with action by the authority concerning the project.

(c) Each further member of the authority appointed by the governing body shall serve as, and for all purposes of this chapter be, a member of the authority serving at the pleasure of the governing body until such time as bonds of the authority are issued under this chapter to finance any part of the project described in the resolution

of the governing body consenting to the location, or the authority determines by resolution that the bonds will not be issued.

Sec. 44.61.040. CHAIRMAN AND VICE-CHAIRMAN. The commissioner of economic development shall be the chairman of the authority, preside over all meetings, and have the duties which the authority may direct. A vice-chairman may be elected by the authority from among its other members for one or more terms of one year each. The vice-chairman shall preside over all meetings in the absence of the commissioner of economic development and shall have other duties which the authority may direct.

Sec. 44.61.050. 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 by him, shall be considered adopted by the authority.

(b) The members of the authority serve without salary but each member is entitled to reimbursement from authority funds for actual and necessary expenses incurred in the performance of his official duties as a member of the authority.

(c) The authority may appoint persons as officers it considers advisable, including an executive director or executive vice-president, and may employ professional advisors, counsel, technical experts, agents, and other employees it considers advisable.

## ARTICLE 2. DEFINITIONS, PURPOSE AND POWERS.

Sec. 44.61.060. DEFINITIONS. In this chapter

- (1) "authority" means the Alaska Industrial Development Authority created by this chapter;
- (2) "business enterprise" means a corporation, firm, partnership or other association of persons organized in any manner, or a single proprietorship;
- (3) "federal agency" means the United States and any officer, department, agency or instrumentality of the United States;
- (4) "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 borough assembly if the project is to be located in an organized borough;
- (5) "industrial plant" or "manufacturing plant" means a plant used or intended for use in connection with making, processing, preparing, 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;

(6) "plant" 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, whether above, at or below ground or water level, and may include fixtures, machinery and equipment on it or in it;

(7) "project" means a manufacturing or industrial plant or plants, the construction or acquisition of which is to be financed in whole or in part by the authority under this chapter and the reasonable aggregate project cost of which to be financed by the authority under this chapter will exceed, in the opinion of the authority, \$500,000;

(8) "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 or acquisition of a project, including without limitation the cost of acquiring 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 financing the project, including, without limitation, interest charges before, during or after construction 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 or acquisition;

(9) "project occupant" means a business enterprise or enterprises proposing to use and occupy a project;

(10) "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;

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

Sec. 44.61.070. 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 Alaska, to relieve problems of unemployment and to create additional employment by providing a means of financing industrial and manufacturing plant construction, conversion or expansion within the state, including the acquisition of real property, for lease or sale to business enterprises for industrial or manufacturing purposes.

Sec. 44.61.080. POWERS OF THE AUTHORITY. In furtherance of its corporate purposes, the authority shall have

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 make rules and regulations governing the exercise of its corporate powers;
- (5) to acquire, whether by construction, purchase, gift or lease, and to improve and equip projects in the state;
- (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 to pay the cost of acquiring by construction, purchase or lease or improving and equipping a project and to secure payment of the bonds as provided in this chapter;
- (8) to sell, 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, 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 or an agency or instrumentality of the state, a municipality, 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.

### ARTICLE 3. FINANCIAL PROVISIONS.

Sec. 44.61.090. BONDS OF THE AUTHORITY. (a) The authority may borrow money and may issue bonds therefor, 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 financed with the proceeds of the bonds, (2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed 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 shall be dated and shall mature as the

resolution may provide, except that no bond shall 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 the 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 the issuance of any bonds, the authority shall make provision by lease or other agreement regarding the project or projects being financed by the issue of the bonds for rentals or other considerations 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 therefor as the authority considers necessary or desirable and to meet all obligations in connection with the lease or other 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.

(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.

Sec. 44.61.100. 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;

(C) the assignment by the authority of its rights in the lease or contract of sale of a project or in a mortgage or other security interest created with respect to a project 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 by mandamus or other proceeding or by taking possession of by agent or otherwise and operating a project 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. 44.61.110. 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. 44.61.120. NONLIABILITY ON BONDS. (a) Neither the members of the authority nor a person executing the bonds shall be liable personally on the bonds or be subject to personal liability or accountability by reason of the issuance of the bonds.

(b) The bonds issued by the authority shall 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 shall 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. 44.61.130. PLEDGE OF THE STATE. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency which loans or contributes funds in respect to a project, 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, or 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. 44.61.140. EXEMPTION FROM TAXATION. (a) 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 financed under this chapter and a leasehold interest created in a project occupant or other person under this chapter, devoted to an essential public and governmental function and purpose, and the property, assets, income, receipts, 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 payment 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 shall affect or limit an exemption from license fees, property taxes, or excise, income or any other taxes, provided under any other law.

(b) The authority may enter into agreements with a proposed project occupant or project occupant providing for payments, computed on a formula basis or otherwise, in lieu of taxes, which the authority may consider appropriate. The agreement may provide that the payments be made to the political subdivision of the state in which a project is or is to be located 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 political subdivision.

(c) For the purposes of AS 14.17 relating to the computation of the required local effort by a district as defined in AS 14.17.250(3), all property exempted from taxation by this chapter shall be considered taxable real and personal property.

Sec. 44.61.150. 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.

#### ARTICLE 4. GENERAL PROVISIONS.

Sec. 44.61.160. FINDINGS OF THE AUTHORITY. Before entering into a lease or other agreement regarding a project as mentioned in sec. 90(e) of this chapter there must have been 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 (which 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 occupant), and the authority must 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 occupant is financially responsible; and
- (3) provision to meet increased demand upon public facilities that might result from the project is reasonably assured.

#### Sec. 44.61.170. PURCHASE OF PROJECT AND LEASES.

(a) No provision of this chapter shall prevent 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. 44.61.180. CONFLICTS OF INTEREST. (a) No member of the authority may vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if he is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation or association which may be a party to the contract or lease. If a person may not vote because of this prohibition, for all purposes regarding action of the authority relating to adoption of the resolution, the position of the persons as a member shall be transferred to the first one of the following state officers who is not then acting as a member and would not be prohibited from voting on the resolution because of the same prohibition: commissioner of administration, attorney general, commissioner of revenue, commissioner of health and welfare, commissioner of labor, commissioner of public works, commissioner of public safety.

(b) The state officer shall serve as a member from time to time and for all purposes of this chapter shall be a member for the purpose of voting on the resolution but after each vote the authority shall again consist of members referred to in sec. 30 of this chapter only, until one or more members may not again vote on a resolution because of the prohibition.

Sec. 44.61.190. OPERATION OF CERTAIN STATUTES EXCEPTED. (a) The authority shall 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) 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 shall not be considered or constitute money of the state, nor shall 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 lands belonging to the state, or state lands referred to in Art. VIII of the Alaska Constitution.

Sec. 44.61.200. 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. 44.61.210. ANNUAL REPORT. Before December 1 of each year, the authority shall submit to the governor and the legislature a comprehensive report, in form prescribed by the governor, describing operations, income and expenditures for the preceding 12-month period.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.