

**CS FOR HOUSE BILL NO. 312(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered: 2/18/98**  
**Referred: Finance**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE DEFERRED MAINTENANCE TASK FORCE**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to the Public Facilities Financing Corporation; authorizing an**  
**2 advisory vote on whether the legislature should appropriate \$1,500,000,000 from**  
**3 the constitutional budget reserve fund to capitalize the build Alaska fund; and**  
**4 providing for an effective date."**

**5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**6 \* Section 1. FINDINGS.** The legislature finds that

**7 (1) there is an urgent need for deferred maintenance to existing public facilities**  
**8 in the state and for new public facilities throughout the state;**

**9 (2) the establishment of the Public Facilities Financing Corporation**  
**10 (AS 35.45.010) will provide an affordable and effective means of financing deferred**  
**11 maintenance and new construction of these facilities.**

**12 \* Sec. 2.** AS 35 is amended by adding new sections to read:

**13 Chapter 45. Public Facilities Financing Corporation.**

**14 Sec. 35.45.010. Public Facilities Financing Corporation.** The Public

1 Facilities Financing Corporation is created as a public corporation of the state in the  
 2 Department of Revenue. The corporation is an instrumentality of the state but has a  
 3 legal existence independent of and separate from the state and has continuing  
 4 succession until its existence is terminated by law. The corporation is subject to  
 5 AS 37.07 (Executive Budget Act).

6 **Sec. 35.45.020. Board of directors.** The corporation is governed by a board  
 7 of five directors, consisting of the commissioner of revenue, the commissioner of  
 8 transportation and public facilities, the commissioner of education, the executive  
 9 director of the Alaska Housing Finance Corporation, and the executive director of the  
 10 Alaska Industrial Development and Export Authority.

11 **Sec. 35.45.030. Officers and quorum.** (a) The board of directors shall elect  
 12 one of their number as chair. The board shall elect a secretary and a treasurer who  
 13 need not be directors. The same person may be elected to serve both as secretary and  
 14 treasurer. The powers of the corporation are vested in the board of directors, and three  
 15 directors of the corporation constitute a quorum. Action may be taken and motions  
 16 and resolutions adopted by the corporation at any meeting by the affirmative vote of  
 17 at least three directors. A vacancy in the directorship of the corporation does not  
 18 impair the right of a quorum to exercise all of the powers and perform all of the duties  
 19 of the corporation.

20 (b) The corporation may not employ staff.

21 **Sec. 35.45.040. Powers of the corporation.** The corporation may

- 22 (1) sue and be sued;
- 23 (2) adopt and alter an official seal;
- 24 (3) make and enforce bylaws and regulations for the conduct of its  
 25 business and for the use of its services and facilities;
- 26 (4) maintain one office at any place in the state;
- 27 (5) subject to other provisions of this chapter, acquire, hold, use, and  
 28 dispose of its income, revenue, funds, and money;
- 29 (6) acquire, rent, lease, hold, use, and dispose of property for its  
 30 purposes;
- 31 (7) subject to AS 35.45.070, issue revenue bonds or notes and provide

1 for and secure payment of the revenue bonds or notes, provide for the rights of their  
2 holders, and purchase, hold, and dispose of any of its revenue bonds or notes;

3 (8) fix and revise from time to time and charge and collect fees and  
4 charges for the use of its services or facilities;

5 (9) accept gifts or grants from the United States, or from any  
6 governmental unit or person, carry out the terms or provisions or make agreements  
7 with respect to the gifts or grants, and do all things necessary, useful, desirable, or  
8 convenient in connection with procuring, accepting, or disposing of the gifts or grants;

9 (10) do anything authorized by this chapter through its officers, agents,  
10 or employee, or by contracts with a person;

11 (11) make, enter into, and enforce all contracts necessary, convenient,  
12 or desirable for the purposes of the corporation or pertaining to a purchase or sale of  
13 bonds or other investments, or the performance of its duties and execution of any of  
14 its powers under this chapter;

15 (12) purchase or hold bonds at prices and in a manner the corporation  
16 considers advisable;

17 (13) adopt and amend regulations by motion, by resolution, or in  
18 another manner permitted under the bylaws of the corporation;

19 (14) procure insurance against any losses in connection with its  
20 property, operations, or assets in amounts and from insurers it considers desirable, or  
21 obtain bond insurance or other credit enhancement with the reimbursement, security,  
22 interest, remedy, and other provisions the corporation may determine;

23 (15) to the extent permitted under its contracts with the holders of  
24 bonds or notes of the corporation, consent to modification of the rate of interest, time  
25 and payment of installment of principal or interest, security, or any other term of a  
26 bond or note, contract, or agreement of any kind to which the corporation is a party;  
27 and

28 (16) do all acts and things necessary, convenient, or desirable to carry  
29 out the powers expressly granted or necessarily implied in this chapter.

30 **Sec. 35.45.050. Issuance of bonds and notes.** (a) Subject to AS 35.45.070,  
31 the corporation may issue its bonds or notes in principal amounts sufficient to provide

1 funds for acquisition, construction, repair, major maintenance, and renovation of public  
2 facilities or school facilities that are projects approved under AS 14.11.015(a).

3 (b) Bonds or notes may be issued for a facility under (a) of this section only  
4 when

5 (1) the project and the amount of the project cost to be borne by the  
6 corporation, if any, are authorized by law;

7 (2) the commissioner of administration, or the supreme court for a court  
8 facility, or the Board of Regents for a University of Alaska facility, has certified that  
9 a computerized maintenance management plan, cardex system, or formal systematic  
10 means of tracking the timing and costs associated with planned and completed  
11 maintenance activities, including scheduled preventive maintenance, is in place for the  
12 facility; and

13 (3) the commissioner of transportation and public facilities, or the  
14 supreme court for a court facility, or the Board of Regents for a University of Alaska  
15 facility, has determined that a project or element of a project will be designed in  
16 accordance with the energy performance standards adopted under AS 44.42.020(a).

17 (c) The corporation may issue its bonds or notes in principal amounts that it  
18 considers necessary to provide funds for

19 (1) payment, funding, or refunding of the principal of, or interest or  
20 redemption premiums on, bonds or notes issued by it, whether the bonds or notes or  
21 interest to be funded or refunded have become due;

22 (2) the establishment or increase of reserves to secure or pay bonds or  
23 notes or interest on bonds or notes and all other costs or expenses of the corporation  
24 incident to and necessary or convenient to carry out its corporate purposes and powers;

25 (3) capitalized interest for any expected construction or improvement  
26 period and for up to one year after that period ends.

27 (d) Bonds may be authorized only by resolution of the corporation and shall  
28 be dated and mature as the resolution may provide, except that a bond may not mature  
29 more than 25 years from the date of its issue. Bonds shall bear interest at rates, be in  
30 the denominations, be in the form, either coupon or registered, carry the registration  
31 privileges, be executed in the manner, be payable in the medium of payment, at the

1 place or places, and be subject to the terms of redemption that the resolution or a  
2 subsequent resolution may provide. Bonds or notes may be sold at a public or private  
3 sale.

4 (e) Bonds issued by the corporation are payable only from revenue and other  
5 funds of the corporation, as provided in the resolution authorizing issuance of the  
6 bonds, excluding the build Alaska fund and any income of the fund. Bonds are  
7 payable from revenue generated by projects financed with bonds, lease rents, or  
8 installment purchase payments received by the corporation. Unless the use of the  
9 money is restricted by the terms of the grant, appropriation, or agreement, bonds are  
10 payable from money received by the corporation under a grant, appropriation, or other  
11 agreement with the state. Except for money in the build Alaska fund and income of  
12 the fund, the corporation may pledge its assets to secure bonds, including proceeds of  
13 its bonds, revenue, and rights under any lease, installment sale, or other agreement or  
14 arrangement.

15 (f) For the purpose of securing the financing for projects through the issuance  
16 of bonds by the corporation, the state or a department or an agency of the state may  
17 buy or lease property or facilities from the corporation, sell or lease property or  
18 facilities to the corporation, or enter into other agreements or arrangements with the  
19 corporation. The installment purchase, rental, or other payment provisions, term,  
20 interest, payment, prepayment, security, default, remedy, and other terms or provisions  
21 may be specified in the installment sale, purchase, lease, or other agreement or  
22 arrangement between the corporation and the state or a department or an agency of the  
23 state. This subsection provides a complete, additional, and alternative method for  
24 performing the acts authorized by this subsection, and a sale or lease of property or  
25 facilities of the state to the corporation, a purchase or lease of property or facilities  
26 from the corporation, and other agreements or arrangements with the corporation, need  
27 not comply with the requirements of any other law.

28 (g) Neither bonds issued by the corporation, nor leases, installment sales, or  
29 other agreements or arrangements entered into by the state or a department or an  
30 agency of the state securing or providing the source of payment for the bonds are  
31 obligations for which the full faith and credit of the state is pledged. No person has

1 a claim or lien on any money of the state for the repayment of any obligation of the  
2 corporation. The legislature may appropriate money to pay the leases, installment  
3 sales, or other agreements or arrangements entered into by the state or a department  
4 or an agency of the state with the corporation; however, the legislature is under no  
5 obligation to appropriate money for these purposes or to make payments on any bonds  
6 or other obligations of the corporation. The bonds of the corporation shall recite in  
7 substance that they are not a debt or liability of the state or a political subdivision of  
8 the state, except the corporation, that bondholders have no claim or lien on any money  
9 of the state, except money appropriated by the state for the purpose of paying the  
10 leases, installment sales, or other agreements or arrangements entered into by the state  
11 or a department or an agency of the state with the corporation, that the state is not  
12 obligated to appropriate money for these purposes or to pay the bonds, and that  
13 issuance of bonds by the corporation does not directly, indirectly, or contingently  
14 obligate the state or a political subdivision of the state to apply money from, levy, or  
15 pledge any form of taxation to the payment of the bonds.

16 **Sec. 35.45.060. Trust indentures and trust agreements.** (a) In the  
17 discretion of the corporation, an issue of bonds may be secured by a trust indenture  
18 or trust agreement between the corporation and a corporate trustee, including a trust  
19 company, bank, or national banking association, with corporate trust powers, located  
20 inside or outside the state, or by a secured loan agreement or other instrument or under  
21 a resolution giving powers to a corporate trustee by means of which the corporation  
22 may

23 (1) make and enter into any and all the covenants and agreements with  
24 the trustee or the holders of the bonds that the corporation may determine to be  
25 necessary or desirable, including, without limitation, covenants, provisions, limitations,  
26 and agreements as to

27 (A) the application, investment, deposit, use, and disposition of  
28 the proceeds of bonds of the corporation or of money or other property of the  
29 corporation, excluding the build Alaska fund and income from the fund;

30 (B) the terms and conditions upon which additional bonds of the  
31 corporation may be issued; and

1 (C) the vesting in a trustee of rights, powers, duties, funds, or  
2 property in trust for the benefit of bondholders, including the right to enforce  
3 payment, performance, and all other rights of the corporation or of the  
4 bondholders, under an agreement of the corporation;

5 (2) pledge, mortgage, or assign money, agreements, property, or other  
6 rights or assets of the corporation either presently in hand or to be received in the  
7 future, or both, but excluding the build Alaska fund and income from the fund; and

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

10 (b) For the purpose of securing one or more issues of its bonds, the  
11 corporation may establish one or more special funds, called "public facility reserve  
12 funds," and shall pay into the reserve funds the proceeds of the sale of its bonds and  
13 other money that may be made available to the corporation for the purposes of those  
14 reserve funds from another source. The reserve funds shall be established only if the  
15 corporation determines that the establishment would enhance the marketability of the  
16 bonds. Money held in a reserve fund, except as provided in this section, shall be used  
17 as required solely for (1) the payment of the principal of and interest on bonds or of  
18 the sinking fund payments with respect to those bonds, (2) the purchase or redemption  
19 of bonds, or (3) the payment of a redemption premium required to be paid when those  
20 bonds are redeemed before maturity. However, money in a reserve fund may not be  
21 withdrawn from it at any time in an amount that would reduce the amount of that  
22 reserve fund to less than the public facilities reserve fund requirement under (c) of this  
23 section except for the purpose of making, with respect to those bonds, payment, when  
24 due, of principal, interest, redemption premiums, and the sinking fund payments for  
25 the payment of which other money of the corporation is not available. Income or  
26 interest earned by, or increment to, a reserve fund, due to the investment of the reserve  
27 fund or other amounts in it, may be transferred by the corporation to other funds or  
28 accounts of the corporation to the extent that the transfer does not reduce the amount  
29 of the reserve fund below the public facilities reserve fund requirement under (c) of  
30 this section.

31 (c) If the corporation decides to issue bonds secured by a public facilities

1 reserve fund, the bonds may not be issued if the amount in the reserve fund is less  
2 than an amount that may be established by resolution of the corporation, called the  
3 "public facilities reserve fund requirement," unless the corporation, at the time of  
4 issuance of the obligations, deposits in the reserve fund from the proceeds of the  
5 obligations to be issued or from other sources, an amount that, together with the  
6 amount then in the reserve fund, is not less than the public facilities reserve fund  
7 requirement.

8 (d) In computing the amount of a public facilities reserve fund for the purpose  
9 of this section, securities in which all or a portion of the funds are invested shall be  
10 valued by a reasonable method established by the corporation by resolution. Valuation  
11 on a particular date shall include the amount of any interest earned or accrued to that  
12 date.

13 (e) The chair of the corporation shall annually, not later than January 2, make  
14 and deliver to the governor and the legislature a certificate stating the amount, if any,  
15 required to restore a public facilities reserve fund to the public facilities reserve fund  
16 requirement. That amount may be appropriated by the state for deposit by the  
17 corporation in the proper reserve fund. Nothing in this subsection creates a debt or  
18 liability of the state.

19 (f) If the corporation decides to covenant to issue bonds secured by a public  
20 facilities reserve fund, the bonds may not be issued until 10 days after the corporation  
21 has mailed notification to the state bond committee and the Legislative Budget and  
22 Audit Committee by certified mail of its intention to establish a public facilities  
23 reserve fund to secure the bond issue. The notification must include the amount of the  
24 reserve fund to be established and the amount of bonds proposed to be issued. The  
25 notification must be accompanied by an estimate by the corporation of the need to  
26 withdraw money from the reserve fund during the term of the bond issue, the amount  
27 that it may be necessary to withdraw, and the time at which withdrawals are estimated  
28 to be needed. The corporation shall annually prepare a revised estimate, considering  
29 the same factors, and a statement of all withdrawals that have occurred from the date  
30 of issuance of the bonds to the end of the calendar year. The revised estimate and  
31 statement shall be submitted to the state bond committee and the Legislative Budget

1 and Audit Committee by January 30 of the year following preparation of the revised  
2 estimate.

3 **Sec. 35.45.070. Bonding limitations.** The total amount of bonds of the  
4 corporation that may be outstanding at any time may not exceed \$2,000,000,000,  
5 excluding bonds for which money or securities in the amount necessary to redeem the  
6 principal of and interest on the bonds, and to pay any redemption premium on the  
7 bonds, has been deposited in trust for that purpose.

8 **Sec. 35.45.080. Nonliability on bonds.** A member of the board of directors  
9 or an employee of the corporation or a person executing bonds of the corporation is  
10 not personally liable on the bonds or subject to personal liability or accountability as  
11 a result of the issuance of the bonds.

12 **Sec. 35.45.090. Exemption from taxation.** All bonds of the corporation are  
13 declared to be issued by a political subdivision of the state and for an essential public  
14 and governmental purpose, and the bonds, the interest on them, the income from them,  
15 the transfer of the bonds, and all assets, income, and receipts pledged to pay or secure  
16 the payment of the bonds, or the interest on them, shall at all times be exempt from  
17 taxation by or under the authority of the state, except for inheritance and estate taxes  
18 and taxes on transfers by or in contemplation of death.

19 **Sec. 35.45.100. Pledge of the state.** (a) The state pledges to and agrees with  
20 the holders of bonds issued under this chapter that the state will not limit or alter the  
21 rights and powers vested in the corporation by this chapter to fulfill the terms of a  
22 contract made by the corporation with the holders, and that the state will not in any  
23 way impair the rights and remedies of the holders until the bonds, together with the  
24 interest on them with interest on unpaid installments of interest, and all costs and  
25 expenses in connection with an action or proceeding by or on behalf of the holders,  
26 are fully met and discharged. The corporation is authorized to use this pledge and  
27 agreement of the state in agreements involving holders of bonds of the corporation.

28 (b) It is the intention of the legislature that a pledge made with respect of  
29 bonds shall be valid and binding from the time the pledge is made, that the money and  
30 property so pledged and thereafter received by the corporation shall immediately be  
31 subject to the lien of the pledge without physical delivery or further act, and that the

1       lien of the pledge shall be valid and binding against all parties having claims of any  
2       kind in tort, contract, or otherwise against the corporation, irrespective of whether the  
3       parties have notice. The resolution, trust agreement, or another instrument by which  
4       a pledge is created need not be recorded nor filed under the provisions of the Uniform  
5       Commercial Code to be valid, binding, or effective against the parties.

6               (c) The pledge of the state is limited to the express provisions of (a) of this  
7       section and is not a guarantee, surety, promise, undertaking, or assurance of repayment  
8       or performance of any obligation of the corporation.

9               **Sec. 35.45.110. Build Alaska fund.** (a) The build Alaska fund is established  
10       in the corporation. The build Alaska fund consists of appropriations made to it. The  
11       build Alaska fund shall be invested by the Department of Revenue as agent of the  
12       corporation. Income from investments shall be deposited into the general fund.

13              (b) The build Alaska fund and income of the fund may not be pledged or used  
14       to pay the principal or interest due on bonds issued by the corporation or to pay any  
15       obligations of the state or a state department or agency that secure payment of any  
16       bonds of the corporation.

17              (c) Money in the build Alaska fund may be used only in accordance with an  
18       appropriation. Money may be appropriated from the fund

19                      (1) to pay costs of issuing bonds of the corporation or the costs of any  
20       guaranty, insurance, or other credit enhancement for the bonds;

21                      (2) for acquisition, construction, repair, major maintenance, or  
22       renovation of public facilities or school facilities that are projects approved under  
23       AS 14.11.015(a).

24              **Sec. 35.45.120. Annual audit.** The corporation shall have its financial records  
25       audited annually by a certified public accountant. The legislative auditor may  
26       prescribe the form and content of the financial records of the corporation and may  
27       have access to the records at any time.

28              **Sec. 35.45.130. Annual report.** Before October 1 of each year, the  
29       corporation shall submit to the governor a comprehensive report describing operations,  
30       income, and expenditures for the preceding 12-month period. The corporation shall  
31       notify the legislature that the report is available.

1           **Sec. 35.45.140. Regulations.** The corporation may adopt regulations necessary  
 2 to carry out the purposes of this chapter. Except for AS 44.62.310 and 44.62.312  
 3 regarding public meetings, AS 44.62 (Administrative Procedure Act) does not apply  
 4 to regulations adopted by the corporation. The corporation shall make available to  
 5 members of the public copies of the regulations it adopts. Within 45 days after its  
 6 adoption, the chair of the board shall the submit regulation to the chair of the  
 7 Administrative Regulation Review Committee (AS 24.20.400).

8           **Sec. 35.45.900. Definitions.** In this chapter, unless the context requires  
 9 otherwise,

10                   (1) "bonds" means revenue bonds, notes, or other obligations of the  
 11 corporation issued under this chapter;

12                   (2) "corporation" means the Public Facilities Financing Corporation  
 13 established under AS 35.45.010;

14                   (3) "public facility" means a building or other structure that serves a  
 15 public purpose and is constructed or maintained in whole or in part with state money,  
 16 and includes a highway, an airport, and a facility or vessel of the Alaska marine  
 17 highway system.

18 \* **Sec. 3.** AS 36.30.850(b) is amended by adding a new paragraph to read:

19                   (38) contracts of the Public Facilities Financing Corporation  
 20 (AS 35.45.010).

21 \* **Sec. 4.** AS 39.50.200(b) is amended by adding a new paragraph to read:

22                   (56) Public Facilities Financing Corporation (AS 35.45.010).

23 \* **Sec. 5.** The lieutenant governor shall place before the qualified voters of the state at the  
 24 next general election a question advisory to the legislature of whether the legislature should  
 25 appropriate \$1,500,000,000 from the constitutional budget reserve fund (art. IX, sec. 17,  
 26 Constitution of the State of Alaska) to capitalize the build Alaska fund (AS 35.45.110). The  
 27 question shall appear on the ballot in the following form:

28   Q U E S T I O N

29           Shall the Legislature of the State of Alaska appropriate \$1,500,000,000 from  
 30 the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State  
 31 of Alaska) to capitalize the build Alaska fund (AS 35.45.110)?

1 Yes [ ] No [ ]

2 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).