

CS FOR SENATE BILL NO. 227(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 2/6/98

Referred: Finance

Sponsor(s): SENATE 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 employ an executive director but may not employ any
 21 other staff. The executive director is in the exempt service under AS 39.25.110.

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

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

1 (7) subject to AS 35.45.070, issue revenue bonds or notes and provide
2 for and secure payment of the revenue bonds or notes, provide for the rights of their
3 holders, and purchase, hold, and dispose of any of its revenue bonds or notes;

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

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

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

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

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

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

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

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

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

31 **Sec. 35.45.050. Issuance of bonds and notes.** (a) Subject to AS 35.45.070,

1 the corporation may issue its bonds or notes in principal amounts sufficient to provide
 2 funds for acquisition, construction, repair, major maintenance, and renovation of public
 3 facilities or school facilities that are projects approved under AS 14.11.015(a).

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

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

8 (2) the commissioner of administration has certified that a computerized
 9 maintenance management plan is in place for the facility; and

10 (3) the commissioner of transportation and public facilities has certified
 11 that

12 (A) the facility is designed in accordance with the energy
 13 performance standards adopted under AS 44.42.020(a);

14 (B) the designer and constructor of the facility have certified
 15 that the facility will be designed and constructed in accordance with the energy
 16 performance standards adopted under AS 44.42.020(a); or

17 (C) if construction of the facility began before July 1, 1980, the
 18 facility meets or, upon completion of the project, will meet the energy
 19 performance standards that are substantially equivalent to those adopted under
 20 AS 44.42.020(a).

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

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

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

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

31 (d) Bonds may be authorized only by resolution of the corporation and shall

1 be dated and mature as the resolution may provide, except that a bond may not mature
2 more than 25 years from the date of its issue. Bonds shall bear interest at rates, be in
3 the denominations, be in the form, either coupon or registered, carry the registration
4 privileges, be executed in the manner, be payable in the medium of payment, at the
5 place or places, and be subject to the terms of redemption that the resolution or a
6 subsequent resolution may provide. Bonds or notes may be sold at a public or private
7 sale.

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

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

1 (g) Neither bonds issued by the corporation, nor leases, installment sales, or
 2 other agreements or arrangements entered into by the state or a department or an
 3 agency of the state securing or providing the source of payment for the bonds are
 4 obligations for which the full faith and credit of the state is pledged. No person has
 5 a claim or lien on any money of the state for the repayment of any obligation of the
 6 corporation. The legislature may appropriate money to pay the leases, installment
 7 sales, or other agreements or arrangements entered into by the state or a department
 8 or an agency of the state with the corporation; however, the legislature is under no
 9 obligation to appropriate money for these purposes or to make payments on any bonds
 10 or other obligations of the corporation. The bonds of the corporation shall recite in
 11 substance that they are not a debt or liability of the state or a political subdivision of
 12 the state, except the corporation, that bondholders have no claim or lien on any money
 13 of the state, except money appropriated by the state for the purpose of paying the
 14 leases, installment sales, or other agreements or arrangements entered into by the state
 15 or a department or an agency of the state with the corporation, that the state is not
 16 obligated to appropriate money for these purposes or to pay the bonds, and that
 17 issuance of bonds by the corporation does not directly, indirectly, or contingently
 18 obligate the state or a political subdivision of the state to apply money from, levy, or
 19 pledge any form of taxation to the payment of the bonds.

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

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

31 (A) the application, investment, deposit, use, and disposition of

1 the proceeds of bonds of the corporation or of money or other property of the
2 corporation, excluding the build Alaska fund and income from the fund;

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

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

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

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

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

1 accounts of the corporation to the extent that the transfer does not reduce the amount
2 of the reserve fund below the public facilities reserve fund requirement under (c) of
3 this section.

4 (c) If the corporation decides to issue bonds secured by a public facilities
5 reserve fund, the bonds may not be issued if the amount in the reserve fund is less
6 than an amount that may be established by resolution of the corporation, called the
7 "public facilities reserve fund requirement," unless the corporation, at the time of
8 issuance of the obligations, deposits in the reserve fund from the proceeds of the
9 obligations to be issued or from other sources, an amount that, together with the
10 amount then in the reserve fund, is not less than the public facilities reserve fund
11 requirement.

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

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

23 (f) If the corporation decides to covenant to issue bonds secured by a public
24 facilities reserve fund, the bonds may not be issued until 10 days after the corporation
25 has mailed notification to the state bond committee and the Legislative Budget and
26 Audit Committee by certified mail of its intention to establish a public facilities
27 reserve fund to secure the bond issue. The notification must include the amount of the
28 reserve fund to be established and the amount of bonds proposed to be issued. The
29 notification must be accompanied by an estimate by the corporation of the need to
30 withdraw money from the reserve fund during the term of the bond issue, the amount
31 that it may be necessary to withdraw, and the time at which withdrawals are estimated

1 to be needed. The corporation shall annually prepare a revised estimate, considering
 2 the same factors, and a statement of all withdrawals that have occurred from the date
 3 of issuance of the bonds to the end of the calendar year. The revised estimate and
 4 statement shall be submitted to the state bond committee and the Legislative Budget
 5 and Audit Committee by January 30 of the year following preparation of the revised
 6 estimate.

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

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

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

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

1 (b) It is the intention of the legislature that a pledge made with respect of
2 bonds shall be valid and binding from the time the pledge is made, that the money and
3 property so pledged and thereafter received by the corporation shall immediately be
4 subject to the lien of the pledge without physical delivery or further act, and that the
5 lien of the pledge shall be valid and binding against all parties having claims of any
6 kind in tort, contract, or otherwise against the corporation, irrespective of whether the
7 parties have notice. The resolution, trust agreement, or another instrument by which
8 a pledge is created need not be recorded nor filed under the provisions of the Uniform
9 Commercial Code to be valid, binding, or effective against the parties.

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

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

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

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

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

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

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

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

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

12 **Sec. 35.45.900. Definitions.** In this chapter, unless the context requires
 13 otherwise,

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

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

18 (3) "public facility" means a building or other structure that serves a
 19 public purpose and is constructed or maintained in whole or in part with state money,
 20 and includes highways and facilities and vessels of the Alaska marine highway system.

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

22 (38) contracts of the Public Facilities Financing Corporation
 23 (AS 35.45.010).

24 * **Sec. 4.** AS 39.25.110 is amended by adding a new paragraph to read:

25 (33) the executive director of the Public Facilities Financing
 26 Corporation.

27 * **Sec. 5.** AS 39.50.200(b) is amended by adding a new paragraph to read:

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

29 * **Sec. 6.** The lieutenant governor shall place before the qualified voters of the state at the
 30 next general election a question advisory to the legislature of whether the legislature should
 31 appropriate \$1,500,000,000 from the constitutional budget reserve fund (art. IX, sec. 17,

1 Constitution of the State of Alaska) to capitalize the build Alaska fund (AS 35.45.110). The
2 question shall appear on the ballot in the following form:

3 Q U E S T I O N

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

7 Yes [] No []

8 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).