

**HOUSE BILL NO. 495**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES KAPSNER, Foster, Morgan**

**Introduced: 2/19/02**

**Referred: Health, Education and Social Services, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to financing school construction; establishing the Education Facilities**  
2 **Financing Authority; and providing for an effective date."**

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 FINDINGS AND INTENT. (a) The legislature finds that

7 (1) art. VII, sec. 1, Constitution of the State of Alaska, provides that the  
8 legislature shall establish and maintain a system of public schools open to all children of the  
9 state;

10 (2) adequate public school facilities that provide a safe and effective  
11 atmosphere for learning are integral to the success of the initiative for quality schools in this  
12 state;

13 (3) every school-age child in this state deserves the opportunity to attend an  
14 adequate public school facility;

1 (4) the current value of public school and school-related facilities statewide is  
2 nearly \$4,000,000,000;

3 (5) the state must protect its investment in our public school facilities by  
4 recognizing where new public school facilities are needed and repairing and maintaining  
5 existing public school facilities that are deficient;

6 (6) the Department of Education and Early Development compiles a statewide  
7 list of projects for which grant applications are submitted under AS 14.11.011 and ranks those  
8 projects according to priority needs;

9 (7) the current statewide lists of public school construction, repair, and  
10 maintenance needs include over 150 school projects at a total cost to the state of over  
11 \$640,000,000;

12 (8) the superior court, Third Judicial District, State of Alaska, found, in  
13 *Kasayulie, et al. v. State of Alaska*, No. 3AN-97-3782 CI, that the state had failed to provide  
14 constitutionally adequate public school facilities to all children of the state;

15 (9) to correct the constitutional violations found in *Kasayulie, et al. v. State of*  
16 *Alaska*, it is necessary to eliminate future debt-reimbursement funding under AS 14.11.100  
17 and to provide sufficient funding so that every school-age child in this state will have the  
18 opportunity to attend an adequate public school facility;

19 (10) the establishment of the Education Facilities Financing Authority as  
20 provided in this Act will provide an effective means for financing public school facilities.

21 (b) It is the intent of the legislature that sufficient funding be appropriated for school  
22 construction and major maintenance projects, as defined in AS 14.11.135(6) and (7), so that  
23 every school-age child in Alaska will have the opportunity to attend an adequate public school  
24 facility.

25 \* **Sec. 2.** AS 14.11.100(a)(9) is amended to read:

26 (9) subject to (h), (i), (j), and (n) of this section and after projects  
27 funded by the bonds, notes, or other indebtedness have been approved by the  
28 commissioner, 70 percent of payments made by the municipality during the fiscal year  
29 for the retirement of principal and interest on outstanding bonds, notes, or other  
30 indebtedness authorized by the qualified voters of the municipality on or after July 1,  
31 1998, but before **December 14, 2001** [JULY 1, 2004], to pay costs of school

1 construction, additions to schools, and major rehabilitation projects that exceed  
2 \$200,000 and are approved under AS 14.07.020(a)(11);

3 \* **Sec. 3.** AS 14.11.100(a)(10) is amended to read:

4 (10) subject to (h), (i), (j)(2) - (4), and (o) of this section, and after  
5 projects funded by the bonds, notes, or other indebtedness have been approved by the  
6 commissioner, 70 percent of payments made by the municipality during the fiscal year  
7 for the retirement of principal and interest on outstanding bonds, notes, or other  
8 indebtedness authorized by the qualified voters of the municipality on or after June 30,  
9 1998, **but before December 14, 2001**, to pay costs of school construction, additions to  
10 schools, and major rehabilitation projects that exceed \$200,000, are approved under  
11 AS 14.07.020(a)(11), and are not reimbursed under (n) of this section.

12 \* **Sec. 4.** AS 14.11.100 is amended by adding a new subsection to read:

13 (q) The state may not allocate money to a school district to pay the costs of  
14 school construction, additions to schools, or major rehabilitation projects authorized  
15 by the qualified voters of the municipality on or after December 14, 2001. Except as  
16 otherwise provided in this section, the legislature may not appropriate or allocate  
17 money for the costs of school construction, additions to schools, or major  
18 rehabilitation projects unless the project is approved under AS 14.11.015(a).

19 \* **Sec. 5.** AS 36.30.850(b) is amended by adding a new paragraph to read:

20 (42) contracts of the Education Facilities Financing Authority  
21 (AS 44.27.100).

22 \* **Sec. 6.** AS 39.25.110 is amended by adding a new paragraph to read:

23 (37) the employees of the Education Facilities Financing Authority.

24 \* **Sec. 7.** AS 39.50.200(b) is amended by adding a new paragraph to read:

25 (57) Education Facilities Financing Authority (AS 44.27.100).

26 \* **Sec. 8.** AS 44.27 is amended by adding new sections to read:

27 **Article 3. Education Facilities Financing Authority.**

28 **Sec. 44.27.100. Education Facilities Financing Authority.** The Education  
29 Facilities Financing Authority is created as a public corporation of the state in the  
30 Department of Education and Early Development. The authority is an instrumentality  
31 of the state but has a legal existence independent of and separate from the state and

1 has continuing succession until its existence is terminated by law. The authority is  
2 subject to AS 37.07 (Executive Budget Act).

3 **Sec. 44.27.110. Board of directors.** (a) The authority is governed by a board  
4 of seven directors consisting of the commissioner of revenue, the commissioner of  
5 education and early development, the commissioner of transportation and public  
6 facilities, two members elected by the State Board of Education and Early  
7 Development from among its membership, and two public members appointed by the  
8 governor. In appointing the public members, the governor shall give preference to  
9 persons who have experience and expertise in finance or education. At least one of  
10 the public members shall be a rural resident of the state. The directors are subject to  
11 AS 39.50. Before entering upon the duties of office, a director shall take and  
12 subscribe to an oath to perform the duties faithfully, impartially, and justly to the best  
13 of the director's ability. A record of the oath shall be filed in the Office of the  
14 Governor.

15 (b) The public members of the authority shall serve staggered terms of four  
16 years. A public member may be reappointed, but may not serve more than two  
17 consecutive terms or eight years, whichever is longer.

18 **Sec. 44.27.120. Officers, quorum, and meetings.** (a) The board of directors  
19 shall elect one of their number as chair. The board shall elect a secretary and a  
20 treasurer, who need not be directors, and the same person may be elected to serve both  
21 as secretary and treasurer.

22 (b) The powers of the authority are vested in the board of directors, and four  
23 directors of the authority constitute a quorum. Action may be taken and motions and  
24 resolutions adopted by the authority at any meeting by the affirmative vote of at least  
25 four directors. A vacancy in the directorship of the authority does not impair the right  
26 of a quorum to exercise all of the powers and perform all of the duties of the authority.

27 (c) The directors and officers of the authority may meet and transact business  
28 by an electronic medium if (1) public notice of the time and locations where the  
29 meeting will be held by an electronic medium has been given in the same manner as if  
30 the meeting were held in a single location; (2) participants and members of the public  
31 in attendance can hear and have the same right to participate in the meeting as if the

1 meeting were conducted in person; and (3) copies of pertinent reference materials,  
 2 statutes, regulations, and audio-visual materials are reasonably available to  
 3 participants and to the public. A meeting by an electronic medium as provided in this  
 4 subsection has the same legal effect as a meeting in person.

5 (d) The authority may appoint persons as employees it considers advisable and  
 6 may employ professional advisors, counsel, technical experts, agents, and others as  
 7 appropriate. The employees of the authority are in the exempt service under  
 8 AS 39.25.110.

9 **Sec. 44.27.130. Powers of the authority.** The authority may

- 10 (1) sue and be sued;
- 11 (2) adopt and alter an official seal;
- 12 (3) make and enforce bylaws and regulations for the conduct of its  
 13 business and for the use of its services and facilities;
- 14 (4) maintain an office at any place in the state;
- 15 (5) acquire, hold, use, and dispose of its income, revenue, funds, and  
 16 money;
- 17 (6) acquire, rent, lease, hold, use, and dispose of other personal  
 18 property for its purposes;
- 19 (7) subject to AS 44.27.160, issue revenue bonds or notes and provide  
 20 for and secure payment of the revenue bonds or notes, provide for the rights of their  
 21 holders, and purchase, hold, and dispose of any of its revenue bonds or notes;
- 22 (8) fix and revise from time to time and charge and collect fees and  
 23 charges for the use of its services or facilities;
- 24 (9) accept gifts or grants from the United States, or from any  
 25 governmental unit or person, carry out the terms or provisions or make agreements  
 26 with respect to the gifts or grants, and do all things necessary, useful, desirable, or  
 27 convenient in connection with procuring, accepting, or disposing of the gifts or grants;
- 28 (10) do anything authorized by AS 44.27.100 - 44.27.250, through its  
 29 officers, agents, or employees, or by contracts with a person;
- 30 (11) make, enter into, and enforce all contracts necessary, convenient,  
 31 or desirable for the purposes of the authority or pertaining to a purchase or sale of

1 bonds or other investments, or the performance of its duties and execution of any of its  
2 powers under AS 44.27.100 - 44.27.250;

3 (12) purchase or hold bonds at prices and in a manner the authority  
4 considers advisable;

5 (13) adopt and amend regulations by motion, by resolution, or in  
6 another manner permitted under the bylaws of the authority;

7 (14) procure insurance against any losses in connection with its  
8 property, operations, or assets in amounts and from insurers it considers desirable;

9 (15) to the extent permitted under its contracts with the holders of  
10 bonds or notes of the authority, consent to modification of the rate of interest, time and  
11 payment of installment of principal or interest, security, or any other term of a bond or  
12 note, contract, or agreement of any kind to which the authority is a party; and

13 (16) do all acts and things necessary, convenient, or desirable to carry  
14 out the powers expressly granted or necessarily implied in AS 44.27.100 - 44.27.250.

15 **Sec. 44.27.140. Issuance of bonds and pledges of assets.** (a) Subject to  
16 AS 44.27.160, the authority may issue its bonds or notes in principal amounts  
17 sufficient to provide funds for the construction of schools or school facilities that are  
18 projects approved under AS 14.11.015(a) and authorized by the legislature.

19 (b) Bonds or notes may be issued or agreements made for a facility under (a)  
20 of this section only when

21 (1) the legislature has authorized the facility and its construction cost;  
22 and

23 (2) the commissioner of education and early development has certified  
24 that

25 (A) the facility is designed in accordance with the energy  
26 performance standards adopted under AS 44.42.020(a); or

27 (B) the designer and constructor of the facility have certified  
28 that the facility will be designed and constructed in accordance with the energy  
29 performance standards and regulations adopted under AS 44.42.020(a).

30 (c) The authority may issue its bonds or notes in principal amounts that it  
31 considers necessary to provide funds for

1 (1) payment, funding, or refunding of the principal of, or interest or  
 2 redemption premiums on, bonds or notes issued by it, whether the bonds or notes or  
 3 interest to be funded or refunded have or have not become due;

4 (2) the establishment or increase of reserves to secure or to pay bonds  
 5 or notes or interest on bonds or notes and all other costs or expenses of the authority  
 6 incident to and necessary or convenient to carry out its corporation purposes and  
 7 powers.

8 (d) Except as otherwise provided in AS 44.27.100 - 44.27.250 or by the  
 9 authority, every issue of bonds or notes shall be payable out of the revenue or funds of  
 10 the authority, subject only to agreements with the holders of particular bonds or notes  
 11 pledging particular revenue or funds.

12 (e) Bonds shall be authorized by resolution of the authority and shall be dated  
 13 and mature as the resolution may provide, except that a bond may not mature more  
 14 than 15 years from the date of its issue. Bonds shall bear interest at rates, be in the  
 15 denominations, be in the form, either coupon or registered, carry the registration  
 16 privileges, be executed in the manner, be payable in the medium of payment, at the  
 17 place or places, and be subject to the terms of redemption that the resolution or a  
 18 subsequent resolution may provide. Bonds or notes may be sold at a public or private  
 19 sale.

20 (f) The authority may disburse funds necessary to comply with the  
 21 construction and reimbursement provisions of (a) of this section. An agreement not to  
 22 modify an appropriation for construction after bonds or notes have been issued for the  
 23 purpose is valid. The authority shall exclude from the total school construction cost of  
 24 the local district all state and federal funds included in these costs except funds  
 25 provided under this section and AS 43.50.140.

26 **Sec. 44.27.150. Trust indentures and trust agreements.** (a) In the  
 27 discretion of the authority, an issue of bonds may be secured by a trust indenture or  
 28 trust agreement between the authority and a corporate trustee, including a trust  
 29 company, bank, or national banking association, with corporate trust powers, located  
 30 inside or outside the state, or by a secured loan agreement or other instrument or under  
 31 a resolution giving powers to a corporate trustee by means of which the authority may

1 (1) make and enter into any and all the covenants and agreements with  
 2 the trustee or the holders of the bonds that the authority may determine to be necessary  
 3 or desirable, including, without limitation, covenants, provisions, limitations, and  
 4 agreements as to

5 (A) the application, investment, deposit, use, and disposition of  
 6 the proceeds of bonds of the authority or of money or other property of the  
 7 authority in which it has an interest;

8 (B) the terms and conditions upon which additional bonds of  
 9 the authority may be issued; and

10 (C) the vesting in a trustee of rights, powers, duties, funds, or  
 11 property in trust for the benefit of bondholders, including the right to enforce  
 12 payment, performance, and all other rights of the authority or of the  
 13 bondholders, under any agreement of the authority;

14 (2) pledge, mortgage, or assign money, agreements, property, or other  
 15 rights or assets of the authority either presently in hand or to be received in the future,  
 16 or both; and

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

19 (b) For the purpose of securing one or more issues of its bonds, the authority  
 20 may establish one or more special funds, called "capital reserve funds," and shall pay  
 21 into the capital reserve funds the proceeds of the sale of its bonds and other money  
 22 that may be made available to the authority for the purposes of those funds from  
 23 another source. The funds shall be established only if the authority determines that the  
 24 establishment would enhance the marketability of the bonds. Money held in a capital  
 25 reserve fund, except as provided in this section, shall be used as required solely for (1)  
 26 the payment of the principal of, and interest on, bonds or of the sinking fund payments  
 27 with respect to those bonds, (2) the purchase or redemption of bonds, or (3) the  
 28 payment of a redemption premium required to be paid when those bonds are redeemed  
 29 before maturity; however, money in a fund may not be withdrawn from it at any time  
 30 in an amount that would reduce the amount of that fund to less than the capital reserve  
 31 requirement set out in (2) of this subsection, except for the purpose of making, with

1 respect to those bonds, payment, when due, of principal, interest, redemption  
2 premiums, and the sinking fund payments for the payment of which other money of  
3 the authority is not available. Income or interest earned by, or increment to, a capital  
4 reserve fund, due to the investment of the fund or any other amounts in it, may be  
5 transferred by the authority to other funds or accounts of the authority to the extent  
6 that the transfer does not reduce the amount of the capital reserve fund below the  
7 capital reserve fund requirement under (c) of this section.

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

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

19 (e) The chair of the authority shall annually, not later than January 2, make  
20 and deliver to the governor and the legislature a certificate stating the amount, if any,  
21 required to restore a capital reserve fund to the capital reserve fund requirement. The  
22 legislature may appropriate the amount described in this subsection, and all money  
23 appropriated during the then current fiscal year by the legislature for the restoration  
24 shall be deposited by the authority in the proper capital reserve fund. Nothing in this  
25 section creates a debt or liability of the state.

26 (f) If the authority decides to covenant to issue bonds secured by a capital  
27 reserve fund, the bonds may not be issued until 10 days after the authority has mailed  
28 notification to the state bond committee and the Legislative Budget and Audit  
29 Committee by certified mail of its intention to establish a capital reserve fund to  
30 secure the bond issue. The notification must include the amount of the capital reserve  
31 fund to be established and the amount of bonds proposed to be issued. The

1 notification must be accompanied by an estimate by the authority of the need to  
 2 withdraw money from the capital reserve fund during the term of the bond issue, the  
 3 amount that it may be necessary to withdraw, and the time at which withdrawals are  
 4 estimated to be needed. The authority shall annually prepare a revised estimate,  
 5 considering the same factors, and a statement of all withdrawals that have occurred  
 6 from the date of issuance of the bonds to the end of the calendar year. The revised  
 7 estimate and statement shall be submitted to the state bond committee and the  
 8 Legislative Budget and Audit Committee by January 30 of the year following  
 9 preparation of the revised estimate.

10 **Sec. 44.27.160. Bonding limitations.** The authority may not issue bonds or  
 11 make agreements under AS 44.27.140 unless the money in the education facilities  
 12 fund equals or exceeds \$1,500,000,000.

13 **Sec. 44.27.170. Nonliability on bonds.** (a) Neither the members of the  
 14 authority nor a person executing the bonds is personally liable on the bonds or is  
 15 subject to personal liability or accountability as a result of the issuance of the bonds.

16 (b) Bonds issued by the authority do not constitute an indebtedness or other  
 17 liability of the state or of a political subdivision of the state, except the authority.  
 18 Bonds shall be payable solely from the income and receipts or other funds or property  
 19 of the authority. The authority may not pledge the faith or credit of the state or of a  
 20 political subdivision of the state, except the authority, to the payment of a bond.

21 **Sec. 44.27.180. Pledge of the state.** (a) The state pledges to and agrees with  
 22 the holders of bonds issued under AS 44.27.100 - 44.27.250 that the state will not  
 23 limit or alter the rights and powers vested in the authority by AS 44.27.100 -  
 24 44.27.250 to fulfill the terms of a contract made by the authority with the holders and  
 25 that the state will not in any way impair the rights and remedies of the holders until the  
 26 bonds, together with the interest on them with interest on unpaid installments of  
 27 interest, and all costs and expenses in connection with an action or proceeding by or  
 28 on behalf of the holders are fully met and discharged. The authority is authorized to  
 29 use this pledge and agreement of the state in agreements involving holders of bonds of  
 30 the authority.

31 (b) The pledge of the state is limited to the express provisions of (a) of this

1 section and is not a guarantee, surety, promise, undertaking, or assurance of repayment  
2 or performance of any obligation of the authority.

3 **Sec. 44.27.190. Education facilities fund.** (a) The education facilities fund  
4 is established in the authority. The fund consists of appropriations made to the fund  
5 by the legislature, and, subject to appropriation, the income of the fund. The authority  
6 may enter into agreements for financial covenants or pledge amounts in the fund that  
7 exceed \$1,500,000,000 to secure the payment of bonds of the authority and may make  
8 expenditures from the fund for the purposes of the agreements.

9 (b) The fund and any other funds of the authority shall be invested by the  
10 Alaska Permanent Fund Corporation as agent of the authority in the manner provided  
11 for assets of the Alaska permanent fund under AS 37.13.120 unless otherwise  
12 provided in a trust agreement securing bonds.

13 **Sec. 44.27.200. Annual audit.** The authority shall have its financial records  
14 audited annually by a certified public accountant. The legislative auditor may  
15 prescribe the form and content of the financial records of the authority and may have  
16 access to the records at any time.

17 **Sec. 44.27.210. Annual report.** Before March 1 of each year, the authority  
18 shall submit to the governor and the legislature a comprehensive report describing  
19 operations, income, and expenditures for the preceding calendar year.

20 **Sec. 44.27.250. Definitions.** In AS 44.27.100 - 44.27.250, unless the context  
21 requires otherwise,

22 (1) "authority" means the Education Facilities Financing Authority  
23 established under AS 44.27.100;

24 (2) "bonds" means revenue bonds, notes, or other obligations of the  
25 authority issued under AS 44.27.100 - 44.27.250;

26 (3) "fund" means the education facilities fund established under  
27 AS 44.27.190.

28 \* **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).