

CS FOR SENATE BILL NO. 213(FIN)(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/16/03

Offered: 5/14/03

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Knik Arm Bridge and Toll Authority and relating to that
2 authority."

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

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

5 **Chapter 90. Knik Arm Bridge and Toll Authority.**

6 **Article 1. Establishment and Organization.**

7 **Sec. 44.90.011. Purpose.** The purpose of the authority created by this chapter
8 is to develop, stimulate, and advance the economic welfare of the state and further the
9 development of public transportation systems in the vicinity of the Upper Cook Inlet
10 with construction of a bridge to span Knik Arm and connect the Municipality of
11 Anchorage and the Matanuska-Susitna Borough.

12 **Sec. 44.90.021. Establishment of authority.** (a) There is established the
13 Knik Arm Bridge and Toll Authority. The authority is a public corporation and an
14 instrumentality of the state within the Department of Transportation and Public

1 Facilities, but the authority has a separate and independent legal existence from the
 2 state. The exercise by the authority of the powers in this chapter is considered an
 3 essential governmental function of the state.

4 (b) The authority may not be terminated as long as it has bonds, notes, or other
 5 obligations outstanding. Upon termination of the authority, its rights and property
 6 pass to the state.

7 **Sec. 44.90.031. Board of directors of authority.** (a) The authority shall be
 8 governed by a board of directors consisting of the following:

9 (1) the commissioner of transportation and public facilities or the
 10 commissioner's designee;

11 (2) the commissioner of revenue or the commissioner's designee;

12 (3) one public member, appointed by the governor, who is a state
 13 resident and United States citizen;

14 (4) one public member, appointed by the governor, who is a resident of
 15 the Municipality of Anchorage and who has knowledge of local transportation issues;

16 (5) one public member, appointed by the governor, who is a resident of
 17 the Matanuska-Susitna Borough and who has knowledge of local transportation issues;

18 (6) one nonvoting member who is a member of the state house of
 19 representatives appointed by the speaker of the house and who serves at the pleasure
 20 of the speaker of the house; the speaker of the house shall consider the appointment of
 21 a legislator elected from a house district that lies entirely or partially within the
 22 Municipality of Anchorage or the Matanuska-Susitna Borough for appointment under
 23 this paragraph; and

24 (7) one nonvoting member who is a member of the state senate
 25 appointed by the president of the senate and who serves at the pleasure of the president
 26 of the senate; the president of the senate shall consider the appointment of a senator
 27 elected from a senate district that lies entirely or partially within the Municipality of
 28 Anchorage or the Matanuska-Susitna Borough for appointment under this paragraph.

29 (b) The public members of the board shall serve for staggered terms of five
 30 years and may be reappointed to a single successive five-year term. A public member
 31 may only be removed for cause.

1 (c) If a vacancy occurs in a public member's seat on the board, the governor
2 shall make an appointment, effective immediately, for the unexpired portion of that
3 member's term.

4 **Sec. 44.90.041. Operation of authority.** (a) The powers of the authority are
5 vested in the board.

6 (b) Three voting members of the board constitute a quorum.

7 (c) The governor shall designate one member of the board to serve as the chair
8 of the board. The voting members of the board shall elect other officers they
9 determine desirable.

10 (d) Action may be taken and motions and resolutions adopted by the board at a
11 meeting by the affirmative vote of at least three voting members.

12 (e) The public members of the board shall receive a stipend of \$300 a day
13 while performing business of the authority.

14 (f) The members of the board serving under AS 44.90.031(a)(1), (2), (6), and
15 (7) serve without compensation, but are entitled to per diem and travel expenses
16 authorized by law under AS 39.20.180.

17 **Sec. 44.90.051. Executive director.** The authority shall employ an executive
18 director who may not be a member of the board. The executive director shall serve at
19 the pleasure of the board. The board shall establish the duties and compensation of the
20 executive director.

21 **Sec. 44.90.061. Employment of personnel.** The executive director may hire
22 employees of the authority. The board shall prescribe the duties and compensation of
23 authority employees.

24 **Sec. 44.90.071. Personnel exempt from State Personnel Act.** The executive
25 director and employees of the authority are in the exempt service under AS 39.25
26 (State Personnel Act).

27 **Sec. 44.90.081. Legal advisor.** The attorney general is the legal counsel for
28 the authority. The attorney general shall advise the authority in legal matters and
29 represent it in suits.

30 **Article 2. Powers and Duties.**

31 **Sec. 44.90.111. Powers and duties of the authority.** (a) In furtherance of its

1 purposes, the authority may

2 (1) own, acquire, construct, develop, create, reconstruct, equip,
3 operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant
4 facilities;

5 (2) sue and be sued;

6 (3) adopt a seal;

7 (4) adopt, amend, and repeal regulations under AS 44.62 and establish
8 bylaws;

9 (5) make and execute agreements, contracts, and other instruments for
10 the exercise of its powers and functions under this chapter, including contracts with
11 any person, firm, corporation, governmental agency, or other entity;

12 (6) in its own name acquire, lease, rent, or convey real and personal
13 property;

14 (7) issue bonds and otherwise incur indebtedness, in accordance with
15 AS 44.90.211, in order to pay the cost of the Knik Arm bridge and its appurtenant
16 facilities; the authority may also secure payment of the bonds or other indebtedness as
17 provided in AS 44.90.221;

18 (8) apply for and accept gifts, grants, or loans from a federal agency or
19 an agency or instrumentality of the state, or from a municipality, private organization,
20 or other source;

21 (9) fix and collect fees, rents, tolls, rates, or other charges for the use of
22 the Knik Arm bridge and appurtenant facilities, or for a service developed, operated,
23 or provided by the authority; notwithstanding AS 37.10.050(a), fees, rents, tolls, rates,
24 and other charges fixed and collected under this paragraph may exceed the actual
25 operating cost of the use of the bridge, facility, or service;

26 (10) pledge fees, rents, tolls, rates, charges, or other revenue of the
27 authority as security for bonds of the authority;

28 (11) deposit or invest its funds, subject to agreements with
29 bondholders;

30 (12) procure insurance against any loss in connection with its
31 operation;

1 (13) contract for and engage the services of consultants, experts, and
2 financial and technical advisors that the authority considers necessary for the exercise
3 of its powers and functions under this chapter;

4 (14) apply for, obtain, hold, and use permits, licenses, or approvals
5 from appropriate agencies of the state, the United States, a foreign country, and any
6 other proper agency in the same manner as any other person;

7 (15) perform reconnaissance studies and engineering, survey, and
8 design studies with respect to the Knik Arm bridge and its appurtenant facilities;

9 (16) exercise powers of eminent domain or file a declaration of taking
10 as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 -
11 09.55.460 to acquire land or an interest in land;

12 (17) confer with municipal and other governments, metropolitan
13 planning organizations, and the department, concerning the Knik Arm bridge;

14 (18) do all acts and things necessary to carry out the powers expressly
15 granted or necessarily implied in this chapter.

16 (b) The authority shall

17 (1) prepare an annual report of its operations to include a balance
18 sheet, an income statement, a statement of changes in financial position, a
19 reconciliation of changes in equity accounts, a summary of significant accounting
20 principles, an auditor's report, comments regarding the year's business, and prospects
21 for the next year; the report shall be completed by the third day of each regular session
22 of the legislature, and the authority shall notify the governor, the commissioner of the
23 department, the presiding officers of each house of the legislature, and the Legislative
24 Budget and Audit Committee that the report is available;

25 (2) comply with the provisions of AS 37.07 (Executive Budget Act),
26 except that AS 37.07 does not apply to the activities of the authority that relate to the
27 authority's borrowing of money as provided in this chapter, including the issuing of its
28 obligations or evidence of that borrowing and the repayment of the debt obligation;

29 (3) establish a personnel management system for hiring employees and
30 setting employee-benefit packages;

31 (4) establish procedures, rules, and rates governing per diem and travel

1 expenses of the employees of the authority in substantial conformity to statutes,
2 procedures, rules, and rates applicable to state employees of similar state entities;

3 (5) coordinate the exercise of its powers to plan, design, construct,
4 operate, and maintain the Knik Arm bridge with the department, and with the mayors
5 of the Municipality of Anchorage and the Matanuska-Susitna Borough.

6 **Sec. 44.90.211. Bonds of the authority.** The authority may borrow money
7 and issue bonds on which the principal and interest are payable from money derived
8 from the fees, rents, tolls, rates, charges, and other revenue of the authority under this
9 chapter. Before issuing bonds for the Knik Arm bridge, the authority shall submit to
10 the state bond committee a description of the bond issue and a preliminary prospectus,
11 offering circular, or official statement relating to the bond issue. Bonds may not be
12 issued unless the state bond committee finds, based upon the information submitted by
13 the authority under this section and other information that is reasonably available to
14 the committee, that the Knik Arm bridge revenue and other revenue available to the
15 authority can be reasonably expected to be adequate for payment of the principal and
16 interest on the bonds to be issued and that issuance of the bonds by the authority
17 would not be expected to adversely affect the ability of the state or its political
18 subdivisions to market bonds. Bonds may not be issued unless the principal amount
19 of the bond issue is authorized by law.

20 **Sec. 44.90.221. Trust indentures and trust agreements.** (a) In the
21 discretion of the authority, an issue of bonds may be secured by a trust indenture or
22 trust agreement between the authority and a corporate trustee, by a secured loan
23 agreement or other instrument, or by a resolution giving powers to a corporate trustee,
24 by means of which the authority may

25 (1) make agreements with the trustee or the holders of the bonds that
26 the authority determines to be necessary or desirable, including agreements as to the

27 (A) application, investment, deposit, use, and disposition of

28 (i) the proceeds of bonds of the authority;

29 (ii) money or other property of the authority; or

30 (iii) money or other property in which the authority has

31 an interest;

1 (B) fixing and collecting of fees, rents, tolls, rates, or other
2 charges;

3 (C) assignment by the authority of its rights in any contract
4 with respect to the Knik Arm bridge or in a mortgage or other security interest
5 created with respect to the Knik Arm bridge to a trustee for the benefit of
6 bondholders;

7 (D) terms and conditions under which the authority may issue
8 additional bonds;

9 (E) vesting in a trustee of rights, powers, duties, money, or
10 property in trust for the benefit of bondholders, including the right to enforce
11 payment, performance, and all other rights of the authority or of the
12 bondholders, under a lease, power of contract, contract of sale, mortgage,
13 security agreement, or trust by injunction or other proceeding or by taking
14 possession by agent or otherwise, and operating the Knik Arm bridge and
15 collecting rents or other consideration and applying the same in accordance
16 with the trust agreement;

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

20 (3) provide for any other matters that affect the security or protection
21 of the bonds.

22 (b) Notwithstanding any other provisions of this chapter, the trust agreement
23 must contain an agreement by the authority that the authority will at all times maintain
24 fees, rents, tolls, rates, or other charges sufficient to

25 (1) pay the costs of operation and maintenance of the Knik Arm bridge
26 and its appurtenant facilities and the principal of and interest on bonds issued under
27 the trust agreement as the bonds severally become due and payable;

28 (2) provide for debt service coverage as considered necessary by the
29 authority for the marketing of its bonds; and

30 (3) provide for renewals, replacements, and improvements of the Knik
31 Arm bridge, and to maintain reserves required by the terms of the trust agreement.

1 (c) For the purpose of securing one or more issues of its bonds, the authority
2 may establish one or more special funds, called "capital reserve funds," and shall pay
3 into those capital reserve funds the proceeds of the sale of its bonds and any other
4 money that is available to the authority for the purposes of those funds. The funds
5 shall be established only if the authority determines that the establishment would
6 enhance the marketability of the bonds. All money held in a capital reserve fund,
7 except as provided in this section, shall be used as required solely for (1) the payment
8 of the principal of and interest on bonds or of the sinking fund payments with respect
9 to those bonds, (2) the purchase or redemption of bonds, or (3) the payment of a
10 redemption premium required to be paid when those bonds are redeemed before
11 maturity. However, money in a fund may not be withdrawn from the fund at any time
12 in an amount that would reduce the amount of the fund to less than the capital reserve
13 requirement set out in (d) of this section, except for the purpose of making, with
14 respect to those bonds, payment, when due, of principal, interest, redemption
15 premiums, and the sinking fund payments for the payment of which other money of
16 the authority is not available. Income or interest earned by or increment to a capital
17 reserve fund due to the investment of the fund or any other amounts in the fund may
18 be transferred by the authority to other funds or accounts of the authority to the extent
19 that the transfer does not reduce the amount of the capital reserve fund below the
20 capital reserve fund requirement.

21 (d) If the authority decides to issue bonds secured by a capital reserve fund,
22 the bonds may not be issued if the amount in the capital reserve fund is less than the
23 amount of the capital reserve fund requirement, if any, established by resolution of the
24 authority, unless the authority, at the time of issuance of the obligations, deposits in
25 the capital reserve fund from the proceeds of the obligations to be issued or from other
26 sources an amount that, together with the amount then in the fund, will not be less than
27 the capital reserve fund requirement.

28 (e) In computing the amount of a capital reserve fund for the purpose of this
29 section, securities in which all or a portion of the fund is invested shall be valued by
30 some reasonable method established by the authority by resolution. Valuation on a
31 particular date shall include the amount of any interest earned or accrued to that date.

1 (f) If the authority decides to issue bonds secured by a capital reserve fund, the
 2 bonds may not be issued until 30 days after the authority has mailed notification to the
 3 state bond committee and the Legislative Budget and Audit Committee by certified
 4 mail of its intention to establish a capital reserve fund to secure the bond issue. The
 5 notification must include the amount of the capital reserve fund to be established, the
 6 amount of bonds proposed to be issued, and the total cost for which the bonds are to
 7 be issued. The notification shall be accompanied by an estimate by the authority of
 8 the need to withdraw money from the capital reserve fund during the term of the bond
 9 issue, the amount that may be necessary to withdraw, and the time at which
 10 withdrawals are estimated to be needed. By January 30 of each year, the authority
 11 shall prepare, and provide to the state bond committee and the Legislative Budget and
 12 Audit Committee, a revised estimate, considering the same factors, and a statement of
 13 all withdrawals that have occurred from the date of issuance of the bonds to the end of
 14 the preceding calendar year.

15 (g) Nothing in this section creates a debt or liability of the state.

16 **Sec. 44.90.231. Validity of pledge.** It is the intention of the legislature that a
 17 pledge made in respect of bonds shall be perfected and shall be valid and binding from
 18 the time the pledge is made, that the money or property so pledged and after that
 19 received by the authority shall immediately be subject to the lien of the pledge without
 20 physical delivery or further act, and that the lien of the pledge shall be valid and
 21 binding against all parties having claims of any kind in tort, contract, or otherwise
 22 against the authority irrespective of whether the parties have notice. Neither the
 23 resolution, trust agreement, nor any other instrument by which a pledge is created need
 24 be recorded or filed under the provisions of the Uniform Commercial Code in order to
 25 be perfected or to be valid, binding, or effective against the parties. This section does
 26 not affect title to or conveyances of real property, and does not limit the applicability
 27 of AS 40.17.080(b).

28 **Sec. 44.90.241. Nonliability on bonds.** (a) Neither the members of the board
 29 nor a person executing the bonds of the authority is liable personally on the bonds or is
 30 subject to personal liability or accountability by reason of the issuance of the bonds.

31 (b) The bonds issued by the authority do not constitute an indebtedness or

1 other liability of the state or of a political subdivision of the state other than the
 2 authority, but shall be payable solely from the income, receipts, or other money or
 3 property of the authority.

4 (c) The authority may not pledge the faith or credit of the state or of a political
 5 subdivision of the state other than the authority, and the issuance of a bond by the
 6 authority does not directly, indirectly, or contingently obligate the state or a political
 7 subdivision of the state to apply money from, levy, or pledge any form of taxation to
 8 the payment of the bond.

9 (d) Each obligation issued under this chapter other than a state guaranteed
 10 bond shall contain on its face a statement that the authority is not obligated to pay it
 11 nor the interest on it except from the revenue or assets of the authority and that neither
 12 the faith and credit nor the taxing power of the state or of any political subdivision of
 13 the state is pledged to the payment of the principal of or the interest on the obligation.

14 **Sec. 44.90.251. Pledge of the state.** The state pledges to and agrees with the
 15 holders of bonds issued under this chapter and with a federal agency that loans or
 16 contributes money in respect to the Knik Arm bridge that the state will not limit or
 17 alter the rights and powers vested in the authority under this chapter to fulfill the terms
 18 of a contract made by the authority with the holders or federal agency or in any way
 19 impair the rights and remedies of the holders until the bonds, together with the interest
 20 on them, with interest on unpaid installments of interest, and all costs and expenses in
 21 connection with an action or proceeding by or on behalf of the holders, are fully met
 22 and discharged. The authority may include this pledge and agreement of the state,
 23 insofar as it refers to holders of bonds of the authority, in a contract with the holders
 24 and, insofar as it relates to a federal agency, in a contract with the federal agency.

25 **Sec. 44.90.261. Exemption from taxation.** The real and personal property of
 26 the authority and its assets, income, and receipts are declared to be the property of a
 27 political subdivision of the state and are exempt from all taxes and special assessments
 28 of the state or a political subdivision of the state. All bonds of the authority are
 29 declared to be issued by a political subdivision of the state and for an essential public
 30 and governmental purpose. The bonds, the interest on the bonds, the income from the
 31 bonds and the transfer of the bonds, and all assets, income, and receipts pledged to pay

1 or secure the payment of the bonds or interest on the bonds are, at all times, exempt
 2 from taxation by or under the authority of the state, except for inheritance and estate
 3 taxes and taxes on transfers by or in contemplation of death. Nothing in this section
 4 affects or limits an exemption from license fees, property taxes, or excise, income, or
 5 other taxes provided under any other law, nor does it create a tax exemption with
 6 respect to the interest of any business enterprise or other person, other than the
 7 authority, in any property, assets, income, receipts, project, or lease, regardless of
 8 whether financed under this chapter.

9 **Sec. 44.90.271. Bonds legal investments for fiduciaries.** The bonds of the
 10 authority are securities in which all public officers and bodies of the state and all
 11 municipalities and municipal subdivisions, all insurance companies and associations
 12 and other persons carrying on an insurance business, all banks, bankers, trust
 13 companies, savings banks, savings associations, including savings and loan
 14 associations and building and loan associations, investment companies and other
 15 persons carrying on banking business, all administrators, guardians, executors,
 16 trustees, and other fiduciaries, and other persons who are now or may afterward be
 17 authorized to invest in bonds or other obligations of the state may properly and legally
 18 invest money, including capital in their control or belonging to them. Notwithstanding
 19 any other provision of law, the bonds of the authority are also securities that may be
 20 deposited with and may be received by all public officers and bodies of the state and
 21 all municipalities and municipal subdivisions for any purpose for which the deposit of
 22 bonds or other obligations of the state is now or may afterward be authorized.

23 **Sec. 44.90.281. Audit.** The legislative auditor annually shall audit, or cause to
 24 have audited, the financial records of the authority. The legislative auditor may
 25 prescribe the form and content of the financial records of the authority and shall have
 26 access to these records at any reasonable time.

27 **Sec. 44.90.291. State appropriations for Knik Arm bridge and**
 28 **appurtenant facilities not affected.** This chapter does not prevent the state from
 29 making appropriations for or in aid of the acquisition, design, construction, or
 30 operation of the Knik Arm bridge and its appurtenant facilities.

31 **Sec. 44.90.301. Insurance.** The authority shall keep in force public liability

1 insurance in an amount reasonably calculated to cover potential claims for bodily
 2 injury, death or disability, and property damage that may arise from or be related to its
 3 operation and activities, naming the state as an additional insured.

4 **Sec. 44.90.311. Safeguarding of money.** The authority shall maximize
 5 revenue from and deposit all money in depositories acceptable to the commissioner of
 6 revenue and otherwise safeguard the money under instructions as the commissioner of
 7 revenue may from time to time issue.

8 **Sec. 44.90.321. Fidelity bond.** The authority shall obtain a fidelity bond in an
 9 amount determined by the board, for the members of the board and any official
 10 responsible for authority accounts and finances. A bond must be in effect for the
 11 tenure of the bonded person.

12 **Article 3. General Provisions.**

13 **Sec. 44.90.911. Exemption from local regulation.** Notwithstanding any
 14 contrary provision of law, the activities of the authority are exempt from land use
 15 planning, zoning, permitting, or other similar governmental powers of political
 16 subdivisions of the state.

17 **Sec. 44.90.980. Definitions.** In this chapter, unless the context requires
 18 otherwise,

19 (1) "authority" means the Knik Arm Bridge and Toll Authority;

20 (2) "board" means the board of directors of the authority;

21 (3) "department" means the Department of Transportation and Public
 22 Facilities.

23 **Sec. 44.90.990. Short title.** This chapter may be cited as the Knik Arm
 24 Bridge and Toll Authority Act.

25 * **Sec. 2.** AS 36.30.015(f) is amended to read:

26 (f) The board of directors of the Alaska Housing Finance Corporation,
 27 notwithstanding AS 18.56.088, **and the board of directors of the Knik Arm Bridge**
 28 **and Toll Authority under AS 44.90.111,** shall adopt regulations under AS 44.62
 29 (Administrative Procedure Act) and the board of trustees of the Alaska State Pension
 30 Investment Board shall adopt regulations under AS 37.10.240 to govern the
 31 procurement of supplies, services, professional services, and construction for the

1 respective public corporation and board. The regulations must reflect competitive
 2 bidding principles and provide vendors reasonable and equitable opportunities to
 3 participate in the procurement process and must include procurement methods to meet
 4 emergency and extraordinary circumstances. Notwithstanding the other provisions of
 5 this subsection, the Alaska Housing Finance Corporation, **the Knik Arm Bridge and**
 6 **Toll Authority**, and the Alaska State Pension Investment Board shall comply with
 7 AS 36.30.170(b).

8 * **Sec. 3.** AS 39.25.110 is amended by adding a new paragraph to read:

9 (39) the executive director and employees of the Knik Arm Bridge and
 10 Toll Authority under AS 44.90.051 and 44.90.061.

11 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 APPOINTMENT OF THE INITIAL PUBLIC MEMBERS OF THE KNIK ARM
 14 BRIDGE AND TOLL AUTHORITY. Notwithstanding AS 39.05.055 and AS 44.90.031(b),
 15 added by sec. 1 of this Act, the governor shall appoint the initial public members of the board
 16 of directors of the Knik Arm Bridge and Toll Authority to terms as follows:

17 (1) one public member to a term of five years;

18 (2) one public member to a term of three years; and

19 (3) one public member to a term of one year.