

**HOUSE BILL NO. 469**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES KAPSNER, Kerttula**

**Introduced: 2/13/06**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to school construction and major maintenance financing; providing a**  
2 **remedy to the constitutional violations found in Kasayulie et al. v. State of Alaska, Case**  
3 **No. 3AN-97-3782 CV; relating to the public school trust fund; relating to the Education**  
4 **Facilities Financing Authority; and providing for an effective date."**

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

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

8 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

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

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

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

3 (4) the current value of public school and school-related facilities statewide is  
4 nearly \$5,000,000,000;

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

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

11 (7) the current statewide lists of public school construction, repair, and  
12 maintenance needs include over 145 school projects with a total cost to the state of over  
13 \$875,000,000;

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

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

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

23 (b) It is the intent of the legislature that sufficient funding be appropriated for school  
24 construction and major maintenance projects, as those terms are defined in AS 14.11.135, to  
25 allow every school-age child in Alaska to have the opportunity to attend an adequate public  
26 school facility.

27 \* **Sec. 2.** AS 14.11.100 is amended by adding a new subsection to read:

28 (s) Except for funds allocated to school districts under this section, the  
29 legislature shall appropriate or allocate funds for the costs of school construction,  
30 additions to schools, or major rehabilitation projects that are approved under  
31 AS 14.11.015.

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

2 (45) contracts of the Education Facilities Financing Authority  
3 (AS 44.27.100).

4 \* **Sec. 4.** AS 37.05.530(g) is amended to read:

5 (g) Amounts received by the state under 42 U.S.C. 6508 and not appropriated  
6 for grants to municipalities under (d) of this section shall be deposited at the end of  
7 each fiscal year as follows: (1) 25 percent to the principal of the Alaska permanent  
8 fund; and (2) **one and one-half** [.5] percent to the public school trust fund  
9 (AS 37.14.110). The amounts remaining after the deposits to the Alaska permanent  
10 fund and the public school trust fund may be appropriated to the power cost  
11 equalization and rural electric capitalization fund (AS 42.45.100). The amounts  
12 remaining after any appropriation to the power cost equalization and rural electric  
13 capitalization fund shall lapse into the general fund for use by the state for the  
14 following facilities and services: planning; construction, maintenance, and operation  
15 of essential public facilities; and other necessary public services.

16 \* **Sec. 5.** AS 37.14.110(c) is amended to read:

17 (c) The commissioner of revenue shall determine the net income of the fund in  
18 accordance with investment accounting principles and in a manner that preserves the  
19 distinction between principal and income and that excludes capital gains or losses  
20 realized on principal. The principal of the fund [AND THE CAPITAL GAINS OR  
21 LOSSES REALIZED ON PRINCIPAL] shall be perpetually retained in the fund for  
22 investment purposes.

23 \* **Sec. 6.** AS 37.14.140 is amended to read:

24 **Sec. 37.14.140. Utilization of public school trust fund [INCOME].** The net  
25 income of the fund may not be appropriated for a purpose other than the support of the  
26 state public school program, **including construction and major maintenance**  
27 **expenses. The legislature may appropriate the income of the fund for the purpose**  
28 **of securing and servicing bonds issued by the Education Facilities Financing**  
29 **Authority under AS 44.27.100.** The commissioner of revenue shall invest realized  
30 net income that has not been appropriated or that has been appropriated but not  
31 expended until the income is appropriated and expended.

1 \* **Sec. 7.** AS 37.14.150 is amended to read:

2           **Sec. 37.14.150. Contributions.** During each fiscal year the commissioner of  
3 revenue shall transfer to the fund created in AS 37.14.110 a sum equal to **one and**  
4 one-half [OF ONE] percent of the total receipts derived from the management of state  
5 land, including amounts paid to the state as proceeds of sale or annual rent of surface  
6 rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral  
7 revenue-sharing payments or bonuses.

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

9           (41) the employees of the Education Facilities Financing Authority  
10 established under AS 44.27.100.

11 \* **Sec. 9.** AS 39.50.200(b) is amended by adding a new paragraph to read:

12           (59) Education Facilities Financing Authority (AS 44.27.100).

13 \* **Sec. 10.** AS 44.27 is amended by adding new sections to read:

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

15           **Sec. 44.27.100. Education Facilities Financing Authority.** There is created  
16 the Education Facilities Financing Authority. The authority is created as a public  
17 corporation of the state in the Department of Revenue. The authority is an  
18 instrumentality of the state but has a legal existence independent of and separate from  
19 the state and has continuing succession until its existence is terminated by law. The  
20 authority is subject to AS 37.07 (Executive Budget Act).

21           **Sec. 44.27.110. Board of directors.** The authority is governed by a board of  
22 seven directors, consisting of the commissioner of revenue, the commissioner of  
23 education and early development, the commissioner of transportation and public  
24 facilities, two members elected by the Board of Education and Early Development  
25 from among its membership, and two public members appointed by the governor. In  
26 appointing the public members, the governor shall give preference to persons who  
27 have experience and expertise in finance or education. At least one public member  
28 shall be a resident of a rural area of the state. The two directors appointed by the  
29 governor serve at the governor's pleasure for four-year terms and may be reappointed.  
30 The directors are subject to AS 39.50 (public official financial disclosure). Before  
31 entering on the duties of office, a director shall take and subscribe to an oath to

1 perform the duties faithfully, impartially, and justly to the best of the director's ability.  
 2 A record of the oath shall be filed in the Office of the Governor.

3 **Sec. 44.27.120. Officers, quorum, and meetings.** (a) The directors shall elect  
 4 one of their number as chair. The directors shall elect a secretary and a treasurer who  
 5 need not be directors, and the same person may be elected to serve both as secretary  
 6 and treasurer. The powers of the authority are vested in the board of directors, and four  
 7 directors of the authority constitute a quorum. Action may be taken and motions and  
 8 resolutions adopted by the authority at any meeting at which a quorum is present by  
 9 the affirmative vote of a majority of those directors present. A vacancy in the  
 10 directorship of the authority does not impair the right of a quorum to exercise all of the  
 11 powers and perform all of the duties of the authority.

12 (b) The directors and officers of the authority may meet and transact business  
 13 by an electronic medium if (1) public notice of the time and locations where the  
 14 meeting will be held by an electronic medium has been given in the same manner as if  
 15 the meeting were held in a single location; (2) participants and members of the public  
 16 in attendance can hear and have the same right to participate in the meeting as if the  
 17 meeting were conducted in person; and (3) copies of pertinent reference materials,  
 18 statutes, regulations, and audio-visual materials are reasonably available to  
 19 participants and to the public. A meeting by an electronic medium as provided in this  
 20 subsection has the same legal effect as a meeting in person.

21 (c) The authority may appoint persons as employees it considers advisable and  
 22 may employ professional advisors, counsel, technical experts, agents, and others as  
 23 appropriate. The employees of the authority are in the exempt service under  
 24 AS 39.25.110.

25 **Sec. 44.27.130. Powers of the authority.** The authority may  
 26 (1) sue and be sued;  
 27 (2) adopt and alter an official seal;  
 28 (3) make and enforce bylaws and regulations for the conduct of its  
 29 business and for the use of its services and facilities;  
 30 (4) maintain an office at any place in the state;  
 31 (5) acquire, hold, use, and dispose of its income, revenue, funds, and

1 money;

2 (6) acquire, rent, lease, hold, use, and dispose of other personal  
3 property for its purposes;

4 (7) subject to AS 44.27.160, issue its bonds or notes and provide for  
5 and secure payment of the bonds or notes, provide for the rights of holders of the  
6 bonds or notes, and purchase, hold, and dispose of any of its bonds or notes;

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

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

13 (10) do anything authorized by AS 44.27.100 - 44.27.250, through its  
14 officers, agents, or employees, or by contracts with a person;

15 (11) make, enter into, and enforce all contracts necessary, convenient,  
16 or desirable for the purpose of the authority or pertaining to a purchase or sale of  
17 bonds, or other investments, or the performance of its duties and execution of any of  
18 its powers under AS 44.27.100 - 44.27.250;

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

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

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

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

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

31 **Sec. 44.27.140. Issuance of bonds and pledges of assets.** (a) Subject to

1 AS 44.27.160 and except as provided in (b) of this section, the authority may issue its  
2 bonds or notes in principal amounts sufficient to provide funds for the construction of  
3 schools or school facilities that are approved under AS 14.11.015(a) and authorized by  
4 the legislature.

5 (b) Bonds or notes may be issued or agreements made for a project under (a)  
6 of this section only after

7 (1) the legislature has authorized the facility and its construction cost;  
8 and

9 (2) the commissioner of education and early development has certified  
10 that

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

13 (B) the designer and builder of the facility have certified that  
14 the facility will be designed and constructed in accordance with the energy  
15 performance standards and regulations adopted under AS 44.42.020(a).

16 (c) The authority may issue its bonds or notes in principal amounts that it  
17 finds necessary to provide funds for the

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

21 (2) establishment or increase of reserves to secure or to pay the  
22 principal of or interest on bonds or notes and all other costs or expenses of the  
23 authority incident to and necessary or convenient to carry out the purpose and powers  
24 of the authority.

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

29 (e) Bonds shall be authorized by resolution of the board and shall be dated and  
30 mature as provided in the resolution, except that a bond may not mature more than 15  
31 years from the date of its issue. Bonds shall bear interest at rates, be in the

1 denominations, be in the form, either coupon or registered, carry the registration  
 2 privileges, be executed in the manner, be payable in the medium or payment, at the  
 3 place or places, and be subject to the terms of redemption provided in the resolution or  
 4 a subsequent resolution. Bonds or notes may be sold at a public or private sale.

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

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

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

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

24 (B) the terms and conditions on which additional bonds of the  
 25 authority may be issued; and

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

30 (2) pledge, mortgage, or assign money, agreements, property, or other  
 31 rights or assets of the authority either presently in hand or to be received in the future,

1 or both; and

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

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

24 (c) If the board decides to issue bonds secured by a capital reserve fund, the  
25 bonds may not be issued if the amount in the capital reserve fund is less than an  
26 amount that may be established by resolution of the board, called the "capital reserve  
27 fund requirement," unless the authority, at the time of issuance of the obligations,  
28 deposits in the capital reserve fund from the proceeds of the obligations to be issued or  
29 from other sources, an amount that, together with the amount then in the fund, is not  
30 less than the capital reserve fund requirement.

31 (d) In computing the amount of a capital reserve fund for the purpose of this

1 section, securities in which all or a portion of the funds are invested shall be valued by  
 2 a reasonable method established by the board by resolution. Valuation on a particular  
 3 date shall include the amount of any interest earned or accrued to that date.

4 (e) The chair of the board shall annually, not later than January 2, make and  
 5 deliver to the governor and the legislature a certificate stating the amount, if any,  
 6 required to restore a capital reserve fund to the capital reserve fund requirement. The  
 7 legislature may appropriate the amount described in this subsection, and all money  
 8 appropriated during the then current fiscal year by the legislature for the restoration  
 9 shall be deposited by the authority in the proper capital reserve fund. This section does  
 10 not create a debt or liability of the state.

11 (f) If the board decides to issue bonds secured by a capital reserve fund, the  
 12 bonds may not be issued until 10 days after the authority has mailed notification to the  
 13 state bond committee and the Legislative Budget and Audit Committee by certified  
 14 mail of its intention to establish a capital reserve fund to secure the bond issue. The  
 15 notification must include the amount of the capital reserve fund to be established and  
 16 the amount of bonds proposed to be issued. The notification must be accompanied by  
 17 the amount of bonds proposed to be issued, estimates of the need to withdraw money  
 18 from the capital reserve fund during the term of the bond issue, the amount that may  
 19 be withdrawn, and the dates on which withdrawals will be needed. The authority shall  
 20 annually prepare a revised estimate, considering the same factors, and a statement of  
 21 all withdrawals that have occurred from the date of issuance of the bonds to the end of  
 22 the calendar year. The revised estimate and statement shall be submitted to the state  
 23 bond committee and the Legislative Budget and Audit Committee by January 30 of the  
 24 year following preparation of the revised estimate.

25 **Sec. 44.27.160. Bonding limitations.** The authority may not issue bonds or  
 26 make agreements under AS 44.27.140 unless the money in the education facilities  
 27 fund established under AS 44.27.190 equals or exceeds \$1,500,000,000.

28 **Sec. 44.27.170. Nonliability on bonds.** (a) Neither the members of the board  
 29 nor a person executing the bonds is personally liable on the bonds or is subject to  
 30 personal liability or accountability as a result of the issuance of the bonds.

31 (b) Bonds issued by the authority do not constitute an indebtedness or other

1 liability of the state or of a political subdivision of the state, except the authority.  
 2 Bonds shall be payable solely from the income and receipts or other funds or property  
 3 of the authority. The authority may not pledge the faith or credit of the state or of a  
 4 political subdivision of the state, except the authority, to the payment of a bond.

5 **Sec. 44.27.180. Pledge and agreement of state.** (a) The state pledges to and  
 6 agrees with the holders of bonds issued under AS 44.27.100 - 44.27.250 that the state  
 7 will not limit or alter the rights and powers vested in the authority under AS 44.27.100  
 8 - 44.27.250 to fulfill the terms of a contract made by the authority with the  
 9 bondholders and that the state will not in any way impair the rights and remedies of  
 10 the bondholders until the bonds, together with the interest on them with interest on  
 11 unpaid installments of interest, and all costs and expenses in connection with an action  
 12 or proceeding by or on behalf of the bondholders are fully met and discharged. The  
 13 authority may use this pledge and agreement of the state in agreements involving  
 14 bondholders.

15 (b) The pledge of the state is limited to the express provisions of (a) of this  
 16 section and is not a guarantee, surety, promise, undertaking, or assurance of repayment  
 17 or performance of any obligation of the authority.

18 **Sec. 44.27.190. Education facilities fund.** (a) The education facilities fund is  
 19 established in the authority. The fund consists of appropriations made to the fund by  
 20 the legislature and, subject to appropriation, the income of the fund. The authority may  
 21 enter into agreements for financial covenants or pledge amounts in the fund that  
 22 exceed \$1,500,000,000 to secure the payment of bonds of the authority and may make  
 23 expenditures from the fund for the purpose of the agreements.

24 (b) The education facilities fund and any other funds of the authority shall be  
 25 invested by the Alaska Permanent Fund Corporation as agent of the authority in the  
 26 manner provided for assets of the permanent fund under AS 37.13.120 unless  
 27 otherwise provided in a trust agreement securing bonds.

28 **Sec. 44.27.200. Annual audit.** The authority 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 authority and may have  
 31 access to the records at any time.

1           **Sec. 44.27.210. Annual report.** Before March 1 of each year, the authority  
2 shall submit to the governor and the legislature a comprehensive report describing  
3 operations, income, and expenditures for the preceding 12-month period.

4           **Sec. 44.27.250. Definitions.** In AS 44.27.100 - 44.27.250, unless the context  
5 requires otherwise,

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

8                   (2) "board" means the board of directors of the Education Facilities  
9 Financing Authority;

10                   (3) "bonds" means revenue bonds, notes, or other obligations of the  
11 authority issued under AS 44.27.100 - 44.27.250;

12                   (4) "fund" means the education facilities fund established under  
13 AS 44.27.190.

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

16           **AUTHORIZATION OF FACILITIES.** The Education Facilities Financing Authority  
17 established under AS 44.27.100, enacted by sec. 10 of this Act, is authorized under  
18 AS 44.27.140(a), enacted by sec. 10 of this Act, to issue its bonds for construction for those  
19 facilities that, after the effective date of this Act, are placed on the prioritized list of the  
20 Department of Education and Early Development under AS 14.11.015.

21   \* **Sec. 12.** This Act takes effect July 1, 2007.