

SENATE BILL NO. 80

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY SENATORS MENARD, Huggins, Dyson, McGuire

Introduced: 2/4/11

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the authority and obligations of the Knik Arm Bridge and Toll**
2 **Authority, to bonds of the authority, and to reserve funds of the authority; authorizing**
3 **the state to provide support for certain obligations of the authority; relating to taxes and**
4 **assessments on a person that is a party to an agreement with the authority; and**
5 **establishing the Knik Arm Crossing fund."**

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

7 *** Section 1.** AS 19.75.111(a) is amended to read:

8 (a) Except as otherwise explicitly made applicable to the authority, the
9 performance of the authority's duties and the exercise of its powers, including its
10 powers to issue bonds and otherwise incur debt, shall be governed exclusively by this
11 chapter. In furtherance of its purposes, the authority may
12 (1) own, acquire, construct, develop, create, reconstruct, equip,
13 operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant

1 facilities;

2 (2) sue and be sued;

3 (3) adopt a seal;

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

6 (5) make and execute agreements, contracts, and all other instruments
7 with any public or private person, governmental unit or agency, corporation, or other
8 business entity lawfully conducting business in the United States for the exercise of its
9 powers and functions under this chapter and for the financing, design, construction,
10 maintenance, improvement, or operation of facilities, properties, or projects of the
11 authority, including making and executing contracts with any person, firm,
12 corporation, governmental agency, or other entity for the purpose of

13 (A) incurring indebtedness, obtaining investments in the
14 authority's projects, acquiring or granting lump sum payments for services in
15 advance or in arrears, grants, and other financing; and

16 (B) entering into public-private partnerships or service
17 contracts in any form; **the monetary obligations incurred by the authority**
18 **under the partnerships or contracts are obligations of the state, and**
19 **satisfaction of those obligations from funds other than authority funds is**
20 **subject to appropriation;**

21 (6) in its own name acquire, lease, rent, sell, or convey real and
22 personal property;

23 (7) issue and refund bonds in accordance with this chapter, in order to
24 pay the cost of the Knik Arm bridge and its appurtenant facilities; the authority may
25 also secure payment of the bonds as provided in this chapter;

26 (8) incur other indebtedness, including lines of credit and indebtedness
27 to the Federal Highway Administration, United States Department of Transportation,
28 under 23 U.S.C. 601 - 610 (Transportation Infrastructure Finance and Innovation Act
29 of 1998), as amended, and secure that indebtedness as provided in this chapter;

30 (9) apply for and accept gifts, grants, or loans from a federal agency or
31 an agency or instrumentality of the state, or from a municipality, private organization,

1 or other source, including obtaining title to state, local government, or privately owned
2 land, directly or through a department of the state having jurisdiction of the land;

3 (10) fix and collect fees, rents, tolls, rates, or other charges for the use
4 of the Knik Arm bridge and appurtenant facilities, or for a service developed,
5 operated, or provided by the authority; notwithstanding AS 37.10.050(a), fees, rents,
6 tolls, rates, and other charges fixed and collected under this paragraph may exceed the
7 actual operating cost of the use of the bridge, facility, or service;

8 (11) bring civil actions, refer criminal actions to the appropriate
9 authority, and take other actions or enter into agreements with law enforcement and
10 collection agencies to enforce the collection of its fees, rents, tolls, rates, other
11 charges, penalties, and other obligations;

12 (12) pledge, encumber, transfer, or otherwise obligate revenue derived
13 by the authority from the ownership, use, or operation of toll facilities, including fees,
14 rents, tolls, rates, charges, or other revenue of the authority or money that the
15 legislature may appropriate, except a state tax or license, as security for bonds or other
16 indebtedness or agreements of the authority;

17 (13) deposit or invest its funds, subject to agreements with
18 bondholders;

19 (14) procure insurance against any loss in connection with its
20 operation;

21 (15) contract for and engage the services of consultants, experts, and
22 financial and technical advisors that the authority considers necessary for the exercise
23 of its powers and functions under this chapter;

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

27 (17) perform reconnaissance studies and engineering, survey, and
28 design studies with respect to the Knik Arm bridge and its appurtenant facilities;

29 (18) exercise powers of eminent domain or file a declaration of taking
30 as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 -
31 09.55.460 to acquire land or an interest in land; the authority's exercise of powers

1 under this paragraph may not exceed the permissible exercise of those powers by the
2 state;

3 (19) confer with municipal and other governments, metropolitan
4 planning organizations, and the department, concerning the Knik Arm bridge;

5 (20) do all acts and things necessary to carry out the powers expressly
6 granted or necessarily implied in this chapter; nothing in this chapter limits the powers
7 of the authority that are expressly granted or necessarily implied.

8 * **Sec. 2.** AS 19.75.211(a) is repealed and reenacted to read:

9 (a) Notwithstanding any other provision of law, the authority may borrow
10 money and issue and refund bonds on which the principal and interest are paid out of
11 and secured by

12 (1) the gross revenue derived by the authority from the ownership, use,
13 and operation of its toll facilities, including money derived from the fees, rents, tolls,
14 rates, charges, and other revenue of the authority under this chapter;

15 (2) revenue received by a private person or enterprise that has entered
16 into a public-private partnership agreement with the authority; or

17 (3) any other revenue or money that the legislature may appropriate,
18 except a state tax or license.

19 * **Sec. 3.** AS 19.75.211(c) is amended to read:

20 (c) The authority may issue bonds in an aggregate amount not to exceed
21 \$600,000,000 [500,000,000], plus the cost of issuance.

22 * **Sec. 4.** AS 19.75.211 is amended by adding a new subsection to read:

23 (e) Before issuing bonds for the Knik Arm bridge under this section, the
24 authority shall submit to the state bond committee a description of the bond issue and
25 a preliminary prospectus, offering circular, or official statement relating to the bond
26 issue. Bonds may not be issued unless the state bond committee finds, based on the
27 information submitted by the authority under this section and other information that is
28 reasonably available to the committee, that either the Knik Arm bridge revenue and
29 other revenue available to the authority or the revenue of the private person or
30 enterprise under a public-private partnership agreement entered into by the authority
31 under AS 19.75.111(a) can be reasonably expected to be adequate for payment of the

principal of and interest on the bonds to be issued and that issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds.

* **Sec. 5.** AS 19.75.221(h) is amended to read:

(h) Notwithstanding any other provision of law, the authority may establish other funds and reserves as the board of directors may determine reasonable and prudent for the issuance of bonds or for the conduct of the business and affairs of the authority. The interest earned on or profit derived from these funds and reserves shall be the property of the authority. **Deposits made into a reserve fund established under this section may include**

(1) revenue derived by the authority from the ownership, use, or operation of toll facilities, including fees, rents, tolls, rates, charges, or other revenue of the authority;

(2) money that the legislature may appropriate; and

(3) other money which may be made available to the authority from other sources.

* **Sec. 6.** AS 19.75.221 is amended by adding new subsections to read:

(i) Money in a reserve fund established under (h) of this section

(1) may be used only for

(A) the payment of monetary obligations, liabilities, and indebtedness of the authority, including termination payment obligations, under agreements for the financing, design, construction, maintenance, improvement, or operation of facilities, properties, or projects of the authority;

(B) the performance of the authority's statutory functions, including the authority's overhead and administrative costs and working capital; and

(C) planning, permitting, design, acquisition, construction, maintenance, improvement, or operation of projects, facilities, properties, systems, or equipment of the authority or other public entities, including expansions, extensions, and capacity improvements, eligible under applicable federal and state law to be funded from toll revenue;

(2) may not be used for the purpose of planning, permitting, design, acquisition, construction, maintenance, improvement, or operation of projects, facilities, properties, systems, or equipment under (1) of this subsection if the withdrawal would reduce the amount in the reserve fund to less than the reserve fund requirement.

(j) Income or interest earned by, or increment to, a reserve fund established under (h) of this section, from the investment of all or part of the fund, may be transferred by the authority to other funds or accounts of the authority if the transfer does not reduce the amount of a reserve fund below the reserve fund requirement.

(k) In computing the amount of a reserve fund established under (h) of this section, securities in which all or a portion of the fund is invested shall be valued by a reasonable method established by the authority by resolution or established by the terms of the agreement for which the fund serves as security. Valuation must include the amount of interest earned or accrued as of the date of the valuation.

(l) The chair of the board shall annually, not later than December 1, certify in writing to the governor and the legislature the amount, if any, required to restore a reserve fund established under (h) of this section to the reserve fund requirement. The legislature may appropriate to the authority the amount certified by the chair of the board that is needed to restore a reserve fund to the reserve fund requirement.

(m) In this section, "reserve fund requirement" means the amount required to be on deposit in a reserve fund established under (h) of this section as of the date of computation, as determined by resolution of the authority or by the terms of the agreement for which the fund serves as security.

* **Sec. 7.** AS 19.75.261 is amended to read:

Sec. 19.75.261. Exemption from taxation. The real and personal property of the authority and its assets, income, and receipts are declared to be the property of a political subdivision of the state and are exempt from all taxes and special assessments of the state or a political subdivision of the state. Notwithstanding any law to the contrary, rights and interests in real and personal property, assets, income, and receipts, including concession, franchise, leasehold, or other real or personal property rights and interests, held by a private person or enterprise under a

public-private partnership agreement entered into under this chapter, except any rights and interests of the private person in property serving a business, commercial, or other purpose not necessary to operate the facilities, properties, or projects of the authority, shall be exempt from all taxes and special assessments of the state or a political subdivision of the state. All bonds of the authority are declared to be issued by a political subdivision of the state and for an essential public and governmental purpose. The bonds, the interest on the bonds, the income from the bonds and the transfer of the bonds, and all assets, income, and receipts pledged to pay or secure the payment of the bonds or interest on the bonds are, at all times, exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. Nothing in this section affects or limits an exemption from license fees, property taxes, or excise, income, or other taxes provided under any other law [, NOR DOES IT CREATE A TAX EXEMPTION WITH RESPECT TO THE INTEREST OF ANY BUSINESS ENTERPRISE OR OTHER PERSON, OTHER THAN THE AUTHORITY, IN ANY PROPERTY, ASSETS, INCOME, RECEIPTS, PROJECT, OR LEASE, REGARDLESS OF WHETHER FINANCED UNDER THIS CHAPTER].

* **Sec. 8.** AS 19.75 is amended by adding a new section to article 2 to read:

Sec. 19.75.345. Knik Arm Crossing fund. (a) The Knik Arm Crossing fund is established as a separate fund in the general fund. The fund consists of

- (1) money appropriated to the fund by the legislature;
 - (2) gifts, bequests, contributions from other sources, and federal money appropriated to the fund;
 - (3) interest earned on the fund balance and appropriated to the fund;
- and
- (4) investments, to be managed by the Department of Revenue, which shall be the fiduciary of the fund under AS 37.10.071.

(b) The fund is not a dedicated fund.

(c) Money in the fund may be transferred by the Department of Revenue to the authority for the purposes listed in this section.

1 (d) On a date determined by the authority but not before the authority executes
2 a public-private partnership agreement under AS 19.75.111(a)(5)(B) for design,
3 construction, and maintenance of the Knik Arm Crossing, the Department of Revenue
4 shall transfer money from the fund to the authority in an amount necessary to meet the
5 reserve fund requirement. The authority shall deposit the money into the reserve fund
6 established in AS 19.75.221(h).