

Introduced: 3/3/65
Referred: State Affairs
and Commerce

1 IN THE SENATE

BY SENATORS OWEN, HOPSON,
BEGICH AND HANSEN

2 SENATE BILL NO. 152

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a public works authority
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

10 CHAPTER 27.

11 ARTICLE 1.

12 Sec. 44.57.010. ALASKA PUBLIC WORKS AUTHORITY. The
13 Alaska Public Works Authority is established as a public
14 body corporate and politic.

15 Sec. 44.57.020. ALASKA PUBLIC WORKS AUTHORITY BOARD.

16 (a) The Alaska Public Works Authority Board is established
17 as the governing body of the authority.

18 (b) The board consists of five members appointed by
19 and serving at the pleasure of the governor and confirmed by
20 the legislature meeting in joint session. The members shall
21 be residents of Alaska qualified by administrative and
22 business experience.

23 (c) The term of office of each member is six years.
24 The terms of two members expire on February 1 of each even-
25 numbered year, except that on February 1 of each sixth year
26 the term of only one member expires. A member appointed to
27 fill a vacancy occurring other than by expiration of a term
28 shall serve only for the unexpired term of the member he
29 succeeds. Members appointed are qualified to act and receive

1 compensation between the time of their appointment and the
2 time of confirmation or rejection by the legislature.

3 Sec. 44.57.030. ORGANIZATION, COMPENSATION, OATH, AND
4 BOND. (a) Within 10 days after the operative date of this
5 chapter, the governor shall make all appointments to the
6 board and the board shall meet and organize by electing from
7 its members a chairman, a vice chairman, and a secretary.
8 At the first regular meeting of every even-numbered year the
9 board shall elect new officers. Two members of the first
10 board shall serve for two years, two members shall serve for
11 four years, and one member shall serve for six years. At
12 the time of the appointments, the governor shall designate
13 which members have been appointed for which terms. The com-
14 missioner of the Department of Revenue shall be the treasurer
15 of the authority without voting rights or additional compen-
16 sation. The treasurer shall attend meetings when requested
17 to do so and shall perform all duties imposed upon him as
18 treasurer of the authority.

19 (b) Members of the board receive no salary but shall
20 receive the same per diem and travel expenses as are author-
21 ized for state boards for time spent in the service of the
22 authority.

23 (c) Members of the board shall take the oath required
24 of all public officers, and shall execute an official bond
25 to the state in the amount of \$5,000 with satisfactory
26 sureties to be approved by the commissioner of the Department
27 of Revenue. The oath and bond shall be filed with the com-
28 missioner of the Department of Revenue.

29 Sec. 44.57.040. MEETINGS OF THE BOARD. (a) Meetings

1 of the board shall be public. All members of the board shall
2 attend all meetings unless excused from attendance for a
3 justifiable reason. Three members constitutes a quorum for
4 the organization and transaction of business, unless the by-
5 laws require a larger number.

6 (b) The board shall keep minutes of its meetings and
7 may publish so much of the minutes as it considers of public
8 interest and benefit.

9 Sec. 44.57.050. POWERS AND DUTIES OF THE BOARD. (a)
10 The board shall manage the properties and business of the
11 authority and may prescribe, amend, and repeal bylaws, rules,
12 and regulations governing the manner in which the business of
13 the authority may be conducted. Regulations of the board
14 which come under the meaning of "regulation" as defined by
15 the Administrative Procedure Act may be promulgated and used
16 only in accordance with that Act.

17 (b) The board shall employ as the executive director of
18 the authority a person professionally trained and profession-
19 ally qualified and experienced in the performance of his
20 duties. The selection of the executive director is subject
21 to the approval of the governor. The executive director may
22 not have any interest in a business that may favorably or
23 unfavorably be affected by the operation of the authority.

24 (c) The board shall fix and determine the number of
25 officers, agents, and employees of the authority and their
26 respective compensation and duties, and may delegate to the
27 executive director all powers and duties it may consider
28 proper.

29 (d) On or before December 1 of each year, the board

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shall submit to the governor a report containing a full and complete account of its business for the preceding year, together with other information, suggestions, and recommendations considered of public value.

ARTICLE II. POWERS AND DUTIES OF THE AUTHORITY

Sec. 44.57.070. GENERAL POWERS AND FUNCTIONS. (a) The authority is established in order to construct, acquire, and maintain and operate school buildings, public buildings, airports and landing fields, public institutions for care, treatment or confinement of individuals, additions and improvements to public universities, highways, bridges, tunnels, swimming pools and lakes, hydroelectric dams and facilities, nuclear energy facilities, reservoirs, flood and water control facilities, ferry boats, ferry slips, and ferry terminals, ports and port and harbor facilities, and any other project which is in the interest of the public whether on the state, regional, or local level.

(b) The authority may sue and be sued in its official corporate name, make contracts, acquire through gift, grant, purchase, lease, condemnation, or otherwise, and hold, use, handle, enjoy, lease, sell, pledge, or otherwise dispose of any and all real and personal property.

(c) No project may be undertaken by the authority, bonds issued for it, or plans and specifications presented for bids unless the project has been approved by the governor or his designee.

(d) The authority has no power to levy taxes or to pledge the credit or the taxing power of the state or its political subdivisions, and no debt or obligation of the

1 authority may be considered a debt or obligation of the
2 state, of its political subdivisions, or other public
3 agencies.

4 (e) In addition, the authority has, but is not limited
5 to, the power to do the following:

6 (1) fix, alter, charge, and collect fees, tolls,
7 rates, rentals, and other charges for the use of its facili-
8 ties, or its services, or those of its projects at reasonable
9 rates, determined by the authority for the purpose of pro-
10 viding for the payment of the expenses of the authority,
11 the construction, acquisition, and operation of its facili-
12 ties and properties, the payment of the principal of and
13 interest on its obligations, and fulfill the terms and
14 provisions of any agreement made with the purchasers or
15 holders of such obligations;

16 (2) borrow money, make and issue negotiable notes,
17 bonds, and other evidences of indebtedness or obligations of
18 the authority; secure the payment of its bonds, or any part
19 of them, by pledge of or establishment of a lien upon all or
20 any portion of its revenues and make such agreements with
21 the purchasers or holders of its bonds or with others in
22 connection with its bonds, whether issued or to be issued,
23 as the authority may consider advisable; and in general pro-
24 vide for the security for its bonds and the rights of the
25 holders of them;

26 (3) make contracts and execute all instruments
27 necessary or convenient for the carrying on of its business;

28 (4) borrow money and accept grants of real and
29 personal property from and enter into contracts, leases, or

1 other transactions with the federal government;

2 (5) exercise the power of eminent domain;

3 (6) do all acts and things necessary or convenient
4 to carry out the powers granted to it by this chapter;

5 (7) enter into agreements with the state, any of
6 its political subdivisions or other public agencies for the
7 undertaking of a project;

8 (8) acquire, by assignment from the state, con-
9 tracts which are not completed and which involve any of the
10 undertakings which the authority is authorized to perform
11 by this chapter.

12 Sec. 44.57.080. REVENUE BOND ISSUE. (a) The authority
13 may, by resolution of the board, issue such revenue bonds as
14 it considers necessary.

15 (b) The bonds shall be of the series, bear the date,
16 mature at the time not exceeding 30 years from their respec-
17 tive date, bear interest at a rate not exceeding six per
18 cent a year, payable semiannually, be in the denominations,
19 be in the form, either coupon or fully registered without
20 coupons, carry the registration exchangeability and inter-
21 changeability privileges, be payable in the medium of payment
22 and at the place, be subject to the terms of redemption at
23 the prices not exceeding 105 per cent of the principal, and
24 be entitled to the priorities in the revenues, rentals, or
25 receipts of the authority as the resolution may provide.

26 (c) The bonds shall bear the facsimile signature of the
27 chairman of the board, the facsimile of the corporate seal,
28 and the manual signature of the treasurer. Coupon bonds
29 shall have interest coupons attached to them bearing the

1 facsimile signature of the treasurer. Bonds bearing the
2 signature of officers in office on the date of signing are
3 valid, notwithstanding that before delivery the persons sign-
4 ing have ceased to be officers.

5 (d) The bonds shall be sold to the highest responsible
6 bidder after public notice in such manner as the authority
7 may prescribe. The notice shall contain a general descrip-
8 tion of the bonds, the manner, place, and time of the sale,
9 or the time limit for the receipt of bids, the name of the
10 officers to whom bids or proposals shall be delivered, and
11 a statement of the terms and conditions of the sale. If no
12 bids are received or the authority determines that the bids
13 are not satisfactory as to the price or the responsibility
14 of the bidder, the authority may reject all bids received,
15 if any, and either readvertise or sell the bonds at a private
16 sale. Pending the preparation of the definitive bonds,
17 interim receipts or temporary bonds may be issued to the
18 purchaser of bonds and may contain such terms and conditions
19 as the authority may determine.

20 (e) The authority may sell the bonds at a price below
21 par value.

22 (f) A resolution authorizing bonds may contain provi-
23 sions which shall be part of the contract with the holders of
24 the bonds as to the following:

25 (1) pledging the revenues of the authority for
26 such obligations, or restricting the pledge to any portion of
27 its revenues from all or any projects or properties;

28 (2) the construction, acquisition, or operation of
29 any project and the duties of the authority with reference to

1 them;

2 (3) the terms and provisions of the bonds;

3 (4) limitations on the purposes to which the pro-
4 ceeds of the bonds may be applied;

5 (5) the rate of tolls, rentals, and other charges
6 for use of the facilities of or for the services rendered by
7 the authority, including limitations upon the power of the
8 authority to modify leases or other agreements under which
9 tolls, rentals, or other charges are payable;

10 (6) the setting aside of reserves or sinking funds
11 and the regulation and disposition of them;

12 (7) limitations on the issuance of additional
13 bonds;

14 (8) the terms and provisions securing the bonds or
15 under which the bonds may be issued;

16 (9) any other or additional agreements with the
17 holders of the bonds.

18 (g) The authority may enter into agreements with any
19 bank or trust company or other person in the United States
20 having power to enter into the agreement, including the
21 federal government, as security for its bonds; and may
22 assign and pledge all or any portion of the revenues of the
23 authority thereunder. The indenture agreement may contain
24 provisions which may be customary in these instruments or as
25 the authority may authorize, including, but not limited to,
26 provisions in regard to

27 (1) the construction, acquisition or operation,
28 of any project and the duties of the authority with reference
29 to them;

1 (2) the application of funds and the safeguarding
2 of funds on hand or on deposit;

3 (3) the rights and remedies of the trustees and
4 the holders of the bonds, which may include restrictions
5 upon the individual right of action of the bondholders;

6 (4) the terms and provisions of the bonds or the
7 resolutions authorizing the issuance of the bonds;

8 (5) unless the authority provides otherwise in
9 the resolution, the principal, interest, and sums for other
10 security funds shall be paid from the revenues before paying
11 the maintenance and operation costs of any project.

12 (h) Bonds of the authority are legal investments for
13 state and local retirement systems.

14 (i) The bonds have all the qualities of negotiable in-
15 struments as set out in the laws of the state.

16 Sec. 44.57.090. REMEDIES OF BONDHOLDERS. (a) If the
17 authority defaults in the payment of principal of or interest
18 on any bonds for a period of at least 30 days, or if the
19 authority fails or refuses to comply with this chapter or
20 defaults in an agreement made with holders of its bonds, the
21 holders of 25 per cent in aggregate principal amount of the
22 bonds then outstanding may, subject to the limitations of
23 the indenture or agreement or in addition to the remedies of
24 the indenture or agreement, appoint a trustee to represent
25 the bondholders. The trustee and any trustee under an in-
26 denture or other agreement may, and upon written request of
27 the holders of 25 per cent -- or whatever per cent is speci-
28 fied by the indenture or other agreement -- in principal
29 amount of the bonds outstanding shall, in his own name

1 perform the following:

2 (1) by suit, action, or proceeding, enforce all
3 rights of the bondholders, including the right to require
4 the authority to impose and collect charges from the opera-
5 tion of the project the revenues of which have been pledged,
6 which charges shall be adequate to carry out any agreement
7 as to or pledge of the revenues of the authority, and to
8 require the authority to carry out any other agreement with
9 or for the benefit of the bondholders, and to perform its
10 and their duties under this chapter;

11 (2) bring suit upon the bonds;

12 (3) by action require the authority to account as
13 if it were the trustee of an express trust for the bond-
14 holders;

15 (4) by action enjoin any acts or things which may
16 be unlawful or in violation of the rights of the bondholders;

17 (5) by notice in writing to the authority, declare
18 all bonds due and payable, and if all defaults shall be made
19 good, then with the consent of the holders of 25 per cent --
20 or whatever per cent is specified by the indenture or other
21 agreement -- of the principal amount of the bonds then out-
22 standing, to annul such declaration and its consequences.

23 (b) A trustee, whether appointed under this chapter or
24 under an indenture or other agreement and whether or not all
25 bonds have been declared due and payable, shall be entitled,
26 as a matter of right, to the appointment of a receiver, who
27 may, to the same extent that the authority itself could do
28 so, enter and take possession of the facilities of the
29 authority, or any parts of them, the revenues from which are

1 applicable to the payment of the bonds so in default, and
2 operate and maintain the same, and collect and receive all
3 revenues thereafter arising from them in the same manner as
4 the authority might do, and shall deposit all the money in a
5 separate account, and apply the same in the manner as the
6 court directs. In an action or proceeding by the trustees,
7 the fees, counsel fees, and expenses of the trustee and of
8 the receiver, if any, and all costs and disbursements allowed
9 by the court, shall be a first charge on any revenues and
10 receipts derived from the facilities of the authority, the
11 revenues or receipts from which are applicable to the pay-
12 ment of the bonds so in default. The trustee shall, in
13 addition, have and possess all of the powers necessary or
14 appropriate for the exercise of the functions specifically
15 set out in this chapter or incident to the general representa-
16 tion of the bondholders in the enforcement and protection of
17 their rights.

18 (c) In addition to all other rights and all other
19 remedies, a holder of bonds of the authority has the right
20 by action or proceeding to enforce his rights against the
21 authority, including the right to require the authority to
22 impose and collect charges adequate to carry out any agree-
23 ment as to or pledge of the charges or revenues, and to
24 require the authority to carry out any of its covenants and
25 agreements with the bondholders and to perform its and their
26 duties under this chapter. However, nothing in this chapter
27 authorizes any receiver appointed under this chapter for the
28 purpose of operating and maintaining any facilities of the
29 authority, to sell, assign, mortgage, or otherwise dispose

1 of any of the assets of whatever kind and character belonging
2 to the authority. It is the intention of this chapter to
3 limit the powers of the receiver to the operation and main-
4 tenance of the facilities of the authority as the court may
5 direct, and no holder of bonds of the authority, nor any
6 trustee, shall ever have the right in action or proceedings
7 to compel a receiver, nor shall a receiver ever be authorized
8 or a court be empowered to direct the receiver to sell,
9 assign, mortgage, or otherwise dispose of any assets of what-
10 ever kind or character belonging to the authority.

11 Sec. 44.57.100. MONEY OF THE AUTHORITY. All money of
12 the authority, from whatever source derived, shall be paid
13 to the treasurer of the authority. The money shall be
14 deposited in the first instance by the treasurer in one or
15 more banks or trust companies, in one or more special accounts,
16 and each of the special accounts shall be continuously secur-
17 ed by a pledge of direct obligations of the federal govern-
18 ment or of the state, having an aggregate market value,
19 exclusive of accrued interest, at all times at least equal
20 to the balance on deposit in the account. The securities
21 shall either be deposited with the treasurer or be held by a
22 trustee or agent satisfactory to the authority. The money
23 in the accounts shall be paid out on the warrant or other
24 order of the treasurer of the authority or of a person the
25 authority authorizes to execute the warrants or orders. The
26 Department of Revenue is authorized from time to time to
27 examine the accounts and books of the authority, including
28 its receipts, disbursements, contracts, leases, sinking funds,
29 investments, and any other matters relating to its finances,

1 operations, and affairs.

2 Sec. 44.57.110. GRANT OF LANDS TO THE AUTHORITY. The
3 state may grant, assign, and convey to the authority, with
4 or without consideration, lands, easements or rights in
5 lands, together with any improvements, buildings, or
6 structures on the lands needed or convenient for the pur-
7 poses of the authority, or lease to the authority for a
8 term, not exceeding 99 years, at a nominal or other rental
9 as may be determined, any or all these lands, easements or
10 rights in lands, together with any improvements, buildings,
11 or structures on the lands.

12 Sec. 44.57.120. LEASES FROM THE AUTHORITY. The state
13 may enter into contracts with the authority to lease as
14 lessee from the authority any or all of the projects under-
15 taken by the authority for a term, with respect to each
16 project constructed, not exceeding 30 years, at the rental
17 or rentals which may be determined by the authority, and upon
18 the completion of the projects, the state may lease as
19 lessee any or all of the projects completed by the authority
20 for a term, with respect to each project leased, not exceed-
21 ing 30 years, at the rental or rentals which may be determined
22 by the authority. The state may lease as lessee any equip-
23 ment and furnishings from the authority required for the use
24 and occupancy of any project.

25 Sec. 44.57.130. ACQUISITION OF LANDS. The state may
26 acquire title to additional lands or interest in lands which
27 may be required for the purposes of the authority, and pay-
28 ment for the lands shall be made by the state. The power of
29 the state to acquire lands does not limit or restrict the

1 power of the authority itself to acquire lands or interests
2 in lands in the name of the authority.

3 Sec. 44.57.140. COMPETITION IN AWARD OF CONTRACTS. If
4 a project is constructed under a contract and the estimated
5 cost of the work exceeds \$2,500, the contract shall be award-
6 ed to the lowest responsible bidder after advertisement for
7 bids which is considered necessary by the board. The author-
8 ity may make rules and regulations for the submission of bids
9 and the construction of any project. No contract shall be
10 entered into for construction of a project or for the
11 purchase of materials, unless the contractor gives an under-
12 taking with a sufficient surety or sureties approved by the
13 authority, and in an amount fixed by the authority, for the
14 faithful performance of the contract; and the contract shall
15 be accompanied by an additional bond for the protection of
16 those who furnish labor and material, for the amount and
17 subject to the terms and conditions established by the
18 authority. All construction contracts shall provide, among
19 other things, that the person entering into the contract
20 with the authority shall pay for all materials furnished and
21 services rendered for the performance of the contract, and
22 that a person furnishing the materials or rendering the
23 services may maintain an action to recover for them against
24 the obligor in the undertaking as though the person was
25 named therein, provided the action is brought within one
26 year after the time the cause of action accrued. Nothing in
27 this section shall be construed to limit the power of the
28 authority to construct any project directly by the officers,
29 agents, and employees of the authority or by agreement with

1 the federal or state governments. Nothing in this chapter
2 prevents the authority from entering into contracts which
3 are subject to the rules of the federal government, if the
4 authority considers it advisable to do so, but the governor's
5 approval must be obtained before the authority may undertake
6 a project.

7 Sec. 44.57.150. USE OF PROJECTS. The use of the facilities
8 of the authority and the operation of its business shall
9 be subject to the rules and regulations from time to time
10 adopted by the authority. However, the authority may not
11 do anything which will impair the security of the holders of
12 the obligations of the authority or violate any agreements
13 with them or for their benefit.

14 Sec. 44.57.160. LIMITATION OF POWERS. The state
15 pledges to and agrees with any person acquiring the bonds to
16 be issued by the authority for the construction of a project
17 or part thereof, that the state will not limit or alter the
18 rights vested in the authority until all bonds at any time
19 issued, together with the interest on the bonds, are fully
20 met and discharged. The state further pledges and agrees
21 with the federal government that if a federal agency con-
22 structs or contributes funds for the construction of a
23 project the state will not alter or limit the rights and
24 powers of the authority in any manner which would be incon-
25 sistent with the continued maintenance and operation of the
26 project or the improvement of it, or which would be incon-
27 sistent with the due performance of any agreements between
28 the authority and the federal government, and the authority
29 shall continue to have and may exercise all powers granted

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by this chapter so long as it is necessary or desirable to carry out the purposes of this chapter.

Sec. 44.57.170. EXEMPTION FROM TAXATION. The effectuation of the authorized purposes of the authority shall be in all respects for the benefit of the people of the state for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and since the authority will be performing essential governmental functions in effectuating its purposes, the authority is not required to pay any taxes or assessments upon property acquired or used by it for these purposes, and the bonds issued by the authority, their transfer, and the income from them -- including any profits made on their sale -- shall at all times be free from taxation in this state except from inheritance and estate taxation. This section does not prevent the authority from entering into agreements with the state's political subdivisions to make payments in lieu of taxes when it is in the interest of the public to do so.

Sec. 44.57.180. REFUNDING BONDS. (a) The authority may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire bonds issued by it upon the terms, at the times, and in the manner it considers advisable.

(b) The provisions of this chapter applicable to the issuance of bonds are applicable to funding or refunding bonds and to their issuance, sale, or exchange.

(c) Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of the following:

- (1) all bonds to be funded or refunded by them;

1 (2) all expenses incident to the calling, retir-
2 ing, or paying of the outstanding bonds and the issuance of
3 the funding or refunding bonds, including the difference in
4 amount between the par value of the funding or refunding
5 bonds and any amount less than that for which the funding or
6 refunding bonds may be sold;

7 (3) interest upon the funding or refunding bonds
8 from the date of sale to the date of payment of the bonds
9 to be funded or refunded out of the proceeds of the sale or
10 the date upon which the bonds to be funded or refunded will
11 be paid under the call or agreement with the holders of the
12 bonds;

13 (4) any premium necessary in the calling or retir-
14 ing of the outstanding bonds and the interest accruing on
15 them to the date of the call or retirement.

16 ARTICLE 3. GENERAL PROVISIONS

17 Sec. 44.57.200. DEFINITIONS. In this chapter unless
18 the context is not applicable:

19 (1) "authority" means the Alaska Public Works
20 Authority;

21 (2) "board" means the Alaska Public Works Authority
22 Board;

23 (3) "construction" or "to construct" means build-
24 ing, improvement, maintenance, equipment, enlargement, alter-
25 ation, extension, repair, and furnishing, or their verb
26 forms;

27 (4) "project" or "enterprise" means any structure,
28 facility, plant, system, works, or other undertaking, to-
29 gether with all appurtenances, which the authority is

1 authorized to construct, improve, equip, furnish, maintain,
2 acquire, or operate under this chapter and includes any
3 portion thereof;

4 (5) "person" means a natural person, association,
5 corporation, business trust, partnership, or public body;

6 (6) "federal government" or "federal agency" means
7 the government of the United States of America and includes
8 the President, other officers, departments, corporations,
9 authorities, agencies, or any instrumentality of the United
10 States of America;

11 (7) "bonds" means evidences of indebtedness or
12 obligation issued by the authority;

13 (8) "charges" includes fees, tolls, rates, and
14 rentals;

15 (9) "revenues" means all charges or any specified
16 portion thereof received for and all other income and
17 receipts derived by the authority from the operation of a
18 specific enterprise or project or arising therefrom and in-
19 cludes revenue deposited in any fund to secure the bonds or
20 to provide for the payment of them or the interest on them.

21 Sec. 44.57.210. SHORT TITLE. This chapter may be cited
22 as the Authority Act of 1965.

23 * Sec. 2. OPERATIVE DATE. The provisions of this Act become
24 operative when declared to be operative by the passage of a con-
25 current resolution by the legislature or by the promulgation of
26 an executive order by the governor.

27 * Sec. 3. EFFECTIVE DATE. This Act takes effect on the day
28 after its passage and approval or on the day it becomes law with-
29 out such approval.