

Original sponsor: Guess

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1 IN THE HOUSE

BY THE LOCAL GOVERNMENT COMMITTEE

2 CS FOR HOUSE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Industrial Development
7 Authority as a public corporation and political
8 subdivision of the state with power to issue bonds
9 to provide funds to acquire and construct manufactur-
10 ing and industrial plants throughout the state for
11 sale or lease to business enterprises and otherwise
12 defining the purposes and powers and functions of
13 the authority; and providing for an effective date."

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

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

16 CHAPTER 61. ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY.

17 ARTICLE 1. CREATION AND ORGANIZATION.

18 Sec. 44.61.010. LEGISLATIVE FINDING AND POLICY. (a) The
19 legislature finds, determines and declares that

20 (1) there exist areas of the state in which seasonal and
21 nonseasonal unemployment exist;

22 (2) this unemployment is a serious menace to the health,
23 safety and general welfare, not only to the people in those areas,
24 but also to the people of the entire state;

25 (3) the state lacks the basic manufacturing and industrial
26 enterprises necessary to permit adequate development of its natural
27 resources and the balanced growth of its economy;

28 (4) the establishment of industrial and manufacturing
29 plants in Alaska is essential to the development of the natural

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1 resources and the long term economic growth of the state, and will
2 directly and indirectly alleviate unemployment in the state;

3 (5) the achievement of the goal of full employment, and of
4 establishment and continuing operation and development of industrial
5 and manufacturing plants in the state, will be accelerated and
6 facilitated by the creation of an instrumentality of the state with
7 powers to incur debt for acquiring or constructing industrial and
8 manufacturing plants for private operation and thus provide financial
9 assistance for the establishment, operation and development of such
10 plants on a basis offsetting in whole or in part construction, market-
11 ing or other costs involved in such projects in this state.

12 (b) It is declared to be the policy of the state, in the
13 interests of promoting the health, security and general welfare of
14 all the people of the state, and a public purpose, to increase job
15 opportunities and otherwise to encourage the economic growth of the
16 state, including the development of its natural resources, through
17 the establishment of manufacturing and industrial enterprises by
18 creating the public corporation with power, duties and functions as
19 provided in this chapter.

20 Sec. 44.61.020. CREATION OF AUTHORITY. There is created the
21 Alaska Industrial Development Authority. The authority shall be a
22 public corporation of the state and a body corporate and politic
23 constituting a political subdivision within the Department of Economic
24 Development, but with separate and independent legal existence.

25 Sec. 44.61.030. MEMBERSHIP OF THE AUTHORITY. (a) The members
26 of the authority shall consist of the commissioner of commerce, the
27 commissioner of economic development and the commissioner of natural
28 resources, serving ex officio. If a state officer who is a member
29 of the authority is unable for any reason to attend a meeting of the

1 authority, he may by an instrument in writing filed with the authority,
2 designate his deputy or assistant commissioner to act in his place
3 as a member at the meeting. For all purposes of this chapter the
4 designee shall constitute a member of the authority at the meeting.

5 (b) After each time a certified copy of the resolution of the
6 governing body of the political subdivision of the state, if any, in
7 which a project is to be located consenting to a location as provided
8 in sec. 160 of this chapter is filed with the authority, and the
9 authority has made the findings regarding the project set out in the
10 section, the governing body may by resolution appoint three persons
11 who shall in connection only with subsequent action by the authority
12 found by the chairman to concern the project, constitute members of
13 the authority. Persons so appointed shall be residents of the
14 political subdivision and may be members of its governing body, and shall
15 be considered members of the authority for purpose of sec. 50 of this
16 chapter only in connection with action by the authority concerning the
17 project.

18 (c) Each further member of the authority appointed by the
19 governing body shall serve as, and for all purposes of this chapter
20 be, a member of the authority serving at the pleasure of the governing
21 body until such time as bonds of the authority are issued under this
22 chapter to finance any part of the project described in the resolution
23 of the governing body consenting to the location, or the authority
24 determines by resolution that the bonds will not be issued.

25 Sec. 44.61.040. CHAIRMAN AND VICE-CHAIRMAN. The commissioner
26 of economic development shall be the chairman of the authority,
27 preside over all meetings, and have the duties which the authority
28 may direct. A vice-chairman may be elected by the authority from
29 among its other members for one or more terms of one year each. The

1 vice-chairman shall preside over all meetings in the absence of the
2 commissioner of economic development and shall have other duties which
3 the authority may direct.

4 **Sec. 44.61.050. MEETINGS, COMPENSATION, OFFICERS AND EMPLOYEES.**

5 (a) A majority of the members of the authority constitutes a quorum
6 for the transaction of business or the exercise of a power or function
7 at a meeting of the authority. In case of a tie vote on any motion or
8 resolution pending before the authority such motion or resolution shall
9 be presented to the governor and if approved by him, shall be deemed
10 adopted by the authority.

11 (b) The members of the authority serve without salary but
12 each member is entitled to reimbursement from authority funds for
13 actual and necessary expenses incurred in the performance of his
14 official duties as a member of the authority.

15 (c) The authority may appoint persons as officers it considers
16 advisable, including an executive director or executive vice-president,
17 and may employ professional advisors, counsel, technical experts,
18 agents, and other employees it considers advisable.

19 **ARTICLE 2. DEFINITIONS, PURPOSE AND POWERS.**

20 **Sec. 44.61.060. DEFINITIONS. In this chapter**

21 (1) "authority" means the Alaska Industrial Development
22 Authority created by this chapter;

23 (2) "business enterprise" means a corporation, firm,
24 partnership or other association of persons organized in any manner,
25 or a single proprietorship;

26 (3) "federal agency" means the United States and any
27 officer, department, agency or instrumentality of the United States;

28 (4) "governing body of a political subdivision" means,
29 when used with respect to the location of a project, the council of

1 a city if the project is to be located in a city, in the unorganized
2 borough, or the borough assembly if the project is to be located in an
3 organized borough;

4 (5) "industrial plant" or "manufacturing plant" means a plant
5 used or intended for use in connection with making, processing, prepar-
6 ing, or producing in any manner, goods, products or substances of any
7 kind or nature or in connection with developing or utilizing a natural
8 resource, or extracting, smelting, transporting, converting, assembling
9 or producing in any manner, minerals, raw materials, chemicals, compounds,
10 alloys, fibers, commodities and materials, products or substances of
11 any kind or nature;

12 (6) "plant" means real property, whether above or below mean
13 high water, or an interest in it, and the buildings, improvements and
14 structures constructed or to be constructed on or in it, whether above,
15 at or below ground or water level, and may include fixtures, machinery
16 and equipment on it or in it;

17 (7) "project" means a manufacturing or industrial plant or
18 plants, the construction or acquisition of which is to be financed in
19 whole or in part by the authority under this chapter and the reasonable
20 aggregate project cost of which to be financed by the authority under
21 this chapter will exceed, in the opinion of the authority, \$500,000;

22 (8) "project cost" or "cost of a project" means all or any
23 part of the aggregate costs determined by the authority to be necessary
24 to finance the construction or acquisition of a project, including
25 without limitation the cost of acquiring real property, the cost of
26 constructing buildings and improvements, the cost of constructing means
27 of access to and from the project, the cost of constructing extensions
28 of utility systems to the site of the project, the cost of financing
29 the project, including, without limitation, interest charges before,

1 during or after construction or acquisition of the project, costs
2 related to the determination of the feasibility, planning, design or
3 engineering of the project and, to the extent determined necessary by
4 the authority, administrative expenses, the cost of machinery or
5 equipment to be used in the operation of the project and expenses of
6 installation, replacement or rehabilitation, and all other costs,
7 charges, fees and expenses which may be determined by the authority to
8 be necessary to finance the construction or acquisition;

9 (9) "project occupant" means a business enterprise or
10 enterprises proposing to use and occupy a project;

11 (10) "real property" means land and rights and interests
12 in land, including, without limitation, interests less than full
13 title such as easements, uses, leases, and licenses;

14 (11) "lease" includes, when used as a noun, an interest
15 in, or when used as a verb, the transfer of an interest in, real
16 property less than fee simple title, including, without limitation,
17 when used as a noun, agreements to use or occupy real property.

18 Sec. 44.61.070. PURPOSE OF THE AUTHORITY. The purpose of the
19 authority is to promote, develop and advance the general prosperity
20 and economic welfare of the people of Alaska, to relieve problems of
21 unemployment and to create additional employment by providing a means
22 of financing industrial and manufacturing plant construction,
23 conversion or expansion within the state, including the acquisition of
24 real property, for lease or sale to business enterprises for industrial
25 or manufacturing purposes.

26 Sec. 44.61.080. POWERS OF THE AUTHORITY. In furtherance of its
27 corporate purposes, the authority shall have the following powers
28 in addition to its other powers:

29 (1) to sue and be sued;

- 1 (2) to have a seal and alter it at pleasure;
- 2 (3) to make and alter bylaws for its organization and
- 3 internal management;
- 4 (4) to make rules and regulations governing the exercise
- 5 of its corporate powers;
- 6 (5) to acquire, whether by construction, purchase, gift
- 7 or lease, and to improve and equip projects in the state;
- 8 (6) to lease to others a project acquired by it for the
- 9 rentals and upon the terms and conditions the authority may consider
- 10 advisable, including, without limitation, provisions for options to
- 11 purchase or renew;
- 12 (7) to issue bonds to pay the cost of acquiring by
- 13 construction, purchase or lease or improving and equipping a project
- 14 and to secure payment of the bonds as provided in this chapter;
- 15 (8) to sell, exchange, donate, convey or encumber in any
- 16 manner by mortgage or by creation of any other security interest,
- 17 real or personal property owned by it, or in which it has an interest,
- 18 when, in the judgment of the authority, the action is in furtherance
- 19 of its corporate purposes;
- 20 (9) to accept gifts, grants or loans from, and enter into
- 21 contracts or other transactions regarding them, with a federal agency
- 22 or an agency or instrumentality of the state, a municipality, private
- 23 organization or other source;
- 24 (10) to deposit or invest its funds, subject to agreements
- 25 with bondholders;
- 26 (11) to enter into contracts or agreements with respect
- 27 to the exercise of any of its powers, and to do all things necessary
- 28 or convenient to carry out its corporate purposes and exercise the
- 29 powers granted in this chapter.

ARTICLE 3. FINANCIAL PROVISIONS.

1
2 **Sec. 44,61.090. BONDS OF THE AUTHORITY. (a)** The authority may
3 borrow money and may issue bonds therefor, including but not limited to
4 bonds on which the principal and interest are payable, (1) exclusively
5 from the income and receipts or other money derived from the project
6 financed with the proceeds of the bonds, (2) exclusively from the income
7 and receipts or other money derived from designated projects whether or
8 not they are financed in whole or in part with the proceeds of the bonds,
9 or (3) from its income and receipts or other assets generally, or a
10 designated part or parts of them.

11 **(b)** Bonds shall be authorized by resolution of the authority,
12 and shall be dated and shall mature as the resolution may provide,
13 except that no bond shall mature more than 40 years from the date
14 of its issue. Bonds shall bear interest at the rate or rates, be
15 in the denominations, be in the form, either coupon or registered,
16 carry the registration privileges, be executed in the manner, be
17 payable in the medium of payment, at the place or places, and be
18 subject to the terms of redemption which the resolution or a
19 subsequent resolution may provide.

20 **(c)** All bonds, regardless of form or character, shall be nego-
21 tiable instruments for all the purposes of the Uniform Commercial
22 Code.

23 **(d)** All bonds may be sold at public or private sale in the
24 manner, for the price or prices, and at the time or times which the
25 authority may determine.

26 **(e)** Before the issuance of any bonds, the authority shall make
27 provision by lease or other agreement regarding the project or
28 projects being financed by the issue of the bonds for rentals or other
29 considerations at least sufficient, in the judgment of the authority,

1 to pay the principal of and interest on the bonds as they become due
2 and to create and maintain the reserves therefor as the authority
3 considers necessary or desirable and to meet all obligations in
4 connection with the lease or other agreement and all costs necessary
5 to service the bonds unless the lease or agreement provides that the
6 obligations are to be met or costs are to be paid by a party other
7 than the authority.

8 (f) The superior court shall have jurisdiction to hear and
9 determine suits, actions or proceedings relating to the authority,
10 including suits, actions or proceedings brought to foreclose or
11 otherwise enforce a mortgage, pledge, assignment or security interest
12 or brought by or for the benefit or security of a holder of its
13 bonds or by a trustee for or other representative of the holders.

14 Sec. 44.61.100. TRUST INDENTURES AND TRUST AGREEMENTS. In
15 the discretion of the authority, an issue of bonds may be secured
16 by a trust indenture or trust agreement between the authority and
17 a corporate trustee (which may be a trust company, bank, or national
18 banking association, with corporate trust powers, located inside or
19 outside the state) or by a secured loan agreement or other instrument
20 or under a resolution giving powers to a corporate trustee (hereinafter
21 in this section referred to as "Trust Agreement") by means of which
22 the authority may:

23 (1) make and enter into any and all the covenants and
24 agreements with the trustee or the holders of the bonds which the
25 authority may determine to be necessary or desirable, including,
26 without limitation, covenants, provisions, limitations and agreements
27 as to

28 (A) the application, investment, deposit, use and
29 disposition of the proceeds of bonds of the authority or of

1 money or other property of the authority or in which it has
2 an interest;

3 (B) the fixing and collection of rents or other
4 consideration for, and the other terms to be incorporated in
5 a lease or contract of sale of a project;

6 (C) the assignment by the authority of its rights
7 in the lease or contract of sale of a project or in a mortgage
8 or other security interest created with respect to a project
9 to a trustee for the benefit of bondholders;

10 (D) the terms and conditions upon which additional
11 bonds of the authority may be issued;

12 (E) the vesting in a trustee of rights, powers,
13 duties, funds or property in trust for the benefit of bondholders,
14 including, without limitation, the right to enforce payment,
15 performance and all other rights of the authority or of the
16 bondholders, under a lease, contract of sale, mortgage, security
17 agreement, or trust agreement with respect to a project by
18 mandamus or other proceeding or by taking possession of by
19 agent or otherwise and operating a project and collecting rents
20 or other consideration and applying the same in accordance with
21 the trust agreement;

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

25 (3) provide for any other matters of like or different
26 character which in any way affect the security or protection of the
27 bonds.

28 Sec. 44.61.110. VALIDITY OF PLEDGE. It is the intention of the
29 legislature that a pledge made in respect of bonds shall be valid

1 and binding from the time the pledge is made; that the money or
2 property so pledged and thereafter received by the authority shall
3 immediately be subject to the lien of the pledge without physical
4 delivery or further act; and that the lien of the pledge shall be
5 valid and binding as against all parties having claims of any kind
6 in tort, contract or otherwise against the authority irrespective of
7 whether the parties have notice. Neither the resolution, trust agree-
8 ment nor any other instrument by which a pledge is created need be
9 recorded or filed under the provisions of the Uniform Commercial Code
10 to be valid, binding or effective against the parties.

11 **Sec. 44.61.120. NONLIABILITY ON BONDS.** (a) Neither the members
12 of the authority nor a person executing the bonds shall be liable
13 personally on the bonds or be subject to personal liability or
14 accountability by reason of the issuance of the bonds.

15 (b) The bonds issued by the authority shall not constitute an
16 indebtedness or other liability of the state or of a political
17 subdivision of the state, except the authority, but shall be payable
18 solely from the income and receipts or other funds or property of the
19 authority. The authority may not pledge the faith or credit of the
20 state or of a political subdivision of the state (except the authority)
21 to the payment of a bond and the issuance of a bond by the authority
22 shall not directly or indirectly or contingently obligate the state
23 or a political subdivision of the state to apply money from, or levy
24 or pledge any form of taxation whatever to the payment of the bond.

25 **Sec. 44.61.130. PLEDGE OF THE STATE.** The state does hereby
26 pledge to and agree with the holders of bonds issued under this
27 chapter and with the federal agency which loans or contributes funds
28 in respect to a project, that the state will not limit or alter the
29 rights and powers vested in the authority by this chapter to fulfill

1 the terms of any contract made by the authority with the holders or
2 federal agency, or in any way impair the rights and remedies of the
3 holders until the bonds, together with the interest on them, with
4 interest on unpaid installments of interest, and all costs and
5 expenses in connection with any action or proceeding by or on behalf
6 of the holders, are fully met and discharged. The authority is
7 authorized to include this pledge and agreement of the state, insofar
8 as it refers to holders of bonds of the authority, in a contract with
9 the holders, and insofar as it relates to a federal agency, in a
10 contract with such an agency.

11 Sec. 44.61.140. EXEMPTION FROM TAXATION. (a) The real and
12 personal property of the authority and its assets, income and receipts
13 are declared to be property of a political subdivision of the state
14 and, together with any project financed under this chapter and a lease-
15 hold interest created in a project occupant or other person under this
16 chapter, devoted to an essential public and governmental function and
17 purpose, and the property, assets, income, receipts, project and
18 leasehold interests shall be exempt from all taxes and special
19 assessments of the state or a political subdivision of the state,
20 including, without limitation, all boroughs, cities, municipalities,
21 school districts, public utility districts and other taxing units.
22 All bonds of the authority are declared to be issued by a political
23 subdivision of the state and for an essential public and governmental
24 purpose and to be a public instrumentality and the bonds, and the
25 interest on them, the income from them and the transfer of the bonds,
26 and all assets, income and receipts pledged to pay or secure the
27 payment of the bonds, or interest on them, shall at all times be
28 exempt from taxation by or under the authority of the state, except
29 for inheritance and estate taxes and taxes on transfers by or in

1 contemplation of death. Nothing in this section shall affect or limit
2 an exemption from license fees, property taxes, or excise, income or
3 any other taxes, provided under any other law.

4 (b) The authority may enter into agreements with a proposed
5 project occupant or project occupant providing for payments, computed
6 on a formula basis or otherwise, in lieu of taxes, which the authority
7 may consider appropriate. The agreement may provide that the payments
8 be made to the political subdivision of the state in which a project
9 is or is to be located or to any other taxing unit of the state
10 including, without limitation, a borough, city, municipality, school
11 district or public utility district, the area of which is coterminous
12 in whole or in part with that of the political subdivision.

13 (c) For the purposes of AS 14.17 relating to the computation of
14 the required local effort by a district as defined in AS 14.17.250(3),
15 all property exempted from taxation by this chapter shall be considered
16 taxable real and personal property.

17 Sec. 44.61.150. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
18 bonds of the authority are securities in which all public officers and
19 bodies of the state and all municipalities and municipal subdivisions,
20 all insurance companies and associations and other persons carrying on
21 an insurance business, all banks, bankers, trust companies, savings
22 banks, savings associations, including savings and loan associations
23 and building and loan associations, investment companies and other
24 persons carrying on a banking business, all administrators, guardians,
25 executors, trustees and other fiduciaries, and all other persons
26 whatsoever who are now or may hereafter be authorized to invest in
27 bonds or other obligations of the state, may properly and legally
28 invest funds including capital in their control or belonging to them.
29 Notwithstanding any other provisions of law, the bonds of the authority

1 are also securities which may be deposited with and may be received by
2 all public officers and bodies of this state and all municipalities
3 and municipal subdivisions for any purpose for which the deposit of
4 bonds or other obligations of the state is now or may hereafter be
5 authorized.

6 **ARTICLE 4. GENERAL PROVISIONS.**

7 **Sec. 44.61.160. FINDINGS OF THE AUTHORITY.** Before entering into
8 a lease or other agreement regarding a project as mentioned in sec.
9 90(e) of this chapter there must have been filed with the authority a
10 certified copy of a resolution of the governing body of the political
11 subdivision of the state, if any, in which the project is to be
12 located, consenting to the location (which consent need only refer
13 to the general nature of the project ultimately to be acquired as
14 set out in a request of the proposed project occupant), and the
15 authority must find, on the basis of all information reasonably avail-
16 able to it, that

17 (1) the project and its development under this chapter will
18 be economically advantageous to the state and the general public
19 welfare and will contribute to the economic growth of the state;

20 (2) the project occupant is financially responsible; and

21 (3) provision to meet increased demand upon public facilities
22 that might result from the project is reasonably assured.

23 **Sec. 44.61.170. PURCHASE OF PROJECT AND LEASES.** (a) No provi-
24 sion of this chapter shall prevent the inclusion in a lease or other
25 agreement relating to a project of a provision granting the right to
26 purchase the project, or to renew or extend the lease or agreement,
27 upon the terms and conditions which may be provided for in the lease
28 or agreement.

29 (b) A lease with respect to a project may provide for two or

1 more lessees with the legal relationship between themselves and the
2 authority which the authority may approve, including without limitation,
3 provisions to the effect that the obligations of the lessees under the
4 lease for payment of rental or otherwise between themselves and the
5 authority are several, joint, or joint and several and that said
6 lessees lease the project as tenants-in-common, or otherwise.

7 Sec. 44.61.180. CONFLICTS OF INTEREST. (a) No member of the
8 authority may vote on a resolution of the authority relating to a
9 lease or contract to be entered into by the authority under this
10 chapter if he is a party to the lease or contract or has a direct
11 ownership or equity interest in a firm, partnership, corporation or
12 association which may be a party to the contract or lease. If a
13 person may not vote because of this prohibition, then for all purposes
14 regarding action of the authority relating to adoption of the resolu-
15 tion, the position of the person as a member shall be transferred to
16 the first one of the following state officers who is not then acting
17 as a member and would not be prohibited from voting on the resolution
18 because of the same prohibition: commissioner of administration,
19 attorney general, commissioner of revenue, commissioner of health and
20 welfare, commissioner of labor, commissioner of public works, commis-
21 sioner of public safety.

22 (b) Such state officer shall serve as such a member from time to
23 time and for all purposes of this chapter shall be a member for the
24 purpose of voting on the resolution but after each such vote the
25 authority shall again consist of the members referred to in sec. 30
26 of this chapter only, until one or more members may not again vote on
27 a resolution because of the prohibition.

28 Sec. 44.61.190. OPERATION OF CERTAIN STATUTES EXCEPTED. (a) The
29 authority shall not be considered or constitute (1) a political

1 subdivision of the state as the term is used in AS 37.10.085, (2) a
2 municipal corporation or political subdivision of the state as the
3 terms are used in AS 29, or (3) a state agency as the term is used
4 in AS 37, but for all other purposes the authority constitutes a
5 political subdivision and an instrumentality of the state as provided
6 in this chapter.

7 (b) The funds, income or receipts of the authority shall not
8 be considered or constitute money of the state, nor shall real property
9 in which the authority has an interest be considered land owned in
10 fee by the state or to which the state may become entitled or in any
11 way lands belonging to the state, or state lands referred to in
12 Art. VIII of the Alaska Constitution.

13 Sec. 44.61.200. ANNUAL AUDIT. The authority shall have its
14 financial records audited annually by the legislative auditor or by
15 a certified public accountant approved by the legislative auditor.
16 The legislative auditor may prescribe the form and content of the
17 financial records of the authority and shall have access to these
18 records at any time.

19 Sec. 44.61.210. ANNUAL REPORT. Before December 1 of each year,
20 the authority shall submit to the governor and the legislature a
21 comprehensive report, in form prescribed by the governor, describing
22 operations, income and expenditures for the preceding 12-month period.

23 * Sec. 2. This Act takes effect on the day after its passage and approval
24 or on the day it becomes law without approval.

25 Passed by the House March 19, 1967

26
27 ATTEST:

Speaker of the House

28
29 _____
Chief Clerk of the House