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1 IN THE HOUSE

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2 HOUSE BILL NO. 546

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Marine Highway Authority."

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

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

9 CHAPTER 58. ALASKA MARINE HIGHWAY AUTHORITY.

10 ARTICLE 1. CREATION AND ORGANIZATION.

11 Sec. 44.58.010. ALASKA MARINE HIGHWAY AUTHORITY CREATED. (a)

12 There is created the Alaska Marine Highway Authority composed of the  
13 governor, the commissioner of the Department of Public Works, the  
14 commissioner of the Department of Administration, the commissioner of  
15 the Department of Highways, and the commissioner of the Department of  
16 Revenue. The Alaska Marine Highway Authority is a public corporation  
17 of the state. The authority is an instrumentality of the state within  
18 the Department of Public Works, but has a legal existence independent  
19 of and separate from the state.

20 (b) If the office of a commissioner is discontinued or abolished  
21 by law, the governor shall appoint any person or officer of the state  
22 to fill the vacancy resulting from the abolition or discontinuance of  
23 the office.

24 (c) All members of the authority shall serve without compensation  
25 but shall receive their necessary actual traveling expenses incurred in  
26 the discharge of their duties.

27 Sec. 44.58.020. MAJORITY RULE. A majority of the members of the  
28 authority may act for the authority. The authority shall establish  
29 rules and regulations considered wise and lay down policies of procedure

1 and generally supervise and control the operation of the functions  
2 vested in it by law and is clothed with all necessary powers to carry  
3 out its functions. The authority shall appoint an executive secretary  
4 who serves at its pleasure and who is the chief administrative officer  
5 of the authority. The authority shall act collectively with recorded  
6 resolutions or motions adopted by a majority of the authority at  
7 regular or special meetings, notice of which meetings shall be given to  
8 all members under the rules of the authority. Three members constitute  
9 a quorum at any meeting, but no resolution, motion, or other decision  
10 of the authority may be adopted or passed without a favorable vote of  
11 at least three members.

12 Sec. 44.58.030. AUTHORITY MAY EMPLOY PERSONNEL. The authority  
13 may appoint other officers, hire employees and agents, and engage  
14 professional and technical services and advice upon employment or  
15 independent contract basis. The authority shall prescribe the duties  
16 and compensation of its personnel.

17 Sec. 44.58.040. SUITS. The authority may sue and be sued in the  
18 name of the Alaska Marine Highway Authority.

19 ARTICLE 2. POWERS AND DUTIES.

20 Sec. 44.58.080. FERRY SYSTEM AND FACILITIES AUTHORIZED. The  
21 authority is authorized to acquire by lease, charter, contract, pur-  
22 chase, condemnation or construction and to operate, improve and extend,  
23 a system of ferries. The ferry system shall include boats, vessels,  
24 wharves, docks, approaches, landings, franchises, licenses, and  
25 appurtenances the authority determines necessary or desirable for  
26 efficient operation of the ferry system and best service to the public.  
27 The authority is empowered to enter into contracts, agreements or  
28 leases with any person, firm or corporation to provide for the opera-  
29 tion of a ferry of the system, whether acquired by the authority or not

1 For the purpose of obtaining information for the consideration of the  
2 authority upon matters dealing with the ferry system it is the duty of  
3 any cognizant officer or employee of the state upon the request of the  
4 authority to make reasonable examination, investigation, survey or  
5 reconnaissance for the determination of material facts and report to  
6 the authority. The cost of the examination, investigation, survey or  
7 reconnaissance shall be borne by the department or office conducting  
8 it from the funds provided for the department or office for its usual  
9 functions.

10 Sec. 44.58.090. GENERAL POWERS OF THE AUTHORITY AND OFFICIALS.  
11 The Alaska Marine Highway Authority, the officials of the authority,  
12 and all state officials are empowered to do those acts and make agree-  
13 ments not inconsistent with law which may be necessary or desirable in  
14 connection with the duties and power conferred upon them respectively  
15 by law regarding the construction, purchase, lease maintenance, opera-  
16 tion and insurance of ferries and ferry facilities or the safeguarding  
17 of the funds and revenues required for the operation of the ferry  
18 system. The Alaska Marine Highway Authority shall keep full, complete  
19 and separate accounts of each ferry and annually shall prepare balance  
20 sheet and income and profit and loss statements showing the financial  
21 condition of each ferry, which statement shall be open to the inspec-  
22 tion of holders of bonds issued by the authority at all reasonable times.

23 Sec. 44.58.100. FERRIES AND FERRY FACILITIES. Whenever in the  
24 judgment of the Department of Public Works it is considered in the  
25 public interest that a ferry be put into service or that ferry facili-  
26 ties be constructed and operated by the state, the Department of Public  
27 Works shall submit its recommendation to that effect to the Alaska  
28 Marine Highway Authority together with preliminary estimates of the  
29 cost of the project and an estimate of the amount necessary to be

1 raised for that purpose by the issuance of revenue bonds. If the  
2 Alaska Marine Highway Authority concurs in the recommendation of the  
3 Department of Public Works or on its own motion determines to put a  
4 ferry into service or to construct ferry facilities, the Alaska Marine  
5 Highway Authority shall adopt a resolution declaring that public  
6 interest and necessity require the ferry service or construction of  
7 ferry facilities, and may thereafter issue bonds as provided in this  
8 chapter.

9 Sec. 44.58.110. REVENUES AND APPLICATION. (a) The authority is  
10 authorized to establish, levy and collect fees and other charges it may  
11 consider necessary, proper or desirable, in connection with the use of  
12 ferries and ferry facilities or other projects which it is or may be  
13 authorized at any time to carry out, and the aggregate of the fees and  
14 charges shall be at least sufficient to

15 (1) meet the combined expenses of operation, maintenance and  
16 improvement;

17 (2) pay the cost of acquisition or construction, including  
18 the payment, amortization and retirement of bonds or other securities  
19 or obligations assumed, issued or incurred by the authority, together  
20 with interest;

21 (3) provide reserves for those purposes.

22 (b) The authority is authorized and empowered subject to prior  
23 pledges, if any, to pledge all or part of the fees and other revenues  
24 as security for the repayment with interest of money borrowed by it or  
25 advanced to it for its authorized purposes and as security for the  
26 satisfaction of any other obligations assumed by it in connection with  
27 the loans or advances. There shall be allocated to the cost of acqui-  
28 sition, construction, operation, maintenance and improvement of the  
29 ferries, facilities and projects, a proportion of the general expenses

1 of the authority it considers properly chargeable thereto.

2 Sec. 44.58.120. COOPERATIVE FUNDS. The Alaska Marine Highway  
3 Authority is empowered to receive and accept funds from the state or  
4 the federal government or any municipality upon a cooperative or other  
5 basis for acquisition or construction of ferries or facilities author-  
6 ized under this chapter and the authority and the state are empowered  
7 to enter into and perform agreements which may be required for securing  
8 the funds.

9 ARTICLE 3. FINANCIAL PROVISIONS.

10 Sec. 44.58.180. BONDS OF THE AUTHORITY. (a) Subject to (f) of  
11 this section, the authority may borrow money for any of its corporate  
12 purposes, including the payment or securing of any of its obligations,  
13 and may issue bonds therefor, including but not limited to bonds on  
14 which the principal and interest are payable

15 (1) exclusively from the income and receipts or other money  
16 derived from the project financed with the proceeds of the bonds,

17 (2) exclusively from the income and receipts or other money  
18 derived from designated projects whether or not they are financed in  
19 whole or in part with the proceeds of the bonds, or

20 (3) from its income and receipts or other assets generally,  
21 or a designated part or parts of them.

22 (b) Bonds shall be authorized by resolution of the authority, and  
23 shall be dated and shall mature as the resolution may provide, except  
24 that no bond shall mature more than 40 years from the date of its issue.  
25 Bonds shall bear interest at the rate or rates, be in the denominations  
26 be in the form, either coupon or registered, carry the registration  
27 privileges, be executed in the manner, be payable in the medium of pay-  
28 ment, at the place or places, and be subject to the terms of redemption  
29 which the resolution or a subsequent resolution may provide.

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

3 (d) All bonds may be sold at public or private sale in the manner  
4 for the price or prices, and at the time or times which the authority  
5 may determine.

6 (e) The superior court shall have jurisdiction to hear and deter-  
7 mine suits, actions or proceedings relating to the authority, including  
8 suits, actions or proceedings brought by or for the benefit or security  
9 of a holder of its bonds or by a trustee for or other representative  
10 of the holders.

11 (f) The powers of the authority granted by this section may be  
12 used only for projects approved by the legislature by concurrent resolu-  
13 tion before the exercise of those powers.

14 Sec. 44.58.190. TRUSTS INDENTURES AND TRUST AGREEMENTS. In the  
15 discretion of the authority, an issue of bonds may be secured by a  
16 trust indenture or trust agreement between the authority and a corpo-  
17 rate trustee (which may be a trust company, bank, or national banking  
18 association, with corporate trust powers, located inside or outside  
19 the state) or by a secured loan agreement or other instrument or under  
20 a resolution giving powers to a corporate trustee (referred to in this  
21 section as trust agreement) by means of which the authority may

22 (1) make and enter into any and all the covenants and agree-  
23 ments with the trustee or the holders of the bonds which the authority  
24 may determine to be necessary or desirable, including, without limita-  
25 tion, covenants, provisions, limitations and agreements as to

26 (A) the application, investment, deposit, use and dis-  
27 position of the proceeds of bonds of the authority or of money  
28 or other property of the authority or in which it has an interest;

29 (B) the terms and conditions upon which additional

1 bonds of the authority may be issued;

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

5 (3) provide for any other matters of like or different  
6 character which in any way affect the security or protection of the  
7 bonds.

8 Sec. 44.57.230. VALIDITY OF PLEDGE. It is the intention of the  
9 legislature that a pledge made in respect of bonds shall be valid and  
10 binding from the time the pledge is made; that the money or property  
11 so pledged and thereafter received by the authority shall immediately  
12 be subject to the lien of the pledge without physical delivery or  
13 further act; and that the lien of the pledge shall be valid and binding  
14 as against all parties having claims of any kind in tort, contract or  
15 otherwise against the authority irrespective of whether the parties  
16 have notice. Neither the resolution, trust agreement nor any other  
17 instrument by which a pledge is created need be recorded or filed under  
18 the provisions of the Uniform Commercial Code to be valid, binding or  
19 effective against the parties.

20 Sec. 44.58.210. NONLIABILITY ON BONDS. (a) Neither the members  
21 of the authority nor a person executing the bonds is liable personally  
22 on the bonds or subject to personal liability or accountability by  
23 reason of the issuance of the bonds.

24 (b) The bonds issued by the authority may not constitute an  
25 indebtedness or other liability of the state or of a political sub-  
26 division of the state, except the authority, but shall be payable  
27 solely from the income and receipts or other funds or property of the  
28 authority. The authority may not pledge the faith or credit of the state  
29 or a political subdivision of the state (except the authority) to the

1 payment of a bond and the issuance of a bond by the authority shall not  
2 directly or indirectly or contingently obligate the state or a politi-  
3 cal subdivision of the state to apply money from, or levy or pledge  
4 any form of taxation whatever to the payment of the bond.

5 Sec. 44.58.220. PLEDGE OF THE STATE. The state does hereby  
6 pledge to and agree with the holders of bonds issued under this chapter  
7 and with the federal agency which loans or contributes funds in respect  
8 of a project, that the state will not limit or alter the rights and  
9 powers vested in the authority by this chapter to fulfill the terms of  
10 any contract made by the authority with the holders or federal agency,  
11 or in any way impair the rights and remedies of the holders until the  
12 bonds, together with the interest on them, with interest on unpaid  
13 installments of interest, and all costs and expenses in connection  
14 with any action or proceeding by or on behalf of the holders, are  
15 fully met and discharged. The authority is authorized to include this  
16 pledge and agreement of the state, insofar as it refers to holders of  
17 bonds of the authority, in a contract with the holders, and insofar as  
18 it relates to a federal agency, in a contract with a federal agency.

19 Sec. 44.58.230. EXEMPTION FROM TAXATION. The real and personal  
20 property of the authority and its assets, income and receipts are  
21 declared to be property of a political subdivision of the state and,  
22 together with a ferry acquired or ferry facility constructed under this  
23 chapter shall be exempt from all taxes and special assessments of the  
24 state or a political subdivision of the state, including, without  
25 limitation, all boroughs, cities, municipalities, school districts,  
26 public utility districts and other taxing units. All bonds of the  
27 authority are declared to be issued by a political subdivision of the  
28 state and for an essential public and governmental purpose and to be a  
29 public instrumentality and the bonds, and the interest on them, the

1 income from them and the transfer of the bonds, and all assets, income  
2 and receipts pledged to pay or secure the payment of the bonds, or  
3 interest on them, shall at all times be exempt from taxation by or  
4 under the authority of the state, except for inheritance and estate  
5 taxes and taxes on transfers by or in contemplation of death.

6 Sec. 44.58.240. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The  
7 bonds of the authority are securities in which all public officers and  
8 bodies of the state and all municipalities and municipal subdivisions,  
9 all insurance companies and associations and other persons carrying on  
10 an insurance business, all banks, bankers, trust companies, savings  
11 banks, savings associations, including savings and loan associations and  
12 building and loan associations, investment companies and other persons  
13 carrying on a banking business, all administrators, guardians, executors,  
14 trustees and other fiduciaries, and all other persons whatsoever who  
15 are now or may hereafter be authorized to invest in bonds or other  
16 obligations of the state, may properly and legally invest funds includ-  
17 ing capital in their control or belonging to them. Notwithstanding any  
18 other provisions of law, the bonds of the authority are also securities  
19 which may be deposited with and may be received by all public officers  
20 and bodies of this state and all municipalities and municipal subdivi-  
21 sions for any purpose for which the deposit of bonds or other obliga-  
22 tions of the state is now or may hereafter be authorized.

23 ARTICLE 4. GENERAL PROVISIONS.

24 Sec. 44.58.280. DEFINITIONS. In this chapter

- 25 (1) "authority" means the Alaska Marine Highway Authority;  
26 (2) "state" means the State of Alaska.

27 Sec. 44.58.290. STATE APPROPRIATIONS NOT AFFECTED. This chapter  
28 does not prevent the state from making appropriations from time to  
29 time in aid of the acquisition or construction under this chapter of a

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ferry or ferry facility or property, franchises, or rights appurtenant thereto, or for the purpose of making preliminary surveys, plans, and estimates of the cost, and meeting other preliminary expenses as the legislature considers proper.

Sec. 44.58.300. REGULATIONS. The authority may adopt regulations to carry out the purposes of this chapter.