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1 IN THE HOUSE

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2 HOUSE BILL NO. 674

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the State Public Facilities Leasing
7 Fund; and providing for an effective date."

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

9 * Section 1. AS 35 is amended by adding a new chapter to read:

10 CHAPTER 12. ALASKA STATE PUBLIC FACILITIES LEASING FUND.

11 Sec. 35.12.010. PURPOSE, INTENT. The purpose of this chapter
12 is to remedy the acute short supply of necessary public buildings by
13 providing for the financing, construction and acquisition of public
14 buildings for lease to the state.

15 Sec. 35.12.020. ALASKA STATE PUBLIC FACILITIES LEASING FUND.

16 There is created the Alaska State Public Facilities Leasing Fund
17 governed by a board of trustees consisting of the commissioners of
18 public works, administration and revenue and two residents of the state
19 appointed by the governor and confirmed by the legislature for staggered
20 four-year terms. The initial appointees of the governor shall serve
21 two-and four-year terms, respectively, to be determined by lot.
22 Vacancies shall be filled by the appointing authority. Members serve
23 without compensation except that each member may be reimbursed by the
24 fund for actual and necessary expenses in the manner determined by
25 law.

26 Sec. 35.12.030. CORPORATE STATUS OF FUND. The Alaska State Public
27 Facilities Leasing Fund is a public corporation and government instru-
28 mentality within the Department of Public Works, but having a legal
29 existence independent of and separate from the state. The corporation

1 may not be terminated as long as it has bonds, notes or other obliga-
2 tions outstanding. Upon termination of the corporation, its rights
3 and property pass to the state.

4 Sec. 35.12.040. OFFICERS, EMPLOYEES. (a) The commissioner of
5 public works is chairman of the board, and the board may elect a vice
6 chairman from among its members at the first meeting in each year.

7 (b) The board may appoint an executive officer and other officers,
8 hire employees and agents, and engage professional and technical
9 advisors and consultants as employees or as independent contractors.
10 The board shall prescribe the duties and compensation of fund personnel.

11 (c) The personnel of the fund are exempt from AS 39.25 to the
12 same extent as the personnel of a state or local housing authority
13 and housing finance corporation.

14 (d) The attorney general is the legal counsel to the fund, and
15 to the board, and he shall advise the fund in legal matters and repre-
16 sent it in suits.

17 (e) No member or employee of the fund may acquire an interest,
18 direct or indirect, in a public building project, or in property or a
19 contract for materials or services included or planned to be included
20 in a project. If a member or employee owns or controls an interest,
21 he shall immediately disclose the interest in writing to the fund.
22 Failure to make disclosure constitutes misconduct in office.

23 Sec. 35.12.050. MEETINGS. (a) A majority of the members
24 constitute a quorum for organizing the board, conducting its business
25 and exercising the powers of the fund. The board shall meet at the
26 call of its chairman, but in any event not less than once each three
27 months.

28 (b) The board shall keep minutes of each meeting and send a
29 certified copy to the governor.

1 Sec. 35.12.060. POWERS OF FUND. The fund has all powers necessary
2 to carry out the purposes of this chapter including but not limited to
3 the following:

4 (1) sue and be sued;

5 (2) adopt a seal;

6 (3) have perpetual succession;

7 (4) adopt, amend and repeal bylaws, rules and regulations;

8 (5) make and execute contracts and other instruments;

9 (6) in its own name, own, exchange, transfer, lease, rent,
10 convey, or acquire by eminent domain under AS 09.55.240 - 09.55.460,
11 or otherwise, real and personal property; provided that in an eminent
12 domain proceeding the court may, upon motion and after a hearing, fix
13 the time when and the terms upon which the parties in possession are
14 required to surrender possession to the plaintiff; if the court finds
15 that urgent public necessity requires, it may grant the plaintiff
16 possession at any time after the proceeding has been commenced;

17 (7) to provide, subject to the applicable planning, zoning,
18 sanitary and building laws, ordinances, and regulations for the construc-
19 tion, improvement, alteration, or repair of a public building project
20 or any part of a public building project;

21 (8) arrange or contract for services, privileges, works or
22 facilities for or in connection with a public building project and
23 notwithstanding anything to the contrary contained in this chapter or
24 in any other provision of law, include in any such contract stipula-
25 tions that the contractor and subcontractors comply with requirements
26 as to minimum wages and maximum hours of labor, with any conditions
27 which the federal government may have attached to its financial aid
28 of the project, and with any pertinent state law;

29 (9) establish and revise rent schedules;

1 (10) insure any real or personal property or operations of
2 the fund against any risk or hazards;

3 (11) invest in property or securities in which banks or
4 trust companies may legally invest any funds held in reserves or sink-
5 ing funds or any funds not required for immediate disbursement;

6 (12) purchase its bonds at a price not more than the princi-
7 pal amount thereof and accrued interest, all bonds so purchased to
8 be canceled;

9 (13) arrange or contract for the financing, design, construc-
10 tion and acquisition of public buildings for lease to the state in
11 accordance with this chapter.

12 Sec. 35.12.070. FEDERAL RELATIONS. (a) The fund may do all
13 things necessary or desirable to cooperate with or act as agent for
14 the federal government, or to secure financial aid for public building
15 projects provided that those projects may not be undertaken unless an
16 acute shortage of public buildings exists. With respect to those
17 projects, the fund is not subject to limitations, restrictions or
18 requirements of other laws, except those relating to land acquisi-
19 tion, prescribing or limiting the procedure or action to be taken in
20 the development or administration of any buildings, property, public
21 works, undertakings or projects of municipal or public corporations
22 or agencies of the state.

23 (b) The fund may borrow, accept contributions, grants or other
24 financial assistance from the federal government in aid of a public
25 building project and for this purpose may comply with conditions and
26 enter into the mortgages, trust indentures, leases or agreements that
27 are necessary, convenient or desirable in order to obtain financial
28 aid or cooperation from the federal government in the undertaking,
29 construction, maintenance, or operation of a public building project.

1 Sec. 35.12.080. ISSUANCE OF BONDS AND REFUNDING BONDS. The fund
2 may issue bonds from time to time in its discretion for any of its
3 corporate purposes and may issue refunding bonds for the purpose of
4 paying or retiring bonds previously issued by it.

5 Sec. 35.12.090. ISSUANCE AND SALE OF BONDS. Bonds of the fund
6 are authorized by adoption of a resolution prescribing the date of
7 issuance and maturity, interest, rate, denomination, form, conversion
8 privilege, rank or priority, execution, terms of redemption, medium
9 and place of payment. Bonds may be sold at public or private sale
10 at not less than par. Each bond is negotiable. The signature of a
11 member or an officer upon a bond or coupon is not invalidated by his
12 ceasing to hold office before the delivery of the bond. The recita-
13 tion of a bond that it has been issued in the financing of a housing
14 or public building project under secs. 10 - 220 of this chapter is
15 conclusive as to the issuance of the bond and the character of the
16 project in a challenge of the validity of the bond or the security for
17 it.

18 Sec. 35.12.100. ADDITIONAL POWERS TO SECURE BONDS OR OBLIGATIONS
19 UNDER LEASES. In connection with the issuance of bonds or the incurring
20 of obligations under leases and in order to secure the payment of bonds
21 or lease obligations, the fund, in addition to its other powers, may

22 (1) pledge all or a part of its gross or net rents, fees
23 or revenues to which its right exists or may exist;

24 (2) mortgage all or a part of its real or personal property,
25 owned or later acquired;

26 (3) covenant against pledging all or a part of its rents,
27 fees and revenues, or against mortgaging all or a part of its real or
28 personal property, to which its right or title exists or may come into
29 existence or against permitting or suffering any lien on the revenues

1 or property;

2 (4) covenant with respect to limitations on its right to
3 sell, lease or otherwise dispose of a public building project or a
4 part of a public building project;

5 (5) covenant as to what other, or additional debts or obliga-
6 tions may be incurred by it;

7 (6) covenant as to the bonds to be issued and as to the
8 issuance of the bonds in escrow or otherwise, and as to the use and
9 disposition of the proceeds of bonds;

10 (7) provide for the replacement of lost, destroyed or muti-
11 lated bonds;

12 (8) covenant against extending the time for the payment of
13 its bonds or interest on the bonds;

14 (9) redeem the bonds, and covenant for their redemption
15 and to provide the terms and conditions of redemption;

16 (10) covenant subject to the limitations contained in
17 this chapter as to the rents and fees to be charged in the operation
18 of a public building project, the amount to be raised each year or
19 other period of time by rents, fees and other revenues, and as to the
20 use and disposition of these revenues;

21 (11) create or authorize the creation of special funds
22 for money held for construction or operating costs, debt service,
23 reserves, or other purposes, and covenant as to the use and disposi-
24 tion of this money;

25 (12) prescribe the procedure by which the terms of a contract
26 with bondholders may be amended or abrogated, the amount of bonds the
27 holders of which must consent thereto and the manner in which the
28 consent may be given;

29 (13) covenant as to the rights, liabilities, powers and

1 duties arising upon by the breach by it of a covenant, condition, or
2 obligation, and covenant and prescribe as to events of default and
3 terms and conditions upon which any or all of its bonds or obligations
4 shall become or may be declared due before maturity, and covenant
5 as to the terms and conditions upon which this declaration and its
6 consequences may be waived;

7 (14) vest in a trustee or trustees or the holders of bonds
8 or a specified proportion of them, the right to enforce the payment of
9 the bonds or covenants securing or relating to the bonds;

10 (15) vest in one or more trustees the right, in the event
11 of a default by the fund, to take possession of a public building
12 project or a part of the project, and so long as the fund continues
13 in default to retain possession and to use, operate and manage the
14 project, and to collect the rents and revenues from the project, and
15 to dispose of the money according to the agreement between the fund
16 and the trustees;

17 (16) provide for the powers and duties of the trustees,
18 and limit the liability of the trustees; and

19 (17) provide the terms and conditions upon which the trustee
20 or trustees or the holders of bonds, or portions of bonds, may enforce
21 a covenant or right securing or relating to the bonds.

22 Sec. 35.12.110. SECURITY FOR BONDS. The fund may issue bonds
23 including but not limited to bonds on which the principal and interest
24 are payable (1) exclusively from the income and revenue of designated
25 public building projects whether or not they are financed in whole or
26 in part with the proceeds of the bonds, (2) from its revenue generally,
27 or (3) exclusively from rents collected on public buildings. Bonds
28 may be additionally secured by a pledge of a grant or contribution from
29 the federal government or from another source, or by a pledge of income

1 or revenue of the authority, or by a mortgage of a housing project or
2 other property of the authority.

3 Sec. 35.12.120. RESERVES. If the fund's bond reserve, or
4 principal or interest accounts are insufficient to service the
5 bonded indebtedness of the fund in any fiscal year, the legislature
6 shall appropriate money to the fund for its reserve.

7 Sec. 35.12.130. LIMITATION OF LIABILITY ON BONDS. The members
8 of the board and any person executing the bonds are not liable personally
9 on the bonds by reason of their issuance. The bonds of the fund are
10 not a debt of the state or a political or municipal corporation or
11 other subdivision of the state and each bond shall so state on its
12 face. Neither the state nor a political or municipal corporation or
13 other subdivision of the state other than the fund is liable on the
14 bonds, nor are the bonds payable out of funds or properties other than
15 those of the fund. The fund may not pledge the faith of the people
16 of the state for a loan or obligation. Bonds of the fund are not a
17 debt, indebtedness or the borrowing of money within the meaning of any
18 limitation or restriction on the issuance of bonds contained in the
19 constitution or laws of the state.

20 Sec. 35.12.140. RIGHT OF OBLIGEE OF FUND TO BRING MANDAMUS OR
21 INJUNCTION. An obligee of the fund may, in addition to all other
22 rights which may be conferred and subject only to contractual restric-
23 tion binding upon him, bring a mandamus or injunction action against
24 the members of the board, the fund, its officers, agents or employees.

25 Sec. 35.12.150. POWER OF FUND TO CONFER UPON OBLIGEE RIGHT TO
26 BRING ACTION OR PROCEEDING. The fund may by resolution, trust indenture,
27 mortgage, lease or other contract confer upon an obligee holding or
28 representing a specified amount in bonds, or holding a lease, the right
29 upon a default as defined in the resolution or instrument by suit,

1 action or proceeding

2 (1) to have possession of a public building project or
3 part of one surrendered to the obligee, with possession retained by
4 the obligee as long as the fund continues in default;

5 (2) to obtain the appointment of a receiver of a public
6 building project or part of one and its rents and profits, who may
7 enter, take possession and for the duration of the default operate
8 and maintain it, collect and receive all fees, rents, revenues or
9 other charges thereafter arising, and keep the money in a separate
10 account or accounts to be applied in accordance with the obligations
11 of the fund as the court directs;

12 (3) to require the fund and its board members to account
13 as if they were to trustees of an express trust.

14 Sec. 35.12.160. PUBLIC LOANS OR DONATIONS TO OR COOPERATION WITH
15 FUND. (a) Any public body, officer or agency of the state may

16 (1) lend or donate money or property to the fund,

17 (2) cooperate with it in the planning, construction, or
18 operation of a project,

19 (3) transfer to it an interest in property, grant an ease-
20 ment, undertake otherwise authorized construction of facilities
21 adjacent to a project,

22 (4) furnish or improve otherwise authorized roads, streets,
23 alleys and sidewalks,

24 (5) make exceptions from building codes, exercise its planning
25 and zoning powers, and annex the site of a project,

26 (6) contract to exercise its powers relating to repair,
27 elimination, or closing of unsafe, insanitary, or unfit buildings,

28 (7) purchase bonds of the fund,

29 (8) incur the entire expense of improvements made under this

1 chapter,

2 (9) agree with the fund that a certain sum or that no sum
3 shall be paid by the fund to it instead of taxes,

4 (10) enter into agreements respecting exercise of any
5 powers granted herein which shall be approved and executed by the public
6 body or municipality in or adjacent to the project before the project
7 may be constructed, and

8 (11) in general do all things necessary or convenient to co-
9 operate in the planning, construction or operation of a project.

10 (b) A sale, conveyance, lease or agreement under this section
11 may be made without appraisal, public notice or advertisement or
12 bidding. A public body may exercise the powers granted in this section
13 by resolution or ordinance by a majority of the members of the governing
14 body present at the meeting at which it is introduced, and the resolu-
15 tion or ordinance takes effect immediately without publishing or
16 posting.

17 Sec. 35.12.170. EXEMPTION FROM TAXES, ASSESSMENTS. (a) Bonds
18 and other obligations of the fund are declared to be issued for an
19 essential public and governmental purpose and are public instrumentali-
20 ties and, together with interest on them and income from them, are
21 exempt from taxes.

22 (b) The property of the fund is public property used for
23 essential public and governmental purposes and this property and the
24 fund are exempt from all taxes and special assessments of a municipality,
25 the state or a political subdivision of the state. However, instead
26 of taxes, the fund may make payments to the municipality or political
27 subdivision for improvements, services and facilities furnished by
28 it for the benefit of a public building project.

29 Sec. 35.12.180. EXEMPTION OF REAL PROPERTY OF FUND FROM EXECUTION

1 OR OTHER PROCESS. All real property of the fund is exempt from levy
2 and sale by execution, and no execution or other judicial process
3 may issue against it and no judgment against the fund may be a charge
4 or lien upon its real property. However, this section does not limit
5 the right of an obligee to foreclose or otherwise enforce a mortgage
6 of the fund or to pursue any remedy for the enforcement of a pledge
7 or lien given by the fund on its rents, fees or revenues.

8 Sec. 35.12.190. LEGALITY OF AUTHORITY BONDS AS INVESTMENTS.
9 Bonds of the authority are legal and proper investments and security
10 for public and private banking, insurance and trust funds.

11 Sec. 35.12.200. REPORTS, RECOMMENDATIONS FOR LEGISLATION,
12 AUDIT. (a) The fund shall file with the Department
13 of Public Works an annual report of its activities and shall make
14 recommendations for the legislation or other action it considers
15 necessary to carry out the purposes of this chapter.

16 (b) The fund is subject to an annual audit of its activities
17 and operations under this chapter by the Department of Administration
18 or the legislative audit division of the Legislative Budget and Audit
19 Committee.

20 Sec. 35.12.210. DEFINITIONS. In this chapter

21 (1) "board" means the Board of Trustees of the Alaska State
22 Public Facilities Leasing Fund;

23 (2) "fund" means the Alaska State Public Facilities Leasing
24 Fund;

25 (3) "project site" means area devoted for a public building
26 project;

27 (4) "public buildings" means a publicly owned structure
28 leased to the state for governmental, public or educational use.

29 Sec. 35.12.220. SHORT TITLE. This article may be cited as the

1 Alaska State Public Facilities Leasing Act.

2 * Sec. 2. The Alaska State Public Facilities Leasing Fund created by
3 this Act shall assume the public building assets, and related lease agree-
4 ments and other liabilities and obligations, of the Alaska State Housing
5 Authority.

6 * Sec. 3. This Act takes effect July 1, 1972.
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