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1 IN THE HOUSE

BY MARTIN

2

HOUSE BILL NO. 633

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska Export Development

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Authority."

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

9

* Section 1. AS 45 is amended by adding a new chapter to read:

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CHAPTER 96. ALASKA EXPORT DEVELOPMENT AUTHORITY.

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Sec. 45.96.005. PURPOSES. The purposes of this chapter are to:

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(1) assist, promote, encourage, develop, and advance

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economic prosperity and employment throughout the state by fostering

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the expansion of exports of processed goods, natural resources, and

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services to foreign purchasers;

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(2) cooperate and act in conjunction with other organiza-

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tions, public and private, the objects of which are the promotion and

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advancement of export trade activities in the state;

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(3) establish a source of funding credit guarantees and

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insurance to support export development not otherwise available

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particularly to small and medium-sized businesses;

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(4) provide financial counseling to potential and existing

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exporters.

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Sec. 45.96.010. ALASKA EXPORT DEVELOPMENT AUTHORITY. The Alaska

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Export Development Authority is a public corporation and government

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instrumentality within the Department of Commerce and Economic Devel-

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opment, but having a legal existence independent of and separate from

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the state. The authority may not be terminated as long as it has

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bonds, notes, or other obligations outstanding. Upon termination of

1 the authority, its rights and property pass to the state.

2 Sec. 45.96.020. AUTHORITY GOVERNING BODY. (a) The authority
3 shall be governed by a board of directors consisting of nine members
4 appointed by the governor. Each member of the board must be a state
5 resident and a person of recognized ability and experience in at least
6 one of the following areas: finance, international trade, business
7 management, or economics. Members shall be appointed without regard
8 to party affiliation.

9 (b) Members of the board shall be appointed to three-year terms.
10 If a vacancy occurs on the board, the governor shall make an
11 appointment, effective immediately, for the unexpired portion of the
12 term. Each member shall serve until a successor is appointed and
13 qualified.

14 (c) The directors shall annually elect one of their members as
15 chairman and one as secretary. The board may elect other officers as
16 it considers proper.

17 (d) Members of the board are not entitled to compensation for
18 their services as members, but are entitled to reimbursement by the
19 authority for actual and necessary expenses at the same rate paid to
20 members of state boards under AS 39.20.180.

21 (e) Five members of the board constitute a quorum. The affir-
22 mative vote of a majority of the members present at a meeting of the
23 board is necessary and sufficient for an action taken by the board,
24 except that the affirmative vote of at least five members is required
25 for the approval of a resolution authorizing the issuance of bonds or
26 providing guaranteed funding under this chapter.

27 (f) A vacancy in the membership of the board does not impair the
28 right of a quorum to exercise the rights and perform the duties of the
29 board.

1 (g) The board may delegate to one or more of its members or to
2 its officials, agents, or employees the powers and duties it considers
3 proper.

4 Sec. 45.96.030. MEETINGS OF BOARD. (a) The board shall meet at
5 the call of the chair. The board shall meet not less than once each
6 three months.

7 (b) The board may meet and transact business by electronic media
8 if

9 (1) public notice of the time and locations where the
10 meeting will be held by electronic media has been given in the same
11 manner as if the meeting were held in a single location;

12 (2) participants and members of the public in attendance
13 can hear and have the same right to participate in the meeting as if
14 the meeting were conducted in person; and

15 (3) copies of pertinent reference materials, statutes,
16 regulations, and audio-visual material are reasonably available to
17 participants and to the public.

18 (c) A meeting by electronic media as provided in this section
19 has the same legal effect as a meeting in person.

20 (d) For the purposes of this chapter public notice of 24 hours
21 or more is adequate notice of a meeting of the board at which the
22 issuance of bonds is to be authorized.

23 Sec. 45.96.040. EXECUTIVE DIRECTOR. The authority shall employ
24 an executive director, who may not be a member of the board. The
25 executive director shall be appointed by the board of directors and
26 serves at the pleasure of the board.

27 Sec. 45.96.050. LEGAL ADVISOR. The attorney general is the
28 legal counsel for the authority. The attorney general shall advise
29 the authority in legal matters and represent it in suits.

1 Sec. 45.96.060. EMPLOYMENT OF PERSONNEL. The board may appoint
2 other officers and engage professional and technical advisors as
3 independent contractors. The executive director may hire employees of
4 the authority and, subject to the approval of the board, engage pro-
5 fessional and technical advisors under contract with the authority.
6 The board shall prescribe the duties and compensation of authority
7 personnel, including the executive director.

8 Sec. 45.96.070. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The
9 personnel of the authority are exempt from AS 39.25.

10 Sec. 45.96.080. ADMINISTRATIVE PROCEDURE. (a) Except for
11 AS 44.62.310 and 44.62.312, regarding public meetings, and AS 44.62.-
12 320(a) regarding legislative review of regulations, the Administrative
13 Procedure Act (AS 44.62) does not apply to this chapter. The
14 authority shall make available to members of the public copies of the
15 regulations adopted under this section. Within 45 days after
16 adoption, the chairman of the board shall submit a regulation adopted
17 under this section to the chairman of the Administrative Regulation
18 Review Committee under AS 24.20.400 - 24.20.460. The provisions of
19 AS 44.62.320(a) apply to regulations adopted under this section.

20 (b) The board may adopt regulations by motion or by resolution
21 or in any other manner permitted by its bylaws.

22 (c) The board may adopt regulations to carry out the purposes of
23 this chapter. A regulation adopted under this section becomes effec-
24 tive immediately upon its adoption by the board, unless otherwise
25 specifically provided by the order of adoption.

26 Sec. 45.96.090. EXECUTIVE BUDGET ACT. The operating budget of
27 the authority is subject to the Executive Budget Act (AS 37.07). To
28 further ensure effective budgetary decision making by the legislature,
29 the authority shall present a complete accounting of all assets of the

1 authority to the legislature by January 10 of each year. The account-
2 ing shall be audited by an independent outside auditor and shall
3 include a full description of program receipts received by or accrued
4 to the authority during the preceding fiscal year, and all income
5 earned on assets of the authority during that period.

6 Sec. 45.96.100. GENERAL POWERS. The authority possesses the
7 powers of a body politic and corporate necessary and convenient to
8 accomplish the purposes of this chapter, including the power to

9 (1) borrow money and otherwise incur indebtedness for its
10 purposes, and to issue bonds, debentures, notes, or other evidence of
11 indebtedness, whether secured or unsecured;

12 (2) purchase, discount, sell, negotiate with or without
13 guaranty notes or other evidence of indebtedness, and to sell and
14 guarantee securities;

15 (3) procure insurance to

16 (A) guarantee, insure, coinsure, and reinsure against
17 political and credit risk of loss; and

18 (B) secure the payment of principal and interest on
19 bonds, notes, or other obligations of the authority;

20 (4) provide financial counseling services to businesses in
21 the state;

22 (5) accept gifts, grants, or loans from, and enter into
23 contracts or other transactions with, a federal or state agency,
24 municipality, private organization, or other source;

25 (6) sue and be sued;

26 (7) purchase, receive, take by grant, gift, devise, be-
27 quest, or otherwise, lease, acquire, own, hold, improve, employ, use,
28 and otherwise deal in and with, real or personal property, or an
29 interest in property, wherever situated;

1 (8) sell, convey, lease, exchange, transfer, or otherwise
2 dispose of, its property or an interest in its property;

3 (9) adopt and use a seal;

4 (10) exercise other powers and functions necessary or appro-
5 priate to carry out the purposes of this chapter.

6 Sec. 45.96.110. GUARANTEED FUNDING FOR ALASKA EXPORTS. (a) The
7 authority may provide guaranteed funding for an eligible export trans-
8 action through a participating banking organization. An eligible
9 export transaction consists of a loan to a participating banking
10 organization located in the state to finance an international preex-
11 port or export from the state that in the judgment of the authority
12 will: (1) create or maintain employment in the state; and (2) contain
13 at least 25 percent of the value of manufactured goods or services
14 whose final manufacturing process occurs in the state. Guaranteed
15 funding may include a pool of individual export transactions, each of
16 which in the judgment of the authority meets these conditions.

17 (b) Guaranteed funding consists of a guarantee against political
18 or commercial loss, in whole or in part, of principal and interest on
19 an eligible export transaction. A guarantee may include, without
20 limitation, insurance against loss up to a stated amount. The maximum
21 amount payable under a guarantee shall be specifically set out in a
22 writing executed by the chair and secretary of the board at the time
23 the guarantee is entered into by the authority. A guarantee does not
24 constitute a general obligation of the state, and may not be termi-
25 nated, cancelled, or otherwise revoked except in accordance with its
26 terms. A guarantee made by the authority is valid and incontestable
27 in the hands of a holder in due course of a guaranteed eligible export
28 transaction.

29 (c) A participating banking organization is a banking

1 institution operating under AS 06, an agency or branch of a foreign
2 banking corporation licensed by the state, a national bank, federal
3 savings and loan association, or federal credit union located in the
4 state, that has been approved by the board of directors of the
5 authority to participate in guaranteed funding for an eligible export
6 transaction.

7 (d) The authority may charge reasonable fees for providing
8 guaranteed funding under this section to a participating banking
9 organization.

10 (e) Before providing guaranteed funding under this section, a
11 participating banking organization shall make an investigation of a
12 line of credit to the exporter in order to determine the economic
13 benefits to be derived, the prospects for repayment, and other facts
14 needed to determine that the guaranteed funding is consistent with the
15 purposes of this chapter. The authority shall provide guaranteed
16 funding only if, and to the extent that, (1) the funding is reasonably
17 necessary to stimulate or facilitate the making of the eligible export
18 transaction on terms that will enable the transaction to be reasonably
19 competitive with transactions in other states or in foreign countries;
20 or (2) the funding is reasonably necessary to stimulate or facilitate
21 the resale of the eligible export transaction to a holder in due
22 course who would not otherwise purchase the eligible export trans-
23 action. The authority may condition guaranteed funding on other terms
24 and conditions desirable to carry out the purposes of this chapter.

25 Sec. 45.96.120. POWERS TO BE INTERPRETED BROADLY. The powers
26 set out in this chapter shall be interpreted broadly to effect the
27 purposes of this chapter.

28 Sec. 45.96.130. IMMUNITY FROM PERSONAL LIABILITY. A director or
29 a person acting on behalf of the authority may not be held personally

1 liable for executing contracts, commitments, or agreements or for
2 damage or injury resulting from the performance of duties.

3 Sec. 45.96.140. BONDS. (a) The authority may issue, sell, and
4 provide for the retirement of bonds in the amount of \$100,000,000 for
5 the creation and operation of the authority. The bonds shall be
6 limited obligations of the authority. The principal and interest are
7 payable solely from the revenue raised by the authority. Bonds issued
8 under this section are not an indebtedness of the state or the author-
9 ity, but are payable solely from a revenue-producing source or from a
10 special source, not including revenue from a tax or license. The
11 bonds do not give rise to a pecuniary liability of the state or the
12 authority, or to a charge against the general credit of the authority
13 or the state or taxing powers of the state, and this fact shall be
14 plainly stated on the face of each bond.

15 (b) A resolution authorizing the issuance of bonds by the au-
16 thority shall specify

17 (1) whether the bonds are to be executed and delivered as a
18 single issue or as several issues;

19 (2) the form and denominations of the bonds;

20 (3) that the bonds are payable in installments not exceed-
21 ing five years from their date;

22 (4) the terms of redemption;

23 (5) the interest rate or rates that the bonds bear; and

24 (6) other provisions consistent with this subsection.

25 (c) Bonds issued under this section may be sold at public or
26 private sale at a price and time and in a manner determined by the
27 authority to be most advantageous. The authority may pay from the
28 proceeds of the bonds all expenses, premiums, insurance premiums, and
29 commissions necessary or advantageous to the authorization, sale, and

1 issuance of the bonds.

2 (d) A resolution authorizing the issuance of bonds, or a securi-
3 ty agreement, indenture, or trust indenture to be entered into in
4 connection with the issuance of bonds, may contain agreements and
5 provisions customarily contained in instruments securing bonds, in-
6 cluding provisions respecting the fixing and collection of obliga-
7 tions, the creation and maintenance of special funds, and the rights
8 and remedies available to the bondholders or to the trustee in the
9 event of default. In making these agreements or provisions the au-
10 thority may not obligate itself except with respect to eligible export
11 transactions and may not incur a pecuniary liability or a charge upon
12 the general credit of the authority or the state or against the taxing
13 powers of the state. The resolution or security agreement may provide
14 that, in the event of default in payment of the principal or interest
15 or in the performance of an agreement, the payment and performance may
16 be enforced by mandamus or by the appointment of a receiver in equity
17 with power to charge and collect obligations and to apply revenue
18 pledged. A security agreement also may provide that in the event of
19 default in payment or the violation of an agreement, the security
20 agreement may be foreclosed by proceedings at law or in equity. A
21 security agreement may provide that a trustee under the agreement or
22 the holder of bonds secured by the agreement may become the purchaser
23 at a foreclosure sale, by offering the highest bid. A breach of a
24 security agreement does not impose a pecuniary liability on the state
25 or the authority, or a charge on the general credit of the authority
26 or of the state or against the taxing power of the state.

27 (e) A trustee under a security agreement, or a depository speci-
28 fied by a security agreement, may be a person or corporation desig-
29 nated by the authority, notwithstanding that the trustee may be a

1 nonresident of the state or incorporated under the laws of the United
2 States or another state.

3 (f) Bonds issued under this section that are outstanding may be
4 refunded by the authority by issuing refunding bonds in the minimum
5 amount necessary to refund the principal of the bonds to be refunded,
6 together with unpaid interest and premiums, expenses, and commissions
7 necessary to be paid in connection with the refund. Refunding may be
8 effected whether the bonds to be refunded have matured or shall there-
9 after mature, either by sale of the refunding bonds or by exchange of
10 the refunding bonds for the bonds to be refunded. The holder of a
11 bond to be refunded may not be compelled without consent to surrender
12 the bonds for payment or exchange before the date on which the bonds
13 are payable or, if the bonds are called for redemption, before the
14 date on which the bonds are by their terms subject to redemption.
15 Refunding bonds issued under this section are payable in the same
16 manner and under the same terms and conditions provided for the issu-
17 ance of bonds.

18 (g) The proceeds from the sale of a bond issued under this
19 section shall be applied only for the purpose for which the bonds were
20 issued. A premium and secured interest received in a bond sale shall
21 be applied to the payment of the principal of or the interest on the
22 bonds sold. Any portion of the proceeds not needed for the purpose
23 for which the bonds were issued shall be applied to the payment of the
24 principal or interest.

25 Sec. 45.96.150. EXPORT DEVELOPMENT BOND FUND. There is created
26 the export development bond fund in the state treasury. The fund
27 consists of the proceeds of export development bonds and all other
28 money received by the authority through appropriations by law. The
29 commissioner of revenue may, with the approval of the board of

1 directors of the authority, invest and reinvest money from the fund in
2 obligations of the United States government or other appropriate
3 governmental or corporate issuers. Earnings on investments shall be
4 added to the fund.

5 Sec. 45.96.160. INSURANCE. (a) There is established in the
6 authority an insurance fund consisting solely of money from the export
7 development bond fund. The insurance fund shall be held in the
8 custody of one or more banks or trust companies having a principal
9 place of business in the state. The insurance fund shall be held as
10 security for the holders of bonds issued under this chapter.

11 (b) The insurance fund shall be governed by a trust agreement
12 entered into by the authority with the trustees. The trust agreement
13 may contain provisions and limitations concerning the investment and
14 disbursement of money in the insurance fund, the payment of expenses
15 of the insurance fund, the appointment, resignation and discharge of
16 trustees, the delegation to the trustees of enforcement and collection
17 powers under the insurance agreements, the duties of the trustees,
18 amendments of the trust agreement, and other appropriate lawful pro-
19 visions and limitations. The trust agreement may pledge premiums and
20 other money that may be deposited in the insurance fund. The pledge
21 is valid and binding from the time the pledge is made. The premiums
22 and other money pledged and received by the insurance fund or by the
23 trustees shall immediately be subject to the lien of the pledge and
24 shall be valid and binding as against parties having claims against
25 the insurance fund, irrespective of whether the parties have received
26 notice.

27 (c) The authority may also use money from the export development
28 bond fund to purchase insurance to be pledged for the security of the
29 holders of bonds issued under this chapter. If insurance is pledged

1 as security, whether obtained through the insurance fund or purchased
2 with money from the export development bond fund, a description of the
3 insurance shall expressly indicate the limitation on the liability of
4 the authority and that neither the credit nor the taxing power of the
5 state or a political subdivision of the state is available to satisfy
6 obligations.

7 Sec. 45.96.170. BONDS AND NOTES ARE LEGAL INVESTMENTS. The
8 bonds, debentures, notes, or other evidence of indebtedness of the
9 authority are securities in which public officers and bodies of the
10 state, municipalities, municipal subdivisions, insurance companies and
11 associations, other persons carrying on an insurance business, banks,
12 bankers, trust companies, savings banks, savings associations, savings
13 and loan associations, building and loan associations, investment
14 companies, other persons carrying on a banking business, administra-
15 tors, guardians, executors, trustees, other fiduciaries, and other
16 persons authorized to invest in bonds or other obligations of the
17 state, may properly and legally invest funds, including capital, in
18 their control or belonging to them. Notwithstanding other provision
19 of law, the bonds, debentures, notes, or other evidence of indebted-
20 ness of the authority are also securities that may be deposited with
21 and received by public officers and bodies of the state, and munici-
22 palities and municipal subdivisions, for any purpose for which the
23 deposit of bonds or other obligations of the state is or may be au-
24 thorized.

25 Sec. 45.96.180. TAX EXEMPTION. (a) The authority is exempt
26 from franchise, corporate, business, and income taxes levied by the
27 state. This subsection may not be construed to exempt from taxes a
28 person receiving guaranteed funding from the authority.

29 (b) Bonds authorized under this chapter, and the income from the

1 bonds, is exempt from taxation in the state, except for inheritance,
2 estate, or transfer taxes. Security agreements and financing agree-
3 ments made under this chapter are exempt from state stamp and transfer
4 taxes.

5 Sec. 45.96.190. CONFIDENTIAL INFORMATION. Information submitted
6 to or compiled by the authority in connection with the authority's
7 responsibilities that concerns the identity, background, finance,
8 marketing plans, trade secrets, or other commercially sensitive infor-
9 mation of persons is confidential, except to the extent that the
10 person who provided the information consents to disclosure.

11 Sec. 45.96.200. ANNUAL REPORT. (a) The authority shall prepare
12 and transmit annually a report to the governor and the legislature
13 accounting for the efficient discharge of all responsibility assigned
14 by law or by directive to the authority.

15 (b) By January 10 of each year, the board shall publish a report
16 of the authority for distribution to the governor, the legislature,
17 and the public. The report shall be written in language that a legis-
18 lator can understand. The report shall include a financial statement
19 audited by an independent outside auditor, a comparison of the author-
20 ity's performance with the goals of the authority, the levels of
21 bonding and investment activities anticipated in the previous year's
22 report, and other information the board believes would be of interest
23 to the governor, the legislature, and the public. The annual income
24 statement and balance sheet of the authority shall be published in at
25 least one newspaper in each judicial district. The board may also
26 publish other reports it considers desirable to carry out its purpose.

27 Sec. 45.96.250. DEFINITION. In this chapter, unless the context
28 indicates otherwise, "authority" means the Alaska Export Development
29 Authority.

1 * Sec. 2. Notwithstanding AS 45.96.020, enacted by sec. 1 of this Act,
2 of the members initially appointed to the board of directors of the Alaska
3 Export Development Authority, three members shall be appointed to one-year
4 terms, three members shall be appointed to two-year terms, and three
5 members shall be appointed to three-year terms.