

SENATE CS FOR CS FOR HOUSE BILL NO. 471(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/20/06

Referred: Rules

Sponsor(s): REPRESENTATIVES STOLTZE, Elkins

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending the Knik Arm Bridge and Toll Authority Act and the powers and**
2 **authority of the authority to finance construction and maintenance of the Knik Arm**
3 **Bridge, to set and collect tolls, and to carry out its duties; and providing for an effective**
4 **date."**

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

6 * **Section 1.** AS 19.75.111 is amended to read:

7 **Sec. 19.75.111. Powers and duties of the authority.** (a) **Except as otherwise**
8 **explicitly made applicable to the authority, the performance of the authority's**
9 **duties and the exercise of its powers, including its powers to issue bonds and**
10 **otherwise incur debt, shall be governed exclusively by this chapter.** In furtherance
11 of its purposes, the authority may

12 (1) own, acquire, construct, develop, create, reconstruct, equip,
13 operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant
14 facilities;

1 (2) sue and be sued;
 2 (3) adopt a seal;
 3 (4) adopt, amend, and repeal regulations under AS 44.62 and establish
 4 bylaws;

5 (5) make and execute agreements, contracts, and all other instruments
 6 with any public or private person, governmental unit or agency, corporation, or
 7 other business entity lawfully conducting business in the United States for the
 8 exercise of its powers and functions under this chapter and for the financing, design,
 9 construction, maintenance, improvement, or operation of facilities, properties, or
 10 projects of the authority, including making and executing contracts with any
 11 person, firm, corporation, governmental agency, or other entity for the purpose of

12 (A) incurring indebtedness, obtaining investments in the
 13 authority's projects, acquiring or granting lump sum payments for
 14 services in advance or in arrears, grants, and other financing; and

15 (B) entering into public-private partnerships or service
 16 contracts in any form;

17 (6) in its own name acquire, lease, rent, sell, or convey real and
 18 personal property;

19 (7) issue and refund bonds [AND OTHERWISE INCUR
 20 INDEBTEDNESS,] in accordance with this chapter [AS 19.75.211], in order to pay
 21 the cost of the Knik Arm bridge and its appurtenant facilities; the authority may also
 22 secure payment of the bonds [OR OTHER INDEBTEDNESS] as provided in this
 23 chapter [AS 19.75.221];

24 (8) incur other indebtedness, including lines of credit and
 25 indebtedness to the Federal Highway Administration, United States Department
 26 of Transportation, under 23 U.S.C. 601 - 610 (Transportation Infrastructure
 27 Finance and Innovation Act of 1998), as amended, and secure that indebtedness
 28 as provided in this chapter;

29 (9) apply for and accept gifts, grants, or loans from a federal agency or
 30 an agency or instrumentality of the state, or from a municipality, private organization,
 31 or other source, including obtaining title to state, local government, or privately

owned land, directly or through a department of the state having jurisdiction of the land;

(10) [(9)] fix and collect fees, rents, tolls, rates, or other charges for the use of the Knik Arm bridge and appurtenant facilities, or for a service developed, operated, or provided by the authority; notwithstanding AS 37.10.050(a), fees, rents, tolls, rates, and other charges fixed and collected under this paragraph may exceed the actual operating cost of the use of the bridge, facility, or service;

(11) bring civil actions, refer criminal actions to the appropriate authority, and take other actions or enter into agreements with law enforcement and collection agencies to enforce the collection of its fees, rents, tolls, rates, other charges, penalties, and other obligations;

(12) [(10)] pledge, **encumber, transfer, or otherwise obligate revenue derived by the authority from the ownership, use, or operation of toll facilities, including** fees, rents, tolls, rates, charges, or other revenue of the authority **or money that the legislature may appropriate, except a state tax or license,** as security for bonds **or other indebtedness or agreements** of the authority;

(13) [(11)] deposit or invest its funds, subject to agreements with bondholders;

(14) [(12)] procure insurance against any loss in connection with its operation;

(15) [(13)] contract for and engage the services of consultants, experts, and financial and technical advisors that the authority considers necessary for the exercise of its powers and functions under this chapter;

(16) [(14)] apply for, obtain, hold, and use permits, licenses, or approvals from appropriate agencies of the state, the United States, a foreign country, and any other proper agency in the same manner as any other person;

(17) [(15)] perform reconnaissance studies and engineering, survey, and design studies with respect to the Knik Arm bridge and its appurtenant facilities;

(18) [(16)] exercise powers of eminent domain or file a declaration of taking as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 - 09.55.460 to acquire land or an interest in land; **the authority's**

exercise of powers under this paragraph may not exceed the permissible exercise of those powers by the state;

(19) [(17)] confer with municipal and other governments, metropolitan planning organizations, and the department, concerning the Knik Arm bridge;

(20) [(18)] do all acts and things necessary to carry out the powers expressly granted or necessarily implied in this chapter; **nothing in this chapter limits the powers of the authority that are expressly granted or necessarily implied.**

(b) The authority shall

(1) prepare an annual report of its operations to include a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, an auditor's report, comments regarding the year's business, and prospects for the next year; the report shall be completed by the third day of each regular session of the legislature, and the authority shall notify the governor, the commissioner of the department, the presiding officers of each house of the legislature, and the Legislative Budget and Audit Committee that the report is available;

(2) comply with the provisions of AS 37.07 (Executive Budget Act), except that AS 37.07 does not apply to the activities of the authority that relate to the authority's borrowing of money as provided in this chapter, including the issuing of its obligations or evidence of that borrowing and the repayment of the debt obligation;

(3) establish a personnel management system for hiring employees and setting employee-benefit packages;

(4) establish procedures, rules, and rates governing per diem and travel expenses of the employees of the authority in substantial conformity to statutes, procedures, rules, and rates applicable to state employees of similar state entities;

(5) coordinate the exercise of its powers to plan, design, construct, operate, and maintain the Knik Arm bridge with the department, and with the mayors of the Municipality of Anchorage and the Matanuska-Susitna Borough;

(6) have the exclusive authority to determine and fix fees, rents, tolls, rates, and other charges, including the tolls for the use of the bridge and

appurtenant facilities and for the use of all other properties under the control of or owned or managed by the authority.

* **Sec. 2.** AS 19.75 is amended by adding a new section to read:

Sec. 19.75.113. Assets, funds, and revenue of the authority. (a) The Department of Revenue shall separately account for all funds, assets, and revenue of the authority.

(b) The deposit or investment of money in the authority's funds may be made as the board determines. The interest earned on or profits derived from the deposit, investment, or sale of an investment by the authority are funds of the authority.

* **Sec. 3.** AS 19.75.211 is amended to read:

Sec. 19.75.211. Bonds of the authority. **Notwithstanding any other provision of law, the** [THE] authority may borrow money and issue **and refund** bonds on which the principal and interest are **paid out of and secured by the gross revenue derived by the authority from the ownership, use, and operation of its toll facilities, including** [PAYABLE FROM] money derived from the fees, rents, tolls, rates, charges, and other revenue of the authority under this chapter **and any other revenue or money that the legislature may appropriate, except a state tax or license**. Before issuing bonds for the Knik Arm bridge, the authority shall submit to the state bond committee a description of the bond issue and a preliminary prospectus, offering circular, or official statement relating to the bond issue. Bonds may not be issued unless the state bond committee finds, based upon the information submitted by the authority under this section and other information that is reasonably available to the committee, that the Knik Arm bridge revenue and other revenue available to the authority can be reasonably expected to be adequate for payment of the principal **of** and interest on the bonds to be issued and that issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds. [BONDS MAY NOT BE ISSUED UNLESS THE PRINCIPAL AMOUNT OF THE BOND ISSUE IS AUTHORIZED BY LAW.]

* **Sec. 4.** AS 19.75.211 is amended by adding new subsections to read:

(b) The bonds of the authority may be sold in the amounts or series and at the time determined by its board of directors. Bonds, or a series of bonds, may not be sold

1 if the effective interest rate over the life of the bonds exceeds 11 percent a year or a
 2 rate of interest that is 125 percent of the rate of the Bond Buyer Index of 20 Municipal
 3 Bond Average Yields for the week previous to the date of the sale of the bonds,
 4 whichever is higher.

5 (c) The authority may issue bonds in an aggregate amount not to exceed
 6 \$500,000,000, plus the cost of issuance.

7 (d) The amount of refunding bonds that may be issued by the authority and
 8 bond premiums may not be included in the aggregate amount, but may be in addition
 9 to the amount authorized by (c) of this section.

10 * **Sec. 5.** AS 19.75.221 is amended by adding a new subsection to read:

11 (h) Notwithstanding any other provision of law, the authority may establish
 12 other funds and reserves as the board of directors may determine reasonable and
 13 prudent for the issuance of bonds or for the conduct of the business and affairs of the
 14 authority. The interest earned on or profit derived from these funds and reserves shall
 15 be the property of the authority.

16 * **Sec. 6.** AS 19.75.241(b) is amended to read:

17 (b) The bonds issued by the authority do not constitute an indebtedness or
 18 other liability of the state or of a political subdivision of the state other than the
 19 authority, but shall be payable solely from the income, receipts, or other money or
 20 property of the authority. All documents published by the authority or to which the
 21 authority is a signatory and used in or for the issuance of bonds by the authority
 22 must state that they are prepared by or for the authority.

23 * **Sec. 7.** AS 19.75.241(c) is amended to read:

24 (c) The authority may not pledge the faith or credit of the state or of a political
 25 subdivision of the state other than the authority, and the issuance of a bond by the
 26 authority does not directly, indirectly, or contingently obligate the state or a political
 27 subdivision of the state to apply money from, levy, or pledge any form of taxation to
 28 the payment of the bond or to make payments due on the bonds from any source of
 29 funds not pledged for repayment of the bonds.

30 * **Sec. 8.** AS 19.75 is amended by adding new sections to article 2 to read:

31 **Sec. 19.75.330. Bond terms.** (a) The bonds of the authority mature at the time

1 fixed by the board. The bonds may be subject to redemption before their fixed
 2 maturities as determined by the board, or by the authority's executive director when
 3 delegated that responsibility under AS 19.75.332, and with the premium fixed by the
 4 board, but a bond may not be subject to redemption before its fixed maturity date
 5 unless the right to redeem that bond is expressly mentioned on the face of the bond.
 6 The bonds

7 (1) may be in denominations determined by the board;

8 (2) may be issued in coupon form or in fully registered form, and may
 9 be registrable as to principal or both principal and interest, all under regulations and
 10 conditions the board provides;

11 (3) are payable as to principal and interest at the place determined by
 12 the board;

13 (4) shall be signed on behalf of the authority as the board may direct;
 14 the signatures may be facsimile signatures; each of the interest coupons, if any,
 15 attached to the bonds shall be signed by the facsimile signatures of the officials as the
 16 board may direct;

17 (5) shall have the seal of the authority impressed, printed, or
 18 lithographed on them; and

19 (6) shall be issued under and subject to the terms, conditions, and
 20 covenants, providing for the payment of the principal of and interest on the bonds and
 21 the other terms, conditions, covenants, and protective features safeguarding this
 22 payment and relating to the operations, maintenance, or capital improvements as found
 23 necessary by the board, which covenants may include a provision requiring the setting
 24 aside and maintenance of certain reserves to secure the payment of the principal and
 25 interest or for operations, maintenance, or capital improvements.

26 (b) The board may select a trustee or trustees for the holders of the bonds or
 27 any series of the bonds, for the safeguarding and disbursement of any of the money in
 28 any of the funds created under this chapter or for the duties of authentication, delivery,
 29 and registration of the bonds as the board may determine. The board shall fix the
 30 rights, duties, powers, and obligations of the trustee or trustees.

31 (c) In determining the matters and questions relating to the issuance and sale

1 of the bonds and the fixing of the maturities, terms, conditions, covenants, and other
 2 subjects of the bonds as provided in (a) and (b) of this section, the decisions of the
 3 board shall be those found to be reasonably necessary for the best interests of the
 4 authority and the construction, operation, and maintenance of its facilities, and those
 5 that will accomplish the most advantageous sale of the bonds, giving due regard to (1)
 6 necessary or normal costs of maintenance and operation; (2) renewals and
 7 replacements of and repairs to the toll facilities; (3) all improvements to toll facilities
 8 and property of toll facilities owned, used, operated, or leased in connection with toll
 9 facilities; (4) the future growth and expansion of all of the facilities; and (5) the
 10 possibility of additional revenue bond financing for toll facilities purposes. A decision
 11 of the board as expressed in any bond resolution, is final when any bonds have been
 12 issued under the bond resolution.

13 (d) A bond resolution may provide that the bonds issued must contain a recital
 14 that the bonds are issued under this chapter, and any bonds containing this recital are
 15 conclusively considered to be valid and to have been issued in conformity with this
 16 chapter.

17 (e) The validity of the authorization and issuance of bonds is not affected by
 18 any proceeding for the acquisition or construction of the additions, improvements, or
 19 facilities for which the bonds have been issued or by any contract in connection with
 20 the acquisition or construction.

21 **Sec. 19.75.332. Bond resolution.** (a) When issuing bonds of the authority, the
 22 board shall adopt the bond resolution and approve all other documents and
 23 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
 24 series of them. The bond resolution shall fix the aggregate principal amount and
 25 denomination, date, maturities, place or places of payment, rights of redemption, if
 26 any, terms, form, conditions, and covenants of the bonds or each series of them. The
 27 board shall also determine and provide for the date and manner of sale of the bonds,
 28 and shall provide where the notice of sale, if any, is to be published.

29 (b) The board may delegate to the authority's executive director the authority
 30 to approve final principal maturities and dates, interest rates, redemption rights, and
 31 interest payment dates under the terms and conditions the board determines by

1 resolution.

2 **Sec. 19.75.334. Enforcement by holder.** The holder of any bonds or the
3 trustee for the holders of the bonds or any series of them, may, by appropriate
4 proceedings in state court, compel the transfer, setting aside, and payment of money
5 and the enforcement of all of the terms, conditions, and covenants as required and
6 provided in AS 19.75.330 and 19.75.332 and in the bond resolution.

7 **Sec. 19.75.336. Bond negotiability.** The bonds and the coupons attached to
8 them are fully negotiable instruments under the laws of the state.

9 **Sec. 19.75.338. Refunding.** (a) The bonds or any part of them may be
10 refunded at or before their maturity by the issuance of refunding revenue bonds of the
11 authority if, in the opinion of the board, refunding is advantageous to and in the best
12 interest of the authority.

13 (b) The board shall adopt the resolution authorizing refunding and all other
14 documents and proceedings necessary for the issuance, exchange or sale, and delivery
15 of the bonds. All provisions of AS 19.75.211 - 19.75.271, except AS 19.75.211(c), and
16 AS 19.75.330 - 19.75.340 applicable to revenue bonds are applicable to the refunding
17 bonds and to the issuance, sale, or exchange of the bonds, except as otherwise
18 provided in this section.

19 (c) Refunding bonds may be issued in a principal amount sufficient to provide
20 money for the payment of all bonds to be refunded by them and, in addition, for the
21 payment of all expenses incident to the calling, retiring, or paying of the outstanding
22 bonds, and the issuance of the refunding bonds. These expenses include, without
23 limitation,

24 (1) the difference in amount between the par value of the refunding
25 bonds and any amount less than par for which the refunding bonds are sold;

26 (2) any amount necessary to be made available for the payment of
27 interest on the refunding bonds from the date of sale of the bonds to the date of
28 payment of the bonds to be refunded or to the date on which the bonds to be refunded
29 will be paid under the call of the bonds or agreement with the holders of the bonds;

30 (3) the premium, if any, necessary to be paid in order to call or retire
31 the outstanding bonds; and

(4) the interest accruing on the outstanding bonds to the date of the call or retirement and other costs of issuance and refunding.

Sec. 19.75.340. Bonds as legal investments. Bonds of the authority, including toll facilities bonds, are legal investments for all banks, trust companies, savings banks, savings and loan associations, and other persons carrying on a banking business, all insurance companies and other persons carrying on an insurance business, and all executors, administrators, trustees, and other fiduciaries. The bonds may be accepted as security for deposits of all money of the state and its political subdivisions.

* **Sec. 9.** AS 19.75 is amended by adding new sections to read:

Sec. 19.75.915. Liability for payment of tolls. The owner of a vehicle using a facility owned, controlled, or managed by the authority for which a toll or fee is imposed is liable for the payment of the toll or fee solely because of the vehicle ownership, unless the vehicle, except a rental vehicle, is used without the owner's knowledge and incurs the toll or fee during operation.

Sec. 19.75.920. Statutory construction. This chapter shall be liberally construed in order to carry out the purposes for which it was enacted. All existing laws in conflict with this chapter are superseded as necessary to accomplish the purposes of this chapter.

* **Sec. 10.** AS 19.75.980 is amended to read:

Sec. 19.75.980. Definitions. In this chapter, except as otherwise provided and unless the context requires otherwise,

(1) "authority" means the Knik Arm Bridge and Toll Authority;

(2) "board" means the board of directors of the authority;

(3) "department" means the Department of Transportation and Public Facilities;

(4) "state bond committee" means the state bond committee created by AS 37.15.110.

* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).