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SENATE CS FOR 2d CS FOR HOUSE BILL NO. 23(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES NEUMAN AND HUGHES, Keller, Stoltze

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Knik Arm Bridge and Toll Authority; relating to the bonding
2 authority of the Knik Arm Bridge and Toll Authority; relating to toll bridge revenue
3 bonds; creating the toll bridge revenue fund, the toll bridge revenue bond redemption
4 fund, and the bond reserve fund; relating to powers and duties of the state bond
5 committee; and providing for an effective date."

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

7 * **Section 1.** AS 19.75.021(b) is amended to read:

8 (b) The authority may not be terminated as long as it has bonds, notes, or other
9 obligations outstanding, including obligations under an agreement with the state as
10 provided in AS 37.15.225. Upon termination of the authority, its rights and property
11 pass to the state.

12 * **Sec. 2.** AS 19.75.111(a) is amended to read:

13 (a) Except as otherwise explicitly made applicable to the authority, the

1 performance of the authority's duties and the exercise of its powers, including its
2 powers to issue bonds and otherwise incur debt, shall be governed exclusively by this
3 chapter. In furtherance of its purposes, the authority may

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

7 (2) sue and be sued;

8 (3) adopt a seal;

9 (4) adopt, amend, and repeal regulations under AS 44.62 and establish
10 bylaws;

11 (5) make and execute agreements, contracts, and all other instruments
12 with any public or private person, **the state or another** governmental unit or agency,
13 corporation, or other business entity lawfully conducting business in the United States
14 for the exercise of its powers and functions under this chapter and for the financing,
15 design, construction, maintenance, improvement, or operation of facilities, properties,
16 or projects of the authority, including making and executing contracts with any person,
17 firm, corporation, **the state or another** governmental agency, or other entity for the
18 purpose of

19 (A) incurring indebtedness, **obtaining financing for the**
20 **authority's projects,** obtaining investments in the authority's projects,
21 acquiring or granting lump sum payments for services in advance or in arrears,
22 grants, and other financing; and

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

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

27 (7) issue and refund bonds in accordance with this chapter, in order to
28 pay the cost of the Knik Arm bridge and its appurtenant facilities; the authority may
29 also secure payment of the bonds as provided in this chapter;

30 (8) incur other indebtedness, including lines of credit and indebtedness
31 to the Federal Highway Administration, United States Department of Transportation,

1 under 23 U.S.C. 601 - 610 (Transportation Infrastructure Finance and Innovation Act
2 of 1998), as amended, and secure that indebtedness as provided in this chapter;

3 (9) apply for and accept gifts, grants, or loans from a federal agency or
4 **the state or** an agency or instrumentality of the state, or from a municipality, private
5 organization, or other source, including obtaining title to state, local government, or
6 privately owned land, directly or through a department of the state having jurisdiction
7 of the land;

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

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

17 (12) pledge, encumber, transfer, or otherwise obligate revenue derived
18 by the authority from the ownership, use, or operation of toll facilities, including fees,
19 rents, tolls, rates, charges, or other revenue of the authority or money that the
20 legislature may appropriate, except a state tax or license, as security for bonds or other
21 indebtedness or agreements of the authority **or for bonds or other indebtedness or**
22 **agreements of the state on a senior, parity, or subordinate lien basis;**

23 (13) deposit or invest its funds, subject to agreements with
24 bondholders;

25 (14) procure insurance against any loss in connection with its
26 operation;

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

30 (16) apply for, obtain, hold, and use permits, licenses, or approvals
31 from appropriate agencies of the state, the United States, a foreign country, and any

1 other proper agency in the same manner as any other person;

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

4 (18) exercise powers of eminent domain or file a declaration of taking
5 as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 -
6 09.55.460 to acquire land or an interest in land; the authority's exercise of powers
7 under this paragraph may not exceed the permissible exercise of those powers by the
8 state;

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

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

14 * **Sec. 3.** AS 19.75.211(a) is amended to read:

15 (a) Notwithstanding any other provision of law, the authority may borrow
16 money and issue and refund bonds on which the principal and interest are paid out of
17 and secured by the gross revenue derived by the authority from the ownership, use,
18 and operation of its toll facilities, including money derived from the fees, rents, tolls,
19 rates, charges, and other revenue of the authority under this chapter and any other
20 revenue or money that the legislature may appropriate, except a state tax or license.
21 Before issuing bonds for the Knik Arm bridge, the authority shall submit to the state
22 bond committee a description of the bond issue and a preliminary prospectus, offering
23 circular, or official statement relating to the bond issue. Bonds may not be issued
24 unless the state bond committee finds, based upon the information submitted by the
25 authority under this section and other information that is reasonably available to the
26 committee, that the Knik Arm bridge revenue and other revenue available to the
27 authority can be reasonably expected to be adequate for payment of the principal of
28 and interest on the bonds to be issued **by the authority and payments by the**
29 **authority under an agreement under AS 37.15.255 for bonds issued by the state**
30 and that issuance of the bonds by the authority would not be expected to adversely
31 affect the ability of the state or its political subdivisions to market bonds.

1 * **Sec. 4.** AS 19.75.221(b) is amended to read:

2 (b) Notwithstanding any other provisions of this chapter, the trust agreement
3 must contain an agreement by the authority that the authority will at all times maintain
4 fees, rents, tolls, rates, or other charges sufficient to

5 (1) pay the costs of operation and maintenance of the Knik Arm bridge
6 and its appurtenant facilities and the principal of and interest on bonds issued under
7 the trust agreement as the bonds severally become due and payable;

8 (2) provide for debt service coverage as considered necessary by the
9 authority for the marketing of its bonds; [AND]

10 (3) provide for renewals, replacements, and improvements of the Knik
11 Arm bridge, and to maintain reserves required by the terms of the trust agreement;
12 and

13 (4) make payments to the state under an agreement under
14 AS 37.15.255 for bonds issued by the state.

15 * **Sec. 5.** AS 19.75.231 is amended to read:

16 **Sec. 19.75.231. Validity of pledge.** It is the intention of the legislature that a
17 pledge made in respect of bonds of the authority or bonds of the state shall be
18 perfected and shall be valid and binding from the time the pledge is made, that the
19 money or property so pledged and after that received by the authority shall
20 immediately be subject to the lien of the pledge without physical delivery or further
21 act, and that the lien of the pledge shall be valid and binding against all parties having
22 claims of any kind in tort, contract, or otherwise against the authority irrespective of
23 whether the parties have notice. Neither the resolution, trust agreement, nor any other
24 instrument by which a pledge is created need be recorded or filed under the provisions
25 of the Uniform Commercial Code in order to be perfected or to be valid, binding, or
26 effective against the parties. This section does not affect title to or conveyances of real
27 property, and does not limit the applicability of AS 40.17.080(b).

28 * **Sec. 6.** AS 37.15 is amended by adding new sections to read:

29 **Article 1A. Toll Bridge Revenue Bonds.**

30 **Sec. 37.15.225. Bond authorization.** (a) For purposes of financing a portion
31 of the costs of the Knik Arm Crossing and appurtenant facilities or other toll bridges

1 as the legislature may designate, including the costs of bond issuance, the issuance and
2 sale of bonds of the state by the committee is authorized as provided in AS 37.15.225 -
3 37.15.285. The net proceeds of the sale of the bonds remaining after payment of costs
4 of issuance, capitalized interest, if any, and making deposits to the bond reserve fund
5 under AS 37.15.255, shall be transferred to the Knik Arm Bridge and Toll Authority
6 for the Knik Arm Crossing project facilities or another authority as the legislature may
7 designate for other projects approved by the legislature, or may be held by a trustee to
8 be disbursed to pay the costs of a toll bridge under the terms and conditions set out in
9 a trust agreement. Accrued interest paid on the bonds shall be paid into the bond
10 redemption fund.

11 (b) Prior to the issuance of bonds authorized under (a) of this section, the
12 committee shall send notice of the issuance to the legislature.

13 (c) The total unpaid principal amount of bonds, including refunding bonds, but
14 excluding refunded bonds, is limited as provided in AS 37.15.230. The bonds do not
15 constitute a general obligation of the state. Authorization by the voters of the state or
16 the legislature is not required.

17 (d) The committee may enter into agreements with other state agencies as
18 necessary or convenient to implement AS 37.15.225 - 37.15.285.

19 (e) The committee may contract for the services of underwriters, paying
20 agents, trustees, bond printers, rating agencies, bond insurance, credit enhancement
21 providers, accountants, financial advisors, and bond counsel, and other services as are
22 necessary to accomplish the bond issuance and sale.

23 **Sec. 37.15.230. Toll bridge revenue bond limit.** The total unpaid principal
24 amount of revenue bonds issued under AS 37.15.225 - 37.15.285, including refunding
25 bonds but excluding refunded bonds, may not exceed \$300,000,000.

26 **Sec. 37.15.235. Toll bridge revenue fund.** (a) The toll bridge revenue fund is
27 established as a separate fund of the state. The revenue fund consists of all revenue,
28 fees, charges, and rentals received by the state, by contract with the authority or
29 otherwise, from the ownership or operation of toll bridges and facilities and
30 improvements used in connection with the toll bridges and facilities. Contracts or
31 other agreements with the authority may establish priorities for the payment of

1 operations and maintenance costs of the authority and for the payment of other
2 obligations, including debt obligations of the authority, senior to the payments to be
3 made by the authority to the state for deposit to the revenue fund. The money in the
4 revenue fund may be used only

5 (1) to pay or secure payment of the principal of and interest on bonds;

6 (2) to redeem bonds before their fixed maturities; and

7 (3) subject to appropriation by the legislature, for any other purpose for
8 which federal funds may be obligated by the state under 23 U.S.C. 129(a).

9 (b) The investment of money in the revenue fund may be made in the manner
10 that the committee or the committee's delegated representative may determine. The
11 interest earned on or any profits derived from the sale of this investment shall be
12 deposited in and become a part of the revenue fund.

13 (c) All references to the toll bridge revenue fund in this section include special
14 accounts within the toll bridge revenue fund that may be created by resolution or trust
15 agreement to secure the payment of particular bonds.

16 **Sec. 37.15.240. Toll bridge revenue bond redemption fund.** (a) The toll
17 bridge revenue bond redemption fund is established as a special fund of the state. The
18 bond redemption fund is a trust fund for paying and securing the payment of the
19 principal of and interest and redemption premium, if any, on the bonds and shall be at
20 all times completely segregated and set apart from all other funds of the state. The
21 bond redemption fund shall be drawn on only for the purpose of paying the principal
22 of and interest and redemption premium, if any, on the bonds, together with related
23 trustee fees, if any.

24 (b) Money in the bond redemption fund may be invested in the same manner
25 and on the same conditions as permitted for investment of money belonging to the
26 state or held in the treasury under AS 37.10.070; however, the committee may agree
27 with the bondholders to further limit these investments. Earnings on investments must
28 be retained in the bond redemption fund or a designated account in the bond
29 redemption fund.

30 (c) All references to the bond redemption fund in this section include special
31 accounts in the bond redemption fund that may be created by resolution or first

1 agreement to secure the payment of particular bonds.

2 **Sec. 37.15.245. Bond terms.** (a) The bonds may be issued and sold at public
3 or negotiated sale in the manner, in the amounts or series, and at the time or times that
4 the committee or the committee's delegated representative determines. The bonds, or
5 each series of them, shall be sold at the price and on the terms, conditions, and
6 covenants set by the committee or the committee's delegated representative after
7 considering market conditions. Interest rates may be fixed or variable.

8 (b) The bonds mature at the time or times fixed by the committee or the
9 committee's delegated representative. The bonds may be subject to redemption before
10 their fixed maturities, as determined by the committee or the committee's delegated
11 representative, with or without a premium or premiums. The bonds may be in
12 denominations determined by the committee or the committee's delegated
13 representative; may be issued in fully or partially registered form; must be payable as
14 to principal and interest at the place or places determined by the committee; must be
15 signed on behalf of the state in the manner provided by the committee; and must be
16 issued under and subject to the terms, conditions, covenants, and protective features
17 safeguarding payment of the bonds and relating to the funding of projects as found
18 necessary by the committee or the committee's delegated representative.

19 (c) If the committee or the committee's delegated representative finds it
20 reasonably necessary, the committee or the committee's delegated representative may
21 select a trustee or trustees for the holders of the bonds, or any series of them, for the
22 safeguarding and disbursement of any of the money in the bond redemption fund, or
23 for duties with respect to the enforcement, authentication, delivery, payment, and
24 registration of the bonds as the committee may determine. The committee or the
25 committee's delegated representative shall fix the rights, duties, powers, and
26 obligations of the trustee or trustees.

27 (d) In its determination of all matters and questions relating to the issuance
28 and sale of the bonds and the fixing of their maturities, terms, conditions, and
29 covenants as provided in (a) - (c) of this section, the decisions of the committee shall
30 be reasonably necessary for the best interests of the state and accomplish the most
31 advantageous sale of the bonds. Decisions of the committee, as expressed in a bond

1 resolution, are final and conclusively considered to comply with the requirements of
2 AS 37.15.225 - 37.15.285.

3 **Sec. 37.15.250. Bond resolution.** The committee shall authorize the issuance
4 of bonds by adopting a resolution and shall prepare all other documents and
5 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
6 series of them. The bond resolution may fix or the committee's delegated
7 representative, subject to parameters set by the committee, may fix the principal
8 amount, denominations, date, maturities, manner of sale, place or places of payment,
9 rights of redemption, if any, terms, form, conditions, and covenants of the bonds or
10 each series of bonds.

11 **Sec. 37.15.255. Bond reserve fund.** (a) The resolution authorizing the
12 issuance of the bonds under AS 37.15.225 - 37.15.285 may provide for the
13 establishment and maintenance of a special fund called the toll bridge revenue bond
14 reserve fund in which there shall be deposited or transferred

15 (1) all money appropriated by the legislature for the purpose of the
16 fund including appropriations in accordance with (g) of this section; and

17 (2) all proceeds of bonds required to be deposited in the fund by terms
18 of the bond resolution or a trust agreement with respect to the proceeds of bonds.

19 (b) Subject to (h) of this section, money in the reserve fund shall be held and
20 applied solely to the payment of the interest on and principal of bonds authorized
21 under AS 37.15.225 - 37.15.285 as the interest and principal become due and payable
22 to the retirement of bonds. Money may not be withdrawn if a withdrawal would
23 reduce the amount in the reserve fund to an amount less than the required debt service
24 reserve except for payment of interest then due and payable on bonds and the principal
25 of bonds then maturing and payable and for the retirement of bonds in accordance
26 with the terms of the bond resolution or trust agreement and for which payment is not
27 then available.

28 (c) Money in the reserve fund in excess of the required debt service reserve as
29 defined in (b) of this section, whether because of investment or otherwise, may be
30 withdrawn at any time or may be transferred to the bond redemption fund subject to
31 (h) of this section.

1 (d) Money in the reserve fund may be invested in the same manner and on the
2 same conditions as permitted for investment of funds belonging to the state or held in
3 the treasury under AS 37.10.070; however, the committee or the committee's
4 delegated representative may agree with the bondholders to further limit these
5 investments.

6 (e) For purposes of valuation, investments in the reserve fund shall be valued
7 at par or, if purchased at less than par, at cost, unless otherwise provided by resolution
8 of the committee. Valuation on a particular date shall include the amount of interest
9 then earned or accrued to that date on the money or investments in the reserve fund.

10 (f) Notwithstanding any other provision of this Act, bonds may not be issued
11 under a trust agreement, indenture, or bond resolution unless there is in the reserve
12 fund the required debt service reserve for all bonds then issued under a trust
13 agreement, indenture, or bond resolution and outstanding and for the bonds to be
14 issued; however, the committee may satisfy this requirement by depositing as much of
15 the proceeds of the bonds to be issued, on their issuance, as is needed to meet the
16 required debt service reserve. The committee may at any time issue bonds or notes for
17 the purpose of increasing the amount in the reserve fund to the required debt service
18 reserve, or to meet whatever higher or additional reserve that may be fixed by a bond
19 resolution or trust agreement with respect to the fund.

20 (g) To ensure the required debt service reserve is maintained in the reserve
21 fund, the legislature may appropriate annually for deposit in the fund the sum, certified
22 by the commissioner of revenue to the governor and to the legislature, that is
23 necessary to restore the fund to an amount equal to the required debt service reserve.
24 The commissioner of revenue annually, before January 30, shall make and deliver to
25 the governor and to the legislature a certificate stating the sum required to restore the
26 fund to that amount, and the certified sum may be appropriated during the then current
27 state fiscal year. Nothing in this subsection creates a debt or liability of the state.

28 (h) All amounts received because of money appropriated to the reserve fund
29 shall be held and applied in accordance with (b) of this section.

30 (i) All references to the reserve fund in this section include special accounts
31 within the reserve fund that may be created by resolution or trust agreement to secure

1 the payment of particular bonds.

2 (j) The commissioner of revenue may, subject to appropriation, lend surplus
3 money in the general fund for deposit to an account in the reserve fund in an amount
4 equal to the required debt service reserve. The loans shall be made on the terms and
5 conditions that may be agreed on by the commissioner of revenue and the trustee,
6 including, without limitation, terms and conditions providing that the loans need not
7 be repaid until the obligations of the state secured and to be secured by the account in
8 the reserve fund are no longer outstanding.

9 (k) In this section, "required debt service reserve" means, on the date of
10 computation, the amount required to be on deposit in the reserve fund as provided by
11 resolution of the committee.

12 **Sec. 37.15.260. Enforcement by bond owner.** The holder of any bonds or the
13 trustee for the holders of the bonds or any series of them, may, by appropriate
14 proceedings in the superior court, compel the transfer, setting aside, and payment of
15 money and the enforcement of all of the terms, conditions, and covenants as required
16 and provided for in AS 37.15.225 - 37.15.285 and in the bond resolution or trust
17 agreement.

18 **Sec. 37.15.265. Amounts required for payments.** The committee shall,
19 before June 30 of each year or from time to time within the year, as appropriate,
20 commencing with the year in which the bonds are issued, certify to the commissioners
21 of revenue and administration the amounts required in the current fiscal year and the
22 next ensuing fiscal year by the bond resolution or resolutions or trust agreements to be
23 paid out of toll bridge revenue or capitalized amounts into the bond redemption fund
24 and to be paid into and maintained in any reserve fund or account or other fund or
25 account created by the bond resolution or resolutions. The committee shall also certify
26 to the commissioners the last date or dates on which payments may be made.

27 **Sec. 37.15.270. Refunding.** (a) The committee may refund the bonds or any
28 part of the bonds at or before their maturity or redemption dates by issuing refunding
29 revenue bonds of the state if the committee determines the refunding to be
30 advantageous to and in the best interest of the state.

31 (b) The issuance of refunding bonds need not be authorized by the voters of

1 the state or by an act of the legislature. The committee shall adopt the resolution or
2 resolutions and prepare all other documents and proceedings necessary for the
3 issuance, exchange or sale, and delivery of the refunding bonds. All provisions of
4 AS 37.15.225 - 37.15.285 applicable to revenue bonds are applicable to the refunding
5 bonds and to the issuance, sale, or exchange of the refunding bonds, except as
6 otherwise provided in this section.

7 (c) The committee may issue refunding bonds in a principal amount sufficient
8 to provide money for the advance or current refunding of all bonds to be refunded and
9 interest on the refunded bonds and to pay the costs of issuance and administration of
10 the refunding bonds. These expenses also include the difference in amount between
11 the par value of the refunding bonds and any amount less than par for which the
12 refunding bonds are sold; the premium, if any, necessary to be paid in order to call or
13 retire the outstanding bonds and the interest accruing on them to date of the call or
14 retirement; and other costs. The committee is authorized to incur the expenses.

15 (d) The committee or the committee's delegated representative may contract
16 with a refunding trustee to hold the proceeds of refunding bonds in trust until the
17 proceeds, together with earnings on the proceeds, are applied to pay the principal of,
18 premium, if any, and interest on the bonds to be refunded. Until the refunding bond
19 proceeds are applied, the proceeds may be invested in direct obligations of, or
20 obligations guaranteed by, the United States or an agency or corporation of the United
21 States whose obligations constitute direct obligations of, or obligations guaranteed by,
22 the United States.

23 **Sec. 37.15.275. Bonds as legal investments.** The bonds are legal investments
24 for all banks, trust companies, savings banks, savings and loan associations, and other
25 persons carrying on a banking business, all insurance companies and other persons
26 carrying on an insurance business, and all executors, administrators, trustees, and other
27 fiduciaries. The bonds may be accepted as security for deposits of all money of the
28 state and its political subdivisions.

29 **Sec. 37.15.280. Statutory construction.** AS 37.15.225 - 37.15.285 shall be
30 liberally construed in order to carry out the purposes for which they were enacted.

31 **Sec. 37.15.285. Definitions.** In AS 37.15.225 - 37.15.285,

1 (1) "authority" means

2 (A) the Knik Arm Bridge and Toll Authority established in
3 AS 19.75.021 with respect to the Knik Arm Bridge and its appurtenant
4 facilities; or

5 (B) an authority established by the legislature for any other toll
6 bridge project;

7 (2) "bond redemption fund" means the toll bridge revenue bond
8 redemption fund established in AS 37.15.240;

9 (3) "bond resolution" means a resolution adopted by the committee
10 under AS 37.15.250 to authorize the issuance of bonds;

11 (4) "bonds" means the toll bridge revenue bonds authorized in
12 AS 37.15.225 - 37.15.285;

13 (5) "committee" means the state bond committee created in
14 AS 37.15.110, or any other committee, body, department, or officer of the state that
15 succeeds to the rights, powers, duties, and obligations of the state bond committee by
16 law;

17 (6) "costs of issuance and administration" means all costs associated
18 with issuance and administration of toll bridge revenue bonds and refunding bonds,
19 including costs of bond printing, official statements, financial advisors, travel costs,
20 rating agencies, bond insurance, letters and lines of credit for credit enhancement,
21 underwriters, legal services, paying agents, bond registrars, bond and escrow trustees,
22 arbitrage rebate, and all other costs, including administrative costs, both direct and
23 indirect;

24 (7) "reserve fund" means the toll bridge revenue bond reserve fund
25 authorized in AS 37.15.255;

26 (8) "revenue fund" means the toll bridge revenue fund established in
27 AS 37.15.235.

28 * **Sec. 7.** This Act takes effect July 1, 2014.