

SENATE BILL NO. 152

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATORS HUGGINS, Ellis, Davis

Introduced: 3/18/09

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to municipal transportation systems and to regional transit**
2 **authorities."**

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

4 *** Section 1.** AS 29.35 is amended by adding new sections to read:

5 **Article 9A. Regional Transit Authorities.**

6 **Sec. 29.35.750. Purpose and creation of an authority.** (a) The purpose of a
7 regional transit authority is to provide for public transportation within the boundaries
8 of the authority.

9 (b) A regional transit authority may be created in one of the following ways:

10 (1) the governing body of a municipality may, by ordinance, create the
11 authority as a public corporation of the municipality;

12 (2) the governing bodies of two or more municipalities may, by
13 substantially identical ordinances adopted by each of the governing bodies, create the
14 authority as a public corporation of the municipalities.

1 (c) One or more municipalities may join an authority established under (b)(1)
2 or (2) of this section on the adoption of substantially identical ordinances by the
3 governing bodies of each affected municipality.

4 (d) The enabling ordinance by which an authority is established must specify
5 the powers, boundaries, and limitations of the authority.

6 (e) An authority is a body corporate and politic and an instrumentality of the
7 municipality or municipalities creating it but has a separate and independent legal
8 existence. Creation of the authority is an exercise of a municipality's transportation
9 system powers.

10 (f) Nothing in AS 29.35.750 - 29.35.799 prevents a municipality or
11 municipalities from creating or participating in a public corporation, including a
12 regional transit authority, in any form or manner not prohibited by law. However,
13 AS 29.35.750 - 29.35.799 apply only to and may be used only by an authority created
14 under this section.

15 **Sec. 29.35.752. Dissolution of an authority; withdrawal from authority.** (a)
16 The enabling ordinance creating a regional transit authority must provide for the
17 manner by which the authority may be dissolved. If an authority ceases to exist, its
18 assets shall be distributed to each municipality that was participating in the authority
19 on the day before the date of dissolution, in proportion to the municipality's
20 contribution to the authority, less any outstanding debt or obligation of that
21 municipality to the authority. Any obligation to bondholders then outstanding shall
22 first be satisfied in full.

23 (b) A municipality that is participating in an authority with one or more other
24 municipalities may withdraw from participation without dissolving the authority. The
25 contributions to the authority made by the withdrawing municipality remain the
26 property of the authority, and the municipality remains liable for obligations under any
27 agreement with the authority or other participating municipalities unless the agreement
28 is changed by the contractual parties. A municipality withdraws from participation in
29 an authority by adopting an ordinance repealing the ordinance adopted under
30 AS 29.35.750(b)(2) or (c).

31 (c) Notwithstanding AS 29.26.100, the powers of initiative and referendum

1 may not be used for withdrawing a municipality from participation in an authority
2 with one or more other municipalities.

3 **Sec. 29.35.754. Municipal property.** (a) A municipality may transfer and
4 otherwise convey or lease real property and improvements to real property to a
5 regional transit authority for use by the authority for the purposes set out in the
6 ordinance adopted under AS 29.35.750(b) or (c).

7 (b) A municipality may transfer and otherwise assign or lease personal
8 property to an authority for use by the authority for the purposes set out in the
9 ordinance adopted under AS 29.35.750(b) or (c).

10 **Sec. 29.35.756. Powers and duties.** (a) If provided in the enabling ordinance,
11 a regional transit authority may

12 (1) sue and be sued;

13 (2) have a seal and alter it;

14 (3) acquire an interest in a project as necessary or appropriate to
15 provide financing for the project, whether by purchase, gift, or lease;

16 (4) lease to others a project acquired by the authority on the terms and
17 conditions the authority may consider advisable, including provisions for purchase or
18 renewal;

19 (5) sell, by installment sale or otherwise, exchange, donate, convey, or
20 encumber in any manner, by mortgage or by creation of another security interest, real
21 or personal property that it owns or in which it has an interest, including a project,
22 when the authority determines the action is in furtherance of the authority's purposes;

23 (6) accept gifts, grants, or loans, under the terms and conditions
24 imposed under the gift, grant, or loan, and enter into contracts, conveyances, or other
25 transactions with a federal agency or an agency or instrumentality of the state, a
26 municipality, a private organization, or another person;

27 (7) deposit or invest the authority's funds, subject to agreements with
28 bondholders;

29 (8) purchase or insure loans to finance the costs of projects;

30 (9) provide for security within the boundaries of the authority;

31 (10) enter into loan agreements for one or more projects on the terms

1 and conditions the authority considers advisable;

2 (11) acquire, manage, and operate projects the authority considers
3 necessary or appropriate to serve the authority's purposes;

4 (12) assist private lenders to make loans to finance the costs of projects
5 through loan commitments, short-term financing, or otherwise;

6 (13) charge fees or other forms of remuneration for the use or
7 possession of projects under the agreements described in this subsection, other
8 agreements relating to the projects, covenants, or representations made in bond
9 documents relating to the projects, or regulations of the authority relating to the
10 projects;

11 (14) exercise the powers of eminent domain and declaration of taking
12 within its physical boundaries under AS 29.35.030 to acquire land or materials for the
13 purposes of the authority;

14 (15) regulate land use within the boundaries of the authority;

15 (16) defend and indemnify a current or former member of the board,
16 employee, or agent of the authority against all costs, expenses, judgments, and
17 liabilities, including attorney fees, incurred by or imposed on that person in connection
18 with a civil or criminal action in which the person is involved because of the person's
19 affiliation with the authority if the person acted in good faith on behalf of the authority
20 and within the scope of the person's official duties and powers;

21 (17) purchase insurance to protect and hold harmless its employees,
22 agents, and board members from an action, claim, or proceeding arising out of the
23 performance of, purported performance of, or failure to perform in good faith duties
24 for the authority or arising out of employment with the authority and to hold them
25 harmless from expenses connected with the defense, settlement, or monetary
26 judgments from that action, claim, or proceeding; the purchase of insurance is subject
27 to the discretion of the board; insurance purchased under this paragraph is not
28 compensation to the insured person; and

29 (18) protect its assets, services, and employees by purchasing
30 insurance or providing for certain self-insurance retentions.

31 (b) An authority shall maintain casualty, property, business interruption,

1 marine, boiler and machinery, pollution liability, and other insurance in amounts
 2 reasonably calculated to cover potential claims against the authority or a municipality
 3 for bodily injury, death, or disability, and property damage that arise from or are
 4 related to operations and activities of the authority.

5 **Sec. 29.35.758. Bonds of a regional transit authority.** (a) If authorized by the
 6 enabling ordinance, a regional transit authority may borrow money and issue bonds on
 7 which the principal and interest are payable

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

10 (2) exclusively from the income and receipts of, or other money
 11 derived from, designated projects or other sources, whether they are financed, insured,
 12 or guaranteed in whole or in part with the proceeds of the bonds; or

13 (3) from its income and receipts or a designated part or parts of them.

14 (b) All bonds shall be sold at public or private sale in the manner, for the price
 15 or prices, and at the time or times, the authority may determine. Before issuing bonds,
 16 an authority shall provide for consideration at least sufficient, in the judgment of the
 17 authority, to

18 (1) pay the principal of and interest on the bonds as they become due;

19 (2) create and maintain the reserves for the payment that the authority
 20 considers necessary or desirable; and

21 (3) meet all obligations in connection with and all costs necessary to
 22 service the bonds, unless the bond agreement provides that the obligations are to be
 23 met or costs are to be paid by a party other than the authority.

24 (c) Bonds shall be authorized by resolution of the authority and shall be dated
 25 and mature as the resolution may provide, except that a bond may not mature more
 26 than 40 years after the date of its issue. Bonds shall bear interest at the rate or rates, be
 27 in the denominations, be in the form, either coupon or registered, carry the registration
 28 privileges, be executed in the manner, be payable in the medium of payment, at the
 29 place or places, and be subject to the terms of redemption that the resolution or a
 30 subsequent resolution may provide.

31 (d) All bonds issued under this section, regardless of form or character, are

1 negotiable instruments for all the purposes of AS 45.01 - AS 45.08, AS 45.12,
2 AS 45.14, and AS 45.29 (Uniform Commercial Code).

3 **Sec. 29.35.760. Bonds eligible for investment.** Bonds issued under
4 AS 29.35.758 are securities in which public officers and public bodies of the state and
5 its political subdivisions, insurance companies, trust companies, banks, investment
6 companies, executors, administrators, trustees, and other fiduciaries may properly and
7 legally invest funds, including capital in their control or belonging to them. The bonds
8 may be deposited with a state or municipal officer of an agency or political
9 subdivision of the state for any purpose for which the deposit of bonds of the state is
10 authorized by law.

11 **Sec. 29.35.762. Pledge of revenue; credit.** (a) The pledge of revenue of a
12 regional transit authority to the payment of the principal of or interest on bonds or
13 notes of the authority is valid and binding from the time the pledge is made, and the
14 revenue is immediately subject to the lien of the pledge without physical delivery or
15 further act. The lien of a pledge is valid and binding against all parties having claims
16 of any kind against the authority, regardless of whether those parties have notice of the
17 lien of the pledge.

18 (b) The state and municipalities participating in an authority are not liable for
19 the debts of that authority. Bonds issued under AS 29.35.758 are payable solely from
20 the revenue of the authority and do not constitute a

21 (1) debt, liability, or obligation of the state or a municipality; or

22 (2) pledge of the faith and credit of the state or a municipality.

23 (c) An authority may not pledge the credit or the taxing power of the state or
24 its municipalities. A bond issued under AS 29.35.758 must contain on its face a
25 statement that

26 (1) the authority is not obligated to pay it or the interest on it except
27 from the revenue pledged for it; and

28 (2) the faith and credit of the taxing power of the state or of a political
29 subdivision of the state is not pledged to the payment of it.

30 **Sec. 29.35.764. Pledges of the state and municipalities.** The state and
31 municipalities participating in an authority pledge to and agree with the holders of

1 bonds issued under AS 29.35.758 and with the federal agency, if any, that loans or
 2 contributes funds for a project of the authority that the state and the municipalities
 3 participating in the authority will not limit or alter the rights and powers vested in the
 4 authority by its enabling ordinance or other law so that it is unable to fulfill the terms
 5 of a contract made by it with those holders or that federal agency or in any way impair
 6 the rights and remedies of those holders or that federal agency until the bonds,
 7 together with the interest on them and interest on unpaid installments of interest, and
 8 all costs and expenses in connection with an action or proceeding by or on behalf of
 9 those holders or that federal agency, are fully met and discharged. An authority may
 10 include this pledge and agreement of the state and the municipalities participating in
 11 the authority, to the extent that it refers to holders of bonds of the authority, in a
 12 contract with those holders and, to the extent that it relates to a federal agency, in a
 13 contract with that federal agency.

14 **Sec. 29.35.766. Limitation of liability; fidelity bond.** (a) Any liability, debt,
 15 or judgment incurred by a regional transit authority shall be satisfied exclusively from
 16 the assets or revenue of the authority. A creditor or other person does not have a right
 17 of action against the state or a municipality participating in an authority because of a
 18 debt, obligation, or liability of an authority.

19 (b) A board member or employee of an authority is not subject to personal
 20 liability or accountability because of the execution or issuance of bonds under
 21 AS 29.35.758.

22 (c) An authority shall obtain a fidelity bond in an amount determined by the
 23 board for board members and each executive officer responsible for accounts and
 24 finances of that authority. A fidelity bond must be in effect during the entire tenure in
 25 office of the bonded person.

26 **Sec. 29.35.768. Exemption from taxation.** (a) A regional transit authority
 27 exercising the powers granted under AS 29.35.750 - 29.35.799 is in all respects for the
 28 benefit of the people of the municipalities participating in the authority and the people
 29 of the state in general, for their well-being and prosperity, and for the improvement of
 30 their social and economic condition. The real and personal property of the authority
 31 and its assets, income, and receipts are exempt from all taxes and special assessments

1 of the state or a political subdivision of the state.

2 (b) Bonds issued by the authority under AS 29.35.758 are issued for an
3 essential public and governmental purpose; therefore, the bonds, the interest and
4 income from them, and all fees, charges, funds, revenue, income, and other money
5 pledged or available to pay or secure the payment of the bonds or interest on them are
6 exempt from taxation except for inheritance, transfer, and estate taxes.

7 (c) Notwithstanding the provisions of (a) of this section, an authority and the
8 municipalities participating in the authority may enter into agreements under which
9 the authority agrees to pay the participating municipalities' payments in lieu of taxes
10 and special assessments on real and personal property of the authority that is within
11 the taxing jurisdiction of the municipality.

12 (d) Nothing in this section creates a tax exemption with respect to the interests
13 of a business enterprise or other person, other than the authority, in property, assets,
14 income, or receipts, whether or not financed under AS 29.35.750 - 29.35.799.

15 **Sec. 29.35.770. Administration of regional transit authority; board.** (a) A
16 regional transit authority shall be governed by a board of directors, which shall
17 exercise the powers of the authority. The enabling ordinance establishing the authority
18 under AS 29.35.750 must specify the number, qualifications, manner of appointment
19 or election, and terms of members of the board.

20 (b) The board shall appoint a chief executive officer of the authority, who
21 serves at the pleasure of the board. The board shall fix the compensation of the chief
22 executive officer.

23 **Sec. 29.35.772. Collective bargaining agreements.** (a) A collective
24 bargaining agreement for employees of the state or its political subdivisions who are
25 transferred to a regional transit authority remains in effect for the term of the
26 agreement or one year, whichever is longer, and is binding on the authority unless the
27 parties agree to the contrary before the agreement expires. A labor-management
28 negotiation impasse declared after a transfer of employees under this subsection but
29 before the negotiation of a new collective bargaining agreement shall be resolved as
30 provided in the collective bargaining agreement or, if the collective bargaining
31 agreement does not provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

1 (b) Employees of the state or a political subdivision of the state transferred to
 2 an authority shall retain, for one year following the date of transfer or for the duration
 3 of a collective bargaining agreement transferred under (a) of this section, whichever is
 4 greater, all rights of participation in fringe benefit programs available to the employees
 5 on the day before the transfer, or in substantially equivalent programs.

6 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority unless all
 7 municipalities participating in the authority are exempt under AS 23.40.255(a).

8 **Sec. 29.35.774. Bylaws and regulations.** (a) The board of directors of a
 9 regional transit authority shall adopt bylaws and appropriate regulations consistent
 10 with the enabling ordinance to carry out its functions and purposes.

11 (b) The board shall adopt bylaws as soon after the authority is established as
 12 possible and may, from time to time, amend those bylaws. The bylaws may contain
 13 any provision not in conflict with law for managing the business of the authority and
 14 for conducting the affairs of the authority, including provisions relating to

15 (1) the time, place, and manner of calling, conducting, and giving
 16 notice of meetings of the board and committees of the board, if any;

17 (2) the compensation of directors, if any;

18 (3) the appointment and authority of committees of the board, if any;

19 (4) the appointment, duties, compensation, and tenure of officers,
 20 directors, the chief executive officer, and other employees, if any;

21 (5) procedures for adopting regulations;

22 (6) procedures for adopting bylaws;

23 (7) procedures for making annual reports and financial statements; and

24 (8) other matters for the conduct of business by the board.

25 **Sec. 29.35.776. Authority subject to public records and open meetings**
 26 **laws.** A regional transit authority is subject to AS 40.25.110 - 40.25.220 and to
 27 AS 44.62.310 and 44.62.312.

28 **Sec. 29.35.778. Report and audit.** (a) Within 90 days following the end of the
 29 fiscal year of a regional transit authority, the board of directors shall distribute to the
 30 mayor and governing body of each municipality participating in the authority a report
 31 describing the operations and financial condition of the authority during the preceding

1 fiscal year. The report may include suggestions for legislation relating to the structure,
 2 powers, or duties of the authority or operation of facilities of the authority. The report
 3 must itemize the cost of providing each category of service offered by the authority
 4 and the income generated by each category.

5 (b) The board shall have the financial records of the authority audited annually
 6 by an independent certified public accountant.

7 (c) An authority shall make all of its financial records available for
 8 examination to an auditor appointed by a municipality participating in the authority.

9 **Sec. 29.35.780. Claims and remedies.** (a) The superior court has jurisdiction
 10 to hear and determine suits, actions, or proceedings relating to an authority, including
 11 suits, actions, or proceedings brought to foreclose or otherwise enforce a mortgage,
 12 pledge, assignment, or security interest brought by or for the benefit or security of a
 13 holder of the authority's bonds or by a trustee for or other representative of the holders.

14 (b) A holder of bonds or notes or coupons attached to the bonds issued by an
 15 authority under AS 29.35.758, and a trustee under a trust agreement or resolution
 16 authorizing the issuance of the bonds, except as restricted by a trust agreement or
 17 resolution, either at law or in equity, may

18 (1) enforce all rights granted under AS 29.35.750 - 29.35.799, the trust
 19 agreement or resolution, or another contract executed by the authority; and

20 (2) compel the performance of all duties of the authority required by
 21 AS 29.35.750 - 29.35.799 or the trust agreement or resolution.

22 (c) In judicial and regulatory proceedings by and against an authority, an
 23 authority and its board members and employees enjoy the same rights, privileges, and
 24 immunities as a municipality and municipal officers.

25 **Sec. 29.35.790. Conflicting laws inapplicable.** If a provision of AS 29.35.750
 26 - 29.35.799 conflicts with another provision of this title, the provision of AS 29.35.750
 27 - 29.35.799 prevails.

28 **Sec. 29.35.798. Definitions.** In AS 29.35.750 - 29.35.799, unless the context
 29 otherwise requires,

30 (1) "authority" means a regional transit authority established under
 31 AS 29.35.750;

- 1 (2) "board" means the board of directors of a regional transit authority;
- 2 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding
3 bonds, or other forms of indebtedness of the authority;
- 4 (4) "bylaws" means the guidelines adopted by and amended by the
5 board of directors from time to time under AS 29.35.750 - 29.35.799;
- 6 (5) "costs of projects" means all or any part of the aggregate costs
7 determined by a regional transit authority to be necessary to finance the construction
8 or acquisition of a project, including, without limitation,
- 9 (A) the cost of acquiring real property;
- 10 (B) the cost of constructing buildings and improvements;
- 11 (C) the cost of financing the project, including, without
12 limitation, interest charges before, during, or after construction or acquisition
13 of the project;
- 14 (D) costs related to determining the feasibility of, planning,
15 design of, or engineering of the project and, to the extent determined necessary
16 by the authority, administrative expenses;
- 17 (E) the costs of machinery or equipment to be used in the
18 operation or rehabilitation of a transit facility or operation; and
- 19 (F) all other costs, charges, fees, and expenses that the
20 authority determines necessary to finance the construction or acquisition;
- 21 (6) "land" or "real property" means any interest in real property,
22 including tidal and submerged land, any right appurtenant to the interest, and, without
23 limitation, interests less than full title, such as easements, uses, leases, and licenses;
- 24 (7) "project" means a capital project related or incidental to public
25 transportation;
- 26 (8) "public transportation" means transportation by a conveyance that
27 provides regular and continuing general or special transportation to the public;
- 28 (9) "regulation" means a standard of general application or the
29 amendment, supplement, revision, or repeal of a standard adopted by a regional transit
30 authority to implement, interpret, or make specific the law enforced or administered
31 by it or to govern its procedure.

1 **Sec. 29.35.799. Short title.** AS 29.35.750 - 29.35.799 may be cited as the
2 Regional Transit Authority Act.

3 * **Sec. 2.** AS 29.71.800 is amended by adding a new paragraph to read:

4 (26) "transportation system" means the infrastructure and carriers
5 necessary to provide for public or private transportation of goods and individuals,
6 including ports, marinas, railways, terminals, highways, roads, and trails, as well as
7 motor vehicles, trains, and watercraft.