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Referred: Resources  
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1 IN THE SENATE

2

SENATE BILL NO. 151

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to Regional Resource Development  
7 Authorities; and providing for an effective date."

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

9 \* Section 1. LEGISLATIVE FINDINGS AND POLICY. The legislature finds,  
10 determines, and declares that:

11 (1) In most areas of the state, there is a lack of basic trans-  
12 portation and port facilities adequate to permit the development of non-  
13 renewable natural resource enterprises, including mining enterprises.

14 (2) The development of nonrenewable natural resource enter-  
15 prises, including mining enterprises, is essential to the long-term eco-  
16 nomic growth of the state and will directly and indirectly alleviate un-  
17 employment in the state.

18 (3) The achievement of full employment and the establishment and  
19 continuing development of nonrenewable natural resource enterprises in the  
20 state will be accelerated by authorizing the creation of instrumentalities  
21 in the various areas of the state with powers to borrow money to provide  
22 for the development of transportation and port facilities, and to own,  
23 operate and maintain transportation and port facilities, as provided in  
24 this chapter.

25 \* Sec. 2. AS 30 is amended by adding a new chapter to read:

26 CHAPTER 13. REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

27 Sec. 30.13.010. CREATION AND ORGANIZATION. (a) The residents  
28 of each area of the state within the boundaries of a regional educa-  
29 tional attendance area established under AS 14.08 may create a public

1 body corporate and politic under the name and style of the " \_\_\_\_\_ -  
2 \_\_\_\_\_ Resource Development Authority" with all or any  
3 significant part of the name of the region of the state inserted. For  
4 purposes of this chapter the authority created has jurisdiction over  
5 the area within the boundaries of the regional educational attendance  
6 area. An authority is created by a petition filed with the Department  
7 of Community and Regional Affairs that must include the proposed name  
8 of the authority, the boundaries of its jurisdiction, and a statement  
9 of the proposed facilities to be provided by the authority. The  
10 petition must be signed by 50 residents of the proposed area of the  
11 authority. The Department of Community and Regional Affairs shall  
12 review petitions for content and signatures. If the Department of  
13 Community and Regional Affairs determines that the petition is ade-  
14 quate, it shall transmit the petition to the director of elections.

15 (b) Within 30 days after receipt of a petition, the director of  
16 elections shall order an election in the proposed area of the author-  
17 ity to determine whether the voters desire the creation of the author-  
18 ity. The election must be held not less than 30 or more than 90 days  
19 after the date of the election order. The election order must specify  
20 the dates after which nomination petitions for election of initial  
21 officers may be filed.

22 (c) An Alaska voter who has been a resident within the area of  
23 the proposed authority for 30 days before the date of election may  
24 vote.

25 (d) If creation of an authority is approved, the director of  
26 elections shall, within 10 days of certification, order an election to  
27 choose the five initial members of the authority. The election is  
28 held not less than 60 or more than 90 days after the date of the  
29 election order. The initially elected members of the authority take

1 office on the first Monday following certification of their election  
2 and shall be designated by lot to serve for terms respectively expir-  
3 ing on the first days of the first, second, third, fourth and fifth  
4 Novembers next ensuing after the date of their appointment. On the  
5 first Tuesday of October in each year after the first election, one  
6 person shall be elected as a member of the authority to serve for a  
7 term commencing on the first day of November in that year and expiring  
8 on the first day of November after that year. The governor shall  
9 appoint as members of the authority two persons who serve as the heads  
10 of principal departments of the executive branch to serve for two-year  
11 terms.

12 (e) Nominations for elected members are made by petition. The  
13 petition must be in the form prescribed by the director of elections  
14 and include the name and address of the nominee and the statement of  
15 the nominee that the nominee is qualified under the provisions of this  
16 chapter for the office of member of the authority. Petitions to  
17 nominate members must include the signature and resident address of 20  
18 voters in the area of the authority. The director of elections shall  
19 supervise the elections in the general manner prescribed by the Alaska  
20 Election Code (AS 15). The state shall pay all election costs under  
21 this chapter.

22 (f) A copy of each petition for the creation of an authority and  
23 of the certificate of the director of elections as to the election  
24 shall be filed in the office of the director of elections. Upon proof  
25 of filing the authority referred to shall, in any suit, action or  
26 proceeding involving the validity or enforcement of, or relating to,  
27 any contract or obligation or act of the authority, be conclusively  
28 presumed to have been lawfully and properly created as a public body  
29 corporate and politic and established and authorized to transact

1 business and exercise its powers under this chapter.

2 Sec. 30.13.020. MEMBERS. (a) The members of an authority shall  
3 elect a chairperson and a vice chairperson from among its members. A  
4 majority of the members of an authority constitutes a quorum for the  
5 transaction of business. Action may be taken and motions or resolu-  
6 tions adopted by an authority by vote of a majority of the members  
7 present, unless the bylaws of an authority require a larger number.  
8 An authority may delegate to one or more of its officers, agents or  
9 employees the powers and duties that it considers proper. An author-  
10 ity may appoint persons as officers it considers advisable, including  
11 an executive director, and may employ professional advisors, counsel,  
12 technical experts, agents, and other employees it considers advisable.

13 (b) A member of an authority may not vote on a resolution of the  
14 authority relating to any agreement to be entered into by the author-  
15 ity under this chapter if the member is a party to the agreement or  
16 has a direct ownership or equity interest, beneficially or of record,  
17 exceeding one percent in a firm, partnership, corporation or asso-  
18 ciation that is a party to the agreement. A resolution of the author-  
19 ity that is approved by a majority of all the members who are not  
20 barred from voting under this subsection is a valid action of the  
21 authority for all purposes.

22 Sec. 30.13.030. PURPOSE OF AN AUTHORITY. The purpose of an  
23 authority shall be the improvement, establishment and development of  
24 facilities in its district for transportation purposes, either direct-  
25 ly or by agreement with any public or private entity or person, or in  
26 any other manner, as in the judgment of the authority will provide an  
27 effective and satisfactory method for promoting its purposes.

28 Sec. 30.13.040. POWERS OF AN AUTHORITY. In furtherance of its  
29 corporate purposes, an authority has the power to

- 1 (1) sue and be sued;
- 2 (2) have a seal and alter it at its pleasure;
- 3 (3) make and alter bylaws for its organization and internal  
4 management;
- 5 (4) adopt regulations governing the exercise of its corpo-  
6 rate powers;
- 7 (5) acquire, rent, hold, use and dispose of real and per-  
8 sonal property necessary, useful, or convenient for its purposes;
- 9 (6) grant, by franchise, lease or otherwise, the use of any  
10 project, facilities or property owned and controlled by it to any  
11 person for the consideration and period of time and upon the other  
12 terms and conditions it may fix and agree upon;
- 13 (7) lease or agree with others to use a project for the  
14 rentals and upon the terms and conditions the authority may consider  
15 advisable;
- 16 (8) provide for and secure the payment of bonds and the  
17 rights of the holders of them, and to purchase, hold and dispose of  
18 bonds;
- 19 (9) accept gifts, grants, or loans from, and enter into  
20 contracts or other transactions regarding them, with any federal,  
21 state, municipal or other agency or instrumentality, private orga-  
22 nization, or other person;
- 23 (10) deposit or invest its funds, subject to agreements with  
24 bondholders;
- 25 (11) charge and collect rents, rates, fees, or other charges  
26 for its services and facilities;
- 27 (12) enter into contracts or other transactions with any  
28 federal, state, municipal or other agency, or instrumentality, private  
29 organization, or person consistent with the exercise of any powers

1 under this chapter; and

2 (13) do all things necessary and convenient to carry out its  
3 corporate purposes and exercise the powers granted in this chapter.

4 Sec. 30.13.050. LIMITATION ON POWERS. An authority has only  
5 those powers expressly granted in this chapter, reasonably implied  
6 from this chapter, or reasonably necessary or convenient to carry out  
7 its corporate purposes and to exercise the powers expressly granted in  
8 or reasonably implied from this chapter. An authority does not have  
9 powers of eminent domain, taxation, land use planning, or other simi-  
10 lar governmental powers.

11 Sec. 30.13.060. BONDS OF AN AUTHORITY. (a) An authority may  
12 borrow money and may issue bonds, including but not limited to bonds  
13 on which the principal and interest are payable,

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

16 (2) exclusively from the income and receipts or other money  
17 derived from designated projects whether or not they are financed in  
18 whole or in part with the proceeds of the bonds; or

19 (3) from its income and receipts or other assets generally,  
20 or a designated part or parts of them.

21 (b) Bonds shall be authorized by resolution of the authority,  
22 and be dated and shall mature as the resolution may provide, except  
23 that no bond may mature more than 40 years from the date of its issue.  
24 Bonds shall bear interest at the rate or rates, be in the denomina-  
25 tions, be in the form, either coupon or registered, carry the regis-  
26 tration privileges, be executed in the manner, be payable in the  
27 medium of payment, at the place or places, and be subject to the terms  
28 of redemption which the resolution or a subsequent resolution may  
29 provide.

1 (c) All bonds, regardless of form or character, shall be nego-  
2 tiable instruments for the purposes of the Uniform Commercial Code.

3 (d) All bonds may be sold at public or private sale in the  
4 manner, for the price or prices, and at the time or times that the  
5 authority may determine.

6 (e) The superior court shall have jurisdiction to hear and  
7 determine suits, actions or proceedings relating to an authority,  
8 including suits, actions or proceedings brought to foreclose or other-  
9 wise enforce a mortgage, pledge, assignment or security interest or  
10 brought by or for the benefit or security of a holder of its bonds or  
11 by a trustee for or other representative of the holders.

12 Sec. 30.13.070. TRUST INDENTURES AND TRUST AGREEMENTS. In the  
13 discretion of the authority, an issue of bonds may be secured by a  
14 trust indenture or trust agreement between the authority and a corpo-  
15 rate trustee, that may be a trust company, bank, or national banking  
16 association, with corporate trust powers, located inside or outside  
17 the state, or by a secured loan agreement or other instrument or under  
18 a resolution giving powers to a corporate trustee, after this in this  
19 section referred to as "trust agreement", by means of which the  
20 authority may

21 (1) make and enter into the covenants and agreements with  
22 the trustee or the holders of the bonds that the authority determines  
23 necessary or desirable, including, without limitation, covenants,  
24 provisions, limitations and agreements as to

25 (A) the application, investment, deposit, use and  
26 disposition of the proceeds of the bonds of the authority or of  
27 money or other property of the authority or in which it has an  
28 interest;

29 (B) the fixing and collection of rents or other

1 consideration for, and the other terms to be incorporated in an  
2 agreement with respect to a project;

3 (C) the assignment by the authority of its rights in a  
4 mortgage or other security interest created with respect to a  
5 project to a trustee for the benefit of bondholders;

6 (D) the terms and conditions upon which additional  
7 bonds of the authority may be issued;

8 (E) the vesting in a trustee of rights, powers,  
9 duties, funds, or property in trust for the benefit of bond-  
10 holders, including, without limitation, the right to enforce  
11 payment, performance and all other rights of the authority or of  
12 the bondholders, under a lease, contract of sale, mortgage,  
13 security agreement, or trust agreement with respect to a project  
14 by mandamus or other proceeding or by taking possession of by  
15 agent or otherwise and operating a project and collecting rents  
16 or other consideration and applying the same in accordance with  
17 the trust agreement;

18 (2) pledge, mortgage or assign money, leases, agreements,  
19 property or other assets of the authority either presently in hand or  
20 to be received in the future, or both; and

21 (3) provide for any other matters that in any way affect  
22 the security or protection of the bonds.

23 Sec. 30.13.080. VALIDITY OF PLEDGE. It is the intention of the  
24 legislature that a pledge made in respect of bonds shall be perfected  
25 and shall be valid and binding from the time the pledge is made; that  
26 the money or property so pledged and thereafter received by an author-  
27 ity shall immediately be subject to the lien of the pledge without  
28 physical delivery or further act; and that the lien of the pledge  
29 shall be valid and binding against all parties having claims of any

1 kind in tort, contract, or otherwise against the authority irrespec-  
2 tive of whether the parties have notice. Neither the resolution,  
3 trust agreement or any other instrument by which a pledge is created  
4 need be recorded or filed under the provisions of the Uniform Commer-  
5 cial Code to be perfected or to be valid, binding, or effective  
6 against the parties.

7 Sec. 30.13.090. NONLIABILITY ON BONDS. (a) Neither the members  
8 of an authority nor a person executing the bonds are liable personally  
9 on the bonds or are subject to personal liability or accountability by  
10 reason of the issuance of the bonds.

11 (b) The bonds issued by an authority do not constitute an in-  
12 debtedness or other liability of the state or of a political subdivi-  
13 sion of the state, except the authority, but shall be payable solely  
14 from the income and receipts or other funds or property of the author-  
15 ity. The authority may not pledge the faith or credit of the state or  
16 of a political subdivision of the state, except the authority, to the  
17 payment of a bond, and the issuance of a bond by the authority does  
18 not directly or indirectly or contingently obligate the state or a  
19 political subdivision of the state to apply money from, levy or pledge  
20 any form of taxation to the payment of the bond.

21 Sec. 30.13.100. PLEDGE OF THE STATE. The state pledges to and  
22 agrees with the holders of bonds issued under this chapter and with  
23 the federal agency which loans or contributes funds in respect to a  
24 project, that the state will not limit or alter the rights and powers  
25 vested in an authority by this chapter to fulfill the terms of a  
26 contract made by the authority with the holders or federal agency, or  
27 in any way impair the rights and remedies of the holders until the  
28 bonds, together with the interest on them with interest on unpaid  
29 installments of interest, and all costs and expenses in connection

1 with an action or proceeding by or on behalf of the holders, are fully  
2 met and discharged. The authority is authorized to include this  
3 pledge and agreement of the state, insofar as it refers to holders of  
4 bonds of the authority, in a contract with the holders, and insofar as  
5 it relates to a federal agency, in a contract with the federal agency.

6 Sec. 30.13.110. EXEMPTION FROM TAXATION. The real and personal  
7 property of an authority and its assets, income and receipts are  
8 declared to be the property of a political subdivision of the state  
9 and, together with any project financed under this chapter and an  
10 interest created in a project applicant or other person under this  
11 chapter, devoted to an essential public and governmental function and  
12 purpose, and the property, assets, income, receipts, project and  
13 leasehold interests are exempt from all taxes and special assessments  
14 of the state or a political subdivision of the state. All bonds of an  
15 authority are declared to be issued by a political subdivision of the  
16 state and for an essential public and governmental purpose and to be a  
17 public instrumentality, and the bonds, and the interest on them, the  
18 income from them and the transfer of the bonds, and all assets, income  
19 and receipts pledged to pay or secure the payment of the bonds, or  
20 interest on them, shall at all times be exempt from taxation by or  
21 under the authority of the state, except for inheritance and estate  
22 taxes and taxes on transfers by or in contemplation of death. Nothing  
23 in this section affects or limits an exemption from license fees,  
24 property taxes, or excise, income, or other taxes, provided under any  
25 other law, nor does it create a tax exemption with respect to the  
26 interest of any business enterprise or other person, other than the  
27 authority, in any property, assets, income, receipts, project or lease  
28 whether or not financed under this chapter.

29 Sec. 30.13.120. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The

1 bonds of an authority are securities in which all public officers and  
2 bodies of the state and all municipalities and municipal subdivisions,  
3 all insurance companies and associations and other persons carrying on  
4 an insurance business, all banks, bankers, trust companies, savings  
5 banks, savings associations, including savings and loan associations  
6 and building and loan associations, investment companies and other  
7 persons carrying on banking business, all administrators, guardians,  
8 executors, trustees and other fiduciaries, and all other persons who  
9 are now or may afterward be authorized to invest in bonds or other  
10 obligations of the state, may properly and legally invest money in-  
11 cluding capital in their control or belonging to them. Notwithstand-  
12 ing any other provisions of law, the bonds of an authority are also  
13 securities that may be deposited with and may be received by all  
14 public officers and bodies of the state and all municipalities and  
15 municipal subdivisions for any purpose for which the deposit of bonds  
16 or other obligations of the state is now or may afterward be autho-  
17 rized.

18 Sec. 30.13.130. EQUAL USE AND ACCESS. If an authority owns,  
19 leases, or otherwise operates or controls a facility, the authority  
20 shall, to the maximum extent possible, provide for equal rights to  
21 access to and use of the facility by members of the public and other  
22 persons or entities. However, this section does not prevent an  
23 authority from establishing fair and reasonable limitations on use of  
24 or access to a facility to the extent the authority considers, in its  
25 sole discretion, that the limitations are necessary in connection with  
26 the nature of the facility or the demand for use of or access to the  
27 facility. This section applies to the establishment of rates and rate  
28 structures as well as other factors relating to the use of or access  
29 to a facility owned, leased, operated, or otherwise controlled by an

1 authority.

2 Sec. 30.13.140. JURISDICTION. An authority is not subject to  
3 the jurisdiction of the Alaska Transportation Commission.

4 Sec. 30.13.150. SUCCESSION. Whenever a borough of the first or  
5 second class is created with an area coterminous with the area of an  
6 authority, the authority shall be integrated into the borough within  
7 one year of incorporation. On integration the borough succeeds to all  
8 the rights, powers, duties, assets, and liabilities of the authority.

9 Sec. 30.13.900. DEFINITIONS. In this chapter, unless the con-  
10 text otherwise requires,

11 (1) "authority" means a public body created under AS 30.-  
12 13.010;

13 (2) "bonds" means bonds or other obligations issued under  
14 this chapter;

15 (3) "cost" includes the cost of acquisition or construction  
16 of all or any part of transportation facilities and of all or any  
17 property, rights, easements and franchises considered by an authority  
18 to be necessary, useful, or convenient, including reimbursements to  
19 the authority or any other person of money expended for the purposes  
20 of the authority and interest or discount on bonds to finance those  
21 expenses, engineering and inspection costs and legal expenses, the  
22 cost of financial, professional and other advice, and the cost of  
23 issuance of bonds;

24 (4) "district" means the area within the boundaries of an  
25 authority;

26 (5) "person" includes an association, corporation, nation,  
27 state or agency or subdivision of the state, municipality of the  
28 state, or an authority, as well as a natural person;

29 (6) "transportation facilities" or "facilities" means

1 harbor, port, shipping and transportation facilities of all kinds,  
2 including harbors, channels, turning basins, anchorage areas, jetties,  
3 breakwaters, waterways, canals, locks, tidal basins, wharves, docks,  
4 piers, slips, bulkheads, public landings, warehouses, terminals,  
5 refrigerating and cold storage plants, rolling stock car ferries,  
6 tugs, boats, conveyors, tunnels, bridges, highways, roads and rail-  
7 roads, and appliances of all kinds for the handling, storage, in-  
8 spection and transportation of freight and natural resource products;  
9 it also includes all property, rights, easements and franchises rela-  
10 tive to a facility and necessary or convenient for the acquisition,  
11 construction or operation of the facility, but does not include air-  
12 port facilities.

13 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
14 10.070(c).