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Finance

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1 IN THE SENATE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 151 (C&RA)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

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 natural
13 resource enterprises, including mining enterprises.

14 (2) The development of natural resource enterprises, including
15 mining enterprises, is essential to the long-term economic growth of the
16 state and will directly and indirectly alleviate unemployment in the state.

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

23 (4) The locally elected majority membership of an authority
24 created under this chapter provides a method of assuring that the manner of
25 development and the permanent features of a project will be consistent with
26 the economic, sociological, cultural, environmental, and political aspira-
27 tions of the residents of the particular region.

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

29 CHAPTER 13. REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

1 Sec. 30.13.010. CREATION OF AUTHORITY. (a) The residents of
2 each area of the state within the boundaries of a regional educational
3 attendance area established under AS 14.08 may create a public body
4 corporate and politic under the name and style of the "
5 _____ Resource Development Authority" with all or any
6 significant part of the name of the region of the state inserted. The
7 boundaries of the authority created shall be coterminous with the
8 boundaries of the regional educational attendance area. Creation of
9 an authority is initiated by a petition filed with the Department of
10 Community and Regional Affairs and a statement submitted to the gover-
11 nor before July 1, 1986. The petition must include the proposed name
12 of the authority, its boundaries, and a statement of the facilities
13 proposed to be provided by the authority. The petition must be signed
14 by 15 percent of the total number of residents in the regional educa-
15 tional attendance area who cast votes in the preceding general
16 election. The Department of Community and Regional Affairs shall
17 review petitions for content and signatures. If the Department of
18 Community and Regional Affairs determines that the petition is ade-
19 quate, it shall transmit the petition to the director of elections.

20 (b) The statement required under (a) of this section to be
21 submitted to the governor must include the purposes for which the
22 authority is to be created, the goals and potential projects the
23 authority intends to accomplish, and an analysis of alternative
24 methods of accomplishing the goals and projects of the proposed au-
25 thority. The governor shall determine whether the accomplishment of
26 the goals and potential projects of the proposed authority would be
27 advantageous to the economic growth of the region and the state and
28 whether the creation of the proposed authority would be an appropriate
29 and desirable method of accomplishing those goals and projects. The

1 governor shall submit findings under this subsection to the division
2 of elections within 90 days after receipt of the statement.

3 (c) The director of elections shall order an election in the
4 area of the proposed authority to determine whether the voters desire
5 the creation of the authority if the director has received the peti-
6 tion and

7 (1) the governor has submitted affirmative findings to the
8 director under (b) of this section; or

9 (2) more than 90 days have elapsed since the statement was
10 submitted to the governor under (a) of this section and the governor
11 has failed to submit negative findings to the division of elections.

12 (d) An order for an election shall be made within 30 days after
13 the requirements of (c) of this section have been met. The election
14 shall be held not less than 30 or more than 120 days after the date of
15 the election order. To the extent practicable, the election shall be
16 held on a date coinciding with the date for other elections in the
17 region. The election order shall specify the dates after which nomi-
18 nation petitions for election of initial officers may be filed.

19 (e) A registered voter who has been a resident within the area
20 of the proposed authority for 30 days before the date of election may
21 vote.

22 (f) If creation of an authority is approved, the director of
23 elections shall, within 10 days of certification, order an election to
24 choose the five initially elected members of the board of governors of
25 the authority. The election shall be held not less than 60 or more
26 than 90 days after the date of the election order. The initially
27 elected members of the board of governors shall take office on the
28 first Monday following certification of their election. Two of the
29 initially elected members shall be designated by lot to serve for a

1 term expiring on the first day of the second November after the date
2 of their election; two of the initially elected members shall be
3 designated by lot to serve for a term expiring on the first day of the
4 third November after the date of their election, and one of the ini-
5 tially elected members shall be designated by lot to serve for a term
6 expiring on the first day of the fourth November after the date of
7 election.

8 (g) Nominations for elected members are made by petition. The
9 petition shall be in the form prescribed by the director of elections
10 and include the name and address of the nominee and the statement of
11 the nominee that the nominee is qualified under this chapter for the
12 office of member of the board of governors of the authority. A
13 nomination petition shall include the signature and resident address
14 of 20 voters in the area of the authority. The director of elections
15 shall supervise the elections in the general manner prescribed by the
16 Alaska Election Code (AS 15). The state shall pay all election costs
17 under this chapter.

18 (h) A copy of each petition for the creation of an authority and
19 of the certificate of the director of elections as to the election
20 shall be filed in the office of the director of elections. Upon proof
21 of filing the authority referred to shall, in any suit, action or
22 proceeding involving the validity or enforcement of, or relating to,
23 any contract or obligation or act of the authority, be conclusively
24 presumed to have been lawfully and properly created as a public body
25 corporate and politic and established and authorized to transact
26 business and exercise its powers under this chapter.

27 Sec. 30.13.020. BOARD OF GOVERNORS. (a) The authority shall be
28 governed by a board of governors consisting of eight members, five of
29 whom shall be elected and three of whom shall be appointed by the

1 governor. Elections of members to succeed those initially elected
2 under AS 30.13.010(f) shall be held on the first Tuesday of October of
3 each year in which a term expires. Terms of elected members shall be
4 two years.

5 (b) Nominations for elected members to succeed those initially
6 elected under AS 30.13.010(f) shall be in accordance with the proce-
7 dures set out in AS 30.13.010(g).

8 (c) The three members appointed by the governor shall be heads
9 of principal departments of the executive branch and shall serve at
10 the pleasure of the governor.

11 (d) The members of the board of governors shall elect a chair-
12 person and a vice chairperson from among its members. Six members of
13 the board of governors constitute a quorum for the transaction of
14 business. Action may be taken and motions or resolutions adopted by
15 the board of governors at a meeting at which a quorum is present by
16 vote of a majority of the members present, unless the bylaws of an
17 authority require a larger number. The board of governors may
18 delegate to one or more of its officers, agents or employees the
19 powers and duties that it considers proper. The board of governors
20 may appoint persons as officers it considers advisable, including an
21 executive director, and may employ professional advisors, counsel,
22 technical experts, agents, and other employees it considers advisable.

23 (e) A member of the board of governors of an authority may not
24 vote on a resolution of the board relating to any agreement to be
25 entered into by the authority under this chapter if the member is a
26 party to the agreement or has a direct ownership or equity interest,
27 beneficially or of record, exceeding one percent in, or is employed
28 by, a firm, partnership, corporation or association that is a party to
29 the agreement. A resolution of the board that is approved by a

1 majority of all the members who are not barred from voting under this
2 subsection is a valid action of the authority for all purposes.

3 Sec. 30.13.030. PURPOSE OF AN AUTHORITY. The purpose of an
4 authority shall be the improvement, establishment and development of
5 facilities in its district for transportation purposes in connection
6 with natural resource enterprises, either directly or by agreement
7 with any public or private entity or person.

8 Sec. 30.13.040. POWERS OF AN AUTHORITY. Subject to AS 30.13.050
9 and AS 30.13.130, in furtherance of its corporate purposes under
10 AS 30.13.030, an authority has the power to

- 11 (1) sue and be sued;
- 12 (2) have a seal and alter it at its pleasure;
- 13 (3) adopt and amend bylaws for its organization and inter-
14 nal management;
- 15 (4) adopt regulations governing the exercise of its corpo-
16 rate powers;
- 17 (5) acquire, rent, hold, use and dispose of projects and
18 other real and personal property necessary, useful, or convenient for
19 its purposes upon the terms and conditions the authority may consider
20 advisable;
- 21 (6) provide for and secure the payment of bonds and the
22 rights of the holders of them, and to purchase, hold and dispose of
23 bonds;
- 24 (7) accept gifts, loans, or grants, including organiza-
25 tional grants, from, and enter into contracts or other transactions
26 regarding them with, any federal, state, municipal or other agency or
27 instrumentality, private organization, or other person;
- 28 (8) deposit or invest its funds, subject to agreements with
29 bondholders;

1 (9) charge and collect rents, rates, fees, or other charges
2 for its services and facilities;

3 (10) enter into contracts or other transactions with any
4 federal, state, municipal or other agency, or instrumentality, private
5 organization, or person consistent with the exercise of any powers
6 under this chapter; and

7 (11) do all things necessary and convenient to carry out its
8 corporate purposes and exercise the powers granted in this chapter.

9 Sec. 30.13.050. LIMITATION ON POWERS. An authority has only
10 those powers expressly granted in this chapter, reasonably implied
11 from this chapter, or reasonably necessary or convenient to carry out
12 its corporate purposes and to exercise the powers expressly granted in
13 or reasonably implied from this chapter. An authority does not have
14 powers of eminent domain, taxation, land use planning, zoning, permit-
15 ting, or other similar governmental powers. An authority may not use
16 state grants, appropriations, or other transfers from the state to
17 satisfy bond obligations or otherwise establish collateral or security
18 for bonds issued by the authority or to finance the improvement,
19 establishment, or development of transportation facilities or
20 projects.

21 Sec. 30.13.055. CONSIDERATION OF PROJECTS TO BE FINANCED. (a)
22 Before issuing bonds for any project under this chapter, an authority
23 must find, on the basis of all information reasonably available to it,
24 that

25 (1) the project and its development under this chapter will
26 be economically advantageous to the state and the general public
27 welfare and will contribute to the economic growth of the state and
28 the region within which the authority may exercise its powers;

29 (2) the project is financially feasible and, able to

1 produce revenue adequate to repay the bonds with which it is financed;
2 and

3 (3) the scope of the project is sufficient to provide a
4 reasonable expectation of a benefit to the region and the economy of
5 the state.

6 (b) An authority shall give fair and reasonable consideration to
7 a project presented to it for financing. When the authority deter-
8 mines whether to finance or assist in the financing of the project,
9 the authority shall state the reasons for its determination in a
10 written resolution upon request by a person who presented the project
11 to the authority or a person who presented opposition to the project.
12 The authority shall base its reasons on the information presented to
13 it concerning the project and on other information considered appro-
14 priate by the authority.

15 Sec. 30.13.060. BONDS OF AN AUTHORITY. (a) Subject to the
16 provisions of AS 30.13.055(a), an authority may borrow money and may
17 issue bonds, including but not limited to bonds on which the principal
18 and interest are payable,

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

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

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

26 (b) Bonds shall be authorized by resolution of the authority,
27 and be dated and shall mature as the resolution may provide, except
28 that no bond may mature more than 40 years from the date of its issue.
29 Bonds shall bear interest at the rate or rates, be in the denomina-

1 tions, be in the form, either coupon or registered, carry the regis-
2 tration privileges, be executed in the manner, be payable in the
3 medium of payment, at the place or places, and be subject to the terms
4 of redemption which the resolution or a subsequent resolution may
5 provide.

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

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

11 (e) The superior court shall have jurisdiction to hear and
12 determine suits, actions or proceedings relating to an authority,
13 including without limitation suits, actions or proceedings brought to
14 foreclose or otherwise enforce a mortgage, pledge, assignment or
15 security interest or brought by or for the benefit or security of a
16 holder of its bonds or by a trustee for or other representative of the
17 holders.

18 (f) Before issuing bonds for a project under this chapter an
19 authority shall submit to the state bond committee a description of
20 the bond issue and an independent economic feasibility analysis of the
21 project and expected revenues. This information may be contained in a
22 preliminary prospectus, offering circular or official statement relat-
23 ing to the bond issue. Bonds may not be issued unless the state bond
24 committee finds, based upon the information submitted by the authority
25 under this subsection and other information that is reasonably avail-
26 able to it, that the project revenues can be reasonably expected to be
27 adequate for payment of the principal and interest on the bonds to be
28 issued, and that issuance of the bonds by the authority would not be
29 expected to adversely affect the ability of the state or its political

1 subdivisions to market bonds.

2 Sec. 30.13.070. TRUST INDENTURES AND TRUST AGREEMENTS. In the
3 discretion of the authority, an issue of bonds may be secured by a
4 trust indenture or trust agreement between the authority and a
5 corporate trustee, that may be a trust company, bank, or national
6 banking association, with corporate trust powers, located inside or
7 outside the state, or by a secured loan agreement or other instrument
8 or under a resolution giving powers to a corporate trustee, after this
9 in this section referred to as "trust agreement", by means of which
10 the authority may

11 (1) make and enter into the covenants and agreements with
12 the trustee or the holders of the bonds that the authority determines
13 necessary or desirable, including, without limitation, covenants,
14 provisions, limitations and agreements as to

15 (A) the application, investment, deposit, use and
16 disposition of the proceeds of the bonds of the authority or of
17 money or other property of the authority or in which it has an
18 interest;

19 (B) the fixing and collection of rents or other con-
20 sideration for, and the other terms to be incorporated in an
21 agreement with respect to a project;

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

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

27 (E) the vesting in a trustee of rights, powers,
28 duties, funds, or property in trust for the benefit of bond-
29 holders, including, without limitation, the right to enforce

1 payment, performance and all other rights of the authority or of
2 the bondholders, under a lease, contract of sale, mortgage,
3 security agreement, or trust agreement with respect to a project
4 by mandamus or other proceeding or by taking possession of by
5 agent or otherwise and operating a project and collecting rents
6 or other consideration and applying the same in accordance with
7 the trust agreement;

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

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

13 Sec. 30.13.080. VALIDITY OF PLEDGE. It is the intention of the
14 legislature that a pledge made in respect of bonds shall be perfected
15 and shall be valid and binding from the time the pledge is made; that
16 the money or property so pledged and thereafter received by an author-
17 ity shall immediately be subject to the lien of the pledge without
18 physical delivery or further act; and that the lien of the pledge
19 shall be valid and binding against all parties having claims of any
20 kind in tort, contract, or otherwise against the authority irrespec-
21 tive of whether the parties have notice. Neither the resolution,
22 trust agreement or any other instrument by which a pledge is created
23 need be recorded or filed under the provisions of the Uniform Commer-
24 cial Code to be perfected or to be valid, binding, or effective
25 against the parties. This section does not affect title to or convey-
26 ances of real property, and does not limit the applicability of
27 AS 34.15.290.

28 Sec. 30.13.090. NONLIABILITY ON BONDS. (a) Neither the members
29 of an authority nor a person executing the bonds are liable personally

1 on the bonds or are subject to personal liability or accountability by
2 reason of the issuance of the bonds.

3 (b) The bonds issued by an authority do not constitute an in-
4 debtedness or other liability of the state or of a political
5 subdivision of the state, but shall be payable solely from the income
6 and receipts or other funds or property of the authority. The
7 authority may not pledge the faith or credit of the state or of a
8 political subdivision of the state, except the authority, to the
9 payment of a bond, and the issuance of a bond by the authority does
10 not directly or indirectly or contingently obligate the state or a
11 political subdivision of the state to apply money from, levy or pledge
12 any form of taxation to the payment of the bond.

13 Sec. 30.13.100. PLEDGE OF THE STATE. The state pledges to and
14 agrees with the holders of bonds issued under this chapter and with
15 the federal agency which loans or contributes funds in respect to a
16 project, that the state will not limit or alter the rights and powers
17 vested in an authority by this chapter to fulfill the terms of a
18 contract made by the authority with the holders or federal agency, or
19 in any way impair the rights and remedies of the holders until the
20 bonds, together with the interest on them with interest on unpaid
21 installments of interest, and all costs and expenses in connection
22 with an action or proceeding by or on behalf of the holders, are fully
23 met and discharged. The authority is authorized to include this
24 pledge and agreement of the state, insofar as it refers to holders of
25 bonds of the authority, in a contract with the holders, and insofar as
26 it relates to a federal agency, in a contract with the federal agency.

27 Sec. 30.13.110. EXEMPTION FROM TAXATION. The real and personal
28 property of an authority and its assets, income and receipts are
29 declared to be the property of a political subdivision of the state

1 and, together with any project financed under this chapter are exempt
2 from all taxes and special assessments of the state or a political
3 subdivision of the state. All bonds of an authority are declared to
4 be issued by a political subdivision of the state and for an essential
5 public and governmental purpose and to be a public instrumentality,
6 and the bonds, and the interest on them, the income from them and the
7 transfer of the bonds, and all assets, income and receipts pledged to
8 pay or secure the payment of the bonds, or interest on them, shall at
9 all times be exempt from taxation by or under the authority of the
10 state, except for inheritance and estate taxes and taxes on transfers
11 by or in contemplation of death. Nothing in this section affects or
12 limits an exemption from license fees, property taxes, or excise,
13 income, or other taxes, provided under any other law, nor does it
14 create a tax exemption with respect to the interest of any business
15 enterprise or other person, other than the authority, in any property,
16 assets, income, receipts, project or lease whether or not financed
17 under this chapter.

18 Sec. 30.13.120. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
19 bonds of an authority are securities in which all public officers and
20 bodies of the state and all municipalities and municipal subdivisions,
21 all insurance companies and associations and other persons carrying on
22 an insurance business, all banks, bankers, trust companies, savings
23 banks, savings associations, including without limitation savings and
24 loan associations and building and loan associations, investment
25 companies and other persons carrying on banking business, all adminis-
26 trators, guardians, executors, trustees and other fiduciaries, and all
27 other persons who are now or may afterward be authorized to invest in
28 bonds or other obligations of the state, may properly and legally
29 invest money including capital in their control or belonging to them.

1 Notwithstanding any other provisions of law, the bonds of an authority
2 are also securities that may be deposited with and may be received by
3 all public officers and bodies of the state and all municipalities and
4 municipal subdivisions for any purpose for which the deposit of bonds
5 or other obligations of the state is now or may afterward be autho-
6 rized.

7 Sec. 30.13.125. AUDIT. The legislative auditor shall audit or
8 shall cause to have audited annually the financial records of an
9 authority. The legislative auditor may prescribe the form and content
10 of the financial records of an authority and shall have access to
11 these records at any reasonable time.

12 Sec. 30.13.130. EQUAL USE AND ACCESS. If an authority owns,
13 leases, or otherwise operates or controls, or participates in the
14 financing of, a facility, the authority shall, to the maximum extent
15 possible, provide for equal rights of access to and use of the facil-
16 ity by members of the public and other persons or entities upon terms
17 and conditions that are fair and reasonable. However, this subsection
18 does not prevent an authority from establishing fair and reasonable
19 limitations on use of or access to a facility to the extent the limi-
20 tations are necessary in connection with the nature of the facility or
21 the demand for use of or access to the facility. This section applies
22 to the establishment of rates and rate structures as well as all other
23 factors, terms, and conditions relating to the use of or access to the
24 facility, including without limitation the design and location of the
25 facility. The members of the authority shall make a written finding
26 concerning compliance of the facility with the provisions of this
27 section. A written finding signed by at least three of the five
28 elected members and two of the three appointed members that the facil-
29 ity complies with the provisions of this section shall constitute a

1 conclusive presumption of compliance.

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 or a home rule municipality is created with an area
6 coterminous with or inclusive of the area of an authority, the author-
7 ity shall be integrated into the borough or home rule municipality
8 within one year of incorporation. On integration the borough or home
9 rule municipality succeeds to all the rights, powers, duties, assets,
10 and liabilities of the authority, except that any indebtedness of an
11 authority does not constitute a general obligation of the borough or
12 home rule municipality payable from taxes levied by the borough or
13 home rule municipality. The borough or home rule municipality may not
14 levy any taxes to pay the indebtedness.

15 Sec. 30.13.900. DEFINITIONS. In this chapter, unless the con-
16 text otherwise requires,

17 (1) "authority" means a public body created under AS 30.-
18 13.010;

19 (2) "bonds" means bonds or other obligations issued under
20 this chapter;

21 (3) "cost" includes the cost of acquisition or construction
22 of all or any part of transportation facilities and of all or any
23 property, rights, easements and franchises considered by an authority
24 to be necessary, useful, or convenient, including without limitation
25 reimbursements to the authority or any other person of money expended
26 for the purposes of the authority and interest or discount on bonds to
27 finance those expenses, engineering and inspection costs and legal
28 expenses, the cost of financial, professional and other advice, and
29 the cost of issuance of bonds;

1 (4) "district" means the area within the boundaries of an
2 authority;

3 (5) "person" includes a corporation, company, partnership,
4 firm, association, organization, business trust, society, state or
5 agency or subdivision of the state, municipality of the state, or an
6 authority, as well as a natural person;

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

20 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).