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1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 151 (Resources)

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 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 housing
3 authority established under AS 18.55.996 which is located in whole or
4 in part in the unorganized borough of the state may create a public
5 body corporate and politic under the name and style of the "
6 _____ Resource Development Authority" with all or any
7 significant part of the name of the region of the state inserted. The
8 boundaries of the authority created shall be coterminous with the
9 portion of the applicable regional housing authority that lies in the
10 unorganized borough. Creation of an authority is initiated by a
11 petition filed with the Department of Community and Regional Affairs
12 and a statement submitted to the governor before July 1, 1986. The
13 petition must include the proposed name of the authority, its bound-
14 aries, and a statement of the facilities proposed to be provided by
15 the authority. The petition must be signed by 15 percent of the total
16 number of residents in the portion of the applicable regional housing
17 authority that lies in the unorganized borough who cast votes in the
18 preceding general election. The Department of Community and Regional
19 Affairs shall review petitions for content and signatures. If the
20 Department of Community and Regional Affairs determines that the
21 petition is adequate, it shall transmit the petition to the director
22 of elections.

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

1 advantageous to the economic growth of the region and the state and
2 whether the creation of the proposed authority would be an appropriate
3 and desirable method of accomplishing those goals and projects. The
4 governor shall submit findings under this subsection to the division
5 of elections within 90 days after receipt of the statement.

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

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

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

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

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

25 (f) 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 initially elected members of the board of governors of
28 the authority. The election shall be held not less than 60 or more
29 than 90 days after the date of the election order. The initially

1 elected members of the board of governors shall take office on the
2 first Monday following certification of their election. Two of the
3 initially elected members shall be designated by lot to serve for a
4 term expiring on the first day of the second November after the date
5 of their election; two of the initially elected members shall be
6 designated by lot to serve for a term expiring on the first day of the
7 third November after the date of their election, and one of the ini-
8 tially elected members shall be designated by lot to serve for a term
9 expiring on the first day of the fourth November after the date of
10 election.

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

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

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2 Sec. 30.13.020. BOARD OF GOVERNORS. (a) The authority shall be
3 governed by a board of governors consisting of eight members, five of
4 whom shall be elected and three of whom shall be appointed by the
5 governor. Elections of members to succeed those initially elected
6 under AS 30.13.010(f) shall be held on the first Tuesday of October of
7 each year in which a term expires. Terms of elected members shall be
8 two years.

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

12 (c) The three members appointed by the governor shall be the
13 commissioner of transportation and public facilities and the heads of
14 two other principal departments of the executive branch.

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

27 (e) A member of the board of governors of an authority may not
28 vote on a resolution of the board relating to any agreement to be
29 entered into by the authority under this chapter if the member is a

1 party to the agreement or has a direct ownership or equity interest,
2 beneficially or of record, exceeding one percent in, or is employed
3 by, a firm, partnership, corporation or association that is a party to
4 the agreement. A resolution of the board that is approved by a major-
5 ity of all the members who are not barred from voting under this
6 subsection is a valid action of the authority for all purposes.

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

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

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

1 regarding them with, any federal, state, municipal or other agency or
2 instrumentality, private organization, or other person;

3 (8) deposit or invest its funds, subject to agreements with
4 bondholders;

5 (9) charge and collect only those rents, rates, fees, or
6 other charges that are necessary to pay for capital, maintenance, and
7 operating costs of the services and facilities of the authority;

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

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

14 Sec. 30.13.050. LIMITATION ON POWERS. An authority has only
15 those powers expressly granted in this chapter, reasonably implied
16 from this chapter, or reasonably necessary or convenient to carry out
17 its corporate purposes and to exercise the powers expressly granted in
18 or reasonably implied from this chapter. An authority does not have
19 powers of eminent domain, taxation, land use planning, zoning, permit-
20 ting, or other similar governmental powers. An authority may not use
21 state grants, appropriations, or other transfers from the state to
22 satisfy bond obligations or otherwise establish collateral or security
23 for bonds issued by the authority. An authority may not use rents,
24 rates, fees, or other charges collected through operation of a facil-
25 ity to finance the improvement, establishment, and development of
26 unrelated facilities.

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

1 that

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

6 (2) the project is financially sound and, can be expected
7 to produce revenue adequate to repay the bonds with which it is
8 financed; and

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

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

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

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

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

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

3 (b) Bonds shall be authorized by resolution of the authority,
4 and be dated and shall mature as the resolution may provide, except
5 that no bond may mature more than 40 years from the date of its issue.
6 Bonds shall bear interest at the rate or rates, be in the denomina-
7 tions, be in the form, either coupon or registered, carry the regis-
8 tration privileges, be executed in the manner, be payable in the
9 medium of payment, at the place or places, and be subject to the terms
10 of redemption which the resolution or a subsequent resolution may
11 provide.

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

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

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

24 (f) Before issuing bonds for a project under this chapter an
25 authority shall submit to the state bond committee a description of
26 the bond issue and an independent economic feasibility analysis of the
27 project and expected revenues. This information may be contained in a
28 preliminary prospectus, offering circular or official statement relat-
29 ing to the bond issue. Bonds may not be issued unless the state bond

1 committee finds, based upon the information submitted by the authority
2 under this subsection and other information that is reasonably avail-
3 able to it, that the project revenues can be reasonably expected to be
4 adequate for payment of the principal and interest on the bonds to be
5 issued, and that issuance of the bonds by the authority would not be
6 expected to adversely affect the ability of the state or its political
7 subdivisions to market bonds.

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

17 (1) make and enter into the covenants and agreements with
18 the trustee or the holders of the bonds that the authority determines
19 necessary or desirable, including, without limitation, covenants,
20 provisions, limitations and agreements as to

21 (A) the application, investment, deposit, use and
22 disposition of the proceeds of the bonds of the authority or of
23 money or other property of the authority or in which it has an
24 interest;

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

28 (C) the assignment by the authority of its rights in a
29 mortgage or other security interest created with respect to a

1 project to a trustee for the benefit of bondholders;

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

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

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

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

19 Sec. 30.13.080. VALIDITY OF PLEDGE. It is the intention of the
20 legislature that a pledge made in respect of bonds shall be perfected
21 and shall be valid and binding from the time the pledge is made; that
22 the money or property so pledged and thereafter received by an author-
23 ity shall immediately be subject to the lien of the pledge without
24 physical delivery or further act; and that the lien of the pledge
25 shall be valid and binding against all parties having claims of any
26 kind in tort, contract, or otherwise against the authority irrespec-
27 tive of whether the parties have notice. Neither the resolution,
28 trust agreement or any other instrument by which a pledge is created
29 need be recorded or filed under the provisions of the Uniform

1 Commercial Code to be perfected or to be valid, binding, or effective
2 against the parties. This section does not affect title to or convey-
3 ances of real property, and does not limit the applicability of
4 AS 34.15.290.

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

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

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

1 pledge and agreement of the state, insofar as it refers to holders of
2 bonds of the authority, in a contract with the holders, and insofar as
3 it relates to a federal agency, in a contract with the federal agency.

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

24 Sec. 30.13.120. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
25 bonds of an authority are securities in which all public officers and
26 bodies of the state and all municipalities and municipal subdivisions,
27 all insurance companies and associations and other persons carrying on
28 an insurance business, all banks, bankers, trust companies, savings
29 banks, savings associations, including without limitation savings and

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

13 Sec. 30.13.125. AUDIT. The legislative auditor shall audit or
14 shall cause to have audited annually the financial records of an
15 authority. The legislative auditor may prescribe the form and content
16 of the financial records of an authority and shall have access to
17 these records at any reasonable time.

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

1 facility, including without limitation the design and location of the
2 facility. The members of the authority shall make a written finding
3 concerning compliance of the facility with the provisions of this
4 section. A written finding signed by at least three of the five
5 elected members and two of the three appointed members that the facil-
6 ity complies with the provisions of this section shall constitute a
7 conclusive presumption of compliance.

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

10 Sec. 30.13.150. SUCCESSION. Whenever a borough of the first or
11 second class or a home rule municipality is created with an area
12 coterminous with or inclusive of the area of an authority, the author-
13 ity shall be integrated into the borough or home rule municipality
14 within one year of incorporation. On integration the borough or home
15 rule municipality succeeds to all the rights, powers, duties, assets,
16 and liabilities of the authority, except that any indebtedness of an
17 authority does not constitute a general obligation of the borough or
18 home rule municipality payable from taxes levied by the borough or
19 home rule municipality. The borough or home rule municipality may not
20 levy any taxes to pay the indebtedness.

21 Sec. 30.13.900. DEFINITIONS. In this chapter, unless the con-
22 text otherwise requires,

23 (1) "authority" means a public body created under AS 30.-
24 13.010;

25 (2) "bonds" means bonds or other obligations issued under
26 this chapter;

27 (3) "cost" includes the cost of acquisition or construction
28 of all or any part of transportation facilities and of all or any
29 property, rights, easements and franchises considered by an authority

1 to be necessary, useful, or convenient, including without limitation
2 reimbursements to the authority or any other person of money expended
3 for the purposes of the authority and interest or discount on bonds to
4 finance those expenses, engineering and inspection costs and legal
5 expenses, the cost of financial, professional and other advice, and
6 the cost of issuance of bonds;

7 (4) "district" means the area within the boundaries of an
8 authority;

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

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

26 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).