

H

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77

COMMITTEE REPORT

HOUSE

RESOURCES

FURTHER: FINANCE

(7)

4/22/83

Date: 5-18-83

Mr. Speaker:

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 377

"An Act relating to Regional Resource Development Authorities; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

#2 - passed out of Committee 5-17-83

Lear 5/18/83 ✓

Staff
Delete p 5-4-21
Regular

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 377 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act financing regional transportation facilities
7 by the Alaska Industrial Development Authority; and
8 providing for an effective date."

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

10 * Section 1. FINDINGS. In addition to the findings in AS 44.88.010,
11 the legislature finds that:

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

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

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

25 * Sec. 2. PURPOSE. In addition to the purposes specified in AS 44.88.-
26 070, the purpose of the authority is to promote the development of trans-
27 portation facilities by providing financing for transportation facilities
28 or by owning and operating transportation facilities.

29 * Sec. 3. POWERS. In addition to the powers conferred on the authority

1 under AS 44.88.080 and under other law, the authority has the power to

2 (1) acquire, rent, hold, use, and dispose of real and personal
3 property necessary, useful, or convenient for its purposes;

4 (2) grant, by franchise, lease or otherwise, the use of any
5 project, facilities or property owned or controlled by it to any person for
6 the consideration and period of time and upon the other terms and condi-
7 tions it may fix and agree upon;

8 (3) lease or agree with others to use a project for the rentals
9 and upon the terms and conditions the authority may consider advisable;

10 (4) charge and collect rents, rates, fees, or other charges for
11 its services and facilities;

12 (5) issue bonds in accordance with sec. 4(b) of this Act and
13 AS 44.88.090(b) - (f) to pay the cost of a transportation facility and to
14 secure payment of the bonds by any means provided in AS 44.88; and

15 (6) establish insurance funds, reserve funds, or other funds and
16 accounts with money provided by the sale of bonds or collateral provided by
17 participating businesses, as the authority determines to be appropriate to
18 further the purposes described in this Act.

19 * Sec. 4. REGIONAL TRANSPORTATION FACILITY DEVELOPMENT FUND. (a)
20 There is established in the authority the regional transportation facility
21 development fund. The fund consists of money or assets appropriated or
22 transferred to the authority for transportation facilities and other money
23 or assets deposited in the fund by the authority. The fund may be used to
24 finance or develop a transportation facility or to secure bonds issued to
25 finance transportation facilities.

26 (b) If a transportation facility is financed or developed through use
27 of the assets of the regional transportation facility development fund, the
28 authority may not pledge or use other assets of the authority to assist in
29 the financing or development of the transportation facility. With respect

1 to assets of the authority, bonds issued to finance transportation facil-
2 ities constitute limited obligations of the authority, secured only by
3 assets in the regional transportation facility development fund. If a
4 transportation facility is also a qualified "project," as defined in
5 AS 44.88.220(5), the limitation described in this section does not impair
6 or restrict in any manner the authority's ability to finance the project
7 under the programs established in AS 44.88.

8 * Sec. 5. REGIONAL DEVELOPMENT ADVISORY COUNCIL. (a) A Regional
9 Development Advisory Council may be established in each of the six economic
10 regions recognized by the Bureau of Labor Statistics, United States Depart-
11 ment of Labor, for the purpose of

12 (1) conducting hearings on and approving or rejecting proposed
13 transportation facilities, unless proposed to be located wholly within the
14 boundaries of a municipality; and

15 (2) advising the authority in the development, maintenance, and
16 operation of transportation facilities.

17 (b) A Regional Development Advisory Council shall be organized in a
18 regulatory body after the authority has received a proposal for the development
19 of a transportation facility within the region.

20 (c) A Regional Development Advisory Council consists of nine members
21 registered to vote in the region. The governor shall appoint the members
22 to reflect the economic and geographic diversity of the region. Council
23 members serve three-year terms at the pleasure of the governor, except that
24 the initial members may be appointed for less than three years so that the
25 term of one-third of the council expires each year. The governor shall
26 appoint a chairperson who shall call meetings as required and preside over
27 the deliberations of the council. A majority of the council constitutes a
28 quorum for transacting the affairs of the council.

29 (d) Members of a Regional Development Advisory Council receive no

1 compensation for their services on the council, but are entitled to per
2 diem and travel expenses authorized by law for state boards and commissions
3 under AS 39.20.180.

4 * Sec. 6. APPROVAL AND FINDINGS REGARDING TRANSPORTATION FACILITIES.

5 (a) Before entering into an agreement with respect to the financing or
6 development of a proposed transportation facility the authority shall
7 obtain the approval of each Regional Development Advisory Council in which
8 the proposed transportation facility is to be located, unless the proposed
9 transportation facility is to be located wholly within the boundaries of a
10 municipality, in which case the council shall obtain the approval of the
11 municipality. Approval under this subsection shall be evidenced by a
12 certified copy of a resolution of the council or governing body of the
13 municipality.

14 (b) Before issuing bonds to provide financing for a transportation
15 facility the authority shall obtain approval under (a) of this section and
16 find, on the basis of all information reasonably available to it, that

17 (1) the transportation facility and its development under this
18 chapter will be economically advantageous to the state and the general
19 public welfare and will contribute to the economic growth of the state;

20 (2) the transportation facility applicant is financially respon-
21 sible;

22 (3) the transportation facility is financially feasible and able
23 to produce revenue adequate to repay the bonds with which it is financed;

24 (4) provision to meet increased demand on public facilities that
25 might result from the transportation facility is reasonably assured;

26 (5) the transportation facility will provide or retain employ-
27 ment reasonably related to the amount of the financing by the authority
28 considering the amount of investment per employee for comparable facilities
29 and other relevant factors; and

1 (6) the scope of the transportation facility is sufficient to
2 provide a reasonable expectation of a benefit to the economy of the state.

3 * Sec. 7. HEARING TO CONSIDER PROPOSED TRANSPORTATION FACILITY. Before
4 considering a resolution regarding the approval or rejection of the devel-
5 opment or financing of a proposed transportation facility, a Regional
6 Development Advisory Council shall conduct a public hearing in at least
7 three different locations within the region or, if applicable under sec.
8 6(a) of this Act, the governing body of a municipality shall conduct a
9 hearing.

10 * Sec. 8. APPOINTMENT OF TWO AUTHORITY MEMBERS TO REPRESENT COUNCIL OR
11 GOVERNING BODY. (a) If the development or financing of the proposed
12 transportation facility is approved, the Regional Development Advisory
13 Council or governing body of a municipality, as the case may be, may desig-
14 nate two persons to serve as voting members of the authority in connection
15 with subsequent action by the authority that exclusively concerns the
16 transportation facility. If the transportation facility is located in the
17 jurisdiction of more than one council, the authority may, by resolution,
18 prescribe the manner in which local representation is provided.

19 (b) The two members designated under (a) of this section are subject
20 to the provisions of AS 44.88.180, except that they may vote on a decision
21 even though they may be regular shareholders of a native corporation af-
22 fected by the decision. However, they may not vote on the decision if they
23 are officers or employees of the native corporation.

24 * Sec. 9. DEVELOPMENT, MAINTENANCE, AND OPERATION OF TRANSPORTATION
25 FACILITIES. The authority must obtain approval of the Regional Development
26 Advisory Council or governing body of a municipality, as the case may be,
27 in which the transportation facility is located before the adoption or
28 execution of contracts, agreements, resolutions, or other matters that
29 directly concern the development, maintenance, and operation of the

1 transportation facility.

2 * Sec. 10. EQUAL USE AND ACCESS. If the authority owns, leases, or
3 otherwise operates or controls, or participates in the financing of a
4 transportation facility, the authority shall, to the maximum extent pos-
5 sible, provide for equal rights of access to and use of the facility by
6 members of the public and other persons or entities, and the access to and
7 use of the facility shall be upon terms and conditions which are fair and
8 reasonable. However, this section does not prevent the authority from
9 establishing fair and reasonable limitations on use of or access to a
10 facility to the extent the limitations are necessary in connection with the
11 nature of the facility or the demand for use of or access to the facility.
12 This section applies to the establishment of rates and rate structures as
13 well as all other factors, terms and conditions relating to the use of or
14 access to the facility, including without limitation the design and loca-
15 tion of the facility. The members of the authority shall make a written
16 finding concerning compliance of the facility with the provisions of this
17 section.

18 * Sec. 11. DEFINITIONS. In this Act, unless the context requires
19 otherwise,

20 (1) "authority" means the Alaska Industrial Development Author-
21 ity;

22 (2) "transportation facilities" or "facilities" means harbor,
23 port, shipping and transportation facilities of all kinds, including with-
24 out limitation harbors, channels, turning basins, anchorage areas, jetties,
25 breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers,
26 slips, bulkheads, public landings, warehouses, terminals, refrigerating and
27 cold storage plants, rolling stock, car ferries, tugs, boats, conveyors,
28 tunnels, bridges, highways, roads and railroads, and appliances of all
29 kinds for the handling, storage, inspection and transportation of freight

1 and natural resource products; it also includes without limitation all
2 property, rights, easements and franchises relating to a facility and
3 necessary or convenient for the acquisition, construction or operation of
4 the facility.

5 * Sec. 12. EFFECTIVE PERIOD. The powers described in this Act to
6 finance or develop a transportation facility expire on December 31, 1985.
7 Nothing in this section modifies the provisions of this Act with regard to
8 transportation facilities approved, financed, and developed under this Act
9 before December 31, 1985.

10 * Sec. 13. This Act takes effect immediately in accordance with AS 01.-
11 10.070(c).

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STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHR 377 (LOANS)
 Title: Financing Regional Trans. Fac...
 Sponsor: Comm. & Reg. Affairs Committee
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: James F. Wiedeman Phone: 465-2018
 Division: Office of Commissioner Date: _____
 Approved by Commissioner: Richard A. Lyon *Franklin [Signature] for* Date: 5/27/83
 Department: Commerce & Economic Development

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

CSHB 377 (LOANS)
Fiscal Note Analysis 5/27/83

Language in Section 5(b) of this committee substitute ties the establishment of a Regional Development Advisory Council to the Submission of a transportation facility proposal to AIDA. Costs incurred by the Council would be charged back to the project. If that language is deleted, and regional councils are established regardless of proposed projects, there would be fiscal impact to the department as indicated in the fiscal note dated 5/9/83.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

M E M O R A N D U M

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: May 15, 1983

RE: CSHB 377: Proposed Amendments

The attached amendments to CSHB 377 have been requested by representatives of the Alaska Environmental Lobby. The proposals have been numbered for the purpose of easy reference.

Proposed Amendments to CS for House Bill No. 377 (C&RA)
May 14, 1983

1) Page 2, line 14-17

Change language to read "(6) establish insurance funds, reserve funds, or other funds and accounts with monies provided by the sale of bonds or collateral provided by participating businesses, as the Authority determines to be appropriate to further the purposes described in this Act."

good
Comment: The current version makes reference to capital reserve funds. In the existing AIDA statutes (AS 44.88.105), capital reserve funds are set up to imply the moral obligation of the state to repay Industrial Development Bonds if project revenues are insufficient to cover them. The state, as a practical matter, is at risk for any tax exempt bonds it issues, but the "moral obligation" phrase increases the risk.

The intent of the amendment is to retain the use of insurance funds and reserve funds, which protect the state from risk, but to have those funds filled with private monies, not state monies. They would also serve to reduce interest rates.

2) page 3, line 16,17

Change language to read "A Regional Development Advisory Council consists of nine members who are registered to vote in the Advisory Council Region. They will be appointed by the Governor to reflect the economic and geographic diversity of the region."

3.
Comment: The present language does not insure local representation. These changes would encourage the Governor to see that local interests are represented.

3) page 4, line 16

good
Add a new point after (2) "The proposed project is financially feasible and able to produce revenues adequate to repay the bonds with which it is financed"

Comment: At present, the findings of AIDA required before bonds are sold do not include a specific examination of the viability of the project which is to be financed.

4) page 5, line 4 and 5

good
change to "may designate two persons to serve as voting members of the authority in connection with subsequent action by the authority that concern the transportation facility exclusively"

Comment: "voting" and "exclusively" are added to make the role of the two members more clear. The two added members would not be able to vote on issues that affect transportation facilities state wide.

Proposed Amendments to CS for House Bill No. 377 (continued)

5/
check
page 5, line 5

Add a new line or lines that states that the two designated members of the authority are subject to the AIDA conflict of interest law (AS 44.38.180) except that they may be regular shareholders of a native corporation that is affected by an AIDA decision and still vote on that decision. However, they may not be employees or officers of the native corporation and vote.

Comment: As the CS is currently written, most people in the NANA region could not serve as voting Authority members on the Red Dog Mine Proposal, since NANA is in a joint venture on the projects, and most residents are shareholders of NANA. The legal aspect of this modification needs to be checked--I do not know how specifically the statutes can exclude somebody from conflict of interest requirements.

6/
100
page 5, line 15.

Add "A public hearing on any issue requiring approval of the Regional Development Advisory Council must be held at the request of 5 or more residents."

Comments: The intent is to provide public hearings on the development, maintenance and operation of the transportation facility, if there is a need for them. In the present CS, they are not provided for.

3/
good
Page 3, line 15. (OUT OF ORDER)

Add "Advisory Councils will be formed only after transportation facilities have been proposed to AIDA for that region."

Comments: The administration has suggested that these councils could serve purposes other than evaluating AIDA transportation facility programs, but they have not been listed in this legislation. Since, at present, councils serve no purpose until proposals are made, their formation need not be immediate.

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May 14, 1983

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Proposed Amendments to CS for House Bill No. 377 (continued)

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ORIGINAL.



GREATER SITKA

Chamber of Commerce, Inc.

May 13, 1983

Testimony for Public Hearing by House Committee on Community
and Regional Affairs

Monday, May 26, 1983

3:15 P.M.

The Greater Sitka Chamber of Commerce wishes to be on record
in support of HB 377 and SB 151 relating to Regional Resource
Development Authorities. We believe that both of these bills
are in the best interest of the Alaskan economy which cannot
afford to be dependent upon a single resource.

Greater Sitka Chamber of Commerce
Board of Directors

POST OFFICE BOX 634

SITKA, ALASKA 99833

Rep. Lucher

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 377 (C&RA)
 Title: "... Financing Regional Trans. Fac..."
 Sponsor: Comm. & Reg. Affairs Committee
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.
 Program Category Affected: Public Protection
 BRU, Program of Subprogram(s) Affected: _____
 Administrative Services _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|--------------|--------------|--------------|--------------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | 70.1 | 73.6 | 77.3 | 81.2 | | |
| 200 TRAVEL | 91.8 | 96.4 | 101.2 | 106.3 | | |
| 300 CONTRACTUAL | 9.5 | 10.0 | 10.5 | 10.0 | | |
| 400 COMMODITIES | 7.8 | 8.2 | 8.6 | 9.0 | | |
| 500 EQUIPMENT | 7.0 | .5 | .5 | .5 | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | 186.2 | 188.7 | 198.1 | 208.0 | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

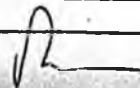
| | | | | | | |
|------------------------|-------|-------|-------|-------|--|--|
| GENERAL FUND | 186.2 | 188.7 | 198.1 | 208.0 | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: James F. Wiedeman Phone: 465-2018
 Division: Office of Commissioner Date: _____
 Approved by Commissioner: Richard A. Lyon  Date: 5/9/83
 Department: Commerce & Economic Development

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3/8/83

CSHB 377 (C&RA) ANALYSIS

It is assumed that each Regional Development Advisory Council will meet once each year. Inflation is assumed to be 5% per year.

100 PERSONAL SERVICES 70.1

Six councils will require two new positions to provide administrative and program support

| | |
|--------------------------|------|
| Development Specialist I | 44.4 |
| Clerk III | 25.7 |

200 TRAVEL 91.8

| | |
|--------------------------|------|
| Travel for staff | 18.9 |
| Development Specialist I | 13.2 |
| Clerk III | 5.7 |

| | |
|-----------------------------|------|
| Council travel and per diem | 72.9 |
|-----------------------------|------|

300 CONTRACTUAL 9.5

Telephone, telegraph, computers, copying, printing, etc.

400 COMMODITIES 7.8

Paper, meeting materials, etc.

500 EQUIPMENT 7.0

First year costs

| | |
|---------------------|-----|
| Equip new positions | 3.3 |
| Recording equipment | 2.5 |
| Other | 1.2 |

| | | | | | | | | | | |
|---------------------|-----------------------------|-----------------------|-----------|------------|------------------|--------------------|-------------------|------|---------|---------|
| 1. | POSITION TITLE Clerk III | | | | RANGE/STEP 8A | BARC. UNIT Gen. | FORM 12 PAGE/LINE | COV. | APPROV. | DISAPP. |
| 2. | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP NUMBER | PCN NUMBER | BRU PRIORITY | LOCATION Juneau | ELECTION DISTRICT | LEG. | | |
| 3. | CONTINUATION LEVEL | | | | JUSTIFICATION | | | | | |
| 4. | TYPE OF EXPENDITURE | | | | AMOUNT | | | | | |
| | 1 | | 2 | | 3 | | | | | |
| | PERSON'L SERVICES | | | | | | | | | |
| 5. | Salary | 17,844 | | | | | | | | |
| 6. | Benefits | 2,766 | | | | | | | | |
| 7. | Supplemental Benefits | 2,240 | | | | | | | | |
| 8. | Fixed Benefits | 2,980 | | | | | | | | |
| 9. | TOTAL PERSONAL SERVICES | 01 | | 25,730 | | | | | | |
| 10. | Travel | 02 | | 5,700 | | | | | | |
| 11. | Contractual | 03 | | 1,250 | | | | | | |
| 12. | Commodities | 04 | | 900 | | | | | | |
| 13. | Equipment | 05 | | 1,650 | | | | | | |
| 14. | Other | | | | | | | | | |
| 15. | TOTAL COST | | | 35,230 | | | | | | |
| | RECEIPT CODE | FUNDING SOURCE | | | | | | | | |
| 16. | | Federal Receipts 1002 | | | | | | | | |
| 17. | | G.F. Match 1003 | | | | | | | | |
| 18. | | General Funds 1004 | | 35.2 | | | | | | |
| 19. | | I-A Receipts 1005 | | | | | | | | |
| 20. | | Program Receipts 1028 | | | | | | | | |
| 21. | | Other | | | | | | | | |
| FOR B&M USE ONLY | | | | | | | | | | |
| 4A KEY NUMBER _____ | | | | | | | | | | |

This position will assist the Development Specialist I in support of the six "Regional Development Advisory Councils." The position will be responsible for coordinating and handling all travel arrangements for council functions, per diem claims, correspondence, organizing and supervising recording of meetings and minutes, and other similar work as required.

13 REQUEST FOR
NEW POSITION

AGENCY COMMERCE & ECONOMIC DEVELOPMENT
PROGRAM _____
BRU _____
COMPONENT _____

FY 84

Page _____ of _____
Revised Date _____

| | | | | | | | | | | |
|---------------------|---------------------------------------------------|---------------------------|-----------|------------|--------------------------|---------------------------|-------------------|------|---------|---------|
| 1. | POSITION TITLE <u>Development Specialist 1</u> | | | | RANGE/STEP <u>18A</u> | BARG. UNIT <u>Gen</u> | FORM 12 PAGE/LINE | COV. | APPROV. | DISAPP. |
| 2. | TYPE OF POSITION <u>PFT</u> | STAFF MONTHS <u>12</u> | RP NUMBER | PCN NUMBER | BRU PRIORITY | LOCATION <u>Juneau</u> | ELECTION DISTRICT | LEG. | | |
| 3. | CONTINUATION LEVEL | | | | JUSTIFICATION | | | | | |
| 4. | TYPE OF EXPENDITURE | | | | AMOUNT | | | | | |
| | 1 | | 2 | | 3 | | | | | |
| | PERSONAL SERVICES | | | | | | | | | |
| 5. | Salary | | 33,984 | | | | | | | |
| 6. | Benefits | | 5,267 | | | | | | | |
| 7. | Supplemental Benefits | | 2,240 | | | | | | | |
| 8. | Fixed Benefits | | 2,880 | | | | | | | |
| 9. | TOTAL PERSONAL SERVICES | | 01 | | 44,371 | | | | | |
| 10. | Travel | | 02 | | 13,210 | | | | | |
| 11. | Contractual | | 03 | | 1,250 | | | | | |
| 12. | Commodities | | 04 | | 500 | | | | | |
| 13. | Equipment | | 05 | | 1,650 | | | | | |
| 14. | Other | | | | | | | | | |
| 15. | TOTAL COST | | | | 60,981 | | | | | |
| | RECEIPT CODE | FUNDING SOURCE | | | | | | | | |
| 16. | | Federal Receipts 1002 | | | | | | | | |
| 17. | | G.F. Match 1003 | | | | | | | | |
| 18. | | General Funds 1004 | | 61.0 | | | | | | |
| 19. | | I-A Receipts 1005 | | | | | | | | |
| 20. | | Program Receipts 1028 | | | | | | | | |
| 21. | | Other | | | | | | | | |
| FOR B&M USE ONLY | | | | | | | | | | |
| 4A KEY NUMBER _____ | | | | | | | | | | |

This position will function as the Executive Secretary to the 6 "Regional Development Advisory Councils". The incumbent will serve also as a consultant to the Councils and as the liaison between the Councils, the State and the private sector. This position will be responsible for organizing and assisting the managing of the various council meetings; will prepare or have prepared economic and economic development information and data, development and feasibility studies and reports; and all other material required by the Councils.

13 REQUEST FOR
NEW POSITION

AGENCY Dept. of Commerce and Economic Development

PROGRAM _____

BRU _____

COMPONENT _____

Page _____ of _____
Revised Date _____

FY 84

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 377 (C&RA)
 Title: Regional Transportation Facilities
 Sponsor: House Community & Regional Affairs
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected: _____
 Alaska Industrial Development Authority

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | *0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL-FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

*Any costs, such as travel, incurred by AIDA for specific projects will be charged back to those projects.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bertram Wagon, Executive Director Phone: 274-1551
 Division: Alaska Industrial Development Authority Date: _____
 Approved by Commissioner: Richard A. Lyon ✓ Date: 5/9/83
 Department: Commerce and Economic Development

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

MEMORANDUM

TO: HOUSE SPEAKER JOE HAYES

FROM: REPRESENTATIVE BARBARA LACHER

DATE: May 4, 1983

SUBJECT: HB 377 Memorandum

Handwritten signature: J. Friday

I received a memo from your office today requesting that I move HB 377 out of the C&RA Committee. First the Administration has formally requested that I hold the bill in committee until this Friday as they have materials they are working on that are relevant to the bill. Secondly, there is testimony that has yet to be heard in relation to this bill. Finally, the Senate companion bill passed out of the Senate today and will be coming into the House C&RA Committee in the near future.

ALASKA

STATE LEGISLATURE

MEMORANDUM

MAY 4, 1983

TO: REP. BARBARA LACHER
FROM: JOE HAYES *JH*
BARBARA,

I'D REALLY APPRECIATE YOUR TAKING A HARD LOOK AT MOVING HB 377 OUT THIS AFTERNOON IF AT ALL POSSIBLE. I'M ANXIOUS FOR IT TO HAVE A THOROUGH HEARING IN RESOURCES BEFORE EVERYTHING STARTS TO GET URGENT AROUND HERE.

PLEASE ASK SOMEONE TO GIVE MY OFFICE A RING AFTER YOUR MEETING TO LET US KNOW WHETHER YOU'VE MOVED IT AND/OR WHEN YOU MIGHT BE ABLE TO DO SO.

THANKS,

I. REQUEST

Bill/Resolution No.: HB 377
 Title: Relating to RRDA's
 Sponsor: House C&RA
 Requestor: House C&RA

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec Operatio
 BRU, Program of Subprogram(s), Affected:
Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | .4 | | | | |
| 300 CONTRACTUAL | | 19.6 | 10.4 | 11.0 | | |
| 400 COMMODITIES | | .6 | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS ETC | | | | | | |
| TOTAL OPERATING | -0- | 20.6 | 10.4 | 11.0 | -0- | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|-----|------|------|------|-----|--|
| GENERAL FUND | -0- | 20.6 | 10.4 | 11.0 | -0- | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:


| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director
 Division: Division of Elections

Phone: 586-6181
 Date: May 3, 1983

Approved by Commissioner: 
 Department: _____

Date: 5/4/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HOUSE BILL 377

ASSUMPTIONS:

1. An election will be held in one REAA area creating one Regional Resource Development Authority. If the election does not take place at the same time as a regularly scheduled REAA election, there will be a fiscal impact.
2. The above question passes and an election of the initial five member board take place not less than 60 nor more than 90 days after the order of election. There will be a fiscal impact.
3. Subsequent election of members, after the initial members' terms have expired, takes place at the same date as a regularly scheduled REAA election. Only the Contractual Services category will be affected and is figured at 6% inflation.
4. This analysis is computed for an election of an RRDA and board members for one REAA area. If there should be elections in all 21 REAA areas, multiply \$20.6 x 21 to compute the fiscal impact. (432.6)

GCO Minerals Company

MAY 6 7 1983

1031 WEST 4TH AVE SUITE 300
ANCHORAGE ALASKA 99501
907/274-9541
TLX 26-666
P O BOX 425E
HOUSTON TEXAS 77210
713/651-9261
TWX 910-881-2178

May 2, 1983

Ms. Barbara Lacher
Chairperson
House Community and Regional Affairs Committee
Alaska House of Representatives
Juneau, Alaska 99801

RE: House Bill 377
Regional Resource
Development Authorities

Dear Ms. Lacher:

This letter is to express GCO Minerals Company's interest in and support for House Bill 377. GCO Minerals Company, a wholly owned subsidiary of International Paper Company, has been involved in exploration and development of hardrock mineral resources in Alaska since the late 1960's. Since the late 1970's GCO Minerals Company, along with various partners, has been directly involved in efforts to develop our interests in an asbestos deposit in east-central Alaska and a lead-zinc-silver deposit in northwestern Alaska. Both of these deposits represent significant mineral resources which should be developed.

GCO Minerals Company, along with many others, has seen much of our effort to develop potential resources in Alaska stymied by the lack of existing transportation facilities and the high cost of construction of these facilities. The ability to construct these facilities using tax exempt bonds would greatly facilitate the development of the mineral wealth of the state and insure that Alaska's mineral resources can economically compete on world markets. House Bill 377 is a significant step in this direction.

In GCO Minerals Company's consideration of this legislation, we have worked closely with Nana Regional Corporation, Cominco Alaska, Inc. and others to insure that the legislation provides fair and reasonable access to facilities on an equal basis to any potential user. This important aspect of the legislation has

been addressed throughout the bill, but specifically in Section 130. This section should insure that the state, local regions and potential users derive maximum benefit from the legislation.

GCO Minerals Company strongly supports the concept and implementation of House Bill 377.

Very truly yours,

GCO MINERALS COMPANY

A handwritten signature in cursive script, appearing to read "Joe M. Britton", is written over the typed name.

Joe M. Britton
Alaska District Manager

JMB:slg

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
PO BOX 478
PA. MER. ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

M E M O R A N D U M

TO: ATTORNEY GENERAL NORMAN GORSUCH

FROM: REPRESENTATIVE BARBARA LACHER *BL*

SUBJECT: HB 377, SB 151; Relating to establishment of Regional Resource Development Authorities.

DATE: April 28, 1983

The attached correspondence echos my concerns on Hb 377 which is scheduled for first hearing in the House Community and Regional Affairs Committee on May 4, 1983. While the author of the attached material was referring to SB 150, and certain revisions have been made in HB 377, the following question persists:

- 1) Is the establishment and proposed activities of Regional Resource Development Authorities, as implemented in HB 377, within the authority of the State Constitution?

I realize that I am requesting a response in an unusually limited time frame and only do so because of the importance of this issue.



Matanuska-Susitna Borough

BOX B. PALMER, ALASKA 99645 • PHONE 745-4801

DEPARTMENT OF ADMINISTRATION

April 26, 1983

LAPR 28 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

Steve Morrissett, our Borough Attorney, is concerned that Senate Bill 151 would undermine the system of borough and city local governments as established by the Alaska Constitution.

His analysis is attached.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Thurlow".

Gary Thurlow
Borough Manager

er

Attachment

cc: Steven H. Morrissett, Borough Attorney



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

April 22, 1983

MEMORANDUM

To: Gary Thurlow, Borough Manager

From: Steven H. Morrissett, Borough Attorney

Subject: SB 151: REGIONAL RESOURCE DEVELOPMENT AUTHORITY BILL

The bill was introduced April 6, 1983, by Kerttula, Farenkamp, Ferguson and Paul Fisher which is intended to create "regional resource development authorities". The boundaries of any authorities created would be the regional education attendance areas for school districts. The authorities would operate as public corporations.

The control of a resource development authority would be through a board of governors. Three of the members would be appointed by the Governor. Five of the members would be elected pursuant to the Alaska Election Code. Candidates would be nominated by a petition signed by 20 voters in the area. Elections would be held on the first Tuesday of October, the same time as municipal elections. Terms for board members would be two years.

My first concern is that the bill appears to establish the authorities as "political subdivisions" at least for issuance of bonds and tax exempt status. I think it is likely that this conflicts with the State Constitution. Article 10, Section 1 provides "the purpose of this article is to provide for maximum local self-government with a minimum of local government units..." Article 10, Section 2 provides "all local government powers shall be vested in boroughs and cities." It is my opinion that creation of a "political subdivision" which is not a city or borough under the appropriate statutes would probably violate the Alaska Constitution.

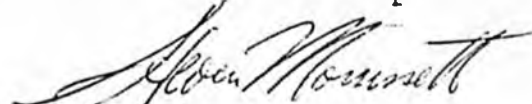
The practical effect of this potential conflict is that an authority which was created very well may find its bonds to be unsaleable. Since I have no particular expertise in the area of municipal bonds, it would be best to request the advice of knowledgeable bond counsel. However, it is my understanding that a legal question striking at the validity of a corporation which issues bonds would similarly effect the validity of those bonds.

A second problem with this bill is that it creates a direct competition with the Borough's responsibility and powers

to develop transportation systems (MSB 2.04.167, AS 29.48.030(a) (12)), powers to develop harbors, wharves and marine facilities (MSB 2.04.150) and powers to promote economic development through the other borough powers. A parallel local government authority exercising "resource development" responsibilities may find itself in direct competition with the Borough for bond sales, economic development programs and other areas where there may be duplicate responsibilities.

A third problem is that the real and personal property of the authority would be exempt from taxation as "property of a political subdivision of the state". Again, there appears to be a conflict with the Alaska Constitution, because the authority is neither a city nor a borough and is not controlled by a city or a borough. The bill attempts to create a tax exemption by declaring the authority to be a "political subdivision" rather than a state agency.

I believe that this bill deserves comment by this Borough, other municipalities and the Alaska Municipal League.



Steven H. Morrisett
Borough Attorney

er



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

DEPARTMENT OF ADMINISTRATION

April 26, 1983

APR 26 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

Steve Morrissett, our Borough Attorney, is concerned that Senate Bill 151 would undermine the system of borough and city local governments as established by the Alaska Constitution.

His analysis is attached.

Sincerely,

A handwritten signature in cursive script that reads "Gary Thurlow".

Gary Thurlow
Borough Manager

er

Attachment

cc: Steven H. Morrissett, Borough Attorney

STATE OF ALASKA

CORRECTED VERSION

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 3, 1983

Honorable Arliss Sturgulewski
Alaska Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSB 151
Our file no.: 366-575-83

Dear Senator Sturgulewski:

This letter responds to your inquiry regarding the establishment of regional resource development authorities (authorities) under CSSB 151.

The proposed establishment of up to 21 authorities in the unorganized borough, each with authority to issue bonds to finance the development of regional transportation facilities, raises a myriad of complex policy and legal concerns. Resolution of the difficult policy considerations has been actively pursued through the several committee hearings, and has resulted in the adoption of numerous amendments, many of which relate to your concerns regarding the propriety of more extensive executive oversight of the formation and bonding activities of an authority.

Resolution of the legal questions is no less difficult. The legal questions addressed in this letter are quite novel, and cannot be answered with any degree of certainty. Indeed, this letter can perhaps be more accurately described as identifying the relevant legal concerns rather than offering a legal analysis and result. In substantial part, the legal uncertainty reflects the curious endowment of each authority with attributes of both a political subdivision and a state agency. While the difficulty in assigning a label may not be significant in itself, the cumulative lack of legal certainty may itself implicate separate policy considerations.

With the foregoing qualification in mind, it is our view (1) that an authority is a permissible limited purpose political subdivision of the state, (2) that the state has no

OFFICE OF THE ATTORNEY GENERAL

legal liability in the event that an authority defaults on its debts, and (3) that the proposed provisions for succession to a subsequently established local government are adequate. We explain our conclusion below.

1. Is establishment of an authority permissible under art. X of the Alaska Constitution?

Alaska State Legislature

The bill proposes the establishment of authorities across the unorganized borough in areas coterminous with the existing boundaries of Rural Education Attendance Areas (REAs). Though limited in other respects, an authority would have broad, if not plenary power with respect to the financing of a transportation facility within its jurisdiction. Article X, section 2 of the Alaska Constitution provides, however, that "[a]ll local government power shall be vested in boroughs and cities." Since, of course, an authority is neither a borough or a city, it is arguable that their establishment is contrary to the constitutional provision.

Testifying in support of the legislation, representatives of the NANA Development Corporation suggested that an authority does not possess the requisite "local government power" to be subject to the article X prohibition. The argument posits a distinction, at least with respect to the applicability of article X, between governmental and proprietary functions of local governmental entities.

Though the proffered argument is plausible, we have substantial reservations whether a court would similarly conclude that the proposed authorities are beyond the scope of article X. It is first arguable that the powers of an authority are governmental, not proprietary. The determination of whether a function is governmental or proprietary is "often a difficult question to answer." 5 E. McQuillin, The Law of Municipal Corporations 10.05, at p. 743 (1979). "Among other considerations, the extent to which a function is traditionally engaged in by local government is entitled to substantial weight." Id. Under present law, the power to provide for facilities proposed for financing by an authority is one traditionally accorded to municipalities in Alaska, suggesting that the power of an authority to provide for transportation facilities is a local government power. See AS 29.48.030(a)(3), (8) and (12). In the same vein, AS 29.58 authorizes municipalities to issue revenue bonds to finance the

development of capital projects, again suggesting that the financing powers of an authority parallel the traditional powers of local governments in Alaska. More fundamentally, our research discloses no case authority or historical documentation to suggest that the constitutional framers intended to limit the scope of the art. X prohibitions in the suggested fashion. To the contrary, the desire to avoid the proliferation of local governmental units explicitly articulated in sec. 1 would appear to be as salient regardless of whether an entity is exercising what may be labeled proprietary rather than governmental functions. And, the explicit exception in art. IX, sec. 11 relating to revenue bonds issued by a public corporation established by a political subdivision further suggests that in other instances where a political subdivision acts in what may be regarded as a proprietary capacity, it remains subject to constitutional limitation.

That an authority is within the ambit of art. X does not, however, necessarily lead to the conclusion that their establishment is unconstitutional. Section 5 of art. X authorized the assembly of an organized borough to create service areas for the provision of special services not common to the entire borough. Article X, sec. 6 authorizes the establishment of comparable service areas in the unorganized borough:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

In our view, the legislature may establish regional resource development authorities in its role as the assembly for the unorganized borough. The resultant authorities serve a limited purpose -- the promotion and financing of transportation facilities in a specific area of the unorganized borough. And, since the unorganized borough itself a political subdivision of the state, Walters v. Cease, 388 P.2d 263, 264 n.1 (Alaska, 1964), a constituent part of the unorganized borough must as well be a political subdivision. See generally 1977 Op. Att'y Gen. No. 15 (March 26) (REAA's are limited purpose political subdivisions).

We do recognize that an authority has certain attributes of a state agency. See e.g., Alaska State Operated School System v. Muller, 536 P.2d 99 (Alaska 1975). The governor must certify the need for establishment of an authority. The

governor is further authorized to appoint three of the eight board members from among the principal heads of executive departments. And, the state bond committee, comprised of the commissioners of commerce, revenue and administration (AS 37.15.010) is accorded oversight responsibilities.

On balance, however, we conclude that organization through local election in addition to the numerous other provisions establishing a modicum of local autonomy are more determinative of the characterization of an authority. If, in the unlikely event that a court were to conclude otherwise, the failure to place the authorities within an executive branch department would be problematic. Alaska Const. art. III, sec. 22.

2. It there any potential for the state to be liable in the extent than an authority is unable to satisfy its debts?

Assuming that a regional resource development authority constitutes a permissible political subdivision of the state, you ask if that relationship imposes any possible legal obligation for the state to satisfy debt service obligations in the event that the assets of an authority prove inadequate. As a general proposition, the state has no legal obligation to guarantee satisfaction of debt service obligations on bonds issued by a political subdivision of the state. See Kenai Peninsula Borough v. State, 532 P.2d 1019, (Alaska 1975); cf. Walker v. Alaska State Mortgage Association, 416 P.wd 245 (Alaska 1966); DeArmond v. Alaska State Development Corp., 376 P.2d 717 (Alaska 1962). While SB 151 purports to immunize the state from any potential liability, sec. 30.13.090(b), we caution that it is arguable that in certain instances the legislature may have a constitutional obligation to preserve the ability of an authority to maintain its operation of a transportation facility. That argument derives from the requirement in art. X, sec. 6 for the legislature to "provide for the performance of services it deems necessary or advisable in unorganized boroughs."

Under the authority of article X, sec. 6, we have previously advised the legislature that it "may well have an obligation to satisfy judgments against REAA's." Inf. Att'y Gen. Op. (April 22, 1982; J66-668-81). It is our estimation that whatever the legal obligation for the state to satisfy the debts of an REAA, it is a tenuous proposition at best to extend that analysis to impose a requirement for the state to satisfy bond obligations of an authority. First, the provision of education in the unorganized borough is mandated under article VII of the



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

April 22, 1983

MEMORANDUM

To: Gary Thurlow, Borough Manager
From: Steven H. Morrissett, Borough Attorney
Subject: SB 151: REGIONAL RESOURCE DEVELOPMENT AUTHORITY BILL

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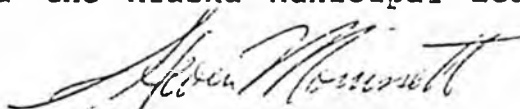
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I believe that this bill deserves comment by this Borough, other municipalities and the Alaska Municipal League.



Steven H. Morrisett
Borough Attorney

er

GCO Minerals Company

1031 WEST 4TH AVE SUITE 300
ANCHORAGE ALASKA 99501
907 274-9541
TLY 26-666
PO BOX 4258
HOUSTON TEXAS 77210
*12 651-8261
TWX 910-881-2778

May 2, 1983

Ms. Barbara Lacher
Chairperson
House Community and Regional Affairs Committee
Alaska House of Representatives
Juneau, Alaska 99801

RE: House Bill 377
Regional Resource
Development Authorities

Dear Ms. Lacher:

This letter is to express GCO Minerals Company's interest in and support for House Bill 377. GCO Minerals Company, a wholly owned subsidiary of International Paper Company, has been involved in exploration and development of hardrock mineral resources in Alaska since the late 1960's. Since the late 1970's GCO Minerals Company, along with various partners, has been directly involved in efforts to develop our interests in an asbestos deposit in east-central Alaska and a lead-zinc-silver deposit in northwestern Alaska. Both of these deposits represent significant mineral resources which should be developed.

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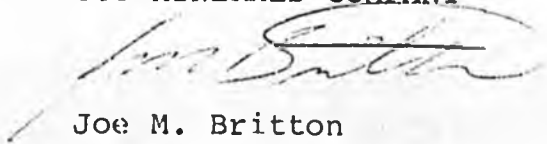
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been addressed throughout the bill, but specifically in Section 130. This section should insure that the state, local regions and potential users derive maximum benefit from the legislation.

GCO Minerals Company strongly supports the concept and implementation of House Bill 377.

Very truly yours,

GCO MINERALS COMPANY



Joe M. Britton
Alaska District Manager

JMB:slg

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 26th, 1983
RE: House Bill 377

HB 377 is a companion bill to SB 151. The legislation establishes a mechanism for the creation of a Regional Resource Development Authority (RRDA). The purpose of an RRDA is the improvement, establishment, and development of facilities in its district for transportation purposes in connection with natural resource enterprises.

The legislation provides for the RRDA to issue bonds and to deposit or invest funds, and, to enter into contracts with public or private entities. Neither the members of an RRDA nor the persons executing the bonds are personally liable on bonds of the authority. Language is included providing that bonds issued by an RRDA do not become an indebtedness of the state or local subdivision.

The real and personal property of an RRDA, assets, and income are exempt from all taxes and special assessments of the state and political subdivisions. The RRDA is not subject to the jurisdiction of the Alaska Transportation Commission.

RREA's are to be established only in the unorganized borough. The boundaries will be the same as the Rural Education Area Authority in which the RRDA is located. Upon municipal incorporation of the geographical area in which the RRDA is located, the RRDA will become integrated into the newly formed borough or home rule municipality. The newly formed borough or municipality may not levy taxes to pay the indebtedness of an RRDA that is absorbed by the local government.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 25, 1983

SUBJECT: Regional resource development authorities
(HB 377)

TO: Representative Barbara Lacher

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested our office to provide a sectional analysis of HB 377 which is an Act relating to Regional Resource Development Authorities. We offer the following information.

Section 1. Legislative findings and policy are set forth with emphasis on the need for the creation of instrumentalities in the various areas of the state with powers to borrow money to provide for the development of transportation and port facilities to encourage the development of natural resource enterprises, including mining enterprises, essential to the long-term economic growth of the state.

Section 2. This section amends AS 30 by adding a new chapter 13 pertaining to regional resource development authorities.

Sec. 30.13.010 addresses creation of an authority. An authority may only be created by the residents within the boundaries of a regional educational attendance area by petition filed with the Department of Community and Regional Affairs and a supporting statement submitted to the governor outlining the purposes and projects contemplated. If the governor determines that the goals and potential projects of the proposed authority would not be advantageous to the economic growth of the region and the state, the petition may not be submitted to the voters. However, if the governor makes affirmative findings as to the purposes and potential projects of the proposed authority or fails to submit his findings to the director of elections within 90 days, the director of elections must order an election in the area of the proposed authority if the petition is in proper form.

The election for the creation of an authority must be held between 30 and 120 days after the date of the election order. If creation of an authority is approved, another election is held to choose the five initially elected members of the board of governors of the authority. The initially elected members of the board of governors serve staggered terms ranging from approximately one to three years. The director of elections supervises both elections in the general manner prescribed by AS 15 and the state bears the costs of the elections. Election materials are filed with the director of elections and the date of that filing constitutes the date of creation of an authority for all legal purposes.

Sec. 30.13.020 provides for a board of governors consisting of eight members, five of whom are elected and three of whom are appointed by the governor. The term of a regularly elected member is two years. The three members appointed by the governor must be heads of principal departments of the executive branch. The members of the board of governors elect a chairperson and a vice chairperson from among its members and a majority of the members of the board at a meeting at which a quorum is present may transact business. The board of governors may delegate powers and duties that it considers proper and may appoint officers and employ professionals and employees it considers advisable.

Subsection (e) addresses conflicts of interests that may arise when the board of governors votes on agreements to be entered into by the authority. A member may not vote if the member is a party to the agreement or has a direct ownership or equity interest, beneficially or of record, exceeding one percent in, or is employed by, a firm, partnership, corporation or association that is a party to the agreement.

Sec. 30.13.030 sets forth the purpose of an authority as being the improvement, establishment, and development of facilities in its district for transportation purposes in connection with natural resource enterprises. The purpose may be accomplished either directly or by agreement with any public or private entity or person.

Sec. 30.13.040 designates the powers of an authority. The enumerated powers are similar to those granted by statute to public corporations. The more remarkable provisions are those authorizing the authority to issue bonds and to deposit or invest its funds, subject to agreements with bondholders, and those provisions authorizing the authority to enter into

contracts or other transactions with public or private entities or persons consistent with the exercise of the other powers of the authority.

Sec. 30.13.050 sets forth certain limitations on powers of the authority. An authority does not have powers of eminent domain, taxation, land use planning, zoning, permitting, or other similar governmental powers.

Sec. 30.13.060 addresses bonds of an authority. Those provisions delineate how the authority may borrow money and issue bonds. Much of this section is standard bond language. However, subsection (f) is worthy of note. Before issuing bonds for a project under this chapter an authority must submit a description of the bond issue and an independent economic feasibility analysis of the project and expected revenues to the state bond committee. The bonds may not be issued unless the state bond committee finds that the project revenues can be reasonably expected to be adequate for payment of the principal and interest on the bonds to be issued, and that issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds.

Sec. 30.13.070 addresses trust indentures and trust agreements used by an authority to secure an issue of bonds. Paragraph (1) sets forth the covenants and agreements that the authority may make with the trustee or the holders of the bonds as to use and disposition of the proceeds of the bonds, the fixing and collection of rents or other consideration associated with a project agreement, assignment by the authority of its rights in a mortgage or other security interest, et cetera.

Sec. 30.13.080 sets forth the intention of the legislature that a pledge made in respect of bonds be perfected and valid and binding from the time the pledge is made regardless of whether the resolution, trust agreement or any other instrument by which the pledge is created is recorded or filed under the provisions of the Uniform Commercial Code.

Sec. 30.13.090 clarifies that neither the members of an authority nor persons executing the bonds are personally liable on bonds of the authority. Furthermore, the bonds issued by an authority do not constitute an indebtedness of the state or local subdivision.

Sec. 30.13.100 provides protection for bondholders by stating that the state will not limit or alter the rights and powers vested in an authority by this chapter or in anyway impair the rights and remedies of the holders until the bonds and interest and expenses are fully met and discharged.

Sec. 30.13.110 exempts the real and personal property of an authority and its assets and income from all taxes and special assessments of the state or a political subdivision of the state. Additionally, interest on bonds issued by the authority are tax exempt. However, this section does not limit other provisions of Alaska law pertaining to license fees, property taxes, or excise, income or other taxes, nor does it create a tax exemption with respect to the interest of any business enterprise or other person other than the authority.

Sec. 30.13.120 specifies that the bonds of an authority constitute securities in which all public officers may legally invest in the discharge of their fiduciary responsibilities.

Sec. 30.13.130 requires that an authority provide equal use and access to the public if the authority owns, leases, or otherwise operates or controls or participates in the financing of a facility. Reasonable terms and conditions may be imposed by the authority, but the members of the authority must make a written finding concerning compliance of the facility with the provisions of this section.

Subsection (b) requires an authority to make a finding, before issuing bonds for a project, that the project and its development will be economically advantageous to the state and region, that the project would be financially feasible, and that the scope of the project is sufficient to provide a reasonable expectation of a benefit to the region and the economy of the state.

Sec. 30.13.140 declares that an authority is not subject to the jurisdiction of the Alaska Transportation Commission.

Sec. 30.13.150 provides a mechanism by which an authority is integrated into a borough or home rule municipality within one year of incorporation of a first or second class borough or a home rule municipality created within an area coterminous with the authority. This section does specify that the newly created borough or home rule municipality may not levy any

Representative Barbara Lacher
Page 5
April 25, 1983

taxes to pay the indebtedness of an authority that is absorbed by the local subdivision.

Sec. 30.13.900 contains definitions that would apply in the newly created chapter. Paragraph (6) defines "transportation facilities", or "facilities", or "projects" by broadly enumerating mechanisms for transporting, handling, and storing freight and natural resource products. The definition also includes all property, rights, easements, and franchises relative to a facility but does not include airport facilities.

Section 3 provides for an immediate effective date.

Hopefully, this information is responsive to your request. If you wish further information, do not hesitate to contact us.

JHL:ljb
16/014

LEGISLATURE

Red Dog mine measure amended

by Bill White

Times Juneau Bureau

Juneau — A bill designed to spur development of the rich Red Dog zinc mine near Kotzebue underwent heavy amending Friday to assure the state doesn't make a sour multimillion-dollar investment in the project.

The bill would let each of the state's 21 Bush school districts form a Regional Resource Development Authority. Each authority could issue tax-free bonds to generate money to build mining roads and ports in rural areas.

The bonds would be paid off by charging the mining companies fees to use the roads and ports.

The bill was drafted with the aid of Cominco America Inc., which has bought production rights to the 85 million-ton Red Dog mine 90 miles north of Kotzebue.

Development of that mine,

rich in zinc, lead and silver deposits, is clouded by a lack of funds to build a 55-mile road to tidewater, absence of port facilities, need for federal and state approval for its access route, and a world metals market that's nearly hit rock bottom.

But some Senate Resource Committee members, led by Sens. Arliss Stargulewski, R-Anchorage, and Vic Fischer, D-Anchorage, questioned what protection the state would have from bad investments made by the authorities.

The committee adopted a dozen amendments to the bill Friday, before sending the measure to the Finance Committee. They include changes to:

- Require the governor to issue a finding, before an authority may be created, that the authority's projects and goals would aid the economic growth of the region and state. The governor also must find the author-

ity is a desirable way to accomplish those goals and projects.

- Raise to 100, from 50, the minimum number of residents that may petition for a vote on the creation of an authority.

- Require the state bond committee to find a project's revenues can be expected to repay the bonds, and that the bond issue won't hurt the state's credit rating, before an authority may sell bonds.

- Set a limit of June 30, 1986, on the creation of authorities.

Those four amendments help insure the authorities make good investments, Pat Pourchot, a Resource Committee aide, told the panel members.

But environmentalists asked for stricter assurances.

The state would have little control over the debt these authorities incur, said Jay Nelson, head of the Alaska Environmental Lobby.

"If one of these organizations ever went bankrupt, the state would be obligated to bail them out (by covering their bonds),

not morally or legally, but financially to protect its own credit rating," he said.

Nelson circulated a cartoon depicting a baby elephant, symbolic of an authority, at the state's front door asking for a handout. The caption reads, "If you don't feed me, I'll die in your front yard."

He recommended three alternatives to authorities.

First, new boroughs could be formed in areas that want roads and ports. The boroughs would have concerns other than just developing a mine, he said.

The state also could fund development through its business loan agency or through tax-free bonds issued by the Transportation Department.

Dan Casey, head of that department, said the administration thinks the bill's concept is good, but some changes may be needed. One concern is of user fees remaining imposed on mining companies after the bonds are paid off, he said.

Alaska State Legislature

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POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

April 6, 1983

Memo

To: Senator Bennett, Co-Chairman Finance Committee
Senator Sackett, Co-Chairman Finance Committee

From: Senator Bettye Fahrenkamp

Subject: CSSB 151, Regional Resource Development Authorities

As you know, the Finance Committee has recently received the above bill for consideration from the Resources Committee. This bill would authorize the establishment of authorities in the unorganized borough for the purpose of developing infrastructures for resource development projects. Funding for the developments would primarily come from the issuance of tax-exempt revenue bonds by the authority to be repaid with user fees from the developments.

In testimony and discussion before the Resources Committee several criticisms of the bill as originally drafted surfaced: 1) lack of guarantees of equal access to facilities which may be developed; 2) the possibility of proliferation of authorities throughout the unorganized borough; 3) the encouragement of less-than-sound economic projects by authorities; 4) the possibility that bonds issued by authorities may in some way create a liability to the state or add to the state's overall bond indebtedness; and 5) the possibility that the issuance of bonds by authorities might in some way affect the ability of the state or its political subdivisions to market their revenue bonds.

In response to these criticisms the Resources Committee adopted several major changes and additions to the bill including:

- 1) Page 2, lines 19-29, the Governor must make a positive finding that an authority's goals and projects would be economically advantageous to the region and state and that the authority is an appropriate and desirable method of accomplishing the goals and projects prior to establishment of an authority.
- 2) Page 2, lines 8-11, the ability to petition for establishment of an authority expires on July 1, 1986.
- 3) Page 2, lines 13-14, a petition to call for an election to establish an authority must be signed by 100 persons of a district.

- 4) Page 4, lines 26-29, the Board of Governors of an authority shall consist of eight members, five elected locally and three Department heads appointed by the Governor.
- 5) Page 8, subsection (f), Prior to issuance of bonds an authority must submit an independent economic analysis of a project and its revenues to the state bond committee. The committee must find that project revenues are adequate for payment of the bonds and that the issuance of bonds would not adversely affect the ability of the state or localities to market their bonds.
- 6) Page 11, subsection (b), bonds issued by an authority do not constitute any liability or indebtedness to the state or political subdivision, nor can an authority pledge the faith or credit of the state or local government.
- 7) Page 13, subsection (a), ensures fair and equal access and fee assessments for users of facilities.
- 8) Page 13-14, subsection (b), an authority must find that prior to issuance of bonds that a project would be economically advantageous to the state and general public welfare and that the project is economically viable.
- 9) Page 14, section 30.13.150 provides that an authority would be integrated into a local government should it be established, but that an indebtedness of an authority does not constitute an obligation of the new government.

I think that these provisions adequately address the concerns that were raised. However, several other possible amendments were suggested that might further clarify the intent of this legislation which were suggested too late to be properly integrated into the committee substitute. I would urge the Finance Committee to consider the following possible changes:

- 1) Changing the number of petitioners calling for an election to establish an authority from an absolute number of 100 to a percentage formula similar to other regional elections. (Attached is a possible formula suggested by the Division of Elections).
- 2) Any monies received by the state may not be used to satisfy bond obligations or collateral by an authority (attached are draft suggestions from the Department of Law).
- 3) Change a quorum of the Board from a majority to a majority plus one. (Suggested by the Alaska Environmental Lobby; see attached comments).
- 4) Ensure that proposed projects get fair and equal consideration within a district by an authority. (See attached language submitted by the Alaska Miners Association).

In addition, several technical changes should be made in the bill. The following should be made to correct changes which were made by the Legal Division in the CS:

- 1) On page 5, lines 12-13, delete the phrase "at a meeting at which a quorum is present". This simply clarifies that a quorum constitutes a majority of the members of the board of governors.
- 2) On page 6, lines 16-17, delete the phrase "in accordance with the Administrative Procedure Act (AS 44.62)". This phrase was not contained in the CS which passed out of the Resources Committee and could be construed as evidence that authorities are somehow to be viewed as quasi-agencies of the state.
- 3) On page 8, line 25 delete "AS 30.13.060(f)(1)" and insert in lieu thereof "this subsection". There is no subsection (f)(1).
- 4) On page 15, line 18, add a comma after the words "rolling stock".

Finally, I would call your attention to the Letter of Intent which was passed out with the bill. This further clarifies that it is the intent that the bonds issued by the authorities not constitute any liability to the state or local governments or taxpayers in a successor government.

I would be happy to appear before your Committee to further explain this legislation and the actions of the Resource Committee. In addition, I have asked my staff to provide whatever assistance you may need on the bill. I remain convinced that this legislation could be of tremendous value in facilitating the development of resource projects in our state which would have tremendous economic and social benefits to regions as well as the state. I would hope the Finance Committee could expedite its consideration of this important legislation.



Senator Vic Fischer

Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

March 22, 1983

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Senator Vic Fischer

Thank you for the opportunity to consider possible amendments to SB 151.

Amendment 1 does not entirely reflect my concerns about the possibility of a proliferation of authorities. The intent of my suggestion was that the Governor be required to find that the creation of a particular authority is necessary and desirable. This would seem to require a new subsection in Sec. 2 to require submittal of a statement to the Governor to include (1) purpose of the proposed authority, (2) the goals it would seek to meet, (3) analysis of the options other than an authority for obtaining the desired goals, and (4) justification for the choice of an authority over other options for meeting the stated goals. This step would logically come at the same time as petition to C&RA. The Governor would then be required to find that (1) meeting the proposed authority's goals would be advantageous to the state and the region's economic growth, and (2) the authority's creation would be necessary to obtain those goals.

In light of the attached article, which describes the problem of independent authorities and corporations incurring debt for which the state may become at least morally liable, I would like to suggest a further amendment. This would be a new section requiring the Commissioner of Revenue to approve the sale of revenue bonds by an authority. The authority would submit a statement detailing (1) the prospectus of the bond issue and (2) an economic feasibility analysis of the proposed development project and its expected revenues. The Commissioner of Revenue would then be required to find that (1) the project appeared to be capable of producing adequate revenues to repay the bonds and (2) bonds of the authority would not be expected to negatively affect the ability of the state or its subdivisions to market their own bonds and meet their financial obligations.

I'm sure that the legal people can put these suggested amendments into their proper form. Feel free to contact either me or my staff if you need further clarification.

FORMULA 1

The most direct formula for the creation of Regional Resource Development Authorities in the REAA districts is the initiative formula presently in use for REAAs and CRSAs under AS 29.28.070 (b).

In REAAs smaller than 7500 residents, this would require signatures in a number equal to 25% of the qualified voters voting in the last General Election or special election called for the purpose of electing city, borough (or REAA) officers.

In REAAs greater than 7500 residents, the formula would be 15%. There is no requirement for gathering signatures in any set percentage of the villages in an REAA, such as 50% or 66%.

FORMULA 2

Under 15.25.170, Alaska Election Laws, "Required number of signatures for a district-wide office", petitions for the nomination of a state representative or senator require signatures equal in number to 3% of the number of votes cast in the respective election or senate district in the preceding general election, provided that no nomination petition is required to contain more than 200 or less than 50 signatures for any district.

The same requirements apply for the nomination of candidates not representing a political party, under AS 15.40.440.

Note:

The requirements for a statewide initiative are more demanding; a petition must be signed by qualified voters equal in number to 10% of those who voted in the preceding General Election and resident in at least 2/3 (two-thirds) of the election districts of the state. This is cited in AS 15.45.140. The same requirements hold for the state-wide referendum, contained in AS 15.45.370.

In any formula adopted by the final legislation, there should be provision for review of the signatures on the petition, notification of the proper or improper filing, and provision for supplementary petition filing where necessary, as is currently authorized in both the municipal statutes, AS 29, and the State Election Laws.

from Mary Lou Meiners,
Dir. Elections 3-23-83

SB 151, Creation of Regional Resource Development Authorities

FORMULA DETERMINATION, Gathering of Signatures

As now proposed in the legislation, 50 signatures would be required from any REAA district to petition for a special election to create a Regional Resource Development Authority (RRDA). After that election, another 50 signature petition would instigate a second election for voting on board members for the new RRDA. The signatures for the petition could be gathered from any one village in the REAA area, proposing an election for the entire area.

A new formula for the gathering of signatures could be devised from elements of present law that would still give equitable access to the ballot, yet more fully inform and involve the residents of the entire area that new elections and an RRDA are proposed.

FORMULA PROPOSAL

Using the Initiative and Referendum formula for municipalities and service areas, AS 29.28.070, this would require that in each REAA (except #4) that signatures be gathered equal to 25% of the number of voters voting in the last REAA election. This would be a greater task than the gathering of 50 signatures, yet give a better measure of the RRDA acceptance in the service area.

To insure that signatures are not gathered from one town or village, an element of the statewide initiative requirements should be incorporated, requiring that signatures be gathered from more than one village, except in REAAs that are composed of just one village. Not to be prohibitive, this section could read, "...with signatures secured from voters residing in more than one village area within an REAA district, except those REAAs composed of one village area."

Finally, an element of AS 15.25.170 could be incorporated to give the dimensions of the signature gathering task; requiring that any petition requesting a RRDA election contain no less than 50 valid voter signatures.

In summary, an RRDA election petition would be based on the present initiative statute for municipalities, AS 29.28.070, would contain signatures of voters from more than one village area within an REAA district, and have no less than 50 valid voter signatures from the REAA district.

Finally, in any formula adopted by the legislation, there should be a provision for review of the signatures on the petition, notification of the proper or improper filing, and provision for supplementary petition filing where necessary, elements that are currently authorized in both the municipal statutes, AS 29, and state election law, AS 15.

FORMULA APPLICATION : GATHERING SIGNATURES

SB 151, CREATION OF REGIONAL RESOURCE DEVELOPMENT AUTHORITIES

| REAA # | # REG. VOTERS | # VOTING '82 REAA | FORMULA 1 25% | FORMULA 2 3% | # VILLAGES |
|--------|---------------|-------------------|------------------|-----------------|------------|
| 1 | 2791 | 1209 | 302 | 36 | 11 |
| 2 | 2102 | 791 | 198 | 24 | 15 |
| 3 | 2076 | 869 | 217 | 26 | 12 |
| 4 | 5251 | 2240 | 336* | 67 | 22 |
| 5 | 817 | 412 | 103 | 12 | 6 |
| 6 | 941 | 447 | 112 | 13 | 8 |
| 7 | 735 | 255 | 64 | 8 | 8 |
| 8 | 341 | 145 | 36 | 4 | 4 |
| 9 | 393 | 142 | 35 | 4 | 2 |
| 10 | 551 | 180 | 45 | 5 | 1 |
| 11 | 895 | 407 | 102 | 12 | 7 |
| 12 | 1455 | 515 | 129 | 15 | 11 |
| 13 | 1061 | 573 | 143 | 17 | 10 |
| 14 | 1110 | 230 | 58 | 7 | 5 |
| 15 | 1947 | 448 | 112 | 13 | 2 |
| 16 | 1317 | 539 | 135 | 16 | 9 |
| 17 | 1784 | 569 | 142 | 17 | 6 |
| 18 | 927 | 412 | 103 | 12 | 5 |
| 19 | 1090 | 325 | 81 | 10 | 14 |
| 20 | 639 | 258 | 65 | 8 | 1 |
| 21 | 508 | 115 | 29 | 3 | 1 |

* 15%, over 7500 residents

Div. Elections

LETTER OF INTENT

SENATE RESOURCES COMMITTEE

CSSB 151 (RES)

It is the intent of the Committee to authorize the establishment of regional authorities which will have the ability to issue tax-exempt revenue bonds for the purpose of enhancing the development of resource enterprises which would contribute to the economic growth of the State. It is the intent of the Committee that the authorities established pursuant to this legislation would not create any financial liability or obligation by the state for bonds issued for resource enterprises. Nor is it the intent that the issuance of any such bonds by authorities adversely affect the ability of the state or any of its political subdivisions to market their own bonds. Rather, to the maximum extent possible, liability for bonds issued rest exclusively with the regional authority and the specific resource enterprise involved, not the state, successor boroughs or other municipalities or other projects or citizens in the region or state.

Alaska State Legislature

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POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

SB 151

Committee on Resources

- 1) Senator Fischer and Senator Sturgulewski expressed concern that the legislation could create a proliferation of authorities throughout the unorganized borough, not all of which might be well thought out, economically-sound entities. One possible safeguard which was discussed was to require a finding by the Governor that the project developments would be economically advantageous to the state and the general public welfare and other positive findings.

A possible amendment to the committee substitute for SB 151 to achieve this purpose might be the following:

On page 8, add to section 30.13.050 the following new subsection:

"(f) Prior to issuing bonds for any project under this chapter:

- 1) An authority shall submit to the Governor a description of the project and its expected impacts on regional and statewide economies; and
 - 2) The Governor must find that the project and its development will be economically advantageous to the state and the general public welfare and will contribute to the economic growth of the region within which the authority has jurisdiction. Failure to make a finding within 60 days of receipt of a project description shall constitute an affirmative finding for the purposes of issuing bonds for the project."
- 2) Senator Mulcahy expressed concern that the petitioning requirements for calling for elections were not restrictive enough to prevent possible "frivolous" elections and the creation of many ill-conceived authorities.

A possible amendment to strengthen the petitioning requirement might be:

On page 2 in Sec. 30.13.010 make the following change:

"The petition must be signed by ~~(50)~~ 100 residents of the proposed area of the authority."

- 3) The Division of Elections raised the question of expense of the elections involved. One change to encourage consolidated elections might be:

On page 2, in Sec. 30.10.010 (b) make the following changes:

"The election must be held not less than 30 or more than [90] 120 days after the date of the election order. To the extent feasible and practical the election shall be held on a day coincidental to other regional elections."

- 4) Senator Fischer raised a question on the language which would limit the succession of an authority to only a first or second class borough. He suggested that all home-rule municipalities should also be included as in the following possible amendment:

On page 15 in Sec. 30.13.150 make the following change:

"Whenever a borough of the first or second class or a home rule municipality is created with an area coterminous with the area of an authority, the authority shall be integrated into the borough or home rule municipality within one year of incorporation. On integration the borough or home rule municipality succeeds to all the rights, powers, duties, assets, and liabilities of the authority, provided, that, any indebtedness of an authority does not constitute a general obligation of the borough or home rule municipality payable from taxes levied by the borough or home rule municipality."

- 5) There may be cases where a borough or a home rule municipality might be created which would encompass the entire region of an authority but whose boundaries would be outside and not coterminous with those of the authority (i.e. the borough would be larger than the authority). Staff would recommend the following possible amendment:

In the above amendment number 4 change the appropriate line to read:

"...is created with an area coterminous with or inclusive of the area of an authority..."

- 6) Senator Fahrenkamp and Senator Fischer had questioned as to whether or not a termination date for the bill might be a check on authority proliferation and offer the legislature a chance to review the legislation in several years. A possible amendment might be the following:


On page 4 in section 30.13.010 add the following new subsection:

"(g)The authority to petition and hold elections for the purpose of creating an authority under this section shall cease on June 30, 1986.

7) Senator Ziegler suggested that such authorities may be desirable in some regions of the state such as Southeastern where infrastructure development may be for renewable resource development such as fishing or timber harvesting. The current language on page 1, section 1 speaks to only "nonrenewable" resources. A possible amendment might be:

On page 1, in section 1, part (1), (2) and (3) after the word "nonrenewable" add the words "or renewable".

Alternatively, in the above subsections the word "nonrenewable" could be deleted so that the findings would simply address "natural resource enterprises".



adopted.

WOHLFORTH & FLINT

A PROFESSIONAL CORPORATION
 800 WEST 5TH AVENUE, SUITE 300
 ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
 ROBERT D. FLINT
 I. MURPHY G. MIDDLETON
 PETER ARGETHIMIKH
 ROBERT M. JOHNSON
 KENNETH E. VASSAR

TELEPHONE
 AREA CODE 407
 278-6401

M E M O R A N D U M

TO: NANA Development Corporation

FROM: Wohlforth & Flint

DATE: February 15, 1983

A question has been raised under Article X of the Alaska Constitution concerning the validity of a draft bill prepared by this office to create regional transportation authorities. The draft bill would authorize the residents of the regional education attendance areas (REAA's) to form transportation authorities to serve their areas by petitioning the Department of Community and Regional Affairs. Following the petition, an election would be held in the particular REAA to decide whether the authority should be created. If the voters of the REAA approve formation of the authority, another election would be held to elect members of the board of directors of the authority. In addition to the elected members of the board, the governor would appoint two commissioners to serve on the board. Once formed, the authority would have the ability to issue bonds to finance transportation facilities in connection with resource development projects. It is worth noting that the authority would not have powers of taxation, eminent domain, planning, platting, zoning, or other land use powers, or other powers beyond those necessary to accomplish its purpose of financing transportation facilities. Since an authority could only be formed in an REAA, the jurisdiction of an authority would be limited to a specific area of the unorganized borough.

The constitutional question, it is believed, arose largely because the draftsman of the bill stated at a hearing before the Joint House and Senate Resource Committees on February 9, 1983, that the bill provided for "limited local government" by the proposed authorities. We are convinced, however, that the powers to be granted to the proposed authorities are not "local government powers" contemplated by Article X, section 2, to be vested in boroughs and cities and that the creation of the proposed authorities is within the discretion of the legislature under Article X, section 6.

February 15, 1963

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There are three pertinent sections in Article X; they are Sections 1, 2, and 6. These sections state:

Section 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

The initial question is whether the power to provide financing for transportation facility projects in connection with natural resource development is a "local government power" such that granting the power to a public corporation would violate Section 2 by vesting a "local government power" in an entity other than a borough or city.

The Minutes of the Constitutional Convention (herein "Minutes") reflect little or no discussion of the nature of "local government powers". However, there is considerable discussion of the results the delegates intended to avoid by requiring that such powers be vested in boroughs and cities. The delegates were well aware of the proliferation in other states of local entities which exercised governmental powers. These local entities were autonomous from the municipalities within which they operated, and their powers weakened the ability of the municipalities to coordinate and control governmental activities. The results, which the delegates sought to avoid, were conflicts among the various autonomous entities, as well as between the entities and the municipalities, overlapping jurisdictions, and multiple taxation uncontrolled by a single governmental body. By placing local government powers in a

borough or city, the delegates felt that a single body -- the assembly or council -- would be able to orchestrate the activities of the various municipal departments and the activities of the boards and commissions established to administer special service areas within the municipality. The exercise of the governmental power on a local level by a single body would avoid the conflicts resulting from the exercise of various governmental powers by a number of bodies within the same overlapping jurisdictions. In this regard, the following comments of the delegates reflect the concerns summarized above and the intent behind Section 2 (page numbers are from the Minutes):

TAYLOR: I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions. Now, we have two governmental functions set up here, the cities and the boroughs. I think that is plenty. They can provide for everything including the schools. So now, if the camel gets his head in the tent by adopting this amendment [to add school districts to the list of entities in which local government powers shall be vested under Section 2] as proposed by Mr. Johnson, he probably will be all in the tent, bringing with him the amendments that establish public utility districts, health districts, public improvement districts, and we will be right back to our old method of numerous taxing bodies which we want to get away from. Now, with the borough and the city I don't believe that there is any reason at all but what the taxing purposes for schools can be set up something along the same lines as it is now.

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HILSCHER: Bearing on this particular subject, a conversation I had last year with an editor of a paper in the State of Washington, a city of about 15,000, he informed me that they had 11 taxing jurisdictions in the particular area in which he lived and if I remember some of them, they were welfare, hospitals, sanitary, harbor, and even a trunk sewer system, and he said that was the one thing that was causing them the greatest worry of

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all and that was the spread of the taxing power. I am against it [the amendment vesting local government powers in school districts].

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V. RIVERS: [I] am trying to separate just the idea of schools and trying to hold to the principles as to whether the principle of the disbursing and the approvals of budgets shall lie in the body of one general governing body of government or whether you shall have an autonomy without any co-relation between the other activities of government -- whether you shall have an autonomy in just one function and one activity of government. I think that that covers what I have to say except that on the broad principle, I think you can have better government at less expense by correlating the taxing activities and channeling them through one body with one set of appraisers, one set of collectors, one set of condemnors and tax sale experts, and having that money go into one fund for distribution by a general body elected by all of the people no matter what level of government we operate at.

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LONDBORG: I have gone along with the Committee in their general thinking of trying to get rid of this overlapping of taxes and [sic] has been mentioned, 10, 12, 15 different agencies, each with a blank check to write all they wish to write on it.

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HINCKEL: I would like to ask a question if I may. Your interpretation of Section 2, also, that the borough in an organized borough would probably be the one and only taxing authority? That is, they would handle all of the taxes, and only in unorganized boroughs would the state tax? Would

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that be the way to expect the thing would work out?

V. FISCHER: Yes. We would assume a consolidation there.

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ROSSWOG: Our main intention was to try not to have a lot of separate little districts set up, you know, handling only one problem and try to combine them.

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These concerns were concisely stated several years after the convention in a book written by a former delegate to the convention. Although without legal value in determining the delegates' intent, the following passage from Alaska's Constitutional Convention by Victor Fischer (University of Alaska Press, 1975), page 119, is helpful as a precis of the delegates' comments:

As seen by delegates, the inadequacies of conventional counties were limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) governmental authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

It should be apparent that the intent behind Article X, section 2, was not to make cities and boroughs the sole repositories of all powers which could possibly be exercised by a city or borough. Such an interpretation would virtually prohibit the state from acting within an organized borough or city. It would cast serious doubt on the validity of any state action taken on a regional basis. Moreover, it could even be said that most non-profit corporations would be prohibited from conducting business in the state, since a city or borough would be capable of exercising their charitable or eleemosynary powers.

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The more rational and more likely interpretation is that the delegates intended to vest those powers which are peculiarly "governmental", and which are provided on a local basis, in cities and boroughs. The distinction between local "governmental" powers and other ("proprietary") powers exercised by municipalities has long been recognized. McQuillin, in his treatise, Municipal Corporations (3rd Edition), describes the factors denoting "governmental" functions performed by municipalities:

[A]mong the factors denoting a governmental function is the fact that an activity was historically engaged in by local government, that it is uniformly so furnished today, that it could not be performed as well by a private corporation, that it is not undertaken for profit or for revenue, and that it is not within the imperative public duties imposed on a municipality as agent of the state.

Volume 2, section 10.05, page 743 (footnote omitted). In describing municipal "proprietary" functions (which McQuillin describes as "private"), McQuillin states:

Private, municipal, proprietary functions and powers are those relating to the accomplishment of private corporate purposes in which the public is only indirectly concerned, and as to which the municipal corporation is regarded as a legal individual.... All functions of a municipal corporation not governmental have been said to be private.

Volume 2, section 10.05, page 744 (footnotes omitted). The Attorney General's Office has described, without expressly recognizing, the distinction between governmental powers and proprietary powers. In considering a statute under the municipal revenue sharing program which would have allowed payments to be made by the state to a "Native village government for a village which is not incorporated as a city", Assistant Attorney General Rodger W. Pegues discussed the provisions of Article X, sections 1 and 2. After reviewing the history and purpose of those sections, Assistant Attorney General Pegues stated in his opinion:

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The use of traditional village councils or IHA councils to provide local government services is at odds with the constitution's provisions on local government. The public services they would perform are those which local governments perform.

Op. Att'y Gen., April 27, 1981, p. 3. As noted earlier in this memorandum, two of the factors denoting governmental powers are "the fact that an activity was historically engaged in by local government" and "that it is uniformly so furnished today". Assistant Attorney General Pegues then acknowledged the difference between governmental and proprietary functions, again without expressly so designating them, by stating:

This is not to say that the state cannot contract with a racially (or religiously) exclusive group to provide public services or manage a public facility on a non-discriminatory basis for all the residents of a community. On a limited basis, therefore, grants can be made to IHA councils in their capacity as business corporations to provide some public services. The state constitution, however, bars the de facto establishment under state law of these councils as the local governments of Alaska's villages.

Id. at pages 3 and 4. Thus, provision for the performance of essentially proprietary services in the unorganized borough by a private corporation, in the opinion of the Attorney General's Office, would not violate the constitution.

The distinction between "governmental" and "proprietary" functions was also set out in Britt v. City of Wilmington, 73 S.E. 2d 289 (N.C. 1952), as follows:

So then, generally speaking, the distinction is this: If the undertaking of the municipality is one in which only a governmental agency could engage, it is governmental in nature. It is proprietary and "private" when any corporation, individual, or group of individuals could do the same thing.

73 S.E. 2d at 293 (citation omitted).

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The financing of transportation facilities in connection with resource development projects is not an activity historically engaged in by local governments and is certainly not uniformly furnished by local governments today. It is a function which could be, and undoubtedly is, performed by private corporations. In performing this function, the acts of the transportation authorities would only indirectly concern the public at large. Under McQuillin's description, this power is clearly "proprietary" and not "governmental". The operation of a transportation facility has been found to be a proprietary function (Albuquerque v. New Mexico State Corp. Commission, 605 P.2d 227 (New Mexico 1980)), and the financing of privately owned facilities, as may be the case with the authorities, is characterized as "private activity" financing in the conference report accompanying the Tax Equity and Fiscal Responsibility Act of 1982. Bonds of local governments or public corporations issued for these purposes enjoy tax exemption only if issued for certain narrowly defined purposes or in limited amounts.

It is the exercise of the "governmental" powers by more than one municipal unit with the same or overlapping jurisdictions which results in the kind of conflict and duplication the delegates to the constitutional convention sought to avoid. Placing in the proposed transportation authorities the power to assist in the financing of private projects without more (that is, without placing in them any power of eminent domain, any power of taxation, any power of regulation, or any other "governmental" power) could hardly lead to the problems perceived by the delegates. If authorizing the creation of such entities with such limited powers is a violation of Article X, section 2, then the state must carefully review its corporations code, in which authorization for the incorporation of such entities by private individuals is also provided.

Even if the powers contemplated for the proposed authorities should be considered "local government powers" for purposes of Section 2, the legislature nevertheless derives authority for the creation of such authorities in the unorganized borough from the provisions of Article X, section 6. Section 6 expressly directs the legislature to provide for the performance of services it deems necessary or advisable in unorganized boroughs and, in connection with those services, further directs the legislature to allow for maximum local participation and responsibility. The use of the language,

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"deems necessary or advisable", was expressly considered by the delegates to clarify their intention to allow wide discretion in the legislature in determining what services to perform. Delegate Ralph Rivers explained the significance of the words:

The point was made yesterday that where it says, "the legislature shall provide for the performance of necessary functions," and somebody said, "Who decides what is necessary?" and the Committee said it would take it under advisement. I pursued the point a little bit and drafted this language, "for the performance of services it deems necessary or advisable". In the first place, it specifies that the legislature is the one who shall use its discretion; it clears up that point and also improves the context a little.

Minutes, Part 4, page 2720. There was no intent that, in order to receive services which could be performed by a local government unit, the unorganized area should have to organize into a borough or city. Provision of services by the legislature until such time as organization occurred was clearly foreseen. Delegate Rivers further stated:

Speaking of unorganized areas where they don't have any self-functioning. [sic] Here the state would perform those services that the legislature deems necessary or advisable until such time as the area does get organized.

It cannot reasonably be disputed that, within the unorganized borough, the legislature may provide for the services contemplated in the proposed legislation. The local election of members of the board of directors of the proposed authorities simply complies with the dictates of Section 6 to allow for maximum local participation and responsibility.

It should be emphasized that Section 6 authorizes the legislature to provide for services in the unorganized borough; it does not require that the legislature or the state actually perform the services. This point was discussed at the convention, as reflected in the following dialogue between Delegates Taylor and McLaughlin at page 3609 of the Minutes:

TAYLOR: Mr. McLaughlin, isn't it a fact that that [the phrase "shall provide for the performance of services"] would possibly mean that the legislature would provide a manner in which unorganized boroughs could provide their people in that borough with these certain services? The legislature is not going to provide the services or performance of services, are they?

McLAUGHLIN: When they say "shall provide for the performance of services", it means they shall make provision for them.

TAYLOR: Then in an unorganized borough then, if they were in need of garbage services, the legislature would hire garbage men? Is that right?

McLAUGHLIN: It doesn't necessarily mean that. There are two possible meanings. If we said the legislature "shall" provide the services, that would be one thing; but if we say the legislature shall provide for the performance of services, I think that that means another thing. That is, they can set up the rules and conditions and circumstances under which the services will be provided.

It was the latter phrase ("shall provide for the performance of services") which the delegates chose. The reasonable conclusion, based upon Delegate McLaughlin's explanation, is that the state need not perform the services but can "set up the rules and conditions and circumstances under which the services will be provided."

For the foregoing reasons, we are convinced that (1) the powers granted to the proposed authorities are not "local government powers" which must be vested in cities or boroughs; and (2) the creation of the proposed authorities is well within the authority of the legislature to provide for services in the unorganized borough, allowing for maximum local participation and responsibility.