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151

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: SB 151  
BILL NAME: Regional Resource Development Authority  
SPONSOR(S): Fahnenkamp, Kerttula, Ferguson, P. Fischer  
RELATED BILLS PENDING:  
DATE INTRODUCED: 2-25-83  
REFERRALS: Resources  
Finance

INITIAL RESEARCH:

BILL SUMMARY COMPLETED: SUMMARY BY LEGAL DIVISION:  
SPONSOR CONTACTED FOR DEPT. OF LAW SUMMARY:  
BACKUP MATERIALS: FISCAL NOTE: from Elections - Chip sending 3-15-83  
AGENCY RESPONSE: OTHER INTERESTED SENATORS OR REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED: DATE AND PLACE SET:  
STAFF MEMO TO COMMITTEE: TELECONFERENCE:  
BACKGROUND MATERIAL DISTRIBUTED: PSA/PRESS RELEASE:  
LIST OF WITNESSES: SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:  
Don Argetsinger, NANA

Terry Elder, Dept. Commerce.  
Mary Jo Miners, Director, Div. Elections.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
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## Senate

### Committee on Resources

To: All Members  
House of Representatives

From: Bettye Fahrenkamp, Chairman *BF*  
Senate Resources Committee

Date: June 16, 1983

Subject: SB 151, Regional Resource Authorities

One of the major obstacles to mineral development and other resource projects in much of Alaska is the absence of transportation facilities. This is particularly true in the unorganized borough where entities to assist in the development of infrastructure are largely absent. Until borough governments are established (when the necessary tax base is present), there is a great need for some entity to assist major resource development projects through the provision of transportation systems.

With virtually no risk to the State and little direct State involvement, the State can provide substantial assistance to rural economic development through the authorization of regional resource authorities as provided in SB 151. Obviously, any direct State funding of transportation systems, as has occurred in Canada, would be a much more expensive and risky option for the State.

SB 151 would authorize the establishment of regional authorities in the unorganized borough area which would provide:

- Access to tax-exempt revenue bonds which would substantially reduce financing costs of resource developments;
- Public ownership of transportation systems and ports assuring equal access to all users;
- Maximized local involvement in decision-making along with state participation and oversight.

In testimony and discussion of this legislation, several concerns were raised, including:

- The possibility of proliferation of authorities throughout the unorganized borough;
- The possibility that bonds issued by authorities would create a liability or indebtedness to the State or adversely affect State and local bond ratings;

- The possibility that access to the facilities developed and run by an authority might not be fairly and equally provided, or that some proposed developments might not receive equal consideration.

In response to these concerns, the following "safety features" have been included in SB 151:

- The Governor must approve the establishment of any authority;
- The local people in a region must approve by petition and election the establishment of an authority;
- An authority must be created before July 1, 1986;
- The maximum number of possible authorities allowed would be nine, corresponding to regional housing authority boundaries;
- The State Bond Committee must approve the sale of any revenue bonds by authorities;
- A provision in the bill and in the Letter of Intent expressly states that bonds issued by an authority do not constitute any liability or indebtedness to the State or political subdivision;
- An authority expressly does not have normal governmental powers of eminent domain, tax, land use planning and zoning, permitting, etc. Should a borough be established in the region, the authority would automatically be integrated into it;
- Of the eight members on an authority board, five would be elected from the region, three would be State commissioners. A quorum would require the presence of at least one commissioner;
- Total indebtedness of all authorities established would be limited by law to \$400 million;
- An authority would be audited each year by Legislative Budget and Audit;
- A provision to ensure fair and equal access and user fee assessments and fair consideration by the authority of all proposed developments;
- A provision that state funds cannot be used to pay off or meet revenue bond obligations of an authority.

I believe this legislation is now carefully crafted to achieve the goals of development assistance through maximum local control while providing adequate state input and oversight to assure financial integrity of projects and state-wide coordination. The economic benefits of this legislation could be substantial to our state with little direct cost.

I urge you to support this important bill.

FLOOR STATEMENT ON  
HCS FOR SCS FOR SB 151 (FIN)  
REGIONAL RESOURCE AUTHORITIES

MR. SPEAKER:

ONE OF THE MAJOR OBSTACLES TO MINERAL DEVELOPMENT AND OTHER RESOURCE PROJECTS IN MUCH OF ALASKA IS THE ABSENCE OF TRANSPORTATION FACILITIES. THIS IS PARTICULARLY TRUE IN THE UNORGANIZED BOROUGH WHERE ENTITIES TO ASSIST IN THE DEVELOPMENT OF INFRASTRUCTURE ARE LARGELY ABSENT. UNTIL BOROUGH GOVERNMENTS ARE ESTABLISHED (WHEN THE NECESSARY TAX BASE IS PRESENT), THERE IS A GREAT NEED FOR SOME ENTITY TO ASSIST MAJOR RESOURCE DEVELOPMENT PROJECTS THROUGH THE PROVISION OF TRANSPORTATION SYSTEMS.

WITH VIRTUALLY NO RISK TO THE STATE AND LITTLE DIRECT STATE INVOLVEMENT, THE STATE CAN PROVIDE SUBSTANTIAL ASSISTANCE TO RURAL ECONOMIC DEVELOPMENT THROUGH THE AUTHORIZATION OF REGIONAL RESOURCE AUTHORITIES AS PROVIDED IN SB 151. OBVIOUSLY, ANY DIRECT STATE FUNDING OF TRANSPORTATION SYSTEMS, AS HAS OCCURRED IN CANADA, WOULD BE A MUCH MORE EXPENSIVE AND RISKY OPTION FOR THE STATE.

IN MY OWN DISTRICT, SB 151 IS SEEN AS PROVIDING THE NECESSARY VEHICLE FOR MAKING THE DEVELOPMENT OF THE RE. DOG MINE NEAR KOTZEBUF A REALITY.

SB 151 WOULD AUTHORIZE THE ESTABLISHMENT OF REGIONAL AUTHORITIES IN THE UNORGANIZED BOROUGH AREA WHICH WOULD PROVIDE:

--- ACCESS TO TAX-EXEMPT REVENUE BONDS WHICH WOULD SUBSTANTIALLY REDUCE FINANCING COSTS OF RESOURCE DEVELOPMENTS;

- TRANSPORTATION SYSTEMS AND PORTS WHICH PAY FOR THEMSELVES THROUGH FEES AND TARIFFS CHARGED OR ARE BACKED BY ASSETS OF PRIVATE CORPORATIONS, NO STATE BACKING TO REVENUE BONDS WOULD BE ALLOWED.
- PUBLIC OWNERSHIP OF TRANSPORTATION SYSTEMS AND PORTS ASSURING EQUAL ACCESS TO ALL USERS;
- MAXIMIZED LOCAL INVOLVEMENT IN DECISION-MAKING ALONG WITH STATE PARTICIPATION AND OVERSIGHT.

IN TESTIMONY AND DISCUSSION OF THIS LEGISLATION, SEVERAL CONCERNS WERE RAISED, INCLUDING:

- THE POSSIBILITY OF PROLIFERATION OF AUTHORITIES THROUGHOUT THE UNORGANIZED BOROUGH;
- THE POSSIBILITY THAT BONDS ISSUED BY AUTHORITIES WOULD CREATE A LIABILITY OR INDEBTEDNESS TO THE STATE OR ADVERSELY AFFECT STATE AND LOCAL BOND RATINGS;
- THE POSSIBILITY THAT ACCESS TO THE FACILITIES DEVELOPED AND RUN BY AN AUTHORITY MIGHT NOT BE FAIRLY AND EQUALLY PROVIDED, OR THAT SOME PROPOSED DEVELOPMENTS MIGHT NOT RECEIVE EQUAL CONSIDERATION.

IN RESPONSE TO THESE CONCERNS, THE FOLLOWING "SAFETY FEATURES" HAVE BEEN INCLUDED IN SB 151:

- THE GOVERNOR MUST APPROVE THE ESTABLISHMENT OF ANY AUTHORITY (SEE P. 3, LINES 6-11);
- THE LOCAL PEOPLE IN A REGION MUST APPROVE BY PETITION AND ELECTION THE ESTABLISHMENT OF AN AUTHORITY (SEE P.2 AND 3);

- AN AUTHORITY MUST BE CREATED BEFORE JULY 1, 1986 (KNOWN AS THE SUNSET PROVISION)(SEE P. 2, LINES 10-12);
- THE MAXIMUM NUMBER OF POSSIBLE AUTHORITIES ALLOWED WOULD BE NINE, CORRESPONDING TO REGIONAL HOUSING AUTHORITY BOUNDARIES AND EXCLUDING ALL BOROUGHS (NOTE: 12 HOUSING AUTHORITIES LESS: THE NORTH SLOPE BOROUGH, KODIAK ISLAND BOROUGH, AND COOK INLET);
- THE STATE BOND COMMITTEE MUST GIVE PRIOR APPROVAL TO THE SALE OF ANY REVENUE BONDS BY AUTHORITIES (SEE P. 9, LINES 28 AND 29; P. 10, LINES 1-12);
- A PROVISION IN THE BILL AND IN THE LETTER OF INTENT EXPRESSLY STATES THAT BONDS ISSUED BY AN AUTHORITY DO NOT CONSTITUTE ANY LIABILITY OR INDEBTEDNESS TO THE STATE OR POLITICAL SUBDIVISION (SEE P. 12, LINES 17-29);
- AN AUTHORITY EXPRESSLY DOES NOT HAVE NORMAL GOVERNMENTAL POWERS OF EMINENT DOMAIN, TAX, LAND USE PLANNING AND ZONING, PERMITTING, ETC. SHOULD A BOROUGH BE ESTABLISHED IN THE REGION, THE AUTHORITY WOULD AUTOMATICALLY BE INTEGRATED INTO IT (SEE P. 7, LINES 21-23);
- OF THE EIGHT MEMBERS ON AN AUTHORITY BOARD, FIVE WOULD BE ELECTED FROM THE REGION, THREE WOULD BE STATE COMMISSIONERS. A QUORUM WOULD REQUIRE THE PRESENCE OF AT LEAST ONE COMMISSIONER (SEE P. 5, LINES 1-13; P. 15, LINES 22-29);
- TOTAL INDEBTEDNESS OF ALL AUTHORITIES ESTABLISHED WOULD BE LIMITED BY LAW TO \$400 MILLION (SEE P. 10, LINES 13-15);
- AN AUTHORITY WOULD BE AUDITED EACH YEAR BY LEGISLATIVE BUDGET AND AUDIT (SEE P. 14, LINES 25-29);

- A PROVISION TO ENSURE FAIR AND EQUAL ACCESS AND USER FEE ASSESSMENTS AND FAIR CONSIDERATION BY THE AUTHORITY OF ALL PROPOSED DEVELOPMENTS (SEE P. 15, LINES 1-6);
- A PROVISION THAT STATE FUNDS CANNOT BE USED TO PAY OFF OR MEET REVENUE BOND OBLIGATIONS OF AN AUTHORITY (SEE P. 7, LINES 23-26).

MR. SPEAKER, THIS BILL HAS NOW HAD THOROUGH REVIEW BY FIVE COMMITTEES OF THE LEGISLATURE. AS THE BILL PROGRESSED, MANY IMPROVEMENTS HAVE BEEN MADE. NO EXISTING AUTHORITY OR MUNICIPALITY HAS ANYTHING TO COMPARE TO THE SAFEGUARDS BUILT INTO THIS LEGISLATION.

I BELIEVE THIS LEGISLATION IS NOW CAREFULLY CRAFTED TO ACHIEVE THE GOALS OF DEVELOPMENT ASSISTANCE THROUGH MAXIMUM LOCAL CONTROL WHILE PROVIDING ADEQUATE STATE INPUT AND OVERSIGHT TO ASSURE FINANCIAL INTEGRITY OF PROJECTS AND STATEWIDE COORDINATION. THE ECONOMIC BENEFITS OF THIS LEGISLATION COULD BE SUBSTANTIAL TO OUR STATE WITH LITTLE DIRECT COST.

I URGE YOU TO SUPPORT THIS IMPORTANT BILL.

STATEMENT BEFORE HOUSE FINANCE COMMITTEE ON SB 151,  
REGIONAL RESOURCE AUTHORITIES

NEED

- RESOURCE DEVELOPMENT, LIKE MINING, HAMPERED BY LACK OF TRANSPORTATION FACILITIES, INFRASTRUCTURE
- IN UNORGANIZED BOROUGH NO GOOD MECHANISMS FOR ASSISTING IN TRANSPORTATION
- WITHOUT TAX BASE, LIKE MINERAL DEVELOPMENT, LOW POTENTIAL FOR BOROUGH CREATION, HENCE CHICKEN AND EGG SITUATION.
- ALSO HAVE LOW OR NO STATE \$\$ FOR TRANSPORTATION WITH DECLINING STATE REVENUES

BILL OBJECTIVES

- AUTHORITIES TO ACCESS TAX-EXEMPT REVENUE BONDS TO SUBSTANTIALLY REDUCE COSTS OF FINANCING TRANSPORTATION DEVELOPMENTS
- AUTHORITIES WOULD PROVIDE PUBLIC OWNERSHIP OF TRANSPORTATION SYSTEMS AND PORTS ASSURING EQUAL ACCESS TO ALL USERS AND COORDINATED REGIONAL USES
- MAXIMIZE LOCAL DECISION-MAKING ALONG WITH STATE PARTICIPATION AND OVERSIGHT

SAFEGUARDS IN BILL

- GOVERNOR, LOCAL VOTERS MUST APPROVE ESTABLISHMENT OF ANY AUTHORITY
- ESTABLISHMENT OF NEW AUTHORITIES SUNSETS JULY 1, 1986
- MAXIMUM POSSIBLE AUTHORITIES REDUCED TO 9, REGIONAL HOUSING AUTHORITY BORDERS
- STATE BOND COMMITTEE MUST APPROVE ALL REVENUE BOND SALES
- NO STATE LIABILITY, DEBT EXPRESSLY STATED IN BILL, LETTER OF INTENT
- \* ---QUORUM WOULD REQUIRE PRESENCE OF AT LEAST ONE OF 3 COMMISSIONERS ON BOARD
- \* ---TOTAL AUTHORITY INDEBTEDNESS LIMITED TO \$400 MILLION
- FAIR AND EQUAL ACCESS AND FEES TO ALL USERS
- STATE FUNDS CAN'T BE USED TO PAY OFF BONDS

SUMMARY

I FULLY SUPPORT BILL AND THE ADDITIONAL AMENDMENTS PROPOSED IN THE HOUSE FINANCE COMMITTEE CS (MOST CLARIFYING, TECHNICAL EXCEPT FOR \* ABOVE). GOOD BALANCE IN BILL BETWEEN LOCAL CONTROL AND STATE OVERSIGHT; BETWEEN STATE ASSISTANCE FOR RESOURCE DEVELOPMENT AND PROTECTION AGAINST COST LIABILITY.

ARGUMENTS AGAINST GOVERNOR'S "AIDA" ALTERNATIVE TO SB151

(HB 377)

Note: Extremely late in the session, Governor Sheffield "introduced" an alternative to SB 151 which uses the Alaska Industrial Development Authority (AIDA) as a means to accomplish goals similar to those of SB 151.

1. Introduced too late!

- a. Only recently introduced. Is a house bill which just arrived in House Finance. There has been no consideration of the bill in Senate.
- b. For Red Dog Mine to stay on schedule, legislation needed this session.

2. Insignificant Local Role in Decision Making

- a. Governor's alternative:
  1. Governor appoints all board members.
  2. Governor even appoints chairman.
  3. Local people have no real say in who is appointed (local members are elected under SB 151).
  4. "Local" districts so large that one could have Barrow board members deciding on a Nome project.

3. Insufficient Ceiling on Total Debt Allowed

- a. SB 151 allows only \$400 million statewide.
- b. Governor's alternative would allow \$500 million.

4. AIDA Operations Could Be Adversely Affected

- a. Governor's proposal suggests adding 54 "local representatives" who come and go from AIDA board as project decisions are made. No study has been made on affect on AIDA's day to day operations.
- b. Changes AIDA from its present role of a simple finance vehicle to becoming an operator and owner of ports and roads!

5. Look at Next Year

- a. May be role for Governor's alternative, but needs careful legislative review.
- b. May well make sense to pass next year after adequate study.

TESTIMONY BEFORE SENATE FINANCE COMMITTEE

CSSB 151, REGIONAL RESOURCE AUTHORITIES

WE HAVE SUBMITTED TO THE FINANCE COMMITTEE OUTLINING MAJOR OBJECTIONS RECEIVED BY THE RESOURCES COMMITTEE ON THE BILL AS ORIGINALLY DRAFTED, THE AMENDMENTS WHICH THE COMMITTEE MADE TO THE BILL TO ADDRESS THE CONCERNS, AND A LISTING OF ADDITIONAL POSSIBLE AMENDMENTS AND TECHNICAL CORRECTIONS WHICH THE FINANCE COMMITTEE MAY WISH TO CONSIDER.

IN SUMMARY, MAJOR CONCERNS WITH THE LEGISLATION CENTERED ON FEARS THAT:

- 1) THE BILL WOULD RESULT IN A PROLIFERATION OF AUTHORITIES THROUGHOUT THE REAA DISTRICTS, AND
- 2) REVENUE BONDS ISSUED BY THE AUTHORITIES MIGHT SOMEHOW RESULT IN A LEGAL OR MORAL OBLIGATION ON THE PART OF THE STATE OR MUNICIPALITY IN THE CASE OF DEFAULT OR THAT THE BONDS MIGHT ADVERSELY AFFECT THE MARKETING OF STATE AND LOCAL BONDS.

MAJOR PROVISIONS ADDRESSING THESE CONCERNS PUT IN THE BILL BY THE RESOURCES COMMITTEE INCLUDE:

- 1) A FINDING BY THE GOVERNOR IS REQUIRED PRIOR TO THE HOLDING OF AN ELECTION TO CREATE AN AUTHORITY THAT THE AUTHORITY WOULD BE ECONOMICALLY ADVANTAGEOUS TO THE STATE AND REGION;
- 2) THE AUTHORITY TO PETITION TO ESTABLISH AN AUTHORITY EXPIRES ON JULY 1, 1986;
- 3) PRIOR TO THE ISSUANCE OF ANY REVENUE BONDS BY THE AUTHORITY THE STATE BOND COMMITTEE MUST FIND THAT THE PROJECT IS ECONOMICALLY VIABLE AND THAT THE ISSUANCE OF BONDS WILL NOT AFFECT THE ABILITY OF THE STATE OF LOCALS TO MARKET BONDS;
- 4) A STATEMENT THAT BONDS ISSUED BY AN AUTHORITY DO NOT CONSTITUTE ANY LIABILITY OR INDEBTEDNESS TO THE STATE OR LOCALITY;
- 5) A LETTER OF INTENT WAS INCLUDED REEMPHASIZING THE ABOVE PROVISION.

BEFORE THE FINANCE COMMITTEE IS A DRAFT COMMITTEE SUBSTITUTE FOR THE RESOURCE COMMITTEE SUBSTITUTE. THIS CS INCORPORATES MOST OF THE POSSIBLE AMENDMENTS WHICH I PRESENTED TO THE FINANCE COMMITTEE IN MY LETTER OF TRANSMITTAL INCLUDING:

- 1) ALL FOUR OF THE TECHNICAL AMENDMENTS WHICH ADDRESSED PROBLEMS IN THE BILL AS IT CAME BACK FROM LEGAL SERVICES;
- 2) ONE ADDITIONAL TECHNICAL AMENDMENT TO CHANGES MADE IN LEGAL WHICH CLARIFIES THAT THE AUTHORITY HAS THE POWER TO ACQUIRE AND RENT "PROJECT" PROPERTY;
- 3) A CHANGE IN NUMBER OF PETITIONERS NECESSARY TO CALL FOR AN ELECTION TO ESTABLISH AN AUTHORITY FROM "100" TO 15% OF THE NUMBER OF VOTES IN THE LAST GENERAL ELECTION. THIS COINCIDES MORE CLOSELY WITH EXISTING ELECTION LAW.
- 4) A REQUIREMENT FOR AN AUTHORITY TO CONSIDER PROJECTS SUBMITTED TO IT FOR FINANCING AND ISSUE FINDINGS IF IT DECIDES NOT TO FINANCE THE PROJECT.

I BELIEVE THAT THESE CHANGES ADEQUATELY ADDRESS ALL THE RECOMMENDATIONS WHICH I PASSED ON TO YOUR COMMITTEE WITH THE EXCEPTION OF A GENERAL CONCEPT SUBMITTED BY THE ADMINISTRATION WHICH I ASSUME THEY WILL FOLLOWUP WITH YOU. ANOTHER SUGGESTION TO REQUIRE A SUPERMAJORITY OF BOARD MEMBERS FOR A QUORUM TO ENSURE ADMINISTRATION INPUT I THINK IS HANDLED IN THE FINDINGS REQUIRED BY THE GOVERNOR AND THE STATE BOND COUNCIL.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
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## Senate

### Committee on Resources

April 5, 1983

#### Memo

To: Bettye

From: Resource Committee Staff

Subject: CSSB 151, Regional Resource Authorities

In testimony and correspondence on SB 151 major criticisms of the bill as originally introduced centered on: 1) lack of guarantees of equal access to facilities which may be developed by the regional authorities; 2) the possibility of proliferation of authorities throughout the unorganized borough; 3) the encouragement of less-than-sound economic projects by authorities; and 4) the possibility that bonds issued by authorities may in some way create a liability or indirectly add to the state's indebtedness or adversely affect the ability of the state or its political subdivision to market their revenue bonds.

In response to the first criticism Sec. 30.13.130(a) was added on page 13 which spells out requirements for fair and equal access and fee assessments for users of facilities. This language was suggested and approved by other potential mineral companies in the Red Dog mining area which might utilize facilities created by an authority in Northwest Alaska.

Criticisms regarding proliferation and economic soundness of projects was addressed in several places in the bill: 1) On page 2, in 30.13.010(b) the Governor must make a positive finding that an authority would be advantageous in achieving goals and projects of economic growth the region and state prior to holding an election to create an authority; 2) The ability to petition for creation of an authority expires on July 1, 1986 (page 2, line 11); 3) On page 14, lines 1-10, the authority is required to make findings that a project would be economically advantageous to the state and general public welfare & that a project is financially feasible before issuing revenue bonds; 4) Should a borough or home-rule municipality be created in an authority district, the authority would meld into the municipality (page 14, sec. 30.13.150).

In response to the last criticism language was added on page 8 and 9 (f) to require a positive finding of economic viability by the state bond committee prior to any issuance of revenue bonds by the authority. The committee would also have to find that no impact would happen to bond marketing by the state. On page 11, 30.13.090(a) language was contained that specifically exempts the state from any financial liability for bonds issued by the authority.

Also attached is a draft Committee Substitute containing amendments worked out by the mineral companies involved in development in northwest Alaska who may be affected by this legislation. These amendments change the composition, procedures and election process of the Authority's board; clarify that the Authority does not have zoning and permitting powers; provide an assurance of access to facilities by other users; outline a procedure for determining if a project qualifies for bonding; and make other technical changes.



Official Business

# Alaska State Legislature

## Senate

### Resources Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 18, 1983

#### Memo

To: Bettye

From: Pat

Subject: Hearing on SB 151, Regional Resource Authorities, 3:00pm, Beltz

Attached is a general summary of the legislation. Note the changes on the second page which were worked out by GCO and Cominco in the draft committee substitute. We are expecting testimony from:

Russell Babcock, Bear Creek Mining Company (has a 5:40 plane)

Don Argetsinger, V.P. Nana Development Corp.

Hank Geigerich, President and General Manager, Cominco

Eric Wohlforth, Cominco attorney

Harris Saxon, GCO attorney (Ely, Guess, Rudd)

Administration

Dick Lyon, Commerce

(nobody) DC&RA

Walter Meiners Elections/Lt. Gov. ?

John Bates, Transportation (Deputy Commissioner)

We would hope the following questions and issues would be raised in testimony or by the Committee:

- 1) Why is the authority necessary? economic savings? local control and participation? Other possible funding entities?
- 2) Why isn't a Borough being proposed for this region which would have the same powers and more of the authority?
- 3) What happens when and if a Borough is established?
- 4) What are the costs, or savings, to the state of such an authority?
- 5) What assurances of equal access and use of facilities by other users are in the legislation?
- 6) Does the legislation and authority raise any conflicts with the Alaskan Constitution? (Do such authorities have any "local government powers"? The bill clearly says no powers of taxation, zoning, etc.)
- 7) Would the authority result in duplications or conflicts with statewide transportation, community planning activities and responsibilities?

# Alaska State Legislature

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## Senate

### Committee on Resources

TO: Senate Resources Committee Members  
FROM: Senate Resources Committee Staff  
RE: SB 151  
DATE: March 17, 1983

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On Friday, March 18 at 3:00 p.m. in the Beltz Room, the Senate Resources Committee will be hearing SB 151, An Act relating to Regional Resource Development Authorities.

SB 151 sets up a procedure for establishing a regional resource authority which could finance infrastructure such as roads, pipelines and ports for resource development projects. Similar to port authorities, the resource authority could finance these facilities through tax-exempt revenue bonds. The authorities would only be authorized in the unorganized borough where no bodies currently exist to finance such projects in this manner. Should a borough later be established, the authority would dissolve and fold into the borough. There is currently high interest for such an authority in northwest Alaska to facilitate development of the Red Dog lead/zinc/silver deposits.

Resource development authorities would be created through the Department of Community and Regional Affairs, with approval of voters in the regional educational attendance area, and be run by a 5-member board. The board would have the power to purchase, hold and dispose of bonds. Bonds issued would not constitute an indebtedness or other liability of the state or a political subdivision, except the authority, but would be payable solely from the income and receipts or other funds or property of the authority.

The board would have the authority to acquire and dispose of property, and must provide for equal rights to access and use of a facility by the public and private entities.

Also attached is a draft Committee Substitute containing amendments worked out by the mineral companies involved in development in northwest Alaska who may be affected by this legislation. These amendments change the composition, procedures and election process of the Authority's board; clarify that the Authority does not have zoning and permitting powers; provide an assurance of access to facilities by other users; outline a procedure for determining if a project qualifies for bonding, and make other technical changes.

Introduced: 2/25/83  
Referred: Resources  
and Finance

IN THE SENATE

BY FARRENKAMP, RERTTULA,  
FERGUSON AND P. FISCHER

SENATE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(1) In most areas of the state, there is a lack of basic transportation and port facilities adequate to permit the development of nonrenewable natural resource enterprises, including mining enterprises.

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

(3) The achievement of full employment and the establishment and continuing development of nonrenewable natural resource enterprises in the state will be accelerated by authorizing 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, and to own, operate and maintain transportation and port facilities, as provided in this chapter.

AS 30 is amended by adding a new chapter to read:

CHAPTER 13. REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

Sec. 30.13.010. CREATION AND ORGANIZATION. (a) The residents of each area of the state within the boundaries of a regional educational attendance area established under AS 14.08 may create a public body corporate and politic under the name and style of the " \_\_\_\_\_ Resource Development Authority" with all or any significant part of the name of the region of the state inserted. For purposes of this chapter the authority created has jurisdiction over the area within the boundaries of the regional educational attendance area. An authority is created by a petition filed with the Department of Community and Regional Affairs that must include the proposed name of the authority, the boundaries of its jurisdiction, and a statement of the proposed facilities to be provided by the authority. The petition must be signed by 50 residents of the proposed area of the authority. The Department of Community and Regional Affairs shall review petitions for content and signatures. If the Department of Community and Regional Affairs determines that the petition is adequate, it shall transmit the petition to the director of elections.

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

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

(d) The authority shall be governed by a board of eight members, five of whom shall be elected and three of whom shall be appointed by the governor. If creation of an authority is approved, the director of elections shall, within 10 days of certification, order an election to choose the five initially elected members of the authority. The election is held not less than 60 or more than 90 days after the date of the election order. The initially elected members of the authority shall take office on the first Monday following certification of their election. [AND] Two of the initially elected members shall be designated by lot to serve for a term [TERMS RESPECTIVELY] expiring on the first day [DAYS] of the [FIRST,] second [, THIRD, FOURTH AND FIFTH NOVEMBERS] November next ensuing after the date of their election [APPOINTMENT], two of the initially elected members shall be designated by lot to serve for a term expiring on the first day of the third November next ensuing after the date of their election, and one of the initially elected members shall be designated by lot to serve for a term expiring on the first day of the fourth November next ensuing after the date of his election. Elections of members shall be held thereafter on the first Tuesday of October of [IN] each year [AFTER THE FIRST ELECTION, ONE PERSON SHALL BE ELECTED AS A MEMBER OF THE AUTHORITY TO SERVE FOR A TERM COMMENCING ON THE FIRST DAY OF NOVEMBER IN THAT YEAR AND EXPIRING ON THE FIRST DAY OF NOVEMBER AFTER THAT YEAR] in which a term

expires. Terms of elected members thereafter shall be two years. The three members appointed by the governor shall [APPOINT AS MEMBERS OF THE AUTHORITY TWO PERSONS WHO SERVE AS THE] be heads of principal departments of the executive branch [TO] who shall serve ex officio at the pleasure of the governor. (FOR TWO-YEAR TERMS.)

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

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

Sec. 30.13.020. MEMBERS. (a) The members of an authority shall elect a chairperson and a vice chairperson from among its members. A majority of the members of an authority constitutes a quorum for the transaction of business. Action may be taken and motions or resolutions adopted by an authority at a meeting at which a quorum is present by vote of a majority of the members present, unless the bylaws of an authority require a larger number. An authority may delegate to one or more of its officers, agents or employees the powers and duties that it considers proper. An authority may appoint persons as officers it considers advisable, including an executive director, and may employ professional advisors, counsel, technical .. experts, agents, and other employees it considers advisable.

(b) A member of an authority may not vote on a resolution of the authority relating to any agreement to be entered into by the authority under this chapter 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. A resolution of the authority that is approved by a majority of all the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.

Sec. 30.13.030. PURPOSE OF AN AUTHORITY. The purpose of an authority shall be the improvement, establishment and development of facilities in its district for transportation purposes, either directly or by agreement with any public or private entity or person. (OR IN ANY

OTHER MANNER, AS IN THE JUDGMENT OF THE AUTHORITY WILL PROVIDE AN EFFECTIVE AND SATISFACTORY METHOD FOR PROMOTING ITS PURPOSES].

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

- (1) sue and be sued;
- (2) have a seal and alter it at its pleasure;
- (3) make and alter bylaws for its organization and internal management;
- (4) adopt regulations governing the exercise of its corporate powers;
- (5) acquire, rent, hold, use and dispose of real and personal property necessary, useful, or convenient for its purposes;
- (6) grant, by franchise, lease or otherwise, the use of any project, facilities or property owned or [AND] controlled by it to any person for the consideration and period of time and upon the other terms and conditions it may fix and agree upon;
- (7) lease or agree with others to use a project for the rentals and upon the terms and conditions the authority may consider advisable;
- (8) provide for and secure the payment of bonds and the rights of the holders of them, and to purchase, hold and dispose of bonds;
- (9) accept gifts, grants, or loans from, and enter into contracts or other transactions regarding them, with any federal, state, municipal or other agency or instrumentality, private organization, or other person;

(10) deposit or invest its funds, subject to agreements with bondholders;

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

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

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

Sec. 30.13.050. LIMITATION ON POWERS. An authority has only those powers expressly granted in this chapter, reasonably implied from this chapter or reasonably necessary or convenient to carry out its corporate purposes and to exercise the powers expressly granted in or reasonably implied from this chapter. An authority does not have powers of eminent domain, taxation, land use planning, zoning, permitting, or other similar governmental powers.

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

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

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

the bonds; or

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

(k) Bonds shall be authorized by resolution of the authority, and be dated and shall mature as the resolution may provide, except that no bond may mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption which the resolution or a subsequent resolution may provide.

(c) All bonds, regardless of form or character, shall be negotiable instruments for the purposes of the Uniform Commercial Code.

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

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

Sec. 30.13.070. TRUST INDENTURES AND TRUST AGREEMENTS. In the discretion of the authority, an issue of bonds may be secured by a trust indenture or trust

agreement between the authority and a corporate trustee, that may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state, or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee hereinafter [AFTER THIS] in this section referred to as "trust agreement" by means of which the authority may

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

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

(B) the fixing and collection of rents or other consideration for, and the other terms to be incorporated in an agreement with respect to a project;

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

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

(E) the vesting in a trustee of rights, powers, duties, funds, or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance and all

other rights of the authority or of the bondholders, under a lease, contract of sale, mortgage, security agreement, or trust agreement with respect to a project by mandamus or other proceedings or by taking possession of by agent or otherwise and operating a project and collecting rents or other consideration and applying the same in accordance with the trust agreement;

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

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

Sec. 30.13.080. VALIDITY OF PLEDGE. It is the intention of the legislature that a pledge made in respect of bonds shall be perfected and shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by an authority shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement or any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be perfected or to be valid, binding, or effective against the parties. This section shall not affect title to or conveyances of real property, and shall not limit the applicability of AS 34.15.290.

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

(b) The bonds issued by an authority do not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the authority, but shall be payable solely from the income and receipts or other funds or property of the authority. The authority may not pledge the faith or credit of the state or of a political subdivision of the state, except the authority, to the payment of a bond, and the issuance of a bond by the authority does not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, levy or pledge any form of taxation to the payment of the bond.

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

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

Sec. 30.13.110. EXEMPTION FROM TAXATION. The real and personal property of an authority and its assets, income and receipts are declared to be the property of a political subdivision of the state and, together with any project financed under this chapter, [AND AN INTEREST CREATED IN A PROJECT APPLICANT OR OTHER PERSON UNDER THIS CHAPTER, DEVOTED TO AN ESSENTIAL PUBLIC AND GOVERNMENTAL FUNCTION AND PURPOSE, AND THE PROPERTY, ASSETS, INCOME, RECEIPTS, PROJECT AND LEASEHOLD INTERESTS] are exempt from all taxes and special assessments of the state or a political subdivision of the state. All bonds of an authority are declared to be issued by a political subdivision of the state and for an essential public and governmental purpose and to be a public instrumentality, and the bonds, and the interest on them, the income from them and the transfer of the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. Nothing in this section affects or limits an exemption from license fees, property taxes, or excise, income, or other taxes, provided under any other law, nor does it create a tax exemption with respect to the interest of any business enterprise or other person, other than the authority, in any property, assets, income,

receipts, project or lease whether or not financed under this chapter.

Sec. 30.13.120 BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The bonds of an authority are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including without limitation savings and loan associations and building and loan associations, investment companies and other persons carrying on banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may afterward be authorized to invest in bonds or other obligations of the state, may properly and legally invest money including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of an authority are also securities that may be deposited with and may be received by all public officers and bodies of the state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may afterward be authorized.

Sec. 30.13.130. EQUAL USE AND ACCESS. (a) If an authority owns, leases, or otherwise operates or controls, or participates in the financing of, a facility, the authority shall, to the maximum extent possible, provide for equal rights of [TO] access to and use of the facility by members of the public and other persons or entities, and

the access to and use of the facility shall be upon terms and conditions which are fair and reasonable. However, this section does not prevent an authority from establishing fair and reasonable limitations on use of or access to a facility to the extent [THE AUTHORITY CONSIDERS, IN ITS SOLE DISCRETION, THAT] the limitations are necessary in connection with the nature of the facility or the demand for use of or access to the facility. This section applies to the establishment of rates and rate structures as well as all other factors, terms and conditions relating to the use of or access to the [A] facility, including without limitation the design and location of the facility. [OWNED, LEASED, OPERATED, OR OTHERWISE CONTROLLED BY AN AUTHORITY.] The members of the authority shall make a written finding concerning compliance of the facility with the provisions of this section. A written finding signed by at least three of the five elected members and two of the three appointed members that the facility complies with the provisions of this section shall constitute a conclusive presumption of such compliance.

(b) Before issuing bonds for any project under this chapter, an authority must find, on the basis of all information reasonably available to it, that

(1) the project and its development under this chapter 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 (in this subparagraph called the region) and the state;

(2) the project sponsor is financially responsible; and

(3) 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. JURISDICTION. An authority is not subject to the jurisdiction of the Alaska Transportation Commission.

Sec. 30.13.150. SUCCESSION. Whenever a borough of the first or second class is created with an area coterminous with the area of an authority, the authority shall be integrated into the borough within one year of incorporation. On integration the borough 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 payable from taxes levied by the borough.

Sec. 30.13.900. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "authority" means a public body created under AS 30.13.010;

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

(3) "cost" includes the cost of acquisition or construction of all or any part of transportation facilities and of all or any property, rights, easements and franchises considered by an authority to be necessary, useful, or convenient, including without limitation reimbursements to the authority or any other person of money expended for the purposes of the authority and

interest or discount on bonds to finance those expenses, engineering and inspection costs and legal expenses, the cost of financial, professional and other advise, and the cost of issuance of bonds;

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

(5) "person" includes an association, corporation, [NATION,] state or agency or subdivision of the state, municipality of the state, or an authority, as well as a natural person;

(6) "transportation facilities" or "facilities" means harbor, port, shipping and transportation facilities of all kinds, including without limitation harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, rolling stock, car ferries, tugs, boats, conveyors, tunnels, bridges, highways, roads and railroads, and appliances of all kinds for the handling, storage, inspection and transportation of freight and natural resource products; it also includes without limitation all property, rights, easements and franchises relating [RELATIVE] to a facility and necessary or convenient for the acquisition, construction or operation of the facility, but does not include airport facilities.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

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## 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 (REAs) 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 REA to decide whether the authority should be created. If the voters of the REA 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 REA, 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 draftman 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.

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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

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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 précis of the delegates' comments:

As seen by delegates, the inadequacies of conventional counties were limited function 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.

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:

The use of traditional village councils or IRA 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 IRA 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,

"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 2729. 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:

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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.

# Alaska State Legislature

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ROBERT H. ZIEGLER, SR., Vice Chairman  
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## Senate

### Committee on Resources

March 24, 1983

#### Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Amendments to CS for SB 151

Attached is the CS for SB 151 which was adopted at the meeting of the Committee on March 18, 1983. Contained in this CS are underlined changes intended to meet the concerns of several Members which were raised at the meeting on the 18th. The proposed amendments to the CS address the following:

- 1) In section 1 the word "nonrenewable" was deleted to permit authorities to be formed for both nonrenewable and renewable resource enterprises;
- 2) In section 2 a statement was required to be submitted to the Governor in addition to the petition to the DC&RA to establish an authority. The Governor is required to issue a finding prior to the holding of an election to establish an authority that the authority would contribute to the economic growth of the region and the state, and that the authority is a desirable method of accomplishing the goals and projects.
- 3) The number of petitioners for an authority was raised from 50 to 100.
- 4) Elections are to be held coincidental to other regional elections when possible.
- 5) Section 30.13.020 (h) was added to sunset the ability to petition and hold elections for establishment of an authority on June 30, 1986.
- 6) Section 30.13.060 (f) was added to require an authority to submit economic information on a project to the State Bond Committee prior to the issuance of bonds. The committee must find that the project revenues can be expected to repay the bonds, and that the authority's bond issue will not adversely affect state and local bond issues.
- 7) Changes were made in Sec. 30.13.150 which clarify that when a borough or a home-rule municipality is created for a resource authority area or includes an authority's area, the authority shall be integrated

into the borough or home-rule municipality, that any indebtedness of an authority does not constitute an indebtedness to the municipality and that the municipality may not levy any taxes to pay for any such indebtedness.

- 8) References to an authority's "jurisdiction" have been replaced throughout the bill with references to the area within which an authority may exercise its powers, This change was to clarify the language to closely reflect the character of the authorities.
- 9) The words "ex officio" at the end of section 30.13.010(e) have been deleted as unnecessary and possible confusing.
- 10) Section 30.13.030 has been changed by adding "in connection with natural resource enterprises" after "transportation purposes" to clarify the purpose to be served by the authorities.
- 11) Section 30.13.040 has been changes by adding "set forth in AS 30.13.030" after "corporate purposes" to clarify the purposes for which an authority may exercise its powers.
- 12) The reference in section 30.13.130(b)(2) to the project sponsor has been changed to a reference to the project itself believed to be the more important consideration.

The Committee will again consider this legislation at its meeting on Friday, March 25, at 3:00pm in the Beltz Room.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
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## Senate

### Committee on Resources

March 25, 1983

#### Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Amendments to CS of SB 151, Regional Resource Authorities

The following amendments have been proposed by various interests since the CS was distributed. These four amendments would make only clarifying or technical changes to the CS:

1) On Page 2, add the following new subparagraph to the Legislative Findings and Policy:

"(4) A locally elected majority membership of an authority created under this chapter provides a method of assuring that the manner of development and the permanent features of a project will be consistent with the economic, sociological and political aspirations of the residents of the particular region. "

2) On Page 7, make the following changes in subsection (9):

(9) accept gifts, loans, grants, including without limitation organizational grants, from, and enter into contracts or other transactions regarding them, with any federal, state, municipal or other agency or instrumentality, private organization, or other person;

3) On page 9, change subsection (f)(2) to read:

(2) The state bond committee shall find, based on the information submitted by the authority in AS 30.13.060(f)(1) and such other information that is reasonably available to it, that the project revenues can be reasonably expected to [ensure repayment] be adequate for payment of the principal and

interest on [of] the bonds to be issued, and that the 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.

4) On page 15, in AS 30.13.130(a) change where it appears the word "section" to "subsection".

PROPOSED AMENDMENT TO CS SB 151 SUBMITTED BY

COMINCO/NANA , March 24, 1983

\* Section 1. LEGISLATIVE FINDINGS AND POLICY. is amended by adding a new subparagraph to read:

(4) The locally elected majority membership of an authority created under this chapter provides a method of assuring that the manner of development and the permanent features of a project will be consistent with the economic, sociological and political aspirations of the residents of the particular region.

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MEMORANDUM

TO: Senate Resources Committee

FROM: Wohlforth & Flint

DATE: March 23, 1983

SUBJECT: SB151 "An Act relating to Regional Resource Development Authorities; and providing for an effective date"

We enclose a proposed committee substitute for the above-referenced legislation for your consideration at the committee meeting scheduled for Friday, March 25. The proposed CS incorporates changes recommended by or responsive to comments of the committee members and staff as well as the division of elections. In addition, certain other changes have been included to clarify or correct certain provisions of the bill. These changes include the following:

(1) references to an authority's "jurisdiction" have been replaced throughout the bill with references to the area within which an authority may exercise its power; we believe this change improves the clarity of the language and more closely reflects the character of the authorities;

(2) the words "ex officio" at the end of Section 30.13.010(d) have been deleted as unnecessary;

(3) Section 30.13.030 has been changed by adding "in connection with natural resource enterprises" after "transportation purposes" to clarify the purpose to be served by the authorities;

(4) Section 30.13.040 has been changed by adding "set forth in AS 30.13.030" after "corporate purposes" again to clarify the purposes for which an authority may exercise its powers;

(5) the reference in Section 30.13.130(b)(2) to the project sponsor has been changed to a reference to the project itself, reflecting a belief that the feasibility of the project was the more pertinent consideration; and

March 23, 1983  
Page 2

(6) a new sentence has been added at the end of Section 30.13.150 prohibiting any successor municipality from levying any taxes to pay for indebtedness of an authority to which the municipality has succeeded under the terms of this section; the purpose of this change is to provide further assurance that any such indebtedness will not constitute a general obligation of the succeeding municipality.

All changes from the previous draft of the bill presented to the committee at its meeting of March 18 are shown with underlining and bracketing.

We appreciate your consideration of this proposed committee substitute and welcome any questions or comments you may have.

RIDER

p. 2 - Sec. 30.13.010(a) - 3rd sentence

"An authority is created by a petition filed with the Department of Community and Regional Affairs and a statement submitted to the governor. The petition [THAT] must include ....."

p.3 - new (b)

*under AS 30.13.010*

The statement required ~~by~~ <sup>shall</sup> (a) of ~~this section~~ to be submitted to the governor <sup>is to be</sup> ~~must~~ include: (1) <sup>which</sup> the purpose for the ~~creation~~ of the authority; (2) the goals <sup>of projects</sup> the authority ~~will seek~~ <sup>is intended</sup> to accomplish; (3) an analysis of ~~any~~ <sup>of the projects of the proposed authority</sup> alternative method of accomplishing the goals <sup>described in (2) of this subsection</sup>; and (4) the reason for establishing ~~of~~ the authority rather than using <sup>an</sup> alternative described in (3) of this subsection. <sup>Prior to</sup> ~~Before~~ the ~~division of elections~~ <sup>in</sup> schedules an election under <sup>AS 30.10.010</sup> (c) of ~~this section~~; the governor <sup>shall</sup> ~~must~~ review the statement submitted under this section and <sup>submit</sup> deliver to the division of elections findings that: 1) the accomplishment of the goals <sup>of projects of the authority</sup> described under (2) of ~~this subsection~~ would be advantageous to the state and to the region's economic growth; and <sup>2)</sup> that creation of the authority is a <sup>appropriate</sup> desirable method of accomplishing those goals <sup>projects</sup>.

p. 3 - re-number existing (b) as (c)

"Within 30 days after receipt of the governor's findings under (b) of this section and the [A] petition under (a) of this section...."

Replace (f) in 060 on p. 9

(f) Before issuing bonds for a project under this chapter,

(1) an authority shall submit to the state bond committee a description of the bond issue and an independent economic feasibility analysis of the project and its expected revenues, both of which may be contained in a preliminary prospectus, offering circular or official statement relating to the bond issue (in this section referred to as "official statement"); and

(2) the state bond committee must find based on the official statement that the project appears to be economically feasible and that the bonds are not likely to affect the ability of the state or its political subdivisions to sell their bonds.

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*

# **institute of Public Administration**

ESTABLISHING PUBLIC CORPORATIONS IN ALASKA

A GUIDE FOR LEGISLATIVE DECISION MAKING

A REPORT TO  
THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

BY ANNMARIE WALSH AND DAVID MAMMEN

DECEMBER 15, 1982

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ESTABLISHING PUBLIC CORPORATIONS IN ALASKA  
A GUIDE FOR LEGISLATIVE DECISION MAKING

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ESTABLISHING PUBLIC CORPORATIONS IN ALASKA  
A GUIDE FOR LEGISLATIVE DECISION MAKING

1. Introduction

Continuing demands for greater and more varied government services have resulted in rapid growth in the use of public corporations for loan programs, large scale construction projects and enterprise-type public services. Every session of the Alaska Legislature faces several proposals to create, to change and to subsidize independent public corporations of the state.

In January 1982 the Institute of Public Administration (IPA) prepared a report (Alaska's Public Corporations: a framework for assessment) for the Legislative Budget and Audit Committee of the Alaska Legislature which described the state's major corporations and developed a framework for assessing and overseeing them. This guide is designed to summarize IPA's earlier report by providing a checklist of questions and issues that should be considered during the process of legislative decision making with respect to public corporations.

What are the characteristics of public corporations or authorities?

Public corporations are government instrumentalities established by legislative statute to operate to some extent outside the regular structure of executive departments, usually to finance, construct or operate revenue producing enterprises. As corporations, they have separate legal existence (to sue, to be sued, and to assume credit obligations in their own name). They are variously called corporations,

public authorities, commissions, banks, services or agencies.

How do public corporations differ from regular government?

Public corporations differ from government itself in these ways:

\*Public corporations do not have general government police or reserve powers or powers to tax;

\*Public corporations can exercise only those powers and conduct only those activities specifically authorized in their charter or statute.

Public corporations differ from the line agencies of the executive branch of government in the following ways:

\*They have separate legal identity (corporate personality);

\*They may be exempt from many of the administrative procedures and regulations that apply to line agencies, such as civil service and other personnel regulations, procurement and other administrative procedures, rules and controls by central executive staff agencies;

\*Their powers and structure can usually be changed only by statutory amendment (not by executive order), and such changes may be limited by legal covenants entered into by the corporation for borrowing and other contracts;

\*They can be permitted business-type budgets without line item or expenditure period limitations, and may be permitted to retain their own earnings, subject to dedicated fund prohibitions;

\*Public corporations usually have independent borrowing capacities and credit ratings.

## 2. Selecting the Corporate Form

None of the advantages described below can be achieved only through use of public corporations, and none of them are automatically achieved by use of public corporations. The record of public corporations throughout the nation includes examples of political corruption, financial debacles, and construction failures as well as numerous success stories. However, in some states legislators have sought the following through the use of the corporate form.

- \*Managerial and budgetary flexibility for enterprise-type activities that need to be continually adapted to changes in consumer demand, construction contingencies, and other market factors;

- \*Speed and efficiency of large scale construction using planned funding schedules, flexible contract administration, and non-controlling, multi-year construction budgets;

- \*Increased access to bond markets;

- \*Protected, earmarked funding for priority projects and long term debt service, subject to dedicated fund prohibitions;

- \*Business-like and self supporting activities, particularly where the benefit produced goes primarily to the person or organization that uses and can pay for the service;

- \*Insulation from political influence, for philosophical or other reasons;

- \*Use of an agency with mixed ownership, with the potential for transfer to the private sector, or with a jurisdiction that spans several government units.

What are the pitfalls to be avoided in deciding on and designing public corporations?

An increasing number of public corporations have been formed, particularly for loan programs, public transportation, housing finance and energy development. The single purpose corporation seems a simple and clear cut answer to many demands for new and complex government functions. Their advantages are relatively easy to list. Their disadvantages appear only over time and experience. It is important therefore to keep in mind some of the potential disadvantages when making the initial decision. Potential disadvantages include the following:

\*The accumulation of independent debt burden and other financial obligations and potential claims against future taxes and tax payers without control, financial planning or early warning. Two facts affect this potential problem. First, high volumes of borrowing through corporate revenue bonds do tend to tighten the market for general obligation borrowing by state and local governments from the same state. Second, even when the state clearly has no legal obligation for the debts of its corporations, if those corporations get into financial difficulty the state will have to help them (by channeling appropriations into reserve funds, by offsetting operating deficits, by helping to refinance debt or otherwise avoid default). The credit standing of the state is affected by the credit record of its corporations. Unforeseen changes in interest rates, in economic conditions or in revenues have caused problems with even the seemingly strongest corporations in some states.

\*The separation of important development decisions (such as distribution and pricing of transportation, energy, industrial investment

and housing) from legitimate political institutions based upon voter support and executive leadership. Conflicts over social, environmental and economic impacts may arise too late, after the corporation has made decisions to which the people's representatives did not have access, even when there are public hearing requirements. Similarly, lack of consistency between corporate programs and departmental programs and plans can increase the costs and reduce the effectiveness of government as a whole.

\*Undermining government procedures established for desirable purposes of accountability and legitimacy, including appropriations and budgeting, equitable job classification and salary scales, merit recruitment and promotion, standardized accounting and auditing procedures, and contracting and procurement controls. There is often a temptation to by-pass regular government agencies when these procedures seem too rigid and cumbersome for good management. However, reform of procedures is preferable to progressively cutting chunks of government activity out of them altogether.

\*Creating pockets of public activity susceptible to narrow special interest control.

\*The potential for "creaming", or removing revenue producing activities from government budgets, leaving deficit operations to fall more heavily on taxpayers or appropriations. Many states have tried unsuccessfully, for example, to tap the revenues from successful corporation toll facilities to help finance public roads or transit.

What are the alternatives?

Not all of the differences between public corporations and line

agencies are necessary. Indeed, some of the characteristics of public corporations can be given to line agencies in order to allow them to undertake enterprise-type activities efficiently without giving up executive and legislative controls. For example, some of the legislative alternatives to the full blown corporation are the following:

\*A separate executive agency or administration, headed by an administrator reporting to the governor, with special powers designated by statute but without independent corporate status. This arrangement is often used for enterprises that will be funded by appropriations and state bond issues (eg., transportation bond issues). In California, for example, a State Department of Water Resources issues special general obligation bonds, with project revenues to cover debt service channeled into a trust fund. The Department also issues revenue bonds in the name of the Department; they are obligations of the Department only.

\*A revolving fund or corporate loan fund within an executive department. This is used for loan and subsidy programs that require protected financial integrity, revenue bonding powers and separate credit obligations, but which do not require separate administrative bureaucracies and which benefit by policy coordination with related programs. Such arrangements in other states have provided revenue streams which are identifiable, allowing for accounting separate from the general agency budget in order to maintain credit ratings for revenue bonds. Examples include the Airports Division of the Hawaii Department of Transportation, which is authorized to issue revenue bonds to construct and operate airports. A separate Harbors Division within

the Transportation Department constructs and operates harbors. In the State of Washington, a motor vehicle revolving fund is used by the Department of Transportation which issues revenue bonds backed by motor vehicle fuel taxes to construct toll road and bridge facilities. In Maryland, a separate port authority was abolished in 1971; port administration was made part of a reorganized Department of Transportation.

Regional/local enterprises run by representative commissions or intergovernmental boards. Examples include public utility districts, such as those in the State of Washington. The Metropolitan Council in the Minneapolis - St. Paul region is a regional enterprise governed by an intergovernmental board.

In summary, the selection of the corporate form should be based upon four kinds of information:

\*What characteristics for financing and management are implied by the mission of the proposed agency?

\*What alternative forms of organization can provide these characteristics with minimal loss of democratic control?

\*How important is it to relate these activities to political representation? to community preferences? to departmental policies?

\*How can a corporation be effectively monitored in terms of financial and administrative impacts on state and local government?

### 3. The Design of the Corporation

Careful design of each public corporation to meet the needs of the particular mission, financing situation, and desired patterns of leadership and oversight is crucial if the agency is to live up to the expectations for it, and not prove to be a source of future problems. There are many different ways to organize a public corporation, and the form appropriate for a loan fund may not be appropriate for a railroad or a local port. This section of the Guide provides a check list of questions and legislative alternatives to be considered. These are grouped under recommendations summarized from the earlier IPA report.

#### Legislative intent and oversight

The corporate mission should be stated clearly enough to provide policy guidelines to the corporation and to provide standards for subsequent legislative oversight. Goals, priorities and performance targets should be expressed clearly so that performance can be judged against them. (For example, are services to be self supporting from revenues? Is the aim to increase production of some unit such as ship maintenance, passenger trips, or kilowatt capacity? To aid or subsidize certain groups?)

The most effective way to hold an enterprise accountable is to measure its performance against targets for that performance. Without targets or priorities, oversight tends to consist of random interchanges between legislators and corporate managers that are frustrating to both sides. If legislative statements of corporate mission are ambiguous or shift from year to year, there is little that the supervising executive

officials can do except try to assure that the corporation is acting prudently. It is always difficult to express clear goals and priorities for public programs because the nature of the democratic process is such that they are often the product of shifting compromise. Nevertheless, the exercise of trying to develop coherent statements of mission for each corporation and related departmental programs - however imperfect - can clarify the issues that are relevant to audit and to budget review, and can provide a framework within which successive requests for statutory amendment can be judged.

\*What are the goals and the policy guidelines that the legislature intends for the corporation?

\*Are goals and guidelines sufficiently clear and consistent to judge the performance of the corporation in the future?

\*Should legislative authorization be required for each major capital project or new program expansion?

The relationship of the corporation to the state government

Coordination calls for clarification of the relationship between corporations and the departments of state government. The two linkages presently used in Alaska are to specify in statute that a corporation is attached to a specific department, and to put one or more state commissioners on the corporate board. Currently, provisions that a public corporation be "within" or "attached to" a department are pro forma compliance with state law concerning departmentalization.

\*What role should the related department play?

\*How should departmental programs and policy plans relate to corporate activities?

The use of a governing board for public corporations is derived from the structure developed to represent stockholders in investor owned companies. But experience in federal and state government generally has shown that the ability of part-time boards to provide policy leadership to public corporations is limited, and ex-officio appointment of busy government officials does little to overcome those limitations.

Experience has shown that it is difficult for cabinet members to serve both as supervisors of the corporation from general perspectives and be part of corporate management on the board of directors. Problems are compounded if board meetings must cope with managerial detail, or if board members lack timely information on policy and performance.

Other alternatives should be examined. One is to have the corporation headed by a single administrator who reports to a departmental commissioner and who is aided, not by a governing board but by an advisory board that draws primarily from the private sector. This is particularly appropriate for enterprises closely linked to other state services (transit agencies, equipment maintenance agencies, revolving loan funds related to specific economic programs) Advisory boards without direct responsibility for management can be larger and draw on a broader range of expertise and objective opinion. By reporting their assessment of the corporation to the related state department and to the legislature, they can often provide for better accountability than can governing boards that get bogged down in details.

Another alternative, one suitable for regional enterprises, uses a policy council representing local groups or elected officials together with a strong executive director (see, for example, the public utility

districts of the Pacific Northwest).

\*If a governing board is to be used, who shall appoint the members? The governor? The head of an executive department when the corporation is subsidiary to one department? Local representatives? Should the board be representative? Should it be large enough to use special committees (eg., audit and finance committees typical of the private sector)? If it is large, will it have problems scheduling meetings or assembling a quorum to conduct business?

\*Should terms of members be staggered (giving the board added stability and some political insulation, but making it somewhat less responsive to elected leaders in the short run)? Or should their terms coincide with those of the appointing authorities, making them political executives like department heads?

\*Has provision been made for removal of board members for conflict of interest violations, for non attendance, or for malfeasance?

\*Who shall appoint the executive director? The board? The governor? The department head (corporation subsidiary of one department)? Will the executive director serve by contract, or at the pleasure of the appointing authorities? What provision has been made for removal?

\*Have means of improving the effectiveness of boards been explored? (e.g., use of working and advisory committees or staff to the board)?

In addition to careful design of the corporate governing structure, three other considerations are important to produce good corporate management with state government leadership.

First, the powers and responsibilities of the general manager, the board or council (if there is one) and of the appropriate government officials must be sorted out clearly and sensibly. The manager should have full responsibility to manage, and can then be held responsible for corporate performance. (See below). The board should not be burdened with detailed decisions and personnel choices below that of the manager. The board should focus on continuing evaluation of what is going on in the corporation. And state officials should have a clear role in decisions that have substantial impact on the public interest.

Second, state officials (including the legislature) need timely information concerning the corporation's programs and plans. Multi-year program and financial plans should be required. So should annual reports showing actual results. Statutes should specify the kinds of information and factors that should be included in plans and reports. They should also specify who is to review those documents and approve them.

Third, statutes should specify key policy decisions by the corporation that will affect public welfare and costs. Shall the governor or a commissioner have certain veto powers, prior approval powers or power to give the corporation certain directions?

#### Impact on state budgets

There should be provided ongoing means of assessing and controlling the extent to which the corporation may burden the state with direct or indirect financial costs.

\*Are the corporation's services likely to be self supporting out of operating revenues? At what price levels? Are services to be provided at below market prices? What interests will be served?

\*If operating subsidies are to be provided by appropriations, should there be a ceiling imposed in statute? Absolute or percentage ceiling? What factors will effect the level of subsidies: interest rates, user charges, volume of use, costs? Should prices be regulated? By whom? By what formula?

\*Should specific cost controls be imposed (eg., salary ceilings; executive scale; administrative expense limitations; interest rate ceilings)? How can cost control and efficiency incentives by management be encouraged if deficits are to be absorbed by appropriations?

Impacts on capital finance and debt

Corporate financial plans, debt burden, security arrangements and borrowing volume should be continuously monitored together with those of other state corporations and state and local government. Some orderly process should be established to analyse information on current and planned borrowing, lending, investments, and potential demands on capital appropriations, including impacts on the economy and on state credit given varying market trends.

\*What security will underlie corporate borrowing? Is the estimated revenue stream adequate to secure the borrowing necessary to complete planned projects?

\*What will borrowing costs do to revenue requirements (for example, costs of retail or wholesale electricity, freight and passenger fares, costs of ship maintenance, home mortgage rates, etc.)? What are the fall back resources for debt repayment if the revenue stream diminishes?

\*Does the state have a moral obligation (legislative option to keep corporate reserves up to specified levels)? Can the corporation's finances be leveraged by federal grants, by state loans or grants, or by other sources? Are lease payments by state or local government agencies pledged to back up debt?

\*Where will the liability or risk fall in case of extraordinary circumstances (eg., impacts of power plant failure, of earthquake or bankruptcies on mortgage and loan obligations, etc.?)

\*How will the authorized debt and debt security affect the ratios of debt of and in the state, and the ratings and indices used by the financial community to assess and cost out state and local government borrowings?

\*What arrangements have been made for payback of state capital appropriations or loans (interest, time period, enforcement and forgiveness provisions)?

\*Regarding nonguaranteed borrowing authority, what ceiling shall be established by statute? What agency of state government shall approve issues after reviewing timing, volume, interest costs, and terms of bond resolutions or official statements?

What will be the management capabilities of the corporation?

To do its job well the corporation needs stable financing, concentrated management authority, marketing expertise, high quality labor force, and flexible procurement and contracting capabilities. Sometimes these require exemption from some of the provisions of state administrative law. If such exemptions are applied when they are not needed, however, the public purposes for which the corporations were

established are undermined.

\*Should the agency's personnel be part of the civil service? Should it have its own merit-based personnel system? Should it have salary comparability? Should it offer no job security but provide full management prerogatives to hire and fire? If so, what protection from abuses should be provided? Will the agency assume labor agreements from predecessor organizations? Do collective bargaining provisions make civil service regulation unnecessary?

\*Should regular provisions for public participation and public information apply? (Freedom of information, sunshine laws, equal employment opportunity, community reviews, environmental impact statements, zoning approvals, and public notice and hearings, etc.)? In general these should not be waived without strong justifications.

\*Should regular procurement and contracting procedures be waived for the agency? Rigid competitive bidding requirements may slow down and raise the costs of large scale or repetitive construction projects, and slow procurement procedures are a problem in high technology activities.

\*Should the corporation be permitted to promulgate regulations? If so, should all aspects of the Administrative Procedures Act apply?

\*Does the structure of top leadership for the agency assure strong management together with coordination with the executive branch? The full time executive director is the key to corporate management. Will that position be clearly responsible (eg., appoint other personnel, have duties clearly distinguished from the chairman of the board, be

answerable for the performance of the agency, be subject to incentives and to dismissal by the board, the governor or department head, be expected to testify regularly before the legislature)?

\*Should the corporation be required to have organization and management surveys at least once every five years? To have full engineering and economic feasibility studies of its major projects before their authorization?

\*Should the corporation be required to have approved accounting systems, multi-year financial plans and capital budgets, and annual outside audit of its books? Conflict of interest restrictions should be applied by statute to corporate personnel.

\*What kind of budget should the corporation be required to submit annually? Does the nature of its activity require more flexibility than a normal government line item budget? If so, should a business type budget be specified? Budget estimates with freedom for the corporation to shift funds from category to category? Should Management by Objectives or Zero Based Budget documentation be required? What special provisions are needed for capital and construction budgets?

\*Should its entire budget be subject to annual approval, or only the appropriations requested by it? (If only the appropriations, what evidence of cost control and efficiency will be required in the documentation?) Should full budget review be required of all authorities with outstanding loans from the state?

\*What format and time span should be required for the capital budget of the corporation? What provision for depreciation (maintenance or sinking fund) should be made? How should the impact of interest obligations on operating budgets be reported and monitored? How

should the borrowing requirements generated by short term debt be reported and monitored? Are there adequate provisions for coordination with other capital programs?

How should legislative oversight be exercised?

\*What procedures should the legislature use to monitor the agency's performance with respect to goals? Legislative performance audit? Periodic public hearings or committee investigations (special circumstances only)? Legislative veto of financial plans or budgets which will exceed spending ceilings?

Legislative oversight should not involve intervention in specific management applications of policy (e.g., approval of specific loan applications, personnel actions, contractor selections, detailed budget lines.) If legislative judgment dominates these types of administrative action, the advantages sought from using the corporate form in the first place are lost.

In order for legislative oversight to be effective, legislative staff reviewing and dealing with the corporations must be adequate to keep up with the material coming to it, to analyse, to summarize, and to help distill out the policy implications. Investment in the capacity to continue to evaluate the public corporations would be small in comparison to the state appropriations supporting them.

Legislative oversight tools that have been used Outside include public authority control boards, special investigations, assignment of a full-time performance auditor to individual corporations, and codified corporation control acts. In other states, recent initiatives concerning public corporations have been part of broader efforts to strengthen debt management policies generally.

#### 4. Implications of the Guide for the Alaska Railroad

The framework described in this Guide has implications for proposals before the Legislature. This Guide suggests that no public corporation should be created without thorough consideration of the rationale for selecting the corporate form and consideration of government alternatives. For example, an assessment of organizational alternatives for state ownership of the Alaska Railroad was undertaken in July 1981 for the State Department of Transportation and Public Facilities (An Assessment of the Alaska Railroad: Ownership and Operational Alternatives, by John T. Gray and John A. Bivens), and concluded that the corporate form would be best. The analysis noted these 'disadvantages' to the railroad as a state line agency:

- lack of ability to obtain essential capital investment funds except by state appropriations;
- competitive issues related to marketing, management flexibility, state agency regulations and procedures;
- potential for even more direct political influence on operational decisions;
- the public service versus business orientation questions.

The report went on to note "[The state agency alternative] clearly does not meet most of the criteria established for a viable railroad organization. A state agency organizational structure is the least desirable of the three alternatives discussed."

That conclusion may be correct, but it should be noted that access to the bond market is possible through alternatives such as state transportation bond issues or departmental revenue bonds. In any case

the experience of the Alaska Railroad as a federal agency indicates that two attributes should be sought above all others: 1) flexible, concentrated, business-like management and 2) policy control by state government, exercised in the interests of Alaska.

Regarding the corporate form, the study of organizational alternatives noted:

The principal advantages of the authority or public corporation alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management could be given flexibility and responsibility for its decisions and could also be held accountable for its decisions. Passenger service could be accounted for separately and not subsidized by freight service. The Alaska governmental leadership could determine the appropriate levels, locations, and other parameters of passenger train service. Thus, under this scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

That discussion raises two issues that are not resolved in the bill to establish the Alaska Railroad Authority (CS SB 212 [Transportation]). First, what decisions should be made or reviewed by state officials to assure the public service purposes, and what decisions and prerogatives should be left to management to assure efficient and effective running of the railroad enterprise? Second, what volume and purposes of subsidy should be planned for the railroad?

This Guide suggests that legislative authorizations and mechanisms for supervising the corporations should be based clearly on the premise that the corporations are wholly owned subsidiaries of government. CS SB 212 [Transportation] makes the status of the corporation as a state agency clear:

Sec.42.40.330(e): "the authority is an agency of the State of

Alaska for purposes of jurisdictional determinations and judicial review...." Sec.42.40.100(c)(4): the authority shall act "on behalf of the State of Alaska". Sec. 42.40.200: the authority is an "instrumentality of the state within the Department of Transportation....with legal existence independent of and separate from the state."

This Guide suggests that legislative intent for the goals and mission of the corporation should be sufficiently clear to provide policy guidance, criteria for performance evaluation and financial planning. But fundamental issues are unresolved in CS SB 212 [Transportation], which provides only that the Alaska Railroad should be operated to: "carry out its responsibilities on a self sustaining basis" and to "provide the best possible combination of high quality and reasonably low cost transportation", but be "supported where necessary by state investment in railroad capital improvements."

Is it or is it not to be self supporting? Are both freight and passenger services to be self supporting? Or are operating expenses to be paid for from the fare box, while capital investment is publicly provided? Is public investment to be repaid? On what schedule and with what interest? If it is not repaid, does it have implications for the competitiveness of other components of the state's transportation system?

If these decisions are not to be made by the Legislature at the time of the creation of the authority, what process is established by the statute to make these basic public policy decisions over time? The railroad's fare structure, mix of services, and collective bargaining agreements will each affect the degree to which subsidies will be needed. According to this Guide, a procedure for governmental participation in these decisions is essential, whether it be legislative

fiat, review by the Department of Transportation and Public Facilities, review by the governor, and/or regulation.

Because of the ambiguity in the bill, basic issues of fare structure, subsidy levels, state investment and pay back may be left to the authority management to resolve and bargain over, with little clear guidance from the Legislature. Some forms of capital subsidy will be necessary; some form of operating subsidy may be necessary. According to what criteria; what limits; what procedures?

The Guide recommends that there be an orderly and timely process for assessing and controlling the impact of the corporation on state budget and credit. CS SB 212 [Transportation] implicitly permits subsidy of the railroad authority by state capital investments or revenues "from whatever source" to secure authority notes, but it is not clear about state or executive participation in, or review of, rates and fares, collective bargaining agreements, service expansions or contractions or debt ceilings which are crucial decision making points that will determine the volume and the effect of subsidies in the future. These decisions, plus the control over land (albeit in conjunction with the Department of Natural Resources), place very important policy powers in the hands of a council of six citizens with staggered terms.

Article 7 of the bill concerning state oversight provides procedures for gubernatorial veto, action forcing and intervention which are thorough. But by the time the specific undertakings described would be formally proposed and subject to these procedures, many options could be closed. Therefore review and approval of long range program and capital plans will be the more important process for purposes of policy

guidance and oversight. Proposed service changes and credit transactions should be required to conform to the approved long range plan. The opinion of the Commissioner of Transportation should be required for state review under Section 7, as well as for annual approval of the long range plan. Service improvement and performance targets should be included in the annual plan and used as criteria for performance audit by the legislative auditor.

One procedure that might be provided for would call for the authority to include in the required financial plan a recommended fare structure that would completely cover costs and investment payback. Government decision not to approve such a fare structure would then have to be accompanied by either specific commitments to provide compensating subsidies or specific cost cutting proposals. The active involvement of the Department of Transportation would be needed to carry this out. The importance of some such arrangement can be underscored by the inefficiency of public rail systems elsewhere in the country where disorderly annual negotiations over fares and subsidies have left corporate managements without financial stability or the capability to plan for improvements. Moreover, if these issues are not resolved by orderly public decisionmaking processes, they may be resolved unilaterally by corporate management through bond resolutions that guarantee certain revenue levels be maintained and collective bargaining procedures that determine cost levels.

The Guide suggests that responsible executive officials should be able to influence the major decisions of the corporation in order to provide coordinated and coherent state policy. Yet, as CS SB 212

[Transportation] is written, the Commissioner of Transportation is in an uncertain position with respect to the authority. The Commissioner is one of seven board members; there is no requirement that the Commissioner be chairman. Alternatives should be considered. The manager of the railroad corporation might report to the Commissioner, making the council an advisory and review board rather than a governing board. Or, the Commissioner could be named chairman of the governing board, which might be expanded to represent a wider range of interests.

The Guide notes that fixed management responsibility and concentrated executive leadership are important parts of the business model that public corporations are set up to take advantage of. Yet the bill divides management authority (Section 42.40.250) in ways that may involve the governing council in too much detail (\$11,000 real estate transactions; incurrence of debt, however small, and all changes of services). This may divert the council from policy issues such as program and capital plans and the establishment of rates.

In addition, the bill's provisions for appointment of railroad authority executives involve the council in appointing and removing personnel other than the general manager. This may make it more difficult to recruit a topflight railroad chief operating officer who will want to bring in his or her own management team. Accountability may be better served by giving the manager clear authority to manage, within the parameters of government policy, and holding him or her directly responsible for the results. The Legislature may therefore wish to consider whether the general manager should appoint, and have unhindered powers to dismiss, executive officials. Council involvement through

other executive appointments and the provision that executives serve "at the pleasure of the council" merely divides management responsibilities.

The Guide suggests that corporations be exempted from standard administrative procedures only as required. CS SB 212 [Transportation] AS 42.40.330 provides blanket exemption from the Administrative Procedures Act, except for public meetings and legislative review. There appear to be no criteria or standards for corporate personnel, accounting, contracting or procurement systems. While management flexibility will be served by these exemptions, management quality is not assured by them. The characteristics of the personnel system might be specified. (Will civil service rights be superimposed over collective bargaining rules? Must recruitment and promotion be on a merit basis?) In addition, the legislature should require that the corporation's accounting system be approved by the legislative auditor or that it accord with Generally Accepted Accounting Practices (GAAP).

The Guide recommends that corporations develop systematic procedures for dealing with public interests and opinions concerning the distribution of benefits among groups and localities. The Legislature may want to consider mechanisms for involvement by citizen advisory panels or regional organizations, or by local governments.

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# 'Separate' agencies rely

by Ed Bennett  
Times Business Writer

**A**laska, the land of the plenty, is in debt. Even now, while our oil revenues are declining, that debt is growing fast. At last count, it will cost about \$8.5 billion to pay it all back, with interest. Of that amount, only \$1.2 billion has been approved by the voters.

The rest of the money has been borrowed by a group of special state corporations which are supposedly separate and independent from the state itself. But the heads of those corporations — and the people who loaned them the money — are all relying on the state treasury to bail them out if any of the loans go bad.

Each state corporation can borrow money for a specific purpose. The Alaska Housing Finance Corporation, for instance, buys home mortgages; the Alaska Power Authority builds dams; the Alaska Industrial Development Authority finances commercial ventures and office buildings; and the Municipal Bond Bank Authority funds projects such as sewer systems in Alaska communities.

With these and other corporations responsible for 85 percent of the public debt in the state, their fiscal soundness becomes a matter of some interest. This is especially true when the cost of oil goes down, because the loans made by the state corporations are paid back with revenues from their projects. And all those projects — except municipal bonds — are sensitive to the condition of the state's economy.

According to a recent study, nearly half the personal income earned by Alaskans can be linked to state spending, and at least 85 percent of the state's revenues come from oil. In other words, when oil prices or oil production goes down, Alaska's economy contracts.

How well can Alaska's state corporations weather an economic downturn? How likely are they to default? If it does come to that, who pays? An extensive investigation of Alaska's debt has revealed that:

- By and large, the Alaska Housing Finance Corporation is extremely well prepared to deal with even a large number of foreclosures on its mortgages.
- The Alaska Industrial Development Authority has also protected itself quite thoroughly.
- On the other hand, a number of serious questions have been raised about the Alaska Power Authority



• Without exception, all corporations are relying on the state itself to bail them out if they run into deep trouble.

• The state's direct debt — the bonds approved by the voters — is comparatively low and will be paid back by 1991, just as the flow of oil from Prudhoe Bay begins to decline.

• In contrast, the loans to state corporations will not be paid back until 2018, and those payments will hit a peak in 1992.

• If oil prices stabilize around the current \$29 per barrel OPEC price, none of Alaska's corporations will be in trouble. Any further significant declines, however, may have major impacts.

• The Municipal Bond Bank Authority is insulated from any economic downturn short of a sizable loss of state population.

Alaska's debt is in the form of bonds. When talk of bonds comes up, most people's eyes glaze over. It's viewed as part of the complexity of high finance.

But bonds are actually simple to understand. They are very fancy engraved IOU's issued by government agencies instead of individuals. When you vote in favor of, say, a \$50 million bond issue for construction of airports, you are giving the state permission to borrow \$50 million.

In exchange for the money, the state gives the people who loaned out the money a piece of paper, called a bond, which promises that the money will be paid back by some certain date at some rate of interest.

The bonds people vote on are called general obligation bonds, and are paid back out of the state treasury. But those kinds of bonds are only a small part of the total debt in Alaska.

The rest is in the form of revenue bonds. The money from these bonds is used to build things like houses, dams, and office buildings. The bonds are

paid back with the revenues from these projects, whether it be mortgage payments, electric bills, or office lease money.

Since statehood, the Alaska legislature has created a series of special corporations empowered to sell revenue bonds for specific purposes, and many of the bonds can be tax-free.

Tax-free revenue bonds are attractive to investors because they don't have to pay federal income tax on the interest they earn. This saves money for the people benefiting from the projects. It means lower mortgages for AHFC-financed homes, for instance.

The legislation which created these agencies says they are separate from the state and stand on their own.

But that's on paper. The heads of the three largest state corporations, however, say the state ultimately is responsible for the money they have borrowed.

If a state agency ever found itself unable to make the payments on its bonds, "I say the legislature would step into the breach and save the day," said Harry Goldbar, who until January was head of the AHFC. "If you want to maintain the credit of the state, you won't let a major corporation go belly up."

Ray Benish, the finance director of Alaska Power Authority, was just as blunt: "If we ever default, the state would bail us out." So was Bert Wagnon, executive director of the Alaska Industrial Development Authority: "If I ended up on my butt, I would have to beg the legislature to bail me out."

That view is shared by the people who loan out the money. Take Bankers Trust Company of New York, the ninth largest bank in the country. Bankers Trust issued a \$50 million letter of credit to back up some short-term financing the Alaska Power Authority is using to build the Tyee power project in Southeast Alaska.

Tyee has suffered a series of cost overruns and the city of Petersburg, which the project was designed to serve, has so far refused to buy the power. Lower oil prices have made the hydro project's electricity much more expensive than the diesel-generated electricity Petersburg currently is using.

But the man at Bankers Trust who authorized the line of credit, vice president Harold Kuplesky, isn't worried. Why? "As a backup, we have the state of Alaska standing behind the project." And if Tyee isn't

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# Alaska's Debt

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As of March 1, 1983

Billions of Dollars

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## Alaska Housing Finance Corporation

Municipal Board Bank Authority

Alaska Power Authority

Alaska Industrial Development Authority

Other

State General Obligation Bonds

Sources: Agency & State Financial Reports & Interviews

Total: Appox. \$8.5 billion

Backed by State (Approved by Voters)

Chart illustrates how the price of oil affects Alaska's finances

Dev Postman of The Times

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looks very dimly on people who  
do not honor their obligations,"  
Kuplesky replied.

Kuplesky then illustrated his  
point. "A good example is the  
New York Urban Development  
Authority," he said. "They  
defaulted, and we shut off the  
credit to the state of New York."

What happened? "The  
Legislature came up with the  
money, and fairly quickly, too."

Then there's the Washington  
Public Power Supply System, a  
state corporation which issued  
\$2.25 billion worth of revenue  
bonds to build nuclear reactors.  
Most of the reactors are unbuilt,  
and those that are went way over  
budget. The first payments on  
the bonds are coming due, and  
default looms.

Last week, a special report by  
a Chicago economic consultant

was released by Gov. John  
Spellman. The bottom line was  
this: "The state of Washington  
and the people as a group would  
be considered untrustworthy" in  
the event of a default. Even  
though the project was an  
independent corporation, the  
study predicted the cost of  
borrowing by Washington state  
would go up about two  
percentage points.

In other words, corporation  
debt is state debt, an obligation  
of all the citizens. In Alaska, the  
\$8.5 billion total works out to  
\$21,250 for every man, woman  
and child in the state. The 1983  
payment on that debt is \$426  
million. Each year's payments  
increase until a high of \$500  
million is reached in 1992, after  
which they slowly decline.

While the future of the Tye  
project is uncertain, the \$29 per  
barrel oil may have already

killed a giant: the two-dam, \$14.5  
billion Susitna hydroelectric  
project. The APA has looked at a  
number of lower-cost alternative  
dam sites or even scaling down  
Susitna itself. But much of the  
cash to pay for Susitna will never  
arrive because oil prices  
dropped, throwing the entire  
project in jeopardy.

"The timing of the drop in oil  
prices could not have been  
worse," APA finance director  
Benish said. "Our whole  
philosophy was to take Prudhoe  
Bay oil, invest it in hydro, and sit  
back and smile while the rest of  
the world went crazy."

But the price of oil did go  
down.

"If you're one of those people  
who thinks the real cost of oil will  
decline over the years, then  
hydro doesn't make sense,"  
Benish said. The real cost of oil is  
its value in uninflated dollars.

See State, page I-2

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By Stan Weinstein's Professional Tape Reader  
(Hollywood, Fla.)

"Polaroid Corp. (PRD 29 1/8, 12-month range 24-30 3/4), a company synonymous with instant photography, is in the process of introducing a new product that could lead to significant growth," says Robert W. Baird & Co. (Milwaukee, Wisc.). "The appearance of a new 35mm instant slide film could herald the beginning of new life for the firm. Polaroid's new film is aimed at the nonamateur market, which accounts for about 2 billion pictures in the United States annually. The quick, easy convenience of instant slides could result in significant appeal for this product. We believe the film's potential adds an important ingredient to the stock's current attractiveness. We estimate that 1982 earnings (\$1.15 per share) will be followed by \$3 in 1983. However, given moderate success with the new film, earnings for 1983 could exceed \$4 per

Economic Service (Greenwich, Conn.). "Perhaps, the most dramatic change has been the combination of pharmaceutical sales into one unit under the Parke-Davis name. The company currently has more new products undergoing testing than ever before. The company is also strengthening its consumer products groups, which include Listerine, Efferdent, Roloids, Certs, Dentyne gum and Schick razor blades. This year, I estimate that Warner Lambert will earn approximately \$2.60 a share, up from \$2.20 per share for 1982. A raise in the dividend rate is a reasonable expectation sometime this year. The common stock, selling at only 11 times 1983 estimated earnings is a quality investment that will provide above average capital appreciation."

Dick Davis eschews Wall Street jargon and reports on investment advice and market analysis for more than 100 financial publications.

# State may be liable for default

Continued from page I-1

"One of those people" happens to be Charles Logsdon, the man who is in charge of predicting oil prices for the state of Alaska. "We believe oil prices will go up at a rate below inflation until the end of this decade, and then slowly rise," Logsdon said.

So the hydro projects may be the first victims of the lower oil prices.

The story is a happier one for the other state corporations. AHFC, whose \$6.5 billion total debt is the largest in Alaska, has protected itself up one side and down the other with multiple levels of insurance.

"We would have to have a Great Depression two or three times to cause our insurance companies to go bankrupt," said former AHFC director Goldbar. "For AHFC to default, things would have to be so bad that mortgage payments wouldn't matter; we'd all be in the streets looking for the next apple."

The Alaska Industrial Development Authority protects its \$250 million in debt by only loaning out 75 percent of the value of the projects it funds directly. And, like the AHFC, the property itself is collateral. In addition, AIDA won't loan money for an office building unless it is

almost filled with tenants who have signed three-year leases.

"Prudhoe Bay would have to blow up and an earthquake would have to destroy Anchorage, all at once, before I would be in trouble," said AIDA director Bert Wagon.

So unless a price war drives down oil prices to the point where the Trans-Alaska pipeline is shut down, the big state corporations should be able to pay their debt.

For now. But six years from now, the amount of oil pumped out of Prudhoe Bay will begin to decline, and with it, state revenues and the Alaskan economy. By then, the state's general obligation bonds will be largely paid off.

But because of the state corporations, we will not be debt free. On the contrary, the loans made by the state corporations today will require huge

payments well into the next century.

In 1992, for instance, AHFC will make a balloon payment on its bonds of \$474 million. In the last six months, the housing agency has borrowed nearly half a billion dollars, and continues to sell bonds on a monthly basis. AIDA is also selling bonds at a more modest pace.

"It's totally out of control," said Juneau consultant Thomas Singer, a former state fiscal analyst who blew the whistle on Tye. "All these independent corporations are borrowing like crazy. It will come back to haunt us."

What bothers Singer is that the accumulation of all this debt was not a result of conscious decisions by policymakers.

"It has its own momentum. It's like a bunch of mushrooms sprouting on cow patties in a field."

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Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Pete Jeans  
FROM: Elizabeth Hickerson  
RE: Request No. FY83-15  
DATE: January 5, 1983

Enclosed you will find the memorandum received from Legal Services on the REAAs. It adequately address the legal issues involved in light of the recent statutory changes. Rather than be redundant, I submit the memo as received, and am available to discuss it at your convenience.

However, the memo failed to mention that AS 14.11.020 (d) requires the commissioner to "adopt necessary regulations implementing this section, and setting out the requirements for agreements between the department and a municipality or regional educational attendance area relating to the assumption...for the planning, design, and construction of a project."

These regulations are in the process of being drafted. Concerns regarding the statute and its interpretation should be addressed to the Commissioner of Education during the public input stage.

Enclosure (1)  
EH:pm

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

12/28/82  
LEGISLATIVE AFFAIRS  
JUNEAU ALASKA  
907-465 3841

MEMORANDUM

December 27, 1982

SUBJECT: Relationship between the state and regional  
educational attendance areas  
(Work Order No. 13-0214)

TO: The Senate Advisory Council

From: Tamara Brandt Cook  
TBC

You have asked for an analysis of the relationship between the state and regional educational attendance areas, particularly with regard to state responsibility for activities of regional educational attendance areas and with regard to potential state liability for construction cost overruns, contractor claims and maintenance of schools.

A regional educational attendance area (REAA) is responsible for establishing and maintaining a system of public schools and exercises the powers that are exercised by a city or borough school district. The powers and duties of an REAA are set out by statute. (AS 14.08.101, 14.08.111). The regional school board has substantial control over fiscal matters. It may enter into contracts, hire and compensate school employees, determine fiscal procedures for funding by the state, and assume ownership of all land and buildings used in relation to the schools in the REAA. It may also recommend school construction projects for funding by the state and assume responsibility for the construction of funded projects.

Under former AS 14.08.161(d) a regional school board was authorized to apply to the Department of Transportation and Public Facilities for a grant of the funds allocated for its school construction projects. Upon receipt of a request, the department was required to grant the funds and "provide for the assumption by the regional school board of all of the department's responsibilities relating to the planning, design and construction of an educational facility." Under AS 14.11.020, enacted in 1982, a regional school board may request the assumption of "responsibilities relating to the planning, design, and construction" of a school. The Department of Education may then provide for the assumption,

but it does not have to do so. Even if the department approves the assumption, it retains more control over the funds available for the construction project than it did under former law. AS 14.11.020(b) provides in part

The department may transfer the appropriations to a special construction account in the state treasury. Under the fiscal control of the department, a municipality or regional educational attendance area that assumes responsibilities for the project as provided in this section may draw on the account for costs of the project.

Nevertheless, under both the former law and the current law an REAA is authorized to assume entire responsibility for school construction projects. Both REAAs and school districts are treated equally in the process of applying for state funding of school construction projects (AS 14.11.010) and both may assume equal responsibilities for the construction of funded projects. REAAs have virtually all of the other powers and responsibilities of municipal school districts as well. The Alaska State-Operated School System was considered to more closely resemble an agency of state than a political subdivision. Alaska State-Operated School System v. Mueller, 536 P2d 99 (1975). However, the court seems to be willing to recognize that REAAs are more equivalent to municipal school districts, and, thus, more closely resemble political subdivisions.

The REAAs are not simply successors to the ASOS; they are independent entities which have been given broad powers to run their individual school districts as they see fit. Northwest Arctic Regional Educational Attendance Area v. Alaska Public Service Employees, Local 71, 591 P2d 1292 (Alaska 1979).

The status of an REAA is significant. If a court views it as a political subdivision rather than an agency, that court is less likely to find the state liable for actions of the REAA. At this point, however, the status of an AREA remains somewhat unclear, despite indications that it exercises too much independent power to be properly viewed as a state agency.

It would be impossible to determine in advance what the potential liability of the state would be in a situation involving cost overruns, contractor claims and other damages

assessed against an REAA, since liability would depend upon the facts of the particular case. However, in general the state probably does not have liability for cost overruns and contractor claims related to a construction project that has been assumed by a regional school board, because the state retains virtually no control over the project. This conclusion is supported by the reasoning in Kenai Peninsula Borough v. State, a case holding that the borough, in furnishing transportation for pupils, was not acting as an agent of the state and that the borough, but not the state, was liable for damages resulting from carrying out this delegated function. The court noted

Our examination of the sparse authority on this subject indicates that authorized activities of such subdivisions as municipalities and school districts are almost universally considered to be independent actions not subjecting the state to liability, whereas when a state functions through use of some other type of agency or a private corporation, liability is more likely to ensue...

We have had no case cited to us where liability was imposed upon the state for actions of a political subdivision such as a municipality or a school district. Political subdivisions of a state are creatures of the legislature which prescribes and curtails their authority. They may be subjected to detailed requirements in the exercise of their statutory functions. Yet such legislative regulation has not been held to make the subdivision an agent of the state so as to impose liability. Kenai Peninsula Borough v. State, 532 P2d 1019 (Alaska 1975) at page 1023.

Despite the foregoing, I must provide a caution. The legislature is constitutionally obligated to establish a system of public schools under Article VII, Section 1:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.

Although the legislature has delegated much of this responsibility to municipal school districts and regional educational attendance areas, that does not diminish state control over education. The constitutional language is

mandatory rather than permissive and no other unit of government shares responsibility or authority in the field of primary and secondary education. Macauley v. Hildebrand, 491 P2d 120 (1971).

In addition, Article X, Sec. 6 of the state constitution states in part:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized borough, allowing for maximum local participation and responsibility.

Unlike a municipality, a regional educational attendance area cannot exercise taxing powers. (Constitution of the State of Alaska, Article X, Section 2). Consequently, an REAA is completely dependent upon the state for funding. AS 14.12.020(c) provides:

The legislature shall provide the state money necessary to maintain and operate the regional educational attendance areas. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money which must be raised from local sources to maintain and operate the district.

Since a regional education attendance area is unable to raise revenue from other sources, damages assessed against the REAA must ultimately be paid from state appropriations for the purpose or from diversion of state funds appropriated for other projects. To the extent that the legislature fails to make money available for the payment of damages assessed against an REAA and funds are diverted for that purpose, the diversion may conflict with the duties of the legislature to maintain a system of public schools and to provide for the performance of services in the unorganized borough. Regardless of whether the state will be held directly liable for a particular construction cost overrun, contractor claim, or other damage assessed against an REAA, as a practical matter the state will be forced to bear the burden of the assessment.

TBC:lmb

## LETTER OF INTENT

It is the intent of the Committee to authorize the establishment of regional authorities which will have the capability to issue tax-exempt revenue bonds for the purpose of enhancing the development of resource enterprises which would contribute the economic growth of the state and various regions. 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, it is the intent that to the maximum extent possible that liability for bonds issued rest 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.

I. REQUEST

Bill/Resolution HCS SB 151 (FIN)  
 Title: "An Act relating to KRDS."  
 Sponsor: Frankamp, Vertula, Ferguson,  
 Requestor: Rischer Resources

II.

FISCAL DETAIL

Agency Affected: Office of the Gov  
 Program Category: Affected: Exec. Ope  
 BRU, Program of Subprogram(s) Affect  
 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		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		20.6	10.4	11.0		
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: Linda Dupere, Administrative Assistant  
 Division: Division of Elections

Phone: 586-6181  
 Date: 4/12/83

Approved by Commissioner: [Signature]  
 Department: Office of the Lt Governor

Date: 4/12/83

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)

SENATE BILL 151

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 takes 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)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. H CS SB 151 (Fin)  
 Title Relating to Regional Resource Development Authorities  
 Requested by House Finance Committee Date 6/6/83

II. FISCAL DETAIL

Agency Affected Department of Community & Regional Affairs  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		30.0				
<b>TOTAL</b>		<b>30.0</b>				

FUNDING (Thousands of Dollars)

GENERAL FUND		30.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS 0

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The funding provided in this fiscal note is for start up costs for the NANA region authority expected to finance transportation related facilities for the Red Dog Mine Project. This is the only authority expected to be created in FY 84. \$10,000 of the funding is for honorariums, travel and per diem associated with meetings. The remaining \$20,000 is for attorney fees, financial consultants, and other costs associated with getting the project underway. No staff would be funded from this grant. Any funding remaining at the end of the fiscal year would return to the general fund.

IV. DATE 6/6/83 PREPARED BY Al Adams, Chair

AGENCY House Finance Committee

Original: Legislative Finance PHONE 465-3706

cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

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

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?

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.

Festifying 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) (REAs 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 event that 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.2d 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

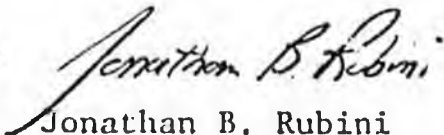
constitution, while there is no corresponding constitutional obligation for the legislature to provide for transportation facilities in the unorganized borough, however essential such facilities may be for regional development. And, more significantly, an REAA has no independent ability to raise revenue to satisfy its debts. In contrast, purchasers of bonds issued by an authority principally rely on the financial integrity of a proposed facility to generate sufficient revenues to meet in interest and principal payments on the bonds. In sum, we think it unlikely that the state would be held legally accountable for the debts of an authority.

3. Would a future borough be subject to the debts of an authority?

You finally ask whether, and to what extent, establishment of an authority may effect the subsequent creation of a borough or home rule municipality. The intergration of special service districts with a subsequently established borough is required under article X, sec. 15. In accordance with the objectives of article X, sec. 30.13.150 provides that the assets and liabilities of an authority are transferred to a borough or home rule municipality which is "created with an area coterminous or inclusive of the area of an authority." Quite properly, the section further provides that an assumed indebtedness does not constitute a general obligation of the new governmental entity subject to satisfaction through the taxing powers of the borough or municipality. To provide otherwise would transform a revenue/limited obligation bond into a general obligation bond, and would thus provide bondholders an unanticipated windfall. In sum, whether either the stringent standard of conterminous/inclusive boundaries or the relative financial success of an authority inhibit or promote the formation of local government in the unorganized borough is a legitimate concern, but is more a matter of policy than of law.

We apologize for the delay in providing a written response. If we can be of further assistance in the matter, please do not hesitate to call.

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Jonathan B. Rubini  
Assistant Attorney General



## Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801

907-586-2345

24 March 1983

### REGIONAL RESOURCE DEVELOPMENT AUTHORITIES: ISSUES AND PROBLEMS

#### INTRODUCTION

Senate Bill 151 allows the creation of 21 Regional Resource Development Authorities in Alaska, with full powers to issue revenue bonds for mining roads and ports. This bill would immediately benefit the development of the proposed Red Dog mine in northwest Alaska. But the larger issue is whether the state needs to create a new form of government in the unorganized borough which can issue unlimited amounts of tax exempt revenue bonds.

#### TAX EXEMPT BONDS

Bonds are usually tax exempt when they are issued by a state or local government (or an agent of a state or local government) and are used for a public purpose. Because the interest on these bonds is exempt from federal taxes, they are popular with investors, and hence have lower interest rates. General Obligation Bonds require approval by the voters and are usually paid off by taxes or any other state revenues. Revenue bonds should pay for themselves, out of the revenues from the project that was financed by the bonds, in this case a "toll" on mining developments and roads. Since these bonds are supposed to be paid off through user fees, they do not require voter approval. 85% of Alaska's \$8.5 billion debt was incurred by revenue bonds--in other words, without voter approval.

After RRDA's are established by local elections, they can issue tax exempt revenue bonds for roads and harbor development. The issuing of these bonds does not require either state approval or voter approval, according to the current committee bill. Because the interest rates on these bonds would be lower than the rates for bonds issued by private corporations, they could encourage mining development that might not otherwise be possible. The effect is marginal, as the current difference in interest rates is about 3%, but the mining companies insist that this advantage is essential for profitability.

## PAYING OFF REVENUE BONDS

The tolls from the roads and port facilities normally would pay the interest and principle due on the bonds. If the mining company fails to pay the tolls and charges required to pay for the road, the authority will be able to take legal action against the mining company. If, however, there is a deep slump in mineral prices, the mining company may go bankrupt, and the authority will have no way to pay off the bonds--except by going back to the state of Alaska and asking for more money.

Under SB 151, the state of Alaska has no legal obligation to help authorities in trouble. As a practical matter, however, the state must come to the rescue, or suffer the consequences of having the reputation of Alaska's bonds all being suspect. This is a problem common to all state authorities. An article in the Sunday, March 20, edition of the Anchorage Times, "'Separate' Agencies Rely on State Backup" investigated this problem. Harold Kuplesky, of the Bankers Trust Company, authorized a \$50 million line of credit to the Alaska Power Authority. The Times reported:

Harold Kuplesky isn't worried. Why? "As a backup, we have the state of Alaska standing behind the project." And if Tye isn't finished and the state refuses to pay off the loan? "The market looks very dimly on people who do not honor their obligations," Kuplesky replied.

Kuplesky then illustrated his point. "A good example is the New York Urban Development Authority," he said. "They defaulted, and we shut off the credit to the state of New York."

"What happened? "The Legislature came up with the money, and fairly quickly, too."

## THE BABY ELEPHANT PHENOMENON

A report to the Legislative Budget and Audit Committee, "Alaska's Public Corporations," by the Institute of Public Administration (Jan. 1982) described this situation in more vivid terms on page 48:

History has shown very clearly that unless state governments become involved in any bail out arrangements for their corporate subsidiaries, state credit will be damaged if not cut off by bond market participants. Market analysts call this the 'baby elephant phenomenon'. The elephant (the indebted corporation in trouble) stumbles up on the state's front porch and says, "feed me or I'll fall down dead on your doorstep."

## OTHER STATE SUBSIDIES

In Senate Bill 151, elections for Regional Resource Development Authorities will be paid for by the state. The operating expenses for the authorities are not specifically provided for. The door is left open for gifts, grants, loans, and payments for contracts from the state, as well as from individuals, private organizations, municipal governments and the federal government.

## LOCAL CONTROL

One of the attractive points of SB 151 is that it provides for a measure of local control of road and port development. The RRDA's will be governed by a board of eight members. Five are elected by voters in the region (a region has the same boundaries as one of the regional educational attendance areas) and three are appointed by the governor. The authority has been likened to a single purpose local government. It is established to build roads and ports, but it does not have powers of land use planning, zoning, permitting, or taxation. The bond issues are approved by the Board, but are not voted on by the members of the region.

A development authority may be succeeded by a first or second class borough. If an authority fails and goes bankrupt, the subsequent formation of a borough may be complicated or prevented by the legal and financial wreckage of the authority.

## ALTERNATIVES TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES

There are several alternatives to RRDA's which provide tax exempt bonding and local control, without risking the state's credit rating.

1. One alternative is to form a new borough in the area(s) that wants to develop roads and ports. The revenue bonds would be issued by the borough or an intramentality of the borough, as was done in Valdez. Because the borough has powers of planning, zoning, and permitting, greater local control is possible than with RRDA's.
2. Another alternative is to modify the Alaska Industrial Development Authority statutes so that they can fund larger projects, and fund roads projects. (Ports are already included.) Local control language is already in place for local governments; it could be extended to include rural areas.
3. Finally, tax free revenue bonds could be issued by the Department of Transportation. This technique is already used for airport construction. With this approach, areawide transportation planning is encouraged, and the chaos of 21 separate transportation authorities is avoided. Additional statutory provisions for local review of state projects would be needed.

\$10,000

Per Capita Long Term Debt of  
State and Local Governments  
Outstanding, FY 1979-80

\$9,000

\$8,000

\$7,000

\$6,000

DEBT PER  
CAPITA

\$5,000

\$4,000

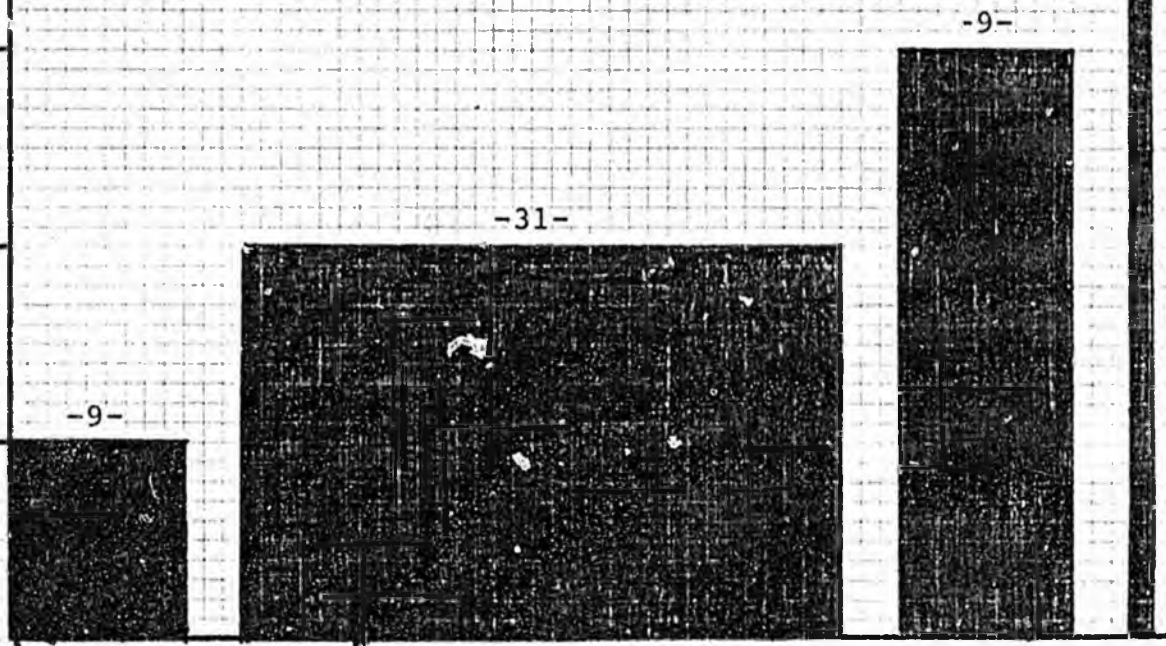
\$3,000

\$2,000

\$1,000

0

ALASKA →



NUMBER OF STATES



# Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801

907-586-2345

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25 March 1983

## Senate Resources Committee

### Amendment 1

Section 30.13.040 (9) accept gifts, grants, or loans from, and enter into contracts or other transactions regarding them, with any federal, [STATE] municipal or other agency or instrumentality, private organization, or other person;

### Rational:

Section 30.13.090 says the state is not directly or indirectly obligated to pay off RRDA revenue bonds. Striking the work "state" further emphasizes the intent of this legislation that the RRDA's not rely on state subsidy.



## Alaska Environmental Lobby, Inc.

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25 March 1983

### Senate Resources Committee

#### Amendment 2

Page 5, Line 3-5: A majority of the members of an authority plus one constitutes a quorum for the transaction of business.

#### Rational:

Without this provision an authority board could conceivably carry on business without any of the three governor's appointees present. It eliminates a potential abuse by the authority board.



# Alaska Environmental Lobby, Inc.

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25 March 1983

## Senate Resources Committee

### Amendment 3

Add: Section 30.13.065 Bond sales by authority are subject to AS 37.15.020.

(Section 37.15.020 MANNER AND AMOUNT OF SALE. The state bond committee shall sell bonds of each authorization in the amounts and series and at the times which it finds are for the best interests of the state and its inhabitants.)

### Rational:

With a potential addition of 21 revenue bonding authorities, timing of actual sales is critical to insure the best rates. This provision would provide coordination among various bond sales by requiring the Bond Committee to oversee all sales.



# Alaska Environmental Lobby, Inc.

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25 March 1983

## Senate Resources Committee

### Amendment 4

Add: Sec. 30.13.0?? ANNUAL AUDIT. An authority shall have its financial records audited annually by the legislative auditor or by a certified public accountant approved by the legislative auditor. The legislative auditor may prescribe the form and content of the financial records of an authority and shall have access to these records at any time.

### Rational:

Legislative oversight of any authority is essential. The case of the Alaska Power Authority is illustrative. This amendment is based on AIDA statutes (AS 44.88.200).



## Alaska Environmental Lobby, Inc.

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25 March 1983

### Senate Resources Committee

#### Amendment 5

Add: Sec. 30.13.0?? Prior to any bond sale over \$10,000,000, an authority will obtain an independent feasibility study and plan of finance in accordance with AS 44.83.181.

#### Rational:

(AS 44.83.181. attached) An independent economic analysis is essential to insuring that each issue of revenue bonds can reasonably be expected to be paid back in full, from revenues generated by the development project. This provision was recently added to the Alaska Power Authority statutes - for obvious reasons.



## Alaska Environmental Lobby, Inc.

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25 March 1983

### Senate Resources Committee

#### Amendment 6

Add: Sec. 30.13.0?? An authority may not issue revenue bonds other than refunding bonds for a project under this chapter in an amount greater than \$50,000,000 during any 2 year period unless the legislature, by law, approves the issuance.

#### Rational:

Similar to AS 44.88.090 (g) (2) of the Alaska Industrial Development statutes. Legislative oversight of the debt of the state of Alaska is essential if the debt burden of Alaska is to be kept to the lowest level necessary.



# Bear Creek Mining Company

Exploration Division of Kennecott Corporation

Anchorage  
Office

March 23, 1983

The Honorable Bettye Fahrenkamp, Chairman  
Senate Committee on Resources  
Pouch V, State Capitol  
Juneau, Alaska 99811

Re: SB 151

Dear Senator Fahrenkamp:

Following the hearing on Friday, March 18, consultation with our parent companies, Kennecott and Sohio, with GCO Minerals, and with representatives for Cominco and NANA, suggested some modification of the Draft Committee Substitute was in order. The following modifications were found acceptable:

- 1) Sec. 30.13.010 Line 8: delete "has jurisdiction over" and insert "may exercise its powers within".

This change will make clear the fact that the authority does not have sole jurisdiction over transportation facility development but has a non-exclusive jurisdiction within the region.

- 2) Sec. 30.13.030 Line 4: insert after transportation purposes "in connection with natural resource enterprises."  
Sec. 30.13.040 Line 3: insert after its corporate purposes "as set forth in Sec. 30.13.030,"

These changes are recommended to clarify that an authority under this chapter may deal only with transportation facilities and only where they are related to natural resource enterprises.

- 3) Sec. 30.13.130 (b)(2): delete "sponsor" and "responsible" and add "feasible", so that it now reads "the project is financially feasible; and"

It is desirable for all concerned that any project pass a feasibility test before going ahead.

- 4) Sec. 30.13.150: add to the end of this section the following sentence: "The borough may not levy taxes to pay such indebtedness."

It is desirable to link the project to the

natural resource enterprise for which it was created, and protect other projects within the authority's or borough's jurisdiction from the burden of such indebtedness.

One further suggestion which, for reasons of urgency in submitting our comment to you on March 25, has not been fully discussed with or agreed upon by the representatives of GCO Minerals, Cominco or Nana, is as follows:

- 5) As an addition to sentence 1, Sec. 30.13.060 (f)(2) as presented in the Senate Resource Committee Staff memorandum dated March 21, 1983, consider adding the following: "and that agreements between the authority and the party or parties sponsoring the natural resource enterprise will enable the authority to meet the financial obligations of the project."

A similar phrase might be considered as an addition to Sec. 30.13.130 (b), as well.

Again, the intent of this addition is to insure that to the maximum extent possible the liability for any project be directed toward the natural resource enterprise and away from other projects or citizens in the area, or the state.

- 6) Our general comments are as follows:

The Red Dog Mine is a truly world class deposit capable of producing significant lead, zinc, and silver over the next century. The principles, Cominco and NANA, are eminently responsible. The assessment now in progress by these parties is thorough and exacting. When a decision to go into production is made, a viable mine will result. Therefore, our concern about financial security and administrative responsibility is not directed at this specific enterprise, probably the first to operate under this specific legislation, but at future authorities which might be established in support of less secure and reasonable enterprises.

A concern of ours is that all users of facilities under the jurisdiction of an authority created under this chapter receive non-discriminatory treatment, and this point appears to have received attention in Sec. 30.13.130. Another concern is that other enterprises and the state be as free as possible from any liability

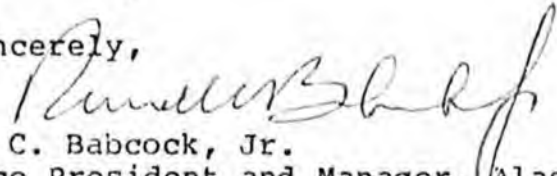
The Honorable Bettye Fahrenkamp  
March 23, 1983  
Page 3

generated by the authority. Such liability, if unsecured by the enterprise itself, might eventually result in additional tax burdens on others, including the State. We feel that the suggestions we have submitted here will assist in insuring this security. We endorse the recommendations of the Senate Resource Committee Staff dated March 21 which provide further for financial responsibility, clarity, and a limit to the time for formation of authorities.

Finally, subject to your consideration of these comments and suggestions, we favor your expeditious action on this Bill in order to provide a mechanism for financing natural resource development.

Thank you.

Sincerely,

  
R. C. Babcock, Jr.  
Vice President and Manager, Alaska

RCB:dl

# Alaska State Legislature

BETTYE FAHRENKAMP  
CHAIRMAN  
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POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
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## Senate

### 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 <sup>(90)</sup>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".

# Alaska can do better than becoming a coupon clipper



**david reaume**

Despite the rather bleak outlook for the Alaska economy caused by the loss of revenue, we still have options. There are two that are becoming

of the first argue that public assistance cannot or is extremely unlikely to be a permanent unsubsidized private enterprise growth. Economists who hold this view (in effect) that if an industry were to be permanent, it is not worth public assistance, it is only worth it once that assistance ceases. The second opinion is that the state should continue to play the role of coupon clipper. According to this view, the state has failed well below the level of success in order to maximize contribution to a permanent fund, and thereby generate a flow of interest income in

Each opinion is based on the assumption that public agencies are either too slow or too political to wisely invest in new projects, there is at least one alternative for them.

However, no compelling economic case has been offered in their support

ignores the fact that public money can help to reduce the up-front fixed costs of risky new ventures, thereby improving their risk-adjusted profitability. It also completely overlooks the fact that the Alaska fishing industry is disorganized and unable to exert the significant market power that control of Alaska's marine resources could give it. And it utterly fails to acknowledge the existence of a growing Alaska tourism industry that has benefited from the sustained, well-coordinated efforts of the Division of Tourism — efforts that can increasingly be turned over to the industry itself as it grows and becomes more aware of the benefits of cooperative advertising and

venturing.

The argument that Alaska should resign itself to the role of coupon clipper reminds me of the hunter who plans to save one shot in his revolver so that he can shoot himself should a large brown bear get the upper hand. Personally, I will always prefer to put the last shot in the bear rather than give up the fight. I might thereby suffer a more agonizing end, but I also might survive to hunt again.

If Alaska tries and fails to stimulate new economic growth, we are likely to wind up worse off than if we had simply clipped coupons. If we succeed, however, we could be significantly better off, which brings us to the second option we have before us.

The second option also requires that public spending be curtailed to increase investible funds. Under the second option, however, these funds would be held in the form of securities only so long as a reasonable opportunity to invest them in real growth did not present itself.

The second point of view carries with it the policy implication that the governor and the legislature should equip the state to make rational investment decisions, and that agencies such as the Alaska Seafood Marketing Institute, and the Division of Tourism should

receive a high priority in the budget.

It further suggests that the governor's Fisheries Task Force should focus on ways to bring fishermen and processors together so their marketing power can be directed outward and not dissipated in intramural squabbles.

Finally, it suggests a role for the state in providing development-tied infrastructure, a role not fulfilled by the pork-barrel approach to capital spending that continues to dominate the process.

In good times it would be too much to ask that politicians put aside their sectional interests and that groups such as fishermen and processors seek common ground. After all, Alaska had a chance five years ago to handle its wealth more prudently and blew the opportunity. If hard times descend, as they apparently will, the odds are a good deal better that a rational investment strategy can be followed. We ought to at least give ourselves a chance.

David Reaume is a private sector business consultant in Juneau.

## State unsure of interest in lease sales

Continued from Page J-1

...people say they think the oil boom is over. But we don't know what to do about it.

CIRI will watch the coal lease sale with interest for signs of serious new competition in the area, "but I question whether or not the lands being made available are of a quantity or quality to attract

Alaska's door," said Hedderly Smith. "I don't think we expect a whole lot of interest, but then again we really don't know." Geothermal is an alternative energy resource that blossoms

## Treaty rejection could benefit fishermen

Continued from Page J-1

tions would band together; seabed mining being largely conducted by an international authority with revenues shared among all nations. A

first 15 years to help stabilize world mineral prices — a help to developing countries still trying to start land-based mineral industries, but a drag on large-scale economic development by the industrial

had fished within their 200-mile zone, made it difficult for a country to ever cut another nation's fish allocation and thus increase its own harvests.

New language added by proposed H CS SB 151 (FIN)

1. Page 5, line 16-18: Changes quorum for authority meetings from six members to five members, with one of the five being one of the commissioners.
2. Page 6, line 8: Allows authority to hold meetings by teleconference.
3. Page 7, lines 9-11: Adds language allowing an authority to charge rents, rates, etc. sufficient to secure bonds and pay debt service, as well as other costs listed. This is to insure the bonds' marketability.
4. Page 7, line 29: The phrase "owned by the authority" is added to clarify that this provision applies only to facilities under direct ownership of the authority.
5. Page 8, line 11: A comma is deleted. This is a technical amendment.
6. Page 8, line 27: Adds the word "revenue" to clearly establish that the authority has the power to issue revenue bonds only.
7. Page 9, line 5-7: Adds language to clarify that bond debt service may be paid back from the authority's assets or from the assets of another entity involved in the project.
8. Page 10, lines 9-10: The new language clarifies the fact that Bond Committee approval is contingent upon revenues being adequate to pay debt service if bonds are secured only by project revenues, and that regardless of the adequacy of project revenues, issuance of the bonds would not inhibit the state's overall ability to market bonds.
9. Page 10, lines 14-16: Adds a new subsection (g) limiting the total bonding capacity of all authorities to \$400 million, exclusive of bonds sold to refinance projects. The exclusion is standard in other statutes dealing with bond capacity limitations and is necessary to insure bond marketability.
10. Page 15, line 4: Changes the word "subsection" to "section". This is a technical word change since this equal use and access language is now a section, not a subsection.

# Editorials

## Roads to resources

**THE STATE** could get itself into another hornet's nest if the legislature approves a measure to create regional resource-development authorities.

These authorities, which would issue revenue bonds for new roads, ports and other transportation facilities needed for resource development, smack too much of the rural education attendance areas.

A few of those education units are notorious for not spending their money within established guidelines.

Fortunately, the Senate Finance Committee has held off approving the bill to create the authorities.

**THOSE RURAL** education areas have enough autonomy that they can get away with all sorts of foolishness. Some of them have tended to spend massive amounts for travel that cannot be justified. A number of them have failed to carry out orders to spend at least 55 percent of their budgets for classroom instruction. Still others have had

## Wrong direction

**THE CITY** would not require inspections of automobiles made before 1967 in its proposed program to clean Anchorage's air.

Isn't that backwards?

It would appear those would be the vehicles that are polluting the most.

There might not be many of them around, but some of them sure do sputter a lot.

more dollars left over at the end of the year than the law allows.

The proposed regional resource development authorities would have the power to issue revenue bonds and to use bond income to construct roads. The engineering and building of roads is no small matter. Large amounts of money would be handled to effect the purchase of rights of way, the engineering and the actual construction.

Under the bill, as many as 21 additional quasi-government units could be formed. Citizens of those rural education attendance areas would be able to vote whether or not to create one of the authorities.

**THERE ARE** a number of questions that need answers before the legislature gives this measure further serious consideration.

Controls are needed because the state likely would be left holding the bag if the authorities defaulted on paybacks. And there must be a firm plan for accountability, which has not been the case with the rural education districts.

There are areas of the state which do need roads and transportation facilities in order to facilitate the extraction the resources. These resources are the key to Alaska's future.

But the state already has established channels to build transportation facilities.

Alaska has learned the hard way that local autonomy is not always the best way to go.

## John E. Manley

**JOHN E. MANLEY** was a long-time Alaskan whose name is closely associated with the development of this community.

and extension of the railroad. Mr. Manley also thrived on civic activity, and the list of his community accomplishments and associations is



**IT'S NOT THAT** I have anything against bankers. Several good friends are in the business. My granddaddy was a banker and he was a better man than I ever be. Besides which, I'll soon have a daughter in college and don't want to be told to go see Bob Dole when I come in to ask about a tuition loan.

But it must be said that the bankers and their allies from the savings and loans and the credit unions are looking seriously at their fight to stop the withholding of taxes on interest. And well they should.

It began last year when the Senate leadership and anyone else with enough sense to be scared, were looking for some way to reduce the deficit. Sen. Robert Dole and his colleagues on the Senate Finance Committee decided that one reasonable idea was to make sure the people paid the taxes they owe.

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill 151 Date on Bill: 2/25/83  
 Title: "An Act relating to Regional Resource Development Authorities."  
 Sponsor: Fahrenkamp, Kertula, Ferguson, and P. Fischer  
 Requestor: Resources

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			83	84	85	86	
Capital							
Operating							
Total			-0-	10.317	-0-	-0-	

b. Revenues:

Revenue							
---------	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: An election will be held in the Regional Educational Attendance Area 1, creating one Regional Resource Development Authority. The election takes place at the same time as a regularly scheduled REAA election so there will be no fiscal impact.

The Regional Resource Development Authority is approved by the voters and an election to elect five members takes place. There will be fiscal impact.

Subsequent election of members takes place on the same date as a regularly scheduled REAA election so there will be no fiscal impact.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared by: Linda Dupere Phone: 586-6181  
 Division: Elections Date: 3/10/83

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department: \_\_\_\_\_

5. Distribution:

Original to Legislative Finance  
 Copy to OMB  
 Copy to Sponsor

SENATE BILL 151

ASSUMPTIONS:

1. An election will be held in the REAA 1 area creating one Regional Resource Development Authority. The election takes place at the same time as a regularly scheduled REAA election.
2. The above question passes and election of five members takes place.
3. There will be 11 precincts involved in the election.
4. 2,750 people are registered to vote in this area as of 2/18/83.
5. Subsequent election of members after the initial election of members takes place at the same date as a regularly scheduled REAA election.

CONCLUSIONS:

There will be no fiscal impact for the election concerning the acceptance or rejection of the Regional Resource Development Authority (RRDA) because it will be held on the same date as a regularly scheduled REAA election.

There will be no fiscal impact for the election of officers after the initial election of officers since it will be held on the same date as a regularly scheduled REAA election.

There will be a fiscal impact for the initial election of officers because the election is held 60 to 90 days after the RRDA election. The fiscal impact is as follows:

Printing

1750 Sample and 3,500 Official Ballots	900	
Petitions	25	
Certificate of Posting Notice	200	
Notice of Elections	25	
Tally Books (15 books, 1101b, 5 pages)	150	
Election Envelopes	500	
Miscellaneous Instructions & Notices	250	
Total Printing		2,050

Absentee Ballot Supplies

Envelopes	200	
Instructions	50	
Total Absentee Supplies		250

SENATE BILL 151 (Continued)

Advertising

2 papers, run ads twice	600	
2 radio stations, run twice	100	
Total Advertising		700

Postage

Certified mail for ballots, shipment of supplies	300	
Total Postage		300

Supplies

Pens, Pencils, Tape	200	
Total Supplies		200

Election Workers

11 precincts x 1 Chairperson x \$8.00 x 15 hours	1,320	
11 precincts x 3 judges x \$7.50 x 15 hours	3,713	
Total Election Workers		5,033

Canvass Team

4 members x \$12.5 hr x 24 hours (write-in candidates cause the review process to be complicated)	1,200	
Total Canvass Team		1,200
TOTAL		\$ 9,733

\$9,733 x .06% inflation		584
GRAND TOTAL		\$10,317

# 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 local people can put these suggested amendments into their proper form. Feel free to contact either me or my staff if you need further clarification.

SENATOR  
ARLISS STURGULEWSKI

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99508  
SENATE DISTRICT F, SEAT A

# Alaska State Legislature



## Senate


While in Juneau  
FOUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

MAR 24 1983

MEMORANDUM

March 23, 1983

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senator Arliss Sturgulewski   
Senate District F, Seat A

RE: Senate Bill 151 Regional Resource Development Authorities

I will not be able to attend the Friday Resources Committee meeting at which you will be considering SB 151. I raised a number of questions in earlier meetings and wanted to share a few additional thoughts with you. I feel the Red Dog development in the Nana Region is an exciting project that I would like to see go forward. The basic issue is, of course, the consideration of a financial structure that would be a positive benefit to the economic viability of the development.

Because of my interest in local government and delivery systems I wanted further clarification of the status of the proposed development authorities, so I have requested an opinion from the Attorney General as to the relationship of the authorities to Article X of the Alaska State Constitution. Case law dealing with limited purpose political subdivisions is sparse and yet it seems to me necessary to try to think ahead to determine what the impacts of the creation of limited political subdivisions might cause. I'm sending you a copy of a memorandum Tamara Cook issued to the Senate Advisory Council dealing with the state and regional educational attendance areas as an example of some of the concerns I see in establishing the new authorities.

I feel that we will see proposals in other areas of the unorganized borough that need assistance in development along the lines of those proposed for the nana region--that is the ability to sell bonds to finance infrastructure. It would seem to me that several approaches other than the regional resource development authorities merit consideration.

1. I think further consideration should be given to possible utilization of the Alaska Industrial Development Authority. Certain amendments would have to be made to the Authority to allow them to finance roads and possibly raise limits on single projects and total limits per year.

2. I think more work needs to be done to look at the possibility of a single statewide authority that might be able to operate in all the unorganized areas of the state. This might well prevent the proliferation of numerous authorities throughout the unorganized borough and might prevent some of the structural problems that could arise as areas where the authorities exist move to borough status.
3. The Department of Transportation and Public Facilities now has the authority to issue revenue bonds for airport construction. It seems to me that consideration should be given to looking at their ability to fast track projects such as proposed in NANA Region through the use of revenue bonds.
4. Alaska Industrial Development Authority assisted tax exempt financing for the private venture should be considered.

In the event the current legislation moves forward, I think that there should be a real strengthening of the legislation in the area of approval by the State Bond Committee of the sale of bonds, and the ability of the legislature and administration to audit the financial records of the authority. I'm sending copies to you of the Institute of Public Administration's (IPA) work regarding public corporations in Alaska. Although I feel the Attorney General may well consider these limited purpose political subdivisions, many of the questions raised by IPA seem very valid. As I have indicated to you, I want to be positive toward this development but have some major concerns in the area of financial and oversight relationships and proliferation of yet another kind of limited service district in the unorganized borough. I will be more than happy to work with you as this legislation progresses.

Enclosures

STATE OF ALASKA  
FISCAL NOTE

Revision Date March 18, 1983

I. REQUEST

Bill/Resolution No.: SB 151  
Title: An Act relating to regional Resource Development Authorities; and providing for an effective date.

Sponsor: \_\_\_\_\_  
Requestor: Fahrenkamp, Kerttula, Ferguson and P. Fischer

II. FISCAL DETAIL

Agency Affected: DOT/PF  
Program Category Affected: \_\_\_\_\_

BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

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 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING		-0-	-0-	-0-		
CAPITAL		-0-	-0-	-0-		
REVENUE		-0-	-0-	-0-		

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: See Attached for Analysis.

Prepared By: Mavis Waarvik Phone: 364-4331  
Division: Planning and Programming Date: 3/18/83

Approved by Commissioner:  Date: 3/18/83  
Department: Transportation and Public Facilities

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 for Sponsor)

3/8/83

IV. ANALYSIS

This bill will have no fiscal impact on DOT/PF.



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 1, 1983

Alaska Miners Association proposed substitute for:

Page 16

Before Sec. 30.13.140, insert the following new language:

(C) An authority shall give fair and reasonable consideration to a project presented to it for financing. The determination to finance or assist in the financing of the project will be based upon that certain engineering, economic and feasibility information presented to the authority and/or requested by it. The authority may commission independent studies of a project. If the authority determines not to finance or assist in the financing of the project, the authority shall state the reasons for its determinations in a written resolution.

*JB 151 - The above language delivered  
to [unclear] 3-29-83  
[Signature]*

# STATE OF ALASKA

Bill Sheffield, Governor

## DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4700

March 16, 1983

### POSITION PAPER

RE: SB 151

SPONSOR: Senator Fahrenkamp

#### PROGRAM EFFECTS

This bill would provide for the voluntary organization of Regional Resource Development Authorities within the boundaries of the REAA's around the state. The purpose of these authorities would be the improvement, establishment, and development of facilities for transportation purposes.

#### COMMENTS

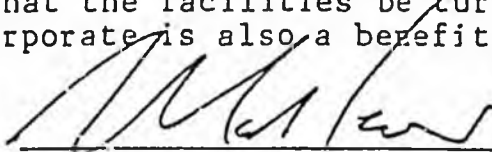
The Department feels this is a good concept which should be pursued. We are not sure how many of these authorities would be formed initially without some type of financial assistance.

One idea might be some type of organizational grant or loan program. These initial costs include things like original project planning, staff recruitment and bond preparation.

This proposal appears to be a step in the right direction. It would provide a mechanism that would begin a process that could create the facilities and methods for developing more of the state's natural resources.

The Department is supportive of this bill as a method of developing these structures.

Additionally the provision that the facilities be turned over to a municipality should one incorporate is also a benefit.

  
\_\_\_\_\_  
Mark Lewis, Commissioner

STATE OF ALASKA  
FISCAL NOTE

Revision Date                     , 1983

I. REQUEST

Bill/Resolution No.: SB 151  
 Title: Regional Resource Development  
 Sponsor: Senator Fahrenkamp  
 Requestor: Senator Fahrenkamp

II. FISCAL DETAIL

Agency Affected: Community & Regional Affairs  
 Program Category Affected: Development  
 BRU, Program of Subprogram(s) Affected:                     

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	0	0	0	0	0	0

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

Sponsor did not indicate source of funds to offset the fiscal impact of this bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Terry L. Earley Phone: 465-4730  
 Division: Local Government Assistance Date: 3/11/83  
 Approved by Commissioner: [Signature] Date: 3/16/83  
 Department: Community & Regional Affairs

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

March 8, 1983

Memo

To: Lt. Governor Steven McAlpine

From: Senator Bettye Fahrenkamp

Subject: Fiscal note on SB 151 Regional Resource Authority legislation

On March 16 the Resources Committee will be holding a hearing on the above legislation. As you can see from the attached bill on page 2-3, elections are called for in the creation of a Resource Authority and Board. I would like to request a fiscal note on the costs which would be incurred for such elections assuming that one Resource Authority in Northwest Alaska were created.

If you had any other comments on the legislation, I would welcome your thoughts or testimony.

March 8, 1983

Memo

To: Mark Lewis, Commissioner DC&RA

From: Senator Mettje Fahrenkamp

Subject: Hearing on SB 151, Regional Resource Authority, March 18

This is to inform you of a hearing by the Resources Committee on the above bill on March 18 at 3:00pm in the Beltz Room. As this bill would involve your Department, I would invite you to testify on the bill if at all possible.

I would also like to request a fiscal note for the bill for the work which would be required of C&RA. For your use and assistance in preparing the fiscal note I have attached a short memo by the bill's drafters which outlines the assumptions and costs as envisioned for a single regional authority in Northwest Alaska. It would certainly be appreciated if this fiscal note could be ready by March 16 for consideration by the Committee in advance of the hearing.

Thank you for your attention on this legislation.

## Cost to Organize Authority

### Assumption

- 2 directors reside in Kotzebue
- 1 each in Kivalina, Kiana, Nostak
- All meetings are held in Kotzebue
- 5 meetings in 1st year of 1 day each
- directors fee of \$100/meeting
- Per diem paid at \$100/day - 1 1/2 days per meeting
- Accounting services are obtained from major accounting firm
- Legal services are obtained from Anchorage based law firm
- Travel costs for directors at \$800/meeting
- State members of the Board of Directors serve at no cost to Authority
- Assistance may be obtained from AIDA on out of pocket cost reimbursable basis if needed
- Records (other than financial) are maintained by legal counsel during first year
- costs of preparing, circulating and certifying petition are borne by CR&A
- Election cost borne by Division of Election

Petition Review Costs	Department of CR&A
Election Costs	Division of Elections
Meeting Fees	\$2,500
Director Travel to Meetings	\$4,000
Director Per diem	\$3,000
Attorney & Recording Services <sup>1</sup>	\$15,000
Financial Services <sup>1</sup>	\$5,000
Total	\$29,500

Note (1) includes professional fees, travel and expenses

TO:

Kent Dawson  
via Action Secretarial Service

Please Telephone 586-2667 on Receipt

1. Authority itself (CR&A)
2. CR&A petition certification etc.
3. Division of Elections

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."

~~REAA~~, 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 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%.

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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.

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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,  
Div. Elections 3-22-82

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.

# MEMORANDUM

# State of Alaska

TO: Honorable Richard Lyon  
Commissioner  
Department of Commerce & Economic  
Development

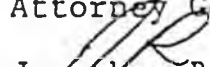
DATE: March 23, 1983

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Proposed amendments  
to SB 151

By:   
Jonathan B. Rubini  
Assistant Attorney General

The following proposed amendments to SB 151 are more conceptual models than draft legislative language. As we discussed, the revisions are intended (1) to assure, to the extent possible, that the general assets of the state are not utilized to support bond issues, and (2) to provide a modicum of centralized oversight over bonding activities.

Review would be provided by a five member committee, consisting of the members of the State Bond Committee (commissioners of administration, revenue, and CED), and the commissioners of DOT/PF and DNR. Establishment of the oversight committee would require additional amendments to the bill. Additionally, other more technical amendments would be required, most notably the deletion of gubernatorial appointments to the boards and any corresponding references. One last caveat. Except for the proposed amendment of sec. 65(a)(5), little, if any, provision is made for centralized control of other regulatory policy decisions.

## PROPOSED AMENDMENTS TO SB 151

Section \_\_\_\_\_. Any state grants, appropriations or other transfers from the state may only be used for organization purposes. Monies received from the state may not be used to satisfy bond obligations or otherwise establish collateral or security for bonds issued by an authority.

Section 060(b). However, notwithstanding the manner in which principal and interest are payable on bonds issued by an authority as described in this section, an authority may not issue bonds unless the authority obtains a sufficient pledge of collateral, to guarantee satisfaction of all bond obligations. A pledge of security may include, but is not limited to,

corporate assets, unrestricted assets of the authority, and "take or pay contracts."

Section 065(a).

The state regional resource development review board shall review and approve any resolution adopted by an authority to issue bonds to determine whether

(1) there is a sufficient pledge of collateral to adequately support issuance of the bonds and to

(2) that issuance of the bonds will not impair or impede the issuance of bonds by the state, its political subdivisions, or other public authorities;

(3) adequate provision has been made to regulate any tariff schedule, public access, maintenance, and other function typically regulated;

(4) adequate coordination between two or more authorities has been obtained, if a completed, functional facility is located within the jurisdiction of more than one authority;

(5) the resolution adopted in accordance with 130(b) is consistent with the reasonably available evidence.

- (b) An authority may not issue bonds without the approval, as described in this section, of the state regional resource development review board.

JBR:md

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
POSITION PAPER

The economic development goal of SB 151 and of the Administration's alternative is the same. Both vehicles would create a financing structure for transportation facilities which would shift the bonded indebtedness from a private balance sheet to a public balance sheet. The reduced capital investment by the developer would increase its return on investment and enhance the economic feasibility of the project. It is clearly in any developer's interest to do this, and may be in the State's interest if that is what it takes to promote a specific project.

The implications of such a debt shift from a private to a public balance sheet require careful consideration. If a project can support the debt service, there is no problem. If the revenue stream is reduced or eliminated for some reason, then the location of the debt is important. There is no legal liability of the State to prevent default of bonds issued by the SB 151 authorities or by the AIDA alternative. If a capital reserve fund in AIDA is funded with State funds, then there is a moral obligation of the State. However, it is legitimate to ask whether the State could allow the default of either an authority or of AIDA. In that respect, there is little difference between the proposals. It is not a reason to oppose either proposal, but it is a reason to be certain that bonding decisions are made carefully.

While the development goals of the two proposals are similar, there are certain strengths in the AIDA approach. First, the need for transportation facilities is a statewide need and AIDA is a statewide authority. Second, AIDA is a recognized name in the investment community; it already exists, and has a professional staff, investment advisor, and bond counsel. Utilizing AIDA simply requires granting it the power to finance and own transportation facilities. Third, use of the six economic regions rather than regional education attendance areas reduces the potential coordination problems that could result when a project spans more than one REAA. Finally, there would be only one bonding authority to finance any project.

The AIDA alternative differs from SB 151 in the method of local involvement. The alternatives allow for local participation via six Regional Development Advisory Councils, appointed by the Governor. The six regions are recognized by the U.S. Department of Labor, and economic data have been collected according to these regions for several years. Local involvement is accomplished in several ways. First, AIDA must obtain the approval of an affected council prior to development of a project, and the council must hold public hearings at three locations in the region. Second, if the council approves the project, two members of the council may serve on the board of AIDA in connection with subsequent action by the authority concerning the transportation facility. Finally, the authority must solicit the advice and approval of the council prior to adopting or executing contracts, agreements, resolutions, or other matters concerning the operation and management of the facilities. These provisions provide substantial local participation in the projects.

May 11, 1983

The Honorable Bettye Fahrenkamp  
Senator  
Senate of Alaska  
Pouch V  
Juneau, AK 99811

Re: "CSSR 151 (Resources) An Act relating to Regional Resource Development Authorities and providing for an effective date."

Dear Senator Fahrenkamp:

The intent of bill CSSR 151 is to provide a financing vehicle for transportation and port development in order to support natural resource development throughout Alaska. The legislative effort to design an enabling mechanism to organize these authorities in the different regions of the state may work against the ultimate success of these entities. In Southeastern Alaska, the REAA boundaries do not correspond with existing or potential political jurisdictions of any sort. Further, the political structure of the region - rural versus urban, development versus conservation, local government oriented versus private industry, etc. would make such an organizational effort difficult unless directed on a project site specific basis or on a totally region wide basis.

A better course of action might be to enable the formation of an authority based upon petition of the Office of the Governor and by concurrence through a joint resolution of the legislature. The petition would include #'s names of qualified voters finding a need for such an entity and their reasons. The legislature, in its capacity as the Assembly for the unorganized borough or as the legislature could find, support and ratify the formation of the authority, its purposes, its powers to create tax exempt financing and other powers. The Governor could appoint the board of governors (or commissioners) of the authority and the appointments could be concurred in by the legislature.


The reason this legislation is required at this time is because area wide government doesn't exist in most of the remote areas of Alaska where natural resource potential is on the verge of development. In the section on Powers of Authority and Limitation on Powers, it is clear that the ability to organize

and finance is granted; however, other necessary tools such as "eminent domain, taxation, land use planning, zoning, permitting or other similiar governmental powers" are specifically withheld. The legislation is silent on how all of these important features are to be dealt with as any development project progresses. Overlapping jurisdictions such as the statutory authority of Alaska Department of Community and Regional Affairs in the unorganized borough, Coastal Zone requirements and other agencies are certain to affect any project(s) created under a regional resource development authority. It seems that some of the powers restricted from these authorities should be granted. If not, then a state agency should be identified in the legislation through which these matters could be focused thus insuring timely progress and success of any resource development. The bottomline being that the public and the State of Alaska by using its tax exempt financing powers and other powers has an investment and interest in the outcome of an authority.

Sealaska Corporation is generally supportive of this legislation. With some changes, it is possible that Regional Resource Development Authorities could catalyst natural resource development in Southeastern Alaska as well as other areas of Alaska. If any of our ideas are helpful in moving the bill forward, we are willing to assist in preparing further language and testimony.

Sincerely,

SEALASKA CORPORATION



Robert W. Loescher  
Vice President  
Resource Management

cc: Byron Mallott  
Chris McNeil  
Janie Leask  
John Shively  
Don Argetsinger  
Sam Kito  
Southeast Village Corporation Presidents

ARGUMENTS AGAINST LIKELY AMENDMENT ATTEMPTS TO SB 151

1. Remove an authority's ability to receive direct state grants to assist in a port or other transportation project

Argument:

- a. An improper attempt to thwart the ability of a future Legislature to assist in a project it deems worthy. (Legally, there is no way this Legislature can bind the appropriation powers of a future Legislature anyway.)
- b. Attempts to single out these activities from virtually all other public bodies, i.e., municipalities, other authorities, etc., from direct state assistance, if both the Legislature and the Governor agree to it.
- c. A possible scenario that the state might wish to put a public fuel or regional supply storage at an authority post site. May wish to participate for any number of good public reasons. Inclusion of state supported projects may be most economical way of achieving public goals.
- d. State traditionally assists in transportation system development. Why attempt to prevent it here?

SB 151, REGIONAL RESOURCE AUTHORITIES

CONCUR IN HOUSE-PASSED VERSION (House Finance CS)

CHANGES IN SENATE-PASSED BILL:

- Regional authority boundaries changed from REAAs to Regional Housing  
(22 to 9 possible regions)
- Quorum of authority board must include one commissioner
- DOT is one of 3 commissioners of board
- Total indebtedness of all authorities limited to \$400 million
- Legislative Budget and Audit annual audit of authorities required
- Provision that state funds can not be used to pay off authority bond  
obligations



# Alaska State Legislature

## Senate

### Resources Committee

Official Business

Senator Bettye Fahrenkamp  
Chairman

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 18, 1983  
3:10 p.m.

211 Beltz Room

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#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Ziegler  
Senator Eliason

Senator Vic Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### SB 151 - An Act relating to Regional Resource Development Authorities

SR 151 sets up a procedure for establishing a regional resource authority which could finance infrastructure such as roads, pipelines and ports for resource development projects. These resource development authorities would be created with approval of voters in the regional education attendance area, and be run by an 8-member board of elected and appointed members.

A draft committee substitute containing amendments worked out by the mineral companies involved in development in northwest Alaska who may be affected by this legislation was also discussed.

Terry Elder, State of Alaska, Department of Commerce testified that the Administration has not yet taken a position on the bill. He emphasized that all Departments should have input into this decision.

Don Argetsinger, NANA corporation, testified regarding the need for transportation in the area where the Red Dog Mine project is located. Other topics discussed were the development of local government, creating a much needed tax base, and the relationship between NANA and the Authority. He stated that NANA preferred the draft committee substitute.

Senator Fischer moved that CS 151 be placed before the committee. There were no objections.

Hank Giergerich, Manager of COMINCO discussed the Red Dog Mine project including financing, mining investment costs in contrast to oil investment cost, similarities to projects in Canada and the key role of transportation to project success.

Eric Wohlforth, attorney for COMINCO discussed the changes in draft committee substitute from the original bill including terms and number of members on the board, and access to facilities. He stressed that a government entity is not being formed. Discussion followed regarding indebtedness, bonding, powers of the authority, constitutionality, the legislature's ability to repeal, the effect on state obligations and bond rating and creation of different entities vis a vis local governments.

Harris Saxon, Ely, Guess and Rudd Law firm representing GCO Minerals testified that he was particularly interested in the guaranteed equal access to facilities. He further discussed support for the committee substitute to development of minerals in Northwest Alaska.

Russ Babcock, Bear Creek Mining Company, testified in general support of SB 151.

Mary Lou Meiners, State of Alaska, Division of Elections testified that two special elections would be necessary. The fiscal note submitted to the Resource Committee details cost of one special election in an KEAA District. Should this legislation pass, she suggested that elections be consolidated if possible.

Senator Mulcahy voiced an interest in whether or not 50 signatures on a petition is overly lenient to call for a special election.

Senator Sturgulewski expressed her general opposition to the creation of new authorities that may duplicate or conflict with other state and local government functions.

Senator Vic Fischer expressed concern over the possible proliferation of regional authorities and inquired as to the impacts on established authorities should the authorizing legislation be sunsetted.

Meeting adjourned at 5:35 p.m.



# Alaska State Legislature

## Senate

Official Business

Senator Bettye Fahrenkamp  
Chairman

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 25, 1983  
3:10 p.m.

211 Beltz Room

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### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Ziegler  
Senator Eliason

Senator Paul Fischer  
Senator Mulcahy

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SB 73 - An Act relating to commercial fishing  
SB 136 - An Act relating to the operation of stationery fishing gear.  
SB 151 - An Act relating to Regional Resource Development Authorities.  
SB 156 - An Act relating to the sale or lease of state hatchery facilities.  
SR 2 - Relating to the Cross Island Well.

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SB 73 - Senator Mulcahy, chairman of the Fisheries Subcommittee, reported that the subcommittee had adopted a committee substitute. He then moved and asked unanimous consent that SB 73 be moved from committee with individual recommendations. There were no objections.

SB 136 - Senator Mulcahy asked that SB 136 be held until the next Resource Committee Meeting.

SB 156 - Senator Mulcahy stated the Fisheries Subcommittee had adopted a committee substitute. He then moved the committee substitute for Senate Bill 156 from committee with individual recommendations. There were no objections.

SB 151 - Pat Pourchot, Administrative Assistant to the Senate Resources Committee testified regarding changes in the committee substitute. He listed four provisions to provide safeguards to the State to protect against possible problems in creation of authorities and issuance of revenue bonds:

- (1) the number of petitioners to initiate calling an election was raised from 50 to 100;
- (2) a sunset provision barring establishment of authorities after June 30, 1986;
- (3) A Governor's finding of an authority;
- (4) A state bond committee finding prior to issuing revenue bonds.

A letter of intent was also presented which addressed liability by the state vis a vis regional authorities and tax-exempt revenue bonds.

MINUTES - March 25, 1983 - Senate Resources Committee

Jay Nelson - representing the Alaskan Environmental Lobby testified that he does not support the bill as presently written. He feels it would lead to potentially unsound developments. In particular, he stated that it could result in the State obligation to bail out any project in order to keep the State's credit rating. He suggested alternatives and a list of amendments.

Mary Lou Meiners, Division of Elections presented a formula for consideration in the bill which would govern the number of signatures required for calling for an election to establish an authority.

Dan Casey, Department of Transportation testified that the Administration supports the concept, but needs more time to study the bill. He recommended that the bill not be held in the Committee.

Terry Elder, Department of Commerce and Economic Development voiced the same concerns as Dan Casey.

Senator Mulcahy moved and asked unanimous consent that committee substitute for SB 151, including proposed amendments, be passed from committee with individual recommendations. There were no objections. He then moved that the letter of intent be moved from committee. There were no objections.

Meeting adjourned 3:45 p.m.

COMMITTEE REPORT  
SENATE

2/25/83

FURTHER: Finance

Date: 3-25-83

Mr. President:

The Committee on Resources has had SB 151

An Act relating to Regional Resources Development  
Authorities; and eff. date.

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

- 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
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*[Signature]*  
*[Signature]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*Paul Finkle No Rec.*  
*Bob [Signature] No Rec.*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*[Signature]*  
 CHAIRMAN *DeVasc*  
*[Signature]*

I. REQUEST

Bill/Resolution No.: SB 151  
 Title: "An Act relating to RRDA's."  
 Sponsor: Fahrenkamp, Kertula, Ferguson,  
 Requestor: Fischer Resources

II. FISCAL DETAIL

Agency Affected: Office of the Governor  
 Program Category Affected: Exec. Operati  
 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		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

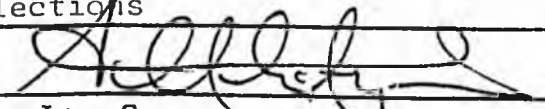
GENERAL FUND		20.6	10.4	11.0		
FEDERAL FUNDS						
OTHER (Specify Source)						

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: Linda Dupere, Administrative Assistant Phone: 586-6181  
 Division: Division of Elections Date: 4/12/83  
 Approved by Commissioner:  Date: 4/12/83  
 Department: Office of the Lt. Governor

Distribution:

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SENATE BILL 151

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 takes 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)

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

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



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

## Senate

### Committee on Resources

June 2, 1983

#### Memo

To: Rep. Al Adams, Chairman House Finance Committee

From: Senator Bettye Fahrenkamp

Subject: CSSB 151, Regional Resource Authorities

I understand that the House Finance Committee will soon be considering the above legislation. As you know, I am in strong support of this legislation and greatly appreciate your prompt attention.

This bill would authorize the creation of regional authorities in the unorganized borough area which could issue tax-exempt revenue bonds for the construction of transportation facilities in connection with resource developments. This ability would have obvious beneficial impacts for projects such as the proposed Red Dog mine in Northwest Alaska where the absence of transportation facilities would involve significant financing obstacles.

In addition to the ability to issue bonds the structure of the authorities would have the added advantage of local elected representation on the Board of Governors to ensure that projects are chosen and developed in such a manner as to be responsive to local concerns.

In testimony and discussion of this bill in the Senate several concerns were raised including:

- 1) The possibility of proliferation of authorities throughout the unorganized borough (based on REAA boundaries);
- 2) The possibility that bonds issued by regional authorities would create a liability or indebtedness to the State or adversely affect the ability of the state or localities to market their own bonds;
- 3) That access to the facilities developed by the authority might not be fairly and equally administered or that facilities desired by some interests might not receive fair or equal consideration.

In response to these concerns the Senate amended the original bill to include:

- 1) The Governor must make a positive finding that an authority would be economically advantageous to the region and state prior to holding elections in the region to establish the authority;
- 2) The ability to petition to establish an authority sunsets July 1, 1986;

- 3) Prior to issuing any revenue 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 bonds would not adversely affect the ability of the state or localities to market their bonds;
- 4) A statement in the bill and in the Letter of Intent that 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;
- 5) A provision that the 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;
- 6) A provision which ensures fair and equal access and fee assessments for users of facilities and fair consideration of all proposed projects brought before the authority;

In the House Resources Committee further safeguards were added to the bill:

- 1) A provision that state funds could not be used to pay off or meet revenue bond obligations of an authority;
- 2) A change in the boundaries of possible authorities to coincide with regional housing authorities rather than REAAs. This reduces the possible number of authorities from 21 to 9.

It is my understanding that your committee is considering further amendments, one of which to set a cap or ceiling on the total indebtedness which could be incurred by an authority. I certainly would favor a cap of \$500 million to provide further safeguards against "runaway" indebtedness while still permitting necessary financing for large resource projects.

Another amendment which would reduce the number for a quorum from 6 of 8 Board members as was adopted in the House Resources Committee to 5 including one of the three Governor's appointees is also a good one. This ensures participation (and oversight) by the state while not hamstringing the workings of the authority with problematic numbers of Board members required for a quorum.

I would like the opportunity to testify before your committee on this important piece of legislation and to supply any additional information which you may need.

# Alaska State Legislature

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## 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 30.13.059(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.