

HB

402

STATE OF ALASKA
THE LEGISLATURE

FOURTH STATE CAPITOL
SUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1988

SUBJECT: House Bill 402

TO: Representative Dave Donley, Chair
House Labor and Commerce Committee

FROM: Jack Chenoweth.
Legislative Counsel

Drafts of proposed Labor and Commerce Committee Substitutes are enclosed. Per instruction, I've tightened the title of the bill(s). The codified provisions of the bill drafts are identical.

The State Procurement Code (AS 36.30) is applicable to the Alaska Industrial Development and Export Authority. AS 36.-30.310 authorizes use of emergency procurement techniques when

. . . a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest

The decision in the matter is the prerogative of the procurement officer. To avoid unwarranted intrusion of the legislative branch into a decision committed to an agency of the executive branch, I have drafted bill section 4 of both versions, the section authorizing use of emergency procurement techniques, only to provide evidence upon which the procurement officer may make the decision rather than directing the officer to reach that conclusion.

Version B incorporates only the authorization to undertake the feasibility study for the state park development project.

Version L incorporates the bond issuance approval language for that project.

Bill section 5 of version L gives pause. Under AS 44.88.-090(g),

The authority may not

(2) issue revenue bonds other than refunding bonds for a project under AS 44.88.155 - 44.88.159, for a development project under AS 44.88.172 - 44.88.177, or to provide money to finance, guarantee, or insure an exporting transaction under AS 44.88.300 - 44.88.390, in an amount greater than \$50,000,000 during any 12-month period beginning after June 30, 1981, unless the issuance is included separately in the estimates required in the report of the authority under AS 44.88.210(b) and unless the legislature, by law, approves the issuance.

Under AS 44.88.210(b), the authority is to incorporate into its annual report its estimates of "investment activity of the authority . . . for the following 12-month period" and "[its] estimate of the amount of bonds to be issued during the following 12-month period." Presumably these requirements apply to projects whose financing the authority has approved through the regular project-approval process set out in AS 44.88.160 - 44.88.177.

The April 16 transmittal letter from Commissioner Smith that accompanied this work draft request suggests that the bond approval is contingent on a favorable outcome from the feasibility study. But that is not the thrust of the suggested language set out in that letter. As drafted, based on the language offered by the commissioner, bill section 5 of version L would give the Alaska Industrial Development and Export Authority a "green light" on the issuance of the revenue bonds without respect to the findings and conclusion of the feasibility study, the completion of which is directed in bill section 4.

Directing approval of bonds for a specific project without compliance with existing legal requirements is arguably unconstitutional, either as a violation of the prohibition on enactment of "local or special legislation" under Article II, section 19 of the state constitution, or as a legislative intrusion into the prerogative of the executive to determine the soundness of proposed projects, a violation of the doctrine of the separation of powers first recognized in Bradner v. Hammond, 553 P.2d 1 (1976).

Representative Dave Donley
Page 3
April 19, 1988

Finally, I assume that you are satisfied that the proposed Chugach State Park project meets the definition of a "development project" set out in AS 44.88.900(4).

Enclosures

JBC:bb
b5/016