

S B

135

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2/9/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 2/15/89

2/3/89

Mr. President:

L&C

Committee considered SS SB 135

establishing the Alaska neighborhood revitalization initiative; efd.

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Walter Rodney

Jim Cristofani

W. Glessner Do pass

Chairman signature and recommendation

Committee backup attached

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. Sr., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE : February 6, 1989

TO : Senator Dick Eliason, Chair
Senate Labor & Commerce Committee

FROM : Senator Patrick M. Rodey

RE : Senate Bill 135 and Senate Bill 152 regarding neighborhood revitalization initiative and issuance of government obligation bonds

I respectfully request that the above-mentioned bills be scheduled for a hearing in the Senate Labor and Commerce Committee on Wednesday, February 15.

Ms. Cynthia Parker with the Neighborhood Housing Services in Anchorage will be in Juneau on the 15th and would be available to testify on the bill.

Attached is a brief summary prepared by Representative Donley's Office addressing these proposals. Representative Donley has introduced identical legislation in the House, and sponsored similar legislation last session.

Attachment

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



February 6, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

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

Re: Proposed Committee Legislation - "Neighborhood Development Bonds"

Attached are two bill drafts creating the Alaska Neighborhood Revitalization and Development program (enabling) and authorizing the issuance of G.O. Bonds (appropriation) in the amount of \$11,000,000 to pay for the program.

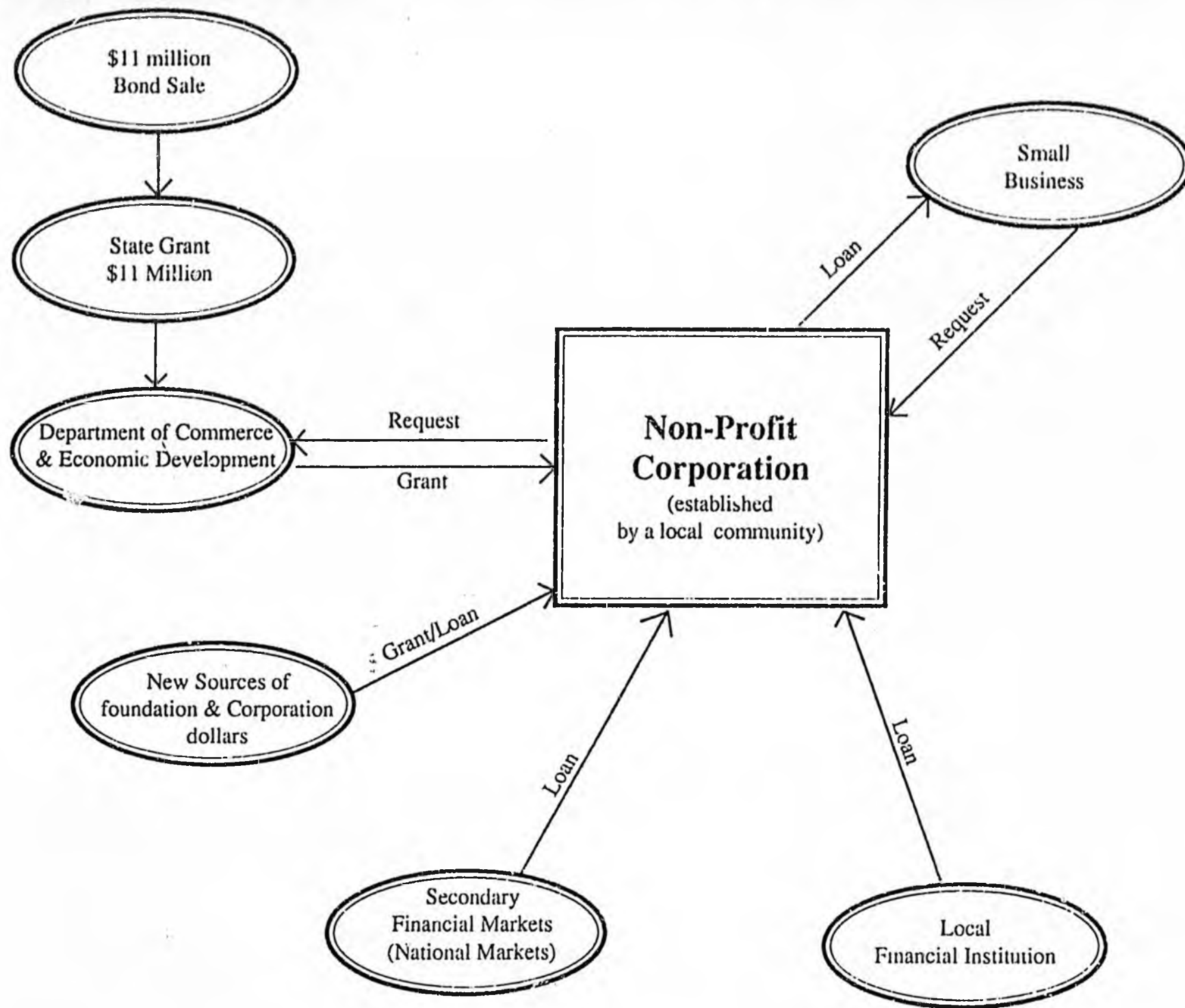
The Neighborhood Revitalization Initiative and the companion bond bill creates a statewide program modeled after Anchorage Neighborhood Housing Services to leverage state money with secondary financial markets, both public and private, to redevelop commercial business zones. This program could provide as much as a ten to one match for every dollar the state puts in.

The purpose of the Alaska Neighborhood Revitalization Initiative is to provide an opportunity to develop a public/private partnership in communities to:

- Create new short term and long term jobs.
- Create an incentive for attracting new businesses to an area.
- Help make existing businesses more viable, attractive, and stable.
- Leverage business loans made with conventional financing.
- Create a business climate that better serves the Community

These drafts are modeled after HB 430 and 431, introduced last year by the House Labor and Commerce Committee. The significant difference is that the bond authorization replaces and substitutes for the direct \$2.7 million appropriation contained in the original HB 431. In addition, the new enabling legislation (last year's HB 430) is amended to speak directly to G.O. bonds as an additional funding source for capital improvements.

I would like to introduce these bills as Committee legislation as soon as possible. We will be taking them up tomorrow at 3:30 p.m. Please call me, Veronica Slajer, or Ginger Baim at 4954 if you have any questions or need additional information.



The Neighborhood Reinvestment Corporation

A congressionally-chartered, public nonprofit corporation, Neighborhood Reinvestment was established in 1978 (P.L. 95-557) to continue the efforts of the Urban Reinvestment Task Force. Its mission includes the revitalization of declining lower income neighborhoods for the benefit of their current residents, and the provision of affordable housing to neighborhood residents.

The Corporation achieves these goals primarily through the development and support of local neighborhood-based partnerships. The most widely known of these is the Neighborhood Housing Services (NHS) program, a partnership of neighborhood residents, business leaders and local government officials.

These and other local partnership organizations form the NeighborWorks system—the nation's largest and most successful systematic approach to neighborhood revitalization. NeighborWorks members are at work in 239 neighborhoods in 137 cities across the country. An additional 52 formerly-declining neighborhoods have been returned to substantial self-reliance through the efforts of NeighborWorks members.

As the anchor for this national system of local partnerships, Neighborhood Reinvestment provides a range of training and technical assistance to help each local partnership establish neighborhood goals and develop the strategies needed to achieve those goals.

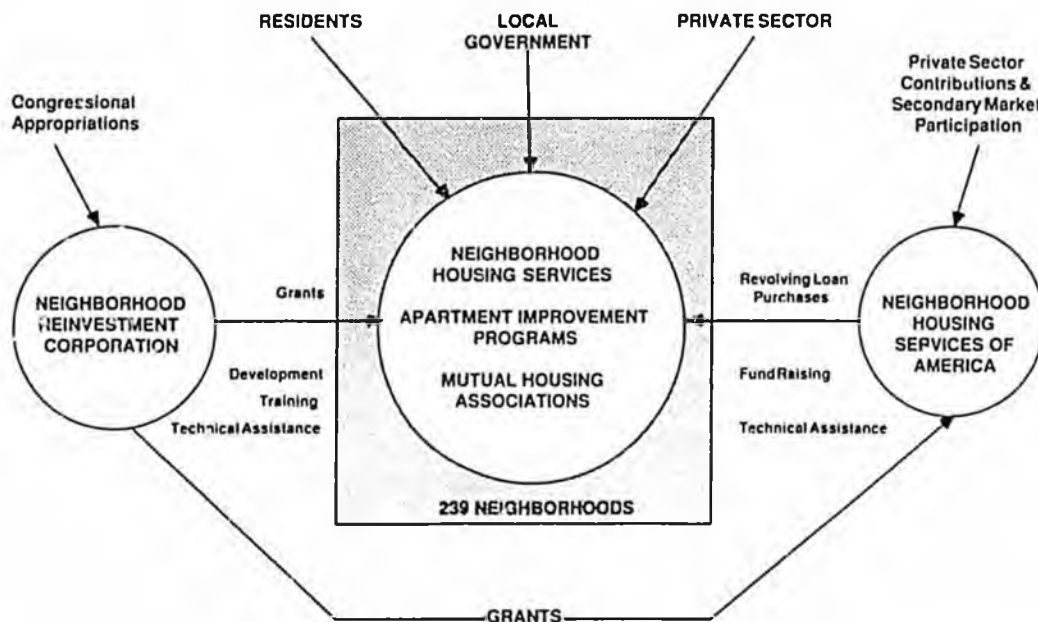
Neighborhood Reinvestment also makes small seed money grants to the local partnerships, which are matched many times over by contributions from local governments, businesses and foundations. In addition, the Corporation provides grants to Neighborhood Housing Services of America, the system's national secondary market.

The Corporation received a \$19 million federal appropriation in fiscal year 1987. Since 1974, a total expenditure of \$135 million in federal appropriations by the Corporation and its predecessor has produced an impact of more than \$4 billion in neighborhoods across the country.

The Corporation's board of directors is composed of a Governor of the Federal Reserve, the Comptroller of the Currency, the Secretary of Housing and Urban Development, the Chairman of the Federal Home Loan Bank Board, the Chairman of the Federal Deposit Insurance Corporation, and the Chairman of the National Credit Union Administration.

Although the Corporation is headquartered in Washington, D.C., the majority of its staff are based in nine districts across the country to better assist the local partnerships they serve.

The NeighborWorks System



Resolution of the Alaska Municipal League

Resolution No. 89-52

**A RESOLUTION SUPPORTING THE IMPLEMENTATION
OF A "MAIN STREET" PROGRAM FOR INTERESTED
MUNICIPALITIES THROUGHOUT THE
STATE OF ALASKA**

WHEREAS, the Fairbanks community has initiated a local Main Street Program to encourage and foster economic growth which will result in a downtown that is a vital, energetic, and attractive center of the community, and

WHEREAS, the City of Fairbanks, the Fairbanks North Star Borough, the Fairbanks Downtown Association, the Interior Delegation, and the State of Alaska have all helped fund the private/public partnership known as "Main Street" to promote downtown revitalization, and

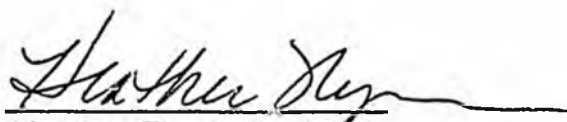
WHEREAS, during the past legislative session, several Alaska communities expressed an interest in developing a statewide program, and

WHEREAS, the "Main Street" program consists of a four-point program which includes organization, design, promotion, and economic restructuring for communities of up to 50,000 population, as well as for commercial districts in larger urban areas, and


WHEREAS, the process is sensitive to the unique history of each community and seeks to emphasize growth without sacrificing the qualities that make each community distinctive;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the implementation of a statewide "Main Street" program.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

SSSB 135: NEIGHBORHOOD REVITALIZATION INITIATIVE

Background

Similar legislation was introduced last session (HB 430), with a general fund appropriation of \$2.7 million. The legislation passed the House and went as far as the Senate Finance Committee.

The department researched both the Main Street and Neighborhood services programs and found that both programs are worthwhile in furthering neighborhood and downtown economic revitalization, using similar public/private participation techniques.

Analysis of Bill

SSSB 135 establishes a program which promotes neighborhood revitalization and development through local initiatives at the community level with the assistance of financial institutions and the state. The legislation creates a neighborhood revitalization and development fund to be administered by the Department of Commerce and Economic Development. Neighborhood housing services, community revitalization, and economic development projects are eligible for funding. The program requires that any nonprofit organization applying for the grant funds from the department must meet the criteria established by the Neighborhood Reinvestment Corporation.

The Neighborhood Reinvestment Corporation was established in 1978 by Congress as a public nonprofit corporation to assist communities in revitalizing declining neighborhoods for the benefit of current residents. That goal is achieved primarily through the development and support of Neighborhood Housing Services (NHS) programs, such as Anchorage Neighborhood Housing Services. In 1986 there were 239 NHS s in 137 cities across the country.

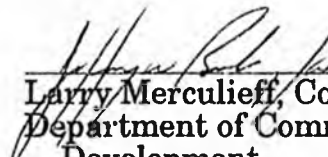
The bill also establishes the Alaska Main Street Program to provide grants to persons and organizations for economic revitalization and development projects in older central business districts and neighborhoods, using techniques developed by the National Trust for Historic Preservation.

The Neighborhood Revitalization and Development Fund is funded in part by proceeds from a proposed bond issue (SB 152) of \$11,000,000, if approved by the voters. Proceeds from the general obligation bond sale can only be used for capital improvement projects so any administrative costs or grants that are not directly attributable to such projects must be funded through the general fund or other sources. Consequently, the assumption is made in the fiscal note prepared by DCED that state administrative costs and pass through grants for operation of community Main Street Programs must be funded by state general funds sources other than the bond proceeds.

The staffing plan for the Main Street grant program presented in the fiscal note was prepared in consultation with the Office of History and Archeology, Department of Natural Resources, and the Anchorage Neighborhood Housing Services Corporation.

The Commissioner of Commerce and Economic Development sits as the chair of the State Bond Committee. The State Bond Committee policy has been to keep the state's debt service at 5% or less of unrestricted revenue. It is currently two times that. The last debt issue was October 1983. Our debt rating with Standard and Poor's is "AA." Alaska is the only energy state that has not had its rating adjusted downward in the last two to three years. Issuance of a GO bond would most likely cause a reevaluation of the state's rating, with a probable downward adjustment.

From an economic development standpoint, the department supports SSSB 135. Neighborhood housing service programs in Alaska and other states have a proven track record, and are successful at tapping into solid sources of federal and other funds. An appropriate funding source for the program is an issue to be debated by the Legislature..



Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development

Date: 2/15/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Neighborhood Revitalization
 Initiative BRU: Business Development
 Sponsor: Senator Rodey Components: _____
 Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES			75.3	202.0	202.0	202.0
TRAVEL			10.0	25.0	20.0	20.0
CONTRACTUAL			110.0	110.0	90.0	90.0
SUPPLIES			3.0	3.0	2.7	2.7
EQUIPMENT			6.0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS			150.0	325.0	405.0	175.0
MISCELLANEOUS						
TOTAL OPERATING			354.3	665.0	719.7	489.7
CAPITAL						
REVENUE			0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND			354.3	665.0	719.7	489.7
FEDERAL FUNDS						
OTHER						
TOTAL			354.3	665.0	719.7	489.7

POSITIONS:

FULL-TIME			3	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Tom Lawson, Acting Director Phone: 465-2017
 Division: Business Development Date: 2-13-89

Approved by Commissioner: Larry Merculieff Date: 2/13/89
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE ANALYSIS

SSSB 135--ALASKA NEIGHBORHOOD REVITALIZATION INITIATIVE

Assumptions/Program Summary

SSSB 135 establishes a program which promotes neighborhood revitalization and development through local initiatives of the state's communities with the assistance of financial institutions and the state. The legislation creates a neighborhood revitalization and development fund to be administered by the Department of Commerce and Economic Development. Neighborhood housing services, community revitalization, and economic development projects are eligible. The program requires that any nonprofit organization applying for the grant funds from DCEd must meet the criteria of the Neighborhood Reinvestment Corporation.

(The Neighborhood Reinvestment Corporation was established in 1978 by Congress as a public nonprofit corporation to assist communities in revitalizing declining neighborhoods for the benefit of current residents. That goal is achieved primarily through the development and support of Neighborhood Housing Services (NHS) programs, such as Anchorage Neighborhood Housing Services. In 1986 there were 239 NHS's in 137 cities.)

The bill also establishes the Alaska Main Street Program to provide grants to persons and organizations for economic revitalization and development projects in older central business districts and neighborhoods, using techniques developed by the National Trust for Historic Preservation.

The Neighborhood Revitalization and Development Fund is funded in part by proceeds from a proposed bond issue (SB 152) of \$11,000,000, if approved by the voters. Proceeds from the general obligation bond sale can only be used for capital improvement projects so any administrative costs or grants that are not directly attributable to such projects must be funded through the general fund or other sources.

It is estimated that about 13 communities may be able to participate in the Neighborhood Revitalization and Development Program. Under the Main Street Program it is assumed that approximately twelve to fourteen communities will participate in program grants.

The election on the question of the bond sale (SB 152), the proceeds of which fund the initiative, would be held in November 1990. Assuming voter approval of the initiative, and the bond sale is conducted in a timely manner, the first six months of FY 91 will be spent establishing the new programs, including development of administrative regulations.

Personal Services. In the first year, staff for the Main Street and the Neighborhood revitalization and development Programs includes the following 3 permanent full time six month positions:

Program Coordinator-Development Specialist II (Range 20)	\$29.0
Architect (Range 21)	30.5
Accounting Clerk II (Range 09)	15.8

Note: in the second year (FY92) these position are 12 month positions and salary/benefits cost listed are doubled.

The Statewide coordinator will initiate, coordinate and supervise both programs. The architect will serve as the Alaska Main Street Program architect and will provide design and historic perservation assistance. It is important that the architect position be filled at the beginning of the program in order for the individual to participate in the design and development of the Alaska Main Street program as well as to utilize the training services of the National Trust for Historic Preservation. Under the supervision of the program coordinator, the accounting clerk will administer the grants for both programs and will assist in the administrative details of developing the program.

A second development specialist (DS I, Range 18, \$51.0) will be necessary beginning in FY 91 to fully implement the Neighborhood Revitalization and Development Program.

Travel. Costs include travel to Washington, D.C. by the program coordinator and architect to receive training by the National Trust for Historic Preservation. In addition, once the program is established, one site visit for each community is estimated, with approximately six communities participating the first year. In subsequent years out-of-state travel should diminish while in-state travel will increase, resulting in a slight reduction of expenses.

Contractual Services. Typically, states contract with the National Main Street Center, National Trust for Historic Preservation, for assistance and training in establishing and operating a Main Street Program. The average costs of programs in other states is \$100.0 per year. Technical assistance offered ranges from developing criteria for selecting communities that will participate in the state program to conducting evaluations of local programs. Complete training in revitalization techniques to local programs is provided. Training continues over a three-year period, focusing on increasingly complex issues.

An alternative approach is to contract for the various services needed on a competitive basis. A number of consulting firms in the Northwest and other parts of the country have gained expertise with the Main Street Program over the past ten years and offer Main Street program implementation and training services.

The balance of the contractual service funds (\$10.0) are needed for office related services, including advertising, phone, postage, copying, printing, etc. In subsequent years contractual expenses will decrease.

Supplies. Funds will be used to purchase office supplies and training materials. Costs will decrease in future years.

Equipment. Cost will be just for the first year and will include purchase of a computer/word processor terminal and miscellaneous equipment.

Grants. Under the Main Street Program, grants would be provided to communities to develop and operate a local Main Street Program. Grants to communities would be on a three year track with first year funding at \$50.0, second year - \$25.0, and third year - \$10.0. In the first year (FY 91) through a competitive grant process, three communities would receive grants; in the next two years, five communities would receive first year funding.

	<u>Total</u>
<u>FY 91</u>	
3 1st yr. communities @ \$50.0	\$150.0
<u>FY 92</u>	
5 1st yr. communities @ \$50.0	
3 2nd yr. communities @ \$25.0	325.0
<u>FY 93</u>	
5 1st yr. communities @ \$50.0	
5 2nd yr. communities @ 25.0	
3 3rd yr. communities @ 10.0	405.0
<u>FY 94</u>	
5 2nd yr. communities @ 25.0	
5 3rd yr. communities @ 10.0	175.0

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Neal WRIGHT, Appellant,
v.

CITY OF PALMER, Municipal Corporation,
State of Alaska, Theodore Schmidtke, Mayor,
Emilio St. Pierre, City Clerk, and Members
of the City Council of the City of Palmer,
Appellees.

No. 1192.

Supreme Court of Alaska.
April 27, 1970.

Declaratory judgment action to invalidate city's issuance of general obligation bonds. The Superior Court, Third Judicial District, C. J. Occhipinti, J., granted judgment, and appeal was taken. The Supreme Court, Connor, J., held that issuance of general obligation bonds to finance a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility which would be leased to a private corporation did not, under circumstances presented constitute an unlawful lending of credit to a private corporation and did not constitute a violation of "capital improvement" and "public purpose" requirements of Constitution.

Affirmed.

1. Municipal Corporations ⇨722

It is within statutory power of a city to make available industrial sites which may be of benefit to municipality and to lease them on terms which are advantageous to public welfare of city. AS 29.10.132(e).

2. Municipal Corporations ⇨869, 873

Issuance of general obligation bonds to finance a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility to be leased to a private corporation, where significant restrictions and controls were retained by city over corporation's operations, did not constitute a violation of statute prohibiting the state or a political subdivision from lending its credit or borrowing money for use of a private corporation. AS 37.10.085.

3. Municipal Corporations ⇨911

Land and building to be obtained by municipality through issuance of general obligation bonds under a 20-year improvement program providing for purchase of a site and construction of a manufacturing and processing facility, where city's real ownership of structure would increase as years of rental payment went by, constituted "capital improvements" within Constitution providing that no debt shall be contracted by a political subdivision unless for capital improvements. Const. art. 9, § 9.

See publication Words and Phrases for other judicial constructions and definitions.

4. Municipal Corporations ⇨911

In determining whether a community development plan financed through issuance of general obligation bonds fulfills "public purpose" requirement of Constitution, test is whether plan is so unreasonable as to transgress limitations of Constitution. Const. art. 9, § 6.

5. Municipal Corporations ⇨910

Although development of industry within a community through issuance of general obligation bonds is not always an unmixed blessing, as it may impose burdens on other public facilities, it is hard to see how municipality, contrary to "public purpose" provision of Constitution would be hurt by location of an industry within its boundaries, where its plight is that of an eroding economic community and where city fathers and voters of community feel that a plan of action is necessary. Const. art. 9, § 6.

Eric E. Wohlforth, of McGrath & Wohlforth, Anchorage, for appellant.

Burton C. Biss, Anchorage, for appellees.

OPINION

Before DIMOND, Acting Chief Justice, and RABINOWITZ, BONEY, and CONNOR, Justices.

CONNOR, Justice.

This case questions the validity of a general obligation bond issue for the purpose of encouraging industrial development within a municipality. This is a declaratory judgment action in which appellant, in his capacity as a resident of and owner of real and personal property in the City of Palmer, seeks to have declared invalid the issuance of bonds by the city. These bonds were authorized at a special election at which the proposition carried by a vote of 248 in the affirmative and 7 in the negative. The proposition submitted to the voters was as follows:

PROPOSITION NO. 1

Shall the City of Palmer, Alaska, issue general obligation bonds in an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) for the following purpose: Under a 20-year improvement program providing for the purchase of a site and the construction of a manufacturing and processing facility within the City of Palmer. All said general obligation bonds shall mature within twenty years from the date of issue and bear interest at a legal rate.

After the proposition was approved by the voters, the city entered into an agreement with Huskey Manufacturing Corporation, a manufacturer or assembler of industrial housing, low-cost residential housing and mobile homes, by which the corporation agreed that it would in the future enter into a lease and occupy the building to be constructed, for a period of not less than 20 years, to keep its raw materials within the city limits in order to render

it subject to personal property taxation, to employ not less than 80% of its personnel from the Palmer area, to maintain training facilities for its employees, and to maintain on-the-job training programs under federal and state auspices. It also agreed, as a condition to entering into a lease, that it would use the public utilities owned by the city, as far as they are available. The company agreed that the paved parking lot adjacent to the building should be available at all reasonable times for public recreational uses. The agreement also provides that the rental shall be fixed in such an amount that the total cost of the project, including the sums necessary to amortize the bonds sold to finance the project, shall be payable over a 20-year period under a reasonably uniform schedule through the term of the lease. In short, the city would procure or make available land and a structure for the use of the lessee, using the bond proceeds to accomplish this end.

This case obviously has been brought for the purpose of testing the validity of the bond issue and to determine whether the bonds are marketable. The record is somewhat one-sided in that all of the evidence was presented by the city, although the witnesses for the city were cross-examined by counsel for appellant. On the other hand, the legal questions have been thoroughly argued and briefed. Unlike the situation in *Ault v. Alaska State Mortgage Association*, 387 P.2d 698 (Alaska 1963), we do find the record sufficient for determining the legal issues presented in this case.¹ Unlike *Ault*, where a summary judgment was entered, this case went to a trial on

1. In *Jefferson v. Asplund*, 458 P.2d 995, 998 (Alaska 1960), this court held that an actual controversy is a prerequisite to the granting of declaratory relief under the Alaska statute permitting declaratory judgment actions. We further cited with approval the definition of "controversy" found in the opinion by Chief Justice Hughes in *Aetna Life Insurance Company of Hartford, Conn. v. Haworth*, 300 U.S. 227, 57 S.Ct. 401, 81 L.Ed. 617 (1937):

"A 'controversy' in this sense must be one that is appropriate for judicial determination. * * * A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. * * * The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." (Citations omitted.)

the merits under the provisions of Rule 57(a), Rules of Civil Procedure.²

The testimony and evidence presented show a pattern of serious economic problems which the City of Palmer is seeking to overcome. The City Council in the agreement to lease makes a recital of its findings about the economic plight of the City of Palmer and its environs. The pattern which emerges from the evidence is that over the course of the last several years the economic growth of Palmer has been nil. The Palmer Comprehensive Development Plan of 1967, prepared by the city, discloses a high year-round rate of unemployment. Virtually no manufacturing exists in the City of Palmer. At one time coal mines were operated in the Palmer area, but these have been shut down because Elmendorf Air Force Base and Fort Richardson, the prime consumers of coal, now utilize natural gas for heating and the generation of electricity. The closure of the mines has resulted in a loss of payroll for the Palmer area estimated at something over one million dollars per annum. Lumber processing has

ceased in the Palmer area, with a loss of about 20 jobs. Various other business activities have moved out of the Palmer area recently, including the Matanuska Valley Cooperative Association, the Sears & Roebuck store, and other businesses. Palmer has recently been declared a depressed area by the federal government. It is in an effort to combat this declining economy that the city has proposed the issuance of bonds, the erection of a manufacturing building, and its lease to a private corporation. It is estimated that the proposed project, when fully operational, would employ approximately 65 to 110 persons on a full-time basis.

IS THERE AN UNLAWFUL LENDING OF CREDIT?

[1, 2] It is asserted that the bond issue and plan of action violates AS 37.10.085,³ which prohibits either the state or a political subdivision to lend its credit for the use of a private corporation, or to borrow money for the use of a private corporation. We note at the outset that the city is not handing money directly to a private

2. "Rule 57. Declaratory Judgments—Judgments by Confession. (a) Declaratory Judgments. The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."

Many actions such as the one in the instant case have been entertained by other state courts.

"Municipal financing legislation and projects have frequently been questioned in taxpayer suits, on the ground that they violate state constitutional provisions prohibiting the use of public funds or credit for purposes which are not 'public.' Often such suits are brought by industrialists and others who seek prior judicial approval of a project. [Footnotes omitted.] In most cases, the projects and legislation have been upheld. [Newberry v. City of And-

lusia, 257 Ala. 40, 57 So.2d 629 (1952); Wayland v. Snapp, [232 Ark. 57], 334 S.W.2d 633 (Ark.1960); Dyeke [sic] v. City of London, 288 S.W.2d 648 (1956); Miller v. Police Jury, 226 La. 8, 74 So.2d 394 (1954); City of Frostberg [Frostburg] v. Jenkins, 215 Md. 9, 136 A.2d 852 (1957); Village of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956); Holly v. City of Elizabethton, 193 Tenn. 46, 241 S.W.2d 1001 (1951); McConnell v. City of Lebanon, 203 Tenn. 498, 314 S.W.2d 12 (1958). *Contra*, State v. Town of No. Miami, 50 So.2d 779 (Fla.1952); State ex rel. Beck v. City of New York, 164 Neb. 223, 82 N.W.2d 269 (1957).]" 70 Yale Law J. 789, at 791 and n. 15, "The 'Public Purpose' of Municipal Financing for Industrial Development."

3. "Financial aid to corporations by state or political subdivision. Neither the state nor a political subdivision of the state may (1) make a subscription to the capital stock of a corporation; (2) lend its credit for the use of a corporation; or (3) borrow money for the use of a corporation."

corporation. Nor is it pledging that its credit or taxing powers may be used to make good the indebtedness of a private person in contravention of the Alaska Constitution.⁴ It is within the statutory power of a city to make available industrial sites which may be of benefit to the municipality and to lease them on terms which are advantageous to the public welfare of the city. AS 29.10.132(e).⁵ Since significant restrictions and controls are retained by the City of Palmer over Huskey Manufacturing Corporation's operations, the bond issue in question is not violative of AS 37.10.085. These controls and restrictions were imposed upon the corporation to insure the effectuation of the public purpose objective of this bond issue. *Roe v. Kervick*, 42 N.J. 191, 199 A.2d 834 (1964). We think that the question of whether the public credit is being pledged for a private purpose is also comprehended under the broader question of whether a public purpose is served by the bond issue and plan for its expenditure, which is discussed below.

IS THE PROJECT A CAPITAL IMPROVEMENT?

The contention is made that the indebtedness would violate Article IX, § 9, of the Alaska constitution⁶ which requires that

such debt can be incurred only for capital improvements. It is argued that in *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962), this court laid down a strict test of what constitutes a "capital improvement," rendering that term synonymous with "public works of a permanent character." Because an industrial development project is not clearly within that category, it is said that the plan before us must fail.

We do not read the *Hixson* case so narrowly. There we struck down a bond issue because no capital improvement would have resulted from the expenditure of the proceeds. The vice in the *Hixson* case was that raw land would have been acquired with the proceeds and would then have been donated to the State of Alaska as a proposed capitol site. As a result of the plan, the City of Juneau would have been left with no tangible asset in place of the indebtedness. Furthermore, the State of Alaska had entered into no agreement for and had not otherwise shown an interest in the acquisition or use of any capitol site.

[3] By contrast, in the case before us the City of Palmer will own a tangible asset. The plan is that the indebtedness shall be retired out of the rental money received over the life of the bond issue. The land and building fulfill the definition of "capital improvements" which was stated in the

4. Alaska Const., art. IX, § 6:

"Public Purpose. No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

The courts which have upheld bonding projects as a legitimate exercise of power by the political subdivisions have held that a statute which pledges only project revenues does not pledge the public credit, and, therefore does not lend the public credit in aid of anyone. *Newberry v. City of Andalusia*, 257 Ala. 49, 57 So.2d 620 (1952); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Bennett v. City of Mayfield*, 323 S.W.2d 573 (Ky.1959).

5. "City properties. * * *

(e) The council, in order to make sites available for new industries which will benefit the municipality, may likewise acquire, own and hold such sites, including

468 P.2d—21½

Alaska Rep. 466-477 P.2d—3

real property, either inside or outside the corporate limits and may sell, lease or dispose of them upon the terms and conditions as it considers advantageous to the civic welfare of the city, to persons who will agree to install, maintain and operate a beneficial new industry. Sites required under this paragraph and any right, equity, claim or title acquired by the municipality to real property sold to it for delinquent taxes are not 'property acquired, owned or held for or devoted to a public use' as used herein."

6. Alaska Const., art. IX, § 9:

"Local Debts. No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question."

Hixson case⁷ as being "associated with value represented by real or personal property in some form and with relative permanency." 373 P.2d, at 747. There is here no giving away of the asset. On the contrary, the city's real ownership of the structure should increase as the years of rental payment go by. Even if the tenants should default, the building probably would be susceptible to a number of other beneficial uses. We conclude, therefore, that the bond issue and the plan of expenditure does not violate the capital improvement requirement of our constitution.

IS THERE A FULFILLMENT OF PUBLIC PURPOSE?

Article IX, § 6, of the Alaska constitution provides that "[n]o tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose." It is asserted that the bond issue and the plan for its expenditure violates this provision.

In *DeArmond v. Alaska State Development Corporation*, 376 P.2d 717 (Alaska 1962), this court noted that the term "public purpose" is one of great imprecision. As we said there,

7. In *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962), this court defined "capital improvement" as follows:

"The trial court was correct in holding that the bond issue herein was not for a capital improvement. Assuming for the moment that the expenditure of the money could accomplish the desired objective, the end product would lack most of the attributes usually associated with the completed public project for which general obligation bonds have been sold. No permanent asset in the form of real or personal property would accrue to the city. The property acquired by the proceeds would be donated to the state. No thing of value would remain the property of the city. No improvement of general use or service to the taxpayers of the city would have been created by the expenditure. No tangible security for the bonded indebtedness would have been created—in fact, the total security would have been reduced by the removal of some seven

"We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs. Whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case." 376 P.2d at 721.

The technique used by most courts is that of looking to the entire factual and governmental context to determine whether a particular plan of action serves a public purpose.⁸ In the area of industrial development bond issues, numerous decisions have upheld such plans.⁹ There is much criticism which can be leveled against a community using its public borrowing capacity to sponsor or induce the location of private industry within its boundaries. Many of these plans have been attacked on grounds of public policy, but they have been sustained frequently by the courts.¹⁰ It is true that such plans are susceptible to abuse. Municipalities have been known to go bankrupt after having induced an industry to come to them under such a plan.¹¹ There are dangers that an industry locating in a community may end up dominating the political and economic processes. On the

aces of downtown property from the city's tax rolls." 373 P.2d, at 748.

8. See Note, "Legal Limitations on Public Inducements to Industrial Location," 39 Colum.L.Rev. 618 (1959).

9. *Newberry v. City of Andalusia*, 257 Ala. 49, 57 So.2d 620 (1952); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960); *Dyche v. City of London*, 288 S.W.2d 648 (Ky.1956).

10. Although courts have split on the validity of revenue bond plans, the weight of authority is in their favor. Pinsky, "State Constitutional Limitations on Public Industrial Financing: An Historical and Economic Approach," 111 U. of Pa.L.Rev. 265, 276 n. 63 (1963).

11. Long-run economic and social changes are ever present sources of financial risk. Population shifts or widespread economic recession may render unworkable fiscal policies that were once considered sound. These risks, however, are inevitable concomitants of public decision making.

other hand, it is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived. The tendency in most of the modern case law is to broaden the notion of public purpose to include such projects as the one contemplated by the City of Palmer.¹²

In *Walker v. Alaska State Mortgage Association*, 416 P.2d 245 (Alaska 1966), and in *Suber v. Alaska State Bond Committee*, 414 P.2d 546 (Alaska 1966), such broad notions of public purpose were applied. As we observed in the *Suber* case,

"The basic objective of government is to protect and promote the health, safety and general welfare of the people. When a condition of affairs appears in the state which presents a threat to the accomplishment of that objective, the government has the right, and the obligation, to cope with such threat by whatever measures, within constitutional limits, that are necessary or appropriate." 414 P.2d, at 551-552.

[4] The role of the courts in matters of this kind is relatively limited. Our function is not to determine whether, as prudent burghers, we might think this plan wise. *City of Juneau v. Hixson*, supra.

12. In the cases applying the public purpose doctrine and the public aid limitations to the fields of transportation, recreation, and parking, courts have placed

The test which we must apply is whether the plan is so unreasonable as to transgress the limitations of our constitution. If the plan of action were plainly foolhardy, or if it amounted to the pledging of credit or the giving away of assets without any corresponding discernible benefit, we might be persuaded to strike down the plan. But that is not the case here.

[5] The benefits from the plan of the City of Palmer may be enjoyed in part by some individuals more than by others. But collective advantages to the community at large can be perceived quite readily. Although the development of industry is not always an unmixed blessing, as it may impose burdens upon other public facilities, it is hard to see how the City of Palmer could be hurt by the location of an industry within its boundaries. Its plight at the moment is that of an eroding economic community. If the city fathers and the voters of the community feel that this plan of action is necessary, it is not for us to retard them. It is within their legislative province to determine whether the advantages outweigh the risks.

Because we think the public purpose of the project has been demonstrated, we find the bond issue valid.

Affirmed.

considerable emphasis on the public importance of the project and the urgency of the need for public financing. *Pinsky*, supra note 10.