

**SB**

**338**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/2/94

FURTHER:

DATE TURNED INTO OFFICE: 4-19-94

The Finance Committee considered **SENATE BILL NO. 338**

Issuance of revenue bonds for acquisition and construction of the Alaska Discovery Center for the Ship Creek Project in Anchorage; relating to a study of the feasibility and financial viability of the Alaska Discovery Center; relating to construction of the Alaska Discovery Center; efd.

and recommends:

replace with CS 5B 338 (FINANCE)  
 or  adopt previous CS \_\_\_\_\_  
 attaches amendment(s)

same title  
 new title  
 technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
<u>DOR</u>	<u>2/22/94</u>	<u>0</u>	

Appropriation No Fiscal Note

**DO PASS.**

Tim Kelly

Steve Kim

**OTHER RECOMMENDATIONS:**

Best Sharp No-Rec

1. Irue Pearce - No Rec  
 Co-Chair: Signature/Recommendation

2. Don No Rec  
 Co-Chair: Signature/Recommendation

# FISCAL NOTE

No. 1

Bill Version: SB 338

(S) Publish Date: 3-2-94

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL 1**

Revision Date: _____	Dept. Affected: <u>Revenue</u>
Title: <u>An Act Relating to the Issuance of Revenue Bonds for the Alaska Discovery Center</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Senate Labor and Commerce Committee</u>	Component: <u>Treasury Management</u>
Requestor: <u>Senate Labor and Commerce Committee</u>	COMPONENT SERIAL NO. <u>121</u>

**Expenditures/Revenues:** (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE:</b>						

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0	0				
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME			
PART-TIME			
TEMPORARY			

Estimate of current year (FY94) impact: \$ 0

Changes in CSB 338 (etc) have no fiscal impact. This fiscal note is appropriate.  
3/1/94 date [Signature] Compt Aide (initial)

**ANALYSIS:** (Attach a separate page if necessary.)

The Department of Revenue believes it to be in the best interest of the State to have a thorough analysis of the project feasibility as required by this legislation. A qualified financial advisor should also review all bond and legal documents for proper disclosure of revenue sources and other credit issues. The analysis will be funded from bond proceeds.

Prepared by: Laraine L. Derr, Deputy Commissioner Phone: 465-4880  
 Division: Treasury Date: 2/28/94  
 Approved by Commissioner: Darrel J. Rexwinkel Date: 2/28/94  
 Agency: Department of Revenue

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4-19-94  
SF 3/6  
~~FR~~ 81

8-LS1761NO.4  
Utermohle  
4/19/94

Adopted

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSSB 338(L&C)

BY SENATOR FRANK

Page 2, line 13:

Delete "of"

Insert "received by the corporation from"

Page 2, line 14, after "Center.":

Insert "Notwithstanding AS 42.40.630 and 42.40.640, the Alaska Railroad Corporation may not pledge, mortgage, or assign money, leases, revenue, agreements, assets, or property of the corporation to the payment of the bonds, except as expressly provided in this subsection."

Page 2, line 31, after "assets":

Insert "received by the corporation from the public or private entity that owns and operates the Northern Crossroads Discovery Center that are"

SENATE FINANCE  
COMMITTEE #1  
Amendment Number:       #1        
Bill Number: SB 338  
Sponsor: FRANK Date: 19 APR 94  
Logged In By: [Signature]

Kathy  
2418

4-20-94

1) Leave as is

Sec. 1(a)

Approved

by

Sen

Kelly

per

Linda

2) on charge to

Sec 1(a)(1)(B)

AN ACT

Establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date.

\* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature

finds that

(1) it is the policy of the state to

(A) provide safe, economical, and efficient transportation to residents, businesses, visitors, and military installations in the state;

(B) foster and promote the long-term economic growth and development of the state;

(C) develop and implement plans for a transportation network;

(D) foster and promote the development of the state's land and natural resources;

(E) ensure that the Alaska Railroad does not use direct appropriations to fund a particular freight operation if it can be demonstrated that the appropriation has placed privately owned and operated carriers in an unfair competitive position. Nothing herein shall affect the provisions of AS 42.40.220(b);

(2) the Alaska Railroad is an essential part of the state transportation network that may, unless preserved by state action, cease to be a transportation option in Alaska;

3-16-94  
Technical Amendment  
p. 1, line 7  
Adopted. 8-LS1761\O

\* Revision of technical  
amend. to Sec. 1(a)(1)(B)  
approved by Sen. Kelly  
4/20/94  
FJR

CS FOR SENATE BILL NO. 338(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/2/94  
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the issuance of revenue bonds for acquisition and  
2 construction of the Northern Crossroads Discovery Center for the Ship Creek  
3 Landings Project; relating to a study of the feasibility and financial viability of  
4 the Northern Crossroads Discovery Center; relating to construction of the  
5 Northern Crossroads Discovery Center; and providing for an effective date."

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

7 \* Section 1. (a) In furtherance of the state policy under sec. 1(a), ch. 153, SLA 1984 to  
8 foster the long-term economic growth and development of the state, the Alaska Railroad  
9 Corporation is authorized to issue revenue bonds in the principal amount of not more than  
10 \$55,000,000 for the construction and acquisition of the Northern Crossroads Discovery Center  
11 for the Ship Creek Landings Project, if the board of directors of the Alaska Railroad  
12 Corporation determines after completion of the study conducted under sec. 2 of this Act that  
13 the Northern Crossroads Discovery Center is feasible and financially viable. This section

(b)\* (see above revision) 4/20/94 TK  
Adopted

1 constitutes legislative approval of the issuance of bonds by the Alaska Railroad Corporation,  
2 as required by AS 42.40.285.

3 (b) The Alaska Railroad Corporation may loan the proceeds from the sale of revenue  
4 bonds authorized by this section to a public or private entity that the Alaska Railroad  
5 Corporation considers appropriate to acquire, construct, and operate the Northern Crossroads  
6 Discovery Center. The Alaska Railroad Corporation may enter into agreements, including  
7 leases, with a public or private entity that the Alaska Railroad Corporation considers  
8 appropriate to provide for and secure payment of a loan made from the proceeds from the sale  
9 of the revenue bonds.

10 (c) The issuance of revenue bonds authorized by this section is subject to  
11 AS 42.40.600 - 42.40.700, except that, notwithstanding AS 42.40.630, the bonds are special  
12 nonrecourse obligations of the Alaska Railroad Corporation payable only from the revenues  
13 and assets <sup>received by the corporation from</sup> of the public or private entity that owns and operates the Northern Crossroads  
14 Discovery Center. *-notwithstanding etc. Amend #1*

15 \* Sec. 2. The Alaska Railroad Corporation shall conduct a study of the feasibility and  
16 financial viability of the proposed Northern Crossroads Discovery Center for the Ship Creek  
17 Landings Project, if a private party, including a potential developer or lessee of the Northern  
18 Crossroads Discovery Center, enters into an agreement with the Alaska Railroad Corporation  
19 to pay the cost of the study. The Alaska Railroad Corporation shall select the person or firm  
20 to conduct the study. Upon receipt of the completed study, the board of directors of the  
21 Alaska Railroad Corporation shall determine whether the Northern Crossroads Discovery  
22 Center is feasible and financially viable.

23 \* Sec. 3. Before construction of the Northern Crossroads Discovery Center begins, the  
24 Alaska Railroad Corporation shall require that the public or private entity authorized to design  
25 and construct the Northern Crossroads Discovery Center post a payment and performance  
26 bond in favor of the Alaska Railroad Corporation to assure completion of the Northern  
27 Crossroads Discovery Center.

28 \* Sec. 4. Each bond issued under sec. 1 of this Act shall contain on its face a statement  
29 that

30 (1) the Alaska Railroad Corporation is not obligated to pay the bond or the  
31 interest on the bond except from the revenue or assets <sup>pledged</sup> for the bond;

*received by corporation etc.*

1                   (2) neither the faith and credit nor the taxing power of the State of Alaska or  
2 of a political subdivision of the state is pledged to the payment of the bond; and

3                   (3) the issuance of the bonds does not create a legal or moral debt of the State  
4 of Alaska and payment of the bond is not directly or indirectly dependent upon an  
5 appropriation by the Alaska State Legislature.

6    \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

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March 16, 1994

BY FAX

Senate Finance Committee  
State Capitol  
Juneau, Alaska 99801

Re: Potential State liability for bonds issued pursuant to the terms of CS  
for Senate Bill No. 338 (L&C) (Alaska Railroad Ship Creek Project)  
Our File No. 5323/0601

Honorable Members of the Committee:

During this morning's meeting of the committee, Eric Wohlforth was asked whether the State of Alaska might be liable for the repayment of bonds authorized to be issued if the above-referenced bill were enacted. A similar question was asked of me when the bill was before the Labor and Commerce Committee. Following this morning's meeting of the Finance Committee, Mark LoPatin asked me whether the requirement in the bill for a feasibility study might lead to some liability of the State for the bonds. I am preparing this letter at Mr. LoPatin's request for the purpose of setting forth our views relating to potential State liability for bonds issued under the authorization of this bill. In brief, we do not believe the State would have any liability for the repayment of bonds issued under the terms of the bill in its present form.

Section 1 of the bill authorizes the issuance of bonds and describes the bonds that are authorized to be issued as "special nonrecourse obligations of the Alaska Railroad Corporation payable only from the revenues and assets of the public or private entity that owns and operates the Northern Crossroads Discovery Center." This language is clear. It authorizes the issuance of bonds that are only payable from the revenues and assets of the entity that owns and operates the Northern Crossroads Discovery Center. Any effort to issue bonds that are payable from any other assets (including assets of the State of Alaska) would be beyond the authority granted by this language, and any such bonds would be invalid. Without more, I believe this language would prevent any attempt to issue bonds

WOHLFORTH, ARGETSINGER,  
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for which the State of Alaska could be held liable. However, there is more to the bill.

Section 4 of the bill requires that each bond issued under Section 1 contain on its face several statements, each of which strongly and plainly indicates that the bonds may not in any way pledge the assets of the State. Those statements are:

(1) the Alaska Railroad Corporation is not obligated to pay the bond or the interest on the bond except from the revenue or assets pledged for the bonds;

(2) neither the faith and credit nor the taxing power of the State of Alaska or of a political subdivision of the state is pledged to the payment of the bond; and

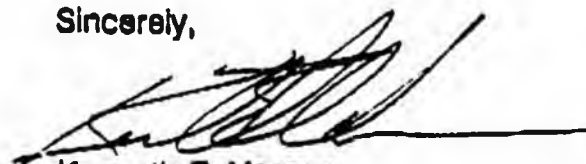
(3) the issuance of the bonds does not create a legal or moral debt of the State of Alaska and payment of the bond is not directly or indirectly dependent upon an appropriation by the Alaska State Legislature.

To my knowledge, these disclaimers are uniquely strong. It is difficult to imagine how they could be made stronger or clearer. A person who buys a bond with this language printed on the bond would be clearly informed that the State is neither legally nor morally obligated to use its assets to repay the bond.

The language of the bill describes, and only authorizes the issuance of, revenue bonds -- that is, bonds that are secured solely by the revenues of the project that it is issued to finance. It is possible to issue revenue bonds that do not obligate the State of Alaska, and the bonds authorized by this bill would be in that category. The requirement in the bill for a feasibility study, if it has any impact on their status, probably strengthens the argument that the bonds are revenue bonds. By requiring a feasibility study, the bill further emphasizes that the bonds are payable solely from revenues by requiring that there be a reasonable demonstration of the existence of such revenues before the bonds may be issued.

I hope this letter is helpful to the committee in its consideration of the bill. We are, of course, happy to assist further at your request.

Sincerely,



Kenneth E. Vassar

*Lo Patin Lease*  
*1st Nine Page*

GROUND LEASE

THIS GROUND LEASE (herein called "this Lease") is made on the day executed by the last signatory hereto, by and between the ALASKA RAILROAD CORPORATION (herein called "Lessor"), a public corporation created pursuant to AS 42.40, whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500, and SHIP CREEK CROSSINGS DEVELOPERS, INC., an Alaska corporation (herein called "Lessee"), whose mailing address is 3000 Town Center, Suite 1000, Southfield, Michigan 48075.

Recitals

A. The Lessor has agreed to lease to Lessee approximately 37 acres of land located in the Alaska Railroad Anchorage Terminal Reserve on the south side of Ship Creek. The parcel is within the 120-acre area generally known as the Ship Creek Redevelopment which was the subject of a Request for Proposal issued by the Anchorage Economic Development Corporation in January, 1990. Up to 25 additional acres that are currently leased to the Municipality of Anchorage at Ship Creek Point may subsequently be added to the leased premises.

B. Lessee will act as a master developer for the property consistent with the terms of this Lease and a development agreement to be negotiated between Lessor and Lessee. Lessee's master development plan must consider the entire 120 acres which constitute the Ship Creek Redevelopment area, and Lessee will coordinate development within the leased premises with activities on the adjacent acreage.

C. Lessee is required under this Lease to bring substantial development projects to the property, which may include a hotel/conference center, tourist oriented specialty shops, commercial offices, a residential component, and public amenities such as a world class aquarium or planetarium.

D. The intent of Lessor in issuing this Lease is to develop new markets for both tourists and residents of Alaska, rather than relocating existing tenants and commercial enterprises already established in the Anchorage area.

ARTICLE 1

LEASED PREMISES AND TERM

1.01 Leased Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Lessor, the land situated in the Anchorage Recording District, Third Judicial District, State of Alaska, more particularly described on Schedule 1 attached to and for all purposes made a part of this Lease, together with all rights, easements, privileges, both subterranean and vertical, and appurtenances attaching or belonging to the described land, but subject to the reservation contained in paragraph 1.02 hereof (herein called the "Leased Premises").

This Lease is subject to certain existing leases and permits respecting the Leased Premises, as specified in Exhibit A. Two of such leases, Contract No. 4270 with Dresser Industries as lessee, and Contract No. 1664 with Consolidated Freightways as lessee, are being assigned by Lessor to Lessee concurrently with execution of this Lease. The land area within such two leases is included within the 37 acres described in Schedule 1. Upon expiration or earlier termination of each of such leases, the real property affected thereby will become a part of the Leased Premises and governed thereafter by the terms of this Lease. To the extent noted on Exhibit A, the other existing leases and permits may be terminated by Lessor, at Lessee's request, before June 1, 1992 and the affected property made available to Lessee.

The Leased Premises may be expanded after execution of this Lease, in the event Lessor and the Municipality of Anchorage complete certain on-going negotiations in a manner that makes a portion of the Municipality's Ship Creek Landing lease, Contract No. 5920 available to add to the Leased Premises. Lessor will exert good faith efforts to successfully conclude such negotiations. Lessor and Lessee agree that in such event, Schedule 1 shall be amended to include such additional acreage (currently estimated to be approximately 25 acres) and such property shall be governed by the terms of this Lease.

1.02 Reservation of Minerals. All oil, gas, coal, geothermal resources and minerals of whatever nature in or under the above-described land are excluded from the Leased Premises and reserved to Lessor. Notwithstanding the foregoing, Lessee shall have the right, subject to the terms of this Lease, to use earth materials on or in the above-described land to a depth not to exceed twenty (20) feet below the surface, and to move and recontour such materials on the Leased Premises. During the term of this Lease, Lessor shall not have the right to enter on the surface of the Leased Premises, without Lessee's prior consent, for the purpose of mining and/or extracting such oil, gas, coal, geothermal resources, or other minerals and shall not mine and/or extract the same by any means at a depth less than twenty-five (25) feet below the surface of the Leased Premises. If Lessor mines and/or extracts such oil, gas, coal, geothermal resources, or other minerals, the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises, parking or access to the Leased Premises.

1.03 Improvements Owned by Lessor. The following described improvements ("Lessor's improvements") are situated on and are a part of the Leased Premises and are and shall remain throughout the term of this Lease the property of the Lessor:

All fill, retaining walls, berms, earth contours, and all other below-surface improvements situated on the Leased Premises on the date of this Lease; excepting however, any utility service connections and any underground storage tank(s) on the Leased Premises or appurtenances to such tank(s).

Any subsurface improvements to the Leased Premises during the Lease Term shall become the property of Lessor (and included within the term "Lessor's Improvements") immediately upon installation, except underground storage

tank(s) (and their appurtenances) and utility service connections, which shall be and remain the sole property of Lessee. Any such subsurface improvements shall be eligible for rent credits pursuant to the criteria set forth in paragraph 2.04, regardless of their ownership under this paragraph 1.03.

Lessor is also the owner of certain trackage located on the Leased Premises, and shall remain the owner thereof regardless of any subsequent relocation, except as otherwise agreed.

1.04 Improvements Owned by Lessee. There are no above surface improvements on the Leased Premises which belong to Lessee at the commencement of this Lease. Lessee's improvements shall include any above surface improvement constructed or placed on the Leased Premises by Lessee (or Lessee's assigns and/or sublessees) during the term of this Lease ("Lessee's Improvements").

1.05 Lease Term. This Lease shall be and continue in full force and effect for a term of five (5) years (the "Lease Term") commencing as of March 1, 1992, and terminating on February 28, 1997, unless earlier terminated as provided in this Lease.

1.06 Option to Extend.

A. Lessee may, at Lessee's option, extend the term of this Lease for up to two additional lease terms not to exceed five (5) years each, subject to all the provisions of this Lease, including but not limited to provisions for adjustments to and variations in rent and the provisions of subparagraph B below.

Lessee may, at Lessee's election, assign this option in whole or in part at any time and from time to time to any one or more Qualified Subtenants, Assignees, or Mortgagees as those terms are hereinafter defined, and may give any such Subtenant, Assignee or Mortgagee, with or without such assignment, power of attorney to exercise such option.

B. Lessee's right to extend the Lease Term is subject to the following conditions precedent:

1. In order to exercise its option for the second 5-year term (the first extension period), Lessee must have accomplished development projects (evidenced by the issuance of certificates of occupancy during the original 5-year term to either Lessee, its sublessees and/or assigns) whose cumulative value is \$2 million, in addition to the development requirements contained in paragraph 4.01.C. In order to exercise its option for the third 5-year term (the second extension period), Lessee must have accomplished development projects (evidenced by the issuance of certificates of occupancy during the second 5-year term to either Lessee, its sublessees and/or assigns) whose cumulative value is \$5 million.

2. The Lease shall be in effect at the time notice of exercise is given and on the last day of the original Lease Term; and

3. Lessee shall not be in material default under any provision of this Lease at the time notice of exercise is given or on the last day of the term; and

4. Lessee shall have given Lessor written notice of its exercise of the option, which shall be irrevocable, not more than 365 days nor less than 90 days before the last day of the original Lease Term.

C. The phrase "Lease Term" as used in this Lease shall mean and refer to the original 5-year term hereof and any extended term (in the event Lessee exercises one or both of its option to extend). The phrase "extended term" is used from time to time herein to refer solely to either or both of the 5-year additional terms created if Lessee exercises the option provided under subparagraphs 1.06.A and B.

D. If during the course of this Lease Term or either of the extended terms, Lessee is prepared to commence construction on any of the development projects contemplated by this Lease, Lessor and Lessee agree to enter into good faith negotiations towards the execution of a new ground lease with either Lessee or its proposed assignee for that portion of the Leased Premises to be developed. It is anticipated that said ground leases shall not extend beyond two (2) successive thirty-five (35) years terms, it being understood that the extended term(s) in each instance shall be tailored to the specific projects and need not be the same term for each specific project.

1.07 Termination for Railroad Use. In accordance with Alaska Statute 42.40.285(4) (the Alaska Railroad Corporation Act), Lessor reserves the right to terminate this Lease or any successor lease as contemplated by paragraph 1.06.D at any time after thirty-five (35) years if the Premises are needed for railroad purposes, which are defined solely for purposes of this paragraph 1.07 as being for track right-of-way of customary width. This entire Lease (or entire successor lease) may not be terminated unless Lessor determines in good faith that so much of the Leased Premises are needed for railroad purposes that the purpose of this Lease (or specific successor lease) cannot reasonably be satisfied. In the event of such termination, Lessor shall compensate Lessee only for the fair market value of Lessee's Improvements as of the date Lessor gives Lessee notice of such termination. Fair market value of Lessee's Improvements shall be agreed to by the parties or determined as set forth in Article 2 of this Lease.

ARTICLE 2

RENTS

2.01 Rents. Lessee shall pay the following rents to Lessor in legal tender of the United States of America, without deduction and without notice or demand, net of all real property taxes, assessments, and other charges required to be paid by Lessee under this Lease with respect to the Leased Premises, and in equal monthly installments in advance on or before the first day of each calendar month during the Lease Term, with partial periods prorated on a daily basis. Both Initial Rent and Project Rent, as hereafter defined, are referred to elsewhere in this Lease as "Basic Rents."

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To	M.H.	From	PJ
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

A. Initial Rent. Rent payable at the outset of this Lease and without any adjustment as hereinafter provided is known as "Initial Rent." For Lease years 1-5 inclusive, Initial Rent will be Thirty-Seven Thousand Dollars (\$37,000), subject to the provisions of paragraph 2.01.B below. The parties agree that this figure represents rent of \$1,000 per acre for the 37 net usable acres within the Leased Premises.

Initial Rent will be payable for the net usable land released from the Municipality of Anchorage's current Ship Creek Point lease and made available to Lessee for development as described in paragraph 1.01, commencing June 1, 1993 or at such later date as such land is so released from the municipal lease. The parties presently contemplate that less than twenty-five (25) acres will become so available. Initial Rent shall be payable at the rate of \$1,000 per acre until such time, if ever, any portion of this former municipal lease acreage becomes the site of a development project. Then and in such event, Project Rent will be payable in accordance with subparagraph 2.01.B.

B. Project Rent. Initial Rent as provided in subparagraph 2.01.A will be adjusted from time to time in the following manner with respect to any specific portion of the Leased Premises upon which a component of Lessee's development project becomes situated. After such adjustment, such rental will be known as "Project Rent."

1. Initial Rent will be paid at the rate set in subparagraph 2.01.A until the date a certificate of occupancy (or equivalent) is issued.

2. As of the date such certificate is issued, rent for that parcel will be adjusted to its fair market value as determined in accordance with paragraph 2.02 unless Lessor elects to apply one of the methods of rental computation set forth in subparagraph 2.01.B.3 below.

In the event Lessor and Lessee are unable to reach agreement regarding specific terms under subsection 3 immediately below, then fair market value rent under this subparagraph 2.01.B.2 shall become due and payable with respect to the specific project, effective as of the date the certificate of occupancy was issued.

3. Lessor's alternatives to fair market value are as follows:

a. Lessor may elect to receive a percentage of the project's gross revenues in addition to a base rent of seventy-five percent (75%) of fair market value rent as determined in accordance with paragraph 2.02. The percentage of gross revenues so received shall be negotiated on a project-specific basis.

b. In the alternative, Lessor may elect to participate as an investor/owner of a specific project and receive a negotiated percentage of net profits.

4. Once a specific project obtains a certificate of occupancy and begins accruing Project Rent, the area which is platted for (or otherwise agreed by Lessor and Lessee to be allocated to) such project shall be withdrawn from computation of Initial Rent regardless of whether Lessee

subleases the parcel or partially assigns its rights under this Lease to the project occupant. For purposes of this calculation, parcel sizes shall be rounded to the nearest half acre and Initial Rent shall accordingly be reduced pro rata.

2.02 Determination of Fair Market Value Rent: Periodic Readjustment. Whenever fair market value is used as an agreed measure of Project Rent (under paragraphs 2.01.B.2 or 3 above), it shall be determined as set forth below. In addition to the initial valuation, the fair market value rent shall be readjusted to current fair market value as of the beginning of each seven (7)-year period of the lease term pursuant to the same procedures. Notwithstanding anything to the contrary, Project Rent shall not be increased for any portion of the Leased Premises for which a certificate of occupancy has not been issued.

A. Appraisal of Fair Market Value of Fee Simple Interest. Lessor shall select an appraiser from a list of qualified appraisers compiled by Lessor and kept available for public inspection at Lessor's office. The appraiser shall determine, within sixty (60) days of Lessee's request and Lessor's selection of an appraiser pursuant to this subparagraph for an initial fair market valuation, or as of a date within one hundred eighty (180) days before or after the beginning of the applicable rent period for subsequent rental adjustments, the fair market value of the fee simple interest in the Leased Premises, based upon the use to which the land is or shall be put so long as the same is consistent with the master plan developed for the Leased Premises, unencumbered by this Lease, and including improvements owned by Lessor (identified in paragraph 1.03 of this Lease), and excluding improvements owned by Lessee (identified in paragraph 1.04 of this Lease). A copy of the appraisal report shall be provided by Lessor to Lessee at Lessee's request.

B. Fair Market Value Rent. The fair market value rent shall be the product derived from multiplying the fair market value of the Leased Premises (established in accordance with subparagraph 2.02.A) by TEN PERCENT (10 %).

C. Appeal and Arbitration of Rent Increases. In the event Lessee disagrees with an appraisal of fee simple value made by Lessor pursuant to subparagraph 2.02.A of this Lease, Lessee may appeal the value determined in such appraisal by notifying Lessor in writing of its demand for appeal within thirty (30) days of receiving Lessor's notice of change in rent. Lessee's failure to give said notice will constitute a waiver of Lessee's right to appeal a change in rent based on such appraisal, and Lessee shall be bound by Lessor's determination of the fair market value rent.

In the event Lessee so appeals a change in rent, Lessee shall, at its own expense, obtain an appraisal of the fair market value of the fee simple interest in the Leased Premises, based upon the use to which the land is or shall be put so long as the same is consistent with the master plan developed for the Leased Premises, unencumbered by this Lease, and including Lessor's Improvements and excluding Lessee's Improvements, and provide the same to Lessor no later than sixty (60) days after Lessee's notice of appeal is delivered to Lessor. Said appraisal shall be performed in accordance with Lessor's Standard Appraisal Instructions in effect at the time of appraisal.

If within fifteen (15) days after Lessor receives Lessee's appraisal, the parties are unable to agree as to the fair market value of the fee simple interest, Lessee may, at its option, refer the matter to arbitration in accordance with the procedures contained in Article 8 of this Lease by notifying Lessor in writing of its demand for arbitration within ten (10) days after expiration of the 15-day period provided above. Otherwise, Lessee shall have no right to refer a rent dispute to arbitration and shall be bound by Lessor's determination of rent under this Lease.

Notwithstanding the foregoing, Lessee shall pay all rent at the new rate provided in Lessor's notice of change in rent until the issue of fair market value of the Leased Premises is resolved.

D. Retroactive Rent. Until a change in Basic Rent is determined, Lessee shall pay the same Basic Rent as in the previous year. When the adjusted Basic Rent has been determined, and Lessee notified, such Basic Rent as so determined shall be due and payable to Lessor retroactive to the commencement of the lease year for which such rent adjustment is made, and any deficiency resulting from such rent adjustment shall be payable within thirty (30) days after the giving of such notice to Lessee. However, at no time will the Lessee be responsible for more than ninety (90) days of unbilled retroactive rent at the increased level.

2.03 Absolutely Net Rent. It is the purpose and intent of Lessor and Lessee that the Basic Rents established under this Lease shall be absolutely net to Lessor so that this Lease shall yield, net to Lessor, the rent specified herein during the term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises, which may arise or become due during the Lease Term, except as otherwise expressly provided in this Lease, and except costs, expenses, and obligations (other than those to be borne by Lessee as herein provided) incurred by Lessor in connection with the sale or mortgaging of the Leased Premises, shall be paid by Lessee, and that Lessor shall be indemnified and held harmless by Lessee from and against the same.

#### 2.04 Rent Credits.

A. Lessee's Rent Credits. Lessee shall be eligible for credit against its annual rent (whether Initial Rent or Project Rent) for certain expenditures that qualify for capitalization under Internal Revenue Code section 195. Such expenditures are subject to an annual maximum of \$150,000. Lessee may submit an itemization of such expenditures on a monthly basis (or less frequently, if Lessee so desires) together with such supporting documentation as Lessor may require, and receive payment of any amount by which the month's eligible expenditures exceed the rental due, subject however to the \$150,000 annual maximum credit.

B. Specific Project Rent Credit. Lessee's subleases (or partial assignments) to specific project owners or operators may grant such parties the right to seek rent credit for site-specific development costs that qualify as capital improvements under Internal Revenue Code section 195, amortized over the life of the individual sublease or assignment. Lessor shall require supporting documentation for any such credits requested. In no event shall

such credit exceed, on an annual basis, the annual Project Rent payable with respect to that project. Any excess qualifying costs (those not fully applied as credits in any one calendar year) may be carried over into subsequent rental periods until fully utilized by the sublessee/assignee.

C. Credit for Improvements of Common Benefit. Lessor and Lessee acknowledge that certain capital improvements may benefit all component development projects generally rather than any specific project. Such improvements include but are not limited to main streets/thoroughfares and pedestrian trails. The cost of such improvements may be eligible for rent credit to Lessee consistent with paragraph 2.04.A or, at Lessee's election, such costs may be charged to sublessees and allocated among all development projects on the basis of their respective pro rata shares of land area within the Leased Premises. In such event, the cost shall be amortized over the remaining term of each respective sublease. In no event shall any sublessee's credit under this subparagraph, taken together with any credit under paragraph 2.04.B, exceed that sublessee's annual Project Rent, but any unused qualifying costs may be carried over until fully utilized. Lessor shall require supporting documentation for any such credits requested.

D. Improvements Funded by Public Monies. Notwithstanding the foregoing, in no event will rent credit be allowed for any improvements to the extent the same are funded by grants or other public monies unless such funds are in the form of loans at market equivalent interest rates.

2.05 Public Amenity Development. The parties contemplate the inclusion of one or more "public amenity" projects within the Leased Premises, such as a planetarium or aquarium. Such projects cannot reasonably be expected to be produce net revenue, yet they enhance the overall development and the business opportunities of individual projects. Ownership and management of such amenity projects shall be decided by Lessor and Lessee on a case-by-case basis and may be vested in separately established non-profit corporations. Any parcel devoted to such amenity projects shall continue to accrue Initial Rent at the rate set in paragraph 2.01 unless a higher rate is charged as rent by Lessee to the sublessee. In the latter event, Lessor shall receive fair market value rent for such parcel under paragraph 2.02. As to such projects for which Lessee does not receive rent greater than the Initial Rent, Lessee shall be paid a development fee by Lessor equivalent to five percent (5%) of Lessee's development costs. Lessor shall require supporting documentation for such costs prior to paying any such development fee.

### ARTICLE 3

#### QUIET ENJOYMENT

Subject to the other leases and permits described in paragraph 1.01, upon timely payment by Lessee of all of such rents and other payments required to be paid by Lessee under this Lease, and upon full and faithful observance and performance by Lessee of all of its covenants contained in this Lease, and so long as such observance and performance continues, Lessee shall peaceably hold and enjoy the Leased Premises during the Lease Term and any extended term(s) without hindrance or interruption by Lessor or anyone lawfully claiming by, through, or under Lessor.

## ARTICLE 4

## LESSEE'S COVENANTS

4.01 Special Covenants of Lessee.

A. Lessee shall act as master developer of the Leased Premises and accomplish an integrated mixed-use commercial development pursuant to the terms of this Lease and a development agreement as described in subparagraph 4.01.B. Such development shall occupy various portions of the Leased Premises on a sublease or partial assignment basis, subject to the other terms of this Lease.

B. In order to obtain \$5.5 million previously appropriated by the Alaska State Legislature for the redevelopment of the Leased Premises, Lessor and Lessee must execute a development agreement (the "Development Agreement") which is approved by the Anchorage Economic Development Corporation and the Municipality of Anchorage not later than April 30, 1992. Lessee shall diligently and in good faith negotiate the terms of the Development Agreement with Lessor and failure to enter into the Development Agreement may, at Lessor's discretion, be cause for termination of this Lease.

C. The previously mentioned legislative appropriation requires private investment commitments of not less than \$5.5 million and the Development Agreement shall so provide. In addition, Lessee is required by this Lease to diligently pursue such commitments (and any others it may obtain) to a final result of the issuance of certificate(s) of occupancy for development projects on the Leased Premises totalling not less than \$7.0 million within three (3) years of the effective date of this Lease.

D. It is Lessor's desire to encourage public participation in the development process to the extent that no party's competitive position is compromised and no privileged or proprietary information is released. Lessee shall actively solicit public comment regarding each proposed component part of its development on the Leased Premises to the extent reasonably possible, consistent with this philosophy. Lessee is not, however, required to conduct public hearings or follow any other specific procedures, and failure to obtain a public consensus as to any individual project shall not be cause for abandonment of that project, nor shall it constitute default under this Lease.

4.02 Taxes, Assessments and Charges.

A. Lessee shall pay, not less than ten (10) days before they become delinquent, all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any improvement thereon or any use thereof, are now or during the Lease Term may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by Lessor or Lessee, subject to Lessee's option to pay in installments hereinafter provided. Such taxes and assessments include, but are not limited to, any increased real property tax resulting from any classification of the Leased Premises during the Lease Term to a higher use. Payments of real property taxes and assessments due during the first and last years of the

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

*True*

DATE: 2/22/94

FURTHER: Finance

Date of 5-Day Notice: 2/24/94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/2/94

L&C Committee considered SB 338

Issuance of revenue bonds for acquisition and construction of the Alaska Discovery Center for the Ship Creek Project in Anchorage relating to a study of the feasibility and financial viability of the Alaska Discovery Center; relating to construction of the Alaska Discovery Center; efd.

and recommends: **and recommends it be replaced with**

replace with CS SB 338 (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and report it back as follows**

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

- do pass
- do not pass
- no recommendation
- individual recommendations

*FIN*

**FISCAL NOTE INFORMATION**

SB&CS

Department	Date	Zero	Fiscal
DEPT. OF REVENUE	2/24/94		<input checked="" type="checkbox"/>

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

**DO PASS:**

**OTHER RECOMMENDATIONS:**

- \_\_\_\_\_
- \_\_\_\_\_ *Rep. A. M. Sharp NR*
- \_\_\_\_\_ *Rep. ... NR*
- \_\_\_\_\_ *Rep. ... (No Rec)*
- \_\_\_\_\_ *Rep. ... NR*

**(1) Tom Kelly - Do Pass**  
Chair: Signature and Recommendation