

HB

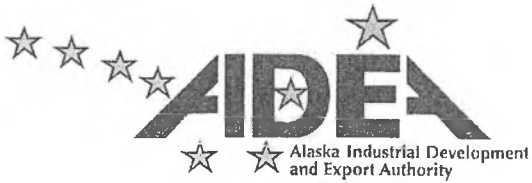
119

<TARGET><BILL>HB 119</BILL><SUBJECT>HB
119</SUBJECT><COMM>HEDT27</COMM></TARGET>

EDT 2.3.11 HB 119 AIDEA: PROCUREMENT; PROJECTS

From The Fiscal Note: "This bill allows AIDEA to invest directly in a corporation or limited liability company which holds a development project as its sole asset. This bill also expands the definition of development projects that AIDEA may own and operate to include projects which "enhance or promote economic development associated with transportation, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research." This bill also enables AIDEA to adopt regulations to establish its own procurement process; similar procurement authority is granted to other state corporations."

1. Is AIDEA not allowed now to invest in a company which has a development project as its sole asset because those investments are seen as being of higher risk? And if so what will AIDEA be doing to minimize this risk?
2. This bill also expands the definition of Development Projects AIDEA may own to include projects which "enhance or promote economic development associated with transportation, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research." Please give me one example for each type of project listed. AIDEA would also be allowed to invest in Federal facilities – please give rationale.
3. So right now does AIDEA have to follow the same procurement rules as DCCED? How will this change help?
4. Last Session we passed a bill to expand AIDEA's board from 5 to 7 and to increase private sector participation on the Board. Has this process been completed? [A: It hasn't: it's taking them a while to find new board members and there has been a lot of turnover lately] Am I right in suspecting that an expanded board may be particularly important to AIDEA if this bill passes and AIDEA gains a broader mandate? OR: In what ways might the expanded Board is even more important if this bill passes?



January 26, 2011

The Honorable Bob Herron
Chair, Special Committee on Economic Development, Trade and Tourism
Alaska State Legislature
State Capitol Room 411
Juneau, Alaska 99801

RE: HB119, "An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Industrial Development and Export Authority; relating to the definition of 'own' for the economic development account; relating to the definitions of 'development project', 'plant', 'facility', and 'project' for the Alaska Industrial Development and Export Authority; and providing for an effective date."

Dear Representative Herron:

On January 24, 2011, HB119 (Companion Bill, SB 65) was introduced and referred to the Senate Labor & Commerce Committee. This legislation is intended to provide the Alaska Industrial Development and Export Authority (AIDEA) with more flexibility to encourage greater investment in expanding Alaska's private sector and in developing the state's natural resources.

HB119 will allow AIDEA to own all or a percentage of a corporation or be a member of an LLC for which a development project is the sole asset of the corporation or LLC. This allows AIDEA to establish working relationships with other investors and leverages AIDEA's assets to own a portion of a project rather than the entire project.

HB119 expands the definition of "project" to include projects which enhance or promote economic development. The project must also be associated with transportation, communications, community and public purposes, technical innovations, prototype commercial applications or research. The definition will also be expanded to include federal facilities including military, National Guard or Coast Guard installations.

HB119 also amends the procurement code allowing for the adoption of regulations to govern AIDEA's procurement of supplies, services and construction. AIDEA regulations will be required to reflect competitive bidding principles and AIDEA would be given authority similar to other state corporations such as AHFC and KABATA.

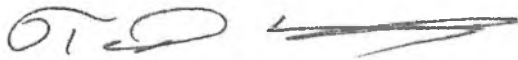
Submitted for the committee's consideration is a proposed amendment to HB119. This amendment further defines AIDEA's authority to create subsidiary corporations for the purpose of financing development projects. This amendment also clarifies AIDEA's ability to transfer assets into the subsidiary corporation but at the same time ensures that the subsidiary corporation's debts, liabilities, and obligations are not those of the Authority, therefore limiting AIDEA's total risk in financing a development project. The Authority would urge the committee to adopt this amendment.

Representative Herron
January 26, 2011
Page 2

We respectfully request you to schedule HB119 for a hearing in your committee and we urge favorable action on this bill. A copy of HB119, the fiscal note, the sectional analysis, and the suggested amendment are attached. We will be happy to meet with you and other members of the committee to provide any other information you may require. Thank you for considering our request.

Sincerely,

ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

A handwritten signature in black ink, appearing to read "Ted Leonard", with a long horizontal flourish extending to the right.

Ted Leonard, CMA, SPHR
Executive Director

Attachments (4)

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532



550 West 7th Avenue #1700
Anchorage, Alaska 99501
907-269-7450
fax 907-269-7463
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Sean Parnell
STATE OF ALASKA

January 21, 2011

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill to provide the Alaska Industrial Development and Export Authority (AIDEA) with more flexibility to encourage greater investment and Alaska resource development. This bill would amend AS 44.88.172(a) to enable AIDEA to invest directly in a corporation or limited liability company which holds a development project as its sole asset. Under its strategic plan, AIDEA works to encourage other investors to join in financing development projects, and to do so, must establish working relationships with those other investors. The proposed legislation will accomplish that goal by providing greater flexibility in how AIDEA and other investors may jointly invest in development projects.

This bill would expand the types of development projects for which AIDEA may own and operate. Under existing law, development projects are basically limited to projects related to making, processing, or transporting goods or products; developing or transporting natural resources; generating or transmitting energy; and infrastructure for tourism destination facilities. This bill would expand the definition of "project" to include projects which enhance or promote economic development. The project must also be associated with transportation, communications, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research. Second, the definition of "project" would expand to include federal facilities, including a United States military, National Guard, or Coast Guard facility, and would also clarify that a component of a project may be a road.

In addition, this bill amends the procurement code (AS 36.30.015(f)) to empower AIDEA to adopt regulations to govern AIDEA's procurement of supplies, services, professional services, and construction.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell".

Sean Parnell
Governor

Enclosure

CS FOR HOUSE BILL NO. 119(EDT)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, AND TOURISM

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the procurement of supplies, services, professional services, and
2 construction for the Alaska Industrial Development and Export Authority; relating to
3 the definition of 'own' for the economic development account; relating to the definitions
4 of 'development project', 'plant', 'facility', and 'project' for the Alaska Industrial
5 Development and Export Authority; relating to the Alaska Industrial Development and
6 Export Authority creating subsidiaries regarding projects financed under AS 44.88.172;
7 and providing for an effective date."

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

9 * **Section 1.** AS 36.30.015(f) is amended to read:

10 (f) The board of directors of the Alaska Housing Finance Corporation,
11 notwithstanding AS 18.56.088, the membership of the Alaska Industrial
12 Development and Export Authority, notwithstanding AS 44.88.085, and the board
13 of directors of the Knik Arm Bridge and Toll Authority under AS 19.75.111, shall

1 adopt regulations under AS 44.62 (Administrative Procedure Act) and the board of
 2 trustees of the Alaska Retirement Management Board shall adopt regulations under
 3 AS 37.10.240 to govern the procurement of supplies, services, professional services,
 4 and construction for the respective public corporation and board. The regulations must
 5 reflect competitive bidding principles and provide vendors reasonable and equitable
 6 opportunities to participate in the procurement process and must include procurement
 7 methods to meet emergency and extraordinary circumstances. Notwithstanding the
 8 other provisions of this subsection, the Alaska Housing Finance Corporation, **the**
 9 **Alaska Industrial Development and Export Authority**, the Knik Arm Bridge and
 10 Toll Authority, and the Alaska Retirement Management Board shall comply with
 11 AS 36.30.170(b).

12 * **Sec. 2.** AS 44.88.172(a) is amended to read:

13 (a) The economic development account is established in the revolving fund.
 14 The economic development account consists of money or assets appropriated, loaned,
 15 or transferred to the authority for deposit in the account and other money or assets
 16 deposited in the account by the authority. While money is on deposit in the economic
 17 development account, the money may be used only to finance, acquire, manage, and
 18 operate development projects that the authority intends to own and operate. In this
 19 subsection,

20 (1) "operate" includes operation directly by the authority, by an agent
 21 of the authority, or by a person as determined under an agreement between the
 22 authority and other owners of the development project;

23 (2) "own" includes ownership by the authority of all or a percentage of
 24 a development project, **or all or a percentage of the shares of a corporation or**
 25 **membership in a limited liability company for which the development project is**
 26 **the sole asset of the corporation or limited liability company.**

27 * **Sec. 3.** AS 44.88 is amended by adding a new section to read:

28 **Sec. 44.88.178. Creation of subsidiaries.** The authority may create one or
 29 more subsidiary corporations for the purpose of acquiring, constructing, owning,
 30 operating, or financing a project financed under AS 44.88.172. A subsidiary
 31 corporation created under this section may be incorporated under AS 10.20.146 -

1 10.20.166. The authority may transfer assets of the authority to a subsidiary created
 2 under this section. A subsidiary created under this section may borrow money and
 3 issue bonds as evidence of that borrowing, and has all the powers of the authority that
 4 the authority grants to it. Unless otherwise provided by the authority, the debts,
 5 liabilities, and obligations of a subsidiary corporation created under this section are not
 6 the debts, liabilities, or obligations of the authority.

7 * **Sec. 4.** AS 44.88.900(3) is amended to read:

8 (3) "development project" has the meaning given to "project" in (9)(A)
 9 and (D) - (H) [(9)(A) AND (D) - (F)] of this section;

10 * **Sec. 5.** AS 44.88.900(8) is amended to read:

11 (8) "plant" or "facility" means real property, whether above or below
 12 mean high water, or an interest in it, and the buildings, improvements and structures
 13 constructed or to be constructed on or in it, and may include roads, fixtures,
 14 machinery, and equipment on it or in it, and tangible personal property, regardless of
 15 whether the tangible personal property is attached to or connected with real property,
 16 if the owner has agreed not to remove the tangible personal property permanently from
 17 the state for the period the authority sets; "plant" or "facility" does not include work in
 18 process or stock in trade;

19 * **Sec. 6.** AS 44.88.900(9) is amended to read:

20 (9) "project" means

21 (A) a plant or facility used or intended for use in connection
 22 with making, processing, preparing, transporting, or producing in any manner,
 23 goods, products, or substances of any kind or nature or in connection with
 24 developing or utilizing a natural resource, or extracting, smelting, transporting,
 25 converting, assembling, or producing in any manner, minerals, raw materials,
 26 chemicals, compounds, alloys, fibers, commodities and materials, products, or
 27 substances of any kind or nature;

28 (B) a plant or facility used or intended for use in connection
 29 with a business enterprise;

30 (C) commercial activity by a business enterprise;

31 (D) a plant or facility demonstrating technological advances of

1 new methods and procedures and prototype commercial applications for the
2 exploration, development, production, transportation, conversion, and use of
3 energy resources;

4 (E) infrastructure for a new tourism destination facility or for
5 the expansion of a tourism destination facility; in this subparagraph, "tourism
6 destination facility" does not include a hotel or other overnight lodging facility;

7 (F) a plant or facility, other than a plant or facility described in
8 (D) of this paragraph, for the generation, transmission, development,
9 transportation, conversion, or use of energy resources;

10 **(G) a plant or facility that enhances, provides for, or**
11 **promotes economic development with respect to transportation,**
12 **communications, community public purposes, technical innovations,**
13 **prototype commercial applications of intellectual property, or research;**

14 **(H) a plant or facility used or intended for use as a federal**
15 **facility, including a United States military, national guard, or coast guard**
16 **facility;**

17 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version HB119
(H) Publish Date 1/24/11

Identifier (file name) 1745-CED-AIDEA-01-10-11
Title AIDEA Project Ownership and Project Definition
Sponsor Rules Committee
Requester Request of the Governor
Dept. Affected DCCED
Appropriation AIDEA
Allocation AIDEA Operations
OMB Component Number 1234

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version

Prepared by Sara Fisher-Goad, Deputy Director - Operations
Division Alaska Industrial Development & Export Authority
Approved by Susan K. Bell, Commissioner
Commerce, Community & Economic Development

Phone 907-771-3012
Date/Time 1/21/11 12:25 PM
Date 1/21/2011

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 119

Analysis

The bill allows AIDEA to invest directly in a corporation or limited liability company which holds a development project as its sole asset. This bill also expands the definition of development projects that AIDEA may own and operate to include projects which "enhance or promote economic development associated with transportation, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research." This bill also enables AIDEA to adopt regulations to establish its own procurement process; similar procurement authority is granted to other state corporations.

This legislation has no operational fiscal impact to AIDEA.

HB 119 and SB 65

An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Industrial Development and Export Authority; relating to the definition of "own" for the economic development account; relating to the definitions of "development project", "plant", "facility", and "project" for the Alaska Industrial Development and Export Authority; and providing for an effective date.

Sectional Analysis

Section	Analysis
1	Amends AS 36.30.015(f) (the procurement code) to allow AIDEA to adopt regulations to govern AIDEA's procurement of supplies, services and construction. AIDEA regulations will be required to reflect competitive bidding principles; AIDEA would be given authority similar to other state corporations such as AHFC and KABATA
2	Amends AS.44.88.072(a) to allow AIDEA to own all or a percentage of a corporation or be a member of an LLC for which a development project is the sole asset of the corporation or LLC
3	Amends AS 44.88.900(3) to include in the expanded definition of development project in AIDEA's development finance projects under which AIDEA owns and operates projects
4	Amends AS 44.88.900(8) to clarify that "roads" may be a component of a project
5	Amends AS 44.88.900(9) to expand the definition of project to include a plant or facility that enhances, provides for, or promotes economic development with respect to transportation, communications, community public purposes, technical innovations, prototype commercial application of intellectual property, or research; and a plant or facility used or intended for use as a federal facility, including a US military, national guard, or coast guard facility
6	Provides for an immediate effective date

HB 119 Summary

“An Act relating to the procurement of supplies, services, profession services, and construction for the Alaska Industrial Development and Export Authority; relating to the definition of ‘own’ for the economic development account; relating to the definitions of ‘development project’, ‘plant’, ‘facility’, and ‘project’ for the Alaska Industrial Development and Export Authority; and providing for an effective date.”

- Gives the Alaska Industrial Development and Export Authority (AIDEA) increased flexibility to encourage greater investment in Alaska Resource Development
- Amends AS44.88.172(a) to enable AIDEA to invest directly in a corporation or limited liability company which holds a development project as its sole asset.
- AIDEA must develop working relationships with investors in order to encourage them to join financing development projects; this bill gives AIDEA greater flexibility in how AIDEA can jointly invest in development projects.
- HB 119 expands the type of projects that AIDEA may own and operate. Currently, develop projects are limited to projects relating to making, processing, or transporting goods or products; developing or transporting natural resources; generating or transmitting energy; and infrastructure for tourism destination facilities
- HB119 expands the definition of project to include projects which enhance or promote economic development; it also expands the definition to include federal facilities, including a United States military, National Guard, or Coast Guard facility; it also clarifies that a component of a project may be a road.

lowest limit?

AMENDMENT

OFFERED IN THE HOUSE SPECIAL COMMITTEE
ON ECONOMIC DEVELOPMENT, TRADE,
AND TOURISM
TO: HB 119

BY OLSON

1 Page 1, line 5, following "**Authority**";

2 Insert "**relating to the Alaska Industrial Development and Export Authority creating**
3 **subsidiaries regarding projects financed under AS 44.88.172;**"

4

5 Page 2, following line 24;

6 Insert a new bill section to read:

7 "*** Sec. 3.** AS 44.88 is amended by adding a new section to read:

8 **Sec. 44.88.178. Creation of subsidiaries.** The authority may create one or more
9 subsidiary corporations for the purpose of acquiring, constructing, owning, operating, or
10 financing a project financed under AS 44.88.172. A subsidiary corporation created under
11 this section may be incorporated under AS 10.20.146 - 10.20.166. The authority may
12 transfer assets of the authority to a subsidiary created under this section. A subsidiary
13 created under this section may borrow money and issue bonds as evidence of that
14 borrowing, and has all the powers of the authority that the authority grants to it. Unless
15 otherwise provided by the corporation, the debts, liabilities, and obligations of a
16 subsidiary corporation created under this section are not the debts, liabilities, or
17 obligations of the authority."

18

19 Renumber the following bill sections accordingly.

AIDEA's Answers to Questions Posed by the House Committee on Tourism and Economic Development Regarding HB 119: AIDEA Procurement and Projects

Question #1

Is AIDEA not allowed not to invest in a company which has a development project as its sole asset because those investments are seen as being of higher risk? And if so what will AIDEA be doing to minimize this risk?

AIDEA's Response

AIDEA was not allowed to invest in projects through use of a limited liability or corporation because it was set up originally as an Authority which would use its own funds to own and operate projects which supported delineated forms of economic development. It would appear the risk of the investment was not a factor in the use of this sole ownership structure. Rather, the requirement that AIDEA have sole ownership in a project reflected a state policy that the Authority would develop and own projects which would not otherwise be built by the private sector. AIDEA, therefore, was designed to own and operate facilities and projects which supported development of natural resources, tourism and energy (which was added in 1993).

So risk aversion was not a factor in this sole ownership structure. In fact, AIDEA sole ownership of industrial sites and buildings increased the risk for the Authority. Sole ownership meant that AIDEA could not leverage its funds and that AIDEA took all the risk in owning the project. Moreover, sole ownership put all the assets of the Authority on the line should the development project fail or incur some type of liability from an industrial accident.

So AIDEA's statutes were not designed to mitigate risk, but rather to add state capital to the developing Alaska economy. At that time, the prevalent view was that a state could use its own capital to build a facility which would not otherwise be built with private capital. In a newly formed and developing state, this model worked.

Over time, however, this view has changed. The current view of economic development is that state development agencies should be working with the private sector as partner in developing needed infrastructure. Such public – private partnerships are often referred to as PPPs. PPPs permit the state agency to leverage its funds while decreasing both the risk of financial default and risk of liability arising from the operation of the project.

One change AIDEA now seeks through HB 119 is designed to increase use of PPP projects. The change will permit the Authority to own a percentage of a development finance project - though use of a limited liability company or corporation.

For most of its history, AIDEA was authorized to “own” a development project under AS 44.88.172. This reference to owning a project was interpreted to mean that AIDEA had to own 100% of a project and could not partner with other investors. As a result, AIDEA developed projects in which it was the sole owner, such as the FedEx hangar at Anchorage Airport or the Delong Mountain Transportation System, which is an industrial road and port that supports the Red Dog mine.

Last session, AIDEA sought and received legislative approval for a change in AS 44.88.172 to authorize the Authority to own a percentage of a development project. In this way, AIDEA could partner with other investors, leverage its funds, and lessen its risk. This change also reflected the trend, noted above, for state agencies to work with private entities in economic development.

As AIDEA has worked with this new legislative authority, it was asked by several potential private partners to form an LLC or a corporation as a way to own and manage joint ownership of a proposed project or facility. This use of an LLC or corporation is common in development projects because it sets up a methodology to operate the project. For example, in an LLC, the members can elect a managing member to run the day-to-day operations of the entity. The use of an LLC also mitigates risk because in the event of a default, creditors know that for their recourse, they are limited to the assets of the LLC. This mitigation of risk is important because as AIDEA works with junior companies in sectors such as mining and oil and gas, the Authority will be the investing party which has the most assets, and could be viewed as a deep pocket.

In sum, the change in ownership structure sought through HB 119 is designed to minimize risk, permit AIDEA to engage with private capital, and allow ADIEA to leverage its funds so that it can participate in more economic development projects than it could if it has to fund 100% of each project.

Question 2

This bill also expands the definition of Development Projects. AIDEA may want to include projects which “enhance or promote economic development associated with transportation, community public purposes, technological innovations, prototype commercial applications of intellectual property, or research.” Please give one example for each type of project listed. AIDEA would also be allowed to invest in Federal facilities- please give rationale.

AIDEA’s Response

Transportation Project: An example would be a project such as fuel storage at Anchorage Airport which supports transportation, but is not linked to transporting natural resources, energy, industrial production, or tourism infrastructure.

Community Public Purposes: An example would be a health care clinic.

Technical Innovations: An example would be development of an industrial plant utilizing new technology which was not supporting natural resources, energy or tourism. Currently, for example, the Authority is looking at a development finance project involving innovative technology in the fishing industry, which involves a natural resource. However, at present, AIDEA could not support a plant using innovative technology in textiles, even though it may have that opportunity.

Prototype Commercial Applications of Intellectual Property or Research: An example would be providing financing for the development of a commercial application of a new process, such as the commercialization of a patent. This would be especially the case when the prototype plant to test commercial feasibility of a patent or innovation may not immediately lead to production which is readily saleable.

Federal Facilities: The rationale for this change is that AIDEA wants to be able to support a significant sector of the Alaskan economy: the federal military. AIDEA has been approached by federal agencies that are interested in AIDEA developing facilities which would be leased to a federal agency. This reflects a trend in federal procurement under which federal agencies do not want to own facilities and instead seek to lease them on a long- term basis.

AIDEA would like to offer this service to federal agencies because states and regions that can offer leased premises are attractive to the federal government. This in turn encourages the location of more federal employees to these areas. In the current economy with tightening federal spending, it is reasonable to treat the federal government like any other sector of the economy. This is particularly the case when this spending represents a significant portion of the economy. Therefore, it is appropriate to offer the federal government incentives and programs that will encourage federal agencies to locate in Alaska and which can bring in new jobs and investments. Leasing to a federal agency is the same as AIDEA leasing a hangar to FedEx at the Anchorage Airport, or leasing port facilities at Skagway.

Secondly, executing long term leases with a reliable tenant such as a federal agency offer AIDEA a good investment and return on its capital. Finally, at the end of the lease, these facilities will revert back to AIDEA and can then be sold into the private market. This will create economic opportunities and increase property taxes for local communities in which the facilities are located.

Question 3

So right now does AIDEA have to follow the same procurement rules as DCCED? How does this change help?

AIDEA's Response

AIDEA, like most state agencies such as the Department of Commerce, falls under Alaska's State Procurement Code. See AS 36.30.005 (centralization of procurement) and AS 36.30.990(1)(A) (definition of included entities includes departments). The current procurement code, however, excludes certain public corporations, such as Alaska Housing Finance Corporations (AHFC) and the Alaska Aerospace Development Corporation. See AS 36.30.015(f) and AS 36.30.990(1)(B)(iii) and (vi). AIDEA submits that its need to do development projects and interface with the private sector in development projects means that it should be granted the same exclusion from the Procurement Code as its fellow public corporations.

The procurement change in HB 119 would assist AIDEA in accomplishing its economic development mission in several ways. First, AIDEA is often approached by a developer at a stage when the project is seeking financing. At this stage, the developer will usually have a business plan and a detailed

design for the project, including architectural and engineering drawings. All of these materials will often be at hand because they are needed to budget the cost of the project. This is a critical component in developing a finance package. Developers are used to having this level of detail when they seek conventional bank financing, for example.

However, if AIDEA decides to finance all or part of a project, it must essentially start all over again and develop a whole new set of plans and specifications for the project - based on the Procurement Code. This includes soliciting new bids on each aspect of the project, even if detailed plans already exist. It has been AIDEA's experience that this can be a barrier to working with a potential client who has expended considerable time and money in developing detailed plans for the project.

Moreover, AIDEA is moving toward a development finance model in which it often will own only part of a project, such as 20%. This limited investment is designed to use state capital only to the extent it is needed to move a project to completion, and to minimize AIDEA's risk if the project does not perform as expected. However, under the current law, AIDEA's minority ownership in a project would mean that the entire project is subject to the Procurement Code.

Another advantage to the proposal in HB 119 is that it permits AIDEA, just like AHFC, to set out an open and fair procurement process by adopting new regulations with oversight from the AIDEA Board. In the event that there is a bid protest, the matter can be heard expeditiously by the AIDEA Board and a decision reached. In contrast, under the Procurement Code, an AIDEA protest would be heard by the DOT&PF Commissioner and then by the Commissioner of Administration. This process is time consuming. In contrast, HB 119 would permit the AIDEA Board to determine bid protests. This places the decision making process in front of an entity familiar with economic development financing.

Question 4

Last session we passed a bill to expand AIDEA's board from 5 to 7 and to increase private sector participation on the Board. Has this process been completed? Am I right in suspecting that an expanded board may be particularly important to AIDEA if this bill passes and AIDEA gains a broader mandate? OR: In what ways might the expanded Board be even more important if this bill passes?

AIDEA's Response

While AIDEA did not request the Board change, the Authority welcomes the participation of additional private sector members. AIDEA's Strategic Plan calls for the Authority to expand the effectiveness of its programs, and this includes forming important private-public partnerships to finance needed economic development. The five public members of the board bring their expertise and experience to the decision making process, and the new, larger Board allows for the formation of Board subcommittees to review proposed projects and investment opportunities outside of the formal Board meeting process. Their private sector backgrounds assist AIDEA in reviewing both the benefits and possible pitfalls of proposed partnerships with private sector interests in developing a project.

The change in the Board's composition is consistent with the goals of HB 119 to expand and clarify the scope of the agency's economic development mission. The addition of three additional public members means that the Board's composition reflects broader business and geographic experience. This will assist Management and the Board in carrying out the expanded scope of economic development projects contemplated in HB 119.

Question 5

What sources were used to draft the language in HB 119 regarding the proposed list of the types of projects AIDEA can undertake?

AIDEA's Response

As AIDEA began development of its Strategic Plan, it conducted a review of the programs and statutes used by its sister development agencies in other states. In particular, AIDEA focused on the New Jersey Development Corporation, the Wyoming Business Council, the Vermont Economic Development Authority (VEDA), Mass Development, and the Bank of North Dakota.

One constant that appeared from this review is that most state development authorities have programs tied to the nurturing and development of existing economic sectors, as well as having programs to attract new businesses into the state and diversify the economy.

As part of this process, AIDEA retained Western Financial to do a "Strength-Weakness-Opportunities-Threats (SWOT) analysis" of Alaska's economy, as well

as an outreach program to the business community for an environmental scan of the economy. This SWOT and scan analysis became cornerstones of AIDEA's Strategic Plan.

At page 33 of AIDEA's Strategic Plan, there is a chart that sets out the economic sectors this analysis indicated should be supported by AIDEA. For example, this list included traditionally important areas of the economy such as fisheries and tourism, but also includes newer or less well-defined areas such as the federal government, logistics, aerospace, and health care.

In addition to tracking economic sectors identified in AIDEA's Strategic Plan, the expanded list of projects listed in HB 119 reflects the type of economic development work undertaken by development authorities in other states. In 2008, AIDEA and DCCED jointly began a comprehensive review of what other states were doing to support economic growth and diversification in their respective economies.

DCCED was engaged in looking at the programs being offered by state development authorities in over 40 states. Commerce staff surveyed these authorities' web sites, interviewed officials in some states, and researched the statutory powers of these disparate state development authorities, comparing their approaches to AIDEA's statutes. This research showed that while AIDEA was pursuing some of the same economic goals of other states, on the whole its statutory powers were more limited in scope.

As Ted Leonard noted in his testimony last week, the Authority is essentially aimed at promoting economic development projects in four sectors: (1) natural resources; (2) industrial sites; (3) energy; and (4) tourism infrastructure.

In contrast, most other state development authorities have powers to effectuate a broader range of projects. For example, the various Port Authorities in Ohio (which are that state's development mechanism) are authorized by Ohio Statutes [Ohio Rev. Stat. 4582.0] to support a variety of projects:

"Authorized purposes" or "purpose" means either of the following:

- (1) Activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority..."

Ohio also has its Enterprise bond fund which makes loans of up to \$1.5 million for eligible businesses include manufacturing, research and development, and distribution. Retail projects are ineligible.

Another factor this review noted was the support many development authorities offered for new technologies and innovative businesses. For example, one of the best known U.S. development agencies is the New Jersey Economic Development Authority. New Jersey is authorized to finance what it terms Technology and Life Sciences, which encompasses biotechnology. New Jersey also offers financial support for information and communication technologies as well as offering early state investment funding.

Similarly, Mass Development and the Wyoming Business Council are set up to support new technologies and innovative businesses.

Another factor that emerged from the review is that few development agencies own and operate development projects as does AIDEA. One exception is the West Virginia Economic Development Authority. The WVEDA under Chapter 3, Article 15 31-15-16(a) can “acquire, construct... and operate projects within the state...”. This is similar to the language found in AS 44.88.172(a) which permits AIDEA to own and operate development finance projects. What differentiates Alaska from West Virginia is that AIDEA can and does own and operate much larger projects than the WVEDA.

The upshot of this joint research effort was AIDEA’s Strategic Plan which, in part, called for seeking legislative authority for AIDEA to broaden and expand the type of projects it could support. One factor was simply to modernize AIDEA’s list of permissible projects by adding industries and sectors that did not exist when AIDEA’s statutes were first drafted; an example would be communications, which now encompasses the internet and cell phones. This was simply not an important economic sector when AIDEA was formed in the late 1960s. Indeed, the last time AIDEA’s list of permissible projects was expanded was 18 years ago, in 1993 when energy was added as a project development category.

In sum, HB 119’s list of new permissible AIDEA projects is an effort to keep the authority in sync with changes in Alaska’s economy and provide a basis for supporting enterprises which could lead to greater diversification of the economy.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

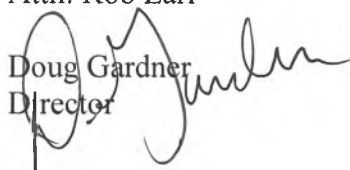
MEMORANDUM

February 9, 2011

SUBJECT: AIDEA Creation of Subsidiaries (CSHB 119(EDT))
(Work Order No. 27-GH1745\M)

TO: Representative Bob Herron
Chair of the House Special Committee on Economic Development,
Trade, and Tourism
Attn: Rob Earl

FROM: Doug Gardner
Director



You requested that we draft a committee substitute for House Bill 119 to incorporate the amendment to section 3 of the bill that was adopted by the House Special Committee on Economic Development, Trade and Tourism on February 8, 2011. In essence, the amendment adding section 3 to CSHB 119(EDT) is virtually identical to AS 18.56.086 (AHFC authority to create subsidiaries). Section 3 allows the Alaska Industrial Development and Export Authority (AIDEA) to create subsidiaries for acquiring, constructing, owning, operating or financing a project under AS 44.88.172:

* **Sec. 3.** AS 44.88 is amended by adding a new section to read:

Sec. 44.88.178. Creation of subsidiaries. The authority may create one or more subsidiary corporations for the purpose of acquiring, constructing, owning, operating, or financing a project financed under AS 44.88.172. A subsidiary corporation created under this section may be incorporated under AS 10.20.146 - 10.20.166. The authority may transfer assets of the authority to a subsidiary created under this section. A subsidiary created under this section may borrow money and issue bonds as evidence of that borrowing, and has all the powers of the authority that the authority grants to it. Unless otherwise provided by the corporation, the debts, liabilities, and obligations of a subsidiary corporation created under this section are not the debts, liabilities, or obligations of the authority.

I have several concerns about section 3 set out above. The purpose of this memo is to identify any constitutional issues so that they may be discussed as desired during additional hearings regarding this bill. I would note, that during additional discussion of section 3, representatives of AIDEA testifying about this bill could provide testimony and

context for AIDEA's intended application of section 3 of the bill that might alleviate my concerns. At present, the concerns that I have are set out as follows:

Public Purpose Requirement

The state Supreme Court has avoided defining "public purpose," in article IX, section 6 of the Alaska Constitution, preferring to treat it as a constantly changing concept. The Court generally defers to the legislature's judgment (e.g., as stated in a statute) as to what constitutes a public purpose. See *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962); *Comtec, Inc. v. Municipality of Anchorage*, 710 P.2d 1004 (Alaska 1985). Therefore, by extrapolation, if the legislature determines that an appropriation serves a public purpose, the purpose will probably be upheld if the determination is reasonable and there is a reasonable basis in fact for making the determination.

Section 3 of the bill allows AIDEA to create a subsidiary for the purpose of acquiring, constructing, owning, operating, or financing a project financed under AS 44.88.172. While the reference to AS 44.88.172 provides limitations on what an AIDEA-created subsidiary might acquire or construct, etc., the latitude allowed the subsidiary is arguably very broad. My concern is that since the subsidiary might make acquisitions or, by implication, dispose of an acquisition based on the subsidiary's and AIDEA's business judgment, an argument might arise that funds were expended beyond the public purpose restriction in article IX, section 6. Since AIDEA and the subsidiary would be making the ownership/sale of assets decision, there would be no findings by the legislature of a public purpose for the court to defer to as discussed above. Again, this is an issue that guidance from AIDEA might resolve, but based on the broad grant of authority in section 3 of the bill, is an issue that a committee might want to address in considering passage of this bill.

Delegation of Authority

Section 3, as discussed above, allows substantial discretion to AIDEA to capitalize the subsidiary corporation authorized by this section, and the subsidiary is authorized to borrow money and issue bonds. In addition, section 3 authorizes AIDEA to grant the subsidiary all the powers that AIDEA, in its discretion, thinks appropriate. Finally, section 3 provides that debts and obligations of the subsidiary corporation are not the debts of AIDEA unless otherwise provided.

This section grants an arguably very broad grant of authority to AIDEA, and in turn, to the subsidiary. AIDEA has a broad range of power of authority vested in it as set out in AS 44.88.080. It appears, the way section 3 is worded, that AIDEA could grant to the subsidiary some or all of the powers enumerated in AS 44.88.080. Such a broad delegation of authority by AIDEA to the subsidiary might constitute an unconstitutional delegation of authority by the legislative branch to the executive branch to grant the subsidiary powers and authority that require legislative authorization. Again, perhaps AIDEA can clarify how section 3 would be implemented to avoid such an impermissible

Representative Bob Herron

February 9, 2011

Page 3

grant of legislative authority to the subsidiary corporation. *See State v. Fairbanks North Star Borough*, 736 P.2d 1140 (Alaska 1987). *Fairbanks North Star Borough v. State*, 753 P.2d 1158 (Alaska 1988).

Sale of Bonds

Section 3 allows the subsidiary corporation of AIDEA to borrow money and issue bonds. While section 3 of the bill contemplates that obligations of the subsidiary corporation are not necessarily debts, liabilities, or obligations of AIDEA, section 3 also suggests that the subsidiary could be structured by AIDEA in a way that the subsidiary's debts, liabilities, and obligations are the obligations of AIDEA. Again, perhaps AIDEA can clarify that bonds sold by the subsidiary are not the debts of the state and are not a violation of article IX, section 8, or are authorized by article IX, section 11, where bonds sold by the subsidiary would only have as security for the bondholders, the revenues of the subsidiary or AIDEA. *See Myers vs. AHFC*, 68 P.3d 386 (Alaska 2003)

In closing, it may be that AIDEA has already addressed all of these issues by way of testimony or position paper. If not, a committee may wish to raise these questions in subsequent hearings regarding this bill. If you have further questions, please advise.

DDG:plm
11-070.plm

Enclosure