

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86 / 2

2832 SRES SB 151

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

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

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

I URGE YOU TO SUPPORT THIS IMPORTANT BILL.

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

NEED

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

BILL OBJECTIVES

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

SAFEGUARDS IN BILL

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

SUMMARY

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

ARGUMENTS AGAINST GOVERNOR'S "AIDA" ALTERNATIVE TO SB151

(HB 377)

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

1. Introduced too late!

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

2. Insignificant Local Role in Decision Making

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

3. Insufficient Ceiling on Total Debt Allowed

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

4. AIDA Operations Could Be Adversely Affected

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

5. Look at Next Year

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

TESTIMONY BEFORE SENATE FINANCE COMMITTEE

CSSB 151, REGIONAL RESOURCE AUTHORITIES

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

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

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

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

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

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

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

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

Alaska State Legislature

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Senate

Committee on Resources

April 5, 1983

Memo

To: Bettye

From: Resource Committee Staff

Subject: CSSB 151, Regional Resource Authorities

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

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

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

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

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



Official Business

Alaska State Legislature

Senate

Resources Committee

Pouch V
State Capitol
Juneau, Alaska 99811

March 18, 1983

Memo

To: Bettye

From: Pat

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

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

Russell Babcock, Bear Creek Mining Company (has a 5:40 plane)
Don Argetsinger, V.P. Nana Development Corp.
Hank Geigerich, President and General Manager, Cominco
Eric Wohlforth, Cominco attorney
Harris Saxon, GCO attorney (Ely, Guess, Rudd)
Administration
Dick Lyon, Commerce
(nobody) DC&RA
Marilyn Morris Elections/Lt. Gov. ?
John Bates, Transportation (Deputy Commissioner)

David Kennedy

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

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

Alaska State Legislature

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Senate

Committee on Resources

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

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

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

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

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

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

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

IN THE SENATE

BY FARRENKAMP, RERTTULA,
FERGUSON AND P. FISCHER

SENATE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(3) The achievement of full employment and the establishment and continuing development of nonrenewable natural resource enterprises in the state will be accelerated by authorizing the creation of instrumentalities in the various areas of the state with powers to borrow money to provide for the development of transportation and port facilities, and to own, operate and maintain transportation and port facilities, as provided in this chapter.

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

CHAPTER 13. REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

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

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

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

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

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

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

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

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

(b) A member of an authority may not vote on a resolution of the authority relating to any agreement to be entered into by the authority under this chapter if the member is a party to the agreement or has a direct ownership or equity interest, beneficially or of record, exceeding one percent in, or is employed by, a firm, partnership, corporation or association that is a party to the agreement. A resolution of the authority that is approved by a majority of all the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.

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

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

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

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

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

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

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

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

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

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

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

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

the bonds; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notwithstanding any other provisions of law, the bonds of an authority are also securities that may be deposited with and may be received by all public officers and bodies of the state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may afterward be authorized.

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

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

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

(1) the project and its development under this chapter will be economically advantageous to the state and the general public welfare and will contribute to the economic growth of the region within which the authority has jurisdiction (in this subparagraph called the region) and the state;

(2) the project sponsor is financially responsible; and

(3) the scope of the project is sufficient to provide a reasonable expectation of a benefit to the region and the economy of the state.

Sec. 30.13.140. JURISDICTION. An authority is not subject to the jurisdiction of the Alaska Transportation Commission.

Sec. 30.13.150. SUCCESSION. Whenever a borough of the first or second class is created with an area coterminous with the area of an authority, the authority shall be integrated into the borough within one year of incorporation. On integration the borough succeeds to all the rights, powers, duties, assets, and liabilities of the authority, provided, that, any indebtedness of an authority does not constitute a general obligation of the borough payable from taxes levied by the borough.

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

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

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

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

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

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

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

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

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

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276-6401

M E M O R A N D U M

TO: NANA Development Corporation

FROM: Wohlforth & Flint

DATE: February 15, 1983

A question has been raised under Article X of the Alaska Constitution concerning the validity of a draft bill prepared by this office to create regional transportation authorities. The draft bill would authorize the residents of the regional education attendance areas (REAs) to form transportation authorities to serve their areas by petitioning the Department of Community and Regional Affairs. Following the petition, an election would be held in the particular REA to decide whether the authority should be created. If the voters of the REA approve formation of the authority, another election would be held to elect members of the board of directors of the authority. In addition to the elected members of the board, the governor would appoint two commissioners to serve on the board. Once formed, the authority would have the ability to issue bonds to finance transportation facilities in connection with resource development projects. It is worth noting that the authority would not have powers of taxation, eminent domain, planning, platting, zoning, or other land use powers, or other powers beyond those necessary to accomplish its purpose of financing transportation facilities. Since an authority could only be formed in an REA, the jurisdiction of an authority would be limited to a specific area of the unorganized borough. The constitutional question, it is believed, arose largely because the draftman of the bill stated at a hearing before the joint House and Senate Resource Committees on February 9, 1983, that the bill provided for "limited local government" by the proposed authorities. We are convinced, however, that the powers to be granted to the proposed authorities are not "local government powers" contemplated by Article X, section 2, to be vested in boroughs and cities and that the creation of the proposed authorities is within the discretion of the legislature under Article X, section 6.

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There are three pertinent sections in Article X; they are Sections 1, 2, and 6. These sections state:

Section 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

The initial question is whether the power to provide financing for transportation facility projects in connection with natural resource development is a "local government power" such that granting the power to a public corporation would violate Section 2 by vesting a "local government power" in an entity other than a borough or city.

The Minutes of the Constitutional Convention (herein "Minutes") reflect little or no discussion of the nature of "local government powers". However, there is considerable discussion of the results the delegates intended to avoid by requiring that such powers be vested in boroughs and cities. The delegates were well aware of the proliferation in other states of local entities which exercised governmental powers. These local entities were autonomous from the municipalities within which they operated, and their powers weakened the ability of the municipalities to coordinate and control governmental activities. The results, which the delegates sought to avoid, were conflicts among the various autonomous entities, as well as between the entities and the municipalities, overlapping jurisdictions, and multiple taxation uncontrolled by a single governmental body. By placing local government powers in a

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borough or city, the delegates felt that a single body -- the assembly or council -- would be able to orchestrate the activities of the various municipal departments and the activities of the boards and commissions established to administer special service areas within the municipality. The exercise of the governmental power on a local level by a single body would avoid the conflicts resulting from the exercise of various governmental powers by a number of bodies within the same overlapping jurisdictions. In this regard, the following comments of the delegates reflect the concerns summarized above and the intent behind Section 2 (page numbers are from the Minutes):

TAYLOR: I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions. Now, we have two governmental functions set up here, the cities and the boroughs. I think that is plenty. They can provide for everything including the schools. So now, if the camel gets his head in the tent by adopting this amendment [to add school districts to the list of entities in which local government powers shall be vested under Section 2] as proposed by Mr. Johnson, he probably will be all in the tent, bringing with him the amendments that establish public utility districts, health districts, public improvement districts, and we will be right back to our old method of numerous taxing bodies which we want to get away from. Now, with the borough and the city I don't believe that there is any reason at all but what the taxing purposes for schools can be set up something along the same lines as it is now.

Pages 2669 -- 2700

HILSCHER: Bearing on this particular subject, a conversation I had last year with an editor of a paper in the State of Washington, a city of about 15,000, he informed me that they had 11 taxing jurisdictions in the particular area in which he lived and if I remember some of them, they were welfare, hospitals, sanitary, harbor, and even a trunk sewer system, and he said that was the one thing that was causing them the greatest worry of

all and that was the spread of the taxing power. I am against it [the amendment vesting local government powers in school districts].

Page 2701

V. RIVERS: [I] am trying to separate just the idea of schools and trying to hold to the principles as to whether the principle of the disbursing and the approvals of budgets shall lie in the body of one general governing body of government or whether you shall have an autonomy without any co-relation between the other activities of government -- whether you shall have an autonomy in just one function and one activity of government. I think that that covers what I have to say except that on the broad principle, I think you can have better government at less expense by correlating the taxing activities and channeling them through one body with one set of appraisers, one set of collectors, one set of condemnors and tax sale experts, and having that money go into one fund for distribution by a general body elected by all of the people no matter what level of government we operate at.

Page 2703

LONDBORG: I have gone along with the Committee in their general thinking of trying to get rid of this overlapping of taxes and [sic] has been mentioned, 10, 12, 15 different agencies, each with a blank check to write all they wish to write on it.

Page 2704

HINCKEL: I would like to ask a question if I may. Your interpretation of Section 2, also, that the borough in an organized borough would probably be the one and only taxing authority? That is, they would handle all of the taxes, and only in unorganized boroughs would the state tax? Would

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that be the way to expect the thing would work out?

V. FISCHER: Yes. We would assume a consolidation there.

Page 2707

ROSSWOG: Our main intention was to try not to have a lot of separate little districts set up, you know, handling only one problem and try to combine them.

Page 2715

These concerns were concisely stated several years after the convention in a book written by a former delegate to the convention. Although without legal value in determining the delegates' intent, the following passage from Alaska's Constitutional Convention by Victor Fischer (University of Alaska Press, 1975), page 119, is helpful as a précis of the delegates' comments:

As seen by delegates, the inadequacies of conventional counties were limited function jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) governmental authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

It should be apparent that the intent behind Article X, section 2, was not to make cities and boroughs the sole repositories of all powers which could possibly be exercised by a city or borough. Such an interpretation would virtually prohibit the state from acting within an organized borough or city. It would cast serious doubt on the validity of any state action taken on a regional basis. Moreover, it could even be said that most non-profit corporations would be prohibited from conducting business in the state, since a city or borough would be capable of exercising their charitable or eleemosynary powers.

The more rational and more likely interpretation is that the delegates intended to vest those powers which are peculiarly "governmental", and which are provided on a local basis, in cities and boroughs. The distinction between local "governmental" powers and other ("proprietary") powers exercised by municipalities has long been recognized. McQuillin, in his treatise, Municipal Corporations (3rd Edition), describes the factors denoting "governmental" functions performed by municipalities:

[A]mong the factors denoting a governmental function is the fact that an activity was historically engaged in by local government, that it is uniformly so furnished today, that it could not be performed as well by a private corporation, that it is not undertaken for profit or for revenue, and that it is not within the imperative public duties imposed on a municipality as agent of the state.

Volume 2, section 10.05, page 743 (footnote omitted). In describing municipal "proprietary" functions (which McQuillin describes as "private"), McQuillin states:

Private, municipal, proprietary functions and powers are those relating to the accomplishment of private corporate purposes in which the public is only indirectly concerned, and as to which the municipal corporation is regarded as a legal individual.... All functions of a municipal corporation not governmental have been said to be private.

Volume 2, section 10.05, page 744 (footnotes omitted). The Attorney General's Office has described, without expressly recognizing, the distinction between governmental powers and proprietary powers. In considering a statute under the municipal revenue sharing program which would have allowed payments to be made by the state to a "Native village government for a village which is not incorporated as a city", Assistant Attorney General Rodger W. Pegues discussed the provisions of Article X, sections 1 and 2. After reviewing the history and purpose of those sections, Assistant Attorney General Pegues stated in his opinion:

The use of traditional village councils or IRA councils to provide local government services is at odds with the constitution's provisions on local government. The public services they would perform are those which local governments perform.

Op. Att'y Gen., April 27, 1981, p. 3. As noted earlier in this memorandum, two of the factors denoting governmental powers are "the fact that an activity was historically engaged in by local government" and "that it is uniformly so furnished today". Assistant Attorney General Pegues then acknowledged the difference between governmental and proprietary functions, again without expressly so designating them, by stating:

This is not to say that the state cannot contract with a racially (or religiously) exclusive group to provide public services or manage a public facility on a non-discriminatory basis for all the residents of a community. On a limited basis, therefore, grants can be made to IRA councils in their capacity as business corporations to provide some public services. The state constitution, however, bars the de facto establishment under state law of these councils as the local governments of Alaska's villages.

Id. at pages 3 and 4. Thus, provision for the performance of essentially proprietary services in the unorganized borough by a private corporation, in the opinion of the Attorney General's Office, would not violate the constitution.

The distinction between "governmental" and "proprietary" functions was also set out in Britt v. City of Wilmington, 73 S.E. 2d 289 (N.C. 1952), as follows:

So then, generally speaking, the distinction is this: If the undertaking of the municipality is one in which only a governmental agency could engage, it is governmental in nature. It is proprietary and "private" when any corporation, individual, or group of individuals could do the same thing.

73 S.E. 2d at 293 (citation omitted).

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The financing of transportation facilities in connection with resource development projects is not an activity historically engaged in by local governments and is certainly not uniformly furnished by local governments today. It is a function which could be, and undoubtedly is, performed by private corporations. In performing this function, the acts of the transportation authorities would only indirectly concern the public at large. Under McQuillin's description, this power is clearly "proprietary" and not "governmental". The operation of a transportation facility has been found to be a proprietary function (Albuquerque v. New Mexico State Corp. Commission, 605 P.2d 227 (New Mexico 1980)), and the financing of privately owned facilities, as may be the case with the authorities, is characterized as "private activity" financing in the conference report accompanying the Tax Equity and Fiscal Responsibility Act of 1982. Bonds of local governments or public corporations issued for these purposes enjoy tax exemption only if issued for certain narrowly defined purposes or in limited amounts.

It is the exercise of the "governmental" powers by more than one municipal unit with the same or overlapping jurisdictions which results in the kind of conflict and duplication the delegates to the constitutional convention sought to avoid. Placing in the proposed transportation authorities the power to assist in the financing of private projects without more (that is, without placing in them any power of eminent domain, any power of taxation, any power of regulation, or any other "governmental" power) could hardly lead to the problems perceived by the delegates. If authorizing the creation of such entities with such limited powers is a violation of Article X, section 2, then the state must carefully review its corporations code, in which authorization for the incorporation of such entities by private individuals is also provided.

Even if the powers contemplated for the proposed authorities should be considered "local government powers" for purposes of Section 2, the legislature nevertheless derives authority for the creation of such authorities in the unorganized borough from the provisions of Article X, section 6. Section 6 expressly directs the legislature to provide for the performance of services it deems necessary or advisable in unorganized boroughs and, in connection with those services, further directs the legislature to allow for maximum local participation and responsibility. The use of the language,

"deems necessary or advisable", was expressly considered by the delegates to clarify their intention to allow wide discretion in the legislature in determining what services to perform. Delegate Ralph Rivers explained the significance of the words:

The point was made yesterday that where it says, "the legislature shall provide for the performance of necessary functions," and somebody said, "Who decides what is necessary?" and the Committee said it would take it under advisement. I pursued the point a little bit and drafted this language, "for the performance of services it deems necessary or advisable". In the first place, it specifies that the legislature is the one who shall use its discretion; it clears up that point and also improves the context a little.

Minutes, Part 4, page 2729. There was no intent that, in order to receive services which could be performed by a local government unit, the unorganized area should have to organize into a borough or city. Provision of services by the legislature until such time as organization occurred was clearly foreseen. Delegate Rivers further stated:

Speaking of unorganized areas where they don't have any self-functioning. [sic] Here the state would perform those services that the legislature deems necessary or advisable until such time as the area does get organized.

It cannot reasonably be disputed that, within the unorganized borough, the legislature may provide for the services contemplated in the proposed legislation. The local election of members of the board of directors of the proposed authorities simply complies with the dictates of Section 6 to allow for maximum local participation and responsibility.

It should be emphasized that Section 6 authorizes the legislature to provide for services in the unorganized borough; it does not require that the legislature or the state actually perform the services. This point was discussed at the convention, as reflected in the following dialogue between Delegates Taylor and McLaughlin at page 3609 of the Minutes:

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TAYLOR: Mr. McLaughlin, isn't it a fact that that [the phrase "shall provide for the performance of services"] would possibly mean that the legislature would provide a manner in which unorganized boroughs could provide their people in that borough with these certain services? The legislature is not going to provide the services or performance of services, are they?

McLAUGHLIN: When they say "shall provide for the performance of services", it means they shall make provision for them.

TAYLOR: Then in an unorganized borough then, if they were in need of garbage services, the legislature would hire garbage men? Is that right?

McLAUGHLIN: It doesn't necessarily mean that. There are two possible meanings. If we said the legislature "shall" provide the services, that would be one thing; but if we say the legislature shall provide for the performance of services, I think that that means another thing. That is, they can set up the rules and conditions and circumstances under which the services will be provided.

It was the latter phrase ("shall provide for the performance of services") which the delegates chose. The reasonable conclusion, based upon Delegate McLaughlin's explanation, is that the state need not perform the services but can "set up the rules and conditions and circumstances under which the services will be provided."

For the foregoing reasons, we are convinced that (1) the powers granted to the proposed authorities are not "local government powers" which must be vested in cities or boroughs; and (2) the creation of the proposed authorities is well within the authority of the legislature to provide for services in the unorganized borough, allowing for maximum local participation and responsibility.

Alaska State Legislature

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ROBERT H. ZIEGLER, SR., Vice Chairman
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Senate

Committee on Resources

March 24, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Amendments to CS for SB 151

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

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

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

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

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

Alaska State Legislature

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Senate

Committee on Resources

March 25, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

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

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

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

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

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

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

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

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

interest on [of] the bonds to be issued, and that the issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds.

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

PROPOSED AMENDMENT TO CS SB 151 SUBMITTED BY

COMINCO/NANA , March 24, 1983

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

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

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279-8401

MEMORANDUM

TO: Senate Resources Committee

FROM: Wohlforth & Flint

DATE: March 23, 1983

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

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

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

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

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

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

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

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Page 2

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

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

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

RIDER

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

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

p.3 - new (b)

under AS 30.13.010

The statement required ~~by~~ ^{shall} (a) of ~~this section~~ ^{is to be} to be submitted to the governor ~~must~~ ^{shall} include: (1) ^{which} the purpose for the ~~creation~~ ^{of projects} of the authority; (2) the goals ^{the authority will seek} to accomplish; (3) an analysis of ~~any~~ ^{of the proposed authority} alternative method of accomplishing the goals ^{described in (2) of this subsection}; and (4) the reason for establishing ~~of~~ the authority rather than using ^{an} alternative described in (3) of this subsection. ^{Prior to} ~~Before~~ the ~~division of elections~~ ^{division of elections} schedules an election under ^{AS 30.10.010} (c) of ~~this section~~ ^{in AS 30.10.010}; the governor ~~must~~ ^{shall} review the statement submitted under this section and ~~deliver~~ ^{submit} to the division of elections findings that:

1) the accomplishment of the goals ^{of projects of the authority} described under (2) of ~~this subsection~~ ^{of this subsection} would be advantageous to the state and to the region's economic growth; and ²⁾ that creation of the authority is a ^{appropriate} desirable method of accomplishing those goals ^{projects}.

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

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

Replace (f) in 060 on p. 9

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

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

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

SB 151, Creation of Regional Resource Development Authorities

FORMULA DETERMINATION, Gathering of Signatures

As now proposed in the legislation, 50 signatures would be required from any REAA district to petition for a special election to create a Regional Resource Development Authority (RRDA). After that election, another 50 signature petition would instigate a second election for voting on board members for the new RRDA. The signatures for the petition could be gathered from any one village in the REAA area, proposing an election for the entire area.

A new formula for the gathering of signatures could be devised from elements of present law that would still give equitable access to the ballot, yet more fully inform and involve the residents of the entire area that new elections and an RRDA are proposed.

FORMULA PROPOSAL

Using the Initiative and Referendum formula for municipalities and service areas, AS 29.28.070, this would require that in each REAA (except #4) that signatures be gathered equal to 25% of the number of voters voting in the last REAA election. This would be a greater task than the gathering of 50 signatures, yet give a better measure of the RRDA acceptance in the service area.

To insure that signatures are not gathered from one town or village, an element of the statewide initiative requirements should be incorporated, requiring that signatures be gathered from more than one village, except in REAAs that are composed of just one village. Not to be prohibitive, this section could read, "...with signatures secured from voters residing in more than one village area within an REAA district, except those REAAs composed of one village area."

Finally, an element of AS 15.25.170 could be incorporated to give the dimensions of the signature gathering task; requiring that any petition requesting a RRDA election contain no less than 50 valid voter signatures.

In summary, an RRDA election petition would be based on the present initiative statute for municipalities, AS 29.28.070, would contain signatures of voters from more than one village area within an REAA district, and have no less than 50 valid voter signatures from the REAA district.

Finally, in any formula adopted by the legislation, there should be a provision for review of the signatures on the petition, notification of the proper or improper filing, and provision for supplementary petition filing where necessary, elements that are currently authorized in both the municipal statutes, AS 29, and state election law, AS 15.

FORMULA APPLICATION : GATHERING SIGNATURES

SB 151, CREATION OF REGIONAL RESOURCE DEVELOPMENT AUTHORITIES

REAA #	# REG. VOTERS	# VOTING '82 REAA	FORMULA 1 25%	FORMULA 2 3%	# VILLAGES
1	2791	1209	302	36	11
2	2102	791	198	24	15
3	2076	869	217	26	12
4	5251	2240	336*	67	22
5	817	412	103	12	6
6	941	447	112	13	8
7	735	255	64	8	8
8	341	145	36	4	4
9	393	142	35	4	2
10	551	180	45	5	1
11	895	407	102	12	7
12	1455	515	129	15	11
13	1061	573	143	17	10
14	1110	230	58	7	5
15	1947	448	112	13	2
16	1317	539	135	16	9
17	1784	569	142	17	6
18	927	412	103	12	5
19	1090	325	81	10	14
20	639	258	65	8	1
21	508	115	29	3	1

* 15%, over 7500 residents

Div. Elections

institute of Public Administration

ESTABLISHING PUBLIC CORPORATIONS IN ALASKA

A GUIDE FOR LEGISLATIVE DECISION MAKING

A REPORT TO
THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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ESTABLISHING PUBLIC CORPORATIONS IN ALASKA
A GUIDE FOR LEGISLATIVE DECISION MAKING

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ESTABLISHING PUBLIC CORPORATIONS IN ALASKA
A GUIDE FOR LEGISLATIVE DECISION MAKING

1. Introduction

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

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

What are the characteristics of public corporations or authorities?

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

public authorities, commissions, banks, services or agencies.

How do public corporations differ from regular government?

Public corporations differ from government itself in these ways:

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

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

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

*They have separate legal identity (corporate personality);

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

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

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

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

2. Selecting the Corporate Form

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

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

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

- *Increased access to bond markets;

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

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

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

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

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

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

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

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

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

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

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

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

What are the alternatives?

Not all of the differences between public corporations and line

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

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

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

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

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

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

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

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

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

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

3. The Design of the Corporation

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

Legislative intent and oversight

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

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

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

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

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

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

The relationship of the corporation to the state government

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

*What role should the related department play?

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

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

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

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

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

districts of the Pacific Northwest).

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

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

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

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

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

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

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

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

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

Impact on state budgets

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

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

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

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

Impacts on capital finance and debt

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

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

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

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

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

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

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

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

What will be the management capabilities of the corporation?

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

established are undermined.

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

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

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

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

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

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

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

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

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

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

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

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

How should legislative oversight be exercised?

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

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

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

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

4. Implications of the Guide for the Alaska Railroad

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The INSTITUTE OF PUBLIC ADMINISTRATION (IPA) is a private, nonprofit, nonpartisan organization. It conducts research, advisory and educational activities in public administration, urban affairs, and management and finance of governments. IPA is chartered under the education laws of New York State.

Founded in 1906 as the Bureau of Municipal Research, the activities of the Institute of Public Administration are directed toward the solution of emerging problems at home and abroad, and emphasize innovation, demonstration of new techniques and communication among governments and between the public and private sectors.

IPA's professional staff includes specialists in public and business administration, finance, political science, law, planning, engineering, library science and economics. Offices are located in New York City and Washington, D.C.

'Separate' agencies rely

by Ed Bennett
Times Business Writer

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

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

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

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

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

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

- By and large, the Alaska Housing Finance Corporation is extremely well prepared to deal with even a large number of foreclosures on its mortgages.

- The Alaska Industrial Development Authority has also protected itself quite thoroughly.

- On the other hand, a number of serious questions have been raised about the Alaska Power Authority



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Billions of Dollars

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Last week, a speci a Chicago economic c

Alaska's Debt

(principal plus interest)
As of March 1, 1983

Billions of Dollars

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Alaska Housing Finance Corporation

Municipal Board Bank Authority

Alaska Power Authority

Alaska Industrial Development Authority

Other

State General Obligation Bonds

Sources: Agency & State Financial Reports & Interviews

Total: Appox. \$8.5 billion

Backed by State (Approved by Voters)

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

Dev Postman of The Times

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finished and the state refuses to
pay off the loan? "The market
looks very dimly on people who
do not honor their obligations,"
Kuplesky replied.

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

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

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

Last week, a special report by
a Chicago economic consultant

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

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

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

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

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

But the price of oil did go
down.

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

See State, page I-2

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

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

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

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

State may be liable for default

Continued from page I-1

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

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

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

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

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

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

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

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

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

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

payments well into the next century.

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

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

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

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

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Senator Kerttula, Chairman
Senator Bennett
Senator Dankworth
Senator Fahrenkamp



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State Capital
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

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

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

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

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

Enclosure (1)
EH:pm

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

December 27, 1982

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

TO: The Senate Advisory Council

From: Tamara Brandt Cook
TBC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TBC:lmb

LETTER OF INTENT

It is the intent of the Committee to authorize the establishment of regional authorities which will have the capability to issue tax-exempt revenue bonds for the purpose of enhancing the development of resource enterprises which would contribute the economic growth of the state and various regions. It is the intent of the Committee that the authorities established pursuant to this legislation would not create any financial liability or obligation by the state for bonds issued for resource enterprises. Nor is it the intent that the issuance of any such bonds by authorities adversely affect the ability of the state or any of its political subdivisions to market their own bonds. Rather, it is the intent that to the maximum extent possible that liability for bonds issued rest with the regional authority and the specific resource enterprise involved, not the state, successor boroughs or other municipalities or other projects or citizens in the region or state.

I. REQUEST

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

II.

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		.4				
300 CONTRACTUAL		19.6	10.4	11.0		
400 COMMODITIES		.6				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	20.6	10.4	11.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Linda Dupere, Administrative Assistant
 Division: Division of Elections

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

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

Date: 4/12/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

SENATE BILL 151

ASSUMPTIONS:

1. An election will be held in one REAA area creating one Regional Resource Development Authority. If the election does not take place at the same time as a regularly scheduled REAA election, there will be a fiscal impact.
2. The above question passes and an election of the initial five member board takes place not less than 60 nor more than 90 days after the order of election. There will be a fiscal impact.
3. Subsequent election of members, after the initial members' terms have expired, takes place at the same date as a regularly scheduled REAA election. Only the Contractual Services category will be affected and is figured at 6% inflation.
4. This analysis is computed for an election of an RRDA and board members for one REAA area. If there should be elections in all 21 REAA areas, multiply \$20.6 x 21 to compute the fiscal impact. (432.6)

FISCAL NOTE

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND		30.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS 0

FULL TIME						
PART TIME						
TEMPORARY						

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

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

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

AGENCY House Finance Committee

Original: Legislative Finance PHONE 465-3706

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

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