

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86 / 2

2833 SRES SB 151 - SB 156

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 3, 1983

Honorable Arliss Sturgulewski
Alaska Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSB 151
Our file no.: 366-575-83

Dear Senator Sturgulewski:

This letter responds to your inquiry regarding the establishment of regional resource development authorities (authorities) under CSSB 151.

The proposed establishment of up to 21 authorities in the unorganized borough, each with authority to issue bonds to finance the development of regional transportation facilities, raises a myriad of complex policy and legal concerns. Resolution of the difficult policy considerations has been actively pursued through the several committee hearings, and has resulted in the adoption of numerous amendments, many of which relate to your concerns regarding the propriety of more extensive executive oversight of the formation and bonding activities of an authority.

Resolution of the legal questions is no less difficult. The legal questions addressed in this letter are quite novel, and cannot be answered with any degree of certainty. Indeed, this letter can perhaps be more accurately described as identifying the relevant legal concerns rather than offering a legal analysis and result. In substantial part, the legal uncertainty reflects the curious endowment of each authority with attributes of both a political subdivision and a state agency. While the difficulty in assigning a label may not be significant in itself, the cumulative lack of legal certainty may itself implicate separate policy considerations.

With the foregoing qualification in mind, it is our view (1) that an authority is a permissible limited purpose political subdivision of the state, (2) that the state has no

legal liability in the event that an authority defaults on its debts, and (3) that the proposed provisions for succession to a subsequently established local government are adequate. We explain our conclusion below.

1. Is establishment of an authority permissible under art. X of the Alaska Constitution?

The bill proposes the establishment of authorities across the unorganized borough in areas coterminous with the existing boundaries of Rural Education Attendance Areas (REAs). Though limited in other respects, an authority would have broad, if not plenary power with respect to the financing of a transportation facility within its jurisdiction. Article X, section 2 of the Alaska Constitution provides, however, that "[a]ll local government power shall be vested in boroughs and cities." Since, of course, an authority is neither a borough or a city, it is arguable that their establishment is contrary to the constitutional provision.

Testifying in support of the legislation, representatives of the NANA Development Corporation suggested that an authority does not possess the requisite "local government power" to be subject to the article X prohibition. The argument posits a distinction, at least with respect to the applicability of article X, between governmental and proprietary functions of local governmental entities.

Though the proffered argument is plausible, we have substantial reservations whether a court would similarly conclude that the proposed authorities are beyond the scope of article X. It is first arguable that the powers of an authority are governmental, not proprietary. The determination of whether a function is governmental or proprietary is "often a difficult question to answer." 5 E. McQuillin, The Law of Municipal Corporations 10.05, at p. 743 (1979). Among other considerations, the extent to which a function is traditionally engaged in by local government is entitled to substantial weight. Id. Under present law, the power to provide for facilities proposed for financing by an authority is one traditionally accorded to municipalities in Alaska, suggesting that the power of an authority to provide for transportation facilities is a local government power. See AS 29.48.030(a)(3), (8) and (12). In the same vein, AS 29.58 authorizes municipalities to issue revenue bonds to finance the

development of capital projects, again suggesting that the financing powers of an authority parallel the traditional powers of local governments in Alaska. More fundamentally, our research discloses no case authority or historical documentation to suggest that the constitutional framers intended to limit the scope of the art. X prohibitions in the suggested fashion. To the contrary, the desire to avoid the proliferation of local governmental units explicitly articulated in sec. 1 would appear to be as salient regardless of whether an entity is exercising what may be labeled proprietary rather than governmental functions. And, the explicit exception in art. IX, sec. 11 relating to revenue bonds issued by a public corporation established by a political subdivision further suggests that in other instances where a political subdivision acts in what may be regarded as a proprietary capacity, it remains subject to constitutional limitation.

That an authority is within the ambit of art. X does not, however, necessarily lead to the conclusion that their establishment is unconstitutional. Section 5 of art. X authorized the assembly of an organized borough to create service areas for the provision of special services not common to the entire borough. Article X, sec. 6 authorizes the establishment of comparable service areas in the unorganized borough:

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.

In our view, the legislature may establish regional resource development authorities in its role as the assembly for the unorganized borough. The resultant authorities serve a limited purpose -- the promotion and financing of transportation facilities in a specific area of the unorganized borough. And, since the unorganized borough itself a political subdivision of the state, Walters v. Cease, 388 P.2d 263, 264 n.1 (Alaska 1964), a constituent part of the unorganized borough must as well be a political subdivision. See generally 1977 Op. Att'y Gen. No. 15 (March 26) (REAs are limited purpose political subdivisions).

We do recognize that an authority has certain attributes of a state agency. See e.g., Alaska State Operated School System v. Muller, 536 P.2d 99 (Alaska 1975). The governor must certify the need for establishment of an authority. The

governor is further authorized to appoint three of the eight board members from among the principal heads of executive departments. And, the state bond committee, comprised of the commissioners of commerce, revenue and administration (AS 37.15.010) is accorded oversight responsibilities.

On balance, however, we conclude that organization through local election in addition to the numerous other provisions establishing a modicum of local autonomy are more determinative of the characterization of an authority. If, in the unlikely event that a court were to conclude otherwise, the failure to place the authorities within an executive branch department would be problematic. Alaska Const. art. III, sec. 22.

2. it there any potential for the state to be liable in the event that an authority is unable to satisfy its debts?

Assuming that a regional resource development authority constitutes a permissible political subdivision of the state, you ask if that relationship imposes any possible legal obligation for the state to satisfy debt service obligations in the event that the assets of an authority prove inadequate. As a general proposition, the state has no legal obligation to guarantee satisfaction of debt service obligations on bonds issued by a political subdivision of the state. See Kenai Peninsula Borough v. State, 532 P.2d 1019, (Alaska 1975); cf. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966); DeArmond v. Alaska State Development Corp., 376 P.2d 717 (Alaska 1962). While SB 151 purports to immunize the state from any potential liability, sec. 30.13.090(b), we caution that it is arguable that in certain instances the legislature may have a constitutional obligation to preserve the ability of an authority to maintain its operation of a transportation facility. That argument derives from the requirement in art. X, sec. 6 for the legislature to "provide for the performance of services it deems necessary or advisable in unorganized boroughs."

Under the authority of article X, sec. 6, we have previously advised the legislature that it "may well have an obligation to satisfy judgments against REAA's." Inf. Att'y Gen. Op. (April 22, 1982; J66-668-81). It is our estimation that whatever the legal obligation for the state to satisfy the debts of an REAA, it is a tenuous proposition at best to extend that analysis to impose a requirement for the state to satisfy bond obligations of an authority. First, the provision of education in the unorganized borough is mandated under article VII of the

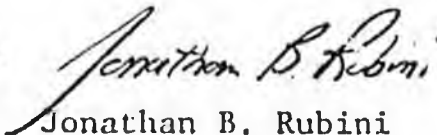
constitution, while there is no corresponding constitutional obligation for the legislature to provide for transportation facilities in the unorganized borough, however essential such facilities may be for regional development. And, more significantly, an REAA has no independent ability to raise revenue to satisfy its debts. In contrast, purchasers of bonds issued by an authority principally rely on the financial integrity of a proposed facility to generate sufficient revenues to meet in interest and principal payments on the bonds. In sum, we think it unlikely that the state would be held legally accountable for the debts of an authority.

3. Would a future borough be subject to the debts of an authority?

You finally ask whether, and to what extent, establishment of an authority may effect the subsequent creation of a borough or home rule municipality. The intergration of special service districts with a subsequently established borough is required under article X, sec. 15. In accordance with the objectives of article X, sec. 30.13.150 provides that the assets and liabilities of an authority are transferred to a borough or home rule municipality which is "created with an area coterminous or inclusive of the area of an authority." Quite properly, the section further provides that an assumed indebtedness does not constitute a general obligation of the new governmental entity subject to satisfaction through the taxing powers of the borough or municipality. To provide otherwise would transform a revenue/limited obligation bond into a general obligation bond, and would thus provide bondholders an unanticipated windfall. In sum, whether either the stringent standard of conterminous/inclusive boundaries or the relative financial success of an authority inhibit or promote the formation of local government in the unorganized borough is a legitimate concern, but is more a matter of policy than of law.

We apologize for the delay in providing a written response. If we can be of further assistance in the matter, please do not hesitate to call.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Jonathan B. Rubini
Assistant Attorney General



Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801

907-586-2345

24 March 1983

REGIONAL RESOURCE DEVELOPMENT AUTHORITIES: ISSUES AND PROBLEMS

INTRODUCTION

Senate Bill 151 allows the creation of 21 Regional Resource Development Authorities in Alaska, with full powers to issue revenue bonds for mining roads and ports. This bill would immediately benefit the development of the proposed Red Dog mine in northwest Alaska. But the larger issue is whether the state needs to create a new form of government in the unorganized borough which can issue unlimited amounts of tax exempt revenue bonds.

TAX EXEMPT BONDS

Bonds are usually tax exempt when they are issued by a state or local government (or an agent of a state or local government) and are used for a public purpose. Because the interest on these bonds is exempt from federal taxes, they are popular with investors, and hence have lower interest rates. General Obligation Bonds require approval by the voters and are usually paid off by taxes or any other state revenues. Revenue bonds should pay for themselves, out of the revenues from the project that was financed by the bonds, in this case a "toll" on mining developments and roads. Since these bonds are supposed to be paid off through user fees, they do not require voter approval. 85% of Alaska's \$8.5 billion debt was incurred by revenue bonds--in other words, without voter approval.

After RRDA's are established by local elections, they can issue tax exempt revenue bonds for roads and harbor development. The issuing of these bonds does not require either state approval or voter approval, according to the current committee bill. Because the interest rates on these bonds would be lower than the rates for bonds issued by private corporations, they could encourage mining development that might not otherwise be possible. The effect is marginal, as the current difference in interest rates is about 3%, but the mining companies insist that this advantage is essential for profitability.

PAYING OFF REVENUE BONDS

The tolls from the roads and port facilities normally would pay the interest and principle due on the bonds. If the mining company fails to pay the tolls and charges required to pay for the road, the authority will be able to take legal action against the mining company. If, however, there is a deep slump in mineral prices, the mining company may go bankrupt, and the authority will have no way to pay off the bonds--except by going back to the state of Alaska and asking for more money.

Under SB 151, the state of Alaska has no legal obligation to help authorities in trouble. As a practical matter, however, the state must come to the rescue, or suffer the consequences of having the reputation of Alaska's bonds all being suspect. This is a problem common to all state authorities. An article in the Sunday, March 20, edition of the Anchorage Times, "'Separate' Agencies Rely on State Backup" investigated this problem. Harold Kuplesky, of the Bankers Trust Company, authorized a \$50 million line of credit to the Alaska Power Authority. The Times reported:

Harold Kuplesky isn't worried. Why? "As a backup, we have the state of Alaska standing behind the project." And if Tye isn't 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."

THE BABY ELEPHANT PHENOMENON

A report to the Legislative Budget and Audit Committee, "Alaska's Public Corporations," by the Institute of Public Administration (Jan. 1982) described this situation in more vivid terms on page 48:

History has shown very clearly that unless state governments become involved in any bail out arrangements for their corporate subsidiaries, state credit will be damaged if not cut off by bond market participants. Market analysts call this the 'baby elephant phenomenon'. The elephant (the indebted corporation in trouble) stumbles up on the state's front porch and says, "feed me or I'll fall down dead on your doorstep."

OTHER STATE SUBSIDIES

In Senate Bill 151, elections for Regional Resource Development Authorities will be paid for by the state. The operating expenses for the authorities are not specifically provided for. The door is left open for gifts, grants, loans, and payments for contracts from the state, as well as from individuals, private organizations, municipal governments and the federal government.

LOCAL CONTROL

One of the attractive points of SB 151 is that it provides for a measure of local control of road and port development. The RRDA's will be governed by a board of eight members. Five are elected by voters in the region (a region has the same boundaries as one of the regional educational attendance areas) and three are appointed by the governor. The authority has been likened to a single purpose local government. It is established to build roads and ports, but it does not have powers of land use planning, zoning, permitting, or taxation. The bond issues are approved by the Board, but are not voted on by the members of the region.

A development authority may be succeeded by a first or second class borough. If an authority fails and goes bankrupt, the subsequent formation of a borough may be complicated or prevented by the legal and financial wreckage of the authority.

ALTERNATIVES TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES

There are several alternatives to RRDA's which provide tax exempt bonding and local control, without risking the state's credit rating.

1. One alternative is to form a new borough in the area(s) that wants to develop roads and ports. The revenue bonds would be issued by the borough or an intramentality of the borough, as was done in Valdez. Because the borough has powers of planning, zoning, and permitting, greater local control is possible than with RRDA's.
2. Another alternative is to modify the Alaska Industrial Development Authority statutes so that they can fund larger projects, and fund roads projects. (Ports are already included.) Local control language is already in place for local governments; it could be extended to include rural areas.
3. Finally, tax free revenue bonds could be issued by the Department of Transportation. This technique is already used for airport construction. With this approach, areawide transportation planning is encouraged, and the chaos of 21 separate transportation authorities is avoided. Additional statutory provisions for local review of state projects would be needed.

\$10,000

Per Capita Long Term Debt of
State and Local Governments
Outstanding, FY 1979-80

\$9,000

\$8,000

\$7,000

\$6,000

DEBT PER
CAPITA

\$5,000

\$4,000

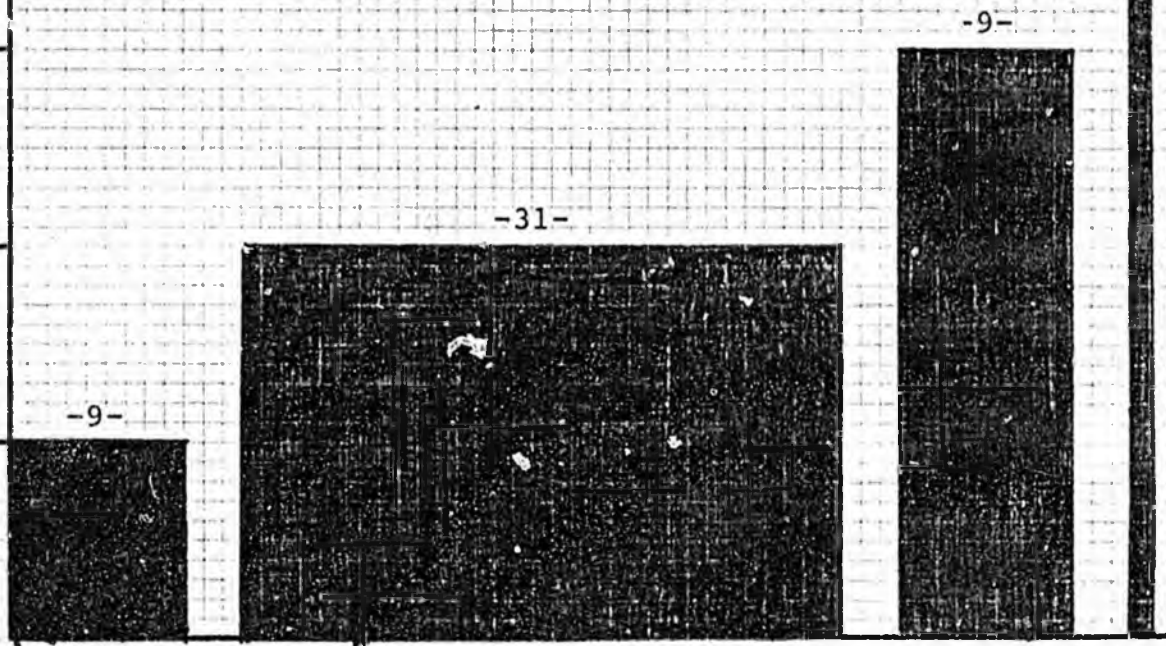
\$3,000

\$2,000

\$1,000

0

ALASKA →



NUMBER OF STATES



Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801

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25 March 1983

Senate Resources Committee

Amendment 1

Section 30.13.040 (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;

Rational:

Section 30.13.090 says the state is not directly or indirectly obligated to pay off RRDA revenue bonds. Striking the work "state" further emphasizes the intent of this legislation that the RRDA's not rely on state subsidy.



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25 March 1983

Senate Resources Committee

Amendment 2

Page 5, Line 3-5: A majority of the members of an authority plus one constitutes a quorum for the transaction of business.

Rational:

Without this provision an authority board could conceivably carry on business without any of the three governor's appointees present. It eliminates a potential abuse by the authority board.



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25 March 1983

Senate Resources Committee

Amendment 3

Add: Section 30.13.065 Bond sales by authority are subject to AS 37.15.020.

(Section 37.15.020 MANNER AND AMOUNT OF SALE. The state bond committee shall sell bonds of each authorization in the amounts and series and at the times which it finds are for the best interests of the state and its inhabitants.)

Rational:

With a potential addition of 21 revenue bonding authorities, timing of actual sales is critical to insure the best rates. This provision would provide coordination among various bond sales by requiring the Bond Committee to oversee all sales.



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25 March 1983

Senate Resources Committee

Amendment 4

Add: Sec. 30.13.0?? ANNUAL AUDIT. An authority shall have its financial records audited annually by the legislative auditor or by a certified public accountant approved by the legislative auditor. The legislative auditor may prescribe the form and content of the financial records of an authority and shall have access to these records at any time.

Rational:

Legislative oversight of any authority is essential. The case of the Alaska Power Authority is illustrative. This amendment is based on AIDA statutes (AS 44.88.200).



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25 March 1983

Senate Resources Committee

Amendment 5

Add: Sec. 30.13.0?? Prior to any bond sale over \$10,000,000, an authority will obtain an independent feasibility study and plan of finance in accordance with AS 44.83.181.

Rational:

(AS 44.83.181. attached) An independent economic analysis is essential to insuring that each issue of revenue bonds can reasonably be expected to be paid back in full, from revenues generated by the development project. This provision was recently added to the Alaska Power Authority statutes - for obvious reasons.



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25 March 1983

Senate Resources Committee

Amendment 6

Add: Sec. 30.13.0?? An authority may not issue revenue bonds other than refunding bonds for a project under this chapter in an amount greater than \$50,000,000 during any 2 year period unless the legislature, by law, approves the issuance.

Rational:

Similar to AS 44.88.090 (g) (2) of the Alaska Industrial Development statutes. Legislative oversight of the debt of the state of Alaska is essential if the debt burden of Alaska is to be kept to the lowest level necessary.



Bear Creek Mining Company

Exploration Division of Kennecott Corporation

Anchorage
Office

March 23, 1983

The Honorable Bettye Fahrenkamp, Chairman
Senate Committee on Resources
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 151

Dear Senator Fahrenkamp:

Following the hearing on Friday, March 18, consultation with our parent companies, Kennecott and Sohio, with GCO Minerals, and with representatives for Cominco and NANA, suggested some modification of the Draft Committee Substitute was in order. The following modifications were found acceptable:

- 1) Sec. 30.13.010 Line 8: delete "has jurisdiction over" and insert "may exercise its powers within".

This change will make clear the fact that the authority does not have sole jurisdiction over transportation facility development but has a non-exclusive jurisdiction within the region.

- 2) Sec. 30.13.030 Line 4: insert after transportation purposes "in connection with natural resource enterprises."
Sec. 30.13.040 Line 3: insert after its corporate purposes "as set forth in Sec. 30.13.030,"

These changes are recommended to clarify that an authority under this chapter may deal only with transportation facilities and only where they are related to natural resource enterprises.

- 3) Sec. 30.13.130 (b)(2): delete "sponsor" and "responsible" and add "feasible", so that it now reads "the project is financially feasible; and"

It is desirable for all concerned that any project pass a feasibility test before going ahead.

- 4) Sec. 30.13.150: add to the end of this section the following sentence: "The borough may not levy taxes to pay such indebtedness."

It is desirable to link the project to the

natural resource enterprise for which it was created, and protect other projects within the authority's or borough's jurisdiction from the burden of such indebtedness.

One further suggestion which, for reasons of urgency in submitting our comment to you on March 25, has not been fully discussed with or agreed upon by the representatives of GCO Minerals, Cominco or Nana, is as follows:

- 5) As an addition to sentence 1, Sec. 30.13.060 (f)(2) as presented in the Senate Resource Committee Staff memorandum dated March 21, 1983, consider adding the following: "and that agreements between the authority and the party or parties sponsoring the natural resource enterprise will enable the authority to meet the financial obligations of the project."

A similar phrase might be considered as an addition to Sec. 30.13.130 (b), as well.

Again, the intent of this addition is to insure that to the maximum extent possible the liability for any project be directed toward the natural resource enterprise and away from other projects or citizens in the area, or the state.

- 6) Our general comments are as follows:

The Red Dog Mine is a truly world class deposit capable of producing significant lead, zinc, and silver over the next century. The principles, Cominco and NANA, are eminently responsible. The assessment now in progress by these parties is thorough and exacting. When a decision to go into production is made, a viable mine will result. Therefore, our concern about financial security and administrative responsibility is not directed at this specific enterprise, probably the first to operate under this specific legislation, but at future authorities which might be established in support of less secure and reasonable enterprises.

A concern of ours is that all users of facilities under the jurisdiction of an authority created under this chapter receive non-discriminatory treatment, and this point appears to have received attention in Sec. 30.13.130. Another concern is that other enterprises and the state be as free as possible from any liability

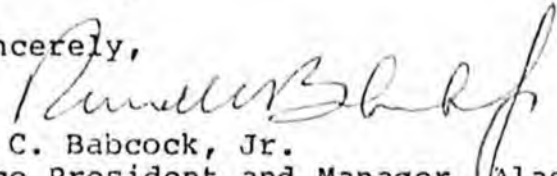
The Honorable Bettye Fahrenkamp
March 23, 1983
Page 3

generated by the authority. Such liability, if unsecured by the enterprise itself, might eventually result in additional tax burdens on others, including the State. We feel that the suggestions we have submitted here will assist in insuring this security. We endorse the recommendations of the Senate Resource Committee Staff dated March 21 which provide further for financial responsibility, clarity, and a limit to the time for formation of authorities.

Finally, subject to your consideration of these comments and suggestions, we favor your expeditious action on this Bill in order to provide a mechanism for financing natural resource development.

Thank you.

Sincerely,



R. C. Babcock, Jr.
Vice President and Manager, Alaska

RCB:dl

Alaska State Legislature

BETTYE FAHRENKAMP
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Senate

Committee on Resources

- 1) Senator Fischer and Senator Sturgulewski expressed concern that the legislation could create a proliferation of authorities throughout the unorganized borough, not all of which might be well thought out, economically-sound entities. One possible safeguard which was discussed was to require a finding by the Governor that the project developments would be economically advantageous to the state and the general public welfare and other positive findings.

A possible amendment to the committee substitute for SB 151 to achieve this purpose might be the following:

On page 8, add to section 30.13.050 the following new subsection:

"(f) Prior to issuing bonds for any project under this chapter:

- 1) An authority shall submit to the Governor a description of the project and its expected impacts on regional and statewide economies; and

- 2) The Governor must find that the project and its development 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. Failure to make a finding within 60 days of receipt of a project description shall constitute an affirmative finding for the purposes of issuing bonds for the project."

- 2) Senator Mulcahy expressed concern that the petitioning requirements for calling for elections were not restrictive enough to prevent possible "frivolous" elections and the creation of many ill-conceived authorities.

A possible amendment to strengthen the petitioning requirement might be:

On page 2 in Sec. 30.13.010 make the following change:

"The petition must be signed by [50] 100 residents of the proposed area of the authority."

- 3) The Division of Elections raised the question of expense of the elections involved. One change to encourage consolidated elections might be:

On page 2, in Sec. 30.10.010 (b) make the following changes:

"The election must be held not less than 30 or more than ^[90]120 days after the date of the election order. To the extent feasible and practical the election shall be held on a day coincidental to other regional elections."

- 4) Senator Fischer raised a question on the language which would limit the succession of an authority to only a first or second class borough. He suggested that all home-rule municipalities should also be included as in the following possible amendment:

On page 15 in Sec. 30.13.150 make the following change:

"Whenever a borough of the first or second class or a home rule municipality is created with an area coterminous with the area of an authority, the authority shall be integrated into the borough or home rule municipality within one year of incorporation. On integration the borough or home rule municipality 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 or home rule municipality payable from taxes levied by the borough or home rule municipality."

- 5) There may be cases where a borough or a home rule municipality might be created which would encompass the entire region of an authority but whose boundaries would be outside and not coterminous with those of the authority (i.e. the borough would be larger than the authority). Staff would recommend the following possible amendment:

In the above amendment number 4 change the appropriate line to read:

"...is created with an area coterminous with or inclusive of the area of an authority..."

- 6) Senator Fahrenkamp and Senator Fischer had questioned as to whether or not a termination date for the bill might be a check on authority proliferation and offer the legislature a chance to review the legislation in several years. A possible amendment might be the following:

On page 4 in section 30.13.010 add the following new subsection:

"(g)The authority to petition and hold elections for the purpose of creating an authority under this section shall cease on June 30, 1986.

7) Senator Ziegler suggested that such authorities may be desirable in some regions of the state such as Southeastern where infrastructure development may be for renewable resource development such as fishing or timber harvesting. The current language on page 1, section 1 speaks to only "nonrenewable" resources. A possible amendment might be:

On page 1, in section 1, part (1), (2) and (3) after the word "nonrenewable" add the words "or renewable".

Alternatively, in the above subsections the word "nonrenewable" could be deleted so that the findings would simply address "natural resource enterprises".

Alaska can do better than becoming a coupon clipper



David Reaume

Despite the rather bleak outlook for the Alaska economy caused by the loss of revenue, we still have options. There are two that are becoming

of the first argue that public assistance cannot or is extremely unlikely to be a permanent unsubsidized private enterprise growth. Economists who hold this view (in effect) that if an industry were to be permanent, it is not worth public assistance, it is only worth it once that assistance ceases. The second option is that the state should continue to play the role of coupon clipper. According to this view, the state has failed well below the level of success in order to maximize contribution to a permanent fund, and thereby generate a flow of interest income in

Each opinion is based on the fact that public agencies are either too short-sighted or too political to wisely invest in new projects, there is at least one alternative for them.

However, no compelling economic case is offered in their support

ignores the fact that public money can help to reduce the up-front fixed costs of risky new ventures, thereby improving their risk-adjusted profitability. It also completely overlooks the fact that the Alaska fishing industry is disorganized and unable to exert the significant market power that control of Alaska's marine resources could give it. And it utterly fails to acknowledge the existence of a growing Alaska tourism industry that has benefited from the sustained, well-coordinated efforts of the Division of Tourism — efforts that can increasingly be turned over to the industry itself as it grows and becomes more aware of the benefits of cooperative advertising and

venturing.

The argument that Alaska should resign itself to the role of coupon clipper reminds me of the hunter who plans to save one shot in his revolver so that he can shoot himself should a large brown bear get the upper hand. Personally, I will always prefer to put the last shot in the bear rather than give up the fight. I might thereby suffer a more agonizing end, but I also might survive to hunt again.

If Alaska tries and fails to stimulate new economic growth, we are likely to wind up worse off than if we had simply clipped coupons. If we succeed, however, we could be significantly better off, which brings us to the second option we have before us.

The second option also requires that public spending be curtailed to increase investible funds. Under the second option, however, these funds would be held in the form of securities only so long as a reasonable opportunity to invest them in real growth did not present itself.

The second point of view carries with it the policy implication that the governor and the legislature should equip the state to make rational investment decisions, and that agencies such as the Alaska Seafood Marketing Institute, and the Division of Tourism should

receive a high priority in the budget.

It further suggests that the governor's Fisheries Task Force should focus on ways to bring fishermen and processors together so their marketing power can be directed outward and not dissipated in intramural squabbles.

Finally, it suggests a role for the state in providing development-tied infrastructure, a role not fulfilled by the pork-barrel approach to capital spending that continues to dominate the process.

In good times it would be too much to ask that politicians put aside their sectional interests and that groups such as fishermen and processors seek common ground. After all, Alaska had a chance five years ago to handle its wealth more prudently and blew the opportunity. If hard times descend, as they apparently will, the odds are a good deal better that a rational investment strategy can be followed. We ought to at least give ourselves a chance.

David Reaume is a private sector business consultant in Juneau.

State unsure of interest in lease sales

Continued from Page J-1

... people say they think the oil boom is over. But we don't know for sure.

CIRI will watch the coal lease sale with interest for signs of serious new competition in the area, "but I question whether or not the lands being made available are of a quantity or quality to attract

Alaska's door," said Hedderly Smith. "I don't think we expect a whole lot of interest, but then again we really don't know."

Geothermal is an alternative energy resource that blossoms

Treaty rejection could benefit fishermen

Continued from Page J-1

... tions would band together; seabed mining being largely conducted by an international authority with revenues shared among all nations. A

first 15 years to help stabilize world mineral prices — a help to developing countries still trying to start land-based mineral industries, but a drag on large-scale economic development by the industrial

... had fished within their 200-mile zone, made it difficult for a country to ever cut another nation's fish allocation and thus increase its own harvests.

New language added by proposed H CS SB 151 (FIN)

1. Page 5, line 16-18: Changes quorum for authority meetings from six members to five members, with one of the five being one of the commissioners.
2. Page 6, line 8: Allows authority to hold meetings by teleconference.
3. Page 7, lines 9-11: Adds language allowing an authority to charge rents, rates, etc. sufficient to secure bonds and pay debt service, as well as other costs listed. This is to insure the bonds' marketability.
4. Page 7, line 29: The phrase "owned by the authority" is added to clarify that this provision applies only to facilities under direct ownership of the authority.
5. Page 8, line 11: A comma is deleted. This is a technical amendment.
6. Page 8, line 27: Adds the word "revenue" to clearly establish that the authority has the power to issue revenue bonds only.
7. Page 9, line 5-7: Adds language to clarify that bond debt service may be paid back from the authority's assets or from the assets of another entity involved in the project.
8. Page 10, lines 9-10: The new language clarifies the fact that Bond Committee approval is contingent upon revenues being adequate to pay debt service if bonds are secured only by project revenues, and that regardless of the adequacy of project revenues, issuance of the bonds would not inhibit the state's overall ability to market bonds.
9. Page 10, lines 14-16: Adds a new subsection (g) limiting the total bonding capacity of all authorities to \$400 million, exclusive of bonds sold to refinance projects. The exclusion is standard in other statutes dealing with bond capacity limitations and is necessary to insure bond marketability.
10. Page 15, line 4: Changes the word "subsection" to "section". This is a technical word change since this equal use and access language is now a section, not a subsection.

Editorials

Roads to resources

THE STATE could get itself into another hornet's nest if the legislature approves a measure to create regional resource-development authorities.

These authorities, which would issue revenue bonds for new roads, ports and other transportation facilities needed for resource development, smack too much of the rural education attendance areas.

A few of those education units are notorious for not spending their money within established guidelines.

Fortunately, the Senate Finance Committee has held off approving the bill to create the authorities.

THOSE RURAL education areas have enough autonomy that they can get away with all sorts of foolishness. Some of them have tended to spend massive amounts for travel that cannot be justified. A number of them have failed to carry out orders to spend at least 55 percent of their budgets for classroom instruction. Still others have had

Wrong direction

THE CITY would not require inspections of automobiles made before 1967 in its proposed program to clean Anchorage's air.

Isn't that backwards?

It would appear those would be the vehicles that are polluting the most.

There might not be many of them around, but some of them sure do sputter a lot.

more dollars left over at the end of the year than the law allows.

The proposed regional resource development authorities would have the power to issue revenue bonds and to use bond income to construct roads. The engineering and building of roads is no small matter. Large amounts of money would be handled to effect the purchase of rights of way, the engineering and the actual construction.

Under the bill, as many as 21 additional quasi-government units could be formed. Citizens of those rural education attendance areas would be able to vote whether or not to create one of the authorities.

THERE ARE a number of questions that need answers before the legislature gives this measure further serious consideration.

Controls are needed because the state likely would be left holding the bag if the authorities defaulted on paybacks. And there must be a firm plan for accountability, which has not been the case with the rural education districts.

There are areas of the state which do need roads and transportation facilities in order to facilitate the extraction the resources. These resources are the key to Alaska's future.

But the state already has established channels to build transportation facilities.

Alaska has learned the hard way that local autonomy is not always the best way to go.

John E. Manley

JOHN E. MANLEY was a long-time Alaskan whose name is closely associated with the development of this community.

and extension of the railroad. Mr. Manley also thrived on civic activity, and the list of his community accomplishments and associations is



IT'S NOT THAT I have anything against bankers. Several good friends are in the business. My granddaddy was a banker and he was a better man than I ever be. Besides which, I'll soon have a daughter in college and don't want to be told to go see Bob Dole when I come in to ask about a tuition loan.

But it must be said that the bankers and their allies from the savings and loans and the credit unions are looking seriously at their fight to stop the withholding of taxes on interest. And well they should.

It began last year when the Senate leadership and anyone else with enough sense to be scared, were looking for some way to reduce the deficit. Sen. Robert Dole and his colleagues on the Senate Finance Committee decided that one reasonable idea was to make sure the people paid the taxes they owe.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill 151 Date on Bill: 2/25/83
 Title: "An Act relating to Regional Resource Development Authorities."
 Sponsor: Fahrenkamp, Kertula, Ferguson, and P. Fischer
 Requestor: Resources

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	1983	1984	1985	1986
Capital				
Operating				
TOTAL	-0-	10,317	-0-	-0-

b. Revenues:

Revenue				
---------	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: An election will be held in the Regional Educational Attendance Area 1, creating one Regional Resource Development Authority. The election takes place at the same time as a regularly scheduled REAA election so there will be no fiscal impact.

The Regional Resource Development Authority is approved by the voters and an election to elect five members takes place. There will be fiscal impact.

Subsequent election of members takes place on the same date as a regularly scheduled REAA election so there will be no fiscal impact.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared BY: Linda Dupere Phone: 586-6181
 Division: Elections Date: 3/10/83

Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor

SENATE BILL 151

ASSUMPTIONS:

1. An election will be held in the REAA 1 area creating one Regional Resource Development Authority. The election takes place at the same time as a regularly scheduled REAA election.
2. The above question passes and election of five members takes place.
3. There will be 11 precincts involved in the election.
4. 2,750 people are registered to vote in this area as of 2/18/83.
5. Subsequent election of members after the initial election of members takes place at the same date as a regularly scheduled REAA election.

CONCLUSIONS:

There will be no fiscal impact for the election concerning the acceptance or rejection of the Regional Resource Development Authority (RRDA) because it will be held on the same date as a regularly scheduled REAA election.

There will be no fiscal impact for the election of officers after the initial election of officers since it will be held on the same date as a regularly scheduled REAA election.

There will be a fiscal impact for the initial election of officers because the election is held 60 to 90 days after the RRDA election. The fiscal impact is as follows:

Printing

1750 Sample and 3,500 Official Ballots	900	
Petitions	25	
Certificate of Posting Notice	200	
Notice of Elections	25	
Tally Books (15 books, 1101b, 5 pages)	150	
Election Envelopes	500	
Miscellaneous Instructions & Notices	250	
Total Printing		2,050

Absentee Ballot Supplies

Envelopes	200	
Instructions	50	
Total Absentee Supplies		250

SENATE BILL 151 (Continued)

Advertising

2 papers, run ads twice	600	
2 radio stations, run twice	100	
Total Advertising		700

Postage

Certified mail for ballots, shipment of supplies	300	
Total Postage		300

Supplies

Pens, Pencils, Tape	200	
Total Supplies		200

Election Workers

11 precincts x 1 Chairperson x \$8.00 x 15 hours	1,320	
11 precincts x 3 judges x \$7.50 x 15 hours	3,713	
Total Election Workers		5,033

Canvass Team

4 members x \$12.5 hr x 24 hours (write-in candidates cause the review process to be complicated)	1,200	
Total Canvass Team		1,200
TOTAL		\$ 9,733

\$9,733 x .06% inflation		584
GRAND TOTAL		\$10,317

Senator Vic Fischer

Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954



March 22, 1983

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Senator Vic Fischer

Thank you for the opportunity to consider possible amendments to SB 151.

Amendment 1 does not entirely reflect my concerns about the possibility of a proliferation of authorities. The intent of my suggestion was that the Governor be required to find that the creation of a particular authority is necessary and desirable. This would seem to require a new subsection in Sec. 2 to require submittal of a statement to the Governor to include (1) purpose of the proposed authority, (2) the goals it would seek to meet, (3) analysis of the options other than an authority for obtaining the desired goals, and (4) justification for the choice of an authority over other options for meeting the stated goals. This step would logically come at the same time as petition to C&RA. The Governor would then be required to find that (1) meeting the proposed authority's goals would be advantageous to the state and the region's economic growth, and (2) the authority's creation would be necessary to obtain those goals.

In light of the attached article, which describes the problem of independent authorities and corporations incurring debt for which the state may become at least morally liable, I would like to suggest a further amendment. This would be a new section requiring the Commissioner of Revenue to approve the sale of revenue bonds by an authority. The authority would submit a statement detailing (1) the prospectus of the bond issue and (2) an economic feasibility analysis of the proposed development project and its expected revenues. The Commissioner of Revenue would then be required to find that (1) the project appeared to be capable of producing adequate revenues to repay the bonds and (2) bonds of the authority would not be expected to negatively affect the ability of the state or its subdivisions to market their own bonds and meet their financial obligations.

I'm sure that the local people can put these suggested amendments into their proper form. Feel free to contact either me or my staff if you need further clarification.

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



Senate


While in Juneau
FOUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

MAR 24 1983

MEMORANDUM

March 23, 1983

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Arliss Sturgulewski 
Senate District F, Seat A

RE: Senate Bill 151 Regional Resource Development Authorities

I will not be able to attend the Friday Resources Committee meeting at which you will be considering SB 151. I raised a number of questions in earlier meetings and wanted to share a few additional thoughts with you. I feel the Red Dog development in the Nana Region is an exciting project that I would like to see go forward. The basic issue is, of course, the consideration of a financial structure that would be a positive benefit to the economic viability of the development.

Because of my interest in local government and delivery systems I wanted further clarification of the status of the proposed development authorities, so I have requested an opinion from the Attorney General as to the relationship of the authorities to Article X of the Alaska State Constitution. Case law dealing with limited purpose political subdivisions is sparse and yet it seems to me necessary to try to think ahead to determine what the impacts of the creation of limited political subdivisions might cause. I'm sending you a copy of a memorandum Tamara Cook issued to the Senate Advisory Council dealing with the state and regional educational attendance areas as an example of some of the concerns I see in establishing the new authorities.

I feel that we will see proposals in other areas of the unorganized borough that need assistance in development along the lines of those proposed for the nana region--that is the ability to sell bonds to finance infrastructure. It would seem to me that several approaches other than the regional resource development authorities merit consideration.

1. I think further consideration should be given to possible utilization of the Alaska Industrial Development Authority. Certain amendments would have to be made to the Authority to allow them to finance roads and possibly raise limits on single projects and total limits per year.

2. I think more work needs to be done to look at the possibility of a single statewide authority that might be able to operate in all the unorganized areas of the state. This might well prevent the proliferation of numerous authorities throughout the unorganized borough and might prevent some of the structural problems that could arise as areas where the authorities exist move to borough status.
3. The Department of Transportation and Public Facilities now has the authority to issue revenue bonds for airport construction. It seems to me that consideration should be given to looking at their ability to fast track projects such as proposed in NANA Region through the use of revenue bonds.
4. Alaska Industrial Development Authority assisted tax exempt financing for the private venture should be considered.

In the event the current legislation moves forward, I think that there should be a real strengthening of the legislation in the area of approval by the State Bond Committee of the sale of bonds, and the ability of the legislature and administration to audit the financial records of the authority. I'm sending copies to you of the Institute of Public Administration's (IPA) work regarding public corporations in Alaska. Although I feel the Attorney General may well consider these limited purpose political subdivisions, many of the questions raised by IPA seem very valid. As I have indicated to you, I want to be positive toward this development but have some major concerns in the area of financial and oversight relationships and proliferation of yet another kind of limited service district in the unorganized borough. I will be more than happy to work with you as this legislation progresses.

Enclosures

STATE OF ALASKA
FISCAL NOTE

Revision Date March 18, 1983

I. REQUEST

Bill/Resolution No.: SB 151
Title: An Act relating to regional Resource Development Authorities; and providing for an effective date.

Sponsor: _____
Requestor: Fahrenkamp, Kerttula, Ferguson and P.Fischer

II. FISCAL DETAIL

Agency Affected: DOT/PF
Program Category Affected: _____

BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING		-0-	-0-	-0-		
CAPITAL		-0-	-0-	-0-		
REVENUE		-0-	-0-	-0-		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: See Attached for Analysis.

Prepared By: Mavis Waarvik Phone: 364-4331
Division: Planning and Programming Date: 3/18/83

Approved by Commissioner:  Date: 3/18/83
Department: Transportation and Public Facilities

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 for Sponsor)

3/8/83

IV. ANALYSIS

This bill will have no fiscal impact on DOT/PF.



ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 1, 1983

Alaska Miners Association proposed substitute for:

Page 16

Before Sec. 30.13.140, insert the following new language:

(C) An authority shall give fair and reasonable consideration to a project presented to it for financing. The determination to finance or assist in the financing of the project will be based upon that certain engineering, economic and feasibility information presented to the authority and/or requested by it. The authority may commission independent studies of a project. If the authority determines not to finance or assist in the financing of the project, the authority shall state the reasons for its determinations in a written resolution.

*JB 151 - The above language delivered
to [unclear] 3-29-83
[Signature]*

STATE OF ALASKA

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

March 16, 1983

POSITION PAPER

RE: SB 151

SPONSOR: Senator Fahrenkamp

PROGRAM EFFECTS

This bill would provide for the voluntary organization of Regional Resource Development Authorities within the boundaries of the REAA's around the state. The purpose of these authorities would be the improvement, establishment, and development of facilities for transportation purposes.

COMMENTS

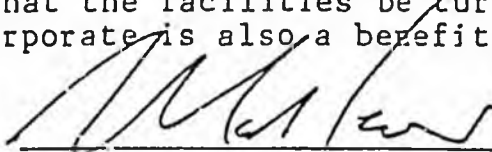
The Department feels this is a good concept which should be pursued. We are not sure how many of these authorities would be formed initially without some type of financial assistance.

One idea might be some type of organizational grant or loan program. These initial costs include things like original project planning, staff recruitment and bond preparation.

This proposal appears to be a step in the right direction. It would provide a mechanism that would begin a process that could create the facilities and methods for developing more of the state's natural resources.

The Department is supportive of this bill as a method of developing these structures.

Additionally the provision that the facilities be turned over to a municipality should one incorporate is also a benefit.



Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SB 151
 Title: Regional Resource Development
 Sponsor: Senator Fahrenkamp
 Requestor: Senator Fahrenkamp

II. FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	0	0	0	0	0	0

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

Sponsor did not indicate source of funds to offset the fiscal impact of this bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Terry L. Earley Phone: 465-4730
 Division: Local Government Assistance Date: 3/11/83
 Approved by Commissioner: [Signature] Date: 3/16/83
 Department: Community & Regional Affairs

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)

3/8/83

March 8, 1983

Memo

To: Lt. Governor Steven McAlpine

From: Senator Bettye Fahrenkamp

Subject: Fiscal note on SB 151 Regional Resource Authority legislation

On March 16 the Resources Committee will be holding a hearing on the above legislation. As you can see from the attached bill on page 2-3, elections are called for in the creation of a Resource Authority and Board. I would like to request a fiscal note on the costs which would be incurred for such elections assuming that one Resource Authority in Northwest Alaska were created.

If you had any other comments on the legislation, I would welcome your thoughts or testimony.

March 8, 1983

Memo

To: Mark Lewis, Commissioner DC&RA

From: Senator Mettje Fahrenkamp

Subject: Hearing on SB 151, Regional Resource Authority, March 18

This is to inform you of a hearing by the Resources Committee on the above bill on March 18 at 3:00pm in the Beltz Room. As this bill would involve your Department, I would invite you to testify on the bill if at all possible.

I would also like to request a fiscal note for the bill for the work which would be required of C&RA. For your use and assistance in preparing the fiscal note I have attached a short memo by the bill's drafters which outlines the assumptions and costs as envisioned for a single regional authority in Northwest Alaska. It would certainly be appreciated if this fiscal note could be ready by March 16 for consideration by the Committee in advance of the hearing.

Thank you for your attention on this legislation.

Cost to Organize Authority

Assumption

- 2 directors reside in Kotzebue
- 1 each in Kivalina, Kiana, Nostak
- All meetings are held in Kotzebue
- 5 meetings in 1st year of 1 day each
- directors fee of \$100/meeting
- Per diem paid at \$100/day - 1 1/2 days per meeting
- Accounting services are obtained from major accounting firm
- Legal services are obtained from Anchorage based law firm
- Travel costs for directors at \$800/meeting
- State members of the Board of Directors serve at no cost to Authority
- Assistance may be obtained from AIDA on out of pocket cost reimbursable basis if needed
- Records (other than financial) are maintained by legal counsel during first year
- costs of preparing, circulating and certifying petition are borne by CR&A
- Election cost borne by Division of Election

Petition Review Costs	Department of CR&A
Election Costs	Division of Elections
Meeting Fees	\$2,500
Director Travel to Meetings	\$4,000
Director Per diem	\$3,000
Attorney & Recording Services ¹	\$15,000
Financial Services ¹	\$5,000
Total	\$29,500

Note (1) includes professional fees, travel and expenses

TO:

Kent Dawson
via Action Secretarial Service

Please Telephone 586-2667 on Receipt

1. Authority itself (CR&A)
2. CR&A petition certification etc.
3. Division of Elections

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."

~~REAA~~, 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 1

The most direct formula for the creation of Regional Resource Development Authorities in the REAA districts is the initiative formula presently in use for REAAs and CRSAs under AS 29.28.070 (b).

In REAAs smaller than 7500 residents, this would require signatures in a number equal to 25% of the qualified voters voting in the last General Election or special election called for the purpose of electing city, borough (or REAA) officers.

In REAAs greater than 7500 residents, the formula would be 15%. There is no requirement for gathering signatures in any set percentage of the villages in an REAA, such as 50% or 66%.

FORMULA 2

Under 15.25.170, Alaska Election Laws, "Required number of signatures for a district-wide office", petitions for the nomination of a state representative or senator require signatures equal in number to 3% of the number of votes cast in the respective election or senate district in the preceding general election, provided that no nomination petition is required to contain more than 200 or less than 50 signatures for any district.

The same requirements apply for the nomination of candidates not representing a political party, under AS 15.40.440.

Note:

The requirements for a statewide initiative are more demanding; a petition must be signed by qualified voters equal in number to 10% of those who voted in the preceding General Election and resident in at least 2/3 (two-thirds) of the election districts of the state. This is cited in AS 15.45.140. The same requirements hold for the state-wide referendum, contained in AS 15.45.370.

In any formula adopted by the final legislation, there should be provision for review of the signatures on the petition, notification of the proper or improper filing, and provision for supplementary petition filing where necessary, as is currently authorized in both the municipal statutes, AS 29, and the State Election Laws.

from Mary Lou Meiners,
Div. Elections 3-22-82

LETTER OF INTENT

SENATE RESOURCES COMMITTEE

CSSB 151 (RES)

It is the intent of the Committee to authorize the establishment of regional authorities which will have the ability to issue tax-exempt revenue bonds for the purpose of enhancing the development of resource enterprises which would contribute to the economic growth of the State. 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, to the maximum extent possible, liability for bonds issued rest exclusively 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.

MEMORANDUM

State of Alaska

TO: Honorable Richard Lyon
Commissioner
Department of Commerce & Economic
Development

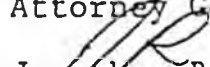
DATE: March 23, 1983

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Proposed amendments
to SB 151

By: 
Jonathan B. Rubini
Assistant Attorney General

The following proposed amendments to SB 151 are more conceptual models than draft legislative language. As we discussed, the revisions are intended (1) to assure, to the extent possible, that the general assets of the state are not utilized to support bond issues, and (2) to provide a modicum of centralized oversight over bonding activities.

Review would be provided by a five member committee, consisting of the members of the State Bond Committee (commissioners of administration, revenue, and CED), and the commissioners of DOT/PF and DNR. Establishment of the oversight committee would require additional amendments to the bill. Additionally, other more technical amendments would be required, most notably the deletion of gubernatorial appointments to the boards and any corresponding references. One last caveat. Except for the proposed amendment of sec. 65(a)(5), little, if any, provision is made for centralized control of other regulatory policy decisions.

PROPOSED AMENDMENTS TO SB 151

Section _____. Any state grants, appropriations or other transfers from the state may only be used for organization purposes. Monies received from the state may not be used to satisfy bond obligations or otherwise establish collateral or security for bonds issued by an authority.

Section 060(b). However, notwithstanding the manner in which principal and interest are payable on bonds issued by an authority as described in this section, an authority may not issue bonds unless the authority obtains a sufficient pledge of collateral, to guarantee satisfaction of all bond obligations. A pledge of security may include, but is not limited to,

corporate assets, unrestricted assets of the authority, and "take or pay contracts."

Section 065(a).

The state regional resource development review board shall review and approve any resolution adopted by an authority to issue bonds to determine whether

(1) there is a sufficient pledge of collateral to adequately support issuance of the bonds and to

(2) that issuance of the bonds will not impair or impede the issuance of bonds by the state, its political subdivisions, or other public authorities;

(3) adequate provision has been made to regulate any tariff schedule, public access, maintenance, and other function typically regulated;

(4) adequate coordination between two or more authorities has been obtained, if a completed, functional facility is located within the jurisdiction of more than one authority;

(5) the resolution adopted in accordance with 130(b) is consistent with the reasonably available evidence.

- (b) An authority may not issue bonds without the approval, as described in this section, of the state regional resource development review board.

JBR:md

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
POSITION PAPER

The economic development goal of SB 151 and of the Administration's alternative is the same. Both vehicles would create a financing structure for transportation facilities which would shift the bonded indebtedness from a private balance sheet to a public balance sheet. The reduced capital investment by the developer would increase its return on investment and enhance the economic feasibility of the project. It is clearly in any developer's interest to do this, and may be in the State's interest if that is what it takes to promote a specific project.

The implications of such a debt shift from a private to a public balance sheet require careful consideration. If a project can support the debt service, there is no problem. If the revenue stream is reduced or eliminated for some reason, then the location of the debt is important. There is no legal liability of the State to prevent default of bonds issued by the SB 151 authorities or by the AIDA alternative. If a capital reserve fund in AIDA is funded with State funds, then there is a moral obligation of the State. However, it is legitimate to ask whether the State could allow the default of either an authority or of AIDA. In that respect, there is little difference between the proposals. It is not a reason to oppose either proposal, but it is a reason to be certain that bonding decisions are made carefully.

While the development goals of the two proposals are similar, there are certain strengths in the AIDA approach. First, the need for transportation facilities is a statewide need and AIDA is a statewide authority. Second, AIDA is a recognized name in the investment community; it already exists, and has a professional staff, investment advisor, and bond counsel. Utilizing AIDA simply requires granting it the power to finance and own transportation facilities. Third, use of the six economic regions rather than regional education attendance areas reduces the potential coordination problems that could result when a project spans more than one REAA. Finally, there would be only one bonding authority to finance any project.

The AIDA alternative differs from SB 151 in the method of local involvement. The alternatives allow for local participation via six Regional Development Advisory Councils, appointed by the Governor. The six regions are recognized by the U.S. Department of Labor, and economic data have been collected according to these regions for several years. Local involvement is accomplished in several ways. First, AIDA must obtain the approval of an affected council prior to development of a project, and the council must hold public hearings at three locations in the region. Second, if the council approves the project, two members of the council may serve on the board of AIDA in connection with subsequent action by the authority concerning the transportation facility. Finally, the authority must solicit the advice and approval of the council prior to adopting or executing contracts, agreements, resolutions, or other matters concerning the operation and management of the facilities. These provisions provide substantial local participation in the projects.

May 11, 1983

The Honorable Bettye Fahrenkamp
Senator
Senate of Alaska
Pouch V
Juneau, AK 99811

Re: "CSSR 151 (Resources) An Act relating to Regional Resource Development Authorities and providing for an effective date."

Dear Senator Fahrenkamp:

The intent of bill CSSR 151 is to provide a financing vehicle for transportation and port development in order to support natural resource development throughout Alaska. The legislative effort to design an enabling mechanism to organize these authorities in the different regions of the state may work against the ultimate success of these entities. In Southeastern Alaska, the REAA boundaries do not correspond with existing or potential political jurisdictions of any sort. Further, the political structure of the region - rural versus urban, development versus conservation, local government oriented versus private industry, etc. would make such an organizational effort difficult unless directed on a project site specific basis or on a totally region wide basis.

A better course of action might be to enable the formation of an authority based upon petition of the Office of the Governor and by concurrence through a joint resolution of the legislature. The petition would include #'s names of qualified voters finding a need for such an entity and their reasons. The legislature, in its capacity as the Assembly for the unorganized borough or as the legislature could find, support and ratify the formation of the authority, its purposes, its powers to create tax exempt financing and other powers. The Governor could appoint the board of governors (or commissioners) of the authority and the appointments could be concurred in by the legislature.


The reason this legislation is required at this time is because area wide government doesn't exist in most of the remote areas of Alaska where natural resource potential is on the verge of development. In the section on Powers of Authority and Limitation on Powers, it is clear that the ability to organize

and finance is granted; however, other necessary tools such as "eminent domain, taxation, land use planning, zoning, permitting or other similiar governmental powers" are specifically withheld. The legislation is silent on how all of these important features are to be dealt with as any development project progresses. Overlapping jurisdictions such as the statutory authority of Alaska Department of Community and Regional Affairs in the unorganized borough, Coastal Zone requirements and other agencies are certain to affect any project(s) created under a regional resource development authority. It seems that some of the powers restricted from these authorities should be granted. If not, then a state agency should be identified in the legislation through which these matters could be focused thus insuring timely progress and success of any resource development. The bottomline being that the public and the State of Alaska by using its tax exempt financing powers and other powers has an investment and interest in the outcome of an authority.

Sealaska Corporation is generally supportive of this legislation. With some changes, it is possible that Regional Resource Development Authorities could catalyst natural resource development in Southeastern Alaska as well as other areas of Alaska. If any of our ideas are helpful in moving the bill forward, we are willing to assist in preparing further language and testimony.

Sincerely,

SEALASKA CORPORATION



Robert W. Loescher
Vice President
Resource Management

cc: Byron Mallott
Chris McNeil
Janie Leask
John Shively
Don Argetsinger
Sam Kito
Southeast Village Corporation Presidents

ARGUMENTS AGAINST LIKELY AMENDMENT ATTEMPTS TO SB 151

1. Remove an authority's ability to receive direct state grants to assist in a port or other transportation project

Argument:

- a. An improper attempt to thwart the ability of a future Legislature to assist in a project it deems worthy. (Legally, there is no way this Legislature can bind the appropriation powers of a future Legislature anyway.)
- b. Attempts to single out these activities from virtually all other public bodies, i.e., municipalities, other authorities, etc., from direct state assistance, if both the Legislature and the Governor agree to it.
- c. A possible scenario that the state might wish to put a public fuel or regional supply storage at an authority post site. May wish to participate for any number of good public reasons. Inclusion of state supported projects may be most economical way of achieving public goals.
- d. State traditionally assists in transportation system development. Why attempt to prevent it here?

SB 151, REGIONAL RESOURCE AUTHORITIES

CONCUR IN HOUSE-PASSED VERSION (House Finance CS)

CHANGES IN SENATE-PASSED BILL:

- Regional authority boundaries changed from REAAs to Regional Housing (22 to 9 possible regions)
- Quorum of authority board must include one commissioner
- DOT is one of 3 commissioners of board
- Total indebtedness of all authorities limited to \$400 million
- Legislative Budget and Audit annual audit of authorities required
- Provision that state funds can not be used to pay off authority bond obligations



Alaska State Legislature

Senate

Resources Committee

Official Business

Senator Bettye Fahrenkamp
Chairman

Pouch V
State Capitol
Juneau, Alaska 99811

March 18, 1983
3:10 p.m.

211 Beltz Room

MEMBERS PRESENT

Senator Fahrenkamp
Senator Ziegler
Senator Eliason

Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

SB 151 - An Act relating to Regional Resource Development Authorities

SR 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. These resource development authorities would be created with approval of voters in the regional education attendance area, and be run by an 8-member board of elected and appointed members.

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 was also discussed.

Terry Elder, State of Alaska, Department of Commerce testified that the Administration has not yet taken a position on the bill. He emphasized that all Departments should have input into this decision.

Don Argetsinger, NANA corporation, testified regarding the need for transportation in the area where the Red Dog Mine project is located. Other topics discussed were the development of local government, creating a much needed tax base, and the relationship between NANA and the Authority. He stated that NANA preferred the draft committee substitute.

Senator Fischer moved that CS 151 be placed before the committee. There were no objections.

Hank Giergerich, Manager of COMINCO discussed the Red Dog Mine project including financing, mining investment costs in contrast to oil investment cost, similarities to projects in Canada and the key role of transportation to project success.

Eric Wohlforth, attorney for COMINCO discussed the changes in draft committee substitute from the original bill including terms and number of members on the board, and access to facilities. He stressed that a government entity is not being formed. Discussion followed regarding indebtedness, bonding, powers of the authority, constitutionality, the legislature's ability to repeal, the effect on state obligations and bond rating and creation of different entities vis a vis local governments.

Harris Saxon, Ely, Guess and Rudd Law firm representing GCO Minerals testified that he was particularly interested in the guaranteed equal access to facilities. He further discussed support for the committee substitute to development of minerals in Northwest Alaska.

Russ Babcock, Bear Creek Mining Company, testified in general support of SB 151.

Mary Lou Meiners, State of Alaska, Division of Elections testified that two special elections would be necessary. The fiscal note submitted to the Resource Committee details cost of one special election in an KEAA District. Should this legislation pass, she suggested that elections be consolidated if possible.

Senator Mulcahy voiced an interest in whether or not 50 signatures on a petition is overly lenient to call for a special election.

Senator Sturgulewski expressed her general opposition to the creation of new authorities that may duplicate or conflict with other state and local government functions.

Senator Vic Fischer expressed concern over the possible proliferation of regional authorities and inquired as to the impacts on established authorities should the authorizing legislation be sunsetted.

Meeting adjourned at 5:35 p.m.



Alaska State Legislature

Senate

Official Business

Senator Bettye Fahrenkamp
Chairman

Pouch V
State Capitol
Juneau, Alaska 99811

March 25, 1983
3:10 p.m.

211 Beltz Room

MEMBERS PRESENT

Senator Fahrenkamp
Senator Ziegler
Senator Eliason

Senator Paul Fischer
Senator Mulcahy

SB 73 - An Act relating to commercial fishing
SB 136 - An Act relating to the operation of stationery fishing gear.
SB 151 - An Act relating to Regional Resource Development Authorities.
SB 156 - An Act relating to the sale or lease of state hatchery facilities.
SR 2 - Relating to the Cross Island Well.

SB 73 - Senator Mulcahy, chairman of the Fisheries Subcommittee, reported that the subcommittee had adopted a committee substitute. He then moved and asked unanimous consent that SB 73 be moved from committee with individual recommendations. There were no objections.

SB 136 - Senator Mulcahy asked that SB 136 be held until the next Resource Committee Meeting.

SB 156 - Senator Mulcahy stated the Fisheries Subcommittee had adopted a committee substitute. He then moved the committee substitute for Senate Bill 156 from committee with individual recommendations. There were no objections.

SB 151 - Pat Pourchot, Administrative Assistant to the Senate Resources Committee testified regarding changes in the committee substitute. He listed four provisions to provide safeguards to the State to protect against possible problems in creation of authorities and issuance of revenue bonds:

- (1) the number of petitioners to initiate calling an election was raised from 50 to 100;
- (2) a sunset provision barring establishment of authorities after June 30, 1986;
- (3) A Governor's finding of an authority;
- (4) A state bond committee finding prior to issuing revenue bonds.

A letter of intent was also presented which addressed liability by the state vis a vis regional authorities and tax-exempt revenue bonds.

MINUTES - March 25, 1983 - Senate Resources Committee

Jay Nelson - representing the Alaskan Environmental Lobby testified that he does not support the bill as presently written. He feels it would lead to potentially unsound developments. In particular, he stated that it could result in the State obligation to bail out any project in order to keep the State's credit rating. He suggested alternatives and a list of amendments.

Mary Lou Meiners, Division of Elections presented a formula for consideration in the bill which would govern the number of signatures required for calling for an election to establish an authority.

Dan Casey, Department of Transportation testified that the Administration supports the concept, but needs more time to study the bill. He recommended that the bill not be held in the Committee.

Terry Elder, Department of Commerce and Economic Development voiced the same concerns as Dan Casey.

Senator Mulcahy moved and asked unanimous consent that committee substitute for SB 151, including proposed amendments, be passed from committee with individual recommendations. There were no objections. He then moved that the letter of intent be moved from committee. There were no objections.

Meeting adjourned 3:45 p.m.

COMMITTEE REPORT
SENATE

2/25/83

FURTHER: Finance

Date: 3-25-83

Mr. President:

The Committee on Resources has had SB 151

An Act relating to Regional Resources Development
Authorities; and eff. date.

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Paul Finkle No Rec.
Bob [Signature] No Rec.

[Signature]
 CHAIRMAN *DeVasc*
[Signature]

I. REQUEST

Bill/Resolution No.: SB 151
 Title: "An Act relating to RRDA's."
 Sponsor: Fahrenkamp, Kertula, Ferguson,
 Requestor: Fischer Resources

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operati
 BRU, Program of Subprogram(s) Affected:
 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						

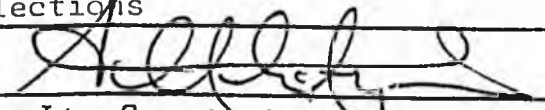
III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

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: 
 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)

LETTER OF INTENT

SENATE RESOURCES COMMITTEE

CSSB 151 (RES)

It is the intent of the Committee to authorize the establishment of regional authorities which will have the ability to issue tax-exempt revenue bonds for the purpose of enhancing the development of resource enterprises which would contribute to the economic growth of the State. 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, to the maximum extent possible, liability for bonds issued rest exclusively 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.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

June 2, 1983

Memo

To: Rep. Al Adams, Chairman House Finance Committee

From: Senator Bettye Fahrenkamp *B.F.*

Subject: CSSB 151, Regional Resource Authorities

I understand that the House Finance Committee will soon be considering the above legislation. As you know, I am in strong support of this legislation and greatly appreciate your prompt attention.

This bill would authorize the creation of regional authorities in the unorganized borough area which could issue tax-exempt revenue bonds for the construction of transportation facilities in connection with resource developments. This ability would have obvious beneficial impacts for projects such as the proposed Red Dog mine in Northwest Alaska where the absence of transportation facilities would involve significant financing obstacles.

In addition to the ability to issue bonds the structure of the authorities would have the added advantage of local elected representation on the Board of Governors to ensure that projects are chosen and developed in such a manner as to be responsive to local concerns.

In testimony and discussion of this bill in the Senate several concerns were raised including:

- 1) The possibility of proliferation of authorities throughout the unorganized borough (based on REAA boundaries);
- 2) The possibility that bonds issued by regional authorities would create a liability or indebtedness to the State or adversely affect the ability of the state or localities to market their own bonds;
- 3) That access to the facilities developed by the authority might not be fairly and equally administered or that facilities desired by some interests might not receive fair or equal consideration.

In response to these concerns the Senate amended the original bill to include:

- 1) The Governor must make a positive finding that an authority would be economically advantageous to the region and state prior to holding elections in the region to establish the authority;
- 2) The ability to petition to establish an authority sunsets July 1, 1986;

- 3) Prior to issuing any revenue bonds an authority must submit an independent economic analysis of a project and its revenues to the state bond committee. The committee must find that project revenues are adequate for payment of the bonds and that the bonds would not adversely affect the ability of the state or localities to market their bonds;
- 4) A statement in the bill and in the Letter of Intent that bonds issued by an authority do not constitute any liability or indebtedness to the state or political subdivision, nor can an authority pledge the faith or credit of the state or local government;
- 5) A provision that the authority would be integrated into a local government should it be established, but that an indebtedness of an authority does not constitute an obligation of the new government;
- 6) A provision which ensures fair and equal access and fee assessments for users of facilities and fair consideration of all proposed projects brought before the authority;

In the House Resources Committee further safeguards were added to the bill:

- 1) A provision that state funds could not be used to pay off or meet revenue bond obligations of an authority;
- 2) A change in the boundaries of possible authorities to coincide with regional housing authorities rather than REAAs. This reduces the possible number of authorities from 21 to 9.

It is my understanding that your committee is considering further amendments, one of which to set a cap or ceiling on the total indebtedness which could be incurred by an authority. I certainly would favor a cap of \$500 million to provide further safeguards against "runaway" indebtedness while still permitting necessary financing for large resource projects.

Another amendment which would reduce the number for a quorum from 6 of 8 Board members as was adopted in the House Resources Committee to 5 including one of the three Governor's appointees is also a good one. This ensures participation (and oversight) by the state while not hamstringing the workings of the authority with problematic numbers of Board members required for a quorum.

I would like the opportunity to testify before your committee on this important piece of legislation and to supply any additional information which you may need.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
EOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
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JUNEAU, ALASKA 99811
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Senate

Committee on Resources

April 6, 1983

Memo

To: Senator Bennett, Co-Chairman Finance Committee
Senator Sackett, Co-Chairman Finance Committee

From: Senator Bettye Fahrenkamp

Subject: CSSB 151, Regional Resource Development Authorities

As you know, the Finance Committee has recently received the above bill for consideration from the Resources Committee. This bill would authorize the establishment of authorities in the unorganized borough for the purpose of developing infrastructures for resource development projects. Funding for the developments would primarily come from the issuance of tax-exempt revenue bonds by the authority to be repaid with user fees from the developments.

In testimony and discussion before the Resources Committee several criticisms of the bill as originally drafted surfaced: 1) lack of guarantees of equal access to facilities which may be developed; 2) the possibility of proliferation of authorities throughout the unorganized borough; 3) the encouragement of less-than-sound economic projects by authorities; 4) the possibility that bonds issued by authorities may in some way create a liability to the state or add to the state's overall bond indebtedness; and 5) the possibility that the issuance of bonds by authorities might in some way affect the ability of the state or its political subdivisions to market their revenue bonds.

In response to these criticisms the Resources Committee adopted several major changes and additions to the bill including:

- 1) Page 2, lines 19-29, the Governor must make a positive finding that an authority's goals and projects would be economically advantageous to the region and state and that the authority is an appropriate and desirable method of accomplishing the goals and projects prior to establishment of an authority.
- 2) Page 2, lines 8-11, the ability to petition for establishment of an authority expires on July 1, 1986.
- 3) Page 2, lines 13-14, a petition to call for an election to establish an authority must be signed by 100 persons of a district.

- 4) Page 4, lines 26-29, the Board of Governors of an authority shall consist of eight members, five elected locally and three Department heads appointed by the Governor.
- 5) Page 8, subsection (f), Prior to issuance of bonds an authority must submit an independent economic analysis of a project and its revenues to the state bond committee. The committee must find that project revenues are adequate for payment of the bonds and that the issuance of bonds would not adversely affect the ability of the state or localities to market their bonds.
- 6) Page 11, subsection (b), bonds issued by an authority do not constitute any liability or indebtedness to the state or political subdivision, nor can an authority pledge the faith or credit of the state or local government.
- 7) Page 13, subsection (a), ensures fair and equal access and fee assessments for users of facilities.
- 8) Page 13-14, subsection (b), an authority must find that prior to issuance of bonds that a project would be economically advantageous to the state and general public welfare and that the project is economically viable.
- 9) Page 14, section 30.13.150 provides that an authority would be integrated into a local government should it be established, but that an indebtedness of an authority does not constitute an obligation of the new government.

I think that these provisions adequately address the concerns that were raised. However, several other possible amendments were suggested that might further clarify the intent of this legislation which were suggested too late to be properly integrated into the committee substitute. I would urge the Finance Committee to consider the following possible changes:

- 1) Changing the number of petitioners calling for an election to establish an authority from an absolute number of 100 to a percentage formula similar to other regional elections. (Attached is a possible formula suggested by the Division of Elections).
- 2) Any monies received by the state may not be used to satisfy bond obligations or collateral by an authority (attached are draft suggestions from the Department of Law).
- 3) Change a quorum of the Board from a majority to a majority plus one. (Suggested by the Alaska Environmental Lobby; see attached comments).
- 4) Ensure that proposed projects get fair and equal consideration within a district by an authority. (See attached language submitted by the Alaska Miners Association).

In addition, several technical changes should be made in the bill. The following should be made to correct changes which were made by the Legal Division in the CS:

- 1) On page 5, lines 12-13, delete the phrase "at a meeting at which a quorum is present". This simply clarifies that a quorum constitutes a majority of the members of the board of governors.
- 2) On page 6, lines 16-17, delete the phrase "in accordance with the Administrative Procedure Act (AS 44.62)". This phrase was not contained in the CS which passed out of the Resources Committee and could be construed as evidence that authorities are somehow to be viewed as quasi-agencies of the state.
- 3) On page 8, line 25 delete "AS 30.13.059(f)(1)" and insert in lieu thereof "this subsection". There is no subsection (f)(1).
- 4) On page 15, line 18, add a comma after the words "rolling stock".

Finally, I would call your attention to the Letter of Intent which was passed out with the bill. This further clarifies that it is the intent that the bonds issued by the authorities not constitute any liability to the state or local governments or taxpayers in a successor government.

I would be happy to appear before your Committee to further explain this legislation and the actions of the Resource Committee. In addition, I have asked my staff to provide whatever assistance you may need on the bill. I remain convinced that this legislation could be of tremendous value in facilitating the development of resource projects in our state which would have tremendous economic and social benefits to regions as well as the state. I would hope the Finance Committee could expedite its consideration of this important legislation.

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Official Business

Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

Pouch V
State Capitol
Juneau, Alaska 99811

March 15, 1983

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 156

The subcommittee has taken testimony and recommends replacing SB 156 with CS SB 156(Res) and reports CS SB 156(Res) back to the committee as a whole with the following recommendations.

Members

Recommendation

Senator Mulcahy	<u>Bob Mulcahy</u>	<u>Do Pass</u>
Senator Eliason	<u>Al Eliason</u>	<u>X 9</u>
Senator Gilman	<u>Don Gilman</u>	<u>Do Pass</u>

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

10 Earnest Creek
Contracts & Facilities Unit
Division of Administration
Department of Fish & Game

September 14, 1982

WILSON L. CONDON
ATTORNEY GENERAL

Director, Bureau of Fisheries

By: John B. Gargine
Assistant Attorney General
Department of Law

RECEIVED
SEP 14 1982

You have asked several questions regarding the Department of Fish and Game's proposed transfer of three state hatcheries to non-profit regional aquaculture associations. Specifically, you wish to know whether there is any bar to a negotiated transfer to a selected transferee, and what types of transfer are permissible. We conclude that Fish and Game currently may not undertake any type of transfer, since no statutory authority for a transfer now exists. If the legislature does grant the necessary power to Fish and Game, it will be able to do a negotiated transfer, but will not be able to give up ownership without receiving fair value for the facilities.

*Contract
to
transfer
to
non-profit
association
of
fishermen
in
the
area*

Lack of statutory authority. Fish and Game has no specific authority to dispose of property. AS 16.05.050(3) authorizes the commissioner to "design and construct" hatcheries, but not to lease or sell them. Similarly, both AS 16.05.020, the statute listing the commissioner's broad functions, and AS 16.05.092, the statute broadly defining the powers of the FRED division (which runs the hatcheries), are silent as to Fish and Game's and/or FRED's power to dispose of them. There is no Alaska constitutional provision or judicial decision expressly requiring that an executive department have explicit statutory authority before it may dispose of state property. But this is the general rule of law followed elsewhere, and one must presume that the rule applies in Alaska, too.

This general rule is reflected in the myriad of cases concerning disposition of state property (generally land) by sale or lease, virtually all of which discuss the statutory basis for the transfer. Many of these cases can be found under West's Key Number States 89. "It is a well settled principle of law that title to government property may pass only in the manner prescribed by the duly constituted legislative body and that title to any such property may not be forfeited through the oversight, carelessness, negligence or even intentional conduct of any of the agents of the government." State v. West, 229 S.E.2d 826, 831-32 (D.C. App. 1976), aff'd, 355 S.E.2d 158 (D.C. 1977). See also Finch v. State, 124 So.2d 825, 827 (Ala. 1960) (within

constitutional limitations, legislature has power to provide for leasing of state property, and may set limits on length of leases and determine general policy concerning them); State Land Board v. Heuber, 548 P.2d 1323, 1328 (Or. App. 1976) (conveyance by state is valid only if done with proper statutory authority); 5B G. Thompson, Real Property § 2720 (1975 repl. ed.) (state may dispose of lands through the legislature; state officers may act only in accordance with constitution and statutes); 72 Am. Jur.2d States §§ 66, 67 (1974).

The necessary statutory authority to sell or lease cannot be found in general grants of power made by the legislature to state officials. Samsell v State Line Development Co., Inc., 174 S.E.2d 318 (W.Va. 1970), invalidated a mineral lease made in 1962 by the state director of natural resources. The legislature had in 1961 vested title to state land in the Public Land Corporation, of which the natural resources director was secretary, and the corporation had not ratified the lease. The court declined an invitation to uphold the lease on the basis of a general statute allowing the director to execute contracts and agreements in the name of the state.

Another instructive case is Central Advertising Co. v. Michigan State Highway Commission, 172 N.W.2d 432 (Mich. 1969). There the highway commission attempted to place a restrictive covenant banning roadside advertising on some excess land it was selling. In the absence of any statutory authority for this covenant, the court found, its inclusion was beyond the commission's power. Again the court declined to find the requisite authority for the covenant in the statute conferring general powers on the commission.

We would conclude, then, that before Fish and Game can transfer operation of its hatcheries to an aquaculture association, either by sale or lease, the legislature must specifically authorize Fish and Game to make such a transfer. Perhaps an amendment could be proposed to AS 16.05.050(C), which would allow the commissioner to lease or sell the "hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state" that the subsection now empowers him to construct.

Incidentally, if the hatcheries could be regarded as surplus property, then the Department of Administration currently has the power to dispose of them, by sale or lease, under AS 44.71.010. If, say, the FRED division were unable to operate them because of manpower shortages caused by budget constraints, the hatcheries might be properly regarded as surplus property.

and disposition under AS 44.71.010 might be appropriate. When, however, the decision to transfer operations to the aquaculture associations reflects a department policy determination, invocation of AS 44.71.010 would not in our opinion be proper.

Negotiated transfer. On this question, we refer you to a May 28, 1980 informal opinion of this office, which is attached to this memorandum. While that opinion is directly concerned with disposal of surplus property under AS 44.71.010 (discussed above), the principle is the same. Competitive bidding is required only when specified by statute. Since there is no statute here mandating such bidding, a negotiated transfer is permissible. We would repeat the observation contained in the 1980 informal opinion, though: any transfer agreement (assuming that the requisite statutory authority is obtained) should state why Fish and Game believes the transfer to be in the state's best interest.

Permissible types of transfer. On this question, too, we refer you to another recent informal opinion, this one dated March 30, 1982, and dealing with the very issue of hatchery transfers. That opinion is also attached to this memorandum, and we believe answers the question you pose. In addition, we note that any transfer without compensation of the hatcheries, either as an outright grant or under a "performance purchase" agreement (automatic transfer after a number of years of successful operation by the aquaculture association), would seem to be inconsistent with AS 16.10.500-.620, the fisheries enhancement loan program. AS 16.10.510 authorizes loans (not grants) to certified aquaculture associations to construct hatcheries (under AS 16.10.375-.475). It would be difficult to square this legislative directive with a Fish and Game decision to turn over grants to the associations hatcheries that Fish and Game built with its own funds. While the legislature has made direct appropriations to aquaculture associations (e.g., § 3, ch. 42, SLA 1982), these grants have not been specifically for the purpose of constructing hatcheries. Of course, the legislature (subject only to constitutional public interest requirements) could authorize a transfer at less than fair market value.

To sum up, then, we believe that the three hatcheries cannot at present be either sold or leased by Fish and Game, because of the lack of statutory authority for hatchery transfer. If the legislature sees fit to confer such authority, then Fish and Game will be able to lease the hatcheries or sell them for fair value to an aquaculture association with which Fish and Game

Ernest Creek
Contracts & Facilities Office
Department of Fish & Game
466-086-83

September 9, 1987

Page 4

has negotiated an agreement. However, the department will not be able to transfer the hatcheries at less than fair market value in the absence of specific legislative authority to do so.

Please feel free to contact us if you have additional questions.

JBG:d1m

Attachments

The Honorable William R. Hudson DATE May 28, 1980
Commissioner
Department of Administration FILE NO. J-66-737-80

TELEPHONE NO

FROM AVRUM M. GROSS
 ATTORNEY GENERAL

SUBJECT Negotiated sale of excess
 or surplus housing

By:

 Rodger W. Pegues
 Assistant Attorney General

You have asked whether you may dispose of surplus housing to employee-residents by negotiation.

No statute requires disposal by bid, and the applicable statute, AS 44.71.010, expressly allows for disposition "on the terms [you] consider for the best interests of the state." Some record of how the chosen terms serve the best interests of the state should be a part of the file. Otherwise, there are no other requirements.

The applicable regulations, 2 AAC 20.010(a)(1), allows either a negotiated or competitive sale.

There is no constitutional requirement for a competitive sale. Such requirements as exist are to be found in the statute. Libby v. City of Dillingham, P.2d _____ (Alaska Sup. Ct. Op. No. 2097, May 23, 1980). Here, it is the best interests of the state which must be served.

RWP:cb

to W. I. "Bob" Palmer, Coordinator
Office of Special Projects
Office of the Governor

DATE: March 30, 1982

FILE NO: J66-197-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Transfer of operation
of state hatcheries

By: *W. Davis*
LESLIE L. DAVIS
Assistant Attorney General

This will confirm our telephone conversation in response to your memorandum of September 9, 1981. We see no problem with the transfer of responsibility for operation of state-owned fish hatcheries to the private nonprofit aquaculture associations whose membership is directly benefitted by the hatcheries' work. However, if ownership of the hatcheries is transferred, the state must receive fair value for the facilities. If the associations are unable to purchase the facilities, the state may lease them for a nominal fee and provide that the associations shall operate and maintain them. Our opinion is based upon the following legal principles and reasoning.

The Alaska Constitution prohibits the transfer of public property except for a public purpose. Alaska Const., art. IX, § 6. Generally, this requires that the state receive fair value for property which it disposes of. The Department of Administration is by statute responsible for disposing of surplus or obsolete property on terms which are "in the best interests of the state." AS 44.71.010.

The value of a salmon hatchery is in its ability to enhance the supply of fish to be caught by commercial and sport fishermen. Since the ownership of hatchery-produced fish is not retained after they leave the hatchery, the market value of a hatchery is difficult to determine. The establishment of a hatchery serves a public purpose by supporting both commercial and recreational fishing in the state. See Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970), holding that encouraging industrial development is a public purpose. As a hatchery becomes productive, its economic benefit is realized directly by fishermen. In transferring responsibility for a hatchery to the people directly benefitted, the public purpose clause requires that the state obtain terms which recover as much of the public contribution as is reasonable under the circumstances.

We conclude that a simple transfer of ownership without compensation to the state would be suspect. If ownership

is transferred, the state should receive reasonable compensation for its costs. As an alternative, a lease of the hatchery for a nominal fee with the lessee paying for operation and maintenance and indemnifying the state from liability for any harm arising from operation of the hatchery would be consistent with the public purpose clause. See Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), regarding a similar lease of a public hospital to a nonprofit corporation.

We note that the general obligation bonds which were issued to pay for the hatcheries do not require the state to continue ownership or operation of the hatcheries. 1974 Alaska Sess. L., ch. 133; 1976 Alaska Sess. L., ch. 214; 1978 Alaska Sess. L., ch. 140; 1980 Alaska Sess. L., ch. 01. However, the money received from those bond issues may not be spent for any other purpose without an appropriation. There is a legal question as to whether money received from a bond issue but not spent for the purposes for which the bonds were authorized may be reappropriated for another public purpose or must be used to redeem the bonds. We will defer addressing this question until it is directly presented. We hope that this answers your questions.

LLD/pjg

cc: Hon. Jim Duncan
House of Representatives

RESOLUTION
OF THE
ALASKA FISHERIES COUNCIL
November 23, 1982

WHEREAS, the Fisheries Rehabilitation, Enhancement & Development Division of the Alaska Department of Fish and Game has played a vital role in the State of Alaska's Salmon Enhancement Program; and

WHEREAS, the Fisheries Rehabilitation, Enhancement & Development Division shall continue to play a vital role in the support of the Salmon Enhancement Program by providing technical services such as pathology, genetics, and limnology, as well as to produce fish in areas not suited for cost recovery for the benefit of all Alaskans, be they subsistence, sport, or commercial users, and continue to develop new biotechnology; and

WHEREAS, the People of the State of Alaska have expressed their edict by imposing a spending limit as an amendment to the Constitution of the State of Alaska; and

WHEREAS, the provisions of the spending limit may cause funding problems that jeopardize the statutorily required and other vital contributions of the Fisheries Rehabilitation, Development & and Enhancement Division to the Alaska Salmon Enhancement Program; and

WHEREAS, the policy of the State is to promote enhancement of the State's salmon fisheries through private, non-profit regional aquaculture associations comprised of all of the various user groups, thereby furthering a valid public purpose; and

WHEREAS, the search for viable options has been exhaustive and but one found; NOW THEREFORE BE IT

RESOLVED that the Alaska Fisheries Council respectfully recommends to the Governor of the State of Alaska that legislation be introduced by his hand to grant authority to the Commissioner of the Department of Fish and Game to sell or lease State-owned salmon hatcheries to Qualified Regional Aquaculture Associations, and further be it

RESOLVED that the Alaska Fisheries Council respectfully recommends to the Legislature of the State of Alaska that said legislation be enacted into law, and further be it

RESOLVED that the Commissioner of the Department of Fish and Game initiate sincere negotiations with those Qualified Regional Aquaculture Associations who apply to lease or buy state-owned salmon hatcheries within their respective regions and that said negotiations be concluded in a timely fashion.

Signed,

Curt Kerns, Chairman
Alaska Fisheries Council



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

To: The Honorable Bill Sheffield
Governor

From: Curt Kerns, Chairman *Curt Kerns*
Alaska Fisheries Council
Office of the Governor

Subject: AFC Resolution of November 23, 1982

Date: January 3, 1983

The Alaska Fisheries Council respectfully requests your consideration of the enclosed resolution and accompanying draft legislation.

The resolution and legislation are the culmination of work first begun in July of 1981 when Budget and Management first flagged FRED Division operating and maintenance funding as an area of potential problems, given the imposition of the spending limit. A cabinet-level steering committee and then a working group were formed. A number of options were reviewed; the steering committee narrowed the list to five. After additional study, the Alaska Fisheries Council met to review the options. Four have significant constitutional or political problems. The remaining option -- selected transfer -- while not free of objections, was judged worthy of your consideration.

Should your administration make the decision to introduce the enclosed legislation, passage of the bill and subsequent transfer of selected FRED production facilities to the private sector will not be a panacea in that FRED budgetary requirements will not be reduced. Future increases, however, will not grow as rapidly without transfer. If Alaska is to have a competitive and healthy salmon industry on into the future, FRED will need to be funded at a rate commensurate with other A.D.F. & G. divisions.

A plethora of background materials are available. If your office requires further input, please contact us.

Enclosures

TO: Ernest Creek
Contracts & Facilities Unit
Division of Administration
Department of Fish & Game

DATE: September 7, 1982
BY: [illegible]
SUBJECT: [illegible]

FROM: WILSON L. CONDO
ATTORNEY GENERAL

SUBJECT: Authorization to Transfer
for Hatcheries

By: John B. Gargine
Assistant Attorney General
Department of Law

RECEIVED
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You have asked several questions regarding the Department of Fish and Game's proposed transfer of three state hatcheries to non-profit regional aquaculture associations. Specifically, you wish to know whether there is any bar to a negotiated transfer to a selected transferee, and what types of transfer are permissible. We conclude that Fish and Game currently may not undertake any type of transfer, since no statutory authority for a transfer now exists. If the legislature does grant the necessary power to Fish and Game, it will be able to do a negotiated transfer, but will not be able to give up ownership without receiving fair value for the facilities.

Lack of statutory authority. Fish and Game has no specific authority to dispose of property. AS 16.05.050(3) authorizes the commissioner to "design and construct" hatcheries, but not to lease or sell them. Similarly, both AS 16.05.020, the statute listing the commissioner's broad functions, and AS 16.05.092, the statute broadly defining the powers of the FRED division (which runs the hatcheries), are silent as to Fish and Game's and/or FRED's power to dispose of them. There is no Alaska constitutional provision or judicial decision expressly requiring that an executive department have explicit statutory authority before it may dispose of state property. But this is the general rule of law followed elsewhere, and one must presume that the rule applies in Alaska, too.

*Contract for
aquaculture
Contract for
Finch v. State
[illegible]*

This general rule is reflected in the myriad of cases concerning disposition of state property (generally land) by sale or lease, virtually all of which discuss the statutory basis for the transfer. Many of these cases can be found under West's Key Number States 89. "It is a well settled principle of law that title to government property may pass only in the manner prescribed by the duly constituted legislative body and that title to any such property may not be forfeited through the oversight, carelessness, negligence or even intentional conduct of any of the agents of the government." State v. West, 229 S.E.2d 826, 831-32 (N.C. App. 1976), aff'd, 235 S.E.2d 157 (N.C. 1977). See also Finch v. State, 124 So.2d 875, 877 (Ala. 1960) (within

constitutional limitations, legislature has power to provide for leasing of state property, and may set limits on length of leases and determine general policy concerning them); State Land Board v. Heuber, 548 P.2d 1323, 1328 (Or. App. 1976) (conveyance by state is valid only if done with proper statutory authority); 5B G. Thompson, Real Property § 2720 (1978 repl. ed.) (state may dispose of lands through the legislature; state officers may act only in accordance with constitution and statutes); 72 Am. Jur.2d States §§ 66, 67 (1974).

The necessary statutory authority to sell or lease cannot be found in general grants of power made by the legislature to state officials. Samsell v State Line Development Co., Inc., 174 S.E.2d 318 (W.Va. 1970), invalidated a mineral lease made in 1962 by the state director of natural resources. The legislature had in 1961 vested title to state land in the Public Land Corporation, of which the natural resources director was secretary, and the corporation had not ratified the lease. The court declined an invitation to uphold the lease on the basis of a general statute allowing the director to execute contracts and agreements in the name of the state.

Another instructive case is Central Advertising Co. v. Michigan State Highway Commission, 172 N.W.2d 432 (Mich. 1969). There the highway commission attempted to place a restrictive covenant banning roadside advertising on some excess land it was selling. In the absence of any statutory authority for this covenant, the court found, its inclusion was beyond the commission's power. Again the court declined to find the requisite authority for the covenant in the statute conferring general powers on the commission.

We would conclude, then, that before Fish and Game can transfer operation of its hatcheries to an aquaculture association, either by sale or lease, the legislature must specifically authorize Fish and Game to make such a transfer. Perhaps an amendment could be proposed to AS 16.05.050(2), which would allow the commissioner to lease or sell the "hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state" that the subsection now empowers him to construct.

Incidentally, if the hatcheries could be regarded as surplus property, then the Department of Administration currently has the power to dispose of them, by sale or lease, under AS 44.71.010. If, say, the FRED division were unable to operate them because of manpower shortages caused by budget constraints, the hatcheries might be properly regarded as surplus property.

and disposition under AS 44.71.010 might be appropriate. When, however, the decision to transfer operations to the aquaculture associations reflects a department policy determination, invocation of AS 44.71.010 would not in our opinion be proper.

Negotiated transfer. On this question, we refer you to a May 28, 1980 informal opinion of this office, which is attached to this memorandum. While that opinion is directly concerned with disposal of surplus property under AS 44.71.010 (discussed above), the principle is the same. Competitive bidding is required only when specified by statute. Since there is no statute here mandating such bidding, a negotiated transfer is permissible. We would repeat the observation contained in the 1980 informal opinion, though: any transfer agreement (assuming that the requisite statutory authority is obtained) should state why Fish and Game believes the transfer to be in the state's best interest.

Permissible types of transfer. On this question, too, we refer you to another recent informal opinion, this one dated March 30, 1982, and dealing with the very issue of hatchery transfers. That opinion is also attached to this memorandum, and we believe answers the question you pose. In addition, we note that any transfer without compensation of the hatcheries, either as an outright grant or under a "performance purchase" agreement (automatic transfer after a number of years of successful operation by the aquaculture association), would seem to be inconsistent with AS 16.10.500-.620, the fisheries enhancement loan program. AS 16.10.510 authorizes loans (not grants) to certified aquaculture associations to construct hatcheries (under AS 16.10.375-.475). It would be difficult to square this legislative directive with a Fish and Game decision to turn over gratis to the associations hatcheries that Fish and Game built with its own funds. While the legislature has made direct appropriations to aquaculture associations (e.g., § 3, ch. 42, SLA 1982), these grants have not been specifically for the purpose of constructing hatcheries. Of course, the legislature (subject only to constitutional public interest requirements) could authorize a transfer at less than fair market value.

To sum up, then, we believe that the three hatcheries cannot at present be either sold or leased by Fish and Game, because of the lack of statutory authority for hatchery transfer. If the legislature sees fit to confer such authority, then Fish and Game will be able to lease the hatcheries or sell them for fair value to an aquaculture association with which Fish and Game

Earnest Creek
Contracts & Facilities Office
Department of Fish & Game
366-086-83

September 9, 1987
Page 4

has negotiated an agreement. However, the department will not be able to transfer the hatcheries at less than fair market value in the absence of specific legislative authority to do so.

Please feel free to contact us if you have additional questions.

JBG:dln

Attachments

TO: Officer of the Attorney General
Department of Law
Juneau

DATE: July 28, 1962

FILE NO:

ATTENTION: G. Thomas Koester

TELEPHONE NO: 465-4120

FROM: Earnest Creek
Contracts & Facilities Officer
Division of Administration
Department of Fish and Game

SUBJECT: Hatcheries Transfer

We are anticipating in the near future the decision to transfer the Cannery Creek and Main Bay Hatcheries to Prince William Sound Aquaculture Corporation, and the Beaver Falls Hatchery to Southern Southeastern Regional Aquaculture Association, Inc.

Consequently, we need your opinion re:

1. State's ability to transfer property to a selected transfer; ;
2. Fish and Game's authority to transfer by:
 - (a) Sublease
 - (b) Performance Purchase (pass title after successful operation for 5 to 10 years)
 - (c) Grant.

Thank you for your help.

ERG/hb

The Honorable William R. Hudson . DATE: May 28, 1980
Commissioner
Department of Administration . FILE NO: J-66-737-80

TELEPHONE NO

FROM: AVRUM M. GROSS . SUBJECT: Negotiated sale of excess
ATTORNEY GENERAL . or surplus housing

By:
Rodger W. Pegues
Assistant Attorney General

You have asked whether you may dispose of surplus housing to employee-residents by negotiation.

No statute requires disposal by bid, and the applicable statute, AS 44.71.010, expressly allows for disposition "on the terms [you] consider for the best interests of the state." Some record of how the chosen terms serve the best interests of the state should be a part of the file. Otherwise, there are no other requirements.

The applicable regulations, 2 AAC 20.010(a)(1), allows either a negotiated or competitive sale.

There is no constitutional requirement for a competitive sale. Such requirements as exist are to be found in the statute. Libby v. City of Dillingham, P.2d ____ (Alaska Sup. Ct. Op. No. 2097, May 23, 1980). Here, it is the best interests of the state which must be served.

RWP:cb

to W.I. "Bob" Palmer, Coordinator
Office of Special Projects
Office of the Governor

DATE: March 30, 1982

FILE NO: J66-197-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Transfer of operation
of state hatcheries

By: *LD*
Laura L. Davis
Assistant Attorney General

This will confirm our telephone conversation in response to your memorandum of September 9, 1981. We see no problem with the transfer of responsibility for operation of state-owned fish hatcheries to the private nonprofit aquaculture associations whose membership is directly benefitted by the hatcheries' work. However, if ownership of the hatcheries is transferred, the state must receive fair value for the facilities. If the associations are unable to purchase the facilities, the state may lease them for a nominal fee and provide that the associations shall operate and maintain them. Our opinion is based upon the following legal principles and reasoning.

The Alaska Constitution prohibits the transfer of public property except for a public purpose. Alaska Const., art. IX, § 6. Generally, this requires that the state receive fair value for property which it disposes of. The Department of Administration is by statute responsible for disposing of surplus or obsolete property on terms which are "in the best interests of the state." AS 44.71.010.

The value of a salmon hatchery is in its ability to enhance the supply of fish to be caught by commercial and sport fishermen. Since the ownership of hatchery-produced fish is not retained after they leave the hatchery, the market value of a hatchery is difficult to determine. The establishment of a hatchery serves a public purpose by supporting both commercial and recreational fishing in the state. See Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970), holding that encouraging industrial development is a public purpose. As a hatchery becomes productive, its economic benefit is realized directly by fishermen. In transferring responsibility for a hatchery to the people directly benefitted, the public purpose clause requires that the state obtain terms which recover as much of the public contribution as is reasonable under the circumstances.

We conclude that a simple transfer of ownership without compensation to the state would be suspect. If ownership

is transferred, the state should receive reasonable compensation for its costs. As an alternative, a lease of the hatchery for a nominal fee with the lessee paying for operation and maintenance and indemnifying the state from liability for any harm arising from operation of the hatchery would be consistent with the public purpose clause. See Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), regarding a similar lease of a public hospital to a nonprofit corporation.

We note that the general obligation bonds which were issued to pay for the hatcheries do not require the state to continue ownership or operation of the hatcheries. 1974 Alaska Sess. L., ch. 133; 1976 Alaska Sess. L., ch. 214; 1978 Alaska Sess. L., ch. 140; 1980 Alaska Sess. L., ch. 91. However, the money received from those bond issues may not be spent for any other purpose without an appropriation. There is a legal question as to whether money received from a bond issue but not spent for the purposes for which the bonds were authorized may be reappropriated for another public purpose or must be used to redeem the bonds. We will defer addressing this question until it is directly presented. We hope that this answers your questions.

LLD/pjg

cc: Hon. Jim Duncan
House of Representatives

Alaska Statutes

Title 16. Fish and Game.

Chapter

- 10. Fisheries and Fishing Regulations (§§ 16.10.010 — 16.10.720)
- 20. Conservation and Protection of Alaskan Wildlife (§§ 16.20.010 — 16.20.320)
- 51. Alaska Seafood Marketing Institute (§§ 16.51.010 — 16.51.180)
- 52. Fishery Industrial Technology Center (§§ 16.52.010 — 16.52.070)
- 55. Shooting and Firearm Safety (§§ 16.55.010 — 16.55.040)

Chapter 05. Fish and Game Code.

Article

- 4. Licensing of Commercial Fishing Crewmembers and Vessels (§§ 16.05.440 — 16.05.720)

Article 1. The Department of Fish and Game.

Section

- 50. Powers and duties of commissioner
- 65. Application extension
- 90. Organization of the department
- 94. Duties of section of subsistence

Section

- hunting and fishing
- 110. Composition of fund
- 130. Diversion of funds prohibited

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency, acquire by gift, purchase, or lease, or other lawful means, lands, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) design and construct hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) accept money from any person under conditions requiring the use of the money for specific purposes in the maintenance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) collect, classify, and disseminate statistics, data and information as in his discretion will tend to promote the objects of AS 16.05.010 — 16.05.950;

(6) capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific or stocking purposes;

(7) Repealed by § 2 ch 227 SLA 1970.

(8) provide public facilities where necessary or proper to facilitate the taking of fish or game, and enter into cooperative agreements with any person to effect them;

(9) administrative, budgeting, and fiscal powers;

(10) the supervision and maintenance, including construction and operation, of vessels used by the Department of Fish and Game;

(11) authorize the holder of an interim-use permit under AS 16.43.010 — 16.43.380 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under AS 16.05.010 — 16.05.950 in conformity with standards established by the Alaska Commercial Fisheries Entry Commission.

(12) [Effective until January 1, 198?] not later than March 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which he designates as developing commercial fish species for the following fiscal year of the state; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed.

[Effective January 1, 1983] not later than January 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed.

(§§ 6, 11 art I ch 64 SLA 1959; am § 1 ch 42 SLA 1963; am § 2 ch 227 SLA 1970; am § 2 ch 79 SLA 1973; am § 12 ch 79 SLA 1979; am § 1 ch 82 SLA 1982)

Effect of amendments. — The 1979 amendment, added paragraph (12). The 1982 amendment, effective January 1, 1983, substituted "January 31" for "March 31," "the commissioner of fish and game designates" for "he designates," and

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"that calendar year" for "the following fiscal year of the state" in the introductory language of paragraph (12).

Editor's notes. — Section 14, ch. 79, SLA 1979 provides in subsection (b): "Not later than 30 days after the effective date of this Act, the commissioner of fish and game shall designate fish and shellfish species as developing commercial fish species in accordance with AS 16.05.050(12) for the purpose of taxing developing commercial fish species from the effective date of this Act and until June 30, 1980."

Section 14, ch. 79, SLA 1979, as amended by § 13, ch. 155, SLA 1980 provides in subsection (a): "The taxes paid for the 1978 calendar year under AS 43.75

shall be shared with municipalities in accordance with AS 43.75.130 and 43.75.135, as those sections read before their respective amendment and repeal by this Act. The taxes paid for the 1979 calendar year and for each succeeding calendar year shall be shared with municipalities in accordance with AS 43.75.130 as amended by sec. 11 of this Act."

Section 14, ch. 82, SLA 1982, provides: "The designation of developing commercial fish species required to be made not later than January 31, 1983, under AS 16.05.050(12), as amended in sec. 1 of this Act, supersedes the designation of developing commercial fish species for the fiscal year ending June 30, 1983."

Sec. 16.05.060. Emergency openings and closures.

NOTES TO DECISIONS

Effect of orders. — Authorized by this section, emergency closure orders have the force and effect of law. *F/V Am. Eagle, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980).*

Vagueness of order. — The closure of a shellfish district by emergency order was not in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, in violation of the due process rights of a fishing vessel's owners. *F/V Am. Eagle, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980).*

Area closed. — This section does not prohibit the closure of an entire statistical area of king crab stocks or district thereof. *F/V Am. Eagle, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973,*

3974, 4023) 620 P.2d 657 (1980).

Use to enforce resource management plan. — If the Board of Fisheries properly adopted a plan for the management of state fishery resources, the Commissioner of the Department of Fish and Game could enforce that policy through the emergency order process. *Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).*

Selective closures. — The Commissioner of the Department of Fish and Game may use the emergency order process to close down one type of fishery and not another in order to implement a policy establishing priorities of use. *Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).*

Sec. 16.05.065. Application extension. (a) The commissioner shall extend the time and dates during which application may be made for fish or game registration if he finds that

(1) the conservation and management of the fish or game resource will not be affected adversely; and

(2) the failure to timely apply is the result of excusable neglect.

(b) The fee for an extension granted under this section is \$45.

(c) As used in this section, "excusable neglect" does not include unfamiliarity with or ignorance of applicable laws and regulations. In order to show excusable neglect, a person must have demonstrated,