



HB

382

Representative Jay Ramras
Co-Chair, House Resources
Co-Chair, Economic Develop.
Tourism & Trade
House State Affairs
Joint Armed Services
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives Sponsor Statement HB 382

House Bill 382 will allow the patrons of restaurants to enjoy a bottle of wine with their meals without the need to consume the entire bottle. Presently, if a customer purchases dinner and is unable to eat it all they can request a package to take the leftovers home. If it is a bottle of wine the only options are to finish it before leaving, or leave the unconsumed portion at the restaurant. Since the majority of customers chose the first option they may have had too much to safely drive.

What House Bill 382 does is allow the restaurant to recork the bottle in such a manner as to require the use of a corkscrew to reopen the bottle. In the case of non-corked bottles or at the discretion of the Alcohol Beverage Control Board the wine can be sealed.

House Bill 382 is an additional tool to curb DUI's by allowing the consumer to purchase and enjoy a bottle of wine with their dinner, and not overindulge simply because of economics.

###

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB382-DPS-ABC-2-03-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act relating to recorking, sealing, or packaging RDU Alcoholic Beverage Control Board
of wine served with a meal..." Component ABC Board
 Sponsor Representative Ramras
 Requester House Special Committee on Economic Component No. 2690
Development, Trade and Tourism, Labor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type -Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no fiscal impact on the Department of Public Safety.

Prepared by: Director Douglas B. Griffin
 Division: Alcoholic Beverage Control Board
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

Phone 907-269-0351
 Date/Time 2/6/06 10:56 AM
 Date 2/6/2006

Sec. 04.16.120. Removal or introduction of alcoholic beverages.

Statute text

(a) A person may not remove from licensed premises alcoholic beverages that have been sold or furnished for consumption only on the premises.

(b) Except as provided in this subsection, a person may not bring an alcoholic beverage into licensed premises for use or consumption by oneself or another person on the premises unless that person is a licensee, an agent, employee, or common carrier in the regular course of employment. With the permission of the licensee, a person may bring wine into premises licensed as a beverage dispensary or a restaurant or eating place for consumption by the person while eating food served at a table on the licensed premises. The beverage dispensary or restaurant or eating place may charge a corkage fee for serving wine supplied by a customer.

History

(§ 3 ch 131 SLA 1980; am § 15 ch 74 SLA 1999)

State Regulations on Re-corking Wine from Restaurants

Compiled by the National Restaurant Association from state liquor authority, state restaurant association, and other sources. All information is believed to be accurate as of June 2005 and is provided with the understanding that the National Restaurant Association is not engaged in rendering legal or professional services. No warranty of accuracy is given. Please verify policies and appropriate procedures with your state and local alcohol beverage control department as other regulations may apply.

State	Rules on taking wine home from restaurants
Arizona	Patrons may re-cork and removed a partially consumed bottle of wine as long as it was purchased with a meal and the cork is replaced flush with the bottle.
Arkansas	Arkansas ABC Reg. 1.79(27) does provide that those establishments which hold an on premise permit that would allow the service of wine may allow a consumer who purchases an unsealed package of wine in conjunction with a food service and consumes a portion of the wine on the premises with the meal, to replace the cork and remove the partially filled package from the premise. Contact enforcement agency for compliance details.
California	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Colorado	Patrons may take one 1 partially consumed bottle of wine up to 750 ml purchased from an establishment with a hotel/restaurant liquor license. Restaurants are not required to do so. Those restaurants who do extend this option to customers is urged to reseal and package the wine to protect against any open container violation. (enacted 2005)
Connecticut	Patrons are allowed to take wine home when purchased with a meal. Regulations pertaining to transportation of unsealed container apply.
Delaware	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for additional compliance details.
Florida	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for additional compliance details. (enacted 2005)
Georgia	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for additional compliance details.
Hawaii	Legislation enacted in 2002 allows county liquor commissions to permit many licensees (incl. restaurants) to allow patrons to remove re-corked/re-sealed wine from premises. Contact enforcement agency for compliance details.
Idaho	Patrons are allowed to take wine home when purchased with a meal. Regulations pertaining to transportation of unsealed container apply.
Indiana	Patrons are allowed re-cork and take home wine purchased with a meal. The cautionary statement is to avoid any violation of the open container laws in the area that the wine will then be transported in. Local law enforcement can provide that information.
Iowa	Patrons are allowed to take wine home when purchased with a meal if the restaurant or bar has the appropriate licensing in place.

Louisiana	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Maine	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Michigan	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details. <i>(enacted 2005)</i>
Minnesota	A restaurant with an on-sale or wine license may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal, to remove the bottle when leaving the license premises provided that the bottle has been opened and the contents partially consumed.
Montana	Re-corking is permitted in businesses with all-beverage licenses or beer/wine licenses. A restaurant beer/wine license may <u>not</u> sell alcohol to go. Contact enforcement agency for compliance details.
Nevada	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
New Hampshire	Unconsumed wine purchased with a full meal may be taken from premises, provided patron is not intoxicated, bottle is properly sealed/bagged, and transported in vehicle area inaccessible to the driver.
New Jersey	Patrons are allowed to remove partially consumed wine from the premise as long as it is re-corked and placed in the trunk of the car. Not having direct access to the wine would remove the chance of receiving an open container citation.
New York	State law does allow patrons to take home <u>one</u> bottle of wine purchased with full meal. Please contact enforcement agency for compliance details.
North Carolina	If the establishment has an <u>off-premises</u> permit, then they customer can take an opened bottle of wine home by corking it. If the establishment does <u>not</u> have an off-premises license, the customer cannot. Re-corked wine must be transported in a vehicle compartment inaccessible to the driver.
Oklahoma	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Oregon	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Pennsylvania	All hotel (H) and restaurant (R) licensees may now allow patrons who have purchased a bottle of wine in conjunction with a meal, to take the unconsumed portion of the bottle with them when they leave. The bottle <u>must be resealed</u> before leaving the premises. A "meal" is defined as food prepared on the premises sufficient to constitute breakfast, lunch, or dinner; a "meal" does not include snacks such as pretzels, popcorn, chips, or similar items. This does not apply to retail dispenser (beer only or E), club, (C) or catering club (CC) licenses.
South Carolina	Nothing in the S.C. law prevents a patron from removing the open container from the restaurant. It is also legal to have the open container in a car as long as it is in the trunk or luggage compartment. Contact enforcement agency for compliance details.
Tennessee	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.

Texas	Patrons who order wine with food and have a portion of the open container remaining may remove the open container of wine from the premises. Contact enforcement agency for compliance details.
Utah	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details.
Vermont	Vermont allows restaurants the discretion of allowing patrons to take home opened, bagged bottles of wine. **only in accordance with T 7 VSA § 222(1) Contact enforcement agency for compliance details.
Virginia	Patrons are allowed to take wine home when purchased with a meal. While it is not required to be in the trunk it is recommended that the bottle is inaccessible to the driver and passengers.
Washington	Washington law permits the unused portion of wine to be re-corked, packaged and carried out by the guest. Contact enforcement agency for compliance details.
Wyoming	Patrons are allowed to take wine home when purchased with a meal. Contact enforcement agency for compliance details. <i>(enacted 2005)</i>

** All states not mentioned do not allow the re-corking and removal of partially consumed wine that was purchased with a meal.



2005 02 18: Michigan Considers a Wine Re-corking Bill

by Joseph McConnell

There's an old piece of internet humor that contrasts the Martha Stewart personality type with the attitudes and reactions of "the real woman." In one of its entries, it has the Martha-type saying that freezing in ice cube trays is a wonderful way of preserving leftover wine. The real woman's reaction is, "*Leftover wine?*"

We react in somewhat the same way to a bill introduced recently in the Michigan Senate by Sen. Judi Gilbert, which would permit restaurants and restaurant patrons to "re-cork" and take home wine left over at the end of a meal. Not a problem we often have. But although CII management will probably seldom take advantage of this capability, we still support it, for several reasons.

First, we applaud anything that encourages diners to order and restaurants to offer higher quality wines. The theory is, if you know that you'll be able to take home (and perhaps freeze in ice cube trays) the remains of that Chateaufeuf or Howell Mountain, you're more likely to order it instead of the Bonny Doon or even the Diet Slurpee. This is of particular interest when you consider people who often dine out alone; without a recorking law, dinner for one means a choice between the by-the-glass offerings, getting sloshed, or leaving good wine to the tender mercies of the kitchen staff.

And it's also argued that the bill will have some impact on drunken driving -- you won't feel economically pressured to finish your bottle, and therefore will drive more sensibly and safely on the way home. We admit that this is not the most convincing argument -- no statistics are collected here or anywhere else to show *what* an intoxicated driver was drinking, and consequently there's no basis to say that people pushing themselves to drain the last drop from a bottle of 1995 Brunello are subsequently laying waste the countryside. But if it makes the values voters happy, we're willing to play along, since the other benefits for the industry and the consumers are real enough.

The mechanics of it are not specified in the current bill's language -- presumably it would be necessary to do more than just pounding in the cork again. There's likely to be some kind of official re-seal process or something similar, letting Officer Friendly know that you're a fine upstanding oenophile who simply practices moderation, and not some Ripple-swilling Beatnik, cruising for babes with an **open bottle of alcohol** in your car.

In fact, if it becomes law, it might not be a bad idea for restaurants to provide a hang tag of some kind, citing the actual bill. And of course, there might be some incremental revenue to be made by selling preservation gear along with the re-corked bottle. A basic VacuVin kit, perhaps with the restaurant's label, might be a nice thing to stock and sell as an add-on.

Anyway, if you're a Michigan voter and you'd like to see the state follow the 30 other states that have similar laws, drop your Senator a line and encourage him or her to support Senate Bill 0199 2005.

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Act No. 21
Public Acts of 2005
Approved by the Governor
May 19, 2005
Filed with the Secretary of State
May 19, 2005
EFFECTIVE DATE: May 19, 2005

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Senators Gilbert, Hammerstrom, Sanborn, McManus, Jellinek, Goschka, Bishop, George, Barcia and Switalski

ENROLLED SENATE BILL No. 199

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 1021 (MCL 436.2021), as amended by 2002 PA 725.

The People of the State of Michigan enact:

Sec. 1021. (1) The commission shall not require a licensee to sell or serve food to a purchaser of alcoholic liquor. The commission shall not require a class A hotel or class B hotel to provide food services to registered guests or to the public.

(2) Except as otherwise provided in subsection (3), a purchaser shall not remove alcoholic liquor sold by a vendor for consumption on the premises from those premises.

(3) A vendor licensed to sell wine on the premises may allow an individual who has purchased a meal and who has purchased and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure. This subsection does not allow the removal of any additional unopened bottles of wine unless the vendor is licensed as a specially designated merchant. The licensee or the licensee's clerk, agent, or employee shall reinsert a cork so that the top of the cork is level with the lip of the bottle. The transportation or possession of the partially consumed bottle of wine shall be in compliance with section 624a of the Michigan vehicle code, 1949 PA 300, MCL 257.624a.

(4) This act and rules promulgated under this act do not prevent a class A or B hotel designed to attract and accommodate tourists and visitors in a resort area from allowing its invitees or guests to possess or consume, or both, on or about its premises, alcoholic liquor purchased by the invitee or guest from an off-premises retailer, and does not prevent a guest or invitee from entering and exiting the licensed premises with alcoholic liquor purchased from an off-premises retailer.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved _____

Governor

wine making supplies, beer making supplies, winemaking supplies, homebrewing, home wine making supply, home brewing supply, wine making, beer making



**Wine and Beer Making Supplies
for Home Brewers and Vintners**
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Wine making supplies and beer making supplies for home wine or home brewing. We stock only quality Wine Cellar Supply and Bee Supply in Elkhart just outside of Goshen, South Bend, Chicago or Indianapolis. Use our great selection of high quality wine making and beer making equipment, wine making kits, beer making kits a supplies for making your favorite homebrew and home made wine and beer kits at everyday low prices. Kegging equipment, grape p corks, wine bottles, beer bottles and more in stock and ready to s wide today. Cheers and Salute from Quality Wine and Ale Supply.

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Wine Corks, Wine Corkers

corks, wine corks, bottle corks, wine making kits, wine making supply, home wine making supplies, winemaking supp wine making supplies...



Item # 17421

Champagne Floor Corker by Ferrari

Corks Champagne bottles and standard wine bottles. Uses our i champagne corks or any straight wine cork. Very good quality al frame and legs. Corks all standard size wine bottles including 37 1.5 ltr. and 750ml champagne bottles. Caps beer bottles too with adaptor for crown caps #17530 sold below.

\$93.95

Quantity

1



Item # 17530

Adaptor for Crown Caps - Use with Corkers Listed

For use with our #4040 La Dio Padre or our #17421 Champagne cap your beer bottles with any metal crown cap. Makes your wine versatile and capping could not be easier.

\$9.95

Quantity

1

Item # 4036

Italian Twin Lever Corker

Deluxe, adjustable push rod for regulating depth of cork insertion favorite corker.

\$19.95

Quantity

1

- Carboys
- Chemicals - Wine
- Clarifiers - Wine
- Corks
- Corkers
- Crushers - Grapes
- Destemmers - Grapes
- Demi-Johns
- Fermentors
- Filters and Pads
- Foils - Champagne



- Fruit Flavoring
- Labels and Paper
- Presses - Grapes
- Shrink Caps
- Spigots - Wood
- Sterilizing - Wine
- V-Vessel System
- Wine Storage Racks
- Wine Accesories
- Wine Glasses
- Yeast - Dry - Wine
- Yeast - Liquid
- Coming Soon:
 - Stainless Tanks



Item # 4037
Easy Twin Lever Corker

Nylon body with spring that helps secure bottle from sliding while duty then our Italian twin lever corker.

\$24.95

Quantity

1

- Beer Making Supplies**
- BYO Brew Your Own Magazine**
- Beer Equipment Kits**
- Beer Ingredient Kits:**
 - Brewers Best Kits
 - Brew House Kits
 - Malt Extract Kits
 - Barons Beer Kits



item # 4039
Portuguese Twin Lever Corker
Good quality corker.

\$13.95

Quantity

1

- Additives - Beer
- Books - Beer
- Bottles - Beer
- Brewers Garden Herbs
- Brewing / Boiling Pots
- Candi & Sugars
- Caps & Cappers
- Carboys
- Chemicals - Beer
- Cleaners - Beer
- Fermentors
- Filters and Pads
- Fiakes & Adjuncts
- Fruit Flavors
- Oregon Fruit
- Purees



Item # 4040
Italian Floor Corker - 'La Dio Padre' by Ferrari

'La Dio Padre' of floor corkers. Brass crimping jaws. If you are lo this is it! Handle breaks down into two sections for easier storage standard size wine bottles including 375ml, 750ml and 1.5 ltr. Ct too with the optional adaptor for crown caps #17530 sold above.

\$29.95

Quantity

1

Item # 4042

- [Harvest Fruit](#)
- [Bases](#)
- [Grains - Brewing](#)
- [Herbs - Dried](#)
- [Hops](#)
- [Kegging](#)
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- [Yeast - Dry](#)
- [Yeast - Liquid](#)



Portuguese Floor Corker

Excellent, heavy duty floor corker with high quality crimping jaws and 1.5ltr bottles. Corks 375ml bottles with small block of wood placed on bottle holder. Makes a great gift!

\$49.95

Quantity

- Common Equipment**
- [Air Locks](#)
- [Better Bottles](#)
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Our No. 7 first quality corks are made of natural cork, prewashed natural products, greatly improving their appearance. The corks have decorative grape leaf pattern and are chamfered. Recommended stopper for table wine only, non-wine liquid or bottle closures. Caution: hand so they are tight but NOT airtight. NOT recommended for lay any liquid but upright storage is ok. Great when using wine bottle with red hots, M&M's or when sending wedding or party invitation

First Quality Corks / #7 x 1-3/4

Selected Item #4050

\$3.49

Quantity



1-3/4 inch long corks provide up to 3-5 years of protection for aging. Quality corks are made of natural cork, prewashed and filled with wax, greatly improving their appearance. The corks are printed with a leaf pattern and are chamfered. Best choice when using a twin leaved any hand corker. Floor corkers too.

First Quality Corks / # 8 x 1-3/4 Corks

Selected Item #4060

\$3.95

Quantity



1-1/2 inch long corks provide up to 2 years of protection for aging. Quality corks are made of natural cork, prewashed and filled with natural wax, greatly improving their appearance. The corks are printed with a decorative pattern and are chamfered. Recommended for use with floor corker

First Quality Corks / # 9 x 1-1/2 Corks

Selected Item #4062

\$3.95

Quantity

- Miscellaneous**
- [Liquor Making](#)
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1-3/4 inch long corks provide up to 3-5 years of protection for aging. Quality corks are made of natural cork, prewashed and filled with wax, greatly improving their appearance. The corks are printed with a leaf pattern and are chamfered. Recommended for use with floor corks.

First Quality Corks / # 9 x 1-3/4 Corks

Selected Item #4064

(A) First Quality Corks / Bag of 30 / No. 9 x 1 3/4

\$4.25

Quantity



Quality Wine and Ale Supply and Nomacorc® have joined forces to bring you the #1 synthetic cork on the market! "What's so special about these corks? The answer is the manufacturing process. Other types of synthetic corks are injection molded which is a batch process that produces corks with inconsistent density and cell structure size resulting in inconsistent protection. Nomacorc® are made by a unique, patented, co-extrusion process that provides a very consistent quality, and each cork is exactly the same. Nomacorc® is simply a better closure because of its closed cell structure creates a better barrier from oxygen and protects your wine. They have made for us a 9 x 1 1/2 cork, printed with the Nomacorc logo. We've tested the corks and they work best with floor corks and hand corks too. These corks seal instantly and the bottle can be stored directly after corking. You can also use any common corker on your wine bottles. This is modern technology that preserves your wine. We are pleased to be able to offer it to you. Recommended for use with floor corks and also for twin lever corks. These corks will provide at least 1 year of protection during aging.

Nomacorc® Synthetic Corks / # 9 x 1-1/2

Selected Item #4086

(A) Nomacorc® Synthetic Corks / Bag of 30 / No 9 x 1-1/2

\$6.75

Quantity



1-3/4 inch long corks provide up to 5 years of protection for aging. These corks are agglomerated and non-chamfered. You will find minimal leakage with high quality corks. Use with floor corks only.

Premium Twin Disc Wine Corks / #9 x 1-3/4

Selected Item #4102

(A) Premium Corks / Bag of 30 / No 9 x 1 3/4

\$6.25

Quantity

APM Premium Quality Wine Corks - 1000 Count Bags Only



Selected Item #4119

(A) 9 x 1-1/2 Agglomerated Superior Wine Corks - Per 1000

\$49.95

Quantity

1

This is a ridiculously unbelievable sale, a real super Superbuy! A cork supplier has closed their doors and auctioned off their left over just happened to be at the right place at the right time and score. There is no compromise on quality here as all the corks are wine want to act fast because quantities are limited and when the corks are gone for good. Choose your style and length. 1000 count bag

Some types of corks:

Agglomerate Corks: (#4119)

This type of cork closure is produced from cork granules that are cork oak resins using heat treatment while under pressure. They are formed by a single molding or by extrusion. Agglomerate cork has high resistance to a good seal. A mixture of clean cork granules that are pressed together to form wine corks are used to produce agglomerate stoppers. Agglomerate wine corks are the ideal economically produced stoppers to be used which will be consumed within two or three years.

Twin Top (Disc) or One by One Corks: (#4117 & #4111)

This is a new generation of cork stoppers, economically priced as well as high quality natural straight corks. It is comprised of a disc of agglomerate cork, and a disc of natural cork at each end.

(Below is for customer information only for other types of corks)

Natural Straight Wine Corks:

This is a cylindrical stopper which has been punched directly from 100% natural product. Once the stopper has been punched it is correct length, sorted into various qualities by computerized sort washed and sterilized. For added assurance, a final quality sort is done manually and random samplings are sent for laboratory for microorganisms, moisture control, etc. There are different grades available depending on the type of bottle, bottling method.

Ice Wine Natural Corks:

These are the highest quality corks specifically sized and treated for neck ice wine bottles and to withstand high sugar content

Colmated or Pore-Filled Corks:

This is a natural cork which goes through an extra operation of "colmation" inherent to all corks. This treatment improves the cork's mechanical strength. Usually the filling of the pores is performed on lower grades since they are of a quality high enough not to require pore filling. The "filling" is done using a mixture of cork particles of a granulometry and natural resin approved by the FDA. Colmated corks are a very good functional stopper.

Item # 4208

Tapered Wine Corks / Bag of 25 / No. 8

Tapered cork with 7/8 inch top, 11/16 inch bottom.



Quantity

Mr. Pound --

I have reviewed HB 382, "An Act relating to recorking, sealing, or packaging of wine served with a meal and removal ...". Speaking only for myself and not on behalf of the ABC Board, I support this legislation. Similar provisions are found in many states. The consensus of states that allow the resealing for safe removal and transport of wine not consumed with a meal is that benefits outweigh potential problems. The main benefit of allowing the resealing of a partially consumed bottle of wine to take home is the prevention of over consumption with the meal for the sake of not wasting good (perhaps expensive) wine. This just removes one more excuse for a person to drink excessively and endanger the public by driving. This concern over moderate alcohol consumption leading to a potential DUI arrest has been heightened in the public's mind and for hospitality business owners by the adoption of the .08 BAC standard.

The primary concern with this bill is violation of open container laws while transporting the resealed wine home. Representative Ramras has taken care in drafting the bill to minimize this potential problem. The bill sponsor has required replacement of the cork sufficient to require a tool to reopen the bottle. More and more premium wines are changing to screw-off caps and it is likely this trend will continue. This will require just a bit more work to develop common sense ways to make the resealed bottle tamper proof (taping the bottle cap or placing the bottle in a paper or plastic bag that can be sealed and adequately enclosed). The bill provides for the ABC Board to establish safe and simple ways to address this issue and I do not see this as a problem. Alaska has the advantage of learning what that worked well in other states and applying it here.

I hope these comments and observations are helpful to the committee. I am sorry that I could not be available to participate in the hearing by teleconference.

Doug Griffin, Director

Alaska Alcoholic Beverage Control Board

HB

389

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

(907)-465-3719

FAX# (907)-465-3250

State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HB 389 – Tourist Accommodations

SPONSOR STATEMENT

I was contacted by the Department of Environmental Conservation after my office solicited information from state agencies about laws that should be repealed.

This legislation repeals the permitting requirement for tourist accommodations.

Tourist accommodations are heavily regulated as public accommodations and the remaining sections of AS 18.35 will provide DEC with the regulatory authority necessary to insure the health and safety of the public.

(24-LS1276/G)

ALASKA STATE HOUSE OF REPRESENTATIVES

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FAX# (907)-465-3258
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REPRESENTATIVE JOHN COGHILL

HB 389 – Tourist Accommodations

SECTIONAL

Section 1.

Presently DEC does not require permits for public accommodations. This bill will cleanup language deleting reference to AS 18.35.040, 050, 070, and AS 44.46.025(a) which are being repealed in Section 2.

Section 2.

Repeals:

AS 18.35.040 Permits –
Permits are no longer required.

AS 18.35.050 Penalty for noncompliance with permit requirement.
There is no permit; there is no noncompliance.

AS 18.35.070 Posting regulations.
It is unnecessary to post the laws and regulations on the premises.

AS 44.64.030(a)(16) - AS 18.35.040 (Tourist Accommodations).
This section needs to be repealed, because 18.35.040 is repealed.

Section 3:

This Act will take effect immediately under AS 01.10.070(c).

HB

392

**Testimony of Deputy Commissioner Dan Easton
House Community and Regional Affairs Committee
House Bill 392 (authorizing the establishment of regional solid waste
management authorities)
February 9, 2006**

Mr. Chairman, I'm Dan Easton, Deputy Commissioner of the Department of Environmental Conservation (DEC).

I appreciate the opportunity to speak in support of HB 392 dealing with regional solid waste management authorities.

In some ways, Alaska's solid waste management situation is unique – a point illustrated by comparing us to the State of Washington.

Washington has a population of over 6 million with all of its municipal solid waste going to 21 regional disposal facilities.

Alaska, with its population of around 640 thousand, has over 200 different disposal facilities (some of which are out of state).

Compared to Washington, we have about one tenth of the population and ten times the number of solid waste disposal sites.

The difference is that Washington, with its transportation infrastructure and ability to move solid waste, has large solid waste facilities that serve all municipalities within a region. Alaska tends to have one disposal facility per community.

From DEC's environmental and human health perspective, we support development of regional solid waste management systems that serve a number of communities over individual systems serving a single community.

Larger solid waste facilities are able to take advantage of economies of scale and are generally better funded, better operated, and less apt to cause environmental or health problems than smaller facilities.

Alaska has the following regional solid waste management systems:

- Anchorage Regional Landfill;
- Matanuska-Susitna Borough Central Landfill (Palmer);
- Kenai Peninsula Borough Central Landfill (Soldotna);
- Fairbanks Northstar Borough Landfill;
- Oxbow Landfill (North Slope Borough - Deadhorse);
- Kodiak Island Borough Landfill;
- Denali Borough Landfill (Healy);
- Copper Basin Sanitation Landfill (Glennallen);
- Bristol Bay Borough Landfill (Naknek); and
- Tok Landfill.

We encourage development of other regional solid waste management systems where they make sense.

By providing communities with the opportunity to band together to form regional solid waste authorities, we hope that HB 392 will foster development of new regional solid waste management systems in Alaska.

We are not experts on many of the Title 29 authorities, legal and financial matters in this bill.

We do, however, support the intended effect of this bill to further development of regional solid waste management systems in Alaska.

We urge your support for HB 392.



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

Memorandum

March 6, 2006

To: Representative Tom Anderson, Members of the Labor and Commerce Committee
From: Rep. Peggy Wilson

Re: CS for CSHB 392, Solid Waste Management Authorities

During the Community and Regional Affairs Committee meeting a CS to HB392 was passed. That CS made a change to the authority language that would allow a municipality to opt out of an authority without dissolving that authority. In addition to changing the Solid Waste Management Authority statutes inadvertently the Port Authority language was modified to make both the authority statutes alike.

I would like to propose a CS for CSHB392 Ver.S . This CS will remove all the language that would modify the Port Authority Statutes. I don't feel we want to make changes to this well-established entity just to have similar authority language. The CS I'm proposing will still allow a municipality to opt out of a Solid Waste Management Authority but it will not change the Port Authority language.

Please pass CSHB 392 Ver. X as described in this memo.

24-LS1227X
Bullock
3/2/06

CS FOR HOUSE BILL NO. 392()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE WILSON

A BILL
FOR AN ACT ENTITLED

1 **"An Act authorizing the establishment of regional solid waste management authorities."**

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

3 *** Section 1.** AS 29.35.070(a) is amended to read:

4 (a) The assembly acting for the area outside all cities in the borough and the
5 council acting for the area in a city may regulate, fix, establish, and change the rates
6 and charges imposed for a utility service provided to the municipality or its inhabitants
7 by a utility that is not subject to regulation under AS 42.05 unless that utility is
8 exempted from regulation under AS 42.05.711(a), (d) - (k), [OR] (o), or (p), or is
9 exempted under regulations adopted under AS 42.05.810 from complying with all or
10 part of AS 42.05.141 - 42.05.721.

11 *** Sec. 2.** AS 29.35 is amended by adding new sections to read:

12 **Article 10. Regional Solid Waste Management Authorities.**

13 **Sec. 29.35.800. Purpose of authorities.** The purpose of a regional solid waste
14 management authority is to provide environmentally sound and cost-effective
15 management of solid waste, including storage, collection, transportation, separation,

1 processing, recycling, and disposal, to protect the public health, safety, and welfare;
2 improve the environment of the state; recover resources and energy; and prevent
3 pollution.

4 **Sec. 29.35.805. Establishment of regional solid waste management**
5 **authorities.** (a) A regional solid waste management authority may be created in one of
6 the following ways:

7 (1) the governing body of a municipality may, by ordinance, create a
8 regional solid waste management authority as a public corporation of the municipality;

9 (2) the governing bodies of two or more municipalities may, by
10 substantially identical ordinances adopted by each of the governing bodies, create a
11 regional solid waste management authority as a public corporation of the
12 municipalities.

13 (b) One or more municipalities may join an authority established under (a)(1)
14 or (2) of this section upon the adoption of substantially identical ordinances by the
15 governing bodies of each affected municipality.

16 (c) A regional solid waste management authority created under this section is
17 a body corporate and politic and an instrumentality of the municipality or
18 municipalities creating it but has a separate and independent legal existence.

19 (d) Creation of a regional solid waste management authority under
20 AS 29.35.800 - 29.35.925 is an exercise of a municipality's extraterritorial jurisdiction
21 under AS 29.35.020.

22 (e) The enabling ordinance by which a regional solid waste management
23 authority is established must specify the powers, boundaries, and limitations of the
24 regional solid waste management authority.

25 (f) An ordinance creating a regional solid waste management authority must
26 be approved by the voters of the municipality or municipalities participating in the
27 authority for the authority to be established.

28 (g) Nothing in AS 29.35.800 - 29.35.925 prevents a municipality or
29 municipalities from creating or participating in a public corporation, including a
30 regional solid waste management authority, in any form or manner not prohibited by
31 law. However, AS 29.35.800 - 29.35.925 only apply to and may only be used by a

1 regional solid waste management authority created under this section.

2 **Sec. 29.35.810. Dissolution of a regional solid waste management**
3 **authority.** (a) The enabling ordinance creating a regional solid waste management
4 authority must provide for the manner by which a regional solid waste management
5 authority may be dissolved.

6 (b) If an authority ceases to exist, its assets shall be distributed to each
7 municipality that was participating in the authority on the day before the date of
8 dissolution in proportion to the municipality's contribution to the authority less any
9 outstanding debt or obligation of that municipality to the authority. Any obligation to
10 bondholders then outstanding shall first be satisfied in full.

11 (c) A municipality that is participating in an authority with one or more other
12 municipalities may withdraw from participation without dissolving the authority. The
13 contributions to the authority made by the withdrawing municipality remain the
14 property of the authority, and the municipality remains liable for obligations under any
15 agreement with the authority or other participating municipalities unless the agreement
16 is changed by the contractual parties. A municipality withdraws from participation in
17 an authority by repealing the ordinance adopted under AS 29.35.805(a)(2) or (b).

18 **Sec. 29.35.815. Municipal property.** (a) A municipality may transfer and
19 otherwise convey or lease real property and improvements to real property to an
20 authority for use by the authority for the purposes set out in the ordinance adopted
21 under AS 29.35.805.

22 (b) A municipality may transfer and otherwise assign or lease personal
23 property to an authority for use by the authority for the purposes set out in the
24 ordinance adopted under AS 29.35.805.

25 **Sec. 29.35.820. Powers and duties.** (a) If provided in the enabling ordinance,
26 an authority may

- 27 (1) sue and be sued;
- 28 (2) have a seal and alter it;
- 29 (3) acquire an interest in a project as necessary or appropriate to
30 provide financing for the project, whether by purchase, gift, or lease;
- 31 (4) lease to others a project acquired by the authority on the terms and

1 conditions the authority may consider advisable, including, without limitation,
2 provisions for purchase or renewal;

3 (5) sell, by installment sale or otherwise, exchange, donate, convey, or
4 encumber in any manner by mortgage or by creation of another security interest, real
5 or personal property owned by it or in which it has an interest, including a project,
6 when, in the judgment of the authority, the action is in furtherance of the authority's
7 purposes;

8 (6) accept gifts, grants, or loans, under the terms and conditions
9 imposed under the gift, grant, or loan, and enter into contracts, conveyances, or other
10 transactions with a federal agency or an agency or instrumentality of the state, a
11 municipality, a private organization, or another person;

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

13 (8) purchase or insure loans to finance the costs of projects;

14 (9) provide for security within the boundaries of the authority;

15 (10) enter into loan agreements for one or more projects on the terms
16 and conditions the authority considers advisable;

17 (11) acquire, manage, and operate projects the authority considers
18 necessary or appropriate to serve the authority's purposes;

19 (12) assist private lenders to make loans to finance the costs of projects
20 through loan commitments, short-term financing, or otherwise;

21 (13) charge fees or other forms of remuneration for the use or
22 possession of projects under the agreements described in this subsection; other
23 agreements relating to the projects, covenants, or representations made in bond
24 documents relating to the projects; or regulations of the authority relating to the
25 projects;

26 (14) exercise the powers of eminent domain and declaration of taking
27 within its physical boundaries under AS 29.35.030 to acquire land or materials for
28 authority purposes;

29 (15) regulate land use within the boundaries of the authority;

30 (16) defend and indemnify a current or former member of the board,
31 employee, or agent of the authority against all costs, expenses, judgments, and

1 liabilities, including attorney fees, incurred by or imposed on that person in connection
2 with a civil or criminal action in which the person is involved because of the person's
3 affiliation with the authority if the person acted in good faith on behalf of the authority
4 and within the scope of the person's official duties and powers;

5 (17) purchase insurance to protect and hold harmless its employees,
6 agents, and board members from an action, claim, or proceeding arising out of the
7 performance of, purported performance of, or failure to perform in good faith, duties
8 for the authority or arising out of employment with the authority and to hold them
9 harmless from expenses connected with the defense, settlement, or monetary
10 judgments from that action, claim, or proceeding; the purchase of insurance is subject
11 to the discretion of the board; insurance purchased under this paragraph is not
12 compensation to the insured person; and

13 (18) protect its assets, services, and employees by purchasing
14 insurance or providing for certain self-insurance retentions.

15 (b) An authority shall maintain casualty, property, business interruption,
16 marine, boiler and machinery, pollution liability, and other insurance in amounts
17 reasonably calculated to cover potential claims against the authority or a municipality
18 for bodily injury, death or disability, and property damage that arises from or is related
19 to authority operations and activities.

20 **Sec. 29.35.825. Bonds of a regional solid waste management authority;**
21 **superior court jurisdiction.** (a) If authorized by the enabling ordinance, an authority
22 may borrow money and issue bonds on which the principal and interest are payable

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

25 (2) exclusively from the income and receipts of, or other money
26 derived from, designated projects or other sources, whether they are financed, insured,
27 or guaranteed in whole or in part with the proceeds of the bonds; or

28 (3) from its income and receipts or a designated part or parts of them.

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

31 (c) Before issuing bonds, an authority shall provide for consideration at least

1 sufficient, in the judgment of the authority, to

2 (1) pay the principal of and interest on the bonds as they become due;

3 (2) create and maintain the reserves for the payment that the authority
4 considers necessary or desirable; and

5 (3) meet all obligations in connection with the lease or agreement and
6 all costs necessary to service the bonds, unless the lease or agreement provides that the
7 obligations are to be met or costs are to be paid by a party other than the authority.

8 (d) Bonds shall be authorized by resolution of the authority and shall be dated
9 and mature as the resolution may provide, except that a bond may not mature more
10 than 40 years after the date of its issue. Bonds shall bear interest at the rate or rates, be
11 in the denominations, be in the form, either coupon or registered, carry the registration
12 privileges, be executed in the manner, be payable in the medium of payment, at the
13 place or places, and be subject to the terms of redemption that the resolution or a
14 subsequent resolution may provide.

15 (e) All bonds issued under this section, regardless of form or character, are
16 negotiable instruments for all the purposes of AS 45.01 - AS 45.08, AS 45.12,
17 AS 45.14, and AS 45.29 (Uniform Commercial Code).

18 (f) The superior court has jurisdiction to hear and determine suits, actions, or
19 proceedings relating to an authority, including suits, actions, or proceedings brought to
20 foreclose or otherwise enforce a mortgage, pledge, assignment, or security interest
21 brought by or for the benefit or security of a holder of the authority's bonds or by a
22 trustee for or other representative of the holders.

23 **Sec. 29.35.830. Bonds eligible for investment.** Bonds issued under
24 AS 29.35.825 are securities in which public officers and public bodies of the state and
25 its political subdivisions, insurance companies, trust companies, banks, investment
26 companies, executors, administrators, trustees, and other fiduciaries may properly and
27 legally invest funds, including capital in their control or belonging to them. The bonds
28 may be deposited with a state or municipal officer of an agency or political
29 subdivision of the state for any purpose for which the deposit of bonds of the state is
30 authorized by law.

31 **Sec. 29.35.835. Validity of pledge.** The pledge of revenue of an authority to

1 the payment of the principal or interest on bonds or notes of the authority is valid and
2 binding from the time the pledge is made, and the revenue is immediately subject to
3 the lien of the pledge without physical delivery or further act. The lien of a pledge is
4 valid and binding against all parties having claims of any kind against the authority
5 irrespective of whether those parties have notice of the lien of the pledge.

6 **Sec. 29.35.840. Credit of state or a municipality not pledged.** (a) The state
7 and municipalities participating in an authority are not liable for the debts of that
8 authority. Bonds issued under AS 29.35.825 are payable solely from the revenue of
9 the authority and do not constitute a

10 (1) debt, liability, or obligation of the state or a municipality; or

11 (2) pledge of the faith and credit of the state or a municipality.

12 (b) An authority may not pledge the credit or the taxing power of the state or
13 its municipalities. A bond issued under AS 29.35.825 must contain on its face a
14 statement that

15 (1) the authority is not obligated to pay it or the interest on it except
16 from the revenue pledged for it; and

17 (2) the faith and credit of the taxing power of the state or of a political
18 subdivision of the state is not pledged to the payment of it.

19 **Sec. 29.35.845. Pledges of the state and municipalities.** The state and
20 municipalities participating in an authority pledge to and agree with the holders of
21 bonds issued under AS 29.35.825 and with the federal agency, if any, that loans or
22 contributes funds for a project of the authority that the state and the municipalities
23 participating in the authority will not limit or alter the rights and powers vested in the
24 authority by its enabling ordinance or other law so that it is unable to fulfill the terms
25 of a contract made by it with those holders or that federal agency or in any way impair
26 the rights and remedies of those holders or that federal agency until the bonds,
27 together with the interest on them and interest on unpaid installments of interest, and
28 all costs and expenses in connection with an action or proceeding by or on behalf of
29 those holders or that federal agency, are fully met and discharged. An authority may
30 include this pledge and agreement of the state and the municipalities participating in
31 the authority, to the extent that it refers to holders of bonds of the authority, in 1

1 contract with those holders, and to the extent that it relates to a federal agency, in a
2 contract with that federal agency.

3 **Sec. 29.35.850. Limitation of liability.** A liability incurred by an authority
4 shall be satisfied exclusively from the assets or revenue of the authority. A creditor or
5 other person does not have a right of action against the state or a municipality
6 participating in an authority because of a debt, obligation, or liability of an authority.

7 **Sec. 29.35.855. Limitation on personal liability.** A board member or
8 employee of an authority is not subject to personal liability or accountability because
9 of the execution or issuance of bonds.

10 **Sec. 29.35.860. Fidelity bond.** An authority shall obtain a fidelity bond in an
11 amount determined by the board for board members and each executive officer
12 responsible for accounts and finances of that authority. A fidelity bond must be in
13 effect during the entire tenure in office of the bonded person.

14 **Sec. 29.35.865. No taxing authority.** An authority may not levy an income or
15 other tax.

16 **Sec. 29.35.870. Exemption from taxation.** (a) An authority exercising the
17 powers granted by the enabling ordinance under AS 29.35.800 - 29.35.925 is in all
18 respects for the benefit of the people of the municipalities participating in the authority
19 and the people of the state in general, for their well-being and prosperity, and for the
20 improvement of their social and economic condition. The real and personal property of
21 an authority and its assets, income, and receipts are exempt from all taxes and special
22 assessments of the state or a political subdivision of the state.

23 (b) Bonds issued by the authority under AS 29.35.825 are issued for an
24 essential public and governmental purpose; therefore, the bonds, the interest and
25 income from them, and all fees, charges, funds, revenue, income, and other money
26 pledged or available to pay or secure the payment of the bonds or interest on them are
27 exempt from taxation except for inheritance, transfer, and estate taxes.

28 (c) Notwithstanding the provisions of (a) of this section, an authority and the
29 municipalities participating in the authority may enter into agreements under which
30 the authority agrees to pay the participating municipalities' payments in lieu of taxes
31 and special assessments on real and personal property of the authority that is within

1 the taxing jurisdiction of the municipality.

2 (d) Nothing in this section creates a tax exemption with respect to the interests
3 of a business enterprise or other person, other than the authority, in property, assets,
4 income, or receipts, whether or not financed under AS 29.35.800 - 29.35.925.

5 **Sec. 29.35.875. Administration of regional solid waste management**
6 **authorities; board.** (a) An authority shall be governed by a board of directors, which
7 shall exercise the powers of the authority. The enabling ordinance establishing the
8 authority under AS 29.35.805 must specify the number, qualifications, manner of
9 appointment or election, and terms of members of the board.

10 (b) The board shall appoint a chief executive officer of the authority, who
11 serves at the pleasure of the board. The board shall fix the compensation of the chief
12 executive officer.

13 **Sec. 29.35.880. Continuation of collective bargaining agreements;**
14 **application of AS 23.40.070 - 23.40.260.** (a) A collective bargaining agreement for
15 employees of the state or its political subdivisions who are transferred to an authority
16 under AS 29.35.800 - 29.35.925 remain in effect for the term of the agreement or one
17 year, whichever is longer, and are binding on the authority unless the parties agree to
18 the contrary before the agreement expires. A labor-management negotiation impasse
19 declared after a transfer of employees under this subsection but before the negotiation
20 of a new collective bargaining agreement shall be resolved as provided in the
21 collective bargaining agreement or, if the collective bargaining agreement does not
22 provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

23 (b) Employees of the state or a political subdivision of the state transferred to
24 an authority shall retain, for one year following the date of transfer or for the duration
25 of a collective bargaining agreement transferred under (a) of this section, whichever is
26 greater, all rights of participation in fringe benefit programs available to the employees
27 on the day before the transfer, or in substantially equivalent programs.

28 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority established
29 under AS 29.35.800 - 29.35.925 unless all municipalities participating in the authority
30 are exempt under sec. 4, ch. 113, SLA 1972.

31 **Sec. 29.35.885. Bylaws and regulations.** (a) A board shall adopt bylaws and

1 appropriate regulations consistent with the enabling ordinance to carry out its
2 functions and purposes.

3 (b) A board shall adopt bylaws as soon after the authority is established as
4 possible and may, from time to time, amend those bylaws. The bylaws may contain
5 any provision not in conflict with law for managing the business of the authority and
6 for conducting the affairs of the authority, including provisions relating to

7 (1) the time, place, and manner of calling, conducting, and giving
8 notice of meetings of the board and committees of the board, if any;

9 (2) the compensation of directors, if any;

10 (3) the appointment and authority of committees of the board, if any;

11 (4) the appointment, duties, compensation, and tenure of officers,
12 directors, the chief executive officer, and other employees, if any;

13 (5) procedures for adopting regulations;

14 (6) procedures for adopting bylaws;

15 (7) procedures for making annual reports and financial statements; and

16 (8) other matters for the conduct of business by the board.

17 **Sec. 29.35.890. Authority subject to public records and open meetings**
18 **laws.** An authority established under AS 29.35.805 is subject to AS 40.25.110 -
19 40.25.220 and to AS 44.62.310 and 44.62.312.

20 **Sec. 29.35.895. Annual report.** Within 90 days following the end of the fiscal
21 year of an authority, the board shall distribute to the mayor and governing body of
22 each municipality participating in the authority a report describing the operations and
23 financial condition of the authority during the preceding fiscal year. The report may
24 include suggestions for legislation relating to the structure, powers, or duties of the
25 authority or operation of facilities of the authority. The report must itemize the cost of
26 providing each category of service offered by the authority and the income generated
27 by each category.

28 **Sec. 29.35.900. Audits.** (a) The board shall have the financial records of an
29 authority audited annually by an independent certified public accountant.

30 (b) An authority shall make all of its financial records available to an auditor
31 appointed by a municipality participating in the authority for examination.

1 **Sec. 29.35.905. Remedies.** A holder of bonds or notes or coupons attached to
2 the bonds issued by an authority under AS 29.35.825, and a trustee under a trust
3 agreement or resolution authorizing the issuance of the bonds, ~~except~~ as restricted by a
4 trust agreement or resolution, either at law or in equity, may

5 (1) enforce all rights granted under AS 29.35.800 - 29.35.925, the trust
6 agreement or resolution, or another contract executed by the authority; and

7 (2) compel the performance of all duties of the authority required by
8 AS 29.35.800 - 29.35.925 or the trust agreement or resolution.

9 **Sec. 29.35.910. Claims.** In judicial and regulatory proceedings by and against
10 an authority, an authority and its board members and employees enjoy the same rights,
11 privileges, and immunities as a municipality and municipal officers.

12 **Sec. ~~29.35.915. Conflicting laws inapplicable.~~** If a provision of AS 29.35.800
13 - 29.35.925 conflicts with another provision of this title, the provision of AS 29.35.800
14 - 29.35.925 prevails.

15 **Sec. 29.35.920. Definitions.** In AS 29.35.800 - 29.35.925, unless the context
16 otherwise requires,

17 (1) "authority" means a regional solid waste management authority
18 established under AS 29.35.805;

19 (2) "board" means the board of directors of an authority;

20 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding
21 bonds, or other forms of indebtedness of the authority;

22 (4) "bylaws" means the guidelines adopted by and amended by the
23 board from time to time under AS 29.35.800 - 29.35.925;

24 (5) "costs of projects" means all or any part of the aggregate costs
25 determined by an authority to be necessary to finance the construction or acquisition
26 of a project, including, without limitation, the cost of acquiring real property; the cost
27 of constructing buildings and improvements; the cost of financing the project,
28 including, without limitation, interest charges before, during, or after construction or
29 acquisition of the project; costs related to determining the feasibility of, planning,
30 design of, or engineering of the project and, to the extent determined necessary by the
31 authority, administrative expenses; the costs of machinery or equipment to be used in

1 the operation or rehabilitation of a solid waste management facility or operation; and
2 all other costs, charges, fees, and expenses that the authority determines necessary to
3 finance the construction or acquisition;

4 (6) "land" or "real property" means any interest in real property,
5 including tidal and submerged land, any right appurtenant to the interest, and, without
6 limitation, interests less than full title, such as easements, uses, leases, and licenses;

7 (7) "project" means a solid waste management facility, and
8 administrative facilities, including property necessary for solid waste management;

9 (8) "regulation" means a standard of general application or the
10 amendment, supplement, revision, or repeal of a standard adopted by an authority to
11 implement, interpret, or make specific the law enforced or administered by it or to
12 govern its procedure.

13 **Sec. 29.35.925. Short title.** AS 29.35.800 - 29.35.925 may be cited as the
14 **Regional Solid Waste Management Authority Act.**

15 * **Sec. 3.** AS 42.05.711 is amended by adding a new subsection to read:

16 (p) a regional solid waste management authority established under
17 AS 29.35.800 - 29.35.925 is exempt from regulation under this chapter, except that a
18 solid waste management authority is subject to this chapter if it directly competes with
19 a utility subject to this chapter.

20 * **Sec. 4.** AS 44.85.410(3) is amended to read:

21 (3) "municipal bond" means a bond or note or evidence of debt that
22 constitutes

23 (A) a general obligation bond that is a direct and general
24 obligation of a political subdivision of the state, all the taxable property within
25 which is subject to taxation to pay the bond, note, or evidence of debt, and the
26 interest without limitation, as to rate or amount generally to the extent
27 permitted by law or to avoid a default as provided for second class cities under
28 AS 29.45.590;

29 (B) a revenue bond, except a revenue bond for electrical
30 generation purposes other than diesel-powered generation, issued by a
31 municipality, a solid waste management authority, or a port authority that

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pledges the revenue of a revenue-producing capital improvement and that is payable solely from the revenue of the revenue-producing capital improvement;

(C) a general obligation bond or revenue bond combined or additionally secured;

(D) a bond of a borough issued as a general obligation of a service area under AS 29.47.440 or former AS 29.58.340; or

(E) an obligation of a municipality secured only by

(i) special assessments on benefited property;

(ii) tax increments and a letter of credit or equal security; or

(iii) a lease for equipment or building improvements if the state is not a lessee;

**Testimony of Deputy Commissioner Dan Easton
House Community and Regional Affairs Committee
House Bill 392 (authorizing the establishment of regional solid waste
management authorities)
February 9, 2006**

Mr. Chairman, I'm Dan Easton, Deputy Commissioner of the Department of Environmental Conservation (DEC).

I appreciate the opportunity to speak in support of HB 392 dealing with regional solid waste management authorities.

In some ways, Alaska's solid waste management situation is unique – a point illustrated by comparing us to the State of Washington.

Washington has a population of over 6 million with all of its municipal solid waste going to 21 regional disposal facilities.

Alaska, with its population of around 640 thousand, has over 200 different disposal facilities (some of which are out of state).

Compared to Washington, we have about one tenth of the population and ten times the number of solid waste disposal sites.

The difference is that Washington, with its transportation infrastructure and ability to move solid waste, has large solid waste facilities that serve all municipalities within a region. Alaska tends to have one disposal facility per community.

From DEC's environmental and human health perspective, we support development of regional solid waste management systems that serve a number of communities over individual systems serving a single community.

Larger solid waste facilities are able to take advantage of economies of scale and are generally better funded, better operated, and less apt to cause environmental or health problems than smaller facilities.

Alaska has the following regional solid waste management systems:

- Anchorage Regional Landfill;
- Matanuska-Susitna Borough Central Landfill (Palmer);
- Kenai Peninsula Borough Central Landfill (Soldotna);
- Fairbanks Northstar Borough Landfill;
- Oxbow Landfill (North Slope Borough - Deadhorse);
- Kodiak Island Borough Landfill;
- Denali Borough Landfill (Healy);
- Copper Basin Sanitation Landfill (Glennallen);
- Bristol Bay Borough Landfill (Naknek); and
- Tok Landfill.

We encourage development of other regional solid waste management systems where they make sense.

By providing communities with the opportunity to band together to form regional solid waste authorities, we hope that HB 392 will foster development of new regional solid waste management systems in Alaska.

We are not experts on many of the Title 29 authorities, legal and financial matters in this bill.

We do, however, support the intended effect of this bill to further development of regional solid waste management systems in Alaska.

We urge your support for HB 392.

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
Wrangell, AK 99929
Phone: (907) 874-3088
Fax: (907) 874-3055



Session:
State Capitol, Room 108
Juneau, AK 99801-1182
Phone: (907) 465-3824
1-800-686-3824
Fax: (907) 465-3175

**REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2**

SPONSOR STATEMENT CSHB 392

"Solid Waste Management Authorities."

HB 392 will allow a community or group of communities to create a public corporation to deal with waste management. HB 392 is modeled after the port authority statutes and will authorize the formation of solid waste authorities for waste management.

Over the last decade in Southeast Alaska landfills, waste-to-energy plants and incinerators have closed. The cheapest and quickest alternative for any one community has been to ship municipal solid waste (MSW) by barge and rail to super landfills in the continental U.S. Lack of available and suitable land near existing communities and high costs to develop a landfill have prevented any one community from taking on this task itself. HB 392 would allow a group of communities to come together and form an authority for waste management. Working together they will be able to accomplish what one community working alone is unable to do.

Recycling and municipal waste collection is expensive with southeast communities paying between \$77/ton and \$220/ton to ship recyclables to markets and MSW to landfills, while the cost per ton for disposal in Anchorage is only \$40/ton. Presently, communities in Southeast Alaska, excluding Juneau, are shipping 23,000 tons of municipal waste out of state each year. Other Southeast communities have landfills nearing capacity, while many small communities have improper or un-permitted dumps.

Communities cooperating as a single entity can produce a regional solution to deal with the MSW. The authority's regional facility could include a Materials Recovery Facility (recycling) on the front end and a state-of-the-art landfill. Other options may include thermal reduction (waste to energy), space for composting, and space for treating oily soils.

While the compelling reasons to develop this authority are focused around the Southeast Region this bill applies to any municipality or group of governing bodies in Alaska.

The Community and Regional Affairs Committee passed a committee substitute for HB 392. The Committee substitute added language that would allow a municipality to withdraw from an authority without dissolving the authority. However, any contributions from the departing municipality would remain with the authority and the municipality would remain liable for existing obligations that are not otherwise changed.



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

MEMORANDUM

Date: February 14, 2006

To: Representative Tom Anderson Labor and Commerce Committee

From: Representative Peggy Wilson *(PW)*

Re: HB 392 – Regional Solid Waste Management Authorities

HB 392 will allow a community or group of communities to create a public corporation to deal with waste management. HB 392 is modeled after the port authority statutes and will authorize the formation of solid waste authorities for waste management.

I request that you schedule HB 392 for hearing before Labor and Commerce Committee as soon as possible. Thank you for your consideration.

ALASKA STATE LEGISLATURE



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While the compelling reasons to develop this authority are focused around the Southeast Region this bill applies to any municipality or group of governing bodies in Alaska.

LEGAL SERVICES

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

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

State Capitol
Juneau, Alaska 99801-1162
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 30, 2006

SUBJECT: Sectional analysis of HB 392 (Work Order No. 24-LS1227F)

TO: Representative Peggy Wilson
Attn: Becky Rooney
Donald M. Bullock Jr.

FROM: Donald M. Bullock Jr.
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends AS 29.35.070(a) by adding a reference to AS 42.05.711(p) that would be added by sec. 3 of the bill.

Section 2. Amends AS 29.35 by adding article 10, secs. 29.35.800 - 29.35.925, relating to regional solid waste management authorities.

Sec. 29.35.800. States the purpose of regional solid waste management authorities.

Sec. 29.35.805. Provides that a single municipality or two or more municipalities may create a regional solid waste management authority ("authority") by ordinance or ordinances. Allows a municipality to join an established authority. Provides that an authority is a body corporate and politic and an instrumentality of the municipality or municipalities that created it, but has a separate and independent legal existence from the municipality or municipalities. States that the creation of an authority is an exercise of a municipality's extraterritorial jurisdiction. Requires that the ordinance or ordinances creating the authority must specify the powers, boundaries, and limitations of the authority. Requires that voters in a creating municipality approve the authority. Limits the application of AS 29.35.800 - 29.35.925 to an authority created under this section.

Sec. 29.35.810. Requires that an ordinance creating an authority provide for the manner for dissolving an authority. States that the assets of a dissolved authority be distributed to a participating municipality in proportion to a municipality's contribution, less any liability owed to the authority. Distribution may only occur after outstanding bond liability has been satisfied.

Sec. 29.35.815. Authorizes a municipality to transfer real and personal property or leases to the authority.

Sec. 29.35.820. Lists the powers an authority may exercise, provided the powers are included in the enabling ordinance.

Sec. 29.35.825. Provides that an authority created with appropriate powers may issue bonds and borrow money. States that the principal and interest are payable from the revenue received by the authority. Lists requirements for authorizing and selling bonds and planning for the payment of bond debt. Sets jurisdiction in the superior court for issues relating to an authority's obligations.

Sec. 29.35.825. States that an authority's bonds are eligible investments for entities listed.

Sec. 29.35.835. States that the pledge of revenue for the payment of debt is binding from the time the pledge is made and provides for a lien on revenue.

Sec. 29.35.840. States that the state and municipalities participating in an authority are not liable for the debts of an authority and that the debt is payable solely from the authority's revenue.

Sec. 29.35.845. Provides that the state and participating municipalities commit to not interfere with the ability of an authority to meet its debt obligation.

Sec. 29.35.850. Limits the satisfaction of the liability of an authority to the assets or revenue of the authority.

Sec. 29.35.855. Limits the liability of a board member or employee because of the execution or issuance of bonds.

Sec. 29.35.860. Requires an authority to obtain a fidelity bond for board members and executives responsible for accounts and finances.

Sec. 29.35.865. Prohibits an authority from levying any tax.

Sec. 29.35.870. Exempts an authority and its bonds from state and municipal taxes. Provides that an authority and a participating municipality may negotiate for payments in lieu of taxes.

Sec. 29.35.875. Provides for the authority to be administered by a board that shall appoint a chief executive officer.

Sec. 29.35.880. Provides that a collective bargaining agreement for state or municipal employees transferred to the authority shall remain in effect for a fixed period of time and allows the employees to retain certain rights of participation in

fringe benefit programs. Provides that AS 23.40.070 - 23.40.260 apply to the authority's employees unless all participating municipalities are exempt.

Sec. 29.35.885. Requires the board to adopt bylaws and regulations and lists subjects that must be included in the bylaws and regulations.

Sec 29.35.890. States that the authority is subject to public records and open meeting laws.

Sec. 29.35.895. Requires the authority to distribute an annual report to the mayor and governing body of each municipality participating in the authority and lists subjects that may be included in the report.

Sec. 29.35.900. Requires an annual audit by an independent certified public accountant and requires the authority to make its records available to an auditor for a municipality participating in the authority.

Sec. 29.35.905. Provides the authority for a holder of bonds, notes, or coupons, or a trustee to enforce their rights and compel performance of the authority's duties.

Sec. 29.35.910. Provides that an authority, its board members, and its employees enjoy the same rights, privileges, and immunities as a municipality and municipal officers in judicial and regulatory proceedings.

Sec. 29.35.915. Provides that the statutes in the legislation prevail if in conflict with other statutes in AS 29.

Sec. 29.35.920. Defines terms used in provisions that would be enacted by sec. 2 of the bill.

Sec. 29.35.925. States the short title for the Act.

Section 3. Amends AS 42.05.711 by adding a new subsection to exempt the authority from regulation by the Regulatory Commission of Alaska unless the authority directly competes with a regulated utility.

Section 4. Amends AS 44.85.410(3) by including a revenue bond issued by the authority within the definition of "municipal bond."

If I may be of further assistance, please advise.

Southeast Conference

P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

Nov 9, 2005

Cindy Roberts
Denali Commission
510 L Street, Ste 410
Anchorage, Alaska 99501

Re: Final Report for Grant #156-05 – Solid Waste Entity Formation (\$19,000)

Dear Cindy,

With this letter, I am submitting a final work product. I will summarize the work done under this grant.

I am pleased to report that we accomplished more than we intended with this grant. Not only did we research solid waste entities in the Lower-48, review Alaskan statutes and provide templates for all regions of Alaska, but, through a state representative, have helped draft legislation that would create and authorize Solid Waste Management Authorities in Alaska. This legislation is to be introduced in the 2006 Alaska State Legislature.

As of September 30, 2005, we had expended 100% of the grant funds.

Here are some of the highlights during the grant period:

- Work began in mid-2005 with SEC staff and board, its Environment Committee and contractor Ecology and Environment, Inc.
- SEC maintained an active role in this work, with weekly conference calls and updates from the contractor. This information then was relayed to the board and committees.
- The contractor interviewed dozens of representatives from state government, federal government, consulting businesses and solid waste authorities.
- We developed a matrix and white paper to look at entity formation options for Alaska.
- We had an independent attorney review the white paper and matrix.
- We developed a template for communities and regions in Alaska to use.
- We drafted legislation for a Solid Waste Management Authority
- We gave presentations at the SEC annual Meeting on Sept. 26 in Wrangell. Speakers were contractor Dick Smith on the solid waste report; Rollo Pool, on solid waste entities; and Kake Tribal Corp. general manager Duff Mitchell on its waste-to-energy option (plasma arc).
- We met twice with Waste Management, Inc. which operates the landfill in Juneau.

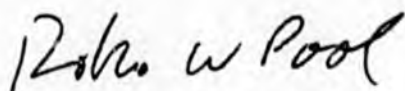
- We gave presentations to the Juneau Rotary Club and to the Juneau Economic Development Council on solid waste, recycling and other issues.

Our solid waste work in the regional continues to garner interest by the media. During the life of this grant, we updated reporters in Haines, Sitka, Juneau, Wrangell, Ketchikan, and Petersburg. State and federal officials are engaged in discussion of regional solid waste plans. The governor supports an effort to keep Southeast Alaska communities from shipping these wastes from Alaska.

We are enthused with the work to date and encouraged with the number of communities expressing interest for consideration as a regional site and with the support at state and federal levels. Again, we appreciate the support from the Denali Commission for this grant.

Should you have any questions, please do not hesitate to contact me, by mail, phone or email: rollo@seconference.org.

Sincerely Yours,



Rollo Pool
Executive Director

Southeast Conference

P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

Alaska Solid Waste Entity Formation

A Look at Options to Coordinate
Transfer, Handling and Disposal of Solid Wastes
In Alaskan Communities



Contractors

Ecology & Environment, Inc.
Cedarbrook Consulting

for

Southeast Conference

P.O. Box 21989
Juneau, AK 99802
Telephone: (907) 463-3445
www.seconference.org

Oct 31, 2005

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SUMMARY

SOLID WASTE ENTITY FORMATION FRAMEWORK

Over the last decade in Southeast Alaska, landfills and waste-to-energy plants and incinerators have closed. The cheapest and quickest alternative for any community has been to ship municipal solid waste (MSW) by barge and rail to super landfills in the Continental US. Lack of available and suitable land near existing communities and high costs to develop a landfill have prevented any community from taking on this task itself.

Southeast Alaska is an isolated area of 70,000 residents living in more than 25 communities scattered over an area comprising 20 million acres – roughly half the size of Washington State. This area is dependent on barge, airline and ferry service to connect it with the contiguous 48 states and British Columbia. Recycling and municipal waste collection is expensive with some communities paying over \$100-200/ton to ship recyclables to markets and MSW to landfills, while the cost per ton for disposal in Anchorage is \$40/ton.

Presently, communities in Southeast Alaska are shipping 23,000 tons of municipal waste each year out of state – some as far as 1,100 miles. Other Southeast communities have landfills nearing capacity, while many small communities have improper or unpermitted dumps.

Southeast Conference feels that its communities, cooperating as a single entity, can produce a regional solution to deal with MSW. The goal is to recycle more, save communities money over current costs, and produce jobs in the region. At a minimum, a regional facility, should it happen, will include recycling (Materials Recovery Facility) on the front end and a state-of-the-art landfill. Other options may include thermal reduction (waste-to-energy) and space for composting and for treating oily soils.

In the last 15 months, SEC has begun work under two Solid Waste grants from the federal government. One is to do a report that looks at solid waste handling options in Southeast Alaska - especially those communities that ship waste to the Lower-48. This report will be done in late November 2005, and it will list options (including a regional landfill and recycling center) and potential sites. Several communities (Petersburg, Wrangell, Thome Bay, Sitka and Kake) are interested in being considered as a future site.

A second grant from the Denali Commission, which is the subject of this report, has helped determine what kind of legal entity is needed for communities to move and process municipal solid waste and to operate a regional landfill.

Through a grant from the Denali Commission, Southeast Conference hired consultants and a law firm to study regional solid waste handling in other states, to review state statutes and to offer advice on entity formations.

There are two primary legal vehicles to move, process and dispose of solid waste. One is a Joint Government Agreement, for which there is existing statutory authority. Another option, and likely to be more preferable, is a Solid Waste Management Authority. Draft legislation has been prepared for the 2006 Alaska legislature. The legislation would be applicable to other regions or to a group of communities elsewhere in Alaska.

SEC STUDY METHODOLOGY

A Solid Waste Entity Matrix (Attachment #1) was developed by Ecology & Environment, Inc. (E&E) to provide basic information regarding a range of different business operations and management structures including For-Profit Corporation, Nonprofit Corporation, Limited Liability Company, Cooperative Corporation, Partnership, Federation and Commission, Authority and Joint Government Agreement. The two most common entities encountered in E&E's research for solid waste management structures and those most appropriate for Southeast Alaska are the Authority model and, by contract, with a Joint Government Agreement.

Under AS 29.35.010 and Article X and Section 13 of the Alaska Constitution, all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration, for any function of power, including management of solid waste. Unincorporated areas do not have this ability, and, therefore, some of the very smallest communities in Southeast Alaska would not be able to enter into Joint Government agreements. However these small communities could contract for services provided by an entity created by a Joint Government Agreement.

JOINT GOVERNMENT AGREEMENT

E&E developed a template for a Joint Government Agreement (Attachment # 2) that would establish a regional solid waste authority. This template provides language for the typical sections found in Joint Government Agreements and identifies those areas needed further development by the participating communities. Additionally this template can easily be modified for use in establishing any type of joint government agreement. In the process of developing the template for a Joint Government Agreement, E&E developed an outline for a Joint Government Agreement (Attachment #3) and an outline for an Authority Created Under a Joint Government Agreement (Attachment #4). Both "outline" documents identify the general elements to be incorporated in a Joint Government Agreement and into an authority and provide another set of criteria to use in establishing a Joint Government Agreement.

AUTHORITY

For the purposes of the discussion, the term "authority" has been used generically to mean an "entity with administrative powers."

The second most common entity formed to manage solid waste is an Authority established in statute. Alaska statutes currently provide for Port Authorities (AS 29.35.600) and Regional Resource Development Authorities (AS 30.13). Both of these authorities are for transportation purposes only and cannot be used for solid waste. There are no solid waste authorities or general authorities that can be used for solid waste issues in Alaska statutes.

E&E found that a solid waste management entity (authority) established via a Joint Government Agreement as a viable method for consideration by SE Conference because a statutorily created Authority is more cumbersome to create.

Southeast Conference retained Baxter Bruce & Sullivan to provide legal review and analysis of the matrix and outline documents prepared by E&E. They did not review the template for a Joint Government Agreement as it had not been completed. Their conclusion is that a statutorily established authority is the most attractive option, unless there is some political opposition to enabling legislation that would allow communities to form solid waste authorities just as they form port authorities.

STATUTORY CHANGE

A statutorily authorized Solid Waste Authority in Alaska will require passage of enabling legislation. One of the uniform features of most statutorily-created Solid Waste Authorities reviewed is that, in each participating community, elected officials and voters approve of its participation.

Using the Port Authority Statute as a model, E&E created a draft solid-waste statute. (Southeast Conference has submitted it to Rep. Peggy Wilson who has sent it to the Alaska Department of Law for review.)

E&E developed a template for a Regional Solid Waste Management Authority modifying the Port Authority statute (AS 29.35.600) by eliminating the requirements for development and plan approval at various points in the process. The Regional Resource Development Authority requires, among other elements, a petition be submitted and approved by the administration, a vote of the people and at least 3 board members be appointed by the governor.

Through the office of Rep. Peggy Wilson (District 2 – Wrangell) and the Legislative Affairs Agency, draft legislation has been created and is attached (attachment # 6).

MEMORANDUM

To: Rollo Pool, Southeast Conference
From: Stephanie Pingree, Ecology & Environment, Inc.
CC: Mary Siroky, Cedarbrook Consulting
Date: June 2, 2005
Re: Solid Waste Regional Entity Project

In response to Southeast Conference's March 2005 request for proposals (RFP) and subsequent conversation with you, Ecology and Environment, Inc. (E & E) has developed the attached matrix outlining regional entities that may be used in dealing with regional solid waste issues in Southeast Alaska. The matrix was developed through reviewing websites of regional solid waste organizations throughout the United States, interviewing executive directors or planners of select solid waste entities, and review of Alaska statutes. This information is intended to provide Southeast Conference with basic information regarding operations and management of different business structures. It does not provide all restrictions or requirements for operations. Although the matrix has had limited review by E & E's legal team, a full review by an attorney and/or accountant should be performed before moving forward with any of the entities outlined in this memorandum or attached matrix.

After review of regional solid waste entity websites provided by Southeast Conference, as well as others identified by E & E, multiple business structures were identified as potentially viable to address Southeast Alaska's regional solid waste needs. These organizations include the following: for-profit corporation, non-profit corporation, limited liability company, cooperative corporation, partnership, authority, joint government agreements, federation, and commission. Each of these entities is discussed below. The two most common entities encountered in E & E's research of solid waste entities include solid waste authorities and joint government agreements. Both structures are discussed in more detail below.

For-Profit Corporation

For-profit corporations are established under Alaska Statutes (AS) 10.06 and can be established for any lawful purpose. A For-Profit Corporation is owned by anyone who owns stock. Votes in the corporation are divided by shares, which could lead to unequal voting between shareholders. In addition, there are obvious tax disadvantages associated with for-profit corporations.

Nonprofit Corporation

Nonprofit corporations are established under AS 10.20 and can be established for any lawful purpose including commercial or industrial purposes. A nonprofit corporation is owned by its members. Management of the corporation is through a Board of Directors elected by its members and voting is usually one vote per member unless otherwise stated in the articles or bylaws. There can be one or more classes of members as set out in the bylaws. Nonprofit corporations, in general, are able to receive grant funds. Municipalities would be able to issue bonds to finance the projects of a nonprofit

corporation but the nonprofit corporation is not likely to be able to issue bonds on its own. This illustrates the main disadvantage of the nonprofit corporation; its abilities are limited in comparison to other entities that are created for purely public purposes.

Limited Liability Company

Limited Liability Companies (LLC) are established under AS 10.50 and can be established for any lawful purpose. It is owned by members who must own interest in the company. Voting and profit distribution is established through the operating agreement. As with for-profit corporations, there is the potential disadvantage for tax purposes. In addition, LLCs are not generally eligible for grant funding although not specifically excluded.

Cooperative Corporation

A Cooperative Corporation is established under AS 10.15 and can be established for any lawful purpose except as specified in Alaska law. Solid waste entities are not identified as excluded from cooperative organization. A Board of Directors manages a cooperative and membership is based on ownership of shares of membership stock or payment of a membership fee as set out in the articles. Each member has one vote unless the bylaws authorize voting according to actual, estimated, or potential patronage, or a combination of these approaches.

Partnership

Limited Partnerships are established under AS 32.11 and Limited Liability Partnerships are established under AS 32.06. Limited partnerships have one or more general partners, who control the business and are liable for debts and obligations of the partnership, and one or more limited partners, who are not as involved and who have limited liability such as a shareholder in a corporation. It is assumed that all members of the solid waste regional organization would like to be actively involved and therefore this option was not further evaluated.

Limited Liability Partnerships are similar to a general partnership except normally a partner does not have personal liability for the negligence of another partner. Professionals, such as accountants and lawyers, generally use this business structure. For both a Limited Liability Partnership and a Limited Partnership, tax liability flows directly through to the owners and the entity itself is not taxed. Because of these restrictions, both types of partnerships were not investigated any further.

Federation and Commission

Federation and Commission organization and operation are not specifically addressed in Alaska statutes. In addition, examples of either type of organization managing solid waste on a regional basis were not found.

Generally speaking, a federation is a league or union of states, groups or people arranged with a strong central authority within a limited region. However, the members of the federation commonly retain various rights and powers to act independently of the federation. One solid waste federation, Federation of New York Solid Waste

Association, is an umbrella organization for multiple solid waste associations in New York State. It serves as a professional organization and does not own, operate, or manage any solid waste facilities.

A commission is a body of persons acting under lawful authority to perform certain public services. It is commonly used by single jurisdictions to transfer the accomplishment of a specific public function to a new organization. For example, the Federal Commission was established by Congress to regulate interstate and international communications by radio, television, wire, satellite and cable within the United States.

Authority

Alaska statutes allow for Port Authorities (AS 29.35.600) and Regional Resource Development Authorities (AS 30.13). Both of these authorities can be established for transportation purposes only. Solid waste authorities or general authorities that can be used for solid waste issues are not specifically addressed in Alaska statutes. It is possible that the "Port Authority" statute could be used as the mechanism to establish an entity responsible for shipping solid waste around Southeast Alaska; AS 29.35.600 states that Port Authorities can be created for "transportation related commerce within the territory of the authority". A Port Authority requires parallel ordinances in each participating community as well as approval by the voters of each community.

Solid Waste Authorities are used extensively throughout the country to address both local and regional solid waste needs. E & E researched regional Solid Waste Authorities throughout the country to identify their management and operation. Below are some examples of how regional solid waste authorities are operating.

The Revised Code of Ohio, Title III, Chapter 343, created solid waste management districts. The Solid Waste Authority of Central Ohio was created under this law. They are one of 52 solid waste districts in the state. The Solid Waste Authority runs the landfill, encourages recycling through education programs, and finds new uses for recyclables but does not pick up the trash curbside. The authority is a government body that answers to a 9 member Board of Trustees. The authority has the power to levy taxes and issue bonds, if needed.

The Coastal Regional Solid Waste Management Authority in North Carolina was formed in 1990 through an agreement between three counties. In 1989, the state legislature adopted General Statutes of North Carolina 153A-22 which authorizes and set forth the process for creating Solid Waste Management Authorities. Each participating county adopted a resolution to form the Coastal Regional Solid Waste Management Authority. The authority's purpose is to provide an environmentally sound, cost effective system of solid waste disposal for the citizens of the three member counties. The organization is a public authority, governed by a 7 member Board of Directors representing the member counties. Seats, and votes, on the board were assigned by population and ensuring that no one county had the majority of the board members. The organization operates four facilities including an administrative office, landfill, and two transfer stations. Participating members are responsible for collection of waste. The organization is

funded through an initial bond that financed all capital and tipping fees for operation and repaying bond.

Joint Government Agreements

Under AS 29.35.010 and Article X, Section 13 of the Alaska Constitution, all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration of any function of power with a municipality, the state, or the United States. This power is not allowed for unincorporated areas, therefore not all communities in Southeast Alaska would be allowed to enter into these agreements without changes to the Alaska statutes or utility service areas of neighboring municipalities.

E & E identified many agencies that operate through some form of a joint government agreement. Examples of how a few of these organizations operate and are managed are discussed below.

The Land of Sky Regional Council in North Carolina was set up by the legislature to address multiple regional issues, one of which is solid waste. It is made up of local government agencies (4 counties and 15 municipalities). A Board of Directors comprised of representatives from each of the government agencies in addition to other representatives, such as community and industry representatives, manage the regional council. Each board member is a voting member. The regional council provides recycling, household hazardous waste disposal, and educational activities. Each of the member governments operates their own solid waste activities such as transportation, pick-up, and disposal individually. According to a representative at the organization, the regional council was not able to operate as a regional government due to past experience not being able to cooperate on regional issues and failure to ensure equitable issues among members.

The Bluestem Solid Waste Agency is another example of a regional government agency representing six counties and participating cities in Iowa. The agency operates recycling center, pollution prevention center, etc. and provides assistance to participating members; landfills are publicly owned and not a part of the agency. The agency was developed through legislation that allows for government agencies to join together. A Board of Directors made up of elected officials from participating governments manages the organization. The organization is funded primarily from tipping fees.

The Solid Waste Authority of Salinas is a joint power agency set up by California statutes allowing for local governments to join together addressing common issues in their communities. The organization owns and operates a common landfill and the participating cities are in charge of pick-up and transportation to that landfill. The management of the organization is through a board representing member cities and unincorporated areas. Voting rights are distributed based on the population of the member organization. The organization's operation is funded through grants and tipping charges.

Conclusion

A solid waste authority or agency formed through specific language addressing solid waste authorities in state statutes or formed through a joint government agreement is the most common type of regional solid waste organization found through our research. Joint government agreements are currently permitted under Alaska statutes and could be used to form a regional solid waste authority or agency in Southeast Alaska. The management, ownership, voting power, and ability to issue bonds could be set out in a memorandum of agreement signed by all participating governments. The formation of a solid waste authority or agency in this manner would require no changes to the current statutes. Changes to Alaska statutes would be required if a solid waste authority was to be set up by the legislature as was done in the Ohio and North Carolina examples above.

Att.

Solid Waste Entity Matrix
Southeast Conference, June 2005

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
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	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Purpose	Any lawful purpose.	Any lawful purpose including commercial or industrial.	Any lawful purpose.	Any lawful purpose, except banking or insurance or the furnishing of electric or telephone service.	For cooperative or joint administration of any function or power of the municipality.	Port Authority – Provide for the development of a port or ports for transportation related commerce within the territory of the authority. It is possible that for just the transportation portion of a regional solid waste authority that this statute could be used. Regional Resource Development Authority – improvement, establishment, and development of facilities in its district for transportation purposes in connection with natural resource enterprises
Ownership	Anyone who owns stock.	Members.	Members who own interests.		Can be specified in agreement.	Members.
Management	Board of Directors elected by shareholders.	Board of Directors elected by members.	Manager, all members, or Board of Directors as stated in the articles of organization.	Board of Directors	Can be specified in agreement.	Board of Directors appointed or elected as specified in ordinance.

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.500 and AS 30.13.010 ⁶
Membership	Shareholders.	May have one or more classes of members.	Membership gained by acquiring interest.	Based on ownership of a share of membership stock or payment of a membership fee as set forth in the articles.	Borough, and 1 st or 2 nd class city. Unincorporated areas not eligible.	Participating municipalities/organizations.
When Members Can Join	Anytime.	Anytime.	Anytime.	Anytime.	Can be specified in agreement.	Port Authority – One or more municipalities may join upon adoption of parallel ordinances by governing bodies of each affected municipality.
Voting	Equal vote per share within class; Number of shares based on consideration paid money, other property, or services. Could lead to unequal voting rights between shareholders.	One vote per member, usually, but can be varied in the articles or bylaws.	As per operating agreement.	Each member has one vote except bylaws may authorize voting according to actual, estimated or potential patronage, or a combination of these plans of voting. Shares of stock may not be given voting power except in specific instances.	Can be specified in agreement.	

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Liability of Owners	Limited Liability of Owners.	Limited Liability of Owners.	Limited Liability of Owners.	Member is not liable for the debts in an amount exceeding the sum remaining unpaid on the member's subscription for shares of the cooperative, and the sum remaining unpaid on the member's membership fee if a fee is required.	Not specified.	Port Authority – Liability incurred shall be satisfied exclusively from the assets and revenue of the authority. Creditor does not have a right of action against the municipality participating in the authority. - Board member or employee of authority is not subject to personal liability or accountability because of execution or issuance of bonds.
Profit Distribution	Based on shares, but there can be different types of shares with different rights.	Not allowed to issue stock or pay dividends to members or officers.	As specified in Operating Agreement.	A cooperative organized with capital stock may pay a dividend on capital stock authorized by its articles if its capital is not impaired and would not be impaired by the payment.	Not specified.	

	For Profit Corporation AS 10.06 ¹ , et seq.	Non-Profit Corporation AS 10.20 ² , et seq.	Limited Liability Company AS 10.50 ³ , et seq.	Cooperative Corporation AS 10.15 ⁴ , et seq.	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Ability to Receive Funds	Less practical.	Can receive grants and loans.	Less practical.	Less practical.	Once formed is could have only those powers of taxation as one or more of the participating governing bodies and only as specifically provided in the agreement proposing creation of the joint government agreement. Is likely to be able to issue bonds.	Port Authority - Can accept grants and loans. If authorized by ordinance, can borrow money and issue bonds
Requires Federal or State Statute/Regulation Change	No.	No.	No.	No.	No.	Yes.
Legally Mandated Minimum Staffing Requirements	No.	No.	No.	Requires in-state agent.	No.	Board appoints chief executive officer.
Exempt from Federal Income Tax	Not generally.	May qualify but more difficult. Usually 501(c)(3) charitable or 501(c)(4) social welfare exemptions.	Not generally.		Not specified.	

	For Profit Corporation AS 10.06 ¹ , et seq.	Non-Profit Corporation AS 10.20 ² , et seq.	Limited Liability Company AS 10.50 ³ , et seq.	Cooperative Corporation AS 10.15 ⁴ , et seq.	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Exempt from State Income Tax	No.	No, unless operating solely for religious, charitable, etc. purposes.	Not generally.		Not specified ¹	Yes (AS 29.35.670)
Regulated Time and Cost to Form Entity	\$150 filing of articles fee.	\$50 filing of articles fee.	\$150 filing fee.	Biennial fee of \$100.	No regulated cost. Time needed to draft MOA agreeable to all parties.	Not only requires parallel ordinances but also a vote of the citizens of each participating community which takes time and is costly
Formation	Filing of Articles of Incorporation with the State.	Three or more persons may act as incorporators of a non-profit corporation by signing and filing articles of incorporation.	Filing of Articles of Organization with the State.	Three or more persons may act as incorporators of a cooperative by filing articles.	Formed through appropriate action by ordinance, resolution, or otherwise pursuant to the law of the participating governing bodies.	Port Authority – (1) Municipality creates by ordinance as a public corporation of the municipality, (2) Two or more municipalities create by parallel ordinances adopted by each of the governing bodies as a public corporation of the municipalities.

¹ AS 10.06 – Alaska Corporations Code

² AS 10.20 – Alaska Nonprofit Corporation Act

³ AS 10.50 – Alaska Revised Limited Liability Company Act

⁴ AS 10.15 – Alaska Cooperative Corporation Act

⁵ AS 29.35.010 and Article X, Section 13 of the Alaska Constitution

⁶ AS 29.35.600 – Port Authorities; AS 30.13.010 – Regional Resource Development Authorities

JOINT GOVERNMENT AGREEMENT TEMPLATE

INSTRUCTIONS

The Joint Government Agreement Template is designed as a template for the development of a solid waste regional authority. The template can easily be modified for use in the establishment of any type of Joint Government Agreement. Below is a list of sections where template users may consider different options.

- Intent of the Parties- determine if all the issues leading up to the formation of a joint government agreement are captured. For joint government agreements dealing with different issues insure that all the reasons for formation are listed here.
- Membership – consider who is to be a member. A joint government authority can provide services to entities that are not members via contracts.
- Board – determine if board membership results in a one to one ratio of membership on the board. Should board members be members of the participating local government or should local government authorities appoint them?
- Terms of Office – is three years an appropriate term of office? Does this match the terms of office of local government officials? One-year terms of office are common.
- Executive Director – determine if there are additions or deletions to the list of responsibilities for the Executive Director. For joint government agreements dealing with different issues this may differ dramatically.
- Meetings – should the board meet more or less often than quarterly? Determine if travel and per diem costs of board members are to be paid by the authority?

- Powers of an Authority- review the list or responsibilities of the regional solid waste authority and determine if this is complete. For joint governmental agreements dealing with different issues this list will need to be modified.
- Duration of the Agreement – is 15 years long enough? Too long? For joint governmental agreements dealing with different issues the duration of the agreement may be much different.
- Disposition of Authority Assets and Liabilities Upon Termination - if an authority does not have assets this section may not be needed.

JOINT GOVERNMENT AGREEMENT TEMPLATE

Italics represent information that may need to be added as a final agreement is drafted as appropriate.

1. DEFINITIONS

- a. "Agreement" means this Joint Government Agreement.
- b. "Contract Date" means the date of this Agreement.
- c. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste any enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- d. "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land, which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or surface storage facility.
- e. "Party" or "Parties" means the municipalities, cities or local government as the context or usage of the term any require.
- f. "Solid Waste Management" means purposefully, systematic, control of generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- g. "State" means the State of Alaska and all of its appropriate administrative, contracting and regulatory departments and offices.
- h. "Unit of Local Government" means a Unified Home Rule Municipalities, Home Rule Borough, 2nd Class Borough, 1st and 2nd class city
- i. Define technical and scientific terms used in the agreement.

2. INTENT OF THE PARTIES

- a. The Parties are concerned that relying on shipping solid waste outside of the state reduces the communities control over costs.
- b. The Parties believe that by working together to manage solid waste on a regional basis the cost of solid waste disposal for all communities in Southeast Alaska will be reduced.
- c. Additionally the Parties believe that it is in the best interest of all the communities in Southeast Alaska that there are landfill disposal options available, regionally, to the communities of Southeast Alaska.

3. PARTIES/AUTHORITIES

- a. This agreement authorizes the establishment of an authority that will plan for, develop and manage a regional solid waste transportation system and potentially plan, purchase the land for, develop, construct and operate a regional solid waste disposal (landfill) facility.
- b. Each of the Parties (LIST PARTIES HERE)
 - i. CITY AND BOROUGH OF JUNEAU ("Juneau"), a unified home rule municipality;
 - ii. CITY AND BOROUGH OF SITKA ("Sitka"), a unified home rule municipality;
 - iii. CITY OF KAKE ("Kake"), a 1st class city; and
 - iv. CITY OF THORNE BAY ("Thorne Bay"), a 2nd class city.

Add additional communities as necessary

- c. Each of the Parties to this Agreement is a local government entity functioning within the State of Alaska.
- d. The Parties have the authority to enter in this agreement pursuant to section 29.35.010 (13) of the Alaska Statutes and Article X, section 13 of the Alaska Constitution which states that all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration of any function or power with a municipality, the state, or the United States.
- e. Each of the Parties to this Agreement has the power, in addition to other powers which are common to each of them, to undertake and perform: solid waste planning and program management, including collection services and siting; the development, construction, and operation of solid waste facilities, including recovery of recyclable and compostable materials; and the transfer and disposal of solid waste generated within each of the Parties jurisdictional boundaries. *Each of the participating parties will need to check their municipal ordinances to insure they have the powers talked about in this paragraph. The state in Sec 29.35.050 grants a municipality the ability to assume these powers by ordinance but there is the possibility that some communities have not taken on these powers.*

4. ESTABLISHMENT OF THE AUTHORITY:

- a. There is established an Authority which shall be a public entity separate from the Parties to this agreement.
- b. The name of the Authority shall be the SOUTHEAST ALASKA REGIONAL SOLID WASTE MANAGEMENT AUTHORITY.
- c. The boundaries of the authority shall encompass the territorial jurisdiction of the members of the authority.

5. MEMBERSHIP; BOARD; DELEGATES

- a. Each Party signing on to this agreement shall become a member of the regional solid waste management authority. There after any unit of local government may join the authority by

agreeing to the provisions of this agreement and by being admitted by unanimous vote of the existing members.

- b. All the rights and privileges of membership in a regional solid waste management authority shall be exercised on behalf of the member units of local government by a board composed of delegate to the authority who shall be appointed by and shall serve at the pleasure of the governing boards of their respective units of local government.
- c. A vacancy on the board shall be filled by appointment by the governing board of the unit of local government having the original appointment.

6. MEMBERSHIP

- a. The authority shall be governed by a Board of Directors composed of a representative from each of the participating communities and two representatives from the City and Borough of Juneau who have a population twice as large as any other participating community.
- b. For the transaction of business, a quorum consists of one greater than half the members.

7. TERMS OF OFFICE, ALTERNATES, OFFICERS

- a. The term of office of each member of the Authority Board shall be three (3) years and shall not exceed the term of the elective office, which the member holds.
- b. Each Party may, in addition to their respective regular appointments, appoint one or more elected officials who will serve as alternate appointees and members of the Authority Board and each such alternate appointee and member shall be empowered to cast votes in the absence of a regular appointee and member or in the event of a disqualification to vote because of conflict of interest. Each alternate appointed shall be a member of the governing body of the Party making such appointment.
- c. At its first meeting and thereafter at the first meeting of every third year, the Board of Directors shall elect a President, Vice-President, and such officers as the Authority Board find appropriate, to serve the Authority Board for a term of three (3) years unless sooner terminated at the pleasure of the Authority Board. In the event the officer so elected ceases to be a Director, the resulting vacancy shall be filled at the next regular meeting of the Authority Board held following the occurrence of the vacancy. In the absence or inability of the President to act, the Vice-President shall act as President. The President, or in the absence of the President, the Vice-President, shall preside at and conduct all Authority Board meetings.

8. EXECUTIVE DIRECTOR

- a. The Authority Board shall select an Executive Director to serve at its pleasure. The Executive Director shall be responsible to the Authority Board for the proper and efficient administration of the Authority as may be placed in the Executive Director's charge, or under the Executive Director's jurisdiction or control, pursuant to the provision of this Agreement, or any ordinance, resolution, or order of the Authority Board. In addition to the powers and duties provided, the Executive Director shall have the power to:
 - i. Plan, organize and direct all Authority activities under the policy direction of the Authority Board.

- ii. Enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget.
- iii. Hire and manage such staff as necessary to carry out the provisions of this agreement;
- iv. Make recommendations to and request of the governing board concerning all the matters, which are to be performed, done or carried out by the Authority Board.
- v. Have charge of, handle or access to any property of the Authority, and shall make an annual inventory of all Authority property.
- vi. Make all books and records of the Authority in the Executive Director's hands open to inspection at all reasonable times by members of the Authority Board or their representatives.

9. ORGANIZATION OF THE AUTHORITY

- a. The governing board of a regional solid waste management authority shall hold an initial organizational meeting at such time and place as agreed upon by its members units of local governments and shall elect a chair and any other officers that the charter may specify of the delegates deem advisable.
- b. The authority shall then adopt by laws for the conduct of it business.

10. MEETINGS

- a. The Authority Board shall meet a minimum of 4 times a calendar year, one of which will be face to face. The Authority Board may provide for allowances for members or alternates to attend meetings.

11. CHARTER.

- a. The charter of a regional solid waste management authority shall:
 - i. Set out the method of determining the financial support that will be given to the authority by each member unit of local government.
 - ii. Establish a method for amending the charter, and for dissolving the authority and liquidation of assets and liabilities.
 - iii. Contain rules for the conduct of the authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member units of local government deem appropriate.

12. POWERS OF AN AUTHORITY. The charter may confer on the regional solid waste management authority any or all of the following powers:

- a. To apply for, accept, receive, and disburse funds and grants made available to it by the state or any agency thereof, the United States of America or any agency therefore, any unit of local government whether or not a member of the authority, any private or civic agency, and any persons, firms or corporations.

- b. To employ personnel.
- c. To contract with consultants.
- d. To contract with the United States of America or any agency or instrumentality thereof, the state or any agency, instrumentality, political subdivision, or municipality thereof, or any private corporation, partnership, association or individual, providing for the acquisition, construction, improvement, enlargement, operation or maintenance of any solid waste management facility, or providing for any solid waste management services.
- e. To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties.
- f. To establish suitable offices at such place as it may determine either by the authority alone or through appropriate cost-sharing arrangements with any unit of local government or other persons.
- g. To study, plan, design, construct, operate, acquire, lease, and improve systems and facilities, including systems and facilities for waste reduction, materials recovery, recycling, resource recovery, land filling, transportation, household hazardous waste management, disposal and public education regarding solid waste management in order to provide environmentally sound, cost effective management of solid waste including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; to enhance the environment for the people of the state, recover resources and energy which have the potential for further use.
- h. To locate solid waste facilities, including ancillary support facilities as the authority may see fit.
- i. To assume any responsibility for disposal and management of solid waste imposed by law on any member unit of local government.
- j. To operate such facilities together with any person, firm, corporation, the State, any entity of the State, or any unit of local government as appropriate and otherwise permitted;
- k. To set and collect fees and charges as is reasonable to offset operating costs, debt service and capital reserve requirements of the authority.
- l. To apply to the appropriate agencies of the State, the United State of America or any state therefore, and to any other appropriate agency for such permits, licenses, certificates or approvals as may be necessary, to construct, maintain, and operate projects in accordance with such permits licenses, or approvals in the same manner as any other person or operating unit of any other person.
- m. To employ engineers, architects, attorneys, real estate agents, appraisers, financial advisories and such other consultants and employees as may be required in the judgment of the authority, to fix and pay their compensation from funds available to the authority.
- n. To acquire property located within the territorial jurisdiction of any member unit of local government by eminent domain pursuant to authorities granted local governments.

- o. To do all things necessary, convenient or desirable to carry out the purposes and to exercise the powers granted to the authority.
- p. To sue and be sued, and name and plead and be impleaded.
- q. To receive, administer and comply with the conditions and requirements respecting any gift grant or donation of any property or money.
- r. To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof.
- s. To sell, lease, exchange, transfer, or otherwise dispose of, or grant options for any such purposes with respect to any real or personal property or interest therein.
- t. To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources.
- u. To issue revenue bonds of the authority and enter into other financial arrangements to finance solid waste management activities, including but not limited to systems and facilities for waste reduction, materials recovery, recycling, resources recovery, landfill, ash management, and disposal and for support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of maturity or realistic redemption date, or to provide funds for other corporate purposes of the authority.
- v. With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
- w. To develop and make data, plans, information, surveys, and studies of solid waste management facilities within the territorial jurisdiction of the members of the authority, to prepare and make recommendations in regard thereto.
- x. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

13. LONG TERM CONTRACT PERMITTED BY AND WITH THE AUTHORITY

- a. To the extent authorized in its by laws, the Authority may enter into long-term and continuing contracts, not to exceed a term of 60 years, with member or other units of local government for the acquisition, construction, improvement, enlargement, operation, or maintenance of any solid waste management facility or for solid waste management or transportation services.
- b. Contracts entered into by an authority may include, but are not limited to, provisions for:
 - i. Payment by the members of the Authority and other units of local government of a fee or other charge by the Authority to accept, dispose of or transport solid waste.

- ii. Periodic adjustments to the fee or other charges to be paid by each member of the authority and such other units of local government.
- iii. Warranties from the members of the Authority and such other units of local government with the respect to the quantity of solid waste to be transported or delivered to the authority and warranties relating to the content or quality of solid waste.

14. APPLICABLE REGULATIONS.

- a. An authority created by this agreement shall comply with all applicable federal and state laws, regulations, rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.
- b. *Identify any local government ordinances that maybe applicable.*

15. APPROVAL AND PERMIT REQUIREMENTS

- a. *List all approvals and permit requirements being required.*
- b. *This is only applicable if constructing or operating a landfill.*

16. DEDICATIONS AND RESERVATIONS

- a. Provide a statement of all reservations or dedications of lands, if applicable.
- b. List any other reservations the parties have agreed to.

17. DURATION OF THE AGREEMENT –TERM AND WITHDRAWAL

- a. This agreement shall be effective when signed by each Party and shall continue for so long as may be necessary to carry out the purpose of this Agreement or until terminated by mutual consent of the governing bodies of all Parties, whichever is earlier; provided, however that:
 - i. A Party to this Agreement may not withdraw from the Authority for a period of 15 years after execution of this Agreement. After the 15-year period, a Party may withdraw from this Agreement by majority vote of the governing body, giving to the other Parties one year's written notice of such intention to withdraw, so long as all revenue bonds or other forms of indebtedness shall have been paid or adequate provisions of such payment shall have been made. The Party withdrawing from the Agreement will retain its fair share of financial liability for closure and post closure and site remediation costs based on the tons of material it has contributed to the Authorities solid waste system and as determined by the Authority in its sole discretion and such determination of the Authority shall be binding on the Parties. The Party withdrawing shall be afforded the same rights and ability to use Authority facilities and services as any other governmental jurisdiction, which is not a member of the Authority.
 - ii. Upon receipt of a Party's one-year notice of intention to withdraw, the members who will be remaining in the Authority shall meet and prepare appropriate amendments to this Agreement to reflect the changed membership status. Such amendments shall become effective upon the effective date of the Party's withdrawal.

- iii. This Agreement cannot be amended in any way to the detriment of the holders of any revenue bonds or other forms of indebtedness, which are outstanding in accordance with any resolution adopted by the Authority.
- b. This Agreement shall remain in effect until terminated by mutual consent of all the governing bodies of all Parties to this Agreement. The resolution to terminate must be passed by a majority vote of each governing board of each of the Parties to this Agreement.

18. DISPOSITION OF AUTHORITY ASSETS AND LIABILITIES UPON TERMINATION:

- i. In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities of the Authority shall be transferred to the successor public entity.
- ii. If there is no successor public entity which could carry on any of the activities of the Authority or assume any of its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be returned in proportion to the contribution of each Party during the term of the agreement. If bonds are issued or large capital projects, such as closure construction are initiated during the term of this agreement, then in no event shall the exercise of the powers granted be terminated until all bonds issued and the associated interest have been paid or provision for such payments have been made.
- iii. If there is a successor public entity which would undertake some of the functions of the Authority and assume some of its assets, liabilities, obligation, and funds including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be allocated by the governing board between the successor public entity and the Parties.

19. AMMENDMENTS.

- a. This Agreement may be amended by affirmative vote of the governing bodies of each Party.

20. ENFORCMENT

- a. This agreement shall be enforceable, unless lawfully terminated or cancelled by any Party to the Agreement or any Party's successor notwithstanding any subsequent changes in applicable law adopted by the Parties that alters or amends the laws, ordinances, resolutions rules or policies frozen by the Agreement.

21. LIMINATION OF LIABILITY

- a. The debts, liabilities or obligations of the Authority do not constitute debts, liabilities or obligation of the Parties and the Authority shall hold the Parties harmless and shall indemnify the Parties from any claim or loss that may arise as a result of the Authority's ownership and

maintenance of the landfill assets or the Authority's performance of any of its duties or powers described in this agreement.

- b. No officer, agent or employee of any Party shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

22. HOLD HARMLESS CLAUSE

- a. If the parties agree, the agreement should contain a clause holding each other harmless from liability from damages, injury or death that may arise from the direct or indirect operations of the parties carrying out the terms of the agreement.

23. SEVERABILITY CLAUSE

- a. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this agreement.

24. MERGER CLAUSE

- a. This agreement constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the parties.

25. PUBLIC NOTICE

- a. *If public notice is required by local ordinance of any of the participating local governments add that language.*

26. STATEMENT OF INCORPORATION BY REFERENCE

- a. *Identify any documents related to the Agreement and being incorporated by reference into this agreement*
- b. *Include lists of conditions, schedules of completion, imposition of dedications, impact fees and development plans and specifications.*

27. SUBSIDIARY OF COLLATERAL AGREEMENTS

- a. *Identify additional agreements relating to the project from any nonparty agencies or persons.*

OUTLINE FOR A JOINT GOVERNMENT AGREEMENT

Joint Government Agreements permit local governments to join in providing constituent services. In the Joint Government Agreement, the roles and responsibilities of the participating local governments are established. The agreement details the "who," "what," "when," and "where" of the activity to be undertaken together. The following outlines the general elements to be incorporated into a Joint Government Agreement.

1. DEFINITIONS
 - a. List all technical terms used in the agreement.
 - b. Define technical and scientific terms used in the agreement.
2. PARTIES/AUTHORITIES
 - a. Provide an explanation of the need for the agreement and what it is going to provide, be broad to allow for flexibility as the project evolves.
 - i. Solid waste transportation, pickup, landfill construction and operation, recycling as appropriate.
 - b. List the parties who are participating in the agreement.
 - c. List the parties' authorities to enter into the agreement.
 - d. Cite legal authorities used to enter into the agreement, such as state authorizations. AS 29.35.010 and Article X, Section 13 Alaska Constitution.
3. PROPERTY
 - a. Identify any property to be purchased.
 - b. Identify any property to be shared.
4. INTENT OF THE PARTIES
 - a. Clearly state that the parties are bound by the agreement.
5. RECITATION OF CONTRACTURAL TERMS
 - a. Clearly recite the terms of the duties and obligations each party receives from the other.
 - b. Clearly recite the terms of the duties and obligations that each party is providing to each other.
6. PUBLIC NOTICE
 - a. Identify if a public hearing is required.
 - b. State the date of the hearing ¹.
7. APPLICABLE REGULATIONS
 - a. Identify any state regulations that the project will be subject to ².
 - b. Identify any local government ordinances.
8. APPROVAL AND PERMIT REQUIREMENTS
 - a. List all approvals being required.
 - b. List permit requirements.
9. DEDICATIONS AND RESERVATIONS
 - a. Provide a statement of all reservations or dedications of lands, if applicable.
 - b. List any other reservations the parties have agreed to.

¹ This would be a requirement under the ordinances of one of the participating local governments as there is no requirement in the state statute.

² For this project this is the pertinent sections of 18 AAC 60

10. DURATION OF THE AGREEMENT

- a. Identify a termination date for the project as a whole.
- b. Identify commencement and completion dates for various phases as applicable.
- c. Include a statement that the termination date can be extended by mutual agreement and that commencement and completion dates can be extended at the discretion of the parties.

11. AMMENDMENTS, CANCELLATIONS OR TERMINATION

- a. Identify the conditions by which the agreement can be amended, canceled or otherwise terminated.
- b. Note that parties can only terminate the agreement under the circumstances spelled out in the agreement

12. PERIODIC REVIEW

- a. Provide for periodic reviews in order to determine compliance with the agreement.
- b. Specify who is responsible for reviews.
- c. Identify procedures for dealing with situations in which minor and major noncompliance issues are discovered.

13. REMEDIES

- a. Identify remedies for breach on the part of any party to the agreement.

14. ENFORCMENT

- a. Specify that the agreement shall be enforceable, unless lawfully terminated or cancelled by any party to the agreement or any party's successor notwithstanding any subsequent changes in applicable law adopted by the parties that alters or amends the laws, ordinances, resolutions rules or policies frozen by the agreement.

15. HOLD HARMLESS CLAUSE

- a. If the parties agree, the agreement should contain a clause holding each other harmless from liability from damages, injury or death that may arise from the direct or indirect operations of the parties carrying out the terms of the agreement.

16. INSURANCE BONDS

- a. Identify any insurance coverage required and/or secured by any party of the agreement affecting any aspect of the project.
- b. Identify existing bonds in detail, as well as bonds required by the agreement.
- c. Cite applicable ordinances related to bond requirements.

17. SEVERABILITY CLAUSE

- a. Identify the provisions of the agreement that are severable, if there are any.
- b. Identify any severability limitations.

18. MERGER CLAUSE

- a. Specify that the terms of the agreement as stated in the written document are a final and complete expression of the parties' intentions.

19. STATEMENT OF INCORPORATION BY REFERENCE

- a. Identify all documents related to the agreement and incorporated into the agreement by reference.
- b. Include lists of conditions, schedules of completion, imposition of dedications, impact fees and development plans and specifications.

20. COOPERATION

- a. Identify the extent to which the parties will cooperate in their efforts to carry out the terms of the agreement.