

CS FOR SENATE BILL NO. 152(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 4/10/10

Referred: Finance

Sponsor(s): SENATORS HUGGINS, Ellis, Davis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to municipal transportation systems and to regional transit**
2 **authorities."**

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

4 *** Section 1.** AS 29.35 is amended by adding new sections to read:

5 **Article 9A. Regional Transit Authorities.**

6 **Sec. 29.35.750. Purpose and creation of an authority.** (a) The purpose of a
7 regional transit authority is to provide for public transportation within the boundaries
8 of the authority.

9 (b) A regional transit authority may be created in one of the following ways:

10 (1) the governing body of a municipality may, by ordinance, create the
11 authority as a public corporation of the municipality;

12 (2) the governing bodies of two or more municipalities may, by
13 substantially identical ordinances adopted by each of the governing bodies, create the
14 authority as a public corporation of the municipalities.

1 (c) One or more municipalities may join an authority established under (b)(1)
 2 or (2) of this section on the adoption of substantially identical ordinances by the
 3 governing bodies of each affected municipality.

4 (d) The enabling ordinance by which an authority is established must specify
 5 the powers, boundaries, and limitations of the authority. The ordinance may provide
 6 that the commissioner of transportation and public facilities, or the commissioner's
 7 designee, serves as a member of the board. The ordinance may provide for the
 8 selection of a member of the policy board of a metropolitan planning organization
 9 formed under 23 U.S.C. 134 to serve on the board.

10 (e) An authority is a body corporate and politic and an instrumentality of the
 11 municipality or municipalities creating it but has a separate and independent legal
 12 existence. Creation of the authority is an exercise of a municipality's transportation
 13 system powers.

14 (f) Nothing in AS 29.35.750 - 29.35.799 prevents a municipality or
 15 municipalities from creating or participating in a public corporation, including a
 16 regional transit authority, in any form or manner not prohibited by law. However,
 17 AS 29.35.750 - 29.35.799 apply only to and may be used only by an authority created
 18 under this section.

19 **Sec. 29.35.752. Dissolution of an authority; withdrawal from authority.** (a)
 20 The enabling ordinance creating a regional transit authority must provide for the
 21 manner by which the authority may be dissolved. If an authority ceases to exist, its
 22 assets shall be distributed to each municipality that was participating in the authority
 23 on the day before the date of dissolution, in proportion to the municipality's
 24 contribution to the authority, less any outstanding debt or obligation of that
 25 municipality to the authority. Any obligation to bondholders then outstanding shall
 26 first be satisfied in full.

27 (b) A municipality that is participating in an authority with one or more other
 28 municipalities may withdraw from participation without dissolving the authority. The
 29 contributions to the authority made by the withdrawing municipality remain the
 30 property of the authority, and the municipality remains liable for obligations under any
 31 agreement with the authority or other participating municipalities unless the agreement

1 is changed by the contractual parties. A municipality withdraws from participation in
 2 an authority by adopting an ordinance repealing the ordinance adopted under
 3 AS 29.35.750(b)(2) or (c).

4 (c) Notwithstanding AS 29.26.100, the powers of initiative and referendum
 5 may not be used for withdrawing a municipality from participation in an authority
 6 with one or more other municipalities.

7 **Sec. 29.35.754. Municipal property.** (a) A municipality may transfer and
 8 otherwise convey or lease real property and improvements to real property to a
 9 regional transit authority for use by the authority for the purposes set out in the
 10 ordinance adopted under AS 29.35.750(b) or (c).

11 (b) A municipality may transfer and otherwise assign or lease personal
 12 property to an authority for use by the authority for the purposes set out in the
 13 ordinance adopted under AS 29.35.750(b) or (c).

14 **Sec. 29.35.756. Powers and duties.** (a) If provided in the enabling ordinance,
 15 a regional transit authority may

16 (1) sue and be sued;

17 (2) have a seal and alter it;

18 (3) acquire an interest in a project as necessary or appropriate to
 19 provide financing for the project, whether by purchase, gift, or lease;

20 (4) lease to others a project acquired by the authority on the terms and
 21 conditions the authority may consider advisable, including provisions for purchase or
 22 renewal;

23 (5) sell, by installment sale or otherwise, exchange, donate, convey, or
 24 encumber in any manner, by mortgage or by creation of another security interest, real
 25 or personal property that it owns or in which it has an interest, including a project,
 26 when the authority determines the action is in furtherance of the authority's purposes;

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

31 (7) deposit or invest the authority's funds, subject to agreements with

1 bondholders;

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

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

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

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

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

10 (13) charge fees or other forms of remuneration for the use or
11 possession of projects under the agreements described in this subsection, other
12 agreements relating to the projects, covenants, or representations made in bond
13 documents relating to the projects, or regulations of the authority relating to the
14 projects;

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

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

19 (16) defend and indemnify a current or former member of the board,
20 employee, or agent of the authority against all costs, expenses, judgments, and
21 liabilities, including attorney fees, incurred by or imposed on that person in connection
22 with a civil or criminal action in which the person is involved because of the person's
23 affiliation with the authority if the person acted in good faith on behalf of the authority
24 and within the scope of the person's official duties and powers;

25 (17) purchase insurance to protect and hold harmless its employees,
26 agents, and board members from an action, claim, or proceeding arising out of the
27 performance of, purported performance of, or failure to perform in good faith duties
28 for the authority or arising out of employment with the authority and to hold them
29 harmless from expenses connected with the defense, settlement, or monetary
30 judgments from that action, claim, or proceeding; the purchase of insurance is subject
31 to the discretion of the board; insurance purchased under this paragraph is not

1 compensation to the insured person; and

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

4 (b) An authority shall maintain casualty, property, business interruption,
5 marine, boiler and machinery, pollution liability, and other insurance in amounts
6 reasonably calculated to cover potential claims against the authority or a municipality
7 for bodily injury, death, or disability, and property damage that arise from or are
8 related to operations and activities of the authority.

9 **Sec. 29.35.758. Bonds of a regional transit authority.** (a) If authorized by the
10 enabling ordinance, a regional transit authority may borrow money and issue bonds on
11 which the principal and interest are payable

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

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

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

18 (b) All bonds shall be sold at public or private sale in the manner, for the price
19 or prices, and at the time or times, the authority may determine. Before issuing bonds,
20 an authority shall provide for consideration at least sufficient, in the judgment of the
21 authority, to

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

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

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

28 (c) Bonds shall be authorized by resolution of the authority and shall be dated
29 and mature as the resolution may provide, except that a bond may not mature more
30 than 40 years after the date of its issue. Bonds shall bear interest at the rate or rates, be
31 in the denominations, be in the form, either coupon or registered, carry the registration

1 privileges, be executed in the manner, be payable in the medium of payment, at the
 2 place or places, and be subject to the terms of redemption that the resolution or a
 3 subsequent resolution may provide.

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

7 **Sec. 29.35.760. Bonds eligible for investment.** Bonds issued under
 8 AS 29.35.758 are securities in which public officers and public bodies of the state and
 9 its political subdivisions, insurance companies, trust companies, banks, investment
 10 companies, executors, administrators, trustees, and other fiduciaries may properly and
 11 legally invest funds, including capital in their control or belonging to them. The bonds
 12 may be deposited with a state or municipal officer of an agency or political
 13 subdivision of the state for any purpose for which the deposit of bonds of the state is
 14 authorized by law.

15 **Sec. 29.35.762. Pledge of revenue; credit.** (a) The pledge of revenue of a
 16 regional transit authority to the payment of the principal of or interest on bonds or
 17 notes of the authority is valid and binding from the time the pledge is made, and the
 18 revenue is immediately subject to the lien of the pledge without physical delivery or
 19 further act. The lien of a pledge is valid and binding against all parties having claims
 20 of any kind against the authority, regardless of whether those parties have notice of the
 21 lien of the pledge.

22 (b) The state and municipalities participating in an authority are not liable for
 23 the debts of that authority. Bonds issued under AS 29.35.758 are payable solely from
 24 the revenue of the authority and do not constitute a

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

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

27 (c) An authority may not pledge the credit or the taxing power of the state or
 28 its municipalities. A bond issued under AS 29.35.758 must contain on its face a
 29 statement that

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

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

3 **Sec. 29.35.764. Pledges of the state and municipalities.** The state and
4 municipalities participating in an authority pledge to and agree with the holders of
5 bonds issued under AS 29.35.758 and with the federal agency, if any, that loans or
6 contributes funds for a project of the authority that the state and the municipalities
7 participating in the authority will not limit or alter the rights and powers vested in the
8 authority by its enabling ordinance or other law so that it is unable to fulfill the terms
9 of a contract made by it with those holders or that federal agency or in any way impair
10 the rights and remedies of those holders or that federal agency until the bonds,
11 together with the interest on them and interest on unpaid installments of interest, and
12 all costs and expenses in connection with an action or proceeding by or on behalf of
13 those holders or that federal agency, are fully met and discharged. An authority may
14 include this pledge and agreement of the state and the municipalities participating in
15 the authority, to the extent that it refers to holders of bonds of the authority, in a
16 contract with those holders and, to the extent that it relates to a federal agency, in a
17 contract with that federal agency.

18 **Sec. 29.35.766. Limitation of liability; fidelity bond.** (a) Any liability, debt,
19 or judgment incurred by a regional transit authority shall be satisfied exclusively from
20 the assets or revenue of the authority. A creditor or other person does not have a right
21 of action against the state or a municipality participating in an authority because of a
22 debt, obligation, or liability of an authority.

23 (b) A board member or employee of an authority is not subject to personal
24 liability or accountability because of the execution or issuance of bonds under
25 AS 29.35.758.

26 (c) An authority shall obtain a fidelity bond in an amount determined by the
27 board for board members and each executive officer responsible for accounts and
28 finances of that authority. A fidelity bond must be in effect during the entire tenure in
29 office of the bonded person.

30 **Sec. 29.35.768. Exemption from taxation.** (a) A regional transit authority
31 exercising the powers granted under AS 29.35.750 - 29.35.799 is in all respects for the

1 benefit of the people of the municipalities participating in the authority and the people
 2 of the state in general, for their well-being and prosperity, and for the improvement of
 3 their social and economic condition. The real and personal property of the authority
 4 and its assets, income, and receipts are exempt from all taxes and special assessments
 5 of the state or a political subdivision of the state.

6 (b) Bonds issued by the authority under AS 29.35.758 are issued for an
 7 essential public and governmental purpose; therefore, the bonds, the interest and
 8 income from them, and all fees, charges, funds, revenue, income, and other money
 9 pledged or available to pay or secure the payment of the bonds or interest on them are
 10 exempt from taxation except for inheritance, transfer, and estate taxes.

11 (c) Notwithstanding the provisions of (a) of this section, an authority and the
 12 municipalities participating in the authority may enter into agreements under which
 13 the authority agrees to pay the participating municipalities' payments in lieu of taxes
 14 and special assessments on real and personal property of the authority that is within
 15 the taxing jurisdiction of the municipality.

16 (d) Nothing in this section creates a tax exemption with respect to the interests
 17 of a business enterprise or other person, other than the authority, in property, assets,
 18 income, or receipts, whether or not financed under AS 29.35.750 - 29.35.799.

19 **Sec. 29.35.770. Administration of regional transit authority; board.** (a) A
 20 regional transit authority shall be governed by a board of directors, which shall
 21 exercise the powers of the authority. The enabling ordinance establishing the authority
 22 under AS 29.35.750 must specify the number, qualifications, manner of appointment
 23 or election, and terms of members of the board.

24 (b) The board shall appoint a chief executive officer of the authority, who
 25 serves at the pleasure of the board. The board shall fix the compensation of the chief
 26 executive officer.

27 **Sec. 29.35.772. Collective bargaining agreements.** (a) A collective
 28 bargaining agreement for employees of the state or its political subdivisions who are
 29 transferred to a regional transit authority remains in effect for the term of the
 30 agreement or one year, whichever is longer, and is binding on the authority unless the
 31 parties agree to the contrary before the agreement expires. A labor-management

1 negotiation impasse declared after a transfer of employees under this subsection but
 2 before the negotiation of a new collective bargaining agreement shall be resolved as
 3 provided in the collective bargaining agreement or, if the collective bargaining
 4 agreement does not provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

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

10 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority unless all
 11 municipalities participating in the authority are exempt under AS 23.40.255(a).

12 **Sec. 29.35.774. Bylaws and regulations.** (a) The board of directors of a
 13 regional transit authority shall adopt bylaws and appropriate regulations consistent
 14 with the enabling ordinance to carry out its functions and purposes.

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

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

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

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

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

25 (5) procedures for adopting regulations;

26 (6) procedures for adopting bylaws;

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

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

29 **Sec. 29.35.776. Authority subject to public records and open meetings**
 30 **laws.** A regional transit authority is subject to AS 40.25.110 - 40.25.220 and to
 31 AS 44.62.310 and 44.62.312.

1 **Sec. 29.35.778. Report and audit.** (a) Within 90 days following the end of the
 2 fiscal year of a regional transit authority, the board of directors shall distribute to the
 3 mayor and governing body of each municipality participating in the authority a report
 4 describing the operations and financial condition of the authority during the preceding
 5 fiscal year. The report may include suggestions for legislation relating to the structure,
 6 powers, or duties of the authority or operation of facilities of the authority. The report
 7 must itemize the cost of providing each category of service offered by the authority
 8 and the income generated by each category.

9 (b) The board shall have the financial records of the authority audited annually
 10 by an independent certified public accountant.

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

13 **Sec. 29.35.780. Claims and remedies.** (a) The superior court has jurisdiction
 14 to hear and determine suits, actions, or proceedings relating to an authority, including
 15 suits, actions, or proceedings brought to foreclose or otherwise enforce a mortgage,
 16 pledge, assignment, or security interest brought by or for the benefit or security of a
 17 holder of the authority's bonds or by a trustee for or other representative of the holders.

18 (b) A holder of bonds or notes or coupons attached to the bonds issued by an
 19 authority under AS 29.35.758, and a trustee under a trust agreement or resolution
 20 authorizing the issuance of the bonds, except as restricted by a trust agreement or
 21 resolution, either at law or in equity, may

22 (1) enforce all rights granted under AS 29.35.750 - 29.35.799, the trust
 23 agreement or resolution, or another contract executed by the authority; and

24 (2) compel the performance of all duties of the authority required by
 25 AS 29.35.750 - 29.35.799 or the trust agreement or resolution.

26 (c) In judicial and regulatory proceedings by and against an authority, an
 27 authority and its board members and employees enjoy the same rights, privileges, and
 28 immunities as a municipality and municipal officers.

29 **Sec. 29.35.790. Conflicting laws inapplicable.** If a provision of AS 29.35.750
 30 - 29.35.799 conflicts with another provision of this title, the provision of AS 29.35.750
 31 - 29.35.799 prevails.

1 **Sec. 29.35.798. Definitions.** In AS 29.35.750 - 29.35.799, unless the context
2 otherwise requires,

3 (1) "authority" means a regional transit authority established under
4 AS 29.35.750;

5 (2) "board" means the board of directors of a regional transit authority;

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

8 (4) "bylaws" means the guidelines adopted by and amended by the
9 board of directors from time to time under AS 29.35.750 - 29.35.799;

10 (5) "costs of projects" means all or any part of the aggregate costs
11 determined by a regional transit authority to be necessary to finance the construction
12 or acquisition of a project, including, without limitation,

13 (A) the cost of acquiring real property;

14 (B) the cost of constructing buildings and improvements;

15 (C) the cost of financing the project, including, without
16 limitation, interest charges before, during, or after construction or acquisition
17 of the project;

18 (D) costs related to determining the feasibility of, planning,
19 design of, or engineering of the project and, to the extent determined necessary
20 by the authority, administrative expenses;

21 (E) the costs of machinery or equipment to be used in the
22 operation or rehabilitation of a transit facility or operation; and

23 (F) all other costs, charges, fees, and expenses that the
24 authority determines necessary to finance the construction or acquisition;

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

28 (7) "project" means a capital project related or incidental to public
29 transportation;

30 (8) "public transportation" means transportation by a conveyance that
31 provides regular and continuing general or special transportation to the public;

1 (9) "regulation" means a standard of general application or the
2 amendment, supplement, revision, or repeal of a standard adopted by a regional transit
3 authority to implement, interpret, or make specific the law enforced or administered
4 by it or to govern its procedure.

5 **Sec. 29.35.799. Short title.** AS 29.35.750 - 29.35.799 may be cited as the
6 Regional Transit Authority Act.

7 * **Sec. 2.** AS 29.71.800 is amended by adding a new paragraph to read:

8 (26) "transportation system" means the infrastructure and carriers
9 necessary to provide for public or private transportation of goods and individuals,
10 including ports, marinas, railways, terminals, highways, roads, and trails, as well as
11 motor vehicles, trains, and watercraft.