

AIDEA's
March to Autonomy

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The Alaska Industrial Development and Export Authority (AIDEA) is in many respects an autonomous organization, exempted from the most important laws that protect the public. These include laws that:

- help Alaskans keep their government transparent and accountable,
- give local governments a say in AIDEA projects,
- protect public employees from arbitrary firings,
- ensure a level field for competitive public contracts, and
- give the legislature consistent oversight of agency borrowing, lending, spending, and investing.

It wasn't always this way. The sole purpose of the 1967 legislation that established the Alaska Industrial Development Authority (AIDA, "Export" was added later) was to create an entity that could borrow money at low interest rates in the municipal bond market to make it easier to establish industry in Alaska.

The establishing legislation, 1967's House Bill 14, authorized revenue bonds "payable solely from the income and receipts or other funds or property of the authority." The authority was to be strictly prohibited from pledging the faith or credit of the state.¹

This was not unusual for a state government. According to Representative Gene Guess, D-Anchorage, the bill's sponsor, more than half the states were using industrial revenue bonds to accelerate economic growth. "This method of financing has grown from slightly over \$7 million in 1957 to \$216 million in 1965," Guess continued, "[It] will make more new industry think about coming to Alaska because the interest rates would be lower than those obtainable on the regular industrial bond market and the lease payments covering the interest and premium are tax deductible."²

The measure passed the House with a bi-partisan majority on March 20th; ten days later the Senate gave its approval.³ Governor Bill Egan signed the measure into law April 4, 1967.

The bill that Egan signed included provisions requiring local government involvement in any AIDA development. Projects were not to use AIDA bonds without first obtaining a resolution of approval from the local government where the project was to be located.

1. Chapter 64, Session Laws of Alaska 1967.

2. Associated Press, "Industrial Bonding Given House Okay", *Anchorage Daily Times*, March 20, 1967.

3. Associated Press, "Senate Approves Bill Establishing Industrial Board", *Anchorage Daily Times*, March 30, 1967.

Moreover, local government representatives were to be seated temporarily on the AIDA board of directors with authority to vote yea or nay on any actions by AIDA involving the project.

Within weeks the first signs emerged of AIDA's 57-year and continuing march to autonomy. Legislation to eliminate local government say in any AIDA project passed later that session.

As the ten figures in this report show, this pattern has been repeated again and again.⁴ AIDEA has become a major investment bank, exempt from the federal laws that govern such banks, with little state regulation, and sitting on a treasure trove of largely locked-up state assets.

Keeping the locals on the sidelines and out of AIDEA's pockets

Give locals as little say in AIDEA projects as possible

Soon after AIDA's 1967 creation, legislation was introduced to eliminate the local government board representatives and thus eliminate their veto power over, for example, the initiation of local projects, the expansion of projects, and changes in contractual local hire promises.

4. A compilation of all Alaska legislation having material effect on AIDEA is available on request to gerickso@gmail.com.

Figure 1

Laws that help AIDEA avoid Local Government Oversight		
Year	Session Law	Summary of the law's effect
1967	Chapter 207	Changes composition of AIDA's board, eliminating three members appointed by local governments.
1977	Chapter 64	Limits the role of local governments in AIDA's management of projects for transportation, pollution control and waste disposal, and delivery of electric energy or gas.
1984	Chapter 162	Creates AS 44.88.174-175, establishing Regional Resource Advisory Councils, and providing that affected councils and local governments must approve AIDEA projects costing over \$10 million.
1990	Chapter 123	Weakens provisions of the 1984 legislation that required Regional Resource Advisory Council or local government approvals.

In 1990, Governor Steve Cowper (D) proposed a major overhaul of AIDEA, including lifting of bonding limits, loosening requirements for legislative approval of bonds, and relaxing statutory constraints in investment of AIDEA's financial assets.⁵ Cowper was clearly interested in shaping the Authority into a more easily wielded tool for development financing, but his proposed legislation, HB 123, made no mention of weakening the local government veto. No matter. When the bill reached Cowper's desk, it contained a repealer of the local government hearing requirements adopted in 1984.

Avoiding local taxes

Units of state government are constitutionally exempt from local government taxes, so one would expect that AIDEA would be home free on this front. Over the years, AIDEA has increasingly inserted itself into areas that had been the sphere of the private sector, and that has led AIDEA to request specific exemptions from local taxes.

For example, building a profit making, transportation system for the exclusive use of a mining company to put ore on a ship would not normally be considered a government function, but that is something AIDEA does with the DeLong Mountain Transportation

5. Gov. Steve Cowper, Letter to the Speaker of the House "transmitting a bill authorizing the Alaska Industrial Development and Export Authority (AIDEA) to finance development enterprises", January 27, 1989, *1989 House Journal*, page 187.

System. As **Figure 2** shows, AIDEA requested and received legislative approval of exemptions on its DeLong Mountain assets in 2002, 2010, and 2018.⁶ The AIDEA-owned shipyard in Ketchikan is also exempt from local taxes. They are far from the only assets that the legislature has put off limits to local and school district property tax levies.

Laws that help AIDEA avoid Local Property Taxes		
Year	Session Law	Summary of the law's effect
1980	Chapter 106	Provides that private leasehold interests in AIDEA projects are exempt from local taxation.
2002	Chapter 121	Limits taxability of certain private leasehold interestes on AIDEA property, specifically targeted at lodging facilities associated with DMTS (Red Dog). Expands authority of AIDEA to approve payment-in-lieu-of-tax contracts on private leaseholds of AIDEA property.
2003	Chapter 74	Extends a municipal tax exemption for certain AIDEA assets.
2010	Chapter 71	Limits municipal property taxation of DeLong Mountain Transportation System.
2012	Chapter 71	Extends an exemption from municipal property taxes that were set to expire.
2018	Chapter 64	Expands the property tax exemptions of private interests in the Ketchikan Shipyard and the DeLong Mountain Transportation System.

Opaqueness achieved

Keeping the public out of AIDEA's records

Transparency, when speaking about organizations, means the practice of sharing accurate information with its stakeholders about the institution's activities, with the intent to create clarity, trust, and accountability.⁷ The opposite of transparency is opaqueness.

6. The local government, the Northwest Arctic Borough, receives negotiated payments in lieu of taxes.

7. Cascade Strategy, "How to improve transparency in an organization," <http://www.cascade.app/blog/how-to-develop-organizational-transparency>.

Among journalists writing about AIDEA, one would be hard pressed to find any who do not consider the Authority the opaquest government organization in Alaska. This opinion was held even before 2010, when AIDEA achieved exemption from most provisions of the Alaska Public Records Act.⁸ In 2019, when Moody's Investors Service downgraded AIDEA's credit rating, the agency wrote that one reason for the downgrade was, "the fact that AIDEA provides very limited information on its loan program participants."⁹

Because the Authority's opaqueness is widely known, AIDEA doesn't receive many public records requests from journalists. Why bother? When reporters or researchers do make public records requests, AIDEA routinely takes the maximum amount of time allowed before replying, then responds that the agency is extending their due date for additional time because the records request came during a period of "peak workload." When the response eventually arrives, it typically will deny the request based on multiple grounds. For example,

"Your request is denied pursuant to AS 44.88.215 (2), (3), (5), (7) and (8); and AS 40.25.120 (a) (4) incorporating the exception in federal law 5 USC 552(a) (4) and AS 40.25.120(a)(12)."¹⁰

On some occasions AIDEA does not deny a request outright but claims that the records cannot be found without expenditure of staff resources. To move your request forward you must send AIDEA an amount, usually over \$1,000, to pay for the estimated staff time.

On September 6, 2023, Jim Davis, an attorney with the Northern Justice Project, representing independent Alaska journalist Nathaniel Herz, wrote Randy Ruaro, AIDEA's Executive Director, a seven-page letter asserting that AIDEA's refusal to release unredacted copies of contracts between the Authority and various consultants or development partners was illegal:

8. AS 40.25.110–125.

9. Moody's Investors Service, "Moody's downgrades Alaska Industrial Development and Export Authority to A2 from Aa3; outlook negative", July 25, 2019, http://www.moodys.com/research/Moodys-downgrades-Alaska-Industrial-Development-and-Export-Authority-to-A2-Rating-Action--PR_905966921 accessed Dec. 22, 2023. Also quoted by Suzanne Downing, at <http://mustreadalaska.com/breaking-moodys-downgrades-state-of-alaska-aidea/>, July 25, 2019.

10. Letter, Raymie Hamann, AIDEA Public Records Coordinator, to Gregg Erickson, May 19, 2023. The request was for a copy of the agreement with Brooks Range Petroleum Company for a due diligence study on a potential industrial road project for the Mustang development field on the North Slope, a copy of the study, including suitability assessment and preliminary feasibility analysis, and a copy of the report of AIDEA's Investment Committee forwarding the report to the Board, with its recommendation to perform due diligence, true modeling and to complete an economic analysis to determine benefits to the state. The request was refused.

“The documents requested by Mr. Herz constitute basic information about the spending of public money, and the public is clearly entitled to this information. Unredacted copies of these documents can and should have been provided to Mr. Herz within a few days of his original request, and instead, AIDEA has engaged in unreasonable and illegal delay.”¹¹

According to Herz, AIDEA responded to the letter and promptly turned over the documents. For most journalists who can’t afford to hire a lawyer as persuasive as Mr. Davis, and publishers who are loath to hire lawyers of any sort, the options are limited or nonexistent.

Figure 3

Laws that allow AIDEA to avoid requirements of Public Records and Open Meetings Acts		
Year	Session Law	Summary of the law’s effect
2010	Chapter 71	Creates a sweeping exception to the Alaska Public Records Act for information submitted by entities applying for bond, loan, guarantee, or other financial assistance from AIDEA.
2018	Chapter 7	Exempts AIDEA from most provisions of the Alaska Open Meetings Act.

If it’s Important it gets discussed in executive session.

As members of the public and witnesses before the AIDEA board frequently note, just about anything important gets discussed in executive session, where the public is barred from listening in. This is true in part because the Alaska Public Meetings law requires heavy commitments of time and money from private persons to enforce. Few can afford that. In addition, in 2018 AIDEA obtained exemption from most provisions of the law.

11. James J. Davis, Jr., Letter to Randy Ruaro, “Violations of the Alaska Public Records Act by the Alaska Industrial Development and Export Authority,” September 6, 2023.

Excluding the public from AIDEA's process in setting regulations

Regulations often have huge impacts on citizens. The Alaska Administrative Procedures Act (APA) constrains, regulates, and standardizes how agencies make regulations. AIDEA is one of the state's biggest maker of regulations.¹² Nevertheless, legislators have exempted it from key requirements of the Act. Substitute provisions enacted by AIDEA in its own regulations reduce and sometimes effectively eliminate the public's procedural opportunities to weigh in when new regulations are being considered, and protest when agencies act contrary to their own regulations.

As shown in **Figure 4**, AIDEA has obtained multiple exemptions from the Act. Just one example: when AIDEA proposes a new regulation, it must give public notice, just as it would under the APA; but 1982 legislation opened a huge loophole, allowing adoption of *material amendments* with no public notice whatsoever.

Figure 4

Laws that exempt AIDEA from Administrative Procedures Act		
Year	Session Law	Summary of the law's effect
1982	Chapter 113	Exempts AIDA from much of the Administrative Procedure Act. AIDA may adopt its own regulations. AIDA may materially amend proposed regulations without further public notice.
1987	Chapter 42	Because of the name change (adding "Export"), reiterates that "the Administrative Procedure Act regarding the adoption of regulations (AS 44.62.040 - 44.62.320) do not apply to the authority."
2004	Chapter 164	Once again, exempts AIDEA from the provisions of the Administrative Procedure Act regarding the adoption of regulations.
2018	Chapter 7	Furtheres AIDEA's exemption from the authority of the Administrative Regulation Review Committee (ARRC) by abolishing the requirement that AIDEA submit its regulations to the ARRC for review within 45 day of adoption.

12. AIDEA's regulations encompass over two hundred pages covering such diverse subjects as who is entitled to an AIDEA loan and what they must do to apply, who gets to supply fuel to AIDEA facilities, and how energy development in Fairbanks can proceed.

AIDEA exempted from law that keeps agencies out of trouble

One purpose of a procurement code, such as Alaska's State Procurement Code,¹³ is to keep state agencies out of trouble. Codifying how contracts are made with private business creates a level playing field for all, helping to prevent special deals for favored contractors. That's one reason agencies tend to chafe against the limits a procurement code puts on their freedom. But, personal or political favoring of contractors is one of the major ways agencies get themselves in trouble.

Figure 5

Laws that help AIDEA avoid Requirements of the Procurement Code		
Year	Session Law	Summary of the law's effect
1990	Chapter 124	Exempts AIDEA "Clean Coal" projects from the state Procurement Code (AS 36.30).
1996	Chapter 111	Exempts AIDEA from the Procurement Code for contracts with the developer of an integrated transportation and port facility owned by the Authority.
2011	Chapter 7	Provides AIDEA with a sweeping exemption from the Procurement Code. The Authority is to establish its own purchasing and contracting procedures, which must "reflect competitive bidding principles," and provide an Alaska Bidder Preference.

Each agency will argue that they face special circumstances requiring that they operate on a different playing field from other agencies. That has been the case with AIDEA. Then Executive Director Ted Leonard argued in 2011 that the Authority needed an exemption from Alaska's Procurement Code because of its unique relations with the private sector. He did not explain how this was any different from other agencies that deal almost exclusively with the private sector on procurement issues.¹⁴

13. AS 36.30.005–995, <http://www.akleg.gov/basis/statutes.asp#36.30.005>, accessed January 30, 2024.

14. Ted Leonard, Testimony on HB 119 to the House Committee on Economic Development, International Trade, and Commerce, March 3, 2011.

It should be noted that the exemption AIDEA gained from the code for the Healy Clean Coal Project did not prevent extensive litigation involving AIDEA over contracting matters and subsequent write-offs by AIDEA of \$216 million of its investments of public money in the project.¹⁵

Keeping the legislature at bay

Throughout its history, AIDEA has pushed against the interests of the press, local governments, and other state agencies. Nowhere has this tension been more in flux than its on-again, off-again relationship with the Alaska State Legislature. AIDEA has sought freedom to issue bonds without legislative approval, invest state money free of the requirements laid down by the legislature for state agencies, and keep the money its investments earn from being transferred to the Alaska state general fund.

Figures 6 through 9 show the extent of AIDEA's often extensive efforts to escape legislative oversight. What it does not show as clearly is the on-again, off-again nature of that relationship. For example, when the legislature gives AIDEA the authority to issue bonds, whether generally or for specific projects, it almost always attaches a drop-dead date, after which no bonds may be issued. Such provisions afford the legislature much coveted leverage.

How that leverage can work is illustrated by considering the situation that ensued after AIDEA's bonding authorization expired in 1995. Three projects proponents had applied for bond finance assistance and received the necessary AIDEA approvals. All that was needed for these projects to move forward, was for the legislature to renew AIDEA's bonding authorization, but the bill to do so was stalled.¹⁶

During negotiations between the Governor and the Senate and House Finance Committee chairs it became clear that the bonding authorization would be going nowhere without an amendment pushed by the committee chairs, but opposed by the Governor and AIDEA. Inclusion of the amendment would establish a formula for annual contributions by AIDEA from its endowment to the state's general fund.¹⁷

15. MB Barker, LLC et al, *AIDEA Cost & Financial Performance — A Long, Hard Look*, SalmonState, September 27, 2022. pages 14 and 75, at <http://salmonstate.org/reports>; and, *Alaska Industrial Development and Export Authority Revolving Fund, Financial Statements, June 30, 2002*, KPMG, LLP, September 27, 2002, at <http://www.aidea.org/About/News-Publications/Publications-Financial-Statements/Financial-Statements>.

16. Minutes of the Alaska Senate Transportation Committee, April 16, 1996, at <http://www.akleg.gov/basis/Meeting/Detail?Meeting=STRA%201996-04-16%2015:55:00>

17. For more details, see the accompanying report, "The AIDEA Endowment: A Short History of a Disputed Resource."

The Governor relented, paving the way for the bond authorization legislation to pass, with the committee chairs' amendment tacked on. The three projects queued up for AIDEA bond financing moved forward.¹⁸

Figure 6

Laws that help AIDEA avoid Legislative Oversight		
Year	Session Law	Summary of the law's effect
1980	Chapter 106	Allows AIDA to put money in special funds making them nominally off-limits to appropriation.
1990	Chapter 123	Lifts requirement of prior legislative approval of bonds.
1998	Chapter 109	Extends AIDEA's authority to issue bonds of more than \$10 million without specific legislative approval.
2000	Chapter 117	Further extends AIDEA's authority to issue bonds of more than \$10 million without specific legislative approval.
2010	Chapter 71	Elimiates any limit on refunding bonds.
2011	Chapter 7	Allows AIDEA to create corporate subsidiaries without legislative approval.

Figure 7

Law that allowed AIDEA to hang on to Earnings Designated for the General Fund		
Year	Session Law	Summary of the law's effect
1980	Chapter 106	Allows AIDA to keep earnings of some funds, and allows it to put money in special funds that are nominally off-limits to appropriation.

18. "AIDEA bill gets Knowles approval," *Alaska Budget Report*, July 19, 1996, p. 12-13. The much-amended version entered the statute books as Chapter 111 of the 1996 session laws.

Figure 8

Laws that reduce AIDEA requirements for Legislative Authorization for Borrowing		
Year	Session Law	Summary of the law's effect
1990	Chapter 123	Repeals the provision in AS 44.88.090(i) preventing AIDEA from issuing bonds (except refunding bonds) without legislative approval.
2015	Chapter 39	Amends AS 44.88.095(g) to raise from \$10 million to \$25 million the ceiling on AIDEA's authority to issue, absent specific legislative authorization, bonds under AS 44.88.172–177.

Figure 9

Laws that exempt AIDEA from Rules on Investing State Funds		
Year	Session Law	Summary of the law's effect
1980	Chapter 106	Exempts AIDA from some requirements in AS 37.10 governing the investment of public funds.
1988	Chapter 141	Relaxes limits on kinds of investments AIDEA may use as security or reserves for payment of AIDEA-issued bonds or loans.
1990	Chapter 123	Eliminates the requirement that the Enterprise Development Account be invested in accordance with AS 37.10.071, (Investment of Public Funds and personal liability of fiduciaries).

As this report was being written, in March of 2024, AIDEA demonstrated, together with allied legislators, an end-of-session tactic used to minimize public involvement and limit opportunities for thoughtful legislative review. AIDEA's expert use of this tactic goes far to explain how legislation described in **Figure 8** and elsewhere in this report managed to become law.

A bill to authorize the state-owned Alaska Railroad to issue up to \$150 million in revenue bonds was being considered in the House Transportation Committee.¹⁹ The money would be used to replace the Railroad's crumbling cruise ship dock in Seward and add modern passenger transfer facilities. The bonds would not be a liability of the state, and no state dollars would be used for repayment; the bonds would be secured by a long-term use agreement with anchor tenant Royal Caribbean Group.²⁰

With no public notice, an amendment was offered authorizing AIDEA to issue \$300 million in AIDEA general obligation bonds "for critical mineral and rare earth element projects."

The Committee took testimony from AIDEA lawyer Mark Davis. Likely due to the lack of notice, no member of the public offered testimony on the amendment. The amendment was quickly and quietly added, and the bill was passed out of Committee.

AIDEA exempts its employees from personnel protections

Soon after statehood, the legislature passed legislation establishing a merit system governing the hiring and firing of most public employees not occupying policymaking positions. The merit system is embodied in the Public Employment Relations Act that covers most state of Alaska employees. The Act establishes procedures and criteria to ensure fair hiring decisions and to prevent arbitrary or discriminatory firing. Not a single AIDEA employee is afforded these protections because, as **Figure 10** indicates, in 1980 AIDEA mounted a successful lobbying effort to exempt itself from the Act.²¹

AIDEA employees are also denied the right to organize a union and bargain for wages, along with a host of related rights and protections afforded by Alaska law to most other state workers.²²

19. See minutes and audio of the House Transportation Committee, March 14, 2024 at <http://www.akleg.gov/basis/Meeting/Detail?Meeting=HTRA%202024-03-14%2013:00:00> .

20. See Alaska Railroad, "Seward Passenger Dock & Terminal Replacement Project," Feb. 27, 2024 http://www.akleg.gov/basis/get_documents.asp?session=33&docid=29866 .

In an earlier report the authors recommended AIDEA be restricted to his type of revenue bond financing. See MB Barker, LLC et al, *AIDEA Cost & Financial Performance - A Long, Hard Look*, page 4.

21. AIDEA and other state agencies are prohibited from lobbying, but the law has little practical effect. All agencies communicate with legislators, with varying degrees of effectiveness.

22. AIDEA employees remain covered by the much weaker protections in federal law.

Figure 10

Laws that help AIDEA skirt
State Personnel Laws & Regulations

Year	Session Law	Summary of the law's effect
1980	Chapter 106	Moves AIDEA employees into the exempt service, making them fireable at will.