

# Senate Transportation Committee

*Alaska State Legislature*



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## **Sectional Analysis**

**SB 170; Version 32-LS0528\W**

### **Alaska Marine Highway Corporation Act**

**Section 1:** Establishes legislative findings and purposes of the Alaska Marine Highway System Corporation.

**Section 2:** Amends AS 12.05.020

Conforming language adding the corporation to state jurisdiction for prosecution of offenses committed on aircraft or ferries and other watercraft owned or operated by the state.

**Section 3:** Amends AS 19.10.399(8)

Clarifying language regarding the definition of a highway. Conforming language that removes “state” from the Alaska state marine highway system.

**Section 4:** Amends AS 23.05.360(f)

Adds the Alaska Marine Highway System Corporation Act for administration of the Public Employment Relations Act by the Alaska labor relations agency.

**Section 5:** Amends AS 23.05.370(a)

Establishes that the Alaska labor relations agency shall serve at the request of the corporation as the labor relations agency for the Alaska marine highway system.

**Section 6:** Amends AS 23.40.040

Conforming language that authorizes the corporation rather than the Department of Transportation to negotiate and enter into collective bargaining agreements with employees operating the state ferry system as masters or members of the crews of vessels, or with employee bargaining agents.

**Section 7:** Amends AS 28.90.990(a)(15)

Clarifying language for the definition of a highway. Conforming language that removes “state” from the Alaska state marine highway system.

**Section 8:** Amends AS 29.35.722

Removes the Alaska marine highway system from the prohibition of conveyance or transfer of ownership or operation of certain state facilities without approval of the state legislature.

**Section 9:** Amends AS 35.27.030(1)

Excludes vessels and boats of the Alaska marine highway system in terms of art requirements for public buildings and facilities.

**Section 10:** Amends AS 35.27.030

Clarifies the definitions of the Alaska marine highway system and Alaska Marine Highway Corporation in terms of art requirements for public buildings and facilities.

**Section 11:** Amends AS 36.30.990(1)

Conforming language of the state procurement code definitions that adds the Alaska Marine Highway Corporation and removes the Department of Transportation in regards to the vessels, docking facilities, passenger and vehicle transfer facilities of the Alaska marine highway system.

**Section 12:** Amends AS 39.20.310

Conforming language that removes the Division of Marine Transportation and state ferry and adds the Alaska marine highway system and Alaska Marine Highway Corporation regarding exceptions from provisions in AS 39.20.275, AS 39.20.200 – 39.20.330.

**Section 13:** Amends AS 39.25.110(16)

Conforming language that removes the Division of Marine Transportation and adds the Alaska Marine Highway Corporation regarding exempt service from provisions of the State Personnel Act.

**Section 14:** Amends AS 39.35.680(22)

Conforming language that removes the Division of Marine Transportation, state ferry, and state; adds the Alaska Marine Highway Corporation and Alaska marine highway system to definitions of public employees' retirement systems of Alaska.

**Section 15:** Amends AS 39.35.680

Conforming language that adds the definition of Alaska Marine Highway Corporation as defined under its establishing statute for public employees' retirement systems of Alaska.

**Section 16:** Amends AS 39.50.200(b)

Adds the Alaska Marine Highway Corporation boards of directors to the definition of state commissions or boards for compliance with public official financial disclosure requirements.

**Section 17:** Amends AS 42.

Adds a new chapter to AS 42. "Public Utilities and Carriers and Energy Programs" titled Chapter 50. Alaska Marine Highway System Corporation.

- Article 1. Establishment and Organization (Sec. 42.50.010 - 42.50.060)
  - Establishment of Alaska Marine Highway System Corporation as a public corporation within the Department of Commerce, Community, and Economic Development.
  - Establishes the board of directors, and defines membership, terms of office, vacancies, compensation and expenses, and board officers.

- Membership of the board of directors shall include the commissioner of the Department of Transportation and Public Facilities, commissioner of Department of Commerce, and five members appointed by the governor and confirmed by the legislature.
- Public members of the board shall represent three geographical regions and collectively possess specified experience.
- Article 2. Management. (Sec. 42.50.100 - 42.50.120)
  - Establishes the responsibilities of the board, including management of financial and legal obligations, adherence to accounting standards, and development of comprehensive long-term plans and corrective action reports.
  - Establishes board authority to appoint executive officers.
  - Establishes board authority to delegate powers and duties necessary for management of daily affairs and operation of the corporation to chief executive officer.
- Article 3. Administrative Provisions. (Sec. 42.50.140 - 42.50.240)
  - Establishes minimum schedule of once every three months for board meetings, minimum of four members for quorum, procedures for adopting regulations, and clarifies the manner of voting.
  - Grants board authority to adopt, amend, supplement, revise, or repeal regulations to carry out its functions; and establish bylaws for adoption of emergency regulations.
  - Clarifies that corporation information is public and establishes authority to designate and withhold public disclosure of privileged or proprietary information.
  - Establishes that the corporation shall establish a website that is accessible at lowest internet website access speed used in the state.
  - Establishes that the corporation shall publish notice of service schedules and changes for at least 30 days on corporation website and allow for public commentary.
- Article 4. Powers and Duties (Sec. 42.50.250 - 42.50.320)
  - Defines the general powers of the Alaska Marine Highway System Corporation.
  - Establishes that the board shall have its financial records audited annually.
  - Requires the corporation to develop a comprehensive long-range plan for the Alaska marine highway system covering 30 years and revised every five years.
  - Requires the board to submit an annual operations and performance report to the governor, senate secretary, and chief clerk of the house of representatives.
  - Requires the board to submit travel and compensation reports with the Department of Administration annually.
  - Clarifies use of assets by the Alaska Marine Highway System Corporation.
  - Establishes that the corporation may contract with the Department of Transportation to maintain and service motor vehicles.
  - Clarifies and defines indemnity authority of the corporation for current or former members of the board, employees, and corporation agents.
- Article 5. Corporation Property. (Sec. 42.50.350 - 42.50.410)
  - Authorizes corporation to lease, grant easements or permits for corporation property use.
  - Establishes that the corporation may sell or acquire property in its own name, and exchange lands; subject to terms and conditions.
  - Confirms that the corporation may vacate an easement by executing and filing a deed.

- Permits public use of corporation land upon request of a municipality or the state as authorized by corporation.
- Clarifies adverse possession and prescriptive easements of corporation land.
- Article 6. Financial Provisions. (Sec. 42.50.500 - 42.50.580)
  - Clarifies the limitation of liability for the corporation and allows the corporation to purchase liability and casualty insurance.
  - Establishes that the corporation may obtain fidelity bonds.
  - Establishes the Alaska marine highway system operating fund, which consisting of money appropriated by the legislature and gross revenue generated from corporation operations.
  - Corporation shall account for gross revenue from operations each fiscal year.
  - Establishes a revenue accounting fund that the corporation shall account for gross revenue; legislature may appropriate gross revenue deposited in the fund to the Alaska marine highway system operating fund.
  - Establishes a separate account for vessel maintenance and replacement within the Alaska marine highway system operating fund.
  - Corporation may request a direct appropriation or grant from the legislature.
  - State shall enter into a minimum service assurance agreement that is subject to appropriation each year.
  - Corporation shall pay dividends to the state general fund any amount by which the Alaska marine highway system operating fund exceeds projected costs of operation through the next fiscal year.
- Article 7. Bonds (Sec. 42.50.600 - 42.50.710)
  - Establishes practices in which the corporation may issue bonds by board resolution.
  - Clarifies that issued bonds are available for investment and that the principal of and interest on bonds of the corporation are payable from corporation money or assets.
  - Bonds may be secured by a trust indentured at the discretion of the board.
  - Clarifies the security for bonds, validity of the pledge of assets or revenue, and remedies.
  - State of Alaska and its political subdivisions are not liable for the debts of the corporation.
  - Bonds issued by the corporation are payable solely from revenue or corporation assets.
  - Establishes the validity of signatures appearing on bonds and the pledges of assets or revenue of the corporation.
  - Clarifies corporation bond financing and state pledges for securing bonds. Authorizes the corporation to include the pledge and agreement of the state insofar as it refers to holders of bonds of the corporation.
  - Establishes that the state are not liable for the debts of the corporation; and clarifies the personal liability or accountability due to execution or issuance of bonds.
- Article 8. Personnel and Labor Relations. (Sec. 42.50.720 - 42.50.740)
  - Establishes restrictions on political activities utilizing corporation money or property.
  - Clarifies that employees are employees of the corporation and not of the state. However, employees shall be treated as state employees for purposes of AS 23.40 and AS 39.
  - Corporation may negotiate and enter into collective bargaining agreements with employees engaged in operating the Alaska marine highway system as masters or vessel crew members or other employees of the corporation.

- Article 9. Miscellaneous Provisions. (Sec. 42.50.800 - 42.50.850)
  - Establishes that claims or lawsuits involving activities of the corporation may not be brought against the state, rather they shall be brought against the corporation.
  - Board shall name vessels or facilities and vessels must bear the name of an Alaska glacier.
  - Assets, income, receipts, and other property of the corporation are exempt from all taxes and special assessments of the state or political subdivisions of the state.
  - Corporation shall provide free transportation on vessels for members of the Alaska National Guard, Alaska Naval Militia, or the Alaska State Defense Force who is enroute to official activities to the extent that space is available.
  - Vessels owned by the corporation shall be maintained and repaired at a shipyard facility located in the state.
    - Exceptions include if the board determines in writing that no shipyard facilities located in the state are equipped or qualified to perform maintenance or repair; or after taking into consideration the five percent preference under AS 36.30.321(a) and the interport differential, that the proposed cost is unreasonable.
  - Clarifies that competitive bid provisions of AS 36.30 does not apply to a contract for maintenance or repair of marine vessels owned by the corporation if the contract is awarded to a shipyard facility in the state.
  - Board shall adopt regulations to establish criteria to determine whether cost of maintenance or repair work is reasonable, and criteria used in calculating interport differential.
  - Designated base port for marine vessels primarily serving east of Icy Cape is Ketchikan and Seward for vessels primarily serving the remainder of the state.
  - Establishes following laws do not apply to corporation unless otherwise specified.
    - AS 30.15, AS 35, AS 37.10.085, AS 38, AS 44.62.010-44.62.160, AS 44.62.180-44.62.305, and AS 44.62.320.
- Article 10. General Provisions. (Sec. 42.50.990 - 42.50.995)
  - Provides clarifying language and definitions for the act.
  - Establishes the short title for AS 42. 50 as Alaska Marine Highway Corporation Act

**Section 18.** Amends AS 43.40.010.

Adds a new subsection establishing that the legislature may appropriate funds from the special highway fuel tax account to the Alaska marine highway system operating fund for expenditure by the Alaska Marine Highway Corporation.

**Section 19.** Amends AS 44.19.027

Conforming language that changes the Alaska Marine Highway System to Alaska Marine Highway System Corporation regarding emergency assistance transportation.

**Section 20.** Amends AS 44.29.300(a)

Conforming language regarding Statewide Suicide Prevention Council membership in terms of rural community connectivity to the main road system or the Alaska marine highway system.

**Section 21.** Amends AS 44.33.010

Adds membership on the board of directors of the Alaska Marine Highway System Corporation to duties of the Commissioner of Commerce.

**Section 22.** Amends AS 44.42.020(a)

Clarifies that the Department of Transportation has authority over state modes of transportation and transportation facilities except for the Alaska marine highway system. Establishes that the department shall incorporate the corporation's comprehensive long-term plan under AS 42.50.270 into the department's comprehensive, long-range, intermodal transportation plan.

**Section 23.** Amends AS 44.42.020

Defines marine highway system in terms of Department of Transportation powers and duties.

**Section 24.** Amends AS 44.99.030(a)

Adds the Alaska Marine Highway Corporation to the list of state government agencies and public corporations prohibited from forming contracts to lobby the state, municipality of the state, or agency of the state or municipality.

**Section 25.** Repeals the following language regarding Alaska Marine Highway System.

- Chapter 65. Alaska Marine Highway System.
  - Article 1. Comprehensive Plan, Vessels, and Facilities.
    - AS 19.65.011: Comprehensive long-range plan.
    - AS 19.65.020: Naming of vessel or facility.
    - AS 19.65.030: Acquisition and maintenance of ferry terminal facilities.
    - AS 19.65.035: Transportation of members of the Alaska organized militia.
  - Article 2. Alaska Marine Highway System Fund and Budget.
    - AS 19.65.050: Legislative findings, purpose, and intent.
    - AS 19.65.060: Alaska marine highway system fund
    - AS 19.65.070: Revenue accounting.
    - AS 19.65.080: Annual appropriation.
    - AS 19.65.100: Definitions.
  - Article 3. Alaska Marine Transportation Advisory Board.
    - AS 19.65.110: Alaska Marine Transportation Advisory Board.
    - AS 19.65.120: Board composition.
    - AS 19.65.130: Officers and quorum.
    - AS 19.65.140: Meetings.
    - AS 19.65.150: Per diem and expenses.
    - AS 19.65.160: Records.
    - AS 19.65.170: Legal assistance.
    - AS 19.65.180: Powers, duties, and functions.
    - AS 19.65.190: Staff.
    - AS 19.65.195: Definition.
- Title 35. Public Buildings, Works, and Improvements; Chapter 10. Public Works.
  - AS 35.10.015 (c), (d), and (g). Accessibility of public buildings and facilities.
- Title 36. Public Contracts; Chapter 30. State Procurement Code.
  - AS 36.30.850 (b)(28): Application of this chapter.
- Title 36. Public Contracts; Chapter 36. Miscellaneous Provisions.
  - AS 36.90.049: Maintenance of state marine vessels
- Title 37. Public Finance; Chapter 5. Fiscal Procedures Act.
  - AS 37.05.550: Alaska marine highway system vessel replacement fund



**Section 26.** Transition language, initial board members.

Not later than 90 days after the effective date of AS 42.50; the governor shall appoint the initial board of directors members of the Alaska Marine Highway Corporation in staggered terms.

**Section 27.** Transition language, initial appointment and delegation of powers and duties.

Board of directors of the Alaska Marine Highway Corporation shall appoint and delegate the chief executive officer the powers and duties at the first board meeting.

**Section 28.** Transition language, initial regulations and orders and management employees.

Within the first 120 days, the board of directors shall adopt initial operational regulations of the Alaska Marine Highway Corporation and the Alaska marine highway system. Regulations and orders in effect at date of transfer may remain in effect until amended or repealed by the board as provided by a resolution. Authorizes corporation to hire employees for management of the corporation before its operation of the Alaska marine highway system begins.

**Section 29.** Transition language, department negotiation, nonrenewal, and termination of collective bargaining agreements. Establishes that the department shall enter negotiations with a union to assign the state's interest in the collective bargaining agreement with the union to the corporation.

- When the department and union reach an agreement, the state shall assign the state's interest in the collective bargaining agreement to the corporation.
- If by June 30<sup>th</sup>, 2023, the department and a union cannot reach an agreement on assignment, the department shall terminate the collective bargaining agreement at the time and in a manner provided under the collective bargaining agreement.
- Union contracts between the department and a union that is assigned to the corporation shall expire not later than two years from the effective date of the act.
- Defines unions for this section as the following:
  - International Organization of Masters, Mates, and Pilots
  - Marine Engineers Beneficial Association
  - Inlandboatmen's Union representing the Unlicensed Marine Unit
  - Alaska State Employees Association
  - Alaska Public Employees Association

**Section 30.** Transition language, corporation negotiation of collective bargaining agreements.

Authorizes the corporation to negotiate and enter into a collective bargaining agreement with a union once the following has been met.

- Board of directors has been appointed.
- Chief executive officer has been appointed and powers delegated.
- Board of directors has adopted regulations.
- Department has been assigned an agreement with a union to the corporation, and the agreement has later been terminated or agreement with the union has been terminated.

Ascertain that the corporation may negotiate and enter into labor agreements with unions and individual employees before the corporation begins operation, if the agreements have an effective date that is not earlier than July 1<sup>st</sup>, 2023.

**Section 31.** Transition language, transfer of assets; assumption of rights, liabilities, and obligations. Department of Transportation shall transfer to the corporation the vessels, ferry port facilities, real property, vehicles, and other personal property used for the Alaska marine highway system. The corporation shall take title in its own name; and shall assume all rights, liabilities, and obligations of Alaska marine highway system.

**Section 32.** Transition language, operation of marine highway system by the corporation. Establishes that the Alaska Marine Highway Corporation shall begin operating the Alaska marine highway system on July 1<sup>st</sup>, 2023.

**Section 33.** Transition language, miscellaneous provisions. Clarifies and defines the transfer of all contracts, rights, liabilities, bonds, notes, or other obligations of the Alaska marine highway system as operated by the Department of Transportation to the Alaska Marine Highway Corporation Act.

**Section 34.** Transition provision, report of transferred assets. Department of Transportation shall prepare or direct the preparation of all necessary financial reports of the assets to be transferred by the department as described under Section 31 of this Act.

**Section 35.** Transition, initial reports. Corporation shall file its first operations and performance report within 90 days following the end of its second fiscal year. The corporation shall file its first travel and compensation report with Department of Administration by January 21<sup>st</sup> of the third calendar year after this Act takes effect.

**Section 36.** Transition, initial audit. Board of directors of the corporation shall have the first audit performed after the second fiscal year of the corporation, covering the first and second fiscal years.

**Section 37.** Conditional effect, notification. Establishes that Section 14 of this Act, takes effect only if commissioner of Commerce notified the revisor of statutes in writing of the date in which the Department of Transportation has assigned the state's interest in the collective bargaining agreement to the Alaska Marine Highway Corporation under section 29 of this act. Unions defined in section 29 of the act include the following:

- International Organization of Masters, Mates, and Pilots
- Marine Engineers Beneficial Association
- Inlandboatmen's Union representing the Unlicensed Marine Unit
- Alaska State Employees Association
- Alaska Public Employees Association

**Section 38.** Conditional effect. Establishes that if section 13 of this Act takes effect under section 37 of this Act, it will take effect the day after the date the commissioner of Commerce notified the revisors of statutes.

**Section 39.** Effective date. Except as provided in Section 38, this Act takes effect immediately.

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