

SENATE BILL NO. 40

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATORS COWDERY AND HOFFMAN

Introduced: 1/11/05

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the establishment of the Kuskokwim Port Authority; and providing**
2 **for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND PURPOSE. (a) The Alaska State Legislature finds that

7 (1) certain communities and residents on the Kuskokwim River desire the
8 establishment of a port authority to provide an organization for economic development,
9 transportation system infrastructure development, natural resource marketing, and promotion
10 of efficient energy development and distribution;

11 (2) since many of the communities in the region are not organized
12 municipalities, those communities cannot form a port authority under the Municipal Port
13 Authority Act (AS 29.35.600 - 29.35.730);

14 (3) it is in the best interest of the state to establish a state port authority for the

1 Kuskokwim River region of the state to promote economic self-sufficiency in the region.

2 (b) The purpose of this Act is to establish the Kuskokwim Port Authority to provide
3 an organization that residents and communities in the region encompassing portions of the
4 Kuskokwim River may use to finance and manage transportation, energy, and economic
5 development infrastructure projects that will improve economic conditions in the region and
6 promote resource development and visitor industry opportunities in the region.

7 * **Sec. 2.** AS 30 is amended by adding a new chapter to read:

8 **Chapter 21. Kuskokwim Port Authority.**

9 **Article 1. Creation and Organization.**

10 **Sec. 30.21.010. Kuskokwim Port Authority.** (a) The Kuskokwim Port
11 Authority is established as a public corporation of the state. The corporation is an
12 instrumentality of the state in the Department of Commerce, Community, and
13 Economic Development but has a legal existence independent of and separate from the
14 state and has continuing succession until its existence is terminated by law.

15 (b) The powers of the authority are vested in the board of directors of the
16 authority.

17 (c) The purpose of the authority is to improve, establish, and develop facilities
18 and operations to provide transportation, energy, regional waste disposal, and other
19 infrastructure services and economic development in the operating area of the
20 authority.

21 **Sec. 30.21.020. Board of directors.** (a) The board of directors of the
22 authority consists of nine voting members.

23 (b) The governor shall appoint seven persons to serve on the board. The
24 governor shall solicit nominations for persons to be appointed to the board from
25 private persons and public and private entities, including the Kuskokwim Corporation,
26 Calista Corporation, the Kuskokwim Native Association, the Association of Village
27 Council Presidents, Inc., the City of Napakiak, the City of Bethel, and the Crooked
28 Creek Traditional Village Council. The appointed members of the board shall be
29 officers, directors, or employees of private entities that have a physical presence
30 within the area of operation of the authority.

31 (c) The commissioner of commerce, community, and economic development

1 and the commissioner of transportation and public facilities are voting members of the
2 board. Each commissioner may designate a person to serve on the board in the
3 commissioner's absence.

4 (d) The appointed members of the board serve for staggered terms of three
5 years. The terms of the appointed members begin on January 1.

6 **Sec. 30.21.030. Removal and replacement of appointed members.** The
7 appointed members of the board serve at the pleasure of the governor. A person
8 appointed to fill a vacancy on the board shall serve for the balance of the unexpired
9 term.

10 **Sec. 30.21.040. Per diem and travel expenses.** A member of the board may
11 receive per diem and travel expenses authorized for boards and commissions under
12 AS 39.20.180.

13 **Sec. 30.21.050. Meetings.** (a) The board shall hold at least four regular
14 meetings each year. The board shall set the schedule and locations for meetings of the
15 board.

16 (b) The board may hold special meetings at the call of the chair or at the
17 request of three members of the board.

18 **Sec. 30.21.060. Officers and quorum.** (a) The board shall elect a chair and a
19 vice-chair from among its members.

20 (b) The board shall elect a secretary, who need not be a member of the board.
21 The secretary serves at the pleasure of the board.

22 (c) Five members of the board constitute a quorum. Action may be taken and
23 motions and resolutions adopted by the board at a meeting by the affirmative vote of at
24 least five members. Members may not vote by proxy. A vacancy in the membership
25 of the board does not impair the right of a quorum to exercise all the powers and
26 perform all the duties of the board.

27 (d) Members may participate in meetings of the board by electronic means.

28 **Sec. 30.21.070. Staff; legal advisor.** (a) The board shall employ officers and
29 employees as necessary for the efficient operation of the authority.

30 (b) The board may employ executive, administrative, and fiscal officers and
31 employees as the board considers necessary for the efficient management of the

1 authority.

2 (c) The attorney general is the legal counsel for the authority. The attorney
3 general shall advise the authority in legal matters and represent the authority in suits.

4 **Sec. 30.21.080. Operating area of the authority.** The authority is authorized
5 to operate within the contiguous area enclosed by

6 (1) a line that is at all points 10 miles inland of the mean high water
7 line of the shore that is generally the northern bank of the main channel of the
8 Kuskokwim River from a point that is 10 miles inland of the mean high water line of
9 the shore that is generally the northern bank of the main channel of the Kuskokwim
10 River at the City of Napakiak to a point that is 10 miles inland of the mean high water
11 line of the shore that is generally the northern bank of the main channel of the
12 Kuskokwim River at the Canoe Village site; a line from a point that is 10 miles inland
13 of the mean high water line of the shore that is generally the northern bank of the main
14 channel of the Kuskokwim River at the Canoe Village site to a point that is 10 miles
15 inland of the mean high water line of the shore that is generally the southern bank of
16 the main channel of the Kuskokwim River at the Canoe Village site; a line that is at all
17 points 10 miles inland of the mean high water line of the shore that is generally the
18 southern bank of the main channel of the Kuskokwim River from a point that is 10
19 miles inland of the mean high water line of the shore that is generally the southern
20 bank of the main channel of the Kuskokwim River at the Canoe Village site to a point
21 that is 10 miles inland of the mean high water line of the shore that is generally the
22 southern bank of the main channel of the Kuskokwim River opposite of the City of
23 Napakiak; a line from a point that is 10 miles inland of the mean high water line of the
24 shore that is generally the southern bank of the main channel of the Kuskokwim River
25 opposite of the City of Napakiak to a point that is 10 miles inland of the mean high
26 water line of the shore that is generally the northern bank of the main channel of the
27 Kuskokwim River at the City of Napakiak;

28 (2) a corridor extending 10 miles on both sides of the centerline of the
29 road from the Canoe Village site to the village of Crooked Creek and then to the
30 community of Donlin Creek; and

31 (3) a 10-mile radius around the community of Donlin Creek.

1 **Sec. 30.21.090. Regulations.** The board may adopt regulations under
 2 AS 44.62 to carry out its functions and the purposes of this chapter, including rules to
 3 safeguard property owned by the authority and to protect employees and persons using
 4 the authority's property or services.

5 **Article 2. Powers and Duties.**

6 **Sec. 30.21.100. Powers and duties of authority.** (a) In addition to other
 7 powers granted in this chapter, the authority may

- 8 (1) sue and be sued;
- 9 (2) adopt and alter an official seal;
- 10 (3) maintain an office in the state;
- 11 (4) acquire, hold, use, and dispose of its money, subject to
 12 appropriation by the legislature;
- 13 (5) acquire, hold, use, lease, rent, construct, and dispose of property for
 14 its purposes;
- 15 (6) issue revenue bonds under AS 30.21.200 - 30.21.320 to provide
 16 financing for projects;
- 17 (7) enter into agreements to provide transportation, energy, regional
 18 waste disposal, marketing, facilities and services, and to provide coordinated training
 19 in association with authority facilities and operations;
- 20 (8) enter into contracts or other transactions with a federal, state,
 21 municipal, or other agency, or instrumentality, private organization, or person
 22 consistent with the exercise of the powers of the authority under this chapter;
- 23 (9) charge and collect those rents, rates, fees, or other charges that are
 24 necessary to pay for capital, maintenance, and operating costs of the services and
 25 facilities and operations of the authority, for the establishment of reserves to secure
 26 payment of bonds or notes or interest on bonds or notes, and for repairs,
 27 improvements, storage, and care of personal property made or furnished by the
 28 authority in connection with the facilities and operations of the authority;
- 29 (10) accept money, gifts, loans, or grants from a federal, state,
 30 municipal, or other agency or instrumentality, private organization, or other person;
 31 and

1 (11) do all acts necessary to carry out this chapter that are not
2 expressly prohibited by law.

3 (b) The authority shall

4 (1) operate, manage, plan, improve, market, construct, and maintain
5 the facilities and operations of the authority; and

6 (2) adopt and enforce

7 (A) bylaws of the authority;

8 (B) regulations for the conduct of its business and for the use of
9 its facilities, operations, and services;

10 (C) personnel rules necessary to establish a system of personnel
11 administration.

12 (c) The resources of the authority may not be used to finance or influence
13 political activities.

14 **Sec. 30.21.110. Public nature of authority activities.** The planning,
15 construction, improvement, maintenance, and operation of a facility or operation,
16 whether by the authority separately or jointly with a federal, state, or municipal agency
17 or a private entity, and the exercise of other powers granted to the authority are public
18 and governmental functions exercised for a public purpose and matters of public
19 necessity. Land and other property and privileges acquired and used by or on behalf
20 of the authority for the purposes enumerated in this chapter are acquired and used for
21 public and governmental purposes and as a matter of public necessity.

22 **Sec. 30.21.120. Acquisition of land and easements.** Within the operating
23 area of the authority, the authority may acquire by purchase, gift, grant, or exchange
24 land in fee simple or easements, either temporary or permanent, that the authority
25 considers necessary for present or future public use authorized under this chapter. By
26 the same means, the authority may obtain material, including clay, gravel, sand,
27 timber, rock, or other material, and the land necessary to obtain the material. When
28 the authority declares that it is in the best public interest of the state to do so, the
29 authority may acquire by purchase, gift, grant, or exchange land or an interest in land
30 for the purpose of exchanging the land or interest in land for land or an interest in land
31 that the authority is authorized by law to acquire.

1 **Sec. 30.21.130. Indemnification.** (a) If the person acted in good faith on
 2 behalf of the authority and within the scope of the person's official duties or powers,
 3 the authority may defend and indemnify a current or former member of the board,
 4 employee, or agent of the authority against all costs, expenses, judgments, and
 5 liabilities, including attorney fees, incurred by or imposed upon that person in
 6 connection with a civil or criminal action in which the person is involved by affiliation
 7 with the authority.

8 (b) The authority may purchase insurance to protect and hold personally
 9 harmless its board members, employees, and agents from an action, claim, or
 10 proceeding arising out of the performance, purported performance, or failure of
 11 performance, in good faith, of duties for, or employment with, the authority and to
 12 hold them harmless from expenses connected with the defense, settlement, or
 13 monetary judgments from that action, claim, or proceeding. The purchase of
 14 insurance is discretionary with the board, and insurance is not considered to be
 15 compensation to the insured person.

16 **Sec. 30.21.140. Insurance.** Except as provided in AS 30.21.130(b), the
 17 authority shall protect its assets, services, and employees by purchasing insurance or
 18 providing for certain self-insurance retentions. The authority shall also maintain
 19 casualty, property, and other insurance in amounts reasonably calculated to cover
 20 potential claims against the authority or state for bodily injury, death, or disability and
 21 property damage that may arise from or be related to authority operations and
 22 activities.

23 **Sec. 30.21.150. Fidelity bond.** The authority shall obtain a fidelity bond in an
 24 amount determined by the board for members of the board and for each executive
 25 officer responsible for accounts and finances. A bond must be in effect during the
 26 entire tenure in office of the bonded person.

27 **Article 3. Revenue Bonds and Notes.**

28 **Sec. 30.21.200. Bonds and notes of the authority.** (a) The authority, by
 29 resolution, may issue revenue bonds and bond anticipation notes in order to finance
 30 projects under this chapter. Before issuing bonds for a project under this chapter, the
 31 authority must find, on the basis of all information reasonably available to the

1 authority, that

2 (1) the project and its development under this chapter will be
3 economically advantageous to the state and the region and the general public welfare
4 and will contribute to the economic growth of the state and the region within which
5 the authority operates;

6 (2) the project is financially sound and can be expected to produce
7 revenue adequate to repay the bonds with which it is financed; and

8 (3) the scope of the project is sufficient to provide a reasonable
9 expectation of a benefit to the region and the economy of the state.

10 (b) The principal and interest on the revenue bonds or bond anticipation notes
11 authorized and issued under (a) of this section are payable from authority funds. Bond
12 anticipation notes may be payable from the proceeds of the sale of bonds or from the
13 proceeds of the sale of other bond anticipation notes or, in the event bond or bond
14 anticipation note proceeds are not available, the notes may be paid from other funds or
15 assets of the authority.

16 (c) Bonds or bond anticipation notes may be additionally secured by a pledge
17 of a grant or contribution from the federal government, or a corporation, association,
18 institution, or person, or a pledge of money, income, or revenue of the authority from
19 any source.

20 (d) Bonds or bond anticipation notes of the authority may be issued in one or
21 more series and shall be dated, bear interest at the rate or rates a year or within the
22 maximum rate, be in the denomination, be in the form, carry the conversion or
23 registration provisions, have the rank or priority, be executed in the manner and form,
24 be payable at the times, from the sources, and in the medium of payment and place or
25 places within or outside the state, be subject to authentication by a trustee or fiscal
26 agent, and be subject to the terms of redemption with or without premium, as the
27 resolution of the authority may provide. Bond anticipation notes shall mature at the
28 time or times that are determined by the authority. Bonds shall mature at a time not
29 exceeding a number of years from their date that is determined by the authority.
30 Before the preparation of bonds or bond anticipation notes, the authority may issue
31 interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds

1 or bond anticipation notes when these bonds or bond anticipation notes have been
2 executed and are available for delivery.

3 (e) Bonds or bond anticipation notes may be sold in the manner and on the
4 terms the authority determines.

5 (f) If an officer whose signature or a facsimile of whose signature appears on a
6 bond or note ceases to be an officer before the delivery of the bond or note, the
7 signature or facsimile is valid to the same extent as if the officer had remained in
8 office until delivery.

9 **Sec. 30.21.210. Covenants.** In a resolution of the authority authorizing or
10 relating to the issuance of bonds or bond anticipation notes, the authority has power by
11 provisions in the resolution that will constitute covenants of the authority and
12 contracts with the holders of the bonds or bond anticipation notes to

13 (1) pledge to a payment or purpose all or a part of its revenue to which
14 its right then exists or may thereafter come into existence, and the money derived from
15 the revenue, and the proceeds of bonds or notes;

16 (2) covenant as to the use and disposition of payments of principal or
17 interest received by the authority on loans or other investments held by the authority;

18 (3) covenant as to establishment of reserves or sinking funds and the
19 making of provision for and the regulation and disposition of the reserves or sinking
20 funds;

21 (4) covenant with respect to or against limitations on a right to sell or
22 otherwise dispose of property of any kind;

23 (5) covenant as to bonds and notes to be issued, and their limitations,
24 terms, and conditions, and as to the custody, application, and disposition of the
25 proceeds of the bonds and notes;

26 (6) covenant as to the issuance of additional bonds or notes, or as to
27 limitations on the issuance of additional bonds or notes and the incurring of other
28 debts;

29 (7) covenant as to the payment of the principal of or interest on the
30 bonds or notes, as to the sources and methods of the payment, as to the rank or priority
31 of the bonds or notes with respect to a lien or security, or as to the acceleration of the

1 maturity of the bonds or notes;

2 (8) provide for the replacement of lost, stolen, destroyed, or mutilated
3 bonds or notes;

4 (9) covenant as to the redemption of bonds or notes and privileges of
5 their exchange for other bonds or notes of the authority;

6 (10) covenant to create or authorize the creation of special funds of
7 money to be held in pledge or otherwise for operating expenses, payment or
8 redemption of bonds or notes, reserves, or other purposes;

9 (11) establish the procedure, if any, by which the terms of a contract or
10 covenant with or for the benefit of the holders of bonds or notes may be amended or
11 abrogated, the amount of bonds or notes the holders of which must consent to
12 amendment or abrogation, and the manner in which the consent may be given;

13 (12) covenant as to the custody of property or investments, their
14 safekeeping and insurance, and the use and disposition of insurance money;

15 (13) agree with a corporate trustee that may be a trust company or
16 bank having the powers of a trust company within or outside the state as to the
17 pledging or assigning of revenue or funds to which or in which the authority has rights
18 or an interest; the agreement may further provide for other rights and remedies
19 exercisable by the trustee as may be proper for the protection of the holders of a bond
20 or note of the authority and not otherwise in violation of law and may provide for the
21 restriction of the rights of an individual holder of bonds or notes of the authority;

22 (14) appoint and provide for the duties and obligations of a paying
23 agent or paying agents or other fiduciaries as the resolution may provide within or
24 outside the state;

25 (15) limit the rights of the holders of a bond or note to enforce a pledge
26 or covenant securing the bonds or notes;

27 (16) make covenants other than and in addition to the covenants
28 expressly authorized in this section of like or different character, and to make
29 covenants to do or refrain from doing acts and things as may be necessary or
30 convenient and desirable in order to better secure bonds or notes or that, in the
31 absolute discretion of the authority, will tend to make bonds or notes more marketable,

1 notwithstanding that the covenants, acts, or things may not be enumerated in this
2 section.

3 **Sec. 30.21.220. Limitations of issuance of bonds.** (a) The authority may
4 issue bonds in an amount greater than \$10,000,000 to assist in the financing of a
5 capital improvement under this chapter only with the prior approval of the legislature
6 by law.

7 (b) This section does not apply to the issuance by the authority of refunding
8 bonds under AS 30.21.290.

9 **Sec. 30.21.230. Independent financial advisor.** In negotiating the sale of
10 bonds or bond anticipation notes to an underwriter, the authority may retain a financial
11 advisor. A financial advisor retained under this section must be independent from the
12 underwriter.

13 **Sec. 30.21.240. Validity of pledge.** (a) The pledge of assets or revenue of the
14 authority to the payment of the principal of or interest on an obligation of the authority
15 is valid and binding from the time the pledge is made, and the assets or revenue
16 become immediately subject to the lien of the pledge without physical delivery or
17 further act. The lien of a pledge is valid and binding against all parties having claims
18 in tort, contract, or otherwise against the authority, irrespective of whether those
19 parties have notice of the lien of the pledge.

20 (b) This section does not prohibit the authority from selling assets subject to a
21 pledge, except that a sale may be restricted by the trust agreement or resolution
22 providing for the issuance of the obligations.

23 **Sec. 30.21.250. Capital reserve funds.** (a) For the purpose of securing one
24 or more issues of its obligations, the authority may establish one or more special
25 funds, called "capital reserve funds," and shall pay into those capital reserve funds (1)
26 money appropriated and made available by the state for the purpose of those funds, (2)
27 proceeds of the sale of its obligations, to the extent provided in the resolution or
28 resolutions of the authority authorizing their issuance, and (3) other money that may
29 be made available to the authority for the purpose of those funds from another source.
30 All money held in a capital reserve fund, except as provided in this section, shall,
31 subject to appropriation, be used as required solely for the payment of the principal of

1 obligations or of the sinking fund payments with respect to those obligations, the
2 purchase or redemption of obligations, the payment of interest on obligations, or the
3 payment of a redemption premium required to be paid when those obligations are
4 redeemed before maturity. However, money in a fund may not be withdrawn from
5 that fund at any time in an amount that would reduce the amount of that fund to less
6 than the capital reserve requirement set out in (b) of this section, except for the
7 purpose of making, with respect to those obligations, payment, when due, of principal,
8 interest, redemption premiums, and the sinking fund payments for the payment of
9 which other money of the authority is not available. Income or interest earned by, or
10 increment to, a capital reserve fund due to the investment of the fund or other amounts
11 in it may be transferred by the authority to other funds or accounts of the authority to
12 the extent that the transfer does not reduce the amount of the capital reserve fund
13 below the capital reserve fund requirement.

14 (b) If the authority decides to issue obligations secured by a capital reserve
15 fund, the obligations may not be issued if the amount in the capital reserve fund is less
16 than a percent, not exceeding 10 percent, of the principal amount of all of those
17 obligations secured by that capital reserve fund then to be issued and then outstanding
18 in accordance with their terms, as may be established by resolution of the authority,
19 called the "capital reserve fund requirement," unless the authority, at the time of
20 issuance of the obligations, deposits in the capital reserve fund from the proceeds of
21 the obligations to be issued or from other sources an amount that, together with the
22 amount then in the fund, will not be less than the capital reserve fund requirement.

23 (c) In computing the amount of a capital reserve fund for the purpose of this
24 section, securities in which all or a portion of the funds are invested shall be valued at
25 par or, if purchased at less than par, at amortized costs as the term is defined by
26 resolution of the authority authorizing the issue of the obligations or by some other
27 reasonable method established by the authority by resolution. Valuation on a
28 particular date must include the amount of interest earned or accrued to that date.

29 (d) To assure the continued operation and solvency of the authority for the
30 carrying out of its corporate purposes, provision is made in (a) of this section for the
31 accumulation in capital reserve funds of an amount equal to their capital reserve fund

1 requirement.

2 (e) This section does not create a debt or liability of the state.

3 **Sec. 30.21.260. Remedies.** A holder of obligations issued under the
4 provisions of this chapter, and a trustee under a trust agreement or resolution
5 authorizing the issuance of the obligations, except as restricted by a trust agreement or
6 resolution, either at law or in equity, may enforce all rights granted hereunder or under
7 the trust agreement or resolution, or under another contract executed by the authority
8 under this chapter, and may enforce and compel the performance of all duties required
9 by this chapter or by the trust agreement or resolution to be performed by the authority
10 or by an officer of the authority.

11 **Sec. 30.21.270. Negotiable instruments.** All obligations are negotiable
12 instruments under the laws of this state, subject only to applicable provisions for
13 registration.

14 **Sec. 30.21.280. Obligations eligible for investment.** Obligations issued
15 under the provisions of this chapter are securities in which all public officers and
16 public bodies of the state and its political subdivisions, all insurance companies, trust
17 companies, banking associations, investment companies, executors, administrators,
18 trustees, and other fiduciaries may properly and legally invest funds, including capital
19 in their control or belonging to them. These obligations may be deposited with a state
20 or municipal officer of an agency or political subdivision of the state for a purpose for
21 which the deposit of bonds, notes, or obligations of the state is authorized by law.

22 **Sec. 30.21.290. Refunding bonds.** (a) The authority may provide for the
23 issuance of refunding bonds for the purpose of refunding an obligation then
24 outstanding that has been issued under the provisions of this chapter, including the
25 payment of redemption premium on them and interest accrued or to accrue to the date
26 of redemption of the obligations. The issuance of the bonds, the maturities and other
27 details of them, the rights of the holders of them, and the rights, duties, and obligations
28 of the authority in respect of them are governed by the provisions of this chapter that
29 relate to the issuance of obligations insofar as those provisions may be appropriate.

30 (b) Refunding bonds may be sold or exchanged for outstanding bonds issued
31 under this chapter, and, if sold, the proceeds may be applied, subject to appropriation

1 and in addition to another authorized purpose, to the purchase, redemption, or payment
 2 of the outstanding obligations. Pending the application of the proceeds of refunding
 3 bonds, with any other available funds, to the payment of the principal of, accrued
 4 interest on, and redemption premium on the obligations being refunded, and, if so
 5 provided or permitted in the resolution authorizing the issuance of the refunding bonds
 6 or in the trust agreement securing them, to the payment of any interest on the
 7 refunding bonds and expenses in connection with the refunding, the proceeds may be
 8 invested in direct obligations of, or obligations the principal of and the interest on
 9 which are unconditionally guaranteed by, the United States that mature or that will be
 10 subject to redemption, at the option of the holders of them, not later than the respective
 11 dates when the proceeds, together with the interest accruing on them, will be required
 12 for the purposes intended.

13 **Sec. 30.21.300. Credit of state not pledged.** (a) Obligations issued under
 14 the provisions of this chapter do not constitute a debt, liability, or obligation of the
 15 state or of a political subdivision of the state or a pledge of the faith and credit of the
 16 state or of a political subdivision of the state but are payable solely from the revenue
 17 or assets of the authority. Each obligation issued under this chapter must contain on
 18 its face a statement that the authority is not obligated to pay the obligation or the
 19 interest on the obligation except from the revenue or assets of the authority and that
 20 neither the faith and credit nor the taxing power of the state or of a political
 21 subdivision of the state is pledged to the payment of the principal of or the interest on
 22 the obligation.

23 (b) Expenses incurred by the authority in carrying out the provisions of this
 24 chapter are payable from funds provided under this chapter, and liability may not be
 25 incurred by the authority in excess of these funds.

26 **Sec. 30.21.310. Officers not liable.** A member or other officer of the
 27 authority is not subject to personal liability or accountability by reason of having
 28 executed or issued an obligation.

29 **Sec. 30.21.320. Tax exemption.** All obligations issued under this chapter are
 30 declared to be issued by a body corporate and public of the state and for an essential
 31 public and governmental purpose, and the obligations, and the interest and income on

1 and from the obligations, and all fees, charges, funds, revenue, income, and other
 2 money pledged or available to pay or secure the payment of the obligations, or interest
 3 on the obligations, are exempt from state taxation except for transfer, inheritance, and
 4 estate taxes.

5 **Article 4. Fiscal Procedures.**

6 **Sec. 30.21.350. Authority program and financial plan.** (a) The authority
 7 shall assure the development of a system of results-based operation designed to
 8 increase efficiency and effectiveness of facilities, operations, programs, and services
 9 of the authority. Toward that end, the authority shall, on an annual basis, identify
 10 results-based measures that have been used to work toward achievement of the
 11 mission statement and desired results issued by the legislature and of other goals of the
 12 authority, and set out the results as measured. The authority shall also prepare a public
 13 report that shall be published by January 2 of each year. The report must

14 (1) identify the mission of the authority;

15 (2) identify the goals and objectives the authority will use to achieve
 16 the legislature's mission and desired results;

17 (3) include written, defined methods of measuring results that apply to
 18 the responsibilities, products, and services of the authority;

19 (4) identify surveys or other methods of gathering user-group opinions
 20 that have been used by the authority to identify ways to improve its programs;

21 (5) identify methods of measuring performance when the mission
 22 statement and desired results of the authority involve cooperation with other public or
 23 private agencies and make recommendations to eliminate duplication of government
 24 functions and waste;

25 (6) include the budget requested to carry out the authority's proposed
 26 plans in the succeeding fiscal year, including information reflecting the expenditures
 27 during the last fiscal year, the expenditures authorized for the current fiscal year, the
 28 expenditures proposed for the succeeding fiscal year, an explanation of the services to
 29 be provided, the total number of positions for all persons employed or under contract
 30 by the agency for personal services, including those rendered for capital improvement
 31 projects, the need for the services, and the cost of the services;

1 (7) include a report of receipts of the authority during the last fiscal
 2 year, an estimate of receipts during the current fiscal year, and an estimate of receipts
 3 for the succeeding fiscal year;

4 (8) identify legislation required to implement the proposed programs
 5 and financial plans;

6 (9) include an evaluation of the advantages and disadvantages of
 7 specific alternatives to existing or proposed activities or administrative methods of the
 8 authority.

9 (b) The report prepared under (a) of this section must describe the relationship
 10 of the services provided by the authority to those services provided by other
 11 government agencies and nongovernmental organizations.

12 (c) All goals and objectives, plans, programs, estimates, budgets, and other
 13 documents forwarded to the governor by the authority under this section are public
 14 information on and after the date they are forwarded.

15 **Sec. 30.21.360. Program execution.** The authority has power to administer
 16 its programs and is responsible for the proper management of its facilities and
 17 operations.

18 **Sec. 30.21.370. Annual report.** By January 2 of each year, the authority shall
 19 prepare a concise report describing the operations, income, and expenditures for the
 20 preceding fiscal year. The report must contain information substantially similar to that
 21 required by the United States Securities and Exchange Commission Form 10-K. The
 22 report must also include financial statements audited by an independent outside
 23 auditor.

24 **Sec. 30.21.380. Annual audit.** The authority shall have a certified audit of its
 25 financial records prepared annually by an independent certified public accountant.

26 **Article 5. General Provisions.**

27 **Sec. 30.21.400. Authority employees.** Employees of the authority are not
 28 employees of the state.

29 **Sec. 30.21.410. Application of existing laws.** (a) Except as provided under
 30 this chapter, or unless those provisions of law conflict with the provisions of this
 31 chapter, the authority is subject to those provisions of law generally applicable to

1 public corporations of the state and to

2 (1) AS 40.25;

3 (2) AS 44.62.310 and 44.62.312.

4 (b) The provisions of AS 37.07 (Executive Budget Act)

5 (1) apply to the operating and capital budgets of the authority;

6 (2) do not apply to activities of the authority under this chapter that
7 relate to the authority's borrowing of money as provided in this chapter, including the
8 issuing of its obligations or evidence of that borrowing and the repayment of the debt
9 obligation.

10 (c) Unless specifically provided otherwise in this chapter, the following laws
11 do not apply to the operations of the authority:

12 (1) AS 36.30, except as provided in that chapter;

13 (2) AS 39.

14 **Sec. 30.21.490. Definitions.** In this chapter, unless the context requires
15 otherwise,

16 (1) "authority" means the Kuskokwim Port Authority;

17 (2) "board" means the board of directors of the authority;

18 (3) "bonds" means the bonds issued by the authority under this
19 chapter;

20 (4) "capital improvement" means a project for the construction,
21 rehabilitation, rebuilding, enlarging, or improving of a facility or operation, as
22 determined by the authority to be necessary or desirable for efficient management of
23 the facility or operation by the authority and to best serve the public;

24 (5) "facility or operation" means a facility or operation necessary for
25 the authority to carry out its mission.

26 **Sec. 30.21.495. Short title.** This chapter may be cited as the Kuskokwim Port
27 Authority Act.

28 * **Sec. 3.** AS 30.15.010 is amended to read:

29 **Sec. 30.15.010. State grants for port facilities construction.** To the extent
30 funds are appropriated by the legislature, or from the proceeds from the sale of bonds,
31 the state may make grants to municipalities **and regional port authorities** to finance a

1 portion of the cost of constructing local, regional, or state port facilities. The state
 2 shall participate only in those projects approved by the governor on recommendation
 3 of the commissioner.

4 * **Sec. 4.** AS 30.15.020 is amended to read:

5 **Sec. 30.15.020. Criteria for establishing eligibility.** (a) Before a grant may
 6 be awarded under this chapter, the commissioner shall determine that

7 (1) the grant is for a feasible project;

8 (2) the project is endorsed by resolution **of the board of directors of**
 9 **the regional port authority or** of the governing body of the sponsoring municipality
 10 on its own behalf, or on behalf of a service area in an organized borough if a service
 11 area is established to finance and construct port facilities and operate and maintain
 12 them once constructed; and

13 (3) **the regional port authority or** the municipality can clearly
 14 demonstrate its ability to finance the local share of project costs.

15 (b) A grant may not be awarded under this chapter for a port facility
 16 development project until a study of its feasibility is conducted and submitted with the
 17 application for the grant. The project also must be justifiable on the basis of public
 18 convenience and necessity. The study shall be conducted by consultants, engineers, or
 19 other technical experts, who may be officers or employees of **the regional port**
 20 **authority or** the municipality [IN] making application for a grant.

21 * **Sec. 5.** AS 30.15.030 is amended to read:

22 **Sec. 30.15.030. Limitation on grants.** Grants **to municipalities** for the
 23 development of port facilities may not exceed

24 (1) 90 percent of project costs for municipalities under 5,000
 25 population;

26 (2) 80 percent of project costs for municipalities 5,000 population and
 27 over.

28 * **Sec. 6.** AS 30.15.070 is amended by adding a new paragraph to read:

29 (5) "regional port authority" includes the Kuskokwim Port Authority
 30 authorized under AS 30.21.

31 * **Sec. 7.** AS 36.30.015(e) is amended to read:

1 (e) The board of directors of the Alaska Railroad Corporation, **the board of**
 2 **directors of the Kuskokwim Port Authority,** and the board of directors of the
 3 Alaska Aerospace Development Corporation shall adopt procedures to govern the
 4 procurement of supplies, services, professional services, and construction. The
 5 procedures must be substantially equivalent to the procedures prescribed in this
 6 chapter and in regulations adopted under this chapter. Notwithstanding the other
 7 provisions of this subsection, the Alaska Railroad Corporation, **the Kuskokwim Port**
 8 **Authority,** and the Alaska Aerospace Development Corporation shall comply with
 9 AS 36.30.170(b), and, when the Department of Transportation and Public Facilities
 10 authorizes the Alaska Railroad Corporation to perform construction work instead of
 11 the Department of Transportation and Public Facilities, the Alaska Railroad
 12 Corporation shall use competitive sealed bidding or competitive sealed proposals
 13 under AS 36.30.100 - 36.30.270 to procure the supplies, services, professional
 14 services, and construction services necessary for the work and, to ensure the state
 15 obtains the lowest cost for the project, may submit a bid or proposal for the work.

16 * **Sec. 8.** AS 36.30.050(c) is amended to read:

17 (c) The lists may be used by the chief procurement officer or an agency when
 18 issuing invitations to bid or requests for proposals under this chapter. The lists may be
 19 used by the legislative council, the court system, **the Kuskokwim Port Authority,**
 20 and the Alaska Railroad Corporation.

21 * **Sec. 9.** AS 36.30.990(1) is amended to read:

22 (1) "agency"

23 (A) means a department, institution, board, commission,
 24 division, authority, public corporation, the Alaska Pioneers' Home, the Alaska
 25 Veterans' Home, or other administrative unit of the executive branch of state
 26 government;

27 (B) does not include

28 (i) the University of Alaska;

29 (ii) the Alaska Railroad Corporation;

30 (iii) the Alaska Housing Finance Corporation;

31 (iv) a regional Native housing authority created under

1 AS 18.55.996 or a regional electrical authority created under
2 AS 18.57.020;

3 (v) the Department of Transportation and Public
4 Facilities, in regard to the repair, maintenance, and reconstruction of
5 vessels, docking facilities, and passenger and vehicle transfer facilities
6 of the Alaska marine highway system;

7 (vi) the Alaska Aerospace Development Corporation;

8 (vii) the Alaska State Pension Investment Board;

9 (viii) the Alaska Seafood Marketing Institute;

10 **(ix) the Kuskokwim Port Authority;**

11 * **Sec. 10.** AS 37.05 is amended by adding a new section to article 1 to read:

12 **Sec. 37.05.055. Delegation to the Kuskokwim Port Authority.** The
13 commissioner of administration may delegate the performance of the functions under
14 this chapter as they relate to the Kuskokwim Port Authority to the authority and set the
15 criteria and guidelines that shall be followed.

16 * **Sec. 11.** AS 39.50.200(b) is amended by adding a new paragraph to read:

17 (58) board of directors of the Kuskokwim Port Authority
18 (AS 30.21.020).

19 * **Sec. 12.** AS 39.52.960(2) is amended to read:

20 (2) "agency" means a department, **the** office of the governor, or **an**
21 entity in the executive branch, including but not limited to the University of Alaska,
22 public or quasi-public corporations, boards or commissions, [AND] the Alaska
23 Railroad Corporation, **and the Kuskokwim Port Authority;**

24 * **Sec. 13.** AS 39.52.960(4) is amended to read:

25 (4) "board or commission" means a board, commission, authority, or
26 board of directors of a public or quasi-public corporation, established by statute in the
27 executive branch, including the Alaska Railroad **Corporation and the Kuskokwim**
28 **Port Authority,** but excluding members of a negotiated regulation making committee
29 under AS 44.62.710 - 44.62.800;

30 * **Sec. 14.** AS 39.52.960(12) is amended to read:

31 (12) "instrumentality of the state" means a state agency or

1 administrative unit, whether in the legislative, judicial, or executive branch, including
 2 such entities as the University of Alaska, the Alaska Railroad **Corporation, the**
 3 **Kuskokwim Port Authority**, and any public or quasi-public corporations, boards, or
 4 commissions; the term includes municipalities;

5 * **Sec. 15.** AS 44.42.020(a) is amended to read:

6 (a) The department shall

7 (1) plan, design, construct, and maintain all state modes of
 8 transportation and transportation facilities and all docks, floats, breakwaters, buildings,
 9 and similar facilities;

10 (2) study existing transportation modes and facilities in the state to
 11 determine how they might be improved or whether they should continue to be
 12 maintained;

13 (3) study alternative means of improving transportation in the state
 14 with regard to the economic costs of each alternative and its environmental and social
 15 effects;

16 (4) develop a comprehensive, long-range intermodal transportation
 17 plan for the state;

18 (5) study alternatives to existing modes of transportation in urban areas
 19 and develop plans to improve urban transportation;

20 (6) cooperate and coordinate with and enter into agreements with
 21 federal, state, and local government agencies and private organizations and persons in
 22 exercising its powers and duties;

23 (7) manage, operate, and maintain state transportation facilities and all
 24 docks, floats, breakwaters, and buildings, including all state highways, vessels,
 25 railroads, pipelines, **and** airports [,] and aviation facilities **other than ports and port**
 26 **related transportation facilities and operations managed, operated, and**
 27 **maintained by the Kuskokwim Port Authority under AS 30.21;**

28 (8) study alternative means of transportation in the state, considering
 29 the economic, social, and environmental effects of each alternative;

30 (9) coordinate and develop state and regional transportation systems,
 31 considering deletions, additions, and the absence of alterations;

1 (10) develop facility program plans for transportation and state
2 buildings, docks, and breakwaters required to implement the duties set out in this
3 section, including but not limited to functional performance criteria and schedules for
4 completion;

5 (11) supervise and maintain all state automotive and mechanical
6 equipment, aircraft, and vessels, except vessels and aircraft used by the Department of
7 Fish and Game or the Department of Public Safety; for state vehicles maintained by
8 the department, the department shall annually evaluate the cost, efficiency, and
9 commercial availability of natural gas for automotive purposes, and the purpose for
10 which the vehicles are intended to be used, and convert or purchase vehicles to utilize
11 natural gas whenever practicable; the department may participate in joint ventures
12 with public or private partners that will foster the availability of natural gas for all
13 automotive fuel consumers;

14 (12) supervise aeronautics inside the state, under AS 02.10;

15 (13) complete and maintain a current inventory of public facilities,
16 including a projection of the serviceability of the facilities and projections of
17 replacements and additions to facilities needed to provide the level of services
18 programmed by the various user agencies, for municipalities with populations of less
19 than 12,000 and for unincorporated communities, and perform those duties on a
20 cooperative basis with larger municipalities;

21 (14) adopt energy performance standards for public facilities of the
22 state, the construction of which begins after July 1, 1980; the standards shall be based
23 on thermal and lighting energy standards established by the American Society of
24 Heating, Refrigeration and Air Conditioning Engineers as adapted for application in
25 high latitude, cold climate environs;

26 (15) provide planning assistance, including but not limited to energy
27 audits and related technical services, to school districts and regional educational
28 attendance areas to develop and implement

29 (A) standards for the design, construction, and operation of
30 rural educational facilities; and

31 (B) energy conservation measures for rural educational

1 facilities;

2 (16) implement the safety and financial responsibility requirements for
3 air carriers under AS 02.40;

4 (17) inspect weights and measures.

5 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 REGIONAL DEVELOPMENT PLAN. Within one year from the first meeting of the
8 board of directors of the Kuskokwim Port Authority, the board shall prepare and publish a
9 development plan for promoting economic self-sufficiency in the region in which the
10 authority operates. The development plan must include a description of the transportation,
11 energy, regional waste disposal, and tourism infrastructure needs of the region that are
12 necessary to promote regional economic self-sufficiency. The plan must also identify
13 opportunities for private resource development in the region, training programs that are
14 necessary to take advantage of current and future economic opportunities in the region,
15 tourism marketing strategies for the region, and sources of funding for operations and projects
16 of the authority.

17 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 INITIAL APPOINTMENTS. Notwithstanding AS 30.21.020, as added by sec. 2 of
20 this Act, and AS 39.05.055, the governor shall appoint the initial appointed members of the
21 board of directors of the Kuskokwim Port Authority to terms as follows:

22 (1) two members to terms of one year;

23 (2) two members to terms of two years;

24 (3) three members to terms of three years.

25 * **Sec. 18.** This Act takes effect July 1, 2005.