

HOUSE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE ORTIZ

Introduced: 2/20/24

Referred: Community and Regional Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal port authorities and municipal development authorities;
2 relating to leases of state land to a municipal authority; and relating to the definition of
3 'municipal bond.'"

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

5 * **Section 1.** AS 29.35.600 is amended to read:

6 **Sec. 29.35.600. Purpose of authorities.** The purpose of a port authority is to
7 provide for the development of a port or ports for transportation related commerce
8 within the territory of the authority. The purpose of a development authority is to
9 promote, develop, and advance the general prosperity and economic welfare of
10 the people of a municipality, to relieve problems of unemployment, and to create
11 additional employment.

12 * **Sec. 2.** AS 29.35.605(a) is amended to read:

13 (a) A port authority or development authority may be created by one of the
14 following means:

(1) the governing body of a municipality may create by ordinance a port authority **or development authority** as a public corporation of the municipality;

(2) the governing bodies of two or more municipalities may create by parallel ordinances adopted by each of the governing bodies a port authority **or development authority** as a public corporation of the municipalities.

* **Sec. 3.** AS 29.35.605(c) is amended to read:

(c) **An** [A PORT] authority created under this section is a body corporate and politic and an instrumentality of the municipality or municipalities creating it but having a separate and independent legal existence.

* **Sec. 4.** AS 29.35.605(d) is amended to read:

(d) Creation of a port authority under AS 29.35.600 - 29.35.730 is an exercise of a municipality's transportation system powers. **Creation of a development authority under AS 29.35.600 - 29.35.730 is an exercise of a municipality's power to expend money for a community purpose, facility, or service for the good of the municipality under AS 29.35.010(9).**

* **Sec. 5.** AS 29.35.605(e) is amended to read:

(e) The enabling ordinance by which **an** [A PORT] authority is established must specify the powers, boundaries, and limitations of the [PORT] authority, **including the types of projects that the authority may undertake.**

* **Sec. 6.** AS 29.35.605(f) is amended to read:

(f) An ordinance creating **an** [A PORT] authority shall require approval by the voters of the municipality or municipalities participating in the authority in order for the authority to be established.

* **Sec. 7.** AS 29.35.605(g) is amended to read:

(g) Nothing in AS 29.35.600 - 29.35.725 prevents a municipality or municipalities from creating or participating in a public corporation, including **an** [A PORT] authority, in any form or manner not prohibited by law. However, the provisions of AS 29.35.600 - 29.35.725 only apply to and may only be utilized by **an** [A PORT] authority created under this section.

* **Sec. 8.** AS 29.35.610(a) is amended to read:

(a) The enabling ordinance by which **an** [A PORT] authority is created must

1 provide for the manner by which an [A PORT] authority may be dissolved.

2 * **Sec. 9.** AS 29.35.620 is amended to read:

3 **Sec. 29.35.620. Powers.** If provided in the enabling ordinance, an authority
4 may

5 (1) sue and be sued;

6 (2) have a seal and alter it at pleasure;

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

9 (4) lease to others a project acquired by it and on [UPON] the terms
10 and conditions the authority may consider advisable, including, without limitation,
11 provisions for purchase or renewal;

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

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

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

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

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

24 (10) enter into loan agreements with respect to one or more projects on
25 [UPON] the terms and conditions the authority considers advisable;

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

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

30 (13) charge fees or other forms of remuneration for the use or
31 possession of projects in accordance with the agreements described in this section,

1 other agreements relating to the projects, covenants, or representations made in bond
 2 documents relating to the projects, or regulations of the authority relating to the
 3 projects;

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

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

8 (16) defend and indemnify a current or former member of the board,
 9 employee, or agent of the authority against all costs, expenses, judgments, and
 10 liabilities, including attorney fees, incurred by or imposed on [UPON] that person in
 11 connection with civil or criminal action in which the person is involved as a result of
 12 the person's affiliation with the authority if the person acted in good faith on behalf of
 13 the authority and within the scope of the person's official duties and powers;

14 (17) purchase insurance to protect and hold harmless its employees,
 15 agents, and board members from an action, claim, or proceeding arising out of the
 16 performance, purported performance, or failure to perform in good faith, of duties for,
 17 or employment with the authority and to hold them harmless from expenses connected
 18 with the defense, settlement, or monetary judgments from that action, claim, or
 19 proceeding; the purchase of insurance is subject to the discretion of the board;
 20 insurance purchased under this paragraph may not be considered compensation to the
 21 insured person; [AND]

22 (18) protect its assets, services, and employees by purchasing
 23 insurance or providing for certain self-insurance retentions; an authority may also
 24 maintain casualty, property, business interruption, marine, boiler and machinery,
 25 pollution liability, and other insurance in amounts reasonably calculated to cover
 26 potential claims against the authority or a municipality for bodily injury, death or
 27 disability, and property damage that may arise from or be related to authority
 28 operations and activities; and

29 (19) finance, acquire, manage, and operate development projects
 30 that the authority intends to own and operate or provide financing for
 31 development projects the authority does not intend to own and operate; in this

1 paragraph,

2 (A) "development project" means a project listed in
 3 AS 29.35.725(6)(B) - (J);

4 (B) "operate" includes operation directly by the authority,
 5 by an agent of the authority, or by a person as determined under an
 6 agreement between the authority and other owners of the development
 7 project;

8 (C) "own" includes ownership by the authority of all or a
 9 percentage of a development project or all or a percentage of the shares of
 10 a corporation or membership in a limited liability company for which the
 11 development project is the sole asset of the corporation or limited liability
 12 company.

13 * Sec. 10. AS 29.35.725(1) is amended to read:

14 (1) "authority" means a port authority or a development authority
 15 [ESTABLISHED UNDER AS 29.35.605];

16 * Sec. 11. AS 29.35.725(6) is amended to read:

17 (6) "project" means

18 (A) a port, dock, and administrative facilities, including
 19 property necessary in connection with the operation of a port;

20 (B) a plant or facility used or intended for use in connection
 21 with making, processing, preparing, transporting, or producing in any
 22 manner, goods, products, or substances of any kind or nature or in
 23 connection with developing or using a natural resource, or extracting,
 24 smelting, transporting, converting, assembling, or producing in any
 25 manner, minerals, raw materials, chemicals, compounds, alloys, fibers,
 26 commodities and materials, products, or substances of any kind or nature;

27 (C) a plant or facility used or intended for use in connection
 28 with a business enterprise;

29 (D) commercial activity by a single proprietorship,
 30 cooperative, corporation, firm, partnership, or other association of
 31 persons organized in any manner, for any credit worthy business purpose;

1 (E) a plant or facility demonstrating technological advances
 2 of new methods and procedures and prototype commercial applications
 3 for the exploration, development, production, transportation, conversion,
 4 and use of energy resources;

5 (F) infrastructure for a new tourism destination facility or
 6 for the expansion of a tourism destination facility; in this subparagraph,
 7 "tourism destination facility" does not include a hotel or other overnight
 8 lodging facility;

9 (G) a plant or facility, other than a plant or facility
 10 described in (E) of this paragraph, for the generation, transmission,
 11 development, transportation, conversion, or use of energy resources;

12 (H) a plant or facility that enhances, provides for, or
 13 promotes economic development with respect to transportation,
 14 communications, community public purposes, technical innovations,
 15 prototype commercial applications of intellectual property, or research;

16 (I) a plant or facility used or intended for use as a federal
 17 facility, including a United States military, national guard, or coast guard
 18 facility; or

19 (J) infrastructure for an area that is designated as a
 20 military facility zone under AS 26.30;

21 * Sec. 12. AS 29.35.725(7) is amended to read:

22 (7) "project cost" or "cost of a project" means all or any part of the
 23 aggregate costs determined by an authority to be necessary to finance the construction,
 24 expansion, or acquisition of a project, including without limitation [TO] the cost of
 25 acquiring real or tangible personal property, and, in connection with real property,
 26 the cost of constructing buildings and improvements, the cost of constructing means
 27 of access to and from the project, and the cost of constructing extensions of utility
 28 systems to the site of the project; the cost of a project includes, without limitation,
 29 the cost of financing the project, [INCLUDING, WITHOUT LIMITATION,] interest
 30 charges before, during, or after construction, expansion, or acquisition of the project,
 31 costs related to the determination of the feasibility, planning, design, or engineering of

the project and, to the extent determined necessary by the authority, administrative expenses, the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement, or rehabilitation [OF A PORT], and all other costs, charges, fees, and expenses which [THAT] may be determined by the authority to be necessary to finance the construction, expansion, or acquisition;

* **Sec. 13.** AS 29.35.725 is amended by adding new paragraphs to read:

(10) "development authority" means an authority established under AS 29.35.605 with the power to undertake a project listed in (6)(B) - (J) of this section;

(11) "plant" or "facility" means real property, whether above or below mean high water, or an interest in it, and the buildings, improvements, and structures constructed or to be constructed on or in it, and may include roads, fixtures, machinery, and equipment on it or in it, and tangible personal property, regardless of whether the tangible personal property is attached to or connected with real property, if the owner has agreed not to remove the tangible personal property permanently from the state for the period the authority sets; "plant" or "facility" does not include work in process or stock in trade;

(12) "port authority" means an authority established under AS 29.35.605 with the power to undertake a project under (6)(A) of this section.

* **Sec. 14.** AS 29.35.730 is amended to read:

Sec. 29.35.730. Short title. AS 29.35.600 - 29.35.730 may be referred to as the Municipal Port and Development Authority Act.

* **Sec. 15.** AS 38.05.810(i) is amended to read:

(i) Subject to AS 38.05.820, the commissioner may lease undeveloped state land, including tideland, to an [A PORT] authority established under AS 29.35.600 - 29.35.730, if the state land is within the physical boundaries of the authority and is needed by the authority for purposes provided in AS 29.35.600 - 29.35.730. The commissioner may lease developed state land, including tideland, to an [A PORT] authority established under AS 29.35.600 - 29.35.730 only if, (1) the developed state land is within the physical boundaries of the authority; (2) the developed state land is needed by the authority for purposes provided in AS 29.35.600 - 29.35.730; and (3)

1 the legislature approves the lease. A lease of state land under this subsection may be
2 for less than the appraised market value.

3 * **Sec. 16.** AS 44.85.410(4) is amended to read:

4 (4) "municipal bond" means a bond or note or evidence of debt that
5 constitutes

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

12 (B) a revenue bond issued by a municipality, the University of
13 Alaska, a regional health organization, a joint action agency formed under
14 AS 42.45.310, a solid waste management authority, or **an** [A PORT] authority
15 **established under AS 29.35.600 - 29.35.730** that pledges the revenue of a
16 revenue-producing capital improvement and that is payable solely from the
17 revenue of the revenue-producing capital improvement;

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

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

22 (E) an obligation of a municipality secured only by

23 (i) special assessments on benefited property;

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

26 (iii) a lease;

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

29 TRANSITION: ENABLING ORDINANCES. Notwithstanding AS 29.35.605(e), as
30 amended by sec. 5 of this Act, an authority existing on the effective date of this Act may
31 undertake a project listed in AS 29.35.725(6)(A), as amended by sec. 11 of this Act. An

1 authority existing on the effective date of this Act may not undertake a project listed in
2 AS 29.35.725(6)(B) - (J), as amended by sec. 11 of this Act, unless the municipality that
3 created the authority grants the authority additional powers by ordinance and the additional
4 powers are approved by the voters of the municipality under AS 29.35.605(f), as amended by
5 sec. 6 of this Act.