

HB


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February 18, 1992

MEMORANDUM

TO: Jerry Mackie, Chairman
Members, House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: Testimony on HB 399 - Establishment of Port Authorities

The Alaska Municipal League supports the intent of HB 399 - 1) the recognition of the potential benefits of port authorities to bring about community or regional economic development and 2) to clarify, if necessary, the authority of municipalities to form, operate, and finance port authorities in the best interests of the public and municipalities involved.

However, notwithstanding the sponsors' good intentions, the legislation as proposed in HB 399 may be, to a large extent, unnecessary or, worse, unnecessarily restrictive from the standpoint of the Alaska constitution, existing statute, and the desire for maximum local self-government. I have attached a copy of a memo dated February 11, 1992 from Jerry Luckhaupt, Legislative Counsel, to Senator Curt Menard. The Senate Transportation Committee, which Senator Menard chairs, is also considering port authority legislation, including SB 352 which is similar to HB 399. Mr. Luckhaupt's memo substantiates my belief the legislation, except for the public records provisions and separate bonding authority, is perhaps unnecessary. By implying the need for specific statutory authority, the legislation may have the effect of restricting or diluting municipal powers.

The AML urges the legislature to craft and pass minimal legislation which:

1. reinforces the provisions for maximum local self-government, a liberal construction of powers of local governments, and the ability for joint administration of any function or power under the Constitution (Article 10, Sections 1 and 13) and, subsequently, by statute (AS 29, Article 6; AS 29.35.010(13),
2. clarifies the ability of municipalities, singularly or jointly, to form public corporations, authorities, or similar public entities through which they may exercise municipal powers,
3. clarifies, under state and federal IRS laws, the ability of a public corporation or authority to sell bonds that are solely the debt of that corporation or authority, and
4. leaves, to the extent possible, the decisions as to the formation, powers, and structure of an authority to the municipality or municipalities involved - by ordinance, including requiring a vote of the people, and/or by bylaws.

AML Testimony on HB 399, Port Authorities
February 19, 1992
Page 2

The Alaska Municipal League Board of Directors passed Board Resolution No. 92-1 urging the passage of legislation to allow for local and regional port authorities. The AML 1992 Policy Statement states, " The League opposes any effort by the Legislature to restrict the method of establishment, form, powers, or other features of municipal port or other authorities. The League supports legislation that would clarify the ability of municipalities to form public corporations, authorities, and similar public entities through which they may exercise a power." (Page 47).

Again, the AML supports legislation as necessary to clarify that municipalities have the ability to form public corporations and authorities such as port authorities, singularly or jointly, and that such authorities have the power to incur debt separate from the municipality or municipalities. However, AML urges the legislature to pass the minimum amount of legislation needed and to avoid diluting or restricting municipal powers and local control.

For the Committee's and the sponsors' review, I have also attached a list of questions and concerns regarding the specifics of HB 399. For your information, I have also attached a copy of a memo to me dated February 13, 1992 from Lee Sharp, an attorney in private practice and a person I have worked with on municipal issues for a number of years. In the memo Mr. Sharp raises a number of other "observations" for the committee's consideration. I contacted Mr. Sharp regarding the port authority legislation before the legislature this year because we had worked together on this and similar issues in the past and I respect his expertise in municipal law.

I look forward to working with the sponsors and the committee on this legislation to accomplish our mutual goals.

Attachments

cc: Representative Baker
Senator Pearce
Senator Duncan
Senator Menard

HB 399 - Questions and Concerns

o Overall: Too much policy language, i.e., what should be in bylaws and policies and procedures, in statute, e.g. .615(b), most of .625, and second sentence in .630(b).

o Page 2, .600(d)- is the authority wholly owned and controlled by a municipalities, i.e. is it eligible to be insured under AS 21.76 which are limited to insuring "municipalities and school districts"? See insurance provisions in .680. Also, see Luckhaupt memo, "Question 7."

(e) - Is this an areawide, non-areawide, or service area power? See Luckhaupt memo, "Question 5."

(g) - Requiring at least one member of the board to be a person with at least five years of experience is unnecessary (CEO can be the expert) and would probably rule out the possibility of having the council/assembly sit as the board.

(h) - Unclear. What "provisions" in the terminology "granted under those provisions" (emphasis added)?

o Pages 3-4 - "(9)" appears to have or include the same meaning as "(16)" and "(17)" and "(19)" appears to be the same as "(9)" and "(17)."

o Page 6, .640(b) - Why to just an "auditor"?

.660 - Why should authority have exclusive land use powers vested in boroughs? Private property owners do not enjoy this power. This includes land "managed" by authority. Does this hold true if the authority area is not contiguous? The exercise of land use powers or eminent domain powers in .655 appears to be at the discretion of the authority but not necessarily the discretion of the municipality to grant such powers to the authority.

o Page 8, .695 - Specific development plans as a port develops should be required in addition to an initial overall development plan.

o Page 10, .720(a) - Assume that the private or leasehold interests are not tax exempt. Should this be clarified?

(c) - "Boundaries of the authority" are referred to but not defined. Although very specific in many other ways, nothing in the law requires the municipality to set out the boundaries of the authority within which power is to be granted and exercised. Does the area have to be contiguous? For example, the language here would seem to exclude the possibility of requiring the authority to pay for legitimate off-site improvements necessitated by the development or activities of the port.

o Page 11, .750(5) - This would seem to make port employees ineligible for PERS.

RECEIVED
FEB 18 1992
ALASKA MUNICIPAL LEAGUE

TO: Scott Burgess, Executive Director
FROM: Lee Sharp
RE: Personal observation on Port Authority Legislation
DATE: February 13, 1992

I have watched with some interest the Port Authority legislation that has been introduced off and on for the last five years or so. Following are some personal observations. As always, I come from the position that if a single municipality wishes to establish a port operation, there need be no special legislation authorizing it to do so. If such legislation is put on the books, it is superfluous to existing powers and raises the serious question about how many other kinds of powers should be specifically delegated to municipalities in order to ensure that they have the authority to do what they already have the authority to do. Will we need legislation to allow municipalities to operate their hospitals under something called a hospital authority? We are not a "Dillon's Rule" state and I am always alarmed when a municipality comes forward stating that they have been told that they need special legislation granting and detailing the method of exercising a municipal power. If a port authority bill is going to go through the legislature (and it is possible that one may be needed for other reasons discussed below) then I sincerely hope that any prefatory language in the bill not indicate that it is in the public interest to authorize municipalities to create port authorities. I would hope that if such prefatory language is thought to be necessary that it be changed to indicate that it is in the public interest to provide by statute one specific method by which municipalities may exercise their rights to create port authorities and that such statutory provisions do not constitute the only method by which one (or more) municipalities could create a port authority under existing municipal powers nor does such legislation limit the powers or methods of operation of port authorities that are established outside the purview of the subject legislation.

Using CSHB 399 (TRA) as a basis for comment, I offer for your consideration the following comments and questions.

Section 29.35.600(a). May an Authority that is not established pursuant to this section call itself a "Municipal Port Authority" or is this term now reserved solely for the use of those Authorities that are formed pursuant to this legislation?

Under Section 600(e) may a borough establish a service area in which it assumes the port power and then use that as the basis for joining another municipality in the formation of a Port Authority which occupies, in the borough, only the area inside the service area? If it may, is it then legitimate for it to give up its planning and zoning powers as to Authority property within the service area as planning and zoning is an areawide power.

Although Section 600(h) purports to make clear that a municipality cannot use the legislation for the purpose of exercising a power that has not been granted under these provisions, I am not sure just what this means. Does it mean that a dual municipality Port Authority can exercise only those powers that are possessed by both municipalities and are specifically delegated to it? This is not what the section says. Is there a distinction between the exercise of a power by the municipality and the exercise of a power by the Authority; that is, if the legislation authorizes an Authority to exercise certain powers, may it do so even though one (or perhaps both) of the participating municipalities is not authorized to exercise that power? For example, under Section 610(12) the Authority is given the right to "exercise police powers" with respect to a port. Police powers are extremely broad and include not only police protection, but the full gambit of powers associated with the public health, safety and welfare. Under these two provisions, may a municipality, in its authorizing ordinance, authorize the Authority to exercise the full gambit of police powers even though the municipality does not possess those powers? May these powers be exercised only within the "jurisdiction" of the Authority or only as to property of the Authority? It would be the Authority exercising these powers, not the municipality, and Section 600(h) only indicates that this legislation does not authorize a municipality to exercise a power that has not been granted under these provisions. However, the police powers are being exercised by the Authority, not the municipality; and in any event, it appears under Section 610(12) that it literally does not make any difference whether the Authority and the municipality are viewed as the same entity (which they aren't) as the municipality does not delegate any of its authority to the Authority, it merely sets out in its authorizing ordinance the extent of the police powers that the Authority may exercise. If it is intended that port authorities be able to exercise powers that the participating municipalities do not possess, then language making that clear would help avoid having to face these questions after the legislature has gone home. If Port Authorities are to be able to exercise all the powers of a municipality (except as may be limited in their authorizing ordinances) without regard to whether the municipality itself possess that power, then we should make that clear. On the other hand, if we intend that the Port Authority have no more power than the participating municipalities, then that should be made clear. Actually, we get into this problem mostly with respect to the concept of the Authority exercising what are traditionally viewed as governmental powers. If the Authority were not given police powers, including land use regulation veto power, these questions might be less important.

Continuing on the "powers" question, what happens if a municipality exercises, on an areawide basis, a power that will be exercised by the Port Authority; e.g., fire protection? Does the borough no longer have areawide fire protection powers? If the Authority, pursuant to Section 610(14) finds that it is necessary or appropriate to serve a public purpose that the Authority construct and operate public roads within its

jurisdiction, does it simply oust the municipality from its authority to undertake such projects? What if the Port Authority is within a borough road service area? Are the service area boundaries deemed to have been changed? Or, if during the Authority formation process, the borough clearly gives to the Authority road construction and maintenance power within the jurisdiction of the new Authority, does this cast upon the Authority the duty and public responsibility to provide for road construction and maintenance within its jurisdiction? As the Authority has no taxing powers and is not entitled to revenue sharing for roads, would it be appropriate for the Authority to expend port revenues for road purposes within the service area?

What if a municipality has areawide solid waste disposal powers and has covenanted with solid waste facility bond holders to continue to exercise that power on an areawide basis and to require all persons within the borough to use the borough solid waste facility; may the Port Authority provide for solid waste disposal within its jurisdiction, or even just for the property it owns or controls in its port function?

Section 655 on eminent domain probably needs to be there as the courts are reluctant to find that any public entity has the power of eminent domain or declaration of taking unless it has clearly been delegated to that entity. As Title 29 currently prohibits municipalities from exercising eminent domain outside their boundaries, it is doubtful whether a court would view the exercise of eminent domain by an Authority as a "joint" exercise. However, the right of eminent domain and declaration of taking granted under this section applies only within the jurisdiction of the Authority. It might be helpful if someplace in Section 600 there is a requirement set out that the parallel ordinances must not only set out the number, qualifications, manner of appointment and terms of board members, but should also provide a legal description of the boundaries of the Port Authority. Then everyone will know what is inside and outside its jurisdiction for purpose both of the exercise of eminent domain and of police powers.

Section 660 appears to function essentially as the grant of a veto power over zoning regulations that would otherwise be applicable to the property of the Authority. This provision is not without some fairly substantial public policy questions. For example, is it really necessary in light of the fact that municipalities retain substantial control over the Authority through Section 695 (requiring municipal approval of Authority development plans)? Even the state of Alaska is required to conform its projects to local building and zoning codes unless the governor, for reasons of an overriding state interest, grants a waiver. Why shouldn't a Port Authority be required to comply with the zoning requirements imposed by the government within whose jurisdiction the port is located? Why should the owner of parcel A, who must comply with zoning restrictions, be left without the protection of the zoning ordinance if the Port Authority buys or condemns the parcel abutting his parcel A?

Section 720 exempts the Authority property from all taxes and special assessments. Again, is there any sound public policy reason for exempting an Authority from the requirement to pay special assessments for improvements that specially benefit the Authority property. Title 29 requires the state of Alaska to pay such assessments. Should Authorities be treated any differently? Should they be permitted to have streets

abutting their property paved under a project where all the neighboring property owners pay a special assessment, but the Authority does not?

Under Section 720(c) there is authority for the Authority to agree to payments in lieu of taxes. May the Authority agree with one municipality to make payments in lieu of taxes and not agree with the other municipality in which it is located? Considering that generally the largest part of the tax revenues of a municipality go to support education, this restrictive use of payments-in-lieu seems unwarranted. While it is true that the Authority will be an industry that will create jobs, the people who hold those jobs have children who must attend school and the restriction on the objects of expenditure for the payment-in-lieu revenues seems unrelated to the general burdens created by the enterprise.

The declaration of inapplicability of certain statutes under Section 750 might be examined to determine whether they are necessary and whether, on balance, they accomplish a desired result. For example, is it necessary to exempt the Authority from Title 19? Title 19 governs the highways and public (state) projects that are undertaken by DOT/PF. New projects undertaken by the Authority would not appear to be public projects falling under Title 19. There are provisions of Title 19 that apply to areas near highways, however these sections are called out as exceptions to the Authority's immunity from the application of Title 19. What, in particular, within Title 19 was thought would apply to port authorities that would have made it difficult or impossible for Port Authorities to function?

What is it in Title 35 (Public Buildings, Works and Improvements) that was thought would apply to Authorities and would prevent them from operating efficiently? Public facilities and buildings as used in that chapter generally applies only to those controlled, held or constructed by the state of Alaska. One deviation from this is in A.S. 35.10.015 that requires DOT/PF to prepare, adopt and enforce regulations governing the construction of public buildings by the state, the university and political subdivisions to ensure that public facilities are accessible to and usable by the physically handicapped, aged and infirm.

Title 38 deals with public lands. Among its many provisions are ones that give upland property owners a preference for a negotiated lease of tidelands abutting their property and the authority for the state to convey lands to public entities at less than market value. Do Authorities want to divest themselves of these rights through a blanket disavowal of the application of Title 38? Again, what specific provisions of Title 38 were thought to impede the ability of Authorities to function?

What is it under Title 39 that would appear to impede the functioning of a Port Authority? Do municipalities not want to be able to make available to Port Authority employees access to PERS? Of course, if they do, not only will this exception from Title 39 need to be removed, but there should also probably be considered amendments to Title 39 to ensure that Authorities have access to PERS. Although it appears that the director and appointed Authority board members are exempt from the conflicts of interest statute, if that statute is applicable to city or borough managers and planning or zoning commission members, is there a sound policy reason to exempt the members of

a Port Authority board of directors and the executive director of the Authority from filing such statements? Perhaps the statute should be amended to include them.

Although, if there were a judicial challenge, I suppose that a court would put reasonable limits on the scope of the word "port" as it is defined in Section 790(5), nevertheless a port being any "facility of commerce" located in the state seems awfully broad for what most people think of as a Port Authority. Ports, at least in my mind, are generally associated with transportation facilities, typically marine ports and airports. Marine ports might also include associated rail facilities. However, even limiting it to transportation facilities are we talking about truck and highway facilities that are relatively independent of marine or airports? Are we including overland passenger transportation facilities? Are we intending it to go beyond just transportation facilities to include anything that involves the buying or selling of goods under the broader definition of "commerce."

As to the need for these bills, I do recognize that there may be reasons beyond simply some nagging doubts that some may have about whether municipalities really can join together under agreements for the cooperative or joint administration of functions or powers as provided in the constitution and in Title 29. One of these relates to the issuance of tax exempt obligations. If the entity is not the state or a political subdivision of the state, the IRS has established requirements with which other governmental entities must comply if they are to be permitted to issue tax exempt obligations. If these special requirements of the IRS are thought to require such legislation, then it may be helpful for someone to produce the specific IRS requirements so that the legislation may be examined in light of the specific requirements of the IRS. Then, those concerned with the Port Authority bills will be better able to evaluate what is required and what is surplusage in the bills.

I would urge you to bear in mind that if the perceived local government powers questions could be answered with very much abbreviated but more general legislation, then that may be the approach to take. Again, my concern is that we not put something on the books that will lead to the argument (or worse yet the conclusion) that these types of powers must be specifically delegated to municipalities by statute; but if there is to be such a delegation, it should be as short, uncomplicated and unrestrictive as possible. What may work for a Southcentral Port may not work for the Pribilofs or for Southeast Alaska. Those of us who were involved in drafting the present Title 29 attempted to rid it of all detail that seemed unnecessary. As I recall, presently there are only two areas in Title 29 that deal in what I think may be unnecessary detail with respect to the exercise of certain rather narrow powers. The Port Authority bills would add to Title 29 more extremely fine details than I believe could be found in Title 29 since its first major revision twenty years ago. Unlike a Dillon's Rule state, Alaska does not require detailed delegation of power. And, unlike this memo, Title 29 should be kept as short, simple and uncluttered as possible.

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STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 399 (TRA)
(H) Publish Date: 2/7/92

FISCAL NOTE

Revision Date:

Department Affected: DOT&PF

Title: An Act relating to the establishment
of a pctt authority by municipalities

BRU: Headquarters

Component: Plans, Programs & Budget

Sponsor: Representative Baker

Requestor: Representative Baker

Component Serial Number: 0542

EXPENDITURES/REVENUES:

(Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
FUND SOURCE:	0	0	0	0	0	0

FUNDING:

(Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

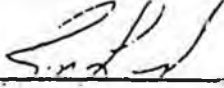
POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

No direct impact on this agency.

Prepared by: Rich Poor 

Phone: 465-2171

Division: DOT&PF, Plans Programs and Budget

Date: 1/27/92

Approved by the Commissioner: 

Phone: 465-3900

Frank G. Turpin

Agency: Department of Transportation and Public Facilities

Date:

Distribution by Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies)

Alaska State Legislature


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Representative Larry Baker
MEMORANDUM

DATE: December 16, 1991
TO: Members of the House
RE: Sponsor Statement for Port Authority Legislation



Public transportation facilities are critical to the economic future of Alaska. Our resource exports pass through ports as well as all of our goods and supplies in order to provide services to our state residents. Tourists, intrastate business and numerous other activities move through Alaska's ports and harbors. The economic importance of ports justifies a focused, separate economic entity for the future of the State of Alaska.

The State of Alaska is slowly making the transition from totally paying for, owning and operating public transportation facilities in Alaska. In some cases facilities have already transitioned to local governments. In recent years, facilities have been built by revenue bonds rather than solely with state grants.

Port authorities have been an important economic development tool by other states and nations. Authorities often bridge municipal, state and international boundaries to achieve economies of scale in order to be self-sufficient.

Regional port authorities will be vital to the State of Alaska as we progress toward a more diverse economic base.

If you have any questions, please give my office a call.

LB:elm

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1992

FURTHER REFERRALS: Community & Regional Affairs
Finance

Date of Committee Action: 2/6/92

The TRANSPORTATION Committee considered:

HB 399

HOUSE BILL NO. 399

AUTHORIZE PORT AUTHORITIES

"An Act relating to the establishment of port authorities by municipalities; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 399 (Trans) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

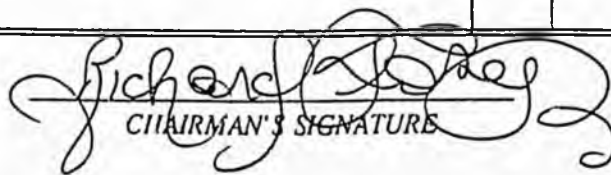
fiscal impact _____

fiscal note(s) _____

zero fiscal note Dept of Transportation

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene J. Kubera</i>	X				
<i>Bill Hudson</i>	X				
<i>Ron D. Leman</i>	✓				
<i>Gail Phillips</i>	✓				
<i>Jimmy Mah</i>	✓				
<i>Richard Joseph</i>	*				


 CHAIRMAN'S SIGNATURE

THE ANCHORAGE CHAMBER OF COMMERCE
Legislative Priority

Title Port Authority Legislation

THE ISSUE

Municipalities are restricted in their abilities to provide revenue bond authority and independent political identity for its port. Municipalities rely on state funding to develop ports. As state revenues decline over the next decade, the amount of funding provided for port development will diminish.

THE IMPORTANCE

Empower Anchorage port development by:

1. Allow establishment of an independent port authority.
2. The port authority would have the power to raise bonds, collect fees, own or lease land and develop port projects.
3. Development plans by the authority would be subject to review by the municipality. The authority would not have the power to raise taxes.

The above powers would allow increasing the scope of business activity at the Port of Anchorage without state assistance. Economic development in the port will help diversify the economy and capture a larger share of maritime business.

CHAMBER POSITION

The Chamber supports Port Authority legislation that will benefit the Anchorage economy by allowing the Municipality to independently develop its port and increase port related business.

Approved January 17, 1992



Department of Transportation
and Public Facilities

POSITION PAPER

BILL NO: HB 399

APPROVED: *J. J. [Signature]*

TITLE: Authorizes Port Authorities

DATE: February 4, 1992

The intent of this bill is to allow municipal governments the authority to establish a port authority within certain jurisdictions and to spell out the power of that authority. This bill will allow municipalities to establish port authorities. Once established, the authority will have separate and independent legal authority. The bill does not determine how a board member is selected or the length of term in office. This is established by the municipality. The port authority will have all normal powers to allow for efficient operations, but will also have Power of Eminent Domain, leasing and bonding authority, be exempt from taxation, but would not have taxation authority. The Department of Transportation proposes an amendment to allow powers of Eminent Domain only if approved by the municipality.

A Resolution of the Alaska Municipal League Board of Directors

Board Resolution No. 92-1

A RESOLUTION URGING THE PASSAGE OF LEGISLATION
TO ALLOW FOR LOCAL AND REGIONAL PORT AUTHORITY

WHEREAS, the people of Alaska find themselves with many opportunities in maritime and aviation commerce, international trade, tourism, fisheries, oil and mineral development, timber development, transportation, and other industries in Alaska;

WHEREAS, ports are vital to Alaska's economic well-being and future economic development of these industries and new industries in Alaska;

WHEREAS, the future development of ports in Alaska will require the expenditure of large sums of money and the close cooperation of the State of Alaska, its regions, and political subdivisions in the encouragement of the investment of capital and the formulation and execution of the necessary physical plans;

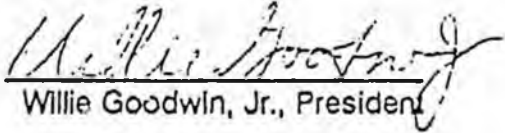
WHEREAS, it is confidently believe that a better coordination of ports, harbors, transportation, and other facilities of commerce in, about and through ports in Alaska, will result in greater economies, benefiting the people of Alaska;

WHEREAS, the foregoing are best accomplished through the enactment of legislation expressly authorizing the formation of local or regional port authorities, defining the purposes, jurisdictions, powers, and duties for such authorities, and authorizing the issuance of self-liquidating revenue bonds by them to finance acquiring, constructing, equipping, maintaining and operating of their ports;

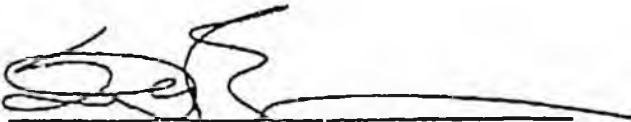
WHEREAS, the foregoing can best be accomplished through the cooperation of one or more of the regions and communities in Alaska by and through one or more joint and common port authorities;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska legislature to proceed with all due speed to enact legislation expressly to allow and to provide for the structure for the formation of local and regional port authorities within Alaska and that once enacted, the legislation be signed into law by the Governor of the State of Alaska.

Adopted this 16th day of November 1991.


Willie Goodwin, Jr., President

Attest:


Scott A. Burgess, Executive Director

President R. B. Stiles
1227 West 9th Ave. Suite 201
Anchorage, Alaska 99501
Tel. (907) 276-6868
Fax. (907) 276-2395



Alaska Coal Association

Secretary Charles P. Boddy
122 First Avenue Suite 302
Fairbanks, Alaska 99701
Tel. (907) 452-2625
Fax. (907) 451-6543

Representative Larry Baker

Subject: Port Authority Legislation

Dear Representative Baker,

Attached please find a resolution in support of the enactment of legislation enabling the establishment of local and regional Port Authorities. This resolution was passed by the Alaska Coal Association at our annual meeting in November of 1991.

We believe that the establishment of local and, more importantly, regional Port Authorities is essential to the health and growth of the coal industry in the State of Alaska.

While Alaska is rich in natural resources, in state markets for coal, timber and minerals are small to non-existent. In state sources of capital needed to develop these resources are equally small. Thus, developers and producers of Alaska's natural resources must pursue external markets and sources of capital. A critical concern of both customer and capital markets is the inadequate transportation and port infrastructure of Alaska.

Development of transportation systems and port facilities is, for the most part, a function and responsibility of the public sector. While transportation systems are developed largely in response to a general public need, ports are developed in response to more specific needs. Development of ports in Alaska is, at best, an uncoordinated and marginally effective effort of various public and private sector entities. We believe that legislation enabling the establishment of Port Authorities has the potential for significantly increasing the effectiveness of port development.

Given that, in many circumstances, an area served by a port would encompass multiple local political subdivisions it is essential that legislation enabling the establishment of Port Authorities allow for both local and regional authorities.

Development of adequate transportation and port infrastructure is a long term and evolving process. We believe that legislation such as HB 399 is essential to this long term process. Such legislation sends a clear message to both customer and capital markets that Alaska is not only committed to fostering the development of its natural resources; but is equally committed to the development of the transportation and port infrastructure systems needed to get these resources to market.

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Alaska Coal Association

RESOLUTION

WHEREAS, the people of Alaska find themselves with many opportunities in maritime and aviation commerce, international trade, tourism, fisheries, oil and mineral development, timber development, transportation, and other industries in Alaska;

WHEREAS, ports are vital to Alaska's economic well-being and future economic development of these industries and new industries in Alaska;

WHEREAS, the future development of ports in Alaska will require the expenditure of large sums of money and the close cooperation of the State of Alaska, its regions, and political subdivisions in the encouragement of the investment of capital and the formulation and execution of the necessary physical plans;

WHEREAS, it is confidently believed that a better coordination of ports, harbors, transportation and other facilities of commerce in, about and through ports in Alaska, will result in greater economies, benefiting the people of Alaska;

WHEREAS, the foregoing are best accomplished through the enactment of legislation expressly authorizing the formation of local or regional port authorities, defining the purposes, jurisdictions, powers, and duties of such authorities, and authorizing the issuance of self-liquidating revenue bonds by them to finance acquiring, constructing, equipping, maintaining and operating of their ports;

WHEREAS, The foregoing can best be accomplished through the cooperation of one or more regions and communities in Alaska by and through one or more joint and common port authorities;

NOW THEREFORE BE IT RESOLVED, that the undersigned urges the Alaska legislature to proceed with all due speed to enact legislation expressly to allow and to provide the structure for the formation of local and regional port authorities within Alaska and that once enacted, the legislation be signed into law by the governor of the State of Alaska.

Passed by the members of the Alaska Coal Association on November 6, 1991.

TESTIMONY OF J. J. BRECHT
BEFORE THE
HOUSE TRANSPORTATION COMMITTEE
ON
HOUSE BILL 399

Anchorage, Alaska
January 30, 1992

Good morning. My name is Julius J. Brecht, and I am an attorney in private practice with the law firm of Wohlforth, Argetsinger, Johnson and Brecht, with offices in Anchorage, Alaska. I wish to thank the committee for the opportunity to offer this written testimony to the record on House Bill 399.

In the way of further introduction of myself and the bill before you, I am the former Director of the Alaska Division of Banking and Securities and practice law in the corporate, finance, and securities areas. I have resided in Anchorage since leaving the division in 1980. I have been involved with various civic and professional groups studying issues of importance to Alaska. Over the past year, I have chaired an ad hoc committee composed of representatives of the Matanuska-Susitna Borough, the Municipality of Anchorage, and several private individuals including myself. We call ourselves the Port Authority Committee.

The common interest of the committee members has been the consensus that port authorities offer an opportunity to support and encourage economic development in an area as yet essentially untapped in Alaska. It is true that Alaska has many harbors and ports. However, with limited exception, these present facilities are woefully underutilized and with limited exception are not in a position to compete in a world marketplace even though Alaska has many resources to offer in that marketplace.

The first charge of the committee was to prepare a resolution to encourage individuals and organizations in Alaska to support the introduction and

enactment of legislation providing for the establishment of port authorities in Alaska. It soon became apparent subsequent to the preparation of that resolution that precious time was being lost in waiting for a draft of such legislation to be produced. I personally volunteered to prepare a first draft of the legislation. That first draft has become HB 399 which is before you today.

The resolution prepared by the Port Authority Committee notes that the people of Alaska find themselves with many opportunities in waterborne and other commerce and other industries in Alaska. The resolution further states that ports are vital to Alaska's economic well-being and future economic development of these industries and new industries in Alaska. In some respects, Alaska can have the greatest natural resource wealth in a number of areas. However, without the infrastructure to get it to market, it is, in large respect, worthless and, in any case, it contributes very little to the economic base in this state. The net result is that we become even more dependent upon existing sources of economic activity, e.g., oil, and even more dependent upon government to "spend" its way out of problems.

An alternative means for economic development and a proven use in other states and countries is the establishment of port authorities and the development of ports in Alaska.

The HB 399 is an attempt to allow for the establishment of such port authorities. Please note that the legislation permits, but does not require, the formation of port authorities.

Briefly, the mechanism set forth in the bill is to allow one or more municipalities to form a port authority by the adoption of parallel ordinances. The port authority would be formed as a public corporation and instrumentality of the municipality or municipalities creating it. It will have separate legal existence from those municipalities. The bill sets out various powers that a port authority may have. One very critical power will be the authority to issue revenue bonds. However, the bill expressly provides that neither the faith and credit of the state nor of the municipalities participating in a port authority will be involved in the issuance of such bonds or other obligations of the port authority.

The bill provides for the establishment of port authorities by local government and not by the state. The bill then does not provide for simply establishing another state program which would be in competition with other state programs for shrinking state revenues in the future. That is, the bill will allow access by a port authority to the revenue bond marketplace separate from that of the state revenues. Furthermore, the particular project which is the subject of the revenue bonds will have to be economically feasible in order to be sold in that marketplace.

The bill provides for a structure of a port authority including the appointment of a board of directors by the governing bodies of the municipalities participating in the port authority. That board of directors will, in turn, hire an executive director to carry out the directives and manage the day-to-day operations of the port authority.

The bill expressly provides that the port authority will have no taxing authority.

The bill, in essence, provides that one or more municipalities may contract with one another to establish a port authority and carry out economic development within that port authority.

I would be most pleased to respond to any questions which you may have regarding the bill, the resolution, or the concept of port authorities. Thank you again for the opportunity to submit testimony before this body.

Alaska Association of Harbormasters & Port Administrators, Inc.

334 Front Street
Ketchikan, Alaska 99901

November 12, 1991

Jerome Selby, President
Alaska Municipal League

Post-it™ brand fax transmittal memo 7671		# of pages ▶
To	RICH WILSON	From DOUG ENSLEY
Co.	LIK HOP COFF	Co. CITY OF KTN
Dept.	2171	Phone # 228-5632
Fax #	561-4674	Fax # 225-5075

Dear Mr. Selby:

The Alaska Association of Harbormasters and Port Administrators recently held its annual conference in Kenai, Alaska. One of the presentations and items of discussion was the Department of Transportation and Public Facilities Ports and Harbors Task Force proposal: Sustaining and Developing Alaska's Ports and Harbors.

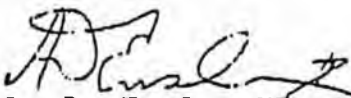
Our Association supports the proposal and the essential program elements outlined in the report. The three components: Development Plan, Financial Foundation, and Cooperation must be supported to enhance our facilities and local economies.

The Alaska Association of Harbormasters and Port Administrators feels very strongly that a Financial Foundation must be established as the first step in implementing the proposal. Our Association also feels that harbor maintenance which the State has deferred can be deferred no longer. To that end we request the State appropriate sixty million dollars to perform deferred maintenance of existing facilities, provide matching funds for U. S. Army Corps of Engineers projects, and fund new harbor development.

Please convey our position to your members as you discuss the State-wide Proposal. We are aware that funds are limited and other programs may have a higher priority. We are the operators of facilities that are twenty to forty years old; facilities that are the property of the citizens of our State; facilities that are of great importance to our/your local economy.

Please support us in our efforts.

Sincerely,



A. D. Ensley II, President
Alaska Association of Harbormasters
and Port Administrators

**PORT AUTHORITY LEGISLATION
BILL COMPARISON**

design	SB 352/CSHB 399 Pierce/Baker	SB341 Duncan
establishment	ordinance by municipal govnmnt	ordinance approved by vote of the people
dissolution	not addressed	ordinance approved by vote of the people
applicability	municipality	municipality, other than 2nd class city
scope of powers	muni decides which powers apply	authority possesses all powers addressed
board	by muni design; one has 5 yrs port experience	3 members; six year terms
multiple municipal coverage	single authority - by adoption of parallel muni ordinances	by agreement of multiple authorities
revenue bonds	specific requirements given	under muni bonding statute
budget	annual report required	muni approval of annual budget before commission approval
confidentiality	proprietary info protected; muni auditor has full access	not addressed
taxing/taxes	authority has NO taxing powers, and is not taxed, muni may negotiate with authority for payment "in-lieu of taxes"; muni taxes individual operators/businesses	not specifically addressed, (financing available through specified actions, taxes not mentioned)
eminent domain	authority has power	muni may exercise on behalf of the the authority



ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

February 11, 1992

Representative Larry Baker
Alaska State Legislature
State Capitol
Juneau, AK 99801

RE: Introduced Legislation on HB 309

Dear Representative Baker,

At the last A.E.D.C. board meeting, January 29th, there were questions raised as to whether all of the points important to our organization were addressed in your bill.

After talking to you about our concerns, I feel quite sure that at the next meeting of March 4, 1992, the A.E.D.C. will offer its full support of this legislation.

However, as President of the Western Alaska Building and Construction Trades, I can at this time give you the support of that organization. We feel it is a very positive piece of development legislation.

Pat Smutz is the Building Trades voice in Juneau, any questions may be addressed to him.

Sincerely,

Phil Thingstad
Chairman, A.E.D.C. Legislative Committee
President, Western Alaska Building Trades

PAT/sh

cc: Pat Smutz



Southwest Alaska Municipal Conference

Putting Resources to Work For People

3300 Arctic Blvd., Suite 203 • Anchorage, Alaska 99503 • (907) 562-7380 • FAX (907) 562-0438

RESOLUTION 92-14

A RESOLUTION SUPPORTING THE ESTABLISHMENT OF STATE PORT AND HARBOR DEVELOPMENT FUND

WHEREAS, the ports and harbors of Southwest Alaska are one of the lifelines and engines of economic development to communities on the waterfront and others, serving as transportation access and home port facilities for Southwest Alaska's fishermen and other business people; and

WHEREAS, the current condition of many existing facilities is universally considered deteriorated, uneconomic or even unsafe due to the deferral of maintenance over the past decades; and

WHEREAS, Southwest Alaska's competitive position in world markets depends on developing new and improved port and harbor facilities; and

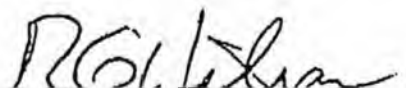
WHEREAS, satisfying statewide port and harbor needs require that the State of Alaska adopt and implement a different approach to funding, one that builds a stable financial base -- a "Port and Harbor Development Fund;" and

WHEREAS, the Statewide Ports and Harbors Task Force, supported by municipal harbormasters and Port Administrators Association representatives, makes such recommendations in its report, "Sustaining and Developing Alaska's Ports and Harbors".

NOW, THEREFORE, BE IT RESOLVED, that the Southwest Alaska Municipal Conference strongly supports the recommendations in the report calling for a stable funding source and specifically supports an FY93 appropriation of \$60 million for deferred maintenance, matching funds for Army Corps of Engineers harbor projects and new port and harbor facilities.

PASSED AND APPROVED ON THIS 19TH DAY OF JANUARY, 1992.


Marideth Sandler, Executive Director


Richard G. Wilson, President

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 11, 1992

SUBJECT: Port Authorities (SB 341 and SB 352)

TO: Senator Curt Menard
Attn: Johanna

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

Questions Presented

Question 1. May municipalities currently form a port authority under existing law or is additional legislation required?

Answer: It is my opinion that municipalities may form a port authority under existing law.

Question 2. May two or more municipalities jointly form a port authority under existing law or is additional legislation required?

Answer: Two or more municipalities may cooperate and jointly operate any power or function. Art. X, § 13, Alaska Constitution; AS 29.35.010(13).

Question 3. What is need under IRS rules to ensure that a port authority of a single or multiple municipalities may issue tax exempt bonds?

Answer: Per my conversation with Johanna, I have enclosed copies of the Internal Revenue Service Code relating tax exempt bonds issued by governmental units. Please be advised that under SB 341 any revenue bonds for the authority would be issued not by the authority but by the municipality or municipalities setting up the authority. AS 29.47.240(a) provides that a municipality may issue revenue bonds "for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation." Art. IX, § 11, of the Alaska Constitution also provides that the restrictions on contracting debt in article IX of the constitution do not apply to the issuance of revenue bonds by a public corporation of a political subdivision of the state. SB 352 provides that the bonds

would be issued by the authority itself but only after approval by the governing body of the municipality or municipalities creating the authority.

Question 4. What specific powers or activities outlined in SB 341 and SB 352 cannot be done under current law?

Answer: In SB 352, new AS 29.35.630(b) would create an exception to the public records provisions that may not otherwise be available. As noted earlier and in that same bill a port authority would be able to issue its own bonds. AS 29.47.-240(a) currently provides for a municipality to issue the bonds of its public corporations.

Question 5. Is the operation of a port authority an areawide, non-areawide, or service area power?

Answer: The operation of a port authority by a first or second class borough would be considered an areawide power regardless of whether the power was considered to be a transportation system (AS 29.35.200(b)(1) and 29.35.210(a)(1)) or another power acquired under AS 29.35.300. SB 352 provides that a municipality must first comply with AS 29.35.300 and add the power to operate a port authority before utilizing its provisions. A third class borough would only be able to operate a port authority on a service area basis. AS 29.35.220(d). The concepts of areawide and non-areawide powers have no application to cities, except that a home rule or general law city within a borough may not exercise a power if the power is being exercised on an areawide basis by the borough unless the borough ordinance provides otherwise. AS 29.35.250(b).

Question 6. What in SB 341 and SB 352 can be left to the municipality or municipalities to set forth in establishing a port authority?

Answer: Except as provided in answer to Question 4, a municipality or municipalities establishing a port authority could provide the structure they desired by ordinance.

Question 7. Would the a port authority as described in SB 341 and SB 352 be a municipality particularly as that term is used in AS 21.76 regarding joint insurance arrangements?

Answer: A port authority as envisioned by these bills would not be a municipality in and of themselves. Municipalities are classified in AS 29.04. A port authority of a municipality would probably be considered to be part of the municipality, even though the port authority is a public corporation and has separate status, just as public corporations of the state are considered for most purposes to be agencies of the state. An opposite opinion could be reached, though, so it might be

Senator Curt Menard
February 11, 1992
Page 3

wise to amend AS 21.76.010(a) to include any public corporations of a municipality that participates in the joint insurance arrangement.

If you have further questions, please contact me at your convenience.

GPL:gc
92-121.glc

Enclosure

7-LS1445M
Luckhaupt
2/26/92

CS FOR HOUSE BILL NO. 399 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BAKER, Larson, Choquette, B.Davis, C.Davis, Gonzales, Gruenberg, Hudson, Jacko, Mackie, M.A.Miller, G.Phillips, R.Phillips, Taylor, Ulmer, Zawacki, Sharp, Ivan, Kubina

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment of port authorities by municipalities; relating to
2 public corporations of a municipality; and providing for an effective date."

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

4 * Section 1. LEGISLATIVE FINDINGS AND POLICY. (a) The legislature finds that

5 (1) the development of ports for waterborne and other commerce is vital to attainment
6 of an efficient and effective transportation network in the state;

7 (2) the development of ports is vital to the economic well-being of the state and of the
8 future development of industry in the state;

9 (3) article X, sec. 13, Constitution of the State of Alaska, authorizes municipalities to
10 make agreements for cooperative or joint administration of functions or powers and, under that authority,
11 two or more municipalities may by agreement establish an authority;

12 (4) bond holders are not familiar with the state constitution and the authority granted to
13 municipalities under the state constitution;

14 (5) it is in the interest of the state to provide port authorities with the power to issue

1 revenue bonds when permitted by a municipality in a port authority enabling ordinance.

2 (b) It is the policy of the state and, in the interest of promoting the health, security, and general
3 welfare of all of the people of the state, a public purpose to provide a means for establishing a more
4 efficient transportation system and to encourage economic growth in the state, including the development
5 of its natural resources, by making it clear that municipalities are authorized to create municipal port
6 authorities with the power to acquire, construct, and operate ports for waterborne and other commerce
7 and to borrow money for the same.

8 * Sec. 2. AS 29.35 is amended by adding new sections to read:

9 ARTICLE 9. PORT AUTHORITIES.

10 Sec. 29.35.600. PURPOSE OF AUTHORITIES. The purpose of a port authority is to
11 provide for the development of a port or ports for waterborne and other commerce within the
12 territory of the authority.

13 Sec. 29.35.605. ESTABLISHMENT OF PORT AUTHORITIES. (a) A port authority
14 may be created by one of the following means:

15 (1) the governing body of a municipality may create by ordinance a port authority
16 as a public corporation of the municipality;

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

20 (b) One or more municipalities may join an authority established under (a)(1) or (2) of
21 this section upon the adoption of parallel ordinances by the governing bodies of each affected
22 municipality.

23 (c) A port authority created under this section is a body corporate and politic and an
24 instrumentality of the municipality or municipalities creating it but having a separate and
25 independent legal existence.

26 (d) Creation of a port authority under AS 29.35.600 - 29.35.730 is an exercise of a
27 municipality's transportation system powers.

28 (e) The enabling ordinance by which a port authority is established must specify the
29 powers, boundaries, and limitations of the port authority.

30 (f) An ordinance creating a port authority may require approval by the voters of the
31 municipality or municipalities participating in the authority in order for the authority to be

1 established.

2 Sec. 29.35.610. DISSOLUTION OF A PORT AUTHORITY. (a) The enabling
3 ordinance by which a port authority is created must provide for the manner by which a port
4 authority may be dissolved.

5 (b) If an authority ceases to exist, its assets shall be distributed to the municipalities that
6 participated in the authority in proportion to the difference between their contributions to the
7 authority and any outstanding debt or obligation of that municipality to the authority, provided
8 that any obligation to bondholders then outstanding shall first be satisfied in full.

9 Sec. 29.35.615. MUNICIPAL PROPERTY. (a) A municipality may transfer and
10 otherwise convey or lease real property, and any improvements to it, to an authority for use by
11 the authority for the purposes set out in the ordinance adopted under AS 29.35.605.

12 (b) A municipality may transfer and otherwise assign or lease personal property to an
13 authority for use by the authority for the purposes set out in the ordinance adopted under
14 AS 29.35.605.

15 Sec. 29.35.620. CONVEYANCE OF OTHER LAND TO PORT AUTHORITY. An
16 authority and a municipality participating in the authority may enter into an agreement with the
17 state, the federal government, or a person for the conveyance, transfer, or lease to the authority
18 of land that is necessary or useful for present or future purposes of the authority.

19 Sec. 29.35.625. POWERS. In addition to its other powers, and if provided in the
20 enabling ordinance, an authority may

21 (1) sue and be sued;

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

23 (3) adopt and amend bylaws for its organization and internal management;

24 (4) adopt regulations governing the exercise of its corporate powers;

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

27 (6) lease to others a project acquired by it and upon the terms and conditions the
28 authority may consider advisable, including, without limitation, provisions for purchase or
29 renewal;

30 (7) sell, by installment sale or otherwise, exchange, donate, convey, or encumber
31 in any manner by mortgage or by creation of another security interest, real or personal property

- 1 owned by it, or in which it has an interest, including a project, when, in the judgment of the
2 authority, the action is in furtherance of the authority's purposes;
- 3 (8) accept gifts, grants, or loans from, and enter into contracts or other
4 transactions regarding them, with a federal agency or an agency or instrumentality of the state,
5 a municipality, private organization, or other source;
- 6 (9) deposit or invest its funds, subject to agreements with bondholders;
- 7 (10) purchase or insure loans to finance the costs of projects;
- 8 (11) provide for security within the boundaries of the authority;
- 9 (12) enter into loan agreements with respect to one or more projects upon the
10 terms and conditions the authority considers advisable;
- 11 (13) acquire, manage, and operate projects as the authority considers necessary
12 or appropriate to serve the authority's purposes;
- 13 (14) assist private lenders to make loans to finance the costs of projects through
14 loan commitments, short-term financing, or otherwise;
- 15 (15) charge fees or other forms of remuneration for the use or possession of
16 projects in accordance with the agreements described in this section, other agreements relating
17 to the projects, covenants, or representations made in bond documents relating to the projects,
18 or regulations of the authority relating to the projects;
- 19 (16) exercise the power of eminent domain within its physical boundaries under
20 AS 29.35.030 to acquire land or materials for authority purposes;
- 21 (17) regulate land use within the boundaries of the authority; the power conferred
22 by this paragraph is exercised for the common health, safety, and welfare of the public and may
23 not be limited by the terms and conditions of leases, contracts, or other transactions;
- 24 (18) defend and indemnify a current or former member of the board, employee,
25 or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney
26 fees, incurred by or imposed upon that person in connection with civil or criminal action in
27 which the person is involved as a result of the person's affiliation with the authority if the person
28 acted in good faith on behalf of the authority and within the scope of the person's official duties
29 and powers;
- 30 (19) purchase insurance to protect and hold harmless its employees, agents, and
31 board members from an action, claim, or proceeding arising out of the performance, purported

1 performance, or failure to perform in good faith, of duties for, or employment with the authority
2 and to hold them harmless from expenses connected with the defense, settlement, or monetary
3 judgments from that action, claim, or proceeding; the purchase of insurance is subject to the
4 discretion of the board; insurance purchased under this paragraph may not be considered
5 compensation to the insured person; and

6 (20) protect its assets, services, and employees by purchasing insurance or
7 providing for certain self-insurance retentions; an authority may also maintain casualty, property,
8 business interruption, marine, boiler and machinery, pollution liability, and other insurance in
9 amounts reasonably calculated to cover potential claims against the authority or a municipality
10 for bodily injury, death or disability, and property damage that may arise from or be related to
11 authority operations and activities.

12 Sec. 29.35.630. BONDS OF A PORT AUTHORITY; SUPERIOR COURT
13 JURISDICTION. (a) If authorized by the enabling ordinance, an authority may borrow money
14 and may issue bonds on which the principal and interest are payable

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

17 (2) exclusively from the income and receipts of, or other money derived from,
18 designated projects or other sources whether or not they are financed, insured, or guaranteed in
19 whole or in part with the proceeds of the bonds; or

20 (3) from its income and receipts or other assets generally or a designated part or
21 parts of them.

22 (b) All bonds may be sold at public or private sale in the manner, for the price or prices,
23 and at the time or times that the authority may determine.

24 (c) Before issuing bonds, an authority shall provide for consideration by lease or
25 agreement at least sufficient, in the judgment of the authority, to pay the principal and interest
26 on the bonds as they become due and to create and maintain the reserve for the payment that
27 the authority considers necessary or desirable and meet all obligations in connection with the
28 lease or agreement and all costs necessary to service the bonds, unless the lease or agreement
29 provides that the obligations are to be met or costs are to be paid by a party other than the
30 authority.

31 (d) Bonds shall be authorized by resolution of the authority, be dated, and shall mature

1 as the resolution may provide, except that a bond may not mature more than 40 years from the
2 date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the
3 form, either coupon or registered, carry the registration privileges, be executed in the manner, be
4 payable in the medium of payment, at the place or places, and be subject to the terms of
5 redemption that the resolution or a subsequent resolution may provide.

6 (e) All bonds issued under this section, regardless of form or character, are negotiable
7 instruments for all of the purposes of AS 45.01 - AS 45.09 (Uniform Commercial Code).

8 (f) The superior court has jurisdiction to hear and determine suits, actions, or proceedings
9 relating to an authority, including suits, actions, or proceedings brought to foreclose or otherwise
10 enforce a mortgage, pledge, assignment, or security interest brought by or for the benefit or
11 security of a holder of the authority's bonds or by a trustee for or other representative of the
12 holders.

13 Sec. 29.35.635. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under
14 AS 29.35.630 are securities in which all public officers and public bodies of the state and its
15 political subdivisions, all insurance companies, trust companies, banks, investment companies,
16 executors, administrators, trustees, and other fiduciaries may properly and legally invest funds,
17 including capital in their control or belonging to them. The bonds may be deposited with a state
18 or municipal officer of an agency or political subdivision of the state for any purpose that the
19 deposit of bonds of the state is authorized by law.

20 Sec. 29.35.640. VALIDITY OF PLEDGE. The pledge of assets or revenue of an
21 authority to the payment of the principal or interest on bonds or notes of the authority is valid
22 and binding from the time the pledge is made, and the assets or revenue are immediately subject
23 to the lien of the pledge without physical delivery or further act. The lien of a pledge is valid
24 and binding against all parties having claims of any kind against the authority irrespective of
25 whether those parties have notice of the lien of the pledge.

26 Sec. 29.35.645. CREDIT OF STATE OR A MUNICIPALITY NOT PLEDGED. (a) The
27 state and municipalities participating in an authority are not liable for the debts of that authority.
28 Bonds issued under AS 29.35.630 are payable solely from the revenue or assets of the authority
29 and do not constitute a

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

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

1 (b) An authority may not pledge the credit or the taxing power of the state or its
2 municipalities. A bond issued under AS 29.35.630 must contain on its face a statement that

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

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

7 Sec. 29.35.650. PLEDGES OF THE STATE AND MUNICIPALITIES. The state and
8 municipalities participating in the authority pledge to and agree with the holders of bonds issued
9 under AS 29.35.630 and with the federal agency, if any, that loans or contributes funds in respect
10 to a project of the authority, that the state and the municipalities participating in the authority will
11 not limit or alter the rights and powers vested in the authority by its enabling ordinance or other
12 law so that it is unable to fulfill the terms of a contract made by the authority with those holders
13 or that federal agency, or in any way impair the rights and remedies of those holders or that
14 federal agency until the bonds, together with the interest on them and interest on unpaid
15 installments of interest, and all costs and expenses in connection with an action or proceeding
16 by or on behalf of those holders or that federal agency, are fully met and discharged. An
17 authority is authorized to include this pledge and agreement of the state and the municipalities
18 participating in the authority, insofar as it refers to holders of bonds of the authority, in a contract
19 with those holders, and insofar as it relates to a federal agency, in a contract with that federal
20 agency.

21 Sec. 29.35.655. LIMITATION OF LIABILITY. A liability incurred by an authority shall
22 be satisfied exclusively from the assets or revenue of the authority. A creditor or other person
23 does not have a right of action against the state or a municipality participating in an authority
24 because of a debt, obligation, or liability of an authority.

25 Sec. 29.35.660. FIDELITY BOND. An authority shall obtain a fidelity bond in an
26 amount determined by the board for board members and each executive officer responsible for
27 accounts and finances of that authority. A fidelity bond must be in effect during the entire tenure
28 in office of the bonded person.

29 Sec. 29.35.665. NO TAXING AUTHORITY. An authority may not levy an income or
30 other tax.

31 Sec. 29.35.670. EXEMPTION FROM TAXATION. (a) An authority exercising the

1 powers granted under AS 29.35.600 - 29.35.730 is in all respects for the benefit of the people
2 of the municipalities participating in the authority and the people of the state in general, for their
3 well-being and prosperity, and for the improvement of their social and economic condition. The
4 real and personal property of an authority and its assets, income, and receipts are exempt from
5 all taxes of the state or a political subdivision of the state.

6 (b) Bonds issued by the authority under AS 29.35.630 are issued for an essential public
7 and governmental purpose; therefore, the bonds, interest and income from them, and all fees,
8 charges, funds, revenue, income, and other money pledged or available to pay or secure the
9 payment of the bonds or interest on them are exempt from taxation except for inheritance,
10 transfer, and estate taxes.

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

15 (d) Nothing in this section creates a tax exemption with respect to the interests of a
16 business enterprise or other person, other than the authority, in property, assets, income, or
17 receipts, whether or not financed under AS 29.35.600 - 29.35.730.

18 Sec. 29.35.675. DEVELOPMENT PLAN. In the enabling ordinance establishing the
19 authority under AS 29.35.605 the authority may be

20 (1) required to submit a development plan to the governing body of the
21 municipality or municipalities participating in the authority; or

22 (2) prohibited from undertaking the construction or acquisition of a project unless
23 the project appears in a development plan submitted to and approved by the governing body of
24 the municipality or municipalities participating in the authority.

25 Sec. 29.35.680. ADMINISTRATION OF PORT AUTHORITIES; BOARD. (a) An
26 authority shall be governed by a board of directors, which shall exercise the powers of the
27 authority. The enabling ordinances establishing the authority under AS 29.35.605 must specify
28 the number, qualifications, manner of appointment or election, and terms of members of the
29 board.

30 (b) The board shall appoint a chief executive officer of the authority who serves at the
31 pleasure of the board. The board shall fix the compensation of the chief executive officer.

1 Sec. 29.35.68. CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS.

2 A collective bargaining agreement for employees of the state or its political subdivisions who are
3 transferred to an authority under AS 29.35.600 - 29.35.725 shall remain in effect for the term of
4 the agreement and shall be binding on the authority.

5 Sec. 29.35.690. BYLAWS AND REGULATIONS. (a) A board shall adopt bylaws and
6 appropriate regulations to carry out its functions and the purposes of AS 29.35.600 - 29.35.730,
7 including regulations to safeguard property owned, managed, or transported by the authority and
8 to protect employees and persons using the authority's property or services.

9 (b) A board shall adopt bylaws as soon after the establishment of the authority as
10 possible and may from time to time, amend those bylaws. The bylaws may contain any
11 provision not in conflict with law for the management of the business of the authority and for
12 the conduct of the affairs of the authority, including

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

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

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

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

19 (5) procedures for adopting regulations;

20 (6) procedures for adopting bylaws;

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

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

23 Sec. 29.35.695. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided
24 under (b) of this section, information in the possession of an authority is public and is open to
25 public inspection at reasonable times.

26 (b) Notwithstanding AS 09.25.100 - 09.25.220, an authority may through its bylaws or
27 by regulation designate and withhold public disclosure of matters of a privileged or proprietary
28 nature. Those matters include personnel records, communications with and work product of legal
29 counsel, and other information including proprietary information associated with specific shippers
30 and contract rate agreements.

31 Sec. 29.35.700. ANNUAL REPORT. Within 90 days following the end of the fiscal year

1 of an authority, the board shall distribute to the mayor and governing body of each municipality
2 participating in the authority a report describing the operations and financial condition of the
3 authority during the preceding fiscal year. The report may include suggestions for legislation
4 relating to the structure, powers, or duties of the authority or operation of facilities of the
5 authority. Subject to AS 29.35.695, the report must itemize the cost of providing each category
6 of service offered by the authority and the income generated by each category.

7 Sec. 29.35.705. AUDITS. (a) The board shall have the financial records of an authority
8 audited annually by an independent certified public accountant.

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

11 Sec. 29.35.710. REMEDIES. A holder of bonds or notes or coupons attached to the
12 bonds issued by an authority under AS 29.35.630, and a trustee under a trust agreement or
13 resolution authorizing the issuance of the bonds, except as restricted by a trust agreement or
14 resolution, either at law or in equity, may

15 (1) enforce all rights granted under AS 29.35.600 - 29.35.730, the trust agreement
16 or resolution, or another contract executed by the authority; and

17 (2) compel the performance of all duties of the authority required by
18 AS 29.35.600 - 29.35.730 or the trust agreement or resolution.

19 Sec. 29.35.715. CLAIMS. For the purpose of actionable claims, undertakings, payments
20 of judgments, execution, interest, punitive damages, statutes of limitations, bonds, costs, and
21 similar matters related to the presentation and prosecution of claims by and against an authority,
22 an authority and its board members and employees enjoy the same rights, privileges, and
23 immunities as a municipality and municipal officers.

24 Sec. 29.35.720. CONFLICTING LAWS INAPPLICABLE. If provisions of
25 AS 29.35.600 - 29.35.730 conflict with the provisions of other state law, the provisions
26 AS 29.35.600 - 29.35.730 prevail.

27 Sec. 29.35.725. DEFINITIONS. In AS 29.35.600 - 29.35.730, unless the context
28 otherwise requires,

29 (1) "authority" means a port authority established under AS 29.35.605;

30 (2) "board" means the board of directors of an authority;

31 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding bonds, or

1 other forms of indebtedness of the authority;

2 (4) "bylaws" or "bylaws of the authority" means the guidelines adopted by and
3 amended by the board from time to time in accordance with AS 29.35.600 - 29.35.730;

4 (5) "port" means a facility of commerce located within the state;

5 (6) "project" means a port, dock, and administrative facilities, including property
6 necessary in connection with the operation of a port;

7 (7) "project cost" or "cost of a project" means all or any part of the aggregate
8 costs determined by an authority to be necessary to finance the construction or acquisition of a
9 project, including without limitation to the cost of acquiring real property, the cost of constructing
10 buildings and improvements, the cost of financing the project, including, without limitation,
11 interest charges before, during, or after construction or acquisition of the project, costs related
12 to the determination of the feasibility, planning, design, or engineering of the project and, to the
13 extent determined necessary by the authority, administrative expenses, the cost of machinery or
14 equipment to be used in the operation or rehabilitation of a port, and all other costs, charges,
15 fees, and expenses that may be determined by the authority to be necessary to finance the
16 construction or acquisition;

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

20 (9) "regulation" means a standard of general application or the amendment,
21 supplement, revision, or repeal of a standard adopted by an authority to implement, interpret, or
22 made specific the law enforced or administered by it or to govern its procedure.

23 Sec. 29.35.730. SHORT TITLE. AS 29.35.600 - 29.35.730 may be referred to as the
24 Municipal Port Authority Act.

25 * Sec. 3. AS 21.76.010(a) is amended to read:

26 (a) Municipalities and their public corporations, city and borough school districts, and
27 regional educational attendance areas may enter into cooperative agreements with each other for
28 the purpose of establishing, operating, or participating in joint insurance arrangements through
29 which the participating members agree to pool contributions in order to either assume risks from
30 losses to the participants on a group basis or purchase coverage for the participants on a group
31 basis.

1 * Sec. 4. AS 29.45.030(a) is amended to read:

2 (a) The following property is exempt from general taxation:

3 (1) municipal property, including property held by a public corporation of a
4 municipality, or state property, except that

5 (A) a private leasehold, contract, or other interest in the property is taxable
6 to the extent of the interest;

7 (B) notwithstanding any other provision of law, property acquired by an
8 agency, corporation, or other entity of the state through foreclosure or deed in lieu of
9 foreclosure and retained as an investment of a state entity is taxable; this subparagraph
10 does not apply to federal land granted to the University of Alaska under AS 14.40.380
11 or 14.40.390, or to other land granted to the university by the state to replace land that
12 had been granted under AS 14.40.380 or 14.40.390;

13 (C) an ownership interest of a municipality in real property located outside
14 the municipality acquired after December 31, 1990, is taxable by another municipality;
15 however, a borough may not tax an interest in real property located in the borough and
16 owned by a city in that borough;

17 (2) household furniture and personal effects of members of a household;

18 (3) property used exclusively for nonprofit religious, charitable, cemetery,
19 hospital, or educational purposes;

20 (4) property of a nonbusiness organization composed entirely of persons with 90
21 days or more of active service in the armed forces of the United States whose conditions of
22 service and separation were other than dishonorable, or the property of an auxiliary of that
23 organization;

24 (5) money on deposit;

25 (6) the real property of certain residents of the state to the extent and subject to
26 the conditions provided in (e) of this section;

27 (7) real property or an interest in real property that is exempt from taxation under
28 43 U.S.C. 1620(d), as amended;

29 (8) property of a political subdivision, agency, corporation, or other entity of the
30 United States to the extent required by federal law; except that a private leasehold, contract, or
31 other interest in the property is taxable to the extent of that interest.

1 * Sec. 5. AS 38.05.810 is amended by adding a new subsection to read:

2 (i) Subject to AS 38.05.820, the commissioner shall lease state land, including tideland,
3 to a port authority established under AS 29.35.600 - 29.35.730, if the state land is within the
4 physical boundaries of the authority and is needed by the authority for purposes provided in
5 AS 29.35.600 - 29.35.730. A lease of state land under this section may be for less than the
6 appraised market value.

7 * Sec. 6. AS 44.85.410(3) is amended to read:

8 (3) "municipal bond" means a bond or note or evidence of debt that constitutes

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

14 (B) a revenue bond, except a revenue bond for electrical generation
15 purposes other than diesel-powered generation, issued by a municipality or a port
16 authority that [WHICH] pledges the revenue of a revenue-producing capital
17 improvement and that [WHICH] is payable solely from the revenue of the
18 revenue-producing capital improvement;

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

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

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

24 (i) special assessments on benefited property;

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

26 (iii) a lease for equipment or building improvements if the state is

27 not a lessee;

28 * Sec. 7. This act takes effect immediately under AS 01.10.070(c).

Amendment #1

Page 1, Line 5 Delete "and other" after "waterborne"
Page 2, Line 3 Delete "and other" after "waterborne"
Page 3, Line 3 Delete "and other" after "waterborne"
Page 12, Line 15 Add "waterborne" between "of" and
"commerce"

Amendment #2

Page 2, Line 8 Add ",subject to voter approval," after
"ordinance"
Page 2, Line 13 Add ",and subject to voter approval," after
"bodies"
Page 2, Line 18 Add "subject to voter approval" after
"municipality"

Amendment #3

Page 11, Line 26 Delete "(2) AS 23.40.070-23.40.260" and
renumber accordingly.

Amendment #4

Page 11, Line 26 Delete "(2) AS 23.40.070-23.40.260" and
renumber accordingly.

R.G.P. Adopting Amend:

See overl. cont

TESTIMONY OF THE

ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT
ALASKA STATE EMPLOYEES ASSOCIATION/AFSCME LOCAL #52
PUBLIC EMPLOYEES LOCAL #71

on

CS for HOUSE BILL 399 (TRANSPORTATION)
"MUNICIPAL PORT AUTHORITIES"

before the

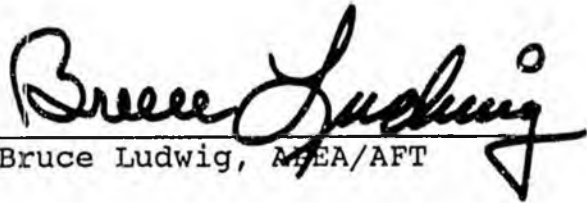
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

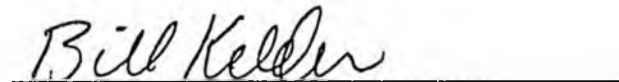
We appreciate the opportunity to address the committee on CSHB 399 (Transportation) which enables municipalities to create Port Authorities to develop our ports in an orderly and efficient manner. This is a worthwhile endeavor and deserves the attention of the Legislature, and the support of the public. However, because of some very serious concerns we have about the bill as currently drafted, we cannot support, and will actively oppose CSHB 399 (Transportation).

These concerns are:

1. While specifically specifying "ports for waterborne commerce," the bill also includes "ports for other commerce." whatever that is. This could also include airports, highways and other modes of transportation. We recommend limiting the use of Authorities at this time to waterborne facilities.
2. CSHB 399 (Tra) allows authorities to be created by simple ordinance, without voter approval. Because of the possible liability to the municipality, potential loss of tax base and other impacts upon a municipality, we believe that the establishment of a Port Authority should be approved by the voters. A public vote will ensure a complete disclosure of the effects and impact of creating a Port Authority on the affected municipality, and its citizens.
3. CSHB 399 (Tra) specifically denies employees of an authority the right to bargain collectively over their wages, hours and working conditions. This is a basic right enjoyed by most Americans. This bill will take that right away. This is unacceptable.
4. CSHB 399 (Tra) specifically excludes Authority employees access to the Public Employees Retirement System, State Health Insurance, Supplemental Benefit System and other rights guaranteed by Title 39. This, too, is unacceptable.

While we agree with the concept of municipalities being permitted the opportunity to establish Port Authorities, we are adamantly opposed to CSHB 399 (Tra) as currently written, and respectfully request this Committee to modify the bill to address the concerns we are raising.


Bruce Ludwig, ASEA/AFT


Bill Kelder, ASEA/AFSCME


Ed Flahigan, Local #71