

HB399

Bill in HFC-1992

7-LS1445\G

HOUSE BILL NO. 399

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES BAKER, Larson, Choquette, B.Davis, C.Davis, Gonzales, Gruenberg, Hudson, Jacko, Mackie, M.A.Miller, G.Phillips, R.Phillips, Taylor, Ulmer, Zawacki

Introduced: 1/15/92

Referred: Transportation, Community & Regional Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment of port authorities by municipalities; and providing
2 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 the cooperative or joint administration of functions or powers and, under that
11 authority, two or more municipalities may by agreement establish an authority in accordance with this
12 Act.

13 (b) It is the policy of the state and, in the interest of promoting the health, security, and general
14 welfare of all of the people of the state, a public purpose to provide the means for establishing a more

1 efficient transportation system and to encourage economic growth in the state, including the development
2 of its natural resources, by authorizing municipalities to create municipal port authorities with power to
3 acquire and construct ports for waterborne and other commerce, to borrow money for the same, and
4 otherwise to exercise the powers, duties, and functions as provided in this Act.

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

6 ARTICLE 9. PORT AUTHORITIES.

7 Sec. 29.35.600. ESTABLISHMENT OF PORT AUTHORITIES; BOARD. (a) The
8 governing body of a municipality may create by ordinance a port authority as a public
9 corporation. An authority established under this subsection shall have the name of the
10 municipality followed by the words "Municipal Port Authority."

11 (b) The governing bodies of two or more municipalities may create by parallel ordinances
12 adopted by each of the governing bodies a port authority as a public corporation. An authority
13 established under this subsection shall have the name, or a significant part of the name, of each
14 municipality or a similar geographical phrase followed by the words "Municipal Port Authority."

15 (c) One or more additional municipalities may join an authority established under (a) or
16 (b) of this section upon the adoption of parallel ordinances by the governing bodies of each
17 affected municipality.

18 (d) A port authority created under this section is a body corporate and politic and an
19 instrumentality of the municipality or municipalities creating it but having a separate and
20 independent legal existence.

21 (e) A municipality that may add port powers only after complying with AS 29.35.300 -
22 29.35.350 shall comply with those provisions before exercising powers under AS 29.35.600 -
23 29.35.795.

24 (f) An authority shall be governed by a board of directors, which shall exercise the
25 powers of the authority. The ordinances adopted under (a) - (c) of this section must specify the
26 number, qualifications, manner of appointment, and terms of members of the board.

27 (g) At least one member of a board must be a person with at least five years of
28 experience in port management, who may be a person who is not a state resident. All other
29 members of a board must be state residents.

30 (h) Nothing in AS 29.35.600 - 29.35.795 authorizes a municipality to exercise a power
31 that has not been granted under those provisions.

1 Sec. 29.35.605. PURPOSE OF AUTHORITIES. The purpose of an authority is to
2 provide for the development of a port or ports for waterborne and other commerce within the
3 territory of the authority.

4 Sec. 29.35.610. POWERS. In addition to its other powers, an authority may

- 5 (1) sue and be sued;
- 6 (2) have a seal and alter it at pleasure;
- 7 (3) adopt and amend bylaws for its organization and internal management;
- 8 (4) adopt regulations governing the exercise of its corporate powers;
- 9 (5) acquire an interest in a project as necessary or appropriate to provide financing
10 for the project, whether by purchase, gift, or lease;
- 11 (6) lease to others a project acquired by it for the rentals and upon the terms and
12 conditions the authority may consider advisable, including, without limitation, provisions for
13 adoptions to purchase or renew;
- 14 (7) issue bonds and otherwise incur indebtedness in order to pay the cost of a
15 project or projects or in order to provide money for the authority's purposes under
16 AS 29.35.600 - 29.35.795 and to secure payment of the bonds or other indebtedness as provided
17 in AS 29.35.600 - 29.35.795;
- 18 (8) sell, by installment sale or otherwise, exchange, donate, convey, or encumber
19 in any manner by mortgage or by creation of another security interest, real or personal property
20 owned by it, or in which it has an interest, including a project, when, in the judgment of the
21 authority, the action is in furtherance of its corporate purposes;
- 22 (9) accept gifts, grants, or loans from, and enter into contracts or other
23 transactions regarding them, with a federal agency or an agency or instrumentality of the state,
24 a municipality, private organization, or other source;
- 25 (10) deposit or invest its funds, subject to agreements with bondholders;
- 26 (11) purchase or insure loans to finance the costs of projects;
- 27 (12) own, operate, regulate, and exercise police powers with respect to a port or
28 ports to the extent provided in the ordinance or ordinances adopted under AS 29.35.600;
- 29 (13) enter into loan agreements with respect to one or more projects upon the
30 terms and conditions the authority considers advisable;
- 31 (14) acquire, manage, and operate projects as the authority considers necessary

1 or appropriate to serve a public purpose;

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

4 (16) accept gifts, grants, or loans from any source;

5 (17) enter into contracts or other transactions with a federal agency, an agency
6 or instrumentality of the state or a municipality, or a private organization or other entity
7 consistent with the exercise of a power under AS 29.35.600 - 29.35.795;

8 (18) charge fees or other forms of remuneration for the use or possession of
9 projects in accordance with the agreements described in this section, other agreements relating
10 to the projects, covenants, or representations made in bond documents relating to the projects,
11 or regulations of the authority relating to the projects; and

12 (19) enter into contracts or agreements with respect to the exercise of its powers,
13 and do all things necessary or convenient to carry out its corporate purposes and exercise the
14 powers granted in AS 29.35.600 - 29.35.795.

15 Sec. 29.35.615. CHIEF EXECUTIVE OFFICER AND EMPLOYEES. (a) The board
16 shall appoint a chief executive officer of the authority who serves at the pleasure of the board.
17 The board shall fix the compensation of the chief executive officer.

18 (b) The chief executive officer of an authority may appoint and fix the compensation for
19 other employees. The compensation for an employee appointed under this subsection is subject
20 to board approval.

21 Sec. 29.35.620. DUTIES OF CHIEF EXECUTIVE OFFICER. The board shall establish
22 by bylaw the duties and responsibilities of the chief executive officer, which must include those
23 powers and duties necessary or appropriate for the management of the daily affairs and operations
24 of the authority. A board may, through the bylaws, require that the exercise of a specific power,
25 duty, or responsibility is subject to board approval.

26 Sec. 29.35.625. BYLAWS AND REGULATIONS. (a) A board shall adopt bylaws and
27 appropriate regulations to carry out its functions and the purposes of AS 29.35.600 - 29.35.795,
28 including regulations to safeguard property owned, managed, or transported by the authority and
29 to protect employees and persons using the authority's property or services.

30 (b) A board shall adopt bylaws as soon after the establishment of the authority as
31 possible and may from time to time amend those bylaws. The bylaws may contain any provision

1 not in conflict with law for the management of the business of the authority and for the conduct
2 of the affairs of the authority, including

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

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

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

7 (4) the appointment, duties, compensation, and tenure of officers;

8 (5) procedures for adopting regulations;

9 (6) procedures for amendment of the bylaws;

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

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

12 Sec. 29.35.630. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided
13 under (b) of this section, information in the possession of an authority is public and is open to
14 public inspection at reasonable times.

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

20 Sec. 29.35.635. ANNUAL REPORT. Within 90 days following the end of the fiscal year
21 of an authority, the board shall distribute to the mayor and governing body of each municipality
22 participating in the authority a report describing the operations and financial condition of the
23 authority during the preceding fiscal year. The report may include suggestions for legislation
24 relating to the structure, powers, or duties of the authority or operation of facilities of the
25 authority. Subject to AS 29.35.630, the report must itemize the cost of providing each category
26 of service offered by the authority and the income generated by each category.

27 Sec. 29.35.640. AUDITS. (a) The board shall have the financial records of an authority
28 audited annually by an independent certified public accountant experienced in port authority
29 accounting. The board shall have an annual performance audit conducted by a recognized port
30 management expert to assure that the authority is being managed and operated effectively and
31 efficiently in accordance with the requirements of law and that each appropriation is used to

1 directly support those services for which the appropriation was requested.

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

4 Sec. 29.35.645. MUNICIPAL PROPERTY. (a) A municipality may transfer and
5 otherwise convey or lease real property and any improvements to it to an authority for use by
6 the authority and enter into necessary agreements respecting the property within the purposes set
7 out in the ordinance adopted under AS 29.35.600.

8 (b) A municipality may transfer and otherwise assign or lease personal property to an
9 authority for use by the authority and enter into necessary agreements respecting the property
10 within the purposes set out in the ordinance adopted under AS 29.35.600.

11 Sec. 29.35.650. CONVEYANCE OF OTHER LAND TO AUTHORITY. An authority
12 and a municipality participating in the authority may enter into an agreement with the state, the
13 federal government, or a person for the conveyance, transfer, or lease to the authority of land that
14 is necessary or useful for present or future purposes of the authority.

15 Sec. 29.35.655. EMINENT DOMAIN. (a) An authority may exercise the power of
16 eminent domain under AS 09.55.240 - 09.55.460 to acquire land for authority purposes consistent
17 with AS 29.35.600 - 29.35.795. Notwithstanding AS 09.55.250, an authority may acquire a fee
18 simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary
19 to carry out the purposes of AS 29.35.600 - 29.35.795.

20 (b) An authority may file a declaration of taking in the manner provided for the state
21 under AS 09.55.420.

22 (c) The power of eminent domain conferred under this section includes the power to
23 obtain clay, gravel, sand, timber, rock, or other material for the operation of the authority, the
24 land necessary to obtain the material, and access to the land and material.

25 Sec. 29.35.660. LAND USE REGULATIONS. A board may adopt exclusive regulations
26 governing land use by parties having interest in or permits for land owned or managed by an
27 authority. The power conferred by this section is exercised for the common health, safety, and
28 welfare of the public and, to the extent constitutionally permissible, may not be limited by the
29 terms and conditions of leases, contracts, or other transactions.

30 Sec. 29.35.665. LIMITATION OF LIABILITY. A liability incurred by an authority shall
31 be satisfied exclusively from the assets or revenue of the authority. A creditor or other person

1 does not have a right of action against the state or a municipality participating in an authority
2 because of a debt, obligation, or liability of an authority.

3 Sec. 29.35.670. FIDELITY BOND. An authority shall obtain a fidelity bond in an
4 amount determined by the board for board members and each executive officer responsible for
5 accounts and finances of that authority. A fidelity bond must be in effect during the entire tenure
6 in office of the bonded person.

7 Sec. 29.35.675. INDEMNIFICATION. An authority may defend and indemnify a current
8 or former member of the board, employee, or agent of the authority against all costs, expenses,
9 judgments, and liabilities, including attorney fees, incurred by or imposed upon that person in
10 connection with a civil or criminal action in which the person is involved as a result of the
11 person's affiliation with the authority if the person acted in good faith on behalf of the authority
12 and within the scope of the person's official duties or powers.

13 Sec. 29.35.680. INSURANCE. (a) An authority may purchase insurance to protect and
14 hold harmless its employees, agents, and board members from an action, claim, or proceeding
15 arising out of the performance, purported performance, or failure of performance in good faith,
16 of duties for, or employment with the authority and to hold them harmless from expenses
17 connected with the defense, settlement, or monetary judgments from that action, claim, or
18 proceeding. The purchase of insurance is subject to the discretion of the board. Insurance
19 purchased under this subsection may not be considered compensation to the insured person.

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

26 Sec. 29.35.685. NO TAXING AUTHORITY. An authority may not levy an income or
27 other tax.

28 Sec 29.35.690. BONDS OF A PORT AUTHORITY. (a) An authority may borrow
29 money and may issue bonds on which the principal and interest are payable

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

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

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

6 (b) Bonds shall be authorized by resolution of the authority, be dated, and shall mature
7 as the resolution may provide, except that a bond may not mature more than 40 years from the
8 date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the
9 form, either coupon or registered, carry the registration privileges, be executed in the manner, be
10 payable in the medium of payment, at the place or places, and be subject to the terms of
11 redemption that the resolution or a subsequent resolution may provide.

12 (c) All bonds, regardless of form or character, shall be negotiable instruments for all of
13 the purposes of AS 45.01 - AS 45.09 (Uniform Commercial Code).

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

16 (e) Before issuing bonds, an authority shall provide for consideration at least sufficient,
17 in the judgment of the authority, to pay the principal and interest on the bonds as they become
18 due and to create, maintain the reserves for the payment that the authority considers necessary
19 or desirable, and meet all obligations in connection with the lease or agreement and all costs
20 necessary to service the bonds, unless the lease or agreement provides that the obligations are
21 to be met or costs are to be paid by a party other than the authority.

22 (f) The superior court shall have jurisdiction to hear and determine suits, actions, or
23 proceedings relating to an authority, including suits, actions, or proceedings brought to foreclose
24 or otherwise enforce a mortgage, pledge, assignment, or security interest brought by or for the
25 benefit or security of a holder of the authority's bonds or by a trustee for or other representative
26 of the holders.

27 Sec. 29.35.695. DEVELOPMENT PLAN. (a) Before undertaking the construction and
28 acquisition of a project, an authority shall prepare a development plan for submission to the
29 governing body or governing bodies that created it. The development plan must contain

30 (1) a description of the proposed project;

31 (2) a description of any existing improvements in the project area to be affected

1 by the project;

2 (3) an estimate of the project cost and a statement of the proposed method of
3 financing and the proposed lease or other contractual arrangements with respect to the project.

4 (b) Upon receipt of a development plan from an authority, the governing body shall hold
5 a public hearing and shall thereafter either approve or reject the plan or approve it with
6 modification.

7 Sec. 29.35.700. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under
8 AS 29.35.690 are securities in which all public officers and public bodies of the state and its
9 political subdivisions, all insurance companies, trust companies, banks, investment companies,
10 executors, administrators, trustees, and other fiduciaries may properly and legally invest funds,
11 including capital in their control or belonging to them. The bonds may be deposited with a state
12 or municipal officer of an agency or political subdivision of the state for any purpose that the
13 deposit of bonds of the state is authorized by law.

14 Sec. 29.35.705 VALIDITY OF PLEDGE. The pledge of assets or revenue of an
15 authority to the payment of the principal or interest on bonds or notes of the authority is valid
16 and binding from the time the pledge is made, and the assets or revenue are immediately subject
17 to the lien of the pledge without physical delivery or further act. The lien of a pledge is valid
18 and binding against all parties having claims of any kind against the authority irrespective of
19 whether those parties have notice of the lien of the pledge.

20 Sec. 29.35.710. CREDIT OF STATE OR A MUNICIPALITY NOT PLEDGED. (a) The
21 state and municipalities participating in an authority are not liable for the debts of that authority.
22 Bonds issued under AS 29.35.690 are payable solely from the revenue or assets of the authority
23 and do not constitute a

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

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

26 (b) An authority may not pledge the credit or the taxing power of the state or its
27 municipalities. A bond issued under AS 29.35.600 - 29.35.795 must contain on its face a
28 statement that

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

31 (2) the faith and credit or the taxing power of the state or of a political

1 subdivision of the state is not pledged to the payment of it.

2 Sec. 29.35.715. PLEDGES OF THE STATE AND MUNICIPALITIES. The state and
3 municipalities participating in the authority pledge to and agree with the holders of bonds issued
4 under AS 29.35.690 and with the federal agency, if any, that loans or contributes funds in respect
5 to a project of the authority, that the state and the municipalities participating in the authority will
6 not limit or alter the rights and powers vested in the authority by AS 29.35.600 - 29.35.795 to
7 fulfill the terms of a contract made by the authority with those holders or that federal agency,
8 or in any way impair the rights and remedies of those holders or that federal agency until the
9 bonds, together with the interest on them and interest on unpaid installments of interest, and all
10 costs and expenses in connection with an action or proceeding by or on behalf of those holders
11 or that federal agency, are fully met and discharged. An authority is authorized to include this
12 pledge and agreement of the state and the municipalities participating in the authority, insofar as
13 it refers to holders of bonds of the authority, in a contract with those holders, and insofar as it
14 relates to a federal agency, in a contract with that federal agency.

15 Sec. 29.35.720. EXEMPTION FROM TAXATION. (a) The exercise of the powers
16 granted under AS 29.35.600 - 29.35.795 is in all respects for the benefit of the people of the
17 municipalities participating in the authority and the people of the state in general, for their well-
18 being and prosperity, and for the improvement of their social and economic condition. The real
19 and personal property of an authority and its assets, income, and receipts are exempt from all
20 taxes and special assessments of the state or a political subdivision of the state.

21 (b) Bonds issued by the authority under AS 29.35.690 are issued for an essential public
22 and governmental purpose; therefore, the bonds, interest and income from them, and all fees,
23 charges, funds, revenue, income, and other money pledged or available to pay or secure the
24 payment of the bonds or interest on them are exempt from taxation except for inheritance,
25 transfer, and estate taxes.

26 (c) Notwithstanding the provisions of (a) of this section, an authority and a municipality
27 participating in the authority may enter into agreements under which the authority agrees to pay
28 the municipality payments in lieu of taxes on real and personal property of the authority that is
29 within the taxing jurisdiction of the municipality. Payments made under this subsection may only
30 be used for police and fire protection, construction and maintenance of roads, utilities, sidewalks,
31 and similar improvements within the boundaries of the authority.

1 (d) Nothing in this section creates a tax exemption with respect to the interests of a
2 business enterprise or other person, other than the authority, in property, assets, income, receipts,
3 or off-street parking facility, whether or not financed under AS 29.35.600 - 29.35.795.

4 Sec. 29.35.725. REMEDIES. A holder of bonds or notes issued by an authority under
5 AS 29.35.600 - 29.35.795 or coupons attached to the bonds, and a trustee under a trust agreement
6 or resolution authorizing the issuance of the bonds, except as restricted by a trust agreement or
7 resolution, either at law or in equity, may

8 (1) enforce all rights granted under AS 29.35.600 - 29.35.795, the trust agreement
9 or resolution, or another contract executed by the authority; and

10 (2) compel the performance of all duties of the authority required by
11 AS 29.35.600 - 29.35.795 or the trust agreement or resolution.

12 Sec. 29.35.730. LIMITATION ON PERSONAL LIABILITY. A board member or
13 employee of an authority is not subject to personal liability or accountability because of the
14 execution or issuance of bonds.

15 Sec. 29.35.740. CLAIMS. For the purpose of actionable claims, undertakings, payments
16 of judgments, execution, interest, punitive damages, statutes of limitations, bonds, costs, and
17 similar matters related to the presentation and prosecution of claims by and against an authority,
18 an authority and its board members and employees enjoy the same rights, privileges, and
19 immunities as a municipality and municipal officers.

20 Sec. 29.35.750. APPLICATION OF EXISTING LAWS. Unless specifically provided
21 otherwise in AS 29.35.600 - 29.35.795, the following laws do not apply to the operations of an
22 authority:

- 23 (1) AS 19;
24 (2) AS 23.40.070 - 23.40.260
25 (3) AS 35;
26 (4) AS 38;
27 (5) AS 39.

28 Sec. 29.35.760. CONFLICTING LAWS INAPPLICABLE. If provisions of
29 AS 29.35.600 - 29.35.795 conflict with the provisions of other state law, the provisions of
30 AS 29.35.600 - 29.35.795 prevail.

31 Sec. 29.35.770. DISTRIBUTION OF ASSETS. If an authority ceases to exist, its assets

1 shall be distributed to the municipalities that participated in the authority in proportion to the
2 difference between their contributions to the authority and any outstanding debt or obligation of
3 that municipality to the authority, provided that any obligation to bondholders then outstanding
4 shall first be satisfied in full.

5 Sec. 29.35.790. DEFINITIONS. In AS 29.35.600 - 29.35.795, unless the context
6 otherwise requires,

7 (1) "authority" means a port authority established under AS 29.35.600;

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

9 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding bonds, or
10 other forms of indebtedness of the authority;

11 (4) "bylaws" or "bylaws of the authority" means the guidelines adopted by and
12 amended by the board from time to time in accordance with AS 29.35.600 - 29.35.795;

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

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

16 (7) "project cost" or "cost of a project" means all or any part of the aggregate
17 costs determined by an authority to be necessary to finance the construction or acquisition of a
18 project, including without limitation the cost of acquiring real property, the cost of constructing
19 buildings and improvements, the cost of financing the project, including, without limitation,
20 interest charges before, during, or after construction or acquisition of the project, costs related
21 to the determination of the feasibility, planning, design, or engineering of the project and, to the
22 extent determined necessary by the authority, administrative expenses, the cost of machinery or
23 equipment to be used in the operation or rehabilitation of a port, and all other costs, charges,
24 fees, and expenses that may be determined by the authority to be necessary to finance the
25 construction or acquisition;

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

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

1 Sec. 29.35.795. SHORT TITLE. AS 29.35.600 - 29.35.795 may be referred to as the
2 Municipal Port Authority Act.

3 * Sec. 3. AS 44.85.410(3) is amended to read as follows:

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

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

15 (C) a general obligation bond or revenue bond combined or additionally
16 secured;

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

19 (E) an obligation of a municipality secured only by
20 (i) special assessments on benefited property;
21 (ii) tax increments and a letter of credit or equal security; or
22 (iii) a lease for equipment or building improvements if the state is
23 not a lessee;

24 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

Revision Date:

Department Affected: DOT&PF

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

BRU: Headquarters

Sponsor: Representative Baker

Component: Plans, Programs & Budget

Requestor: Representative Baker

Component Serial Number: 0542

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY93 | FY94 | FY95 | FY96 | FY97 | FY98 |
|-------------------------|----------|----------|----------|----------|----------|----------|
| 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 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|--------------|---|---|---|---|---|---|
| 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: Ron Lind

Phone: 465-2171

Division: DOT&PF, Plans, Programs and Budget

Date: 2/11/92

Approved by the Commissioner: Frank G. Turpin

Phone: 465-3900

Frank G. Turpin

Agency: Department of Transportation and Public Facilities

Date: 2-12-92

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

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

March 9, 1992

SUBJECT: HB 399 - Sectional Summary
(Work Order No. 17-LS1445\P)

TO: Representative Larry Baker
Attn: Eric Musser

FROM: Jerry Luckhaupt *JLS*
Legislative Counsel

You have requested a sectional summary of HB 399, an Act relating to the establishment of port authorities by municipalities. Be advised that a sectional summary is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill contains findings and policy.

Section 2 of the bill contains the statutory "meat" of the bill.

AS 29.35.600 provides a purpose clause.

AS 29.35.605 provides for the establishment of a port authority by one or more municipalities. This section also establishes that the authority is a public corporate entity of the municipality or municipalities creating it.

AS 29.35.610 provides for the dissolution of the authority.

AS 29.35.615 permits a municipality to transfer property to an authority.

AS 29.35.620 permits other public or private land to be conveyed by agreement to the authority.

AS 29.35.625 sets forth various powers of the authority if they are provided by the municipality in the enabling ordinance.

AS 29.35.630 provides that the authority, if authorized in the enabling ordinance, may issue revenue bonds.

AS 29.35.635 provides that the authority's bonds are proper investments.

AS 29.35.640 provides that the pledge of revenue made for a bond is binding and valid.

AS 29.35.645 provides that the credit of the state or a municipality is not pledged for the debts of the authority.

AS 29.35.650 provides that the state or a municipality will not limit or alter the rights or powers of the authority to fulfill a contract with bondholders or any federal agency.

AS 29.35.655 provides that debts of the authority are only debts of the authority and not of the state or a municipality.

AS 29.35.660 requires the authority to obtain fidelity bonds for the board members and its chief executive officer.

AS 29.35.665 provides that the authority may not levy a tax.

AS 29.35.670 provides that the authority's bonds are exempt from taxation and that the authority and its assets are exempt from taxation.

AS 29.35.675 provides that the municipality creating a port authority may in the enabling ordinance require the authority to prepare a development plan before undertaking the construction or acquisition of a project and submit the plan to the municipality that created it.

AS 29.35.680 provides an authority shall be governed by a board of directors and that the board shall appoint a chief executive officer and fix the chief executive officer's compensation.

AS 29.35.685 provides for the continuation of collective bargaining agreements for state or local government employees transferred to an authority.

AS 29.35.690 requires the board of directors of the authority to adopt bylaws and regulations.

AS 29.35.695 provides that the authority, through its bylaws, may withhold public disclosure of privileged or proprietary records and further excludes such records from the reach of the public records statutes of this state.

AS 29.35.700 requires the authority to publish an annual report.

AS 29.35.705 requires annual audits of the authority.

AS 29.35.710 provides remedies for bondholders.

AS 29.35.715 regards claims against the authority or its employees.

AS 29.35.720 provides that laws conflicting with this Act do not apply.

AS 29.35.725 provides definitions.

AS 29.35.730 provides a short title.

Section 3 of the bill amends AS 21.76.010(a) to clarify their public corporations of municipalities may participate in joint insurance arrangements.

Section 4 of the bill amends AS 29.45.030(a) to provide that property held by a municipal public corporation is municipal property and exempt from taxation.

Section 5 of the bill amends AS 38.05.810 by providing a new subsection requiring the commissioner of natural resources to lease state land within the boundaries of port authorities to the authority and also provides that the lease may be for less than the appraised market value.

Representative Larry Baker

March 9, 1992

Page 3

Section 6 of the bill amends AS 44.85.410(3) to provide that a municipal bond includes a port authority bond for purposes of the Municipal Bond Bank Authority.

Section 7 of the bill provides an effective date.

JL:gc

92-211.glc



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.

**REPRESENTATIVE LARRY BAKER
HB 399 TESTIMONY BEFORE HOUSE FINANCE
MARCH 9, 1992**

MR. CHAIRMAN AND MEMBERS OF THE FINANCE COMMITTEE,

I APPRECIATE THE OPPORTUNITY TO PRESENT TO YOU HOUSE BILL (HB) 399, MY PORT AUTHORITY LEGISLATION.

SINCE DEVELOPING THE PIECE OF LEGISLATION YOU HAVE BEFORE YOU TODAY, I HAVE MET WITH ALL AFFECTED DEPARTMENTS, THE GOVERNOR'S OFFICE, SEVERAL OF MY COLLEAGUES, STATE LABOR ORGANIZATIONS, AND THE ALASKA MUNICIPAL LEAGUE. THIS COLLABORATION HAS RESULTED IN BROAD BASED SUPPORT FOR THE PROVISIONS CONTAINED IN THE C&RA VERSION OF HB 399.

THIS LEGISLATION WILL PROVIDE THE NECESSARY FLEXIBILITY TO ALLOW ONE OR MORE MUNICIPALITIES TO BAND TOGETHER AND ESTABLISH A SINGLE OR REGIONAL PORT AUTHORITY WITH AUTONOMOUS AUTHORITY FROM THE MUNICIPALITY OR MUNICIPALITIES FROM WHICH IT IS ESTABLISHED. TO DATE, THIS BILL HAS BEEN ENDORSED AND SUPPORTED BY THE MATANUSKA-SUSITNA BOROUGH, ALASKA MUNICIPAL LEAGUE, SOUTHWEST MUNICIPAL CONFERENCE, ALASKA ASSOCIATION OF HARBORMASTERS & PORT ADMINISTRATORS, WESTERN ALASKA BUILDING AND CONSTRUCTION TRADES, ALASKA RAILROAD CORPORATION, ANCHORAGE CHAMBER OF COMMERCE, THE ALASKA COAL ASSOCIATION, THE ALASKA MINERS ASSOCIATION, DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, AND OTHERS. ADDITIONALLY, RESOLUTIONS ARE PENDING WITH THE ANCHORAGE MUNICIPAL ASSEMBLY AND THE ANCHORAGE ECONOMIC DEVELOPMENT CORPORATION.

THE TERM PORT AUTHORITY CAN BE MISLEADING AND EVEN INACCURATE IN IMPLYING AN AUTONOMOUS OR SEMI-AUTONOMOUS, SELF-SUSTAINING PUBLIC BODY. SOME DO IN FACT MEET THAT CRITERIA. HOWEVER, IN HB 399, PARTICIPATING MUNICIPALITIES WILL ULTIMATELY DETERMINE THE PORTS' STRUCTURE THROUGH ENABLING ORDINANCES.

WITH RESPECT TO LAND USE DECISIONS AND PORT BOUNDARIES, THE PARTICIPATING MUNICIPALITIES WILL MAKE THIS DETERMINATION WHEN LOCAL ENABLING ORDINANCES ARE ADOPTED.

MR. CHAIRMAN AND COMMITTEE, FOLLOWING THE BILL'S PASSAGE FROM THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE, MY OFFICE HAS CONCLUDED DISCUSSIONS WITH STATE LABOR ORGANIZATIONS AND WOULD REQUEST THE HOUSE FINANCE COMMITTEE PASS THIS BILL FOLLOWING CONSIDERATION OF THE FOLLOWING THREE AMENDMENTS:

1. ADD A NEW SEC. 29.35.722 TO READ AS FOLLOWS:

Sec. 29.35.722. APPROVAL FOR ONVEYANCE OF STATE ASSETS OR AUTHORITY TO OPERATE STATE FACILITIES. A transfer of a state asset to an authority or an agreement between the state and an authority for the authority to operate a state facility or function may not occur until presented to the legislature and approved by law.

THIS AMENDMENT WOULD SIMPLY REQUIRE LEGISLATIVE APPROVAL BEFORE THE TRANSFER OF A SIGNIFICANT STATE ASSET, SUCH AS AN AIRPORT, TO AN AUTHORITY.

2. ON PAGE 9, LINE 2, DELETE "and shall be binding on the authority." Insert "or for a period of one year, whichever is longer, and shall be binding on the authority unless the parties agree to the contrary before the expiration of the agreement. A labor-management negotiation impasse declared after a transfer of employees but before the negotiation of a new collective bargaining agreement shall be resolved as provided in AS 23.40.070 - 23.40.260.

(b) An employee of the state or its political subdivisions may not suffer a loss in benefits due to a transfer to an authority.

THIS AMENDMENT, IF ADOPTED, WOULD PROTECT STATE EMPLOYEES AND THEIR BENEFITS IF AN ASSET IS TRANSFERRED TO AN AUTHORITY. LABOR FEELS STRONGLY THAT THIS AMENDMENT BE INCLUDED IN THE BILL AS MOST OF THEIR COLLECTIVE BARGAINING AGREEMENTS EXPIRE AT THE END OF THIS YEAR OR THE EARLY PART OF NEXT YEAR. IF AN ASSET IS TRANSFERRED TO AN AUTHORITY WITHOUT THIS AMENDMENT, IT IS POSSIBLE AN AUTHORITY COULD SIMPLY NOT NEGOTIATE WITH LABOR TO EQUITABLY SECURE A CONTRACT AND PROTECTION OF EMPLOYEES.

3. ON PAGE 9, FOLLOWING LINE 2, INSERT A NEW SUBSECTION TO READ:

(b) AS 23.40.070 - 23.40.260 applies to employees of an authority established under AS 29.35.600 - 29.35.730 unless all municipalities participating in the authority have been lawfully exempted under sec. 4, ch. 113, SLA 1972.

THIS AMENDMENT ENSURES EMPLOYEES, AS PART OF A STATE ASSET, WOULD BE PROTECTED UNDER PERA (PUBLIC EMPLOYEES RETIREMENT ACT) UNLESS THEY HAVE ALREADY BEEN EXEMPTED. THE LABOR CONCERN IS THAT MANAGEMENT, WHEN ESTABLISHING AN AUTHORITY, CAN POTENTIALLY EXERCISE AN OPTION TO OPT ITS EMPLOYEES OUT OF PERA.

ADOPTION OF THE AMENDMENTS, I BELIEVE, WILL RESOLVE ALL ISSUES NEEDING CLARIFICATION BEFORE THIS BILL MOVES OUT OF THE HOUSE.

WHILE PORT AUTHORITY POWERS VARY WIDELY, ALL SHARE THE COMMON PURPOSE OF SERVING THE PUBLIC INTEREST OF A STATE, REGION, OR LOCALITY. HOUSE BILL 399 WILL SERVE EACH AREA OF THE STATE OF ALASKA IN A SOUND, RESPONSIBLE, AND MUCH NEEDED WAY AND WILL PROVIDE JOBS. THIS LEGISLATION WOULD BE A STEP IN THE RIGHT DIRECTION WHEN IT COMES TO HELPING OUR LOCAL AREAS DIVERSIFY, ESTABLISH A MODE OF ECONOMICALLY VIABLE MOVEMENT OF GOODS, AND MOST IMPORTANTLY, WEAN SOME AREAS FROM CONTINUED DEMAND FOR STATE DOLLARS.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY TODAY AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS FROM MEMBERS OF THE COMMITTEE.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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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 *JLP*
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 be 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 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




217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 4, 1992

MEMORANDUM

TO: Representative Mike Navarre, Co-Chairman
Representative Eileen MacLean, Co-Chairman
Members, House Finance Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: Testimony on CS for HB 399 (CRA) - 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, to the degree 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, even as proposed in CS for HB 399 (CRA) 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. Also, by implying the need for specific statutory authority, the legislation may have the effect of restricting or diluting municipal powers.

The AML urges the committee to craft and the legislature to 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 and jointly, to form public corporations, authorities, or similar public entities through which the municipality or municipalities may exercise any existing municipal power or powers, including the formation of port as well as hospital or water and sewer authorities, as necessary,
3. gives such authorities, under local, state and federal IRS laws, the ability of a public

AML Testimony on HB 399, Port Authorities
March 4, 1992
Page 2

corporation or authority to sell bonds that are solely the debt of that corporation or authority (other issues which may need to be included from the CRA CS in a shorter, simplified Finance CS are the extent in which an authority may be exempt from the open records laws, the clarification as to joint insurance arrangements, and a municipality being able to grant powers of eminent domain), 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.

The Committee Substitute of HB 399 (CRA) is an improvement over the original bill to this degree; however, in clarifying local flexibility to establish port authorities to meet individual circumstances, the detail of the bill emphasizes that much of the language is unnecessary or worse dilutes existing municipal power.

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. However, 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.

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

Attachment

cc: Representative Baker

sab6:porttest.34

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

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;

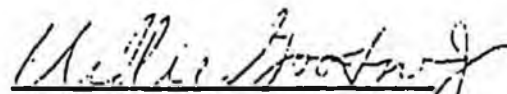
WHEREAS, it is confidently believe that a better coordination of ports, harbors, transportation, and other facilities of commerce in, about and through ports in Alaska, will result in greater economies, benefiting the people of Alaska;

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
122 West 9th Ave. Suite 201
Anchorage, Alaska 99501
Tel. (907) 276-6868
Fax. (907) 276-2395



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

Alaska Coal Association

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, a 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 longer 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.

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



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

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.

RESOLUTION SERIAL NO. 92-004

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO PASS LEGISLATION PROVIDING FOR THE FORMATION OF LOCAL AND REGIONAL PORT AUTHORITIES

WHEREAS, the people of Alaska find themselves with many opportunities in maritime and aviation commerce, international trade, tourism, fisheries, oil and mineral 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 sum 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, benefitting 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 Matanuska-Susitna Borough Assembly 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

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| | |
|---------------------|--------------------|
| To | From Alaska |
| Co. Senator Bradley | Co. Mat-Su Borough |
| Dept. | Phone # 945-9685 |
| Fax # 465-3153 | Fax # 945-0886 |

AM No. 92-001
Reso. No. 92-004



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



**ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION**

February 11, 1992

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

RE: Introduced Legislation on HB 399

Dear Representative Baker,

At the last A.E.D.C. board meeting, January 28th, 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

Alaska Association of Harbormasters & Port Administrators, Inc.

334 Front Street
Ketchikan, Alaska 99901

November 12, 1991

Jerome Selby, President
Alaska Municipal League

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.

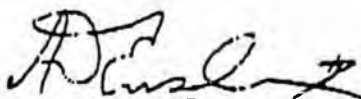
Our Association supports the proposal and the essential program elements outlined in the report. The three components: Development Plan, Financial Foundation, and Cooperation must be supported to enhance our facilities and local economies.

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

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| To | RICH WILSON | From | DOUG ENSLEY |
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March 6, 1992

Representative Larry Baker
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Juneau, AK 99801

Dear Representative Baker,

We are writing this letter in response to your question on whether organized labor has any problems with HB 399. As you know, some of our concerns have been taken care of but in regards to what is still left on the table we can state them in order:

1) The question of whether or not Port Authorities (P.A.'s) created under the act will have an opportunity to opt out of PERA coverage under SLA Chapter 113 1972 (the so-called Koslosky Amendment) must be dealt with in order to assure that collective bargaining rights are never infringed upon.

It is our concern that newly created P.A.'s (in essence public employers) would be able to opt out of PERA even though the original public employer was covered under the act. This is totally unacceptable. In response we have proposed language that would recognize the status quo with regard to local governments which are under PERA and thus protecting the rights of their employees and prospective employees.

Conversely, if a local government has already opted out under the Koslosky amendment in PERA we propose that the new P.A. would also reflect that status. Moreover, if more than one local government combine to form a P.A. and either one is covered under PERA then the P.A. would be covered under PERA. Below is our suggested language.

AS 23.40.070 et.seq. Shall apply to the employees of an authority established pursuant to AS 29.35.600 - 29.35.795 unless the local government or all local governments participating in the Port Authority have been lawfully exempted from its provisions, in which case the requisite local bargaining ordinance shall apply.

2) The question of the transference of state property and assets such as the International Airports or the Marine Highway to a P.A. must be addressed. Past legislation has been opposed by labor in regard to the above mentioned entities due to concerns regarding our current membership's future. In response, we propose two amendments that will insure the bargaining units status, working conditions, and benefits of existing employees subject to transfer.

a) The C&RA substitute incorporated some of the language we proposed from the Alaska Railroad Transfer Act which extended collective bargaining agreements in effect on the date of transfer to the state operated railroad. The committee substitute fell short of our goal of extending existing contracts for two years leaving the possibility of an agreement expiring one or two months after the date of transfer. This would create an environment that is insufficient for a bargaining unit to adapt to changed circumstances thus putting them in a very vulnerable position. Below is proposed language that we feel would be adequate enough by transferring the existing collective bargaining agreements to the P.A. for the duration of their term or one year (whichever is greater).

Sec. 39.35.685 CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS. (a) A collective bargaining agreement for employees of the state or its

political subdivisions who are transferred to an authority under AS 29.35.600 - 29.35.725 shall remain in effect for the term of the agreement or for a period of one year, whichever is longer, and shall be binding upon the authority unless the parties agree to the contrary before the expiration of the agreement. Any labor-management negotiation impasse declared shall be resolved in accordance with AS 23.40.070 ET SEQ

(b) No employee of the authority shall suffer a loss in benefits due to the transfer from the state or its political subdivisions.

b) It is our conviction that the interests of the state, its people, and its employees are best served if any transfer of state land or assets to a P.A. created under the Act must first be approved by an act of the legislature.

Reassurance by legislative counsel that such a transfer would probably be required is not sufficient to assuage our concern. In fact, legislative counsel raised a point that is of additional concern to us in regards to transferring the operation of, or contracting for the operation of state assets or enterprises with a P.A. Such entities, including the International Airports and the Marine Highway, could be subjected to such transference without legislative approval. In response we are proposing the following language.

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Sec. 29.35._____. CONVEYANCE OF LAND, ASSETS, OR AUTHORITY TO OPERATE STATE ASSETS OR FACILITIES. (a) Any transfer of state land or assets, or the delegation of authority to operate a state transportation facility or asset to a Port Authority shall be subject to approval by an Act of the Legislature.

(b) Conveyance of state assets, other than raw land as defined by AS_____, shall not become final until a P.A. has been in existence for at least one year.

Though we do not consider ourselves legislative draftsmen, we do know what we want to accomplish. The above amendments we want you to incorporated will provide us with the security that we need to insure our members needs are addressed. Our suggested changes should not hurt your legislation.


As you know our members interests come first. We are willing to work with you on this bill which we believe will eventually provide additional jobs along with the economic development the bill is purported to foster.

Thank you for your consideration.

Sincerely,


Pat Smutz
Business Representative
Alaska AFL-CIO


Bruce Ludwig
Business Manager, APEA/AFT


Ed Flanagan
Business Agent, Local 71


Jon Stables
Assistant Business Manager, ASEA