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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 352

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Establishing port authorities by municipalities

BRU: Economic Development

Sponsor: Senator Pearce

Component: _____

Requestor: Senator Pearce

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year Impact: None

ANALYSIS (Attach a separate page if necessary.)

This bill enables a municipality or group of municipalities to establish port authorities as separate enterprises. It does not require their establishment.

Prepared By: Albert H. Clough, Development Specialist Phone: 465-2017

Division: Economic Development Date: 2/3/92

Approved by Commissioner: Glenn A. Olds *for [Signature]* Ant. [Signature]

Agency: Department of Commerce & Economic Development Date: 2-4-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legls. Ofc., and Impacted Agency(ies).

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7-LS1768J
Luckhaupt
3/5/92

CS FOR SENATE BILL NO. 352 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS PEARCE, Collins

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 29.35 is amended by adding new sections to read:

5 ARTICLE 9. PUBLIC CORPORATIONS AND AUTHORITIES.

6 Sec. 29.35.600. ESTABLISHMENT OF PUBLIC CORPORATIONS AND
7 AUTHORITIES. (a) A public corporation or authority may be created by one of the following
8 means:

9 (1) the governing body of a municipality may create by ordinance a public
corporation or authority of the municipality;

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

14 (b) One or more municipalities may join a public corporation or authority established

*clear that this is
only one way
and conforms to
Article X 12, Sec 13
and AS 29.35.010(13)*

*cooperative
agreement
or*

1 under (a)(1) or (2) of this section upon the adoption of parallel ordinances by the governing
2 bodies of each affected municipality.

3 (c) A public corporation or authority created under this section is a body corporate and
4 politic and an instrumentality of the municipality or municipalities creating it but having a
5 separate and independent legal existence.

6 (d) A public corporation or authority may be created by a municipality under
7 AS 29.35.600 - 29.35.730 to perform ~~a~~ power^s_λ or function^s_λ the municipality has or has acquired
8 under AS 29.35.300 - 29.35.350.

9 (e) The enabling ordinance by which a public corporation or authority is established must
10 specify the powers, boundaries, and limitations of the public corporation or authority.

11 (f) An ordinance creating a public corporation or authority may require approval by the
12 voters of the municipality or municipalities participating in the public corporation or authority
13 in order for the public corporation or authority to be established.

14 Sec. 29.35.605. DISSOLUTION OF A PUBLIC CORPORATION OR AUTHORITY.

15 (a) The enabling ordinance by which a public corporation or authority is created must provide
16 for the manner by which a public corporation or authority may be dissolved.

17 (b) If a public corporation or authority ceases to exist, its assets shall be distributed to
18 the municipalities that participated in the public corporation or authority in proportion to the
19 difference between their contributions to the public corporation or authority and any outstanding
20 debt or obligation of that municipality to the public corporation or authority, provided that any
21 obligation to bondholders then outstanding shall first be satisfied in full.

22 Sec. 29.35.610. MUNICIPAL PROPERTY. (a) A municipality may transfer and
23 otherwise convey or lease real property, and any improvements to it, to a public corporation or
5 authority for use by the public corporation or authority for the purposes set out in the ordinance
adopted under AS 29.35.600.

26 (b) A municipality may transfer and otherwise assign or lease personal property to a
27 public corporation or authority for use by the public corporation or authority for the purposes set
28 out in the ordinance adopted under AS 29.35.600.

29 Sec. 29.35.615. CONVEYANCE OF OTHER LAND TO PUBLIC CORPORATION OR
30 AUTHORITY. A public corporation or authority and a municipality participating in the public
31 corporation or authority may enter into an agreement with the state, the federal government, or

1 a person for the conveyance, transfer, or lease to the public corporation or authority of land that
2 is necessary or useful for present or future purposes of the public corporation or authority.

3 Sec. 29.35.620. POWERS. As provided in the enabling ordinance, a public corporation
4 or authority may exercise any power not otherwise prohibited by law.

necessary
clarification
to satisfy courts

5 Sec. 29.35.625. EMINENT DOMAIN. As provided in the enabling ordinance, a public
6 corporation or authority may exercise the power of eminent domain ^{and declaration of taking} within its physical boundaries
7 under AS 29.35.030 to acquire land or materials for a public corporation or authority purposes.

8 Sec. 29.35.630. BONDS OF A PUBLIC CORPORATION OR AUTHORITY;
9 SUPERIOR COURT JURISDICTION. (a) If authorized by the enabling ordinance, a public
10 corporation or authority may borrow money and may issue bonds on which the principal and
11 interest are payable

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

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

17 (3) from its income and receipts generally or a designated part or parts of them.

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

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

27 (d) Bonds shall be authorized by resolution of the public corporation or authority, be
28 dated, and shall mature as the resolution may provide, except that a bond may not mature more
29 than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the
30 denominations, be in the form, either coupon or registered, carry the registration privileges, be
31 executed in the manner, be payable in the medium of payment, at the place or places, and be

Unclear 21 that
bonds 22 could
be issued based
on the 23
revenue of
the authority,
rather 25 than
just 26 from
a lease, as
a project operator
not 27
financial 28
29

1 subject to the terms of redemption that the resolution or a subsequent resolution may provide.

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

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

9 Sec. 29.35.635. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under
10 AS 29.35.625 are securities in which all public officers and public bodies of the state and its
11 political subdivisions, all insurance companies, trust companies, banks, investment companies,
12 executors, administrators, trustees, and other fiduciaries may properly and legally invest funds,
13 including capital in their control or belonging to them. The bonds may be deposited with a state
14 or municipal officer of an agency or political subdivision of the state for any purpose that the
15 deposit of bonds of the state is authorized by law.

16 Sec. 29.35.640. VALIDITY OF PLEDGE. The pledge of revenue of a public corporation
17 or authority to the payment of the principal or interest on bonds or notes of the public
18 corporation or authority is valid and binding from the time the pledge is made, and the revenue
19 is immediately subject to the lien of the pledge without physical delivery or further act. The lien
20 of a pledge is valid and binding against all parties having claims of any kind against the public
21 corporation or authority irrespective of whether those parties have notice of the lien of the pledge.

22 Sec. 29.35.645. CREDIT OF STATE OR A MUNICIPALITY NOT PLEDGED. (a) The
23 state and municipalities participating in a public corporation or authority are not liable for the
24 debts of that public corporation or authority. Bonds issued under AS 29.35.630 are payable
25 solely from the revenue of the public corporation or authority and do not constitute a

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

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

28 (b) A public corporation or authority may not pledge the credit or the taxing power of the
29 state or its municipalities. A bond issued under AS 29.35.630 must contain on its face a
30 statement that

31 (1) the public corporation or authority is not obligated to pay it or the interest on

1 it except from the revenue pledged for it; and

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

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

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

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

28 Sec. 29.35.665. NO TAXING POWER. A public corporation or authority may not levy
29 an income or other tax.

30 Sec. 29.35.670. EXEMPTION FROM TAXATION. (a) A public corporation or
31 authority exercising the powers granted by the enabling ordinance under AS 29.35.600 -

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

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

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

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

could add "Development
 Plan" section; if
 necessary

19 Sec. 29.35.675. ADMINISTRATION OF PUBLIC CORPORATIONS OR

20 AUTHORITIES; BOARD. (a) A public corporation or authority shall be governed by a board
 21 of directors, which shall exercise the powers of the public corporation or authority. The enabling
 22 ordinances establishing the public corporation or authority under AS 29.35.600 must specify the
 23 number, qualifications, manner of appointment or election, and terms of members of the board.

24 (b) The board shall appoint a chief executive officer of the public corporation or
 25 authority who serves at the pleasure of the board. The board shall fix the compensation of the
 26 chief executive officer.

Add language "consistent
 with enabling ordinance"

27 Sec. 29.35.680. BYLAWS AND REGULATIONS. A board shall adopt bylaws and
 28 appropriate regulations to carry out its functions and the purposes of AS 29.35.600 - 29.35.730.

29 ~~including regulations to safeguard property owned, managed, or transported by the public~~
 30 ~~corporation or authority and to protect employes and persons using the public corporation's or~~
 31 ~~authority's property or services.~~

not
 necessary
 - potential
 liability from
 interpretation of
 "adequate safeguards"

1 Sec. 29.35.685. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided
 2 under (b) of this section, information in the possession of a public corporation or authority is
 3 public and is open to public inspection at reasonable times.

Clarification needed that records are to be available to participating municipalities - see "AUDITS" below

4 (b) Notwithstanding AS 09.25.100 - 09.25.220 and AS 44.62.310, a public corporation
 5 or authority may through its bylaws or by regulation designate and withhold public disclosure
 6 of matters of a privileged or proprietary nature. Those matters include personnel records,
 7 communications with and work product of legal counsel, and other information including
 8 proprietary information associated with rate setting.

Annual Report section if necessary

9 Sec. 29.35.690. AUDITS. (a) The board shall have the financial records of a public
 10 corporation or authority audited annually by an independent certified public accountant.

11 (b) A public corporation or authority shall make all of its financial records available to
 12 an auditor appointed by a municipality participating in the public corporation or authority for
 13 examination.

14 Sec. 29.35.695. REMEDIES. A holder of bonds or notes or coupons attached to the
 15 bonds issued by a public corporation or authority under AS 29.35.630, and a trustee under a trust
 16 agreement or resolution authorizing the issuance of the bonds, except as restricted by a trust
 17 agreement or resolution, either at law or in equity, may

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

20 (2) compel the performance of all duties of the public corporation or authority
 21 required by AS 29.35.600 - 29.35.730 or the trust agreement or resolution.

22 Sec. 29.35.700. CLAIMS. For the purpose of ~~actionable claims, undertakings, payments~~
 23 of judgments, execution, interest, punitive damages, ~~statutes of limitations, bonds, costs, and~~
 24 similar matters related to the presentation and prosecution of claims by and against a public
 25 corporation or authority, a public corporation or authority and its board members and employees
 26 enjoy the same rights, privileges, and immunities as a municipality and municipal officers.

See against a public corporation simpler punitive damages incurred

judicial and similar proceedings

27 Sec. 29.35.705. CONFLICTING LAWS INAPPLICABLE. If provisions of
 28 AS 29.35.600 - 29.35.730 conflict with the provisions of other state law, the provisions of
 29 AS 29.35.600 - 29.35.730 prevail.

30 Sec. 29.35.730. DEFINITIONS. In AS 29.35.600 - 29.35.730, unless the context
 31 otherwise requires,

1 (1) "board" means the board of directors of a public corporation or authority;
 2 (2) "bonds" includes bonds, bond anticipation notes, notes, refunding bonds, or
 3 other forms of indebtedness of the public corporation or authority;

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

7 (4) "public corporation or authority" means a public corporation or authority
 8 created by a municipality or municipalities under AS 29.35.600;

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

*p. 2 do not enforce
 or administer
 laws*

12 (6) "regulation" means a standard of general application or the amendment,
 13 supplement, revision, or repeal of a standard adopted by a public corporation or authority to
 14 [implement, interpret, or make specific the law enforced or administered by it or to] govern its
 15 [procedure.] operations.

16 * Sec. 2. AS 21.76.010(a) is amended to read:

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

23 * Sec. 3. AS 29.45.030(a) is amended to read:

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

25 (1) municipal property, including property held by a public corporation or
 26 authority of a municipality, or state property, except that

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

29 (B) notwithstanding any other provision of law, property acquired by an
 30 agency, corporation, or other entity of the state through foreclosure or deed in lieu of
 31 foreclosure and retained as an investment of a state entity is taxable; this subparagraph

1 does not apply to federal land granted to the University of Alaska under AS 14.40.380
2 or 14.40.390, or to other land granted to the university by the state to replace land that
3 had been granted under AS 14.40.380 or 14.40.390;

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

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

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

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

15 (5) money on deposit;

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

18 (7) real property or an interest in real property that is exempt from taxation under
19 43 U.S.C. 1620(d), as amended;

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

23 * Sec. 4. AS 38.05.810 is amended by adding a new subsection to read:

24 (i) Subject to AS 38.05.820, the commissioner may lease state land, including tideland,
25 to a public corporation or authority established under AS 29.35.600 - 29.35.730, if the state land
26 is within the physical boundaries of the public corporation or authority and is needed by the
27 public corporation or authority for purposes provided in AS 29.35.600 - 29.35.730. A lease of
28 state land under this section may be for less than the appraised market value.

29 * Sec. 5. AS 44.85.410(3) is amended to read:

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

31 (A) a general obligation bond that is a direct and general obligation of a

1 political subdivision of the state, all the taxable property within which is subject to
 2 taxation to pay the bond, note or evidence of debt, and the interest without limitation, as
 3 to rate or amount generally to the extent permitted by law or to avoid a default as
 4 provided for second class cities under AS 29.45.590;

5 (B) a revenue bond, except a revenue bond for electrical generation
 6 purposes other than diesel-powered generation, issued by a municipality or a public
 7 corporation or authority of a municipality that [WHICH] pledges the revenue of a
 8 revenue-producing capital improvement and that [WHICH] is payable solely from the
 9 revenue of the revenue-producing capital improvement;

10 (C) a general obligation bond or revenue bond combined or additionally
 11 secured;

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

14 (E) an obligation of a municipality secured only by
 15 (i) special assessments on benefited property;
 16 (ii) tax increments and a letter of credit or equal security; or
 17 (iii) a lease for equipment or building improvements if the state is
 18 not a lessee;

19 * Sec. 6. This act takes effect immediately under AS 01.10.070(c).

(F) a bond of a borough issued as a general obligation of the area of the borough lying outside all cities under AS 29.47.440 (2) (2)

would allow the Bond Bank to purchase bonds of a borough that are secured by the pledge of taxes in the area outside all cities (the non areawide area)

CS FOR SENATE BILL NO. 352 (TRANSPORTATION)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 3/18/92
Referred: CRA, Finance

Sponsor(s): SENATORS PEARCE, Collins

A BILL

FOR AN ACT ENTITLED

*Still would like to
make authority and
separate bonding authority
GENERIC to any
municipal power*

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 *Trying to get that this*
18 *concept thru* (2) the governing bodies of two or more municipalities may create ^{by cooperative agreement} parallel
19 *is only one* ordinances adopted by each of the governing bodies a port authority as a public corporation of
20 *way to form* the municipalities.

21 *a port authority* (b) One or more municipalities may join an authority established under (a)(1) or (2) of
22 *by cooperative agreement or* this section upon the adoption of parallel ordinances by the governing bodies of each affected
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. ^{As} If provided in the enabling ordinance, an authority may
20 exercise any power not otherwise prohibited by law.

- 21 (1) sue and be sued;
- 22 (2) have a seal and alter it at pleasure;
- 23 (3) acquire an interest in a project as necessary or appropriate to provide financing
24 for the project, whether by purchase, gift, or lease;
- 25 (4) lease to others a project acquired by it and upon the terms and conditions the
26 authority may consider advisable, including, without limitation, provisions for purchase or
27 renewal;
- 28 (5) sell, by installment sale or otherwise, exchange, donate, convey, or encumber
29 in any manner by mortgage or by creation of another security interest, real or personal property
30 owned by it, or in which it has an interest, including a project, when, in the judgment of the
31 authority, the action is in furtherance of the authority's purposes;
- (6) accept gifts, grants, or loans from, and enter into contracts or other

not necessary -
sounds like a
financing institution
not the functions
of an authority

1 transactions regarding them, with a federal agency or an agency or instrumentality of the state,
2 a municipality, private organization, or other source;

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

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

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

6 (10) enter into loan agreements with respect to one or more projects upon the
7 terms and conditions the authority considers advisable;

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

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

12 (13) charge fees or other forms of remuneration for the use or possession of
13 projects in accordance with the agreements described in this section, other agreements relating
14 to the projects, covenants, or representations made in bond documents relating to the projects,
15 or regulations of the authority relating to the projects;

16 (14) exercise the power of eminent domain ^{or declaration of taking} within its physical boundaries under
17 AS 29.35.030 to acquire land or materials for authority purposes;

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

19 (16) defend and indemnify a current or former member of the board, employee,
20 or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney
21 fees, incurred by or imposed upon that person in connection with civil or criminal action in
22 which the person is involved as a result of the person's affiliation with the authority if the person
23 acted in good faith on behalf of the authority and within the scope of the person's official duties
24 and powers;

25 (17) purchase insurance to protect and hold harmless its employees, agents, and
26 board members from an action, claim, or proceeding arising out of the performance, purported
27 performance, or failure to perform in good faith, of duties for, or employment with the authority,
28 and to hold them harmless from expenses connected with the defense, settlement, or monetary
29 judgments from that action, claim, or proceeding; the purchase of insurance is subject to the
30 discretion of the board; insurance purchased under this paragraph may not be considered
31 compensation to the insured person; and

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

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

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

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

15 (3) from its income and receipts generally or a designated part or parts of them.

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

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

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

31 (e) All bonds issued under this section, regardless of form or character, are negotiable

Unclear that
bonds could be
issued based
on the ordinary
revenues of the
authority, rather
than just from
a lease, as a
project operator
not just a
financer

1 instruments for all of the purposes of AS 45.01 - AS 45.09 (Uniform Commercial Code).

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

7 Sec. 29.35.635. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under
8 AS 29.35.630 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. 29.35.640. VALIDITY OF PLEDGE. The pledge of revenue of an authority to the
15 payment of the principal or interest on bonds or notes of the authority is valid and binding from
16 the time the pledge is made, and the revenue is immediately subject to the lien of the pledge
17 without physical delivery or further act. The lien of a pledge is valid and binding against all
18 parties having claims of any kind against the authority irrespective of whether those parties have
19 notice of the lien of the pledge.

20 Sec. 29.35.645. 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 29.35.630 are payable solely from the revenue of the authority and do
23 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 29.35.630 must contain on its face a statement that

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

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

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

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

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

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

25 Sec. 29.35.670. EXEMPTION FROM TAXATION. (a) An authority exercising the
26 powers granted by the enabling ordinance under AS 29.35.600 - 29.35.730 is in all respects for
27 the benefit of the people of the municipalities participating in the authority and the people of the
28 state in general, for their well-being and prosperity, and for the improvement of their social and
29 economic condition. The real and personal property of an authority and its assets, income, and
30 receipts are exempt from all taxes of the state or a political subdivision of the state.

31 (b) Bonds issued by the authority under AS 29.35.630 are issued for an essential public

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

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

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

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

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

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

19 Sec. 29.35.680. ADMINISTRATION OF PORT AUTHORITIES; BOARD. (a) An
20 authority shall be governed by a board of directors, which shall exercise the powers of the
21 authority. The enabling ordinance establishing the authority under AS 29.35.605 must specify
22 the number, qualifications, manner of appointment or election, and terms of members of the
23 board.

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

26 Sec. 29.35.685. CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS;
27 APPLICATION OF AS 23.40.070 - 23.40.260. (a) A collective bargaining agreement for
28 employees of the state or its political subdivisions who are transferred to an authority under
29 AS 29.35.600 - 29.35.730 shall remain in effect for the term of the agreement or for a period of
30 one year, whichever is longer, and shall be binding on the authority unless the parties agree to
31 the contrary before the expiration of the agreement. A labor-management negotiation impasse

1 declared after a transfer of employees under this subsection but before the negotiation of a new
2 collective bargaining agreement shall be resolved as provided in the collective bargaining
3 agreement, except that if the collective bargaining agreement does not provide for a resolution,
4 then as provided in AS 23.40.070 - 23.40.260.

5 (b) Employees of the state or a political subdivision of the state transferred to an
6 authority shall retain, for a period of one year following the date of transfer or for the duration
7 of a collective bargaining agreement transferred under (a) of this section, whichever is greater,
8 all rights of participation in fringe benefit programs available to the employees on the day before
9 the transfer, or in programs substantially equivalent.

10 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority established under
11 AS 29.35.600 - 29.35.730 unless all municipalities participating in the authority are exempt under
12 sec. 4, ch. 113, SLA 1972.

13 Sec. 29.35.690. BYLAWS AND REGULATIONS. (a) A board shall adopt bylaws and
14 appropriate regulations to carry out its functions and the purposes of AS 29.35.600 - 29.35.730,

15 ~~including regulations to safeguard property owned, managed, or transported by the authority and~~
16 ~~to protect employees and persons using the authority's property or services.~~

opens authority
to potential
litigation
17

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

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

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

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

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

27 (5) procedures for adopting regulations;

28 (6) procedures for adopting bylaws;

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

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

31 Sec. 29.35.695. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided

consistent with the enabling ordinance.

1 under (b) of this section, information in the possession of an authority is public and is open to
2 public inspection at reasonable times.

3 clarification -
4 should always
5 be available
to participating
municipalities

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

8 Sec. 29.35.700. ANNUAL REPORT. Within 90 days following the end of the fiscal year
9 of an authority, the board shall distribute to the mayor and governing body of each municipality
10 participating in the authority a report describing the operations and financial condition of the
11 authority during the preceding fiscal year. The report may include suggestions for legislation
12 relating to the structure, powers, or duties of the authority or operation of facilities of the
13 authority. Subject to AS 29.35.695, the report must itemize the cost of providing each category
14 of service offered by the authority and the income generated by each category.

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

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

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

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

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

27 similar - punitive
28 damages incorrect...

27 Sec. 29.35.715. CLAIMS. For the purpose of judicial and similar proceedings
28 ~~of judgments, execution, interest, punitive damages, status of limitations, bonds, costs, and~~
29 ~~similar matters related to the presentation and prosecution of claims~~ by and against an authority,
30 an authority and its board members and employees enjoy the same rights, privileges, and
31 immunities as a municipality and municipal officers.

1 Sec. 29.35.720. CONFLICTING LAWS INAPPLICABLE. If provisions of
2 AS 29.35.600 - 29.35.730 conflict with other provisions of this title, the provisions of
3 AS 29.35.600 - 29.35.730 prevail.

4 Sec. 29.35.725. DEFINITIONS. In AS 29.35.600 - 29.35.730, unless the context
5 otherwise requires,

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

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

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

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

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

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

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

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

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

31 Sec. 29.35.730. SHORT TITLE. AS 29.35.600 - 29.35.730 may be referred to as the

1 Municipal Port Authority Act.

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

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

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

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

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

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

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

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

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

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

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

- 1 (5) money on deposit;
- 2 (6) the real property of certain residents of the state to the extent and subject to
- 3 the conditions provided in (e) of this section;
- 4 (7) real property or an interest in real property that is exempt from taxation under
- 5 43 U.S.C. 1620(d), as amended;
- 6 (8) property of a political subdivision, agency, corporation, or other entity of the
- 7 United States to the extent required by federal law; except that a private leasehold, contract, or
- 8 other interest in the property is taxable to the extent of that interest.

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

10 (i) Subject to AS 38.05.820, the commissioner shall lease state land, including tideland,

11 to a port authority established under AS 29.35.600 - 29.35.730, if the state land is within the

12 physical boundaries of the authority and is needed by the authority for purposes provided in

13 AS 29 35.600 - 29.35.730. A lease of state land under this section may be for less than the

14 appraised market value.

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

- 16 (3) "municipal bond" means a bond or note or evidence of debt that constitutes
- 17 (A) a general obligation bond that is a direct and general obligation of a
- 18 political subdivision of the state, all the taxable property within which is subject to
- 19 taxation to pay the bond, note or evidence of debt, and the interest without limitation, as
- 20 to rate or amount generally to the extent permitted by law or to avoid a default as
- 21 provided for second class cities under AS 29.45.590;
- 22 (B) a revenue bond, except a revenue bond for electrical generation
- 23 purposes other than diesel-powered generation, issued by a municipality or a port
- 24 authority that [WHICH] pledges the revenue of a revenue-producing capital
- 25 improvement and that [WHICH] is payable solely from the revenue of the
- 26 revenue-producing capital improvement;
- 27 (C) a general obligation bond or revenue bond combined or additionally
- 28 secured;
- 29 (D) a bond of a borough issued as a general obligation of a service area
- 30 under AS 29.47.440 or former AS 29.58.340; or
- 31 (E) an obligation of a municipality secured only by

- 1 (i) special assessments on benefited property;
- 2 (ii) tax increments and a letter of credit or equal security; or
- 3 (iii) a lease for equipment or building improvements if the state is
- 4 not a lessee;
- 5 * Sec. 7. This act takes effect immediately under AS 01.10.070(c).

(F) a bond of a borough issued as a general obligation of the area of the borough lying outside all cities under AS 29.47.440(2)(2).

would allow Bond Bank
to purchase bonds of a
borough that are secured
by the pledge of taxes
in the area outside all
cities (the non-area-wide area)



PORT OF BELLINGHAM

Washington State

DATE: February 25, 1992

TO: Representative William Hudson and
Representative Jerry Mackie,
Alaska State Legislature

VIA: Reed R. Stoops
FAX NO. (907) 463-4841

COMMENTS ON PROPOSED HOUSE BILL NO. 399

BY: THOMAS J. GLENN, FORMER OFFICER OF THE PORT OF BELLINGHAM
- PORT ENGINEER, July, 1958 through December, 1962
- GENERAL MANAGER, January, 1963 through January, 1983

This draft legislation would provide for the setting up of port authorities in the State of Alaska as marine and transportation facilities- and operations-focused departments of municipal entities - towns, cities, and boroughs.

The sole source of funds to pay costs of operating the authority is revenue from its operations. This provision assures that the port will never become a drain on the funds of its parent municipality. It also assures that the port will function as no more than a city's (or borough's, or both) waterfront department.

This scope of activity is different - notably less - than port district operations in, say, the State of Washington, where ports are politically autonomous and are granted certain taxing powers. The reason for this difference must be sound since it reflects a different assignment for port authorities by the State of Alaska.

With this difference in mind, I would suggest that a "start-up" fund may need to be provided to enable a port authority to open offices, hire its embryo staff, and start operations.

The revenue bond provisions are comprehensive and clear.

QUESTIONS:

1. Should Section 29.35.635 be expanded to note that the port authority must abide by all the laws, rules, etc., of authorities above it. That is, is the authority given the position of licensee, not licensor, concerning building permits, etc.?

COMMISSIONERS

KENNETH MCAULAY SCOTT WALKER PETER ZUANICH

ADMINISTRATIVE OFFICES

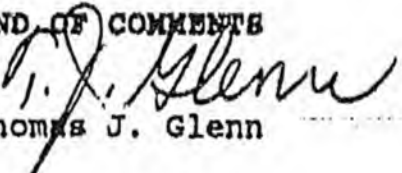
625 Cornwall Avenue/P.O. Box 1717/Bellingham, Washington 98227-1717

COMMENTS ON PROPOSED HOUSE BILL NO. 399
BY: THOMAS J. GLENN
PAGE 2

2. Under Section 29.35.605(3)(d), would the goals of each port authority be so different that the definition of powers could not be set forth once at the State level?

Section 29.35.705 provides commendable flexibility in light of the variation of size, resources, and type of Alaskan communities that may desire to implement port authority operations.

END OF COMMENTS


Thomas J. Glenn

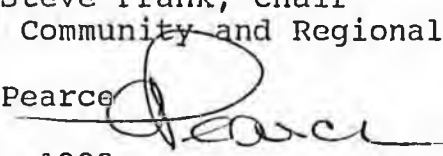
Alaska State Legislature

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During Session:
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Juneau, Alaska 99811
(907) 465-4993
FAX: (907) 463-5352

Senator Drue Pearce District G

To: Senator Steve Frank, Chair
Senate Community and Regional Affairs

From: Senator Pearce 

Date: March 26, 1992

Re: Scheduling CSSB-352 (Transportation) to be heard in
Senate Community and Regional Affairs Committee.

Reasons for permitting regional Port Authorities:

- 1) Current statute allows single municipalities or boroughs to form an authority. However, when two or more municipalities decide to form an authority the ability to bond projects for the authority becomes unclear under present law. Bond holders become nervous when they do not know which entity is ultimately responsible for paying the bonds. This legislation would allow the creation of Port Authorities that are a separate and legal entity that is responsible for its own bond debt. Potential bond holders understand and are much more comfortable with this concept.
- 2) Permitting regional Port Authorities removes an element of local territorialism often involved in the formation of a new port facility. This encourages the development of trade on a regional level and allows participating communities to all benefit from the economies of scale offered by a single larger port facility. This will tend to eliminate the formation of several small port facilities that often are not economically viable.

Please schedule this bill at your soonest opportunity. I will be traveling to Washington DC on state business all of next week, but I will return to Juneau by April 6th.

Request for Hearing

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 352
(S) Publish Date: 3-18-92

FISCAL NOTE

Revision Date: 01/30/92
Title: Authorize Port Authorities

Department Affected: DOT&PF
BRU: Headquarters

Sponsor: Senator Pearce
Requestor:

Component: Plans, Programs and Budget
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 FUND SOURCE	0	0	0	0	0	0
TOTAL FUNDING:	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: _____

ANALYSIS: (Attach a separate page if necessary)

Changes in CS SB 352 (Trans)
have no fiscal impact. This
fiscal note is appropriate.

3/17/92
date

[Signature]
Comptroller, (initial)

Prepared by: Ron B. Lind, Director

Phone: 465-2171

Division: Plans, Programs and Budget

Date: January 30, 1992

Approved by Commissioner: [Signature]
Frank G. Durpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 30, 1992

Distribution By Preparer: Leg. Finance, Leg. Sponsor, Requestor, OMB/DBR, Gov. Leg. Office, Impacted Agency(ies).

Fiscal Note DOT

Sponsor's Sectional Analysis of CS for SB-352

Section 1: Findings and Policy.

- a) Clarifies that the Constitution of Alaska (article X, sec. 13) authorizes municipalities to make agreements for cooperative or joint administration of functions or powers.
- b) Purpose is to clarify that municipalities are authorized to create port authorities.

ie powers come from the constitution and flow through the munis to the Port Authorities.

Section 2: Port Authorities.

29.35.600 Purpose.

self explanatory

29.35.605 Creation.

- a)
 - 1) The governing body of a municipality may create by ordinance a port authority as a public corporation of the municipality.
 - 2) The governing bodies of two or more municipalities may create by parallel ordinances adopted by each of the governing bodies a port authority as a public corporation of the municipalities.
- b) A municipality (borough) may join an existing port authority by adopting a parallel ordinance.
- c) Port authorities are instrumentalities of the muni, but they have separate and independent legal existence.
- d) Creation of a port authority is an exercise of a muni's transportation system powers.
- e) The enabling ordinance must specify the powers, boundaries, and limitations.
- f) The enabling ordinance may require approval by the voters of the municipality.

29.35.610 Dissolution.

- a) The enabling ordinance must provide for the manner in which the port authority is dissolved.
- b) Before a port authority can be dissolved it must first fully satisfy all bond holders. Assets are distributed to the forming munis in the proportion they were contributed.

29.35.615 Municipal Property.

- a) A muni may transfer, convey, or lease land.
- b) " may " " " " personal property.

29.35.620 Conveyance of other land to Port Authorities.

Port Authorities may enter into agreements with state, federal, or individuals to obtain land.

29.35.625 Powers.

A pick list of powers that may be obtained by including them in the enabling ordinance follows. Page 3, line 20 through page 5, line 10.

- sue or be sued.
- have a seal.
- acquire an interest in a project.
- lease a project.
- sell, etc. an interest.
- accept gifts, grants, loans, enter into contracts.
- deposit and invest funds.
- purchase or insure loans.
- security within its boundaries.
- enter into loan agreements.
- acquire, manage, and operate projects.
- assist private lenders (loan guarantees? - I believe)
- charge fees or other forms of remuneration.
- exercise powers of eminent domain within its boundaries
- regulate zoning within its boundaries.
- defend and indemnify current or former board members, employees, and agents.
- purchase insurance for current or former board members, employees, and agents.
- insure assets, services, and employees

29.35.630 Bonds.

- a) A Port Authority may borrow on:
 - 1) the project being financed.
 - 2) other projects.
 - 3) other income.
- b) The Port Authority may sell bonds publicly or privately, for the price(s) and at the time(s) it determines.
- c) The project being financed by bonds must be able to pay back the bonds financing it.
- d) Bonds mature at 40 years or less.
- e) Bonds are negotiable instruments under AS 45.01 - AS 45.09 (Uniform Commercial Code).
- f) Superior Court has standing for disputes involving these bonds.

29.35.635 Bonds Eligible for Investment.

All public officers and public bodies of the state, insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may legally invest in these bonds.

ie anyone may buy these bonds.

29.35.640 Validity of Pledge.

The authority is bound to pay its bond debt.

29.35.645 Credit of State or a Municipality not pledged.

The state and municipalities participating in an authority are **not liable** for the debts of that authority. These bonds are payable solely from the revenue or assets of the authority.

29.35.650 Pledges of the State and Municipalities.

Pledges of the state or the municipalities participating in the Authority will not limit or alter the rights and powers of the Port Authority.

29.35.655 Limitation of Liability.

All liabilities incurred by the authority shall be satisfied exclusively from the assets or revenue of the authority.

29.35.660 Fidelity Bond.

An Authority shall obtain a fidelity bond for board members and officers responsible for accounts and finances of the authority.

29.35.665 No Taxing Authority.

Self explanatory.

29.35.670 Exemption from Taxation.

- a) The land and personal property of an authority and its assets, income, and receipts shall be exempt from all taxes of the state.
- b) The bonds shall be tax free with the exception of inheritance, transfer, and estate taxes.
- c) The Authority may make payments to municipalities participating in the authority in lieu of paying taxes.

- d) Property, assets, income, and receipts of a business or person shall be taxable.

29.35.675 Development Plan

- 1) The enabling ordinance may require the submission of a development plan to the governing body of the participating municipalities.
- 2) The enabling ordinance may prohibit the construction or acquisition of a project unless the submitted development plan has been approved by the governing body of the participation municipalities.

29.35.680 Administration of Port Authorities; Board.

- a) The enabling ordinance shall specify the number, qualifications, manner of appointment or election, and the terms of members of the board.
- b) A CEO's service and compensation shall be at the discretion of the board.

29.35.685 Continuation of Collective Bargaining Agreements.

All collective bargaining agreements shall remain in effect for the term of the agreement, or for one year, (whichever is longer) and be binding on the Authority. A labor-management negotiation impasse shall be resolved as provided in the existing collective bargaining agreement, or according to PERA if one does not exist. PERA applies to the employees of an authority unless all parties participating are exempt.

29.35.690 Bylaws and Regulations.

- a) A board shall adopt bylaws and regulations.
- b) A board shall adopt bylaws as soon as possible and may amend those bylaws. Items on the following pick list may be included:

The time, place, calling, conducting, and giving notice of meetings of the board.

The compensation (if any) of directors (board members).

The appointment of board committees.

The appointment of duties, compensation, and tenure of officers, directors, chief executive officer, and other employees.

Procedures for adopting regulations.

Procedures for adopting bylaws.

Procedures for making annual reports and financial statements.

Other matters for the conduct of business by the board.

29.35.695 Public Disclosure of Information

All information in the possession of an Authority shall be public, however the Authority may withhold from public disclosure personnel records, legal counsel, and proprietary information relating to specific shippers and contract rate agreements.

29.35.700 Annual Report

An Annual report is required 90 days after the end of the fiscal year.

29.35.705 Audits

Annual audits are required by an independent CPA and the books are required to be open to representative from the participating municipalities.

29.35.710 Remedies.

In the event of a lawsuit brought by a bond holder, this law applies to the bond holder.

29.35.715 Claims.

In the event of a lawsuit, an Authority and its board members and employees have the same legal rights as a municipality and its municipal officers.

29.35.720 Conflicting Laws Inapplicable.

In the event of a lawsuit, this law prevails over other provisions of title 29.

29.35.725 Definitions

self explanatory

29.35.730 Short Title

May be called the Municipal Port Authority Act.

Section 3: Amends Title 21, Insurance.

This allows Port Authorities to participate in insurance pools.

Section 4: Amends Title 29, Municipal Government.

Adds public corporations (Port Authorities) to the tax exempt property list.

Section 5: Amends Title 38, Public Lands.

Requires the commissioner of DNR to lease land (tidelands) within the physical boundaries of the Port Authority where water access is necessary for the port to operate. The commissioner may lease this land at below market rates.

Section 6: Amends Title 44, State Government.


Adds Port Authorities to the organizations that can issue revenue bonds.



April 2, 1992

MEMORANDUM

TO: Senator Steve Frank, Chairman
and
Members, Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: CS for SB 352 (TRANS) - Establishment of Port Authorities

The Alaska Municipal League supports the intent of SB 352 - 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 public corporations to 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 SB 352 (TRANS) 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. Mr. Luckhaupt's memo substantiates the my contention that the legislation as originally introduced is perhaps unnecessary, except for the public records provisions, separate bonding authority, and the insurance references. By implying the need for specific statutory authority, the legislation may also have the effect of restricting or diluting municipal powers. And, finally, the legislation fails to provide the additional statutory authority or clarification the League seeks.

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

1. includes in the LEGISLATIVE FINDINGS AND POLICY language that it is the intent of the legislature to reinforce, not diminish, a) 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), b) the existing authority of municipalities to establish port or other authorities but to provide explicit statutory authority to remove doubts that may exist for bond holders, and c) that the statutory language is providing one, but not the only, way in which a municipality can provide for such an authority, i.e., could form an authority by resolution or by cooperative agreement,

2. enables 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. The intent is to allow the formation of municipal public corporations to exercise any existing municipal power authorized by the local governing body or bodies, not to grant new municipal powers.

3. gives such public corporations or authorities, under local, state and federal IRS laws, the authority to sell bonds that are solely the debt of that corporation or authority. Other language needed in a CS are clarification as to eligibility to participate in or form joint insurance arrangements under AS 21.76 as provided in the CS SB 352 (TRANS) and allowing a municipality to grant the corporation the power to use eminent domain and declaration of taking [the "declaration of taking is not clear in the CS SB 352 (TRANS)].

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 and/or by bylaws. CS SB 352 (TRANS) has done a better job of this than the original bill but is still too detailed, e.g. Section 29.35.625. POWERS. and Section 29.35.690. BYLAWS AND REGULATIONS., and it just applies to port authorities.

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. The Committee Substitute of SB 352 (TRANS) is an improvement over the original bill but fails to provide general authority to exercise municipal powers through public corporations with bonding capabilities and may have the effect of diluting or restricting existing municipal power by its specificity to port authorities.

I have attached an earlier draft to show how the bill can accomplish the objectives of the AML and the sponsors. I look forward to continuing to work with the sponsor and the committee on this legislation to accomplish our mutual objectives.

cc: Senator Pearce
Representative Baker

Enclosure

sab6:porttest.42

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 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

Senator Curt Menard

February 11, 1992

Page 2

The bonding
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

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

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

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4906

Tom Fink,
Mayor

ENTERPRISE ACTIVITIES

FAX COVER SHEET

DATE: April 3, 1992 PAGES INCLUDING COVER SHEET: 3

TO: Senator Steve Frank FAX: () 465-4714

LOCATION: AK State Legislature PHONE: () 465-4989

SUBJECT: Port Authorities hearing on April 7, 1992

FROM: Will Gav, Executive Manager FAX: 258-4583

LOCATION: Enterprise Activities PHONE: 343-4906

COMMENTS: Please provide the other members of your committee with a copy of this letter before the hearing on Tuesday, April 7, 1992. Thanks.

If you do not receive all the pages, please call Linda Michou at (907) 343-4906 as soon as possible.

PLEASE DO NOT HIGHLIGHT DOCUMENT NOTATIONS

Comments. Munic. of Anchorage

ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

February 5, 1992

The Honorable Drue Pearce
Senator
Alaska State Senate
Room 101 Capitol
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pearce:

Thank you for the opportunity to respond to the proposed legislation (SB 352) pertaining to the creation of port authorities within the state. I want you to know that the Alaska Railroad Corporation fully supports the basic concepts outlined in the bill and certainly applaud your efforts to make it become a reality.

We view this as an opportunity by the State of Alaska and its communities to participate in the world market place by opening our horizons in developing the state's natural resources as well as an opportunity to build upon the state's internal infrastructure.

As I review this legislation, I would like to propose that you consider the possibility of including the Alaska Railroad as a participant with a regional port authority since it is a major land owner in several port communities. As the legislation is presently crafted, only municipalities can establish an authority. Whenever this Corporation can play a role in participating with surrounding communities to form such an authority, we want to assist. With our input, this can help diversify Alaska's transportation needs whether it be rail, highway, air or water transportation.

Please let me know what assistance I can provide to make this a reality. Thank you again for your efforts, and also for the opportunity to respond to this proposed legislation.

Yours very truly,

Robert S. Hatfield, Jr.
President & Chief Executive Officer

Agency Support. AKRR, DOT, DLCD

SB 352: "An Act relating to the establishment of port authorities by municipalities."

The concept of a port authority is similar to an enterprise fund. Specifically, all the proceeds of user fees go into the port authority fund to pay for operations, maintenance, and to repay debts incurred in port development.

This legislation is enabling legislation. A municipality or several municipalities could join together to form a port authority. No municipality would be required to establish one; it is just an additional economic development tool. In some cases, several communities joining together in a port authority could provide the economics necessary to operate self-sufficiently.

The legislation allows municipalities to create the structure which makes the most sense for them. The port commission could be directly elected or could be appointed by the mayor and confirmed by the council or assembly. Port authority facilities could be exempt from taxes or could pay "in lieu of taxes."

Any debt incurred by the port authority will be its own debt and not the debt of the local government or the State of Alaska. Port authorities would not have the power to levy taxes but could receive taxes dedicated to it by a local government. A system such as this currently operates in Kodiak where 1% of their 5% sales tax is dedicated to the port fund.

Port authorities would be able to own and operate any kind of transportation facility such as a toll road, toll bridge, airport, etc. This will become more important as state oil revenues decline and less money is available for capital projects. Port authorities, in conjunction with lending institutions such as AIDEA, will provide a method to finance and maintain public transportation facilities which cannot be achieved any other way.

This type of legislation is recommended by the Alaska Municipal League. Furthermore, it is supported by this department.



Glenn A. Olds, Commissioner *GA*

Date: 2.4.92

TRANSPORTATION

NORTHERN SEA ROUTE

By Dave Orr

The Northern Sea Route Project is among the Hickel Administration's top priorities. In actuality, it is a project that began over 600 years ago as explorers sought a maritime route through the Arctic Ocean. Such an ocean route was thought to be the shortest distance between Europe and East Asia. Rather than going across the top of North America, however, the Northern Sea Route (NSR) closely follows the Arctic Ocean coastline of the Soviet Union between Murmansk and the Bering Strait.

By the early 1900s, most western nations had given up on, or had forgotten, the concept of a Northwest Passage. That was not the case for the Soviet Union, however, and they continued to chart the route.

By the 1960s, shipping technology had advanced sufficiently that the Soviets were increasingly using the Arctic Ocean to transport goods and services for their internal domestic use on a seasonal basis. During the 1970s and 1980s, this effort



Soviet icebreaker.

gained in momentum to the point where the western portion of the NSR is open to year-round shipping. The eastern portion is open for about three to four months

during late summer and autumn.

In 1987, Soviet President Mikhail Gorbachev declared that the NSR was open to international shipping and that Soviet icebreakers could be used to escort ships of other nations desiring to use the route. Although the international community has been slow to pick up on the opportunity, interest is growing rapidly and a number of countries such as Canada, Japan, France, and others have shipped products on the NSR using Soviet ships or those of their own registry.

On November 8, 1991, at the third and founding meeting of the Northern Forum, governors from 14 northern regions or states, including Alaska, met and signed an agreement to make the Northern Forum a permanent international organization. Following unanimous approval of the Articles of Incorporation and bylaws, the very next business was adoption of a resolution calling for expanded international commercial shipping on the NSR soon.

According to Captain Lawson Brigham, U.S. Coast Guard and a leading expert on the NSR, transit of the route now averages over 600 voyages per year. Since the route is already being used to that extent, and international interest and use of the route is growing, Alaska is faced with options regarding its proper role in these events. Alaska can either take a leadership role in developing the economic opportunities and managing the related environmental safeguards, or it can sit on the sidelines passively receiving whatever environmental and social impacts develop as a result of

"Alaska can either take a leadership role in developing the economic opportunities and managing the related environmental safeguards, or it can sit on the sidelines passively receiving whatever environmental and social impacts develop as a result of other nations using the NSR."

other nations using the NSR. As Governor Hickel recognizes, there are many potential environmental impacts that range from spills and discharges of oil and hazardous substances to the potential for disruption of migrating whales and other marine mammals.

(Continued on page 11)

PORT AUTHORITY LEGISLATION

By Commissioner Glenn A. Olds

One of the most important economic development issues before the next session of the Alaska Legislature will be port authority legislation.

Marine, airport and other public transportation facilities are critical to the economic future of Alaska communities. All our resource exports go out through them, our supplies and necessities come in through them, all the tourists arrive through them, and all our intrastate business goes through them.

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

The concept of a port authority is similar to an enterprise fund in which all the proceeds of user fees go into the port authority fund to pay for operations and maintenance and to repay debts incurred in port development.

This legislation is enabling legislation, that is, a municipality, or several municipalities could join together to form a port authority. No municipality would be required to establish one, it is just an additional economic development tool. In some cases, several communities joining together in a port authority could provide the economics necessary to operate self-sufficiently.

Legislation could allow municipalities to create the structure which makes most sense for them. The port commission could be directly elected or could be appointed by the mayor and confirmed by the council or assembly. Port authority facilities could be exempt from taxes or could pay "in-lieu of taxes."

Any debt incurred by the port authority will be its own debt and not the debt of the local government or the State of Alaska. Port authorities would not have the authority to levy taxes but could receive taxes dedicated to it by a local government. This would be similar to Kodiak where 1% of their 5% sales tax is dedicated to the port fund.

Port authorities would be able to own and operate any kind of transportation facility.

(Continued on page 11)

Northern Sea Route

(Continued from page 2)

Thus, it is important that Alaska be a leader in the international movement to open the NSR to commercial shipping operations. This is one of the reasons why Alaska signed the Northern Forum agreement. It is also why Governor Hickel was unanimously chosen to be Chairman of the board of directors for the Northern Forum.

The resolution to open the NSR to international commercial shipping is a precursor to expanded maritime operation in the Bering, Chukchi, and possibly Beaufort Seas during months when ice is present in the shipping lanes. The Northern Forum encouraged additional research concerning use of the NSR with the aim of creating a maritime transportation route that is safe, has a long



Northern Sea Route

shipping season, and is operated with proper concern for the environment. These are principles which Alaska fully endorses.

Currently, the department has David Orr on loan from the Department of Natural Resources (DNR), acting as this division's coordinator of Alaska's involvement with the NSR project. Dave is also the Chief of Water Policy for the newly created Division of Water within DNR. Among his many duties is identifying Alaskan businesses who have products that might be competitively marketed in Europe if conventional ocean shipping distances and related transportation costs could be greatly reduced by using the NSR. The Division of Economic Development working with the Office of International Trade (OIT) can then assist those businesses with finding European buyers, assist in locating necessary shipping, and assist potential buyers and sellers to better understand shipping fees and contractual arrangements often used by foreign shipping companies such as those in the Soviet Union.

Salmon Strategy Task Force Report

(Continued from page 3)

- process and industry:
- C) Hatcheries should concentrate on courses for variations in quality in returning stocks and implement improvements.
11. The Division of Economic Development and the Office of International Trade should accelerate marketing strategies for Alaska salmon in all appropriate international arenas. The overseas work of ASMI should build on these efforts and expand them through the Alaska overseas offices of the Governor.
 12. Consideration should be given to a fisherman's salmon marketing council, chartered by the U.S. Secretary of Commerce under the Federal Fish and Seafood Promotion Act of 1986.

LONG-TERM RECOMMENDATIONS

1. Develop a strategic plan for the industry.
2. Organize a comprehensive review committee, including experts from the food industry, to assess and recommend initiatives on the entire salmon industry.
3. Develop a comprehensively integrated market strategy, domestic and international.
4. Investigate and recommend ways to retain and encourage Alaska-held permits, Alaskan-controlled joint ventures, Alaskan-developed product development, and market cultivation and penetration.
5. Contract a major marketing research firm to do a comprehensive and strategic analysis and recommendations for improving Alaska's programs and priorities, including any legislative changes and ASMI operations.
6. Sustain the ASMI strategic five-year plan to maximize the above.
7. Readdress the need and planning for much needed Alaska infrastructure (cold storage, etc.), value-added capacities, and fishery-related taxes and revenue resources to implement the task force recommendations.
8. Enlist the personal responsibility and full involvement of fishermen in effecting positive change in the industry, dependence on government policies or resources will not produce required results.

Port Authority Legislation

(Continued from page 2)

such as a toll road, toll bridge, airport, etc. This will become more important as state oil revenues decline and less money is available for capital projects. Port authorities, in conjunction with lending institutions such as AIDEA will provide a method to finance and maintain public transportation facilities which could not be achieved any other way.

Rep. Baker and a group of cosponsors will introduce a bill in the House, and Senator Duncan has his own bill in the Senate. Paul Fuhs, Governor Hickel's legislative liaison will be working with them and with local governments to develop a workable bill. The Alaska Municipal League recently passed a resolution in support of the concept of port authorities at its 1991 annual convention.

Again, this legislation enables municipalities to form port authorities. It does not require that they do so. Port authority legislation is an important step for the economic future of Alaska. It will lead to more self-sufficient operations and will facilitate the construction and operation of Alaska's commercial trade infrastructure.

1990 Annual Mineral Industry Report

(Continued from page 1)

exploration activity at these three deposits. Reserves at the A-J Mine in the proven, probable and possible categories were estimated at over 100 million tons, and at Fort Knox, between 100 and 200 million tons depending on cut-off grade. Each of these properties, if they are developed, would produce about 1,000 ounces of gold per day, significantly increasing the value of production in a few years.

Cominco's Snip Mine in Canada, about 40 miles east of Wrangell, is one of several mineral developments that could have very beneficial economic impacts on Alaskan towns. Reserves at the Windy Craggy Mine, north of Haines, doubled in 1991, allowing a 30-year mine life, and reserves have increased substantially at the Polaris-Taku and Tulsequah Chief Mines, east of Juneau.

TABLE 1. Total value of mineral industry in Alaska, 1988-90.

	1988	1989	1990
Exploration	\$ 45,468,800	\$ 47,762,596	\$ 63,255,594
Development	274,945,400	134,272,350	14,326,500
Production	232,172,000	276,983,741	533,024,500
TOTAL	\$552,586,200	\$459,018,687	\$610,606,594

From Alaska Mineral Industry Report, 1990 (pl).



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99654-7091
PHONE: (907) 373-9050
FAX: (907) 373-0788

W7 1 0 1082

March 10, 1992

The Honorable Drue Pearce, Chairman
Senate Labor and Commerce Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Pearce:

The City of Wasilla supports legislation providing for the formation of local and regional port authorities. Enclosed Resolution 92-10 was passed unanimously by the City Council on March 9.

Please support appropriate legislation.

Sincerely,

John C. Stein
Mayor, City of Wasilla

JCS/sbh

cc: Mayor Ernie Brannon, Mat-Su Borough
Mat-Su Borough Port Commission Chairman

Letters/Resolutions of Support



Requested by: Administration
Prepared by: Administration

CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99654-7091
PHONE: (907) 373-9050
FAX: (907) 373-0788

RESOLUTION NO. WR92-10

A RESOLUTION OF THE CITY COUNCIL OF WASILLA, ALASKA 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; and

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

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; and

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; and


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; and

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 Wasilla City Council 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.

I certify that a resolution in substantially the above form was passed by a majority of those voting at a duly called and conducted meeting of the governing body of the City of Wasilla this 9th day of March, 1992.

APPROVED:


John C. Stein, Mayor

ATTEST:


Erling P. Nelson, CMC
City Clerk

(Seal)

(Back up for this Resolution was provided in your boxes)



ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

Board Resolution

Whereas, the planning, construction and operation of ports is integral to the economic development of an area; and,

Whereas, port issues are often regional in nature; and,

Whereas, current Alaska state law requires that ports and port authorities be limited in jurisdiction to local government boundaries; and,

Whereas, this local limitation can prevent the regional cooperation that is often necessary for the most effective development and operation of regional port facilities;

Then Be It Therefore Resolved that the Board of Directors hereby endorses legislation that would allow for the formation of regional port authorities.

Passed and approved this 25th day of March, 1992.

Ronald A. Duncan, Chairman

Concur:

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

TESTIMONY OF J. J. BRECHT
BEFORE THE
SENATE TRANSPORTATION COMMITTEE
ON
SENATE BILL 352

Anchorage, Alaska
February 6, 1992

Good afternoon. 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 Senate Bill 352.

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 under utilized 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 SB 352 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 SB 352 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.

FEB 13 1992



ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

*AEDC board
would
voluntarily
supporting P/AS
2/05*

February 11, 1992

Senator Drue Pearce
Alaska State Legislature
State Capitol
Juneau, AK 99801

RE: Introduced Legislation on SB 352

Dear Senator Pearce,

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

*Port of Dutch Harbor
P.O. Box 89
Unalaska AK 99685
Office: 581-1254 - Fax: 581-2519*

February 6, 1992

Senator Drue Pearce
P.O. Box V
Juneau AK 99811

SUBJECT: Senate Bill 352 - Establishing Port Authorities

Dear Senator Pearce:

The City of Unalaska has been asked to provide comments on SB 352 and its companion bill, HB 399. The City of Unalaska owns and operates the Port of Dutch Harbor. I am under contract to serve as a port consultant to the City of Unalaska.

There is an amusing coincidence in the port authority bills being heard this week, just six days after last weekend's dedication of the Unalaska Marine Center. Various legislators, officials of the Hickel administration and other participants in the new Dutch Harbor port project were in Unalaska/Dutch Harbor Jan. 31 and Feb. 1 for its dedication. Publicly and privately citizens and community leaders, shipping executives and fishing industry leaders spoke of the importance of the project and how it required innovative financing and cooperation from the funding agency and the users. The 731-foot dock with its petroleum handling system and container freight capacity mean more freight, jobs and general commerce in the Unalaska/Dutch Harbor community and throughout the region.

It is impossible to determine at this early point in the project's life what effect a port authority would have or could have had on the development of the Unalaska Marine Center. Therefore I will provide comments on behalf of the City of Unalaska prospectively, based on my experience in the public port industry. In a community as directly dependent on its port as Unalaska/Dutch Harbor, everyone is involved in port planning and operation. The Unalaska City Council last year created a Harbor Advisory Commission to oversee port and harbor activity throughout the community. As an advisory body this nine-member Commission will make recommendations to the City of Unalaska on issues and operations relating to marine commerce and the area's marine resources.

Having just constructed a new container and petroleum terminal and having recently established the Commission to expand the community's involvement in marine affairs, the City of Unalaska is not presently in need of a new instrument to satisfy the management of its marine affairs. It is entirely possible, however, that as the new facility gains an operating history and as new projects are considered, the prospect of establishing an authority may

appeal to the administration of the City of Unalaska and the City Council. In all likelihood it would be the community's Harbor Advisory Commission which would first perceive the need for utilizing port authority legislation as outlined in SB 352 and HB 399.

For Unalaska and other developing ports, the benefits of the proposed legislation are readily evident. Perhaps the most important attribute of the legislation is that it takes nothing away from present city-operated ports throughout coastal Alaska.

The legislation does contain three important features that stand out as substantial benefits for mature port organizations:

1. The bills allow establishment of local independent port authorities as political subdivisions of the State of Alaska. Therefore the port is neither an instrument of the local government nor of the State of Alaska and is subservient to neither.
2. Cooperative port authorities can be formed under the legislation by two or more local governments, promoting cooperation and coordination while reducing the prospect of redundancy and destructive competitiveness.
3. Port authorities are provided a project-specific financing method under these bills. The funding mechanism does two things: it protects the local government and the state in the event of default and it sends a clear message to the bond market that projects financed by Alaska port authorities must meet certain requirements and satisfy the lending market on their own, i.e., without being backed up by the full faith and credit of the city in question or the State of Alaska.

There are a variety of other aspects to the bills that are positive and noteworthy. The appointment instead of election of members to the board of directors is wholly appropriate. Over the past decade Alaskans have been contemplating port authority legislation amid a debate over whether board members/commissioners should be elected or appointed. The bills favor appointed members for two good reasons, I believe. Alaska does not need a new political regime with candidate advertising, fund raisers, APOC reports and the rest of the necessities and realities of political campaigning. Nearly as important is the recognition the bills' appointment language gives the established local political hierarchy: appointments will come in some manner from the local governing body and the local governmental administration as determined by those entities. In other words, the locals get to determine how to create the new board and manage future appointments to the board of directors for their port authority.

And although the legislation creates authorities which have "...a separate and independent legal existence," new projects require approval of the governing body that created the port authority. This section of the legislation insures that the authority initiates projects that are feasible both practically and politically.

The significant missing piece in the legislation is the ability to tax. Over the years that I have been following port authority legislation in Alaska the inability to create authorities with

Senator Drue Pearce - Page 3

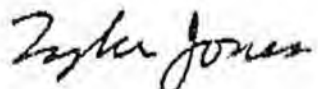
taxing power has been seen as a fatal flaw. In the case of these bills, however, a compromise has been struck. The ability to sell bonds provides the port revenues to develop economically self-supporting projects. Absent sufficient revenues from port operations, however, an authority will need other funding support. The authority can gain that support by increasing revenues, by implementing efficiencies, or by soliciting funds for operations from the local government. In other words, to enjoy the power of taxation the authority need only go to its local government and be persuasive. The port has two options: be self-sustaining or seek support from local taxes. It doesn't require advanced degrees in rocket science to anticipate that only those localities which have strong evidence that their proposed port authorities are going to be self-supporting will create authorities under this legislation. The balance of the ports will retain control at the local government level.

In summary, the legislation has immediate value for mature port organizations seeking independence. It also offers a project-related funding mechanism and a vehicle for cooperation between two or more ports. While benefiting from these new powers, the ports formed under the proposed authority legislation will also be called on to exhibit considerable financial and political maturity. The legislation also serves as a model which some of the faster growing ports, like the Port of Dutch Harbor, can aspire to. The powers that the proposed legislation would extend to local authorities will inspire many port promoters in Alaska's coastal communities to sharpen their pencils and perhaps to dream a little. The responsibilities, however, are quite sobering and will likely derail more than a few ill-conceived schemes.

Thank you for the opportunity to provide comments on this well thought out bill. If it becomes law it will serve as an effective new instrument to aid in port development and management.

Please contact me if there are any questions concerning these comments. A similar letter is being transmitted to Rep. Larry Baker concerning HB 399.

Sincerely,



Tyler Jones

Post-It™ brand fax transmittal memo 7671		# of pages >	3
To	KEN ERICKSON		
From	TYLER JONES		
Cc.	Sen. Pearce's Office		
Co.	Port of Dutch Harbor		
Dept.			
Phone #	274-9559		
Fax #	463-5352		
Fax #	276-8967		

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;

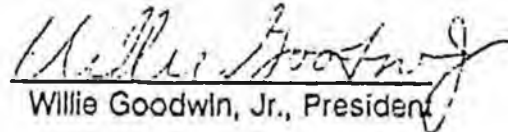
WHEREAS, it is confidently believe that a better coordination of ports, harbors, transportation, and other facilities of commerce in, about and through ports in Alaska, will result in greater economies, benefiting the people of Alaska;

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;

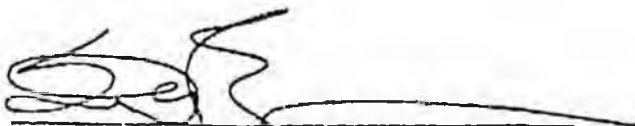
WHEREAS, the foregoing can best be accomplished through the cooperation of one or more of the regions and communities in Alaska by and through one or more joint and common port authorities;

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

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.	Rich Port Corp	Co.	CITY OF KTAI
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.

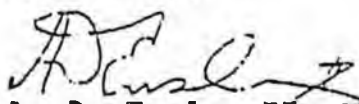
Our Association supports the proposal and the essential program elements outlined in the report. The three components: Development Plan, Financial Foundation, and Cooperation must be supported to enhance our facilities and local economies.

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

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

Senator Drue Pearce

Subject: Port Authority Legislation

Dear Senator Pearce,

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 SB 352 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.

President: R. B. Stiles
1227 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.

Differences between (S)Tran CS and CS presented to (S)C&RA.

The section labeled "Conveyance of other land to Port Authority" was deleted from the Senate Transportation version: pg. 3, line 15-18. The functions contained in this section were added to section 6 of the "Powers" section in the new CS; pg. 3, line 27-30. This eliminated some duplication. The rewording of this section also addresses the intent of argument number 4 of Julius Brecht's written testimony.

Added the words "and declaration of taking" to pg. 4, line 13 after the word domain of the new CS. This addresses a wish from AML for more clarity in this section.

Added a section to the new CS that limits personal liability of a board member or employee because of the execution or issuance of bonds, new CS pg. 7, line 16-18. This was added at the request of Representative Baker.

Added the words "and special assessments" on page 7, line 30 after the word taxes in the new CS. This was added at the request of Julius Brecht.

Changes to the development plan section mandate the submittal of a development plan to the governing body and prohibit the construction or acquisition of a "project" unless approved by the governing body. See page 8, line 13-19. Project is later defined in the bill to include a "...port, dock, and administrative facilities, including property necessary in connection with the operation of a port." This was requested by Senator Pearce.

The bylaws and regulations section, Sec. 29.35.690, of the new CS was rewritten to a shorter form while maintaining the same intent (New CS page 9, line 14-15 versus Trans CS page 9, line 13-16). This was requested by AML.

The public disclosure of information section of the trans CS (page 9, line 31 through page 10, lines 1-7) was replaced with a new section saying that an authority is subject to public records laws (page 9, line 30-31). This is an effort to simplify the bill and to also address a concern of AML.

The claims section in the new CS (page 10, line 20-22) was rewritten to a shorter form while retaining the same intent. This was requested by AML.

7-LS1768P
Luckhaupt
4/21/92

CS FOR SENATE BILL NO. 352 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS PEARCE, Collins

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. POWERS. If provided in the enabling ordinance, an authority may

16 (1) sue and be sued;

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

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

20 (4) lease to others a project acquired by it and upon the terms and conditions the
21 authority may consider advisable, including, without limitation, provisions for purchase or
22 renewal;

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

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

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

- 1 (8) purchase or insure loans to finance the costs of projects;
- 2 (9) provide for security within the boundaries of the authority;
- 3 (10) enter into loan agreements with respect to one or more projects upon the
- 4 terms and conditions the authority considers advisable;
- 5 (11) acquire, manage, and operate projects as the authority considers necessary
- 6 or appropriate to serve the authority's purposes;
- 7 (12) assist private lenders to make loans to finance the costs of projects through
- 8 loan commitments, short-term financing, or otherwise;
- 9 (13) charge fees or other forms of remuneration for the use or possession of
- 10 projects in accordance with the agreements described in this section, other agreements relating
- 11 to the projects, covenants, or representations made in bond documents relating to the projects,
- 12 or regulations of the authority relating to the projects;
- 13 (14) exercise the powers of eminent domain and declaration of taking within its
- 14 physical boundaries under AS 29.35.030 to acquire land or materials for authority purposes;
- 15 (15) regulate land use within the boundaries of the authority;
- 16 (16) defend and indemnify a current or former member of the board, employee,
- 17 or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney
- 18 fees, incurred by or imposed upon that person in connection with civil or criminal action in
- 19 which the person is involved as a result of the person's affiliation with the authority if the person
- 20 acted in good faith on behalf of the authority and within the scope of the person's official duties
- 21 and powers;
- 22 (17) purchase insurance to protect and hold harmless its employees, agents, and
- 23 board members from an action, claim, or proceeding arising out of the performance, purported
- 24 performance, or failure to perform in good faith, of duties for, or employment with the authority
- 25 and to hold them harmless from expenses connected with the defense, settlement, or monetary
- 26 judgments from that action, claim, or proceeding; the purchase of insurance is subject to the
- 27 discretion of the board; insurance purchased under this paragraph may not be considered
- 28 compensation to the insured person; and
- 29 (18) protect its assets, services, and employees by purchasing insurance or
- 30 providing for certain self-insurance retentions; an authority may also maintain casualty, property,
- 31 business interruption, marine, boiler and machinery, pollution liability, and other insurance in

1 amounts reasonably calculated to cover potential claims against the authority or a municipality
2 for bodily injury, death or disability, and property damage that may arise from or be related to
3 authority operations and activities.

4 Sec. 29.35.625. BONDS OF A PORT AUTHORITY; SUPERIOR COURT
5 JURISDICTION. (a) If authorized by the enabling ordinance, an authority may borrow money
6 and may issue bonds on which the principal and interest are payable

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

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

12 (3) from its income and receipts generally or a designated part or parts of them.

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

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

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

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

30 (f) The superior court has jurisdiction to hear and determine suits, actions, or proceedings
31 relating to an authority, including suits, actions, or proceedings brought to foreclose or otherwise

1 enforce a mortgage, pledge, assignment, or security interest brought by or for the benefit or
2 security of a holder of the authority's bonds or by a trustee for or other representative of the
3 holders.

4 Sec. 29.35.630. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under
5 AS 29.35.625 are securities in which all public officers and public bodies of the state and its
6 political subdivisions, all insurance companies, trust companies, banks, investment companies,
7 executors, administrators, trustees, and other fiduciaries may properly and legally invest funds,
8 including capital in their control or belonging to them. The bonds may be deposited with a state
9 or municipal officer of an agency or political subdivision of the state for any purpose that the
10 deposit of bonds of the state is authorized by law.

11 Sec. 29.35.635. VALIDITY OF PLEDGE. The pledge of revenue of an authority to the
12 payment of the principal or interest on bonds or notes of the authority is valid and binding from
13 the time the pledge is made, and the revenue is immediately subject to the lien of the pledge
14 without physical delivery or further act. The lien of a pledge is valid and binding against all
15 parties having claims of any kind against the authority irrespective of whether those parties have
16 notice of the lien of the pledge.

17 Sec. 29.35.640. CREDIT OF STATE OR A MUNICIPALITY NOT PLEDGED. (a) The
18 state and municipalities participating in an authority are not liable for the debts of that authority.
19 Bonds issued under AS 29.35.625 are payable solely from the revenue of the authority and do
20 not constitute a

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

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

23 (b) An authority may not pledge the credit or the taxing power of the state or its
24 municipalities. A bond issued under AS 29.35.625 must contain on its face a statement that

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

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

29 Sec. 29.35.645. PLEDGES OF THE STATE AND MUNICIPALITIES. The state and
30 municipalities participating in the authority pledge to and agree with the holders of bonds issued
31 under AS 29.35.625 and with the federal agency, if any, that loans or contributes funds in respect

1 to a project of the authority, that the state and the municipalities participating in the authority will
2 not limit or alter the rights and powers vested in the authority by its enabling ordinance or other
3 law so that it is unable to fulfill the terms of a contract made by the authority with those holders
4 or that federal agency, or in any way impair the rights and remedies of those holders or that
5 federal agency until the bonds, together with the interest on them and interest on unpaid
6 installments of interest, and all costs and expenses in connection with an action or proceeding
7 by or on behalf of those holders or that federal agency, are fully met and discharged. An
8 authority is authorized to include this pledge and agreement of the state and the municipalities
9 participating in the authority, insofar as it refers to holders of bonds of the authority, in a contract
10 with those holders, and insofar as it relates to a federal agency, in a contract with that federal
11 agency.

12 Sec. 29.35.650. LIMITATION OF LIABILITY. A liability incurred by an authority shall
13 be satisfied exclusively from the assets or revenue of the authority. A creditor or other person
14 does not have a right of action against the state or a municipality participating in an authority
15 because of a debt, obligation, or liability of an authority.

16 Sec. 29.35.655. LIMITATION ON PERSONAL LIABILITY. A board member or
17 employee of an authority is not subject to personal liability or accountability because of the
18 execution or issuance of bonds.

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

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

25 Sec. 29.35.670. EXEMPTION FROM TAXATION. (a) An authority exercising the
26 powers granted by the enabling ordinance under AS 29.35.600 - 29.35.730 is in all respects for
27 the benefit of the people of the municipalities participating in the authority and the people of the
28 state in general, for their well-being and prosperity, and for the improvement of their social and
29 economic condition. The real and personal property of an authority and its assets, income, and
30 receipts are exempt from all taxes and special assessments of the state or a political subdivision
31 of the state.

1 (b) Bonds issued by the authority under AS 29.35.625 are issued for an essential public
2 and governmental purpose; therefore, the bonds, interest and income from them, and all fees,
3 charges, funds, revenue, income, and other money pledged or available to pay or secure the
4 payment of the bonds or interest on them are exempt from taxation except for inheritance,
5 transfer, and estate taxes.

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

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

13 Sec. 29.35.675. DEVELOPMENT PLAN: In the enabling ordinance establishing the
14 authority under AS 29.35.605 the authority shall be

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

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

20 Sec. 29.35.680. ADMINISTRATION OF PORT AUTHORITIES; BOARD. (a) An
21 authority shall be governed by a board of directors, which shall exercise the powers of the
22 authority. The enabling ordinance establishing the authority under AS 29.35.605 must specify
23 the number, qualifications, manner of appointment or election, and terms of members of the
24 board.

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

27 Sec. 29.35.685. CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS;
28 APPLICATION OF AS 23.40.070 - 23.40.260. (a) A collective bargaining agreement for
29 employees of the state or its political subdivisions who are transferred to an authority under
30 AS 29.35.600 - 29.35.730 shall remain in effect for the term of the agreement or for a period of
31 one year, whichever is longer, and shall be binding on the authority unless the parties agree to

1 the contrary before the expiration of the agreement. A labor-management negotiation impasse
2 declared after a transfer of employees under this subsection but before the negotiation of a new
3 collective bargaining agreement shall be resolved as provided in the collective bargaining
4 agreement, except that if the collective bargaining agreement does not provide for a resolution,
5 then as provided in AS 23.40.070 - 23.40.260.

6 (b) Employees of the state or a political subdivision of the state transferred to an
7 authority shall retain, for a period of one year following the date of transfer or for the duration
8 of a collective bargaining agreement transferred under (a) of this section, whichever is greater,
9 all rights of participation in fringe benefit programs available to the employees on the day before
10 the transfer, or in programs substantially equivalent.

11 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority established under
12 AS 29.35.500 - 29.35.730 unless all municipalities participating in the authority are exempt under
13 sec. 4, ch. 113, SLA 1972.

14 Sec. 29.35.690. BYLAWS AND REGULATIONS. (a) A board shall adopt bylaws and
15 appropriate regulations to carry out its functions and the purposes of the enabling ordinance.

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

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

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

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

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

26 (5) procedures for adopting regulations;

27 (6) procedures for adopting bylaws;

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

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

30 Sec. 29.35.695. AUTHORITY SUBJECT TO PUBLIC RECORDS LAW. An authority
31 established under AS 29.35.605 is subject to AS 09.25.110 - 09.25.220.

1 Sec. 29.35.700. ANNUAL REPORT. Within 90 days following the end of the fiscal year
2 of an authority, the board shall distribute to the mayor and governing body of each municipality
3 participating in the authority a report describing the operations and financial condition of the
4 authority during the preceding fiscal year. The report may include suggestions for legislation
5 relating to the structure, powers, or duties of the authority or operation of facilities of the
6 authority. The report must itemize the cost of providing each category of service offered by the
7 authority and the income generated by each category.

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

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

12 Sec. 29.35.710. REMEDIES. A holder of bonds or notes or coupons attached to the
13 bonds issued by an authority under AS 29.35.625, and a trustee under a trust agreement or
14 resolution authorizing the issuance of the bonds, except as restricted by a trust agreement or
15 resolution, either at law or in equity, may

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

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

20 Sec. 29.35.715. CLAIMS. For the purpose of judicial and regulatory proceedings by and
21 against an authority, an authority and its board members and employees enjoy the same rights,
22 privileges, and immunities as a municipality and municipal officers.

23 Sec. 29.35.720. CONFLICTING LAWS INAPPLICABLE. If provisions of
24 AS 29.35.600 - 29.35.730 conflict with other provisions of this title, the provisions of
25 AS 29.35.600 - 29.35.730 prevail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) money on deposit;

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) special assessments on benefited property;

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

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

26 not a lessee;

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

The following amendments will be
offered by the Alaska Municipal
League to CSSB 352() dated 4/21/92.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 2, line 14, following "by":

Insert ", but not limited to,"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 7, line 30:

Delete "and special assessments"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 9, line 15, following "regulations":

Insert "consistent with the enabling ordinance"

Page 9, line 15:

Delete "the purposes of the enabling ordinance"

Insert "purposes"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 11, line 20, following "to" through line 21:

Delete all material.

Insert "govern its operations consistent with the enabling ordinance."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 1, line 2, following "municipality;":

Insert "relating to municipal bonds and the Alaska Municipal Bond Bank Authority;"

Page 13, following line 26:

Insert a new subparagraph to read:

"(F) a bond of a borough issued as a general obligation of the area of the borough lying outside all cities under AS 29.47.440:"

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

April 22, 1992

SUBJECT: Port Authorities - SB 352 (Work Order No. 17-LS1768\P)

TO: Senator Drue Pearce
Attn: Ken Erickson

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

Disregarding for the moment SB 352, you have asked if a municipality could create or participate in a port authority by a cooperative agreement or some other procedure other than by an ordinance? It is my opinion that a municipality could create or participate in a port authority by a cooperative agreement pursuant to AS 29.35.010(13). That section provides that a municipality may cooperate with another municipality, the state, or the federal government in the performance of any power or function that the municipality is authorized to perform. An ordinance approving the cooperative agreement or otherwise approving the municipality's participation in the agreement would not necessarily be required. If the cooperative agreement would "establish, alter, or abolish a municipal department" or could be construed to be undertaking an action for which an ordinance is required under AS 29.25.010(a), then an ordinance would be required in addition to the cooperative agreement.

SB 352 does not necessarily restrict municipalities to only forming a port authority as provided in the bill draft. For example, AS 29.35.605(a) in the bill draft, does not provide that a port authority may only be created by one of the following means. Therefore, general law municipalities probably are not restricted from forming a port authority in another manner. Further, the bill does not contain a provision that AS 29.35.600 - 29.35.725 is a limitation on the powers of a home rule municipality. Therefore, home rule municipalities are certainly not restricted from forming a port authority in another manner. (See AS 29.10.200)

SB 352 provides a structure for municipalities to avail themselves of if they want to create a port authority. It provides various forms of authority that are not currently available (such as, the port authority being able to issue its own revenue bonds). If a municipality wishes to avail itself of the structure provided by AS 29.35.600 -

Senator Drue Pearce

April 22, 1992

Page 2

29.35.725, then it must do so by ordinance. This is a policy choice for the legislature. By requiring an ordinance the legislature may be attempting to provide a certain level of public involvement in the decision-making process before this statutory structure may be utilized. The requirement of an ordinance means that there will be a certain minimum amount of public notice and involvement in the decision to create or participate in a port authority, while a municipality's creation or participation in a port authority by cooperative agreement does not necessarily require any public notice or involvement in the decision at all.

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

GPL:pl:gc
92-279.plm

Municipality of Anchorage



OFFICE OF THE MAYOR

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TOM FINK,
MAYOR

April 3, 1992

Senator Steve Frank, Chair
Committee on Community and
Regional Affairs
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Frank:

It is my understanding that SB 352, relating to Port Authorities, is scheduled to be heard by your committee on April 7, 1992. I would like to share with you and the members of the committee my observations regarding this legislation.

Generally, I am opposed to "authorities". When Alaska's Constitution was drafted, we had the benefit of mistakes made in other states where overlapping jurisdictions made it almost impossible for the average citizen to understand them. The Constitutional Convention wisely chose a different path, and vested all local government powers in cities and boroughs. See Article X, Section 2, Alaska Constitution and the comments of Delegates Rosswog and V. Rivers in the Proceedings of the Alaska Constitutional Convention at 2610 to 2617.

In contrast to the direction favored by the Constitutional Convention, the legislation authorizing port authorities is essentially legislation to permit the establishment of another layer of government at a time the State and the community is already dominated by government. I seriously doubt the ability of this new layer of government to deliver port services more efficiently or more effectively.

The Port of Anchorage was established and designed to serve the interests of this community to the best of its ability. I believe that it is serving this purpose very well. To abolish or significantly alter the Port of Anchorage by becoming part of a port "authority" with other communities necessarily involves compromising the interests of the Port with the interests of these other communities.

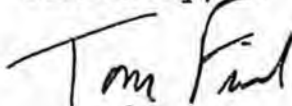
Senator Steve Frank
Page 2

To the extent that other communities have a need for port facilities and functions, and there is economic justification for those facilities, I encourage them to take the necessary steps to develop them. We welcome competition and the benefits that competition would bring to the public, but believe that each facility should make sense o its' own.

Finally, it should be kept in mind that the national experience with "authorities" has not been all that successful. These organizations tend to be fiscally wasteful, unaccountable to the public and vulnerable to conflict of interest problems.

Based on these concerns and problems, I oppose the establishment of port authorities. To the extent that clear benefits to this community can be demonstrated from the establishment of a port authority, I would re-examine this view. Based on what is known about the proposal at this time, I think that burden would be a difficult one.

Sincerely,



Tom Fink
Mayor

cc: Senator Hoffman
Senator Pearce
Senator Sturgulewski
Senator Zharoff

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TESTIMONY OF J. J. BRECHT
BEFORE THE
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
ON
COMMITTEE SUBSTITUTE SENATE BILL 352 (TRANSPORTATION)

Anchorage, Alaska
April 23, 1992

Good afternoon. 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 Committee Substitute Senate Bill 352 (Transportation).

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 under utilized 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 was introduced as SB 352, a precursor of what 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 SB 352 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.

My specific comments as to the changes that have been made to SB 352 as embodied in CSSB352 (Transportation) are as follows:

1. Section 600 The term "territory" should be changed to "boundary" or its equivalent as done elsewhere in the bill.
2. Section 605(a)(1),(2) The phrase "of the municipality" should be deleted. Otherwise, fitting the bonds offered by a port authority under one of the exemptions under federal tax law and securities law may be awkward.

3. Section 605(f)

After the word "may" there should be added "notwithstanding (a)(1), (2) of this section." Otherwise one might assumed (f) requires a vote of the people in all cases. My understanding is that the intent of Section 605 is in part to provide that a municipality may choose (provided it is allowed to do so under its municipal code) to either put the establishment of a port authority to a vote of the people or to adopt a port authority ordinance by a vote of the governing body of the municipality.

4. Section 625(8)
(6)

The phrase "regarding them" should be deleted, the word "conveyances" should be added after the word "contracts." Furthermore, what does the phrase "other source" mean? Does it include a private individual? It should. It should be made clear that (8) allows a port authority to enter into any form of contract or agreement to carry out its responsibilities under the enabling ordinances, including the conveyancing of land to and the accepting of land from, and the sale or other transfer of personal property to or from the port authority, as well as the leasing of either real or personal property to or from the port authority.

5. Section 630(c)

Leave this subsection as it is. It accommodates a deal where the proceeds of a bond offering are to be used to construct a structure as well as a deal where the cash flow from the ongoing operation of a port authority can be pledged to collateralize the bonds.

6. Section 670(a)

In comparing this section to its precursor in SB 352, I note that the phrase "and special assessments" has been deleted after the word "taxes." I suggest that special assessments be added to Section 670(a).

7. Section 675

The precursor of this section in SB 352 described briefly the contents of the development plan. The present section 675 not only does not describe the contents of a development plan, it makes the establishment of a development plan in the enabling ordinance discretionary. The development plan is a very important aspect of a proposed development of a port authority and should be placed before the municipalities participating in the establishment of the port authority. The logical way to present this would be in the enabling ordinance submitted to the governing body for adoption. It should be noted that (2) of Section 675 appears unduly restrictive. If a port authority must go back to the governing body for each and every improvement done to the property within the boundaries of a port authority, the development process can be extremely time consuming and costly. My thought is that the development plan may be set forth in less specific terms as a part of the initial ordinance and adopted by the governing body. Thereafter, the port authority would have the flexibility of adjusting the development plan to fit its ongoing needs. So long as the port authority stayed within the general guidelines set out in its

development plan, it would not need to go back to the governing body for approval, confirmation or ratification of adjustments to that development plan.

8. Section 3 of the Bill This section of the Bill amends AS 21.76.010(a) to include "public corporations" of municipalities. This addition raises the same questions as were addressed pertaining to section 605(a)(1),(2). See item 2 above.
9. Section 4 of the Bill This section of the Bill amends AS 29.45.030(a) in a similar way to the provisions discussed in Item 8 above. Similarly, the reference to "public corporations" should be dropped.

Some of the comments displayed above are technical in nature. See Items 1 and 3. However, other comments are substantive and should be seriously taken into consideration. See Items 2, 4, 5, 8 and 9. Others involve policy decisions for your consideration. See Items 6 and 7.

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.

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7090
PHONE: (907) 465-3900

April 23, 1992

The Honorable Drue Pearce
Alaska State Senator
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce:

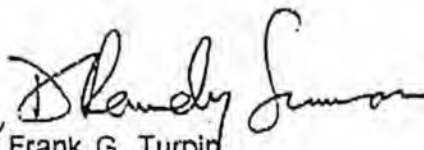
Your staff requested that we provide our comments on a proposal to require legislative approval before any state asset could be transferred to a port authority.

We are opposed to an amendment to Senate Bill 352 to require specific legislative review and approval prior to the transfer to or operations of any State asset by a port authority. This requirement would cause additional complications and delays for port authorities. It would also reduce the ability of the State to act in an expeditious manner to assist local government. Carried to the extreme, it appears that even the transfer of a piece of State surplus equipment would require legislative approval.

If there are some selected facilities that are so critical to the overall economy of the state, such as the Anchorage and Fairbanks International Airports, that they deserve policy consideration by the entire legislature those facilities should be identified. We don't believe that each and every asset reaches this policy level. If there are concerns with the process for transfer of an assets from the State to a political subdivision the legislature could consider changing the current statutes to identify a new process.

If you should require any additional information concerning this subject please feel free to contact my staff or myself.

Sincerely,


Frank G. Turpin
Commissioner

cc: Ron Lind, Director, Plans, Programs and Budget
Katy McHugh, Legislative Liaison, Office of the Commissioner
D. Randy Simmons, Deputy Commissioner

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Juneau, Alaska 99801-2101

MEMORANDUM

April 23, 1992

SUBJECT: Port Authorities - SB 352 (Work Order No. 7-LS1768\M)

TO: Senator Steve Frank
Attn: Sara Fisher

FROM: Jerry Luckhaupt, *JLB*
Legislative Counsel

You have asked if the disposition by sale or other manner of alienation of a state asset, such as the international airports or the Alaska Marine Highway System, by the executive branch would require an act of the legislature. It is my opinion that the disposition of a state asset by the executive branch requires statutory authorization by the legislature.

The executive branch of state government only has the powers and authority granted by the constitution and the legislature. Absent an explicit or implicit grant of authority by one of those two sources, an asset, whether it be real or personal property, may not be disposed of by the executive branch. The legislature has authorized the disposition of state assets in various contexts, including public lands and interests therein, see AS 38.50, and surplus property, see e.g., AS 44.68.110, 36.30.010(b)(4), and 16.40.010. The legislature has also authorized the Department of Transportation and Public Facilities at any time to dispose of all or a part of property, airports, and navigational facilities described in AS 02.15.070(a). AS 02.15.070(b). Conceivably this provision could authorize the disposal of the Anchorage and Fairbanks International Airports. Otherwise, absent statutory authority to dispose of the asset, the asset may not be disposed of by the executive branch.

Of course, the executive branch could also contract or cooperatively agree with some other entity, including a port authority, for the other entity to take over operation of a state asset, such as, the international airports or the Alaska Marine Highway System, if constitutional or statutory authority exists. A number of provisions would seem to authorize this arrangement. See e.g., art. X, § 13, and art. XII, § 2, of the Alaska Constitution; and AS 44.42.020(a)(6).

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

JPL:gc
92-317.glc

YES

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

Page 3, following line 1:

Insert a new subsection to read:

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

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 352 () DRAFT DATED 4/21/92

adopt

Page 9, line 15, following "regulations":

Insert "consistent with the enabling ordinance"

Page 9, line 15:

Delete "the purposes of the enabling ordinance"

Insert "purposes"