

SB352

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/92

FURTHER:

DATE TURNED INTO OFFICE: 5-6-92

The Finance Committee considered SENATE BILL NO. 352

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

and recommends:

- replace with \_\_\_\_\_ CS SB 352 (FINANCE)  
or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_  
 attaches amendment(s)

- same title  
 new title  
 technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

- do pass  
 do not pass  
 no recommendation  
 individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes DATED 2-4-92

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

DO PASS:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
1. [Signature] do pass

Co-Chair: Signature/Recommendation

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes DNT 1-30-92

fiscal notes \_\_\_\_\_

OTHER RECOMMENDATIONS:

all Adams - no Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
2. \_\_\_\_\_

Co-Chair: Signature/Recommendation

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 (CRA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

4/23/92 [Signature]  
date Comte Aide (initial)

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

3/17/92 [Signature]  
date Comte Aide (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. Burpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 30, 1992

Distribution By Preparer: Leg. F

Changes in CS SA 352 (FID) have no fiscal impact. This fiscal note is appropriate.

Leg. Office, Impacted Agency(ies).

5-6-92 [Signature]  
date Comte Aide (initial)

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

Component: \_\_\_\_\_

Sponsor: Senator Pearce

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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE FUND RESOURCE:</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	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).

*Final*

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

BY THE SENATE FINANCE COMMITTEE

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 transportation related 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

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

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

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

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

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

19 Sec. 29.35.620. POWERS. If provided in the enabling ordinance, an authority may

20 (1) sue and be sued;

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

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

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

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

31 (6) accept gifts, grants, or loans, under the terms and conditions imposed under

1 the gift, grant, or loan, and enter into contracts, conveyances or other transactions with a federal  
2 agency or an agency or instrumentality of the state, a municipality, private organization, or other  
3 person;

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

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

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

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

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

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

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

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

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

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

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

1 compensation to the insured person; and

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

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

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

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

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

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

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

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. 29.35.630. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under  
8 AS 29.35.625 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. 29.35.635. 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. 29.35.640. 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 29.35.625 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 29.35.625 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. 29.35.645. 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 29.35.625 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. 29.35.650. 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. 29.35.655. LIMITATION ON PERSONAL LIABILITY. A board member or  
20 employee of an authority is not subject to personal liability or accountability because of the  
21 execution or issuance of bonds.

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

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

28           Sec. 29.35.670. EXEMPTION FROM TAXATION. (a) An authority exercising the  
29 powers granted by the enabling ordinance under AS 29.35.600 - 29.35.730 is in all respects for  
30 the benefit of the people of the municipalities participating in the authority and the people of the  
31 state in general, for their well-being and prosperity, and for the improvement of their social and

1 economic condition. The real and personal property of an authority and its assets, income, and  
2 receipts are exempt from all taxes and special assessments of the state or a political subdivision  
3 of the state.

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

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

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

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

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

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

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

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

31 Sec. 29.35.685. CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS;

1 APPLICATION OF AS 23.40.070 - 23.40.260. (a) A collective bargaining agreement for  
2 employees of the state or its political subdivisions who are transferred to an authority under  
3 AS 29.35.600 - 29.35.730 shall remain in effect for the term of the agreement or for a period of  
4 one year, whichever is longer, and shall be binding on the authority unless the parties agree to  
5 the contrary before the expiration of the agreement. A labor-management negotiation impasse  
6 declared after a transfer of employees under this subsection but before the negotiation of a new  
7 collective bargaining agreement shall be resolved as provided in the collective bargaining  
8 agreement, except that if the collective bargaining agreement does not provide for a resolution,  
9 then as provided in AS 23.40.070 - 23.40.260.

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

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

18 Sec. 29.35.690. BYLAWS AND REGULATIONS. (a) A board shall adopt bylaws and  
19 appropriate regulations consistent with the enabling ordinance to carry out its functions and  
20 purposes.

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

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

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

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

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

31 (5) procedures for adopting regulations;

- 1 (6) procedures for adopting bylaws;
- 2 (7) procedures for making annual reports and financial statements; and
- 3 (8) other matters for the conduct of business by the board.

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

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

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

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

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

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

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

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

28 Sec. 29.35.720. **CONFLICTING LAWS INAPPLICABLE.** If provisions of  
29 AS 29.35.600 - 29.35.730 conflict with other provisions of this title, the provisions of  
30 AS 29.35.600 - 29.35.730 prevail.

31 Sec. 29.35.722. **OWNERSHIP OR OPERATION OF CERTAIN STATE FACILITIES**

1 PROHIBITED. The Department of Transportation and Public Facilities may not, without the  
2 approval of the legislature,

3 (1) convey or transfer the Alaska marine highway system or the Anchorage or  
4 Fairbanks international airports to an authority; or

5 (2) enter into an agreement with an authority under which the authority would  
6 operate the Alaska marine highway system or the Anchorage or Fairbanks international airports.

7 Sec. 29.35.725. DEFINITIONS. In AS 29.35.600 - 29.35.730, unless the context  
8 otherwise requires,

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

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

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

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

15 (5) "port" means a facility of transportation related commerce located within the  
16 state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (5) money on deposit;

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

8 (7) real property or an interest in real property that is exempt from taxation under  
9 43 U.S.C. 1620(d), as amended;

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

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

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

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

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

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

26 (B) a revenue bond, except a revenue bond for electrical generation  
27 purposes other than diesel-powered generation, issued by a municipality or a port  
28 authority that [WHICH] pledges the revenue of a revenue-producing capital  
29 improvement and that [WHICH] is payable solely from the revenue of the  
30 revenue-producing capital improvement;

31 (C) a general obligation bond or revenue bond combined or additionally

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secured;

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

(E) an obligation of a municipality secured only by

- (i) special assessments on benefited property;
- (ii) tax increments and a letter of credit or equal security; or
- (iii) a lease for equipment or building improvements if the state is not a lessee;

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



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: SB 352

APPROVED: 

TITLE: Authorizes Port Authorities

DATE: January 30, 1992

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

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.

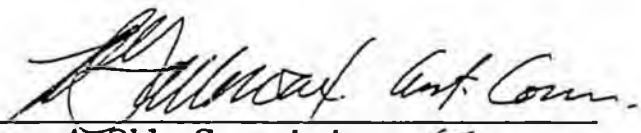
This legislation is enabling legislation. A municipality or several municipalities could join together to form a port authority. No municipality would be required to establish one; it is just an additional economic development tool. In some cases, several communities joining together in a port authority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

# DIVISION OF LEGAL SERVICES

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### 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

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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.

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