

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7359 SENATE COMMUNITY & REGIONAL AFFAIRS

A partial exemption could mean that some natural resources are exempted from property taxation while others are not. Alternatively, a partial exemption could mean that a portion of the assessed value of the natural resource in place would be exempted from property taxation. The former interpretation raises serious questions of taxpayer equity. The latter interpretation triggers serious concerns about the cost-effectiveness of a partial exemption.

An exemption of some natural resources in place but not others would obviously have a differential impact on potential taxpayers. Owners of timber land might question whether it was fair to exempt mineral land from taxability but not their timber land, for example. There would also be a differential impact on municipalities since natural resources are not all distributed evenly across the state. Municipalities whose resources were exempted from taxability would no longer be able to raise revenue by levying a property tax on the value of those resources in place. On the other hand, municipalities whose natural resources were not exempted would have to add the assessed value of those natural resources in place to their full and true value. The consequent increase in the full value determination means those municipalities would have to raise more revenue in order to meet their local contribution requirement for state foundation aid. Those municipalities might not have a large tax base from which to raise revenue other than by a property tax, and yet they might feel that levying a property tax would be detrimental to economic development and also to their residents who might live a largely subsistence life style.

The cost-effectiveness issue discussed above is even more persuasive against the other interpretation of "partial exemption," by which a portion of the assessed value of all natural resources in place would be not taxable. The same difficult and costly assessing work would be required to correctly assess the property, but in return only a certain portion of the assessed value would be put on the tax rolls. Under this scenario, the revenue to be derived from a property tax would be lower, while the amount and cost of the assessment work would remain the same.

#### Option Three: No Exemption from Municipal Property Taxation

The option of no exemption from municipal property taxation will be the conscious or unconscious result if the Legislature takes no action on the issue of the taxation of natural resources in place during the coming legislative session. As mentioned above, the temporary exemption in the Act expires July 1, 1992. On that date, if no legislation has changed the law on taxability, natural resources in place will once again be taxable. The difference is that now people are very conscious of this issue and there is a statewide consensus that natural resources in place should not be taxable.

If there is no exemption from taxation for natural resources in place after July 1, 1992, it is unlikely that resources in place that have an assessable value will be kept off the assessment rolls. Taxpayers who feel they are unfairly carrying the tax burden in their municipality might sue to put assessable resource properties on the tax rolls. If the municipality does not put assessable resource properties on the assessment rolls, the State Assessor will still be obligated to include the full and true value of those properties in the full value determination for the particular municipality. That will have differential impacts on the municipalities' shares of education and state revenue sharing funds depending on whether the municipalities have or do not have assessable natural resources in place. Taxability of natural resources in place will also impact the staffing and funding necessary for municipal assessing offices and the State Assessor's Office.

The resource industries have commented that if natural resources in place are taxable, that will have a detrimental impact on economic development within the state. The cost of the property

tax, if one is levied, will have to be factored into the cost of development in a situation where fluctuating market prices and high development costs make long term investment risky. It will not be enough to say that although the natural resource in place is taxable, the local government will not levy a tax, because the next council or assembly could change that policy, particularly since the value of the resource in place will be included in the municipality's full value determination with the resultant impact on state program formula requirements to raise the local contribution and locally generated revenue. In addition, the resource industries have commented that the next worst thing to taxation is instability in taxation policies. Since they have to plan for long term investment, they need to know what to factor into their plans.

At the same time, it should be pointed out that as long as the natural resource in place is not assessable according to standard assessing techniques, it will not go onto the assessment rolls. Furthermore, much of the natural resource land that might be susceptible to property taxation is held by Native corporations that are insulated from taxation by federal law until development occurs. Leases of Native corporation land are not so protected, however. Nor are leases of state or federal land.

Option Four: Total or Partial Exemption from Municipal Property Taxation at the Option of Each Municipality

The discussion of the framework for municipal taxation found at the beginning of this report explained that the present statutory scheme contains provision for local option with regard to property tax exemptions. The local option exemptions are found in AS 29.45.050. It is conceivable, therefore, to enact an optional exemption, either total or partial, for natural resources in place. That decision should not be made, however, without consideration of all of the consequences.

On the one hand, local option is often favored because it allows local governments maximum control. Local option exemptions, however, do not exclude the property exempted from a municipality's full value determination. A local decision to exempt natural resources in place from taxation would still leave them taxable as far as the State Assessor is concerned. An increase in the full value determination would mean an increase in the absolute amount of the local contribution and the locally generated revenue required. If natural resources in place were locally exempted from property taxation, the local contribution and the locally generated revenue would have to be raised from other property tax payers or through sales and/or excise taxes. This, of course, raises the issue of fairness among tax payers. It also raises the issue of cost-effectiveness. Is it cost-effective to create a situation where the State Assessor must assess natural resources in place, while the municipality may optionally exempt resources in place from taxation?

Option Five: Taxation other than Property Taxation

In the Act, the Legislature asked that the study examine options for taxation of natural resources other than the property tax. As discussed above, of the types of tax that can be levied by a local government, only a property tax can be levied against the value of a natural resource in place. As long as it remains in place, the natural resource is part of the property. This section looks at other forms of taxation that local governments might levy against some aspect of natural resource production.

At the time a natural resource is severed or extracted, a local government can levy a severance tax. In fact, two boroughs (the Denali Borough and the Kodiak Island Borough) have already done so since the temporary exemption from property taxation went into effect. These boroughs levy a tax against the value or tonnage of the resource that has been severed or extracted.

The Kodiak Island Borough adopted what it feels is a long term progressive tax policy that levies against the gross production value of natural resources that have been severed or extracted. While this tax currently targets timber and fish harvesting operations, it can accommodate any resource development activity where a value-by-unit can be established. The value of the severed or extracted resource is multiplied by the local property tax mill levy as determined annually by the borough assembly. The borough maintains that this assures consistency and equity of taxation between natural resource property owners and the owners of other property within the borough that is taxable by the property tax method.

The Denali Borough has also adopted a natural resource severance tax. This tax targets coal, limestone or gravel that has been extracted. The tax is based on a flat rate per unit of production. The tax levy for coal and limestone is \$0.05 per ton of gross production. For gravel the tax is \$0.05 per cubic yard of production.

A severance tax is but one form of excise tax. Other forms of excise tax that might be levied include a tax on exploration activities, transportation activities, processing activities, storage activities, and the like. While a severance tax is recommended by the natural resource industries in lieu of a property tax on natural resources in place, it should be pointed out that excise taxes and property taxes are not mutually exclusive and could be levied at the same time.

Under the Alaska Constitution, Title 29, and the Alaska Supreme Court cases, local government authority to tax is very broad. According to a 1986 Attorney General's opinion, interpreting the above authorities in the context of a question about severance taxation, the provisions of Title 29, other than AS 29.45.010, are limitations on local government authority to tax. Following that interpretation, one concludes that there are no statutory or case law limitations on the power of local governments to enact excise taxes. Only property taxes and sales and use taxes are covered by Title 29 and Alaska Supreme Court cases.

## X. CONCLUSIONS

The study on the issue of taxation of natural resources in place has been concluded and it is now clear that the Legislature must provide an explicit resolution to this taxation issue during the coming legislative session. The temporary exemption for resources in place expires July 1, 1992. Unless the Legislature totally exempts natural resources in place from local taxation during this session, a state of confusion will ensue for the municipalities, the State Assessor's Office and the resource industries. The study raised the consciousness of these interested parties about the meaning of taxability of natural resources in place and the implications which this taxability holds for all concerned. There is a statewide consensus that the Legislature should adopt an amendment to AS 29.45.030 totally exempting natural resources in place from local property taxation.

**Appendix A:  
Property Taxation of Natural Resources  
in the States and Provinces**

The Department of Community and Regional Affairs surveyed Alaska, the other forty-nine states, and the Canadian provinces regarding property taxation of natural resources. The survey questionnaire was formulated into technical and policy sections and was intended to identify resource taxation policies and procedures currently in use throughout North America. The questionnaire was mailed to state and provincial property tax officials in the spring of 1991 and responses were received over a several month period. No questionnaires were mailed to local assessors or to tax officials at the city or county level, as we thought state and provincial agencies would have a better overall picture of what is taking place, in terms of resource taxation, within their jurisdictions.

Many responses to the questionnaires were inadequate or simply raised more questions. Also, some states did not respond at all to the questionnaire. Therefore, we often made follow-up contact by phone. It was interesting, although not altogether surprising, that the phone interviews revealed that resource property taxation practice does not always conform to law or stated policy. Officials were occasionally more candid on the phone than they were in completing the questionnaire and admitted that property taxation on natural resources may not always be administered to the letter of the law. The primary reason for this was that natural resource taxation was not a significant issue in their jurisdiction because of limited resources and, therefore, the time and expense to administer such a tax aggressively could not be justified.

Through the use of the questionnaire, we also hoped to discover specific resource taxation problems or successes that may be shared by various taxing jurisdictions. After our review of the questionnaires and as a result of our phone interviews we found that problems which taxing jurisdictions share are usually of a technical nature. It is generally the old story of lack of market data and lack of comparability between subject properties that makes the job difficult for the appraiser. Lack of adequate training in the appraisal of special purpose properties such as mines and quarries is also a common problem among taxing agencies.

The policy similarities between states and provinces are simply that severance taxes and property taxes are the two most common forms of natural resource taxation. They are used, in some form, in nearly every state and province. This is really where the policy similarities end between states and provinces, however, because the extent and manner in which these two forms of taxation are implemented in each taxing jurisdiction varies so much as to make each unique.

One survey question asked if states and provinces levied taxes against natural resources that are "completely undeveloped." The term "completely undeveloped" was not defined in the questionnaire, however, generally the answer that we received on this question was no. Only eight of the states that responded to the questionnaire answered yes to this question and two of those assess undeveloped resources at a flat rate per acre; \$75 per acre in Illinois and \$60 per acre in Indiana. Four of the states that answered yes to this question only assess against mineral rights that have been severed from the fee ownership. Although several other states answered no to this question, they do in fact assess standing forest lands to some degree (generally some set amount on a per acre basis.)

For those states and provinces that stated they did not assess against undeveloped resources, a follow up question asked officials to describe at what point in the production process was taxability triggered. Most stated that taxability was triggered at the point of production or harvest. The terms to describe this point of taxability vary. For example, taxation is triggered in the Yukon Territory "when production starts" in Wyoming resources are taxable "when the mineral reaches the mouth of the mine," and in Michigan, "sometimes, the trigger is severance." A general summary and some specific highlights of the survey follow.

#### General Summary:

- Thirty-one states can legally tax natural resources in place, but only twelve states actually do to varying degrees. Those states are: Arizona, Colorado, Indiana, Kentucky, Michigan, Mississippi, Missouri, South Dakota, Texas, Virginia, West Virginia and Wisconsin. Of the states that currently include in place natural resource value in real property assessments, only a few do so aggressively. This may be due to the lack of expertise at the local and state level to reliably value and defend assessed values for resources. It may also be that where there is little natural resource value, it is not cost effective to undertake the valuation of natural resources that do exist.
- Nineteen states statutorily exempt the in place natural resource value from the assessment of real property.
- The states with the most advanced programs of natural resource assessment are those resource rich states that can generate enough tax revenue to justify the staff to assess resource properties. Arizona and Kentucky are both very active in resource assessment, and both centralize the assessment activity. Assessments are made by state agencies, and tax collection can either take place at the state level with revenues being passed through to local governments, as is the case in Kentucky, or, assessed values can be provided by the state to local governments for local tax collection, which is the current policy in Arizona.
- Taxing agencies in other states that indicated they do assess and tax natural resources apply several different approaches. Many rely on the market data or sales comparison approach to value. Officials stated, however, that actual sales of resource properties are rare, hard to verify, and are often not very comparable to other properties being assessed. This results in a general disregard for assessing this type of property or at least minimizes their value estimates. Many states are aided by mandatory sales disclosure laws which require sales information on all transactions to be provided to assessment officials. Unfortunately sales information is still generally inadequate to result in reliable assessments for resource properties. Alaska does not have any mandatory sales disclosure law at this time.
- The general nature of natural resource taxation in Canada is similar to ours in the United States. Active natural resource developments are subject to federal, provincial and local government taxes mostly in the form of income and severance taxes. In British Columbia minerals are not subject to property tax, and other natural resources, such as water and timber, are taxed at the time of use or harvest.

**Specific Highlights:**

- Within the area of property taxation there are nearly as many different levels of assessments and applications of millage rates as there are states and provinces.
- Policies for taxation of natural resources also vary from state to state since different states have different types of resources. Taxing jurisdictions adopt taxing policies that best suit their individual needs, kinds of resources, and resource availability. Arizona assesses all recoverable minerals in the ground, Indiana values mineral ownership at \$60 per acre, Michigan exempts ore bodies up to 10 years or until they become part of an operating mine, and Montana values unproductive mining claims as agricultural grazing land.
- Across the country, in states which have elected to levy property taxes against natural resource properties, varying degrees of sophistication exist within agencies responsible for resource assessment. Kentucky has developed an elaborate geographical information system (GIS) for its resource management. They have identified and quantified their natural resources and have developed an assessment scheme that considers current economic and market conditions. The GIS is designed to manipulate resource data to create a three dimensional geographic map of the state which allows for the assessment of each coal seam or mineral deposit of taxable value parcel by parcel. Kentucky was actually forced into developing this assessment system as a result of a state supreme court case. The case determined that state constitutional restrictions did not allow the State Department of Revenue to assess natural resources at levels lower than other types of property. State officials found themselves in the position of being required to assess the resources of the state at full value with very limited resource information. They now have the GIS and a staff of 35 to value natural resources.
- Other states such as Hawaii and Rhode Island have limited mineral deposits and as a result have no specific statutes pertaining to the taxation of these resources and no resource assessment staff. Some states that exempt natural resources from property taxation levy other kinds of taxes on these resources. For example, most states levy some type of excise tax based on the production value of a severed resource or on its production unit (i.e. tax per ton.) In addition, it is common for states to levy income taxes on the resource industry.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347 FAX 278-7997

*1/21/91  
Sen. CRAA*

Date: 1/1/92

Control number: \_\_\_\_\_

### TELECOPY COVER PAGE

TO: Name: Phil / Kent Fax number: 463-3922

\_\_\_\_\_ Fax number: \_\_\_\_\_

\_\_\_\_\_ Fax number: \_\_\_\_\_

Company: \_\_\_\_\_

Location: \_\_\_\_\_

FROM: Name: STEVE BORELL Fax number: 907-278-7997

NOTES: For your info - my comments  
on SB 330 Exempt In Place Taxation

Steve

senate Bill No. 330

Exemption from municipal property taxation for natural resources in place.

My name is Steven C. Borell and I am the Executive Director of the Alaska Miners Association.

Thank you Mr. Chairman and committee members for the opportunity to comment on this important issue. Thank you also for scheduling this bill early in the session.

The AMA supports this legislation and the need for passing an exemption for the taxation of natural resources in place during this session of the Legislature. We are concerned that if taxation of natural resources in place is begun, the affect will be to discourage if not totally close down exploration in those areas where this form of taxation occurs.

We also wish to commend the Alaska Municipal League for taking the lead in support of an exemption from taxation for resources in place. We were very pleased to learn that the AML passed a resolution favoring exemption of taxation of natural resources in place and that the resolution passed on a unanimous vote. The AML recognized that in place taxation would have a very serious negative affect on local economies in several different ways.

Rather than addressing in detail all of the arguments why in place taxation is not a good policy, I shall list and summarize the major problems with this form of taxation.

The first and possibly most compelling reason for not taxing minerals in place is that it is extremely difficult to place a value on minerals before they are actually extracted from the ground. Major mining companies employing scores of exploration, financial, environmental, engineering, and management people have a very difficult time defining the value of a deposit.

The second major problem with the taxation of minerals in place is that it discourages exploration. Mining companies will not even look for minerals if they will be taxed for the many years that are required to determine if they have an economic deposit. For Greens Creek, the largest silver mine in North America, it took 17 years from the initial discovery until first production. For Red Dog, possibly the largest zinc deposit in the world, it took 21 years from initial discovery until first production. If an in place tax had been charged on these minerals before they were mined, there is a high likelihood that no mining would ever have taken place.

A third fact to consider is that taxation of minerals in place is an additional burden on local communities that are already struggling to encourage creation of new jobs and expand their real property tax base. For much of Alaska the only opportunity

for economic development and creation of new jobs is through development of mineral resources. If in place minerals are taxed, local communities will be hurt without even knowing it because the mining companies that have the expertise to find and develop the minerals will not even go out and explore for them.

A fourth problem involves the taxation of non-tangible natural resources that exist due to location or setting. For the city lot this non-tangible value is determined and under the doctrine of equal treatment, the value of non-tangible natural resources such as wilderness character, wilderness proximity, scenic values, proximity to rivers for rafting or floating, etc. would have to be taxed. Hunting and fishing lodges would have to be taxed for the fish and wildlife resources that are in their area.

A fifth problem involves how will the fish resources available to fishing sites be taxed? The fish are clearly a natural resource and the fish site has a measurable market value but it also has an opportunity value be virtue of the fish that pass the site.

A sixth problem is whether or not it would be cost effective to attempt taxation of in place resources. The above examples show some of the difficulties that will be encountered.

A seventh problem will arise when a company that has been taxed for several years on the in place natural resources decides that the project is not economic and asks for reimbursement of the taxes that had been paid. This could be a lodge developer that sees his potential market change or it could be a mining company that concludes that the metallurgy of the ore is too complex and costly for a mine to be profitable.

For all of the above reasons, a permanent exemption for taxation of natural resources in place is necessary during this session of the Legislature.

Thank you again and please feel free to contact me if you have any questions.

# MEMORANDUM

State of Alaska

To: The Honorable Walter J. Hickel  
Governor

December 16, 1991

From: Rural Development Sub-cabinet

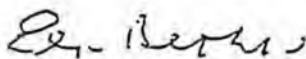
Phone: 465-4700

Re: Support for legislation exempting natural resources in place  
from local property taxation

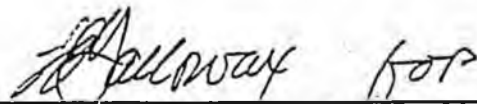
The rural development sub-cabinet has been following with concern the issue of whether or not natural resources in place should be subject to local property taxation. A study of the issue was conducted by the Department of Community and Regional Affairs, and a report will be submitted to the Legislature before January 13.

There is now consensus around the state that natural resources in place should be totally exempt from local property taxation. Legislation to effect a total exemption (with the exception of oil and gas which are treated separately under existing statutes) will be proposed in the forthcoming legislative session. Natural resource industries and associations, Native corporations, local governments, and the Alaska Municipal League have all endorsed a total exemption.

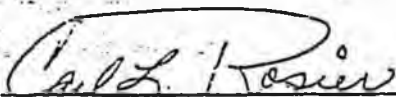
The rural development sub-cabinet supports a total exemption of natural resources in place from local property taxation, and urges the Governor to actively support legislation that will so amend Title 29 of The Alaska Statutes.



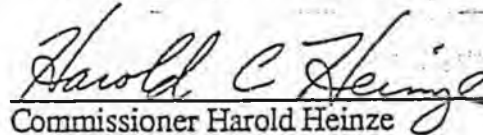
Commissioner Edgar Blatchford, Chair  
Community & Regional Affairs



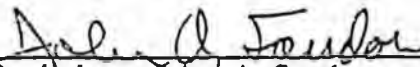
Commissioner Glenn A. Olds  
Commerce & Economic Development



Commissioner Carl L. Rosier  
Fish and Game



Commissioner Harold Heinze  
Natural Resources



Commissioner John A. Sandor  
Environmental Conservation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 330

Revision Date: \_\_\_\_\_  
 Title: "...exemption from property taxation for natural resources in place."  
 Sponsor: Senator Adams  
 Requestor: \_\_\_\_\_

Department Affected: Community and Regional Affairs  
 BRU: Local Government Assistance  
 Component: State Assessor  
 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	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson  
 Division: Administrative Services Division

Phone: 465-4750  
 Date: 11/15/92

Approved by Commissioner: Ken Kelly  
 Agency: Department of Community and Regional Affairs

Date: 1-14-92

# Alaska State Legislature

Senate District L

Al Adams

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245



Official Business

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

FROM: Senator Al Adams *APA*

RE: Senate Bill 330

DATE: January 15, 1992

This is to request a hearing on Senate Bill 330 which is in the Senate C&RA Committee.

This bill creates an exemption on the taxation of natural resources in place. As you may know, unless this legislation is passed this session, the state assessor and municipalities will have to begin the process of including these resources in their tax base. The exemption has broad support from both government and private sector interests.

Enclosed as background materials are:

- Bill copy
- 1992 Report to the Legislature on the Taxation on Natural Resources in Place
- Copy of 1990 statute that created a two year exemption for the purposes of studying this issue
- 1991 resolution of the Alaska Municipal League in support of this exemption
- 1991 Alaska Minerals Commission report placing this as their top legislative priority

A fiscal note has been requested, is expected shortly and will be forwarded to your office upon receipt.

Please feel free to contact Martha Stewart of my staff if you have questions.

Thank you.



# LAWS OF ALASKA

1990

Source

SCS SSIIB 159(CARA)

Chapter No.

127

## AN ACT

Relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

Approved by the Governor: June 14, 1990  
Actual Effective Date: June 15, 1990

AN ACT

Relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date.

\* Section 1. PURPOSE. It is the primary purpose of the legislature in providing for a temporary tax exemption for natural resources in place to gain the time necessary for an orderly and comprehensive study of the issues relating to exempting natural resources in place from municipal property taxation.

\* Sec. 2. TEMPORARY TAX EXEMPTION. Natural resources in place, including proven or unproven mineral and other deposits of valuable materials and timber stumpage, are exempt from property taxation by a municipality.

\* Sec. 3. STUDY AND REPORT. (a) The Department of Community and Regional Affairs shall study and compare the potential effects of various natural resource taxation options including

(1) total exemption from municipal property taxation for natural resources in place;

(2) partial exemption from municipal property taxation for natural resources in place;

(3) no exemption from municipal property taxation for natural resources in place;

(4) total or partial exemption from municipal property taxation for natural resources in place at the option of each municipality;

(5) taxation of natural resources in place by municipalities

other than property taxation for purposes of determining whether a permanent exemption from property taxation is the most desirable approach.

(b) The Department of Community and Regional Affairs shall select representatives of municipalities and of unincorporated communities in boroughs and in the unorganized borough to advise in the design and execution of the study under (a) of this section. The Department of Community and Regional Affairs shall conduct the study in concert with the Department of Revenue and with the Alaska Municipal League. The study must include consideration of

(1) tax treatment by other states of natural resources in place;

(2) the point in time that natural resources in place acquire a value for tax purposes; and

(3) methods for determining the value of natural resources in place that may be applied on a uniform basis in all municipalities.

(c) By January 15, 1992, the Department of Community and Regional Affairs shall report to the legislature its findings and recommendations regarding municipal property taxation of natural resources in place.

\* Sec. 4. This Act is repealed July 1, 1992.

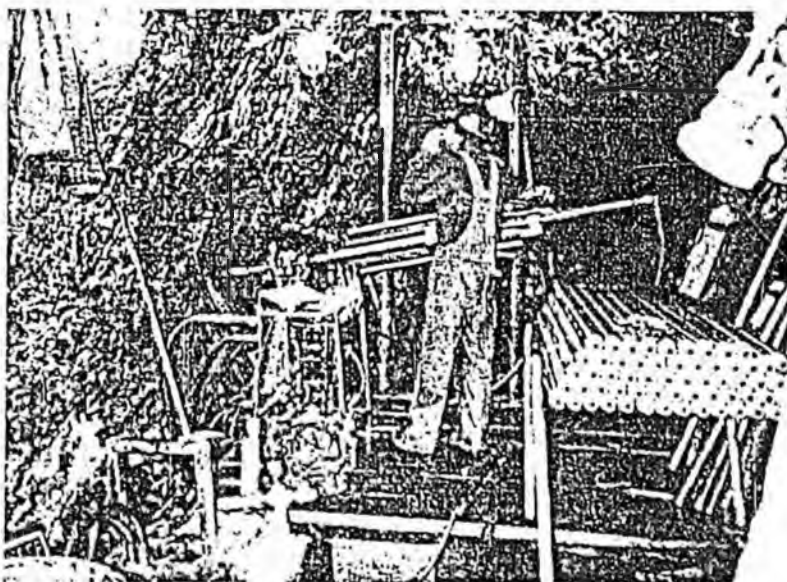
\* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).



Report of the  
**ALASKA  
MINERALS  
COMMISSION**



JANUARY 1991



## EXECUTIVE SUMMARY

Hard-rock mining made a very significant contribution to the minerals sector of the Alaskan economy in 1990 after a nearly 50 year period of relative dormancy. This trend will continue as the level of hard rock exploration has nearly doubled and many very promising deposits are near development decisions.

In contrast, production during 1990 from many small gold placer mines was only half that of 1989 due to new environmental constraints. Environmental regulations also played a role in the U.S. Borax Quartz Hill project near Ketchikan, which will be on indefinite hold due in part to adverse decisions on environmental permits.

The recommendations of the Alaska Minerals Commission address some of the more important and timely concerns of the mining industry. The order in which they are presented is prioritized to reflect the urgency with which they need to be addressed, but does not necessarily imply that later recommendations have diminished importance to the long term growth and health of the industry.

The 35 recommendations of the Alaska Minerals Commission are listed below:

### I. TAXATION:

**Recommendation #1:** The Governor and Legislature should move to exempt in-place minerals from municipal taxation.

### II. MENTAL HEALTH LANDS:

**Recommendation #2:** The Governor and the Legislature should make the prompt settlement of the Mental Health Lands lawsuit a top priority during the upcoming legislative session.

### III. LAND ACCESS AND AVAILABILITY:

**Recommendation #3:** The Governor should direct the appropriate agencies to assert the state's rights on all known RS2477 trails as quickly as possible.

**Recommendation #4:** The Governor and Legislature should urge the U.S. Congress and federal administration to implement the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) protecting prior existing rights and exemptions allowed in the act.

**Recommendation #5:** In conformity with sections 101d and 1326b of ANILCA, no more federal land in Alaska should be withdrawn from mineral entry by either wilderness designation or by de facto withdrawals such as the Areas of Critical Environmental Concern.

**Recommendation #6:** The State of Alaska should select some 2.5 million acres in the southern National Petroleum Reserve-Alaska (NPR-A).

### IV. WATER QUALITY ISSUES:

**Recommendation #7:** The Governor should direct the Department of Environmental Conservation (DEC) to implement a policy that allows discharge water mixing zones to extend downstream to the point of the next substantiated use.

**Recommendation #8:** DEC should also be directed by the Governor to revise the water quality standards for turbidity to attainable levels.

Resolution of the Alaska Municipal League  
Resolution No. 92-6

A RESOLUTION RECOMMENDING TAX-EXEMPT STATUS OF  
"IN PLACE" RESOURCE RESERVES

WHEREAS, under Chapter 127, SLA 1990, there is a temporary exemption for natural resources in place until July 1, 1992, and

WHEREAS, under the same statute, the Department of Community and Regional Affairs (DCRA), in concert with the Alaska Municipal League and the Department of Revenue, is required to prepare a study and recommendations by January 15, 1992, on municipal property taxation of natural resources in place, and

WHEREAS, the AML President appointed a working group of municipal officials and other individuals which has worked with DCRA to represent the views of municipalities, and

WHEREAS, previously, Alaska law required municipalities that levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources, which are mandatorily exempted, and

WHEREAS, without the exemption, the Office of the State Assessor may be required to include values for those natural resources in place in the full value determination for municipalities across the state, and

WHEREAS, prior to the temporary exemption, neither municipalities nor the Office of the State Assessor included values for those resources on local assessment rolls or in the full value determination, and neither has the staff or fiscal resources to value natural resources in place, and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the full value determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads, and other residential property and substantial negative impacts on municipalities under the state revenue sharing and education funding formulas, and

WHEREAS, under the Alaska Constitution and existing statutes, municipalities have broad powers to impose a variety of taxes on such industries, including sales, use, severance, excise, property, and income taxes, in order to provide services and mitigate the impacts or development, and

WHEREAS, in the "Draft Report on the Study of Taxation of 'In Place' Natural Resources" dated November 1, 1991, and prepared by DCRA, natural resources in place are defined as *"any material in its native state before it has been severed or extracted"*;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the passage of legislation that would require, under AS 29.45.030, the exemption from municipal property taxes of all natural resources in place, as defined in the DCRA Draft Report of November 1, 1991, together with language that would insure preservation of the power of municipalities to levy other types of taxes, including severance and sales taxes against the development and sale of those natural resources.

*Adopted at Annual Business Meeting on November 15, 1991 in Fairbanks, Alaska*

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

150 THIRD STREET  
JUNEAU, ALASKA 99801-1291  
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

January 17, 1992

## POSITION PAPER

RE: Senate Bill 330

SPONSOR: Senator Adams

### Program Effects of Bill

The passage of this bill would cause all natural resources in place, as defined in the legislation, to become mandatorily exempt from municipal property taxation. The passage of this measure would make the temporary exemption for natural resources in place enacted by HB 159 in 1990 permanent. That exemption expires July 1, 1992.

### Comments

The Department strongly supports the passage of SB 330. This position is the result of our recent study conducted under CH 127, SLA 1990. The full report of that study, along with our conclusions and recommendations, has already been delivered to the Committee. A suggestion for a minor technical amendment is attached to this position paper.

*E. Blatchford*  
\_\_\_\_\_  
Edgar Blatchford, Commissioner

Attachment

SB 330  
Senator Adams

DCRA  
January 17, 1992

SUGGESTED AMENDMENT

Page 2, Line 20

(9) Natural resources in place including, ~~but not limited~~  
to, coal, ore bodies, mineral deposits, and other proven and  
unproven deposits of valuable materials laid down by natural  
processes, unharvested aquatic plants and animals, and timber  
stumpage.

01-10-040 (b)

f the Capital. If a  
general election in  
ost to the State of  
l voter approval of  
oved by the voters  
reases in appropri-  
1982]

red to in this section,  
voters; and, therefore,  
operative.

nt Limiting In-  
nt limiting appro-  
ntenant governor  
amendment to be  
1986. If the major-  
s the amendment,  
2]

1982 amendment  
lies to appropri-  
oved November 2,

# Alaska Statutes

## Title 1. General Provisions.

### Chapter

10. Laws and Statutes (§ 01.10.040)

### Chapter 10. Laws and Statutes.

#### Article

2. General Rules of Statutory Construction (§ 01.10.040)

#### Article 2. General Rules of Statutory Construction.

#### Section

40. Words and phrases

#### Sec. 01.10.030. Constitutionality and severability.

#### NOTES TO DECISIONS

Quoted in *Fardig v. Municipality of Anchorage*, 803 P.2d 879 (Alaska Ct. App. 1990).

**Sec. 01.10.040. Words and phrases.** (a) Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

(b) When the words "includes" or "including" are used in a law, they shall be construed as though followed by the phrase "but not limited to." (§ 2 ch 62 SLA 1962; am § 1 ch 21 SLA 1991)

**Effect of amendments.** — The 1991 amendment, effective June 11, 1991, added subsection (b). the purpose of the enactment of (b) of this section by § 1, ch. 21, SLA 1991 (HCS CSSB 86 (Jud)), see 1991 House Journal Supplement No. 10, May 13, 1991.

**Legislative history reports.** — For

#### NOTES TO DECISIONS

Applied in *Wylie v. State*, 797 P.2d 651 (Alaska Ct. App. 1990).

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

January 22, 1992

The Honorable Lloyd Jones, Chair  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

Subject: SB 330, which relates to an exemption from municipal property taxation for natural resources in place.

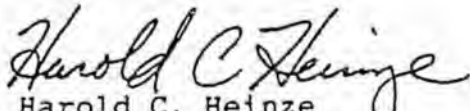
Position: Although this bill does not directly affect the Department of Natural Resources, we offer our support for the taxation policy it establishes.

Background: The valuation of natural resources in place is an extremely difficult and costly task to accomplish, and the results are rarely acceptable to all involved parties. Resource development depends as much on markets, timing, and location as it does on the resource itself. Not exempting natural resources in place from municipal property taxation could further discourage natural resource development in Alaska and depress the price the state receives when offering its resources for sale.

In addition, not exempting natural resources in place from property taxation would raise the value of property within municipalities which, in turn, would negatively affect state education foundation aid and revenue sharing monies municipalities are eligible to receive.

Recommendation: Consider the report on taxation of natural resources in place prepared by the Department of Community and Regional Affairs, and adopt its recommendations.

Sincerely,

  
Harold C. Heinze  
Commissioner

cc: Senator Albert Adams  
Committee Members  
Paul Fuhs, Legislative Liaison, Office of the Governor  
Edgar Blatchford, Commissioner, Department of Community and Regional Affairs

```

*****
*
* DELIVER TO: LIOCSEA
*
* ORIGINAL
* SENT: 01/21/92 TIME: 15:25
* FROM: LTCCFBX
* SUBJECT: 92-01-137; PL#1; SB330; 1-21
* PRINT DATE: 01/21/92 TIME: 15:25
*
*****

```

SUBJECT LINE TO READ: TC NO.; PL NO. QB FS; SHORT SUBJECT; DATE

JNU MOD: LIOCSEA

```

T/C NO: 92-01-137
DATE: JANUARY 21, 1992
SPONSOR: SENATE COMMUNITY AND REGIONAL AFFAIRS
SUBJECT: SB 330: MUNICIPAL TAX EXEMPTION FOR NAT. RES.
MODERATOR: FRAN
SITE: FAIRBANKS

```

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. EARL BEISTLINE - AK	MINIERALS COMMISSION		
2.			
3.			
4.			

```

*****
*
* DELIVER TO: LIOCSEA
*
*
* ORIGINAL
*
* SENT: 01/21/92 TIME: 15:27
* FROM: LIOCMIL Anchorage
* SUBJECT: 92-01-137; PL1; C&RA; 1/21
* PRINT DATE: 01/21/92 TIME: 15:27
*
*****

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SUBJECT LINE TO READ: TC NO.; PL NO. QB FS; SHORT SUBJECT; DATE

JNU MOD:

```

T/C NO: 92-01-137
DATE: 1/21/92
SPONSOR: SEN. FRANK
SUBJECT: MUNI TAX EXEMPTION FOR NAT. RES.
MODERATOR: JUDY
SITE: ANCHORAGE

```

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. STEVE BORELL/AK MINERS ASSOC.	501 W. NORTHERN LIGHTS #203	99503	276-0347 SB330
2.			
3.			

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERENCE

DATE: 1/13/92

FURTHER: Resources  
Finance

Date of 5-Day Notice: 1/16/92  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 1-21-92

CRA Committee considered SENATE BILL NO. 330

"An Act relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date."

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

same title  
 new title  
 technical  
title change  
(HB only)

attaches amendment(s)

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

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

do pass

do not pass

no recommendation

individual recommendations

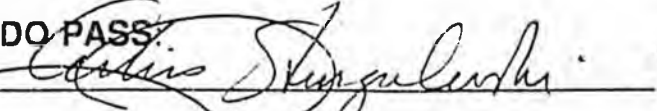

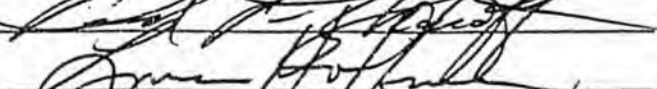
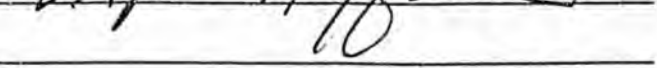
**NEW FISCAL NOTES:** Dept/Date  
 zero fiscal notes C&RA 1/13/92

**PREVIOUS FISCAL NOTES:** Dept/Date  
 Governor's bill with fiscal notes:  
zero fiscal notes \_\_\_\_\_

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

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

appropriation--no fiscal note

**DO PASS:**  
  
  
  


**OTHER RECOMMENDATIONS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Chair: Signature and Recommendation

\*

\*

\*\*\*\*\*

T/C NO: 92-01-137

DATE: 1/21/92

SPONSOR: C&FA

SUBJECT: MUNI TAX EXEMPTION FOR NAT. RES.

MODERATOR: JUDY

BRIDGE LIST

\*\*\*\*\*

1. ~~ANL~~
2. JNU
3. ~~FBX~~
4. SOL
5. KOT
- 6.

S B

3 5 2

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. 

--	--	--	--

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). Page 1 of 1

1

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  
10 corporation or authority of the municipality;

11 (2) the governing bodies of two or more municipalities may create by parallel  
12 ordinances adopted by each of the governing bodies a public corporation or authority of the  
13 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 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<sup>s</sup><sub>λ</sub> or function<sup>s</sup><sub>λ</sub> 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 <sup>and declaration of taking</sup> 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  
by lease or agreement at least sufficient, in the judgment of the public corporation or authority,  
to pay the principal and interest on the bonds as they become due and to create and maintain the  
reserves for the payment that the public corporation or authority considers necessary or desirable  
and meet all obligations in connection with the lease or agreement and all costs necessary to  
service the bonds, unless the lease or agreement provides that the obligations are to be met or  
costs are to be paid by a party other than the public corporation or authority.

21 (d) Bonds shall be authorized by resolution of the public corporation or authority, be  
dated, and shall mature as the resolution may provide, except that a bond may not mature more  
than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the  
denominations, be in the form, either coupon or registered, carry the registration privileges, be  
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  
 12 or administer  
 13 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 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. <sup>As</sup> 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 <sup>or declaration of taking</sup> 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;

not necessary  
24  
25

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

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

29 (5) procedures for adopting regulations;

30 (6) procedures for adopting bylaws;

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

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

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, <sup>uses</sup>, 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~~ <sup>operations</sup>.  
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:**

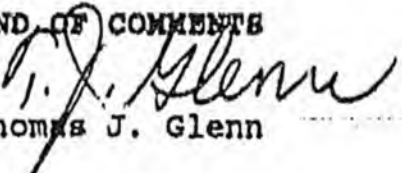
1. Should Section 29.35.635 be expanded to note that the port authority must abide by all the laws, rules, etc., of authorities above it. That is, is the authority given the position of licensee, not licensor, concerning building permits, etc.?

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

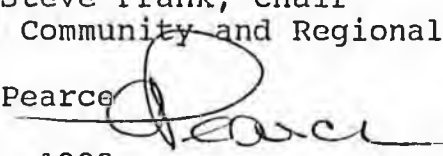
# Alaska State Legislature

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*During Session:*  
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## 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
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REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER 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

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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.

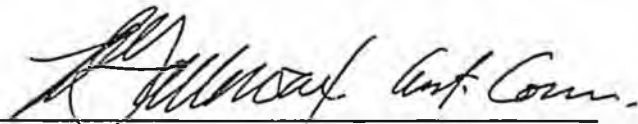
This legislation is enabling legislation. A municipality or several municipalities could join together to form a port authority. No municipality would be required to establish one; it is just an additional economic development tool. In some cases, several communities joining together in a port authority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

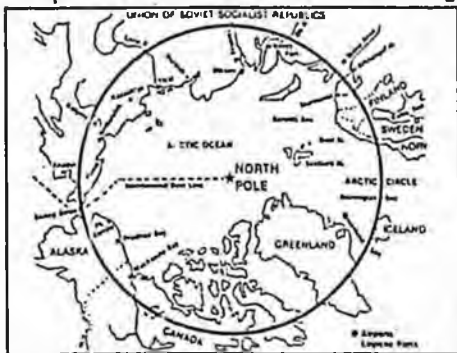
Port authorities would be able to own and operate any kind of transportation facility.

(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

W 7 1 0 1992

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  
2/105*

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