

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7727 SENATE TRANSPORTATION

281

SB 341: "An Act relating to the establishment of port authorities by a municipality."


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 is given the option to form a port authority. No municipality would be required to establish one; it is just an additional economic development tool. The port authorities of several communities could, by agreement, cooperate in the joint management of several ports.

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 be able to own and operate any kind of waterfront or waterway transportation facility associated with the handling, storage and transport of freight and passengers. 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, with some amendments, it is supported by this department. Specifically, the department recommends adopting language to allow for establishment of regional port authorities, inclusion of second class cities, and sole authority control of its budget.



Glenn A. Olds, Commissioner 001
Date: 2.4.92

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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/14/92

FURTHER: C&RA
Finance

Date of 5-Day Notice: 1/30/92
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

Transportation Committee considered SB 352

Establishment of port authorities by municipalities; efd.

and recommends:

replace with _____ CS SB 352 (Trans)

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 DOTPF / 1/30/92

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes _____

fiscal notes _____

DO PASS:

OTHER RECOMMENDATIONS:

Shirley Craft
True Leader
Dick Stubb

Chair: Signature and Recommendation **DO PASS**

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

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

3/17/92 CAW/M
date Comptroller (initial)

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
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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)

Prepared by: Ron B. Lind, Director

Phone: 465-2171

Division: Plans, Programs and Budget

Date: January 30, 1992

Approved by Commissioner: 
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).


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Senator Druc Pearce
District G

To: Senator Curt Menard, Chair
Senate Transportation Committee

From: Senator Pearce 

Date: March 6, 1992

Re: I will be presenting a CS to Senate Bill 352 next Tuesday. I believe this CS addresses many of the concerns expressed previously when SB-352 was last before us in 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.

Reasons for the new CS:

- 1) The original bill (SB-352) was not organized adequately. The CS has been reorganized. We have eliminated many duplications and redundancies from the original bill.
- 2) An orderly presentation makes the concept much easier to understand.

3) The CS includes the changes the administration and the various state departments desired.

4) Scott Burgess @ AML has had most of his concerns addressed. He wanted us to make the bill understandable and as short as possible. He wanted Port Authorities to participate in insurance pools and he did not want any diminution of municipal powers.

5) Labor was concerned that formation of a Port Authority might affect worker's pension and union protections if present employees were to be transferred to the Authority. Section 29.35.685 directly addresses this problem: all collective bargaining agreements shall remain in effect for the term of the agreement and be binding on the Authority.

PORT AUTHORITY LEGISLATION BILL COMPARISION

<u>Subject</u>	<u>CS for SB-352 @ Pearce</u>	<u>SB-341 @ Duncan</u>
establishment	ordinance by municipal government, may require a vote of the people	requires ordinance approved by vote of the people
debts	belong to the authority only	assumed by the participation municipality
dissolution	addressed in enabling ordinance, may require a vote of the people; bond holders must be satisfied before dissolution	requires ordinance approved by vote of the people
applicability	municipality	municipality, other than 2nd class city
scope of powers	muni decides which powers apply	authority possesses all powers addressed
board	number and qualification of board members is specified in the enabling ordinance, allows for election and/or appointment	3 members, 6 year terms, requires elections
multiple municipal coverage	creates a single authority by adoption of parallel muni ordinances.	creates a single authority by agreement of multiple authorities
revenue bonds	specific requirements given	under muni bonding statute
budget	annual report required 90 days after end of fiscal year, audit required by an independant CPA	annual muni approval of budget before port commission approval
confidentiality of information	proprietary info protected; muni auditor has full access; bylaws are required and the authority is subject to the Open Meetings Act	not addressed
taxing and taxes	authority has NO taxing powers, and is not taxed. muni may require authority to make payments "in lieu of taxes"; muni can tax private businesses operating within boundaries	fied actions, taxes not mentioned).
eminent domain	authority has powers within its boundaries, DNR commissioner is required to lease land within the authority boundaries when necessary for Port to operate (solves access issues); DNR commissioner may lease at below market rates	muni may exercise powers on behalf of the authority
collective bargaining	all collective bargaining agreements remain in effect for the term of the agreement	not addressed
bylaws and regulations	authority shall adopt as soon as possible	port commission shall adopt

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Senator Drue Pearce
District G

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.
- bylaws.
- regulations.
- 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 and be binding on the Authority.

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 state law.

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.

**TRANSPORTATION COMMITTEE CS CHANGES TO
CS SB 352 (3/3/92 draft)**

Page 3, lines 22 - 25
Delete

Page 4, line 20, following "authority":

Delete "the power conferred by this paragraph is exercised for the common health, safety, and welfare of the public and may not be limited by the terms and conditions of leases, contracts, or other transactions;"

Page 8, line 25,

Delete the letter "s" at the end of the word "ordinances"

Page 8, line 30, following "AGREEMENTS":

Delete "."

Insert ";APPLICATION OF AS 23.40.070 - 23.40.260. (a)"

Page 9, line 2

Delete "and shall be binding on the authority."

Insert "or for a period of one year, whichever is longer, and shall be binding on the authority unless the parties agree to the contrary before the expiration of the agreement. A labor management negotiation impasse declared after a transfer of employees under this subsection but before the negotiation of a new collective bargaining agreement shall be resolved as provided in the collective bargaining agreement, except that if the collective bargaining agreement does not provide for a resolution then as provided in AS 23.40.070 - 23.40.260."

Page 2

Changes to CS SB 352 (3/3/92 draft)

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

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

Page 10, line 23, following "with":

Delete "the" [provisions] "of other state law"

Insert "other" [provisions] "of this title"

Page 11, line 2, after "port":

Delete "mans"

Insert "means"

ALASKA STATE AFL-CIO

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MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

March 9, 1992

TO: Senate Transportation Committee:

RE: Senate Bills 341 and 352

We are writing this letter in response to your question on whether organized labor has any problems with Senate Bills 341 and 352. Besides the exemption from the Public Employees Relations Act (PERA) and the Public Employees Retirement System (PERS) Section in SB 352 which we would like removed (page 11 delete lines 20 through 27), we also would like to delineate further concerns which are listed below.

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

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

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

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

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

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

Sec. 39.35.685 CONTINUATION OF COLLECTIVE BARGAINING AGREEMENTS. (a) A collective bargaining agreement for employees of the state or its political subdivisions who are transferred to an authority under AS 29.35.600 - 29.35.725 shall remain in effect for the term of the agreement or for a period of one year, whichever is longer, and shall be binding upon the authority unless the parties agree to the contrary before the expiration of the agreement. Any labor-management negotiation impasse declared shall be resolved in accordance with AS 23.40.070 ET SEQ

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

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

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

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

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

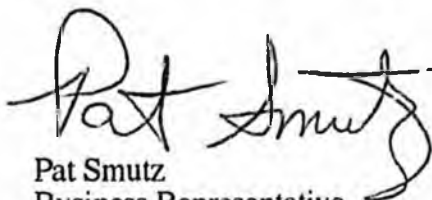
Though we do not consider ourselves legislative draftsmen, we do know what we want to accomplish. The above amendments we want you to incorporate will provide us

with the security that we need to insure our members needs are addressed. Our suggested changes should not hurt your legislation.

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

Thank you for your consideration.

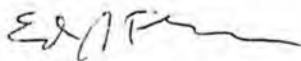
Sincerely,



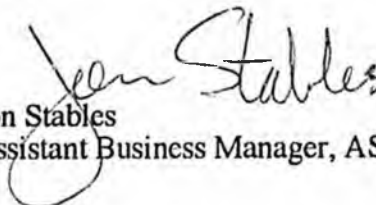
Pat Smutz
Business Representative
Alaska AFL-CIO



Bruce Ludwig
Business Manager, APEA/AFT



Ed Flanagan
Business Agent, Local 71



Jon Stables
Assistant Business Manager, ASEA

cc: Senator Drue Pearce
Senator Jim Duncan

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MEMORANDUM

January 16, 1992

SUBJECT: SB 352 - Sectional Summary
(Work Order No. 17-LS1768\A)

TO: Senator Drue Pearce
Attn: Ken Erickson

FROM: Jerry Luckhaupt *JLP*
Legislative Counsel

You have requested a sectional summary of SB 352, an Act relating to the establishment of port authorities by municipalities. Be advised that a sectional summary is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill contains findings and policy.

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

AS 29.35.600 provides for the establishment of a port authority by one or more municipalities. This section also establishes that the authority is a public corporate entity of the municipality or municipalities creating it and sets up a board of directors as the governing body.

AS 29.35.605 provides a purpose clause.

AS 29.35.610 sets forth the powers of the authority.

AS 29.35.615 provides that the board shall appoint a chief executive officer and fix the chief executive officer's compensation. The chief executive officer may appoint and fix the compensation of other employees.

AS 29.35.620 sets forth the duties of the chief executive officer.

AS 29.35.625 requires the board of directors of the authority to adopt bylaws and regulations.

AS 29.35.630 provides that the authority, through its bylaws, may withhold public disclosure of privileged or proprietary records and further excludes such records from the reach of the public records statutes of this state.

AS 29.35.635 requires the authority to publish an annual report.

AS 29.35.640 requires annual audits of the authority.

AS 29.35.645 permits a municipality to transfer property to an authority.

AS 29.35.650 permits other public or private land to be conveyed by agreement to the authority.

AS 29.35.655 provides that the authority may exercise the power of eminent domain provided at AS 09.55.240 - 09.55.460.

AS 29.35.660 excludes the authority from land use regulations.

AS 29.35.665 provides that debts of the authority are only debts of the authority and not of the state or a municipality.

AS 29.35.670 requires the authority to obtain fidelity bonds for the board members and its chief executive officer.

AS 29.35.675 provides for indemnification of board members and employees of the authority.

AS 29.35.680 provides the authority may purchase insurance to protect itself and its employees against loss.

AS 29.35.685 provides that the authority may not levy a tax.

AS 29.35.690 provides that the authority may issue revenue bonds.

AS 29.35.695 requires the authority to prepare a development plan before undertaking the construction or acquisition of a project and submit the plan to the municipalities that created it.

AS 29.35.700 provides that the authority's bonds are proper investments.

AS 29.35.705 provides that the pledge of revenue made for a bond is binding and valid.

AS 29.35.710 provides that the credit of the state or a municipality is not pledged for the debts of the authority.

AS 29.35.715 provides that the state or a municipality will not limit or alter the rights or powers of the authority to fulfill a contract with bondholders or any federal agency.

AS 29.35.720 provides that the authority's bonds are exempt from taxation.

AS 29.35.725 provides remedies for bondholders.

AS 29.35.730 sets forth that board members or any employee of the authority is not personally liable because they participated in the issuance of the authority's bonds.

AS 29.35.740 regards claims against the authority or its employees.

AS 29.35.750 sets forth various laws that do not apply to the authority.

AS 29.35.760 provides that laws conflicting with this Act do not apply.

AS 29.35.770 provides for the distribution of the assets of the authority if it ceases to exist.

AS 29.35.790 provides definitions.

AS 29.35.795 provides a short title.

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

Senator Drue Pearce
January 16, 1992
Page 3

Section 4 of the bill provides an effective date.

GPL:pl
92-018.plm



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 352

APPROVED: *[Signature]*

TITLE: Authorizes Port Authorities

DATE: January 30, 1992

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

For Further Information contact Katy McHugh at 465-3900.

FISCAL NOTE

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

Department Affected: DOT&PF
BRU: Headquarters

Sponsor: Senator Pearce
Requestor:

Component: Plans, Programs and Budget
Component Serial Number: 0542

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS

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

Estimate of current year impact: _____

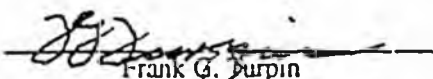
ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron B. Lind, Director

Phone: 465-2171

Division: Plans, Programs and Budget

Date: January 30, 1992

Approved by Commissioner: 
Frank G. Burpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 30, 1992

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 352

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Establishing port authorities by
municipalities

BRU: Economic Development

Component: _____

Sponsor: Senator Pearce

Requestor: Senator Pearce

COMPONENT SERIAL NO.

--	--	--	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year Impact: None

ANALYSIS (Attach a separate page if necessary.)

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

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

Division: Economic Development Date: 2/3/92

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

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).

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	332,172,000	276,983,741	533,024,500
TOTAL	\$552,586,200	\$459,018,687	\$610,606,594

From Alaska Mineral Industry Report, 1990 (pl).

A Resolution of the Alaska Municipal League Board of Directors

Board Resolution No. 92-1

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

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

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

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

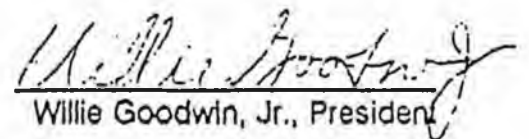
WHEREAS, it is confidently believe that a better coordination of ports, harbors, transportation, and other facilities of commerce in, about and through ports in Alaska, will result in greater economies, benefiting the people of Alaska;

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


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

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

Adopted this 16th day of November 1991.


Willie Goodwin, Jr., President

Attest:


Scott A. Burgess, Executive Director

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

Alaska Association of Harbormasters & Port Administrators, Inc.

334 Front Street
Ketchikan, Alaska 99901

November 12, 1991

Jerome Selby, President
Alaska Municipal League

Post-It™ brand fax transmittal memo 7671		# of pages >
To	RICH WILSON	FROM DOLG, ENSLEY
Co	City of Ketchikan	Co CITY OF KTAI
Dept.	2171	Phone 228-5632
Fax	561-4674	Fax 225-5075

Dear Mr. Selby:

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

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

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

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

Please support us in our efforts.

Sincerely,



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

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.

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,

A handwritten signature in black ink, appearing to read 'Robert S. Hatfield, Jr.', written in a cursive style.

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

A M E N D M E N T by Senator Pearce

OFFERED IN THE SENATE

TO: SB 352

Page 2, line 9, following "corporation":

Insert "with any or all of the powers provided in AS 29.35.600 - 29.35.795"

AMENDMENT by Senator Pearce

OFFERED IN THE SENATE

TO: SB 352

Page 3, line 27, following "respect to":

Insert ", "

A M E N D M E N T by Senator Pearce

OFFERED IN THE SENATE

TO: SB 352

Page 6, line 16, following "eminent domain":

Insert "within its physical boundaries"

Page 6, line 24, following "and material":

Insert "within its physical boundaries"

AMENDMENT by Senator Pearce

OFFERED IN THE SENATE

TO: SB 352

Page 11, line 23, following "AS 19":

Insert ", except for AS 19.25.080 - 19.25.180 and AS 19.27"

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



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

Alaska Coal Association

Senator Drue Pearce

Subject: Port Authority Legislation

Dear Senator Pearce,

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

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

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

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

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

Development of adequate transportation and port infrastructure is a long term and evolving process. We believe that legislation such as SB 352 is essential to this long term process. Such legislation sends a clear message to both customer and capital markets that Alaska is not only committed to fostering the development of its natural resources; but is equally committed to the development of the transportation and port infrastructure systems needed to get these resources to market.

President: R. B. Stiles
1227 West 9th Ave, Suite 201
Anchorage, Alaska 99501
Tel. (907) 276-6865
Fax. (907) 276-2395



Alaska Coal Association

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

RESOLUTION

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

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

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

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

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

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

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

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

**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

Senator Drue Pearce - Page 2

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

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

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

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

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

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

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

Senator Drue Pearce - Page 3

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

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

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

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

Sincerely,



Tyler Jones

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

Alaska State Legislature

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During Session:
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Juneau, Alaska 99811
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Senator Drue Pearce
District C

To: Senator Curt Menard, Chair
Senate Transportation Committee

From: Senator Drue Pearce *DP*

Date: January 28, 1991

Re: Scheduling a hearing for SB-352

Please consider hearing Senate Bill 352 and 341 on the same day. The strengths and deficiencies between the two bills can be brought to the committee members' attention and debated more efficiently if the bills are before the committee concurrently.

The Bills have significant differences. SB 352 allows the resulting Authority more freedom while defining the Authority more stringently. The Authority, as specified under SB 352, would be subject to:

- 1) the open meetings act.
- 2) the formation of organizational bylaws.
- 3) and allow police powers on property controlled by the Authority.
- 4) more stringent accounting standards than required by SB 341.
- 5) an exemption from local zoning rules and state taxation. (Although, we probably need to scrutinize this provision).
- 6) the liabilities of the Authority accruing to the Authority only.


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During Session:
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Senator Drue Pearce
District G

TO: All Senators
FROM: Senator Drue Pearce 
DATE: January 13, 1992
RE: Port Authority Legislation

I will be introducing legislation tomorrow that authorizes local governments to establish port authorities. This legislation is identical to a bill being introduced in the House by Representative Baker and was drafted with the help of the Department of Commerce and Economic Development. Port development is vital to the commercial growth of the state as well as to the general welfare of its residents. Authorities would have the power to acquire and construct ports and to borrow money for port development and management.

I have enclosed a copy of the legislation and encourage you to co-sponsor it. Please contact Rod Mourant of my staff at 465-3844 if you would like your name added as a co-sponsor.

ENCLOSURE

DP:rrm

- 1) No written request yet
- 2) Staff has asked for a port authority "day" to hear both Duncan's & Drue's bills
- 3) positive elements in both
- 4) talk to Duncan & Drue

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
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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: _____

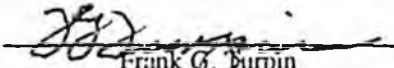
ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron B. Lind, Director

Phone: 465-2171

Division: Plans, Programs and Budget

Date: January 30, 1992

Approved by Commissioner: 
Frank G. Burpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 30, 1992

**PORT AUTHORITY LEGISLATION
BILL COMPARISON**

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

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Senator Drue Pearce
District G

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.
- bylaws.
- regulations.
- 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 and be binding on the Authority.

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 state law.

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.



February 18, 1992

MEMORANDUM

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

FROM: Scott A. Burgess, Executive Director 

SUBJECT: Testimony on HB 399 - Establishment of Port Authorities

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

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

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

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

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

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

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

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

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

Attachments

cc: Representative Baker
Senator Pearce
Senator Duncan
Senator Menard

HB 399 - Questions and Concerns

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

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

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

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

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

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

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

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

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

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

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

Senator Curt Menard
February 11, 1992
Page 3


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

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

GPL:gc
92-121.glc

Enclosure

RECEIVED
FEB 18 1992
ALASKA MUNICIPAL LEAGUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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MEMORANDUM

TO: Representative Larry Baker

FROM: J. J. Brecht 

DATE: February 19, 1992

SUBJECT: Importance of Port Authority Legislation

You have asked me specifically why there is a need for legislation to establish port authorities such as is presented in HB 399 and its companion SB 352 ("Port Authority Legislation"). You have stated that there are those who argue that two or more municipalities may cooperate and jointly operate any power or function under authority of Article X, Section 13, of the Alaska Constitution ("Article X") and under the provision for general powers of municipalities as set forth under AS 29.35.010(13) ("Section 10"). Section 10 extends those general powers to all municipalities "to enter into an agreement, including an agreement for cooperative or joint administration of any function or power with a municipality, the state, or the United States;"

The basic issue is then whether the provisions of Article X and Section 10 provide the basis on which two or more municipalities may join together to establish a port authority and carry out other functions as envisioned in the Port Authority Legislation. I addressed this issue many months ago in contemplating whether there would be a need for port authority legislation.

My conclusion on this issue was, at that time and remains, that the existing provisions of Alaska law are not clear enough on which to base a legal opinion in support of the issuance of bonds of such a port authority.

My conclusion is that this matter can only be remedied in either of two ways: (1) through test litigation to interpret the provisions of Article X and Section 10 in the context of the issuance of bonds on a particular project involving two or more municipalities; or (2) enact legislation that will expressly interpret Article X in the context of port authorities.

Rep. Larry Baker
February 19, 1992
Page 2

Test litigation could take upwards of two years to run its course. My thought at the time was that local government and economic development in this state can ill-afford such a hiatus. It was this basis on which the first draft of port authority legislation was prepared through my firm and on which the Port Authority Legislation is based.

The other distinct advantages of the Port Authority Legislation are that it expressly provides that port authorities will be extended authority of eminent domain to ensure the proper development of a port authority, and that neither the faith and credit of the state nor of the municipalities participating in the establishment of a port authority will be involved in the revenue issues of the port authority. These issues are not clear under existing Alaska law and they will not be made clear short of test litigation or legislation as previously described.

The Port authority Legislation further provides that much of the substance of the formation and operation of a port authority will be established by ordinance adopted by the governing bodies of the municipalities participating in the establishment of the port authority.

In summary, the answer given by some that two or more municipalities may cooperate and jointly operate any power or function under existing Alaska law is not a statement substantiated by either caselaw or other precedent in the context of port authorities and revenue bonds. If legislation is not enacted, test litigation would be necessary to establish that authority and also to establish the extent of liability of the state and the municipalities participating in a given port authority and especially their liability to holders of revenue bonds issued by such an authority.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

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

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

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

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

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

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

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

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

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

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

Senator Curt Menard
February 11, 1992
Page 3

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

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

GPL:gc
92-121.glc

Enclosure

BOROUGH ASSEMBLY DOCUMENT
CONTROL & AM/IM FORM

Matanuska-Susitna Borough
350 E. Dahlia Avenue
Palmer, Alaska 99645-6448

For Agenda of: January 7, 1992

AM No. 92-001

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

ATTACHMENTS: Fiscal Note Yes No XX
Resolution S/N 92-004
Draft Legislation

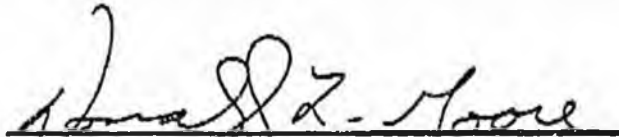
Route to:	Dept/Committee/Individual	Initials	Remarks
1	Assistant to Manager	<i>LM</i>	
2	Borough Assessor	<i>AS</i>	
3	Borough Attorney		
	Finance Director		
4	Mayor		
	Planning Director		
	Public Works Director		

SUMMARY STATEMENT: The attached resolution was prepared by the firm Wohlforth, Argetsinger, Johnson and Brecht. It was prepared to complement the attached legislation which will be introduced in the coming session by representatives Baker and Larson.

The resolution is self-explanatory; it is a critical piece of the Port McKenzie package.

RECOMMENDED ACTION: The manager recommends approval of Resolution 92-004 for transmittal to each member of the House and Senate.

APPROVED BY:


Donald L. Moore, Borough Manager

DRAFT
Wohlfarth/Brecht
APF00009
9999.1304
October 30, 1991

HOUSE BILL NO.

**IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVES BAKER AND LARSON

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

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

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

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

Article 9. Port Authorities

Sec. 29.35.600. LEGISLATIVE FINDINGS, POLICY. The legislature finds, determines, and declares that

(1) the development of ports for water borne and other commerce is vital to attainment of an efficient and effective transportation network in the State of Alaska;

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

(3) It is declared to be the policy of the state and, in the interest of promoting the health, security and general welfare of all of the people of the state, a public purpose, to provide the means for establishing a more efficient transportation system and to encourage economic growth in the state, including the development of its natural resources, by authorizing municipalities to create municipal port authorities with power to acquire and construct ports for water borne commerce and to borrow money for the same and otherwise to exercise the powers, duties and functions as provided in this article;

(4) Article X, section 13 of the Alaska Constitution authorizes municipalities to make agreements for the cooperative or joint administration of any functions or powers, and under that authority two or more municipalities may, by agreement, establish an authority in accordance with this article.

Sec. 29.35.610. ESTABLISHMENT OF PORT AUTHORITIES, BOARD OF DIRECTORS. (a) The governing body of a municipality may, by an ordinance duly adopted, create an authority as a political subdivision and public body corporate and politic under the name and style of "_____ Municipal Port Authority" with the name of the said municipality inserted. Membership of the authority shall be established in the initial ordinance creating the authority. In addition, the governing bodies of two or more contiguous municipalities may, by parallel ordinances adopted by each of such governing bodies create an authority as a political subdivision and a public body corporate and politic under the name and style of "_____ Municipal Port Authority" with all or any significant part of the name of each such municipality or similarly identifying geographical phrase inserted. An authority so formed will have existence separate from the municipality or municipalities establishing it.

(b) Any municipality otherwise required to add port power by election under AS 29.35.300 - 29.35.350 shall exercise port powers only after complying with AS 29.35.300 - 29.35.350.

(c) The powers of an authority will be vested in and an authority will be governed by a board.

(d) The ordinances adopted under (a) and (f) of this section will specify the number, qualification, manner of appointment, and terms of members of the board.

(e) At least one member of the board will be an individual who has at least five years of experience in port management and may be a person who is not a resident of the state. All other members of the board must be residents of the state.

(f) Subsequent to the formation of an authority in accordance with (a) of this section, one or more additional municipalities may join the authority by their governing bodies and those of the municipalities already participating in the authority adopting parallel ordinances allowing and approving the admission of those additional municipalities.

(g) Nothing in this article authorizes a municipality to exercise a power which it has not been granted under provisions of this article.

Sec. 29.35.620. PURPOSE OF A PORT AUTHORITY. The purpose of an authority is to provide for the development of a port or ports for water borne and other commerce within the area or jurisdiction of the authority.

Sec. 29.35.630. POWERS OF A PORT AUTHORITY. In furtherance of its corporate purposes, an authority has the following powers in addition to its other powers:

- (1) to sue and be sued;
- (2) to have a seal and alter it at pleasure;
- (3) to adopt and amend bylaws for its organization and internal management;
- (4) to adopt regulations governing the exercise of its corporate powers;
- (5) to acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift or lease;
- (6) to lease to others a project acquired by it for the rentals and upon the terms and conditions the authority may consider advisable, including, without limitation, provisions for options to purchase or renew;
- (7) to issue bonds and otherwise to incur indebtedness in order to pay the cost of a project or projects or in order to provide money for the authority's purposes

under this article, and to secure payment of the bonds or other indebtedness as provided in this article;

(8) to sell, by installment sale or otherwise, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;

(9) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with a federal agency or an agency or instrumentality of the state, a municipality, private organization or other source;

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

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

(12) to own, operate, regulate, and exercise police powers with respect to a port or ports to the extent provided in the ordinance or ordinances adopted pursuant to AS 29.35.610;

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

(14) to acquire, manage, and operate projects as the authority considers necessary or appropriate to serve a public purpose;

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

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

(17) to enter into contracts or other transactions with a federal agency, with an agency or instrumentality of the state or of a municipality, or with a private organization or other entity consistent with the exercise of any power under this article;

(18) to charge fees or other forms of remuneration for the use or possession of projects in accordance with the agreements described in this section, other

agreements pertaining to the projects, covenants, or representations made in bond documents pertaining to the projects, or regulations of the authority pertaining to the projects; and

(19) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this article.

Sec. 29.35.640. EXECUTIVE OFFICERS. (a) The board will appoint the chief executive officer of the authority who will serve at the pleasure of the board. The board will fix compensation for the chief executive officer.

(b) The chief executive officer of the authority will appoint and fix the compensation for other executive officers. The compensation for an executive officer appointed under this subsection is subject to board approval.

Sec. 29.35.650. DUTIES OF CHIEF EXECUTIVE OFFICER. The board will, through the bylaws, establish the duties and responsibilities of the chief executive officer which will include those powers and duties necessary or appropriate for the management of the daily affairs and operations of the authority. The board may, through the bylaws, require the exercise of these specific powers, duties and responsibilities to be subject to board approval.

Sec. 29.35.660. BYLAWS, REGULATIONS. (a) The board will adopt bylaws and, where appropriate, regulations to carry out its functions and the purposes of this article, including regulations to safeguard property owned, managed, or transported by the authority and to protect employees and persons using the authority's property or services.

(b) The board will adopt bylaws as soon after the establishment of the authority as possible, and thereafter may from time to time amend those bylaws. The bylaws may contain any provision not in conflict with law for the management of the business of the authority and for the conduct of the affairs of the authority including but not limited to the following:

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

- (2) the compensation of directors, if any;
- (3) the appointment and authority of committees of the board, if any;
- (4) the appointment, duties, compensation, and tenure of officers;
- (5) procedures for adopting regulations;
- (6) procedures for amendment of the bylaws;
- (7) procedures for making annual reports and financial statements; and
- (8) other matters for the conduct of business by the board.

Sec. 29.35.670. PUBLIC DISCLOSURE OF INFORMATION. (a) Except as provided under (b) of this section, information in the possession of an authority is public and is open to public inspection as reasonable times.

(b) 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, divisions and contract rate agreements.

Sec. 29.35.680. ANNUAL REPORT. Within 90 days following the end of the fiscal year of an authority, the board will distribute to the mayor and governing body of each municipality participating in the authority a report describing the operations and financial condition of the authority during the preceding fiscal year. The report may include suggestions for legislation relating to the structure, powers or duties of the authority or to the operation of facilities of the authority. Subject to AS 29.35.670, the report will itemize the cost of providing each category of service offered by the authority and the income generated by each category.

Sec. 29.35.690. AUDITS. (a) The board will have the financial records of an authority audited annually by an independent certified public accountant experienced in port authority accounting. The board will have an annual performance audit conducted by a recognized port management expert to assure that the authority is being managed and operated effectively and efficiently in accordance with the requirements of this article

and that each appropriation is used to directly support those services for which the appropriation was requested.

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

Sec. 29.35.700. PROPERTY. (a) A municipality may transfer and otherwise convey or lease real property and any improvements to it to the authority for use by the authority, and enter into any agreements it deems necessary respecting it, within the purposes set forth in the ordinance adopted pursuant to AS 29.35.610.

(b) A municipality may transfer and otherwise assign or lease personal property to the authority for use by the authority, and enter into any agreements it deems necessary respecting it, within the purposes set forth in the ordinance adopted pursuant to AS 29.35.610.

Sec. 29.35.710. CONVEYANCE OF LAND. An authority and a municipality participating in the authority may enter into agreements with the state, the federal government, or any other person whereby lands of the state, the federal government, that municipality or that person are conveyed, transferred, or leased to the authority. Such lands must be necessary or useful for then present or future authority purposes.

Sec. 29.35.720. EMINENT DOMAIN. (a) An authority may exercise a power of eminent domain under AS 09.55.240 - 09.55.460 to acquire land for authority purposes consistent with this article. Notwithstanding AS 09.55.250, an authority may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the purposes of this article.

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

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

Sec. 29.35.730. LAND USE REGULATIONS. The board may adopt exclusive regulations governing land use by parties having interests in or permits for land owned or managed by an authority. The power conferred by this section is exercised for the

common health, safety, and welfare of the public and, to the extent constitutionally permissible, may not be limited by the terms and conditions of leases, contracts, or other transactions.

Sec. 29.35.740. **LIMITATION OF LIABILITY.** A liability incurred by an authority will be satisfied exclusively from the assets or revenue of the authority, and no creditor or other person has a right of action against the state or a municipality because of a debt, obligation, or liability of an authority.

Sec. 29.35.750. **FIDELITY BOND.** An authority will obtain a fidelity bond in an amount determined by the board for board members and each executive officer responsible for accounts and finances of that authority. A fidelity bond must be in effect during the entire tenure in office of the bonded person.

Sec. 29.35.760. **INDEMNIFICATION.** (a) An authority may defend and indemnify a current or former member of the board, employee, or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney's fees, incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved as a result of his or her affiliation with the authority, if the person acted in good faith on behalf of the authority and within the scope of his or her official duties or powers.

(b) The authority may purchase insurance to protect and hold personally harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with the authority and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding. The purchase of insurance is subject to the discretion of the board. Any such insurance shall not be considered compensation to the insured person.

Sec. 29.35.770. **INSURANCE.** An authority will protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions. An authority will also maintain casualty, property, business interruption, marine, boiler and machinery, pollution liability, and other insurance in amounts reasonably calculated to cover potential claims against the authority or a municipality for bodily injury, death or disability and property damage that may arise from or be related to authority operations and activities.

Sec. 29.35.780. NO TAXING AUTHORITY. An authority does not have authority to and is prohibited from levying an income or other tax.

Sec. 29.35.790. BONDS OF A PORT AUTHORITY. (a) The authority may borrow money and may issue bonds, including but not limited to bonds on which the principal and interest are payable

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

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

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

(b) Bonds shall be authorized by resolution of the authority, and 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 subject to the terms of redemption which the resolution or a subsequent resolution may provide.

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

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

(e) Before issuing bonds, the authority shall provide for consideration at least sufficient, in the judgment of the authority, to pay the principal of and interest on the bonds as they become due and to create and maintain the reserves for the payments that the authority considers necessary or desirable, and to 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 authority.

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

Sec. 29.35.800. DEVELOPMENT PLAN. (a) Before undertaking the construction and acquisition of any project, the authority shall prepare a development plan for submission to the governing body or governing bodies which created it. The development plan must contain

- (1) a description of the proposed project;
- (2) a description of any existing improvements in the project area to be affected by the project;
- (3) an estimate of the project cost and a statement of the proposed method of financing and the proposed lease or other contractual arrangements with respect to the project.

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

Sec. 29.35.810. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued under this article are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banks, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds may be deposited with a state or municipal officer of an agency or political subdivision of the state for any purpose for which the deposit of bonds of the state is authorized by law.

Sec. 29.35.820. VALIDITY OF PLEDGE. The pledge of assets or revenue of an authority to the payment of the principal or interest on bonds or notes of the authority is valid and binding from the time the pledge is made, and the assets or revenue are immediately subject to the lien of the pledge without physical delivery or further act. The

lien of a pledge is valid and binding against all parties having claims of any kind against the authority irrespective of whether those parties have notice of the lien of the pledge.

Sec. 29.35.830. CREDIT OF STATE OR A MUNICIPALITY NOT PLEDGED. (a) The state and municipalities are not liable for the debts of an authority. Bonds issued under this article are payable solely from the revenue or assets of the authority and do not constitute a

- (1) debt, liability, or obligation of the state or of a municipality; or
- (2) pledge of the faith and credit of the state or of a municipality.

(c) An authority may not pledge the credit or the taxing power of the state or its municipalities. Each bond issued under this article will contain on its face a statement that

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

(2) neither the faith and credit nor the taxing power of the state or of a political subdivision of the state is pledged to the payment of it.

Sec. 29.35.840. PLEDGES OF THE STATE AND MUNICIPALITIES. The state and municipalities pledge to and agree with the holders of bonds issued under this article and with the federal agency, if any, which loans or contributes funds in respect to a project of the authority, that the state and the municipalities will not limit or alter the rights and powers vested in the authority by this article to fulfill the terms of a contract made by the authority with those holders or that federal agency, or in any way impair the rights and remedies of those holders or that federal agency until the bonds, together with the interest on them and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of those holders or that federal agency, are fully met and discharged. An authority is authorized to include this pledge and agreement of the state and the municipalities, insofar as it refers to holders of bonds of the authority, in a contract with those holders, and insofar as it relates to a federal agency, in a contract with that federal agency.

Sec. 29.35.850. EXEMPTION FROM TAXATION. (a) The exercise of the powers granted under this article will be in all respects for the benefit of the people of the