

HOUSE BILL NO. 165

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HERRON

Introduced: 3/14/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act creating the Alaska Arctic Port and Development Authority as a public**
2 **corporation of the state with the power to receive and administer funds in order to plan,**
3 **develop, construct, own, improve, and operate ports, including deepwater ports, and**
4 **related infrastructure in the state's Arctic coastal region; defining the purposes and**
5 **powers of the authority; establishing the Alaska Arctic Port and Development Authority**
6 **revolving fund; and providing for an effective date."**

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

8 *** Section 1.** AS 24.20.201(a) is amended to read:

9 (a) The Legislative Budget and Audit Committee has the power to

10 (1) organize, adopt rules for the conduct of its business, and prescribe
11 procedures for the comprehensive fiscal analysis, budget review, and post-audit
12 functions;

13 (2) hold public hearings, administer oaths, issue subpoenas, compel the

1 attendance of witnesses and production of papers, books, accounts, documents, and
 2 testimony, and have the deposition of witnesses taken in a manner prescribed by court
 3 rule or law for taking depositions in civil actions;

4 (3) require all state officials and agencies of state government to give
 5 full cooperation to the committee or its staff in assembling and furnishing requested
 6 information;

7 (4) review revenue projections, state agency appropriation requests, the
 8 expenditure of state funds, including the relationship between state agency program
 9 accomplishments and legislative intent, and the fiscal policies and procedures of state
 10 government;

11 (5) review and approve proposed changes to agency authorized
 12 budgets as provided in AS 37.07 (Executive Budget Act);

13 (6) make recommendations concerning appropriations, their
 14 expenditure, and the fiscal policies and procedures of state government to the governor
 15 when appropriate, and to the legislature;

16 (7) prepare and distribute reports, memoranda, or other necessary
 17 materials;

18 (8) sue in the name of the legislature during the interim between
 19 sessions if authorized by majority vote of the full membership of the committee;

20 (9) [REPEALED

21 (10)] make recommendations to the legislature and to agencies of the
 22 state that perform lending or investment functions concerning the structure and
 23 operating practices of the agencies;

24 (10) [(11)] enter into and enforce all contracts necessary or desirable
 25 for the functions of the committee;

26 (11) [(12)] provide for annual post audits of the Alaska Housing
 27 Finance Corporation, the Alaska Aerospace Corporation, [AND] the Alaska Industrial
 28 Development and Export Authority, and the Alaska Arctic Port and Development
 29 Authority.

30 * **Sec. 2.** AS 24.20.206 is amended to read:

31 **Sec. 24.20.206. Duties.** The Legislative Budget and Audit Committee shall

1 (1) annually review the long-range operating plans of all agencies of
2 the state that perform lending or investment functions;

3 (2) review periodic reports from all agencies of the state that perform
4 lending or investment functions;

5 (3) prepare a complete report of investment programs, plans,
6 performance, and policies of all agencies of the state that perform lending or
7 investment functions and notify the legislature on or before the first day of each
8 regular session that the report is available;

9 (4) in conjunction with the finance committee of each house,
10 recommend annually to the legislature the investment policy for the general fund
11 surplus and for the income from the permanent fund;

12 (5) provide for an annual post audit and annual operational and
13 performance evaluation of the Alaska Permanent Fund Corporation investments and
14 investment programs;

15 (6) provide for an annual operational and performance evaluation of
16 the Alaska Housing Finance Corporation, [AND] the Alaska Industrial Development
17 and Export Authority, **and the Alaska Arctic Port and Development Authority**; the
18 performance evaluation must include, but is not limited to, a comparison of the effect
19 on various sectors of the economy by public and private lending, the effect on resident
20 and nonresident employment, the effect on real wages, and the effect on state and local
21 operating and capital budgets of the programs of the Alaska Housing Finance
22 Corporation, [AND] the Alaska Industrial Development and Export Authority, **and**
23 **the Alaska Arctic Port and Development Authority**;

24 (7) provide assistance to the trustees of the trust established in
25 AS 37.14.400 - 37.14.450 in carrying out their duties under AS 37.14.415.

26 * **Sec. 3.** AS 30 is amended by adding a new chapter to read:

27 **Chapter 09. Alaska Arctic Port and Development Authority.**

28 **Article 1. Creation and Organization.**

29 **Sec. 30.09.010. Creation of authority.** The Alaska Arctic Port and
30 Development Authority is created as a public corporation of the state in the
31 Department of Commerce, Community, and Economic Development, but with

1 separate and independent legal existence.

2 **Sec. 30.09.020. Membership of authority.** (a) The authority consists of nine
3 public members appointed by the governor, four of whom shall be from the state's
4 Arctic coastal region.

5 (b) Each member shall possess expertise in private sector business or industry,
6 or both, and possess demonstrated leadership skills.

7 (c) Members appointed under (a) of this section serve at the pleasure of the
8 governor for two-year terms.

9 (d) If a vacancy occurs in the membership of the authority, the governor shall
10 immediately appoint a member for the unexpired portion of the term.

11 **Sec. 30.09.030. Chair and vice-chair.** The members of the authority shall
12 elect a chair from among themselves and may elect a vice-chair from among
13 themselves. The vice-chair presides over all meetings in the absence of the chair and
14 performs other duties as directed by the authority.

15 **Sec. 30.09.040. Meetings, compensation, officers, and employees.** (a) A
16 majority of the members of the authority constitutes a quorum for the transaction of
17 business or the exercise of a power or function at a meeting of the authority.

18 (b) In case of a tie vote on a motion or resolution pending before the authority,
19 the motion or resolution shall be presented to the governor and, if approved, shall be
20 considered adopted by the authority.

21 (c) The authority may meet and transact business by electronic media if (1)
22 public notice of the time and locations where the meeting will be held by electronic
23 media has been given in the same manner as if the meeting were held in a single
24 location; (2) participants and members of the public in attendance can hear and have
25 the same right to participate in the meeting as if the meeting were conducted in person;
26 and (3) copies of pertinent reference materials, statutes, regulations, and audiovisual
27 materials are reasonably available to participants and to the public. A meeting by
28 electronic media as provided in this subsection has the same legal effect as a meeting
29 in person.

30 (d) Members of the authority receive \$100 compensation for each day spent
31 on official business of the authority and may be reimbursed by the authority for actual

1 and necessary expenses at the same rate paid to members of state boards under
2 AS 39.20.180.

3 (e) The authority may appoint officers as the authority considers necessary,
4 including an executive director, and may employ professional advisors, counsel,
5 technical experts, agents, and other employees as the authority considers necessary.
6 The executive director and employees of the authority are in the exempt service under
7 AS 39.25.

8 (f) The authority shall keep minutes of each meeting and send a certified copy
9 of the minutes to the governor and to the Legislative Budget and Audit Committee.

10 **Sec. 30.09.050. Alaska Arctic Port and Development Authority revolving**
11 **fund.** The Alaska Arctic Port and Development Authority revolving fund is
12 established in the authority. The revolving fund consists of appropriations made to the
13 revolving fund by the legislature, money or other assets transferred to the revolving
14 fund by the authority, and unrestricted payments on loans made or purchased by the
15 authority. Unless otherwise expressly stated, the accounts created in this chapter are
16 accounts in the revolving fund. The authority may create additional accounts either in
17 the revolving fund or outside the revolving fund. The authority may transfer amounts
18 in an account in the revolving fund to another account in the revolving fund. Amounts
19 deposited in the revolving fund may be expended for the purposes of the authority
20 under this chapter. The authority has the powers and responsibilities established in
21 AS 37.10.071 with respect to the investment of amounts held in the revolving fund.

22 **Article 2. Purpose and Powers.**

23 **Sec. 30.09.100. Purpose of the authority.** The purpose of the authority is to
24 develop a comprehensive plan for port development in the state's Arctic coastal region
25 and to plan, develop, construct, own, improve, and operate ports, including deepwater
26 ports, and related infrastructure in the state's Arctic coastal region by

27 (1) developing a plan, in cooperation with the United States
28 Department of Transportation, the United States Army Corps of Engineers, and other
29 federal, state, and private institutions, for a regional system of ports, including
30 deepwater ports, and related facilities that allocates resources and services throughout
31 the state's Arctic coastal region in a coherent and cost-effective manner;

1 (2) in cooperation with federal, state, and private institutions,
2 providing means of financing and facilitating the financing of ports, including
3 deepwater ports, and related facilities in the state's Arctic coastal region;

4 (3) owning and operating ports and related facilities;

5 (4) cooperating and acting in conjunction with other organizations,
6 public and private, to plan, develop, construct, own, improve, and operate ports,
7 including deepwater ports, and related infrastructure in the state's Arctic coastal
8 region;

9 (5) establishing a source of funding credit guarantees and insurance,
10 not otherwise available, to support port development in the state's Arctic coastal
11 region.

12 **Sec. 30.09.120. Powers of the authority.** (a) In furtherance of its corporate
13 purposes, the authority has the following powers in addition to its other powers:

14 (1) to sue and be sued;

15 (2) to have a seal and alter it;

16 (3) to make and alter bylaws for its organization and internal
17 management;

18 (4) to adopt regulations under AS 44.62 (Administrative Procedure
19 Act) governing the exercise of its corporate powers;

20 (5) to acquire an interest for the purposes of the authority under
21 AS 30.09.100 in a project in the state's Arctic coastal region as necessary or
22 appropriate to provide financing for the project, whether by purchase, gift, or lease;

23 (6) to sell, by installment sale or otherwise, exchange, donate, convey,
24 or encumber in any manner by mortgage or by creation of any other security interest,
25 real or personal property owned by the authority or in which it has an interest,
26 including a project in the state's Arctic coastal region, when the authority determines
27 the action will further its corporate purposes;

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

31 (8) to enter into contracts or agreements with respect to the exercise of

1 any of the authority's powers and do all things necessary or convenient to carry out its
2 corporate purposes and exercise the powers granted in this chapter;

3 (9) to purchase or insure loans to finance the costs of construction,
4 development, and improvement of ports and related infrastructure in the state's Arctic
5 coastal region;

6 (10) to enter into loan agreements with respect to one or more projects
7 in the state's Arctic coastal region under terms and conditions the authority considers
8 advisable;

9 (11) to receive and administer funds in order to plan, develop,
10 construct, own, improve, and operate port projects and related facilities and
11 infrastructure in the state's Arctic coastal region as the authority considers necessary or
12 appropriate to serve a public purpose;

13 (12) to charge fees or other forms of remuneration for the use or
14 possession of the projects described in (11) of this subsection in accordance with the
15 agreements described in (7) and (8) of this subsection, other agreements pertaining to
16 the projects, covenants, or representations made in bond documents pertaining to the
17 projects, or regulations of the authority pertaining to the projects;

18 (13) to participate with government or private industry in programs for
19 technical assistance, loans, technology transfer, or other programs related to the
20 exportation of Alaska goods, services, or raw materials with respect to its financing
21 activities;

22 (14) to make cooperative agreements with the Department of
23 Transportation and Public Facilities to acquire, equip, operate, maintain, construct, or
24 install ports and related facilities in the state's Arctic coastal region;

25 (15) to straighten, deepen, and improve any channel, river, stream, or
26 other watercourse as necessary and proper in the development of a port or its facilities;

27 (16) to consider, when exercising the powers listed in this section, the
28 interests of local governments affected by the authority's activities in sharing in the
29 benefits of the activities, with appropriate consideration of the authority's ability to
30 meet debt obligations, issue new debt, and fulfill the authority's purposes.

31 (b) The authority may exercise its powers to plan, develop, construct, own,

1 improve, and operate port projects and related facilities and infrastructure, including

2 (1) transportation infrastructure, such as docks, roads, railroads,
3 airports, and pipelines;

4 (2) natural resource processing, liquefaction, refinement, storage,
5 export, import, fueling, and distribution facilities;

6 (3) vessel bunkering, loading, unloading, repair, and storage facilities;

7 (4) power generation plants and transmission facilities;

8 (5) communications systems, such as telephone, wireless
9 communications, and fiber optic networks;

10 (6) seafood processing, refrigeration, packaging, import, export, and
11 storage facilities; and

12 (7) facilities for use by state and federal agencies engaged in search
13 and rescue, forward deployment of the United States Coast Guard, or other military or
14 government agency activities in the public interest.

15 **Sec. 30.09.130. Regulations.** The authority shall adopt regulations under
16 AS 44.62 (Administrative Procedure Act) necessary for the following purposes in
17 connection with its programs for the financing of projects under AS 30.09.120:

18 (1) determination of borrower eligibility;

19 (2) loan guidelines and terms, including

20 (A) maximum loan amounts;

21 (B) required loan-to-value ratios; and

22 (C) a method for determining loan interest rates;

23 (3) characteristics of projects eligible for loans or purchase of loans;
24 and

25 (4) the qualifications of loan originators and servicers and the method
26 of allocating amounts available for the purchase of loans.

27 **Article 3. General Administrative Provisions.**

28 **Sec. 30.09.200. Purchase of project and leases.** (a) Nothing in this chapter
29 prevents the inclusion in a lease or other agreement relating to a project of a provision
30 granting the right to purchase the project, or to renew or extend the lease or agreement,
31 on the terms and conditions provided for in the lease or agreement.

1 (b) A lease with respect to a project may provide for two or more lessees with
2 the legal relationship between themselves and the authority that the authority may
3 approve, including, without limitation, provisions to the effect that the obligations of
4 the lessees under the lease for payment of rental or otherwise between themselves and
5 the authority are several, joint, or joint and several, and that the lessees lease the
6 project as tenants-in-common, or otherwise.

7 **Sec. 30.09.210. Finance plan.** (a) Before approving a project financed under
8 this chapter, the authority shall prepare a finance plan. The finance plan must include
9 an estimate of the total cost of the project and a description of the sources of money
10 that will be used to finance the total cost of the project. The finance plan must also
11 include an estimate of the operational costs of the completed project and a description
12 of the source of the money that is to be used to pay the operational costs.

13 (b) The authority shall give preference to a project that does not require
14 financial assistance from the state. If the authority determines that a project requires
15 state financial assistance, and if the authority further determines that it is desirable to
16 finance the project, the authority shall recommend a method of financing that
17 minimizes cost to the state. A finance plan required under (a) of this section must
18 identify the method of financing that minimizes the cost to the state.

19 (c) The authority shall submit to the governor and the legislature a finance
20 plan prepared under this section before incurring debt for the project. If a project
21 requires financial assistance from the state, the state financial assistance must be
22 available before the project is financed.

23 **Sec. 30.09.220. Annual audit.** The authority shall have its financial records
24 audited annually by the legislative auditor or by a certified public accountant approved
25 by the legislative auditor. The legislative auditor may prescribe the form and content
26 of the financial records of the authority and shall have access to the records at any
27 time.

28 **Sec. 30.09.230. Compliance with Executive Budget Act; authority finances.**
29 (a) The operating budget of the authority is subject to AS 37.07 (Executive Budget
30 Act).

31 (b) To further ensure effective budgetary decision making by the legislature,

1 the authority shall

2 (1) annually review the authority's assets to determine whether assets
3 of the authority exceed an amount required to fulfill the purposes of the authority as
4 defined in this chapter; in making its review, the authority shall determine whether and
5 to what extent assets in excess of the amount required to fulfill the purposes of the
6 authority during at least the next fiscal year are available without

7 (A) breaching any agreement entered into by the authority;

8 (B) materially impairing the operations or financial integrity of
9 the authority; or

10 (C) materially affecting the ability of the authority to fulfill the
11 authority's purposes as set out in AS 30.09.100; and

12 (2) make available to the legislature by January 10 of each year a
13 complete accounting of all assets of the authority and a report of the review and
14 determination made under (1) of this subsection; the accounting shall be audited by the
15 auditor who conducts the audit required by AS 30.09.220 and must include a full
16 description of all loan interest and principal payments and program receipts, including

17 (A) loan commitment fees received by or accrued to the
18 authority during the preceding fiscal year; and

19 (B) all income earned on assets of the authority during that
20 period.

21 **Sec. 30.09.240. Reports and publications.** (a) By January 10 of each year, the
22 authority shall publish a report for distribution to the governor, the legislature, and the
23 public. The authority shall notify the legislature that the report is available. The report
24 shall be written in easily understandable language. The report must include a financial
25 statement audited by an independent outside auditor, a statement of the authority's
26 investments under this chapter, including an appraisal of the investments at market
27 value, a comparison of the authority's performance with the goals of the authority and
28 investment activities anticipated in the previous year's report under (b) of this section,
29 and any other information members of the authority believe would be of interest to the
30 governor, the legislature, and the public. The annual income statement and balance
31 sheet of the authority shall be published in at least one newspaper in each judicial

1 district. The authority may also publish other reports it considers desirable to carry out
2 its purpose.

3 (b) The authority must include in its annual report under (a) of this section an
4 estimate of the investment in projects by the authority under this chapter for the
5 following 12-month period.

6 **Sec. 30.09.250. Fees charged by authority; prepayments.** (a) The
7 commitment fee for a loan commitment by the authority may not exceed two percent
8 of the principal amount of the loan.

9 (b) The authority may not limit or charge a fee or penalty for prepayment of a
10 loan after five years from the inception of the loan.

11 **Sec. 30.09.260. Confidentiality of records and information.** (a) To promote
12 the purposes of this chapter, unless the records or information were a matter of public
13 record before submittal to the authority, the following records and information shall be
14 kept confidential if the person supplying the records or information or the project,
15 loan, or guarantee applicant or borrower requests confidentiality and makes an
16 adequate showing to the executive director of the authority that the records or
17 information are

18 (1) income tax returns;

19 (2) financial statements, profit-and-loss statements, and cash flow
20 projections, except the information required by the authority to calculate debt service
21 coverage on the loan;

22 (3) financial business plans;

23 (4) credit reports from consumer reporting agencies and other credit
24 information obtained from banks, creditors, or other credit reporting entities;

25 (5) trade secrets, including confidential proprietary information and
26 confidential information about products, pricing, or manufacturing or business
27 processes;

28 (6) appraisals, except the name of the appraiser, the date of the
29 appraisal, and the fair market value determined for the property appraised;

30 (7) market surveys and marketing strategy information; or

31 (8) any information required to be kept confidential by a federal law or

1 regulation or by state law.

2 (b) Information compiled by the authority from information described in (a) of
3 this section shall be kept confidential unless disclosure is authorized by the person
4 supplying the information and by the project, loan, or guarantee applicant or borrower.

5 (c) The records and information that the executive director of the authority
6 determines to be confidential under (a) or (b) of this section are not public records
7 under AS 40.25.110 - 40.25.220.

8 (d) Nothing in this section shall prevent a legislator from reviewing
9 information otherwise confidential under this section if the legislator has a valid
10 legislative purpose for reviewing the information and if the legislator agrees to
11 maintain the confidentiality of the information.

12 **Sec. 30.09.270. Personal liability.** An officer, employee, or agent of the
13 authority may not be held personally liable in a civil action for damages for an act
14 done or omitted in good faith while performing the functions of office, employment,
15 or agency under this chapter.

16 **Sec. 30.09.500. Definitions.** In this chapter,

17 (1) "Arctic coastal region" means the area of the state north of 51
18 degrees North latitude and west of 156 degrees West longitude and the area of the
19 state east of 156 degrees West longitude and north of the Brooks Range;

20 (2) "authority" means the Alaska Arctic Port and Development
21 Authority created by this chapter;

22 (3) "cost of the project" means all or any part of the aggregate costs
23 determined by the authority to be necessary to finance the construction, expansion, or
24 acquisition of a project, including, without limitation, the cost of acquiring real or
25 tangible personal property, and, in connection with real property, the cost of
26 constructing buildings and improvements, the cost of constructing means of access to
27 and from the project, and the cost of constructing extensions of utility systems to the
28 site of the project; the cost of a project includes, without limitation, the cost of
29 financing the project, interest charges before, during, or after construction, expansion,
30 or acquisition of the project, costs related to the determination of the feasibility,
31 planning, design, or engineering of the project and, to the extent determined necessary

1 by the authority, administrative expenses, the cost of machinery or equipment to be
 2 used in the operation of the project and expenses of installation, replacement or
 3 rehabilitation, and all other costs, charges, fees and expenses that may be determined
 4 by the authority to be necessary to finance the construction, expansion, or acquisition;

5 (4) "federal agency" means the United States and any officer,
 6 department, agency, or instrumentality of the United States;

7 (5) "lease" includes, when used as a noun, an interest in, or, when used
 8 as a verb, the transfer of an interest in, property less than fee simple title, including,
 9 without limitation, when used as a noun, agreements to use or occupy property;

10 (6) "plant" or "facility" means real property, whether above or below
 11 mean high water, or an interest in it, and the buildings, improvements, and structures
 12 constructed or to be constructed on or in it, and may include roads, fixtures,
 13 machinery, and equipment on it or in it, and tangible personal property, regardless of
 14 whether the tangible personal property is attached to or connected with real property,
 15 if the owner has agreed not to remove the tangible personal property permanently from
 16 the state for the period the authority sets; "plant" or "facility" does not include work in
 17 process or stock in trade;

18 (7) "project" includes a facility or related infrastructure authorized
 19 under AS 30.09.120(b);

20 (8) "real property" means land and rights and interests in land,
 21 including, without limitation, interests less than full title, such as easements, uses,
 22 leases, and licenses;

23 (9) "revolving fund" means the Alaska Arctic Port and Development
 24 Authority revolving fund created in AS 30.09.050;

25 (10) "trade secret" has the meaning given in AS 45.50.940.

26 * **Sec. 4.** AS 36.90.300(c)(4) is amended to read:

27 (4) "public agency" means a department, institution, board,
 28 commission, division, authority, public corporation, committee, school district,
 29 political subdivision, or other administrative unit of a municipality, of a political
 30 subdivision, or of the executive or legislative branch of state government, including
 31 the University of Alaska, the Alaska Aerospace Corporation, the Alaska Housing

1 Finance Corporation, the Alaska Industrial Development and Export Authority, the
2 Alaska Energy Authority, the Alaska Arctic Port and Development Authority, the
3 Alaska Railroad Corporation, and a regional educational attendance area.

4 * **Sec. 5.** AS 39.25.110(11) is amended by adding a new subparagraph to read:

5 (H) Alaska Arctic Port and Development Authority;

6 * **Sec. 6.** AS 39.50.200(b) is amended by adding a new paragraph to read:

7 (64) Alaska Arctic Port and Development Authority (AS 30.09).

8 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).