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SB 40

“An Act relating to the establishment of the Kuskokwim Port Authority”
Sectional Analysis

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings and purpose of the legislature in regard to the establishment of the Kuskokwim Port Authority.

Section 2 of the bill adds a new chapter to AS 30 to provide for the establishment and operation of the Kuskokwim Port Authority.

Article 1. Creation and Organization.

Sec. 30.21.010 establishes the Kuskokwim Port Authority as a public corporation of the state within the Department of Commerce, Community, and Economic Development.

Sec. 30.21.020 establishes the board of directors of the authority, consisting of seven voting members appointed by the governor and two ex-officio voting members. The governor shall solicit nominations for appointments to the board from private persons and public and private entities including certain corporations in the area of operation of the authority. The members are to be persons who are officers, directors, or employees of private entities that have a physical presence in the area of operation of the authority. The commissioners of transportation and public facilities and of commerce, community, and economic development are voting ex-officio members of the board.

Sec. 30.21.030 provides for the removal and replacement of members of the board.

Sec. 30.21.040 provides that the members of the board may receive per diem and travel expenses authorized under AS 39.20.180.

Sec. 30.21.050 provides that the board shall hold at least four regular meetings each year and that the board may also hold special meetings at the call of the chair of the board or of three members of the board.

Sec. 30.21.060 provides for the election of officers of the board and sets the quorum and certain voting procedures for meetings of the board.

Sec. 30.21.070 provides that the board may employ officers and employees of the authority as necessary for operation of the authority. The attorney general is legal counsel for the authority.

Sec. 30.21.080 describes the operating area of the authority to include land within 10 miles of either bank of the Kuskokwim River between Napakiak and the Canoe Village site and within 10 miles of the road from the Canoe Village site to Donlin Creek.

Sec. 30.21.090 provides that the board of the authority may adopt regulations to carry out its functions.

Article 2. Powers and Duties.

Sec. 03.21.100 sets out the powers and duties of the authority.

Sec. 30.21.110 provides that the activities of the authority are public and governmental functions exercised for a public purpose and are matters of public necessity.

Sec. 30.21.120 provides that the authority may acquire by purchase, lease, or gift, upon terms that the authority considers proper land, structures, real or personal property rights, rights-of-way, franchises, easements, and other interests in land.

Sec. 30.21.130 provides that the 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 incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the authority. The authority may also purchase insurance to protect and hold personally harmless its board members, employees, and agents 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.

Sec. 30.21.140 provides that the authority shall protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions. The authority shall also maintain casualty, property, and other insurance in amounts reasonably calculated to cover potential claims against the authority or state related to authority operations and activities.

Sec. 30.21.150 provides that the authority shall obtain a fidelity bond in an amount determined by the board for members of the board and for each executive officer responsible for accounts and finances.

Article 3. Revenue Bonds and Notes.

Secs. 30.21.200 - 30.21.320 set out the powers and duties of the authority in regard to the issuance of revenue bonds. Under sec. 30.21.300, the credit of the state is not pledged to the repayment of debts, liabilities, or obligations of the authority. The authority is solely responsible for payment of its debts, liabilities, or obligations from the revenue of the authority.

Article 4. Fiscal Procedures.

Sec. 30.21.350 sets out the requirement of the authority to assure the development of a system of results-based operation designed to increase efficiency and effectiveness of facilities, operations, programs, and services of the authority. The authority shall annually prepare a detailed report of the mission, goals, operations, and performance of the authority.

Sec. 30.21.360 provides that the authority has power to administer its programs and is responsible for the proper management of its facilities and operations.

Sec. 30.21.370 provides that the authority shall prepare an annual report of its operations, income, and expenditures for the preceding fiscal year.

Sec. 30.21.380 provides that the authority shall have a certified audit of its financial records prepared annually by an independent certified public accountant.

Article 5. General Provisions.

Sec. 30.21.400 provides that the employees of the authority are not state employees.

Sec. 30.21.410 provides that the authority is not subject to the State Procurement Code (AS 36.30), except as specifically provided in this bill or to the statutes governing public officers and employees in AS 39. The authority is subject to the open meetings law, public records law, and most provisions of the Executive Budget Act (AS 37.07).

Sec. 30.21.490 sets out the definitions of terms used in the bill.

Sec. 30.21.495 provides that this chapter may be cited as the Kuskokwim Port Authority Act.

Sections 3 - 6 of the bill amend provisions of AS 30.15 to provide that the Kuskokwim Port Authority would be eligible for grants, if any, that are made for port facility construction under that chapter.

Section 7 of the bill amends AS 36.30.015(e) to provide that the board of directors of the Kuskokwim Port Authority is to adopt procedures to govern the procurement of supplies, services, professional services, and construction that are substantially equivalent to the procedures prescribed in the State Procurement Code (AS 36.30).

Section 8 of the bill amends AS 36.30.050 to provide that the board of directors of the Kuskokwim Port Authority may use the lists of contractors prepared by the commissioner of administration when issuing invitations to bid or requests for proposals.

Section 9 of the bill amends AS 36.30.990(1) to exclude the Kuskokwim Port Authority from the agencies that are subject to the State Procurement Code (AS 36.30).

Section 10 of the bill amends AS 37.05 by adding a new sec. 37.05.055 to provide that the commissioner of administration may delegate functions under the Fiscal Procedures Act (AS 37.05) to the board of directors of the Kuskokwim Port Authority.

Section 11 of the bill amends AS 39.50.200(b) to add the board of directors of the Kuskokwim Port Authority to the list of boards and commissions whose members are subject to public official financial disclosure under AS 39.50.

Sections 12 - 14 of the bill amend AS 39.52.960(2), (4), and (12), respectively, to provide that the board of directors of the Kuskokwim Port Authority is subject to the Executive Branch Ethics Act (AS 39.52).

Section 15 of the bill amends AS 44.42.020(a) to provide that the Department of Transportation and Public Facilities is not responsible for management, operation, or maintenance of ports and port related facilities and operations managed, operated, and maintained by the Kuskokwim Port Authority.

Section 16 of the bill provides that the board of directors of the Kuskokwim Port Authority shall, within one year from the first meeting of the board, prepare and publish a development plan for promoting economic self-sufficiency in the region in which the authority operates.

Section 17 of the bill establishes the length of the terms of the persons initially appointed to board of directors of the Kuskokwim Port Authority in order to establish a system of staggered appointments.

Section 18 of the bill provides that the bill takes effect July 1, 2005.