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1ST SESSION

S. 1177

To establish a congressionally chartered seaway development corporation in the Arctic, consistent with customary international law, with the intention of uniting Arctic nations in a cooperative Arctic shipping union, where voluntary collective maritime shipping fees will help fund the infrastructural and environmental demands of safe and reliable shipping in the region.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2019

Ms. MURKOWSKI (for herself, Mr. SULLIVAN, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish a congressionally chartered seaway development corporation in the Arctic, consistent with customary international law, with the intention of uniting Arctic nations in a cooperative Arctic shipping union, where voluntary collective maritime shipping fees will help fund the infrastructural and environmental demands of safe and reliable shipping in the region.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Shipping and Environ-
3 mental Arctic Leadership Act” or the “SEAL Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **ARCTIC.**—The term “Arctic” has the mean-
7 ing given the term in section 112 of the Arctic Re-
8 search and Policy Act of 1984 (15 U.S.C. 4111).

9 (2) **ARCTIC SEA ROUTES.**—The term “Arctic
10 Sea Routes” means the international Northern Sea
11 Route, the Transpolar Sea Route, and the North-
12 west Passage.

13 **SEC. 3. FINDINGS.**

14 Congress finds the following:

15 (1) The Arctic seas have historically been con-
16 sidered impassable and impractical maritime routes,
17 but diminishing Arctic sea ice, better icebreaking
18 technology, and global demand for Arctic resources
19 has opened up opportunity for international trade
20 routes through Arctic Ocean waters.

21 (2) According to the National Oceanic and At-
22 mospheric Administration, over the last 20 years at-
23 mospheric temperatures have increased at a rate at
24 least 3 times the global average, and as of 2011 sea
25 ice thickness was 42 percent below what it was in

1 1979. If trends continue, summers may produce ice-
2 free waters in the Arctic Ocean by the late 2030s.

3 (3) The Bering Strait is experiencing signifi-
4 cant increases in international traffic from vessels
5 using the Arctic Sea Routes. Increases in inter-
6 national traffic are projected to continue.

7 (4) While the Arctic Council's agreements on
8 search and rescue, spill prevention and response,
9 and initiatives through the International Maritime
10 Organization to bring about a mandatory polar code
11 are significant, little or no cooperation yet exists in
12 the Arctic region to bring about needed maritime in-
13 frastructure, nor do Arctic coastal states and user
14 states cooperate in establishing common seaway ad-
15 ministration. International coordination and invest-
16 ment in infrastructure for shipping routes, ice-
17 breaker service and refuge, ports, spill prevention
18 and response, salvage, and LNG bunkering, would
19 be collectively beneficial for all associated states, the
20 environment, and global commerce.

21 (5) Trans-Arctic shipping brings substantial
22 commercial benefits. Shipping distance between Eu-
23 rope and Asia could be reduced by 4,500 nautical
24 miles, saving a week's time and 40 percent in freight
25 shipping distances compared to alternative routes.

1 Through a voluntary tariff model, user nations from
2 the remainder of the world can be invited to share
3 with Arctic nations the capital and operating costs
4 necessary for safe and reliable infrastructure in the
5 Arctic Ocean and its approaches.

6 (6) As this new frontier emerges, the United
7 States should assume leadership to ensure safe, se-
8 cure, and reliable Arctic seaway development, and
9 further to ensure that the Arctic becomes a place of
10 international cooperation rather than competition or
11 conflict.

12 (7) Setting precedent for cooperative infrastruc-
13 ture investment and greater reliability in domestic
14 and international shipping is the St. Lawrence Sea-
15 way between the United States and Canada, which
16 links the Great Lakes to the Atlantic Ocean. The
17 Seaway operates in internal waters, rather than
18 international waters, but offers ship operators a co-
19 ordinated suite of services, similar to what is needed
20 in the Arctic Ocean and its approaches.

21 (8) The St. Lawrence Seaway Development
22 Corporation, established in 1954, is a model for a
23 United States Government corporation that con-
24 structs, operates, and maintains sea passage infra-
25 structure in water bodies shared with another na-

1 tion. It corresponds with its Canadian counterpart,
2 the St. Lawrence Seaway Management Corporation.
3 In 2010 the Great Lakes-Seaway system gen-
4 erated—

5 (A) 226,833 United States and Canadian
6 jobs;

7 (B) \$33,600,000,000 in business revenue
8 from maritime activity; and

9 (C) \$4,600,000,000 in Federal, State, pro-
10 vincial, and local tax revenue from maritime ac-
11 tivity.

12 (9) In 2012 the Russian Duma passed legisla-
13 tion to create a single management agency called the
14 Northern Sea Route Administration, to manage all
15 infrastructural and navigational services across what
16 Russia claims to be its Arctic territorial waters. This
17 is a claim the United States and many other nations
18 do not recognize. Russia is investing heavily into
19 Northern Sea Route infrastructure, anticipating an
20 increase in cargo transport from 1,800,000 tons in
21 2010 to 64,000,000 tons by 2020. The Russian
22 Northern Sea Route Administration charges escort
23 fees for international cargo ships as high as
24 \$500,000, and aims to collect a share of revenues
25 that might otherwise be paid as tariffs on the Suez

1 Canal where collections totaled \$5,300,000,000 in
2 2017.

3 (10) The Russian Federation has considered
4 legislation to require all energy traffic on the North-
5 ern Sea Route to be carried by Russian-flagged
6 ships.

7 (11) Rising transit in United States Arctic re-
8 gion waters necessitates a management agency and
9 infrastructure investment in a transportation sys-
10 tem. As identified in the Ten-Year Prioritization of
11 Infrastructure Needs in the United States Arctic
12 prepared by the United States Committee on the
13 Marine Transportation System Arctic Transpor-
14 tation Integrated Action Team for the United States
15 Department of Transportation, there is a significant
16 infrastructure gap in the Arctic in the areas of—

17 (A) navigable waterways, such as waterway
18 coordination with international stakeholders;

19 (B) physical infrastructure, such as infra-
20 structure around Port Clarence and Port of
21 Nome in Alaska to support commercial activity;

22 (C) informational infrastructure, such as
23 up-to-date nautical charts and electronic aids to
24 navigation;

1 (D) MTS Response Services, such as emer-
2 gency response and rescue capabilities; and

3 (E) vessel operations, such as United
4 States icebreaking capabilities.

5 (12) The Arctic offers economic value to the
6 United States through commercial shipping and
7 international trade routes, energy, mining, commer-
8 cial fishing, tourism, and tug and barge operations.
9 The Arctic offers environmental and cultural value
10 through ecological significance, unique wildlife, in-
11 digenous peoples and Alaskan communities, and sci-
12 entific research. The Arctic offers security value to
13 the United States as a way to move United States
14 vessels and forces between the world's oceans, and
15 through other waters. While the United States does
16 not support mandatory tariffs in this region, it does
17 not currently have a way to collect voluntary tariffs
18 for providing assistance to vessels crossing through
19 the Bering Strait or the Arctic Ocean.

20 (13) Reinvesting into infrastructural and envi-
21 ronmental demands with funds collected from inter-
22 national shipping fees will be essential to the long-
23 term viability of the Arctic.

1 (14) Environmental protection of the Arctic
2 takes the form of pollution prevention, clean-up, and
3 accident response.

4 (15) Arctic prevention and clean-up involves all
5 feasible efforts to remove or mitigate pollutants from
6 the environment. Arctic ecosystems are more suscep-
7 tible to biological damage from pollutants than more
8 temperate climates. Existing removable hazards,
9 such as dumped radioactive waste and other toxic
10 substances, must be handled.

11 (16) Arctic pollution prevention takes collective
12 adherence to regulations and best practices. United
13 States leadership on clean practices in the Arctic will
14 be essential in the ecosystem's sustainability. Provi-
15 sion of bunkering facilities to enable the use of clean
16 LNG fuels for ships will strengthen pollution preven-
17 tion.

18 (17) Environmental response capabilities in the
19 Arctic are weak, sparse, and have only begun to be
20 internationally coordinated. Transportation of oil
21 and gas and maritime traffic is expected to increase
22 significantly in the Arctic, which will increase the
23 risk of accidents. The Arctic region is particularly
24 vulnerable to pollution from oil and gas shipping.
25 Because oil spills in ice are considerably more com-

1 plicated to address than oil spills in open waters, ef-
2 fects of oil spills could remain in the region for peri-
3 ods of 50 years or more. In 2010 the International
4 Maritime Organization passed Guidelines for Ships
5 Operating in Polar Waters, citing, “the need to en-
6 sure that all ship systems both are capable of func-
7 tioning effectively under anticipated operating condi-
8 tions and provide adequate levels of safety in acci-
9 dent and emergency situations”.

10 (18) In June 2014, the Government Account-
11 ability Office (GAO) reported that the Coast Guard
12 was experiencing a gap in its heavy icebreaking ca-
13 pacity and was without a heavy icebreaker from
14 2010 to 2013. Tariffs collected through this system
15 can help United States public and private icebreaker
16 capacity grow, and induce additional private invest-
17 ment in marine safety and services.

18 (19) During the most recent United States
19 Chairmanship of the Arctic Council, May 2017, the
20 Arctic Council’s Protection of the Arctic Marine En-
21 vironment Working Group established an Arctic
22 Shipping Best Practices Information Forum to help
23 serve as a resource hub of information, guidance,
24 and guidelines that aid decision-makers involved in
25 Arctic maritime navigation and those affected by

1 maritime operations related to the Polar Code. In-
2 surers of Arctic shipping encouraged this Forum to
3 help bring about safer and more reliable shipping in
4 the Arctic region, and to reduce losses. This Act is
5 in support of the same goals.

6 **SEC. 4. CREATION OF THE ARCTIC SEAWAY DEVELOPMENT**
7 **CORPORATION.**

8 There is hereby created, subject to the direction and
9 supervision of the Secretary of Transportation, in conjunc-
10 tion with the Secretary of State, the Secretary of Defense
11 operating through the Secretary of the Army, and the Sec-
12 retary of the Department in which the Coast Guard is op-
13 erating, a body corporate to be known as the Arctic Sea-
14 way Development Corporation (hereinafter referred to as
15 the “Corporation”).

16 **SEC. 5. SERVICES.**

17 (a) IN GENERAL.—The Secretary of Transportation,
18 in conjunction with the Secretary of the Department in
19 which the Coast Guard is operating, the Secretary of De-
20 fense acting through the Secretary of the Army, and the
21 Secretary of State, shall approve services for which the
22 Corporation established under section 4 may charge a toll
23 to vessels.

24 (b) MANAGEMENT.—

25 (1) BOARD OF DIRECTORS.—

1 (A) ESTABLISHMENT.—There is estab-
2 lished the Board of Directors of the Corpora-
3 tion (hereinafter referred to as the “Board of
4 Directors”), which shall be composed of 9 mem-
5 bers as described in subparagraph (B).

6 (B) COMPOSITION.—The Board of Direc-
7 tors shall consist of—

8 (i) the Chair of the Board of Direc-
9 tors to be appointed and designated by the
10 President of the United States;

11 (ii) the Administrator of the National
12 Oceanic and Atmospheric Administration;

13 (iii) the Secretary of State;

14 (iv) the Secretary of Transportation;

15 (v) the Secretary of the Department
16 in which the Coast Guard is operating; and

17 (vi) 4 senior representatives nomi-
18 nated by the Governor of Alaska and des-
19 ignated by the Secretary of Transpor-
20 tation, of whom—

21 (I) 1 shall represent the govern-
22 ment of the State of Alaska;

23 (II) 1 shall represent the Alaska
24 business community;

1 (III) 1 shall represent the Alas-
2 kan coastal and subsistence commu-
3 nities affected by the Corporation; and

4 (IV) 1 shall represent Alaskan
5 maritime labor organizations.

6 (C) TERMS.—Each member of the Board
7 of Directors described in subparagraph (B)(vi)
8 shall serve for a 4-year term or until a new
9 member is designated.

10 (D) MEETINGS.—The Board of Directors
11 shall—

12 (i) meet at the call of the Chair, not
13 less often than once every 90 days; and

14 (ii) conduct an annual meeting of the
15 Corporation in the State of Alaska.

16 (E) FUNCTIONS.—The Board of Directors
17 shall develop a set of policy recommendations
18 regarding the facilities and infrastructure nec-
19 essary to provide services related to safety and
20 environmental protection and response for ves-
21 sels transiting the Arctic Sea Routes, includ-
22 ing—

23 (i) the establishment of rules of meas-
24 urement for vessels and cargo on which

1 rates of charges or tolls for the services
2 provided by the Corporation are based; and

3 (ii) all other matters which the Board
4 of Directors determines to be relevant.

5 (2) ADMINISTRATOR.—The management of the
6 Corporation shall be vested in an Administrator who
7 shall be appointed by the Board of Directors with
8 the approval of the Secretary of Transportation.

9 **SEC. 6. FUNCTIONS OF THE ARCTIC SEAWAY DEVELOP-**
10 **MENT CORPORATION.**

11 The functions of the Corporation are to provide serv-
12 ices related to safety and environmental protection and re-
13 sponse approved by the Secretary under section 5, includ-
14 ing—

15 (1) constructing deep water port facilities in the
16 Arctic to provide services necessary to manage and
17 facilitate increased marine traffic, including cargo,
18 tugs, commercial fuel bunkering, and icebreaker ves-
19 sels in the Arctic;

20 (2) maintaining a relationship with east and
21 west coast ports serving Arctic trade;

22 (3) collaborating with the State of Alaska and
23 the United States Coast Guard in the provision of
24 icebreaker services, including the provision of facili-
25 ties, necessary for safe navigation of the Arctic;

1 (4) leasing private icebreakers and cooperating
2 in offering services with icebreakers of other nations;

3 (5) where necessary, constructing places of ref-
4 uge and aids to navigation within the Arctic;

5 (6) making charts showing the locations of
6 places of refuge readily available to all vessels oper-
7 ating in the Arctic; and

8 (7) establishing strong ties among United
9 States residents of the Arctic region, Arctic ship-
10 pers, and the maritime insurance industry by cre-
11 ating a system of maritime transportation in the
12 Arctic that prevents loss of life, vessels, and cargo,
13 and increases reliability of shipping in the Arctic.

14 **SEC. 7. GENERAL POWERS OF THE CORPORATION.**

15 For the purpose of carrying out its functions under
16 this Act, the Corporation—

17 (1) shall have succession in its corporate name;

18 (2) may adopt and use a corporate seal, which
19 shall be judicially noticed;

20 (3) may sue and be sued in its corporate name;

21 (4) may adopt, amend, and repeal bylaws, rules,
22 and regulations governing the manner in which its
23 business may be conducted and the powers vested in
24 it may be exercised;

1 (5) may make and carry out contracts or agree-
2 ments as are necessary or advisable in the conduct
3 of its business;

4 (6) shall be held to be an inhabitant and resi-
5 dent of the third judicial district of the State of
6 Alaska within the meaning on the laws of the United
7 States relating to the venue of civil suits;

8 (7) may appoint and fix compensation, in ac-
9 cordance with the provisions of subpart D of part
10 III of title 5, United States Code, for such officers,
11 attorneys, and employees as may be necessary for
12 the conduct of its business, defining their authority
13 and duties, and delegating to them such powers vest-
14 ed in the Corporation as the Administrator may de-
15 termine;

16 (8) may acquire, by purchase, lease, property,
17 and any interest therein, and may sell, lease, or oth-
18 erwise dispose of such property, as the Adminis-
19 trator deems necessary for the conduct of its busi-
20 ness;

21 (9) shall determine the character and necessity
22 for its obligations and expenditures, and the manner
23 in which they shall be incurred, allowed, and paid,
24 subject to provisions of law specifically applicable to
25 government corporations;

1 (10) may impose, retain and expend a toll to
2 provide for safety and environmental protection and
3 response services provided by the Corporation and to
4 carry out services approved by the Secretary under
5 section 5;

6 (11) may provide services and facilities, at rea-
7 sonable prices, to vessels operating in the Arctic;

8 (12) if the United States portion of the revenue
9 from the tolls charged to the users of any services
10 provided under this section is applied solely towards
11 the safety and environmental protection and re-
12 sponse services to vessels operating on the Arctic
13 Sea Routes as specified in paragraph (11), may par-
14 ticipate with international entities in the ownership
15 and operation of a tolling company, and may lease
16 icebreakers, and enlist and return assets;

17 (13) shall be credited with amounts received
18 from any of the activities authorized under para-
19 graphs (10) and (11);

20 (14) shall publish charts of locations of places
21 of refuge to be made readily available to all vessel
22 voyaging north of the Bering Strait in the interest
23 of ensuring vessel safety; and

24 (15) shall carry out other functions considered
25 relevant by the Secretary of Transportation, in con-

1 junction with the Secretary of the Department in
2 which the Coast Guard is operating, the Secretary of
3 Defense acting through the Secretary of the Army,
4 and the Secretary of State.

5 **SEC. 8. BONDS; ISSUANCE; MATURITY; REDEMPTION; IN-**
6 **TEREST; PURCHASE OF OBLIGATIONS BY THE**
7 **SECRETARY OF TREASURY.**

8 (a) IN GENERAL.—To finance its activities, the Cor-
9 poration may issue revenue bonds payable from corporate
10 revenue to the Secretary of the Treasury.

11 (b) TOTAL VALUE.—The total value of all bonds
12 issued as described in subsection (a) shall not exceed a
13 sum that shall be determined by the Secretary of Trans-
14 portation in conjunction with the Secretary of the Treas-
15 ury.

16 (c) MATURITY DATES.—Bonds issued as described in
17 subsection (a) shall have maturity dates agreed upon by
18 the Corporation and the Secretary of the Treasury that
19 shall not be in excess of 50 years. The obligations on such
20 bonds may be redeemable at the option of the Corporation
21 before the maturity in such a manner as may be stipulated
22 in such obligations, but the obligations thus redeemed
23 shall not be refinanced by the Corporation.

24 (d) COORDINATION WITH TITLE 31.—

1 (1) AUTHORITY TO USE PROCEEDS FROM SALE
 2 OF TREASURY SECURITIES.—For the purpose of pur-
 3 chasing obligations of the Corporation, the Secretary
 4 of the Treasury may use as a public debt transaction
 5 the proceeds from the sale by the Secretary of any
 6 securities issued under chapter 31 of title 31, United
 7 States Code, and the purposes for which securities
 8 may be issued under such chapter are extended to
 9 include such purchases.

10 (2) TREATMENT OF TRANSACTIONS.—All pur-
 11 chases and sales by the Secretary of the Treasury of
 12 obligations issued by the Corporation under this sec-
 13 tion shall be treated as public debt transactions of
 14 the United States.

15 **SEC. 9. REPORTS.**

16 (a) IN GENERAL.—Not later than 1 year after the
 17 outset of corporate activities of the Corporation, the Cor-
 18 poration shall submit a special report to Congress regard-
 19 ing its general operations.

20 (b) ADDITIONAL REPORTS.—

21 (1) NEW PROPOSALS.—In addition to the re-
 22 port described in subsection (a), the Corporation
 23 shall submit to Congress a special report whenever
 24 there is proposed a new feature, facility, design, or
 25 phase of the Corporation involving an estimated

1 value exceeding \$1,000,000, that shall include jus-
2 tification for the new feature, facility, design, or
3 phase.

4 (2) PROGRESS REPORTS.—The Corporation
5 shall submit reports upon the request of the Board
6 of Directors, the President, or Congress regarding
7 progress of the Corporation, including financial re-
8 ports regarding expenses or revenues, extreme
9 weather patterns in the Arctic region, or reports as
10 determined necessary by Congress. Such reports
11 shall be submitted not later than 180 days after the
12 date of the initial request.

13 (3) ENVIRONMENTAL IMPACT REPORTS.—The
14 Board of Directors may direct the Corporation to
15 compile detailed reports regarding the environmental
16 impact of increased marine shipping within the Arc-
17 tic region. Such reports shall be submitted not later
18 than 180 days after the date of the initial request
19 from the Board of Directors.

20 **SEC. 10. THE ROLE OF THE DEPARTMENT OF STATE IN FA-**
21 **CILITATING INTERNATIONAL ENGAGEMENT.**

22 (a) PROMOTING INTERNATIONAL COOPERATION.—
23 The Secretary of State shall undertake a leadership role
24 in engaging in multilateral dialogues with member and ob-
25 server nations of the Arctic Council with the intention of

1 encouraging cooperation in providing coordinated services
2 for shipping in the Arctic Ocean and its approaches. The
3 Corporation shall encourage cooperative and collaborative
4 relationships with the member and observer nations of the
5 Arctic Council in order to establish fair and reasonable
6 tolls and, where applicable, joint facilities, as described in
7 section 7.

8 (b) INTERNATIONAL FEES AND TOLLS.—The Cor-
9 poration is hereby authorized and instructed to waive fees
10 and tolls as necessary for international cooperation.

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