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2D SESSION

S. 3740

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

DECEMBER 11, 2018

Ms. MURKOWSKI (for herself and Mr. SULLIVAN) 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. FINDINGS.**

5 Congress finds the following:

6 (1) The Arctic seas have historically been con-
7 sidered impassable and impractical maritime routes,
8 but diminishing Arctic sea ice, better icebreaking
9 technology, and global demand for Arctic resources
10 has opened up opportunity for international trade
11 routes through Arctic Ocean waters.

12 (2) According to the National Oceanic and At-
13 mospheric Administration, over the last 20 years at-
14 mospheric temperatures have increased at a rate at
15 least 3 times the global average, and as of 2011 sea
16 ice thickness was 42 percent below what it was in
17 1979. If trends continue, summers may produce ice-
18 free waters in the Arctic Ocean by the late 2030s.

19 (3) The Bering Strait is experiencing signifi-
20 cant increases in international traffic from vessels
21 using the Northern Sea Route, the Transpolar Sea
22 Route, and the Northwest Passage. Increases in
23 international traffic are projected to continue.

24 (4) While the Arctic Council’s agreements on
25 search and rescue, spill prevention and response,
26 and initiatives through the International Maritime

1 Organization to bring about a mandatory polar code
2 are significant, little or no cooperation yet exists in
3 the Arctic region to bring about needed maritime in-
4 frastructure, nor do Arctic coastal states and user
5 states cooperate in establishing common seaway ad-
6 ministration. International coordination and invest-
7 ment in infrastructure for shipping routes, ice-
8 breaker service and refuge, ports, spill prevention
9 and response, salvage, and LNG bunkering, would
10 be collectively beneficial for all associated states, the
11 environment, and global commerce.

12 (5) Trans-Arctic shipping brings substantial
13 commercial benefits. Shipping distance between Eu-
14 rope and Asia could be reduced by 4,500 nautical
15 miles, saving a week's time and 40 percent in freight
16 shipping distances compared to alternative routes.
17 Through a voluntary tariff model, user nations from
18 the remainder of the world can be invited to share
19 with Arctic nations the capital and operating costs
20 necessary for safety and reliability infrastructure in
21 the Arctic Ocean and its approaches.

22 (6) As this new frontier emerges, the United
23 States should assume leadership to ensure safe, se-
24 cure, and reliable Arctic seaway development, and
25 further to ensure that the Arctic becomes a place of

1 international cooperation rather than competition or
2 conflict.

3 (7) Setting precedent for cooperative infrastruc-
4 ture investment and greater reliability in domestic
5 and international shipping is the St. Lawrence Sea-
6 way between the United States and Canada, which
7 links the Great Lakes to the Atlantic Ocean. The
8 Seaway operates in internal waters, rather than
9 international waters, but offers ship operators a co-
10 ordinated suite of services, similar to what is needed
11 in the Arctic Ocean and its approaches.

12 (8) The St. Lawrence Seaway Development
13 Corporation, established in 1954, is a model for a
14 United States Government corporation that con-
15 structs, operates, and maintains sea passage infra-
16 structure in water bodies shared with another na-
17 tion. It corresponds with its Canadian counterpart,
18 the St. Lawrence Seaway Management Corporation.
19 In 2010 the Great Lakes-Seaway system gen-
20 erated—

21 (A) 226,833 United States and Canadian
22 jobs;

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

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

4 (9) In 2012 the Russian Duma passed legisla-
5 tion to create a single management agency called the
6 Northern Sea Route Administration, to manage all
7 infrastructural and navigational services across what
8 Russia claims to be its Arctic territorial waters. This
9 is a claim the United States and many other nations
10 do not recognize. Russia is investing heavily into
11 Northern Sea Route infrastructure, anticipating an
12 increase in cargo transport from 1,800,000 tons in
13 2010 to 64,000,000 tons by 2020. The Russian
14 Northern Sea Route Administration charges escort
15 fees for international cargo ships as high as
16 \$500,000, and aims to collect a share of revenues
17 that might otherwise be paid as tariffs on the Suez
18 Canal where collections totaled \$5,300,000,000 in
19 2017.

20 (10) The Russian Federation has considered
21 legislation to require all energy traffic on the North-
22 ern Sea Route to be carried by Russian-flagged
23 ships.

24 (11) Rising transit in United States Arctic re-
25 gion waters necessitates a management agency and

1 infrastructure investment in a transportation sys-
2 tem. As identified in the Ten-Year Prioritization of
3 Infrastructure Needs in the United States Arctic
4 prepared by the United States Committee on the
5 Marine Transportation System Arctic Transpor-
6 tation Integrated Action Team for the United States
7 Department of Transportation, there is a significant
8 infrastructure gap in the Arctic in the areas of—

9 (A) navigable waterways, such as waterway
10 coordination with international stakeholders;

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

14 (C) informational infrastructure, such as
15 up-to-date nautical charts and electronic aids to
16 navigation;

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

19 (E) vessel operations, such as United
20 States icebreaking capabilities.

21 (12) The Arctic offers economic value to the
22 United States through commercial shipping and
23 international trade routes, energy, mining, commer-
24 cial fishing, tourism, and tug and barge operations.
25 The Arctic offers environmental and cultural value

1 through ecological significance, unique wildlife, in-
2 digenous peoples and Alaskan communities, and sci-
3 entific research. The Arctic offers security value to
4 the United States as a way to move United States
5 vessels and forces between the world's oceans, and
6 through other waters. While the United States does
7 not support mandatory tariffs in this region, it does
8 not currently have a way to collect voluntary tariffs
9 for providing assistance to vessels crossing through
10 the Bering Strait or the Arctic Ocean.

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

15 (14) Environmental protection of the Arctic
16 takes the form of pollution prevention, clean-up, and
17 accident response.

18 (15) Arctic prevention and clean-up involves all
19 feasible efforts to remove or mitigate pollutants from
20 the environment. Arctic ecosystems are more suscep-
21 tible to biological damage from pollutants than more
22 temperate climates. Existing removable hazards,
23 such as dumped radioactive waste and other toxic
24 substances, must be handled.

1 (16) Arctic pollution prevention takes collective
2 adherence to regulations and best practices. United
3 States leadership on clean practices in the Arctic will
4 be essential in the ecosystem’s sustainability. Provi-
5 sion of bunkering facilities to enable the use of clean
6 LNG fuels for ships will strengthen pollution preven-
7 tion.

8 (17) Environmental response capabilities in the
9 Arctic are weak, sparse, and have only begun to be
10 internationally coordinated. Transportation of oil
11 and gas and maritime traffic is expected to increase
12 significantly in the Arctic, which will increase the
13 risk of accidents. The Arctic region is particularly
14 vulnerable to pollution from oil and gas shipping.
15 Because oil spills in ice are considerably more com-
16 plicated to address than oil spills in open waters, ef-
17 fects of oil spills could remain in the region for peri-
18 ods of 50 years or more. In 2010 the International
19 Maritime Organization passed Guidelines for Ships
20 Operating in Polar Waters, citing, “the need to en-
21 sure that all ship systems both are capable of func-
22 tioning effectively under anticipated operating condi-
23 tions and provide adequate levels of safety in acci-
24 dent and emergency situations”.

1 (18) In June 2014, the Government Account-
2 ability Office (GAO) reported that the Coast Guard
3 was experiencing a gap in its heavy icebreaking ca-
4 pacity and was without a heavy icebreaker from
5 2010 to 2013. Tariffs collected through this system
6 can help United States public and private icebreaker
7 capacity grow, and induce additional private invest-
8 ment in marine safety and services.

9 (19) During the most recent United States
10 Chairmanship of the Arctic Council, May 2017, the
11 Arctic Council’s Protection of the Arctic Marine En-
12 vironment Working Group established an Arctic
13 Shipping Best Practices Information Forum to help
14 serve as a resource hub of information, guidance,
15 and guidelines that aid decision makers involved in
16 Arctic maritime navigation and those affected by
17 maritime operations related to the Polar Code. In-
18 surers of Arctic shipping encouraged this Forum to
19 help bring about safer and more reliable shipping in
20 the Arctic region, and to reduce losses. This Act is
21 in support of the same goals.

22 **SEC. 3. CREATION OF THE U.S. ARCTIC SEAWAY INFRA-**
23 **STRUCTURE DEVELOPMENT CORPORATION.**

24 (a) **ESTABLISHMENT.**—There is hereby created, sub-
25 ject to the direction and supervision of the Secretary of

1 Transportation, which shall work in conjunction with the
2 Department of State and with the Department in which
3 the Coast Guard is operating, a body corporate to be
4 known as the U.S. Arctic Seaway Infrastructure Develop-
5 ment Corporation (hereinafter referred to as the “Cor-
6 poration”).

7 (b) MANAGEMENT.—

8 (1) ADMINISTRATOR.—The management of the
9 Corporation shall be vested in an Administrator who
10 shall be appointed by the Board of Directors of the
11 Corporation with the approval of the Secretary of
12 Transportation.

13 (2) BOARD OF DIRECTORS.—

14 (A) COMPOSITION.—There is established
15 the Board of Directors of the Corporation
16 (hereinafter referred to as the “Board of Direc-
17 tors”), which shall be composed of 9 members
18 (each serving for a 4-year term or until a new
19 appointee is designated) as follows:

20 (i) The Chair of the Board of Direc-
21 tors shall be appointed and designated by
22 the President of the United States.

23 (ii) The Administrator of the National
24 Oceanic and Atmospheric Administration

1 shall designate 1 senior representative to
2 the Board of Directors.

3 (iii) The Secretary of State shall des-
4 ignate 1 senior representative to the Board
5 of Directors.

6 (iv) The Secretary of Transportation
7 shall designate 1 senior representative to
8 the Board of Directors.

9 (v) The Secretary of the Department
10 in which the Coast Guard is operating
11 shall designate 1 senior representative to
12 the Board of Directors.

13 (vi) The Governor of Alaska shall des-
14 ignate 4 senior representatives to the
15 Board of Directors—

16 (I) 1 of whom shall represent the
17 government of the State of Alaska;

18 (II) 1 of whom shall represent
19 the Alaska business community;

20 (III) 1 of whom shall represent
21 the Alaskan coastal and subsistence
22 communities affected by the Corpora-
23 tion; and

1 (IV) 1 of whom shall be nomi-
2 nated to represent Alaskan maritime
3 labor organizations.

4 (B) MEETINGS.—The Board of Directors
5 shall meet at the call of the Chair, not less
6 often than once every 90 days.

7 (C) FUNCTIONS.—The Board of Directors
8 shall develop a set of policy recommendations
9 regarding the demands for construction of fa-
10 cilities and infrastructure, including the fol-
11 lowing:

12 (i) The establishment of rules of
13 measurement for vessels and cargo and
14 rates of charges or tolls for the services
15 provided by the Corporation.

16 (ii) All other matters which the Board
17 of Directors determines to be relevant.

18 **SEC. 4. FUNCTIONS OF THE U.S. ARCTIC SEAWAY INFRA-**
19 **STRUCTURE DEVELOPMENT CORPORATION.**

20 (a) DEEP WATER PORTS.—The Corporation is au-
21 thorized to work with the United States Army Corps of
22 Engineers, the State of Alaska, and regional port authori-
23 ties, to construct deep water port facilities within the Alas-
24 kan region necessary to manage and facilitate increased
25 marine traffic, including cargo, tugs, commercial fuel bun-

1 kering, and icebreaker vessels. The Corporation shall also
2 maintain a relationship with east and west coast ports
3 serving Arctic trade.

4 (b) PROVISION OF FACILITIES FOR ICEBREAKERS.—

5 The Corporation shall collaborate with the State of Alaska
6 and the United States Coast Guard in the provision of
7 facilities for icebreaker vessels necessary towards the navi-
8 gation of the Bering Sea and Arctic Ocean. United States
9 Coast Guard icebreakers shall be provided facilities on the
10 condition that they are available, concurrent with meeting
11 other Coast Guard missions, to assist in the navigation
12 of the international Northern Sea Route, Transarctic
13 Route, or the Northwest Passage, in cooperation with
14 coastal States along those routes. The Corporation is au-
15 thorized to lease private icebreakers and to cooperate in
16 offering services with icebreakers of other nations.

17 (c) ESTABLISHMENT OF PLACES OF REFUGE AND
18 IMPROVEMENT OF NAVIGATIONAL INFRASTRUCTURE.—

19 The Corporation shall assist, with expertise and financial
20 support, the Coast Guard in its role to determine the loca-
21 tion and, where necessary, construction of places of refuge
22 and points of navigational aid within United States terri-
23 torial waters due to the Arctic's harsh and unpredictable
24 climate. Charts of locations of places of refuge shall be

1 made readily available to all vessels voyaging north of the
2 Bering Strait in the interest of ensuring vessel safety.

3 (d) TIES WITH ARCTIC RESIDENTS.—The Corpora-
4 tion shall establish strong ties with United States resi-
5 dents of the Arctic region, Arctic shippers, and the mari-
6 time insurance industry whose common goal of preventing
7 loss and increasing reliability will assist in building an ap-
8 propriate system to support shipping in the Arctic region.
9 An annual meeting of the Corporation shall be held in the
10 State of Alaska.

11 **SEC. 5. GENERAL POWERS OF THE CORPORATION.**

12 For the purpose of carrying out its functions under
13 this Act, the Corporation—

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

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

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

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

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

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

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

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

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

23 (10) may retain toll revenues for purpose of
24 eventual reinvestment in the Corporation or publicly

1 owned seaway infrastructure and preservation of the
2 surrounding ecosystem;

3 (11) may provide services and facilities, at rea-
4 sonable prices, towards the servicing and mainte-
5 nance of the Sea Routes as well as vessels and visi-
6 tors using the Bering Strait and Arctic Ocean
7 Routes;

8 (12) may participate with partner development
9 corporations of Arctic or other nations regarding the
10 ownership and operation of a tolling company, and
11 may lease icebreakers, and enlist and return assets
12 if the United States portion of the revenue from the
13 tolls charged to the users of any services provided
14 under this section is applied solely towards the rein-
15 vestment in infrastructure and preservation of the
16 surrounding ecosystem as specified in paragraph
17 (10); and

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

1 **SEC. 6. BONDS; ISSUANCE; MATURITY; REDEMPTION; IN-**
2 **TEREST; PURCHASE OF OBLIGATIONS BY THE**
3 **SECRETARY OF THE TREASURY.**

4 (a) **IN GENERAL.**—To finance its activities, the Cor-
5 poration may issue revenue bonds payable from corporate
6 revenue to the Secretary of the Treasury.

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

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

20 (d) **COORDINATION WITH TITLE 31.**—

21 (1) **AUTHORITY TO USE PROCEEDS FROM SALE**
22 **OF TREASURY SECURITIES.**—For the purpose of pur-
23 chasing obligations of the Corporation, the Secretary
24 of the Treasury may use as a public debt transaction
25 the proceeds from the sale by the Secretary of any
26 securities issued under chapter 31 of title 31, United

1 States Code, and the purposes for which securities
2 may be issued under such chapter are extended to
3 include such purchases.

4 (2) TREATMENT OF TRANSACTIONS.—All pur-
5 chases and sales by the Secretary of the Treasury of
6 obligations issued by the Corporation under this sec-
7 tion shall be treated as public debt transactions of
8 the United States.

9 **SEC. 7. REPORTS.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 outset of corporate activities of the Corporation, the Cor-
12 poration shall submit a special report to Congress regard-
13 ing the success of the Corporation and its general oper-
14 ations.

15 (b) ADDITIONAL REPORTS.—

16 (1) NEW PROPOSALS.—In addition to the re-
17 port described in subsection (a), the Corporation
18 shall submit to Congress a special report whenever
19 there is proposed a new feature, facility, design, or
20 phase of the Corporation involving an estimated
21 value exceeding \$1,000,000, that shall include jus-
22 tification for the new feature, facility, design, or
23 phase.

24 (2) PROGRESS REPORTS.—The Corporation
25 shall submit reports upon the request of the Board

1 of Directors, the President, or Congress regarding
2 progress of the undergoing of the Corporation, in-
3 cluding financial reports regarding expenses or reve-
4 nues, extreme weather patterns in the Arctic region,
5 or reports as determined necessary by Congress.
6 Such reports shall be submitted not later than 180
7 days after the date of the initial request.

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

15 **SEC. 8. THE ROLE OF THE DEPARTMENT OF STATE IN FA-**
16 **CILITATING INTERNATIONAL ENGAGEMENT.**

17 (a) PROMOTING INTERNATIONAL COOPERATION.—
18 The Secretary of State shall undertake a leadership role
19 in engaging in multilateral dialogues with fellow member
20 and observer nations of the Arctic Council with the inten-
21 tion of encouraging cooperation in providing coordinated
22 services for shipping in the Arctic Ocean and its ap-
23 proaches. The Corporation shall encourage synergistic re-
24 lationships with the fellow member and observer nations
25 of the Arctic Council in order to establish fair and reason-

1 able tolls and, where applicable, joint facilities, as de-
2 scribed in section 5.

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

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