

Introduced by:	Knopp, Superman
Date:	03/03/09
Hearings:	04/07/09 & 04/21/09
Action:	Postponed until 04/21/09
Date:	04/21/09
Action:	Failed to Enact as Amended
Vote:	4 Yes, 4 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-15**

**AN ORDINANCE AMENDING KPB TITLE 5 TO AUTHORIZE THE BOROUGH TO
LOAN FUNDS TO PUBLIC UTILITY COMPANIES TO FINANCE THE
INSTALLATION OF UTILITY LINES IN THE AREA OF THE BOROUGH OUTSIDE
OF THE CITIES**

- WHEREAS,** the provision of utilities to property in the borough benefits the public as it improves health, safety, and comfort; and
- WHEREAS,** voters in the area of the borough outside of the cities approved Proposition 2 in the regular election of October 1, 1992, which gave the borough non-area-wide authority to provide for utility lines or extensions through the formation of special assessment districts for repayment of costs by the benefitted property owners; and
- WHEREAS,** following passage of Proposition 2 the assembly enacted KPB Chapter 5.35 which established procedures for creating and financing special assessment districts for utilities; and
- WHEREAS,** since enactment of KPB Chapter 5.35 the public has brought to the assembly's attention a number of concerns with utility special assessment districts ("USADs"), including the unfairness of requiring unwilling property owners to pay assessments for a utility they do not want, or risk losing their property to a foreclosure; and
- WHEREAS,** some utilities' ability to finance the installation of such lines is limited due to legal limitations on securing financing, and costs and risks of recovering costs incurred; and
- WHEREAS,** establishing a separate borough fund to finance the installation or extension of utility lines, secured by assets of the utility company, would enable the utility company to install such lines and not charge uninterested property owners for the line without the level of risk associated with the utility company financing the projects;
- WHEREAS,** the assembly finds that the public's best interests would be served by offering an alternative approach to financing the extension of utility lines in which the borough would loan funds to the utility for the main line or extension, secured by utility assets, with payments to be paid by the utility companies; and

WHEREAS, voter approval is required for the borough to exercise the power to loan funds to public utility companies to finance the construction, installation or extension of utility lines in the area of the borough outside of the cities;

NOW THEREFORE BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 5.10.040 (A) is hereby amended by adding subparagraph 14 to read as follows:

5.10.040. Authorized investments.

A. Borough moneys shall be invested only in the following instruments. All securities purchased by the borough, and all other borough investments, must mature not later than the time indicated below, measured from the date of the borough's investment transaction:

...

14. Collateralized loans to public utilities regulated by the Regulatory Commission of Alaska solely for the purpose of financing the extension of utility lines in the area of the borough outside the cities in the borough. The total principal investment shall not exceed \$2,000,000 at the end of any fiscal year. The rate the borough shall receive when investing in utility projects pursuant to this provision is the prime rate plus 2 percent on the date the investment transaction is closed. All investments made pursuant to this provision must mature and be due and payable in full not more than 10 years after the borough's investment transaction has closed. Any loans made pursuant to this provision shall be in accordance with the procedures established in KPB Chapter 5.40.

SECTION 2. That KPB Chapter 5.40, Public Utility Line Funding Program, is hereby enacted to read as follows:

5.40.010. Purpose.

The purpose of this chapter is to establish procedures for the borough to loan funds to public utilities regulated by the Regulatory Commission of Alaska to finance the extension of public utility lines pursuant to KPB 5.10.040 A. 14. No loans may be made under this program except for a public purpose as required by the Constitution of Alaska. Nothing in this chapter authorizes the borough to lend its credit or borrow money for use of any corporation in violation of AS 37.10.085. Nothing in this chapter shall be construed to create any right whatsoever to borough funds for any proposal, and the borough assembly reserves the right to reject any and all such proposals.

5.40.020. Loan Amount.

Total funds loaned to any public utility may not exceed 50 percent of the value of the public utility's equity in the collateral provided to support the loan.

5.40.030. Project Application.

To receive funds pursuant to this chapter, the public utility must first submit an application fee in the amount of \$1,000 along with an application to the Borough Finance Department on a form provided by the borough containing, at a minimum, the following information:

1. The estimated cost of the proposed project.
2. The amount of the loan requested of the borough.
3. All other sources of financing to be used for the project and the amount to be financed by each such source.
4. The nature and location of the proposed utility improvement.
5. The properties to be charged for the utility improvement.
6. A map showing the proposed project and the properties to be charged.
7. The proposed payment plan between the utility company and the property owners.
8. Signed agreements from the owner of each and every property to be charged stating their agreement to pay all charges plus interest to the utility company.
9. A detailed description of the collateral to be provided to the borough to secure the loan.
10. The most recent three years annual financial statements from the public utility.
11. A copy of the utility's certificate of public convenience and necessity showing the necessary authorization to install and operate the utility.
12. Such other information as may be required by the borough administration to ensure the propriety and validity of this investment.

5.40.040. Application procedure.

Upon receipt of a fully completed application the borough administration shall assess the project's viability. The administration shall submit a written report to the mayor containing findings regarding the viability of the project. Based upon the written report and such other information as the mayor considers appropriate for determining the project's viability, the mayor shall determine whether the project shall be submitted to the assembly for consideration. If the mayor determines that the project is financially viable the mayor shall introduce an ordinance to the assembly seeking an appropriation of funds for the project and approval of the loan for the proposed project. The information supporting the conclusion that the project is viable shall be provided to the assembly, except that proprietary or confidential information shall not be made available to the public.

5.40.050. Loan Agreement.

Upon appropriation of funds and approval of the loan, the administration shall be authorized to execute such documents as are necessary to adequately secure the loan and to pay the funds to the public utility as costs are incurred and billed to the borough. In no event may the funds provided to the public utility exceed the authorized and appropriated amount.

SECTION 3. That the following proposition shall be placed on the ballot for the regular election to be held October 6, 2009:

PROPOSITION No. _____

Shall the Kenai Peninsula Borough be authorized to loan funds to utility companies regulated by the Alaska Regulatory Commission for the purpose of funding the extension of utility lines, provided that the loan is fully collateralized with assets of the utility company?

SECTION 4. That Sections 3 and 4 of this ordinance shall take effect immediately upon its enactment. Sections 1 and 2 of this ordinance shall only take effect upon certification of the regular election to be held October 6, 2009, and if the proposition in section 3 of this ordinance is approved by a majority of the voters voting on the proposition.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2009.

Milli Martin, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Superman
No: Smalley, Smith, Sprague, Martin
Absent: None
Abstention: Pierce