

CS FOR SENATE BILL NO. 254(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/1/04

Referred: Finance

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the levy and collection of an assessment on certain tourism-related**
2 **and recreation-related sales, leases, and rentals, to tourism marketing contracts, and to**
3 **vehicle rental taxes; relating to Alaska marine highway system passenger fares; and**
4 **providing for an effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 SHORT TITLE. This Act may be known as the Sustainable Tourism and Recreation
9 Assessment Act.

10 * **Sec. 2.** AS 19.65 is amended by adding a new section to read:

11 **Sec. 19.65.037.** The commissioner of transportation and public facilities shall
12 give a passenger who presents proof of Alaska residency a one percent discount on the
13 passenger's fare before application of the assessment under AS 44.33.126.

14 * **Sec. 3.** AS 43.52 is amended by adding a new section to read:

1 **Sec. 43.52.095. Disposition of proceeds.** (a) The proceeds of the taxes
2 levied in AS 43.52.010 and 43.52.030 shall be deposited into the sustainable tourism
3 and marketing account created in AS 44.33.134.

4 (b) The deposit required by this section is not intended to create a dedication
5 in violation of art. IX, sec. 7, Constitution of the State of Alaska.

6 * **Sec. 4.** AS 44.33.125(a) is amended to read:

7 (a) Subject to appropriations for the purpose, the Department of Community
8 and Economic Development shall, on or before April 1 of each fiscal year, contract
9 with a single qualified trade association for the purpose of planning and executing a
10 destination tourism marketing campaign during the next fiscal year. **If a sustainable**
11 **tourism and recreation assessment under AS 44.33.126 is in effect when the**
12 **contract is executed, the qualified trade association may not be required to**
13 **provide matching funds. However, if a sustainable tourism and recreation**
14 **assessment under AS 44.33.126 is not in effect when the contract is executed, the**
15 [THE] contract may be **executed** [AWARDED] only if the qualified trade association
16 provides matching funds equal to at least **50** [60] percent of the costs of the marketing
17 campaign described in the contract. The marketing campaign may promote distinct
18 segments of tourism, such as highway tourism, seasonal tourism, ecotourism, cultural
19 tourism, regional tourism, and rural tourism. Before the contract is executed, the
20 marketing campaign plan must be approved by the department.

21 * **Sec. 5.** AS 44.33 is amended by adding new sections to read:

22 **Sec. 44.33.126. Sustainable tourism and recreation assessment.** (a) A
23 sustainable tourism and recreation assessment is levied on

24 (1) the sale of land, water, and aerial transportation of passengers, to
25 the extent permitted by federal law; "aerial transportation" includes transportation by
26 tramway, ski tow, and ski lift;

27 (2) rental of accommodations in a hotel, motel, bed and breakfast,
28 recreational or vacation camp, recreational vehicle park, campground, or other
29 establishment, including an establishment owned or operated by the state or a
30 municipality, providing short-term lodging if the rental does not exceed a period of 30
31 consecutive days;

1 (3) the sale of recreational and adventure services, including guided
2 raft, kayak, and canoe trips, guided hiking trips, guided walking tours, guided motor
3 vehicle sightseeing tours, and fishing charters;

4 (4) the sale on or after May 1, but before October 1, in each calendar
5 year of tickets to theater productions, revues, cabarets, movies, readings, and other
6 entertainment offerings that feature the gold rush, Soapy Smith, or other Alaska
7 historical themes or figures, and that appeal primarily to visitors;

8 (5) goods sold by seasonal retail shops; for purposes of this paragraph,
9 "seasonal retail shop" means a retail store that makes more than 75 percent of its sales
10 on or after May 1 but before October 1 in each calendar year; and

11 (6) the retail sale of gifts and souvenirs featuring Alaska images and
12 not subject to assessment under (5) of this subsection; for purposes of this paragraph,

13 (A) "Alaska images" includes the word "Alaska," the name or
14 image of a municipality in the state, the name or image of an Alaska landmark,
15 whether natural or constructed, the image of the stars of the "Dipper," a picture
16 or scene associated with Alaska, and images of bears, moose, caribou, seals,
17 walrus, whales, eagles, salmon, wolves, sled dogs, and other animals and
18 wildlife associated with Alaska;

19 (B) "gifts and souvenirs" includes tee shirts, sweatshirts, and
20 other clothing, jewelry, glassware, cups, plates, cutlery, key chains, carvings,
21 statues, statuettes, clocks, books, paintings, prints, photographs, postcards,
22 calendars, and videos.

23 (b) The rate of the assessment is one percent.

24 (c) The provisions of AS 43.05 and AS 43.10 apply to the enforcement and
25 collection of the sustainable tourism and recreation assessment.

26 **Sec. 44.33.127. Exemptions.** The assessment levied under AS 44.33.126
27 does not apply to

28 (1) sales, leases, and rentals that are

29 (A) explicitly exempted from taxation under another provision
30 of state law; or

31 (B) exempt from taxation under federal law and purchases

1 made with

2 (i) food coupons, food stamps, or other types of
3 certificates issued under 7 U.S.C. 2011 - 2036 (Food Stamp Act); and

4 (ii) food instruments, food vouchers, or other types of
5 certificates issued under 42 U.S.C. 1786 (special supplemental nutrition
6 program for women, infants, and children);

7 (2) sales and purchases by federal government entities;

8 (3) purchases by state or local government entities;

9 (4) sales, leases, or rentals made to an entity described in 26 U.S.C.
10 501(c)(3) (Internal Revenue Code) and exempt from federal income tax under 26
11 U.S.C. 501(a);

12 (5) sales, leases, or rentals made by an entity described in 26 U.S.C.
13 501(c)(3) (Internal Revenue Code) and exempt from federal income tax under 26
14 U.S.C. 501(a) if the income from the sale or rental is exempt from federal income
15 taxation;

16 (6) casual and isolated sales, leases, or rentals by a seller who does not
17 regularly engage in the business of selling goods or services or making rentals, but
18 only if the total sales or rentals do not exceed \$1,000 a year and the sales or rentals do
19 not occur for more than 14 days in a calendar year;

20 (7) transportation provided by a municipal bus service;

21 (8) transportation in a taxicab.

22 **Sec. 44.33.128. Termination of the sustainable tourism and recreation**
23 **assessment.** (a) The commissioner of revenue shall terminate a sustainable tourism
24 and recreation assessment levied under AS 44.33.126 if

25 (1) an election is held under AS 44.33.129 in which the termination is
26 approved by eligible visitor industry businesses that together account for at least 51
27 percent of the assessment paid under AS 44.33.126 - 44.33.139 for the prior calendar
28 year; or

29 (2) two-thirds of the board of a qualified trade association at a regular
30 meeting adopts a resolution requesting the commissioner of revenue to terminate the
31 assessment.

1 (b) An election under (a)(1) of this section shall be held if

2 (1) the proposed election for the termination of the assessment is
3 approved by a majority of the board of the qualified trade organization at a regularly
4 scheduled meeting; or

5 (2) a petition is presented to the director of elections requesting
6 termination of the assessment by eligible visitor industry businesses that together
7 account for at least 25 percent of the assessment paid under AS 44.33.126 - 44.33.139
8 for the prior calendar year.

9 (c) The qualified trade association shall provide notice of an election in
10 accordance with AS 44.33.129 within 60 days after receiving notice from the director
11 of elections that a valid petition under (b)(2) of this section has been received.

12 (d) The sustainable tourism and recreation assessment is terminated on the
13 next December 31 occurring at least five months after the date of the certification of
14 this election under AS 44.33.129.

15 **Sec. 44.33.129. Procedures for an election to terminate a sustainable**
16 **tourism and recreation assessment.** (a) A qualified trade association may conduct
17 an election under this section after the director of elections approves the

18 (1) notice to be published by the qualified trade association;

19 (2) ballot to be used in the election; and

20 (3) registration and voting procedures for the termination of the
21 sustainable tourism and recreation assessment.

22 (b) In conducting an election under this section, a qualified trade association
23 shall adopt the following procedures:

24 (1) the proposed termination of the assessment shall be adopted at a
25 regularly scheduled meeting of the board held not less than 60 days before the date on
26 which the ballots must be postmarked to be counted unless the election is for
27 termination of the assessment and has been initiated by a petition under
28 AS 44.33.128(b)(2);

29 (2) the qualified trade association shall hold at least one meeting, not
30 less than 30 days before the date on which ballots must be postmarked to be counted,
31 to explain the reason for the termination of the assessment and to explain the voting

1 procedure to be used in the election; the qualified trade association shall provide
2 notice of the meeting by

3 (A) mailing the notice to each eligible visitor industry business;

4 and

5 (B) publishing the notice in at least one newspaper of general
6 circulation in each region of the state at least two weeks before the meeting;

7 (3) the qualified trade association shall mail ballots to each eligible
8 visitor industry business not more than 45 days before the date specified as the date
9 ballots must be postmarked;

10 (4) the ballot must

11 (A) state the rate at which the assessment is levied;

12 (B) indicate the effective date of the termination of the
13 assessment if the termination is approved;

14 (C) ask whether the assessment shall be terminated;

15 (5) the ballots shall be returned by mail and shall be counted by the
16 director of elections or a representative.

17 (c) The director of elections shall certify the results of an election under this
18 section if the director determines that the requirements of (a) and (b) of this section
19 have been satisfied.

20 (d) For purposes of this section, a ballot submitted by a corporation is
21 presumed valid if the ballot is signed by an individual who is indicated to be an officer
22 of the corporation and the ballot is imprinted with the corporate seal.

23 **Sec. 44.33.131. Determination of sales.** (a) Upon request from the director
24 of elections, the commissioner of revenue shall determine

25 (1) the assessment paid under AS 44.33.126 - 44.33.139 for the prior
26 calendar year;

27 (2) whether, for purposes of AS 44.33.128(a), the eligible visitor
28 industry businesses approving the termination of a sustainable tourism and recreation
29 assessment together produced at least 51 percent of the assessment paid under
30 AS 44.33.126 - 44.33.139 for the prior calendar year; or

31 (3) whether the eligible visitor industry businesses petitioning for an

1 election under AS 44.33.128(b)(2) together produced at least 25 percent of the
2 assessment paid under AS 44.33.126 - 44.33.139 for the prior calendar year.

3 (b) Dollars paid with returns filed by providers for the calendar year shall be
4 considered probative of the amount of assessment paid for the calendar year, except
5 that the commissioner, at the commissioner's discretion, may substitute audit
6 assessments, claims for refund, or other pertinent evidence.

7 (c) A provider appealing the commissioner's determination shall be considered
8 aggrieved under AS 43.05.240. However, an appeal under that section may not delay
9 the commissioner's determination.

10 **Sec. 44.33.132. Collection of assessment.** (a) A provider shall add the
11 assessment levied in AS 44.33.126 to the total price of the sale, lease, or rental.

12 (b) The assessment shall be stated separately on any sales receipt, invoice, or
13 other record of the sale, lease, or rental.

14 (c) A provider shall collect the assessment from the person purchasing,
15 leasing, or renting the vehicle, accommodations, service, or ticket, and remit the
16 assessment to the department not later than 30 days following the last day of the
17 month in which the assessment was collected. However, a provider that collects less
18 than \$1,000 in assessments in a calendar quarter may remit the assessments within 30
19 days following the last day of the calendar quarter in which the assessment was
20 collected.

21 (d) A provider remitting the assessment collected under AS 44.33.126 to the
22 department as required under (c) of this section and filing a complete and timely return
23 on a form prescribed by the department may retain one percent of the amount
24 collected to cover expenses associated with collecting and remitting the assessment.

25 (e) If a provider pays an independent agent a commission or other fee for
26 selling or arranging the sale, lease, or rental of a vehicle, accommodations, service, or
27 ticket subject to the assessment levied in AS 44.33.126, that commission shall be
28 considered part of the price of the sale, lease, or rental subject to the assessment levied
29 in AS 44.33.126. The provider shall pay the assessment on the commission. An
30 independent agent is not required to collect or remit the assessment on any resale of a
31 sale, lease, or rental of a vehicle, accommodations, service, or ticket subject to the

1 assessment levied in AS 44.33.126.

2 (f) The person providing a vehicle, accommodations, service, or ticket subject
3 to the assessment levied in AS 44.33.126 is liable for payment of the full assessment,
4 regardless of whether the person has collected the assessment.

5 (g) In this section, "independent agent" means a travel agent or ticket broker
6 who purchases accommodations, services, or tickets from a provider and resells them
7 to a consumer, or who arranges the sale of accommodations, services, or tickets on
8 behalf of a provider, but is not an employee of the provider.

9 **Sec. 44.33.133. Exemption certificate.** The department shall provide
10 exemption certificates to persons and entities exempt from the assessment under
11 AS 44.33.127.

12 **Sec. 44.33.134. Disposition of proceeds.** (a) The sustainable tourism and
13 marketing account is created in the general fund.

14 (b) The proceeds of the assessment levied under AS 44.33.126 and the vehicle
15 rental taxes levied under AS 43.52.010 and 43.52.030 shall be deposited into the
16 sustainable tourism and marketing account.

17 (c) The legislature may appropriate the money in the sustainable tourism and
18 marketing account to the Department of Community and Economic Development for
19 the purpose of entering into a contract with a qualified trade association for tourism
20 marketing under AS 44.33.125.

21 (d) The deposit required and appropriation authorized by this section are not
22 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
23 of Alaska.

24 **Sec. 44.33.139. Definitions.** In AS 44.33.126 - 44.33.139,

25 (1) "board" means the board of directors of a qualified trade
26 organization;

27 (2) "eligible visitor industry business" means a business that would be
28 liable for payment of a sustainable tourism and recreation assessment under
29 AS 44.33.126;

30 (3) "provider" means a person providing a vehicle, accommodations,
31 service, or ticket subject to the assessment levied in AS 44.33.126; "provider" does not

1 include an independent agent;

2 (4) "qualified trade organization" means the trade organization
3 contracting with the Department of Community and Economic Development under
4 AS 44.33.125 for the fiscal year.

5 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **APPLICABILITY.** The amendments to AS 44.33.125 made in sec. 4 of this Act apply
8 to contracts for tourism marketing entered into under AS 44.33.125 for fiscal years beginning
9 July 1, 2005.

10 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
13 regulations necessary to implement the provisions of this Act. The regulations take effect
14 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
15 provision being implemented.

16 * **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect January 1, 2005.