

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

February 16, 2010

8:03 a.m.

**MEMBERS PRESENT**

Representative Bob Herron, Co-Chair  
Representative Cathy Engstrom Munoz, Co-Chair  
Representative John Harris  
Representative Wes Keller  
Representative Charisse Millett  
Representative Sharon Cissna  
Representative Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

OVERVIEW: ALASKA MANUFACTURING EXTENSION PARTNERSHIP

- HEARD

HOUSE BILL NO. 208

"An Act relating to taxes for certain activities on large passenger ships; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 281

"An Act relating to the duties of the commissioner of fish and game and to the interest of the Board of Game in public safety as it relates to game."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 208

SHORT TITLE: CRUISE SHIP TAX

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

03/27/09	(H)	READ THE FIRST TIME - REFERRALS
03/27/09	(H)	CRA, L&C, FIN
04/07/09	(H)	CRA AT 8:00 AM BARNES 124

04/07/09 (H) Heard & Held  
04/07/09 (H) MINUTE(CRA)  
02/16/10 (H) CRA AT 8:00 AM BARNES 124

#### **WITNESS REGISTER**

TOM MYERS, Deputy Director  
Alaska Manufacturing Extension Partnership, Inc. (AMEP)  
Anchorage, Alaska  
**POSITION STATEMENT:** Provided an overview of the Alaska Manufacturing Extension Partnership (AMEP).

REPRESENTATIVE HARRY CRAWFORD  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Spoke as the prime sponsor of HB 208.

KEN ALPERS, Staff  
Representative Harry Crawford  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Speaking on behalf of the sponsor, Representative Crawford, answered questions regarding HB 208.

JOHANNA BALES, Deputy Director  
Tax Division  
Department of Revenue  
Anchorage, Alaska  
**POSITION STATEMENT:** During the hearing of HB 208, opined that taxing an activity doesn't make it legal.

JOE GELDHOF, Legal Counsel  
Responsible Cruising in Alaska  
Juneau, Alaska  
**POSITION STATEMENT:** During hearing of HB 208, provided information on the cruise ship initiative, specifically the tax on gaming.

#### **ACTION NARRATIVE**

8:03:41 AM

**CO-CHAIR CATHY ENGSTROM MUNOZ** called the House Community and Regional Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Munoz, Herron, Harris, Keller, and Gardner

were present at the call to order. Representatives Millet and Cissna arrived as the meeting was in progress.

**Overview: Alaska Manufacturing Extension Partnership**

[8:03:53 AM](#)

CO-CHAIR MUNOZ announced that the only order of business would be a presentation regarding the Alaska Manufacturing Extension Partnership.

[8:04:46 AM](#)

TOM MYERS, Deputy Director, Alaska Manufacturing Extension Partnership, Inc. (AMEP), informed the committee that as of December 2009, Alaska was ranked last in terms of investments into the business community, even on a per capita basis. The goal with today's briefing is to make [the legislature] aware of the aforementioned and to propose a program to address the aforementioned. He relayed that when creating a capital venture program states have faced a problem when the program is hosted inside an educational institution that doesn't have a business focus. The aforementioned often causes problems with priorities such that more funds are targeted for research than the actual investment for start-up businesses or expansion of businesses. Capital venture programs in other states have also faced problems when the funds have been passed on to local venture capital groups who then follow basic venture capital practices in the process of disseminating funds to businesses. Often a predatory element evolves inside a venture capital and it doesn't allow for the best placement of the funds. Therefore, the proposed program is a completely non predatory venture capital practice. He explained that when venture capital groups invest in 10 businesses they expect 1 to succeed, 5 to have some intellectual property that can be torn from the business and sold, and 4 to be a loss. There are ways to ensure the aforementioned doesn't happen.

MR. MYERS related that [the Alaska Manufacturing Business Industry & Technology (AMBIT) Venture Capital Program] seeks to provide several types of funding opportunities to a wide range of Alaskan businesses; provide project support, knowledge, and management to strengthen businesses and promote success. He emphasized that the goal is to work with these businesses as they enter the venture capital setting and set milestones for their success and receive funds as they meet the milestones. He further related that [AVCF] seeks to provide an in-depth market

analysis and leverage opportunities within and outside of the state; properly manage previously underutilized dollars and reinvest in Alaska's entrepreneurs; promote economic growth throughout rural and urban Alaska with "prolonged residency" as a focus. One of the terms of the program is that for each piece of capital a business receives, it must sign a five-year commitment to keep that business in Alaska.

8:09:10 AM

REPRESENTATIVE GARDNER inquired as to the definition of predatory practices since one individual's predatory lending practice is another individual's good business.

MR. MYER explained that investors in venture capital realize that many of the businesses in which they invest aren't businesses they seek to take all the way to success. These businesses are ones in which the investors hope to own the intellectual capital at the end of the failed investment. The aforementioned occurs frequently, particularly in high tech industries such as software companies. For example, the originator of the YouTube program received venture capital to create it, but it wasn't successful. However, the intellectual property was sold and the company that purchased it became what is now YouTube, which then partnered with even larger companies. In further response to Representative Gardner, Mr. Myer specified that it's a predatory practice to specifically target a company and place it, in terms of the amount of financing and restrictions, in a position in which it's difficult for the company to proceed.

8:11:50 AM

REPRESENTATIVE HARRIS asked from where one obtains the funds to loan people funds for venture capital purposes.

MR. MYERS pointed out that the venture capital he proposes targets an existing statute connected to the permanent fund such that permanent fund monies are invested inside of the state. In further response to Representative Harris, Mr. Myers clarified that he hasn't worked through the Permanent Fund Dividend (PFD) Board. He explained that the program he is proposing become the entity working with the PFD Board in order to target those funds toward Alaska businesses.

8:13:04 AM

REPRESENTATIVE HARRIS inquired as to Mr. Myers background.

MR. MYERS related that he has been with the AMEP for over four years. The Alaska Manufacturing Extension Partnership is part of the nationwide [manufacturing extension partnership] MEP program, which is part of National Institute of Standards and Technologies (NIST). He explained that AMEP seeks to help businesses acquire funding, get started, and improve their processes.

[8:13:41 AM](#)

REPRESENTATIVE HARRIS inquired as to why one would talk to Mr. Myers rather than a standard lending institution. He further inquired as to whether Mr. Myers is proposing that entities such as AMEP are more willing to take more risk. He then requested that Mr. Meyers explain how AMEP could loan funds at such a high risk whereas banks can barely loan funds at all.

MR. MYERS mentioned that access to venture capital in Alaska is severely limited. Furthermore, for many Alaskans obtaining a bank loan is not option, regardless of their credit and assets the applicant may have. This proposed program seeks to be the intermediary in the market that is bridge money to allow applicants to have some success.

[8:16:36 AM](#)

REPRESENTATIVE CISSNA recalled her brother's similar situation to what Mr. Myers described. She then asked if Mr. Myers is proposing that this project is one in which the state should do and then he would bid on it.

MR. MYERS explained that he's proposing that many other MEP centers have set up venture capital programs. The funds, in these situations, must come from the state not the federal government. In 2008 members in Congress proposed that the MEP system have access to about \$13 billion that would allow for matching funds to each state. The aforementioned was supposed to become part of the American Recovery and Reinvestment Act of 2009 (ARRA) funding. The funds would be given to the states with a 1:1 match requirement through the MEP system and the State Science and Technology Institute (SSTI), which is a partner with NIST. Five other states, New York, Pennsylvania, Florida, Texas, and Utah have programs with investment capital in excess of \$600 million per state. With regard to the scenario in which smaller businesses are scooped up by larger

organizations, such a scenario doesn't work for Alaska. He explained that in Alaska the smaller business/technology that's incorporated into a larger company is taken out of the state, and therefore Alaska doesn't receive any benefits. The program is being proposed to stop the outflow of good businesses and intellectual capital.

[8:19:49 AM](#)

MR. MYERS, returning to his presentation, reminded the committee of the 1980s when many investors in Alaska lost a lot, which resulted in the view that Alaska was the "Wild West" of business. At that time, even the in-state investors all moved their capital to the Lower 48. Furthermore, most Native corporations have purchased manufacturing firms throughout the Southeast U.S. Mr. Myers emphasized that the longer a dollar is kept in the state, the greater impact it has for the state. The more turns that dollar does in the state's economy, the greater amount of the increase in that dollar's value through the year. Alaska, he related, has about a 4-7 turn per year on a dollar coming into the state whereas most Lower 48 states have 10-12 turns of a dollar per year.

[8:21:14 AM](#)

REPRESENTATIVE GARDNER pointed out that the fact that Native corporations are purchasing manufacturing companies in the Lower 48 isn't relevant to this discussion because the Native corporations aren't acting as venture capitalists.

MR. MYERS replied yes, but [it illustrates] a net capital escape because they aren't investing in building business inside of Alaska. The location of the manufacturing operations experiences the benefit of the investment dollars.

REPRESENTATIVE GARDNER asked whether there is any reason to believe that those who would invest out of state would prefer to be venture capitalists within the state as opposed to investing elsewhere.

MR. MYERS said his presentation will address that. In response to Representative Harris, Mr. Myers assured the committee that he would get to the root cause of why Alaska isn't able to turn over the dollars as much as elsewhere.

[8:23:04 AM](#)

MR. MYERS, returning to his presentation, related that Alaska has a lot of grants from the federal government as well as bank loans. He informed the committee that AMEP is a Community Development Financial Institutions (CDFI) guarantor through which a number of grant opportunities and a small amount of investment capital are brought in. He also informed the committee that AMEP works with the Small Business Association (SBA) and helps folks find co-signers for businesses to bring in capital. The difficulty is that if the amount of capital needed is above the value of the borrower's existing assets, no one will lend to that borrower. He then moved on to the slide entitled "How the AVCF will Help Alaskan Businesses" and explained that AVCF will help Alaskan businesses get ready for, acquire, and properly manage the funds. Money, management, and marketing are the three factors for success in Alaska. In order to help businesses succeed AMEP has been working on those, specifically AMEP ensures that the businesses have a proper, fungible business plan so that the milestones for success are established. He then directed attention to the slide entitled "The Creation of the AMBIT Venture Capital Program". He related that through CDFI AMEP will eventually have access to \$10 million worth of capital. He further related that AMEP is working as a throughput partner with the USDA, such that AMEP helps clients put together their business plan, identify USDA funds, and help the client apply for and manage USDA funds. He then reviewed the SBA's guaranteed loan program, which has to go through a bank. Although up to 85 percent of the bank is guaranteed by the SBA, there have been clients that were unable to obtain capital using the SBA grants because the banks won't make the loans. He told the committee that AMEP is seeking to create a \$25-\$50 million private capital pool by partnering with many of the Native corporations across the state as well as other private investors.

[8:26:54 AM](#)

MR. MYERS, in reference to Representative Harris' earlier question regarding from where the funds will come, pointed out that the permanent fund statute specifies that up to 5 percent of the fund should be [reviewed] for investment in Alaska. However, no organization was ever established to accomplish the aforementioned. Therefore, Mr. Myers explained that he is proposing one half of 1 percent to 1 percent be made available over a three-year time period in order to slowly inject that capital into businesses in Alaska. As those businesses are successful, those businesses would eventually return funds to the permanent fund.

[8:27:32 AM](#)

REPRESENTATIVE HARRIS asked if the permanent fund [corporation] invests in Alaska.

MR. MYERS answered that in the past it has invested in Alaska, but mainly in natural resource extraction. He related his understanding that the investment has never been more than 1 percent. In further response to Representative Harris, Mr. Myers confirmed that the natural resource in which [the Permanent Fund Corporation] invested in Alaska was the oil industry. He further confirmed that the investment was via purchasing stocks in the oil industry, not actual projects.

[8:28:14 AM](#)

REPRESENTATIVE HARRIS asked if Mr. Myers is sure the Permanent Fund Corporation is allowed under state law to do what he's proposing. He reminded everyone that the corporation has a fiduciary responsibility to the citizens of the state to produce the highest rate of return possible under a safe scenario. Venture capital, he pointed out, is very risky.

MR. MYERS noted his agreement that venture capital is riskier than many other investments, but the potential impacts to the state can be very significant. In further response to Representative Harris, Mr. Myers stated his agreement that the belief is that the higher the risk the higher the reward, when successful.

[8:29:05 AM](#)

MR. MYERS, returning to the slide entitled "The Creation of the AMBIT Venture Capital Program," pointed out that on the left side there is a list of the economic development entities that would be able to bring projects that would be vetted to ensure that there is a proper business plan, management is trained, a supply chain is established, and customers are identified prior to receiving any capital. The next level would be discretionary funding and then first through third round of venture capital. He highlighted that the venture capital never exceeds 49 percent ownership in the business in order to avoid predatory practices. He then moved on to the slide entitled "Why the AVCF will be a Successful Solution," which relates the following:

- AVCF is Non-Predatory.

- The AVCF will provide an unparalleled level of expertise and support for participating businesses.
- The AVCF will provide several capital-acquisition outlets for a more individualized financing environment.
- The AVCF is based on mentoring, not financing and then leaving businesses to fend for themselves.
- The AVCF will educate businesses on how to succeed and the process of business development.
- The AVCF will connect business partners in an active way to form synergistic relationships so that all stakeholders are truly invested in a business.
- The AVCF's network of expertise and scrutiny along with the use of guarantors will increase opportunities for bank loans.

MR. MYERS characterized AVCF as the bridge between traditional financing and the leveraging of personal assets. He continued on to the slide entitled "Languished Projects as a Result of a Lack of Funding in Alaska," which lists projects that were unable to acquire funding. He directed attention to the Arctic Steel project for which he set up a partnership with Defense Metals, which performs all the metals acquisition for the Department of Defense. There is a law that stipulates that at least 50 percent of metals, specifically titanium, steel, and other metals, which are available inside of the U.S. must be acquired from those U.S. sources. However, currently 97 percent of all the titanium used by the federal government comes from foreign sources. There is a huge market, he stressed. He then informed the committee that titanium ore is often a byproduct of the other mining industries in Alaska. However, there hasn't been any way to turn it into a product. Mr. Myers emphasized that he isn't referring to just mining the titanium, but is also referring to smelting it and turning it into products that are shipped directly to the U.S. Department of Defense for the armoring of various military vehicles. Mr. Myers explained that he setup Arctic Steel with a titanium smelter in Indiana, but the individual behind Arctic Steel was unable to obtain funding even with personal assets, credibility, and a high credit score. The individual behind Arctic Steel only needed \$15 million to

move forward with the project. Arctic Steel would've created 150 high-end jobs in Alaska and the financial impact of the business to Alaska over a three-year period is projected to be \$750 million. Mr. Myers pointed out that the oil industry is moving more towards titanium every day. For instance, the oil industry located in the Gulf of Mexico is converting to titanium as fast as possible due to rust concerns. Mr. Myers then highlighted the Tetrajack project, which only needed \$3 million in capital. However, the university researcher who developed it couldn't obtain funding. The Tetrajack project was an aggregate that goes inside of concrete with a specialized shape such that half of the amount of steel inside concrete is used. Furthermore, using a 70 percent stack aggregate in the concrete makes the concrete float. The Tetrajack project would've created 25-plus jobs and would've had a financial impact of \$185 million. The State of Florida is trying to get this university researcher to Florida. The process utilized in Tetrajack uses mining tailings that go through a process which seals in the bad things so that they don't leach out into the soil. Mr. Myers said that he wouldn't go through the entire list of projects, but did highlight that the list he provided would've required \$110 million in venture capital funding, but could've created more than 500 jobs with a total potential return of \$3.25 billion to the state.

[8:35:47 AM](#)

MR. MYERS referred to the slide entitled "AMEP's Performance Metric," which utilizes graphs to illustrate various aspects of the projects AMEP has done in Alaska over the last four years. In fact, AMEP has garnered over \$40 million in investment, served over 160 clients, accrued over \$30 million in cost savings, and created over 110 jobs, most of which are located in rural Alaska. He stressed that folks in rural Alaska are unable to obtain financing at all because they don't have assets or homes against which they can borrow to start a business. However, there are entrepreneurs in rural Alaska who want to start businesses, enhance local communities, and stop the outflow of populations from rural Alaska.

[8:37:13 AM](#)

REPRESENTATIVE HARRIS asked if any of the Alaska Native Corporations have been approached regarding investment, as well as shareholder hire possibility.

MR. MYERS said that Alaska Native corporations have been asked to be involved in the private equity piece. A couple of Alaska Native corporations are interested, but they're leery because of the fall out of the 1980s and 1990s. Furthermore, these Alaska Native corporations have made such large and successful investments in the Lower 48 that it's difficult for them to consider investing in some of these small businesses. Moreover, these Alaska Native corporations don't have the expertise to work with small businesses in order to ensure their success.

[8:39:03 AM](#)

MR. MYERS turned the committee's attention to the slide entitled "AK Preference Statute is Still Ineffective". He informed the committee that a couple of years ago Department of Commerce, Community, & Economic Development (DCCED) asked him to rewrite the Alaska preference statute. He said he didn't know if the changes he proposed, which were based on industry and DCCED input, ever went anywhere. He reviewed the proposed changes to AS 36.30.170(a) and (b). One of the changes specifies that the bid must include the cost of shipping for out-of-state bidders. The aforementioned has never been included in the preference. He explained that the change attempts to avoid the situation in which an out-of-state bidder on a cost plus contract beats an Alaskan bidder and then adds the cost of shipping afterwards. Another proposed change specifies that the procurement officer must demonstrate that multiple Alaska bidders were contacted and provided ample chance to submit bids before a contract is awarded to out-of-state bidders. The proposed language specifies, "If the procurement officer is unable to identify any viable Alaska bidders, they must document their search procedure with names of contacted entities. Any single contract over \$5,000 to be awarded to an out-of-state bidder must be reviewed and signed by the office of the Commissioner of Commerce, Community, and Economic Development or by the State of Alaska's Chief Procurement Officer." The proposed changes also include increasing the Alaska bidder preference to 10 percent "and only after the procurement officer has ensured that the solicitation was not written in a manner that may exclude Alaska bidders ...." He informed the committee that recently the Insulfoam company lost a multi-million dollar contract with the Department of Defense for base housing because the state's contract officer wrote the bid for a brand name. Furthermore, Sequestered Solutions, the state's only data center, has lost multiple state contracts. He told the committee that the state houses 80 percent of its data out of state. Another company, Continuous Printing, lost a bid with the state; the bid was awarded to an

out-of-state company that does the exact forms that Continuous Printing does in Alaska.

MR. MYERS, referring to the slide entitled "AMEP Research Projects," informed the committee that AMEP has a number of research projects that are coming to fruition that tie to the venture capital proposal. One such project is the E-Commerce project such that any business in Alaska can obtain an E-Commerce web site and AMEP pays for the hosting of the web site for the first year, after which the cost to the individual is \$9.95 per year. He noted that he has a research paper detailing the impacts of such to rural Alaska. He said that another research paper regarding the economic impacts of connecting the Alaska and Canada railways is forthcoming. He explained that Alaska has three deep water ports and ships can get from Asia to Alaska seven days sooner than they can get to Long Beach. Products that come in on boats to Alaska can be shipped via rail to Detroit and other points East 10 days faster, at a minimum, than going to Seattle or Long Beach, California. He recalled that two years ago General Motors (GM) wanted to place a transshipment warehouse in Alaska for electronics and other products it was bringing in from Asia. At the time GM heard rumors that the aforementioned rail connection would occur. When GM heard that the rail connection was on hold, GM decided to wait on the transshipment warehouse in Alaska. "There are projects out there waiting to happen, if that rail link can be made," he emphasized. Another research project is the high latitude agriculture project, which would use Finland as a model. Alaska imports 95-plus percent of all agricultural products that are consumed in the state and rural Alaska has a 40 percent spoilage rate before the food even reaches the area. He characterized this as a food security issue for the state. Other research projects include enhancing rural participation in the Alaska business environment; creating an investment structure for venture capital in Alaska that is based on best practices; beyond oil, gas, mining, and fishing [creating] strategic business opportunities that make sense for Alaska; creating economic incentives to attract companies to Alaska as well as encouraging local entrepreneurs to start new businesses; and creating an economic development plan for the state for the next five years with projections for the next five more years. He related that the State of Florida has a program in which it will pay for the land on which [an entrepreneur] will place its building, provide a loan for the building, and provide \$6,000 for each Floridian that is hired and trained for the business. Therefore, Florida often steals businesses from other states, including Alaska. He noted that Utah, Montana, and Texas also

have great programs [attracting businesses to Alaska]. In conclusion, Mr. Myers referred to the slide entitled "Summary of Key Points," which relates the following:

- The AVCF is essential to change the course of economic development in the state of Alaska.
- It is imperative for Alaska's economic success to provide businesses the opportunity to acquire bank loans, venture capital/angel investment, proper management and technical training in order not to languish.
- Alaska has missed out on billions of potential dollars due to poor economic governance and capital flight out of AK.
- The Alaska state legislature must realize the importance of actively pursuing Alaskan businesses and change procurement statute AS 36.30.170.
- Together, with the research accomplished by the Alaska Manufacturing Extension Partnership and the promotion of fiscally conscious projects by the state, Alaska can and will be an economically powerful marketplace.

[8:47:10 AM](#)

MR. MYERS, in response to Representative Gardner, said that the completed research papers can be made available upon request. The papers aren't available on AMEP's web site, but that is being requested of AMEP's technical staff.

[8:47:31 AM](#)

REPRESENTATIVE CISSNA pointed out that a large problem in Alaska is to accurately access and follow, which she referred to as "the fidelity to model." Therefore, she opined that there are pieces necessary to make the aforementioned possible. For instance, there should be a university connection to train and verify the process. She then expressed interest in researching Mr. Myers.

MR. MYERS offered to provide the committee with his business cards as well as packets that relate what AMEP has done over the last five years. He noted that he has only been with AMEP for

last four years, prior to that time he was with the University of Alaska Anchorage (UAA) in the College of Business. He related that Dr. Baker, Dean of the College of Business, UAA, is in agreement that the university needs to be more involved with business in Alaska and that the training programs, particularly online programs, are important. He mentioned that AMEP has an online learning platform that allows the training programs to be accessed by folks across the state.

[8:50:08 AM](#)

REPRESENTATIVE KELLER commended the co-chairs for scheduling this presentation. He thanked Mr. Myers for the presentation, which he characterized as identifying something that is of a major concern for him. He then said he would be open to the introduction of committee legislation [that would encourage small business development] as well as any individual legislation.

[8:50:35 AM](#)

REPRESENTATIVE HARRIS remarked that there have been mixed reviews on investments in the state. In fact, the state has invested in projects, through AIDEA, that haven't worked. "The state is just riddled with all kinds of government money that's gone into so-called projects that fell on their face," he pointed out. He noted his agreement with Representative Cissna that [potential businesses] have to have a track record and a way to ensure that a business proposal isn't a boondoggle.

MR. MYERS acknowledged that throughout the state there are a number of [failed projects], including the grain silos. The grain silo project wasn't a bad project, it was just a poorly planned project. Furthermore, the tannery in Shishmaref is operating at 10 percent capacity because it never connected with its supply chain or customers. He emphasized that his goal is to ensure that any project is fully vetted and planned so that the aforementioned problems don't occur. He noted that many [of the state's failed economic development projects] were funded by the Economic Development Authority and other such entities. He told the committee he has talked with the authority regarding when AMEP can help make them successful by say, connecting the business with a supply chain or a customer base. However, it hasn't been done yet.

[8:53:24 AM](#)

REPRESENTATIVE HARRIS recalled that the Alaska Science and Technology Fund (ASTF), which ultimately lost funding, was based upon a similar notion to that which AMEP is proposing.

MR. MYERS said that ASTF wasn't managed fiscally, the projects weren't vetted or planned properly prior to making investments. He informed the committee that he has attended training programs with the Coffman Foundation. Upon completion of the aforementioned training program, he related that he would be a certified venture fund manager. Mr. Myers specified that his goal is to ensure that if created, the projects and money is properly managed.

[8:54:30 AM](#)

REPRESENTATIVE KELLER interjected that ASTF also had successes, including a business that has a contract with the U.S. Department of Defense and employs about 12 employees.

[8:54:53 AM](#)

CO-CHAIR MUNOZ thanked Mr. Myers for his presentation and requested that he keep the committee abreast of his work.

[8:55:15 AM](#)

The committee took an at-ease from 8:55 a.m. to 8:57 a.m.

[8:57:53 AM](#)

### **HB 208-CRUISE SHIP TAX**

[8:57:57 AM](#)

CO-CHAIR MUNOZ announced that the final order of business would be HOUSE BILL NO. 208, "An Act relating to taxes for certain activities on large passenger ships; and providing for an effective date."

[8:58:03 AM](#)

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, speaking as the prime sponsor of HB 208, explained that he doesn't want to open the door for for-profit gambling in the state. He expressed concern that the cruise ship taxation initiative that started taxing the cruise ship industry on its gambling within state waters opens the door to for-profit

gambling. The aforementioned, as illustrated in court decisions, has happened in the Lower 48. The desire to not open the door to for-profit gambling in Alaska is why Alaska banned Monte Carlo nights in the state in the 1990s. He then referred to a June 30, 1997, Anchorage Daily News article in the committee packet entitled "Tribal gambling in Alaska? Not yet, but it's one step closer". From the following article, he read [original punctuation provided]:

As in other areas, Congress sets the rules for gambling in Indian country. Under the Indian Gaming Regulatory Act of 1988, Native Americans can operate casino-type gambling only in states where such activity is legal.

In 1994, the Southeast Alaska village of Klawock proposed a casino on a fragment of village land held in trust by the federal government. In response, the Legislature passed a law revoking the authority for nonprofit groups to hold Monte Carlo nights with roulette, cards and other casino games. That closed the door to Klawock.

The Venetie ruling makes it possible for any tribe that can establish Indian country to qualify for a casino operation, but only if the Legislature votes to make such gambling legal in Alaska. The Legislature did not eliminate lotteries when it banned the other games, however. The state and Klawock are still negotiating over a tribal lottery, said assistant attorney general Vince Usera.

REPRESENTATIVE CRAWFORD opined that since the aforementioned article, the cruise ship initiative was passed. The initiative taxes the cruise ship industry on its gambling profits, which could be viewed as an implicit acceptance of Class 3 gambling inside the state. Therefore, he introduced HB 208.

[9:02:36 AM](#)

REPRESENTATIVE HARRIS asked if HB 208 would prohibit Native villages from having casinos on tribal properties.

REPRESENTATIVE CRAWFORD clarified that HB 208 isn't an absolute prohibition; rather it's just not opening the door [to gambling in Alaska]. He explained that the U.S. only allows tribal gaming in states where the same type of gaming is available to

other entities. Alaska hasn't done the aforementioned. However, Alaska has passed the cruise ship initiative that taxed the Class 3 gambling onboard the cruise ships. The aforementioned, he reiterated, could open the door to casino-type gambling in Alaska. He noted that Alaska is one of only two states that don't allow for-profit gambling.

[9:04:04 AM](#)

REPRESENTATIVE HARRIS surmised then that HB 208 would eliminate the ability of Alaska Native tribes/corporations to participate in a business opportunity such as gaming.

REPRESENTATIVE CRAWFORD replied yes.

[9:04:31 AM](#)

REPRESENTATIVE MILLETT asked if the sponsor is trying to establish a mechanism to stop Indian gaming.

REPRESENTATIVE CRAWFORD related that the casino businesses use Indian gaming operations as a door to gambling. The aforementioned happened in Louisiana.

[9:05:50 AM](#)

KEN ALPERS, Staff, Representative Harry Crawford, Alaska State Legislature, speaking on behalf of the sponsor, Representative Crawford, explained that the legislature banned Monte Carlo nights and associated activities in 1995 primarily to disallow Indian gaming. The provision in the cruise ship initiative that taxes gaming opens a loophole the legislature consciously closed 15 years ago. This legislation merely tries to ensure that loophole remains closed.

[9:06:28 AM](#)

REPRESENTATIVE MILLETT commented that the cruise ship initiative included many things to which many people weren't aware. She then asked if the sponsor could walk her through the current process of a tribe opening a casino in Alaska.

REPRESENTATIVE CRAWFORD answered that there is no such process because heretofore it hasn't been allowed.

[9:07:09 AM](#)

REPRESENTATIVE MILLETT inquired as to the federal process for a tribe to work with the state to open a casino.

MR. ALPERS explained that under the Indian Gaming Act of 1988, states are allowed to enter into agreements and compacts with tribes to regulate Class 3 gaming. The federal law requires that the state has to allow the activity to take place. The [law says] "If the state permits such gaming for any purpose by any person, organization, or entity." The first step, he further explained, is for the state to enter into a compact. The state hasn't done so because the state doesn't permit any such gaming for any purpose, organization, or entity.

[9:07:56 AM](#)

REPRESENTATIVE MILLETT requested an explanation of the exact loophole that HB 208 addresses.

MR. ALPERS explained that that the courts could construe that by taxing this gaming activity, the state is indirectly permitting it.

REPRESENTATIVE MILLETT surmised then that the legislation is in response to fear of court action.

[9:09:38 AM](#)

REPRESENTATIVE CRAWFORD directed the committee's attention to a document entitled "Why We Need HB 208; A Brief Legal History," from which he paraphrased from the following paragraph:

In response to the Cabazon case, Congress passed the Indian Gaming Regulatory Act of 1998 (IGRA). This established the three "classes" of gaming that we use today. It also explicitly recognized the role of tribal gaming for local economic development and self sufficiency. The Act created a National Indian Gaming Commission, which directly regulated Class 2 gaming (bingo), and required state-tribal compacts to regulate Class 3 gaming (slots, casinos, etc). Since this act, tribal gambling revenue increased from \$100 million in 1998 to \$17.7 billion in 2006.

REPRESENTATIVE CRAWFORD informed the committee that prior to IGRA few states allowed large casinos, but now casinos in the Lower 48 have proliferated. Alaska has expressly denied expansion into gaming, which he said he wants to continue to do.

9:11:04 AM

REPRESENTATIVE MILLETT asked which states with Class 3 gaming have formed compacts and which haven't, but have been forced to allow gaming due to court action. She further asked that the delineation between those states that have willingly entered into compacts and which have been forced into a compact be specified.

REPRESENTATIVE CRAWFORD said he couldn't provide the actual number of states or specific states. However, he said he could provide some examples of states that have been forced to open up to for-profit gambling.

9:12:03 AM

REPRESENTATIVE CRAWFORD, in response to Co-Chair Herron, said that he didn't know how the vessels regulate the tax collected for the onboard gaming. However, he surmised that it is self-reported.

MR. ALPERS explained that the initiative statute specifies adjusted gross earnings: revenue less payouts and expenses and so forth. He said that to the extent there is a regulatory process, he said he wasn't aware of the details.

9:13:07 AM

CO-CHAIR HERRON related his understanding that for other bingo/pull tabs a municipality has the ability to negotiate the local tax on gaming. However, the local operator has no ability to negotiate with the state. Therefore, he surmised that the 33 percent tax was arbitrary and voted on by the people rather than negotiated between the operators and the legislature or the governor.

REPRESENTATIVE CRAWFORD confirmed that the 33 percent tax was in the cruise ship initiative.

9:14:07 AM

CO-CHAIR HERRON said that the sponsor, in reference to the loophole the legislation is trying to close, has used examples of land-based loopholes in other states, but this is a water-based loophole. He asked if this water-based loophole has been used in other states.

REPRESENTATIVE CRAWFORD informed the committee that in Louisiana river boats were used for gambling. Those river boats with gambling couldn't be parked, but once those river boats were anchored in state waters gambling onshore began.

[9:15:19 AM](#)

CO-CHAIR HERRON asked if the water-based example in Alaska exists elsewhere. He pointed out that the cruise ships in Alaska move in and out of international waters.

REPRESENTATIVE CRAWFORD acknowledged that the situation in Alaska may be a different animal than [the Louisiana situation]. However, he reminded the committee that [taxing the gambling onboard cruise ships] will result in the state relying on some judge to determine whether the state allows gambling or not. He reiterated his belief that the initiative offers a loophole through which gambling in Alaska could take a foothold.

[9:16:31 AM](#)

CO-CHAIR HERRON said that he needs more information, and inquired as to what the loophole is.

MR. ALPERS related that the foundation lawsuit arose when the Mashantucket Pequot Tribe of Connecticut with a small reservation sued the State of Connecticut, which didn't have any interest in being in the casino business. Because the State of Connecticut allowed church Monte Carlo nights, the tribe was able to convert its small bingo hall into what's now one of the largest casinos in the world. Although it's impossible to say what a judge would do, the loophole is that the state allowed [Monte Carlo night gambling] so it had to be allowed for the tribal entity. Therefore, the sponsor believes that by acknowledging and collecting taxes on gaming, the state is allowing gaming.

REPRESENTATIVE CRAWFORD then related a case in which the Coushatta Indians in Louisiana had no traditional lands. However, they bought several acres in an urban area and referred to those lands as Indian lands. The Coushatta Indians went to court and now a casino is on the lands they designated as Indian lands, although there was no traditional use on those lands. Therefore, Representative Crawford opined that if the loophole in Alaska isn't closed, it will be successfully used to bring casino gambling in Alaska. He referred to it as a back door

attempt to allow gambling. Whether the state allows for-profit gambling is something that should require a vote of the people.

9:19:57 AM

REPRESENTATIVE MILLETT asked if the sponsor is suggesting that a tribe could sue Alaska and force the state into a compact.

REPRESENTATIVE CRAWFORD responded yes. In further response, he opined that the courts could require the governor or the legislature to sign a contract. The aforementioned is the reason why when Klawock wanted to construct a casino the legislature banned Monte Carlo nights in the state in order to eliminate the basis of a lawsuit.

9:21:03 AM

REPRESENTATIVE MILLETT said that she has a copy of the Connecticut State Compact that allows gaming and can't find where it says a court action caused gaming to be allowed in Connecticut.

REPRESENTATIVE CRAWFORD interjected that it's the Indian Gaming Regulatory Act of 1988 that actually caused [gaming to be allowed in Connecticut].

REPRESENTATIVE MILLETT pointed out that IGRA is voluntary and only requires that a state compact be signed. She then asked if all the state compacts are in reaction to a lawsuit or do states enter into the compacts voluntarily. She related her understanding that states enter into the compacts voluntarily. She further asked if the courts can force a state into a compact.

REPRESENTATIVE CRAWFORD replied yes, a court can force the state into a compact allowing gambling.

REPRESENTATIVE MILLETT requested examples in which the courts have required the governor and the legislature to do something.

REPRESENTATIVE CRAWFORD offered to provide specific examples later.

MR. ALPERS related his understanding that the Connecticut Compact was the result of a lawsuit. The State of Connecticut didn't want to enter into such a compact, but was forced to by the courts. The aforementioned doesn't necessarily need to

specify such in the compact as it only makes the rules for gaming. The legal history leading to the compact is separate from the compact itself.

REPRESENTATIVE CRAWFORD interjected that in the case with the Coushatta Indians, the state [of Louisiana] didn't want to [allow gaming], but it was forced to do so by the court.

[9:23:22 AM](#)

CO-CHAIR HERRON referred to the sponsor's document entitled "Why We Need HB 208; A Brief Legal History," which says "that a state-tribal contract must allow a particular sort of gambling if the state '**permits such gaming for any purpose by any person, organization, or entity.**'" Since Alaska prohibits Monte Carlo nights [and IGRA] includes the aforementioned language, Co-Chair Herron inquired as to what he is missing.

REPRESENTATIVE CRAWFORD specified that the cruise ships allow slot machines, roulette wheels, and other gambling games, which is the loophole he wants to close. This legislation isn't addressing the onshore Monte Carlo nights as those were addressed in the 1990s.

[9:24:56 AM](#)

CO-CHAIR HERRON pointed out that Alaska doesn't permit the cruise ship gambling, the state merely taxes it.

REPRESENTATIVE CRAWFORD reiterated that the problem is that by taxing and acknowledging the gambling, it's implicitly permitting it.

[9:25:24 AM](#)

REPRESENTATIVE HARRIS asked if the initiative was written in a manner to allow gaming in the state.

REPRESENTATIVE CRAWFORD replied no.

REPRESENTATIVE HARRIS inquired then as to why the initiative includes taxing gaming.

REPRESENTATIVE CRAWFORD said that he didn't want to assume the motive of the initiative sponsors, but opined that they felt that the cruise ship industry was taking advantage of the state and not contributing to the extent they should be. He further

opined that the initiative sponsors felt that there were a number of areas within the cruise industry that the state should tax.

[9:26:57 AM](#)

REPRESENTATIVE HARRIS asked if the law was in place that prohibited for-profit gambling when the cruise ship initiative passed.

REPRESENTATIVE CRAWFORD answered that the law banning Monte Carlo nights was in place when the cruise ship initiative was passed. In further response to Representative Harris, Representative Crawford said he didn't believe the cruise ship initiative specifically says that it would tax for-profit gambling on cruise ships in Alaska waters, but rather characterized it as an inadvertent loophole.

[9:28:20 AM](#)

REPRESENTATIVE HARRIS surmised then that Representative Crawford was conceding that the cruise ship initiative included at least one unintended consequence.

REPRESENTATIVE CRAWFORD replied yes, that's a possibility.

[9:28:59 AM](#)

REPRESENTATIVE MILLETT requested that Representative Crawford provide to her the specifics of the loophole as she is still having difficulty understanding what the loophole is.

REPRESENTATIVE CRAWFORD agreed to do so. He then reiterated his belief that it's not in Alaska's best interest to have for-profit gambling in the state.

[9:30:23 AM](#)

CO-CHAIR MUNOZ requested additional information regarding the Connecticut example be provided to the committee.

[9:30:32 AM](#)

REPRESENTATIVE HARRIS related his understanding that in Alaska there are many opportunities for people to participate legally in not-for-profit gambling so long as there's no profit to the sponsor of the games.

REPRESENTATIVE CRAWFORD agreed that such exists, and said that he isn't trying to outlaw that as those are situations in which a consenting adult participates in gambling.

REPRESENTATIVE HARRIS surmised then that Alaska has said it won't allow organized for-profit gambling, but hasn't prohibited gambling in situations in which folks get together for a poker game that they don't advertise and for which the sponsor of the game doesn't take a cut.

REPRESENTATIVE CRAWFORD responded that he isn't advocating anything in law to prohibit non-organized gambling for which the sponsor doesn't take a cut.

MR. ALPERS clarified the differences between Class 2 and Class 3 gaming, as follows. All of the regulated nonprofit gaming in Alaska falls under Class 2 gaming, such as bingo, pull tabs, etcetera. No Class 3 gaming, such as video games, table games, or slot machines, is allowed in the state except on cruise ships. He said that he wasn't sure of the specific status of poker, and thus wouldn't address it. He pointed out that there are no black jack tables or slot machines in the allowed nonprofit gaming in the state.

REPRESENTATIVE CRAWFORD interjected that roulette wheels and video poker machines are outlawed in Alaska.

[9:34:51 AM](#)

CO-CHAIR MUNOZ asked if the implementation of the tax has impacted the location of the gambling activity and the amount of gambling activity that occurs in state waters.

REPRESENTATIVE CRAWFORD deferred to the cruise ship industry.

MR. ALPERS informed the committee that the cruise ship casinos aren't open while in port, but are able to open once the vessel breaks from the port. He reminded the committee that the \$6.8 million last year, including the \$50 head tax, is deposited into the subaccount to the general fund (GF). He specified that the funds fund cruise-related impact projects.

[9:36:12 AM](#)

CO-CHAIR MUNOZ thanked the sponsor for bringing this issue before the committee as it's an important issue.

[9:36:41 AM](#)

JOHANNA BALES, Deputy Director, Tax Division, Department of Revenue, informed the committee that the Department of Revenue (DOR) doesn't believe that taxing this activity makes this type of gambling legal in the state. She related DOR has conferred with DOL as well. Ms. Bales confirmed that Class 3 gambling is illegal in Alaska. The only type of gambling allowed in the state is gambling that's for charitable purposes. However, federal law prohibits Alaska from making it illegal for cruise ships [to allow gaming]. She pointed out that there is a definition of the type of vessel that can conduct gambling in Alaska waters. Basically, the only vessels that are allowed to conduct gaming in Alaska's waters are those with a voyage that includes a stop in Canada and or another state other than Alaska and stops at two different ports in Alaska during its voyage. Still, such a vessel is not allowed to conduct within three nautical miles of any port within Alaska. The aforementioned is specified in the federal law. Ms. Bales clarified, "The only reason that these cruise ships are allowed to conduct gaming activities is because the federal law prohibits the State of Alaska from making that illegal in Alaska waters." However, gambling in Alaska and in Alaska state waters is illegal, save the aforementioned prohibition under federal law.

MS. BALES then pointed out that there are various illegal activities conducted in the state and nation. For example, it's illegal to be a drug dealer in the U.S., but the income made from that activity is taxable under federal income tax law. The activity isn't made legal by virtue of it being taxed.

[9:39:42 AM](#)

REPRESENTATIVE HARRIS inquired as how far out do Alaska's waters reach for taxation purposes.

MS. BALES answered Alaska waters are those waters three miles from shore. In further response to Representative Harris, Ms. Bales confirmed that the legislation refers to three nautical miles from the port, which could extend any direction.

[9:40:19 AM](#)

MS. BALES, in response to Representative Gardner, clarified that under the federal law the state is allowed to prohibit gaming three miles from a port. Therefore, [the vessel] could still be

within the three miles in Alaska waters but three miles from a port. She further clarified that so long as the vessel is three miles away from a port along the coast, the vessel can conduct gambling activities.

9:41:49 AM

JOE GELDHOF, Legal Counsel, Responsible Cruising in Alaska, began by noting that he was one of the primary authors of the cruise ship initiative. He explained that the portion of the cruise ship initiative related to taxing [gambling] can be traced back to the 1980s. At that time, the Office of the Attorney General in loose cooperation with the U.S. Department of Justice began reviewing gambling operations in Alaska territorial waters. Although there was never any formal enforcement, when the Federal Bureau of Investigation (FBI) became interested in the emerging cruise ship market that included gambling it was apparent that there were more questions than answers. He opined that the cruise industry understood the heightened interest in the gambling activities within territorial waters, and used the appropriate influence to achieve the law referenced by Ms. Bales. The aforementioned law basically prohibited Alaska from stopping [gambling activities]. The aforementioned was an unusual prohibition that raised concerns with lawyers regarding whether the federal government could prohibit the state from acting. He noted that the basic doctrine is within the Tenth Amendment. During the aforementioned discussion, former legislator Hugh Malone pointed out that the cruise industry had created a loophole that says the state can't prohibit [gambling on the cruise ships]. Mr. Malone suggested that rather than continuing with litigation, the state should tax the activity. Mr. Geldhof recalled the discussion at the time was that [gambling on cruise ships] would be taxed and the activity wouldn't be sanctioned.

MR. GELDHOF then turned to the 33.3 percent taxation on cruise ship gaming was taken from existing statute for charitable gaming. He noted that it wasn't anticipated that the 33.3 percent "takes the oxygen out of any profit." According to the initiative, the taxation of cruise ship gambling has returned about \$6.8 million a year. Although the cruise industry may not like the law, it does like the opportunity for its passengers to gamble. Mr. Geldhof characterized the law as a peculiar response to a unique set of circumstances. Furthermore, the law highlights that geography still matters and takes the state's fair share according to the charitable gaming statute. Mr. Geldhof explained that the taxes collected on gambling goes into

the large passenger account, but those funds are unrestricted and can be spent without regard to the federal law that specifies the funds have to be spent on safety and efficiency of the passengers and the vessel. Mr. Geldhof opined that the concern should arise when one wants the cruise ship deal and requests a compact.

[9:48:45 AM](#)

REPRESENTATIVE HARRIS thanked Mr. Geldhof, who he characterized as a voice of reason, for being present today. He asked Mr. Geldhof if it would be fair to say that he opposes HB 208 as it's a dramatic departure from the intent of the sponsors of the initiative.

MR. GELDHOF stated that in the larger concept of the cruise ship initiative, the gambling tax was a small piece of cleanup legislation to address something that had been around since the 1980s. The initiative seemed to bring some resolution to the gambling issue, and he opined that the drafters of the initiative "got it more right than wrong."

[9:50:34 AM](#)

REPRESENTATIVE MILLETT inquired as to why the gambling tax was included in the cruise vessel passenger tax initiative. She further inquired as to what the authors of the initiative were trying to gain by including the gambling tax in the initiative.

MR. GELDHOF restated the history of the issue with gambling in state waters in which the cruise industry ultimately trumped the state's law that gambling in Alaska is not legal with a federal statute that prevented Alaska from saying that gambling in state waters is illegal. In response to the aforementioned and rather than going through litigation, it was determined to be necessary to tax what the state still believes to be illegal activity. The levy rate was set at 33.3 percent, the charitable gaming provision. The thought, he opined, was that if gaming is going on in Alaska [waters] and the state can't prevent it, then the state should receive the same percentage as it would from charitable gaming.

[9:52:52 AM](#)

REPRESENTATIVE MILLETT asked if Mr. Geldhof believes this taxation of cruise ship gambling is grounds to open up to Class 3 gaming in Alaska.

MR. GELDHOF said that upon reviewing the federal and the state law, there's no easy deal to get because at best one would have to operate a large passenger vessel in foreign carriage that has a port outside. Mr. Geldhof opined that in Alaska there's no opportunity to do what is done in Louisiana or Indiana with near-shore gambling. Furthermore, Mr. Geldhof pointed out that the gambling revenue for the cruise industry is incidental and a full-blown seasonal business can't be built on such revenue.

9:55:18 AM

REPRESENTATIVE GARDNER recalled Mr. Geldhof saying that if a lawsuit is brought on the grounds that the sponsor fears, the state could address it by removing the gambling tax. She asked if it would be too late at that point.

MR. GELDHOF answered that he didn't believe so. At the point, someone comes forward to leverage the state and the governor desires a compact, that's when a working group would likely come together and one of the options would likely be to remove the tax.

9:57:45 AM

MR. GELDHOF, in response to Representative Crawford, acknowledged that there is a scenario in which someone wants the gambling deal and a compact is signed. He further acknowledged that in the course of the compact, the party could agree to the terms. However, the likelihood of the aforementioned seems to be very remote. He opined that his experience is that whatever the scenario, it will require deliberation and will move slowly.

10:00:11 AM

CO-CHAIR MUNOZ announced that HB 208 would be held over.

10:00:38 AM

CO-CHAIR HERRON surmised that basically Alaska's law, due to the initiative, is a fairly high hurdle, particularly for someone who is in business to make a profit. Therefore, he questioned whether the tax is appropriate to keep on the books.

MR. GELDHOF opined that the real issue for the legislature is obtaining funds from taxing gambling while not allowing gambling besides in a very peculiar fashion. "The real challenge here,"

he opined, "is spending the \$6.8 [million] or whatever the yield is for the benefit of our state in a thoughtful way."

[HB 208 was held over.]

[10:02:18 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 10:02 a.m.