

S B

100

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 100

Publish Date: 2/3/87

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: An Act relating to the taxation of watercraft motor fuel

Agency Affected: \_\_\_\_\_

BRU: \_\_\_\_\_

Sponsor: Jones by Request

Components: \_\_\_\_\_

Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	(3000.0)	(3000.0)	(3000.0)	(3000.0)	(3000.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Analysis assumes an effective date of July 1, 1987. See attached.

Prepared By: <sup>DT</sup> David Tonkovich

Phone: 465-2173

Division: Research/Revenue

Date: 2/12/87

Approved by Commissioner: [Signature]

Date: 2/16/87

Agency: REVENUE

SEE ADDITIONAL

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

FISCAL NOTE ON ADMINISTRATIVE COST

Page 1 of 3

- Fiscal Notes (2) -

Continuation for Fiscal Note Analysis

SB 100

Analysis:

This legislation exempts from the \$.05/gallon marine fuel tax that fuel which is purchased outside the State's jurisdiction but is brought into the state for use by a watercraft.

It is the State's contention that fuel used within the three mile limit is subject to the fuel tax. This contention is currently the subject of an administrative hearing process. Because of uncertainty over the outcome of that process current revenue estimates do not include these potential revenues.

There are three pieces of information required to estimate the revenue impact of this bill: 1) The volume of vessel traffic into and out of Alaska; 2) The amount of fuel used within the State's jurisdiction by these vessels; and 3) The portion of the fuel purchased outside the State. Unfortunately there is only fragmentary data on any of these items.

An earlier fiscal note on this topic (SB 387, 1986 Legislative Session) tried to provide a rough estimate of the impact of excluding this fuel usage from the tax. The procedure to develop that estimate is summarized below. Because there have been no further returns filed on this element of the marine fuel tax (pending the outcome of the administrative hearing process) the figures developed for that legislation remain our best estimate of the impact.

The estimate contained in the note for SB 387 was prepared by dividing potential collections into two parts:

1. Revenues from users whose tax liability could be estimated from data on the number of trips, average fuel consumption and time in Alaska waters. Also, for several of these users a full year return was available. This part of the estimate covered these major users:

Tankers into and out of Valdez  
Cruiseships in Southeast Alaska  
Several large common carriers serving Southcentral Alaska  
Several carriers distributing petroleum products for local use.

Our estimate for these users is \$2 million annually.

2. Revenues for remaining users. This tax liability is more difficult to estimate because of the diversity of users and the fact that available returns cover only part of the year. This estimate would cover many of the common and contract carriers, freighters hauling raw materials and semi-finished products such as LNG, fish processors and a variety of other users.

Our estimate for these users is \$1 million. Because of the numbers and variety of users involved this estimate is probably conservative.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 100

REQUEST \_\_\_\_\_

Publish Date: \_\_\_\_\_

Revision Date: 2/12/87

Agency Affected: Revenue

Title: An act relating to taxation of watercraft motor fuel

BRU: \_\_\_\_\_

Sponsor: Jones

Components: \_\_\_\_\_

Requestor: Transportation & Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel*  
Division: Audit

Phone: 465-2320  
Date: 2/12/87

Approved by Commissioner: HT Malone  
Agency: REVENUE / SEE ADDITIONAL

Date: \_\_\_\_\_  
FISCAL NOTE  
ON REVENUE  
IMPACT

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Senate Bill 100  
Fiscal Note Analysis  
February 12, 1987

SB 100 amends definitions in AS 43.40.100 by correcting language usage and adding a section under the definition of motor fuel which excludes from the definition that fuel originating outside the jurisdiction of the State and brought into the State in fuel storage tanks on watercraft for the purpose of operating said watercraft, engines on the watercraft or auxiliary watercraft carried by the watercraft.

It is current Department policy that watercraft of all types, whether engaged in intrastate or interstate commerce must pay the five-cent watercraft motor fuel tax on fuel consumed or used in Alaska. This policy has been conveyed to the water transportation, crude oil tanker, cruise ship and fish processing industries. This position has been challenged by the industry and is currently in the formal hearing process.

We believe it is sound public policy to assert the tax against the interstate shipping industry. First, the levy is borne by Alaska resident shipping companies and puts them at a competitive disadvantage with foreign companies which are not taxed or their fuel purchased in other jurisdictions. Second, there is substantial revenues at stake, conservatively estimated at \$3 million per year.

Suggested Amendments:

Sub-paragraph (M) exempts fuel consumed by "auxiliary watercraft carried by the watercraft." It is our understanding that the sponsors do not intend to exempt from tax fuel consumed by fish processing facilities in the State, especially fishing vessels or other smaller watercraft which enable the processing vessel to take fish in Alaskan waters. The amending language may provide a loophole for fish processors, and we suggest amending language be drafted which disallows the exemption to vessels while they are fishing in Alaskan waters.

The amendment also may permit fish processors to be exempt from tax on fuel used by on-board generators and other engines not associated with propulsion of the vessel. This is also outside the scope of the sponsor's intention.

February 9, 1988

Mr. Bob Evans  
Legislative Liaison  
Office of the Governor  
P. O. Box A  
Juneau, Alaska 99811

Dear Bob:

This is to follow up our recent conversation regarding watercraft fuel taxation issues now under consideration by the Legislature.

There are two separate matters of concern which have shifted back and forth from the Administration to the Legislature due to 1987 AG opinions:

- (1) Does the State have the authority to tax fuel purchased out-of-state, but consumed in Alaska? As a matter of policy, should the State seek statutory authority if it does not now possess it?
- (2) Does the State have the authority to issue rebates of the State fuel tax for fuel purchased in Alaska but consumed out-of-Alaska? If not, is this a good policy?

With respect to fuel purchased out-of-State, the State has historically taken the position that no tax should be levied on fuel purchased out-of-State but consumed in-State. By "historically", I mean from territorial days until 1985, when the Department of Revenue used creativity to interpret its statutory authority to permit the collection of such a tax. Various marine carriers filed suit against the Department in 1985 regarding its authority to levy the tax by regulation, and won a procedural

Mr. Bob Evans  
Office of the Governor  
February 9, 1988  
Page -2-

victory last year. The AG's office then opined that the Department should not attempt to reimpose the tax without specific legislative authorization. (Before the Ag's opinion, two bills had been introduced (SB 100/HB 280) to clarify the statutes to make it clear that the State did not have the authority to levy the tax.)

This issue has been resting peacefully until recent legislation (SB 366/HB 401) was introduced dealing with rebates for fuel purchased in-State, but consumed out-of-State. Historically, the State has been granting these rebates, but discontinued them last year when the AG's office told Revenue it lacked the statutory authority to do so. In the first hearing on SB 366, the Department of Revenue suggested to the Senate Resources Committee that it would support recontinuation of the rebates if the Legislature would give it the specific authority to tax out-of-State fuel. In a subsequent hearing on HB 401, the Department indicated it was drafting a bill to accomplish this.

Before the Governor's office makes a decision on whether to introduce the Department of Revenue's proposed legislation, I urge you to consider the following arguments in opposition to the concept:

- (1) The tax would add a "surcharge" to virtually all food and basic goods transported by water to Alaska. All the marine transportation companies would be forced to pass this new charge along to the "customer", which is all of us.
- (2) The tax could not be fairly applied, since it would catch major carriers, but miss charter operations, private vessels, etc. The State has no way of monitoring such trips to Alaska, so it would not be likely to collect the tax.
- (3) The same tax has also been considered by Revenue for aviation fuel purchased for aircraft flying into Alaska, as the same logic would apply to the State's tax jurisdiction over activities in air space as in the water. Such a tax would run counter to DOT and CED efforts to attract more air traffic into Alaska's major airports, particularly Anchorage.
- (4) There is no clear relationship between the proposed tax and public services rendered to those being taxed. The marine carriers operate to and from private facilities, and receive no State services that I can think of.

Mr. Bob Evans  
Office of the Governor  
February 9, 1988  
Page -3-

On the other hand, providing a rebate for fuel purchased in-State but consumed out-of-State does make sense, because it encourages more business for shore based facilities which would otherwise go to offshore supply ships. This incentive for attracting business is widely used in other coastal states. Those states (i.e., Washington) which offer rebates, do not generally collect taxes on fuel purchased in neighboring states but consumed en route to their home ports. This would clearly serve as a dis-incentive to interstate commerce and diminish the impact of their port marketing programs.

For these reasons, I believe that the Administration should not link the two issues (i.e., the revenue from one pays the cost of the other) because they are separate and distinct issues. Further, I urge you to maintain the State's historic position on fuel taxation for sound public policy reasons.

Sincerely,

/s/  
Reed R. Stoops

RRS:sd/rs.81



# SOUTHEAST STEVEDORING CORPORATION

CONTRACTING STEVEDORES

P.O. BOX 8080

KETCHIKAN, ALASKA 99901

Cable Address  
"Sousteve"

Telephone  
225-6157

Telex:  
099-55-295

February 24, 1987

The Honorable Lloyd Jones  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Senate Bill No. 100

Dear Senator Jones:

On behalf of the foreign flag operators conducting business within the State of Alaska, I would like to thank you for introducing Senate Bill No. 100. I am sure Wes Coyner and Ray Gillespie have given you a brief history regarding our plight against the Department of Revenue and their new interpretation of the Alaska motor fuel tax as it pertains to taxation of motor fuel used as ships stores. Doing business with the Department of Revenue is an educational experience in itself.

I wish that Cliff and myself would have had time to visit with you while in Juneau this past week. However, I do realize you also have a very busy schedule leaving yourself with little free time. I have heard many good things in regard to the work you are doing in Juneau as a freshman Senator. Of course there is no doubt in our mind you will do a good job representing the interests of the Ketchikan area residents as well as the State of Alaska.

Thank you again for your support of this bill. I hope to have the opportunity to stop by and visit with you on my next trip to Juneau.

Sincere regards,

SOUTHEAST STEVEDORING CORPORATION

  
Bill Sharp  
Operations Manager

BS/ng

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING  
P.O. BOX 5A  
JUNEAU, ALASKA 99811-0400

February 20, 1987

FEB 22 1987

OFFICE OF THE GOVERNOR

The Honorable Tim Kelly  
P.O. Box V  
Juneau, AK 99811

Re: Senate Bill No. 100

Dear Senator Kelly:

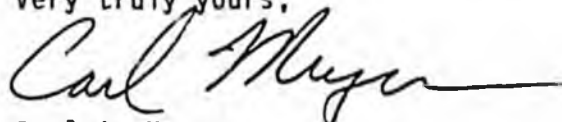
I am providing through this letter the information you requested during the hearing on the above referenced bill. The information concerns the amount of tax the Department has received with voluntary filings of motor fuel tax returns for fuel purchased outside the state but consumed in transit through the territorial waters of the state.

The department has received returns with tax payments of \$1,409,931.81 from marine fuel users falling within that category. Under Senate Bill No. 100, these taxpayers would have a right to seek refunds of those tax payments.

Marine fuel users are not currently filing returns with the department for fuel purchased outside the state but consumed within the state. The department and a number of the marine fuel users entered into an agreement in late 1985 that provides for additional returns to be filed, if necessary, with payment of tax and interest after the resolution of the dispute on the interpretation and reach of the motor fuel statute. Although other marine fuel users are not parties to this agreement and therefore face potential penalties, it appears that these taxpayers are also waiting to see how the dispute will be resolved before filing further returns. Therefore, the department does not anticipate receiving significant revenue in addition to that already received until after the conclusion of the appeal process.

Thank you for the opportunity to testify and to provide information on this subject.

Very truly yours,



Carl A. Meyer  
Chief of Audit Appeals  
(907) 465-2343

cc: Senator Lloyd Jones  
Chairman, Senate Transportation Committee

87-21

# ALASKA STATE LEGISLATURE


*Home Address*  
3813 Denali Street  
Ketchikan, AK 99901  
907-225-9082

*While in Juneau*  
P.O. Box V  
Juneau, AK 99811  
907-465-3743

Senator Lloyd Jones

## MEMORANDUM

TO: Senate Transportation Committee Members

FROM: Senator Lloyd Jones 

DATE: February 19, 1987

SUBJECT: Senate Bill 100

I have introduced this legislation, by request, to clarify existing law with regard to the transportation of watercraft motor fuel into the state. This legislation is identical to legislation that died in the House Rules Committee last year.

From 1946 until 1985 the state has not taxed watercraft motor fuel which is purchased outside Alaska waters and brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel. This legislation would maintain that long-standing policy.

The state will not realize a revenue loss, because it was not included as revenue source in the FY88 budget.

Issue can be taken with DOR's zero fiscal note for administration of a watercraft motor fuel tax. The cost of checking inbound vessels of all sizes would be, I think a big factor.

I urge the committee to support this legislation.

# ALASKA STATE LEGISLATURE


Sen. Lloyd Jones, Chairman  
Sen. John B. "Jack" Coghill, Vice Chairman  
Sen. Mitch Abood  
Sen. Bettve Fahrenkamp  
Sen. Tim Kelly

P.O. Box V  
Juneau, AK 99811  
907-465-4921

## Senate Transportation Committee

### MEMORANDUM

TO: Senate Finance Committee

FROM: Senator Lloyd Jones, Chairman   
Senate Transportation Committee

DATE: March 11, 1987

SUBJECT: Senate Bill 100, Taxation of watercraft motor fuel.

The Senate Transportation was unable to come to a consensus regarding the proper fiscal notes for this bill. It was determined that the Senate Finance Committee could better deal with this particular issue.

A few of the questions were:

Should the revenue loss shown by the passage of this bill be reflected on the fiscal note? Particularly, when the it is not reflected in the FY 88 budget.

How much revenue has actually been collected? Revenue, during the committee hearing on the bill, could not provide the committee with an estimate.

The committee would appreciate your consideration of these issues.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 100  
Publish Date: 2/3/87

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to the taxation of watercraft motor fuel  
Sponsor: Jones by Request  
Requestor: \_\_\_\_\_

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
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CAPITAL	-	-	-	-	-	-
REVENUE	-	(3000.0)	(3000.0)	(3000.0)	(3000.0)	(3000.0)

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GENERAL FUND	-	-	-	-	-	-
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TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Analysis assumes an effective date of July 1, 1987. See attached.

Prepared By: David Tonkovich <sup>DT</sup> Phone: 465-2173  
Division: Research/Revenue Date: 2/12/87

Approved by Commissioner: [Signature] Date: 2/16/87  
Agency: REVENUE

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

SEE ADDITIONAL  
FISCAL NOTE ON  
ADMINISTRATIVE COST

Continuation for Fiscal Note Analysis

SB 100

Analysis:

This legislation exempts from the \$.05/gallon marine fuel tax that fuel which is purchased outside the State's jurisdiction but is brought into the state for use by a watercraft.

It is the State's contention that fuel used within the three mile limit is subject to the fuel tax. This contention is currently the subject of an administrative hearing process. Because of uncertainty over the outcome of that process current revenue estimates do not include these potential revenues.

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REQUEST \_\_\_\_\_

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Sponsor: Jones

Requestor: Transportation & Finance

Agency Affected: Revenue

BRU: \_\_\_\_\_

Components: \_\_\_\_\_

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TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	-	-	-	-	-	-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
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TOTAL	-	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel*  
Division: Audit

Phone: 465-2320  
Date: 2/12/87

Approved by Commissioner: *H. Malone*  
Agency: REVENUE / SEE ADDITIONAL

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

*FISCAL NOTE ON REVENUE IMPACT*

Senate Bill 100  
Fiscal Note Analysis  
February 12, 1987

SB 100 amends definitions in AS 43.40.100 by correcting language usage and adding a section under the definition of motor fuel which excludes from the definition that fuel originating outside the jurisdiction of the State and brought into the State in fuel storage tanks on watercraft for the purpose of operating said watercraft, engines on the watercraft or auxiliary watercraft carried by the watercraft.

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We believe it is sound public policy to assert the tax against the interstate shipping industry. First, the levy is borne by Alaska resident shipping companies and puts them at a competitive disadvantage with foreign companies which are not taxed or their fuel purchased in other jurisdictions. Second, there is substantial revenues at stake, conservatively estimated at \$3 million per year.

Suggested Amendments:

Sub-paragraph (M) exempts fuel consumed by "auxiliary watercraft carried by the watercraft." It is our understanding that the sponsors do not intend to exempt from tax fuel consumed by fish processing facilities in the State, especially fishing vessels or other smaller watercraft which enable the processing vessel to take fish in Alaskan waters. The amending language may provide a loophole for fish processors, and we suggest amending language be drafted which disallows the exemption to vessels while they are fishing in Alaskan waters.

The amendment also may permit fish processors to be exempt from tax on fuel used by on-board generators and other engines not associated with propulsion of the vessel. This is also outside the scope of the sponsor's intention.

TESTIMONY REGARDING SENATE BILL 100  
BEFORE THE SENATE TRANSPORTATION COMMITTEE  
BY BUD HANSEN, LYNDEN, INC.  
FEBRUARY 19, 1987

Chairman Jones and members of the Senate Transportation Committee, my name is Bud Hansen, and I am here today on behalf of Lynden, Inc. and in support of SB 100.

It is unfortunate that we need to take up the Committee's time to clarify AS 43.40.100 on the applicability of the marine fuel tax to fuel consumed within Alaskan waters, because the existing statute is clear, and has been interpreted correctly since 1946 when the Territorial Legislature passed the original statute.

I am not going to take up more of your time discussing the existing statute or all of the legal arguments as to why the Department of Revenue's action is incorrect and inappropriate. Rather, I would like to make a few simple arguments why the tax is not in the best interest of Alaskans in any case:

(1) If commercial marine fuel is taxed when consumed in Alaskan waters, as proposed by the Department of Revenue, it will force us to pass this extra cost to Alaskan consumers in the form of higher freight rates or a special Alaska marine fuel surcharge. In Alaska, this means higher costs for almost everything we consume.

(2) Fuel purchased in Alaska, and consumed in Washington State waters is not taxed by the State of Washington.

Washington realizes that would simply be a disincentive to marine commerce, and a better reason for shippers to use alternative ports in other states. This is one reason why our Alaska statute was intended to be similar to Washington's statute.

(3) As we understand, the Department of Revenue has not attempted to enforce this tax on fishing vessels, pleasure boats, aircraft or other users of motor fuel purchased outside of Alaska and consumed in Alaskan waters or air. The reason is obvious - the tax cannot be easily collected or uniformly applied to all users. If the tax is not uniformly applied, it discriminates against certain users. For example, scheduled marine freight services would pay the tax, but out of state charters or itinerant operators would not likely pay, as the Department of Revenue would have no record of their trips in Alaska.

(4) There is no relationship between the proposed tax and services provided by the State. One reason fuel is taxed where it is sold, is that the fuel facilities themselves benefit from roads, police and fire protection, which are provided by the State or local government. No comparable State services are provided to vessels while in Alaskan waters.

For these reasons, we appreciate your introduction of SB 100, and urge the Committee's support for the bill. I would be pleased to answer any questions that the Committee might have.

Thank you.

sd/8.18

TESTIMONY  
OF  
M.R. LADNER  
PUBLIC AFFAIRS FOR  
SEALAND SERVICE  
FAIRBANKS, ALASKA  
BEFORE  
THE  
ALASKA SENATE  
TRANSPORTATION COMMITTEE  
ON  
FEBRUARY 19, 1987  
JUNEAU, ALASKA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MIKE LADNER AND I AM THE PUBLIC AFFAIRS SPOKESMAN FOR SEALAND SERVICES, <sup>IN ALASKA</sup> BASED OUT OF FAIRBANKS. SEALAND SERVICES OPERATES THREE SHIPS BETWEEN SEATTLE AND THE RAILBELT, <sup>{ALEUTIAN CHAIN</sup> MARKETS OF ALASKA.

I AM TESTIFYING FOR SEALAND IN SUPPORT OF S.B. 100, WHICH WE STRONGLY FEEL CLARIFIES THE EXISTING LAW PASSED BY THE TERRITORIAL LEGISLATURE IN 1946. THE TERRITORIAL LEGISLATURE'S INTENT WE BELIEVE WAS TO STOP VESSEL OPERATORS FROM BRINGING IN BULK FUEL, FOR RESALE, THUS AVOIDING IN-STATE PURCHASES AND ALASKA TAXES.

THE ALASKA DEPARTMENT OF REVENUE IN JUNE OF 1985 CAME TO THE VESSEL OPERATORS AND STATED THEY WERE NOW GOING TO COLLECT A TAX ON FUEL BURNED BUT NOT PURCHASED IN ALASKA'S THREE MILE LIMIT. FOR THIRTY-NINE YEARS THIS TAX WAS NEVER COLLECTED NOR WAS THE LAW INTERPRETED IN SUCH A WAY FOR IT TO BE ASSESSED. THE DEPARTMENT OF REVENUE ARBITRARILY, FOR REASONS OF ITS OWN, ISSUED WITHOUT CLEAR LEGISLATIVE INTENT, A NEW TAX.

THIS USER TAX WOULD COST OUR COMPANY APPROXIMATELY \$150,000. PER YEAR BASED PRIMARILY ON OUR CRUISING TIME WITHIN COOK INLET, KODIAK ISLAND, CORDOVA, AND DUTCH HARBOR, AS WELL AS INTERMEDIATE POINTS. A USER TAX IS USUALLY BASED ON SERVICES RECEIVED, BUT ON THIS CONSUMPTION TAX, ALL AIDES TO NAVIGATION, IINSPECTIONS, SAFETY AT SEA AND PORT CHARGES ARE EITHER PROVIDED BY THE FEDERAL OR LOCAL GOVERNMENTS.

SEALAND EMPLOYS (203) PEOPLE DIRECTLY AND INDIRECTLY IN ALASKA AND WE PAY TAXES ON PAYROLL, WORKERS COMPENSATION, <sup>PERS. PROP.,</sup> (EXCISE), OUR COMPANY PAYS ITS FAIR SHIARE OF TAXES IN ALASKA AND FEELS WE ARE GOOD CORPORATE CITIZENS.  
2 LICENSE TAX

SINCE THE DEPARTMENT OF REVENUE HAS NEVER COLLECTED THIS TAX, THERE WOULD BE NO LOSS OF REVENUE IN PASSING THIS LEGISLATION. THE DEPARTMENT OF REVENUE HAS <sup>INITIALLY</sup> ~~ALSO~~ SINGLED OUT THE MARITIME INDUSTRY ~~FOR~~ ON THIS TAX, BUT CHECKS FOR TRUCKS AT THE BORDER, CARS AND RECREATIONAL VEHICALS AT THE BORDER AND ON THE FERRIES AND ALL AIRLINES WHEN THEY HIT ALASKA AIRSPACE WOULD ALSO FALL UNDER REVENUES INTERPRETATION OF THIS TAX. AS ONE MIGHT IMAGINE, THE EQUITABLE ENFORCEMENT AND STAFFING TO ENFORCE THIS TAX WOULD BE A DIFFICULT AND COSTLY UNDERTAKING, PLUS THE ACCOUNTING BURDEN FOR THE TRANSPORTATION COMPANIES WOULD BE INCREASED.

IF THIS TAX WERE APPLIED TO THE COMMON CARRIERS OF ALASKA, IT WOULD BE ADDED TO THE RATES PAID FOR BY THE ALASKAN CONSUMER, EITHER BY ADDING TO THE RATE OR BY ADDING AN ALASKA FUEL USE TAX SURCHARGE TO THE BILL OF LADING.

SEALAND THEREFORE URGES PASSAGE OF S.B. 100. I WISH TO THANK THE CHAIRMAN AND THIS COMMITTEE FOR ALLOWING US TIME TO EXPRESS OUR OPINION ON THIS ISSUE.

TESTIMONY OF TOTEM OCEAN TRAILER EXPRESS, INC. (TOTE)  
BY LEIGHTON H. THETFORD, ALASKA GENERAL MANAGER  
BEFORE THE ALASKA SENATE TRANSPORTATION COMMITTEE  
IN SUPPORT OF SENATE BILL NO. 100  
FEBRUARY 19, 1987

Mr. Chairman, members of the Committee, TOTE is testifying today on our own behalf and on behalf of other ocean carriers shipping between the states of Alaska and Washington. We wish to express our support of Senate Bill 100, which was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the Territorial Legislature in 1940. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of untaxed bulk fuel into Alaska and therefore prevent a loss of sales tax revenue. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft. In June of 1985 the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The department has asserted this tax is a user tax. The fuel tax has not previously been based on fuel used, but on fuel purchased in state or shipped into the state. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. TOTE's port and dockside facilities are paid for by dockage fees and rental payments to the Port of Anchorage, which were approximately \$1.9 million in 1986. In addition, TOTE is an Alaska corporation and pays substantial taxes to the State of Alaska, including income, property and payroll taxes.

A tax on bunker fuel consumed in Alaskan waters encourages carriers to avoid travel within the three-mile limit. Ports such as Anchorage, which lie further within Alaskan waters, would be discriminated against, as would carriers serving those ports. TOTE serves the Port of Anchorage only, in our service to Alaska. Our ships cruise six hours in each direction through Cook Inlet. If a tax is imposed on bunker fuel, most of TOTE's tax would result from sailing through Cook Inlet to Anchorage.

Any increase in taxes would worsen the condition of the water transportation industry and increase costs to the Alaska consumer. In addition, our industry is a major source of commerce and employment in Alaska and any additional burden on the industry would be detrimental to the Alaskan economy. The past three years have been unprofitable for many carriers in our industry, and several operators have been forced from the business as a result. The next three years are expected to be more difficult.

Our industry has filed appeals with the Department of Revenue contesting this new tax. Although we expect to ultimately prevail in this matter, this arduous and expensive process can be avoided by clarifying the act through Senate Bill 100.

In summary, Senate Bill 100 was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft. This bill will relieve the industry and the Department of Revenue from an expensive appeal and litigation process resulting from the department's radical new interpretation of the act. Finally, this bill will prevent a burden from being imposed on water carriers and consumers in Alaska.

I thank you for this opportunity to express the views of TOTE and of our industry. We encourage your support of Senate Bill 100 and will answer any questions you have at this time.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of Feb 12, 1987 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

DATE TURNED INTO OFFICE Feb 19, 1987

Mr. President:

TRANSPORTATION Committee considered SB 100

taxation of watercraft motor fuel.

and recommended:

[ ] replace with CS \_\_\_\_\_ [ ] same title

[ ] attached amendment(s) and [ ] new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted and attached

\*\* Committee [ ] attached or [ ] adopted fiscal note(s) *(see attached note)*  
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

*[Handwritten signatures]*

OTHER RECOMMENDATIONS

*Tim Kelly - No Rec until fiscal note question is cleared up.*  
*Fabrenkamp - same as Kelly*

*[Handwritten signature]*  
Chairman signature and recommendation

[X] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of Feb 12, 1987 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED \*\*  
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- letter of intent ad \_\_\_\_\_

\*\* Committee  at  
 zero

MEMBERS

[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Committee felt  
 since was in  
 in Gov's budget  
 motion made  
 to pass out of  
 committee w/o  
 Fiscal Note =  
 Finance Committee  
 can better deal  
 with it.*

s) (see attached note)

TIONS  
 ? - No Rec  
 note question  
 re CS

Committee Backup Atta

THE ALASKA STATE CHAMBER OF COMMERCE WISHES TO EXTEND ITS SUPPORT  
TO THE INTENT OF SB 100.

WE FEEL SB 100 WOULD AVOID INCREASES IN THE COST OF CONSUMER GOODS  
AND CONSTRUCTION MATERIALS.

THE ACTION OF THE DEPT. OF REVENUE TO EXPAND THE SCOPE OF MARINE FUEL  
TAX AT THIS TIME WOULD RETARD HEALTHY ECONOMIC DEVELOPMENT IN THE STATE OF  
ALASKA.

WE URGE PASSAGE OF THIS LEGISLATION.

2/19/87

Position Paper

Submitted on behalf of Tote, Sealand Services, Crowley Maritime,  
Alaska Marine Lines, Western Pioneer, and Knappton Towboat.

## POSITION PAPER - SB 100

SB 100 is identical to CS SB 387 (Fin.) which passed the Senat but died in House Rules Committee upon adjournment in 1986.

This legislation is necessary to correct a new (1985) and onerous reinterpretation of the motor fuel tax by the Department of Revenue (D.O.R.). It concerns fuel brought into the state in a marine vessel's fuel storage tanks and consumed to operate the vessel while in Alaska waters. SB 100 would clarify that, consistent with the application of the motor fuel tax laws between 1946 and 1985, fuel brought into the state in fuel storage tanks for the purpose of operating the vessel is not subject to the motor fuel tax.

### Background Information

The motor fuel tax was enacted in 1946. Marine fuel purchased or transferred within Alaska is taxable in full at \$.05 per gallon.

Since its enactment in 1946 until 1985, motor fuel purchased outside Alaska and consumed in Alaska without first being stored or otherwise coming to rest in the state was not taxed under the motor fuel tax provisions.

In 1985, without benefit of any new legislative authorization, D.O.R. initiated a series of letters to certain marine cargo carriers, among others, attempting to levy a fuel tax on fuel consumed in Alaska but which was brought into the state in fuel storage tanks and used to propel and operate the vessel.

This "new interpretation" of the law has not been authorized by the Legislature or existing law and extends the tax beyond the original scope of the marine fuel tax statute.

D.O.R. contends that a 1982 amendment to its administrative regulations authorizes its "new interpretation." However, D.O.R. admits that nothing in the public notice of intent to adopt the regulations stated that D.O.R. intended to tax mere consumption of marine fuel or that it intended to change the application of the law it had used the previous 39 years.

The amendment in question consists of deletion of the word "and" used in the statute and substitution of the word "or" to define "user." The result is that the statute defines "user" as follows:

(4) "user means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state;  
or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (emphasis added)

However, after the D.O.R. amendment, the regulations defines "user" as follows:

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state, who manufactures the

fuel in the state, or who purchases or receives in the state fuel that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010; (emphasis added)

The regulations are obviously inconsistent with statute and appear to be an attempt to extend the scope of the fuel tax beyond that originally intended by the Legislature. This unilateral action by an executive branch agency which attempts to make substantive changes in the law without legislative authorization is highly questionable and unfair.

SB 100 would amend the statute to prevent this "new interpretation" and clarify legislative intent to ensure that D.O.R will tailor its administrative activity consistent with the 39-year history of the motor fuel tax.

It is worthy of note that D.O.R. has said that if successful in the marine fuel area, it will extend its "new interpretation" to vehicular motor transportation and aviation travel, which raises questions similar to those in the marine transportation area.

POLICY CONSIDERATIONS IN SUPPORT OF SB 100

1. D.O.R.'s "new interpretation" would certainly increase the costs of consumer goods, construction materials and equipment, and other products shipped to Alaska and thereby increasing the cost of living to all Alaskans;
2. The "new interpretation" would result in higher tourist travel costs to Alaska as cruise ships would be subject to the new fuel tax;
3. The "new interpretation" would impose the tax on the amount of marine fuel consumed while inside the three-mile limit of Alaska waters thereby placing certain ports at a competitive disadvantage due to their location farther inside bays, harbors and inlets;
4. The "new interpretation" would also apply to tanker traffic to and from Valdez, however this merely increases transportation costs which are "netted back" reducing the well-head value to the state of Alaska;
5. The "new interpretation" would apply to the large fishing fleet and pleasure craft which ply Alaska waters raising questions of the administrative, enforcement, and personnel costs required to adequately monitor the expansion of the tax to fuel "consumed" in transit.
6. When the "new interpretation" is applied to motor vehicle transportation, it is readily apparent that revenue agents would be necessary at the Canadian border to measure fuel in tanks of automobiles, recreation vehicles and trucks

coming into Alaska to levy and collect this tax. (Ferry travel from Seattle would require similar treatment.)

7. No other west coast state, neither Texas nor Hawaii impose a "consumption tax" such as is being proposed under D.O.R.'s "new interpretation."
8. When applied to the aviation travel, both commercial and private, similar questions of increased travel costs and administrative costs are evident.
9. Aside from the obvious administrative costs and enforcement problems, as a matter of public policy, it does not make good sense to permit this extension of the motor fuel tax which will result in more expensive consumer goods, construction equipment and materials and which would possibly discourage tourist travel to Alaska. This is an especially sensitive question at this time of economic stagnation in the state.
10. There is no revenue loss to the state of Alaska because the tax has not been levied or collected between 1946-1985.

## ALASKA MOTOR FUEL TAX CHRONOLOGY

The following is a chronology of key events in the interpretation and application of the Alaska Motor Fuel Tax.

- 1946 Alaska Territorial Legislature imposes motor fuel tax on (1) all fuel sold and delivered or otherwise transferred within the Territory; and (2) all fuel consumed by a "user," defined as "any person, firm or corporation consuming or using any motor fuel, who shall have purchased such fuel out of the Territory and shipped it into the Territory for his or its own use within the Territory." Laws of Alaska 1946, Ch. 18 (emphasis added).
- 1946 - Present Alaska Legislature amends and reenacts motor fuel tax numerous times, without substantive change to provisions relevant here.
- 1946 - 1985 Division of Audit (DOA) of Department of Revenue applies motor fuel tax in accord with constitutional and statutory limits:
- A. Motor fuel purchased or transferred within Alaska was taxable in full without regard to the jurisdiction in which the fuel was actually consumed.
  - B. Motor fuel purchased outside Alaska and consumed in Alaska during propulsion without first being stored or otherwise coming to rest in the state was not taxed under the Motor Fuel Tax provisions.
- June 3, 1982 Governor approves House Bill 101, which amends the motor fuel tax statute without substantive change to the definition of "user" or other provisions relevant here.
- July 19, 1982 Department adopts first comprehensive motor fuel tax regulations, without prior notice. Finding of Emergency states that the regulations are necessary to implement House Bill 101. However, the regulations also purport to restate the definition of "user" as follows:

A. The statute defines "user" as a person consuming or using motor fuel who . . . purchases the fuel out of the state and ships it into the state for personal use in the state . . . AS 43.40.100(4) (emphasis added).

B. The regulations define "user" as "a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state . . ." 15 AAC 40.900(5) [now(6)] (emphasis added)."

July 20, 1982

Department issues Notice of Adoption of Emergency Regulation. Nothing in the notice states that the Department adopted a different definition of "user," or that the Department intended to tax fuel merely consumed in state waters, or that DOA intended to change the way it had applied the motor fuel tax since 1946. No notice is sent to marine fuel consumers as such, or to the Taxpayers here. Extensive comments are submitted on numerous topics, but none of them mention the definition of "user" or taxation of fuel merely consumed in state waters. Nothing in the Department's file on the regulations even discusses the definition of "user" or taxation of fuel merely consumed in state waters.

Nov. 14, 1982

The July 1982 regulations are adopted and made permanent by the Department.

1985

DOA begins to apply the motor fuel tax differently. DOA now interprets the statute and regulations as follows:

A. Motor fuel purchased or transferred within Alaska remained taxable in full at the time of purchase, but in-state purchasers could seek a refund of tax on any fuel consumed outside Alaska. Under this interpretation, fuel both purchased and consumed in the state would be subject to only one tax.

B. Motor fuel purchased outside Alaska and consumed while in transit through Alaska would be subject to Motor Fuel Tax on the fuel actually consumed within the state, even

though not stored or otherwise coming to rest in the state . . . without regard to whether such fuel was subject to actual or potential taxation in the state or foreign country where purchased, and without any express statutory or regulatory credit for taxes paid outside the state.

May 1985

DOA issues Questions and Answer Booklet reflecting its new interpretation as to motor fuel purchased in Alaska. DOA does not seek to comply with Alaska Administrative Procedure Act requirements in the issuance of the Booklet.

June 1985

DOA issues 200 letters applying its new interpretation of the statute to motor fuel purchased outside Alaska and merely consumed in state waters. The letters instruct the recipients, including the Taxpayers here, to file returns for the periods they had allegedly been using fuel in Alaska waters and to respond within 30 days, or else taxes, penalties, and interest would be assessed accordingly. DOA does not seek to comply with Alaska Administrative Procedure requirements in the issuance of the letters. The letters are the first written notice directed to Taxpayers or to marine fuel consumers in general regarding application of the tax to fuel merely consumed in state waters.

July - Nov. 1985

DOA requests that Taxpayers file returns as of January 12, 1985, and represents that it will not seek returns for any prior period.

Oct. Dec. 1985

DOA and Taxpayers agree on appeal procedures, under which Taxpayers file a return for one month, pay the tax for that month, and simultaneously file a refund claim. DOA agrees to stay all other reporting, collection, penalty and assessment procedures pending final administrative and judicial resolution of the matter.

Currently

The matter is now on appeal before the Department of Revenue.

RESOLUTION

WHEREAS, The Alaska Motor Fuel Tax laws have since 1946, levied a 5 cent per gallon tax on marine fuel purchased or transferred within Alaska; and

WHEREAS, for 39 years marine fuel purchased outside Alaska waters and brought into the state in fuel storage tanks on watercraft for the purpose of operating the vessel has not been taxed under the Motor Fuel Tax provisions of Alaska law; and

WHEREAS, in 1985, the Alaska Department of Revenue initiated a new and different interpretation of the law as applied to marine fuel brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel and began a tax collection effort; and

WHEREAS, this effort was undertaken without new authorizing legislation or amendment; and

WHEREAS, the new interpretation of the marine fuel tax will have serious implications for the business and individual consumers in Alaska by increasing the costs of goods brought into the state by water transportation; and

WHEREAS, the new interpretation will apply to cruise ships which visit Alaska waters thereby increasing costs of such tourist travel to our state; and

WHEREAS, because the new interpretation would impose the tax on the amount of marine fuel consumed while the watercraft is inside the 3 mile limits of Alaska waters, certain Alaska ports will be unfairly placed at a competitive disadvantage due to longer travel time inside bays, harbors and inlets; and

WHEREAS, in 1986 the Alaska Senate passed CS S.B. 387 (Finance) which would have specifically prevented application of the new interpretation; and

WHEREAS, the Alaska House of Representatives adjourned before S.B. 387 could reach the floor for a vote on the issue; and

WHEREAS, legislation similar to S.B. 387 would not result in a revenue loss to the State of Alaska because such a tax was not levied or collected between 1945 and 1985;

THEREFORE BE IT RESOLVED, that the Anchorage Chamber of Commerce urges that Governor Cowper and the Alaska Legislature take action to clarify the law so that marine fuel brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel not be taxed and avoid increasing costs of business and consumer goods to Alaska consumers, increasing the costs of tourist activities in the state and avoid the competitive discrimination against certain ports which could result;

BE IT FURTHER RESOLVED, that copies of this resolution together with a letter urging Governor Cowper and the legislative delegation to support a measure similar to S.B. 387 be sent to the appropriate state officials.

\* This resolution has been adopted by the Anchorage Chamber of Commerce.

- Support Resolution -