

SCR

1

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SCR1
 (S) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Support Roads/Hot Springs Loop Road BRU Commissioner's Office
 Component Commissioner's Office
 Sponsor Wilken
 Requester STRA Component No. 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dennis R. Poshard Phone 465-3900
 Division Special Assistant to Commissioner Date/Time 2/10/03 3:09 PM
 Approved by: Commissioner Mike Barton Date 2/10/2003
 Agency Alaska Department of Transportation and Public Facilities

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

FAIRBANKS

Daily News - Miner

"Independent in All Things ... Neutral in None"
Established in 1903

CHARLES L. GRAY
Publisher Emeritus

MARILYN ROMANO
Publisher

KELLY BOSTIAN
Managing Editor

DERMOT COLE
Columnist

ROD BOYCE
Assistant Managing Editor

If you build them ...

We're beginning to get a feel for this new kind of talk coming out of Juneau, and we like it.

People are talking about building things and the leaders of our state have not talked that way for some time.

Sen. Gary Wilken forwarded a resolution supporting construction of a road linking the Chena and Circle hot springs resorts, and the resolution made it through its first Senate committee on Tuesday. Other senators, following Wilken's lead, even added a few of their ideas to the docket.

Wilken said that he had, in fact, introduced the bill in the hopes it would become a wish list of road proposals for legislators to forward to the congressional delegation and to Gov. Frank Murkowski.

The state House voted late last week to forward a resolution urging the governor to encourage the Alaska Railroad Corp. to build an extension of the Alaska Railroad from its terminus at Eielson Air Force Base another 70 miles to Fort Greely to supply the missile defense facility under construction there. And on Wednesday, Gov. Murkowski said in a press conference that his cabinet is narrowing its proposals for new roads, with projects near Delta and on the North Slope rising to the top of the priority list. The cabinet has challenge revenue commissioner Bill Corbus to be innovative in searching for construction finances—beyond the millions available through federal highway funds.

We can thank the governor for this kind of talk; part of his campaign platform included proposals to expand Alaska's road system to spur development.

Our cautious side makes us want to know more details before we start bulldozing the countryside, but we know from experience that there is plenty of time for financial planning, design and environmental assessment. First, there must be a dream.

The Murkowski administration is encouraging leaders to think creatively about building infrastructure that will boost Alaska's prosperity. Any good entrepreneur first has a dream and sets goals. Then the plan comes together on how to make the dream into reality.

A quote in the News-Miner earlier this week from Sen. Wilken about his hot springs loop idea brought it home. "This resolution simply says, 'Let's look,'" Wilken said. "This is my seventh year here and this is the first year that we've had the opportunity to talk about building roads and have had some support."

Sen. Wilken and Gov. Murkowski and others who share these visions have our support.

February 16, 2003

Fairbanks Daily News-Miner

GARY WILKEN

SENATOR
West Fairbanks

Interim
1851 Fox Ave
Fairbanks, Alaska 99701
Tel: (907) 451-4347
Fax: (907) 456-8163



During Session
State Capitol Building
Juneau, Alaska 99801-1182
Tel: 451-5501 (from Fbks)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

Senate Concurrent Resolution 1

Sponsor Statement

“Relating to economic development generated by new road construction and to the design and construction of the Hot Springs Loop Road to connect Chena Hot Springs and Circle Hot Springs. “

SCR 1 is submitted to advance economic development in Interior Alaska.

This resolution addresses the following:

- 1) There is considerable tourism activity at both Chena and Circle Hot Springs. Connecting these two sites will spur further tourism activity at both locations, and potentially at new sites established along the way.
- 2) Local residents also frequent these locations, not only to enjoy the hot springs' facilities, but also to access fishing, hunting, camping and hiking areas that intersect the routes to both hot springs. Extending the road to form a loop will extend and improve access to these Alaskan resources and pastimes.
- 3) The increased traffic along this Loop Road will lend itself to increased commercial and industrial activities, including resource extraction and entrepreneurial ventures, thus promoting job opportunities and long-term economic growth to the area and to the State.

Across Alaska there may be many worthwhile road construction projects currently under consideration to improve Alaska's highway infrastructure. However, SCR 1 does not intend to give preference to any one project. Instead, it aims to identify and evaluate one model project that would significantly improve the quality of life and potential for development in Interior Alaska and encourage further like discussions in other areas of our State.

I respectfully request your support.

GREATER * FAIRBANKS
CHAMBER
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

February 5, 2003

Senator Gary Wilken
State Capitol, Room 518
Juneau, AK 99801-1182

Gary
Dear Senator Wilken:

On behalf of the Board of Directors and over 750 business members of the Greater Fairbanks Chamber of Commerce, I would like to offer our wholehearted support for SCR 1, a resolution of support for the construction of new roads to stimulate economic development and for the design and construction of a scenic loop road connecting Chena Hot Springs and Circle Hot Springs.

This fall, the Greater Fairbanks Chamber of Commerce met with officials from the Fairbanks North Star Borough, the City of Fairbanks, the City of North Pole, and the Interior Delegation to discuss needed transportation projects for Interior Alaska. These groups agreed upon a list of thirteen projects consisting of long-term conceptual plans for transportation infrastructure and needed upgrade and maintenance projects.

Of those projects, a loop road between Chena Hot Spring Road and Circle Hot Springs was listed as an identified project that would have long-term benefits for Interior Alaska. The proposed loop road would further enhance the tourism market to Chena and Circle Hot Springs, as well as attract more tourists in the winter for viewing of the aurora borealis.

Thank you for sponsoring SCR 1. We strongly encourage the passage of this resolution. If you have any questions, please feel free to contact me at 907-452-1105.

Sincerely,

Kara Moriarty

Kara Moriarty
President/CEO

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR DONALD C. OLSON

DISTRICT S

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

SB 54 SPONSOR STATEMENT

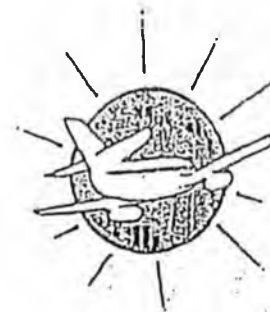
By Senator Olson

I introduced SB 54 to bring certainty to the interpretation of existing federal and state wage and hour statutes as they pertain to payment of overtime in the air transportation industry. Because of the uniqueness of their working conditions, flight crews have been considered professionals that are exempt from the standard 8 hour work day, 40 hour week and associated overtime pay requirements [AS 23.10.055(9)]. In conjunction with the maximum flight hour requirements set by the Federal Aviation Administration, these exemptions at both the state and federal level have allowed the industry to structure wage and hour schedules best suited to the work requirements of their flight crew personnel.

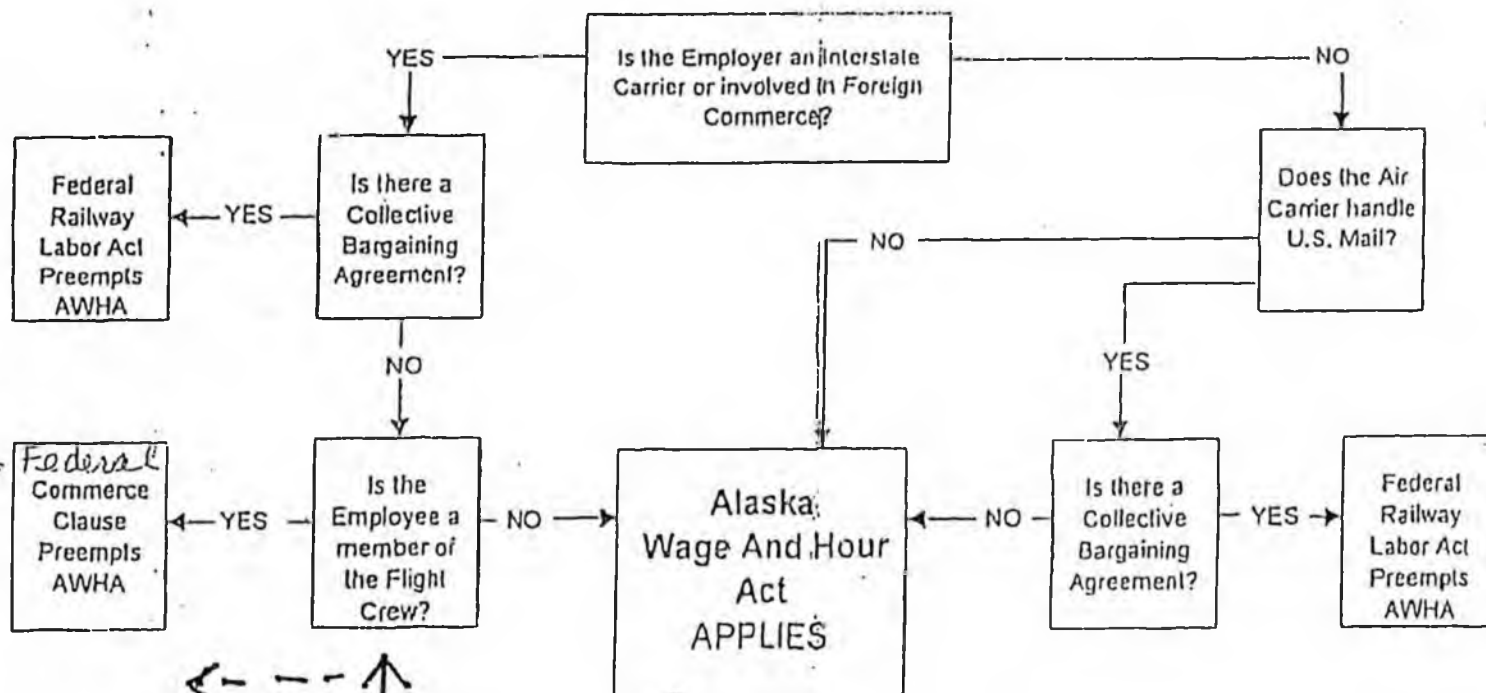
Several Alaska court decisions have raised a question about the correct application of state wage and hour laws and the application of overtime exemptions. Indeed, the confusion has stimulated other court challenges.

SB 54 explicitly adds flight crews to the list of occupations and employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites the provisions of the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of the exemption.

AIR CARRIERS & The Alaska Wage And Hour Act (AWHA)



Attachment 2



← - - - ↑
 proposed
 (19) captures
 this exemption
 from AWHA

DAYHOFF VS. TEMSCO HELICOPTERS, INC.

1372 Alaska

848 PACIFIC REPORTER, 2d SERIES

(1993)

burden to prove the exemption is applicable. *Reeves v. International Tel. & Tel. Corp.*, 357 F.Supp. 295, 298 (W.D.La.1973), *aff'd*, 616 F.2d 1342 (5th Cir.1980), *cert. denied*, 449 U.S. 1077, 101 S.Ct. 857, 66 L.Ed.2d 800 (1981). "Exemptions are to be narrowly construed against the employer." *Id.* at 297. "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled non-exempt." *Adam v. United States*, 26 Cl.Ct. 782, 786 (Cl.Ct.1992). All four elements must be met before an employee is found exempt. *Id.*

The parties agree that Dayhoff was a salaried employee, compensated on a fee basis. The parties dispute the level of education required of Dayhoff, what Dayhoff's primary duty was, how to characterize the discretion exercised by Dayhoff, and if the character of work was intellectual or physical.

Dayhoff claims the knowledge required to become a commercial pilot is not the type of advanced learning needed to qualify as a professional. Dayhoff also claims his primary duty was not professional because approximately 62% of his time was spent performing non-aviation duties. Even while flying, Dayhoff had no discretion as his actions were controlled by superiors. The only discretion and judgment exercised was in the physical operation of the aircraft.

Temasco argues that Dayhoff's primary duty was to be a pilot. He was hired as a pilot and his time was spent flying or waiting to fly. Temasco contends that being a commercial helicopter pilot requires knowledge of an advanced type. Further, Temasco argues that a commercial helicopter pilot is required to consistently exercise discretion and judgment.

[12, 13] The applicability of exemptions are questions of fact to be determined considering the individual's duties and other qualifications, and not upon how the employer classified the employee. *Reeves*, 357 F.Supp. at 302-03. A trial court must make a finding of fact in determining an employee's status. *Dalheim v. KDFW-TV*, 918 F.2d 1220, 1226, 1228 (5th Cir.

1990). While both parties moved for summary judgment on this issue, we first review the grant of summary judgment in favor of Temasco. We must view the facts in a light most favorable to Dayhoff. Dayhoff was primarily self-educated. He claims that for approximately 52% of his time he performed non-aviation duties. Dayhoff had no significant authority to control decisions regarding flight assignments or routes. The only discretion Dayhoff exercised was in the physical operation of his aircraft. Viewing the facts in the light most favorable to Dayhoff, Temasco does not meet the burden of showing that the exemption is applicable. Dayhoff can, at most, be classified as a highly trained technician and not as a professional.

Next we review the denial of Dayhoff's motion for summary judgment. For this purpose we view the facts in the light most favorable to Temasco. It is undisputed that Dayhoff obtained his commercial helicopter license through self study and obtained his flight instructor certificate after only ten hours of formal instruction. This is not the type of advanced study required to classify an employee as a professional. Further, the discretion exercised by Dayhoff in flying a helicopter is not the type of discretion which characterizes a person as a professional for purposes of this exemption.

On the basis of the foregoing we conclude that the FAA does not preempt the AWhA, that the AWhA is not violative of the commerce clause, and that Dayhoff is not a professional for purposes of the AWhA exemption.

B. DAYHOFF DOES NOT HAVE A CAUSE OF ACTION UNDER THE ALASKA LITTLE DAVIS-BACON ACT (ALDBA).

1. ALDBA provides a private cause of action.

ALDBA was modeled after the Davis-Bacon Act, 40 U.S.C. § 276 (1988). ALDBA stipulates that a contractor or subcontractor on a public construction contract must pay its employees the prevailing



Era Aviation, Inc.

6160 Carl Biady Drive
Anchorage, Alaska
99502

FEB 07 2003

February 3, 2003

The Honorable Con Bunde
The Honorable Donny Olson
State Capitol
Juneau AK 99801-1182

RE: Proposed Overtime Exemption Bill for Interstate Air Carriers

Dear Senators Bunde and Olson:

Thank you for agreeing to sponsor the attached proposed legislation regarding the exemption of flight crew personnel employed by Interstate Air Carriers from the state's overtime exemption laws. The Alaska Air Carriers Association (AACA) has made this legislative amendment a priority and fully supports its passage.


Era has become increasingly concerned with the uncertainty associated with the appropriate wage and hour treatment of its flight crews under Alaska wage and hour laws. The Alaska Department of Labor, Wage and Hour Section has assisted the Alaska based interstate air carrier industry by providing a chart that outlines the treatment of air carriers under the Alaska Wage and Hour Act. (See Attachment 2). Era is paying its flight crew employees in a manner consistent with this directive. However, the Alaska state courts have clouded this approach. In Davhoff v. Temsco Helicopters, Inc., 848 P2d 1367 (Alaska 1993), the Alaska Supreme Court concluded that a helicopter pilot was owed overtime, while in a later Era case, an Alaska Superior Court judge denied overtime to a fixed wing co-pilot. (See Attachments 3 and 4). The non-Alaska based interstate air carriers, such as Alaska Airlines, Delta Airlines, and various air cargo carriers, do not really have a stake in this issue because the pay of their flight crews is governed by collective bargaining agreements, which preempt the state's overtime laws. Era, like most of the Alaska based interstate air carriers, is non-unionized. Thus, there are no labor agreements that take us outside the state's wage and hour laws. Even though we adhere to the Alaska Department of Labor's pay policy guidance, there is no guarantee that a court will not chose to interpret the state's overtime laws differently in the future, thereby exposing us to liability for two years of back wage recalculations.

We believe that the proposed exemption would remove this uncertainty by codifying the existing position of the Alaska Department of Labor, Wage and Hour Section administrators. The proposed exemption would not change the way the law is currently being administered. The codified exemption would however, provide a clear, consistent rule for the interstate air carrier industry and remove any uncertainty as to how a court would address overtime issues in the future.

Letter to The Honorable Con Bunde and
The Honorable Donny Olsen
February 3, 2003
Page 2 of 2

Thank you for your assistance in this matter. If you have any questions about this letter or its attachments, please feel free to give me a call at 907-266-8361.

Sincerely,



Charles Johnson
President

Cc: Karen Casanovas, Executive Director AACA
Paul Landis, Senior Vice President, Era
Kip Knudson, Manager of Government Affairs, Era
Marcia Davis, General Counsel, Era
David Parish

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR
DONALD C. OLSON

DISTRICT S

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedes
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

February 5, 2003

MEMORANDUM

To: Senator Cowdery, Chair
Senate Transportation Committee

From: Senator Olson 

Re: Schedule hearing for SB 54, Overtime Pay for Airline Employees.

I respectfully request a Senate Transportation Committee hearing of SB 54 at your earliest convenience. My sponsor statement and support documentation is forthcoming. Please contact me if you need additional information.

Thank you for your attention to this request.

RECEIVED BY

FEB 05 2003

GARY WILKEN

SENATOR
West Fairbanks

Interim:
1851 Fox Ave
Fairbanks, Alaska 99701
Tel: (907) 451-4347
Fax: (907) 456-8163

Alaska State Legislature

Senate

During Session:
State Capitol Building
Juneau, Alaska 99801-1182
Tel: 451-5501 (from Fbks)
Tel: (907) 465-3709 (outside Fbks)
Fax: (907) 465-4714
Website: www.garywilken.com
E-Mail: Senator_Gary_Wilken@legis.state.ak.us

MEMORANDUM

DATE: February 12, 2003

TO: Senator John Cowdery, Chairperson
Senate Transportation Committee

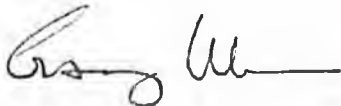
FROM: Gary Wilken
Senator, Fairbanks

RE: Hearing Request for SCR 1

I'm writing to respectfully request that Senate Concurrent Resolution 1 be scheduled for a hearing before the Senate State Affairs Committee.

SCR 1, "relating to economic development generated by new road construction and to the design and construction of the Hot Springs Loop Road to connect Chena Hot Springs and Circle Hot Springs," encourages increased economic and resource development opportunities in Interior Alaska. It favors the identification, evaluation, design and construction of a new scenic "Loop Road" which would connect Chena Hot springs to Circle Hot Springs via the Steese Highway.

Thank you for your consideration. Please feel free to contact me if you have any questions or would like additional information.





Sen. John J. Cowdery, Chair

Senate Transportation Committee


Call: 465-4921 Fax: 465-2069

CONTENTS OF PACKET: SCR1

- A CS SCR 1 version 23-LS0228\1**
- B Fiscal Note**
- C Sponsor Statement**
- D Fairbanks Chamber letter of support**
- E Map Packet**

- Sen. Pres. THERRIault
- Sen. WAGONER
- Sen. LINCOLN
- Sen. OLSON



 [Send To Printer](#) [Back to Map](#)

Circle Hot Springs AK
US

Notes:

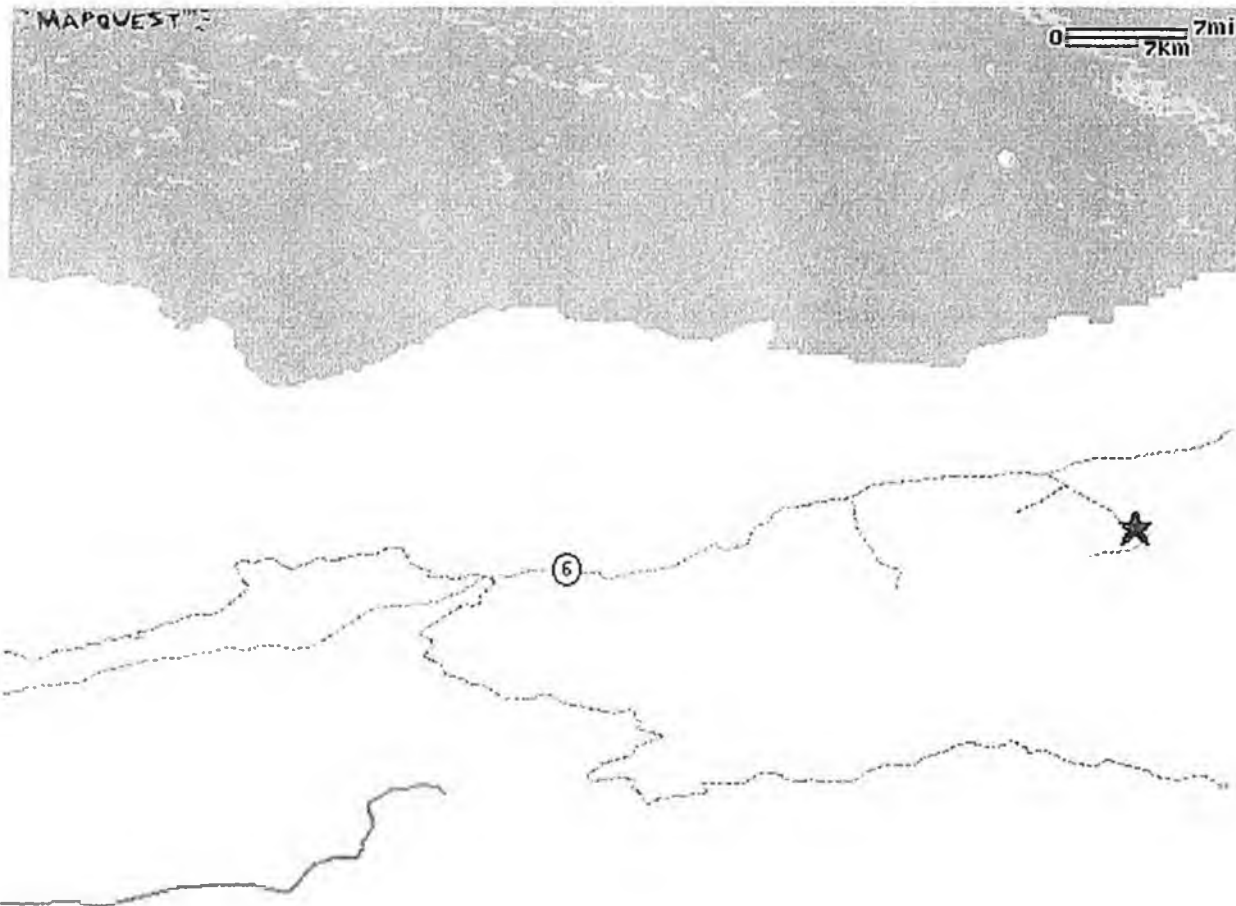
.....
.....
.....
.....

Book a Hotel:

Save up to 75% on

Orbitz Savers Nationwide!

[Book Now!](#)



©2003 MapQuest.com, Inc.

All rights reserved. Use Subject to License/Copyright



This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

[Privacy Policy & Legal Notices](#) © 2003 MapQuest.com, Inc. All rights reserved.

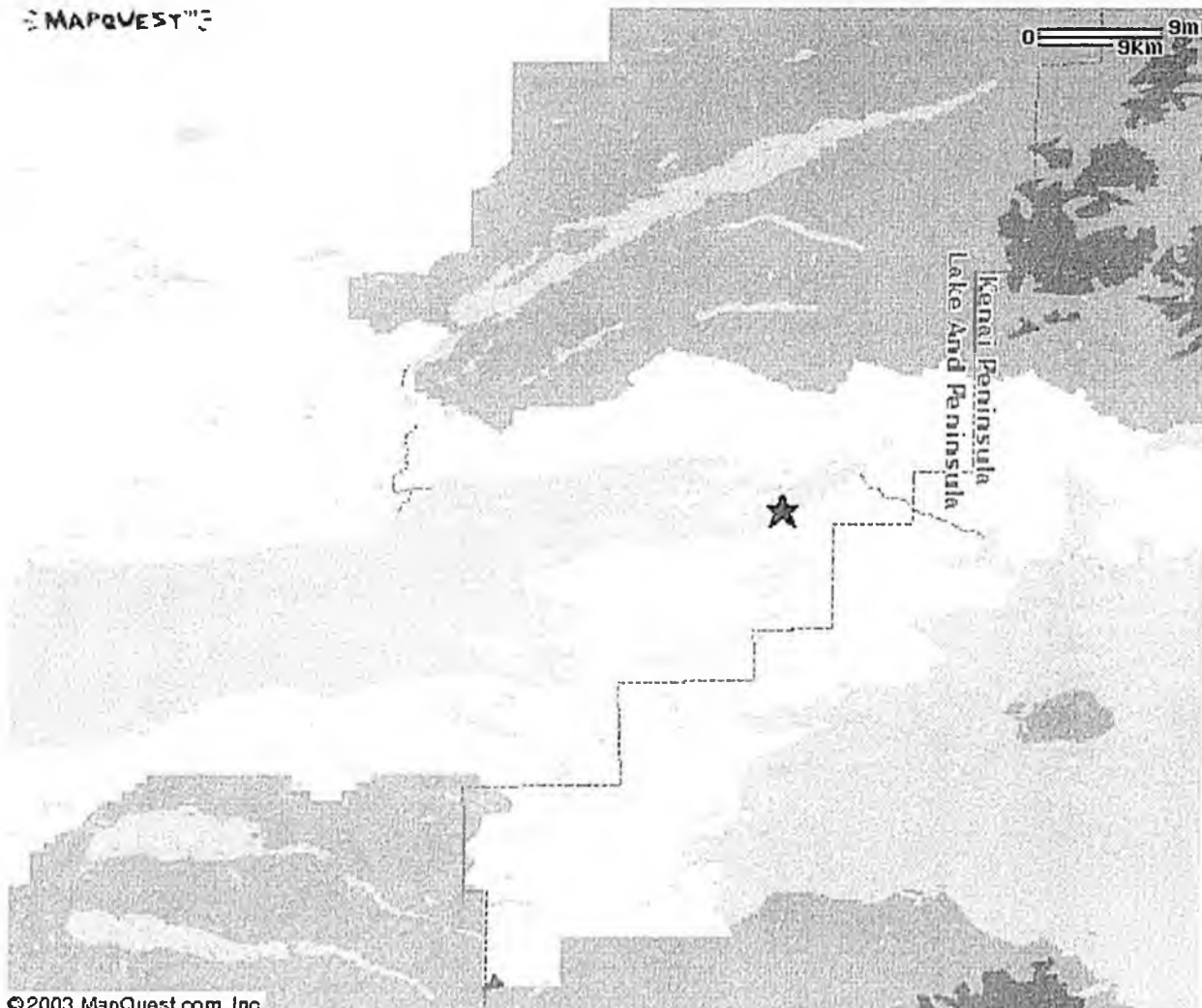


[Send To Printer](#) [Back to Map](#)

Pile Bay AK
US

Notes:
.....
.....
.....
.....

Book a Hotel:
Save up to 75% on
Orbitz Savers Nationwide!
[Book Now!](#)



©2003 MapQuest.com, Inc.

All rights reserved. Use Subject to License/Copyright



This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

[Privacy Policy & Legal Notices](#) © 2003 MapQuest.com, Inc. All rights reserved.

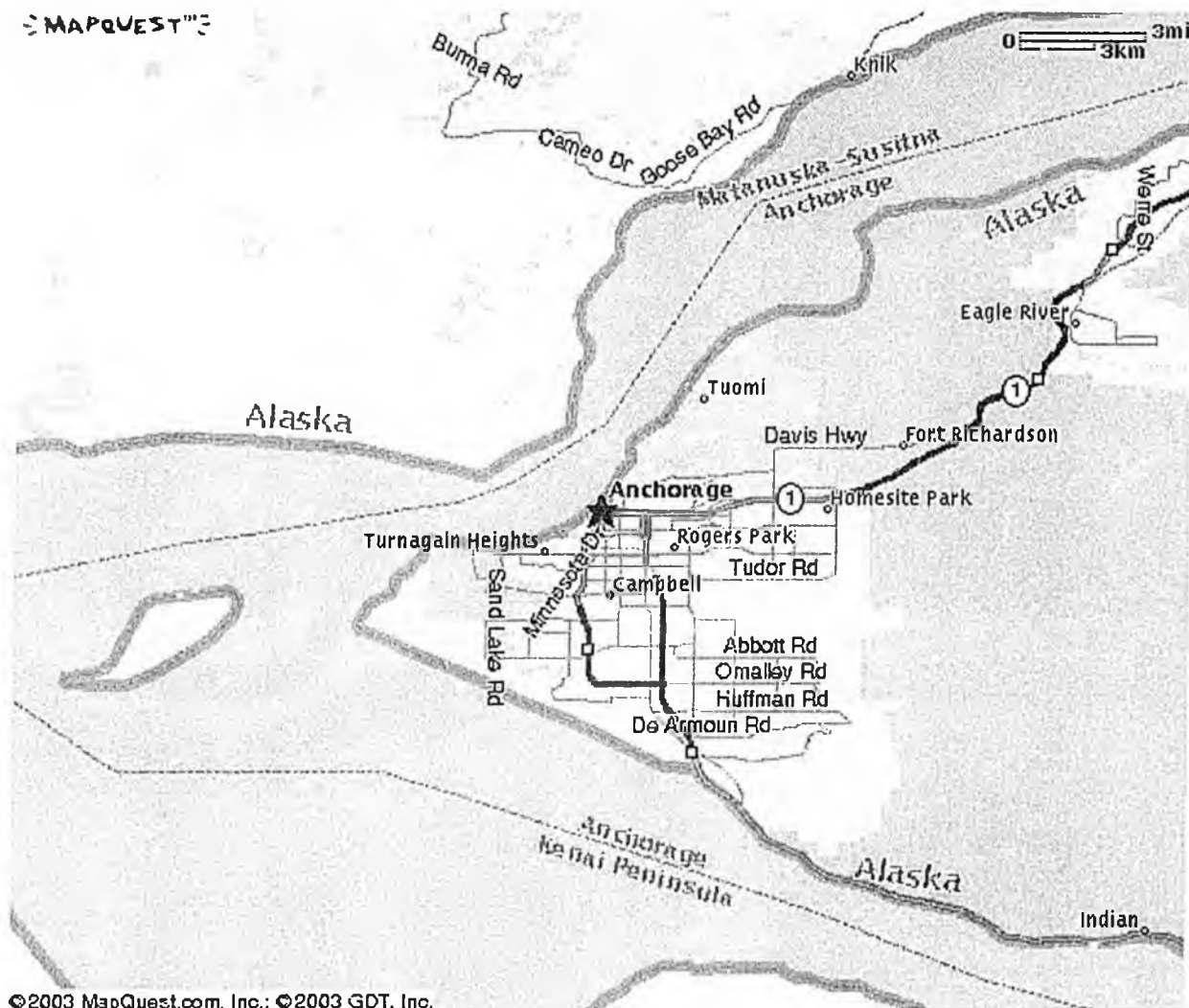


[Send To Printer](#) [Back to Map](#)

Anchorage AK
US

Notes:
.....
.....
.....

Book a Hotel:
Save up to 75% on
Orbitz Savers Nationwide!
[Book Now!](#)



©2003 MapQuest.com, Inc.; ©2003 GDT, Inc.
All rights reserved. Use Subject to License/Copyright



This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

[Privacy Policy & Legal Notices](#) © 2003 MapQuest.com, Inc. All rights reserved.