

ALASKA LEGISLATURE

1832

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

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FILE

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 1  
BIL Bill Version: SR 338  
(S) Publish Date: 3-20-98

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected University of Alaska  
Title An Act relating to waiver of tuition & fees for BRJ University of Alaska  
family of military or emer.med. workers killed in the line of duty. Component Systemwide Budget Reductions &  
Sponsor Senate State Affairs Committee Additions \_\_\_\_\_  
Requester Senate State Affairs Committee Component Serial No. #1296

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	5.4	5.4	5.4	5.4	5.4	5.4
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.4	5.4	5.4	5.4	5.4	5.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>	<b>5.4</b>

Estimate of any current year (FY98) cost: none

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill extends the tuition waiver provisions of AS 14.43.085 to include spouses and dependent of emergency medical service workers, and is similar to a House bill which extends the same benefits to spouses and dependent children of police officers, correctional officers and fire fighters killed in the line of duty. It is difficult to quantify the fiscal impact of either bill, though as the field of possible participants grows it is more likely to be significant. As this bill currently stands, however, except in the event of catastrophic loss the university anticipates the fiscal impact to be relatively minor. This fiscal note assumes that on the average, two students will utilize this program each year, at a cost of \$2,700 each or a total cost per year of \$5,400.

Prepared by Marylou Burton Phone 474-6490  
Division UA Statewide Budget Office Date 3/13/98  
Approved by C. Marylou Burton, Director Date 3/13/98  
Agency UA Statewide Budget Office

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**SB**

**340**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 7, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/10/98

The FINANCE Committee considered:

CSSB 340(FIN)

CS FOR SENATE BILL NO. 340(FIN)

INCREASE LAND GRANT TO UNIV. OF ALASKA

“An Act relating to the University of Alaska and university land, and authorizing the University of Alaska to select additional state land.”

recommends it be replaced with the following committee substitute HCS CSSB 340 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) \_\_\_\_\_  fiscal note(s) Senate DNB 5/4/98  
UA 5/4/98

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> Therriault	X			
<i>[Signature]</i> Mulder	X			
<i>[Signature]</i> Martin	X			
<i>[Signature]</i> Kohring	X			
<i>[Signature]</i> Davis	X			
<i>[Signature]</i> Gussendorf			X	
<i>[Signature]</i> Moses			X	
<i>[Signature]</i> Davis			X	
<i>[Signature]</i> Kelly				
<i>[Signature]</i> Foster				

CHAIR'S SIGNATURE

*[Signature]*  
 Therriault

# FISCAL NOTE

No. 5

Bill Version: CSSB340(FIN)

(S) Publish Date: 5/6/98

## STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date: 1-May-98

Dept Affected: Natural Resources

Title: An Act relating to the University of Alaska and university land, and authorizing the U of A to select addt. st. land.

BRU: Resource Development

Sponsor: S Judiciary

Component: Land Development

Requestor: S FIN

Component Serial No. 431

### Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	139.7	157.7	157.7	157.7	157.7	157.7
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	617.0	617.0	617.0	617.0	617.0	617.0
SUPPLIES	8.0	15.0	15.0	15.0	15.0	15.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>779.7</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )						
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### FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0	32.0	32.0	32.0	32.0	32.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
1007 I/A	749.0	772.7	772.7	772.7	772.7	772.7
<b>TOTAL</b>	<b>779.0</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>	<b>804.7</b>

Estimate of any current year (FY98) cost: \$ None

### POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

### ANALYSIS:

(Attach a separate page if necessary)

This fiscal note is the minimum necessary for DNR to process land selections and conveyances to the University of Alaska. Most costs for the conveyance work will be paid for by the University of Alaska using Interagency Receipts, however, this money still must come from state funds.

For FY 99, staff will include 2 mos. of a Natural Resource Manager I, 12 mos. Natural Resource Officer (NRO) II, and 12 mos. NRO I who will help identify parcels for University selection, check land status and land records, prepare public notice, respond to public inquiries, negotiate with the University, and perform other tasks to prepare land lists. Includes 6 mos. for a Land Surveyor I to prepare survey instructions and contracts for survey. Large contractual expenditures reflect the cost to survey parcels, fiscal note assumes average parcel size will be 320 acres, about half (40 parcels) will require survey, average survey cost per parcel assumed to be \$15,000 (40x15,000=600,000).

FY 00 and following years include the above costs, plus costs to issue title documents.

\* It is impossible to project the exact amount of revenue these conveyances will generate for the University, and will be lost to the state without knowing exactly what lands will be transferred.

Prepared by: Jane Angvik /m

Fphone: 269-8503

Division: Land

Date: 1-May-98

Approved by Commissioner: [Signature]

Date: 5-1-98

Agency: Natural Resources

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# FISCAL NOTE

No. 4  
 Bill Version: CS SB 340(FIN)  
 (S) Publish Date: 5/6/98

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected University of Alaska  
 Title An Act relating to the University of Alaska and **FRU** University of Alaska  
university land, and authorizing selection of additional land. Component Statewide Services  
 Sponsor Senate Judiciary  
 Requester Senate Finance Component Serial No. 730

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
<b>TOTAL OPERATING</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1048 University Receipts	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
<b>TOTAL</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>

Estimate of any current year (FY98) cost: none

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill provides for the selection and conveyance to the University of Alaska of 250,000 acres of land conveyed to the state under the Alaska Statehood Act. A list of land to be conveyed is to be presented to the legislature within 30 days of the beginning of each regular session, with each list to contain at least 25,000 acres. The bill also provides that the University of Alaska shall bear all costs of selection, platting, surveying and conveyance. This fiscal note assumes that the minimum 25,000 acreage will be platted and surveyed each year, at an estimated cost of \$1,500.0. All costs will be paid from the university land grant trust fund as provided for in AS 14.40.400; related expenditures will also be reflected in the university's annual operating budget as university receipts.

Prepared by Marylou Burton, Director Phone 474-6490  
 Division UA Statewide Budget Office Date 5/5/98  
 Approved by Ct. Marylou Burton, Director *Marylou Burton* Date 5/5/98  
 Agency UA Statewide Budget Office

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no/obj Adopted

0-LS1664K.3  
Cook  
5/9/98

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSSB 340(FIN)

BY REPRESENTATIVE KELLY

- 1 Page 4, lines 25 - 29:
- 2 Delete all material.
- 3 Insert "submitted. Land may not be included in the list if, on the date of its selection
- 4 by the university, it
- 5 (1) has been reserved by law from the public domain;
- 6 (2) is land"
  
- 7 Page 5, lines 3 - 10:
- 8 Delete all material and insert:
- 9 "(3) is subject to
- 10 (A) an oil, gas, or coal lease, or coal prospecting lease; or
- 11 (B) a mining claim, a prospecting site, or an upland mining
- 12 lease;"
  
- 13 Renumber the following paragraphs accordingly.
  
- 14 Page 5, line 11:
- 15 Delete "not"
  
- 16 Page 5, line 13:
- 17 Delete "not"
  
- 18 Page 9, line 15:
- 19 Delete "December 31, 2012"
- 20 Insert "December 31, 2020"

0-1.S1664\K.3

1 Page 10, line 16:

2 Delete all material.

3 Insert "of university land or an interest in university land;"

4 Page 10, lines 17 - 18:

5 Delete all material and insert:

6 "(2) before the issuance of a notice of an intent to award a contract  
7 relating to a sale, lease, or disposal of university land or an interest in university land,  
8 the names"

9 Page 10, lines 21 - 22:

10 Delete all material.

11 Insert "appraisal, gross receipts, net receipts, or other financial information relating  
12 to university land or an interest in university land and considered for"

13 Page 10, lines 26 - 29:

14 Delete all material.

15 Insert "operations relating to management of university land;  
16 (5) applications for rights-of-way or easements across university land;  
17 and"

18 Page 10, line 31:

19 Delete all material.

20 Insert "for university land that is being considered for"

21 Page 11, line 5:

22 Delete "identified in AS 14.40.365(a)(4)"

0-LS1664\K.4

1 subsection does not apply if the match is not made available by a municipality."

2 Page 11, line 21, through page 12, line 5:

3 Delete all material.

4 Insert new material to read:

5 **"Sec. 14.40.375. Tort immunity for personal injuries, death, or property**  
6 **damage occurring on university land.** (a) Notwithstanding AS 09.65.200 and  
7 except as provided in (b) of this section, the University of Alaska is not liable in tort,  
8 except for an affirmative act that constitutes gross negligence or reckless or intentional  
9 misconduct, for damages for the injury to or death of a person, or for property  
10 damage to the property of a person, who enters onto or remains on land owned by the  
11 University of Alaska.

12 (b) The provisions of (a) of this section do not apply to damages for injury  
13 to or death of a person, or for property damage to the property of a person, that  
14 occurs on land of the University of Alaska that, after receipt of title to the land by the  
15 University of Alaska, has been improved and is actively maintained by the University  
16 of Alaska."

2 no lobby amended P.02  
0-1.S1664/K.4  
Cook  
5/9/98

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSSB 340(FIN)

BY REPRESENTATIVE KELLY

1 Page 4, line 21, following "less.":  
2       Insert "A list may identify land in excess of the amount of acreage set out in this  
3 subsection, but the amount of land identified on the list may not exceed by more than 25  
4 percent in total acreage the amount of acreage to which, on the date of submission of the list  
5 to the legislature, the university has not received title under this section. If, on a list  
6 presented to the legislature under this subsection, the amount of land to be conveyed exceeds  
7 the balance due the university under this section, the university shall set out the land to be  
8 conveyed in priority order, ~~and, thereafter, when the university receives conveyance of title~~  
9 ~~to land, the commissioner shall reduce the excess acreage by striking from the list the land~~  
10 ~~that has the lowest priority and shall continue to strike acreage from the list until the list of~~  
11 ~~land to be conveyed does not exceed by more than 25 percent in total acreage the amount of~~  
12 ~~acreage to which the university has not received title under this section."~~

13 Page 6, line 4, following "land":  
14       Delete "selected by"  
15       Insert "submitted to the legislature on a list under AS 14.40.365(a)"

16 Page 10, lines 6 - 10:  
17       Delete all material.  
18       Insert "amount up to 20 percent of the earnings derived from the management of  
19 university land conveyed to the university under AS 14.40.365 for programs and services  
20 supporting the development of natural resources within the region from which the earnings  
21 were derived. The earnings shall be used by the campus or campuses located within the  
22 region from which the earnings were derived if a municipality within which the campus or  
23 campuses are located provides to the campus or campuses a match of the same amount. This

0-LS1664\K.2  
Cook  
5/8/98

3

w/d

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 340(FIN)

1 Page 4, line 31:

2 Delete "or"

3 Page 5, line 2, following "38.05.150;":

4 Insert "or"

5 Page 5, following line 2:

6 Insert a new subparagraph to read:

7 "(C) that is the subject of a permit application for a  
8 telecommunications cable or transmission line that has been filed with the state  
9 and is pending;"

AMENDMENT

#4

no/obj  
adopt

DAVIES

TO: CSSB 340 ( FIN) - University of Alaska Land Grant

Page 4, line 16

After, "(P.L. 85-508, 72, Stat. 339)."

Insert:

If there is a disagreement between the university and the Department of Natural Resources about the land to be placed on the list, the disagreement must be submitted to the governor, who shall make the final decision.

Page 4, line 17

Delete [commissioner of natural resources]

Insert, governor

#5

failed

AMENDMENT

Grussendorf

OFFERED IN THE HOUSE

TO: CSSB 340(FIN)

1 Page 1, line 2, following "land":

2 Insert "; and providing for an effective date"

3 Page 13, following line 24:

4 Insert new bill sections to read:

5 "\* Sec. 9. This Act takes effect only if a federal law is enacted during ~~1998~~ that makes  
6 at least 250,000 acres of federal land available for conveyance to the University of Alaska  
7 or to the state for the benefit of the University of Alaska.

8 \* Sec. 10. If this Act takes effect, it takes effect on January 1, 1999."

AMENDMENT

6

Failed  
By REP DAVIS

SB 340 (FIN)

Delete lines 5-14 on page 7 and replace with:

(1) Includes land for which, at the time of its selection under this section the commissioner reasonably believes the land may be selected by a municipality under AS 29.65, but the commissioner may not withhold the conveyance of title to land selected by the university longer than five years after the date of the municipality's incorporation; or

(2) includes land selected by the University within the boundaries of an organized municipality under AS 29.65 unless:  
(A) the municipality has received its entire entitlement, or  
(B) the municipality, by resolution of its governing body, has authorized such selections by the university.

renumber existing sections 2 and 3 to 3 and 4.

A M E N D M E N T

2

w/d

OFFERED IN THE HOUSE

BY DAVIES

TO: SB 340 (FIN)

Page 13, following line 24:

Insert new bill section to read:

“\*Sec. 9. This Act takes effect only if a federal law is enacted that makes at least 250,000 acres of federal land available for conveyance to the University of Alaska or to the state for the benefit of the University of Alaska and the university or state has selected 250,000 acres of the land to be conveyed.”

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Druc Pearce, Vice Chair  
Sen. Mike Miller  
Sen. Sean Parnell  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: (907) 465-3922

## Senate Judiciary Committee

### SPONSOR STATEMENT

#### SENATE BILL 340

**“Relating to the University of Alaska and university land, and authorizing the University to select additional state land.”**

The provisions of SB 340 allow the University of Alaska to select 250,000 acres of state land subject to approval by the Legislature. Land approved for transfer would include interests in minerals and to oil and gas subject to certain limitations. Also lands subject to a coal lease or where a lease application is pending are not available for selection. The University would bear the costs of selection, platting, surveying and conveyance. All land selections must be made by December 31, 2012. Twenty percent (20%) of income derived from selected lands must be used at the campus closest to the income generating parcel(s). All lands conveyed under this program are exempted from municipal taxation. SB 340 is compatible with Senator Murkowski's S.660 the legislation, pending in Congress, that will convey additional public lands to the University of Alaska.

The University of Alaska system was created under federal authority as a land grant institution to provide for the higher education requirements of Alaska's people in perpetuity. Most colleges established under the land grant program were endowed with sizable land bases from which to generate income to be used for operating purposes. Unlike most institutions in the lower 48 states, the University of Alaska does not have the relatively larger population base and proximity to other support services that are so beneficial. The University of Alaska also suffers from a smaller pool of alumni and other normal sources of endowment income which many institutions rely on to help support operations, especially subsidies for teaching positions.

In the past decade several legislators have introduced legislation allowing the University of Alaska to select additional lands from the State. The purpose of all legislative attempts to provide more land for the University statewide system has been to provide more income producing assets where monetary resources are becoming scarcer and unpredictable. This bill continues the effort to give the University of Alaska a larger more productive land base. The bill also provides clear expectations that land conveyed is to be used for the development of value added industries where appropriate.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

May 8, 1998

**SUBJECT:** Sectional summary (CSSB 340(FIN))

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee  
Attn: Ralph Bennett

**FROM:** Tamara Brandt Cook  
Director *TBC*

**Sec. 1.** Findings and purpose, including that the University of Alaska should own income producing land to provide income for the support of public higher education.

**Sec. 2.** Legislative intent that the University encourage the development of in-state value-added industries when developing the land conveyed to it.

**Sec. 3.** Technical amendment to add the land conveyed under this bill to the provision granting the Board of Regents the care, control, and management of other University land.

**Sec. 4.** Technical amendment to account for the land conveyed under this bill.

**Sec. 5.** Adds new section dealing with new land selections.

Sec. 14.40.365. Allows the University to select 50,000 acres of state land. A list of land proposed to be conveyed by the state shall be periodically submitted to the legislature and the legislature may approve or disapprove the list. Sets out requirements for the land that may be selected. The transfer of ownership of the land to the University includes the interest of the state in minerals and to oil and gas, but only as to land that is selected at least 5 years after the effective date of the bill. Describes the power of the state to manage the land selected but not yet conveyed. Lists types of land that may not be conveyed, including land the conveyance of which is determined by the Commissioner of Natural Resources not to be in the best interest of the state. The University bears costs of selection, platting, surveying, and conveying the land, except the state pays the cost of recording patents and documents of interim conveyance. The University must make all selections by December 31, 2012. Land reverts to the state if on the 10th anniversary of the conveyance the commissioner finds that the University is not actively managing the land to provide income.

Sec. 14.40.366. The Board of Regents must establish procedures for mineral leasing on the conveyed land that are substantially similar to state procedures. The board must

prepare an annual plan for the management of the land and seek public comment on the plan. At least 20 percent of the income derived from the management of selected land must be used at the campus that is closest to the land from which the income was derived.

Sec. 14.40.368. For land conveyed that is subject to certain types of agreements (leases, claims, permits, etc.), the state is entitled to receive the income, and the management of the land is turned over to the University only after the term of the agreement expires.

Sec. 14.40.369. Before conveying or disposing of an interest in selected land the University is required to manage the land in a manner that permits customary and traditional uses of resources to the maximum extent practicable.

Sec. 14.40.367. Permits the president of the university, on a determination that it is in the best interest of the university or on request of a person who provided the information, to keep confidential certain types of information relating to land conveyed to the university under AS 14.40.365.

Sec. 6. Except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, grants the university tort immunity for the injury or death of a person who enters the unimproved portion of land owned by the university if the injury or death resulted from a natural condition of the land or the person entered the land for recreation, and if the person had no responsibility to provide compensation for the use of the land.

Sec. 7. Includes income derived from the management of selected land in the endowment trust fund.

Sec. 8. Exempts from municipal taxation property of the University.

TBC:glc  
98-274.glc



## Legislative Resources

Mr. President, in my State of Alaska the University of Alaska is the oldest post-secondary school. The university was chartered prior to statehood and has played a vital role in educating Alaskans as well as students from around the world. The expertise of the university has been in many areas, mining, agriculture, arctic and subarctic sciences.

Additionally, the university has served as an important cornerstone in the history of our State. For example, the university housed the Alaska Constitutional Convention where the fathers of our statehood act carved out the rights and privileges guaranteed to Alaskan citizens. Further, Mr. President, the university is proud of the fact that it began life as the Alaska Agricultural and Mining College. However, Mr. President, what makes the University of Alaska unique is the fact that it is the only land-grant college in the Nation that is virtually landless today.

As some of my colleagues know, one of the oldest and most respected ways of financing America's educational system has been from the land-grant system. This was established in 1785 and the practice gives land to schools and universities for their use in supporting their educational endeavors. In 1862, Congress passed what was then known as the Morrill Act, which created the land-grant colleges and universities as a way to underwrite the cost of higher education to more and more of America's young people. These colleges and universities received land from the Federal Government for facility location, and more importantly as a way to provide for sustaining revenues to those educational institutions.

Mr. President, the University of Alaska received the smallest amount of land of any State, with the exception of Delaware that has a land-grant college. Delaware received about 90,000 acres. Even the land-grant college in Rhode Island received more land from the Federal Government than has the University of Alaska. Rhode Island received 120,000 acres.

In a State the size of Alaska, about 365 million acres, we should logically have one of the best and most fully funded land-grant colleges in the country.

<http://www.senate.gov/~murkowski/legres/Statements/S660Statement.html>

SUPPORTING  
DOCUMENTS

Yet, to date, the University of Alaska only has about 111,000 acres. Unfortunately, without the land promised to Alaska under the land-grant allocation system in earlier legislation, the university is unable to share as one of the premier land-grant colleges in this country.

Previous efforts were made in Congress to fix this problem. These efforts date back to 1915, less than 50 years after the passage of the Morrill Act, when Alaska's delegate to Congress, Delegate James Wickersham shepherded a measure through Congress that set aside potentially more than a quarter of a million acres in the Tanana Valley outside Fairbanks for the support of an agriculture college and school of mines.

Following the practice established in the lower 48 States for the other land-grant colleges, Wickersham's bill set aside every section 33 of the unsurveyed Tanana Valley for the Alaska Agriculture College and Schools of Mines.

Alaska's educational future at that time looked favorable. Many Alaskans saw the opportunity to set up an endowment system similar to that set up by the University of Washington in the downtown center of Seattle, WA, where valuable university lands are leased providing funding for the university's maintenance and upkeep as well as some capital projects.

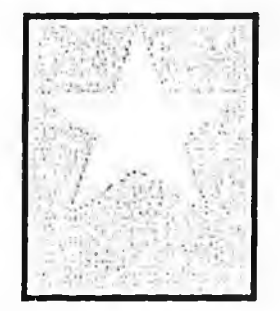
However, in Alaska's case, before the land could be transferred to the Alaska Agricultural College and School of Mines, renamed the University of Alaska in 1935, the land had to be surveyed in order to establish the exact acreage included in the reserve lands.

The section reserved for education could not be transferred to the college until they had been delineated. According to records at the time, it was unlikely given the incredibly slow speed of surveying that the land could be completely surveyed before the end of the current century. Surveying is still an extraordinarily slow process in Alaska's remote and unpopulated terrain.

In all, only 19 section 33's, or approximately 11,211 acres, were ever transferred to the University of Alaska. Of this, 2,250 acres were used for the original campus, and the remainder was left to the discretion of the board of regents to support educational programs and facilities.

Recognizing the difficulties of surveying in Alaska, subsequent legislation was passed in 1929 that simply granted land for the benefit of the university. This grant totaled approximately 100,000 acres, and to this day comprises the bulk of the university's total 111,211 acres of land--less than one-third of what was originally promised. In 1958, the Alaska Statehood Act was passed which extinguished the unfulfilled land grants. The university was thus left with little land with which to support itself and is thus unable to completely fulfill its mission as a land-grant college.

Mr. President, the legislation I am introducing today would redeem the promises made to the university in 1915 and put the university on an even footing with other land-grant colleges in the United States. It provides the university with the land needed to support itself financially and it offers the chance to grow and continue to act as a responsible steward of the land and educator of young Alaskans. It also provides a concrete timetable under which the university must select its land and the Secretary of Interior must act upon those selections.



This legislation also contains significant restrictions on the land that the university can select. The university cannot select land located within a conservation system unit, land validly conveyed to the State or an ANCSA corporation or land used in connection with Federal or military institutions.

Accordingly, Mr. President, under my bill, the university must relinquish extremely valuable inholdings in Alaska once it receives its second-tier State/Federal grant under section 6, of this bill. Therefore, the result of this legislation will mean, specifically, relinquishment of prime university inholdings in such magnificent areas as the Alaska Peninsula and Maritime National Wildlife Refuge, the Kenai Fjords National Park, Wrangell St. Elias National Park and Preserve and Denali Park and Preserve. Mr. President, not only does this bill uphold a decades-old promise to the University of Alaska, it further protects Alaska's unique parks and refuges.

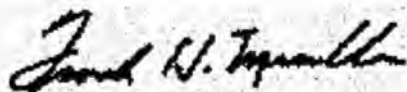
Recognize, Mr. President, my bill requires the State to participate in the process, as well, under an option. Specifically, the bill would grant the university 250,000 acres of Federal land. The university would be eligible to receive another 250,000 acres of Federal land on a matching basis with the State, for a total of 500,000 additional acres. This would be at the option of the legislature, the Governor, and the university's board of regents

Mr. President, the State matching provision is an important component of this legislation. Most agree with the premise that the university was shorted land. However, some believe it is the sole responsibility of the Federal Government to compensate the university with land, while others believe it is solely the responsibility of the State to grant the university land. The legislation I am introducing today offers a compromise, a compromise giving both the State and the Federal Government the opportunity to contribute, as well as provide the Government with valuable inholdings in Federal parks and preserves.

With the passage of this bill, Mr. President, the University of Alaska will finally be able to act fully as a land grant college, and will be able to select lands that can provide the university with stable revenue sources, as well as provide responsible stewardship for the lands.

This is an exciting time for the University of Alaska. The promises that were made 82 years ago could be fulfilled with this legislation, and Alaskans could look forward to a very bright future for the university and the many Alaskans who receive an education there.

I ask unanimous consent, at this time, to have printed in the Record the proposed inholdings that the University has which would be deeded over to the Federal Government under this legislation, a history of the university of Alaska's land grant from the time we were designated as a territory, land grant rankings of all the States, as well as a copy of the bill.



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## S.660

To provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes. (Introduced in the Senate)

---

### SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress finds that--

- (1) the University of Alaska is the successor to and the beneficiary of all Federal grants and conveyances to or for the Alaska Agricultural College and School of Mines;
- (2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45 Stat. 1091, the United States granted to the Territory of Alaska certain federal land for the University of Alaska;
- (3) the Territory was unable to receive most of the land intended to be conveyed by the Act of March 4, 1915, before repeal of that Act by Sec. 6(k) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339);
- (4) only one other state land grant college in the United States has obtained a smaller land grant from the federal government than the University of Alaska has received, and all land grant colleges in the western states of the United States have obtained substantially larger land grants than the University of Alaska;
- (5) an academically strong and financially secure state university system is a cornerstone to the long-term development of a stable population and to a healthy, diverse economy and is in the national interest;
- (6) the national interest is served by transferring certain federal lands to the University of Alaska which will be able to use and develop the resources of such lands and by returning certain lands held by the University of Alaska located within certain federal conservation system units to federal ownership; and

(7) the University of Alaska holds valid legal title to and is responsible for management of lands transferred by the United States to the Territory and State of Alaska for the University and that an exchange of lands is consistent with and in furtherance of the purposes and terms of, and thus not in violation of, the Federal grant of such lands.

(b) PURPOSES- The purposes of this act are--

(1) to fulfill the original commitment of Congress to establish the University of Alaska as a land grant university with holdings sufficient to facilitate operation and maintenance of a university system for the inhabitants of the State of Alaska; and

(2) to acquire from the University of Alaska lands it holds within federal Parks, Wildlife Refuges, and Wilderness areas.

**SEC. 2. PRIMARY FEDERAL GRANT.**

(a) Notwithstanding any other provision of law, but subject to valid existing rights and the procedures set forth herein, the University is granted and entitled to take up to 250,000 acres of federal lands (or reserved interests in lands) in or adjacent to Alaska as a federal grant. The University may identify and select the specific lands it intends to take pursuant to this grant, and the Secretary of the Interior ('Secretary') shall promptly convey to the University the lands selected, in accordance with the provisions of this Act.

(b)(1) Within 48 months of enactment of this Act, the University of Alaska may submit to the Secretary a list of properties the University has tentatively selected to receive under the conditions of this grant. Such list may be submitted in whole or in part during this period and the University may make interim tentative selections that it may relinquish or change within the 48 month period. The University may submit tentative selections that exceed the amount of the grant except that such selections shall not exceed 275,000 acres at any one time.

(2) All selections shall be in reasonably compact units: *Provided*, That the University may select small tracts of federal land within federal reservations consistent with the limitations in subsection (c) below.

(3) The University may submit tentative selections of federal lands validly selected but not conveyed to the State of Alaska or the corporations organized pursuant to the Alaska Native Claims Settlement Act: *Provided*, That such lands may not be approved or conveyed to the University unless the State of Alaska and or the corporation has relinquished its prior selection.

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## S.660

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(4) The University shall make no selections within Conservation System Units as defined in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101).

(5) Within forty-five (45) days of receipt of a University tentative selection, the Secretary shall publish notice of said selection in the

Federal Register. Such notice shall identify lands included in the tentative selection and provide for a period for public comment on the tentative selection not to exceed sixty (60) days.

(6) Within six months of the receipt of a University tentative selection, the Secretary shall notify the University of his acceptance or objection to each tentative selection, including the reasons for any objection. Failure to object within six months shall constitute approval by the Secretary. Any public comments submitted in response to a public notice issued pursuant to paragraph (5) above may be considered by the Secretary: *Provided*, That the Secretary may object to tentative selections of the University if and only if he demonstrates that a conveyance of such to the University--

(A) will have a significant adverse impact on the purposes for which a Conservation System Unit was established; or

(B) will have a significant adverse impact on fulfillment of the Alaska Statehood Act or the Alaska Native Claims Settlement Act. (43 U.S.C. 1601)

(7) The Secretary's acceptance of, or objection to, any tentative selections submitted by the University of Alaska pursuant to Section 2 of this Act or the conveyance of any such selections by tentative approval, patent or other instrument are not major federal actions within the means of section 102(2)(c) of P.L. 91-190.

(8) The Secretary shall publish notice of any decision to accept or object to a tentative selection in the Federal Register.

(c) The Secretary shall not approve or convey, under this grant,

(1) any federal lands which, at the time of enactment of this Act, are included in a Conservation System Unit;

(2) any federal lands validly selected or top filed pursuant to Sec. 906(e) of Public Law 96-487 but not conveyed to the State of Alaska or the corporations pursuant to the Alaska Native Claims Settlement Act; or

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## S.660

**To provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes. (Introduced in the Senate)**

---

### **SEC. 3. RELINQUISHMENT OF CERTAIN UNIVERSITY OF ALASKA HOLDINGS.**

(a) As a condition to receiving the land grant provided by Section 6 of this Act, the University of Alaska shall convey to the Secretary those lands listed in 'The University of Alaska's Inholding Reconveyance Document' and dated April 24, 1997.

(b) The University shall begin conveyance of the lands listed in (a) above upon taking title to lands it has selected pursuant to section 6 of this Act and shall convey to the Secretary a percentage amount of land proportional to that which it has received, but in no event shall it be required to convey any lands other than those listed in (a) above to the Secretary. The Secretary shall accept quitclaim deeds from the University for these lands.

### **SEC. 4. ALIENATION OF LANDS**

Notwithstanding any other provision of law, the University of Alaska may transfer, assign, exchange, grant, deed, lease or otherwise convey any or all present future interests in the lands granted pursuant to this Act.

### **SEC. 5. JUDICIAL REVIEW.**

The University of Alaska has the right to bring action for, including but not limited to, relief in the nature of mandamus, against the Secretary for violation of this Act or for review of an agency decision under this Act. Such an action can only be brought in the United States District Court for the District of Alaska and within two (2) years of the alleged violation or the final decision-making. For all other entities or persons, decisions of the Secretary shall be final and conclusive.

## SEC. 6. STATE MATCHING GRANT.

(a) Notwithstanding any other provision of law, but subject to valid existing rights and the procedures set forth in this Act, the University is granted and shall be entitled to take, in addition to the primary grant provided for in Section 2 herein, up to another 250,000 acres in federal lands (or reserved interests in lands) in or adjacent to Alaska: *Provided*, That any additional acres are granted, as specified below, on a matching acre-for-acre basis to the extent that the State of Alaska shall first grant to the University State-owned land in Alaska.

(b) The university may select and the Secretary shall convey lands which the University is entitled to receive pursuant to this State Matching Grant Provisions in minimum increments of 25,000 acres up to the maximum of 250,000 acres.

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**SB**

**340**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/30/98

FURTHER: 5/5/98

DATE TURNED  
IN TO OFFICE: 6 May 98

Finance Committee considered

SENATE BILL NO. 340

"An Act relating to the University of Alaska and university land, and authorizing the University of Alaska to select additional state land."

and recommends:

be replaced with \_\_\_\_\_ CS SB 340 ( FIN )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Ken Farnell</i>	X	<i>Roll &amp; Sibley</i>	✓		
<i>John Sorenson</i>	✓	<i>Al Adams</i>		X	
Co-Chair:		Co-Chair: <i>Deaice</i>	✓		
Co-Chair:		Co-Chair: <i>Bob King</i>	✓		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
Univ.	5/5/98		1,500.0
DNR	5/1/98		779.7

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

REPORTED OUT OF  
5/7/98  
BILL NO. CSSB340 (FIN)

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected University of Alaska  
 Title An Act relating to the University of Alaska and BFU University of Alaska  
university land, and authorizing selection of additional land. Component Statewide Services  
 Sponsor Senate Judiciary  
 Requester Senate Finance Component Serial No. 730

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
<b>TOTAL OPERATING</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1048 University Receipts	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
<b>TOTAL</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>1,500.0</b>

Estimate of any current year (FY98) cost: none

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill provides for the selection and conveyance to the University of Alaska of 250,000 acres of land conveyed to the state under the Alaska Statehood Act. A list of land to be conveyed is to be presented to the legislature within 30 days of the beginning of each regular session, with each list to contain at least 25,000 acres. The bill also provides that the University of Alaska shall bear all costs of selection, platting, surveying and conveyance. This fiscal note assumes that the minimum 25,000 acreage will be platted and surveyed each year, at an estimated cost of \$1,500.0. All costs will be paid from the university land grant trust fund as provided for in AS 14.40.400; related expenditures will also be reflected in the university's annual operating budget as university receipts.

Prepared by Marylou Burton, Director Phone 474-6490  
 Division UA Statewide Budget Office Date 5/5/98  
 Approved by C: Marylou Burton, Director *Marylou Burton* Date 5/5/98  
 Agency UA Statewide Budget Office

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**SB**

**345**

**SFIN**

**FILE**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Apportionment of Business Income BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: (S) L&C  
 Requestor: (S) FIN COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 (Loss)	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL						

Estimate of any current year cost \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Brett Fried, Economist  
 Division: Income and Excise Audit  
 Approved by Commissioner: Wilson L. Condon  
 Agency: Revenue

Phone: 465-3682  
 Date: April 6, 1998  
 Date: April 6, 1998

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SB 345  
Apportionment of Business Income  
Fiscal Note Analysis  
April 6, 1998  
Page 2

**SB 345 – Apportionment of Business Income**

SB 345 would amend Alaska's Corporate Income Tax to specifically incorporate Section 883 of the Internal Revenue Code. Alaska would exempt from tax the income of foreign owned aircraft and ships, under the legislation.

**Overview of Section 883**

The Alaska Supreme Court, on February 20, 1998, decided a case that determined that the federal corporate income tax exemption that applies to income from foreign owned ships and aircraft does not apply in Alaska. The federal provision is Section 883 of the Internal Revenue Code. The court held that, while Alaska incorporates much of the code into the Alaska Corporate Income Tax (AS 43.20), Section 883 was "excepted to or modified by" Alaska's choice of the apportionment method of determining taxable income in Alaska. The decision makes it clear that these entities are subject to tax in Alaska.

**Revenue Effect**

The state will collect less revenue by changing the statutes to exempt income from foreign owned ships and aircraft from Alaska income tax. We have had little time and we have very limited information available to develop projections of potential corporate tax revenue from the recent court decision on the taxation of foreign shipping corporations. Consequently, we have developed a range based on estimates of Alaska corporate income tax revenue from foreign cruise ship corporations, foreign air cargo corporations and foreign corporations shipping fish. We do not have financial information available to review the other segments of the shipping industry (mining and timber). To develop this range we used publicly available financial statements, information from taxpayer returns, and other industry specific data available from State agencies and other sources.

Based on the above paragraph our estimate of the range of potential annual revenue lost due to the passage of this bill is \$3.0 million to \$8.5 million.

moved Adams  
objection Sharp  
FAILED 1-5  
(Adams)

AMENDMENT

BY ADAMS

SB 345

ON PAGE 1, DELTE LINE 10.

SENATE FINANCE  
COMMITTEE

Amendment Number: 1

Bill Number: SB 345

Sponsor: Adams Date: 4/27/96

Logged In By: Kellam

AMENDMENT

BY ADAMS

SB 345

ON PAGE 1, DELTE LINE 10.

SENATE FINANCE  
COMMITTEE

Amendment Number: 1

Bill Number: SB 345

Sponsor: Adams Date: 4/27/90

Logged In By: Kellie

SENATE FINANCE  
COMMITTEE

Amendment Number: 2 0-LS1674A.1  
Bill Number: SB 345 Cook/Glover  
Sponsor: Adams Date: 4/07/98 4/6/98  
Logged In By: Koltani

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 345

*Sen Adams moved  
Sen Livingston objection  
FAILED 1-5  
(Adams)*

- 1 Page 1, line 1, following "income":
- 2       Insert "; and providing for an effective date"
  
- 3 Page 1, line 10:
- 4       Delete all material and insert:
- 5       \*\* Sec. 2. AS 43.20.021(a) is amended to read:
- 6               (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as
- 7       amended, are adopted by reference as a part of this chapter. These portions of the
- 8       Internal Revenue Code have full force and effect under this chapter unless excepted
- 9       to or modified by other provisions of this chapter. [HOWEVER, NOTHING IN THIS
- 10       CHAPTER OR IN AS 43.19 (MULTISTATE TAX COMPACT) MAY BE
- 11       CONSTRUED AS AN EXCEPTION TO OR MODIFICATION OF 26 U.S.C. 883.]
- 12       \* Sec. 3. Section 1 of this Act is retroactive to January 1, 1993.
- 13       \* Sec. 4. Section 2 of this Act takes effect January 1, 2001."

SENATE FINANCE  
COMMITTEE

Amendment Number: 2  
Bill Number: SB 345  
Sponsor: Adams Date: 4/2/98  
Logged In By: [Signature]

0-LS1674A.1  
Cook/Glover  
4/6/98

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 345

- 1 Page 1, line 1, following "income":
- 2       Insert "; and providing for an effective date"
  
- 3 Page 1, line 10:
- 4       Delete all material and insert:
- 5       \*\* Sec. 2. AS 43.20.021(a) is amended to read:
- 6               (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as
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- 10       CHAPTER OR IN AS 43.19 (MULTISTATE TAX COMPACT) MAY BE
- 11       CONSTRUED AS AN EXCEPTION TO OR MODIFICATION OF 26 U.S.C. 883.]
- 12       \* Sec. 3. Section 1 of this Act is retroactive to January 1, 1993.
- 13       \* Sec. 4. Section 2 of this Act takes effect January 1, 2001."



# Alaska Steamship Association

234 Gold Street • Juneau, Alaska 99801  
(907) 586-3107 • Fax (907) 586-1001

April 7, 1998

Senator Bert sharp  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801 - 1182

Re: SB - 345

Dear Senator Sharp:

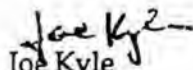
The Alaska Steamship Association (ASA) is very concerned that the Alaska Department of Revenue may, as a result of a recent decision by the Alaska Supreme Court, implement a new corporation business tax on the former, current, and future earnings of foreign, international air and sea carriers operating in the State of Alaska.

Our membership represents a broad base of marine transportation companies operating in Alaska, and their agents; who move timber, mining products, fishery products, petroleum products, and cruise ship passengers — among other products — between Alaska and overseas ports. The membership consist of the Alaska Maritime Agency, American President Lines, ANP Shipping, Marathon Oil Company, the North West Cruiseship Association, North Star Stevedoring and Terminals, Southeast Stevedoring, and Tesoro.

This new business tax, if imposed by the Department of Revenue, will adversely affect our member companies, and the companies who rely on our services for import and export products and tourists. Recently, the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move SB - 345 so that the Department of Revenue will be preempted from imposing this onerous, new tax.

Sincerely,

  
Joe Kyle  
Executive Director

## A.N.P. SHIPPING COMPANY

P.O. BOX 10-1300  
ANCHORAGE, ALASKA 99501  
(907)272-6145 FAX: (907)276-0033

April 4, 1998

Senator Bert Sharp  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Sharp,

We are writing this letter to express our concern regarding the possibility of the Alaska Department of Revenue implementing a new corporation business tax on foreign, international air and sea carriers that operate in the State of Alaska, and to express our support of HB 472.

We operate a vessel agency that represents foreign flagged cargo vessels that operate in Alaskan waters loading coal, forestry products and frozen fish products from Alaskan ports and U.S. Fishing vessels and transporting these products to Asian and Pacific Rim Ports. Many of our clients' Alaskan customers depend on water borne transport exclusively to transport their products to International markets and to receive needed supplies from Japan and Korea.

Any new tax imposed on our clients by the State of Alaska would likely be passed directly on to their Alaskan customers in the form of shipping rate increases and, given the current depressed markets for all Alaskan exports in the Pacific Rim, this increase in shipping rates could very well mean lost sales in the Pacific Rim for many Alaskan Companies. Aside from the potential for Alaskan products being priced out of some Pacific Rim markets, our clients believe any new tax on shipping will only invite retaliatory taxes to be placed on domestic water borne carriers serving these same markets thus raising shipping rates to Alaskan Companies no matter what carrier they choose.

We understand that recently, the states of California, New York, and New Jersey have considered such a tax and then withdrawn these proposals due to the potential overall negative effects such a tax would have on both their own exporters and their State's economies. It is our understanding that Alaska would be the only state in the Union to impose such an onerous tax on international carriers.

In conclusion, we strongly urge that you and your colleagues in the House of Representatives move forward with HB 472 so that the Department of Revenue will be preempted from imposing a tax so potentially damaging to the competitiveness of Alaskan produced products.

Yours very truly,  
A.N.P. Shipping Co.

  
Stuart Lancy




---

**TRIDENT SEAFOODS CORPORATION**


---

5303 Shilshole Ave NW, Seattle, WA 98107-4006 • (206) 783-3818 • Fax: (206) 782-7195  
 Domestic Sales: (206) 783-3474 • Fax: (206) 782-7248  
 Export Sales: (206) 783-3818 • Fax: (206) 782-7195

April 7, 1998

The Honorable Bert Sharp, Chairman  
 Senate Finance Committee  
 Alaska Senate  
 State Capitol  
 Juneau, Alaska 99801-1182

Dear Senator Sharp:

On behalf of Trident Seafoods Corporation I want to make you that the Alaska Department of Revenue is poised, as a result of a recent decision by the Alaska Supreme Court, to implement a new corporation business tax on foreign, international air and sea carriers operating in the State of Alaska. We oppose the new tax and respectfully request the legislature pass HB 472, to stop the Department of Revenue from imposing this cost on the industry.

Like others in the seafood industry, Trident depends on international water borne carriers to move our seafood products overseas to international markets. Given the current economic conditions on the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us through the carriers we use. This tax will also invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim--whom we also use.

We understand that the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move forward with HB 472, so that the Department of Revenue will be preempted from imposing this onerous, new tax on an industry that 's in a very fragile state.

Sincerely,

Joseph T. Plesha  
 General Counsel

Alaska

The American Connection

Washington

Akutan • Anchorage • Clarke Point • Dillingham • Dutch Harbor • Ketchikan • Naknek • Sand Point • So. Naknek • St. Paul Anacortes • Bellingham • Seattle

TOTAL P. 01

# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-6599  
Phone 907-225-6114  
FAX 907-225-5920

April 2, 1998

The Honorable Bert Sharp  
The Honorable Drue Pearce  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

Dear Senators Sharp and Pearce:

The Alaska Forest Association strongly supports Senate Bill 345, "An Act relating to apportionment of business income." The Alaska forest industry depends heavily on foreign vessels for shipments of logs and wood products to its trading partners around the Pacific Rim. The recent Alaska Supreme Court ruling that the exemption in §883 of the Internal Revenue Code does not apply in Alaska will have a significant deleterious effect on those shipments.

Fortunately, the problem can be fixed with a simple change in state statute. Senate Bill 345, introduced by the Senate Labor and Commerce Committee, provides the necessary amendment, and I urge you to take speedy action to ensure passage of this bill. I cannot emphasize enough the importance of making the change this year, before a disruption in Alaska's trade occurs.

Please move SB 345 through the Finance Committee at the earliest opportunity, and support it on the Senate floor.

Thank you for your consistent support for Alaska's resource development industries, including forestry, and thank you in advance for your help on this specific occasion.

Sincerely,

Jack E. Phelps  
Executive Director

cc: Senator Donley  
Senator Parnell  
Senator Phillips  
Senator Torgerson  
Senator Adams  
Senator Leman  
Senator Miller  
Thyes Shaub

Shrp9804\_ltr.wpd, April 2, 1998

**International Air Transport Association**

IATA Centre, Route de l'Aéroport 33  
P. O. Box 416  
CH-1215 Geneva 15 Airport  
Switzerland

Facsimile No: +1 (907) 465-2070  
(2 Pages)

Senator Bert Sharp  
Co-Chair, Senate Finance Committee  
Alaska State Senate  
State Capitol, Room 516  
Juneau, Alaska 99801-1182  
United States of America

6 April 1998  
Ref: 045/98

**Re: Senate Bill No. 345**

Dear Senator Sharp,

On behalf of the International Air Transport Association (IATA), the trade association comprised of 256 member airlines from over 150 countries, I wish to express the strongest support for Senate Bill No. 345. SB 345 would ensure that the income of non-U.S. airlines serving Alaska would be exempt from the state's income tax in accordance with U.S. Internal Revenue Code Section 883.

IATA is deeply concerned with the potentially far-reaching ramifications of the recent Alaska Supreme Court decision in *Alaska v. OSG Bulk Ships, Inc.* Indeed, it is our understanding that on the basis of this decision, the Department of Revenue plans to levy Alaska corporate income tax on the income derived by non-U.S. airlines from the operation of their aircraft in international traffic.

It is widely known that U.S. IRC Section 883 exempts the income of non-U.S. airlines at the federal level on the basis of reciprocity. These reciprocal exemptions are generally embodied in numerous U.S. treaties for the avoidance of double taxation. IATA firmly believes that U.S. IRC Section 883 is intended, *inter alia*, to eliminate the risk of multiple taxation of the income derived by the aircraft of both U.S. and non-U.S. airlines in international traffic.

If the State of Alaska chooses not to adhere to the reciprocal tax exemption provisions of U.S. IRC Section 883, non-U.S. airlines will be exposed to double (and even multiple) taxation, as they are already subject to national (and often local) income taxes in their respective countries of domicile. Furthermore, one immediate consequence of this tax

Direct Dial: +41(22) 799 27 08 • Direct Fax: +41(22) 799 26 78 • TTY: GVAGBXB • E-mail: kellyt@iata.org

Telephone: +41(22) 799 25 25 • Fax: +41(22) 798 35 53 • TTY: GVAKEXB • Telex: 415586

- 2 -

treatment of non-U.S. airlines will be the exposure of U.S. airlines to the reciprocal imposition of similar taxes in the many foreign jurisdictions which they serve. Ultimately, the intricate worldwide network of reciprocal tax regimes will be seriously jeopardized.

IATA also believes that any imposition of an income tax on the international operations of the non-U.S. airlines serving Alaska would ignore the taxes and charges already paid by them for their local operations as well as the significant direct and indirect contributions they make to the economy of the state. We believe that SB 345 sends a strong signal to the international airline community that the State of Alaska encourages their business on the basis of long-established international tax practice.

Based upon the foregoing, IATA strongly urges you to take all necessary steps to ensure the passage of Senate Bill No. 345.

Yours sincerely,



Tony Kelly  
Director  
Industry Monetary Affairs

# CADWALADER

*Cadwalader, Wickersham & Taft*

1333 New Hampshire Ave., N.W.  
Washington, DC 20036  
Tel: 202 862-2200  
Fax: 202 862-2400

Kenneth Klein  
Direct Dial: 202-862-2482  
Internet: kklein@cwt.com

New York  
Washington  
Los Angeles  
Charlotte  
London

April 3, 1998

**BY FACSIMILE**

Mr. Joe Kyle  
Executive Director  
Alaska Steamship Association  
234 Gold Street  
Juneau, Alaska 99801

Re: Potential Retaliatory Impact on U.S. Carriers Abroad of State  
Taxation of Foreign Carriers

Dear Mr. Kyle:

You have asked me to describe the retaliatory impact abroad on U.S. shipping and air transport companies that could occur if a U.S. state or locality were to impose state or local income taxation on foreign shipping and air transport companies that are not subject to U.S. federal income taxation as a result of U.S. income tax treaties with foreign countries.

We are not aware of any U.S. state or locality that currently subjects to state or local taxation the income of foreign carriers that are eligible for the benefits of reciprocal shipping income agreements. Under such agreements, foreign countries exempt U.S. carriers from foreign tax if the United States reciprocally exempts foreign carriers from U.S. tax. U.S. income tax treaties or other agreements with over 70 countries provide such reciprocal exemptions. However, if state or local income taxes were to be imposed on foreign carriers by *even one* U.S. state or locality (as the State of Alaska currently is considering doing), retaliation by foreign jurisdictions would be permitted under U.S. income tax treaties, as discussed below.

For example, under the income tax treaties that the United States has entered into with Japan, Italy, and France, each country exempts from its national

Mr. Joe Kyle

-2-

April 3, 1998

income tax the income derived by a resident of the other jurisdiction from the operation of ships or aircraft in international traffic.<sup>1</sup> Moreover, through exchanges of diplomatic notes, these foreign nations also exempt the income of U.S. shipping and air transport companies from local taxes, such as the enterprise tax in Japan,<sup>2</sup> the "ILOR" in Italy,<sup>3</sup> or the "taxe professionnelle" in France,<sup>4</sup> provided that no state, county, or local government in the United States levies an income tax on shipping and air transport companies resident in such countries. So, for example, if no U.S. state or locality taxes the income of a Japanese shipping and air transport company, a U.S. shipping and air transport company that moves cargo between the United States and Japan would pay only U.S. federal, state, and local income taxes because it would be exempt from Japanese national and local income taxes. Similarly, a Japanese shipping or air transport company moving cargo between Japan and the United States would be exempt from U.S. federal, state and local income taxes and would only pay Japanese national and local income taxes. Although Congress has not enacted a statute or entered into a treaty that would require the states to exempt non-U.S. shipping and air transport companies from state and local income taxes, the U.S. Departments of State and Treasury have actively enlisted the cooperation of the U.S. states and localities in advancing this policy. For example, in recent years both the States of New York and New Jersey contemplated taxing foreign carriers. State and Treasury Department officials had discussions with tax officials from those states, encouraging them not to tax foreign carriers because of the retaliatory impact such taxation could have on U.S. carriers abroad. Both New York and New Jersey decided not to impose their taxes on foreign carriers.

If any U.S. state or locality (e.g., Alaska) were to tax the income of shipping and air transport companies residing in, Japan, Italy, or France, the equivalents of states or localities in those countries could then impose their taxes on U.S. shipping and air transport companies. To illustrate, in the 1971 exchange of diplomatic notes, the Japanese government stated that if a U.S. locality were to levy an income tax on Japanese shipping and air transport companies, the Japanese government would "take necessary measures" to let local Japanese authorities levy the Japanese enterprise tax on all U.S. shipping and air transport companies. Therefore, regardless of whether it is a resident of the state or locality that initially imposed the income tax on Japanese shipping and air transport companies, a U.S. shipping or air transport company that moves cargo or passengers between the

---

<sup>1</sup> Income Tax Convention, March 8, 1971, U.S.-Japan, Article 10. Income Tax Convention, April 17, 1984, U.S.-Italy, Article 8(1). Income and Capital Tax Convention, August 31, 1994, U.S.-France Article 8(1).

<sup>2</sup> Exchange of Notes, March 8, 1971, U.S.-Japan.

<sup>3</sup> Exchange of Notes, April 17, 1984, U.S.-Italy.

<sup>4</sup> Exchange of Notes, August 31, 1994, U.S.-France.

Mr. Joe Kyle

-3-

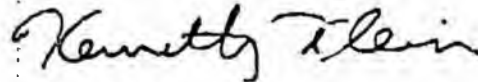
April 3, 1998

United States and Japan could become required to pay local Japanese income taxes in addition to its U.S. income taxes, although the company would still be exempt from the Japanese national income tax. The corresponding Japanese shipping and air transport company would similarly pay U.S. state and local income taxes in addition to its Japanese income taxes. Similar provisions are included in the exchanges of diplomatic notes with Italy and France.

While Japan, Italy, and France have formal agreements with the United States in this regard, we understand that informal agreements of a similar nature exist with many other of the 70 countries which provide reciprocal exemptions to U.S. carriers. Thus, the taxation of foreign carriers by Alaska could directly result in retaliatory taxes being imposed on U.S. carriers in a number of foreign jurisdictions.

If I can provide you with additional information in this regard, please let me know.

Sincerely,



Kenneth Klein

500 West Republic  
Suite 201  
Seattle, Washington 98101  
206.283.4417  
fax 206.283.3003

30 March 1998

Senator Bert Sharp  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

RE: SB - 345

Dear Senator Sharp:

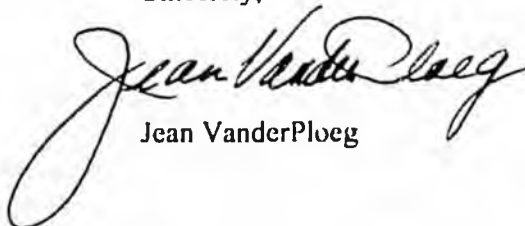
We are very concerned that the Alaska Department of Revenue is poised, as a result of a recent decision by the Alaska Supreme Court, to implement a new corporation business tax on the former, current, and future earnings of foreign, international air and sea carriers operating in the State of Alaska.

Our company depends on international water borne carriers to move products overseas to international markets, and in some instances those same carriers bring cargo to us in Alaska. Given the current economic conditions of the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us by the carriers we use. Aside from the new tax being passed on to businesses operating in Alaska, it will invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim.

Recently, the states of California, New York and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax.

Therefore, I strongly urge that you move SB - 345 so that the Department of Revenue will be preempted from imposing this onerous tax.

Sincerely,



Jean VanderPloeg

 **ALASKA MARITIME AGENCIES**

4341 B Street, Suite 101, Anchorage, Alaska 99503

Tel: (907) 562-8808  
Fax: (907) 562-8810  
Tlx: 6733427 (MCI)  
Cable: ALAMARSENATOR BERT SHARP  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

30 March 1998

RE: LETTER OF SUPPORT FOR SB-345

Dear Senator Sharp:

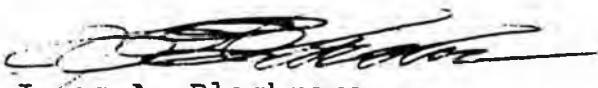
We are writing this letter in support of SB-345. It is our understanding that as a result of a recent decision by the Alaska Supreme Court, the Alaska Department of Revenue is preparing to implement a new corporate business tax on foreign, international air and sea carriers operating in the State of Alaska. As a U.S. company with six offices in Alaska which makes a living by providing service to foreign-sea carriers, we are extremely concerned about this issue.

We are particularly concerned about the effect this will have on transportation for the fisheries and logging sectors. With the current economic crisis in Asia, Asian shipping companies are barely surviving, and the markets they service are also extremely depressed. This means that foreign shipping companies are unlikely to absorb these new taxes without raising freight rates. Increased freight rates mean that Alaskan products are less competitive in markets that are already staggering from currency devaluation and a serious economic downturn.

It is also our understanding that recently, the states of California, New York and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were bad for business and bad for the economy. We've heard that Alaska would be the only state in the Union imposing such a tax if the Dept. of Revenue decides to move forward with this. We also think that some sort of retaliatory action by foreign governments against U.S. air and sea carriers would be highly probable.

Therefore, we strongly urge that you move forward with SB-345 so that the Department of Revenue will be preempted from imposing this onerous, new tax which flies in the face of international standards.

Sincerely,

  
James A. Blackmore  
Chairman

5B345

**KFP**  
Koncor Forest Products Company

3501 Denali, Suite 202  
Anchorage, Alaska 99503  
(907) 562-3335 FAX (907) 562-0599

March 30, 1998

Senator Burt Sharp  
Alaska State Legislature  
State Capitol Room 516  
Juneau, AK 99801-1182

Dear Senator Sharp:

It is our understanding that due to a recent Alaska Supreme Court ruling the Department of Revenue is going to implement a new corporate business tax on foreign international air and sea carriers operating in the State of Alaska.

Koncor Forest Products Company depends on international water borne carriers to move our products overseas to international markets. Koncor charters in excess of 40 foreign cargo ships annually so this tax could have a huge impact on our business. Given the current poor economic condition of the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us through the carriers we use. Aside from the new tax being passed on to businesses operating in Alaska, it will invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim.

Recently, the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move forward with HB-472 so that the Department of Revenue will be preempted from imposing this onerous, new tax.

Sincerely,



John Sturgeon  
President, Koncor Forest Products Company





# Alaska Steamship Association

234 Gold Street • Juneau, Alaska 99801  
(907) 586-3107 • Fax (907) 586-1001

## TALKING POINTS OSG BULK SHIPS TAX ISSUE

### SUPPORT FOR SENATE BILL 345

### RELATING TO ALASKA CORPORATE INCOME TAX

#### PROBLEM: RECENT SUPREME COURT RULING

The Alaska Supreme Court ruled on February 20, 1998 that an exemption from Corporate Income tax for foreign international air and sea carriers, that exists at the federal level in section 883 of the IRS code, no longer applies in Alaska.

At issue in the OSG case is whether or not the Legislature intended, when it adopted section 883 into the Alaska Tax Code in 1975, for the exemption to apply as written or whether the Legislature intended to "except to" or modify the exemption when it was adopted.

Many sections of the IRS Code are directly incorporated or adopted into the Alaska State Tax Statutes. Those incorporated provisions generally stand as written unless they are expressly "excepted to" or modified when they are adopted into the State tax law.

The Superior Court (lower court) found that the section 883 exemption on foreign international air and sea carrier income was in fact adopted into the Alaska Tax Statutes by the Legislature and that the plain language of the 883 exemption applies in Alaska.

When State DOR appealed the lower court's decision, the Supreme Court reversed finding that the adoption of 883 was "impliedly" (without finding express language in the law) "excepted to" or modified by other sections of the Alaska Tax Code and therefore the 883 exemption is not applicable in Alaska. (See pages 10 and 15 of the Supreme Court decision.) **This decision permits DOR to impose a new tax on every foreign airplane or ship that brings products to or from Alaska.**

#### SOLUTION: PASSAGE OF SENATE BILL 345

Senate Bill 345 amends the section of Alaska Net Income Tax Act (ANITA) that adopted section 883 into Alaska law to expressly state that nothing in the Alaska Tax Statutes may be construed as an exception to modification of Section 883 of the IRS code.

## WHY PASS SENATE BILL 345?

### **Tax is Bad for Alaska**

With the price of oil in the \$10 a barrel range and with Asian markets down, this is a particularly bad time to increase business taxes. Increasing the cost of getting our resources to market will have a serious negative impact on Timber, Mining, Fishing, Gas Exports, Tourism, Airport Development and a host of Support and Supply industries.

The impact of this tax will be borne by Alaskans, not foreign corporations. The tax will translate to higher transport fees or lower purchase prices for Alaskan resources. With the significant downturn in the Asian economies, Alaska's resource industries cannot afford increased shipping costs or lower market prices.

### **Detriment to New Investment**

An aggressive move to tax business income not only impacts the industries directly subject to the tax but also sends a negative message to prospective investors. A message that Alaska will seek to raise taxes on businesses before it considers other options will deter rather than encourage investment.

Foreign air and sea carriers will have incentive to move away from Alaska to jurisdictions that don't impose the tax. A mixed message will be sent in relation to the gas pipeline, with efforts to establish tax breaks on one hand while increasing costs on the other.

### **Tax Policy Inconsistent with International Agreements**

The purpose of section 883 is not only to prevent the double taxation of foreign income but to insure that income earned by U.S. companies is not taxed in other nations. Section 883 upholds a logical concept in international trade.

It says foreign companies doing business in the United States won't be taxed in the United States so long as the countries the foreign companies come from don't tax U.S. companies doing business there. The reciprocal tax agreements on the taxation of air and shipping income are in place between the United States and many other nations.

When a state or local government in the United States imposes a new tax on foreign international air and sea carriers, it exposes U.S. international shipping companies to the triggering of retaliatory taxes in other countries.

Recently, the states of New York, New Jersey and California rescinded their efforts to impose similar taxes. Alaska will be the ONLY state in the Union to impose a tax on international foreign air and sea carriers if it proceeds.

**Klukwan Forest Products, Inc.**

P.O. Box 34659 • Juneau, Alaska 99803-4659  
(907) 789-7361 • Fax: (907) 789-0675

March 31, 1998

Senator Drue Pearce  
Senator Bert Sharp  
Co-Chairs  
Senate Finance Committee  
Alaska State Legislature  
State Capitol, Room 520  
Juneau, AK 99801-1182

Dear Senators Pearce and Sharp:

I am writing to support the passage of SB 345, "An Act relating to the apportionment of business income". This bill prevents the income taxation of foreign carriers by the State of Alaska.

Taxation of foreign carriers would negatively impact every important industry in Alaska, including tourism, fisheries, mining, oil and gas and timber. This, at a time when all are struggling to stay alive in some of the toughest markets we have seen in a long time.

Currently, Alaska is the only state which claims the right to levy a corporate income tax on foreign shippers. This is based on a recent Alaska Supreme Court ruling which overturned the lower court's ruling that the tax did not apply.

So now the stage is set for the application of this decision to all foreign carriers doing business here. This will likely throw the shipping situation into turmoil, as carriers try to assess the impact on them (and their freight rates to Alaskan customers). Some marginal carriers may elect to no longer participate, reducing competition and driving prices up. Finally, the application of this unitary type tax is difficult and contentious. Many court battles are likely to result.

We recognize the fiscal problems facing the state, but respectfully submit that this tax is not part of the solution. Its detrimental effect on the state's major industries will do more harm than good. Thus, we urge the passage of SB 345 which will make state tax law consistent with the federal provisions and avoid the turmoil which will result from the recent Alaska Supreme Court decision.

We appreciate your consideration of our concerns. Please feel free to call if I may be of assistance.

Sincerely,

Robert G. Loiselle  
President



**KLUKWAN, INC.**

2075 Jordan Avenue (99801)

P.O. Box 32077

Juneau, AK 99803-2077

Office (907) 790-7510 \*\*\* FAX (907) 789-0675

**FAX TRANSMITTAL**

TO: Senator Bert Sharp

LOCATION: Senate Finance Committee

FAX NUMBER: 465-2070

FROM: Bob Loiselle

DATE: 3/31/98 TIME: \_\_\_\_\_

NUMBER OF PAGES (including this page): \_\_\_\_\_

*If you do not receive all of the pages or you experience any problems in the transmittal, please call me at the above number.*

**SB**

**347**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 15, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/10/98

The FINANCE Committee considered:

SB 347

SENATE BILL NO. 347

PROGRAM RECEIPTS

“An Act relating to the increase of an appropriation item based on additional federal or other program receipts.”

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  
 a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date)  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) LFD, LAA 4/3/98

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> FOSTER	X			
<i>[Signature]</i> Thernault			*	
<i>[Signature]</i> Mulder	X			
<i>[Signature]</i> Martin	X			
<i>[Signature]</i> Kohring	X			
<i>[Signature]</i> Grissendorf				X
<i>[Signature]</i> J. Davis		<del>X</del>		
<i>[Signature]</i> Kelly				
<i>[Signature]</i> Moses			X	
<i>[Signature]</i> G. Davis			X	
<i>[Signature]</i> Hanley			X	

CHAIR'S SIGNATURE *[Signature]*  
*[Signature]*  
Hanley

**FISCAL NOTE**

**STATE OF ALASKA  
1998 LEGISLATIVE SESSION**

No. 1  
Bill Version: SR 347  
(S) Publish Date: 4-3-98

Revision Date: \_\_\_\_\_  
Title: Program Receipts  
Sponsor: Senate Finance Committee  
Requester: Legislative Budget & Audit Committee

Dept. Affected Legislature  
BRU Budget & Audit  
Component Legislative Finance  
Committee Expenses  
Component Serial No. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES [ ]</b>						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: 0.0

**POSITIONS**

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The legislation will have no fiscal impact on either the Legislative Finance Division or the Legislative Budget & Audit Committee operations.

Prepared by Ike Greany, Legislative Fiscal Analyst  
Division Legislative Finance Division  
Approved by \_\_\_\_\_  
Agency \_\_\_\_\_

Phone 465-3002  
Date 4/3/98  
Date \_\_\_\_\_

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For further distribution information, call the Governor's Legislative Office

ROLL CALL: HOUSE FINANCE COMMITTEE

DATE

5/10/98

SUBJECT

7 SB 347

MEMBER	YES	NO
MOSES	✓	
MULDER	✓	
DAVIES, JOHN		✓
DAVIS, GARY		✓
GRUSSENDORF		✓
FOSTER	✓	
KELLY	✓	
KOHRING	✓	
MARTIN	✓	
THERRIAULT	✓	
HANLEY	✓	

TOTAL

--	--

PASSED \_\_\_\_\_

FAILED \_\_\_\_\_

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE


Division of Legislative Finance



P.O. Box 113200  
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November 14, 1997

TO: Chair, Vice-Chair, and Members  
Legislative Budget and Audit Committee

FROM: Mike Greany, Legislative Fiscal Analyst 

RE: Options to Change the RPL "45 Day Rule"

At the October 8 meeting of the Legislative Budget and Audit Committee, I was instructed to bring options to change the "45 day rule" back to the next meeting.

Working with Legal Services, we have come up with five options that would involve either constitutional, statutory, or appropriation process changes. Their legal analysis is included (see October 27, 1997 memorandum).

**Option [1] Grant original appropriation authority to the Legislative Budget and Audit Committee (constitutional amendment required).**

Currently the committee has no original appropriation authority. The actual appropriation of additional federal or other receipts are made in a front section of the general appropriations bill, and then are subject to the RPL review process. The problem lies in the fact that the front section actually makes the appropriation and the expenditure of the funds can go forward either [1] with the approval of the committee or [2] by the Governor after 45 days have lapsed without committee approval – after failure to approve or no action.

Under this option a constitutional amendment would be necessary to grant the committee the power to specifically appropriate additional federal or other receipt funds on an item-by-item basis in lieu of the general and open-ended appropriation in the front section of the general appropriations bill enacted by the full legislature. In this way there would be no 45 day rule – if the committee failed to approve there would simply be no appropriation increase.

The voters rejected a similar constitutional amendment proposed by the 1978 session of the Legislature.

**Option [2] Extend the 45-day period (statutory change required).**

The operation of this option would be that the current front section appropriation would remain in the general appropriations bill, failure by the committee to approve an RPL request would still trigger a waiting period after which the administration could proceed to expend, but the waiting period would be constructed to extend into the next regular session to allow the legislature the opportunity to repeal (dis-appropriate) the additional federal or other receipts amount. The legislature would have to enact a specific appropriation item repealing the expenditure-through-RPL in question.

The Governor could not proceed with the expenditure of funds unless the full legislature failed to take action to implement the committee's denial of approval.

This option would require enactment of substantive law to change AS 37.07.080(2) and (3).

**Option [3] No longer include a front section that makes the appropriation of federal funds and additional program receipts (no statutory change required). This would effectively eliminate the RPL process.**

The legislature would simply stop making the front section appropriation of additional federal or other program receipts. There would be no budget authority under which the RPL process would normally work. Agencies would be limited to the actual amounts appropriated to them in the regular back section of the appropriation bill. Any additional expenditure authority would have to come through the supplemental appropriation process in the subsequent legislative session.

This option would essentially remove the Budget and Audit Committee from the budget process.

**Option [4] Statutory delegation of expenditure authority to the Committee with specific standards (statutory change required).**

The concept would be that specific standards given by the full legislature to the committee in approving or denying RPL requests would replace the 45-day provision. However, legal analysis finds this approach highly unlikely to survive constitutional challenge: improper delegation and separation of powers issues.

For that reason, it would not be fruitful to develop this option further.

**Option [5] Repeal the 45-day provision that authorizes the Governor to make expenditures despite LB & A approval (statutory change required).**

The straight out removal of the 45 provision which allows the Governor to proceed with the expenditure of funds despite LB & A Committee disapproval would only require a statutory change but would likely result in litigation. Again, the constitutional issues of separation of power and the delegation problem would be raised with a favorable outcome for the Legislature doubtful.

*Legislative Fiscal Analyst Recommendation*

It would appear that the most legally defensible options immediately available to the Legislature are Options 2 or 3.

**I recommend Option 2 extending the waiting period into the subsequent session before the Governor can override LB & A denial of an RPL request. This would allow the full legislature the opportunity to implement the committee action by an appropriation measure before any expenditure of funds could occur.**

Option 3 is not recommended because it would effectively eliminate the RPL process -- that has historically served as the LB & A Committee's primary budget oversight function during the interims.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-2105

## MEMORANDUM

October 27, 1997

**SUBJECT:** Expenditure of program receipts (Work Order No. 20-LS1196)

**TO:** Mike Greany  
Legislative Fiscal Analyst

**FROM:** Tamara Brandt Cook  
Director TBC

You have asked me to provide a legal review of options for amending AS 37.07.080(h) so that the Governor may not authorize the expenditure of program receipts if expenditure has been disapproved by the Legislative Budget and Audit Committee.

### **HISTORY OF SUBSECTION**

AS 37.07.080(h) was enacted in 1977 (Chapter 74, SLA 1977) It originally provided for revisions of appropriations upon approval by both the Governor and the Legislative Budget and Audit Committee. It provided in full:

- (h) Appropriations may be revised on approval by the governor and the Legislative Budget and Audit Committee to allow for
- (1) increase of an appropriation item based on additional federal or other program receipts;
  - (2) establishment of a new, permanent position not authorized in the appropriated operating budget; or
  - (3) reallocation between appropriation items.

Upon enactment of this subsection suit was brought. Judge Tom Stewart found all three types of revisions to appropriations to be unconstitutional. With respect to expenditure of "additional program receipts," the Judge found both an improper delegation of the legislative power to appropriate to a committee and a violation of the separation of powers doctrine to the extent that the provision authorized a legislative committee to exercise jointly with the Governor expenditure authority. (Kelley v. Hammond, First Judicial District, Superior Court, C.A. 77-4 (Alaska 1978))

The appeal in the Kelley case was ultimately dismissed and the legislature submitted a proposed constitutional amendment to the voters proposing budget revisions and expenditure

of program receipts upon approval of both the governor and an interim committee of the legislature. The voters rejected the constitutional amendment. (LR 39 Tenth Alaska Legislature, copy attached) During the session held immediately after the voters rejected the proposed constitutional amendment the legislature enacted AS 37.07.080(h) in substantially the form it now appears. (Chapter 60, SLA 1977)

## REVISION OPTIONS

(1) **Constitutional amendment.** A constitutional amendment like LR 39 could again be submitted to the voters to authorize the Legislative Budget and Audit Committee to, essentially, appropriate additional program receipts, or the amendment could grant the committee expenditure authority only after an appropriation of additional program receipts has been made by the full legislature. Currently, the operating budget typically contains an appropriation of excess program receipts in general terms: "Federal or other program receipts that exceed the amounts appropriated in this Act are appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h)."

(2) **Extend the 45-day period.** AS 37.07.080(h)(2) and (3) could be amended so that the governor could not make an expenditure very quickly. This would enable the legislature to convene in special or regular session and appropriate the program receipts at issue to avoid the expenditure. The weakness in the approach is that the governor could veto the appropriation.

(3) **Stop making appropriations of additional program receipts.** The legislature can avoid the delegation problem litigated in Kelley and still control expenditures by simply making no appropriations of program receipts in a manner that leads to discretionary expenditures, or the legislature could make appropriations of additional receipts only for specific programs it feels comfortable increasing by unknown amounts.

(4) **Statutory delegation to the LBA Committee of expenditure authority over additional program receipts with specific standards.** When the Supreme Court held that AS 37.07.080(g)(2) is an unconstitutional delegation of the power to appropriate to the governor, the court suggested that such a delegation might withstand a constitutional challenge based on improper delegation if the statute included standards to guide the exercise of administrative discretion. However, the court noted that, even with standards, the delegation to the governor would probably still violate the principle of separation of powers. (State v. Fairbanks N. Star Borough, 736 P.2d 1140 (Alaska 1987)) It is remotely possible that, if standards were supplied to guide the LBA Committee in its determination as to whether to approve the expenditure of additional program receipts, the statute would survive attack. I think, however, that the success of this approach is unlikely.

(5) **Repeal the provision that authorizes the Governor to make expenditures despite LBA disapproval.** This would place the legislature in the position of relitigating the

Mike Greany  
October 27, 1997  
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separation of powers question and, to a lesser extent, the delegation problem that was the subject of the Kelley case.

TBC:glc  
97-389.glc

# STATE OF ALASKA

## THE LEGISLATURE

1978

Legislative  
Resolve No.

Source

HCSSJR 16

39



Proposing an amendment to the Constitution of the State of Alaska relating to the work of interim committees of the legislature.

### BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. Article II, sec. 11, Constitution of the State of Alaska is amended to read:

SECTION 11. INTERIM COMMITTEES. There shall be a legislative council, and the legislature may establish other interim committees, including a committee to approve jointly with the governor, as provided by law, state budget revisions, including revisions authorizing the receipt and expenditure of federal and other program receipts as defined by law. The council and other interim committees may meet between legislative sessions. They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.

\* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

"EXTENSION OF AGREEMENT  
ROYALTY OIL" ("Agreement II")  
by the Agreement, modifying  
various provisions to it;

as set out in AS 38.06,  
the Advisory Board has  
approved Agreement II; and

the resources has fulfilled  
its obligation of selling the royalty oil  
and has obtained approval  
of the Development Advisory Board,  
under AS 38.06; and

the provision stating that if  
the legislature does not approve Agreement II  
by a majority of the  
members of each house, the  
provision shall be of no force or effect;

the sale of royalty oil may  
be made by the resources without the  
concurrent resolution  
of each house; and

the resources submitted  
for consideration and approval;

and the legislature has evaluated Agreement  
II and otherwise received back-  
expressions of public  
opposition to its termination with respect

under current federal  
law, the best interests of  
the State of Alaska, and  
the resources, and  
the applicable constitutional

Legislature that the  
AMENDMENT FOR THE SALE AND  
of the State of Alaska,  
royalty resources, and  
thereby approved.

**SB**

**350**

HFIN

FILE

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 5, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/7/98

The FINANCE Committee considered:

CSSB 350(FIN)

CS FOR SENATE BILL NO. 350(FIN)

ABOLISH TOURISM MARKETING COUNCIL

“An Act relating to tourism and tourism marketing; eliminating the Alaska Tourism Marketing Council; and providing for an effective date.”

recommends it be replaced with the following committee substitute HCS CS SB 350(FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) DCED 5/2/98

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	X			
<i>Edna Mulder</i>	Mulder	X			
<i>Tommy Martin</i>	Martin			X	
<i>Eric Kohring</i>	Kohring				X
<i>John J. Davis</i>	J. Davis	X			
<i>Jan Grissendorf</i>	Grissendorf			X	
<i>Carol E. Moses</i>	Moses			X	
<i>G. Davis</i>	G. Davis	X			
<i>J. Kelly</i>	Kelly	X			

CHAIR'S SIGNATURE *Gene Theriault*

# FISCAL NOTE

No. 1  
 Bill Version: CSSB350 (FIN)  
 (S) Publish Date: 5/2/98

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Revision Date (Note if correction) 5/1/98 Dept. Affected Commerce  
 Title An Act relating to tourism and tourism marketing; BRU Tourism  
eliminating the ATMC Component Tourism Development #2278  
 Sponsor Senate Finance AK Tourism Market Coun #1026  
 Requester Senate Finance Component Serial No. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services		(206.4)	(206.4)	(206.4)		
Travel		(53.4)	(53.4)	(53.4)		
Contractual		(1,707.6)	(2,207.6)	(2,707.6)		
Supplies						
Equipment						
Land & Structures						
Grants & Claims		(60.0)	(60.0)	(60.0)		
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	(2,027.4)	(2,527.4)	(3,027.4)	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>		1,000.0				

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF		(299.3)	(799.3)	(1,299.3)		
1005 GF/Program Receipts		(355.3)	(355.3)	(355.3)		
1037 GF/Mental Health						
Other (Specify Type)		(1,372.8)	(1,372.8)	(1,372.8)		
<b>TOTAL</b>	0.0	(2,027.4)	(2,527.4)	(3,027.4)	0.0	0.0

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time		(3)	(3)	(3)		
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Assumes General Fund reduction as outlined in the Alaska Visitor's Association "New Millenium Plan".  
 Changes in FY 2000 revenue is as a result of the cancellation of the current AVA contract with the Department of Commerce and Economic Development.

Prepared by Tom Garcia, Director  
 Division Tourism Development  
 Approved by Commissioner [Signature]  
 Agency [Signature]

Phone 465-5472  
 Date 5/1/98  
 Date 5/1/98

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