

ALASKA LEGISLATURE

2756

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

Federal law protects interstate commerce from unreasonable burdens, which arguably prevents local governments from restricting railroad hours of transportation, speeds, loading requirements, routes, types of packaging, etc. Through the rail barge operations between Seattle and Whittier, the Alaska Railroad is considered an interstate commerce carrier and noted as such in the Alaska Railroad Transfer Act (P.L. 97-468).

- 1) The Interstate Commerce Commission Termination Act contains an express and very broad preemption clause that essentially eliminates state and local regulatory authority over railroads. See 49 U.S.C 10501 (b) (2). Several courts have addressed ICCTA's preemptive effect and have held that ICCTA preempts local planning and zoning laws with regard to the construction and operation of facilities related to rail transportation.
- 2) Through the Clean Air Act, the federal government has specifically preempted state or local regulations concerning mobile sources of emissions (including locomotives).
- 3) The United States Department of Transportation has authority over hazmat transport. The USDOT's position states:

"One of the primary purposes of federal hazmat law is to assure national uniformity of regulations applicable to the transportation of hazardous materials in commerce. Thus, the preemption provision of federal hazmat law generally preclude non-federal governments from imposing requirements applicable to hazardous materials transportation."

Other Misc:

The Railroad's employees and directors are subject to the State Ethics Code, AS 42.40.710(a). The Railroad is required to have a procurement code substantially equivalent to that of the State, AS 42.40.920(b)(4). ARRC must notify the state attorney general before initiating legal action, AS 42.40.905.

BOARD RULE NO. 17

Adopted: November 23, 1993

Subject: Non-Transportation Activities of the Railroad

Purpose: The purpose of this policy is to set forth the position of the Board of Directors of the Alaska Railroad Corporation (ARRC) regarding the use of corporate assets to obtain an equity position in a non-transportation activity. Because of ARRC's status as a state-owned corporation, any investment in a non-transportation activity is a matter of substantial concern to members of the public and to the executive and legislative branches of state government. This policy is intended to express the general prohibition upon such investment and, at the same time, recognize that broad public support may, in extraordinary circumstances, exist for such investment.

Provided by Wendy Lindskoog, ARR

Adopted (As An Emergency Rule) April 15, 1993

RULE NO. 17

**NON-TRANSPORTATION ACTIVITIES
OF THE ALASKA RAILROAD**

It is the policy of the Alaska Railroad Corporation (ARRC) not to use its real estate or other corporate assets to obtain an equity position in a non-transportation activity. A "non-transportation activity" is any activity not related to the core business of transportation. For purposes of this Policy, the term is specifically deemed to include hotels and other lodging facilities.

The Board of Directors recognizes that extraordinary circumstances may arise from time to time which may generate a public consensus supporting investment in an otherwise proscribed activity. If a specific activity is proposed by third parties that (a) is in the public interest and (b) does not compete with a viable private enterprise, the Board may authorize such activity. However, the Board cannot act without at least thirty (30) days' written notice to the public, the governor and the legislature. Notice to the governor and legislature will contain the information required for oversight reports under AS 42.40.280(b).

This policy does not supersede any applicable public notice and other requirements contained in the corporation's Long Term Lease Policy. It may not be revoked or amended without public notice in accordance with AS 42.40.180.

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This involves a site directly adjacent to the Native Village of Eklutna. The site consists of two hills, which are the namesake of the Village and which have significant historical and cultural significance to the people of the Village and to Dena'ina Athabaskan in general. Approximately one-half of the largest of the two hills is located on land owned by the railroad. The other one-half is located on land previously owned by National Bank of Alaska, and now owned by Wells Fargo. The significance of the site is set out in an extensive report commissioned by the railroad itself, known as the Fall report. It was conducted by James Fall, an anthropologist who works for the State Department of Fish and Game. The railroad has never questioned the findings of the Fall Report, or the significance of the site.

Prior to 1995, the railroad's use of the site in question was quite sporadic and limited. NBA's use was virtually nonexistent. This changed when the railroad leased out the site to a private contractor to operate a gravel pit. At about the same time, NBA also decided it wanted to begin using its land as a gravel pit. These operations would have eventually caused the destruction of the hills for which the Village is named. These events prompted two lawsuits.

First, NBA sought a conditional use permit from the Municipality of Anchorage. Gravel pit operations are a conditional use in the zoning district in which the property is located. The Village appealed the grant of the permit, first to the Board of Adjustment and eventually to the Alaska Supreme Court. The Supreme Court reversed the Board, holding that the Board was required to, and had not, considered the cultural significance of the site in the permitting process. Native Village of Eklutna v. Bd. of Adjustment/National Bank of Alaska, 995 P.2d 641 (Alaska 2000). NBA has not since refiled to obtain a permit.

Second, at about the same time the Village also brought an action against the contractor operating the pit located on the railroad property. The contractor did not have a conditional use permit which, as indicated above, was a requirement of local zoning. The contractor brought the railroad into the case. First the superior court, and then the Alaska Supreme Court, held that the contractor's use of the site required a conditional use permit. Alaska R.R. Corp v. Native Village of Eklutna, 43 P.3d 588 (Alaska 2002). The contractor and the railroad did not apply for a permit. Instead, the arrangement between the contractor and the railroad was terminated and the contractor moved off the property.

The third lawsuit began in January of 2001 and resulted in the March 12, 2004 decision to which the railroad is currently responding. Native Village of Eklutna v. Alaska Railroad Corporation, Alaska Supreme Court Slip Opinion No. 5787 - March 12 2004. After the private contractor moved off the site, the railroad then decided to operate the site itself. The Village sued the railroad since the railroad also did not have a conditional use permit to operate a gravel pit. The railroad claimed it didn't need a permit because it was immune from zoning. The Village, and the Municipality of Anchorage which had eventually joined the lawsuit, stated that the railroad was not immune from zoning and needed a permit to operate. The Alaska Supreme Court held that the railroad was not automatically immune from zoning. It utilized the 'balancing of interests' test, adopted by the vast majority of courts who have addressed the issue of governmental immunity in the last twenty years. The system adopted by the Court is fair to everyone. It requires the railroad to comply with local zoning when it can do so without hardship. It permits the railroad to obtain immunity from local zoning when local zoning would interfere with its operations. It is not unlike the process established for other state agencies under Title 35 of the Alaska Statutes, including DOTPF, which operates across the state.

Historical Statement by Sara Heideman, (Hedland, Brennan,
+ Heideman)

Subject: SB395/HB560

Date: Mon, 03 May 2004 22:45:40 -0800

From: Pat Johnson/Anne Kilkenny <kiljohn@gci.net>

Senator,

Please vote against SB395/HB560. We do not need another entity like Evergreen exempt from local controls. Think about what you did last year to us in the Valley and in Homer by overriding local ordinances and our ability to formulate them. I'm all for economic growth, but not at all costs. Our communities have good land regulation and we need to keep it so.

Sincerely,
Patrick C. Johnson
Mat-Su Platting Board Member

TALKEETNA COMMUNITY COUNCIL, INC.
P. O. BOX 608
TALKEETNA, ALASKA 99676

RESOLUTION OPPOSING SB 395 AND HB 560

WHEREAS, the SB 395 and HB 560, both of which, using identical language, exempt the Alaska Railroad from local planning, platting, and land use regulation, have been introduced in the Alaska State Senate and Alaska State House of Representatives, respectively, and are proceeding to the floor of each body, and

WHEREAS, the Community of Talkeetna has recently developed a number of plans and regulations, and

WHEREAS, the Alaska Railroad has participated, as regards lands owned by them, in the public process as such plans and regulation were developed, and

WHEREAS, the Community of Talkeetna appreciates such participation, and

WHEREAS, the Community of Talkeetna believes that it is vital, in the face of dramatic growth, for the community to guide and influence its future, and

WHEREAS, the Community of Talkeetna believes that good policy decisions can only be made if all stakeholders meaningfully participate in such decisions, and

WHEREAS, these bills would be expected to undermine the ability of the Community of Talkeetna to guide and influence its future.

THEREFORE, BE IT RESOLVED, that the Talkeetna Community Council opposes SB 395 and HB 560 and urges members of the Alaska State Senate and Alaska State House of Representatives to vote against these bills.

Adopted unanimously by the Talkeetna Community Council, this 3rd day of May, 2004

/s/ Ruth Wood

Ruth Wood, Chair

The Native Village of Eklutna is writing to urge you to reject HB 560 and SB 395 (section 1), identical bills which would exempt the Alaska Railroad from municipal zoning, and treat it differently from any other state agency.

This blanket exemption is being pushed by the railroad in reaction to a March 12, 2004 ruling of the Alaska Supreme Court that occurred in a case between the railroad and the native village of Eklutna. The railroad is operating a gravel pit adjacent to the village. The village has been trying to get the railroad to comply with local zoning for years.

The railroad is claiming that it needs a blanket exemption from local zoning because otherwise it cannot operate. This is simply not true, for a number of reasons.

First, the Supreme Court's ruling would not in fact cause interference with essential railroad operations. The Supreme Court case adopts the balancing of interests test. It is the test which has been adopted by the vast majority of courts who have addressed the issue of government immunity in the last thirty years. It has been found to constitute good and enlightened public policy in the area of zoning.

The test adopted is fair for everyone. It would require that the railroad comply with local zoning when compliance would not create a hardship for it. It would immunize the railroad from local zoning when compliance with local zoning would interfere with their operations. It is quite similar in fact to the requirements placed on DOTPF and other state agencies under Title 35 of the Alaska Statutes. DOTPF operates throughout the entire state, is generally required to comply with local zoning but can be immune from such zoning in appropriate cases. In short, the recent Supreme Court decision does not create the adverse impacts suggested by the railroad. Under the system, the public and local officials get to have input, but the essential operations of the railroad are not hindered. SB 395 would on the other hand eliminate all public input, all input from local governments, and eliminate any need for the railroad to consider any legitimate public or local interest.

Second, under the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. §701, State or local economic regulation which would significantly interfere with rail operations is prohibited in any event. In other words, if a State or municipal government was attempting to prevent a railroad from constructing or operating or discontinuing a rail line, that regulation would be prohibited by the federal law. Thus, the railroad doesn't need a blanket exemption from local zoning to protect it from regulation which would be preempted by federal law in any event.

Third, a railroad doesn't need wholesale governmental immunity from local zoning to operate. Most railroads are owned by private companies, not government agencies. Seven railroads operate the vast majority of rail freight operations in the United State - all seven are privately owned, all seven lack governmental immunity from local zoning, and yet all seven continue to operate and grow. Union Pacific is the largest, and operates in some 23 different states, without the kind of blanket immunity which the railroad here is claiming is mandatory.

In short, the railroad's suggestion that it needs protection is false. It already has substantial protections against local economic regulatory interference, under the balancing test adopted by the Supreme Court and under ICCTA, both of which protect the railroad from application of local zoning which would interfere with necessary rail operations.

Summary provided by Sara Heideman (Hedland,
Brennan + Heideman)

4376-6180



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1102

Email mayor@co.fairbanks.ak.us

May 3, 2004

Via Facsimile – 465-4714

RECEIVED
MAY 03 2004

The Honorable Gary Wilken
Member – Senate Finance Committee
State Capitol
Juneau, AK 99801

Dear Senator Wilken:

SB 395 proposes to explicitly exempt the Alaska Railroad Corporation from Municipal ordinances that provide for planning, platting and land use regulation. In its present form the proposal removes the local public process for local scrutiny and citizen input on land use.

In its present form, the administration of the Fairbanks North Star Borough opposes the legislation. However, after consultation with counsel for the ARRC, it appears reasonable to adopt the following amendment to the bill:

AS 42.40.390

- (c) By January 10 of each year, the corporation shall provide notice to municipalities of any new land use proposed for that year by the corporation within municipal boundaries. The corporation shall provide amended notice if a proposed land use is changed or an additional land use is proposed during the course of the year. Except in the event of an emergency, an affected municipality shall have at least 30 days after its receipt of the notice to provide advisory comment to the corporation. In the event of an emergency, the corporation will provide notice to an affected municipality promptly after the event.

It is our opinion that this approach meets the needs of the Alaska Railroad Corporation and the Fairbanks North Star Borough. Given that the ARRC disagrees, it is appropriate that a legislative sub-committee / municipal task force be appointed to study the issue for as long as is necessary to come to a reasonable conclusion.

Sincerely,

Jim Whitaker, Mayor

SB

396

SFIN

FILE

SB 396

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

A hearing was scheduled but the
Bill was not heard



ALASKA STATE LEGISLATURE

SENATE COMMITTEE ON COMMUNITY & REGIONAL AFFAIRS

Senator Bert K. Stedman, Chair

Official Business


Senator Tom Wagoner, Vice-Chair
Senator Kim Elton
Senator Georgianna Lincoln
Senator Gary Stevens

State Capitol, Room 30
Juneau, AK 99801-1182
Phone: (907) 465-4989
Fax: (907) 465-3922

MEMORANDUM

DATE: May 6, 2004

TO: Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senate Finance Committee

FROM: Senator Bert K. Stedman 

SUBJECT: Finance Hearing SB 396

The Senate Community & Regional Affairs Committee introduced SB 396 at the request of Representative Carl Morgan who introduced a similar bill in the House (HB 562) last week.

Our committee held two hearings on SB 396 this week and passed out a committee substitute CS SB396 (CRA) this morning. Several issues were raised during testimony that the members felt would be best addressed in Senate Finance:

- 1) Does the language as currently drafted, make it clear that the State of Alaska will have no legal, moral or other obligation to cover revenue bonds issued by the Interior Rivers Port Authority should they default on those bonds?
- 2) The current Fiscal Note is indeterminate. How will operating costs incurred during the start-up of this Authority, impact the State's general fund.
- 3) Is the authority granted in Sec 30.21.220 (page 11, line 21) – which authorizes bonds up to \$25 million without the prior approval of the legislature – appropriate?

I would hope that these issues could be examined in greater detail in your committee. Thank you for your attention to this request.



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SB 369

Interior Rivers Port Authority

The Interior Rivers region of Alaska is one of the more economically depressed areas of our state, yet it is a region that also has tremendous potential. What has been missing is the regional transportation and energy infrastructure that would lead to self-sufficiency. Currently the region cannot carry the financial burden of establishing a municipal government. A regional port authority can provide the regional focus and development authority that local government normally provides, until the region is prosperous enough to justify formation of a sustainable local government structure.

The region contains mineral deposits that could provide local employment opportunities, similar to the Red Dog Mine, if sufficient transportation and energy infrastructure can be provided through tax-exempt bonding. The area could also benefit from the leverage of regional bulk fuel purchase agreements, electrical interties, and in the long term, providing gas to the region through a spur line or barge system to deliver North Slope gas from an Alaskan gas pipeline.

The region also contains opportunities for developing river tourism experiences that could stimulate local employment and revenues. Development of tourism facilities and experiences along with coordinated marketing programs are necessary for this opportunity to be realized.

Regional landfill solutions can also provide cost efficient solutions to solid waste management and help resolve health issues associated with uncovered landfills.

The Interior Rivers Port Authority is structured to provide representation from the major land owning and economic development organizations in the region. The authority has the power to accept private, municipal, state and federal funds, to issue tax-exempt revenue bonds, to enter into land leases and acquisitions, and to contract for the provision of management services for authority facilities and operations.

The Interior Rivers Port Authority empowers the local people to determine their own development strategy and gives them the tools to implement it. Funding organizations will be more likely to provide funding because they will be able to see a coordinated program that has a strong likelihood of success with a minimum of duplication of services. They will view their contributions in the authority as investments in the self-sufficiency of the region.

Private sector business will also want to invest in the region because the authority will provide a source of stability and access to tax exempt bonding for necessary infrastructure.

INTERIOR RIVERS PORT AUTHORITY
COMMUNITY POPULATIONS

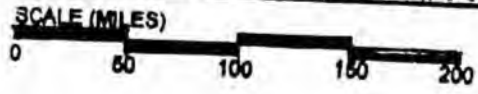
Yukon River Communities	Population	Kuskokwim River Communities	Population
Marshall	368	Upper Kalskag	231
Russian Mission	310	Aniak	551
Holy Cross	209	Cuathbaluk	102
Anvik	108	Crooked Creek	146
Grayling	166	Georgetown	3
Shageluk	146	Red Devel	41
Kaltag	229	Sleetmute	72
Nulato	342	Stony River	49
Koyukuk	111	Takotna	63
Galena	763	McGrath	415
Ruby	169	TOTAL	1673
Tanana	290		
Maley Hot Springs	73		
Rampart	21		
Nenana	519		
TOTAL	3824		
TOTAL AREA POPULATION	5497		

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



NOTE: SHADED AREA IN PORT. AUTHORITY

INTERIOR RIVERS PORT AUTHORITY





Yukon Fuel Company

Locations:

- Arlark
- Bethel
- Ft. Yukon
- Galena
- Illiamna
- Kenai
- McGrath
- Nenana
- St. Mary's
- St. Michael
- Yutana Services

Representative Carl Morgan
 State Capitol Building rm 408
 Juneau, AK 99801-1182

May 5, 2004

Re: Proposed Interior Rivers Port Authority

Representative Morgan,

Yukon Fuel Company provides water transportation services to all areas in the proposed Interior Rivers Port Authority. As a carrier we are faced with uncharted waters, absolutely no aids to navigation, undeveloped landing sites, lack of shore-based infrastructure, and often multiple fuel offload locations. Any concerted effort to improve ports on the Yukon and Kuskokwim rivers has our enthusiastic support.

It is a common theme in rural communities that basic services are expensive. Transportation infrastructure development can help. Any improvement that creates better efficiencies for transporters results in lower costs. Development of facilities also provides a safer place for fuel and freight transfers.

There are many other potential benefits of developed ports and landings to be considered. Such as scheduled transport services, extension of the Alaska Marine Highway, and a way to better serve small subsistence and commercial marine traffic. And of course any large scale resource development projects must be supported with adequate facilities.

Yukon Fuel Company looks forward to assisting in the development of Interior River Ports.

Sincerely,

Mark Smith
 President

Arctic Pacific Enterprises, LLC

2702 Gambell Street, Suite 31
P.O. Box 242912
Anchorage, Alaska 99524-2912
Telephone: (907) 646-8809
Facsimile: (907) 277-6443



May 3, 2004

The Honorable Carl Morgan
Alaska State Representative
State Capitol Room 408
Juneau, Alaska 99801-4527

Subject: Support for House Bill Number 562
for an Interior Rivers Port Authority

Dear Representative Morgan:

I wish to express my enthusiastic support of the proposed Interior Rivers Port Authority. I also urge passage of House Bill Number 562 which would establish such a port authority for the Yukon River, Kuskokwim River and several of their tributaries.

I offer my endorsement of this bill based on my many years of experience as a participant in economic and infrastructure development throughout Alaska and especially rural Alaska. My experience includes:

Arctic Pacific Enterprises, LLC: I founded Arctic Pacific in 2000 to develop infrastructure projects in rural Alaska. This includes roads and harbors, health facilities, community centers and other community buildings, bulk fuel storage systems, rural energy facilities, alternative energy systems, water and waste water systems, roads and harbors, among others.

State of Alaska: As the Executive Director for the Division of Energy, State of Alaska, I was responsible for constructing bulk fuel tanks farms, powerhouses and electrical distribution systems, and alternative energy projects, as well as rural energy emergency response and technical assistance. We also worked on utility regionalization, cooperative fuel-buying arrangements, fuel spill prevention and an overall Energy Plan for rural Alaska. During my tenure, I administered a budget totaling \$497 million, including three loan programs and the Power Cost Equalization (PCE) program.

Sealaska Corporation: I developed economic and employment programs to enhance benefits for residents in Southeast Alaska, including instituting a regional job bank, establishing stronger relationships between educational and training organizations and the private sector, and worked with non-profit corporations, state agencies and private companies to implement a Statewide Native hire program.

Haida Corporation and City of Hydaburg: During my work for the City of Hydaburg and the Haida Corporation, I developed policies and plans and identified lands for reconveyance under 14C(3) of the Alaska Native Claims Settlement Act and initiated a land exchange with the United States Government. I was instrumental in reorganizing Haida Seafoods, developing a timber operation and establishing Haida Oil Products as a wholly-owned subsidiary of Haida Corporation.

The experience of Arctic Pacific covers virtually all forms of infrastructure required in rural Alaska and is especially strong in construction management and civil and structural engineering. The senior staff employees of Arctic Pacific each have at least 14 years experience in project management in Alaska and the Lower 48 States.

Our expertise begins in the development phase, including the public process, feasibility studies and business planning. This is carried through to project completion including procurement, logistics, construction management and financial reporting. The project development and support experience of our staff includes managing more than \$52 million in construction funding with a portfolio of up to 120 active projects on an annual basis at the Division of Energy.

Most of these projects involved a public process. In many instances we made special trips to the community or communities involved to conduct public meetings. Where necessary, we assisted communities in drafting resolutions of support for a project. We went took extra steps to search out all organizations and interest groups that might be affected by the project were included and not overlooked.

As a result, we are well-versed in adhering to a rigorous public process for all projects. This not only includes public notice, public involvement and public comment. It also includes adhering to all permitting requirements and the attendant need for public input. We pride ourselves in taking a pro-active approach to the public process. This is based on our belief that adherence to strong public process guidelines will ultimately result in a better project.

Current and Recent Projects: The following are representative examples of projects underway or under development by Arctic Pacific Enterprises, LLC:

- University of Alaska Anchorage: Arctic Pacific has a current term contract for engineering and architectural services for university projects.
- Marshall: Design and construct a new Community Center including a road to the new subdivision where the center will be located (construction begins spring of 2004).
- Hensel Phelps Construction Co.: Arctic Pacific is a prime contractor to HPC on a U.S. Department of Defense Pentagon renovation project.
- Bureau of Indian Affairs Indian Reservation Roads (IRR) Program: Completed road inventories for Port Graham, Chignik Bay, Chignik Lake, Ivanof Bay and King Salmon tribal governments.

- Chignik Lake: Federal Emergency Management Agency (FEMA) contract for repair of road damaged by high water. Work includes road reconstruction at the barge landing area and the fuel storage pad.
- Consulting work on a proposed road to link the communities of Chignik Lake, Chignik Lagoon and Chignik Bay.
- Road and shallow gas development with Alaska Peninsula Corporation and Becharof Corporation.
- Angoon: Thayer Creek Hydroelectric Project development including penstock and powerline access roads.
- Yakutat: Develop wind power generation project with access roads.
- Clarks Point: Bristol Bay Economic Development Corporation (BBEDC) washeteria application; application process for new health clinic.
- Old Harbor: Complete preliminary design for construction of a new small boat harbor.
- 8A Status For Village Corporations. Bay View Inc. (Ivavof Bay); Pedro Bay Corporation and Chignik Lake: We also are assisting Bay View in developing a protégé relationship with a mentor company.

A strong and determined effort is underway by the State of Alaska and its citizens to produce natural gas from our North Slope oil fields for export to the Lower 48 States and abroad. Making natural gas available to Alaska markets is part of the justification for the State's support of the gas pipeline project.

The gas pipeline project offers a unique opportunity to research and develop plans to provide natural gas along the Yukon and Kuskokwim rivers and their tributaries to promote economic development and enhance the standard of living. This can be a key element to future self-sufficiency of the region encompassed by the proposed Interior Rivers Port Authority and should be a part of the overall port authority mission.

Please call me if you would like to discuss this further. I would be pleased to assist you in making the Interior Rivers Port Authority a reality.

Sincerely,

Percy Frisby
Chief Executive Officer

Calista Corporation

301 Calista Court, Suite A • Anchorage, Alaska 99518-3028 • (907) 279-5516 • Facsimile (907) 279-5060 • Website: www.calistacorp.com

Senator Stedman	
Rec on:	
Read Copy	
SENATOR	Office of the President
MILES	
IAN	
DICK	
Note:	

May 3, 2004

The Honorable Bert Stedman
Alaska State Legislature
State Capital, Room 30
Juneau, Alaska 99801-1182

Re: Proposed Interior Rivers Port Authority

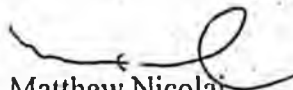
Dear Senator Stedman:

Calista Corporation favors the development of an Interior Rivers Port Authority within the unorganized borough to facilitate economic development. Specifying such a port authority is the first of its kind in Alaska and we applaud the efforts of the Alaska Legislature to address the economic needs of the Yukon and Kuskowim regions. There is a need to facilitate economic development of our resources, and the Donlin Creek project provides an important impetus to begin the process of sustainable long term development for both river systems. The Donlin Creek project has the potential of transforming the third world conditions of our regions. The project will never happen however, without federal and state support. As you know, Calista Corporation has completed the Donlin Creek Mine Power Supply Feasibility Study which, after more than two years of analysis of all available options, demonstrates that the lowest cost alternative that provides power to Donlin Creek and the villages in the region is for a power plant at Bethel and a transmission line to Donlin Creek. If the proposed bill is approved, the Interior Rivers Port Authority can help finance the infrastructure to make Donlin Creek a reality.

The energy and transportation needs for the Donlin Creek project is massive and will need to include a large part of the Kuskokwim and the Yukon Rivers. The large service area identified in this bill could certainly address both the transportation and energy infrastructure necessary to support the Donlin Creek project and other potential mineralized areas over the long term. We look forward to the formation of the Interior Rivers Port Authority.

Sincerely,

CALISTA CORPORATION


Matthew Nicolai
President/CEO

Subject: HB 562

Date: Mon, 3 May 2004 16:05:22 -0700

From: "Michael Scott" <Michael.Scott@NANASERVICES.COM>

To: <Representative_Reggie_Joule@legis.state.ak.us>,
<Representative_Richard_Foster@legis.state.ak.us>,
<Representative_Carl_Moses@legis.state.ak.us>

CC: <Representative_Carl_Morgan@legis.state.ak.us>

Please support passage of HB 562 the Interior Rivers Port Authority bill. If successful, this model could serve as a template for other authorities throughout rural Alaska. As the former regional director for the state Department of Transportation and a municipal manager, HB 562 is a big step forward in bringing financing and decisions to the local level.

Thank you.

Mike Scott

ALASKA RAILROAD CORPORATION



Corporate Address: P.O. Box 107500, Anchorage, Alaska 99510
327 W. Ship Creek Avenue, Anchorage, Alaska 99501

May 1, 2004

Representative Carl Morgan
State Capitol
M/S 3100
Juneau, Alaska
99801-1182

Re: Interior Rivers Port Authority

Honorable Representative Morgan:

The Alaska Railroad Corporation is pleased to support the endeavor of forming an Interior Rivers Port Authority.

This initiative would greatly enhance the interior's opportunity for economic growth by paving the way for infrastructure development. Specifically, it would contribute to the state's overall transportation system and provide an important link, through the City of Nenana, with the Alaska Railroad.

Best regards,

A handwritten signature in cursive script that reads "Wendy Lindskoog".

Wendy Lindskoog
Director, External Affairs
Alaska Railroad Corporation



Doyon, Limited

1 Doyon Place, Suite 300
Fairbanks, Alaska 99701-2941
(907) 459-2000
Info@doyon.com

Sent via fax: (907) 465-2197

April 30, 2004

Representative Carl Morgan
Alaska Legislature
State Capitol, Room 408
Juneau, AK 99801-1182

RE: Possible legislation on Interior Rivers Port Authority

Dear Rep. Morgan:

Thank you once again for the opportunity to review draft legislation that would create an Interior Rivers Port Authority. Additional thanks for the prompt response to my inquiry regarding the relationship this new port authority likely would have with the Alaska Industrial Development and Export Authority. An IRPA could be very beneficial, if not critical, to development projects within the operating area of the authority, and for that reason I support your efforts.

I look forward to further discussion with you and your staff.

Very truly yours,

Oric Williams
President and CEO

Alaska State Legislature

SESSION/ INTERIM OFFICE
State Capitol Building
Juneau, Alaska 99801-1182
Phone: 907-465-4527
Fax: 907-465-2197
Toll Free: 800-491-4527



INTERIM DISTRICT OFFICE
P.O. Box 798
Tok, Alaska 99780
Phone: 907-883-2669
Fax: 907-883-2670

Representative Carl M. Morgan, Jr.
District 6

April 28, 2004

Mr. Orie Williams, President and CEO
Doyon, Limited
1 Doyon Place, Suite 300
Fairbanks, AK 99701-2941

Dear Orie,

Orie

Thanks for your letter regarding the relationship of the Interior Rivers Port Authority (IRPA) and Alaska Industrial Development and Export Authority (AIDEA). We foresee IRPA having a cooperative relationship with AIDEA. The IRPA will provide the focus for involvement of the river communities in regional transportation, energy and water and waste disposal issues. Although, this legislation provides IRPA its own bonding authority we assume major bonding would go through AIDEA. AIDEA is established in the bond market with high bond ratings resulting in lower interest rates. Ron Miller, Executive Director of AIDEA does not see any conflict between the two organizations. He expressed optimism in the synergy that could result between IRPA and AIDEA..

The IRPA's value is in examining the economies of scale for large projects, such as the Donlin Creek Mine, and the benefit to the local people within the region. The IRPA will be the focus for electrical interties, group purchase of fuel, and transportation services which lower the cost of bringing in food and other necessary consumer goods.

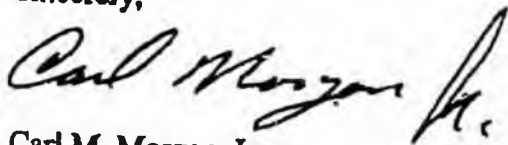
The IRPA is a real opportunity to bring the interior rivers region together for the good of the people with an emphasis on economic development and self-sufficiency. The most important thing at this point is to provide employment and training opportunities to local people and to help facilitate the resource development projects that will "lift up" our whole region.

Page Two
Letter to Orle Williams, President & CEO

As a state agency, IRPA will be able to facilitate rights of way and permits necessary for these projects and to inform local people of the benefits of resource development projects.

I hope Doyon will support these efforts. I look forward to working together with you on this important legislation.

Sincerely,



Carl M. Morgan, Jr.
Alaska State Representative

Cc: Ron Miller, Executive Director of AIDEA



G Y L

Gana-A'Yoo, Ltd.-----
3000 A Street, Suite 417, Anchorage, Alaska 99503 • phone: (907) 555-9599 • fax: (907) 569-9899 • www.ganayoo.com

April 29, 2004

Representative Carl M. Morgan, Jr
State Capitol Building, Suite 408
Juneau, AK 99801-1182

Re: Interior Rivers Port Authority

Dear Representative Morgan,

Gana-A'Yoo, Limited supports an Interior Rivers Port Authority (IRPA). This authority will provide the focus for involvement of the river communities in regional transportation, energy and water and waste disposal issues. It provides a real opportunity to bring the interior rivers region together for the good of the people with an emphasis on economic development and self-sufficiency.

The most important thing at this point is to provide employment and training opportunities to local people and to help facilitate the resource development projects that will "lift up" our whole region.

The IRPA will provide an opportunity for our region to have a voice in directing our own future.

We look forward to working with you on this important piece of legislation.

Sincerely,

Michael Stickman
President
Gana-A'Yoo, Limited



City of Nenana

PO Box 70, Nenana, Alaska 99760

907-832-5501, 907-832-5503-fax

<http://www.nenana.org>



28-Apr-04

Rep. Carl Morgan
State Capitol
M/S 3100
Juneau, Alaska
99701-1182

Re: Interior Rivers Port Authority

Honorable Representative Morgan,

It gives me great pleasure to voice the City of Nenana's support for an Interior Rivers Port Authority.

As Nenana is the primary port for the communities in this area, we have first hand experience with the difficulties in transportation and the needs that exist.

There is a tremendous need to provide a vehicle for these issues to be addressed and the Port Authority concept is an excellent way to accomplish this.

The Interior region of Alaska has been studied many times in the past identifying untapped mineral resources and natural gas resources. Unfortunately there was no appropriate mechanism to organize the affected communities.

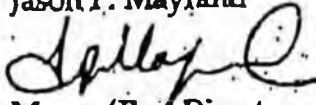
It is clear that the region currently does not have the economic infrastructure to operate as an organized governmental area however the Port Authority will allow the communities to be organized as a whole to pursue the establishment and enhancement of the transportation infrastructure.

Formation of the Port Authority will also allow the entity to bond, enter into leases, and apply for state and federal funding and management of facilities and operations. In addition to the added cooperation between entities along the river, the Port Authority would have the ability to coordinate bulk purchases for products and services thereby lowering the overall costs to communities.

Development of energy infrastructure, expanded tourism opportunity, economic development, and the establishment of a regional landfill to address village health concerns can all be a possibility through the Port Authority.

In short, this is the perfect solution to many problems that plague the Interior river communities and would greatly enhance the economic future of the area as well as provide the means to help them coordinate with each other to pursue economic development projects that enable these areas to be more self-sufficient.

Sincerely,
Jason P. Mayrand



Mayor/Port Director
City of Nenana
Nenana Port Authority



Doyon, Limited

1 Doyon Place, Suite 300
Fairbanks, Alaska 99701-2941
(907) 459-2000
info@doyon.com

Sent via fax: (907) 465-2197

April 28, 2004

Representative Carl Morgan
Alaska Legislature
State Capitol, Room 408
Juneau, AK 99801-1182

RE: Possible Legislation on Interior Rivers Port Authority

Dear Rep. Morgan:

Thank you for the opportunity to review draft legislation that would create an Interior Rivers Port Authority. The purpose for the authority would be to assist in development of mineral deposits and economic opportunities through tax exempt bonding that could be used to help provide needed transportation and energy infrastructure. This goal is a worthy one that I support. I do have one reservation, however. I would like to have a better understanding of what roles and responsibilities this new entity would have in relation to the Alaska Industrial Development and Export Authority. Frankly, I had assumed that most if not all of the functions the new entity were similar to the AIDEA charter. I look forward to further discussion with you and your staff.

Very truly yours,

Orin Williams
President and CEO



The Kuskokwim Corporation

Representative Carl Morgan

RE: Interior Rivers Port Authority

April 26, 2004

To Whom It May Concern:

The Kuskokwim Corporation (TKC) is in support of the Interior Rivers Port Authority researching strategies that would benefit the local people in implementation of local resources. Mainly Yupik Eskimo and Athabascan Indian descendants populate the Kuskokwim River region of Alaska. TKC is the merger of 10 ANCSA village corporations and has over 2,500 shareholders who either live in, or are descendants from, one of the numerous small villages along the Kuskokwim River. TKC owns over 950,000 acres of surface estate lands surrounding the 10 villages including Crooked Creek and surrounding Donlin Creek.

The Interior Rivers Port Authority an option that would provide a structure which could help represent the major land owners and economic development organizations in the region. It not only shows representation by the majority of parties involved, but also shows a commitment to work together to achieve common goals.

The region has little to no economic base, substantially high unemployment and chronically suffers from poverty and marginal education. The cost of electricity, where it is available, is very high and there are minimal to no municipal infrastructures. A number of village residents are without sewer and water, yet it is a region that has great economic development potential. The regional transportation and energy infrastructure would help lead the region to self-sufficiency. The concept of the regional port authority could be the beginning of providing this regional focus.

It is in the best interest of the state to move forward and research establishing a port authority for the Interior Rivers region so long that it protects the regions interest in development for our area.

Sincerely,

Maver E. Carey
TKC President/CEO

Anchorage Office:
4300 B St., Suite 207
Anchorage, Alaska 99503
Phone: (907) 243-2944
Fax: (907) 243-2984

Aniak Office
P.O. Box 227
Aniak, Alaska 99557
Phone: (907) 675-4275
Fax: (907) 675-4276

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 5/2/04

FURTHER: Rules

Date of 5-Day Notice: 24 hr
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 5/6/04

Community and Regional Affairs Committee considered SENATE BILL NO. 396

SB 396 INTERIOR RIVERS PORT AUTHORITY

"An Act relating to the establishment of the Interior Rivers Port Authority; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 396 (CRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

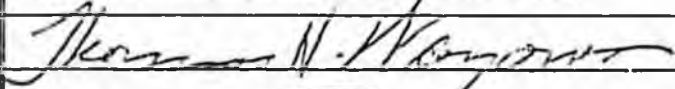
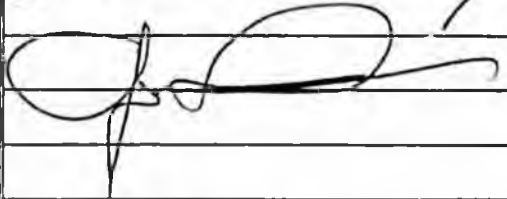
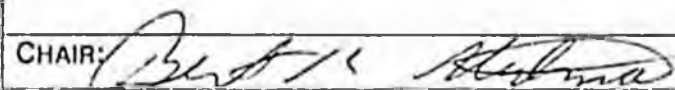
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
D CED	5/6/04		✓		1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Wagoner				✓	
G. Stevens				✗	
Stedman	CHAIR: 			✓	

SB

1001

HFIN

FILE

Adopted

HOUSE CS FOR ~~CS~~ FOR SENATE BILL NO: ¹⁰⁰¹~~368~~(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/11/04

Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes on cigarettes and tobacco products, to tax stamps on
2 cigarettes, to forfeiture of cigarettes and of property used in the manufacture,
3 transportation, facilitation of transportation, possession, offering for sale, or sale of
4 unstamped cigarettes, to accounting for and use of part of the proceeds of the additional
5 cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to
6 unfair cigarette sales; relating to supercedas bonds in certain tobacco-related litigation;
7 amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

12 INTENT. It is the intent of the legislature to provide aggregate funding to meet the

1 minimum amount of tobacco control programs recommended by the United States
2 Department of Health and Human Services, Centers for Disease Control and Prevention, from
3 tobacco taxes and other revenue sources accounted for in the tobacco use education and
4 cessation fund established in AS 37.05.580.

5 * Sec. 2. AS 43.50.030(a) is amended to read:

6 (a) For each license issued to a manufacturer, and for each renewal, the fee is
7 \$50 [\$5].

8 * Sec. 3. AS 43.50.030(c) is amended to read:

9 (c) For each license issued to a vending machine operator, and for each
10 renewal, the fee is \$50 [\$25].

11 * Sec. 4. AS 43.50.030(d) is amended to read:

12 (d) For each license issued to a direct-buying retailer, and for each renewal,
13 the fee is \$50 [\$25].

14 * Sec. 5. AS 43.50.035 is repealed and reenacted to read:

15 Sec. 43.50.035. Wholesaler-distributor license. (a) A person outside of this
16 state who sells or distributes cigarettes into this state and is not required to be licensed
17 under AS 43.50.010 may apply for a wholesaler-distributor license.

18 (b) A person outside of this state who sells or distributes cigarettes into this
19 state, who is not required to be licensed under AS 43.50.010, and who wishes to
20 purchase stamps under this chapter is required to be licensed as a wholesaler-
21 distributor.

22 (c) The department shall adopt reasonable regulations necessary for the
23 collection of cigarette taxes on cigarette sales or distributions made by a wholesaler-
24 distributor licensee into this state and standards for

25 (1) application and issuance of the license; and

26 (2) refusal to issue the license.

27 * Sec. 6. AS 43.50.090(a) is amended to read:

28 (a) There is levied an excise tax of 38 mills on each cigarette imported or
29 acquired in the state. The tax shall be paid through the use of stamps as provided in
30 AS 43.50.500 - 43.50.700. A person who imports or acquires cigarettes in the
31 state upon which a stamp required by this chapter has not been affixed in

1 accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps
 2 as required by AS 43.50.540(a), and who fails to pay the tax through the use of
 3 stamps is not relieved [THE FAILURE TO PAY THE TAX THROUGH THE USE
 4 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
 5 under this chapter. The person shall still pay the tax, and the tax is due on or before
 6 the end of the month following the month in which cigarettes were manufactured,
 7 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
 8 are not again subject to the excise when acquired by another person.

9 * Sec. 7. AS 43.50.090(d) is amended to read:

10 (d) The tax imposed under (a) of this section does not apply to the first 400
 11 cigarettes personally transported into the state by an individual for that
 12 individual's personal consumption [100 CIGARETTES IMPORTED BY AN
 13 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

14 * Sec. 8. AS 43.50.105(g) is amended to read:

15 (g) A person who violates the provisions of this section is guilty of a

16 (1) class A misdemeanor if the person unlawfully ships, causes to be
 17 shipped, or transports at least one but fewer than 5,000 [1,000] cigarettes;

18 (2) class C felony if the person unlawfully ships, causes to be shipped,
 19 or transports 5,000 [1,000] or more cigarettes.

20 * Sec. 9. AS 43.50.105 is amended by adding a new subsection to read:

21 (i) A person who violates the provisions of this section is jointly and severally
 22 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
 23 permitted by the Constitution of the United States, a person who violates the
 24 provisions of this section is required to collect the taxes and pay them to the
 25 department.

26 * Sec. 10. AS 43.50.170(1) is amended to read:

27 (1) "buyer" means a person who imports or acquires cigarettes for the
 28 person's own consumption from any source other than a manufacturer, distributor,
 29 direct-buying retailer, [OR] retailer, or wholesaler-distributor;

30 * Sec. 11. AS 43.50.170(3) is amended to read:

31 (3) "direct-buying retailer" means a person who is engaged in the sale

1 of cigarettes at retail in this state, and who brings cigarettes or causes cigarettes to be
 2 brought [CIGARETTES] into the state that are not purchased from a wholesaler-
 3 distributor;

4 * Sec. 12. AS 43.50.170(4) is amended to read:

5 (4) "distributor" means a person who brings cigarettes that are not
 6 purchased from a wholesaler-distributor, or has cigarettes that are not purchased
 7 from a wholesaler-distributor brought into the state, and who sells or distributes at
 8 least 75 percent [PER CENT] of the cigarettes to others for resale in the state;

9 * Sec. 13. AS 43.50.170(12) is amended to read:

10 (12) "wholesaler-distributor" means a person outside this state who
 11 sells or distributes cigarettes into this state, [AND] who is not required to be licensed
 12 under AS 43.50.010, and who is licensed under AS 43.50.035.

13 * Sec. 14. AS 43.50.190(a) is repealed and reenacted to read:

14 (a) There is levied an excise tax on each cigarette imported or acquired in this
 15 state,

16 (1) after June 30, 2004, but before July 1, 2006, 42 mills;

17 (2) after June 30, 2006, but before July 1, 2007, 52 mills;

18 (3) after June 30, 2007, 62 mills.

19 * Sec. 15. AS 43.50.190(c) is amended to read:

20 (c) The tax imposed under (a) of this section does not apply to the first 400
 21 cigarettes personally transported into the state by an individual for that
 22 individual's personal consumption [100 CIGARETTES IMPORTED BY AN
 23 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

24 * Sec. 16. AS 43.50.190 is amended by adding a new subsection to read:

25 (d) A portion of the annual proceeds of the tax levied under (a) of this section
 26 equal to 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco
 27 use education and cessation fund established in AS 37.05.580. This deposit shall be in
 28 addition to any sums deposited into the fund under AS 37.05.580(a).

29 * Sec. 17. AS 43.50 is amended by adding a new section to read:

30 **Sec. 43.50.200. Nonparticipating manufacturer equity excise tax. (a)**
 31 There is levied an excise tax of 12.5 mills on each cigarette imported or acquired in

1 this state from a nonparticipating manufacturer.

2 (b) The tax levied by this section is in addition to the taxes levied by
3 AS 43.50.010 - 43.50.190. The tax shall be administered and collected in the same
4 manner as the taxes levied by AS 43.50.010 - 43.50.180, except that receipts from the
5 tax shall be deposited in the general fund. The penalties provided in AS 43.05 and this
6 chapter apply to the tax levied in this section.

7 (c) In this section, "nonparticipating manufacturer" means a tobacco product
8 manufacturer as defined in AS 45.53.100 that is not a participating manufacturer as
9 that term is defined in sec. II(jj) of the Master Settlement Agreement.

10 * Sec. 18. AS 43.50.500 is amended to read:

11 Sec. 43.50.500. Tax payment by use of stamps. A licensee shall pay the tax
12 imposed under AS 43.50.090(a), [AND] 43.50.190(a), and 43.50.200 through the use
13 of stamps issued under AS 43.50.500 - 43.50.700.

14 * Sec. 19. AS 43.50.530 is amended by adding a new subsection to read:

15 (c) The department may limit the number of stamps sold to a licensee during
16 the three months immediately preceding the effective date of a tax increase under
17 AS 43.50.090, 43.50.190, or 43.50.200 to minimize the amount of cigarette
18 stockpiling by a licensee. The department may not set the limit of stamps that a
19 licensee may purchase during that three-month period below an amount equal to three
20 times the average monthly stamp purchases made by the licensee during the 12-month
21 period immediately preceding that three-month period.

22 * Sec. 20. AS 43.50.540(f) is amended to read:

23 (f) Title to the stamps passes immediately to the licensee at the time the
24 stamps are obtained in person or, if the stamps are shipped or transported, at the time
25 the stamps are placed in the United States mail or received by the common or private
26 carrier. The licensee bears all costs associated with shipping or transporting the
27 stamps. The department may replace stamps lost or damaged in transit if the
28 licensee provides proof acceptable to the department verifying that the loss or
29 damage occurred while the stamps were in the possession of the shipping
30 company and the shipping company substantiates the loss or damage. Damaged
31 stamps must be returned to the department before the department may replace

1 them [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
2 TRANSIT].

3 * Sec. 21. AS 43.50.550(b) is amended to read:

4 (b) A licensee who submits an application for the purchase of stamps on a
5 deferred-payment basis shall, as a condition of approval of the application, post a
6 bond acceptable to the department in an amount equal to

7 (1) 200 percent of the maximum dollar amount of allowed monthly
8 purchases under this section ; or

9 (2) 100 percent of the maximum dollar amount of allowed monthly
10 purchases under this section if the licensee

11 (A) holds a license issued under AS 43.50.010 for a physical
12 location in this state; and

13 (B) has been in full compliance with the provisions of this
14 title and regulations adopted under this title during the preceding 60
15 months [AS A CONDITION OF APPROVAL OF THE APPLICATION].

16 * Sec. 22. AS 43.50.580(b) is amended to read:

17 (b) A licensee may possess unstamped cigarettes in this state if

18 (1) the licensee posts a surety bond in an amount satisfactory to the
19 department to ensure performance of its duties under this chapter; and

20 (2) unstamped cigarettes are necessary for the conduct of the licensee's
21 business in making sales or distributions

22 (A) to an instrumentality of the federal government or an
23 Indian tribal organization authorized by law to possess cigarettes not taxed
24 under this chapter; or

25 (B) to customers outside the state and the licensee provides
26 proof acceptable to the department that the licensee is properly licensed in
27 the jurisdictions outside the state where the sales or distributions are
28 made.

29 * Sec. 23. AS 43.50.590(a) is amended to read:

30 (a) The department shall adopt procedures for a refund or credit to a licensee
31 in the amount of the denominated value, less the discount given under AS 43.50.540,

1 for

2 (1) unused or damaged stamps; [OR]

3 (2) stamps affixed to cigarette packages that have become unfit for use
4 or sale, are destroyed, or are returned to the manufacturer for credit or replacement if
5 the licensee provides proof acceptable to the department that the cigarettes have not
6 been and will not be consumed in this state; or

7 (3) stamps affixed to cigarette packages that are sold or
8 distributed outside the state if the licensee provides proof acceptable to the
9 department that the cigarettes have not been and will not be consumed in this
10 state and the licensee is properly licensed in the jurisdictions outside the state
11 where the sales or distributions are made.

12 * Sec. 24. AS 43.50 is amended by adding a new section to read:

13 Sec. 43.50.625. Forfeiture of other property. (a) Upon a showing of
14 probable cause that a person has committed the crime of misconduct involving
15 unstamped cigarettes or stamps in the first degree under AS 43.50.640, the following
16 are subject to forfeiture:

17 (1) material and equipment used in the manufacture, sale, offering for
18 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
19 43.50.640 or 43.50.660 - 43.50.700;

20 (2) aircraft, vehicles, or vessels used to transport or facilitate the
21 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale
22 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

23 (3) money, securities, negotiable instruments, or other things of value
24 used in financial transactions derived from activity prohibited under AS 43.50.500 -
25 43.50.640 or 43.50.660 - 43.50.700.

26 (b) Property subject to forfeiture under this section may be actually or
27 constructively seized under an order issued by the superior court upon a showing of
28 probable cause that the property is subject to forfeiture under this section.
29 Constructive seizure is effected upon posting a signed notice of seizure on the item to
30 be forfeited, stating the violation and the date and place of seizure. Seizure without a
31 court order may be made if

1 (1) the seizure is incident to a valid arrest or search;
2 (2) the property subject to seizure is the subject of a prior judgment in
3 favor of the state; or

4 (3) there is probable cause to believe that the property is subject to
5 forfeiture under (a) of this section; property seized under this paragraph may be held
6 for not more than 48 hours unless an order of forfeiture is issued by the court before
7 the end of that time period.

8 (c) Within 30 days after a seizure under this section, the Department of Public
9 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
10 person holding an interest, or an assignee of a person holding an interest, in the
11 property seized, including a right to possession, or a lien, mortgage, or conditional
12 sales contract. The Department of Public Safety shall notify the person ascertained to
13 have an interest in the seized property of the impending forfeiture, and, before
14 forfeiture, the Department of Public Safety shall publish, once a week for four
15 consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of
16 general circulation in the judicial district in which the seizure was made, or if a
17 newspaper is not published in that judicial district, in a newspaper published in the
18 state and distributed in that judicial district.

19 (d) Property subject to forfeiture under (a) of this section may be forfeited
20 (1) upon conviction of a person for a violation of AS 43.50.640; or
21 (2) upon judgment by the superior court in a proceeding in rem that the
22 property was used in a manner subjecting it to forfeiture under (a) of this section.

23 (e) The owner of property subject to forfeiture under (a) of this section is
24 entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an
25 action under (d) of this section, the owner shows that the owner

26 (1) was not a party to the violation;
27 (2) did not have actual knowledge or reasonable cause to believe that
28 the property was used or was to be used in violation of the law; and

29 (3) did not have actual knowledge or reasonable cause to believe that
30 the person committing the violation had, within the last 10 years,

31 (A) a criminal record for violating this chapter; or

1 (B) committed other violations of this chapter.

2 (f) The court may allow the owner of property that is subject to forfeiture
3 under (a) of this section to redeem the property by paying an amount determined by
4 the court to be the fair market value of the property.

5 (g) A person other than the owner holding, or the assignee of, a lien,
6 mortgage, or conditional sales contract on, or the right to possession of property
7 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in
8 the nature of remission of the forfeiture if, in an action under (d) of this section, the
9 person shows that the person

10 (1) was not a party to the violation subjecting the property to
11 forfeiture;

12 (2) did not have actual knowledge or reasonable cause to believe that
13 the property was used or was to be used in violation of the law; and

14 (3) did not have actual knowledge or reasonable cause to believe that
15 the person committing the violation had, within the last 10 years,

16 (A) a criminal record for violating this chapter; or

17 (B) committed other violations of this chapter.

18 (h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2)
19 of this section that a criminal proceeding is pending or has resulted in conviction or
20 acquittal of a person charged with violating AS 43.50.640.

21 (i) Property forfeited under this section shall be placed in the custody of the
22 commissioner of public safety for disposition according to an order entered by the
23 court. The court shall order destroyed any property forfeited under this section that is
24 harmful to the public and may order any property forfeited under this section that was
25 seized in a municipality to be transferred to the municipality in which the property was
26 seized or to another municipality affected by the crime for which the property was
27 forfeited. The state shall notify all municipalities affected by the crime of the
28 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for
29 payment of expenses of the proceedings for forfeiture and sale, including expenses of
30 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in
31 the general fund.

1 (j) The title to a vehicle or vessel forfeited to the state under this section may
 2 be transferred by the state to a municipality or the local governing body of a village
 3 for official use by the municipality or village, on condition that the vehicle or vessel
 4 not be available for use by the defendant.

5 * Sec. 25. AS 43.50.640(a) is amended to read:

6 (a) A person commits the crime of misconduct involving unstamped cigarettes
 7 or stamps in the first degree if the person

8 (1) with reckless disregard that the cigarettes are unstamped

9 (A) sells or distributes 5,000 [1,000] or more unstamped
 10 cigarettes in a single transaction;

11 (B) owns or possesses 5,000 [1,000] or more unstamped
 12 cigarettes with the intent to sell; or

13 (C) acquires, holds, transports, imports, or possesses 10,000 or
 14 more unstamped cigarettes; or

15 (2) with reckless disregard that the stamp was previously affixed to
 16 another cigarette package [.]

17 (A) affixes a previously used stamp to a cigarette package; or

18 (B) possesses, sells, or distributes a previously used stamp.

19 * Sec. 26. AS 43.50.650(a) is amended to read:

20 (a) A person commits the crime of misconduct involving unstamped cigarettes
 21 or stamps in the second degree if the person

22 (1) with reckless disregard that the cigarettes are unstamped

23 (A) sells or distributes at least one but fewer than 5,000 [1,000]
 24 unstamped cigarettes in a single transaction;

25 (B) owns or possesses at least one but fewer than 5,000 [1,000]
 26 unstamped cigarettes with intent to sell; [OR]

27 (C) acquires, holds, transports, imports, or possesses at least
 28 601 [ONE] but fewer than 10,000 unstamped cigarettes; or

29 (D) acquires, holds, transports, imports, or possesses at
 30 least one but fewer than 601 unstamped cigarettes that are not for
 31 personal consumption; or

1 (2) is not licensed under this chapter or otherwise authorized by the
2 department to possess stamps and possesses a stamp that is not affixed to a cigarette
3 package.

4 * Sec. 27. AS 43.50.700(9) is amended to read:

5 (9) "unstamped cigarettes" means a package containing cigarettes that
6 is not affixed with the stamp required by AS 43.50.500 - 43.50.700 or is affixed with
7 a stamp in a denomination less than the tax levied under this chapter.

8 * Sec. 28. AS 43.50.710 is amended by adding a new subsection to read:

9 (e) Nothing in this section prohibits a manufacturer from offering promotions
10 to a wholesaler or a retailer provided the wholesale promotion is the same for all
11 participating wholesalers and the retail promotion is the same for all participating
12 retailers.

13 * Sec. 29. AS 43.50.720 is amended to read:

14 Sec. 43.50.720. Sale at less than cost; with gift or concession. In all
15 advertisements, offers for sale, or sales involving two or more items when at least one
16 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,
17 or sales involving the giving of any gift, concession, or coupon of any kind in
18 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling
19 price may not be below the actual cost to the wholesaler or the actual cost to the
20 retailer, respectively, of the total of all articles, products, commodities, gifts, and
21 concessions included in the transactions, except that, if any articles, products,
22 commodities, gifts, or concessions are not cigarettes, the actual [BASIC] cost shall be
23 determined as provided under AS 43.50.800.

24 * Sec. 30. AS 43.50.760(b) is amended to read:

25 (b) The presumptive actual [WHOLESALE AND PRESUMPTIVE RETAIL]
26 cost of cigarettes as determined by the department under AS 43.50.800 [FROM THE
27 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court
28 action or proceeding as tending to prove actual cost to the wholesaler or retailer
29 complained against. A party against whom the presumptive actual [WHOLESALE
30 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in
31 evidence has the right to offer evidence tending to prove any inaccuracy of the

1 presumptive actual [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any
2 statement of facts that would impair its probative value.

3 * Sec. 31. AS 43.50.770 is amended to read:

4 Sec. 43.50.770. Determination of cost of cigarettes purchased outside of
5 ordinary channels of trade. In establishing the actual [BASIC] cost of cigarettes to
6 a wholesaler or retailer, the invoice cost [OR THE ACTUAL COST] of cigarettes
7 purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary
8 channels of trade may not be used.

9 * Sec. 32. AS 43.50.790(a) is amended to read:

10 (a) The department

11 (1) shall administer AS 43.50.710 - 43.50.849;

12 (2) may adopt regulations relating to the administration and
13 enforcement of AS 43.50.710 - 43.50.849;

14 (3) may determine the actual [BASIC] cost of cigarettes to a
15 wholesaler or retailer as provided in AS 43.50.800 [FROM INFORMATION
16 OBTAINED FROM A MANUFACTURER];

17 (4) may, after reasonable notice and hearing, revoke or suspend a
18 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to
19 comply with a provision of AS 43.50.710 - 43.50.849.

20 * Sec. 33. AS 43.50.800 is repealed and reenacted to read:

21 Sec. 43.50.800. Presumptions applicable to determination of cost. (a) The
22 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -
23 43.50.849, the presumptive wholesale cost as calculated by the department plus an
24 amount equal to four and one-half percent of the presumptive wholesale cost to
25 account for business costs. For purposes of this section, the presumptive wholesale
26 cost is the manufacturer's list price, less trade discounts, plus the full face value of all
27 cigarette taxes.

28 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of
29 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler
30 as calculated by the department under (a) of this section, plus an amount equal to six
31 percent of the presumptive actual cost of cigarettes to the wholesaler to account for

1 business costs.

2 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell
3 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as
4 calculated under (a) or (b) of this section must first obtain approval from the
5 department. The department may grant approval only if the wholesaler or retailer
6 provides proof satisfactory to the department that the wholesaler or retailer's actual
7 cost is lower than presumed. Approval for cigarette sales at less than the presumptive
8 actual cost as determined under (a) or (b) of this section may not be granted for a
9 period longer than one year. In reviewing proof of actual wholesale or retail cost, the
10 department may consider the costs reflected on the actual invoice, but may not
11 consider cash discounts. In reviewing proof of actual costs, the department may
12 consider the standards and methods of accounting regularly employed, and must
13 include labor costs, rent, depreciation, selling costs, maintenance of equipment,
14 delivery costs, all types of licenses, taxes, insurance, advertising, preopening
15 expenses, provision for impaired assets and closing costs, interest expenses, and
16 provision for merger and restructuring expenses. The department shall adopt
17 regulations to determine the actual costs for the wholesaler and retailer for the
18 purposes of AS 43.50.710 - 43.50.849.

19 * Sec. 34. AS 45.53 is amended by adding a new section to read:

20 Sec. 45.53.050. Stays pending appeal in civil cases. (a) Except as provided
21 in (b) of this section, in order to secure and protect the money to be received as a result
22 of the Master Settlement Agreement, in civil tobacco-related litigation under any legal
23 theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to
24 the Master Settlement Agreement, the supersedeas bond to be furnished in order to
25 stay the execution of the judgment during the entire course of appellate review shall be
26 set in accordance with applicable laws or court rules, except that the total bond that is
27 required of all appellants collectively may not exceed \$100,000,000, regardless of the
28 value of the judgment.

29 (b) If an appellee proves by a preponderance of the evidence that an appellant
30 is dissipating assets to avoid the payment of a judgment, a court may require the
31 appellant to post a bond in an amount up to the full amount of the judgment.

1 * Sec. 35. The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997, is
2 repealed and reenacted to read:

3 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

4 (a) There is levied an excise tax on each cigarette imported or acquired in this
5 state,

6 (1) after June 30, 2004, but before July 1, 2006, 77.5 mills;

7 (2) after June 30, 2006, but before July 1, 2007, 87.5 mills;

8 (3) after June 30, 2007, 97.5 mills.

9 * Sec. 36. AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

10 * Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 INDIRECT COURT RULE AMENDMENT. AS 45.53.050, added by sec. 34 of this
13 Act, has the effect of changing Rules 204 and 205, Alaska Rules of Appellate Procedure, by
14 limiting the court's discretion to determine the amount of a supersedeas bond in certain cases.

15 * Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. Section 34 of this Act applies to all cases pending on or filed on
18 or after the effective date of this Act.

19 * Sec. 39. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application
22 of it to any person or circumstance is held invalid, the remainder of this Act and the
23 application to other persons or circumstances are not affected.

24 * Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
27 heading of Article 2 in AS 43.50 from "Additional Cigarette Tax" to "Additional Cigarette
28 Taxes."

29 * Sec. 41. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 CONDITIONAL EFFECT. AS 45.53.050, added by sec. 34 of this Act, takes effect

- 1 only if sec. 37 of this Act receives the two-thirds majority vote of each house required by art.
- 2 IV, sec. 15, Constitution of the State of Alaska.
- 3 * Sec. 42. This Act takes effect ~~July 1, 2004.~~

2005

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HCS SB 1001 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Various
Title "An Act relating to Tobacco Tax..." BRU _____
Component _____
Sponsor (R.L.S) by Request of the Governor
Requester House Finance Committee Component No. _____

E. expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: W.K. Williams
Rep. Williams, Co-Chair
[Signature]
Rep. Harris, Co-Chair

Phone 465-3424
Date/Time 6/24/04 2:48 PM
Date 6/24/2004

failed

Foster

23-GH2170A.2
Kurtz
6/22/04

AMENDMENT 3

OFFERED IN THE HOUSE
TO: HB 1001

BY REPRESENTATIVE ROKEBERG

1 Page 2, following line 1:

2 Insert new bill sections to read:

3 ** Sec. 2. AS 29.10.200(51) is amended to read:

4 (51) AS 29.45.650(c), (d), (e), (f), (i), [AND] (j), and (k) (borough
5 sales and use tax);

6 * Sec. 3. AS 29.10.200(52) is amended to read:

7 (52) AS 29.45.700(d), [AND] (e), and (g) (city sales and use tax);

8 * Sec. 4. AS 29.45.650(a) is amended to read:

9 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), (h), (i),
10 [AND] (j), and (k) of this section, a borough may levy and collect a sales tax on sales,
11 rents, and on services provided in the borough. The sales tax may apply to any or all of
12 these sources. Exemptions may be granted by ordinance.

13 * Sec. 5. AS 29.45.650 is amended by adding a new subsection to read:

14 (k) A borough may not levy or collect a tax on cigarettes or other tobacco
15 products except under an ordinance adopted before September 1, 2004. A borough
16 may not increase the rate of levy of a tax on cigarettes or other tobacco products
17 imposed under an ordinance adopted before September 1, 2004. This subsection
18 applies to home rule and general law boroughs.

19 * Sec. 6. AS 29.45.700(a) is amended to read:

20 (a) A city in a borough that levies and collects areawide sales and use taxes
21 may levy sales and use taxes on all sources taxed by the borough in the manner
22 provided for boroughs. Except as provided in (d), [AND] (e), and (g) of this section,
23 the assembly may by ordinance authorize a city to levy and collect sales and use taxes

1 on other sources.

2 * **Sec. 7.** AS 29.45.700 is amended by adding a new subsection to read:

3 (g) A city may not levy or collect a tax on cigarettes or other tobacco products
4 except under an ordinance adopted before September 1, 2004. A city may not increase
5 the rate of levy of a tax on cigarettes or other tobacco products imposed under an
6 ordinance adopted before September 1, 2004. This subsection applies to home rule
7 and general law cities."

8
9 Renumber the following bill sections accordingly.

10
11 Page 14, following line 7:

12 Insert new bill sections to read:

13 "* **Sec. 45.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997,
14 is repealed and reenacted to read:

15 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

16 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or
17 acquired in this state.

18 * **Sec. 46.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 100, SLA 2002,
19 as amended by sec. 9, ch. 117, SLA 2003, is repealed and reenacted to read:

20 Sec. 4. AS 29.45.650(a) is amended to read:

21 (a) Except as provided in AS 04.21.010(c) [, AS 29.45.750,] and in (f), (h), (i),
22 (j), and (k) of this section, a borough may levy and collect a sales tax on sales, rents,
23 and on services provided in the borough. The sales tax may apply to any or all of
24 these sources. Exemptions may be granted by ordinance."

25
26 Renumber the following bill sections accordingly.

27
28 Page 14, line 12:

29 Delete "SECS. 2 - 39"

30 Insert "SECS. 8 - 47"

31

- 1 Page 14, line 14:
- 2 Delete "secs. 2 - 39"
- 3 Insert "secs. 8 - 47"
- 4
- 5 Page 14, lines 15 - 16:
- 6 Delete "secs. 2 - 39"
- 7 Insert "secs. 8 - 47"
- 8
- 9 Page 14, line 17:
- 10 Delete "sec. 14"
- 11 Insert "sec. 20"
- 12
- 13 Page 14, line 18:
- 14 Delete "secs. 2 - 39"
- 15 Insert "secs. 8 - 47"
- 16
- 17 Page 14, line 19:
- 18 Delete "secs. 2 - 39"
- 19 Insert "secs. 8 - 47"
- 20
- 21 Page 14, line 21:
- 22 Delete "secs. 2 - 39"
- 23 Insert "secs. 8 - 47"
- 24
- 25 Page 14, line 25:
- 26 Delete "secs. 2 - 39"
- 27 Insert "secs. 8 - 47"
- 28
- 29 Page 14, line 28:
- 30 Delete "secs. 2 - 39"
- 31 Insert "secs. 8 - 47"

1

2 Page 15, line 2:

3 Delete "secs. 2 - 40"

4 Insert "secs. 8 - 48"

5

6 Page 15, line 4:

7 Delete "secs. 2 - 40"

8 Insert "secs. 8 - 48"

9

10 Page 15, line 5:

11 Delete "Section 41"

12 Insert "Section 49"

13

14 Page 15, line 6:

15 Delete "sec. 42"

16 Insert "sec. 50"

Adopted

AMENDMENT

2

Page 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: CSSB 368(FIN) am

1 Page 1, line 4, following "Act;":

2 Insert "relating to restrictions on shipping or transporting cigarettes;"

3

4 Page 2, following line 19:

5 Insert new bill sections to read:

6 "* Sec. 4. AS 43.50.105(b) is amended to read:

7 (b) A person who is licensed under this chapter may not ship or cause to be
8 shipped cigarettes to a person in this state unless the person receiving the cigarettes

9 (1) is licensed under this chapter;

10 (2) holds a tobacco endorsement under AS 43.70.075;

11 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
12 1311 or 19 U.S.C. 1555; [OR]

13 (4) is an instrumentality of the federal government or an Indian tribal
14 organization authorized by law to possess cigarettes not taxed under this chapter; or

15 (5) is an individual ^{"19 yrs of age or older"} receiving the cigarettes for personal
16 consumption and the tax imposed on the cigarettes under this chapter has been
17 paid.

18 * Sec. 5. AS 43.50.105(c) is amended to read:

19 (c) A common or contract carrier may not knowingly transport cigarettes to a
20 person in this state unless the person

21 (1) shipping the cigarettes is licensed under this chapter and, before
22 shipment, provides the common or contract carrier with a copy of the person's current
23 license issued by the department and an affidavit from the intended recipient
24 certifying that the person receiving the cigarettes is a person described under (b)(1) -

1 (5) [(b)(1) - (4)] of this section; or

2 (2) receiving the cigarettes is a person described under (a)(2) or (3) of
3 this section or is licensed under this chapter and, before receipt, provides the common
4 or contract carrier with a copy of the person's current license issued by the department.

5 * Sec. 6. AS 43.50.105(d) is amended to read:

6 (d) If the cigarettes are transported by a common or contract carrier to a home
7 or residence, it is rebuttably presumed that the common or contract carrier knew that
8 the person receiving the cigarettes was not a person described under (b)(1) - (5) [(b)(1)
9 - (4)] of this section. unless the person shipping the cigarettes has satisfied the
10 requirements in (c)(1) of this section.

11 * Sec. 7. AS 43.50.105(e) is amended to read:

12 (e) A person, other than a common or contract carrier, may not knowingly
13 transport cigarettes to a person in this state, unless the person receiving the cigarettes
14 is a person described under (b)(1) - (5) [(b)(1) - (4)] of this section."

15

16 Renumber the following bill sections accordingly.

17

18 Page 12, lines 23, 24, 26 (the second occurrence), 28, and 29:

19 Delete "Act"

20 Insert "section"

21

22 Page 12, line 26:

23 Delete "sec. 8"

24 Insert "sec. 12"

25

26 Page 13, line 4:

27 Delete "the Act"

28 Insert "this section"

29

30 Page 13, line 6:

31 Delete all material.

1 Insert new bill sections to read:

2 "* Sec. 35. Sections 4 - 7 of this Act take effect immediately under AS 01.10.070(c).

3 ~~* Sec. 36. Except as provided in sec. 35 of this Act, this Act takes effect July 1, 2004.~~ "54"

STATE OF ALASKA

DEPARTMENT OF REVENUE

Tax Division

FRANK MURKOWSKI, GOVERNOR

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Comparison of Major Differences Between Special Session Tobacco Tax Bill SB/HB 1001 and House Finance CS for CS for SB 368, Version W

The following major provisions are found in Special Session Tobacco Tax Bill SB/HB 1001, but not in House CS for CSSB 368 (as adopted by House Finance):

- Increases the tax on cigarettes by \$1.00 per pack of twenty. The entire \$1.00 increase would be implemented on the effective date of the bill.
- Increases other tobacco products (OTP) tax from 75% to 100% of the wholesale cost.
- Requires individuals who import other tobacco products (OTP) into Alaska for personal consumption to pay the OTP tax. This bill also requires individuals to obtain an OTP buyer's license; pay a fee of \$25 for a buyer's license; renew a buyer's license for a \$25 fee each year; and file a tax return each month.
- Requires a floor stock tax be paid on cigarettes held for sale in the state on the date of the tax rate increase.

The following major provisions are found in House CS for CSSB 368 (as adopted by House Finance), but not in Special Session Tobacco Tax Bill SB/HB 1001:

- Increases the tax on a pack of 20 cigarettes by \$.60 on the effective date of the bill (July 1, 2004) and by an additional \$.20 on July 1, 2006 and July 1, 2007, for a total increase of \$1.00 per pack by July 1, 2007.
- Levies an additional excise tax of 12.5 mills (\$.25 per pack of 20) on brands of cigarettes manufactured by companies that did not sign the tobacco Master Settlement Agreement.
- Limits the number of cigarette tax stamps that a licensee can purchase from the Department of Revenue within the three months preceding a tax increase. (Language was inserted in an attempt to limit the effects of stockpiling since the floor stock language was removed from this version of the bill.)
- Caps appeal bonds for signatories of the Master Settlement Agreement (MSA) at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which, in turn, would put the states' MSA revenue payments at risk.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.
Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.
Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.
Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.	Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.
Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.	Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.
Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.	Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.
Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.
Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2 nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill (\$1.00 per pack increase) would be \$500.	Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2 nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill would eventually be \$500.

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the state's shipping law, even if such shippers have no physical presence in the state.</p>	<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the state's shipping law, even if such shippers have no physical presence in the state.</p>
<p>Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.</p>	<p>Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.</p>

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 30 mills or \$.60 per pack of 20 in on July 1, 2004; by 10 mills or \$.20 per pack of 20 on July 1, 2006; and by 10 mills or \$.20 per pack of 20 on July 1, 2007; for a total increase of \$1.00 per pack of 20 over the current excise tax rate. These increases in the tax will all go into the general fund.
Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.
Section 16. This section requires 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited in the tobacco use education and cessation fund.	Section 16. This section requires the legislature to deposit 8.9% of the annual cigarette taxes deposited in the General Fund into the tobacco use education and cessation fund.
	Section 17. This section levies an additional excise tax of 12.5 mills or \$.25 per pack of 20 cigarettes on brands of cigarettes manufactured by manufacturers that did not sign the tobacco Master Settlement Agreement. This additional tax would be deposited into the General Fund.
	Section 18. This section requires that the additional tax levied under Section 17 must be paid through the use of tax stamps.
	Section 19. This section allows the Department of Revenue to limit the number of tax stamps purchased by a license during the 3 months immediately preceding a tax rate increase.
Section 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost and also levies the tax on other tobacco products sold or imported into the state for personal consumption.	
Section 18. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".	
Section 19. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.	
Section 20. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.	

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 21. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.	
Section 22. This section requires individuals who import tobacco products for personal consumption to file a return each month indicating the amount and purchase price of the tobacco products and the tax due on those tobacco products.	
Section 23. This section changes the definition of a "distributor" to include entities that sell cigarettes to individuals for personal consumption.	
Section 24. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.	
Section 25. This section provides a definition for "buyer" in the tobacco products statutes.	
Section 26. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 20. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.
Section 27. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.	Section 21. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.
Section 28. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.	Section 22. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.
Section 29. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.	Section 23. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 30. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>	<p>Section 24. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>
<p>Section 31. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>	<p>Section 25. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>
<p>Section 32. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>401</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>401</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>	<p>Section 26. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>601</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>601</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>
	<p>Section 27. This section makes a pack of cigarettes bearing a stamp in a denomination less than the total tax required by law, contraband. Language is needed because of additional \$.25 per pack tax on NPM product.</p>
<p>Section 33. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.</p>	<p>Section 28. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.</p>
<p>Section 34. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 33 of this bill.</p>	<p>Section 29. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 33 of this bill.</p>

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 35. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 30. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 36. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 31. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 37. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 32. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 38. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.	Section 33. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.
	Section 34. This section, along with Sections 37 & 38, are taken from CSHB 468(IJD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
	Section 35. This section makes a conforming amendment to a contingent provision in the session law from 1997 that increased Alaska's cigarette tax to \$1.00. That contingent provision has yet to be triggered.
Section 39. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 38.	Section 36. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 33.
	Section 37. This section, along with Sections 34 & 38, are taken from CSHB 468(JUD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.
	Section 38. This section, along with Sections 34 & 37, are taken from CSHB 468(JUD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.
	Section 39. This section is a general severability clause.
	Section 40. This section is a minor revisor's instruction.
	Section 41. This section provides that Section 34 of this Act only takes effect if Section 37 receives the two-thirds majority vote of each house.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 40. This section requires that a floor stock tax be paid by all persons in control or possession of cigarettes for resale at the effective date of this bill. A floor stock tax is the difference between the tax paid at the old rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting but not paying tax at the new rate on the stockpiled cigarettes.</p>	
<p>Section 41. This section allows the Department of Revenue to proceed to adopt regulations prior to the effective date of the bill.</p>	
<p>Section 42. This section provides an immediate effective date for Section 41.</p>	
<p>Section 43. The section provides an effective date for the remainder of the sections of the bill of September 1, 2004.</p>	<p>Section 42. The section provides an effective date of July 1, 2004.</p>

failed
Foster

AMENDMENT 3

OFFERED IN THE HOUSE
TO: HB 1001

BY REPRESENTATIVE ROKEBERG

1 Page 2, following line 1:

2 Insert new bill sections to read:

3 **** Sec. 2.** AS 29.10.200(51) is amended to read:

4 (51) AS 29.45.650(c), (d), (e), (f), (i), [AND] (j), and (k) (borough
5 sales and use tax);

6 *** Sec. 3.** AS 29.10.200(52) is amended to read:

7 (52) AS 29.45.700(d), [AND] (e), and (g) (city sales and use tax);

8 *** Sec. 4.** AS 29.45.650(a) is amended to read:

9 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), (h), (i),
10 [AND] (j), and (k) of this section, a borough may levy and collect a sales tax on sales,
11 rents, and on services provided in the borough. The sales tax may apply to any or all of
12 these sources. Exemptions may be granted by ordinance.

13 *** Sec. 5.** AS 29.45.650 is amended by adding a new subsection to read:

14 (k) A borough may not levy or collect a tax on cigarettes or other tobacco
15 products except under an ordinance adopted before September 1, 2004. A borough
16 may not increase the rate of levy of a tax on cigarettes or other tobacco products
17 imposed under an ordinance adopted before September 1, 2004. This subsection
18 applies to home rule and general law boroughs.

19 *** Sec. 6.** AS 29.45.700(a) is amended to read:

20 (a) A city in a borough that levies and collects areawide sales and use taxes
21 may levy sales and use taxes on all sources taxed by the borough in the manner
22 provided for boroughs. Except as provided in (d), [AND] (e), and (g) of this section,
23 the assembly may by ordinance authorize a city to levy and collect sales and use taxes

1 on other sources.

2 * Sec. 7. AS 29.45.700 is amended by adding a new subsection to read:

3 (g) A city may not levy or collect a tax on cigarettes or other tobacco products
4 except under an ordinance adopted before September 1, 2004. A city may not increase
5 the rate of levy of a tax on cigarettes or other tobacco products imposed under an
6 ordinance adopted before September 1, 2004. This subsection applies to home rule
7 and general law cities."

8
9 Renumber the following bill sections accordingly.

10
11 Page 14, following line 7:

12 Insert new bill sections to read:

13 ** Sec. 45. The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997,
14 is repealed and reenacted to read:

15 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

16 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or
17 acquired in this state.

18 * Sec. 46. The uncodified law of the State of Alaska enacted in sec. 4, ch. 100, SLA 2002,
19 as amended by sec. 9, ch. 117, SLA 2003, is repealed and reenacted to read:

20 Sec. 4. AS 29.45.650(a) is amended to read:

21 (a) Except as provided in AS 04.21.010(c) [, AS 29.45.750,] and in (f), (h), (i),
22 (j), and (k) of this section, a borough may levy and collect a sales tax on sales, rents,
23 and on services provided in the borough. The sales tax may apply to any or all of
24 these sources. Exemptions may be granted by ordinance."

25
26 Renumber the following bill sections accordingly.

27
28 Page 14, line 12:

29 Delete "SECS. 2 - 39"

30 Insert "SECS. 8 - 47"

31

- 1 Page 14, line 14:
- 2 Delete "secs. 2 - 39"
- 3 Insert "secs. 8 - 47"
- 4
- 5 Page 14, lines 15 - 16:
- 6 Delete "secs. 2 - 39"
- 7 Insert "secs. 8 - 47"
- 8
- 9 Page 14, line 17:
- 10 Delete "sec. 14"
- 11 Insert "sec. 20"
- 12
- 13 Page 14, line 18:
- 14 Delete "secs. 2 - 39"
- 15 Insert "secs. 8 - 47"
- 16
- 17 Page 14, line 19:
- 18 Delete "secs. 2 - 39"
- 19 Insert "secs. 8 - 47"
- 20
- 21 Page 14, line 21:
- 22 Delete "secs. 2 - 39"
- 23 Insert "secs. 8 - 47"
- 24
- 25 Page 14, line 25:
- 26 Delete "secs. 2 - 39"
- 27 Insert "secs. 8 - 47"
- 28
- 29 Page 14, line 28:
- 30 Delete "secs. 2 - 39"
- 31 Insert "secs. 8 - 47"

1

2 Page 15, line 2:

3 Delete "secs. 2 - 40"

4 Insert "secs. 8 - 48"

5

6 Page 15, line 4:

7 Delete "secs. 2 - 40"

8 Insert "secs. 8 - 48"

9

10 Page 15, line 5:

11 Delete "Section 41"

12 Insert "Section 49"

13

14 Page 15, line 6:

15 Delete "sec. 42"

16 Insert "sec. 50"

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 1001
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Cigarette and Tobacco Products Tax Increase RDU Revenue Programs & Services
Component Tax Division
Sponsor Governor
Requester Rules Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	466.1	466.1	466.1	466.1	466.1	466.1
Travel	60.0	60.0	60.0	60.0	60.0	60.0
Contractual	248.0	246.8	246.8	246.8	246.8	246.8
Supplies	6.0	6.0	6.0	6.0	6.0	6.0
Equipment	48.0	0.0	0.0	0.0		0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	828.1	778.9	778.9	778.9	778.9	778.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	29,100.0	35,000.0	35,000.0	35,000.0	35,000.0	35,000.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	828.1	778.9	778.9	778.9	778.9	778.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	828.1	778.9	778.9	778.9	778.9	778.9

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	6	6	6	6	6	6
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Cigarette and Tobacco Products Tax Increase - Bill Analysis (December 24, 2003)

Bill Language: This bill will increase the cigarette tax from \$1 per pack of twenty cigarettes to \$2 per pack and the tobacco products tax (OTP) from 75% to 100% of the wholesale cost. This bill will also institute a floor stock tax on existing cigarette inventories held for sale in an attempt to reduce the amount of stockpiling of cigarettes on the effective date. In an attempt to reduce the amount of cigarette smuggling and tax evasion, this bill will also allow the Department of Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in activities which violate the cigarette and tobacco products statutes.

(cont. on page 2)

Prepared by: Johanna Bales Phono 269-6628
Division Tax Division Date/Time 6/15/04 9:53 AM
Approved by: Steve Porter, Deputy Commissioner Date 6/15/2004
Agency Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 1001

ANALYSIS CONTINUATION

Assumptions: The Department of Revenue (DOR) will have primary enforcement responsibility for the cigarette and tobacco products excise tax program. However, DOR will work with the Department of Public Safety (DPS) and Department of Law (DOL) as part of a task force responsible for cigarette tax stamp enforcement in the state. DPS, at the request of DOR, will provide investigative support through a reimbursable services agreement (RSA). The amount of this RSA has been estimated by DPS. Monies for the RSA are included in the Contractual costs requested in this fiscal note. This fiscal note does not include additional costs that may be incurred by DOL as a result of this legislation. From information obtained from other states with cigarette tax rates of \$1.50 to \$2.05 per pack, DOR expects that the increase in the tax rates will result in a significant increase in incidents of cigarette smuggling and tax evasion.

Program Summary: DOR will conduct periodic inspections of cigarette and tobacco products licensees as well as retailers who hold tobacco endorsements with the Department of Community and Economic Development for unstamped cigarettes. In addition, DOR will be the primary contact for complaints from the public and compliant retailers regarding unstamped cigarettes. DOR will work with DPS and DOL to develop cases against cigarette smugglers, including seizing unstamped product and assets used in activities that violate the cigarette and tobacco products statutes. DOR will prepare assessments for unstamped cigarettes and untaxed cigarettes and OTP imported into the state by individuals for personal use and/or resale and work with federal agencies to stop out-of-state entities, specifically Internet sellers, from shipping cigarettes into the state in violation of existing statutes.

Positions: DOR expects that it will need 6 additional positions, 1 Revenue Auditor Supervisor II, 2 Investigator II's, 1 Revenue Auditor III, 1 Accounting Technician III and 1 Appeals Officer (Revenue Auditor V), to manage the workload of the task force, conduct investigations, prepare assessments, and work appeals filed in disputes involving assessments, seized cigarettes, and seized assets. These six positions, along with the two existing investigator positions already assigned to tobacco cases, will represent DOR as part of the task force explained above. DOR estimates the total cost of these additional positions to be \$466,100 each year.

Other Operating Expenditures: (1) Travel - DOR estimates it will need \$60,000 for travel costs for investigators to conduct routine inspections of the approximate 1,600 known cigarette retail establishments throughout the state each year. DOR estimates that each investigator will need to conduct, at a minimum, ten separate inspections/investigations in villages within the state each year to insure an effective enforcement program and respond to complaints from the public of unstamped product. (2) Contractual - Contractual costs in the amount of \$248,000 in the first year and \$246,800 each year thereafter are primarily to fund an RSA between DOR and DPS and for the lease, operation and maintenance of two vehicles to be used by investigators to conduct inspections/investigations in the Anchorage, Mat-Su and Kenai Peninsula areas of the state where most cigarette retail establishments are located. Investigators must be able to respond to complaints of unstamped product quickly and perform unscheduled inspections of retail establishments on an ongoing basis. Contractual costs also include leasing office space and providing phone service for 6 additional employees and renting storage facilities for seized cigarettes and other assets. (3) Supplies - DOR estimates \$1,000 per each FTE each year (a total of \$6,000) for supplies needed to perform the duties of these positions. (4) Equipment - DOR expects equipment expense of \$8,000 per FTE (a total of \$48,000) in the first year for computers, telephones, cubicle parts, software, and other one-time purchases of office equipment needed to perform the duties of these positions.

Revenue: DOR estimates cigarette and tobacco products revenues to increase between \$33 and \$37 million each year. However, DOR believes these revenues will be much smaller unless we institute an aggressive investigation and enforcement program. Although we believe the provision for cigarette tax stamps, which took effect January 1, 2004, will be an effective tool in enforcement of the cigarette excise tax, its success depends upon aggressive enforcement. Even at \$1.00 per pack, the incentive for smuggling and tax evasion is great. At \$2.00 per pack, it will be much more attractive. An aggressive enforcement program will help protect the projected revenue increases.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 1001
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title: Act Relating to Tobacco Tax RDU: Alaska State Troopers
Sponsor: Rules Committee Component: Bureau of Alcohol and Drug Enforcement
Requester: Governor Component No.: 2745

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	171.4	171.4	171.4	171.4	171.4	171.4
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	206.4	206.4	206.4	206.4	206.4	206.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Inter-Agency Receipts	206.4	206.4	206.4	206.4	206.4	206.4
TOTAL	206.4	206.4	206.4	206.4	206.4	206.4

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will increase the cigarette tax from \$1 per pack of twenty to \$2 per pack and the other tobacco products (OTP) tax from 75% to 100% of the wholesale costs. The Department of Public Safety (DPS) will be required to seize and dispose of assets used in illegal activities related to tobacco products statutes.

The DPS will provide investigative support to the Department of Revenue through a reimbursable services agreement. The DPS estimates the services of two full-time investigators and associated field travel, training, communication and vehicle usage will be needed to implement this legislation. The use of these investigative assets and any, as yet unidentified expenses associated with cigarette tax stamp enforcement, will be coordinated between the two agencies and reimbursed at actual cost.

Prepared by: Captain Al Storey Phone 269-5682
Division: Alaska State Troopers Date/Time 6/14/04 9:26 AM
Approved by: Commissioner William Tandeske Date 6/14/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 1001
 (S) Publish Date: 6/23/04
 Dept. Affected: Health & Social Services
 RDU Public Health
 Component Tobacco Prevention and Control

Revision Date/Time (Note if correction):
 Title TOBACCO TAXES AND RELATED MATTERS

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester _____ Component No. 2384

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual		2,600.0	2,600.0	2,600.0	2,600.0	2,600.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims		1,400.0	1,400.0	1,400.0	1,400.0	1,400.0
Miscellaneous						
TOTAL OPERATING	0.0	4,000.0	4,000.0	4,000.0	4,000.0	4,000.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
1168 Tobacco Educ/Cess Fund		4,000.0	4,000.0	4,000.0	4,000.0	4,000.0
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	4,000.0	4,000.0	4,000.0	4,000.0	4,000.0

Estimate of any current year (FY2004) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 Funding for the Tobacco Control Program is authorized and appropriated by the Alaska Legislature each year. The Legislature established the Tobacco Use Education and Cessation Fund as AS 37.05.580, and a portion of Tobacco Master Settlement Agreement revenues are deposited into the Tobacco Fund in April of each year to support the Tobacco Control Program. The program faced a serious cash flow problem in FY04 that continues as it heads into FY05. The Department of Health and Social Services projects that the fund will have only \$397,000 of carry forward revenue at the start of FY05. The FY 2005 budget passed by the legislature authorized a budget of \$4,669,200. The projected \$4,300,000 Master Settlement revenue will not be deposited to the (continued next page)

Prepared by: Sherry Hill, Special Assistant Phone 465-1618
 Division: Office of the Commissioner Date/Time 06/21/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 06/22/2004
 Agency: Department of Health and Social Services

FISCAL NOTE
FN # 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 1001

ANALYSIS CONTINUATION

Analysis Continued:

State until April 2005. As a result, the program will have to "borrow" from other Public Health programs in the interim to allow the Tobacco Control program to operate. This can be seen in the attached table showing Cash Flow without Tobacco Tax as a negative cash flow from July 2004 until April 2005 (attachment A).

Passing the proposed increase in tobacco excise taxes and including the proposed provision that 3.9 percent of the total proceeds of the tax shall be deposited into the Tobacco Use Education and Cessation Fund established in AS 37.05.580 will fix the existing cash flow problem as well as increase prevention funding. This fiscal note reflects an increase of \$4,000,000 Tobacco Education/Cessation Fund spending authorization for the Tobacco Prevention and Control component of the Public Health RDU. Additional authorization of this amount will result in expanded tobacco program activities as well as allow for sufficient carryforward to support program activities in the next fiscal year until Master Settlement revenues are deposited. See attached table showing cash flow with Tobacco Tax (attachment B).

These funds will also help offset a projected decrease in the Tobacco Master Settlement Agreement revenues, according to the latest forecast by the National Association of Attorneys General. This fiscal note also assumes that the current authorization for \$500,000 Tobacco Education/Cessation Fund in the Community Health Grants component would be switched to General Funds in the FY06 budget. If this does not occur, the funds available to the Tobacco Prevention and Control component would be reduced by \$500,000 to remain within the projected revenues. The net increase to the Tobacco Prevention and Control component will be approximately \$3,330,000. See attachment C for summary of Tobacco Program revenues and authorization.

The increased spending authorization is based on the Department of Revenue's projection that the amount of cigarette tax revenue deposited into the Tobacco Use Education and Cessation Fund would be \$4,000,000 annually. All revenues are reported on the Department of Revenue fiscal note.

Critical to the ongoing fiscal integrity of the program will be action by the legislature every year to provide for carry forward of unexpended Tobacco Use Education and Cessation Funds from the current State Fiscal Year to the following one. Because the Master Settlement revenues are not deposited until April each year, legislative action to authorize carry forward is essential so the State can avoid a negative cash flow situation.

The State Tobacco Control Program develops its annual management plan every year depending on the level of appropriations authorized by the legislature. The Tobacco Control Program staff, Alaska Division of Public Health (ADPH), work on an on-going basis closely with members of the Alaska Tobacco Control Alliance (ATCA) to monitor the burden of