ment's total revenues, and like state revenues in general, it's come almost exclusively from the oil industry.

"Worldwide reporting isn't significant at this moment in terms of attracting foreign investment into Alaska," maintains Michael Gay, executive director of corporate development for Calista Corp. and author of the study for former House Speaker Hays on Korean business activities in the state. "But in the long term, it's very significant.

"Korea and Japan are natural markets for Alaska's resources. The Koreans and the Japanese aren't going to make the major commitments we need in Alaska to develop resources as long as the worldwide reporting requirement is in place. Feasibility studies, pre-feasibility studies, sure, but not major investments in development." Promoters of a handful of major resource development projects in Alaska note their negotiations with potential foreign investors haven't reached the point where state tax policy has been a significant issue.

Benefits to Alaska from foreign investment in resource development: shared risk, reliable markets, abundant capital. The state's Dixon maintains

Why oil curdles at the thought of (another) tax change

IN THE MIDST OF LAST YEAR'S MINI-DEBATE OVER whether to reimpose separate accounting on Alaska's oil industry, one long-time state legislator dismissed industry arguments that another change in the tax structure would reinforce business's perception that the state has an unstable tax climate and discourage investment in Alaska. "We've changed taxes nine times on the industry since statehood," he declared.

Is it any wonder the oil industry reaches for its Rolaids whenever someone brings up the issue of changing the tax structure?

"Whenever you make a change in taxes, there's an expense involved in complying with it," assesses one business analyst.

Adds a state official, "Historically, any time there's been talk of changing taxes, it means some group of legislators has found a better way to gouge the oil companies."

The state first imposed separate accounting in 1978. Intent: to maximize state government's take from Prudhoe Bay production. Lawmakers returned to worldwide unitary taxation in 1981 when it appeared separate accounting could be unconstitutional and the state eventually could face a multibillion-dollar judgment against it. The system now in use has been in effect since 1981.

For most multinationals, state corporate tax is based on sales, assets and payroll. Exceptions: airlines, construction companies, companies involved in land transportation. And companies that produce oil or are involved in pipeline transportation.

Companies producing oil are taxed on the basis of assets and extraction.

Companies providing pipeline transportation are taxed on assets and sales.

Companies producing oil *and* providing pipeline transportation are taxed on extraction, assets and sales.

While corporate taxes account for a relatively minor portion of Alaska's total state revenues, the oil industry picks up about 90 percent of the corporate tax tab. (Surprise!)

It's unclear what impact a switch to water's edge unitary taxation from the current system of worldwide reporting would have on the state's biggest tax benefactor, largely because of the number of potential variations on the water's edge theme. Possibly little.

What is clear is that the oil industry is in no mood to talk change in the current climate of uncertainty. Says a tax attorney for one multinational, "You only have to look at what's happened to the industry in the last couple years to understand why we need some tax stability. Any kind of change would be perceived as Alaska not having a stable tax climate, and we need a bit of predictability in this kind of economy."

Not ironically, the oil industry is said to have been one of the biggest proponents of switching from worldwide reporting to water's edge when the issue came up in California. Reason: Marketing and refining, the mainstays of oil's activities in California, historically haven't been as profitable as production overseas.

That's also been the reason for some Alaskan legislators' apparent penchant for separate accounting – a method in which sales and expenses are calculated on a state-by-state basis so corporate taxes can be levied on earnings attributable to operations within each state. Until the oil price collapse in 1986, North Slope production was more profitable than the average of earnings from all operations.

Vince Wright, chief of research for the Alaska Department of Revenue, says separate accounting is more oil price-sensitive than unitary taxation, and in the prevailing climate of $14-per-barrel oil, separate accounting actually would yield less state revenue than worldwide unitary. The department is conducting a study to pinpoint the breakeven point for state revenues under various tax structures.

Must the oil industry – which loathes separate accounting in Alaska and longs for stability – and potential foreign investors – who loathe worldwide reporting, prefer separate accounting, but will settle for a change to water's edge reporting – forever be locked in an Alaskan standoff?

When California implements water's edge taxation next January, multinational corporations will have the option of staying with the current system of worldwide reporting or paying an annual fee based on California payroll, property and income to switch to water's edge reporting for a 10-year period. The annual water's edge election fee has been set at a maximum of 0.03 of a percent of the sum of those three factors, and the fee can be reduced to as little as 0.01 of a percent through new investment in the state.

The oil industry tax attorney, however, maintains it's unlikely initiatives for any change in Alaska's tax structure – even one that gives the industry the option of staying with the status quo – will be supported by the oil industry. "We just don't feel an impetus for any kind of change right now."

Suggests one international trade expert, "The oil industry is just gun-shy. They're afraid that once the issue of taxes is on the table for review, anything can happen. And most of it's bad. They fear wolves in sheep's clothing."

Frank Danner, chairman of the Alaska-Korea Business Council and managing partner of the Anchorage office of Peat Marwick Mitchell & Co., maintains the oil industry could be one of the biggest long-range beneficiaries of a change to water's edge reporting.

Says he, "If the change brings more investment into Alaska and assists in diversifying our economy, there will be other industries to share the tax burden with the oil companies."

there's no shortage of debt capital in Alaska, but rather a shortage of venture capital. "Any time you have equity involvement, you don't want a project to fail. That's why the Japanese haven't pulled out of Sitka (Alaska Pulp Co.), and it's why the Beluga coal project and the gas line will go."

The controller for one foreign multinational operating within the state characterizes Alaska's attitude toward taxation as "cavalier" and maintains that image is a turnoff to potential investors. Adds Albert Kawabe, an Alaskan fish exporter operating out of Seward, "Enforcement is done on a project-by-project basis; there's no consistency. It's made me hesitant to try to convince my contacts they should invest in projects like shore-based processing facilities."

Shore-based bottomfish processing could represent one of the brightest short- to medium-term prospects for foreign investment in Alaska's resources. Instead of encouraging foreign investments in fishing ventures that will provide jobs for Alaskans, however, state policy has had the opposite effect.

Attorney Breeze says on-shore processing isn't competitive with high seas processing in Alaska because of labor costs, real estate and construction costs and taxes. Taxes often account for more than a third of a processor's operating costs, he says, and they represent a powerful tool for reducing the state's uncompetitiveness. Instead, the state has supported reduced allocations to foreign fleets and forced them into joint ventures with U.S. fishermen – often from Seattle.

Joint ventures assure foreign fleets supplies within the 200-mile U.S. limit, and by fishing and processing outside the three-mile state limit, they can avoid state corporate taxes. Breeze maintains that the proper package of incentives – repeal of the worldwide reporting requirement being one of them – Alaska could land 10 new on-shore processing plants costing $10-$20 million and having 100 to 200 employees each.

Peat Marwick's Danner: Economic diversification, encouraged by a water's edge approach to corporate taxation should benefit Alaska's oil industry in the long term.

"IT SEEMS LIKE we often forget who our friends really are," he says. "The state has seemed to treat foreigners like they're on the other side of a competitive game. The Japanese, Koreans and Taiwanese have more of holistic view of things. They figure they need help with fishing and we need help with some of our other resources; they can't figure out why we want to cut off one hand while we're massaging the other. They see us as quite schizophrenic."

There's debate over why foreign investors find worldwide reporting so onerous. One school of thought: The approach may have limited long-term impact on their bottom lines, but the primary objection is philosophical. Frank Danner, chairman of the Alaska-Korea Business Council and managing partner of the Peat Marwick Mitchell office in Anchorage, says Orientals are "very close with their financial information. They view it as an invasion of privacy, and they don't want to invest where they're not wanted."

He adds foreign investors have "no love for the water's edge approach either" and would prefer separate accounting in which tax liability is calculated by subtracting expenses from sales on a state-by-state basis, "but they accept water's edge."

The other school: The bottom line is still the bottom line, and the goal of any business venture is to recapture initial investment as soon as possible. Any significant investment in developing Alaska's resources almost inevitably will result in substantial losses in the early years. By taxing profits on a worldwide basis, a multinational could find itself losing millions of dollars in Alaska yet paying the state corporate income tax on earnings elsewhere.

Says Calista's Gay, "Business is still business, no matter who's doing it. The investor isn't going to get any return at all until the project is developed and operating, and with some of the projects being looked at in Alaska, that could be as much as 10 years. The most important issue is economics, and investors have to have a way to get over that initial hurdle."

In other states, one of the primary concerns has been the impact of water's edge reporting on state government revenues. **According to one study, the average corporate tax setback has been 15 to 25 percent.** Oregon projected losing **only $18** million from its 1986-87 biennial budget, though, and there have been no studies of the impact of new investment on water's edge states' economies.

Alaska's Department of Revenue late in 1986 was studying how various tax systems would affect the state budget. Vince Wright, chief of the department's Research Section in Juneau, says an examination several years ago indicated water's edge reporting would have "no material impact."

Unlike other states, Alaska currently has no vehicle to benefit directly from increased investment stemming from a tax change. No state property tax. No personal income tax. No sales tax. While adopting a water's edge approach may not materially reduce state revenues, additional foreign investment may not materially increase them, either.

Nonetheless, worldwide reporting may be one of the big sticks the state will have to be willing to lay down if it's serious about attracting foreign capital to diversify its economy and it doesn't want to walk forever softly in world markets.

Says Peat Marwick's Danner, "I don't know that we get all that much (tax revenue) from foreign corporations anyhow, but with the intense competition for foreign investment, the benefits to the economy outweigh the revenues state government gets from worldwide reporting."

Adds Gay, major foreign investments in Alaska's development will mean "billions of dollars turning over in our economy for years to come. Our future is resource development, and in the longer term, foreign investment will be critical. But we need to send a message now that we want to make Alaska competitive and make it attractive to foreign investors."

Repeal of worldwide reporting may be the loudest and clearest message Alaska can send in the near term to show that it's ready to lay down the big stick and replace it with a carrot. □

Water's Edge Combination — Opportunity for Uniformity?

Richard Pinger

Richard Pinger, Senior Manager of Price Waterhouse in Houston, said that an opportunity to achieve uniformity has already been lost because nine states now apply water's edge combination but no two are alike. He said that water's edge is a fairness concept, but that it involves costs. For the taxpayer, the costs are those of return preparation and payment and the costs of compliance.

He said that dividends constitute the most important aspect of water's edge combination, but only for U.S. companies. He said that water's edge plus the inclusion of dividends without including factor relief is worse than worldwide combination.

He said that another problem is that of determining which corporations are includable in the combination. Seven of the nine states, he said, include all that are more than 50% commonly owned, one includes only 80% commonly owned corporations and one includes "unitary corporations." Four states include 936 corporations and five include them only partly. He noted other disparities.

Pinger said that eight of the states include at least a part of foreign dividends in the income base; that three provide some form of factor relief; that four states provide for water's edge to be allowed at the taxpayer's election but five require filing on the water's edge basis; that three make an election binding for three or more years; that two impose a fee for electing water's edge; and that only five have regulations.

All of those areas address the tax costs, he said, but the spreadsheets, which are provided for in the statutes of four of the nine states, will trigger tremendous compliance costs. He urged that those states be careful to see to it that any information required will be useful and that taxpayer compliance costs be considered. He expressed the hope that the four states would at least be uniform in establishing spreadsheet requirements. He said that this is the area that provides the best opportunity to attain some uniformity

John James

Minnesota's Commissioner of Revenue reviewed the history of his state's use of the unitary method. The state first adopted domestic, but not water's edge, combination as of July 1, 1981. It included U.S. Possession corporations and 931 and 936 corporations and did not recognize the 80/20 concept. Historically, both foreign and domestic dividends were 80% excluded, which continued to be the case under domestic combination. Royalties from foreign subsidiaries were not excluded; nor was there ever any factor relief for intangible or foreign income.

In 1985, the legislature enacted two changes, excluding from the base: 1) 100% of foreign dividends; and 2) 100% of foreign royalties received by 80/20 corporations.

1986 legislation cut the foreign dividend exclusion back to 80% and cut the foreign royalty exclusion for 80/20s to 35%.

1988 legislation phases in various changes which will u timately result in the following: retention of the 80% exclusic for foreign dividends (70% if the receiving company owns le than 80% of the paying company) with no factor relief; 80 exclusion of royalties received from a foreign subsidiary th is part of the receiving corporation's unitary business (no fa tor relief); foreign operating corporations, unitary 936s an 80/20s, are effectively treated as foreign corporations so th 80% of their income is excluded and the remaining 20% treated as a fully taxed deemed dividend to the parent corpor tion (no factor relief). U.S. Possessions corporations are e sentially treated as foreign corporations. Intangible operatin business income other than that which qualifies for the 80 exclusion is fully included in income subject to factor relie which involves including such income in the sales factor.

James said that worldwide unitary combination is the ap propriate approach conceptually, but that Minnesota ha adopted what amounts to water's edge combination. In doin so, it seeks to provide comparable tax treatment for majc foreign operations regardless of how organized.

Phil Aldape

Idaho's Income Tax Bureau Chief, who has also served a Chair of the MTC's Uniformity Committee for the past seven years, said that water's edge combination is not what man people had expected. He said that there had been growin uniformity under the movement toward worldwide combin tion; that the business community had driven the movemer toward water's edge and that, in doing so, it should have ex pected diverse results.

Aldape said that water's edge produces substantial reduc tions in the tax base as well as shifts in tax burdens; that th purpose of the water's edge movement, at least in the mind of legislators, was to produce an economic boom but that it i too early to determine its effects. He said that uniformity an ease of administration were not foremost in the minds of legis lators as they adopted water's edge. He said that uniformit is desirable but that it should not become a means by whic to restrict the tax base.

Aldape hoped that the spreadsheet would help the state administer their taxes effectively. He expressed the belief tha some multinationals prefer non-uniformity even though man other businesses sincerely yearn for uniformity and consisten cy among the states; that most multinationals do not wan uniformity on the condition of having to comply with spread sheet requirements. He said that state administrative cost need to be taken into account and that increased uniformit can be helpful to them as well as to many taxpayers.

He said that those states which have excluded 80/20s fror their water's edge base are particularly vulnerable to taxpaye tax avoidance tactics; that Section 482 adjustments are not practical answer; and that non-combination states are at th mercy of the taxpayer because the states do not have the resour ces to deal with Section 482 problems.

Nevertheless, he does think that the states should continu to work for uniformity, that it is possible in the water's edg area, and that it is desirable for both the states and man

taxpayers. He said that the four states that have been working on the spreadsheet have been trying to limit the requirements to information that would be necessary, important, and useful and would promote uniformity.

He suggested that current water's edge legislation should remain unchanged for a couple of years. That, he said, would give states and taxpayers alike a chance to evaluate it from state to state; and would increase the chances that any changes to be made in the future would be constructive ones which would enhance uniformity.

Aldape concluded with the comment that uniformity, if it is ever to be achieved, will require a substantial amount of unselfish cooperation between the states and the business community, and that the MTC is uniquely qualified to coordinate that effort.

John LaFaver

Montana's Director of Revenue, who moderated this session, said that, as he listened to the presentations, "it struck me that the changes in the tax laws that we've seen now in the last two or three years in a number of states, moving away from worldwide to water's edge, have served to substantially increase the cost of compliance for both taxpayers and tax agencies. We have enhanced the tax base in a number of states, we have shifted the states away from [illegible] have shifted the tax burden, but we have looked for an economic boom that has not happened." Therefore, he said, "I have to wonder whether, somewhere down the road, we are not going to have to re-invent worldwide unitary" combination.

Sales Taxation of Services

Ron Shreiner, Wade Anderson, Steve Keene

Ron Shreiner, the South Dakota Revenue Secretary, Wade Anderson, Executive Counsel for the Texas Comptroller, and Steven N. Keene, Director of the New Mexico's Audit and Compliance Division, described the manner in which their states had approached the taxation of services. All agreed upon the importance of taxing this fastest growing segment of the nation's economy. Shreiner and Anderson emphasized the importance of bringing the business community into the legislative process early, implying that Florida's troubles traced to a failure to do so; and Keene thought that Florida had taken the wrong approach in specifying services to be taxed rather than enacting a broad tax on services subject to exemptions.

Walter Hellerstein

Walter Hellerstein, the U. of Georgia law professor who had participated in the drafting of the Florida law, responded that Florida had in fact brought the business community into the process early and that legislative staff members had met endlessly with industry; that the apportionment that had been applied to interstate service transactions had been requested by the business community, which had then turned around and attacked it; that the real reason for the subsequent repeal was that the advertising industry simply did not want to be taxed, and that that would have been true regardless of the approach taken. He said that most other industries seemed to be willing to accept the tax as one that was needed to solve the state's fiscal problems. He predicted that most of the services which the legislation had addressed would end up being subjected to the tax anyway; but that the process would take longer and would be accomplished incrementally by expanding the base of the present sales/use tax in Florida.

Hellerstein said that some 50% of the GNP now consists of services and that the percentage is increasing. The states, he said, will have to take that into account in shaping their tax systems and will have to broaden their sales and use tax bases.

There is no economic distinction, he said, between the consumption of tangible personal property and the consumption of services. Eliminating the distinction between the two for tax purposes would greatly facilitate administration, and would bring an end to the extensive litigation which has been addressed to the distinction. He said that it would also increase tax neutrality between sales of services and sales of tangible personal property, that it would increase the responsiveness of the sales/use tax to changing economic conditions, and that it might be claimed to reduce regressivity, although he expressed doubt as to the validity of that claim.

Like the other speakers, he referred to special difficulties that are involved in the taxation of services, particularly sales for resale and sales across state lines. But he noted that the sale of services to business, even though the cost is included in the sales price of business products, does not necessarily conflict with current practices in many states with respect to sales of tangible personal property to business. He said that, if sales to business were exempted, the base would be so narrow that much higher rates would be required. Thus, he said, it is not possible to eliminate all pyramiding without making the base too narrow, whether talking about sales of tangible personal property or sales of services.

He noted that Florida had sought to tax consumption rather than performance, that that was consistent with the basic philosophy of treating a sales tax as a consumption tax, and that, in that context, the place where the service is performed is not relevant. This then raises the question as to whether one must apply apportionment with respect to a service that is used simultaneously in many jurisdictions. He thinks that, as a constitutional matter, apportionment is required. Florida considers a credit to be an adequate response to any multiple taxation complaint. Hellerstein said that debate will now center on the question of whether this is true.

He said that the U.S. Supreme Court would address that question in the pending cases of *G.T.E. Sprint v. Sweet* and *Goldberg v. Sweet*, Nos. 87-826 and 86-1101. There, Illinois imposes its tax on all receipts from telecommunications originating in or terminating in Illinois and billed to an Illinois service member, subject to a credit for tax paid on the same transaction and base to another state. He said that, while he believes that the credit deals effectively with the apportionment requirement, there remains the possibility that it will not satisfy Due Process requirements in all circumstances.

Economic Development and Alaska's Corporate Income Tax:

REVIEWING THE OPTIONS

Briefing for Governor Steve Cowper
and senior state officials

prepared by

The Alaska Department of Revenue
Hugh Malone, Commissioner

A. SUMMARY OF THE ISSUE

In his state of the state message Governor Cowper outlined a 16-point program for permanent recovery of the Alaska economy, including a proposal to "repeal the unitary tax on multinational corporations, replacing lost revenue by other means. "Two weeks later the governor directed the Department of Revenue and the Division of Policy to "review Alaska's tax structure with an eye toward removing potential barriers to international trade. " The Governor specified that he had no preconceived notions about what the review might suggest. He noted, however, that that "the current unitary system appears to scare off potential investors in Alaska."

The Department of Revenue's preliminary review of the corporate income tax structure suggests that the economic development effects of changing the present structure may not be as anticipated. Of special concern to the Department is the additional uncertainty that changing the current structure will introduce into the state's revenues, and its unpredictable effects on the prospects for achieving the balance of the administration's legislative program.

B. NEED FOR BRIEFING AT THIS TIME

Completion of the Department of Revenue's preliminary analysis is an appropriate point for further consideration of the complex ramifications of any change in the corporate tax structure, and to bring diverse expert opinion to bear on the subject.

C. AGENCY INVOLVEMENT

The Department of Revenue administers the tax laws of the state. It has aggressively applied the worldwide combined reporting method to unitary businesses for approximately the last 15 years. The agency has developed expertise with the unitary concept at the audit and administrative level as well as for revenue forecasting purposes.

The Department of Commerce and Economic Development and the Office of International Trade also have an indirect interest in the unitary concept. The focus of the interest is upon promoting investment in Alaska and expanding the state markets. A number of foreign interests, most

notably the Japanese, have argued to these agencies that the unitary concept applied on a worldwide basis inhibits new investment in Alaska.

D. THE STATE POLICY CONSIDERATIONS

An extremely important function of state government is the establishment of fiscal policy. Included within this area is the setting of state tax policy. The state has the unilateral right and responsibility to determine and implement a taxing system that is in the best interest of the people of the state.

Tax policy can be weighed with actual increased foreign investment bringing into the state new jobs for Alaska residents and a broader tax base. The increased foreign investment must be real, not hypothetical or based upon empty promises, to counter any reductions in tax revenues that may result; if not, small domestic corporate taxpayers could be required to pay increased levels of taxes to offset the shortfalls.

E. THE APPROACH TO THE ISSUES

The first step in the weighing of the state tax policy considerations is the identification of the alternative methods of corporate income taxation. The experience of other states in moving to a different method of taxation is also important as an indicator of what the state might expect. The historical results of using tax policy to attract investment is a further consideration.

SECTION ONE

Summary

In the past few years eleven of twelve states have repealed their worldwide combined apportionment statutes. In its place they have adopted either a water's edge or domestic combination method for calculating the corporate net income tax. Alaska remains as the only state applying combination and apportionment on a worldwide basis.

Alaska's policymakers are facing increased pressure to change its tax law. This pressure comes from such diverse entities as the United States Treasury Department, Pacific rim and European governments and foreign based businesses. Before offering legislation to effect such a change, this administration must carefully consider the ramifications such a change may have on its economy and on the ability of the state to generate revenues to fund public services.

This briefing paper analyzes our current income tax structure, providing both the proponent and opponent viewpoint on it and several alternatives. The Department of Revenue has recently begun a study to determine the potential effects of changing our worldwide unitary tax structure to a water's edge or domestic apportionment, or to a separate accounting type of tax. Until that study is completed, it is not possible to accurately predict the revenue impact a law change would create.

Finally, the Department of Revenue recommends that a comprehensive analysis of the intended and predictable economic impacts on the state be conducted. A change in tax structure in exchange for or in expectation of an increase in private sector economic development must be weighed against the increased difficulty state and local governments are having in providing necessary services to its citizens, as well as any impact it may have on small Alaska businesses.

DEFINITION OF TERMS

1. *Unitary Business*

If the operation of the portion of the business done within the state is dependent upon or contributes to the operations of the business outside the state, the operations are unitary. The business is characterized through functional integration, centralization of management and economics of scale.

2. *Combination (or combined report)*

When an operation is unitary, the separate corporate members' incomes are combined, before applying the apportionment formula (three factor formula).

3. *Worldwide Combination*

When members of a unitary group of corporations include subsidiaries incorporated in a foreign country, or where the parent company is a foreign corporation, and the incomes of the foreign companies are combined before applying the apportionment formula. Alaska is the only remaining state utilizing full worldwide combination.

4. *Domestic Combination*

An apportionment method which includes in apportionable income the profits of U.S. affiliates no matter where earned. Foreign affiliates income is not included.

5. *Water's Edge Apportionment*

An apportionment method which limits the scope of the unitary business to the domestic operations of U.S. affiliates. Income from foreign operation, branches or affiliates is not considered, though some states may tax the dividends paid by a foreign affiliate to a domestic parent company.

6. *Separate Accounting Method*

Each corporate taxpayer computes its income *only* on the basis of receipts and costs related to its instate activities, without reference to their out-of-state branches, subsidiaries and affiliates. This method needs no apportionment formula.

7. Apportionment Factor

A formula used to determine a state's share of a multijurisdictional business' taxable income. The formula is usually based upon factors of property, payroll and sales in the state, because of their close link with income producing activities.

EXAMPLES

To illustrate the various methods of apportionment, the following example is offered. Assume Company ABC is an integrated steel company with three affiliated companies, A, B and C.

Facts

Company A: Coal mining operation in Alaska.
Company B: Steel Company in Pittsburgh, 100% subsidiary of A.
Company C: Sales company in Canada, 100% subsidiary of A.
Branch A-1: Coal mining operation in Australia, branch of company A.

Separate Accounting

Company A would file its tax return in Alaska and report only those receipts and costs related to its instate business. Sales between A and B must be determined on an arms length basis for tax purposes even though the companies books and records may report them differently.

Water's Edge Apportionment

Company A and B if unitary, will combine and their combined incomes will be apportioned using the three factor formula. Because Branch A-1 and Company C are not domestic, they cannot combine with the foreign coal mining and sales operations. Some water's edge methods tax the dividends Company C would pay to Company A.

Domestic Combination

Company A and B will combine, including Company A's Australian branch. In some cases, dividends from C may be included in apportionable income.

Worldwide Combination

Companies A, B, and C, including A's Branch, will combine and apportion their entire income. This is the current tax method used by Alaska for both petroleum and non-petroleum taxpayers.

WHAT IS THE UNITARY BUSINESS PRINCIPAL?

More than two dozen states use the unitary method of determining how some corporations figure their income tax, but what exactly is the unitary method? Sometimes it is referred to as a "unitary tax" or a "new tax" on income earned outside the taxing state. It is not a new tax or even a separate tax but a theory or accounting method which some corporations subject to Alaska tax must use to figure out what portion of their income is attributable to Alaska. This method is called the combined income approach. If a unitary group exists, all of the group's income is subject to apportionment based on their use of the state market place. That means that the taxpayer must determine what portion of its income is attributable to Alaska. The amount of tax any company pays to Alaska is determined on the basis of the ratio of its activities in Alaska to its activities everywhere else. The formula method measures the level of business activity conducted in the state. The more or less business in Alaska, as measured by property, payroll and sales factors results in a corresponding reduction or rise in the amount of income subject to tax. The unitary method of taxation is designed to tax corporations based on their actual business relationships rather than the mere form of their relationships.

SECTION TWO

WHAT IS A UNITARY BUSINESS?

AS 43.19 provides how unitary business are taxed. The law applies to two or more corporations conducting a single or unitary business. These corporations must have over 50% common ownership and the business activities must be of mutual benefit, dependent upon or contributory to the activities of one or more of the other corporations in the unitary group.

Whether or not a business is unitary is decided by looking at all phases of the business' operation, its overall management and the relationships between its operating branches or departments.

Whether there is a unity of ownership (over 50% common ownership), operation and use are the three factors which are considered in determining if a business is unitary. Unity of operation is present if there is centralized advertising, accounting, financing, management, and group or committee purchasing. Unity of use occurs when the same group of people (the executive force) perform managerial functions for the group. Courts have recognized these characteristics as proof that a corporation is a member of a unitary business.

HOW DOES ALASKA'S LAW WORK?

Once it is determined that there is a unitary group, each member of the group which does business in Alaska must file a tax return which reflects the income of the entire group. Corporations which do not do any business in Alaska need not file a return in Alaska. Each corporation filing an Alaska return must compute their taxable income using the standard three factor formula, or in the case of oil and gas production and pipeline companies, a modified formula. These formulas may be stated as follows:

STANDARD 3 FACTOR APPORTIONMENT FORMULA

$$\text{Alaska Taxable Income} = \text{Total Apportionable Income} \times \frac{\text{property, payroll and sales in-state}}{\text{total property, payroll and sales everywhere}}$$

MODIFIED APPORTIONMENT FORMULA FOR OIL AND GAS PRODUCERS

Total Apportionable Income X

$$\frac{\frac{\text{Property in this State}}{\text{Total Property Everywhere}} + \frac{\text{AK Barrels or MCF extracted}}{\text{Total Barrels or MCF extracted}}}{2}$$

MODIFIED APPORTIONMENT FORMULA FOR PIPELINE COMPANIES

Total Apportionment Income X

$$\frac{\frac{\text{Property in this State}}{\text{Total Property Everywhere}} + \frac{\text{Sales in this State}}{\text{Total Sales Everywhere}}}{2}$$

MODIFIED APPORTIONMENT FORMULA FOR COMPANIES IN OIL AND GAS PRODUCTION & TRANSPORTATION

Total Apportionment Income X

$$\frac{\text{Property, Extraction and Sales In-State}}{\text{Total Property, Extraction and Sales Everywhere}}$$

ANSWERS TO SOME COMMON QUESTIONS ABOUT THE UNITARY THEORY

1. ***Q. If each state taxes a portion of a unitary group's income, isn't it likely that double taxation will occur?***

A. The issue of double taxation has been raised many times before the courts, but no case has ever shown an instance where the combined income approach inevitable resulted in double taxation.

Two or more states which use the separate accounting method may also arrive at conflicting conclusions as to how income is taxed. A recent Supreme Court decision (Container Corporation of America vs. Franchise Tax Board 103 S. ct. 2933, 2954, (1983)), recognized this possibility when it stated "it would be perverse, simply for the sake of avoiding double taxation, to require California to give up one allocation method that sometimes results in double taxation in favor of another allocation method that also sometimes results in double taxation."

The fact that may states use the three-factor formula minimizes the possibility of double taxation.

2. ***Q. The unitary theory is unfair because it gives a break to companies with out-of-state losses and penalizes companies with profitable business operations. Shouldn't profitable businesses be encouraged?***

A. Corporations with out-of-state losses and in-state gains appear to getting a tax break because they pay tax based only on their profitable Alaska business but on the whole their business is less profitable. Their fair share of tax to Alaska may actually be less than what they would pay under separate accounting.

Corporations which pay more tax to Alaska, based on their overall profitable business operations are just paying their fair share of tax to Alaska. The fact that corporations which earn more income pay more taxes is not a penalty. When corporations are so unfortunate as to suffer losses, it really would penalize them if they were required to pay higher taxes. Corporations plan to make profits. They rarely go into business to lose money.

3. ***Q. Does the use of the unitary method tax Alaska corporations on the income of separate businesses which have no connection with Alaska?***

A. It is a well established legal principle that states may tax income arising out of activities conducted in different states if there is a connection between the out-of-state activities and the taxing state. There must be a rational relationship between the out-of-state activities and the in-state activities and the taxing state. There must be a rational relationship between the out-of-state activities and the in-state activities. If there is a unitary group

as defined above, the members of the group are operating as a single business. That business' out-of-state activities are related to its in-state activities. In other words the so-called "separate" businesses do have a connection to Alaska. If some part of that single business is conducted with Alaska, Alaska may tax that business. Because that business does not operate entirely in Alaska, Alaska can only tax the fraction of income which is related to Alaska. As explained above, the three factor formula is used to determine what this percentage is.

If a business which does not operate in Alaska is truly separate, in the sense that it is not part of the unitary group which has operations in Alaska, it is not included on the combined report and its income is not taxed by Alaska. Only the income of businesses which do have a connection to Alaska are included on the combined report.

4. ***Q. How does Alaska's law differ from unitary laws of other states?***

A. Alaska's unitary law is similar to unitary laws in several other states but there are a few significant differences. Alaska's statute applies to corporations which are created or organized in any country in the world. (Other states' statutes may apply only to corporations organized in the United States.)

Alaska allows corporations to use an equally weighted arithmetic formula or formula which weighs sales, property and payroll the same. A few states use a formula which weighs one or more of the factors to a greater degree or eliminates one or more of the factors.

Some states, including Alaska, include sales in the part of the sales factor attributable to that state if they are not taxable to any other state. This is called a "throwback" rule because sales not taxable elsewhere are thrown back and treated as a sale which occurred in that state.

5. ***Q. How does Alaska's unitary statute affect the business community?***

A. There has been a lot of discussion about Alaska's "business climate." Because Alaska's unitary statute is over 20 years old general observations can be made concerning its overall impact. Although Alaska's economy is dominated by domestic oil production, foreign investment has been heavy over the years in the fisheries, timber and tourist industry. Alaska's unitary concept applied to all corporations (except big oil from 1978 through 1981)

has been one of the most stable aspects of a state's business climate. Its corporate taxation method, while important to many businesses, is only one factor to consider. California has used the unitary method since the late 1930's and its economic growth has been ranked at or near the top in comparison to other states.

Small businesses and companies which conduct their entire business within Alaska may benefit from Alaska's unitary statute because they are able to take losses currently. Several studies indicate that small businesses create more new jobs than larger businesses. Higher employment rates contribute to a stronger state economy. A healthy economy is always good for business.

Some segments of the business community object to combined reporting, but other segments of the business community support it. For example, the National Federation of Independent Business has testified before Congress in support of combined reporting.

6. ***Q.What are the arguments against the worldwide combined reporting method of unitary taxation as compared to those against separate accounting or an arm's length method?***

A. The opponents of the worldwide method make various claims in support of the arguments to abandon the method. These include the following:

- - it may result in double taxation of the same income unless all countries adopt the method.

- - it may interfere with international trade and impede new investment in the United States.

- - foreign based corporations may have a greater income distortion since they have a greater proportion of foreign to U.S. activities.

- - it departs from the international norm of arm's length or separate accounting.

- - it gives rise to foreign threats of retaliation against U.S. based companies.

- - it is administratively burdensome for corporations and domestic companies may not have access to the information concerning a foreign parent or other subsidiaries.

- - it is difficult to define the parameters of a unitary business which gives rise to taxpayer uncertainty.

- - states apply the concept nonuniformly.

The proponents of the method voice the following concerns on the use of separate accounting or the arm's length method:

- - it fails to accurately measure income and may lead to undertaxation in organizations that are functionally integrated, have centralized management, and share economies of scale.

- - it is administratively burdensome for states and taxpayers because of the millions of transactions that must be reviewed in order to source income among the various jurisdictions and the lack of free access to foreign information.

- - states lack the resources to administer it effectively which can result in the tax burden being shifted away from multinational corporations to smaller domestic companies.

- - the allocation of indirect expenses and the determination of value in intracompany transfers is extremely difficult, can be based on arbitrary criteria, can vary from one company to another, and is nearly impossible to audit in large multinational companies.

- - the rules and level of implementation at the international level are not uniform and it departs from the accepted method of state taxation based on apportionment.

- - it has been criticized by the General Accounting Office for failing to provide consistent, equitable measurement of income.

SECTION THREE

FACTORS AGAINST WORLDWIDE APPORTIONMENT

1. Taxpayers believe it exposes them to double taxation;

2. Taxpayers believe it burdens them with excessive bookkeeping requirements;

3. Distorts international flows of trade and investment;

4. Upsets longstanding agreements among the nations to achieve tax harmony;

5. Limits federal government's ability to conduct consistent international economic policy;

6. Invites retaliation by nation's trading partners;

7. Violates the Constitution.

FACTORS FAVORING WORLDWIDE APPORTIONMENT

1. Prevents corporations from evading taxes by misrepresenting the geographical allocation of their income;

2. Easier to administer than various separate accounting methods;

3. Generally, worldwide apportionment increases a state's corporate income tax revenue.

4. On a domestic basis, apportionment has been court approved.

Figure 1

How Much Income Did A Corporation Earn In Alaska?

Alternative Methods:

Separate Accounting Principle

Separate Accounting

$$\text{Alaska Sales} - \text{Alaska Expenses} = \text{Alaska Net Income}$$

Unitary Principle

Water's Edge Reporting Method

$$\frac{\frac{\text{Alaska Sales}}{\text{U.S. Sales}} + \frac{\text{Alaska Assets}}{\text{U.S. Assets}} + \frac{\text{Alaska Payroll}}{\text{U.S. Payroll}}}{3} \times (\text{U.S. Sales} - \text{U.S. Expenses}) = \text{Alaska Net Income}$$

Worldwide Combined Reporting Method

$$\frac{\frac{\text{Alaska Sales}}{\text{Worldwide Sales}} + \frac{\text{Alaska Assets}}{\text{Worldwide Assets}} + \frac{\text{Alaska Payroll}}{\text{Worldwide Payroll}}}{3} \times (\text{W.W Sales} - \text{W.W. Expenses}) = \text{Alaska Net Income}$$

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KEIDANREN on Japanese Economy REVIEW

in This Issue:

Strengthening the Multilateral Free Trade System

A Keidanren proposal to the government calls for steps to reduce Japan's trade surplus, improve the quality of life, promote free trade and prevent investment friction.

Investment from Japan Essential to Diversification of State Economies

Hideo Ishihara, leader of Keidanren investment mission to the U.S., reports on the investment climates and prospects in Alaska and Hawaii.

Japanese Direct Investment In U.S. Gains Momentum

The Council for Better Investment in the U.S. report discusses trends in Japanese direct investment in the U.S. and related problems.

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KEIDANREN is a private and non-profit economic organization which represents virtually all branches of economic activities in Japan. Keidanren, maintaining close contact with both public and private sectors at home and abroad, endeavors not only to find practical solutions to economic problems but also to contribute to the sound development of the economies of Japan and other countries around the world. Its membership counts 119 association members and 913 corporations as of October 1988. The association members include trade associations and regional economic organizations. The corporate members are leading Japanese enterprises and foreign companies operating in Japan.

Investment From Japan Essential to Diversification of State Economies

—A Report on Keidanren Investment Mission to the U.S. (Alaska, Hawaii)—

By Hideo Ishihara
Leader of Keidanren Investment Mission to the U.S.
Managing Director, Industrial Bank of Japan

1. Background and Purpose

Japanese direct investment in the United States has increased sharply in the past few years against a background of the rapid and steep appreciation of the yen. In fiscal 1987, such investment reached $14.7 billion, accounting for 44 percent of Japan's total overseas direct investment, according to the statistics compiled on the basis of reports submitted by investing entities, although the rate of growth fell to 45 percent from 88 percent in fiscal 1986.

Keidanren has been making efforts over the years to promote overseas direct investment, in the belief that such investment will help to correct trade imbalances in the long run and mitigate trade frictions with the U.S. and other countries. As part of these efforts, this organization sent investment missions to 23 states of America in 1984, to 16 states in 1986 and to five in 1987. In addition, we have made consistent efforts to seek abolition of the worldwide unitary tax, a major impediment to direct investment in the U.S. Substantial progress was made toward the resolution of this problem in 1986 when the state legislature of California passed an amendment bill.

The rapid rise in investment in the U.S., however, is causing concern about possible frictions related to investment, such as lack of harmony between investing corporations and local communities. In these circumstances, the Council for Better Investment in the U.S. was created in April this year by succeeding to the Worldwide Unitary Tax Council. The new council aims to deal with the remaining problems related to the unitary tax and to identify problems related to U.S. investment and study ways to cope with such problems.

The latest mission visited Alaska and Hawaii from September 4 to September 13 to obtain firsthand information on the investment climate in the two states and on problems related to investment in these states. Another purpose of the mission was to find out how these states perceived the growing concerns of Japanese investment in the U.S. generally — a sentiment that had intensified since the year before.

2. Impressions of the States Visited

(1) General Impressions

The states of Alaska and Hawaii are very different, when compared in terms of the level of Japanese direct investment. In Alaska, only a small number of investments have been made in the field of natural resources. In Hawaii, by contrast, a considerable number of investments have been made, particularly in the area of tourism.

We were impressed during the visits, however, by the fact that the two states have a number of extremely important things in common. First, both states are geographically separated from the other 48 states. Second, both are the newest states of America, Alaska being the 49th state and Hawaii the 50th. People in Alaska call the 48 states the "lower (southern) 48 states." In Hawaii, these states are collectively called the "mainland." These characteristics of Alaska and Hawaii have had significant effects on economic activities in these states. In particular, they have a strong desire to expand economic exchanges not only with the other 48 states but also with countries in the Pacific economic region, especially Japan. The warm welcome we received in the two states was an expression of this desire. We believe that now is the time for Japan to strengthen its economic relations with both states.

Industrial development needs to be promoted both in Alaska and Hawaii by taking advantage of their geographical characteristics. Alaska is situated at an almost equal

distance from Tokyo, New York and major cities in Europe, while Hawaii is located in the center of the Pacific. To cite a specific example, Federal Express has decided to use Anchorage as the hub of its international parcel delivery services. In addition, a plan to open a securities market in Hawaii is being studied since such trading can be conducted on the basis of time differences between Tokyo and New York. Hawaii also has the potential to develop an education industry since it can serve as the cultural bridge between East and West.

Both states are aiming to "diversify" their economies — an important fact which should be taken into account when Japan's economic relations with them are considered. Alaska, whose economic structure is traditionally oriented toward oil and other natural resources, has been hit hard by the fall in crude oil prices. Consequently, a major challenge for that state is to correct the excessive dependence on oil and other natural resources. Alaska's efforts toward economic diversification are evident in, for example, the fact that the governor of the state is taking the initiative to review the worldwide unitary tax and thereby facilitate foreign direct investment in the state.

In Hawaii, although the importance of promoting the tourism industry is recognized, efforts are being made to strengthen the economic structure through diversification of the economy, specifically through development of high-technologies such as oceanic technologies, in light of the state's geographical and other advantages. Although investment in real estate has elicited some criticism, we obtained the impression that the state government believes that investment from Japan has a large role to play in the development of the Hawaiian economy, and that continued expansion of such investment is to be welcomed.

(2) Impressions in Each State

Some of the impressions we gained during our visits to the two states will be described in more detail on a state-by-state basis:

1) Alaska

The purpose of our visit to Alaska was to conduct a survey on the investment climate there, including the worldwide unitary tax problem.

Regarding the worldwide unitary tax, we were encouraged by the fact that the state government, from the governor on down, is very positive about reviewing it. In fact, the government is already drafting an amendment bill. At a luncheon he hosted, Governor Cowper stated that Alaska has made efforts to expand trade and investment relations with Japan ever since it became the first state of America to open a representative office in Japan in 1964. As for the worldwide unitary tax, he expressed an intention to review it by taking into account the views of Japanese business leaders including Mr. Akio Morita, Vice Chairman of Keidanren and Chairman of the Council for Better Investment in the U.S.

However, the situation surrounding this tax problem does not warrant optimism since some members of the state legislature are said to be reluctant to change the current system. In the background of such negative attitudes is the fact that the current unitary tax system makes it possible for oil companies making large profits in the state to reduce their tax burden. The state government wants to lure more investment from abroad by introducing the water's edge method. At the same time, however, it is concerned about the possible impact of a tax change on the oil industry, which is playing a key role in the state economy. Under the present circumstances, the government is studying a revision on the condition that the tax would apply to the oil industry as an exception to the rule. Since the amendment bill now in the works is likely to come up for debate in the state legislature opening in January next year, we need to keep a close watch over future developments concerning the bill.

During the discussions on the unitary tax, the following question was often asked: Will Japanese investment in Alaska increase if the tax is changed? Our answer to the question was that not only the tax system but also various other factors are taken into account in the making of investment decisions. We believe that the Alaskan side understood our position, at least to some extent. However, since a change in the unitary tax would cause a drop in tax revenue, it is necessary for us to work out a more convincing answer to this question, which is expected to be asked time and again in future discussions on this problem.

In the past, economic relations between Japan and Alaska have centered on trade in mineral and fishery resources, forestry products, paper and pulp. The only notable case of Japanese direct investment is Alaska Pulp. Currently, there are several Japanese investment projects in the fields of coal exploration and resort development, and there are great expectations for these projects.

However, close attention must be paid to the question of environmental regulation in the implementation of these projects since local residents have a keen interest in the protection of the natural environment, one of the great physical assets of the state. On this point, Ms. Brady, the commissioner for natural resources, stated that no development project can be initiated without the consent of local residents. In order to obtain such consent, the state government hold public hearings. Only after the understanding of residents is obtain-

ed, can the legislature proceed to take action. This process of building a consensus naturally takes time.

During the visit to Alaska the mission conducted a tour of the Alaska Pulp plant in Sitka, a small coastal city. The plant, a pioneering example of Japanese direct investment in the U.S., has been in operation since 1959. The company has as many as 360 local people on its payroll and thus maintains close relations with the local community. However, it experienced a labor dispute and learned valuable lessons in the process. We also had much to learn from its experience regarding labor problems, relations with the local community and other relevant matters. The knowledge we obtained during the tour will help greatly, we believe, to promote activities of the Council For Better Investment in the U.S.

2) Hawaii

Hawaii has deep historical relations with Japan, as shown by the factor that about one-fourth of the state's population (about 1 million) are of Japanese descent. Also, one in five tourists from outside Hawaii is Japanese, and Japanese visitors account for one-third of the total revenue from tourism.

Thus Japan maintains a conspicuous presence in Hawaii, as compared with other states of America. Regarding Japanese investment in the state, the reaction was generally favorable except in a few cases, and most people we met expressed hope that investment would be expanded. Governor Waihee, stated during a meeting with us that Hawaii always welcomes foreign investment and that investment from Japan is making a material contribution to economic development in the state. Concerning real estate investment aimed at speculation, the governor stated that it is a matter of concern, as in Japan, and expressed hope that investment would increase in ways that would promote the development of the state economy.

Japanese enterprises, including their affiliates, already occupy an important position in the Hawaiian economy, and they have paid close attention to relations with the local community since they expanded into the state. We were informed that the Japan Club was making greater contributions to the local community, including a $500,000 donation made last year to the Aloha United Way, the Hawaiian branch of the United Way, a nonprofit organization whose business it is to collect donations from across the U.S. The visit to Hawaii was of great significance to the activities of the Council For Better Investment in the U.S. since maintaining harmonious relations with local communities is one of the key objectives of the council.

The state of Hawaii welcomes foreign direct investment in a range of fields from the point of view of promoting the diversification of the local economy. For example, Hawaii is promoting projects to build communications facilities taking advantage of its geographical position as the state situated in the center of the Pacific, to construct a base for space facilities on Hawaii Island and to develop oceanic technologies on Oafu and Maui islands.

In addition, a waterfront redevelopment project is under way in Honolulu Bay and adjacent areas. Members of the mission had the opportunity to observe some of the redevelopment work in progress on a boat tour of the bay. The project is designed to develop a bay area of 1,550 acres stretching along a 6-mile coastline by 1989 with the state government taking the initiative.

It needs to be noted, however, that development projects in Hawaii are subject to various restrictions as in Alaska. To take the waterfront development project as an example, efforts are being made to obtain the understanding of the local community. We learned that because of stringent restrictions, new development projects are avoided and acquisitions of existing areas and facilities are preferred in many cases.

The education industry is another area that seems to hold out much promise. In this connection, the mission visited the Japan America Institute of Management Science (JAIMS), which is managed with the support of Fujitsu Ltd. The institute is conducting a Japanese language program for Americans and scholarship students from Southeast Asia, in addition to a reorientation program for employees taking up overseas assignments. Considering that Hawaii is a cross-cultural center where people from the East and West mingle, it is expected that such global educational activities will produce highly satisfactory results.

3. Future Prospects

The growth of Japanese direct investment in the U.S. has elicited criticism from some Americans since late last year. At the level of individual states, however, such investment is generally welcomed. In Alaska, as described above, foreign investment, particularly from Japan, is being encouraged as an essential means of achieving economic diversification. In Hawaii, too, Japanse investment is appreciated gencrally from the same standpoint, although there have been some undesirable cases of speculative real estate investment. In the case of Alaska, however, information on the state as host to foreign investors is not yet sufficiently available since it is relatively recently that the state showed a positive attitude toward foreign investment. The move to revise the unitary tax is a manifestation of the positive attitude which the state government takes toward Japanese

corporations. We believe that Alaska will be cited more often as a candidate for Japanese investment if a tax change leads to a better understanding of the investment climate on the part of Japanese corporations.

One thing notable about Alaska is that the state is rich in undeveloped tourism resources as well as in natural resources. With the Japanese people becoming increasingly aware of the need to improve the quality of life, the natural environment in Alaska is a great attraction. A plan to hold various international conferences in the state is worth considering, since it is located at an almost equal distance from Japan, the continental U.S. and Europe. Through such moves the Japanese will have a deeper understanding of and a greater sense of affinity toward Alaska and, as a result, possibilities for investment in a variety of fields will likely increase.

As for Hawaii, possibilities for investment in areas other than tourism have tended to be overlooked because the image of the state as a tourist resort is too strong. One interesting possibility is the establishment of a securities market in Hawaii, which is situated between Tokyo and New York. Given such prospects, it is important, we believe, for the state to select certain priority areas and publicize their strong points to would-be foreign investors.

There is also a growing need to maintain harmonious relations with local communities, at a time when Japanese direct investment in the U.S. is expanding rapidly. Hawaii has an important role to play in this. If Japanese businesses learn from their experience in this friendly state and apply the lessons they have learned to their activities in other parts of the U.S., then such efforts will produce useful and beneficial results. In this sense, the JAIMS we visited is a good example of global educational institutions where people from various parts of the world can learn about the economies and cultures of the U.S. and Japan.

4. Acknowledgements

In sending the mission to Alaska and Hawaii we received generous cooperation and support from the governors of the two states, other officials of the state and municipal governments, private economic organizations, the Japanese Consulate General, Japanese corporations in the two states and their representative offices in Japan. We also obtained the cooperation of representatives from member companies who participated actively and enthusiastically in the mission throughout the tightly scheduled trip. I would like to express my deep gratitude for the cooperation and support extended to us and look forward to continued guidance and support.

Keidanren Investment Mission to U.S.A.
Purpose and Back Ground

Japan's direct investment in the United States has been rapidly expanding since the early 1980s, far outpacing the high growth of its global overseas investment. The United States has always been ranked as the number one host of Japan's direct investment. According to the figures released annually by the Ministry of Finance, 1,816 cases of direct investment, amounting to $14.7 billion (44.1% of Japan's global investment of the year), in the United States were made by Japanese companies in fiscal year 1987. This registered a vigorous 44.7% increase over 4.5 billion of the previous fiscal year. The cumulative (FY1951-87) total of Japan's direct investment in the U.S. now amounts to 50.2 billion dollars.

Keidanren believes Japanese direct investments into the U.S. will contribute to the economic development of both the U.S. and Japan, and has helped its member companies explore investment opportunities.

In this context, Keidanren sent three investment study missions covering 23 states in order to obtain firsthand information on economic and social environment of the respective state in June 1984. For the same purpose Keidanren sent similar missions to 16 states in 1986, and to 5 states in 1987. These missions exchanged views with the Governors, members of the state legislature, Mayors, leaders of the state and municipal governments, business community, as well as Japanese companies who already operate locally and visited major industrial sites as well.

With the fast increasing direct investment, Japanese companies are bound to face various new problems caused by their direct investment in the U.S., including such issues as fostering better community relations and avoiding movements towards greater investment restriction. In order to cope with these problems, a new council named "Council for Better Investment in the U.S." (CBIUS) was established on April 6, 1988.

Following these activities, another investment expansion mission was organized to visit the State of Alaska and the State of Hawaii from September 4 to 13.

The Mission will report its findings to the member companies of Keidanren and CBIUS and other Japanese corporations for reference in their future investment plans.

Though this mission will not engage in immediate business talks on investment, we are convinced that the visits by the mission, composed of representative corporations of major industrial sectors in Japan, will lead to a smooth expansion of Japan's direct investment, taking into account various social and economic concerns in the United States.

Keidanren Investment Mission to The United States of America

Alaska, Hawaii

September 1988

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サイマル・インターナショナル通訳

Keidanren (Japan Federation of Economic Organizations) is a private, non-profit economic organization representing virtually all branches of economic activities in Japan. Keidanren, maintaining close contact with both public and private sectors at home and abroad, endeavors not only to find practical solutions to economic problems but also to contribute to the sound development of the economies of Japan and countries around the world.

Through the merger of several economic and industrial organizations active since prewar days, Keidanren was established in August 1946.

Since then Keidanren has grown into a nation-wide body with 120 association and 915 corporate members as of August 1988.

Headed by internationally acknowledged leaders of the Japanese business community, Keidanren plays an active and influential role in the achievement of harmonious economic prosperity for all mankind.

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Sadami (Chris) Wada
Senior Vice President
Government Affairs

February 22, 1989

Testimony in support of
SB-119
Of Alaska State Senate
To modify
The Worldwide Unitary Tax
To Water's Edge Method

By

Sadami (Chris) Wada
Senior Vice President
Sony Corporation of America

U.S. Advisor to
The Council for Better
Investment in the U.S.
of KEIDANREN

My name is Sadami (Chris) Wada, Senior Vice President of Sony Corporation of America and I am also U.S. Advisor to the Council for Better Investment in the U.S. of KEIDANREN.

KEIDANREN is a Japanese name for Japan Federation of Economic Organizations. It is a private, non-profit economic organization representing virtually all branches of economic activities in Japan. It is certainly a nation-wide body with 120 association members and 921 corporate members as of September 1988.

KEIDANREN has sent a series of investment-related missions to various states since 1984, covering 23 states in the first year, 16 states in 1986, 5 states in 1987 and Alaska and Hawaii in September 1988.

Last September the 21-member KEIDANREN investment study mission to Alaska visited a number of places and had a number of important meetings in the state. The meetings included the state legislature leaderships, business leaderships, the Administration leaderships and reporters from media world.

We were very much impressed by the beauty of Alaska and its short distance from Japan. Its abundant natural resources also impressed us. Even though the state lost competition for 1994 winter Olympic site, the state is rich in sites for skiing and other wir er sports.

However, we were very much disappointed to learn that this rich and beautiful state has the notorious worldwide unitary tax system. The British, Dutch and other European nations united their efforts to appeal to the United States with their strong opposition against this unfair, unreasonable and internationally-rejected tax system. Prime Minister Margaret Thatcher repeatedly urged then president Ronald Reagan of the U.S. to stop the practice of the unitary tax on a worldwide basis.

We also found out the unfortunate nature of this worldwide unitary tax system, that results in unfair double taxation and in most onorous administrative burden that in most cases do no give any justice in the final tax assessment. We thought this is very ironic for Alaska, because this beautiful state was the first state to open its office in Tokyo, Japan in order to invite our investments in the state, but now it is the last state to eliminate it if it wants to see its Tokyo office succeed in inviting Japanese investments into the state.

In 1984 the following 12 states had the worldwide unitary tax system. They were Alaska, California, Colorado, Florida, Idaho, Indiana, Massachusets, Montana, New Hampshire, North Dakota, Oregon and Utah. All except Alaska changed their tax system. The most important worldwide unitary tax state, California with its largest tax exposure among the 12 states, provided the water's edge choice by its state legislature and the governor's signature in 1986. The governor of California did support their water's edge and signed it into the law for their economic growth through greater international investment particualarly in manufacturing. All of those states that modified their tax system did so in the same thought as California.

KEIDANREN, Sony and others from Japan, for greater investments in Alaska are all pleased to see SB-119 before the state legislature, and wish very much to support the passage of the bill. We are very happy to know that Governor Cowper took the initiative in this effort with the wide support from the Alaska state legislature. The worldwide unitary tax system penalizes investment. When one makes an investment in manufacturing, it takes time in purchasing land, building plant structures, machines, training workers, organizing plant operations to be efficient, debugging machine operations and also in securing and training material and parts suppliers. It takes easily a few years before you can have real profit on which you may pay income tax. Until you make profit, you have nothing to pay tax out of. The notorious worldwide unitary tax demands state tax payment out of global income from other countries, through what they call worldwide combination of income. Income made in other countries is of course taxed in each country. Why such income should be subjected to another tax. We oppose such double taxation. After invited to invest and to contribute to the economic activities and to the economic base, why one should be penalized by such double taxation.

Further, the worldwide unitary tax system requires combining of properties, sales and payroll of the whole world, in order to find out what percentage of the global income should be attributed to a certain state. Prices of one acre in the U.S. and Japan are very different, particularly when the one acre in Japan was bought three hundred years ago while the one in the U.S. was bought 1989. Those original book values of the each acre, make no basis for apportioning global income. It creates nothing but distortion. Sales in large and traditionally established market and in unstable and risky market would of course have different profit margin, therefore, such providing no rational basis to allocate global income. Wage levels are clearly known to be different country to country, once again, providing no reasonable basis for allocating global income. In Japan, no-lay off means very much beyond some wage differences and it can have important value. Country to country, fringe

benefits are different, that include housing in some countries where it could mean very much in value. Therefore, contribution to income creation cannot be direct translation of wages or salaries. There are in some cases, very important elements that enables contribution by employees to the corporate income, outside wages and salaries.

I am sure that state tax authorities are responsbile to tax corporations without allowing them to hide income and evade due taxes. The Federal Government is very much responsible for making sure that they tax right and not allow international corporations to evade taxes. Their responsibilities may be even far greater, the stake being much larger compared to state level. The Federal tax authorities use "arm's length" method to test any suspicious transactions. IRS Code 482 gives the Secretary of Treasury such an authority to carry out their responsibility to tax. Why cannot a state use the same test, rather than rely upon the impossible worldwide unitary tax system.

Exchange rates among nations that have been changing so much not only over years but even within a year of twelve months. What exchange rate to use? What justification is there for choosing any exchange rate? What could have been the exchange rate of the Japanese currency of three hundred years ago to the U.S. dollar? Should we combine the result, whatever it may be, with the value of any U.S. property bought this year?

Japan has made about $50 billion direct investment in the United States so far. As we make trade surplus with the U.S. we must get the money back to U.S. Unless wo do so, the shortage of money in U.S. will drive the interest rate higher and economic activities lower. Japan should invest such U.S. money in manufacturing industries, rather than national bonds, considering ›ductive and job-creating impact. Greater manuf nas tremendous ripple effects in economic activi...

I am sure all the people in the world find Alaska beautiful and exciting with her natural beauty. She is rich in resources and attractive for recreational sports of different kinds. The KEIDANREN mission came and found this state very attractive but when we learned that unfortunately this state still keeps what we thought was something of the past, we were surprised and disappointed, because the worldwide unitary tax means a red flag for investment.

SB-119 eliminates the worldwide unitary tax from Alaska and removes fear of unfare double taxation from investing in Alaska. It ends the most cumbersome and onorous tax system.

Once the notorious worldwide unitary tax is removed from Alaska and the internationally accepted system is applied to investors from U.K., Holland, Germany or any other country certainly including Japan, I am sure Alaska is really ready for any international investments. KEIDANREN will remove the red flag from Alaska on the investment map.

I would like to express here my sincere appreciation for the opportunity to communicate our opposition against the worldwide unitary tax and our support to the Senate Bill SB-119.

I would also like to express here my appreciation for the January 25, 1989 opportunity to testify via telephone in support of the same SB-119 before the Senates's Committee on International Trade and Tourism under the chairmanship of Senator Szymanski.

****** end ******

ATTACHMENT A

Draft List of Possible Options

1. **Separate accounting for all corporate taxpayers**. This is nominally what the Japanese are asking for, and would remove the psychological barrier said to deter foreign investment. It could lose us up to $2 million annually (depending on how implemented) in non-petroleum corporate tax revenue, but at current oil prices would increase petroleum tax revenue by at least $150 million. Under separate accounting, production and pipeline profits earned in Alaska would be taxed at the full 9.4 percent nominal rate. See the table below for the effective rates under current law.

Net Income, Tax Paid, and Average Effective Rates
Petroleum Corporate Income Tax
----------millions---------

	Alaska Net Income	*Tax Paid*	*Tax Rate*
1983	$5,771	$236	4.1%
1984	$6,639	$265	4.0%
1985	$5,083	$169	3.3%
1986	$3,452	$134	3.9%

Net income calculated from data in Sohio annual reports and FERC filings.

2. **Water's edge for all corporate taxpayers**.Would also remove the psychological barrier said to deter foreign investment. Likely to have little impact on current non-petroleum corporate tax revenue (i.e. ± <$1 million annually). The effect on petroleum revenue could be much larger, though difficult to predict. EXXON and Standard would probably pay more tax, and that ARCO would pay less, resulting in a net increase of $10-40 million in annual corporate petroleum income tax revenue.

3. **Status quo for oil companies, separate accounting for everyone else.**

4. **Status quo for oil companies, water's edge for everyone else.**

5. **Status quo for oil companies, separate accounting or water's edge for everyone else, with a compensating rate change to make result "revenue neutral."** But has anyone figured out what we mean by "revenue neutral?"

6. **Separate accounting or water's edge for everyone, with a compensating rate change to make result "revenue neutral."** Theoretically, this could get the state the same

amount of money as it is currently getting, while cutting the nominal tax rate roughly in half. The oil companies would pay a tiny bit more than at present. Everyone else (at least everyone currently paying 9.4 percent) would have their corporate tax reduced by half. This would unequivocally have a positive economic diversification effect, a statement that can't be made about any of the options describe above. The problem, of course, is that the rate adjustment required for revenue neutrality this year (assuming we could figure that out in advance) would almost certainly not be revenue neutral in the following year.

7. **Abolish the non-petroleum tax, go to separate accounting for oil companies and adjust the rate to achieve "revenue neutrality."** We could probably reduce our nominal 9.4 percent rate (now paid only by oil companies) to 5.5 percent and expect the result to approximate the revenue from our current corporate tax structure. Like option 6, this would produce an unequivocal economic diversification impact.

8. **Abolish the non-petroleum tax, go to separate accounting for oil companies.** Like option 1, above, this would raise oil company taxes and state revenue. Unlike option 1, this would be *certain* to have a positive impact on economic diversification.

9. **Give corporations an option, *a la* California.** Any time we give the oil companies (or any other profit maximizers) an option, they will use it to lower their costs. Where the amounts at stake are large, as they are with in the case of Alaska oil, there is the risk of losing big bucks.

10. **Give non-petroleum corporations an option, *a la* California, but retain (and require) worldwide unitary for oil companies.** But some authorities have suggested that once you establish an option, it must be made available to all.

11. **Do nothing.** "Sorry, governor. It seemed like a good idea at the time, but further study suggests that it doesn't make sense. The reason it doesn't make sense is...."

12. **Study the question until it goes away.** A variation on the "do nothing" option, above. An easy option to justify because no matter how much analysis we devote to any proposed change, we will still face considerable uncertainty on the revenue effects of the change. And while it may not always be true, it *can* always be asserted that additional analysis will reduce the residual uncertainty.

TABLE D-6
CORPORATE INCOME TAX
AS PERCENT OF STATE TAX COLLECTIONS
1985

RANK	*STATE*	*PERCENT*
1	NEW HAMPSHIRE	22.0
2	MICHIGAN	16.0
3	CONNECTICUT	14.0
4	MASSACHUSETTS	12.9
5	CALIFORNIA	12.6
6	NORTH DAKOTA	12.2
7	NEW JERSEY	12.0
→ 8	ALASKA	10.8
9	MONTANA	9.8
10	DELAWARE	9.4
11	NORTH CAROLINA	9.4
12	PENNSYLVANIA	9.3
13	GEORGIA	9.2
14	NEW YORK	9.0
15	TENNESSEE	8.6
16	KANSAS	8.3
17	RHODE ISLAND	8.2
18	WISCONSIN	8.2
19	OREGON	7.8
20	ILLINOIS	7.7
21	VERMONT	7.6
22	LOUISIANA	7.6
23	ARKANSAS	7.5
24	MINNESOTA	7.3
25	SOUTH CAROLINA	7.3
26	ALABAMA	7.3
27	KENTUCKY	7.0
28	ARIZONA	6.9
29	IOWA	6.7
30	VIRGINIA	6.4
31	MISSISSIPPI	5.9
32	IDAHO	5.8
33	MARYLAND	5.7
34	FLORIDA	5.5
35	MAINE	5.3
36	WEST VIRGINIA	5.3
37	OHIO	5.1
38	MISSOURI	4.8
39	SOUTH DAKOTA	4.8
40	NEBRASKA	4.7
41	NEW MEXICO	4.5
42	COLORADO	4.4
43	INDIANA	4.1
44	UTAH	3.9
45	HAWAII	3.6
46	OKLAHOMA	3.5
47	NEVADA	0.0
48	TEXAS	0.0
49	WASHINGTON	0.0
50	WYOMING	0.0
	50 STATE AVG.	8.2

ATTACHMENT B

The corporate tax is plays a bigger role in Alaska than in most states, though a smaller role than it did before the 1981 tax amendments (see Attachment D). Alaska would rank a little lower if the comparison were made against "all general revenues," which would then include our royalty income in the denominator. This is U.S. Census data.

TABLE D-32
CORPORATE PROFITS TAX ON ADDED DOLLAR OF PROFIT ($1,000,000 TO $1,000,001)
1986

RANK	STATE	PERCENT
1	MINNESOTA	12.00
2	CONNECTICUT	11.50
3	NEW YORK	10.00
4	OHIO	9.70
5	CALIFORNIA	9.60
6	MASSACHUSETTS	9.50
7	PENNSYLVANIA	9.50
8	ALASKA	9.40
9	NEW JERSEY	9.00
10	VERMONT	9.00
11	MAINE	8.93
12	DELAWARE	8.70
13	NEW HAMPSHIRE	8.25
14	RHODE ISLAND	8.00
15	WISCONSIN	7.90
16	IDAHO	7.70
17	OREGON	7.50
18	KENTUCKY	7.25
19	MARYLAND	7.00
20	WEST VIRGINIA	7.00
21	KANSAS	6.75
22	MONTANA	6.75
23	NEBRASKA	6.65
24	ILLINOIS	6.50
25	IOWA	6.48
26	HAWAII	6.44
27	ARKANSAS	6.00
28	GEORGIA	6.00
29	NEW MEXICO	6.00
30	NORTH CAROLINA	6.00
31	SOUTH CAROLINA	6.00
32	TENNESSEE	6.00
33	VIRGINIA	6.00
34	ARIZONA	5.67
35	NORTH DAKOTA	5.67
36	FLORIDA	5.50
37	COLORADO	5.00
38	MISSISSIPPI	5.00
39	OKLAHOMA	5.00
40	UTAH	5.00
41	LOUISIANA	4.32
42	INDIANA	3.00
43	ALABAMA	2.70
44	MISSOURI	2.70
45	MICHIGAN	2.00
46	NEVADA	0.00
47	SOUTH DAKOTA	0.00
48	TEXAS	0.00
49	WASHINGTON	0.00
50	WYOMING	0.00

ATTACHMENT C

As this ranking shows, Alaska has a fairly high corporate tax rate. Large mining companies and others which historically pay virtually no income tax may not care. For small to medium corporations (annual sales less than $50 million) studies suggest that the rate may be a significant factor in both location decisions and business success. The desire to reduce the nominal rate has been an element in tax "reform," both federally and in states like Minnesota and New York. For many, a quick and quantitative measure of income tax "reform" is the increase in collections per percentage point of rate: (Δcollections/1% tax/million $ tax base).

ATTACHMENT D

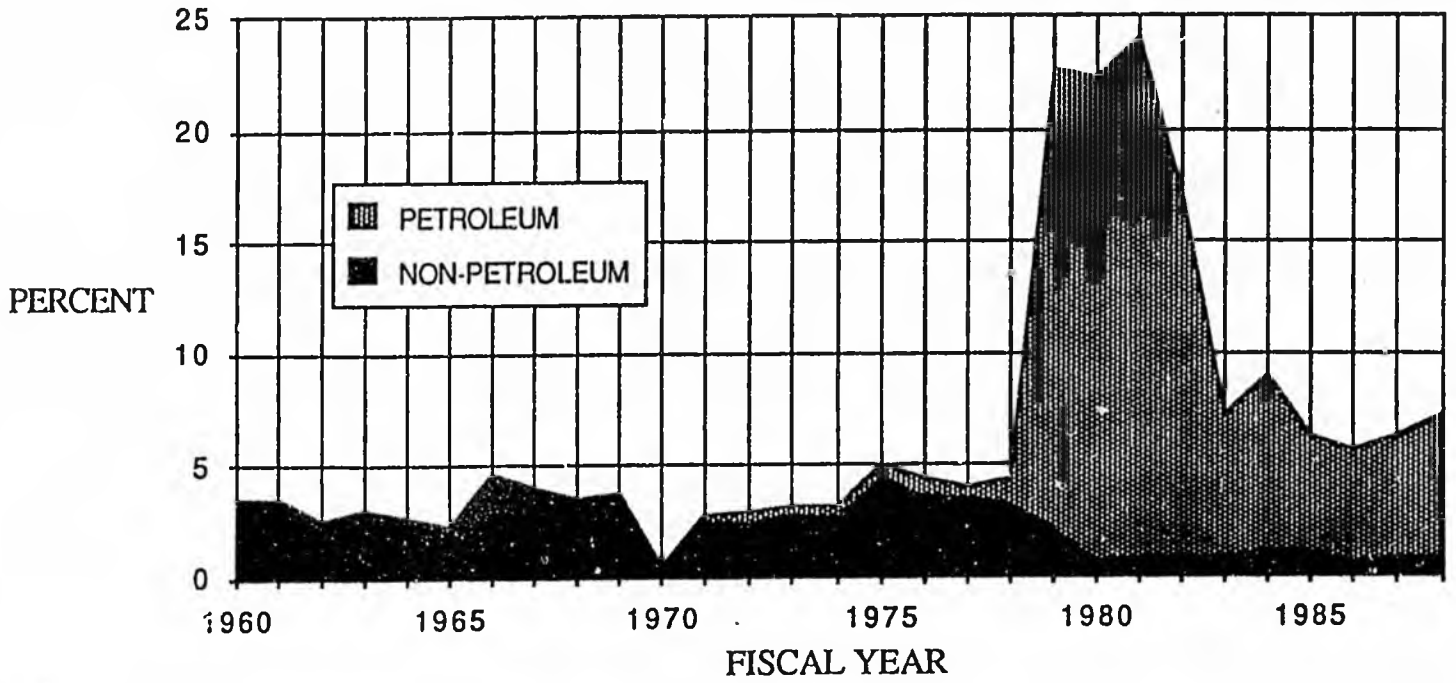
CORPORATE TAX AND TOTAL UNRESTRICTED REVENUE, FY 1959-88
($ Millions)

FY	UNRESTRICTED GENERAL FUND REVENUE	CORPORATE INCOME TAX REVENUE	
		Petroleum	Non-petroleum
59	25.4		1.4
60	48.0		1.7
61	40.5		1.4
62	68.9		1.8
63	71.6		2.2
64	67.0		1.8
65	83.0		1.9
66	86.5		4.1
67	86.6		3.5
68	112.7	0.1	3.8
69	112.4	0.1	4.2
70	1067.3	0.4	4.9
71	220.4	0.9	5.2
72	219.2	1.2	5.3
73	208.2	0.9	5.9
74	254.9	1.2	7.0
75	333.4	2.5	14.8
76	709.8	4.9	26.2
77	874.3	5.0	30.8
78	764.9	8.4	25.1
79	1133.0	232.6	24.8
80	2501.2	547.5	17.9
81	3718.2	860.1	34.8
82	4108.4	668.9	34.8
83	3631.0	236.0	30.1
84	3390.1	265.1	39.5
85	3260.0	168.6	36.0
86	2679.4	135.0	15.0
87	1741.3	95.0	14.0
88*	1716.1	110	15

*Forecast.

ATTACHMENT E

CORPORATE INCOME TAX REVENUES AS A SHARE OF TOTAL U.G.F. REVENUE



SB 123

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 3/29/89

3/1

Mr. President:

RES Committee considered SB 123

adopting the Uniform Conservation Easement Act; efd

and recommended

[ ] ~~replace with~~ ___ CS SB 123 (Jud)) [X] same title
[X] or adopt ___ CS ___) [ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s) and

[ ] ___ letter of intent adopted

[X] do pass majority

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ___

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [ ] previous
[ ] same as previous fiscal note(s) published ___

MEMBERS SIGNING DO PASS

Carlisa Stangelewicz
Rick Halford

OTHER RECOMMENDATIONS

Ole Gleason no rec.
Fred E. Graff No Rec-

~~Fred~~ Tahrenkamp Do Pass
Chairman signature and recommendation

[ ] Committee Backup attached

SENATE COMMITTEE REPORT

6-0350 E

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE MARCH 2 1989
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER RES

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE _____

1/17/89

Mr. President:

JUD Committee considered SB 123

adopting the Uniform Conservation Easement Act; efd

and recommended:

[X] replace with CS SB 123 (JUD) [X] same title
[ ] new title

[ ] attached amendment(s) and + majority do pass.

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) attached [X] zero [ ] fiscal impact
[ ] appropriation no FN attached [ ] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Rick Halford

OTHER RECOMMENDATIONS

FN for CS forthcoming
2 FN for SB here

Chairman signature and recommendation

[ ] Committee backup attached

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 123(JUD) (b)

PUBLISH DATE: 3/17/89

FISCAL NOTE

REQUEST:

Revision Date: 14-Mar-89

Title: An Act adopting the Uniform Conservation Easement Act

Sponsor: Sturgulewski

Requestor: Senate Judiciary

Agency Affected: Natural Resources

BRU: Parks Management
Land & Water Mgmt

Components: Parks Management
Land & Water Mgmt

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky
Phone: 465-2400
Division: Commissioner's Office
Date: 14-Mar-89

Approved by Commissioner: Lennie Gorsuch
Date: 14-Mar-89
Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M 15 Wednesday 1989

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Senator Arliss Sturgulewski

Senate Bill 123 "An Act adopting the Uniform Conservation Easement Act; and providing for an effective date" has been referred to the Senate Resources Committee. I respectfully request that you schedule this bill to be heard as soon as is practicable.

The purpose of this legislation is to change the rules of common law about the enforceability, by a third party, of a use of land. That third party, the holder of a conservation easement, need not have a right to use the land for any purpose, it has only the right to ensure the land is used for the purposes stated in the easement by the grantor.

The Act itself does not impose restrictions or affirmative duties; it allows the private parties to enter into consensual arrangements with a charitable organization or a governmental body to protect land and buildings without the encumbrance of certain potential common law impediments.

Attached is a copy of the Uniform Act commentary which I am sure you will find helpful, a memo from Dick Bradley of Legal Services which summarizes the Act, a question - and - answer sheet prepared by Anchorage Historic Properties Corporation, and an article about a conservation easement grant occurring in Anchorage.

In addition, I have attached a memorandum from John Reese, an attorney and the Chairman of the Anchorage Historic Properties Commission regarding certain implications of this act on concerns raised by a member of the Senate Judiciary Committee. The Judiciary committee made two changes to this bill:

The first change was the addition of (e) to Sec. 34.17.010 stating that neither the state nor a municipality may establish a conservation easement by eminent domain.

The second change was the addition of a provision to Title 29 which requires land upon which there is a conservation easement to be assessed both as though there were no easement and as though there were. In addition, the owner of property on which there is a conservation easement is subject to pay any tax liability that was abated because of the easement if the property should be used contrary to the easement. This change was suggested by Dick Bradley of Legislative Services; his memo is attached.

Please call me or Melissa Fouse of my staff at 465-3818 if you have any questions.

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 6, 1989

The Honorable Jan Faiks
Chair, Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Subject: Senate Bill 123, Uniform Conservation Easement Act.

Position: The department does not object to this bill and at the present time has no plans or funding to purchase conservation easements. The bill allows for the preservation and conservation of natural and historic resources for the public benefit while maintaining private ownership of the property.

Background: SB 123 has support from historic preservation and natural history conservation groups. The bill provides a process which allows conservation easements to be donated or sold to a governmental or charitable non-profit organization.

Common land law does not allow a conservation easement restriction to attach to land in perpetuity. It is based on model legislation drafted by the National Conference of Commissioners on Uniform State Laws. Alaska is one of four states without a conservation easement law.

Conservation easements will provide public land managers with an alternate acquisition method to employ in appropriate circumstances so as to benefit both the private and public sectors. It is a cost-effective way to protect historic and natural values on private lands without the cost of fee simple purchase of the land. The owner is compensated through purchase of the easement or the ability to deduct the value of the easement from federal income taxes as a charitable gift. Because the property remains in private ownership, it remains on local tax rolls, and the public does not take on the responsibility of maintenance and operation of the property.

Conservation easements can be used to protect public values in historic structures and archaeological sites, natural, scenic and open spaces, fishing streams or watershed or critical waterfowl nesting areas.

Sincerely,

Lennie Gorsuch

Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Bob Evans
Denby Lloyd
Gary Gustafson
Neil Johannsen
Judith Bittner

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 123
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 6-Mar-89
Title: An Act adopting the Uniform Conservation Easement Act
Sponsor: Sturgulewski
Requestor: Senate Judiciary

Agency Affected: Natural Resources
BRU: Parks Management
Land & Water Mgmt
Components: Parks Management
Land & Water Mgmt

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky
Phone: 465-2400
Division: Commissioner's Office
Date: 6-Mar-89

Approved by Commissioner: Lennie Gorsuch
Date: 6-Mar-89
Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 123 (Jud)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Uniform Conservation Easement Act
Sponsor: Sturgulewski
Requestor: Senate Judiciary

Agency Affected: Fish and Game
BRU: Habitat
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Roland Shanks
Phone: 465-4100
Division: Commissioner's Office
Date: 3/15/89

Approved by Commissioner: Don McKinnon
Date: 3.15.89
Agency: Fish and Game

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SB ____ -- ALASKA CONSERVATION EASEMENT BILL

WHAT WOULD THE BILL DO?

SB __ would provide the legal process to create conservation easements on private property in Alaska.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement made voluntarily by a private property owner to limit, for the benefit of the public, the type or amount of use of a property. The easement may be donated or it may be sold. An easement is created to protect natural, scenic, open space, historical or cultural values. The easement is accepted, held and monitored by a governmental agency or an appropriate nonprofit corporation. Simply put, the easement is a restriction on the use of real estate.

WHAT KIND OF EASEMENTS ARE WE TALKING ABOUT?

Two types of easements which would be frequently used are Historic Easements and Wildlife Conservation Easements. A typical Historic Easement would be the voluntary written agreement of the owner of a historic building to preserve the historic character of the building and not to replace it with any other structure. A Wildlife Conservation Easement might provide for the perpetual preservation of the watershed of a particularly unique fishing stream or a critical waterfowl nesting area.

IS THIS A NEW IDEA?

No, conservation easements were first used in the 1880s. Alaska is one of four states without a conservation easement law to take advantage of the land management tool which has been called a "terrific alternative to fee acquisition."

WHY DO WE NEED A LAW TO DO THIS?

An Alaska conservation easement law is necessary because the common laws that govern land do not allow such a restriction to attach to the land in perpetuity in those instances where the Grantee of The Easement does not own an adjoining parcel of land. The new law would remove that restriction to allow certain charitable and governmental organizations to have enforceable easements without owning the adjoining land.

SB __ is essentially verbatim from the Uniform Conservation Act which was drafted as a model law by the National Conference of Commissioners on Uniform State Laws.

WHAT ARE THE PUBLIC ADVANTAGES?

A conservation easement provides a cost-effective way to protect public values of private land. These values may be natural, historic, scenic or cultural. It allows such values to be protected without the cost of fee simple purchase of land. The land stays in private ownership.

Because the land stays in private hands, it also stays on the local tax rolls. The assessed valuation may increase or decrease depending on the nature of the easement. For example a historic easement may make the property more valuable for tourist related use while a critical habitat easement would probably reduce value because development would be prohibited.

Furthermore, since the property stays in private ownership the public does not incur the management costs that would come if the lands or buildings were publicly owned. While the public holder of the easement must monitor the agreement this would be an extremely modest cost.

WHY WOULD A PRIVATE LANDOWNER WANT TO CREATE AN EASEMENT?

The landowner who donates a conservation easement, to a public agency or qualified charity, can claim federal income tax deductions for the charitable gift. In the alternative the landowner may sell the easement for what he considers a fair price. All such transactions would be voluntary. No governmental taking through eminent domain would be involved.

Estate taxes can also be reduced through the donation of an easement. Property restricted by a perpetual conservation easement either before the landowner's death or executed as an element of his/her will, must be valued in the estate at its restricted value, resulting in lower taxes.

HOW LONG DOES AN EASEMENT LAST?

A conservation easement would restrict the land for only as long as agreed to by the owner.

WHAT ABOUT PUBLIC ACCESS?

Understandably, most landowners want to retain an ability to control access to land that is still theirs. The landowner and the grantee of the easement may, however, provide for public access if the landowner so agrees.

IN SUMMARY: Conservation easements are flexible, adaptable agreements tailored to the needs of the property owner and the character of the property. Specific public benefits are provided -- without the expense of purchase and while maintaining the land in private ownership.

Keeping downtown in shape

Deal insures facade of Wendler Building

By RON ZELLAR
Times Business Writer

The owner of a downtown landmark acquired from the Municipality of Anchorage in 1984 has donated the building's exterior and air rights to a city-created, non-profit corporation.

Bill Mundy, owner of the Wendler Building at 400 D St., said terms of the agreement with Anchorage Historic Properties Inc. require him to maintain the facade and to insure the building for replacement, among other conditions.

In return, he will receive a tax benefit for the donation, known as a "historic preservation and conservation easement," and retain ownership of the building's interior.

Mundy made the donation just before the end of the 1988 tax year. The size of the tax benefit will not be known until an appraisal is done within the next three months to see how the donation affects the property's value, he said.

Kerry Hoffman, executive director of Anchorage Historic Properties, said the potential tax benefit is sizable, and the corporation hopes the transaction will spur interest in easements to help the preserve the city's historic buildings.

The Wendler Building was built by merchant A.J. Wendler in 1915 as a grocery store with living quarters on the second floor. The grocery, situated at Fourth Avenue and I Streets,

See Building, page B-3

Building

Continued from page B-1

was one of 92 businesses that opened on the city's main street the same year.

The business was converted to a restaurant and bar by Wendler's daughter and was renamed Club 25. In 1982, the property was sold and the building donated to the city on the condition that it be moved. A renovation plan by a partnership that included Mundy was accepted by the city, which spent $47,000 to move the building to its present location.

Another structure, called the Landmark Building, was built behind the historic building to boost its available space. Mundy said a portion of the Landmark's second floor was designed to be used with the Wendler Building as a restaurant — a plan he still hopes to pursue when the Anchorage economy improves.

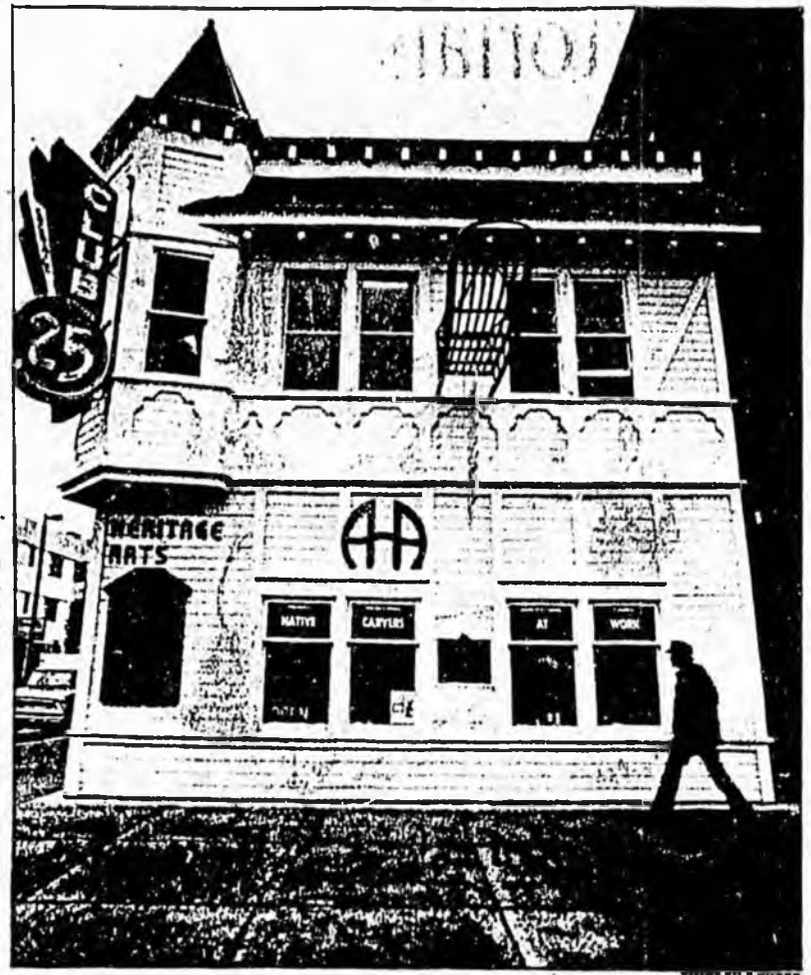
Donation of the air rights means no structure taller than the existing buildings can be built on the site.

The insurance provision requires that if the Wendler Building burns or is destroyed by an earthquake or some other disaster, proceeds must be used to build a replica, or to situate and restore another historic building on the site.

For example, he said, Anchorage Historic Properties might want to move one of several other buildings now in storage at the Cook Inlet Pretrial Facility if the Wendler Building were destroyed.

Mundy said tax incentives for historic buildings changed along with other tax laws in 1986, and it is doubtful the renovation project could have been done under current rules, which limit an individual's use of rehabilitation investment credits.

Hoffman said changes to restore some of the tax benefits are scheduled for consideration by Congress, but sizable benefits remain under present laws for businesses owning historic structures.



TIMES FILE PHOTO

Bill Mundy will get a tax benefit for donating the Wendler Building's exterior to a non-profit.

To be eligible for tax benefits, landmark buildings must be listed on the National Register of Historic Places. About a dozen Anchorage buildings are on the registry, she said.

Anchorage Historic Properties plans an effort this year to get more buildings listed or declared eligible for listing if owners decide to pursue the designation.

Anchorage Historic Properties Inc. was formed by a $1.7 million voter initiative as part of the city's Project 88 program that also led to the construction of parks and public buildings.

The corporation uses the money as an endowment to protect historic properties and to operate a revolving loan fund. Hoffman said the organization is working to be self-supporting through earned revenues, memberships, contributions and project grants.

Introduced by: Anchorage Municipal Assembly

Date: November 16, 1988

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. _____

A RESOLUTION REGARDING THE HISTORIC EASEMENT ENABLING ACT AND UNIFORM CONSERVATION EASEMENT ACT

WHEREAS, historic preservation has many benefits to a community both tangible and intangible, and

WHEREAS, historic preservation easements are one tangible historic preservation strategy, and

WHEREAS, the proposed Uniform Conservation Easement Act will enable governments and qualified nonprofit organizations to acquire/receive easements on real property that are of unlimited duration, and

WHEREAS, the inherited English common law of real property leaves doubt about the enforceability of historic easements which are not tied to an adjoining property, and

WHEREAS, the proposed Uniform Conservation Easement Act removes that doubt.

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the enactment of the Uniform Conservation Easement At.

This resolution was passed by the governing body of Municipality of Anchorage on November 15, 1988.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM January 24, 1989

SUBJECT: Uniform Conservation Easement Act (SB 123)

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley
Legislative Counsel

Melissa has asked that I comment on the purposes behind this uniform act-- that is, what are those restrictions that the uniform act seeks to address?

I have copied the material from the Uniform Laws Annotated that addresses these questions; see particularly the "prefatory note." But because this uniform act seems to contain an unusual amount of esoteric lawyer-talk, I will attempt a brief user's guide to the Uniform Conservation Easement Act.

The title explains part of what is being attempted; the idea is that valuable natural or historic property now in private hands might be protected for future generations by granting a "conservation easement" in the property to a third party, either a nonprofit corporation dedicated to the protection of that kind of property or government. See sec. 34.17.060(2). The holder of the easement can then sue, if necessary, to see that the property is maintained according to the terms of the easement.

But it has been necessary to change the rules of the common law to accomplish this purpose.

The usual understanding of an easement is that it relates to "an interest in land." The problem with conservation easements is that the interest held does not relate to any such "interest in land." The holder of the easement has no right to use the land for any purpose; it merely seeks to regulate the use by others.

The prefatory note states that these kinds of controls over land are typically cast in the suggested three common law forms: easements, covenants real, and equitable servitudes.

The note suggests that easements are generally well understood by courts but covenants and servitudes less so. And the note suggests that the solution to these understandings (or possible misunderstandings) would not be the creation of a fourth and new form of interest, by whatever name.

The suggested solution is to take the easement, the well-understood mechanism, and remove the common law limitations on its use to solve the problem of conservation easements. These common law problems are stated in Sec. 34.17.030.

If I may be of further assistance, please advise.

RAB:kb
wkk1/071

Enclosure

UNIFORM LAWS ANNOTATED

Volume 12

Civil Procedural and Remedial Laws

1988
Cumulative Annual Pocket Part

Replacing 1987 pocket part in back of volume

DIRECTORY OF UNIFORM ACTS AND CODES
with
TABLES AND INDEX

See special pamphlet
which accompanies these Pocket Parts

ST. PAUL, MINN.
WEST PUBLISHING CO.

12 U.L.A.-Civil Proc. & Rem.Laws—1
1988 P.P.

UNIFORM CONSERVATION EASEMENT ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Arizona	1985, c. 171	4-18-1985 *	A.R.S. §§ 33-271 to 33-276.
District of Columbia	D.C.Law 6-113	5-16-1986	D.C.Code 1981, §§ 45-2601 to 45-2605.
Indiana	1984, H.1074	9-1-1984	West's A.I.C. 32-5-2.6-1 to 32-5-2.6-7.
Maine	1985, c. 395	6-21-1985 *	33 MRSA §§ 476 to 479-B.
Minnesota.....	1985, c. 232	5-24-1985 *	M.S.A. §§ 84C.01 to 84C.05.
Mississippi.....	1986, c. 404	3-27-1986	Code 1972, §§ 89-19-1 to 89-19-13.
Nevada	1983, c. 291	5-13-1983*	N.R.S.111.390 to 111.400.
Texas.....	1983, c. 434	9-1-1983	V.T.C.A., Natural Resources Code §§ 183.001 to 183.005.
Wisconsin	1981, c. 261	4-27-1982	W.S.A. 700.40.

* Date of approval.

Historical Note

The Uniform Conservation Easement Act was approved by the National Conference of Commissioners on Uniform State Laws in 1981. The complete text of the act, the prefatory note and comments are set forth in this supplement.

PREFATORY NOTE

The Act enables durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources. Under the conditions spelled out in the Act, the restrictions and obligations are immune from certain common law impediments which might otherwise be raised. The Act maximizes the freedom of the creators of the transaction to impose restrictions on the use of land and improvements in order to protect them, and it allows a similar latitude to impose affirmative duties for the same purposes. In each instance, if the requirements of the Act are satisfied, the restrictions or affirmative duties are binding upon the successors and assigns of the original parties.

The Act thus makes it possible for Owner to transfer a restriction upon the use of Blackacre to Conservation, Inc., which will be enforceable by Conservation and its successors whether or not Conservation has an interest in land benefitted by the restriction, which is assignable although unattached to any such interest in fact, and which has not arisen under circumstances where the traditional conditions of privity of estate and "touch and concern" applicable to covenants real are present. So, also, the Act enables the Owner of Heritage Home to obligate himself and future owners of Heritage to maintain certain aspects of the house and to have that obligation enforceable by Preservation, Inc., even though Preservation has no interest in property benefitted by the obligation. Further, Preservation may obligate itself to take certain affirmative actions to preserve the property. In each case, under the Act, the restrictions and obligations bind successors. The Act does not itself impose restrictions or affirmative duties. It merely allows the parties to do so within a consensual arrangement freed from common law impediments, if the conditions of the Act are complied with.

These conditions are designed to assure that protected transactions serve defined protective purposes (Section 1(1)) and that the protected interest is in a "holder" which is either a governmental body or a charitable organization having an interest in the subject matter (Section 1(2)). The interest may be created in the same manner as other easements in land (Section 2(a)). The Act also enables the parties to establish a right in a third party to enforce the terms of the transaction (Section 3(a)(3)) if the possessor of the right is also a governmental unit or charity (Section 1(3)).

The interests protected by the Act are termed "easements." The terminology reflects a rejection of two alternatives suggested in existing state acts dealing with non-possessory conservation and preservation interests. The first removes the common law disabilities associated with covenants real and equitable servitudes in addition to those associated with easements. As statutorily modified, these three common law interests retain their separate existence as instruments employable for conservation and preservation ends. The second approach seeks to create a novel additional interest which, although unknown to the common law, is, in some ill-defined sense, a statutorily modified amalgam of the three traditional common law interests.

The easement alternative is favored in the Act for three reasons. First, lawyers and courts are most comfortable with easements and easement doctrine, less so with restrictive covenants and equitable servitudes, and can be expected to experience severe confusion if the Act opts for a hybrid fourth interest. Second, the easement is the basic less-than-fee interest at common law; the restrictive covenant and the equitable servitude appeared only because of then-current, but now outdated, limitations of easement doctrine. Finally, non-possessory interests satisfying the requirements of covenant real or equitable servitude doctrine will invariably meet the Act's less demanding requirements as "easements." Hence, the Act's easement orientation should not prove prejudicial to instruments drafted as real covenants or equitable servitudes, although the converse would not be true.

In assimilating these easements to conventional easements, the Act allows great latitude to the parties to the former to arrange their relationship as they see fit. The Act differs in this respect from some existing statutes, such as that in effect in Massachusetts, under which interests of this nature are subject to public planning agency review.

There are both practical and philosophical reasons for not subjecting conservation easements to a public ordering system. The Act has the relatively narrow purpose of sweeping away certain common law impediments which might otherwise undermine the easements' validity, particularly those held in gross. It is is the intention to facilitate private grants that serve the ends of land conservation and historic preservation, moreover, the requirement of public agency approval adds a layer of complexity which may discourage private actions. Organizations and property owners may be reluctant to become involved in the bureaucratic, and sometimes political, process which public agency participation entails. Placing such a requirement in the Act may dissuade a state from enacting it for the reason that the state does not wish to accept the administrative and fiscal responsibilities of such a program.

In addition, controls in the Act and in other state and federal legislation afford further assurance that the Act will serve the public interest. To begin with, the very adoption of the Act by a state legislature facilitates the enforcement of conservation easement serving the public interest. Other types of easements, real covenants and equitable servitudes are enforceable, even though their myriads of purposes have seldom been expressly scrutinized by state legislative bodies. Moreover, Section 1(2) of the Act restricts the entities that may hold conservation and preservation easements to governmental agencies and charitable organizations, neither of which is likely to accept them on an indiscriminate basis. Governmental programs that extend benefits to private donors of these easements provide additional controls against potential abuses. Federal tax statutes and regulations, for example, rigorously define the circumstances under which easement donations qualify for favorable tax treatment. Controls relating to real estate assessment and taxation of restricted properties have been, or can be, imposed by state legislatures to prevent easement abuses or to limit potential loss of local property tax revenues resulting from unduly favorable assessment and taxation of these properties. Finally, the American legal system generally regards private ordering of property relationships as sound public policy. Absent conflict with constitutional or statutory requirements, conveyances of fee or non-possessory interests by and among private entities is the norm, rather than the exception, in the United States. By eliminating certain outmoded easement impediments which are largely attributable to the absence of a land title recordation system in England centuries earlier, the Act advances the values implicit in this norm.

The Act does not address a number of issues which, though of conceded importance, are considered extraneous to its primary objective of enabling private parties to enter into consensual arrangements with charitable organizations or governmental bodies to protect land and buildings without the encumbrance of certain potential common law impediments (Section 4). For example, with the exception of the requirement of Section 2(b) that the acceptance of the holder be recorded, the formalities and effects of recordation are left to the state's registry system; an adopting state may wish to establish special indices for these interests, as has been done in Massachusetts.

Similarly unaddressed are the potential impacts of a state's marketable title laws upon the duration of conservation easements. The Act provides that conservation easements have an unlimited duration unless the instruments creating them provide otherwise (Section 2(c)). The relationship between this provision and the marketable title act or other statutes addressing restrictions on real property of unlimited duration should be considered by the adopting state.

The relationship between the Act and local real property assessment and taxation practices is not dealt with; for example, the effect of an easement upon the valuation of burdened real property presents issues which are left to the state and local taxation system. The Act enables the structuring of transactions so as to achieve tax benefits which may be available under the Internal Revenue Code, but parties intending to attain them must be mindful of the specific provisions of the income, estate and gift tax laws which are applicable. Finally, the Act neither limits nor enlarges the power of eminent domain; such matters as the scope of that power and the entitlement of property

owners to compensation upon its exercise are determined not by this Act but by the adopting state's eminent domain code and related statutes.

General Statutory Notes

Arizona. The Arizona act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Indiana. Adds section as follows:

"32-5-2.6-7 Taxation

"For the purposes of IC 6-1.1, real property subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement."

Mississippi. Adds a section as follows:

"§ 89-19-11. Capital improvements on property upon which easements have been granted.

"With the exception of 'Mississippi Landmarks,' as defined by the Antiquities Law of Mississippi (Section 39-7-1 et seq., Mississippi Code of 1972) and of properties entered in the National Register of Historic Places, no public money, derived either from a special fund or the General Fund, shall be expended for capital improvements on any real property upon which a conservation easement has been granted unless the conservation easement is perpetual, a governmental body is the holder of the easement and the capital improvements are solely for the use and benefit of such holder."

Nevada. The Nevada act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

New York. Sections 49-0301 to 49-0311 of the New York Environmental Conservation Law do not constitute a substantial adoption of the Uniform Act, although they contain some similar provisions and have the same general purpose.

UNIFORM CONSERVATION EASEMENT ACT

1981 ACT

An Act to be known as the Uniform Conservation Easement Act, relating to (here insert the subject matter requirements of the various states).

§ 1. [Definitions]

As used in this Act, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(i) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

(ii) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

COMMENT

Section 1 defines three central elements: What is meant by a conservation easement; who can be a holder; and who can possess a "third-party right of enforcement." Only those inter-

ests held by a "holder," as defined by the Act, fall within the definitions of protected easements. Such easements are defined as interests in real property. Even if so held, the easement must serve one or more of the following purposes: Protection of natural or open-space resources; protection of air or water quality; preservation of the historical aspects of property; or other similar objectives spelled out in subsection (1).

A "holder" may be a governmental unit having specified powers (subsection (2)(i)) or certain types of charitable corporations, associations, and trusts, provided that the purposes of the holder include those same purposes for which the conservation easement could have been created in the first place (subsection (2)(ii)). The word "charitable", in Section 1(2) and (3), describes organizations that are charities according to the common law definition regardless of their status as exempt organizations under any tax law.

Recognition of a "third-party right of enforcement" enables the parties to structure into the transaction a party that is not an easement "holder," but which, nonetheless, has the right to enforce the terms of the easement (Sections 1(3), 3(a)(3)). But the possessor of the third-party enforcement right must be a governmental body or a charitable corporation, association, or trust. Thus, if Owner transfers a conservation easement on Blackacre to Conservation, Inc., he could grant to Preservation, Inc., a charitable corporation, the right to enforce the terms of the easement, even though Preservation was not the holder, and Preservation would be free of the common law impediments eliminated by the Act (Section 4). Under this Act, however, Owner could not grant a similar right to Neighbor, a private person. But whether such a grant might be valid under other applicable law of the adopting state is left to the law of that state. (Section 5(c).)

Action in Adopting Jurisdictions

Variations from Official Text:

District of Columbia. Introductory material reads: "For the purposes of this act, the term:".

Maine. In subsec. (1), omits "or preserving the historical, architectural, archaeological, or cultural aspects".

In subsecs. (2)(ii) and (3), substitutes "nonprofit corporation" for "charitable corporation, charitable association".

Additionally, defines "real property" to include surface waters.

Mississippi. Section reads:

"For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context otherwise requires:

"(1) 'Conservation easement' shall mean a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, historical or open-space values of real property, assuring its availability for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property.

"(2) 'Holder' shall mean either:

"(a) A governmental body empowered by the law of this state or the United States to hold an interest in real property; or

"(b) A private, nonprofit, charitable or educational corporation, association or trust, the purposes or powers of which include retaining or protecting the natural, scenic, historical or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air or water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property which is the recipient or grantee of a conservation easement.

"(3) 'Third-party right of enforcement' shall mean a right granted in a conservation easement to a governmental body or private, nonprofit charitable corporation, association or trust, which is not a holder but which is eligible to be a holder, to enforce any of the terms of the conservation easement.

"(4) 'Person' shall mean any natural person or legal entity."

Texas. In subsec. (1), substitutes "designed to" for "the purposes of which include" (with conforming grammatical variations not affecting substance, e.g., "retain" for "retaining").

In subsec. (2)(ii), substitutes "created or empowered to" for "the purposes or powers of which include" (with conforming grammatical variations not affecting substance, e.g., "retain" for "retaining").

In subsec. (3), substitutes "that is eligible to be a holder but is not a holder" for ", which, although eligible to be a holder, is not a holder".

Adds subsec. (4) as follows: "'Servient estate' means the real property burdened by the conservation easement."

Wisconsin. In subsec. (1), inserts "preserving a burial site, as defined in s. 157.70(1)(b)," following "water quality,".

Library References

Health and Environment ⇐25.5(4).
C.J.S. Health and Environment §§ 91 et seq., 130, 132.

§ 2. [Creation, Conveyance, Acceptance and Duration]

(a) Except as otherwise provided in this Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in Section 3(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

COMMENT

Section 2(a) provides that, except to the extent otherwise indicated in the Act, conservation easements are indistinguishable from easements recognized under the pre-Act law of the state in terms of their creation, conveyance, recordation, assignment, release, modification, termination or alteration. In this regard, subsection (a) reflects the Act's overall philosophy of bringing less-than-fee conservation interests under the formal easement rubric and of extending that rubric to the extent necessary to effectuate the Act's purposes given the adopting state's existing common law and statutory framework. For example, the state's requirements concerning release of conventional easements apply as well to conservation easements because nothing in the Act provides otherwise. On the other hand, if the state's existing law does not permit easements in gross to be assigned, it will not be applicable to conservation easements because Section 4(2) effectively authorizes their assignment.

Conservation and preservation organizations using easement programs have indicated a concern that instruments purporting to impose affirmative obligations on the holder may be unilaterally executed by grantors and recorded without notice to or acceptance by the holder ostensibly responsible for the performance of the affirmative obligations. Subsection (b) makes clear that neither a holder nor a person having a third-party enforcement right has any rights or duties under the easement prior to the recordation of the holder's acceptance of it.

The Act enables parties to create a conservation easement of unlimited duration subject to the power of a court to modify or terminate it in states whose case or statute law accords their courts that power in the case of easement. See Section 3(b). The latitude given the parties is consistent with the philosophical premise of the Act. However, there are additional safeguards; for example, easements may be created only for certain purposes and may be held only by certain "holders." These limitations find their place comfortably within similar limitations applicable to charitable trusts, whose duration may also have no limit. Allowing the parties to create such easements also enables them to fit within federal tax law requirements that the interest be "in perpetuity" if certain tax benefits are to be derived.

Obviously, an easement cannot impair prior rights of owners of interests in the burdened property existing when the easement comes into being unless those owners join in the easement or consent to it. The easement property thus would be subject to existing liens, encumbrances and other property rights (such as subsurface mineral rights) which pre-exist the easement, unless the owners of those rights release them or subordinate them to the easement. (Section 2(d).)

Action in Adopting Jurisdictions

Variations from Official Text:

District of Columbia. Section reads:

"(a)(1) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, provided that the recordation of any conservation easement as defined in section 2, or of any assignment, release, modification, termination, or other alteration of a conservation easement shall be exempt from the recordation tax imposed by section 303 of the District of Columbia Real Estate Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C.Code, sec. 45–923), and from the transfer tax imposed by section 403 of the District of Columbia Revenue Act of 1980, effective September 13, 1980 (D.C.Law 3–92; D.C. Code, sec. 47–903).

"(2) The exemption provided for in subsection (2) of this section shall not apply if the consideration for the conservation easement exceeds $100 in value.

"(b) No right or duty in favor of or against a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

"(c) Except as provided in section 4(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

"(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

"(e) A conservation easement is valid even under the following circumstances:

"(1) It is not appurtenant to an interest in real property;

"(2) It can be or has been assigned to another holder;

"(3) It is not of a character that has been recognized traditionally at common law;

"(4) It imposes a negative burden;

"(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

"(6) The benefit does not touch or concern real property; or

"(7) There is no privity of estate or of contract."

Maine. In subsec. (a), adds "created by written instrument" at the end thereof.

Subsec. (b) reads: "No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person

CONSERVATION

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§ 3. [Judicial Acti

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Subsec. (c) reads:

"Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

"A. The instrument creating it otherwise provides; or

"B. Change of circumstances renders the easement no longer in the public interest as determined in an action under section 478."

Adds a subsection which reads: "The instrument creating a conservation easement must provide in what manner and at what times representatives of the holder of a conservation easement or of any person having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance."

Mississippi. In subsec. (a), substitutes "affected in the same method and manner as other easements" for "affected in the same manner as other easements".

In subsec. (b), substitutes "no right of a person having a third-party right" for "no right in favor of a person having a third-party right".

In subsec. (c), inserts "its" following "unlimited in".

In subsec. (d), substitutes "the conservation easement" for "it" following "is not impaired by".

Texas. Subsec. (b) reads as follows: "A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance."

In subsec. (c), substitutes "makes some other provision" for "otherwise provides".

In subsec. (d), substitutes "that exists in real property" for "in real property in existence" and omits "by it" following "impaired".

Adds subsections as follows:

"(e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.

"(f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due."

Wisconsin. Makes minor language changes not affecting substance.

Library References

Health and Environment ⇐25.5(4).

C.J.S. Health and Environment §§ 91 et seq., 130, 132.

§ 3. [Judicial Actions]

(a) An action affecting a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This Act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

COMMENT

Section 3 identifies four categories of persons who may bring actions to enforce, modify or terminate conservation easements, quiet title to parcels burdened by conservation easements, or otherwise affect conservation easements. Owners of interests in real property burdened by easements might wish to sue in cases where the easements also impose duties upon holders and these duties are breached by the holders. Holders and persons having third-party rights of enforcement might obviously wish to bring suit to enforce restrictions on the owners' use of the burdened properties. In addition to these three categories of persons who derive their standing from the explicit terms of the easement itself, the Act also recognizes that the state's other applicable law may create standing in other persons. For example, independently of the Act, the Attorney General could have standing in his capacity as supervisor of charitable trusts, either by statute or at common law.

A restriction burdening real property in perpetuity or for long periods can fail of its purposes because of changed conditions affecting the property or its environs, because the holder of the conservation easement may cease to exist, or for other reasons not anticipated at the time of its creation. A variety of doctrines, including the doctrines of changed conditions and *cy pres*, have been judicially developed and, in many states, legislatively sanctioned as a basis for responding to these vagaries. Under the changed conditions doctrine, privately created restrictions on land use may be terminated or modified if they no longer substantially achieve their purpose due to the changed conditions. Under the statute or case law of some states, the court's order limiting or terminating the restriction may include such terms and conditions, including monetary adjustments, as it deems necessary to protect the public interest and to assure an equitable resolution of the problem.

The doctrine is applicable to real covenants and equitable servitudes in all states, but its application to easements is problematic in many states.

Under the doctrine of *cy pres*, if the purposes of a charitable trust cannot carried out because circumstances have changed after the trust came into being or, for any other reason, the settlor's charitable intentions cannot be effectuated, courts under their equitable powers may prescribe terms and conditions that may best enable the general charitable objective to be achieved while altering specific provisions of the trust. So, also, in cases where a charitable trustee ceases to exist or cannot carry out its responsibilities, the court will appoint a substitute trustee upon proper application and will not allow the trust to fail.

The Act leaves intact the existing case and statute law of adopting states as it relates to the modification and termination of easements and the enforcement of charitable trusts.

Action in Adopting Jurisdictions

Variations from Official Text:

Indiana. In subsec. (b), adds the following at the end thereof: ", or the termination of a conservation easement by agreement of the grantor and grantee."

Maine. Section reads:

"1. Action or intervention. An action affecting a conservation easement may be brought or intervened in by:

"A. An owner of an interest in the real property burdened by the easement;

"B. A holder of the easement; or

"C. A person having a 3rd-party right of enforcement.

"2. Intervention only. An action affecting a conservation easement may be intervened in by the State or a political subdivision of the State in which the real property burdened by the easement is located.

"3. Power of court. This subchapter does not affect the power of a court to enforce a conservation easement by injunction or proceeding in equity or to modify or terminate a conservation easement in accordance with principles of law and equity. A court may deny equitable enforcement of a conservation easement when it finds that change of circumstances has rendered that easement no longer in the public interest. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

No comparative economic test may be used to determine under this subsection if a conservation easement is in the public interest."

Mississippi. In subsec. (a), substitutes "Any action" for "An action".

Subsec. (a)(4) reads: "A person otherwise authorized and empowered by law."

In subsec. (b), inserts ", and shall not be construed to," following "This Act does not".

Texas. In subsec. (a)(4), inserts "some" following "authorized by".

Wisconsin. Makes minor language changes not affecting substance.

Library References

Health and Environment ⇐25.5(4).
C.J.S. Health and Environment §§ 91 et seq., 130, 132.

§ 4. [Validity]

A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not a of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

COMMENT

One of the Act's basic goals is to remove outmoded common law defenses that could impede the use of easements for conservation or preservation ends. Section 4 addresses this goal by comprehensively identifying these defenses and negating their use in actions to enforce conservation or preservation easements.

Subsection (1) indicates that easements, the benefit of which is held in gross, may be enforced against the grantor or his successors or assigns. By stating that the easement need not be appurtenant to an interest in real property, it eliminates the requirement in force in some states that the holder of the easement must own an interest in real property (the "dominant estate") benefitted by the easement.

Subsection (2) also clarifies common law by providing that an easement may be enforced by an assignee of the holder.

Subsection (3) addresses the problem posed by the common law's recognition of easements that

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Health and Environment ⇐
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§ 5. [Applicability]

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served only a limited number of purposes and its reluctance to approve so-called "novel incidents." Easements serving the conservation and preservation ends enumerated in Section 1(1) might fail of enforcement under this restrictive view. Accordingly, subsection (3) establishes that conservation or preservation easements are not unenforceable solely because they do not serve purposes or fall within the categories of easements traditionally recognized at common law.

Subsection (4) deals with a variant of the foregoing problem. The common law recognized only a limited number of "negative easements" —those preventing the owner of the burdened land from performing acts on his land that he would be privileged to perform absent the easement. Because a far wider range of negative burdens than those recognized at common law might be imposed by conservation or preservation easements, subsection (4) modifies the common law by eliminating the defense that a conservation or preservation easement imposes a "novel" negative burden.

Subsection (5) addresses the opposite problem—the unenforceability at common law of an easement that imposes affirmative obligations upon either the owner of the burdened property or upon the holder. Neither of those interests was viewed by the common law as true easements at all. The first, in fact, was labelled a "spurious" easement because it obligated the owner of the burdened property to perform affirmative acts. (The spurious easement was distinguished from an affirmative easement, illustrated by a right of way, which empowered the easement's holder to perform acts on the burdened property that the holder would not have been privileged to perform absent the easement.)

Achievement of conservation or preservation goals may require that affirmative obligations be incurred by the burdened property owner or by the easement holder or both. For example, the donor of a facade easement, one type of preservation easement, may agree to restore the facade to its original state; conversely, the holder of a facade easement may agree to undertake restoration. In either case, the preservation easement would impose affirmative obligations. Subsection (5) treats both interests as easements and establishes that neither would be unenforceable solely because it is affirmative in nature.

Subsections (6) and (7) preclude the touch and concern and privity of estate or contract defenses, respectively. Strictly speaking, they do not belong in the Act because they have traditionally been asserted as defenses against the enforcement not of easements but of real covenants and of equitable servitudes. The case law dealing with these three classes of interests, however, had become so confused and arcane over the centuries that defenses appropriate to one of these classes may incorrectly be deemed applicable to another. The inclusion of the touch and concern and privity defenses in Section 4 is a cautionary measure, intended to safeguard conservation and preservation easements from invalidation by courts that might inadvertently confuse them with real covenants or equitable servitudes.

Action in Adopting Jurisdictions

Variations from Official Text:

District of Columbia. Omits this section.

Maine. In subsec. (1), inserts "or does not run with" following "to".

Adds a subsec. (8) which reads: "It does not run to the successor and assigns of the holder."

Mississippi. Introductory material reads: "A conservation easement shall be valid despite the following".

In subsec. (2), substitutes "It may be" for "It can be".

Texas. In subsec. (5), substitutes "on" for "upon" in both instances.

Wisconsin. Makes minor language changes not affecting substance.

Library References

Health and Environment ⇐25.5(4).

C.J.S. Health and Environment §§ 91 et seq., 130, 132.

§ 5. [Applicability]

(a) This Act applies to any interest created after its effective date which complies with this Act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This Act applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this State or the United States.

(c) This Act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this State.

COMMENT

There are four classes of interests to which

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 9, 1989

SUBJECT: Conservation easements and their abuse: SB 123

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Chris Christensen has asked that I suggest a solution to the concern that there will be efforts to evade municipal ad valorem property taxation by the use of conservation easements.

The use of the conservation easement should result in a decrease in the value of the property since some of the rights to the use of the property have been transferred to a municipality or a nonprofit corporation.

The easy answer is to provide for some penalty on an inconsistent use or the transfer of the easement to the owner of the property that is the subject of the easement; such a transfer would result in the merger of the two estates and the elimination of the conservation easement.

While there are undoubtedly myriad ways of achieving this goal, I note the existence in state law of a similar provision that applies a sanction on the transfer of property receiving the beneficial farm use assessment. I refer to AS 29.45.060, primarily subsections (a) and (b); those subsections provide:

> Sec. 29.45.060. FARM OR AGRICULTURAL LAND. (a) Farm use land included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use and may not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the land for both full and true value and farm

is conveyed to the owner of the property, the owner shall pay to the municipality an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding 10 years, as though the land had not been assessed subject to the conservation easement.

(b) To secure the assessment under this section, an owner of land subject to a conservation easement must apply to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the assessor and shall include information that may reasonably be required to determine the entitlement of the applicant."

Note some changes suggested.

Since there is no reimbursement to the municipality from the state, I have eliminated the participation by the state assessor and the references to the state.

I have suggested a ten year payback period, in place of the seven year in AS 29.45.060.

If I may be of further assistance, please advise.

RAB:gc
WKG7/122

M E M O R A N D U M

TO: Senator Jan Faiks

FROM: John Reese

DATE: March 9, 1989

RE: S.B. 123

S.B. 123. Implications of conservation easement on:

1. Elimination of properties from tax base, and

2. Ability of owner of property to control use of easement or even obtain return of easement by donation to a sham non-profit organization.

* * *

1. Tax Base. Obviously, donation of the easement removes the segment of the property from the tax base. Property taxes are a function of market value, and the limitation of the easement may frequently reduce the market value of a property. In some situations, the nature of a particular easement may virtually eliminate the marketability of a property and, therefore, its contribution to the general tax base.

On the other hand, this is not really a change in the law. Presently, any owner of a property can donate the property to a qualified non-profit group, church, charity, etc., and thereby remove it from the tax base. The question is whether there are any controls on the process.

The controls are simple economics.

What the person gives up by donating the easement is valued according to the market. If it is insignificant (e.g. cannot change the facade of a building for five years), the market value will change little. If it is substantial (e.g. donation of prime development acreage to be used as park land), the loss to the tax rolls would be huge. But the donator loses the value of what is donated -- very little in the first example and a lot in the second. The tax loss is a small part of the loss in either case. The willingness of the contributor is tempered by his or her own personal financial well being, possibly the most effective control in our society.

But, is it subject to abuse? This brings us to the second issue.

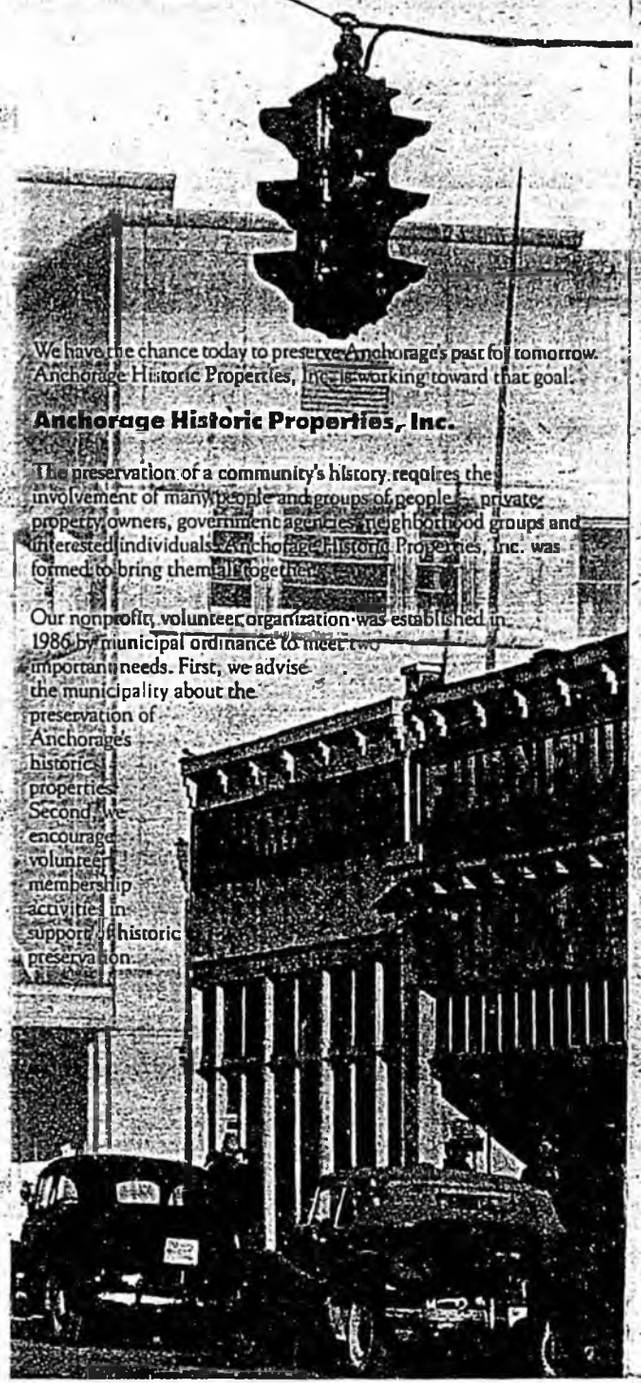
2. Use of Easement as a Ruse to Avoid Taxes. First, it is important to note that the basic motivation control, self-interest, is at play here. If someone is going to donate an easement, the maximum financial benefit of doing so requires that the recipient be organized as a non-profit group, meeting the state and federal requirements for deductibility of contributions, tax credits, etc. Under federal law, any organization receiving tax deductible gifts must have provisions in its articles of incorporation and by-laws which require assets to be used solely for the non-profit purpose, and if dissolved, the assets (including conservation easements) must be contributed to a similar tax qualified non-profit group. State law is similar, although not quite as specific. See AS 10.20. It cannot be given back (unless the easement itself requires it).

If the contributor did receive it back, this would bring due recapture rules of the Internal Revenue Service, which would make it a very expensive choice. On the other hand, if the easement provided for return after a period, the tax implications would be very small, as the market value effect would be very small from the beginning.

I doubt if there are local property tax recapture rules designed for this, but even without that, the federal income tax deductions and tax credits are the big items for the contributor.

* * *

In summary, a conservation easement allows contribution of part of an asset, while leaving it partially on the tax rolls, rather than removing it completely. It cannot be used to avoid taxes because the substantial Internal Revenue Service benefits are reversed if that is tried. Federal and state law restrict it as well.



We have the chance today to preserve Anchorage's past for tomorrow. Anchorage Historic Properties, Inc. is working toward that goal.

Anchorage Historic Properties, Inc.

The preservation of a community's history requires the involvement of many people and groups of people — private property owners, government agencies, neighborhood groups and interested individuals. Anchorage Historic Properties, Inc. was formed to bring them all together.

Our nonprofit, volunteer organization was established in 1986 by municipal ordinance to meet two important needs. First, we advise the municipality about the preservation of Anchorage's historic properties. Second, we encourage volunteer membership activities in support of historic preservation.

Design: Harriet Drummond
Photos: Anchorage Museum of History and Art

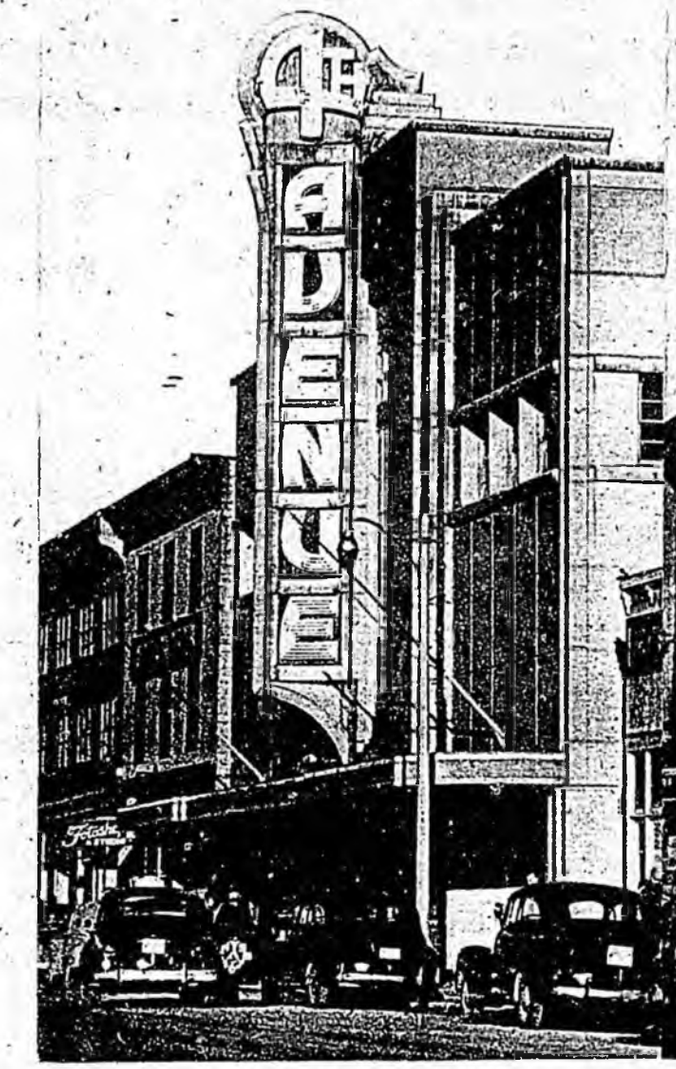
ANCHORAGE HISTORIC PROPERTIES INCORPORATED
OLD CITY HALL

524 WEST FOURTH AVENUE • ANCHORAGE, ALASKA 99501

Anchorage Historic Properties, Inc. is dedicated to the preservation of the Municipality of Anchorage's heritage through the promotion of public awareness and education with respect to historic properties and the preservation of significant properties which contribute to our history, aesthetics, and sense of place.

MEMBER NATIONAL TRUST FOR HISTORIC PRESERVATION

What If Part Of Our Historic Heritage...



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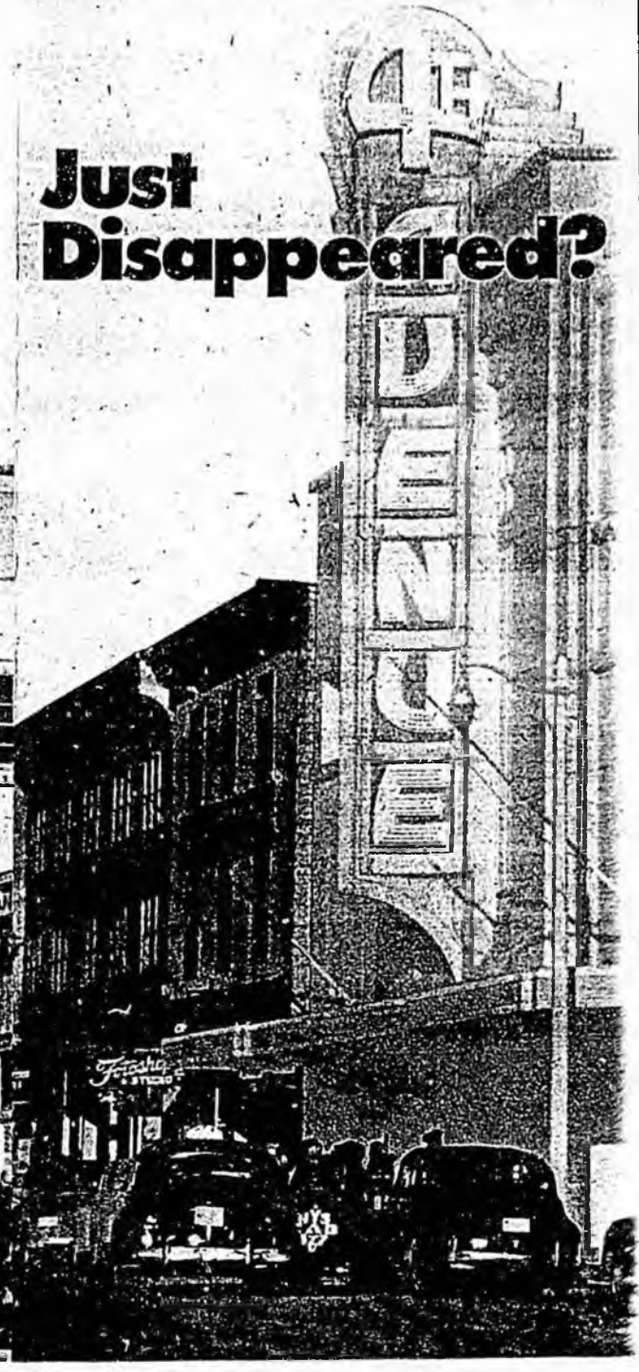


Programs for Preservation

Anchorage Historic Properties, Inc. accomplishes its goals through a variety of programs:

Revolving Loan Fund Anchorage Historic Properties, Inc. makes short-term loans available for the acquisition, study, rehabilitation or repair of qualifying properties within the municipality. As loans are repaid or money is raised from the sale of properties, it goes back into the revolving loan fund for use on other properties.

Easement Program Historic preservation easements have become an important tool for protecting significant properties. Property owners may receive valuable tax advantages when they give Anchorage Historic Properties, Inc. the right to approve any changes to a building's interior or exterior.

Property Management Anchorage Historic Properties, Inc. provides management for such properties as the popular Oscar Anderson House, which is open to visitors for tours and special events.

Education Education is an important aspect of preservation. Anchorage Historic Properties, Inc. has been instrumental in the placement of interpretive historic kiosks at important sites in the downtown area. These kiosks and a guided walking tour, offered in the summer months, help bring to life the events, people and places of Anchorage's colorful past.

Advocacy Anchorage Historic Properties, Inc. acts as a leader in encouraging the preservation and appreciation of historic properties.

Funding

Anchorage Historic Properties, Inc. received funding of $1.7 million from a voter initiative that was approved by the public, as part of the Project '80 program. These funds serve as an endowment to protect our historic properties.

Anchorage Historic Properties, Inc. is working to make the organization self-supporting through earned revenues, memberships, contributions and project grants.

Informational kiosk, one of 12 placed in downtown Anchorage by Anchorage Historic Properties, Inc.

You Can Help

Please join us in helping to protect and preserve Anchorage's heritage.

Become a member You can join Anchorage Historic Properties, Inc. for only $10 a year. When you do, you will receive our quarterly newsletter and invitations to special happenings — and you will be part of a network of dedicated citizens who believe in historic preservation.

Make a contribution Your additional contribution will help us to continue the important work we now do and it will allow us to do more.

Volunteer Anchorage Historic Properties, Inc. relies upon a small staff and a volunteer board to carry out its programs for preservation. You can help by volunteering your time to lead a tour, staff the Oscar Anderson House, or work on a special event or project.

For more information, contact Anchorage Historic Properties, Inc. 524 West Fourth Avenue, Anchorage, Alaska 99501; (907) 274-3600.

Member National Trust for Historic Preservation

I Want To Help

Yes! I want to help Anchorage Historic Properties, Inc. preserve our city's heritage.

☐ Sign me up as a member. My $10 check is enclosed.

☐ Please accept my contribution for $_____

Name _____

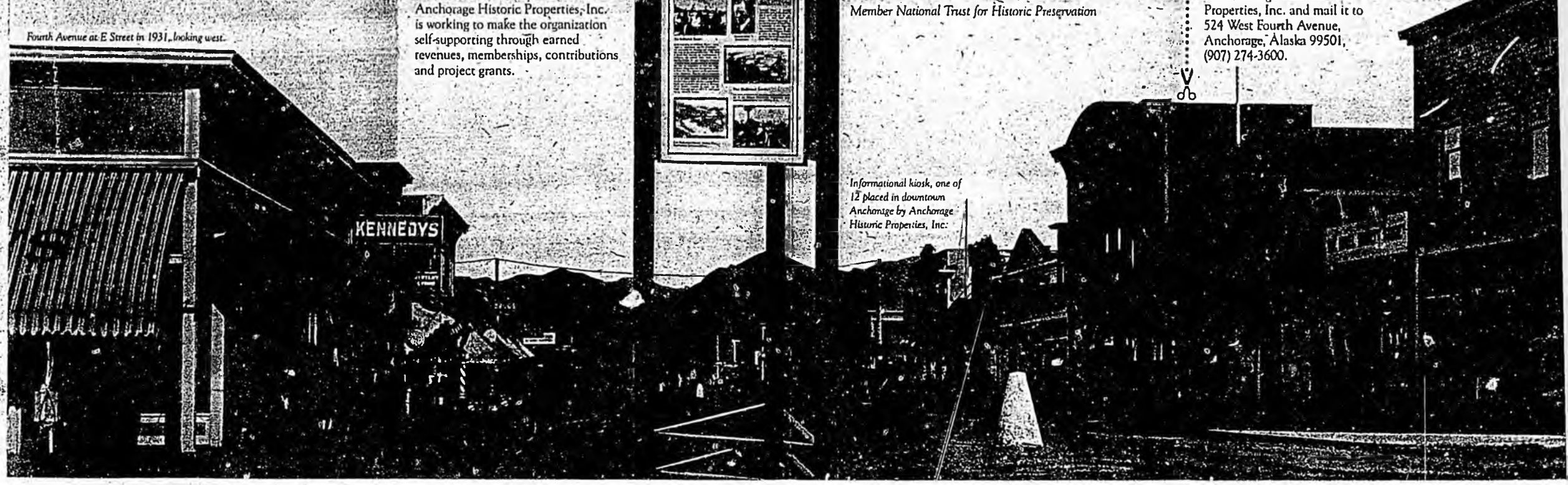
Address _____

City _____ State _____ Zip _____

Please indicate areas in which you would be able to assist Anchorage Historic Properties, Inc.

☐ Membership Development
☐ Office Support
☐ Fundraising
☐ Newsletter
☐ Special Events
☐ Public Relations
☐ Old City Hall
☐ Fourth Avenue Theatre
☐ Oscar Anderson House
☐ Downtown Preservation
☐ Bootlegger Cove Cabin
☐ Other: _____

Please make your check payable to Anchorage Historic Properties, Inc. and mail it to 524 West Fourth Avenue, Anchorage, Alaska 99501, (907) 274-3600.



Fourth Avenue at E Street in 1931, looking west.

Preservation Easements
Can They Work for You?

Many nonprofits find preservation easement programs ideal for fulfilling their missions, achieving conservation and historic goals, and offering tax advantages to their donors—all at the same time. How does such a program work, and does it make sense for your organization?

By Anne M. Nation

What do an old Victorian mansion, a picnic area, and a swamp have in common? If you answered "a summer retreat for the Munsters," read on. You may be pleasantly surprised. To a nonprofit, the above properties should appear as potential sources of preservation easements, many of which qualify for conservation contributions under IRS charitable donation guidelines. Such contributions not only help a nonprofit to carry out its organizational purpose, but can assist the donor by providing a multi-year charitable tax deduction while reducing property, estate, and gift taxes.

Sound interesting? Nation-wide, hundreds of nonprofits have answered "yes." For most, easements have insured a means of preserving this country's heritage and beauty. These nonprofits have been able to secure, for themselves, control over those aspects of private properties which are of natural or historic importance. The controlling nonprofit can then require property owners to maintain wildlife habitats or make repairs to historic houses and can even prevent new construction on open space. Best of all, these costs are borne by the property owner, not the nonprofit. And by obtaining separate cash donations from the original donors, nonprofits can establish stewardship funds as a means of ongoing program support.

This is the closest some nonprofits will come to "eating their cake and having it too."

The Historic Preservation Commission uses easements to guarantee the perpetual maintenance of landmarks without the cost and responsibility of holding an entire property.

WHAT IS A PRESERVATION EASEMENT?

A preservation easement, also referred to as a conservation easement, is a legal appendage to a land deed that transfers a qualified interest in the property to a nonprofit or governmental unit for the purposes of preserving, in perpetuity, specific features of the property.

In Nebraska, for example, the Historic Preservation Commission of Lincoln/Lancaster County is presently working in conjunction with a city landmark ordinance to receive donations of facade easements on designated historic structures. Although the Commission is interested in insuring that buildings determined to be landmarks are preserved as part of the area's heritage, it is neither practical nor cost effective for the Commission to attempt actually to own and maintain designated structures. By holding an easement, the Commission will be able to guarantee the perpetual maintenance of the landmarks in a historic manner without the cost and responsibility of holding an entire property.

Upriver, in Grand Island, Nebraska, the Platte River Whooping Crane Trust (the Trust) is using conservation easements for the protection of threatened and endangered species. Focusing on the need to act quickly to preserve critical wildlife habitats for the whooping crane, sandhills crane, and other migratory birds, the Trust was authorized to acquire land to secure the ecosystem. Recognizing that it lacked the funds to purchase all the land along an 80-mile stretch of river, the Trust concentrated on buying only key roost sites. It then used conservation easements to purchase management rights on surrounding land that could serve as a buffer and protect wetland and grassland feeding sites. Thus, the Trust has been able to spread its limited funds across a large geographic area to rapidly develop critical roost site complexes.

In addition to achieving immediate conservation goals, if the easement results in a reduction in the ability of present and future owners to use a property according to its "highest and best use value," it can result in present and future tax advantages to a donor. The classic example is an old home in the middle of an area ripe for development. The assessed

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value of the property at its highest and best use is $500,000. This usage, however, requires that the home be razed in favor of a high-rise apartment complex. The owners of the home do not wish to have the building destroyed. They want it to remain a classic, single-family unit. By attaching a preservation easement to the deed and transfering the right of the easement to a qualified nonprofit, the owners can effectively block the destruction of the house for development purposes. They continue as the legal owners of the structure, while the easement ensures that the building remains in its present state and that future owners maintain the house in its historic form. By blocking the possibility for development, the owners reduce the "highest and best use" of the property to that of a single-family dwelling. The appraised value of the house drops to that of similar homes—say, $120,000. This revised valuation becomes the standard used for determining property taxes, as well as any estate and gift taxes connected with the transfer of the property.

To determine the value of such a charitable donation, the formula, at its simplest, is to subtract the value of the property before the preservation easement from the value of the property after the easement. In this case, $500,000 - $120,000 = $380,000. This donor value of the gift would be deductible to the full extent allowed by the law.

Table 1
Qualified Properties

Type of Property	Requirements	Definitions
Land areas for outdoor recreation by or education of the general public.	Substantial and regular use of the general public.	This would include boating and fishing areas open to the public. Access: Restrictions in the case of inhabited property can apply, provided they are not overly prohibitive.
A relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.	Protects a significant relatively natural habitat.	Includes habitats for rare, threatened, or endangered species; habitats that are high-quality examples of ecosystems; and habitats that are in or adjoin parks, preserves, or wilderness areas and would contribute to the area. Access: Public access may be restricted if it is necessary to the conservation of the area; however, the donee must be allowed access for the purpose of study and preservation.
Certain open space (including farmland and forest land).	Pursuant to a clearly delineated governmental policy *and* will yield significant public benefit; or For the scenic enjoyment of the public *and* will yield a significant public benefit.	Government policy: Requires a specific conservation project, e.g., flood prevention or control, outdoor recreation, irrigation or water supply protection, erosion control, land management plans, and land abutting or part of existing conservation sites. Government policy must demonstrate that it is a clearly thought out and instituted effort. County boards cannot simply pass individual resolutions accepting properties. There must be criteria in existence that are reviewed and applied on a case-by-case basis. Scenic enjoyment: Visual, not physical, access would be impaired by development of the land. What makes a site scenic is determined case-by-case in consideration of the particular view and its impact on the area. Check on local or regional scenic inventories which might be relevant. Significant public benefit: On a case-by-case basis, includes uniqueness of land, its suitability to proposed use of open space by government policies, scenic value, accessibility to the public, and the importance of the particular piece of property in conservation over others. Significant public benefit must apply in conjunction with either government policy or scenic enjoyment. Access: Can be restricted if necessary to conservation.
Historically important land area or a certified historic structure.	Must be a historically important land area or a certified historic structure.	Historically important land area: Any independently significant land that meets National Register criteria for evaluation; any land area within a registered historic district; or any land area adjacent to a property listed in the *National Register of Historic Places* (but not within a registered historic district). Certified historic structure: Property listed in the *National Register* or located in a registered historic district. Access: The property should generally be visible to the public. Restrictions may be applied in cases of private properties currently being utilized for personal purposes, e.g., residences. Then reasonable viewing, including tours, may be used to fulfill the requirement. Access by the donee for photographic or research purposes is generally required. Health and safety concerns about the physical condition of the building may restrict or prohibit public access.

Not all properties qualify for charitable contributions. Table 1 outlines those properties which meet IRS guidelines. In the case of Harris House and the Phi Delta Theta House in Lincoln, Nebraska, both donors had their buildings placed on the National Register of Historic Places prior to making any donation. This process, which took approximately three months, served to confirm that the properties met the test of being certified historic structures.

It is worth noting that the IRS has recently published rules and regulations specifically relating to the donation of easements. Such action is an indicator that an area is demonstrating a potential for abuse. It also indicates that a claim in this area may serve to flag a return for an audit. To avoid problems with future revenue rulings, a donor may want to review existing revenue rulings or request a private ruling. (See "First Alert" in the November-December 1986 *Nonprofit World* for a relevant revenue ruling citation).

A private ruling is an advance agreement by the IRS that a deduction is acceptable. A private ruling may be obtained by writing the IRS district director, outlining the proposed conservation contribution and stating all pertinent facts in a fair and accurate manner. If a ruling favoring the contribution is received, the donor will be protected, even in the event of future, retroactive revenue rulings against preservation easements. The only exception would be if fraudulent or misleading statements were made by the petitioner.

In general, the test used in determining a qualified contribution is whether or not the owner is giving up something of value. It if cannot be demonstrated that the property value decreases, or worse yet if the easement actually increases the value of the property, do not expect it to qualify as a tax deduction.

However, the transfer of an easement is not contingent upon it being tax deductible. Easements may still be transfered by owners interested in perpetual maintenance or may be purchased by an organization intent on ensuring property preservation.

WHY A PRESERVATION EASEMENT?

The advantage most commonly cited by organizations using easements is that they allow for the best use of limited resources when working to preserve land or buildings. Often the cost of owning and maintaining a property is expensive and time consuming. By using easements, nonprofits can acquire only those property rights that are of interest to

Conservation easements allow the Platte River Whooping Crane Trust to spread its limited funds across a large geographic area.

them. This provides control without the problems of ownership and allows an organization to accomplish a limited organizational purpose without taking on added extraneous responsibilities. And by developing a stewardship fund, the nonprofit can establish a financial means of caring for the property in perpetuity.

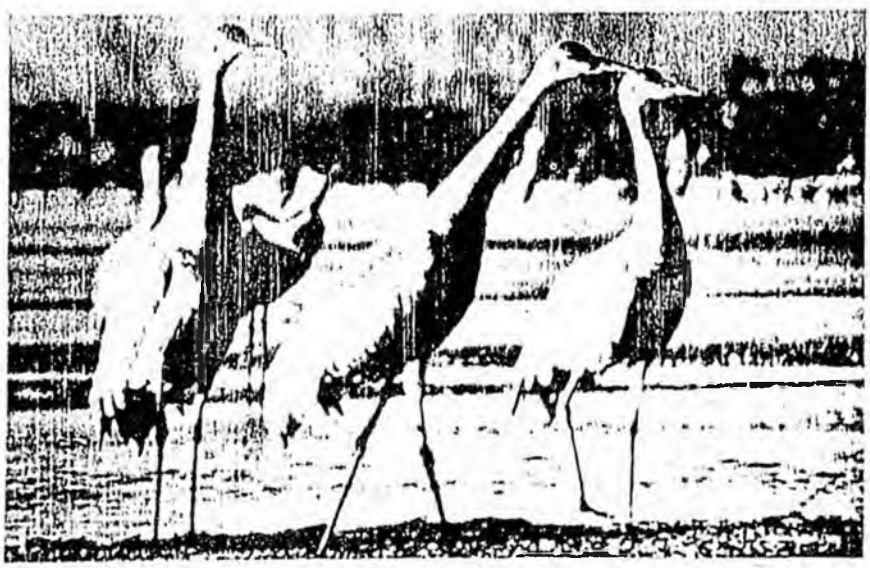
When Nebraska's Lower Platte South Natural Resources District (NRD) faced a decrease in state support, its executive staff looked at acquiring easements on wetlands as a means of habitat preservation. Under the existing program, they now purchase limited management rights in lieu of acquiring entire properties. It is, however, the current landowners who actually implement the land management program. The farmers are still able to obtain income from the property while the controlled management enhances the land as a wildlife habitat.

The preservation easement provides one of the most stringent and comprehensive means of conserving privately held property. Since many historic, recreational, and natural habitat properties are privately owned, the preservation easement provides an irrevocable means of ensuring that conservation and preservation are continued in perpetuity. The commitment does not die with the owner, nor is it threatened by the prospect of a forced sale due to owner relocation, cash flow problems, or estate taxes.

Holders of preservation easements retain control over those aspects of the property deeded to them. They have the authority to require that properties be maintained by the present owner in compliance with the conditions of the easement. This means that the holder can force property repairs and block construction that would be counter to the purposes of the easement. The Society for the Preservation of New England Antiquities (SPNEA) has even exercised this right by threatening litigation against reluctant home owners.

Note, however, that repair and maintenance costs are the responsibility of the owner, not the nonprofit holding the easement. It is the responsibility of the nonprofit to supervise the easement and to assure administratively that the terms of the deed are being met. The nonprofit thus becomes the legal overseer of the property.

In order to cover administrative costs, some nonprofits (such as the SPNEA discussed above) now request that donors make a specific cash contribution to a stewardship fund. These monies, which are also tax deductible, are used as an endowment fund for expenses associated with the regular review of the property. They may also be necessary in the event that the holder must take legal action against an owner to force home repairs or other routine maintenance required by the easement deed. With declining public support, such funds may become increasingly necessary to easement programs. When accurately assessed and managed, a stewardship fund can help a program to become self-supporting.



Courtesy Platte River Whooping Crane Trust, easement holder.

The Platte River Whooping Crane Trust is using conservation easements to protect endangered species, such as these sandhills cranes.

STEPS IN CREATING A PRESERVATION EASEMENT PROGRAM

If the concept of a preservation easement program appeals to you, and if it is philosophically compatible with the purposes of your organization, there are several steps to follow in setting up such a program. The first step is to research the program fully to be certain that it is feasible for your organization. The second step is to design the program—to develop a strategy for finding a donor and working with that donor to create a mutually agreeable program. We shall look at the essential components involved in both these steps.

Program Research

Accurate research at the local level is essential to provide you with realistic expectations of the time, effort, and costs involved in operating an easement program. Such research will allow you to make an informed decision about becoming involved in an easement program. At a minimum, your research should include the following moves.

Assign a coordinator to take primary responsibility for program research and design. Although a committee or team may work with this person, it is important to have one individual in charge.

Review qualifying properties to determine what types of eligible structures or open spaces are available and of interest to your organization. Your organizational purpose will direct this decision. (In the examples discussed earlier, for instance, the Historic Commission of Lincoln/Lancaster County is looking at landmark facades, while the local NRD is seeking out wetlands).

Examine preservation easement programs that exist or have existed in your geographic area. This information is generally available from your state historical society or game and parks commission. Meet with the organizations involved to gain an understanding of their program operations. Request samples of their easement deeds. Talk with property

owners who have placed easements on deeds. Assess any problems they have encountered, and identify ways to avoid the same pitfalls. Determine how to develop a program that will complement efforts already existing in your area.

Identify resource people to assist your organization and potential donors in the actual giving process. These people might include: attorneys familiar with the preservation easement concept and process, appraisers who can accurately assess the value of the easement in conjunction with the restricted use of the property, auditors or CPAs with knowledge of current tax advantages available to the donor, architects able to verify the historic nature of a particular property, wildlife specialists able to verify the need to preserve a particular habitat, and extension agents capable of identifying government conservation programs that would support open space or farmland easements. Do not be surprised if qualified resource people are not locally available. (A potential donor to Landmarks, Inc., of Omaha, brought in an appraiser from Kansas City, while the one used by the Phi Delta House in Lincoln came from Sioux City).

Determine expenditures that the organization and donor can expect to incur. Although actual costs will vary with the property involved, a checklist of cost factors should be developed. For the organization, cost factors to consider include the annual inspection, maintenance reviews, property remodeling or rehabilitation reviews, cost of initiating repairs if an owner refuses to comply with the easement, and cost of initiating legal action against a recalcitrant owner. Donor costs will include attorney and appraiser fees, certification costs to verify that the easement is for a qualifying property, and filing fees, as well as any separate donation to a stewardship fund. Do not overlook estimating these costs to the donor. They are a necessary part of the solicitation and intake components of the program design (which we will discuss in the next section).

Review the research to determine if your organization is capable of operating a viable preservation easement program. If the review is positive, the next step is to develop a program design that includes solicitation, intake, processing, and follow-up components.

Program Design

Solicitation. This program component targets potential donors for your easement program. Begin by delineating the types of qualifying properties that you will be pursuing as possibilities for obtaining preservation easements. Should your organization decide not to accept certain types of easements, try to identify other nonprofits or units of government that will accept such contributions. Arrange to make referrals to these entities when appropriate.

Next, define the geographic area from which donors will be solicited. This area might be as small as a neighborhood or as large as a state.

Finally, develop a promotional campaign that includes press releases and a brochure or flier providing details about the program. Identify key groups to contact. Include relevant public and private advocacy groups such as state and local historical societies, state park and wildlife agencies, private conservation clubs, and neighborhood associations.

Remember to consider the motivation of your audience when planning. Although the concept of a tax deduction can help to sell the program, most participants donate easements because they wish to ensure the perpetual preservation of their property. (In the examples cited previously, both the Trust and the NRD recognized that their target groups were unlikely to be interested in tax deductions and some would be reluctant to limit land use without compensation). Keep the potential for such differences in mind when planning and implementing the solicitation and intake components.

> The preservation easement provides an irrevocable means of ensuring that conservation is continued in perpetuity.

Intake. This component will be instrumental once you have identified a potential donor. Plan how to explain the program in detail and review the owner's expectations of what the preservation easement will accomplish. It is important that these expectations be realistic and that the parties involved understand the commitment required of both, especially the irrevocable nature of the action.

Provide for a tour of the property to note what features the owner plans to include in the easement. The property and easement description can then be reviewed to determine if the gift meets corporate and IRS contribution guidelines.

Remember that for donations, the IRS will require professional documentation to verify that the gift is a qualifying property. To determine the amount of the donation, an appraiser will need to inspect the site to establish "before" and "after" valuations. This information can then be used by a CPA or accountant to recommend to the owner how best to use the contribution for tax purposes. Although the costs and responsibilities associated with this property review fall to the owner, not the nonprofit, it is a good idea for the nonprofit's contact person to be involved and informed about the process, as there are certain factors which

Courtesy Lincoln-Lancaster County Planning Dept., easement recipient.

Placing the Harris House of Lincoln, Nebraska, on the National Register of Historic Places has helped assure its qualification for charitable contributions.

(continued from page 23)

could affect the donation of an easement. These factors include: possible problems with a building's structural integrity; previously unidentified aspects of the property that should also be included with the easement; and city, county, and state planning or zoning ordinances.

If you have decided that you will require a separate donation to a stewardship fund, you will need to determine the amount of that donation. Advise the owner of this separate cost, and arrange a payment schedule.

Once you and the property owner have an idea of the costs and deductions involved, meet again to review the initial easement specifications and decide if either party would like to amend the original proposal. Once the parties are in agreement, and all donation criteria have been met, processing of the preservation easement can begin.

Processing. The landowner's attorney should draft a deed of easement, and you should have your attorney review it. Although such deeds may vary, certain components should be included. The donor and donee must be clearly named. The extent and nature of the easement should also be detailed. (The Trust found that this section, especially, differed from deed to deed).

The deed must also clearly state that this is a perpetual easement. An exact legal description of the property and statements regarding the rights of the donee and the public to access the property will also need to be included. Photographs of the property documenting the condition at the time of the easement will need to be taken. Although such photos are not actually attached to the deed, they are important in case of future legal action surrounding the gift and to verify the condition of the property at the time of donation. If there is any doubt that the donation will qualify as a charitable deduction, the owner might wish to request a private ruling of the IRS at this point.

After your attorney has approved the deed, you should then present it to your board of directors for their review and approval. Finally, the easement deed should be signed, notarized, and filed.

Follow-up. With the signing of the deed, your involvement is just beginning. You will need to determine arrangements for public access and publicize any access guidelines. You will also need to establish procedures for periodic property reviews. The SPNEA provides for annual inspections, but this requirement may vary with the nature and location of the property.

Regardless of the frequency, it is important to develop a set of review criteria for the inspection. Include a review of owner compliance with property maintenance and preservation restrictions. (In case of noncompliance, you will need to send the owner a letter indicating the problem, outlining a remedy, supplying a corrective time line, and explaining what legal remedies will be pursued if action is not taken in the time frame allowed). The property review should also identify any rehabilitation or remodeling being proposed by the owner and indicate if such changes would be in compliance. If not, corrective action must be taken.

You should also develop provisions for handling property which is destroyed. As easement holder, you may have extensive say over any rebuilding plans. If you should, however, determine that the property is not repairable, you will need to institute steps to terminate the easement. Any income realized from such an action must be redistributed to similar purposes.

IMPLEMENTATION

Should you decide to pursue an easement program, remember that a thorough research and development effort will take time. And once you have established a framework, additional time will be required to solicit and negotiate the transfer of an easement. However, by establishing time frames for each of the components discussed in this article, having periodic staff reviews of progress and problems, and keeping the easement program as a priority, 12 months should see you ready to embark on a new and exciting program—one that not only allows for the protection of the nation's historic and natural resources but that can ultimately pay for itself. ■

Resource List

Coughlin, Thomas A., "Easements and Other Legal Techniques to Protect Historic Houses in Private Ownership." *Historic House Association of America*, Washington, D.C. 1981.

Historic Preservation Commission, Lincoln/Lancaster County Planning Department, 556 South 10th, Lincoln, Nebraska 68508.

Platte River Whooping Crane Trust, 2550 North Diers Avenue, Suite H, Grand Island, Nebraska 68803.

Society for the Preservation of New England Antiquities, Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114.

U.S. *Federal Register*, Vol. 51, No. 9, "Income Taxes; Qualified Conservation Contributions," January 14, 1986.

March 23, 1989

A Perspective On: 6(I) Legislation

In the question of rent or royalty, we believe the majority of legitimate prospectors and miners favor no royalty and higher rents.

Under State law, there is already a royalty on mineral production of 7% of net profits. What is needed is a rent on land being held for mining purposes.

The mining laws are being used by largely out-of-state companies to tie up vast acreages for their private exploration use. The State mining law that requires a valid discovery of mineral is being utterly ignored. This situation is due largely to inflation.

The federal "Law of 1872" is the cornerstone of the great success of mining in the United States. It set the amount of assessment work at $100 per twenty acre claim per year. In 1872 that meant about twenty man-days of labor. Inflation eroded the effect of this requirement by a factor of 20, to one man day per claim per year. The same is true for state claims; they can be held free for up to two years, after that, they can be held at nearly no cost.

A rent approach, by making it more expensive to hold ground for long periods, will encourage the development of claims or let them revert back into the public domain, for others to develop the minerals. If 20,000 claims are dropped due to a rent being imposed, that means 800,000 acres of land will be returned to the public domain; revitalizing mineral exploration in Alaska, also reducing state administrative costs. Conversly, a royalty penalizes mineral production.

We recommend $50 per claim rent. No royalty. Even if half the claims are dropped, this proposal will generate over $1,000,000 in revenue at almost no cost to the State.

The choice in 6(I) legislation is clear...Do you want to raise revenue from legitimate prospectors and miners with a royalty...OR...From out-of-state land speculators with rent? Do you want to spend more collecting a royalty than it generates in revenue, or collecting rents at nearly no cost?

By, Robert Craig,
Mining Engineer
President,
Giant-Alaska Mining Co

E. Neil Mackinnon,
Mining Engineer
President,
Hyak Mining Co

SB 123 -- ALASKA CONSERVATION EASEMENT BILL

WHAT WOULD THE BILL DO?

SB __ would provide the legal process to create conservation easements on private property in Alaska.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement made voluntarily by a private property owner to limit, for the benefit of the public, the type or amount of use of a property. The easement may be donated or it may be sold. An easement is created to protect natural, scenic, open space, historical or cultural values. The easement is accepted, held and monitored by a governmental agency or an appropriate nonprofit corporation. Simply put, the easement is a restriction on the use of real estate.

WHAT KIND OF EASEMENTS ARE WE TALKING ABOUT?

Two types of easements which would be frequently used are Historic Easements and Wildlife Conservation Easements. A typical Historic Easement would be the voluntary written agreement of the owner of a historic building to preserve the historic character of the building and not to replace it with any other structure. A Wildlife Conservation Easement might provide for the perpetual preservation of the watershed of a particularly unique fishing stream or a critical waterfowl nesting area.

IS THIS A NEW IDEA?

No, conservation easements were first used in the 1880s. Alaska is one of four states without a conservation easement law to take advantage of the land management tool which has been called a "terrific alternative to fee acquisition."

WHY DO WE NEED A LAW TO DO THIS?

An Alaska conservation easement law is necessary because the common laws that govern land do not allow such a restriction to attach to the land in perpetuity in those instances where the Grantee of The Easement does not own an adjoining parcel of land. The new law would remove that restriction to allow certain charitable and governmental organizations to have enforceable easements without owning the adjoining land.

SB __ is essentially verbatim from the Uniform Conservation Act which was drafted as a model law by the National Conference of Commissioners on Uniform State Laws.

WHAT ARE THE PUBLIC ADVANTAGES?

A conservation easement provides a cost-effective way to protect public values of private land. These values may be natural, historic, scenic or cultural. It allows such values to be protected without the cost of fee simple purchase of land. The land stays in private ownership.

Because the land stays in private hands, it also stays on the local tax rolls. The assessed valuation may increase or decrease depending on the nature of the easement. For example a historic easement may make the property more valuable for tourist related use while a critical habitat easement would probably reduce value because development would be prohibited.

Furthermore, since the property stays in private ownership the public does not incur the management costs that would come if the lands or buildings were publicly owned. While the public holder of the easement must monitor the agreement this would be an extremely modest cost.

WHY WOULD A PRIVATE LANDOWNER WANT TO CREATE AN EASEMENT?

The landowner who donates a conservation easement, to a public agency or qualified charity, can claim federal income tax deductions for the charitable gift. In the alternative the landowner may sell the easement for what he considers a fair price. All such transactions would be voluntary. No governmental taking through eminent domain would be involved.

Estate taxes can also be reduced through the donation of an easement. Property restricted by a perpetual conservation easement either before the landowner's death or executed as an element of his/her will, must be valued in the estate at its restricted value, resulting in lower taxes.

HOW LONG DOES AN EASEMENT LAST?

A conservation easement would restrict the land for only as long as agreed to by the owner.

WHAT ABOUT PUBLIC ACCESS?

Understandably, most landowners want to retain an ability to control access to land that is still theirs. The landowner and the grantee of the easement may, however, provide for public access if the landowner so agrees.

IN SUMMARY: Conservation easements are flexible, adaptable agreements tailored to the needs of the property owner and the character of the property. Specific public benefits are provided -- without the expense of purchase and while maintaining the land in private ownership.

SB
129

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

SB 129

Senate Resources 1/27/89

Previous fiscal notes.

SENATE BILL NO. 84 was referred to the Rules Committee.

Selection=> _____ B005-LAST PAGE
PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP EXIT MENU PRINT BWD FWD FIRST LAST QUIT
Bill/Resolution History 02:36 PM 05/16/90 Page 1
BILL: SB 129
NAME: CSSB 129(FIN)
TITLE: "An Act relating to mining; and providing for an effective date."

PRIME SPONSOR: RULES
BY REQUEST OF THE GOVERNOR

FUNDING : $281,900 GENERAL(FNOTE) $000 OTHER(FNOTE)

CURRENT STATUS: CHAPTER 101 SLA 89 STATUS DATE: 06/12/89

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HELP SUBJ EXIT MENU TEXT PRINT BWD FWD FIRST LAST QUIT
BASIS Journal Text

04/11/89 SENATE JOURNAL PAGE 1175
_SB 129_

The Resources Committee considered SENATE BILL NO. 129 (An Act providing for rent and royalty payments for a mining claim, leasehold location, or mining lease; relating to annual labor requirements for, and abandonment of, a mining claim, leasehold location, or mining lease; relating to

04/11/89 SENATE JOURNAL PAGE 1176
SENATE JOURNAL
1176 April 11, 1989

SB 129 cont'd

mining license tax information; and providing for an effective date) and a majority of the committee recommended it be replaced with

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BASIS Journal Text

04/11/89 SENATE JOURNAL PAGE 1176

CS FOR SENATE BILL NO. 129 (Resources), entitled: "An Act relating to rent and royalty payments for a mining claim, leasehold location, or mining lease, to mineral-in-character determinations, to annual labor requirements for and to abandonment of a mining claim, leasehold location, or mining lease and to mining license tax information; and providing for an effective date."

and do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Halford, Frank, Eliason and Sturgulewski.

Fiscal note for the committee substitute forthcoming.

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Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kerttula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Halford
Senator Arliss Sturgulewski
Senator Fred Zharoff

P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

TO: Members of the Senate

April 24, 1989

FROM: Senator Bettye Fahrenkamp

SUBJECT: CSSB 129 (Finance)
Mining Rents & Royalties

Overview: The Alaska Supreme Court decided in May, 1987 that Alaska's mining law failed to comply fully with section 6(i) of the Statehood Act. The Supreme Court decision found that rents and/or royalties were required from mining claims on state "mineral lands", but did not define "mineral lands". As a result of this court decision, the Resources Committee and Finance Committee have worked hard to craft a bill that would comply with the court decision, minimize impact on the mining industry, and guarantee passage this year. Failure to adopt "6(i)" legislation this year would pose a very real risk that state miners would be shut down by threat of injunction.

SECTIONAL ANALYSIS:

Section 1: This section amends existing statute to clarify that rent and royalty payments are required for leases.

Section 2: This section amends existing statute to add that annual labor be performed on leasehold locations and mining leases under this section. This requirement already exists under AS 38.05.205(b) and AS 38.05.250(c), but changes to these sections require moving the requirement to this section. In addition, this section reduces the annual labor required for each mining claim and leasehold location from $200 to $100 per year. Excess annual labor may still be carried forward for four years.

Section 3: This amends existing statute to conform with changes under Section 2. In addition, new language is added to allow a miner to make a cash payment to the state in lieu of annual labor.

Section 4: This new statute requires an annual rent of $20 to be paid for each mining claim and leasehold location, and $0.50 per acre for mining leases, including offshore leases, of $0.50 per acre. After the claim or lease is 5 years old, the rent increases to $40 each or $1.00 per acre, and after 10 years the rental increases to $100 each or $2.50 per acre. Section c provides that the annual rent shall be credited against any royalty due. Section d requires the rent be adjusted each 10 years based on the change in the consumer price index (CPI) for Anchorage.