

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

8672

8174

HOUSE STATE AFFAIRS

439

Representative Navarre
July 8, 1991
Page 17

constitutional amendment and present it to the people at a subsequent election for final ratification.

The unicameral proposition was not the only proposition appearing on the 1976 general election ballot: there were six other measures for voters to consider as well, several of which were controversial (such as repeal of the limited entry program in state commercial fisheries).³⁵ Perhaps the crowded ballot was a distraction, but for whatever reasons the unicameral proposition was relatively anonymous--in contrast to the controversy sparked by the same question almost 40 years earlier. For the most part, newspaper editors ignored it. The measure got a feeble nod from the *Anchorage Daily News* at the end of an omnibus election-day editorial.³⁶

A popular political figure with statewide stature--a contemporary Tony Dimond--was not at hand to champion the cause. Governor Jay Hammond wrote newspaper columns on behalf of the permanent fund and limited entry, but he was silent on the unicameral issue. Virtually the only published commentary on the advisory measure was a column in the *Anchorage Times* by state Senator Joe Josephson urging a "yes" vote, and a letter to the editor run in several newspapers from the League of Women's Voters intended to provide information about the issue rather than persuade voters to cast their ballot one way or another. Neither proponents nor opponents purchased display advertising in the newspapers.

Despite the dearth of publicity, or perhaps because of it, a majority of the voters approved the measure. The final tally was 58,782 to 55,204.

Early in the first session of the 10th Legislature, convening in January 1977, House Joint Resolution 7 and Senate Joint Resolution 2 were dutifully introduced in their respective bodies. Both resolutions proposed a constitutional amendment to create a unicameral legislature. (Amendments to the constitution must obtain a favorable vote of two-thirds of each house to be adopted.) The senate resolution never emerged from its first committee of referral; the house resolution reached the floor but failed on a

³⁵The ballot measures in 1976 were 1) selection of a new capital site from a list of three choices, Larson Lake, Mt. Yenlo and Willow; 2) a constitutional amendment that would facilitate the reconsideration of vetoed bills by the legislature under certain circumstances; 3) a constitutional amendment that would create the permanent fund; 4) a constitutional amendment that would empower the legislature to review all dispositions of state land-owned land; 5) a constitutional amendment that would allow the state to give financial aid to private colleges; 6) an initiative measure that would repeal the state's limited entry program for commercial fisheries; and 7) the advisory vote on a unicameral legislature. In addition, voters were presented with ten bond issues totaling \$239 million.

³⁶*Anchorage Daily News*, November 2, 1976.

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reconsideration vote 21-17-2 (27 ayes were needed for passage). Thus, in the end, the unicameral proposal did not command enough legislative support even to pass the house.

There the matter rests. The proposal to create a one-house legislature did not cause a noticeable public stir when it was a proposition before the voters, it passed without fanfare, and it faded silently from view when the tenth legislature adjourned without acting in June, 1978.

Conclusion

The periodic attention to unicameralism over the past 80 years in Alaska suggests that we can expect renewed interest in this long passed-over legislative reform sometime in the future. The favorable outcome of the 1976 advisory vote on a unicameral legislature should be a source of encouragement to future partisans. On the other hand, the bicameral system, however undeserving of its veneration in the eyes of some, is heavily weighted with symbols and tradition, and it will not be toppled easily.

This survey of the issue in Alaska political history suggests that a number of factors may be critical to the success of a future unicameral movement. One is the degree of public confidence in the existing legislative system. A crisis of confidence, or a steady erosion of confidence, is certainly a prerequisite for success. (The favorable 1976 vote may have reflected the generally low esteem of government in the aftermath of the Watergate scandals.)

Another factor that could influence the outcome of a future campaign is leadership. Endorsement of the idea by a trusted public figure could bring many voters to the side of the unicameral cause, just as denunciation of the idea by such a person could spell defeat.

Generating public support for the reform is only part of the problem facing would-be unicameralists. The other part is procedural: the usual approach to amending the constitution--passage of a resolution by the legislature--is probably closed to all reforms that affect the vital interests of the legislature itself. Two-thirds of the members of the Alaska State Senate are unlikely to vote for a constitutional amendment that would abolish their chamber. Thus, if a unicameral amendment is ever to come before the voters for ratification, it will probably have to come from a constitutional convention.

HJR

60

HOUSE COMMITTEE REPORT

(7) [REDACTED]
 Date Referred: February 28, 1994

FURTHER REFERRALS: [REDACTED]

Judiciary

Date of Committee Action: 3-8-94

The STATE AFFAIRS Committee considered:

HJR 60

HOUSE JOINT RESOLUTION NO. 60

AMEND US CONSTIT. TO LIMIT FED. COURTS

Relating to an amendment to the Constitution of the United States prohibiting federal courts from ordering a state or a political subdivision of a state to increase or impose taxes.

RECOMMENDATIONS: | | the same title
 be replaced with _____ | | a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Elections

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Vesey</i>	X				
<i>Pat Hoot</i>	X				
<i>Ang Sanders</i>	X				
<i>Larry L Davis</i>	✓				
<i>Harold Olberg</i>	✓				
<i>Bettye Davis</i>	X				

Al Vesey

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HJR 60

Revision Date: _____
Title: Amendment to the U.S. Constitution:
RE: To Limit Federal Courts
Sponsor: State Affairs
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: Operations
COMPONENT SERIAL NO. 21

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Joseph L. Swanson, Director
Division: Division of Elections

Phone: 465-4611

Date: 3/7/94

Approved by Commissioner: John B. Coghill, Lieutenant Governor
Agency: Office of the Governor

Date: 3/7/94

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DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

FEB 17 1994

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

MEMORANDUM

February 17, 1994

SUBJECT: Amendment to the United States Constitution (8-LS1764)

TO: Representative Al Vezey, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook
Director *TBC*

Here is a draft resolution requesting the United States Congress to propose an amendment to the Constitution to prohibit federal courts from ordering states or political subdivisions to impose or increase taxes. Under Article V of the U.S. Constitution Congress may propose amendments. Additionally, upon application of the legislatures of two thirds of the states, Congress is required to call a convention for the purpose of considering amendments. This latter method has never been used and there is considerable debate about whether a convention may be limited to consideration of only a specific amendment or whether, having called a convention, any amendment may be considered. Because of this uncertainty, I have not in this draft included a request that a convention be called for the limited purpose of considering a specific amendment relating to court ordered taxation.

TBC:pl
94-136.plm

Enclosure

*Rec'd
2/24/94*

Legal Svc. Memo 2-17-94

The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

February 8, 1994

Mandates! Directives! That's all we seem to hear from our federal brethren in Washington, D.C. States have recognized the burden these mandates and directives have created at the state level. Unlike the feds the states can't print money to cover their debts. Patrick Henry put it this way, "(Y)our rich, smug, fine, fat, federal officers - the number of collectors of taxes and excises - will outnumber anything from the states. Who can cope with the excise man and the tax man?"

But when an order to levy taxes is mandated by a federal court, how are you to respond to such an order? How do states begin to question or even reject the orders of the federal courts when even the United States Supreme Court upholds as constitutional a lower federal court order to levy a direct tax increase upon the citizens of a city? How do you respond to what we believe is a violation of not only the Constitution of that state, but as we also believe the Constitution of the United States?

With this in mind Missouri State Senator Walt Mueller and I visited a federal judge in his office, and in the capacity of an elected state official and as a private citizen posed that very question. We were notified that such action was part of an ongoing case and as such, he would not discuss it. We were then directed to leave. This action by the judge was not unexpected, but it was felt that his orders needed to be questioned. We felt it was a legitimate question to pose inasmuch as the Constitution of the United States is quite clear in that the judiciary has never been granted the power to tax.

When a federal judge claims that he cannot discuss judicial directives which violate the constitution of a state with a member of the legislative branch of government, something is drastically wrong. So what does one do when the judiciary mandates direct taxes and Congress refuses to challenge the federal court's usurpation of Article I powers as they pertain to taxation? Our answer is to rein in the power that the judiciary has usurped by asking other states to join our call for an amendment to the Constitution that will put a stop to this judicial grab for power. Action must be taken now. We need your help and active support of this proposed amendment.

Sincerely,



John R. Stoeffler
Chairman, The Madison Forum



RECEIVED

FEB 14 1994

Ans'd.....

BILL SKAGGS

February 8, 1994

Honorable Ramona Barnes
Speaker of the House
State Capitol Building
Juneau, Alaska 99801

Dear Representative Barnes:

As you know, Missouri House and Senate passed a concurrent resolution petitioning Congress to propose ratification by the legislators of three-fourths of the state to restrict the Supreme Court or any inferior court of the United States to levy or increase taxes.

Not every state has begun their regular legislative session, but for those of us who have, it's a busy and exciting time.

Twenty-six states have responded to our call to propose a change in our federal constitution which reads:

"Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes."

Federal mandates under the Clean Air Act are just one example of an ongoing and growing squeeze being placed upon the states by the federal government. These mandates have caused fear, anger and resentment among our citizens and our commercial and industrial community. Mandates, dictated by Washington, are putting additional strains on an already tight state budget.

Page 2

To further compound this assault on state revenues the federal district court, with the blessing of the United States Supreme Court, continues to order property tax increases "ad infinitum" to correct what Supreme Court Justice Kennedy rightly referred to as an issue which is properly "part of a legitimate political debate over . . . spending priorities" and not a Constitutional command. In his dissenting opinion to this usurpation of legislative authority by the federal courts Justice Kennedy noted, "This . . . begins a process that over time could threaten the fundamental alteration of the form of government our Constitution embodies."

The Constitution does not allow, nor do we need, judicial intervention requiring tax increases as solutions to potentially serious problems.

You're busy, I know, but in order to be of help to all those working for passage of a concurrent resolution, we are asking you to send us an update of your progress. Just return the enclosed questionnaire at your earliest convenience.

Sincerely,


Bill Skaggs

BS:ya

Enclosure

HJR

62

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 15, 1994

FURTHER REFERRALS:

Date of Committee Action: 3-26-94

The STATE AFFAIRS Committee considered:

HJR 62

HOUSE JOINT RESOLUTION NO. 62

UNFUNDED FEDERAL MANDATES

Urging the Congress to reevaluate its practice of imposing unfunded mandates on state and local governments.

RECOMMENDATIONS:

be replaced with _____ [] the same title [] a new title

[] have attached amendments(s)

[✓] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[✓] zero fiscal note HSTA

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HJR-62

Revision Date: 3/15/94 Dept. Affected: None
Title: Unfunded Federal Mandates... BRU: _____

Sponsor: House State Affairs Committee Component: _____

Requestor: Rep. Al Vezey COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rep. Al Vezey, Chairman, House State Affairs Comm. Phone: 465-3719
Division: (HSTA) Date: 3/19/94

Approved by Commissioner: *Al Vezey* Date: _____
Agency: _____

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MAR 17 1994

National Advisory Committee:

Grassroots Campaign to STOP

**UNFUNDED
MANDATES®**

Paula Easley, Director, Govt. Affairs, Municipality of Anchorage (Chair)
Steve Parks, Chairman, Nationwide Public Projects Coalition
Henry Lamb, Exec. Vice President, Environmental Conservation Organization
Rhonda McAtee, Director, Pennsylvania Landowners Association

March 2, 1994

TO: Rep. Gail Phillips

**FROM: Paula Easley, Director, Government Affairs
Municipality of Anchorage**

RE: Resolution Opposing Unfunded Federal Mandates

Gail, you may know I'm one of the ringleaders nationally who has campaigned to stop Congress's practice of adopting costly environmental measures and then telling states and cities to implement and pay for them.

The movement has been successful thanks to the efforts of many, but we recognized the need to turn up the heat. Reauthorization of the Clean Water Act and Endangered Species Act, wetlands, Superfund and initiatives on indoor air quality, chlorine, radon, etc., all involve billions of dollars that Congress wants communities to finance. At the same time they're giving more powers to the federal agencies and making it more difficult for local economies to thrive by taking land and resources out of production and killing business with yet more costly regulations.

To broaden support for stopping unfunded mandates, the Environmental Conservation Organization is coordinating a grassroots campaign to obtain resolutions to that effect from all 50 state legislatures in the next six weeks. Becky Gay suggested a resolution signed by you, Ramona Barnes, Rick Halford and Robin Taylor might be quickly obtained if you, in fact, support the issue and if you think a joint resolution is too cumbersome for the short timeframe. That's what some of the legislatures not in session are doing.

Coordinated by

eco
environmental
conservation
organization

P.O. Box 191, Hollow Rock, TN 38342 • 901-986-0099 (voice) • 901-986-2299 (fax)

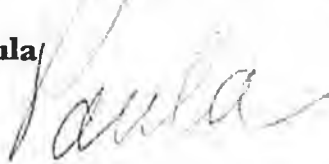
On April 15, Senator Dirk Kempthorne (if he ever runs for President, I want to be his campaign manager!) and several other sponsors of legislation dealing with environmental mandates will hold a press conference in Washington. Simultaneous press conferences are to be held across the country. This will build on the successful "National Unfunded Mandates Day" media effort last fall by the national municipal associations. We'd like the House and Senate leadership to participate in the Alaska press conference and will work with you on scheduling and arrangements.

Enclosed are sample resolutions and backup material. We are also obtaining resolutions from community and private organizations that will be widely distributed in Congress.

From the enclosed quotes you'll see the impact of our battle to get just one little rule changed in the House. I had no idea the outcome of that vote would be so significant!

Please phone or fax me at the above numbers if there are things I can do to help this along. Many thanks.

Paula

A handwritten signature in cursive script, appearing to read "Paula", written in dark ink.

**A Resolution Calling Attention to the Effect of
UNFUNDED MANDATES
On Local Government and Urging
Congress to Reduce These Burdens on Local Citizens**

WHEREAS, unfunded mandates on state and local governments have increased significantly in recent years; and

WHEREAS, federal mandates require cities and towns to perform duties without consideration of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for noncompliance; and

WHEREAS, federal mandates require compliance regardless of other pressing local needs and priorities affecting the health, welfare, and safety of municipal citizens; and

WHEREAS, excessive federal burdens on local governments force some combination of higher local taxes and fees and/or reduced local services on citizens and local taxpayers; and

WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose unrealistic time frames and specify procedures or facilities where less costly alternatives might be just as effective; and

WHEREAS, existing mandates impose harsh pressures on local budgets and the federal government has imposed a freeze upon funding to help compensate for any new mandates; and

WHEREAS, the cumulative impacts of these legislative and regulatory actions directly affect the citizens of our cities and towns; and

WHEREAS, the International City Managers Association, the National Association of Counties, the National League of Cities, the U. S. Conference of Mayors, and other state and local government representatives, began a national public education campaign to help citizens understand and then reduce the burden and inflexibility of unfunded mandates, by dedicating October 27, 1993 as National Unfunded Mandates Day,

NOW, THEREFORE, the assembly here gathered resolves:

Section 1. that the _____ endorses the efforts of national, state, and local organizations to fully inform citizens about the impact of federal mandates on our government and the pocketbooks of our citizens;

Section 2. that we shall double our efforts to inform and work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens;

Section 3. that we shall urge our citizens to support Congressional action that will bring about an end to federal unfunded mandates.

ADOPTED this _____ day of _____, 1994

CLERK'S OFFICE

APPROVED

Date: 10-26-93

Submitted by: Chairman of the Assembly at the
Request of the Mayor

Prepared by: Office of the Mayor

For reading: October 26, 1993

ANCHORAGE, ALASKA

AR NO. 93-320

1 A RESOLUTION CALLING ATTENTION TO THE EFFECT OF UNFUNDED MANDATES ON
2 LOCAL GOVERNMENT AND URGING CONGRESS TO REDUCE THESE BURDENS ON LOCAL
3 CITIZENS
4
5

6 WHEREAS, unfunded mandates on state and local governments have increased significantly in
7 recent years; and

8
9 WHEREAS, federal mandates require cities and towns to perform duties without consideration
10 of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for
11 noncompliance; and

12
13 WHEREAS, federal mandates require compliance regardless of other pressing local needs and
14 priorities affecting the health, welfare, and safety of municipal citizens; and

15
16 WHEREAS, excessive federal burdens on local governments force some combination of higher
17 local taxes and fees and/or reduced local services on citizens and local taxpayers; and

18
19 WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose
20 unrealistic time frames and specify procedures or facilities where less costly alternatives might be just
21 as effective; and

22
23 WHEREAS, existing mandates impose harsh pressures on local budgets and the federal
24 government has imposed a freeze upon funding to help compensate for any new mandates; and

25
26 WHEREAS, the cumulative impact of these legislative and regulatory actions directly affect the
27 citizens of our cities and towns; and

28
29 WHEREAS, the International City Managers Association, the National Association of Counties,
30 of National League of Cities, and the U.S. Conference of Mayors, in conjunction with other state and
31 local government representatives, has begun a national public education campaign to help citizens
32 understand and then reduce the burden and inflexibility of unfunded mandates, beginning with a National
33 Unfunded Mandates Day on October 27, 1993.

34
35 NOW, THEREFORE, the Anchorage Assembly resolves:

36
37 Section 1. that the Municipality of Anchorage endorses the efforts of National, County and
38 Municipal organizations to fully inform our citizens about the impact of federal mandates on our
39 government and the pocketbooks of our citizens.
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Section 2. that the Municipality of Anchorage resolves to redouble our efforts to inform and work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens.

Section 3. that the Municipality of Anchorage will join with hundreds of cities nationwide in recognizing October 27, 1993 as Unfunded Mandates Day.

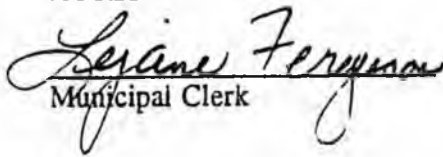
PASSED AND APPROVED by the Assembly this 26th day of October, 1993.

Tom Fink
Mayor



Mark Begich
Chairman

ATTEST:



Municipal Clerk

Network for Environmental Policy Awareness

Regional Coordinators:

Mayor Tom Fink
Box 196650
Anchorage AK 99519
907/343-4278/Fax 343-4110

Mayor Greg Lashuka
90 W. Broad Street
Columbus, OH 43215
614/645-6171/Fax 645-7051

Mayor Bill Westbrook
Box 1687
Jackson, WY 83001
307/733-3932/Fax 733-0919

DATE: January 25, 1994 **PLEASE ACT BY JANUARY 31**

TO: Mayors/Managers, NEPA

FROM: Regional Coordinators

SUBJECT: "JOHNSTON AMENDMENT"

Congress reconvenes today, and within the next week or two there may be critical action in the House of Representatives on the "Johnston Amendment" to the EPA Cabinet bill. You will recall that the "Johnston Amendment," which was added to the Senate version of the Cabinet bill by a vote of 95-3 and is now ready to be proposed in the House of Representatives, would require EPA to explain whether the expected benefits of a regulation justify its costs.

In the House, it is possible there will never be any debate or vote on the merits of a "Johnston Amendment" because the Rules Committee has ruled that the amendment is not germane. When the Cabinet bill is brought to the floor of the House, as soon as next week, there will be an opportunity to vote to overturn that ruling, and then vote on the amendment itself.

Therefore, your help is needed immediately. If the amendment is not added to the House bill, the amendment in the Senate is sure to be watered down in conference. Please tell your U.S. Representative you oppose the rule that would avoid consideration of the merits of the amendment, and that you favor the amendment. Following are some points you might want to make:

- There should be a vote on the amendment itself; it is too important to be dismissed on a technicality.
- The amendment is commonsense, and it is clearly consistent with the President's recent Executive Order No. 12866 setting forth the Administration's regulatory philosophy.
- American cities and counties cannot continue to spend more on environmental regulations without having EPA explain whether the benefits will justify the costs. They also need to know whether a regulation is supported by sound scientific analysis, and how the risk it addresses compares with other risks.
- If EPA is to be given greater stature, it should have greater accountability.

This imminent Congressional action is the most important on the unfunded mandates issue since Senate approval of the Johnston Amendment last May. Every bit of help will count. Opponents of the Johnston amendment in the House delayed action because the vote projections have been so uncertain. A vote could occur any day now, so the sooner you act the better. In addition to faxing or calling your representative, enlist other mayors and county commissioners to do the same; also, urge your national associations to lobby. Do send copies of materials to 907-343-4110.

Controversial Issues Will Be Raised During Markup

SENATORS DRAFTING CWA PROPERTY RIGHTS, WETLANDS AMENDMENTS

Several senators are drafting private property rights and wetlands amendments to the Senate clean water bill, to be offered during the Senate Environment & Public Works Committee markup of the legislation on Feb. 23. Given the controversy over such issues, the amendments could significantly bog down or even derail the legislation.

Sen. Dirk Kempthorne (R-ID) is crafting amendments to S. 1114 focusing on concerns that the bill substantially erodes state discretion in administering the CWA, despite the bill's promotion as one that significantly enhances state flexibility. Kempthorne is also developing amendments to protect the rights of private landowners who have argued that federal environmental laws are encroaching on their constitutional rights. Sen. Lauch Faircloth (R-NC) is developing amendments that would roll back existing wetlands regulations, which critics have charged are cumbersome and overly protective.

At a Feb. 2 clean water, fisheries and wildlife subcommittee hearing on the bill, Kempthorne expressed concerns that S. 1114 ignores the potential for infringement of private property rights under Title VII wetlands provisions, as well as under watershed planning and nonpoint source control programs in Title III, and is expected to offer amendments on the private property rights issue. There should be "compensation and assurances" that what landowners are being asked to do is based on sound science and will have minimum impact "compared to the benefits," Kempthorne stressed.

Faircloth testified that wetlands provisions are of most concern to him, stressing that they need to be "more simple to comply with." The Senator will likely offer an amendment lowering "outrageously high" fines that the current bill would allow EPA to impose on violators. EPA should offer mitigation banking credits to landowners for created wetlands. Faircloth said, pointing out that "if we are going to inventory wetlands losses, we need to inventory gains" as well.

EPA has too much power dictating to states the elements of their antidegradation policies and designated uses, Kempthorne said, calling the agency's method a "one-size fits all" approach. "EPA is required to publish state guidelines for naming Outstanding National Resource Waters, for setting up comprehensive statewide water monitoring programs, and for reviewing and revising water quality standards," Kempthorne said at the hearing. "If that's not enough, the bill then sets arbitrary deadlines for all this to be done -- to EPA's satisfaction, I might add."

Kempthorne is also expected to introduce an amendment that would attempt to improve the scientific basis for EPA rulemaking, and that would more strongly connect pollution reduction efforts to human health risk and cost-benefit analysis. The current bill seems to reflect the attitude that "if it is human-induced, then it must be bad," the senator said at the hearing.

S. 1114 would establish federal authorities and regulations that force the federal government into direct conflict with the states' traditional right to allocate and control the use of waters within their jurisdiction, Kempthorne complained. "It does this with little thought for the long-term consequences, and with little respect for the system of property rights and water rights," Kempthorne said, adding that these rights underpin the livelihood of the West. States are in the best position to decide water allocations and uses -- the consequences of which Kempthorne contends cannot be understood by EPA "thousands of miles away in Washington."

Kempthorne will also likely introduce an amendment that will move the CWA farther away from habitat and species protection, possibly eliminating wildlife criteria, biological monitoring, and the emphasis on sediment quality, congressional sources say. The more variables included in the meaning of water quality, "the more complex the decisions and tradeoffs become," he said. Kempthorne is also expected to propose changes to the bill that would alter current enforcement provisions. "The bill, in practical effect, makes punishment and revenue collection the enforcement goal, rather than compliance," Kempthorne said.

Congressional sources say Faircloth amendments will include proposals that would weaken EPA authority to mandate changes in industrial processes. "We are sending bureaucracy up the pipe and into the plant," he said at the subcommittee hearing, emphasizing that the economic cost of mandates is not adequately considered. Faircloth will also include amendments promoting more reliance on publicly owned treatment works -- rather than requiring facilities to treat waste on site -- and striking out S. 1114's phaseout of many persistent toxics, congressional sources speculate.

at chlorine in a comprehensive manner."

Environmentalists, who have made a chlorine ban a top priority, would have preferred the bill by Rep. Bill Richardson (D-NM), H.R. 2898, which calls for a chlorine ban within five years, says one environmentalist. However, because the administration proposal is highly specific, targeting certain industries for assessment and setting a timetable, environmentalists generally had a favorable reaction to the plan, this source says. The National Wildlife Federation and Clean Water Network, representing 450 environmental groups, applauded the chlorine proposal.

Red Cavaney, president of the American Forest & Paper Association, which would be significantly affected by a chlorine strategy, in a statement said that the proposed study "may provide an alternative way to deal with this complex problem" and called for the study to clarify outstanding scientific issues regarding chlorine.

Policy

Issue Likely To Be Key In CWA, SDWA

EPA CABINET BILL VOTE BOOSTS CONTROVERSIAL RISK ANALYSIS PROPOSALS

Controversial proposals that would require EPA to conduct risk analysis for its rules received a significant boost with the recent House vote on an EPA-authorization bill, a vote that likely signals risk analysis will be a central issue in clean water and safe drinking water debates, according to congressional, state, and other sources.

The House on Feb. 2 voted 227-191 to allow risk analysis-related amendments to be proposed for H.R. 3425, the Department of Environment Act, stunning House leadership and environmentalists who felt certain they could sustain the rule excluding such amendments. The defeated rule would have barred an amendment sponsored by Reps. John Mica (R-FL) and Karen Thurman (D-FL) that seeks to require risk and cost-benefit analysis for agency rules. The rule was voted down despite intense lobbying by the White House, environmentalists, and opponents of risk analysis amendments.

"They gave it their best shot, but we got grassroots lobbying by state and local officials" and defeated the rule "by a landslide," says a congressional source, who comments that members of Congress showed an unprecedented interest in risk assessment questions. This will have a big impact on the Clean Water Act and Safe Drinking Water Act" because "the risk assessment hand has been strengthened," this source adds.

A state source says that the EPA Cabinet bill vote "reflects a coming into awareness that the [risk analysis] perspective is legitimate" and not merely a disguised attempt to undercut EPA or roll back regulations across-the-board. Over the past 20 years, there were "tremendous targets of opportunity" to control sewage and industrial effluent discharges with a certainty that large risk reductions were being achieved, this source says. But now those "big, uncontrolled sources" are no longer available, so risk and cost-benefit analysis is needed to make regulatory decisions that truly achieve benefits for expenditures, this source adds. With the House vote on H.R. 3425, members of Congress "were saying we want to discuss [risk] and to vote" on the issue. A House proposal for reforming the SDWA would make risk and cost-benefit analysis an integral part of the agency's standard-setting procedures, this source notes.

"We're trying to figure out where to go from here," says a disappointed environmentalist, who adds that the House leadership "would never have brought this up if they'd expected the vote" to come out as it did. "A number of offices that said they'd support the rule didn't," resulting in a vote that shocked House leaders and environmentalists alike, this source says. Though surprised by the vote, environmentalists "have known this was a big problem all along," and regard the three themes of risk analysis, unfunded mandates, and property takings as "the last piece of the Reagan legacy" pushing "to get big government out of our lives" and roll back regulations, this source explains.

House members supporting risk analysis amendments are meeting with House majority leader Richard Gephardt (D-MO) to discuss possible compromise positions, says a congressional staffer. This source stresses that proponents of risk analysis are not saying that EPA must base its rules on the most cost-effective decision. Rather, the goal is to "just get the information out" on what risk-reduction benefits would be achieved by various expenditures on controls, this source says. Risk assessment is about setting priorities, this source says.

you did it!

Before assuming responsibility, states would need to have a cleanup program in place that is substantially consistent with the Federal program.

Finally, the administration's proposal would provide for greater public and community accountability "by making the program more responsive to poor and minority communities that have frequently borne the brunt of chemical disposal." Greater community involvement would be accomplished by the establishment of community working groups that would be an important voice in determining the cleanup goals and future uses of the sites.

Chances of Enactment

Details of the administration's Superfund reform had been leaked to the press, including EPA WATCH,

over the past couple of months. As such, the final version of the plan contained few surprises. Congressman Al Swift (Democrat of Washington) and Senator Frank Lautenberg (Democrat of New Jersey) are expected to sponsor the administration's bill in Congress. But until final language has been written into a bill, most parties directly affected by the plan are reacting cautiously. This includes Congressman Swift, who has said that the proposal is a "good starting point" for a Superfund bill.

The business community, which has paid dearly under the present Superfund law, is generally pleased with the plan. On the other hand, environmentalists are not happy with the proposal's remedy selection reform and consider the plan too "pro-business" for their liking.

Insurers, also among the big losers

under current law, applaud the administration's efforts to relieve the insurance industry from much of the grief it has endured under Superfund's liability system. Though they describe the plan as a "step in the right direction," they still worry that the EIRF will not be large enough to cover Superfund liability settlements.

Finally, as noted in EPA WATCH (January 15, 1994), the crowded Congressional calendar may not allow for consideration of such an ambitious program this year. Senator Max Baucus, Democrat of Montana and chairman of the powerful Senate Environment and Public Works Committee, has joined House Minority Whip Newt Gingrich in casting doubt on whether the entire program can be enacted in what remains of the 103rd Congress. "We don't have a lot of time this year," he told the *Washington Post*. ♦



RISK ASSESSMENT CONCERNS STALL EPA CABINET BILL IN HOUSE

In a stunning setback to EPA, the House on February 2 voted by a margin of 227 to 191 not to consider a bill to elevate the agency to cabinet-level status.

An administration-backed attempt to bring the bill, H.R. 3425, up for consideration on the House floor collapsed when 60 Democrats joined all but five Republicans in blocking a vote on the measure that would create the Department of Environmental Protection (DEP).

The vote to shelve consideration of H.R. 3425 is seen by Congressional observers as a reflection of widespread discontent among lawmakers with the House Democratic leadership's efforts to keep the bill free of amendments which would drastically alter the way EPA implements environmental regulations. Not even intense lobbying by Vice President Al Gore and EPA Administrator Carol Browner to bring H.R. 3425 to a vote

succeeded in stemming the tide.

At the center of the controversy stands an amendment sponsored by Representatives John Mica (Republican of Florida) and Karen Thurman (Democrat of Florida) which would require EPA to conduct risk assessments and cost-benefit analyses before issuing environmental regulations. Their proposal closely parallels an amendment sponsored by Senator J. Bennett Johnston (Democrat of Louisiana) which was attached to the Senate version of the EPA-cabinet-elevation bill approved by the upper chamber last May. The Johnston amendment passed the Senate by an overwhelming 95-to-3 margin (See EPA WATCH, May 30, 1993 and November 30, 1993).

The House Rules Committee, supported by the White House, issued a rule prohibiting debate on the Mica amendment, arguing that it was not "germane" to legislation establishing the Department of Environmental

Protection. But Congressman Mica, backed by Senator Johnston, refused to withdraw his amendment, setting the stage for the February 2 confrontation from which proponents of risk assessment reform emerged victorious.

Hoping to persuade his colleagues to reject the Mica amendment, Congressman John Conyers (Democrat of Michigan, chairman of the House Government Operations Committee, and the sponsor of H.R. 3425) argued that, "The purpose of this bill is not to change environmental policy." In response, Mr. Mica asked: "Why doesn't the administration want to debate this issue? I thought they wanted to reinvent government, not stick with the status quo."

Risk Assessment and Unfunded Mandates

"When are we going to realize tha

se have limited resources that must be deployed rationally? This amendment will enable EPA to focus regulations on real health threats," the Florida Republican said. "What is the cost and what is the risk and what are the benefits to the public?"

Tying risk assessment reform to the issue of unfunded Federal environmental mandates, Mr. Mica pointed out that state and local governments spend about \$30 to \$40 billion a year trying to comply with EPA's rules and regulations. "The Federal government cannot continue to impose these costs on state and local governments without a careful evaluation of the costs and benefits of these regulations," he added.

A key element in Mr. Mica's success was the backing he received from a host of bipartisan organizations with considerable influence on Capitol Hill. Backers of the Mica amendment included the National League of Cities, National Governors' Association, National Association of Counties, National Conference of State Legislatures, National Federation of Independent Businesses, the National Farm Bureau Federation, and National Association of Manufacturers.

Congressional sources on both sides of the issue credit the National Governors' Association's (NGA) strong statement (see below) in support of risk assessment and cost-benefit analysis, coupled with its ringing condemnation of unfunded mandates, with providing the margin of victory to Mr. Mica's forces. "The NGA's statement was issued on February 1, and the House voted on February 2. That tells you something," a Congressional staffer told EPA WATCH.

Back to the Rules Committee

The EPA cabinet-elevation bill now returns to the House Rules Committee where its future is uncertain. Sources on the committee say it is unclear when H.R. 3425 will be brought back to the House floor for action. EPA and the White

House remain opposed to inclusion of the Johnston/Mica amendments in the bill but appear to be outnumbered in the House. Fresh from their unexpected victory, Mr. Mica and his supporters do not plan to back down.

Further complicating the matter is the frequently-cited statement by Representative Henry Waxman (Democrat of California and chairman Energy and Commerce Committee's subcommittee on health and the environment) that he would rather see no EPA cabinet-elevation bill than one with risk assessment and cost-benefit language. "It's a real mess now," commented one Congressional staffer sympathetic with the administration's position. "There is talk of reviving a 'clean bill' (with no amendments), but that won't pass in the current atmosphere. We don't know where to turn right now."

There are reports circulating on Capitol Hill that EPA might be willing to swallow a compromise risk assessment/cost-benefits amendment as a price for cabinet-level status. Proponents of risk assessment reform fear that the compromise amendment, if it is introduced, would contain most of the language of the Johnston and Mica amendments but with little of their substance. "We want real reform, not a substitute for reform," said a key Congressional staffer who supports the Johnston/Mica approach.

Sources at EPA were also stunned by the vote. High-level EPA officials had been assured by the White House and the House leadership that the Mica amendment would be defeated. "Morale here has really taken a hit," an agency source told EPA WATCH. "For five years, Congress has been unable to get a cabinet status bill passed, and now this happens." Another source commented that "unfunded mandates, the spotted owl, wetlands, and Superfund have all come home to roost. It was pay-back time"

"Deep Well of Discontent"

The latter observation is shared by

several Congressional sources. "On paper," one source said, "there is widespread support in Congress for EPA cabinet status; few openly oppose it. But, in reality, EPA is not very popular here, and a lot of members used the Mica amendment as an excuse to show their displeasure. They are really feeling the heat on unfunded mandates and other environmental regulations. Mica and Johnston have tapped into a deep well of discontent."

In this connection, it is significant that the House Rules Committee did accept as germane to H.R. 3425 an amendment put forward by Congressman Tom DeLay (Republican of Texas). Submitted in response to revelations of contract mismanagement at EPA, the DeLay amendment would authorize the new department's Inspector General to enter into an interdepartmental investigatory task force with the Department of Justice to identify waste, fraud, and criminal misconduct within the DEP.

Among the other amendments that could eventually be tacked on to H.R. 3425 are the following:

- Rep. William Clinger (Republican of Pennsylvania) would require the assistant secretary for intergovernmental affairs to develop strategy to reduce unfunded Federal environmental mandates imposed on state and local governments;
- Rep. Craig Thomas (Republican of Wyoming) would establish an ombudsman at the DEP to assist small businesses to comply with environmental regulations; and
- Rep. Deborah Price (Republican of Ohio) would require the secretary of the DEP to assess on an annual basis the performance of the new department's regional offices.

With the defeat of the House rule limiting amendments, additional amendments are expected in the day ahead, including an amendment dealing with protection of private property rights. ♦

CONRAD BILL FOCUSES ON INTERSTATE TRANSPORT OF SOLID WASTE

Saying his legislation is "the toughest bill on interstate waste that has ever been introduced in the U.S. Senate," Senator Kent Conrad (Democrat of North Dakota) has introduced a measure that would allow a state to regulate the disposal of municipal solid waste generated outside its borders.

Angered that "the garbage merchants of America . . . are searching for new targets of opportunity," Senator Conrad told his colleagues on January 28 that "states ought to have the ability to make a decision on what comes into their states." He cited large, sparsely populated states such as Montana, Nebraska, South Dakota, and his native North Dakota, as the preferred dumping sites for the 15 to 18 million tons of municipal waste transported across state lines each year.

"Currently," he pointed out, "whenever a state takes action, lawsuits are brought, and the argument is made that under the commerce clause of the Constitution, a state cannot do anything to inhibit what moves in interstate commerce. They cannot do anything unless Congress takes action."

Key Provisions

This is just what his bill, S. 1808, is designed to do. It would amend the

Solid Waste Disposal Act (SWDA) so that, "Each state is authorized to enact and enforce a state law that regulates the treatment, incineration, and disposal of municipal solid waste generated in another state."

Second, his legislation would provide that the entire affected local community be allowed to make a decision "on what comes into that town or that city." S. 1808 would authorize the Governor of each state to determine what the affected community is and, once that determination is made, it would be up to the affected community to decide whether to accept the out-of-state waste.

Third, the Conrad bill would provide for full disclosure before any permit is granted for the transport of interstate waste. Among the items to be disclosed are the following:

- What are the economic implications?
- What are the environmental effects?
- What are the long-term plans of the company that is pursuing a waste permit?
- What is the financial strength of the company? and
- What is the ability of that company

to assure that the proper environmental and health standards are pursued?

"We have seen examples around the country where a local entity would get a permit for a landfill and then a large out-of-state interest would come in and buy that local entity, greatly expand the permit, and there was little that could be done at the local level," the North Dakota Democrat said. "That should not be the case. The local community ought to know what is the future plan before any permit is granted."

Full Disclosure of Violations

Finally, S. 1808 would provide for full disclosure on the part of the company seeking a permit with regard to the firm's background. This would include submitting a detailed history of violations of the terms of permits granted to them at other locations.

Senator Conrad added that he has already talked to Senator Dan Coats (Republican of Indiana) who has sponsored similar legislation in the past aimed at getting more local control over interstate transport of municipal solid waste. It is Mr. Conrad's hope that Senator Coats will agree to co-sponsor S. 1808. As EPA WATCH goes to press, Senator Coats has not yet responded to the Conrad bill. ♦

PRIVATE PROPERTY ADVOCATES PLAN MAJOR CONGRESSIONAL PUSH

Buoyed by a series of largely unexpected legislative victories late last year, private property rights advocates in Congress are preparing to make their growing influence felt on every piece of environmental legislation that comes before Congress in 1994.

"When you lose your job because of an owl or you lose your shrimp boat because of a turtle, the cost of environmental protection hits home," Congressman Billy Tauzin (Democrat of Louisiana) recently told the *St. Louis Post-Dispatch*. "Things are coming to a head now because there

are train wrecks across the country between environmental protection and property rights."

Mr. Tauzin plans to introduce a "land owners' rights" bill in February aimed at protecting people from losing control over their property as

result of environmental regulations. His measure will be but the first in what promises to be a string of bills and amendments designed to anchor protection of private property rights into every conceivable piece of environmental legislation.

Among the most appealing targets of opportunity are the Clean Water Act (CWA), which includes wetlands regulation, the Endangered Species Act (ESA), and the EPA cabinet-elevation bill. Just how potent the property rights advocates have become was demonstrated last October when the House, by a margin of 309 to 115, attached a strong property-rights protection amendment to legislation creating the National Biological Survey (NBS). The amendment, sponsored by Congressman Charles Taylor (Republican of North Carolina), requires written permission from the property owner before surveying for the NBS can begin (See EPA WATCH, November 30, 1993).

Some Congressional property rights supporters believe EPA is so eager for passage of a cabinet-level elevation bill and for reauthorization of the Clean Water Act that the agency might be willing to go along with the inclusion of landowner protection language if that what it takes to get both bills passed.

Efforts to attach private property protection amendments to environmental legislation pose a dilemma for the White House. Though private property advocates believe they have few supporters in the Clinton administration, there are plenty of signs the White House is becoming aware of how politically explosive the issue has become. In announcing its proposals for reform of the nation's wetlands regulations last August, the administration was careful to include language dealing with landowners' concerns. While the administration's position fell far short of private property groups' demands, the mere mention of the issue in an official White House document was seen as significant by some of the movement's leaders.

Controversy Surrounding BLM'S Baca

An even more telling indication of the administration's unease in this area surfaced in late January when the *Washington Post* reported that efforts were underway to replace a key Department of Interior official. Jim Baca, appointed by President Clinton as head of the Bureau of Land Management (BLM) and an ardent proponent of more stringent environmental controls on Federal land, was reportedly offered a new job as deputy assistant secretary of interior. According to the *Post*, Mr. Baca was to be "kicked upstairs," because his aggressive approach to revamping Federal grazing and mining policies had angered some western Democratic governors. The BLM manages approximately 270 million acres of land in the West.

For their part, the western governors -- notably, Cecil Andrus (Idaho), Roy Romer (Colorado), and Mike Sullivan (Wyoming) -- were reacting to angry constituents who fear the loss of their livelihoods as a result of land use policies pushed by Mr. Baca. However, efforts to remove Mr. Baca stalled when he refused to accept the new position, forcing the administration either to fire him or to back down.

The administration, led by Interior Secretary Bruce Babbitt, chose the former, forcing Mr. Baca to resign on February 3. Environmental groups, spearheaded by the Sierra Club, the National Resources Defense Council, the Wilderness Society, and the National Wildlife Federation, lost no time in denouncing Mr. Baca's ouster, accusing the White House of not being sincere about its commitment to the environment. Hoping to smooth over the environmentalists' ruffled feathers, Secretary Babbitt said that, "The reform agenda of this Department remains absolutely unchanged." He further stated that Mr. Baca's dismissal had more to do with "differences in style" than with disagreements over policy.

But this was immediately denied by Mr. Baca who told the *Washington Post* that Secretary Babbitt's claim was "kind of bogus." "Frankly, this

came about because those western elected officials were worried about fund-raising from those traditional extractive industries."

Western governors, who pressured Secretary Babbitt to remove Mr. Baca, still fear unpleasant political repercussions from the Department of Interior's emerging stance on the use of Federal land. The matter is particularly sensitive in light of the fact that Mr. Clinton, breaking what had been a Democratic electoral drought throughout much of the West for almost a generation, carried Colorado, Nevada, Montana, and New Mexico in his successful bid for the White House in 1992.

Meanwhile, the political controversy swirling around the Department of Interior is not likely to go away. The White House is expected to announce its new policy on Federal grazing regulation within two months. Most observers believe the administration will water down its original plans to promulgate more stringent environmental regulations on millions of acres of range land in the West. This is certain to trigger an angry response among environmentalists who will, once again, say they have been betrayed by the administration. Ranchers and others who use the Federal lands to make their living will just as vociferously claim the administration's new grazing regulations will put substantial numbers of them out of business. ♦

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The group also says requirements in the bill that instruct EPA to develop water quality criteria that "the administrator determines would result in the greatest benefit: to human health and the environment" would create a standard that "is ambiguous and goes well beyond the normal EPA standard of protecting human health and the environment. NAM also says that a provision in the bill requiring EPA to develop eight sediment quality criteria in a four-year period is "incompatible with the development of sound science," saying sediment quality criteria should be developed by state water quality officials.

NAM takes issue as well with the bill's permit fee provisions, suggesting fees should be capped; argues that the bill's increased emphasis on citizen suits would lead to escalating litigation costs with little environmental benefit; and maintains that the bill's provisions restricting the "domestic sewage exclusion" under the Resource Conservation & Recovery Act would force industry to spend millions to build redundant treatment facilities.

Senate sources say NAM's objections represent a formidable list of concerns that will likely form the basis of several amendments that will be offered at the Feb. 23 markup. "NAM is very powerful in the Senate," one Senate source says, adding "they are not the type to compromise early, so we should all expect a fight on these issues."

INDUSTRY CALLS HOUSE CABINET VOTE BOOST TO CWA WETLANDS AGENDA

Industry groups seeking to curb federal wetlands regulations say the recent resounding defeat of a House rule that would have barred private property rights amendments to an EPA Cabinet elevation bill will likely force wetlands reform opponents into a more conciliatory stance.

These sources say concerns over property rights played a key role in the rule's defeat, demonstrating that widespread concern about the issue in the House can produce floor votes if members developing Clean Water Act reauthorization proposals fail to address property rights concerns in the federal wetlands program.

The House on Feb. 2 defeated a House Rules Committee rule restricting amendments to the EPA cabinet elevation bill by a 227-191 margin (*Inside EPA*, Feb. 4, p14). The rule would have barred amendments addressing EPA management issues and environmental policy matters, including an amendment on private property rights protection developed by Rep. Billy Tauzin (D-LA). Tauzin's amendment would have required the director of an Office of Environmental Justice proposed in the bill to develop plans to protect the constitutional rights of private property owners and to provide compensation for landowners when a decision pursuant to the federal wetlands program results in a substantial devaluation of property. The Clean Water Act section 404 wetlands program has prompted the a mass of private property "takings" claims in various courts, and has generated significant support for wetlands reform efforts supported by Tauzin and many other House members.

Backers of Tauzin's amendment say their House opponents now are aware that property rights have strong support on the House floor, a development certain to strengthen Tauzin's bargaining position as wetlands proposals are debated in House subcommittees as part of Clean Water Act reauthorization. The vote could have an impact on Senate efforts as well, these sources say, pointing out that a solid group of senators continues to seek serious wetlands reforms and will use the concern over property rights to bolster their bargaining position. Senate sources would not comment.

"The momentum continues to shift in our direction," one supporter of wetlands reform says, noting that both the Senate Environment & Public Works Committee bill -- S. 1304 -- and the Clinton administration's wetlands plan "clearly move in our direction." The vote "demonstrates that we cannot be brushed aside and that [either] substantial reforms to the wetlands program must take place" or property rights "will kill Clean Water Act reauthorization."

Despite the confidence expressed by property rights advocates, House Public Works & Transportation Committee Chairman Norman Mineta (D-CA) in a Feb. 7 speech before the Assn. of State & Interstate Pollution Control Administrators continued his unwavering opposition to compensating landowners for federal wetlands protection decisions. "There are improvements we can make in the administration of the wetlands protection program, but the idea that government cannot act to restrict activities on private property which harm the public interest without paying off the landowners is not one of the changes we will be making," Mineta said (*see related story*).

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HJR

63

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 31, 1994

FURTHER REFERRALS:

Date of Committee Action: 4-5-94

The STATE AFFAIRS Committee considered:

HJR 63

HOUSE JOINT RESOLUTION NO. 63

U.N. MEMBERSHIP REPUBLIC OF CHINA/TAIWAN

Relating to the membership of the Republic of China on Taiwan in the United Nations.

- RECOMMENDATIONS: the same title
 be replaced with _____ a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

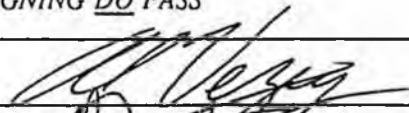

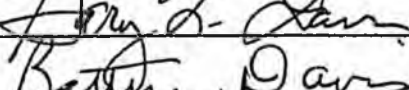
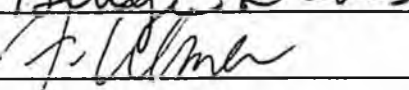

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note HSTA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X	Haley Olberg		✓	
	X				
	X				
	X				
	X				


 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HJR-63

Revision Date: 3/31/94

Dept. Affected: _____

Title: Relating to the membership of the Republic of
China on Taiwan in the United Nations

Component: _____

Sponsor: House State Affairs Committee

Requestor: Rep. Al Vezey

COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$

None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rep. Al Vezey

Phone: 465-3719

Division: Chairman (HSTA)

Date: 3/31/94

Approved by Commissioner: _____

Date: _____

Agency: _____

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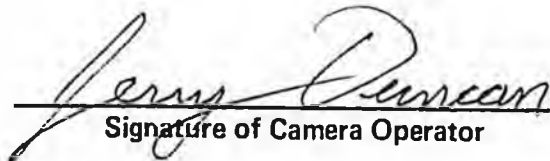


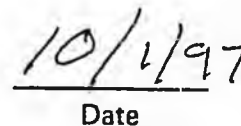
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CERTIFICATION

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Signature of Camera Operator


Date

HR

9

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 6, 1994

FURTHER REFERRALS:

Date of Committee Action: 4-14-94

The STATE AFFAIRS Committee considered:

HR 9

HOUSE RESOLUTION NO. 9

PROTECTING LIFESTYLES OF PACHYDERMS

Protecting the lifestyle of pachyderms and other exotic animals.

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note HSTA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>W. Vesey</i>	X				
<i>Patricia [unclear]</i>	X				
<i>Linda L. [unclear]</i>	X				
<i>Stanley Olberg</i>	✓				
<i>Betty [unclear]</i>	X				

W. Vesey

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HR 9

Revision Date: 4/06/94 Dept. Affected: _____
Title: Protecting Lifestyles of Pachyderms BRU: _____
Component: _____

Sponsor: House State Affairs
Requestor: Rep. Al Vezey COMPONENT SERIAL NO. _____

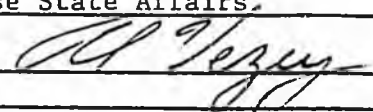
Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rep. Al Vezey Phone: 465-3719
Division: House State Affairs Date: 4/14/94
Approved by Commissioner:  Date: _____
Agency: _____

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JAN 21 1994 10 14:00

James L. Clement
P.O. Box 874611
Wasilla, Alaska 99687
(907) 746-6633

January 25, 1994

State Of Alaska
Department Of Fish & Game
Division Of Boards
Board Of Game
P.O. Box 25526
Juneau, Alaska 99802

During the November 1993 Board of Game meeting in Fairbanks the members of the Board voted down my proposal (#11) to add elephants to the "clean list" of animals. I have just been recently informed that I can appeal this decision and am writing to do just that.

I firmly believe the Board's reasoning for not adding elephants to the list is unjustified. The decision stated "because little is known about disease transmission from elephants". That is because there is little to know. Elephants are not known as disease ridden animals. During my years of experience with many elephants and some of the most knowledgeable elephant veterinarians and trainers I have never seen nor heard of an elephant with a transmittable disease. There have been a few cases in the past where an Asian elephant was thought to have Tuberculosis. There are no documented cases of an African elephant having Tuberculosis. Elephants have been domesticated and lived in close relationship with humans and all our other animals for thousands of years. If indeed elephants were a risk of disease transmission I am sure it would have been well documented by now. And furthermore, the elephants that might come to Alaska are regulated by the United States Department of Agriculture, Animal Plant and Inspection Service, Regulatory Enforcement and Animal Care. My elephant as all others are required to be USDA health certified, to maintain a yearly program of veterinary care, and maintain records of all health related procedures. The animals, their facilities, means of transportation, method of handling and safety procedures are inspected several times yearly by a USDA veterinarian. My safety procedures are also inspected by the carrier of my liability policy.

Consequently, the above health care and safety precautions and inspections are more than enough to remove any worries of disease transmission, inadequate care or unsafe operation methods.

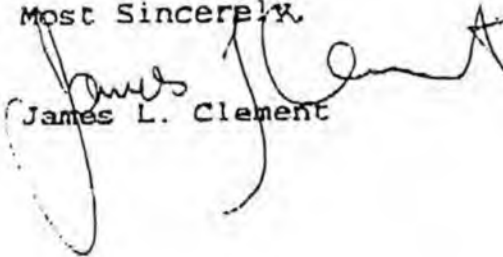
Therefore, I am both asking and urging the Board of Game reconsider my proposal to add elephants to the "clean list" of animals allowed in Alaska.

I would also like copies of any and all information the Board used in making the decision at their November meeting.

I can be reached at the above address and phone and am more than willing to answer any questions or supply additional information needed. I also invite any member of the Board of Game to come visit Moxie the elephant at any time.

Thank you.

Most Sincerely,



James L. Clement

cc:

Senator Kerttula
Commissioner Rosier
Board of Game
Beverly Reaume
Wayne Regelin
Sandra Madearis

James L. Clement
 P.O. BOX 874611
 Wasilla, Alaska 99687
 (907) 746-6633

January 25, 1994

Senator Jay Kerttula
 State Capital
 Juneau, Alaska 99801

Dear Senator,

Many thanks to you and your staff for efforts and support with my elephant problem. Enclosed is a letter I have sent to the Board of Game appealing their decision on adding elephants to the "clean list" of animals. Also enclosed is my resume and some letters so you folks might know a bit of my background.

I firmly believe elephants can be added to the list without causing any problems. As defined in the letter to the Board elephants are already heavily regulated by the Federal Government and for the State of Alaska to repeat the same procedures is a waste of already diminishing state funds. I have all documents pertaining to these regulations and inspections.

I will continue to try to work something out with the Department of Fish and Game on the educational permit. I have been told by Mr. Regelin that the permit will be extended through sometime in March, no definite date. It is obvious I am not and will not be primarily an educational institution. We have always provided some education whenever possible but our primary focus is to entertain folks, to take people away from everyday stresses and worries. The circus and its wonders allows one to escape the pressures of life and dream a bit. That's what entertainment is all about. Besides, the educational program (which wasn't thought up just to get a permit) that I submitted to Fish and Game is already more than most zoos and circuses have.

In short, this problem has created a great hinderance to my business timetable as all bookings and related logistics have all been put on hold. A definite longterm positive decision is greatly needed as soon as possible.

Your offices continued support, suggestions and efforts especially with this "clean list" decision will greatly be appreciated and your staff are more than welcome to visit Moxie at any

Thank you.

Best and Truly Yours,
 James L. Clement

Post-It™ brand fax transmittal memo 767 - of pages 17

To	Kerttula	From	J. Clement
Cu.	Juneau	Co.	L.I.O.
Dept.		Phone	376-3764
Fax	376-3805	Fax	376-4130

MATANUSKA-SUSITNA

CONVENTION & VISITORS BUREAU

November 19, 1993

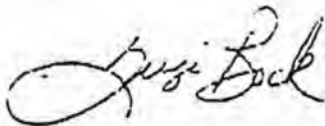
James Clement
Po Box 874611
Wasilla, Ak. 99687

James,

It has often been said that a persons time is the greatest gift given...in your case, however, I would like to add "ABOVE AND BEYOND THE CALL OF DUTY"! You certainly gave both to the MSCVB Annual Meeting. We want to express our sincere appreciation. It was certainly much easier and less stressful knowing you were there with your professional equipment and technical knowledge.

We applaud your insight into the impact that tourism and conventions can have on our area. We wish you the best in your new business and support your efforts. A business such as yours is certainly a welcome and much needed addition to the community.

Thank you again for the EXTRA time you put in on your own to see that our event was such a success.



Suzi Bock
Tourism Director



October 10, 1991

Mr. Jamie Clement
P.O. Box 638
Bell, FL 32519

Dear Jamie,

We wanted to drop you a brief note telling you how much we appreciated the fine job you did for us during our August and September '91 engagements. We thought you and Marcy's presentation of "Moxie" the elephant was very professional and entertaining. It was pleasing to see such a healthy and well cared for African elephant.

We also appreciated your helping to build up the tent when we were short-handed.

Again, thank you for a job well done and we will be contacting you about future engagements. Best regards to you and yours.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric J. Jaeger".

Eric J. Jaeger
Proprietor
Circus Jaeger
P.O. Box 1592
Sarasota, FL 34230
813/957-0914

EJJ:esj



March 9, 1993

Mr. James Clement
HCB 79 Box 58
Orland, Maine 04472

Dear James:

I would like to take this opportunity to thank you for the successful breakfast with Moxy the Elephant on February 20, 1993. It is never easy to coordinate any mall event, yet our event ran smoothly. Your professionalism and flexibility was greatly appreciated.

We look forward to working with you in the future.

Thank you!

Sincerely,

EAST TOWNE MALL COMPANY

A handwritten signature in cursive script, appearing to read "Kurt R. Ivey".

Kurt R. Ivey
Assistant Marketing Director



Seaboard
FEDERAL CREDIT UNION

July 18, 1992

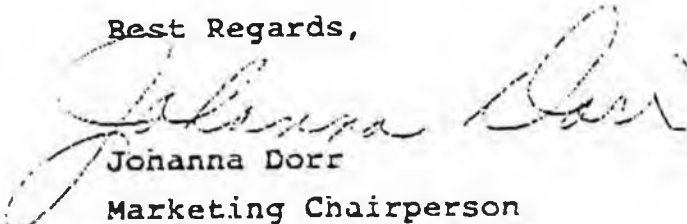
James Clement
P O Box 638
Bell, Fl 32619

Dear James,

We would like to thank you, James, and Moxie for a job well done. Your professionalism and showmanship contributed to the success of our combined efforts to raise money for the Maine Ending Hunger Campaign.

Your interest in our fund raiser for Maine Ending Hunger, which Credit Unions in the state of Maine are supporting, is sincerely appreciated by Seaboard Federal Credit Union.

Best Regards,


Johanna Dorr
Marketing Chairperson

JD/sbm

MOXIE CREDENTIALS

FAIR CREDITS

Alaska State Fair	Palmer, Alaska
Tanana Valley Fair	Fairbanks, Alaska
Deltana Fair	Delta Junction, Alaska
Utah State Fair	Salt Lake City, Utah
Davis Co. Fair	Sountiful, Utah
Utah Co Fair	American Fork, Utah
Salt Lake Co. Fair	Murray, Utah
Clark Co. Fair	Logandale, Nevada
Carbon Co. Fair	Lehighton, Pennsylvania
The Great Allentown Fair	Allentown, Pennsylvania
Bangor State Fair	Bangor, Maine
Topsham Fair	Topsham, Maine
Windsor Fair	Windsor, Maine
Brooklyn Fair	Brooklyn, Connecticut
Saratoga Co. Fair	Bailston Spa, New York
North Alabama State Fair	Huntsville, Alabama

FESTIVAL CREDITS

Cranston Summer Fest	Cranston, Rhode Island
Maderia Beach Seafood Festival	Maderia Beach, Florida
Festival of the American West	Logan, Utah
Haverhill July 4th Festival	Haverhill, Massachusetts
Summer Festival	Orem, Utah
Oak Hill Seafood Festival	Oak Hill, Florida
October Fest	Cypress Gardens
	Winter Haven, Florida
Sarasota Food Festival	Sarasota, Florida
Killeen Corn Fest	Killeen, Texas
Windy City Spring Festival	Chicago, Illinois

CIRCUS CREDENTIALS

Plunketts Old Tyme Circus
 1947 Magic Circus
 Coppe circus Europa
 Circus Bruno

Sparling Bros. Circus
 M&M Circus International
 American Showtime Circus
 Phillis Bros. Circus

Circus Jaegar
 Circus Galaxy
 Francini Family Circus
 Circus Meranatha
 Coles International Circus

Texas
 Utah, Idaho and Nevada
 Georgia Florida, & Alaska
 South Pacific Islands
 ie: Guam, Samoa Islands etc.
 Ontario, Canada
 Nebraska
 Florida and Georgia
 New York, Pennsylvania,
 New Jersey and Connecticut
 Alabama
 Maine
 Florida
 New York
 Northern Plains States

AMUSEMENT PARKS

Marriotts Great America
 Six Flags over Georgia
 The Great Escape Fun Park

Gurnee, Illinois
 Atlanta, Georgia
 Lake George, New York

CORPORATE FUNCTIONS

** Champion International
 ** Century Insurance
 ** Gates Rubber Company
 General Electric
 Pepsi

Bucksport, Maine
 Jacksonville, Florida
 Denver, Colorado
 Bangor, Maine
 Purchase, New York

SPECILTIES

Happy 50th Snow White
 (traveling Disney stage show)
 ** Valley Fair Mall
 Caesars Palace
 Riveria Hotel and Casino
 The Land Mark Hotel and Casino
 Tri Arts Presents "BARNUM" (the play)
 Arcadia Zoological Park
 Alaska Zoo

Western States
 Westend, Utah
 Las Vegas, Nevada
 Las Vegas, Nevada
 Las Vegas, Nevada
 New York
 Trenton, Maine
 Anchorage, Alaska

Additions: IBM Christmas Party
 East Towne Mall
 SE Regional Advertising Awards Banquet
 Hummer Fireworks
 JM Lexus
 Heritage Days

Tampa, Florida
 Knoxville, TN
 Knoxville, TN
 Knoxville, TN
 Kansas City, Missouri
 Margate, Florida
 Haines City, Florida

TELEVISION

**Grandys Restaurant	Regional Commercial
Toyota	Regional Commercial
Las Vegas Hpolstartry	Local Commercial
Live News Shows	Bangor, Maine, Salt Lake City, Utah, Anchorage, Alaska Tampa, Florida

PROMOTIONAL EVENTS

David Early Tire Stores	Utah
Allies Restaurants	Florida
Ethan Allan Furniture	Salt Lake City, Utah
Little Caesars Pizza	Florida
Arctic Office Supplies	Anchorage, Alaska
Baby & Me	St. Petersburg, Florida
**Allstate Car Sales and Leasing	Las Vegas, Nevada
Deckers Auto Corner	Spartanburg, South Carolina
Mc Donalds Restaurants	Vincinnes, Indiana
Harveys Grocery	Springfield, Illinois
Micronesia Mall	Island Of Guam

** denotes organizations forwhich we produced entire circus display

RESUME

James L. Clement

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

RESUME

James L. Clement

Work Experience:

1987 to date: Self employed Entertainer & Producer

Purchased, trained and presented Moxie the Elephant at various events throughout the United States, Canada and The South Pacific. Operated as small business which included all booking, advertising training performances, childrens rides, transportation and all aspects of management. Produced entire circus displays for several events which included all budget matters, suppling of acts and equipment, set up and management. Please see list of credentials.

1985 thru 1986: Sound Engineer & Asst. Lighting
Director
Ringling Bros. & Barnum and Bailey
Circus
Blue Unit
Venice, Florida

Responsible for set up, rigging and operation of all sound equipment. Mixed fifteen piece live circus band. Assisted lighting directorat set up of lighting system and calling show cues. Operated follow spot light upon occasion. Managed three man crew. Recommended show management change existing speaker system to relieve continued problems and up grade quality of sound. Referred management to proper product for change and assisted in design of new system. New system was completed for 1987 season and remains in use today.

1984 Cotton Candy Stand #2 operator
R.S.&B.B. Circus
Blue Unit
Venice, Florida

Operated cotton candy making equipment and seat vendor crew of eight to ten. Responsible for loading of equipment and accounting of all cotton candy revenues.

RESUME

James L. Clement

Work Experience (con't)

1982 thru 1983

Assistant Elephant Trainer
R.B. & B.B. Circus
Blue Unit
Venice, Florida

Assisted Elephant Superintendent with all aspects of care, training and management of herd of twentyone performing Asian elephants and crew of eight. Presented elephants in act and production numbers for circus performance. Was responsible for foot care program and drove forklift for loading and unloading.

1981

Animal Handler
R.B. & B.B. Circus
Red Unit
Venice, Florida

Assisted famed wild animal trainer Gunther Gable Williams with care, training and handling of elephants, tigers, leopards, cougars, horses and giraffe. Assisted in presentation of all animals in circus performance. Drove truck containing giraffe.

Note: While with The Greatest Show On Earth for six years I fully participated in seven totally different production editions. I logged over two hundred thousand miles by road and another two hundred thousand miles by rail. Worked in large arenas in over two hundred major cities all across America. During the off season I worked parttime repairing recreational vehicles for Reaves Motor Homes in Venice Florida.

RESUMEJames L. ClementWork Experience (con't)

1979 thru 1980

Elephant Trainer and Keeper
Benson Wild Animal Park
Hudson, New Hampshire

Started as Zookeeper and was promoted to Elephant Dept. Superintendant after seven months. Duties were total care of four elephants and around twenty big cats. Hand raised cougars, jaguars, and lions. Presented elephants in circus type act. Trained two older female elephants to give rides. Set up ride program (they never had one before) and operated successfully. Managed work crew of six during the season and one during the winter. Handled all purchasing for Zoo Dept. for one year. Plowed snow in park during winter.

1977 thru 1978

Installation and Service
J&J Master Systems
Nashua, New Hampshire

Installed and serviced transmitting, receiving, sound and communication equipment throughout the North East. Was crew leader the second year.

Miscellaneous Employment

Summer 1976

Portrayed the costumed Warner Bros. Foghorn Leghorn at Marriotts Great America Amusement Park north of Chicago, Illinois. Performing on stage, in the parade and as walkaround throughout the park.

Spring 1987 and 1989

Managed seat vendor crew at Chain "O" Lakes Park in Winterhaven, Florida for the Major League Boston Red Sox spring training games.

Winter/Spring 1987/1988

While performing on the famed strip with Baby Moxie I worked my off time for International Alliance Of Theatrical Stagehands and Employees setting up shows for such headliners as Willie Nelson, Suzanne Somers and Julio Iglesias. Consulted famous magicians Sigfreid & Roy with problems they were experiencing with their elephant and elephant illusion. Assisted in the design of the elephant quarters at the Mirage their new home.

RESUME

James L. Clement

Schooling:

Graduated from Bucksport Highschool Bucksport, Maine 1977

Took night classes (electronic communications) at Southern New Hampshire Technical Institute for one year.

* Traveling member of International Alliance of Theatrical Stagenhands and Employees Local # 280 (1985-1990)

* Licensed Class A CDL (federal commercial truck driver license)

* Member International Independant Showmens Association

* welder, carpenter, basic electrical, basic mechanical and basic electronics

Martial Status: Married 1989 enjoy one daughter

Personal and business referances are available upon request

LAKE WALES VETERINARY HOSPITAL

Dr. Tom Gekich, D.V.M.
 Dr. Peter F. ... D.V.M.

Thomas B. Schotman, D.V.M., M.S.
 Michael R. Matthews, D.V.M.

James Clement
 P.O. Box 874611
 Wasilla, Alaska, 99687

1/14/94

Dear Mr. Clement:

In reference to our recent conversation, I will remind you of Moxie's health record. Since 1989, when I first met you and Moxie, he has had annual vaccinations for Tetanus, and annual fecal exams have been negative, although I recommended bi-annual deworming. He tested negative to Intradermal Tb testing (M. bovis, ppd, o.t. I.D.) on 4/11/90, 3/6/92, and 1/30/93. He has had no direct contact with other elephants and has shown no signs of health problems since I have known you + Moxie.

I hope this letter helps to resolve your quest to stay in Alaska

Your friend
 Tom Schotman



10 January 1994

Mr. James Clement
PO Box 274611
Wasilla, AK 99687

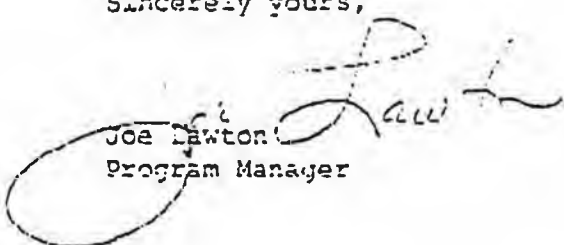
Dear James:

You made me and a lot of other people happy by bringing Moxie to the State Fair last fall. I am especially well-pleased at the way your daily shows in the Barn went. The Moxie show, along with the petting zoo, the live animal demonstration stage, and major new exhibits by DNR and the Wool Association comprised our featured events in 1993 to significantly raise the level of education about the natural world and agriculture to our fairgoers.

When you last performed here in 1993 I realized the potential for educating our patrons in an entertaining manner with your Moxie presentation. You developed and filled that role wonderfully in 1993. Thousands in your audience received a heightened appreciation of the the nature and care of elephants.

I wish you the best success in your efforts to keep Moxie in State. We certainly hope he can join us at the Fair again this fall.

Sincerely yours,


Joe Lawton
Program Manager

**"MOXIE THE ELEPHANT"
CHRONOLOGY OF EVENTS**

- 5/7/93 James L. Clement requested information by telephone relating to importation and exhibition of his elephant in the state of Alaska. He was advised by ADF&G that he should submit a completed state permit application and include a copy of his federal exhibitor's license, most recent animal care inspection report, and statement of insurance liability.
- 6/11/93 ADF&G received permit application from James Clement to import and possess one African elephant for the purpose of "fair exhibition" during the period 7/15 to 12/31. The "confirmation of insurance" form stated that coverage was for *commercial* exotic animal owners' liability for an elephant used for *rides, acts and promotions*.
- 6/16/93 ADF&G contacted the Florida veterinarian who performed the inspection for Clement's federal exhibitor's license and received a favorable report.
- 6/23/93 Mr. Clement telephoned regarding the status of his application and left a message to return his call.
- ADF&G contacted Mr. Clement that afternoon and requested additional details regarding his permit application, i.e., specifics about his holding facilities, names of subpermittees, itinerary for exhibitions, dates of arrival and departure from the state, and the name of an in-state contact. He said he had contractual obligations at the Palmer State Fair and that he planned to remain in Alaska with his elephant. He was advised that state regulations did not permit him to permanently retain the elephant in Alaska; that a *temporary* permit could be issued for display purposes; and that if he was not keeping the animal for *bona fide* scientific or educational purposes, his only recourse was to ask the Board of Game to add elephants to the list of animals that may be held in the state without a permit. He suggested that once the elephant was in the state he might sue ADF&G to keep it.
- Copies of the board's Call for Proposals for the fall 1993 board meeting and regulation proposal forms were mailed to Mr. Clement.
- 6/24/93 ADF&G confirmed with Pam Troutman, vendor coordinator with Alaska State Fair Association, that Mr. Clement was under contract. She said the elephant was Mr. Clement's personal property and his "business."
- Mr. Clement faxed a letter providing additional information requested by telephone. He stated in his letter, "We will depart the State before Dec. 31 1993." His letter requested a permit within 12 days because he was about to leave for Alaska. His letter indicated that he would be through exhibiting the elephant in Alaska on 9/6/93.
- 6/28/93 ADF&G faxed a permit to Mr. Clement that allowed him to import, possess and exhibit Moxie between 7/5 and 10/1; required advance notification to ADF&G of any addition to or change in itinerary; required a statement of export by 10/31; and stated "The use of this permit to import or possess an animal in the state signifies agreement on the part of the permittee to abide by all conditions, restrictions, and stipulations of the permit."

- 9/13/93 Department of Public Safety filed a report following a complaint by Pioneer Pizza that an elephant was loose at Mile 2.2 Palmer-Wasilla Highway.
- 10/31/93 Mr. Clement's permit reporting date passed and Mr. Clement did not (1) export the elephant, as required, (2) submit a status report or statement of export to ADF&G, or (3) request a permit renewal. Because Mr. Clement had submitted a proposal to the Board of Game to amend 5 AAC 92.029, ADF&G decided to await developments at the impending November board meeting before asking Mr. Clement to comply with export requirements of his permit.
- 11/8/93 Mr. Clement's proposal to the Board of Game to allow elephants to be added to the "clean list" (i.e., possessed and imported without a permit) was opposed by the Homer Advisory Committee, Mat-Su Borough and a private person; no public comments in support were received. ADF&G's position on the Clement proposal was neutral. Mr. Clement did not appear before the board to present testimony on his own behalf. The proposal was unanimously rejected by the Board of Game. Subsequently, the board amended 5 AAC 92.029, imposing more rigorous standards for allowing exotic animals into the state.
- 11/29/93 ADF&G decided to examine the possibility that Mr. Clement may meet requirements for receiving an educational permit. ADF&G initiated contact with Mr. Clement regarding the status of his elephant and identified criteria for educational permits. Mr. Clement said he would send materials within 2 weeks.
- 12/14/93 Mr. Clement sent ADF&G a proposal for an educational permit.
- 12/20/93 Wayne Regelin, Deputy Director, Wildlife Conservation, ADF&G, notified Mr. Clement by letter that his application for an educational permit failed to meet the department's criteria and the application was denied. Mr. Clement was asked to make arrangements for export of the elephant by 1/31/94.
- 12/31/93 Mr. Clement's CITES permit to transport the elephant through Canada expired.
Mr. Clement's ADF&G permit to possess an elephant in Alaska expired.
- 1/3/94 Mr. Clement and Dr. Regelin discussed ADF&G's refusal to issue a permanent educational permit. Mr. Clement asked to keep the elephant until June. Regelin refused and asked Mr. Clement to make arrangements to export the elephant soon and report back within two weeks. Dr. Regelin offered to be flexible on a date if Mr. Clement had definite plans to remove the animal.
- 1/7/94 Mr. Clement notified the media in an apparent effort to drum up public support to pressure ADF&G into issuing a permit to allow the elephant to remain in Alaska.
- 1/7/94 According to a Palmer newspaper article, Moxie was exhibited at the Kenai Peninsula State Fair at Ninilchik. If so, this would be a violation of the permit, which requires changes or additions to the exhibition itinerary to be reported in advance. In fact, since the animal has been in the state, Mr. Clement has never contacted the department to advise of itinerary changes or additions, escapes from confinement, or various locations of holding facilities where the elephant has been maintained.

Alaska State Legislature



While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Interim:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

Representative Al Vezey

SPONSOR STATEMENT---HOUSE RESOLUTION NO. 9 Protecting Lifestyles of Pachyderms

The purpose of HR9 is to request that the Alaska Department of Fish and Game include elephants on its "clean list" (5 AAC 92.029) of animals allowed in Alaska.

This legislation would allow the owners of pachyderms to qualify for possession of live game permits issued by the department for the purpose of protecting the lifestyle of these animals.

Current regulations prohibit elephants, among certain other exotic animals, who for entertainment, promotional events and educational opportunities from being in Alaska unless their owners possess a permit.

Although elephants are allowed in such places as zoos, Alaska is the only state in the union where individuals are not permitted to keep elephants unless under a temporary educational permit.

Fear that elephants will transmit diseases is unfounded as there are no documented cases of these species transmitting diseases.

Elephants have been domesticated, lived, worked and played in close relationship with humans and all our animals for thousands of years.

Furthermore, elephants that might come to Alaska are regulated by the United States Department of Agriculture, Animal Plant and Inspection Service, Regulatory Enforcement and Animal Care.

And...some elephants provide a source of revenue income through tourism.

I do not believe that the citizens or domesticated animals in Alaska are at any risk or danger by allowing elephants into the state.

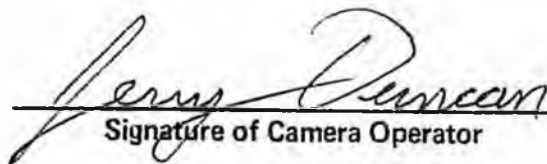
Thank you for your consideration.

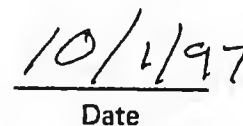


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Signature of Camera Operator


Date

SB

42

Date of Committee Action: 2-3-94

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: CSSB 42(CRA) am(efd fld)

CS FOR SENATE BILL NO. 42(CRA) am(efd fld) LOCAL SALES TAX ON ALCOHOLIC BEV.

"An Act relating to municipal taxation of alcoholic beverages."

RECOMMENDATIONS: the same title
 replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note C+RA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>W.K. Williams</i>	<input checked="" type="checkbox"/>	<i>Car Burke</i>		<input checked="" type="checkbox"/>	
		<i>Gene Sanders</i>		<input checked="" type="checkbox"/>	
		<i>Cliff Williams</i>		<input checked="" type="checkbox"/>	
		<i>Red Willis</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>Harley Olberg</i>		<input checked="" type="checkbox"/>	

Harley Olberg
CHAIRMAN'S SIGNATURE

Revision Date: _____ Dept. Affected: Community and Regional Affairs
 Title: Local Sales Tax on Alcoholic Beverages BRU: _____
 Component: _____
 Sponsor: Jacko
 Requestor: _____ COMPONENT SERIAL NO. N/A

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current (FY94) Impact \$ _____

ANALYSIS: (Attach a separate page if necessary)
 The bill has no impact on DCRA programs.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Division of Administrative Services Date: _____

Approved for Commissioner by: *Bruce Geraghty* Bruce Geraghty, Deputy Commissioner Date: *2/2/94*

Agency: Community and Regional Affairs

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SENATOR GEORGE JACKO

STATE CAPITOL, ROOM 125 JUNEAU, ALASKA 99801-1182 (907) 465-4942 FAX: (907) 465-2997

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University

MEMORANDUM

TO: Representative *Harley* Olberg, Chair
Community and Regional Affairs

FROM: Senator *George* Jacko

DATE: January 18, 1994

RE: Scheduling of SB 42 - Sale of Alcohol beverages

I respectfully request the scheduling of CSSB 42 at your earliest convenience. CSSB 42 is an act enabling municipalities to vote on levying a higher sales tax on alcohol beverages beyond the rates of other sales tax items.

Local voters will have to approve the measure before the higher sales tax could be levied. The Alaska Supreme Court has ruled that no sales tax items can be taxed at a higher rate than others.

CSSB 42 will give municipalities the option of employing an additional revenue tool. For smaller communities who have a limited tax base, the option of a higher alcohol sales tax rate could produce much needed additional revenue.

Thank you for considering this request. If you need further information, please contact Bryce Edgmon at 465-4942.

GJ/be

STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

Bill No.: SB 42
Sponsor: SENATOR JACKO

DCRA FN: Zero (attached)
Position: Support

Title: An Act relating to municipal taxation of alcoholic beverages;
and providing for and effective date.

The bill amends AS 04.21.010(c)(2) to allow municipalities to impose a sales tax "on alcoholic beverages equal to or higher than the sales tax imposed on other sales within the municipality, but may not be lower than the sales tax imposed on other sales within the municipality."

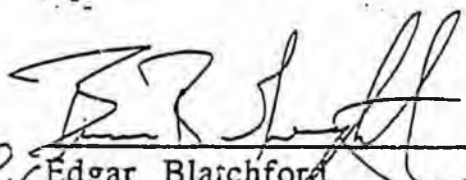
The bill also amends AS 29.45.650(b). This section AS 29.45.650 is the BOROUGH SALES AND USE TAX statute. The amendment removes this section from applying to AS 04.21.010(c). Subsection (b) reads "A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers."

The bill has no impact on DCRA programs.

The department supports this legislation for two primary reasons.

- 1) it allows municipalities to place a greater tax on alcoholic beverages; and
- 2) it allows a greater "use" tax to be imposed on alcoholic beverages in communities that do not allow sales of alcohol, but permit importation for personal use.

Alcohol is one of the most destructive drugs in use in rural Alaska today. This bill allows local communities to appropriately discourage its use, and stem the resultant negative impacts on rural families.


Edgar Blatchford
Commissioner

2-18-93
Date

File No.: SB 42/P

C&RA POSITION PAPER

3:48 PM

TORRISI & SNYDER

ATTORNEYS AT LAW
Box 210 DILLINGHAM, AK 99576
(907) 842-5608

FREDERICK TORRISI

September 14, 1992

DAVID B. SNYDER

George Jacko
Box 47001
Pedro Bay, Alaska 99647

Dear George:

Enclosed is a copy of a draft resolution that I prepared for SWAMC seeking amendment of AS 4.21.010(c), the issue we discussed when you were in Dillingham. Lagos v. City of Sitka was the court decision that made it plain that this statute is an obstacle to taxing the sale of booze at a rate higher than other items.

I'm sure you will be receiving the official version of this from SWAMC later. It is an issue that merits attention, and it will be interesting to see who leads the opposition. Please let me know if I can help on this.

Sincerely,
TORRISI & SNYDER



Fred Torrison
Attorney

FT:ilk
enclosure

cc: Henry E. Graper, Jr., City Manager

LETTERS OF SUPPORT

Alice J. Ruby
P.O. Box 121

Dillingham, Alaska 99576

November 11, 1992

Senator George Jacko
Alaska State Legislature
3111 C Street, Suite 200C
Anchorage, Alaska 99503-3957

Dear Senator Jacko,

I was given copies of your letters to Mr. Graper and Mr. Torrasi in my recent Council packet. I was very happy to be made aware of your willingness to work on the alcohol taxation issue during the upcoming legislative session. As you may be aware, a resolution submitted by the City of Dillingham supporting this effort was adopted by the Southwest Alaska Municipal Conference during their Fall Conference.

I would like to offer my support for the effort to amend the statute. Thank you for your time and interest.

Sincerely,



Alice Ruby



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325. Fax (907) 463-5480

February 18, 1993

TO: Senator Randy Phillips, Chair
and Members, Senate Community and Regional Affairs Committee

FROM: Kent E. Swisher, Executive Director

RE: SB 42 - Relating to municipal taxation of alcoholic beverages

The Alaska Municipal League supports SB 42, relating to municipal taxation of alcoholic beverages, to the extent that it would expand the authority of local governments to determine the level and type of taxes appropriate to their communities.

As a general policy, the League, which represents over 100 municipalities throughout the state, recognizes that local governments should be given the maximum amount of authority and flexibility to make use of the resources available to them. Removing artificial obstacles such as the existing limit on the municipal sales tax that can be levied on alcoholic beverages is one way to accomplish that.

The League's 1993 *Policy Statement* includes the following goal statement:

AML further wishes to manage public assets in an efficient and effective way by working with all government officials to . . . increase the revenue base to support the provision of services, collect and redistribute resources in a fair and logical manner, and maintain maximum control of financial prerogatives at the local level of government, which is under the highest level of scrutiny by Alaskans. [Part I, Taxation and Finance]

In addition, Part I, D.1, Tax-Levying Authority, in the *Policy Statement* includes the statement "The League supports broader municipal authority to consider alternatives to property taxes."

SB 42 would provide greater flexibility and autonomy to local governments, and the Alaska Municipal League supports it for that reason.

cc: Senator George Jacko

LEG933:sb42.222

Member of

ALASKA MUNICIPAL LEAGUE'S
POSITION PAPER

of Counties



Southwest Alaska Municipal Conference

Putting Resources to Work For People

3300 Arctic Blvd., Suite 203 • Anchorage, Alaska 99503 • (907) 562-7380 • FAX (907) 562-0438

RESOLUTION 92-29

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE SEEKING REPEAL OF THE LEGISLATIVE PROHIBITION OF HIGHER RATES OF SALES TAX ON THE SALES OF ALCOHOLIC BEVERAGES BY MUNICIPALITIES.

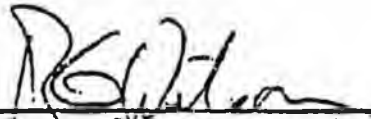
WHEREAS, it is well established that significant sums of money are spent by municipalities as a result of the sale of alcoholic beverages in these municipalities, and


WHEREAS, the members of SWAMC believe that the liquor industry should bear more of the costs associated with such sales, and

WHEREAS, Alaska law apparently does not presently allow the imposition of a sales tax upon alcoholic beverages at a rate higher than the general sales tax rate, now therefore,

BE IT RESOLVED by the Southwest Alaska Municipal Conference that as 4.21.0010(c) be amended to allow a municipality to impose a sales tax on alcoholic beverages only and to allow a sales tax on alcoholic beverages at a higher rate than is imposed on other sales within the municipality.

PASSED this 13th day of September, 1992.


Richard G. Wilson, President


Marideth J. Sandler, Executive Director

SWAMC Resolution

Representing the Bristol Bay, Pribilof, Kodiak Island and Aleutian Island areas.

S.W. ALASKA MUNICIPAL CONFERENCE
RESOLUTION

jury instruction defining sale as requiring a transfer of title from the defendant to the consumer. *Herrera v. State*, 753 P.2d 150 (Alaska Ct. App. 1988).

Conviction and sentence affirmed.

In accord with main pamphlet. *Tuckfield v. State*, 805 P.2d 982 (Alaska Ct. App. 1991).

Sentence of six months' incarceration as a condition of receiving a suspended imposition of sentence, upon conviction of one

count of selling intoxicating beverages without a license in a local option area, was not clearly mistaken, where defendant had set up a commercial enterprise, although of short duration, and sold a pint of whiskey to a man who murdered a woman shortly after buying the whiskey. *Wassillie v. State*, 790 P.2d 1385 (Alaska Ct. App. 1990).

Cited in *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988).

Chapter 21. General Provisions.

Section

- 10. Municipal regulation
- 15. Private manufacture of alcoholic beverages

Section

- 65. Posting of warning signs
- 80. Definitions

Sec. 04.21.010. Municipal regulation. (a) A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

(b) If, as a result of an election held in accordance with AS 04.11.502 in a municipality, the board is prohibited from issuing, renewing, or transferring a license between holders or locations or if the importation of alcoholic beverages is prohibited in the municipality, the municipality may adopt an ordinance making the sale or importation of alcoholic beverages a misdemeanor. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

(c) A municipality may not impose taxes on alcoholic beverages except a

- (1) property tax on alcoholic beverage inventories;
- (2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;
- (3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and
- (4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.490.

(d) At least 10 days before the date set for municipal action on an application for the issuance, renewal, relocation, or transfer of ownership of a proposed license, the municipality shall provide written notice of the proposed action and the time and place for a hearing to a community council that

- (1) is established by municipal charter or ordinance to advise the municipal governing body; and

LAGOS v. CITY AND BOROUGH OF SITKA

Alaska 641

Cite as 823 P.2d 641 (Alaska 1991)

does not apply to partial indemnity claims based on implied contracts since the contribution act has never applied to implied contract cases. The majority opinion's reliance on the *Vertecs* rule is thus difficult to justify. To repeat, the *Vertecs* rule barred partial non-statutory loss shifting in tort cases because there was a partial statutory loss-shifting remedy. There has never been a partial statutory loss-shifting remedy in implied contract cases, and therefore the rationale of the *Vertecs* rule does not apply to such cases.

In summary, where two parties are at fault and are responsible for an indivisible loss, any rule that provides that one of them must bear the entire loss without the opportunity to shift part of the loss to the other is manifestly unjust. What should happen is that the loss should be shared in proportion to the fault of each party. In accord with this, the trial court should be directed on remand to instruct the jury to apportion the damages which the Borough must pay between the Borough and Roen according to the comparative degree of fault of each.



Mike LAGOS and Mei Fong Lagos, Individually, and d/b/a Marina Restaurant, House of Liquors, Inc. d/b/a House of Liquors, an Alaska corporation; and Pioneer Liquor, Inc., d/b/a Pioneer Bar, an Alaska corporation, Appellants,

v.

CITY AND BOROUGH OF SITKA, Appellees.

No. S-4136.

Supreme Court of Alaska.

Dec. 27, 1991.

Owners of business and businesses which sold alcoholic beverages filed com-

plaint for declaratory judgment and injunctive relief against ordinance of city and borough imposing additional tax on alcoholic beverages above and beyond consumer sales tax imposed on other commodities. The Superior Court, First Judicial District, Sitka, Rodger W. Peques, J., granted summary judgment for city, and owners appealed. The Supreme Court, Rabinowitz, C.J., held that statute authorizing municipalities to impose "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality" prohibits municipality from imposing greater tax on sales of alcoholic beverages than on sales made on other commodities.

Reversed.

1. Statutes §188

Supreme Court does not adhere to plain meaning rule in interpretation of statutes.

2. Statutes §188

In interpreting statute, Supreme Court looks first to language of statute.

3. Intoxicating Liquors §91

Statute authorizing municipalities to impose "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality" prohibits municipality from imposing greater tax on sales of alcoholic beverages than on sales made on other commodities. AS 04.21.010(c), (c)(2).

William G. Royce, Anchorage, for appellants.

Theron J. Cole, Sitka, for appellees.

Barbara J. Blasco, Juneau, for amicus curiae, City and Borough of Juneau.

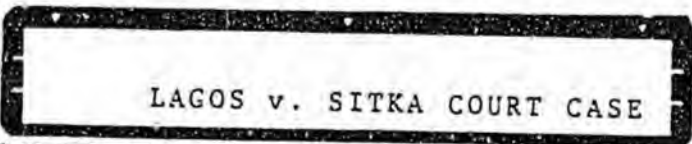
Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

This appeal raises the question of the validity of 4.08.040 of the Sitka General Code. This ordinance provides,



ANCHORAGE LAW LIBRARY

A consumer sales tax is levied on all sales made in the City and Borough of Sitka at the rate of 4% of the selling price. An additional 4% consumer sales tax is placed upon the sale of alcoholic beverages. Normally the burden of this tax rests upon the consumer.

In 1989, the City and Borough of Sitka ("Sitka") had amended this ordinance to include the additional tax on alcoholic beverages in response to a ballot proposition passed by voters on October 3, 1989. The ballot proposition also provided for "the resulting revenue to be dedicated toward the prevention and treatment of alcohol and drug abuse in Sitka." Just prior to the election, appellants, as owners of business and businesses which sold alcoholic beverages, ("Lagos") filed a complaint for declaratory judgment and injunctive relief, seeking to have the ballot proposition invalidated.

Lagos alleged that the ballot proposition and the ordinance were unlawful on three grounds:

- (1) AS 04.21.010(c) prohibits taxing alcoholic beverage sales at a rate higher than the tax on other sales;
- (2) The regulation and taxation of alcohol has been preempted by state law except where such power is specifically conferred on municipalities; and
- (3) A municipal tax purporting to dedicate resulting revenues violates Article IX, § 7, of the Alaska Constitution.

Lagos filed for summary judgment on the first ground, that Sitka's sales tax was illegal under AS 04.21.010(c). This statute provides,

A municipality may not impose taxes on alcoholic beverages except

- (1) property taxes on alcoholic beverage inventories;
- (2) sales taxes on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality; and

1. The parties agree that this appeal does not raise any issues of fact, but rather concerns the interpretation of statutes. This court will employ *de novo* review to a grant of summary judgment. *Kollodge v. State*, 757 P.2d 1028, 1032

(3) sales taxes on alcoholic beverage sales that were in effect before July 1, 1985.

Lagos read subsection two of this statute to ban discriminatory sales tax rates on alcoholic beverages. In this regard he argued that the legislative history of AS 04.21.010(c) showed that the legislature intended to ban discriminatory rates when it enacted AS 04.21.010(c)(2).

Sitka filed its own motion for summary judgment, requesting the superior court to dismiss Lagos' complaint for declaratory and injunctive relief. Sitka argued that none of the contentions advanced by Lagos raised any "issue as to any material fact and that [Sitka] is entitled to judgment as a matter of law."

The superior court granted summary judgment in favor of Sitka. The court thought Lagos' legislative history argument unpersuasive, and concluded that "[h]ad uniformity in rates of taxation been intended, the language of the legislation could easily have been written to say so.... Some legislators may have opposed a requirement for uniform rates." The superior court did not address Lagos' remaining preemption and unconstitutional dedication arguments. This appeal followed.¹

II. DISCUSSION

In this appeal Lagos raises the same arguments against Sitka's differential alcoholic beverage sales tax as were urged before the superior court.

A. Does AS 04.21.010(c) prohibit taxing sales of alcoholic beverages at a higher rate than other commodities?

AS 04.21.010(c)(2) authorizes municipalities to impose a "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality." Lagos interprets this provision to mean "that

(Alaska 1988), and will adopt the rule of law which is "most persuasive in light of precedent, reason and policy." *Langdon v. Champion*, 745 P.2d 1371, 1372 n. 2 (Alaska 1987) (citations omitted).

LAGOS v. CITY AND BOROUGH OF SITKA Alaska 643

Cite as 823 P.2d 641 (Alaska 1991)

sales taxes on alcoholic beverages are allowed only to the extent sales taxes are imposed on other sales." 1

on alcohol. It does not explicitly address rates of taxation.

We have stated that the goal of statutory construction is:

[T]o give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others. In this respect, we have repeatedly stated that unless the words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.

Tesoro Alaska Petroleum Co. v. Kenai Pipeline Co., 746 P.2d 896, 905 (Alaska 1987).

[1.2] We do not adhere to the plain meaning rule in interpretation of statutes. University of Alaska v. Geistauts, 666 P.2d 424, 428 n. 5 (Alaska 1983). However, we have stated that "where a statute's meaning appears clear and unambiguous, ... the party asserting a different meaning has a correspondingly heavy burden of demonstrating contrary legislative intent." Id. See also State v. Alex, 646 P.2d 203, 208 n. 4 (Alaska 1982) (under Alaska's sliding scale approach to statutory interpretation, the plainer the language of the statute the more convincing the evidence of contrary legislative intent must be). In interpreting a statute, we look first to the language of the statute. War. v. State, 758 P.2d 87, 89 n. 5 (Alaska 1988). Here, the language of the statute, on its face, proscribes imposition of a sales tax solely

1. The legislative history

The language requiring a municipality to tax sales of other commodities before taxing sales of alcoholic beverages was added to AS 04.21.010(c) in 1985. Ch. 74, § 20, SLA 1985. Similar language had been deleted from the statute in 1980.³ Ch. 131, § 4, SLA 1980.

Lagos argues that the legislative history supports his interpretation of the 1985 amendments to AS 04.21.010(c). Senator Eliason sponsored the amendment to AS 04.21.010(c), and the Senate Finance Committee deliberated over the merits of the amendment. In proceedings before the Senate Finance Committee, Senator Eliason asked Senator Ray to "testify on the background of this particular amendment." Proceedings of the Senate Finance Committee, May 8, 1985 ("Proceedings") (testimony of Senator Eliason). Senator Ray testified as to his involvement with the 1980 recodification of the code dealing with alcoholic beverages. He noted that the 1980 elimination of the language in the amendment was inadvertent. He then stated, "[I]n fact, two or three years after the bill had passed when ... Juneau ... considered adding an additional tax, it surprised me immensely, and I said, 'Well, they can't do that.'" Id. Senator Ray went on to explain, "It would seem to me it would be discriminatory to have an additional tax on anything." Id. Because Ju-

2. Before the superior court Lagos argued in part:

If one restricts the analysis to the language amending (c)(2), one may argue (as Sitka does) that the statute allows Sitka to tax alcoholic beverages at any rate, so long as sales taxes are imposed on some other sales within the municipality. It is true that (c)(2) contains no discussion regarding the rate of taxation on alcoholic beverage sales. Thus, so long as the analysis is restricted to (c)(2), one could argue (as Sitka does) that municipalities are free to single out sales of alcoholic beverages for taxation at a rate greater than taxes imposed on other sales. Others could argue with equal convincing force that sales taxes on alcoholic beverages are allowed only to the extent sales taxes are imposed on other sales

within the municipality—thus requiring an equality of rate.

Thus, it is necessary to consider the meaning and intended effect of (c)(3) adopted as part of the 1985 amendment.... (Emphasis in original.)

3. The original language read, "nor shall any municipality impose taxes other than property taxes on liquor inventories and sales taxes on liquor sales when such taxes are levied on other property and sales within the community." Ch. 86, § 1, SLA 1960. Apparently, the language requiring taxes on all commodities was inadvertently eliminated when the code was revised in 1980. See Senate Finance Comm. Proceedings, May 7, 1985 (testimony of Sen. Eliason); id., May 8, 1985 (testimony of Senator Ray).

ANCHORAGE LAW LIBRARY

neau did in fact enact a tax which taxes sales of alcohol at a higher rate than it taxes other commodities, Lagos concludes that Senator Ray was interpreting the missing language to prohibit enactment of differential sales taxes on sales of alcohol.

After listening to Senator Ray's testimony, Senator Eliason explained:

The only limitations we're imposing on local governments is the fact that they cannot take a specific sales tax on a specific industry. What we're saying is that if you want to tax liquor and whatever else you might want to tax, that's alright. But we want to—its keeping any specific industry—going out and point and saying, "We're going to tax you and no one else." ... They can ... impose a ten percent tax on liquor and tobacco—that wouldn't be in violation of this provision.... If the proposition read, "Shall we impose a ten percent tax on tobacco only?" they couldn't under this provision.

Id. Earlier in the proceedings, Senator Eliason had stated,

Under this language, no they can't discriminate between alcohol or food or clothing or any other commodity that's sold in the market. Its reasoning being that the state does regulate very stringently the alcoholic program in Alaska, so that's what the intent of the legislation is to treat them all equally.

Id. This history suggests that both senators intended to eliminate differential rates of taxation on sales of alcohol.

Additional support for Lagos' position is found in a comment by Senator Ferguson. At the May 7, 1985 proceedings of the Senate Finance Committee, Senator Ferguson

4. After hearing the testimony of the Acting Commissioner, the committee then questioned the drafter of the amendment, Tamara Cook (of the legislative affairs committee staff). She stated, "[a]s I read this language, if a municipality, whether it be a city or a borough, in fact imposed a sales tax on anything other than alcohol, it would be free to then also include alcohol within its sales tax structure." Proceedings, May 7, 1985.

5. The amicus, City and Borough of Juneau, argues in part as follows:

son asked, "Dillingham is thinking about raising the taxes on alcohol, and would they be allowed to continue their movement? I guess they wouldn't be able to after July 1, 1985?" *Id.* Senator Kerttula in response stated that "[a]s long as their ordinance is fully implemented prior to July 1st, they would be grandfathered in." *Id.* Apparently, both these senators believed that the amendment in question prohibited differential rates on alcohol sales tax.

Subsequently, at the same May 7, 1985 Senate Finance Committee meeting, the strongest statement concerning the subject of differential rates of taxation was made by the then Acting Commissioner of the Department of Community & Regional Affairs, in response to the comment by Senator Ferguson. The Acting Commissioner stated, "I understand then in the amendment that this refers to tax equalization and you cannot set a sales tax for alcohol higher than any other commodity within the community." *Id.*

Sitka counters by noting that

the Lagos' are relying upon the statements of individual legislators made in a single committee. There are no committee findings, no report, no journal entries, no indication that the whole legislature knew of or considered the statements or even considered anything beyond the words of the amendment that was part of a much larger bill.... Since there is no indication that the statements made in the committee were before the legislature, the legislature's intent must be presumed to be that expressed in the words of the statute.⁵

Sitka, and the amicus, also rely on an opinion from an Assistant Attorney General

Under the statute, a preexisting sales tax on alcoholic beverages was "grandfathered" regardless of whether the tax was part of a two-tiered sales tax system (such as Juneau's sales tax on alcoholic beverages) or part of a single-tiered system which imposed a tax on the sales of alcoholic beverages only. Thus, the only sales tax system proscribed by the statute is one which would impose a tax on the sales of alcoholic beverages only and which was not in effect before July 1, 1985.

(Emphasis in original.)

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al and a memorandum from the then Deputy Director of the Division of Legal Services for the Legislative Affairs Agency, both of which concluded that the 1985 amendment to AS 04.21.010(c) did not speak to the rate of taxation.⁶

2. The effect of AS 04.21.010(c)(3)

Lagos further argues that the grandfather clause of AS 04.21.010(c)(3), which permits the continuation of "sales taxes on alcoholic beverage sales that were in effect before July 1, 1985," demonstrates that the legislature intended to prohibit differential rates of taxation when it enacted its amendments to AS 04.21.010(c). Lagos asserts that this grandfather clause applied to the communities of Craig, Juneau, and Kotzebue, because those communities had in place differential taxes on the sale of alcoholic beverages at the time the 1985 amendments were enacted. Additionally, Lagos points to the discussions of the Senate Finance Committee which indicate that the committee believed these three communities were the only communities affected by the grandfather clause. From a review of the legislative history of the amendment to AS 04.21.010(c)(3), and the differential sales tax ordinances of Juneau, Craig, and Kotzebue, Lagos concludes that AS 04.21.010(c)(3) was enacted for the specific purpose of preserving the two-tiered municipal sales taxes on alcohol in these three communities. Thus, Lagos concludes that any ambiguity as to whether AS 04.21.010(c)(2) prohibits discriminatory rates of taxation on sales of alcoholic beverages is resolved by the provisions of AS 04.21.010(c)(3).

The City and Borough of Sitka reply that there is no indication in the wording of AS 04.21.010(c)(3) that it is limited to instances of unequal taxation or that it is limited to the communities of Craig, Juneau, and Kot-

6. In support of its reliance on these two documents Sitka cites *State, Dep't of Natural Resources v. City of Haines*, 627 P.2d 1047, 1049 nn. 6 & 7 (Alaska 1981) and *Carney v. State, Bd. of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the Attorney General, while not controlling on matters of statutory interpretation are entitled to some deference.")

7. In addition to the text and legislative history surrounding the adoption of AS 04.21.010(c)(3),

zebue. "It could just as easily be applied to communities taxing alcohol alone prior to July 1, 1985."

III. CONCLUSION

[3] Our review of the merits leads us to the conclusion that Lagos' position is the more persuasive one. We therefore hold that the Sitka ordinance which taxes the sales of alcoholic beverages at a 4% higher rate than sales made on other commodities within the City and Borough of Sitka is violative of AS 04.21.010(c).

The text of AS 04.21.010(c)(2) is ambiguous in that it fails to clearly indicate whether it prohibits the imposition of discriminatory rates of sales taxes on sales of alcoholic beverages. On the other hand, the text of AS 04.21.010(c)(3) and the relevant legislative history concerning this 1985 amendment to AS 04.21.010(c), indicate that the legislature intended its amendments to prohibit the imposition of discriminatory sales taxes, whether in the form of sales tax rate differentials or a sales tax imposed solely on the sale of alcoholic beverages.⁷ Thus, we conclude that AS 04.21.010(c)(2) and AS 04.21.010(c)(3) when read together, bar a municipality from taxing only the sale of alcoholic beverages and further require that if sales taxes are imposed on other commodities then the rate of taxation on the sale of alcoholic beverages may not exceed the rate of taxation imposed upon such other commodities sales.

REVERSED.⁸



the legislative history of AS 04.21.010(c)(2) noted above, provides evidence that some members of the Senate Finance Committee, including the amendment's sponsor, intended that there be no discrimination in a municipality's rate of taxation concerning alcoholic beverages.

8. Our holding that the ordinance in question is unlawful makes it unnecessary to address any of the remaining issues in this appeal.

To: Bryce Edgemon
Senator Jacko's Office
Fax: 465-2997

From: Alice Ruby
Dillingham

Date: 3/10/93

Re: Alcohol Tax Information

I've obtained some information that may be useful in Senator Jacko's effort to pass the alcohol tax legislation. Following is a description of attached info.

1. Memo from Ward Jones to Christy Tilden

Ward Jones is an employee of BBAHC and provided the information in the memo to Christy Tilden at her request - probably in relationship to her grant program. Ward gave me permission to release the information to you. He advises that he will continue to tabulate this kind of information but will not have the results for a while.

The most interesting to me are paragraph's IV, VI and VII on the second page. Adding these figures brings a total of \$180,925 spent per quarter for alcohol related incidents by the Dillingham Police Department and Ambulance. This means that just the City of Dillingham spends an estimated \$723,700 per year on alcohol related incidents.

2. Estimated Alcohol Sales In Dillingham, July - December 1992

I obtained these figures from actual sales tax reports submitted by the businesses who reported in Dillingham. Note that the AhSaWan just recently opened and will be operating under the Captains Table liquor license and is not reported in this group and Ricardo's is not reported (liquor and food are not separated so I didn't count them).

Estimated sales for that six month period were \$997,382. Using this figure to estimate a years sales brings us to \$1,994,764.00. Note that this does not take April - June into account which as you probably know are part of the busiest season for the liquor sales businesses.

I did some rough calculations on sales taxes at the current 5%, 8%, 10% and 15%. You can extend it further by adding any percentage to the Tot. Tax. Sales (which is the total taxable sales for that month).

3. Effect on individual product prices

I did this just out of curiosity. I wondered what the effect of the tax would be on the consumer's price. I used the price sheet from one business in town (who shall remain anonymous). I had to break out the current 5% sales tax to determine the base prices charged for various products. Then I added 8%, 10% and 15% just to see what happened.

I'll have to admit that I was fairly surprised when I saw the price sheet. I haven't been out for a while and hadn't realized how much prices have gone up. If you want to know what some of the drink categories are let me know. (Example: a Premium is the expensive liquors like baileys, sloe gin, etc.).

4. Miscellaneous

I made the Mayor and Manager aware that I was going to send this information to you. As well I let Fred Torrisi know because he has been supportive of this legislation. I'll be passing the information on to them as well.

Please let me know if I can provide more information. Also, I will be happy to testify when appropriate and will probably use some of this info that I am passing on to you.

In case this information is helpful.....I and the City (I think) are convinced that the alcohol tax will not deter alcohol consumption, nor will it solve some of our social problems by itself. It will, however, provide funding to off-set existing alcohol related expenses and maybe allow us to develop some solutions to the problems. You can see, however, that we would have to tax pretty high before we could actually balance out expenses and income. I don't know if the citizens will allow a really high tax - I do think that they would support a moderate tax in Dillingham.

Memo:

TO: Cristy Tilden, Program Director, BBAHC Alcohol Program

FROM: Ward Jones, Injury Prevention Specialist, BBAHC
Environmental Health *WJ*

RE: Costs of alcohol and drugs to BBAHC and Dillingham
community first quarter FY 93 (10/1-12/31)

DATE: February 2, 1993

In my capacity as Injury Prevention Specialist I have been charged with surveillance of serious injuries. The following are alcohol and drug related incidents and costs:

I. 2 Detox admits @

A. 72 hr. hospital stay @ \$425/da.	= \$	1275
B. ER fee	= \$	70
C. Physician fee	= \$	60
D. Average lab fee	= \$	200
E. Average medicine fee	= \$	20
F. Average supplies	= \$	20
Total	= \$	1,645

Grand Total = \$ 3,290

II. 25 Title 47 admits @

A. 24 hr. hospital stay @ \$425/da.	= \$	425
B. Other costs as above	= \$	370
Total	= \$	795

Grand Total = \$19,625

III. In addition to the above there were the following items that were determined to be alcohol and or drug related:

- A. Two drug overdoses
- B. One alcohol and drug overdose
- C. One skull fracture
- D. One suicide attempt
- E. One loss of consciousness
- F. One undetermined trauma
- G. One hypothermia

If we assume one nights stay and similar other expenses to the above the total for these injuries is \$6,360

IV. There were a total of five ambulance runs associated with the above @ \$125 = \$625

V. There are some expenses not documented with the above, such as xray and medevac that would add significantly to the total.

VI. The City of Dillingham Community Service Patrol is run for the sole purpose of alcohol mitigation so its yearly budget of approximately \$176,000 plus \$30,000 in kind services from the city can be divided by four for a quarterly total of \$51,500.

VII. Seventy percent of the Dillingham City Police Department calls are alcohol related. Consequently if we take seventy percent of the approximately \$736,000 and divide by four we have a quarterly total of \$128,800.

The expenses from the above are not all inclusive and can be expanded upon, however they give us a rough total of \$209,670 spent by agencies in the mitigation of alcohol problems.

The above list is rough and by no means comprehensive. Other agencies and departments that are impacted are:

1. BBAHC Alcohol Program 100%
2. BBAHC Mental Health Department
3. SAFE
4. Alaska State Troopers
5. BBAHC EMS Department
6. BBAHC Community Health Aide Program
7. Others?

Estimated
Alcohol Sales
In
City of Dillingham
July-December 1992

Taxable Income figures taken from Sales Tax Reports prepared by businesses
and submitted to City of Dillingham

FAX NO. 3125462

Current Local Businesses	Reported Taxable Sales for July 92 to December 92						Tot. Tax (Current) Jul-92 Sales	Tax@5%	Tax@8%	Tax@10%	Tax@15%
	Dec-92	Nov-92	Oct-92	Sep-92	Aug-92	NA					
Cannery Lounge	\$3,827.49	\$6,577.61	\$4,461.54	\$7,821.37	\$12,756.73	NA	\$35,244.74	\$1,762.24	\$2,819.58	\$3,524.47	\$5,286.71
Dig. Liquor	\$55,454.32	\$52,583.30	\$58,986.29	\$62,648.54	\$80,730.31	\$105,908.19	\$416,310.95	\$20,815.55	\$33,304.80	\$41,831.10	\$62,446.64
Olson Lkquor	\$21,087.14	\$18,813.72	\$20,332.98	\$19,009.30	\$28,213.33	\$42,453.18	\$149,910.15	\$7,465.51	\$11,992.81	\$14,991.02	\$22,486.52
Sea Inn	\$28,125.02	\$34,989.63	\$34,206.47	\$35,614.20	\$48,271.17	\$57,925.92	\$237,135.41	\$11,856.77	\$18,970.83	\$23,713.54	\$35,570.31
Willow Tree	\$17,589.11	\$20,500.91	\$23,730.76	\$21,179.42	\$31,200.80	\$44,580.01	\$158,780.81	\$7,939.04	\$12,702.46	\$15,878.08	\$23,817.12
Tot. Taxable Sales							\$997,382.06				
Estimated Tax								\$49,869.10	\$78,700.56	\$99,738.21	\$149,807.31

CHOCOLING LTD

MAR-10-93 WED 14:23

Estimated effect on individual product prices

Based on prices currently charged by one business in Dillingham

Mar-93

Alcohol Item	Current Price w/5% tax	Base Price	Price w/8% tax	Price w/10%	Price w/15%
House Wine/glass	\$3.50	\$3.33	\$3.60	\$3.87	\$3.83
Can Beer	\$3.00	\$2.86	\$3.09	\$3.14	\$3.29
Bottle Beer	\$3.50	\$3.33	\$3.60	\$3.67	\$3.83
Import Beer	\$4.00	\$3.81	\$4.11	\$4.19	\$4.38
Specials	\$2.50	\$2.38	\$2.57	\$2.62	\$2.74
Well Drinks	\$3.50	\$3.33	\$3.60	\$3.87	\$3.83
Call Drinks	\$4.00	\$3.81	\$4.11	\$4.19	\$4.38
Premium	\$4.50	\$4.29	\$4.63	\$4.71	\$4.93
Super Premium	\$5.00	\$4.78	\$5.14	\$5.24	\$5.48
Mixed Liq (2 or more)	\$5.00	\$4.78	\$5.14	\$5.24	\$5.48
Blended	\$6.00	\$5.71	\$6.17	\$6.29	\$6.57
Multi Liquor	\$7.00	\$6.67	\$7.20	\$7.33	\$7.67

Note: the prices I obtained were the actual cost to consumer, which includes tax. I backed the sales tax out by dividing the price by 1.05 which gives you the base price of the product to the consumer