ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9347 HOUSE LABOR & COMMERCE

Who Really Pays the Tax?

One of the few acceptably general "laws" of economics can be stated as follows. Taxes levied on economic agents are borne by those agents only if they cannot shift the burden onto other agents via changes in prices. Said another way, taxes levied on one side of a market are borne by the partcipants on both sides of that market in rough proportion to the market power each possesses. Said yet another way, the real burden of a tax falls on the inflexible, not necessarily on she who pays the collector.

Prices paid to domestic processors for frozen and fresh Bristol Bay sockeye salmon are largely set by Japanese buyers in response to current and expected future prices on the Japanese wholesale market. A floor to the wholesale price which can be paid to domestic processors is determined by their processing costs. Chief among the costs which are incurred by domestic processors is the price which they pay to harvesters at dockside. If the Alaska Corporation Net Income Tax is applied to Japanese owned or leased cargo ships operating out of Bristol Bay, it will very likely be paid by the harvesters.

One reason this conclusion can be reached is that harvesters are in no position to bargain for higher prices and seldom do. The Bristol Bay harvester is a price taker for the following reasons.

(a) The salmon can be caught only during a short period of time in June and July.

(b) Once the salmon are caught they must be quickly frozen or otherwise processed. They cannot be left aboard most harvesting vessels for more than a day without beginning to deteriorate.

(c) There is no widely recognized harvesters' union that can negotiate with the domestic processors. In previous years harvester strikes have been called but have collapsed under the pressure of a fast disappearing sockeye run and the need to catch enough fish to cover expenses and capital costs.

(d) Even if a widely recognized union were to be formed, it would not have a strike fund and for that reason would not have a credible strike threat to bring to the bargaining table. Without a strike fund, the union would be unable to compensate strikers for the loss of a season's earnings.

Traditional economic analysis emphasizes that under these conditions the harvesters' supply curve in the ex-vessel market is vertical or nearly so. A game theorist ould emphasize that

harvesters and domestic processors are involved in a classic "take it or leave it" strategic game. Important features of this game are that the harvesters lack both bargaining power and also much of the strategic information which is readily available to the dominant domestic processors. Given a take it or leave it price offer from domestic processors, the harvesters' best option is usually to take it. The conclusion readily reached is that any reduction in the wholesale price received by the domestic processors would translate almost penny for penny into a lower price paid to harvesters in the ex-vessel market.

In the wholesale market the domestic processors find themselves in much the same situation as that of the harvesters in the ex-vessel market. If the Alaska Corporation Net Income Tax is applied to the (imputed) income derived by foreign corporations from transporting Bristol Bay salmon to Japan, the foreign corporation will seek to pass that tax onto another player in order to avert a decline in after tax net operating income. Assuming that the nominally independent Japanese buyers are in fact members of a closely cooperating group (as suggested by the Alaska Attorney General's memorandum of June 1993), it can be shown that a substantial portion of that tax would be passed onto the domestic processors in Bristol Bay with the same ease that downward price fluctuations in the Japanese wholesale market are now passed on. (An extended argument is out of place here. One key to understanding why this is true is the previous observation that the tax may well operate as a value added tax rather than as a tax on corporate profits per se.)

Conclusion

If the Alaska Corporation Net Income Tax is applied to Japanese cargo ships operating in Bristol Bay, the dollar amount of the tax will need to be imputed. For that reason the tax may tend to act more like a value added tax than like a profit tax. Integrated Japanese trading companies are likely to be able to shift the tax backward onto the domestic processors in the form of a lower wholesale price per pound for salmon. In turn the domestic processors will be in a strong position to pass it backward onto harvesters in the form of a lower ex-vessel price.

If the tax yields the $ 2.64 million roughly estimated above, the average tax paid by each of the 2,700 (or so) limited entry permit holders will approach $ 1,000, with the larger volume harvesters paying more than this and the smaller volume harvesters paying less.

APPENDIX C
The Effect On The North Slope Gas Project

SUMMARY: An estimate of the annual amount of tax that would be levied on the business income derived from the fleet of LNG tankers which would transport North Slope natural gas to market is $ 20 million per year. This is approximately 2.6 cents per MCF. Given the price-competitive nature of the Pacific Rim natural gas buyers' market the added tax would be borne primarily if not exclusively by the owners of the Alaska natural gas pipeline and by the Alaska Railroad Corporation.

A more serious concern is the indirect impact of eliminating section 883. As discussed in Appendix A, prospective investors may view the additional tax on foreign flagged vessels as a signal that the State of Alaska will seek to close its perceived budget "gap" by further raising taxes on business.

When and if Prudhoe Bay natural gas finds a market, that market will likely be on the Far Eastern Pacific Rim and it will be served by a fleet of LNG tankers operating out of an ice free port in Southcentral Alaska. For the foreseeable future, the Pacific Rim natural gas market will be one of the most price-competitive buyers markets in the world. If Alaska North Slope natural gas is to enter that market it must meet or beat the price of gas from Australia, Indonesia, Malaysia, Mexico, Vietnam and (possibly) Siberia. Under these circumstances any additional taxes levied on the LNG tanker fleet would be borne largely by the owners of the Alaska natural gas pipeline and the Alaska Railroad Corporation. (As emphasized earlier, shiftable taxes are borne by the different players in accordance with their relative market power. This is a point made in one form or another in virtually every textbook which has been written for the past fifty years.) The remainder of this appendix explains how the estimat of tax burden was obtained.

Appendix B, above, discusses the difficulty that the Alaska Department of Revenue (DOR) may encounter in obtaining accurate information on the business income which a foreign corporation would derive from shipping operations. That discussion applies here as well. The main point emerging from that discussion is that DOR may well need to compute its own estimates of net operating income attributable to LNG tanker operations in order to assess the reasonableness of the numbers submitted by the foreign corporation. Under these circumstances the amount of tax likely to be collected can be estimated (albeit with considerable uncertainty) by using procedures which are not unlike those which would be used by the Alaska Department of Revenue.

The Alaska natural gas pipeline will transport between 750 million MCF and 800 million MCF per year from Prudhoe Bay to tidewater (according to specifications verified by the Yukon Pacific Corporation). A standard 130,000 cubic meter capacity

LNG tanker transports approximately 2.8 million MCF per trip.[1] Assuming a 20 day turn around time per trip, a fleet of fifteen or sixteen LNG tankers would be needed to convey North Slope natural gas to market.

Construction cost estimates published by the International Energy Agency (an agency of the Organization for Economic Cooperation and Development) and then restated in constant 1996 dollars place the cost of a 130,000 cubic meter LNG tanker in the range of $ 200 million to $ 250 million.[2] The mid point of this range is $ 225 million. Jeff Lowenfels of Yukon Pacific Corporation reports that their current cost estimates for a 125,000 cubic meter LNG tanker lie in the range of $ 225 million to $ 235 million. Here we will use an estimate of $ 225 million for a 130,000 cubic meter tanker just to be conservative.

Assuming that the foreign corporation which owns the LNG tankers sets its shipping price at a level which would allow construction cost recovery in five to ten years, an LNG tanker costing $ 225 million would generate between $ 22.5 and $ 45 million in net operating income per year. The mid point of the range is $ 33.75 million per year.

The $ 33.75 million in worldwide net operating income would need to be apportioned between Alaska and the rest of the world in order to determine the amount of Alaska net operating income. Given the nature of these operations an apportionment factor of 0.5 suggests itself. (In OSG Bulk Ships Inc. vs. State of Alaska the court ruled that a days-in-port ratio could be used to apportion Alaska net operating income. The tankers can reasonably be expected to spend roughly as many days in the Alaska port as in the port of destination.) A reasonable estimate of Alaska net operating income is then $ 16.9 million per year per 130,000 cubic meter LNG tanker. For the fleet of fifteen such tankers needed for the project, the total applicable Alaska net operating income comes to roughly $ 250 million.

At current tax rates the annual Alaska Corporation Net Income Tax on $ 225 million of net operating income would be approximately
$ 20 million. Spread over the annual volume of gas to be shipped (approximately 775 million MCF) we get an estimated tax of 2.6 cents per MCF.

Conclusion

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[1] cubic meters of LNG times 600 = cubic meters dry gas
1 cubic meter dry gas = 35.3 cubic feet dry gas

[2] See NATURAL GAS PROSPECTS AND POLICIES, OECD Paris, 1991. On page 146 a 125,000 cubic meter LNG tanker would cost between $ 200 million and $ 220 million in 1991 dollars.

The direct impact of a tax of 2.6 cents per MCF can hardly be called significant. However, the potential indirect impact is of somewhat greater concern. As discussed in Appendix A, prospective investors base their decisions on the after tax returns which they anticipate. These investors may view the tax on foreign flagged vessels as a signal that the State of Alaska will seek to close its perceived budget "gap" by further raising taxes on businesses rather than by using other measures at its disposal. If so, it is not yet clear just how significant the taxation of section 883 income will ultimately be.

Of particular concern to prospective investors in the Alaska natural gas pipeline is the fact that once the pipeline is built it may present a ready target for taxation. (Recall the talk in the early 1980's about the desireability of taxing resource "rents.") Fixed, immovable capital like a pipeline will typically not be shut down as long as operating revenue exceeds the variable costs of operation or until the original investment is recouped. Knowing that they are vulnerable once the pipeline is built, investors may hesitate before building it in the first place.

APPENDIX D
Two Other Cases of Note

Coal Exports To Korea

Usibelli Coal Mine, Inc. of Healy, Alaska mined 1.7 million short tons of coal in 1995 of which approximately one-half was sold to the Suneel Corporation and shipped to Honam, Korea out of the Port of Seward, via the Alaska Railroad. Suneel's coal transports would be subject to a tax on section 883 income.

At this time estimates of the dollar amount of the tax cannot be made with any reasonable accuracy. However, it is clear that Suneel Alaska, the Alaska Railroad and Usibelli would all bear a portion of the burden because none of the three players has a ready alternative to business as usual. Suneel may be the most flexible of the three given the company's ability to eventually find an alternative source of energy elsewhere on the Pacific Rim. However, the low sulphur coal obtained from the Usibelli mine could not be replaced in a short period of time. Further comments along these lines may be forthcoming from management at Usibelli Coal Mine, Inc., the Alaska Railroad Corporation and Suneel Alaska Inc.

The difficulty encountered in attempting to estimate the dollar yield of the tax, and just who will pay it, points out one of the major problems with the taxation of section 883 income. Before the fact, one cannot know with the requisite degree of certainty just who will pay and how much. What one can know is that, in the future, Alaska coal and hard rock minerals will be even less competitive on the Pacific Rim than they are today if section 883 income comes under additional taxation. In markets which are as price competitive as international resource markets are today, the Alaska seller will necessarily need to accept a lower price for his product in order to compensate shippers for the tax on their section 883 income.

Foreign Air Carriers, International Flights

Foreign airlines operating between Alaska and a foreign country would be subject to a tax on their section 883 income. These carriers would be faced with four options: (a) charge higher fares to their passengers and cargo shippers, (b) negotiate lower landing fees with the Alaska airports, (c) accept lower profits, or (d) cease using the Alaska airports. Two separate cases must be considered: airlines which simply stop over in Alaska for refueling or for other reasons and airlines for which Alaska is a departure point or a destination.

AIRLINES STOPPING OVER IN ALASKA

--- Option (a) is the least likely to be pursued given the multiplicity of airline choices and routing options available to most travellers and shippers.

--- If the Alaska section 883 income tax is large relative to the added costs associated with routing aircraft around Alaska then either option (b) or option (d) is likely to be pursued. In this situation, much of the burden of the tax will fall largely on Alaskans.

--- If the Alaska section 883 income tax is small relative to the added costs associated with routing aircraft around Alaska some combination of options (a), (b) and (c) is likely. In this situation at least some of the burden will fall on Alaskans but in a proportion which cannot be determined without considerable further study.

--- Competition among foreign carriers for Alaska passengers and cargo is not a consideration in the case of stop over flights.

ALASKA AS A DEPARTURE POINT OR DESTINATION

--- Option (a) is a plausible alternative. Alaska travellers and shippers could avoid the higher costs of direct flights by re-routing through Seattle but would encounter additional layover delays and flight changes. The threat of a discontinuation of service suggests that the airlines are unlikely to bear the majority of the burden.

--- Competition among foreign carriers for Alaska passengers and cargo is likely to force at least some of the burden onto the air carriers no matter the size of the tax.

As in the case of coal exports, it is not completely clear what is involved here in terms of dollars to be paid and who will pay them. However, an analysis of the options available to foreign air carriers does suggest that when and if the required additional research is completed it will show that the tax is likely to fall more heavily on Alaska individuals and businesses than on the foreign air carrier. The reason for this is much the same as that given repeatedly in earlier sections of the report. The air carriers have many more options than do the Alaska players.

APPENDIX E

The following letter and attachment were sent by the Italian government to the U.S. Department of State on March 19, 1980. It illustrates the opposition which may be forthcoming from foreign governments if the State of Alaska succeeds in taxing section 883 income. One key difference between section 883 income and other Alaska income earned by foreign corporations is that the other income is also taxed by the federal government. With regard to other (non section 883) income the State of Alaska can depend upon receiving the support of the federal government in obtaining detailed accounting records from foreign corporations. With regard to section 883 income such support may not be forthcoming.

Ambasciata D' Italia
Washington D.C.
March 19, 1980

To the Department of State
Washington D.C.

The Italian Embassy presents its compliments to the Department of State and, on behalf of the nine EEC Governments, of which the Italian Government has now the presidency, it has the honor to forward the attached Note on the problems of the unitary method of taxation.

The Italian Embassy welcomes the opportunity to renew to the Department of State the assurances of its highest consideration.
[Seal]

Paola Pansa Cedronio
Ambassador of Italy

ATTACHED NOTE

1. Our Governments are concerned about the application to US subsidiaries of foreign companies of the unitary basis of taxation as applied in California and in varying degrees by certain other states.

2. The unitary basis makes no attempt to examine the profits generated by the subsidiary. It looks to the total profits of the worldwide operations of the group of which the subsidiary is a part, and claims a portion of those profits on the basis of the assumption that certain specified factors, such as the fixed asset values, turnover and payroll, affect the profits of the subsidiary in the same way and to the same extent as the profits of the group as a whole, irrespective of where the corporations of the group operate. This means that, whenever the group as a whole makes a profit the subsidiary will be taxed on a portion of this profit, even if the subsidiary is actually making a

loss, or in the reverse situation, that the subsidiary may not be taxed if the group as a whole has made a loss, although the subsidiary is actually in a profit making situation.

3. This method is incompatible with the principles accepted by all OECD member states and recommended to all states as a basis for the taxation of subsidiaries or permanent establishments of foreign enterprises. These principles require that a subsidiary should be taxed only on the profits it actually has made, provided that these are based on dealing at "arm's length" between the subsidiary and related enterprises, i.e., that the transactions between the subsidiary and related corporations are on the same or on a comparable basis as transactions between wholly independent parties. This is intended to arrive at a fair measure of profit and rule out artificial pricing between members of the group for the sole purpose of minimizing tax liability.

4. Unless the same basic rules for calculating taxable profits are followed generally by the main trading nations it will be impossible to achieve the essential objective of providing a consistent and coherent international tax framework for trade and investment.

5.The unitary tax basis can give rise to obviously inequitable tax liabilities, and to a form of double taxation which often cannot be relieved, or can be relieved only if countries, which follow generally accepted practices, bear an unfair burden of relief.

6. Unitary taxation, because it requires worldwide reporting of the group's activities in the state where the subsidiary operates imposes very heavy compliance costs, in addition to the costs of compliance and reporting for non-US corporations in their "home" countries.

7. The Federal Government uses the arms-length basis for its taxation of subsidiaries of foreign corporations.

8. The problem was addressed in the US/UK Double Taxation Treaty. Article 9(4) of the Treaty, which was supported by the Administration, would have disallowed the imposition of unitary taxes on subsidiaries of UK companies. When the Senate voted on the Treaty in 1978 the majority approved the Treaty with Article 9(4) in its original form, although the necessary two-thirds majority was not achieved. Subsequently, the Senate approved the Treaty with the necessary two-thirds majority, but subject to the reservation that Article 9(4) was not to apply for the purpose of state taxation. Article 9(4) remained in the Treaty, but only for the purpose of national taxation.

9. There are currently four relevant bills in Congress, S983, S1688, HR 5093 and HR 5076, the last of which is scheduled for hearings on the 31st of March.

In view of the strong arguments against unitary taxation, our Governments urge you to support this legislation in so far as it relates to the unitary tax issues raised above, with a view to early enactment.

END OF ATTACHED NOTE

(reprinted from "State Taxation of Multinational and Multistate Corporations," by Harvey Galper, Advisory Commission On Intergovernmental Affairs, Washington D.C. no date affixed, circa 1982, copy available upon request)

CADWALADER

Cadwalader, Wickersham & Taft

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April 3, 1998

<u>BY FACSIMILE</u>

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

Re: <u>Potential Retaliatory Impact on U.S. Carriers Abroad of State Taxation of Foreign Carriers</u>

Dear Mr. Kyle:

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

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

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

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

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

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

[2] Exchange of Notes, March 8, 1971, U.S.-Japan.

[3] Exchange of Notes, April 17, 1984, U.S.-Italy.

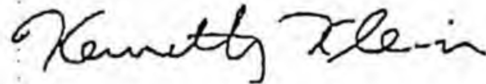
[4] Exchange of Notes, August 31, 1994, U.S.-France.

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

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

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

Sincerely,



Kenneth Klein

BP EXPLORATION

James A. Palmer
Director
External Affairs
Alaska

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 564-5435

April 7, 1998

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

BP Exploration (Alaska) Inc., supports your efforts to pass House Bill 472. We believe that it is important to protect the many other industries from the serious negative impact that would otherwise affect their businesses. We also believe that failure of this bill will be a detriment to new investment in the state by prospective investors.

Sincerely,

James A. Palmer
Director, External Affairs

JAP/dc

For Immediate Release: March 30, 1998

Contact: Rep. Norman Rokeberg
(907)465-4968

Committee Acts to Keep Alaska "Open for Business"
Labor and Commerce Moves Out HB 472

(JUNEAU) -- The House Labor and Commerce Committee today moved out House Bill 472, "An Act relating to apportionment of business income." The House Labor and Commerce Committee originated HB 472 after a February decision by the Alaska Supreme Court that the Alaska Corporation New Income Tax (ANITA) applies to the income of foreign flagged ships and aircraft bringing goods and passengers to and from Alaska."

"This new tax burden would have a chilling effect on commercial development, international trade, and job creation in this state," said Representative Norman Rokeberg (R-Anchorage), Chairman of the L&C Committee. "It will slam the door on the myth that 'Alaska is open for business.' If the Department of Revenue implements this new tax, *Alaska would be the only state to have such a tax*," Rokeberg said.

The L&C Committee noted, in movi g out HB 472, that Alaska would be severely impacted without passage of the .easure. International air cargo, air couriers, airlines, fishermen and seafood processors, mining and coal companies, cruiseship lines and tourism, timber and wood products, manufacturing firms, and oil and LNG exports would all be either directly taxed or subject to either foreign retaliation or secondary effects.

HB 472 now moves to the House Finance Committee.

# # #

Alaska State House of Representatives
Twentieth Legislature
Second Session

RCS# 901
Item 6

04-08-98
11:01:28

HB 472
Third Reading
Final Passage

Yeas:	34	Austerman, Berkowitz, Brice, Bunde, Cowdery, Croft, Davies, Davis, Dyson, Elton, Foster, Green, Grussendorf, Hanley, Hodgins, Ivan, Joule, Kelly, Kemplen, Kohring, Kookesh, Kott, Kubina, Martin, Mulder, Nicholia, Phillips, Porter, Rokeberg, Ryan, Sanders, Therriault, Vezey, Williams
Nays:	1	Moses
Excused:	1	Hudson
Absent:	4	Barnes, James, Masek, Ogan

Kott changed from "Nay" to "Yea".
Vezey changed from "Nay" to "Yea".

0-LS1645\E.1
Glover
4/7/98

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: HB 472

1 Page 1, line 1:

2 Delete all material.

3 Insert ""**An Act relating to taxation of business income; and providing for an**

4 **effective date.**""

5 Page 1, following line 10:

6 Insert a new bill section to read:

7 "* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c)."

LEGAL SERVICES

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

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

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

MEMORANDUM April 8, 1998

SUBJECT: Business tax apportionment (HB 472)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Richard A. Glover -RAG-
Legislative Counsel

Enclosed is the CS you requested. The new section that excepts certain taxes from the retroactive provisions may be a violation of the constitutional requirements of equal protection under the laws, as two taxpayers, similarly situated, are treated differently seemingly without the requisite state interest in making this classification. The taxpayer that has remitted payment to the state in settlement of a purported tax liability will not get the benefit of the retroactive provision, where a taxpayer in the same situation who has not settled, will be rewarded for that delay. To pass constitutional challenge, the state will be required to show, at the very least, a rational basis for this distinction.

If I may be of further assistance, please advise.

RAG:glc
98-218.glc

Enclosure

0-LS1645\F
Glover
4/8/98

CS FOR HOUSE BILL NO. 472( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to apportionment of business income; and providing for an**
2 **effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 43.20.021(a) is amended to read:
5 (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as
6 amended, are adopted by reference as a part of this chapter. These portions of the
7 Internal Revenue Code have full force and effect under this chapter unless excepted
8 to or modified by other provisions of this chapter. **However, nothing in this chapter**
9 **or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or**
10 **modification of 26 U.S.C. 883.**
11 * **Sec. 2.** APPLICABILITY. Section 3 of this Act and the amendments to AS 43.20.021(a)
12 made by sec. 1 of this Act do not apply to payments under an agreement entered into before
13 the effective date of this Act between a taxpayer and the state as a discharge of tax liability.
14 * **Sec. 3.** Section 1 of this Act is retroactive to January 1, 1993.

New Text Underlined [DELETED TEXT BRACKETED]

1 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

0-LS1645\E.3
Glover
4/8/98

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: HB 472

1 Page 1, line 1, following "**income**":

2 Insert "**; and providing for an effective date**"

3 Page 1, following line 9:

4 Insert a new bill section to read:

5 "* **Sec. 2.** APPLICABILITY. Section 3 of this Act and the amendments to

6 AS 43.20.021(a) made by sec. 1 of this Act do not apply to payments under an agreement

7 entered into before the effective date of this Act between a taxpayer and the state as a

8 discharge of tax liability."

9 Renumber the following bill section accordingly.

10 Page 1, line 10:

11 Delete "This"

12 Insert "Section 1 of this"

13 Page 1, following line 10:

14 Insert a new bill section to read:

15 "* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c)."

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

April 7, 1998

Hon. Norman Rokeberg
Alaska House of Representatives
State Capitol, Room 24
Juneau, Alaska 99801-1182

Re: Legal Issues Relating to the Retroactive Provision in House Bill 472 (An Act relating to apportionment of business income)

Dear Representative Rokeberg:

You have asked me to provide a brief written summary of the testimony I provided to the House Finance Committee to the effect that it would be permissible under the Alaska Constitution to provide for retroactive application of the foreign vessel/foreign aircraft exemption provided under Section 883 of the Internal Revenue Code and expressly incorporated into the Alaska Net Income Tax Act by House Bill 472. You have also asked me to comment the severability of the retroactive provision of the bill. I will first address the constitutional issue and then briefly comment on the severability issue.

I. Constitutional Issue.

The Department of Law has recently concluded that retroactive application of the Section 883 exemption contained in House Bill 472 would "probably" be unconstitutional as an appropriation without a public purpose in violation of Article IX, sec. 6 of the Alaska Constitution. In my view, that conclusion is incorrect.

The general rule governing retroactive tax exemptions was stated by the court in Scott v. State Board of Equalization, 58 Cal.Rptr. 376, 379 (Cal.App. 1996):

> As a general rule, the Legislature cannot provide relief for taxes which have become fixed and vested. . . . 'To this general rule, however, there is a well recognized exception. It has been consistently held that expenditures of public funds or property which involve a benefit to private persons are not gifts within the meaning of the constitutional prohibition if those funds are expended for a public purpose.'

There are a number of relatively recent cases from other jurisdictions that have applied this general rule and that have upheld the validity of retroactive tax exemptions where the courts have found that a valid public purpose is served.1/ Two of these cases are worth describing in a bit of detail, since the retroactive application was upheld on the basis of public purposes quite similar to those that have been advanced for House Bill 472.

In Atlantic Richfield Company v. County of Los Angeles, 180 Cal.Rptr. 901 (Cal.App. 1982), the court upheld the validity of a state statute retroactively changing the property tax assessment practices of counties within California. At issue was the method for valuing leasehold interests in oil and gas properties. The state statute directed county assessors to use a new method -- one that reduced the total assessed value of the property -- and also directed that the method apply to a prior tax year. The court held that while there was no legislative purpose expressed in the bill, "the Legislature could well have reasoned that the long run energy production in California would benefit from the immediate application . . . [of the statute] to the 1967-68 tax year because such an application would promote maximum recovery of oil and gas resources, including production from marginal wells." Having found that this was a valid public purpose, the court upheld the retroactive application of the statute.

Similarly, in County of Sonoma v. State Board of Equalization, 241 Cal.Rptr. 215 (Cal.App. 1987), the court upheld the validity of a state statute providing for a retroactive exemption from county sales taxes for sales of geothermal steam because it found that retroactive application served a valid public purpose -- specifically, promoting "the continued use of geothermal steam as an alternative energy resource."

1/ See, Scott v. State Board of Equalization, 58 Cal.Rptr.2d 376 (Cal.App. 1996); Maricopa County v. State of Arizona, 928 P.2d 699 (Ariz.App. 1996); County of Sonoma v. State Board of Equalization, 241 Cal.Rptr. 215 (Cal.App. 1987); Seattle-King County Council of Camp Fire v. State Department of Revenue, 711 P.2d 300 (Wash. 1985); Atlantic Richfield Company v. County of Los Angeles, 180 Cal.Rptr. 901 (Cal.App. 1982).

One of the purposes of House Bill 472 is to ensure that businesses in Alaska that export goods on foreign carriers will not only continue to have foreign carriers available to them -- that is, carriers who are willing to continue to do business in Alaska -- but that the rates charged remain reasonable. Imposing taxes on the income of these carriers (whether prospectively or retroactively) will very likely result in higher shipping rates for those Alaska businesses that rely on their services. Such increases will make it more difficult for all of these businesses to remain profitable; for those that are already operating on a small profit margin, such increases could be disastrous. In my view the Alaska Supreme Court would view this as a valid public purpose and one that supports the retroactive application of the section 883 exemption.2/

II. Severability.

A question has also been raised as to whether the prospective application of the section 883 exemption would be jeopardized by the inclusion in the bill of the retroactive provision. In my view there is no real danger. If the retroactive provision were ever declared unconstitutional (which I seriously doubt), it would almost certainly be severed from the substantive section of the bill granting the exemption prospectively.

AS 01.10.030 provides, "Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, 'If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.'" This section creates a general presumption that the legislature intends the remaining provisions of an enactment to be severable and remain in effect if one provision is held invalid.

That general presumption is strengthened in this case by the fact that the exemption can be given full effect (and underlying purposes mostly served) if the retroactive application were held invalid. I should add, however, that the presumption would be further strengthened by statements from legislators (particularly the bill sponsor) in the legislative record that continued

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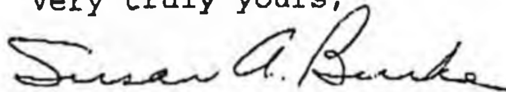
2/ My research has, of course, disclosed a number of cases in which courts have held that retroactive tax relief measures do not promote a public purpose and on that basis have invalidated them. None of those cases, however, involves a tax measure such as House Bill 472, which is designed to promote a very specific economic development purpose.

validity of the prospective exemption is intended, even if the retroactive application is held invalid.

If I can provide any further information, please let me know.

Very truly yours,



Susan A. Burke

SAB:ps

1. To address the constitutional issue the following statement would be helpful to have on the taped record of the House Floor debate:

> Another purpose of this bill -- including the retroactive provision -- is to ensure that businesses in the state can continue to export their goods on foreign vessels and aircraft at reasonable rates. If foreign shippers are forced to pay this tax -- both for future and for past tax years -- they may raise their rates to cover those past and future tax payments to a point that would endanger the continued economic feasibility of these local export enterprises.

2. It might also be helpful to address the constitutional issue directly and say something like the following:

> The Department of Law has questioned whether the legislature has the power to make this legislation retroactive -- on the ground that retroactive application would constitute an appropriation without a public purpose in violation of Article IX, sec. 6, of the Alaska Constitution. We have, however, received an opinion from Susan Burke, a Juneau attorney with many years of experience in state constitutional issues, that there is a valid public purpose in making the legislation retroactive and that therefore Article IX, sec. 6 would not be violated by making this legislation retroactive. She cited several cases from courts in other jurisdictions that have upheld retroactive tax exemptions where the public purposes were very similar to those underlying this legislation.

3. On the severability question it would be helpful to have on the record the following:

> A question has also arisen as to whether the retroactive provision of the bill is severable from the prospective amendment -- that is, if for some reason the retroactive provision were held unconstitutional would there be any effect on the prospective section. It is certainly the intent of the House Labor & Commerce Committee that sponsored this legislation that these two provisions are totally separate and severable. In what I believe is the remote possibility that a court might invalidate the retroactive provision, we would certainly want the prospective amendment to remain in the law. Also AS 01.10.030 expressly provides that all enactments are presumed to be severable.

ALASKA STATE LEGISLATURE
House of Representatives

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REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
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FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

TO: Representative Gene Therriault, Co-Chair
Representative Mark Hanley, Co-Chair
House Finance Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor and Commerce

DATE: March 30, 1998

SUBJECT: Hearing Request for HB 472 - "An Act relating to apportionment of business income."

I respectfully request that a committee hearing be scheduled for HB 472. Attached is a bill packet for use by the committee and letters of support.

Thank you for your consideration in this matter. If you have any questions please contact Shirley Armstrong at 465-4968.

Attachments

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
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Labor and Commerce Committee
SPONSOR STATEMENT
HOUSE BILL 472

"An Act relating to apportionment of business income; and providing for an effective date."

This bill originated at the request of the industries effected by the recent Alaska Supreme Court ruling, State of Alaska vs OSG BULK Ships, Inc., dated February 20, 1998, that the Alaska Corporation Net Income Tax ("ANITA") applies to the income of foreign flagged ships and aircraft bringing goods and passengers to and from Alaska.

This new tax burden will have a chilling effect on commercial development, international trade and job creation in this state. It will slam the door on the myth that "Alaska is open for Business". If the Department of Revenue implements this new tax, Alaska would be the ***only state*** to have such a tax.

The court held that the exemption from taxation granted in 26 U.S.C. Section 883 "is *impliedly* excepted to [or modified] by the ANITA" (italics added). The Legislature adopted Section 883 when it enacted AS 43.20.021 (a) "Sections 26 U.S.C. 1-1399 and 6001-7872 (Internal Revenue code), as amended, are adopted by reference...", (See the bill.). The Court found otherwise.

The issue for the Legislature and the Administration can be posited as: Should the public policy of the State of Alaska be to tax the net income of foreign flagged/owned ships, aircraft, railroad rolling stock and communication satellites contrary to the tax law of the United States and it's agreements with foreign governments engaged in commerce in our state?

A strong indication that the Legislature intended to adopt Section 883 without exception is evident by the rejection of legislation sought by the Department of Revenue in 1991-1992. This legislation specifically stated that Section 883 was not adopted into Alaska tax law.

Commerce of the state of Alaska will be severely impacted without passage of HB 472. The following business sectors would be directly taxed; subject to foreign retaliation or secondarily effected: international air cargo, air couriers, and airlines; fishers and seafood processors; mining and coal companies; cruiseship lines and tourism; timber and wood products; manufacturing firms; and oil and LNG exports.

The imposition of a new business tax, for an as yet unknown amount, will have a detrimental effect on the business and employment of Alaskans.

3/28/98

Cominco Alaska Incorporated/Red Dog Mine/P.O. Box 1230/Kotzebue, Alaska 99752/Tel. (907) 426-2170

04-1_-98

A Subsidiary of Cominco American Incorporated

April 6, 1998

Representative Rokeburg
Chairman, House Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Honorable Represent Rokeburg:

The following is a summary of flag states for shipping vessels for various mines in the State of Alaska, as you requested during the committee hearing last week. I hope you find this information helpful.

Regards,

Charlotte L. MacCay

Charlotte L. MacCay
Senior Administrator, Environmental and Regulatory Affairs

0
04-14-98A

Red Dog Port:

1996
- Panama – 5
- Philippines – 4
- British Hong Kong – 2
- Hong Kong – 1
- Malaysia – 1
- Greece – 1

1997
- Panama – 4
- Cyprus – 3
- Liberia - 3
- Philippines – 2
- Singapore – 1
- Malaysia – 1

Seward Terminal

1996-97
- Panama – 6
- Singapore - 5
- Cyprus – 3
- Malta – 3
- Poland – 2

Skagway Terminal

October, 1995 – April, 1997
- Japan

December, 1997 – February, 1998
- Cyprus – 1
- Vanuatu – 1
- Thailand – 2
- Liberia – 1

ALASKA STATE LEGISLATURE
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Labor and Commerce Committee

MEMORANDUM

TO: Representative Pete Kott, Chairman
House Rules Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 7, 1998

SUBJECT: HB 472– Apportionment Of Business Income

Please consider this memorandum a request to schedule HB 472 for the floor. Attached you will find a packet for floor use.

If you have any questions, please contact Shirley Armstrong at 465-4968.

Attachment

THE STATES OF NEW JERSEY AND NEW YORK WITHDREW THEIR STATE TAXES ON FOREIGN FLAGGED TRANSPORTATION IN THE FACE OF FEDERAL OPPOSITION

United States Department of State

Washington, D.C. 20520

April 6, 1994

Dear Mr. Thompson:

I am writing to seek your cooperation on an important matter affecting U.S. international aviation relations.

Several countries have brought to our attention by means of diplomatic notes the intention of the State of New Jersey to impose a corporation business tax upon foreign air carriers operating in and out of New Jersey.

The proposed tax would effectively undermine the principle of reciprocal tax exemption at the national level contained in many international agreements we have concluded over the years with foreign governments. It also would invite retaliatory taxation of U.S. airlines which have international operations. Foreign governments have told us that they have the authority already in place to permit their state and/or local tax authorities to begin taxing U.S. carriers should New Jersey proceed with the corporation tax.

Taxation by state and local authorities is a significant problem for the international aviation community. Concerns in this area recently prompted the Council of the International Civil Aviation Organization (ICAO), the main forum for consultation and coordination on international air transport matters, to strengthen a number of aviation tax exemption resolutions opposing the imposition of sub-national taxes on international air carriers. We supported and voted for these resolutions as being in the best interests of the United States.

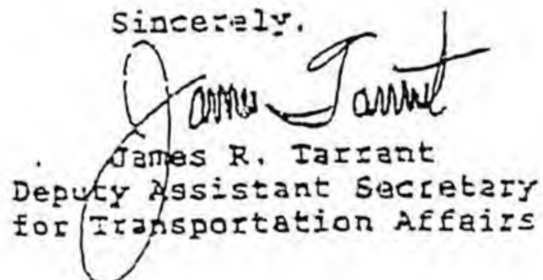
Other state governments have considered taxation of foreign carriers as a possible source of revenue. In previous cases, most recently New York in 1992, state authorities

Mr. Robert Thompson
Acting Director, Division of Taxation
State of New Jersey
50 Barrack Street CN - 269
Trenton, New Jersey 08646

ultimately concluded that it would be unwise to insist on taxing foreign airlines at the price of bringing retaliatory sub-national taxes upon U.S. carriers. Tit-for-tat taxation clearly would impact severely on U.S. airlines, some of whom have major operations in New Jersey.

The Department of State, therefore, strongly encourages the State of New Jersey to reconsider its plan to impose a corporation tax on air carriers of countries that exempt U.S. air carriers from income taxes. Such reconsideration would aid our long-standing national goal of fostering international air transportation as a facilitator of economic growth and development.

Sincerely,



James R. Tarrant
Deputy Assistant Secretary
for Transportation Affairs

TELECOPY COVER SHEET

Anchorage Legislative Information Office

Office - (907) 561-7007 Fax - (907) 562-4376

TO: (H) Labor + Comm.

ATTN: Rep Rokeberg FAX: 465-2040 PHONE:

FROM: Anch TC PHONE:

INSTRUCTIONS: Written (T) from parts in Anchorage - on 3/30

SENT: Date 3/30 Time

DISPOSAL OF ORIGINAL: Discard Hold for Pickup

NUMBER OF PAGES: 3 (counting cover sheet)

TRANSMITTED BY: Jean

Good afternoon Ladies and Gentlemen,

My name is Greg Champion, I am the General Manager of the Sheraton Anchorage Hotel and Inter-Alaska Hotels Incorporated. In addition, as a sister company to Hanjin International Corporation (a foreign corporation) the parent company of Korean Air, I will also be speaking on behalf of Korean Air interests in Alaska.

As long term partners with the City of Anchorage and State of Alaska, we have been involved in a variety of business based in Alaska. Our holdings have or do include real property, apartment buildings, cargo/passenger flights, catering facilities, laundry/linen cooperative company, and of course, the Sheraton Anchorage Hotel. Our Alaska operations account for a total in excess of 350 full time Alaskan employees including airport staff. Our investments show a desire to participate at all levels of both business and social growth for the city and state. Our commitments to date encompass more than just economic stability for our employees, but the reality of participating in significant ways to a long list of charitable organizations and groups that provide for the greater well being of the entire community.

To provide a little history on the Anchorage International Airport and our business operations, please recall approximately ten (10) years ago 1987. During this time period Anchorage lost nearly every foreign air carrier as a result of the opening of Russian Airspace. The reason business was lost was that the carriers found significant economic gains by using Russian Airspace and the ability to eliminate Anchorage as a technical stop. Moreover, as fees, taxes, landing rights, and other taxes continue to escalate all carriers will again be forced to evaluate options and costs. Since Anchorage is not a final destination for any or the 12 foreign carriers, please consider that other options are and will become available. It has already been determined that Stockholm is over 15 minutes closer to the East Coast for a majority of flights from Asia, a significant savings to daily operations. In addition, as Russians locations continue to improve facilities and logistical concerns these locations will again receive future consideration. The current economic crisis in Asia also plays a role in these decisions. In addition, regardless of the State Supreme Court decision Korea and the U.S. Government have a standing law that eliminates double taxation scenarios, clearly this new law would violate that Federal agreement.

At this time, the cost of doing business has been in favor of not only maintaining Alaskan operations but to significantly develop systems and infrastructure that will lend itself to increases to the year 2000 and beyond provided Anchorage remains economically competitive.

In closing, if this income tax is enacted, Alaska would be the only State in the nation to levy such a tax. This tax would lead many nations to view Alaska as an unfavorable place to do business and open the door to these countries to levy similar taxes on American based operators. The ramifications of this tax are immense and will have a drastic impact on this state and virtually all business ventures including tourism, natural resources, and future business development. I cannot think of a more devastating blow to the economic growth that Alaska has enjoyed for the last several years.

TESTIMONY OF ROBERT B. STILES
BEFORE THE ALASKA HOUSE LABOR & COMMERCE COMMITTEE
March 30, 1998

The Problem

- The Alaska Net Income Tax Act (ANITA) incorporates, by reference, groups of sections of the US Internal Revenue Service Code.
- The Alaska Department of Revenue (or more likely an attorney working for the Department of Law) opined that Alaska, for the purposes of calculating tax liability under ANITA, could/should include the worldwide net income of shipping corporations without regard to the country of registration(flag) of the vessels operated by the corporation. As a result, the DOR attempted to implement the attorney's opinion and was sued by OSG Bulk Ships, Inc. OSG is US subsidiary of a parent US corporation, which parent has subsidiaries which operate foreign flag vessels. Having not seen the legal opinion upon which DOR acted, there is no way of knowing if the opinion addressed non-US corporations which have foreign flag vessels or foreign registered aircraft servicing Alaska.
- It appears that the OSG argument in court centered around the so-called Section 883 exemption granted under US IRS code. Section 883 is included in a block of IRS sections included by reference in ANITA.
- OSG prevailed in Alaska Superior Court, the Department of Revenue prevailed on appeal to the Alaska Supreme Court. In ruling in favor of the Department of Revenue the Alaska Supreme Court eliminated the 883 exemption which exempts foreign flag vessels and foreign registered aircraft from taxation if the country of registration grants an exemption to US flag vessels and US registered aircraft.

Consequence of Alaska Supreme Court Decision

ALL NON-US CORPORATIONS WHICH OPERATE FOREIGN FLAG VESSELS AND/OR FOREIGN REGISTERED AIRCRAFT CALLING AT ALASKAN PORTS/AIRPORTS ARE SUBJECT TO TAXATION UNDER ANITA. THEIR WORLDWIDE NET INCOME CAN BE TAXED IN PROPORTION TO THE TIME SPENT AT A PORT/AIRPORT IN ALASKA.

Except for North Slope oil, all seaborn Alaska exports (coal, timber, fish, ore & ore concentrates, gravel) to foreign destinations move in foreign flag vessels owned by non-US corporations. In the absence of restoring via statute the 883 exemption, the world wide net income of the of the non-US corporate owners of these foreign flag vessels will become subject to taxation under ANITA.

This would be a new tax. Alaska would be the only state which assesses such a tax. While the federal government cannot dictate State taxation policy, such a new tax would violate federal trade treaties with Alaska's most important trading partner-Japan. Sub national governments in foreign countries could impose income taxes on US corporations not now subject to taxation without violating treaties with the US.

The Alaskan consumer (imported goods) and the Alaskan producer (exported goods) would pay for this new tax in higher freight rates. Depending on specific circumstances, this new tax could kill an existing export deal or cause a potential export deal to be stillborn. Alternatively, depending on specific circumstances, imposition of this new tax

could create additional collection and audit costs and result in no new revenue being collected.

I would question whether, in enacting and/or modifying ANITA, it was ever the legislature's intent to attempt to impose corporate income taxes on the foreign owners of foreign flag vessels or foreign registered aircraft. Nor do I believe that it is an unstated policy of the current administration to attempt to tax foreign owners of foreign flag vessels or foreign registered aircraft. I do believe that the Alaska Supreme Court had no idea of the potential consequences of their opinion. The net result is that the Alaska Supreme Court was in effect setting policy rather than interpreting law.

HB 472 is a simple, clear and unambiguous statement that it is not the policy of the State of Alaska to impose corporate income taxes on foreign owners of foreign flag vessels or foreign registered aircraft.

In the absence of enactment of such a bill, Alaska:

- Will have the dubious distinction of being the only state in the United States to attempt to tax entities that even the federal government does not tax.
- Sends a clear message that Alaska can't be trusted to abide by international trade treaties executed by the federal government.
- Add to the cost of foreign goods imported to Alaska and the cost of goods exported from Alaska.
- Would impose a new tax in the absence of any understanding of the revenue production potential, cost of administration, or probable consequences.
- Has the potential of severely effecting economic viability of existing resource export deals and possibly destroying the economic viability of developing resource export deals.

Thank you for the opportunity to present this testimony and I respectfully request that the Alaska Legislature address this important problem by passing HB 472 at the earliest possible date.

To use the words of an Assistant Commissioner of Revenue the State's action with regard to taxation of foreign flag vessels is "all over the Internet". It is only by decisive action by this legislature that the damage to Alaska's image as "open for business" can be minimized.

Cruise Industry Impacts on Local Governments in Southeast Alaska

An Assessment of the Effects of the Cruise Industry on Local Government Revenue and Expenditures

Executive Summary with Supplemental Juneau Results

Prepared for:
Southeast Conference
213 3rd Street, Suite 124
Juneau, Alaska 99801

Prepared by:

Juneau, Alaska

in association with

Klugherz & Associates

February, 1998

Introduction

The purpose of this summary document is to highlight Juneau results of the study of cruise industry impacts on local government revenues and expenditures in Southeast Alaska. This summary document includes the original Summary of Results along with specific Juneau-related findings.

Scope of Work

The full study measured the revenue and expenditure effects of the cruise industry on these local governments in Southeast:

- City of Ketchikan
- Ketchikan Gateway Borough
- City of Wrangell
- City of Petersburg
- City and Borough of Sitka
- City and Borough of Juneau
- City of Haines
- Haines Borough
- City of Skagway.

This study focused on local government revenues and expenditures during the 1997 cruise season. Only sales tax and user fee revenues earned by local governments were measured. More specifically, this included:

- **Sales Tax Revenues**: These include the sales taxes generated by local governments as a result of local spending by cruise ship passengers, crew and from cruise lines directly. Transient room taxes paid by cruise passengers are included.

- **User Fees and other revenues**: These revenues include fees paid by cruise lines and cruise passengers. This includes docking fees, lightering fees and other port charges, garbage disposal fees and charges for water sales. Examples of cruise passenger fees include museum admissions, and payments for medical services, among others.

Cruise industry related revenues not measured in this study include property tax payments made by businesses selling goods and services to cruise visitors or sales taxes paid by business people as they make local purchases in support of their operations. It also does not include any secondary or indirect tax revenues (such as sales and property tax payments made by employees (and their dependents) of the cruise industry. Estimating these kinds of indirect revenues would require very detailed and time-consuming analysis of each local economy and is therefore outside the scope of this study.

Local government expenditures measured are of two general types:

- **Marginal Costs:** These are direct *additional* or *new costs* incurred by local government over and above what would be incurred in the absence of the cruise industry. For example, if the police department does not need to hire additional patrol or traffic officers as a result of cruise traffic, there are no marginal costs in that department, even though officers spend some of their time serving cruise visitors.
- **Direct Overhead (Average Cost or Full Allocation):** These are costs allocated according to services rendered rather than dollars spent. Returning to our police department analogy, if a patrol officer is spending 25% of his time dealing with cruise visitors, the approach dictates that 25% of his salary and overhead should be allocated to the cruise visitor industry. The theory underlying this approach is that while there may be no new cost associated with serving visitors, there is an "opportunity cost" in terms of reduced service for residents.

Local government expenditures related to the cruise industry not measured in this study include indirect overhead costs. These are all local government costs associated with providing services to the population in Southeast Alaska employed by the cruise industry. These costs are not measured in this study because of the detailed surveying required to identify income, household size, housing status and other demographic characteristics of Southeast Alaska households earning income directly or indirectly from cruise visitor spending.

Methodology

Measuring local government revenues and costs associated with the cruise industry in Southeast is very difficult. In fact, local government impacts of the cruise industry specifically have never been measured (the effects of the tourism industry overall on the City and Borough of Juneau were addressed in a 1995 study, *Juneau's Visitor Industry: An Economic Impact Study*). The challenge facing researchers in this field is that virtually no cost data exists (i.e. local governments do not track expenditures made in support of visitors) and even the most detailed examination of local government budgets does little to shed light on the issue. After all, services provided to visitors are the same services provided to residents. Because most departments of local government do not track cruise-related impacts, cost estimates are based largely on the perceptions of department managers and experiences of departments in other communities. To identify cruise-related costs, interviews were conducted with approximately 75 local government officials from around Southeast Alaska. Though not cited individually in this report, these officials are the primary source of cost data.

Spending and tax revenue estimates made in this study are based in part on secondary data, notably the 1993 *Alaska Visitor Statistic Program* (AVSP), interviews with retailers and tour operators serving cruise passengers throughout Southeast, community-level business sales data, and other information.

Interested readers are urged to review the full report for more detailed discussion of methodology.

Regional Cruise Related Spending and Tax Revenues

- Cruise ship passengers spending in Southeast Alaska totaled approximately $160 million during the 1997, including approximately $120 million in taxable spending.
- Cruise ship crew generated $10 million in taxable spending in 1997 region-wide.
- Taxable spending in support of cruise line operations totaled just under $10 million in 1997. Cruise lines spent another $18 million on Maritime services, medical services for crew, state/federal government fees and other non-taxable services.
- Sales tax revenues generated as a result of all cruise-related spending, including passenger spending, crew spending and spending by cruise lines, totaled $7 million in Southeast in 1997.
- Port fees generated another $3.2 million in local government revenues in 1997.

Local Government Spending in Support of the Cruise Industry

- Southeast Alaska's local governments incur relatively few additional costs as a result of providing services to cruise lines, passengers and crew. In general, communities are able to provide basic services within their existing staffing and service infrastructure.
- Cruise passengers affect a broad range of local government services, with police departments the most significantly affected, but also emergency medical services, public utilities, and libraries, among others.
- The cost of providing these services is small compared to the local government revenues generated by the cruise industry.
- Region-wide, "marginal" or new costs to local governments totaled about $2.2 million. These are costs governments would not occur if not for the cruise industry.
- Region-wide "direct overhead" costs (local government overhead costs that can be allocated to the cruise industry, totaled $1.2 million). These are not new costs. Local governments would incur these costs even in the absence of the cruise industry.

Net Effect of the Cruise Industry on Local Government Finances

- Region-wide, local government revenues generated by the cruise industry totaled $10.2 million in 1997 while local government costs in support of the industry totaled $3.3 million.
- All cruise-affected local governments experience a net financial gain from the cruise industry, with the exception of Wrangell. The following table summarizes cruise-related revenues and costs by community.

Cruise-Related Revenues and Costs by Local Government, 1997

	Total Revenues	Total Costs	Net Gain (Loss)
City of Ketchikan	$2,891,300	$1,219,995	$1,671,305
Ketchikan Gateway Borough	809,000	13,800	795,200
Wrangell	40,400	41,950	(1,550)
Petersburg	27,500	4,700	22,800
Sitka	685,000	290,230	394,770
Juneau	4,254,000	1,296,850	2,957,150
City of Haines	329,000	247,691	81,309
Haines Borough	65,000	3,660	61,340
Skagway *	1,049,000	187,122	861,878
Totals	**$10,150,200**	**$3,305,998**	**$6,844,202**

*The distinction between marginal costs, direct overhead, and indirect overhead is somewhat arbitrary in a community as significantly effected by the cruise industry as Skagway. As a result, cruise-related costs as measured in this study may understate actual costs for Skagway. Though it is very likely that revenues exceed costs, a detailed local-level study would be required to accurately measure all of Skagway's costs and revenues associated with the cruise industry.

Juneau Revenues and Expenditures

- In 1997, 515,000 cruise passengers spent approximately $60 million in Juneau, including approximately $48 million in taxable spending.
- Cruise passengers spent at an average rate of $117 per person per visit during the 1997 season.
- Cruise ship crew visits totaled 226,000 in 1997, generating approximately $4.1 million in local taxable spending.
- Cruise lines purchased an estimated $4.2 million in goods and services from Juneau businesses in 1997.

- All cruise-related, taxable spending in Juneau totaled approximately $56 million in 1997. This spending generated $2.8 million in sales tax revenues for the City and Borough of Juneau.

- Revenues from various port fees paid by the cruise industry in Juneau totaled just under $1.5 million in 1997.

- Cruise-related revenue, including sales tax revenue and port fees paid to the CBJ, totaled just under $4.3 million in Juneau in 1997.

- Costs incurred by the City and Borough of Juneau in support of the cruise industry totaled $1.3 million in 1997. Debt service on waterfront redevelopment bonds account for about two-thirds of this total (this debt service is paid by cruise lines through port fees).

- Local government activities most affected by the cruise industry include the police department (approximately $220,000 in total marginal and direct overhead costs) and emergency medical services ($57,000 in total costs).

- In summary, cruise-related revenues in Juneau out-weigh costs by a ratio of over three-to-one. Revenues totaled $4.3 million while costs totaled $1.3 million, resulting in a net gain of approximately $3 million in 1997.

Cruise-Related Revenues and Costs
City and Borough of Juneau, 1997

1997 Cruise Visitor Spending	$60,163,000	
Estimated Taxable Passenger Spending	$47,763,000	
Estimated Crew Spending	$4,061,000	
Estimated Cruise Line Operations Spending	$4,158,000	
Total Taxable Cruise-Related Spending	$55,982,000	
Total Cruise Related Sales Tax Revenues	$2,799,100	
Total Port Fees	$1,455,000	
Total CBJ Revenues		$4,254,100
Marginal Costs	$926,000	
Direct Overhead Costs	$371,000	
Total CBJ Costs		$1,297,000
Net Gain (Loss)		$2,957,100

HB
475

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 475

Revision Date (Note if correction)		Dept. Affected	Labor
Title	Rehabilitation of Injured Workers	BRU	Workers' Compensation
		Component	Workers' Compensation
Sponsor	House L&C		
Requester	House L&C	Component Serial No.	344

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: None

POSITIONS

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

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

This bill proposes a provision for an automatic adoption by reference of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" to the most recent version. Activity as a result of this proposal can be absorbed into the existing workload.

Prepared by: Paul Grossi, Director   Phone 465-2790
Division: Workers' Compensation   Date 4/6/98
Approved by Commissioner: Tom Cashen   Date 4/6/98
Agency: Department of Labor

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/6/98

The LABOR AND COMMERCE Committee considered:

HB 475

HOUSE BILL NO. 475

REHABILITATION OF INJURED WORKERS

"An Act establishing a standard for determining when an injured worker is eligible for reemployment benefits and establishing a procedure for adopting a new, revised, or replacement standard for determining when an injured worker is eligible for reemployment benefits."

recommends it be replaced with the following committee substitute ______________________

[ ] the same title
[ ] a new title

[ ] additional referral to ______________ Committee
[ ] attached amendment(s)

ADOPTS: ______________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ______________

[X] zero fiscal note(s) Labor

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______________

[ ] zero fiscal note(s) ______________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			

CHAIR'S SIGNATURE [signature] 4-8-98

Alaska National
INSURANCE COMPANY

Mailed already—
SB 305 —
Duncan —
will Senate
Pass

FACSIMILE TRANSMISSION SHEET

DATE: 1/29/98 ~~1-25-97~~ TRANSMITTING: 2 PAGES (includes cover sheet)

TO: Norm

COMPANY: FACSIMILE NO: HB

FROM: Kill

REGARDING: Legislation

MESSAGE

Norm —

Attached per our previous discussions.

The underlined bold type is the proposed change.

If you have ?, please call Mary Moran, 266-9207 — She is our vocational counselor on staff.

See you soon —
Love
Kerry

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (907) 266-9227

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House of Representatives

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STATE CAPITOL
JUNEAU, AK 99801-1182
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FAX: (907) 465-2040

Representative Norman Rokeberg

JUST THE FAX

Date: 3/11/98

TO: LAA Legal - Mike Ford

FAX: 2029 Telephone: 2450

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 2 (including this page)

Comments: Please draft a House L+C Bill on the attached language

Thanks
Shirly

Have a Nice Day

As presently written, AWCB is interpreting AS 23.30.041(e) to require all parties to utilize the 1977, 4th Edition of the Dictionary of Occupational Titles (DOT) and the 1981 Selected Characteristics of Occupations defined in the Dictionary of Occupational Titles.

Requiring involved parties to rely on a publication which is 20 years old, solely because of flawed statutory language, is a disservice to all, particularly the injured worker.

The following noncontroversial addition to the statute would allow for the utilization of the most current information available when addressing issues under this section:

(e) An employee shall be eligible for benefits under this section upon employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's Selected Characteristics of Occupations Defined in the **most recently published** Dictionary of Occupational Titles, **including supplementary materials** for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the United States Department of Labor's Selected Characteristics of Occupations Defined in the **most recently published** Dictionary of Occupational Titles, **including supplementary materials**.

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Labor and Commerce Committee

MEMORANDUM

TO: Representative Pete Kott, Chairman
House Rules Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor and Commerce

DATE: April 18, 1998

SUBJECT: Hearing Request for HB 475 – Rehabilitation Standards for Injured Workers

---

I respectfully request that HB 475 be scheduled for floor debate. My office will provide a bill packet for use on the floor.

Thank you for your consideration in this matter. If you have any questions please contact Shirley Armstrong at 465-4968.

Attachments

ALASKA STATE LEGISLATURE
House of Representatives

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Labor and Commerce Committee

Sponsor Statement
House Bill 475

Establishing a standard for determining when an injured worker is eligible for reemployment benefits and establishing a procedure for adopting a new, revised, or replacement standard

---

This bill encourages government efficiency and allows the department to stay current when a new or revised edition of the United States Department of Labor, "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupations Titles" is issued.

The bill gives the board 90 days after the new edition is published to hold and hearing and adopt the new standard.

4/4/98

HB

477

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TINDALL BENNETT & SHOUP
A PROFESSIONAL CORPORATION
LAWYERS
510 L STREET, SUITE 500
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 278-8533
FACSIMILE (907) 278-8536

MEMORANDUM

TO: Anchorage Home Builders
Rob Gamel, Robin Ward, Doug Main,
Bill Taylor and Art Clark

FROM: Tindall Bennett & Shoup
Joe Miller

DATE: February 6, 1998

RE: Sectional Analysis of Revised Bill Draft Relating to Common Interest Communities (Work Order No. 20-LS0943\E

You have requested a sectional analysis of the above-described bill draft. Please note that this sectional summary should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 [AS 34.08.010]

1. The proposed changes to AS 34.08.010 track the 1994 Uniform Common Interest Ownership Act ("UCIOA") as drafted by the National Conference of Commissioners on Uniform State Laws. *See* UCIOA § 1-201.

2. A new section, AS 34.08.025 (discussed *infra*, is included in the Work Draft LS0943\E, 12/1/97 ("Work Draft"). This section states that the Alaska Common Interest Ownership Act ("the Act") may not apply to certain cooperatives. The revised[1] version of AS 34.08.010 recognizes this exception by including a reference to AS 34.08.025.

3. The revised version of AS 34.08.010 also changes the words "each common interest community" to "all common interest communities." The change has no substantive impact and conforms to the language of UCIOA § 1-201.

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[1]For purposes of this sectional analysis, "revised" statutes are the statutes amended by the Work Draft.

Section 2 [AS 34.08.025]

1. This is a new section that tracks UCIOA § 1-202.

2. This section permits very small cooperatives to opt out of most of the provisions of the Act.

3. AS 34.08.025 is similar to the former[2] AS 34.08.030 that excepts certain small planned communities from the reach of the Act. Both AS 34.08.025 and AS 34.08.030 provide, however, that small common interest communities may declare that the entire Act applies, notwithstanding the available exemptions.

Section 3 [AS 34.08.030]

1. The changes to this section generally track UCIOA § 1-203.

2. The revised version of AS 34.08.030 exempts both small planned communities with less than twelve units as well as planned communities with annual average common expenses below a certain level; the former AS 34.08.030 does not provide an exemption based on the number of units alone.

3. The revised version of AS 34.08.030 increases the annual average common expenses beyond that recommended by UCIOA § 1-203 for several reasons: (a) seasonal maintenance costs in Alaska (e.g., snow removal) are far higher than similar costs in the lower forty eight; and (b) insurance premiums and endorsements (e.g., earthquake endorsement) tend to be higher in Alaska.

Section 4 [AS 34.08.060]

1. The changes to this section generally track UCIOA § 1-206.

2. The former AS 34.08.060 is unnecessarily confusing. The revised version of AS 34.08.060 provides a relatively straightforward means by which common interest communities created before the effective date of the Act may amend their governing documents.

3. Instead of looking to prior law for amendment procedures, the revised version of AS 34.08.060 first requires that the

---

[2]For purposes of this sectional analysis, "former" statutes are the statutes presently in effect but subject to revision by the Work Draft.

community follow its governing documents in making any amendment pursuant to the subject section. If no such procedures exist, the community is required to follow the Act's current amendment procedures.

Section 5 [AS 34.08.070(b)]

1. This section originates from UCIOA § 1-207.

2. There are several grammatical/stylistic changes in the revised version of AS 34.08.070(b).

3. Insertion of the words "subject to this chapter" is necessary because certain common interest communities are not subject to the Act. See, e.g., AS 34.08.025, AS 34.08.[illegible].

4. The words "restricted exclusively to nonresidential use" track the language of UCIOA § 1-207.

Section 6 [AS 34.08.090]

1. The language in AS 34.08.090 regarding the filing and recording of plats and plans is not contained within UCIOA § 2-101, the uniform statute on which AS 34.08.090 is based.

2. The words "filed and recorded" should be abbreviated to "recorded" to follow the language regarding the recording of the declaration ("[t]he declaration must be recorded . . ."). There is no "filing," per se, of plans that are attached as declaration exhibits and then recorded in the appropriate Alaskan recording district.

3. The terms "independent registered engineer, architect, or land surveyor" are not defined by the Act. If taken literally, "independent" suggests that the engineer, architect, or surveyor may not have a relationship with the developer.

Compliance with this standard is problematic. Particularly in multi-phase common interest communities, developers may have long-term relationships with the individuals who certify the projects. Developers frequently retain certifiers who have a thorough understanding of the projects they are working with. The fact that a state registered engineer, architect, or land surveyor is required to certify the project provides sufficient protection. A false certification would put the engineer's, architect's, or land surveyor's license in jeopardy.

4. The requirement that the engineer, architect, or land surveyor be *registered* is an optional provision of UCIOA § 2-111, which was adopted by the former AS 34.08.090. This has been retained by the revised version of AS 34.08.090.

Section 7 [AS 34.08.130]

1. This section originates from UCIOA § 2-105.

2. Unlike UCIOA § 2-105(a)(6), AS 34.08.130(a)(6) does not require that a declaration describe those limited common elements listed in AS 34.08.170(b)(10). Since AS 34.08.170(b)(10) arguably includes reference to all limited common elements, the former AS 34.08.130(a)(6) releases the declarant from describing any limited common elements in the declaration.

3. The apparent purpose behind inclusion of the AS 34.08.170(b)(10) reference in the former AS 34.08.130(a)(6) is to eliminate the UCIOA requirement that some limited common elements be both described in the declaration and reflected in the plans. To preserve this intent, and to ensure that there remains an obligation to describe limited common elements which are not reflected in the plans, the revised version of AS 34.08.130 exempts from description in the declaration the limited common elements actually "shown on the plats or plans . . . ."

4. Reference to the new subsection AS 34.08.320(c)(2), discussed infra, is made at AS 34.08.130(a)(12)(A). Because use and occupancy may be restricted by the association under the new AS 34.08.320(c)(2), reference to use and occupancy in AS 34.08.130(a)(12)(A) is deleted and replaced with a reference to the new subsection.

5. The new AS 34.08.130(b) clarifies that the declarant retains the right, notwithstanding the association's new power to restrict use and occupancy, to establish restrictions in the declaration on use and occupancy of units in a common interest community.

Section 8 [AS 34.08.140(b)]

1. The language in the former AS 34.08.140(b) regarding the filing and recording of plats and plans is not reflected in UCIOA § 2-106(b), the uniform statute from which AS 34.08.140(b) originates.

2. The words "filed and recorded" should be abbreviated to "recorded" to follow the language regarding the recording of the declaration ("[t]he declaration must be recorded . . ."). There is no "filing," per se, of plans that are attached as a declaration exhibit and then recorded in the appropriate Alaskan recording district.

Section 9 [AS 34.08.140(d)]

1. The language in the former AS 34.08.140(d) regarding the filing and recording of plats and plans is not reflected in UCIOA § 2-106(d), the uniform statute from which AS 34.08.140(d) originates.

2. The words "filed and recorded" should be abbreviated to "recorded" to follow the language regarding the recording of the declaration ("[t]he declaration must be recorded . . ."). There is no "filing," per se, of plans that are attached as a declaration exhibit and then recorded in the appropriate Alaskan recording district.

Section 10 [AS 34.08.160(b)]

1. The language in the former AS 34.08.160(b) regarding the filing and recording of plats and plans is not reflected in UCIOA § 2-108(b), the uniform statute from which AS 34.08.140(b) originates.

2. The words "file and record" and "filed and recorded" should be abbreviated to "record" and "recorded," respectively, to follow the language regarding the recording of the declaration ("[t]he declaration must be recorded . . ."). There is no "filing," per se, of plans that are attached as a declaration exhibit and then recorded in the appropriate Alaskan recording district.

Section 11 [AS 34.08.160(c)]

1. The former AS 34.08.160(c) originates from UCIOA § 2-108(c).

2. The revised version of AS 34.08.150(c) adds the words "and not prohibited by the declaration" to emphasize that the allocation must conform to all provisions of the declaration, not just provisions drafted pursuant to 34.08.130(a)(7).

Section 12 [AS 34.08.170(b)]

1. The former AS 34.08.170(b) originates from UCIOA § 2-109(b).

2. The revised version of AS 34.08.170(b) tracks UCIOA § 2-109(b) by inserting the word "approximate" in AS 34.08.170(b)(6), (b)(7), and (b)(10). These changes are to ensure that the subject subsections are not misconstrued to require precise surveys of each and every horizontal and vertical boundary, and certain limited common elements.

3. The words "filed and recorded" in AS 34.08.170(b)(6) and (b)(7) should be abbreviated to "recorded." There is no "filing," per se, of plans that are attached as a declaration exhibit and then recorded in the appropriate Alaskan recording district. These changes track the language of UCIOA § 2-109(b)(6) and (b)(7).

4. The word "known" is inserted in the revised version of AS 34.08.170(b)(4) in recognition of the practical difficulties of certifying, every time plans are recorded,[3] that there are absolutely no encroachments throughout a common interest community. For a large community of several hundred units, such a certification could take weeks to complete and would be prohibitively expensive.

Section 13 [AS 34.08.170(d)]

1. The former AS 34.08.170(d) originates from UCIOA § 2-109(d).

2. The revised version of AS 34.08.170(d) tracks UCIOA § 2-109(d) by inserting the word "approximate" in AS 34.08.170(d)(1) and the words "the approximate location of" in AS 34.08.170(d)(2) and (d)(3). These changes are to ensure that the subject subsections are not misconstrued to require precise surveys of each and every horizontal and vertical boundary, and certain limited common elements.

---

[3]Plans must be amended and recorded whenever the declarant exercises its development rights. See 34.08.180(a). For example, every time a new phase is added, common elements are added, real estate is withdrawn, or other development rights are exercised, a new plan must be recorded. It is not unusual for communities to amend their development plans four or five times each year.

Section 14 [AS 34.08.170(f)]

1. The former AS 34.08.170(f) originates from UCIOA § 2-109(f).

2. The words "file and record" and "filed and recorded" in AS 34.08.170(f) should be abbreviated to "record" and "recorded," respectively. There is no "filing," per se, of plans that are attached as a declaration exhibit and then recorded in the appropriate Alaskan recording district. These changes track the language of UCIOA § 2-109(f).

Section 15 [AS 34.08.170(g)]

1. The former AS 34.08.170(g) originates from UCIOA § 2-109(g).

2. The terms "independent registered engineer, architect, or land surveyor" are not defined by the Act. If taken literally, "independent" suggests that the engineer, architect, or surveyor may not have a relationship with the developer.

   Compliance with this standard is problematic. Particularly in multi-phase common interest communities, developers may have long-term relationships with the individuals who certify the projects. Developers frequently retain certifiers who have a thorough understanding of the projects they are working with. The fact that a state *registered* engineer, architect, or land surveyor is required to certify the project provides sufficient protection. A false certification would put the engineer's, architect's, or land surveyor's license in jeopardy.

3. The requirement that the engineer, architect, or land surveyor be *registered* is an optional provision of UCIOA § 2-109(g), which was adopted by the former AS 34.08.170(g). This has been retained by the revised version of AS 34.08.170(g).

Section 16 [AS 34.08.170(h)]

1. UCIOA does not contain any provisions analogous to the former AS 34.08.170(h).

2. To conform this subsection to other provisions in the Act relating the recordation of certain documents, the words "filed and" are deleted.

Section 17 [AS 34.08.170]

1. The revised AS 34.08.170(i), a new subsection, tracks UCIOA § 2-109(h).

2. As long as the plats or plans reflect building locations and dimensions (e.g., condominium or cooperative building locations and dimensions) and units within such buildings are described elsewhere in the declaration, this subsection does not require that the plats and plans reflect the details of the individual units.

Section 18 [AS 34.08.180(a)]

1. The former AS 34.08.180(a) generally tracks UCIOA § 2-110(a).

2. The revised AS 34.08.180(a) deletes the words "[t]he declarant is the unit owner of the units created under the amendment" because "unit owner" is already defined under AS 34.08.990(33).

3. The words "file and record" in AS 34.08.180(a) should be abbreviated to "record." There is no "filing," per se, of plans that are recorded as exhibits to declaration amendments exercising development rights. These changes track the language of UCIOA § 2-110(a).

Section 19 [AS 34.08.200(b)]

1. The former AS 34.08.200(b) tracks UCIOA § 2-112(c).

2. The revised AS 34.08.200(b) deletes references to the word "file" because there is no "filing," per se, of plans that are recorded as exhibits to declaration amendments altering unit boundaries. This change tracks the language of UCIOA § 2-112(c).

Section 20 [AS 34.08.200]

1. The revised AS 34.08.200(c), a new subsection, tracks UCIOA § 2-112(b).

2. The revised AS 34.08.200(c) is designed to accommodate situations that arise when additions or other structures constructed by unit owners encroach into common elements. Under the present rule, AS 34.08.250(d), unanimous consent of unit owners would be required to permit any encroachment. The

revised AS 34.08.200(c) recognizes the difficulty of securing such approval and lowers the threshold of unit owner approval to 67%.

Section 21 [AS 34.08.250(a)]

1. The former AS 34.08.250(a) generally tracks UCIOA § 2-117(a).

2. The revised AS 34.08.250(a) conforms the language regarding percentage of unit votes to the language found in AS 34.08.200, AS 34.08.430, revised AS 34.08.260(a), and revised AS 34.08.260(m).

Section 22 [AS 34.08.250(c)]

1. The former AS 34.08.250(c) generally tracks UCIOA § 2-117(c).

2. The revised AS 34.08.250(c) deletes references to the word "file" because there is no "filing," per se, of plans that are recorded along with an amendment to declaration.

Section 23 [AS 34.08.250(d)]

1. The revised AS 34.08.250(d) tracks UCIOA § 2-117(d).

2. The revised AS 34.08.250(d) eliminates the requirement that amendments changing unit use restrictions receive unanimous unit owner approval. This revision recognizes the effect of the new subsection, AS 34.08.320(c)(2), discussed infra, that permits an association to restrict the uses and occupancy of units.

3. Elimination of the unanimous consent rule for changes to unit use restrictions also recognizes the effect of the new subsection, AS 34.08.250(f), discussed infra, which allows -- upon a vote of 80% of the votes in the association -- declaration amendments that "materially" restrict the permitted uses, behaviors, and/or occupancy standards for persons occupying units.

4. Referring to UCIOA § 2-105(a)(12) [AS 34.08.130(a)(12)], the official comment to UCIOA § 2-117(d) maintains that "[t]he deleted provision . . . created the anomaly that unanimous consent was required to amend a use restriction but a lesser number could amend restrictions on occupancy or alienation of a unit." UCIOA § 2-117(d), cmt. 4.

Section 24 [AS 34.08.250]

1. The new subsections AS 34.08.250(f) and (g) track UCIOA § 2-117(f) and (g).

2. Subsection AS 34.08.250(f) permits -- upon a vote of 80% of the votes in the association -- amendment to the declaration "materially" restricting the permitted uses, behaviors, and/or occupancy standards for persons occupying units. This change reflects the growing belief that a super-majority of unit owners should have the right, after the recordation of the declaration, to change use and occupancy standards.

3. The new subsection (f) permits material changes to use and occupancy standards only if previously permitted uses and behaviors are protected in a reasonable manner by the amendment.

4. The new subsection (g) permits the association to extend development rights with the vote of a super-majority of the votes in the association. This provision is designed to provide a solution to associations and unit owners who oppose the termination of development rights because project development may be incomplete.

Section 25 [AS 34.08.260(a)]

1. The former AS 34.08.260(a) generally tracks UCIOA § 2-118(a).

2. The revised AS 34.08.260(a) conforms the language regarding percentage of unit votes to the language found in AS 34.08.200, AS 34.08.430, revised AS 34.08.250(a), and revised AS 34.08.260(m).

Section 26 [AS 34.08.260(m)]

1. UCIOA does not contain any provisions analogous to the former AS 34.08.260(m).

2. The revisions to AS 34.08.260(m) require a simple majority of votes for an extension of the termination date of a common interest community. This approach eliminates the confusion of the subsection's original language.

Section 27 [AS 34.08.300]

1. The former AS 34.08.300 tracks UCIOA § 2-122.

2. The revised AS 34.08.300 eliminates the conflict with AS 34.08.250(d), a subsection that generally requires a unanimous vote to increase the number of units in a community.

Section 28 [AS 34.08.305]

1. The new section, AS 34.08.305, generally tracks UCIOA § 2-123.

2. AS 34.08.305 is designed to limit development constraints on larger common interest communities in Alaska. Because larger communities may take much longer to develop - thus making it much more difficult to predict their growth and consumer responsiveness - the new section:

   a. permits the declarant to determine the length of the period of declarant control, AS 34.08.305(g);

   b. does not restrict the addition of unspecified real estate to the community, AS 34.08.305(f);

   c. does not subject real estate to the Act which has not yet been conveyed to unit owners, AS 34.08.305(d); and

   d. by excluding from the declaration reference to the information listed in AS 34.08.130(a)(3)-(14), permits the declarant the flexibility to modify certain aspects of a community in response to changing circumstances, AS 34.08.305(b).

3. AS 34.08.305 ensures that the protections provided by the Act are retained by units created in a master planned community. The new section requires:

   a. a declaration for units conveyed to purchasers that contains the information listed in AS 34.08.130(a)(3)-(14) as well as a sufficient legal description of the real estate and units conveyed to purchasers in the master planned community, AS 34.08.305(c)(1) - (c)(2);

   b. that units offered for sale, but not yet conveyed to purchasers, are fully protected by the Act, AS 34.08.305(d);

   c. comprehensive public offering statement disclosures for units declared or offered for sale in the community, AS 34.08.305(e); and

d. a conspicuous disclosure of the community as a "master planned community" in the public offering statement, AS 34.08.305(e).

Section 29 [AS 34.08.310]

1. The former AS 34.08.310 tracks UCIOA § 3-101.

2. The revised AS 34.08.310 requires that a unit owners' association be organized no later than the date of the first conveyance of a unit "to a purchaser." Addition of the words "to a purchaser" ensures that a unit owners' association need not be organized when units have been conveyed only to declarants and/or dealers. See AS 34.08.990(26) (defining "purchaser" as a person "other than a declarant or dealer").

Section 30 [AS 34.08.320(a)]

1. The former AS 34.08.320(a) tracks UCIOA § 3-102(a).

2. The revised AS 34.08.320(a) contains several stylistic changes that do not create any real substantive impact. See AS 34.08.320(a)(1), (a)(8), and (a)(11).

3. The revised AS 34.08.320(a)(12) deletes reference to the word "filing" because there is no "filing," per se, of plans that are recorded along with an amendment to declaration.

4. The revised AS 34.08.320(a) adds a new subsection (18) that permits the association to require disputes in the community to be first submitted to nonbinding alternative dispute resolution before court action is initiated by any party.

Section 31 [AS 34.08.320]

1. The new subsections, AS 34.08.320(c) - (f), track UCIOA § 3-102(c) - (f).

2. Subsection AS 34.08.320(c) limits the association's power to restrict use of or behavior in units.

3. Subsections AS 34.08.320(d) - (f) empower associations to enforce the declaration and community rules directly against tenants who occupy units in the common interest community. Under existing statutes, associations' remedies are limited to actions or fines against individual unit owners, not their tenants. Particularly in a common interest community where

there is a high percentage of rental units, the new subsections provide associations with the means by which the rules of the community can be enforced.

Section 32 [AS 34.08.330(d)]

1. revised subsection AS 34.08.330(d) tracks UCIOA § 3-103(d).

2. The change to AS 34.08.330(d) responds to the master planned community exception to declarant control time limitations. See AS 34.08.305(g).

Section 33 [AS 34.08.330(f)]

1. The former AS 34.08.330(f) generally tracks UCIOA § 3-103(f).

2. The revision to AS 34.08.330(f) changes the maximum number of units under which a community may limit its board to one or two members. The revision makes AS 34.08.330(f) consistent with the other exceptions in the Act for small common interest communities. See, e.g., AS 34.08.050, AS 34.08.530, and revised AS 34.08.025.

Section 34 [AS 34.08.340(c)]

1. UCIOA does not contain any provisions analogous to the former AS 34.08.340(c).

2. To conform the language of AS 34.08.340(c) to the other provisions of the Act, including the relevant definitional subsection, AS 34.08.990(4), "common area" is changed to "common element."

3. The terms "independent registered engineer, architect, or land surveyor" are not defined by the Act. If taken literally, "independent" suggests that the engineer, architect, or surveyor may not have a relationship with the developer. The stan rd of "independance" is unnecessary. The fact that a state *registered* engineer, architect, or land surveyor makes the required certification provides sufficient protection. A false certification would put the engineer's, architect's, or land surveyor's license in jeopardy.

Section 35 [AS 34.08.380(a)]

1. The revised AS 34.08.380(a) generally tracks UCIOA § 3-107(a).

2. The former AS 34.08.380(a) omitted reference to unit owners' obligation to permit reasonable access for "replacement" purposes. The revised version of AS 34.08.380(a) eliminates this problem by using the words "those purposes" - a clear reference to the previously stated "maintenance, repair, and replacement" purposes.

Section 36 [AS 34.08.420]

1. The revised AS 34.08.420 generally tracks UCIOA § 3-111.

2. The revised AS 34.08.420(a) provides that a person cannot be held liable for the omissions or negligence of the association solely because of his status as a unit owner. In suits against associations, this change will help protect individual unit owners from being named as defendants.

3. The revised AS 34.08.420(c) cites the statute of limitation exception provided for in the revised AS 34.08.[illegible](d), discussed *infra*.

Section 37 [AS 34.08.430(a)]

1. The revised AS 34.08.430(a) generally tracks UCIOA § 3-112(a).

2. This revised version contains several stylistic changes that do not create any real substantive impact. *See, e.g.*, the replacement of "subjected to" with "encumbered by."

3. The former and revised versions of AS 34.08.430(a) do not track UCIOA with respect to the requirement that proceeds from common element encumbrances be treated as an association asset.

4. Unlike the former AS 34.08.430(a), the revised statute also mandates the equitable distribution of proceeds from the encumbrances of limited common elements.

5. The revised version of AS 34.08.430(a) eliminates reference to "common area" to conform the language of AS 34.08.430(a) to the other provisions of the Act, including the relevant definitional subsection, AS 34.08.[illegible](4).

Section 38 [AS 34.08.430(b)]

1. The revised AS 34.08.430(b) generally tracks UCIOA § 3-112(b).

2. This revised version contains several stylistic changes that do not create any real substantive impact. See, e.g., the replacement of "subjected to" with "encumbered by."

3. Revised AS 34.08.430(b) also eliminates reference to "common area" to conform the language of AS 34.08.430(b) to the other provisions of the Act, including the relevant definitional subsection, AS 34.08.990(4).

Section 39 [AS 34.08.430(g)]

1. The revised AS 34.08.430(g) generally tracks UCIOA § 3-112(g).

2. This revised version, although substantially longer than the former version, is intended to accomplish a similar result. The revised statute clearly sets forth a procedure by which the interests of unit lenders, whose liens extend to unit owners' undivided interests, are terminated.

Section 40 [AS 34.08.430]

1. The new subsection, AS 34.08.430(i), generally tracks UCIOA § 3-112(h).

2. The revised AS 34.08.430(i) explains the requirements for a valid consent or certificate under AS 34.08.430.

3. This new subsection also clarifies the priority of security interests senior to the declaration and the priority of interests created by the association after recordation of the declaration.

Section 41 [AS 34.08.440(h)]

1. Both the revised and former versions of AS 34.08.440(h) generally track UCIOA § 3-113(h).

2. The revised AS 34.08.440(h) deletes references to the word "file" because there is no "filing," per se, of plans that are recorded along with an amendment to declaration.

3. The remaining changes are stylistic and have no real substantive impact.

Section 42 [AS 34.08.450]

1. The revised AS 34.08.450 tracks UCIOA § 3-114.

2. The changes to AS 34.08.450 are stylistic and have no real substantive impact.

Section 43 [AS 34.08.470(a)]

1. The revised AS 34.08.470(a) generally tracks UCIOA § 3-116(a).

2. The revised AS 34.08.470(a) deletes "from the time the assessment or fine becomes due" because this phrase tends to create confusion with respect to priority issues.

3. By inserting the word "statutory" before "lien," the revised AS 34.08.470(a) emphasizes that the lien created is inchoate and arises upon recordation of the declaration.

4. The remaining changes to AS 34.08.470(a) are stylistic and have no real substantive impact.

Section 44 [AS 34.08.470(b)]

1. The revised AS 34.08.470(b) generally tracks UCIOA § 3-116(b).

2. The changes to AS 34.08.470(b) [illegible] grammatical stylistic and have no real substantive impact.

Section 45 [AS 34.08.470]

1. The new subsection AS 34.08.470(l) tracks UCIOA § 3-116(l).

2. This new subsection clarifies the legal right of courts to appoint receivers (at the request of the association) to collect unpaid assessments.

Section 46 [AS 34.08.510]

1. The revised AS 34.08.510 generally tracks UCIOA § 4-101.

2. The revised version of AS 34.08.510 cites the limited exception provided under AS 34.08.305(e) for master planned communities.

3. The revised version also deletes the subsections that restate the exemptions already provided under revised 34.08.030.

4. The revised version excludes nonresidential units from the requirements of AS 34.08.510 - 34.08.[illegible]. See 34.08.510(b)(7).

Section 47 [AS 34.08.520(c)]

1. The former AS 34.08.520(c) generally tracks UCIOA § 4-102.

2. The revised AS 34.08.520(c) specifies that either the dealer or declarant may be liable under AS 34.08.580 or AS 34.08.670 for false or misleading statements in, or omissions of material fact from, public offering statements.

Section 48 [AS 34.08.520]

1. UCIOA does not contain any provisions analogous to the new subsection, AS 34.08.520(e).

2. The new AS 34.08.520(e) empowers the real estate commission to develop a form public offering statement to facilitate the disclosures required by the Act.

Section 49 [AS 34.08.530(a)]

1. The former AS 34.08.530(a) generally tracks UCIOA § 4-103(a).

2. Because the former subsection AS 34.08.530(b) has been repealed, discussed *infra*, the exception cited in the revised AS 34.08.530(a) has been deleted.

3. The revised version of AS 34.08.530(a)(5) deletes the requirement that budgets and budget reserve calculations receive the certifications of "a certified architect or engineer." The declarant's and dealer's liability for false or misleading statements in, or omissions of material fact from, public offering statements offers

sufficient protection that the budget reserve calculations are accurate.

Moreover, to secure new certifications every time new budget calculations are reflected in a public offering statement could be prohibitively expensive because of the very frequent budget revisions in multi-phase common interest communities.

4. The revised version of AS 34.08.530(a)(11)(B) reflects the changes to AS 34.08.530(c), discussed *infra*.

5. The revised AS 34.08.530(a)(13) eliminates any representation by declarant or dealer concerning the escrow account required by AS 34.08.600. The former AS 34.08.530(a)(13) apparently assumes declarant or dealer control over the escrow agent. This, of course, is not the case. Consequently, it is appropriate for the declarant or dealer to re-state the legal requirement that a potential unit owner receive back his deposit if he properly cancels the contract under AS 34.08.580. However, the declarant or dealer is not in a position to make representations concerning a third party's actions.

6. The remaining changes to AS 34.08.530(a) are stylistic and have no real substantive impact.

Section 50 [AS 34.08.530(b)]

1. UCIOA does not contain any provisions analogous to the new subsection, AS 34.08.530(b).

2. The new subsection provides a workable mechanism by which purchasers, if they wish, can be notified by the declarant or dealer of changes to the community. The present standard of continuous notification, *see* 34.08.530(c), is not feasible because of the number of on-going changes in multiphase communities and because of the difficulty in locating individuals who are in the process of moving to a new residence.

Section 51 [AS 34.08.580(a)]

1. The former AS 34.08.580(a) tracks UCIOA § 4-108(a).

2. The revised AS 34.08.580(a) specifies "dealer or declarant" to be consistent with AS 34.08.500 and AS 34.08.530.

3. The revised AS 34.08.580(a) also acknowledges the requirements of the new subsection AS 34.08.530(b) with respect to public offering statement amendments.

Section 52 [AS 34.08.580(c)]

1. The former AS 34.08.580(c) generally tracks UCIOA § 4-108(c).

2. The revised version of AS 34.08.580(c) acknowledges the impact of AS 34.08.520 that permits the declarant to transfer responsibility to the dealer to provide public offering statements to a purchaser. With such a transfer of responsibility, the dealer may be liable for its failure to a provide a public offering statement to a purchaser.

3. The revised AS 34.08.580(c) also penalizes the declarant or dealer for a *knowing* failure to provide a public offering statement to a purchaser who suffers damages. The former AS 34.08.580(c) penalizes the declarant for accidental and unintentional failures to provide public offering statements.

Section 53 [AS 34.08.590(a)]

1. The revised AS 34.08.590(a) tracks UCIOA § 4-109(a).

2. The revised changes to AS 34.08.590(a)(10) and (a)(11) provide more certainty to an association's executive board when preparing resale certificates. Instead a requiring that the board make a statement regarding its "knowledge" of certain conditions, these subsections require disclosure only of written notices, given or received, relating to violations of use, occupancy, health codes, building ordinances, and other matters relating to the subject unit.

3. The new subsections, AS 34.08.590(a)(15) and (a)(16), require disclosure of additional material information regarding the unit for which the resale certificate is prepared. AS 34.08.590(a)(15) requires disclosure of pending sales or encumbrances of the common elements. AS 34.08.590(a)(16) requires disclosure of restrictions on use or occupancy that may effect the subject unit.

4. The remaining changes to AS 34.08.590(a) are stylistic and have no real substantive impact.

Section 54 [AS 34.08.590(d)]

1. UCIOA does not contain any provisions analogous to the former subsection, AS 34.08.590(d).

2. The revised AS 34.08.590(d) clarifies the confusing language of the former subsection.

3. The revised subsection also contains a number of stylistic changes that have no real substantive impact.

Section 55 [AS 34.08.600]

1. The former AS 34.08.600 tracks UCIOA § 4-110.

2. Both the former statute and UCIOA § 4-110 omit a dealer as the possible recipient of funds deposited in escrow. The revised AS 34.08.600 corrects this omission.

Section 56 [AS 34.08.640]

1. The former AS 34.08.640 originates from, but does not closely track, UCIOA § 4-114.

2. The implied warranties of the former statute make the declarant and dealers liable for one another's improvements in the common interest community. The revised AS 34.08.640 makes a number of changes to the former statute in recognition of the fact that declarants and dealers are distinct entities, individually responsible for their respective work.

3. Each of the implied warranties of the former AS 34.08.640 have been dissected into dealer's and declarant's implied warranties in the revised statute. This eliminates dealer's and declarant's joint and several liability for improvements in the common interest community.

Section 57 [AS 34.08.660(a)]

1. The revised AS 34.08.660(a) tracks UCIOA § 4-116(a).

2. The revised statute is identical to the former statute except that it includes citations to two new provisions which can toll the statute of limitations against the declarant and dealer for warranty breaches. See revised

AS 34.08.420; discussed supra; revised AS 34.08.660(d), discussed infra.

Section 58 [AS 34.08.660(b)]

1. The revised AS 34.08.660(b) generally tracks UCIOA § 4-116(b).

2. The revised AS 34.08.660(b) clarifies the awkward and confusing description of when a cause of action for breach of warranty of the common elements accrues. See revised AS 34.08.660(b)(2)(A) - (b)(2)(C).

Section 59 [AS 34.08.660]

1. The new subsection, AS 34.08.660(d), tracks UCIOA § 4-116(d).

2. This new subsection permits the association to establish a committee, independent of the declarant, to review warranty claims. This committee has the right to enforce warranty claims involving the common elements. If so established, the warranty period begins to run from the date of the committee's first meeting.

Section 60 [AS 34.08.670]

1. The new subsection, AS 34.08.670(b), generally tracks UCIOA § 4-117(b).

2. The Work Draft version of AS 34.08.670(b) contains an error. The word "until" should be inserted immediately before the word "after" at line 30, page 32.

3. The new subsection encourages alternative dispute resolution but guards against improper declarant influence during the period of declarant control by requiring concurrence of the independent committee established under AS 34.08.660(d).

Section 61 [AS 34.08.680]

1. The former AS 34.08.680 generally tracks UCIOA § 4-118.

2. The revised AS 34.08.680 deletes the word "conspicuously" with respect to the labeling of promotional material with the phrases "MUST BE BUILT" and "NEED NOT BE BUILT."

3. Given the descriptions of future improvements in the public offering statement required by AS 34.08.540(7), and the penalties for misrepresentation, fraud, and omission provided by AS 34.08.520(c), AS 34.08.670, and AS 34.08.750, it is unnecessary that developers clutter - with conspicuous labels - each and every document or diagram that may provide preliminary information to potential buyers.

<u>Section 62 [AS 34.08.690]</u>

1. The former AS 34.08.690 tracks UCIOA § 4-119.

2. The former statute makes the declarant responsible to complete all improvements that have ever been depicted on any "graphic representation" or site plan. The statute assesses the declarant with this liability even where such graphics or site plans have never been shared with a potential purchaser.

3. The revised statute restores some sensibility to AS 34.08.690. It makes the declarant liable to complete only those improvements shown on graphics which have been provided by the declarant to a purchaser.

4. The revised statute also clarifies that declarant is responsible for any damages caused to the community in the course of declarant's exercise of its rights under the Act. <u>See</u> AS 34.08.690(b).

<u>Section 63 [AS 34.08.700]</u>

1. The former AS 34.08.700 generally tracks UCIOA § 4-120.

2. The words "filed and recorded" are abbreviated to "recorded" in the revised AS 34.08.700 because there is no "filing," <u>per se</u>, of plans that are recorded with the declaration.

3. The former wording regarding certification of unit completion is compatible only with condominiums. In planned unit developments, for example, a unit is complete once a lot is platted and that lot is added to the common interest community by amendment to the

declaration. Thus, the phrase regarding certification is prefaced by the words "in the case of a condominium."

4. By permitting certain appraisers to certify completion, the former AS 34.08.700 conflicts with AS 34.08.090(b). The Act should settle on the certification standard first established in AS 34.08.090. Consequently, the revised AS 34.08.700 relies on AS 34.08.090(b).

Section 64 [AS 34.08.740(a)]

1. The revised AS 34.08.740(a) tracks UCIOA § 1-107(a).

2. The words "file and record" are abbreviated to "record" in the revised AS 34.08.740(a) because there is no "filing," per se, of plans that are recorded with the declaration.

Section 65 [AS 34.08.740(e)]

1. UCIOA does not contain any provisions analogous to the former subsection, AS 34.08.740(e).

2. Revised AS 34.08.740(e) eliminates reference to "common area" to conform its language to the other provisions of the Act, including the relevant definitional subsection, AS 34.08.990(4).

3. Unlike the former subsection, the revised subsection specifies what reallocation costs must be awarded by the court.

Section 66 [AS 34.08.820(a)]

1. The former AS 34.08.820(a) generally tracks UCIOA § 1-115(a).

2. The changes to AS 34.08.820(a) are grammatical/stylistic and have no real substantive impact.

Section 67 [AS 34.08.820(b)]

1. The revised AS 34.08.820(b) generally tracks UCIOA § 1-115(b).

2. With exception of the effective date change, the modifications to AS 34.08.820(b) are primarily grammatical/stylistic and have no real substantive impact.

Section 68 [AS 34.08.990(4)]

1. The revised AS 34.08.990(4) generally tracks UCIOA § 1-103(4).

2. The revised statute broadens the definition of common element to included "any real estate interests . . . that are for the benefit of unit owners." This permits access easements, parking easements, other forms of servitudes, and even real estate outside the common interest community to be common elements.

Section 69 [AS 34.08.990(11)]

1. The revised AS 34.08.990(11) is almost identical to UCIOA § 1-103(11).

2. The change in the definition of dealer from one who "owns six or more units" to one who "is in the business of selling units" eliminates the definitional problem that is encountered when a large dealer begins work in a common interest community but only owns one or two units. One who is not technically a "dealer" must be afforded all of the consumer protections afforded by the Act, including public offering statements.

Section 70 [AS 34.08.990(13')]

1. The former AS 34.08.990(13) is based on UCIOA § 1-103(13).

2. The revision to AS 34.08.990 ensures that all amendments to any document creating the common interest community is considered part of the declaration for the community.

Section 71 [AS 34.08.990(30)]

1. The former AS 34.08.990(30) generally tracks UCIOA § 1-103(29).

2. The only change to the revised AS 34.08.990(30) is the abbreviation of the words "filed and recorded" to "record" because there is no "filing," per se, of plans that are recorded with the declaration.

Section 72 [AS 34.08.990(33)]

1. The former AS 34.08.990(33) is based on UCIOA § 1-103(32).

2. The revised AS 34.08.990(33) attempts to remedy the confusion of the former definition for "unit owner." However, the revised statute needs additional clarification.

Section 73 [AS 34.08.990]

1. UCIOA does not contain any provisions analogous to the revised subsection, AS 34.08.990(34).

2. The definition of "knowingly" is provided because of the term's use in AS 34.08.530(c).

Section 74 [AS 34.08.990]

1. The new subsection AS 34.08.990 [illegible] tracks the introductory paragraph of UCIOA § 1-103.

2. The new subsection AS 34.08.990(b) provides the default rule that the Act's definitions apply to terms used in common interest communities' governing documents unless such documents specifically provide otherwise.

Section 75 [AS 34.08.530(c), AS 34.08.770, AS 34.08.790, AS 34.08.800]

1. AS 34.08.530(c), AS 34.08.770, AS 34.08.790, and AS 34.08.800 are repealed by the Work Draft.

2. AS 34.08.530(c) is now AS 34.08.530(b), with revisions.

3. The former AS 34.08.530(b) was not included in the Work Draft because small communities are already exempted from the disclosure requirements of this article. See AS 34.08.030.

4. AS 34.08.770 tracks the language of UCIOA § 1-110. This section is repealed so as to ensure that the Alaska law on common interest communities develops with some independence due to unique Alaskan circumstances.

5. AS 34.08.790 tracks the language of UCIOA § 1-112. Alaska contract law already prohibits unconscionable agreements. AS 34.08.790 is unnecessary.

6. AS 34.08.800 tracks the language of UCIOA § 1-113. Because every Alaska contract has an implied covenant of good faith and fair dealing, AS 34.08.800 is unnecessary.