

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11386 SENATE TRANSPORTATION

1 **COPIES** of this resolution shall be sent to the Honorable Chen Shui-bian, President of
2 the Republic of China; ^{ON THE WAY} the Honorable George W. Bush, President of the United States; the
3 Honorable Colin Powell, United States Secretary of State; the Honorable Tommy Thompson,
4 United States Secretary of Health and Human Services; the World Health Assembly; the
5 World Health Organization; Jack K. C. Chiang, Director General, Taipei Economic and
6 Cultural Office, 2001 Sixth Avenue, Suite 2410, Seattle, WA 98121; and to the Honorable
7 Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don
8 Young, U.S. Representative, members of the Alaska delegation in Congress.

SENATOR
JOHN J. COWDERY
Anchorage



Committees
Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council
State Affairs

Senate

January - May:
State Capitol, Suite 101
Juneau, Alaska 99801-1182
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Toll Free: 888-269-3879
Fax: 907-465-2069

May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
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Senator_John_Cowdery@legis.state.ak.us

SPONSOR STATEMENT FOR SJR 34

"A Resolution sending a message of goodwill to President Chen Shui-bian, and reaffirming the Alaska State Legislature's 2003 resolution urging the United States Congress to support the granting of Official Observer status to the Republic of China and to support negotiation of a free trade agreement"

The Republic of China (Taiwan) is an important trading partner of the State of Alaska. The President of Taiwan, Chen Shui-bian visited Alaska last November to reinforce the relationship between the state and his nation.

This resolution reaffirms the Alaska State Legislature's action in Legislative Resolve 29, which encouraged the United States Congress to endorse a request by the Republic of China (Taiwan) to be granted Observer Status at the World Health Organization. Legislative Resolve 29 also encouraged the United States Congress to negotiate a free trade agreement with Taiwan.

SJR 34 reaffirms, Legislative Resolve 29 and sends a message of goodwill to the President of Taiwan Chen Shui-bian for his reelection.

HB

97

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Official Business

Alaska State Legislature

House of Representatives

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

HB 97 am

House Letter of Intent

By Representatives Gruenberg, Dahlstrom, Kohring, Gara

It is the intent of the legislature that the developer work with the Government Hill Community Council to resolve their problems concerning the project.

Adopted by the House
April 30, 2003

COMMITTEE COPY

HB97

PACKET CONTENTS:

HB 97 (23-LS0436\H.A)

- B.** Alaska Railroad resolution 2003-41
- C.** Legislative Legal Services memorandum explaining why HB 97 is not 'local or special legislation.'
- D.** Federal Register page 14389, notice on Section 202 grant
- E.** Alaska Statutes: Sec. 42.40.285 relating legislative approval of AKRR leases
- F.** Sponsor Statement, revised 4-28-03
- G.** Journal Text referencing House letter of intent
- H.** Fiscal Note 1
- I.** Packet on Alaska Enfranchise Facilities, Inc.

ALASKA STATE LEGISLATURE

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Wasilla, Alaska 99654
(907) 373-1842
Fax (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2186
Fax (907) 465-3818

REPRESENTATIVE VIC KOHRING
DISTRICT 14

SPONSOR STATEMENT

HOUSE BILL 97

LONG-TERM LEASES OF ALASKA RR LAND

In 2002, the Legislature passed House Bill 298 to increase the maximum lease term without termination rights the Alaska Railroad can grant without Legislative approval to 55 years from the 35-year maximum set in 1984. The increase was to encourage economic development in communities along the Railbelt by making it easier for large commercial and residential developers to obtain financing through grants and other financing resources which require a longer lease. The 55-year lease maximum set forth in HB 298 went into effect May 30, 2002.

The Alaska Railroad can approve a lease in excess of 55 years; however, they must reserve the right to terminate the lease in the event the land is needed for railroad purposes. This reservation to terminate does not meet the requirements for HUD 202 Senior Housing Grants which have a 75-year minimum lease requirement.

A multi-family senior housing project has been planned for Government Hill in Anchorage and the developer was granted a 55-year lease by the Alaska Railroad Board for the project site. The developer has requested an extension of the lease so the project will qualify for the HUD 202 Grant program.

House Bill 97 will allow the Alaska Railroad to extend the developer's current 55-year lease, without the termination clause, allowing the developer to apply for HUD 202 funding.

revised 4-28-03
bill contact aide: Sharron O'Dell

HISTORY

Alaska Enfranchise Facilities, Inc., previously Alaska Evangelistic Fellowship, Inc., received its non-profit corporation status in 1991.

The purpose of the corporation as amended in March, 1999 states: "the purpose of this corporation is to (1) research community needs and target feasible projects; (2) build facilities to support programs by seeking incentives for developers; (3) organize and train program-specific management and volunteers; (4) coordinate the utilization of community-based services in the programs; (5) obtain support for quality-of-life improvements in completed facilities; (6) seek continuous evaluation of facility and program effects; and (7) involve local and regional leadership in the entire process."

Current activities include sponsoring and facilitating the development of owner corporations for seven (7) Section 202 Capital Advance, Supportive Housing for the Elderly, projects in Alaska.

CURRENT PROJECTS

Muldoon Manor

Project #176-EE007
20 units
2040 Muldoon Road
Anchorage, Alaska 99504
Funded 1995
Grant amount \$2,438,199
100% Occupied

Commodore Park Plaza

Project #176-EE010
25 units
10415 Jamestown Drive
Anchorage, Alaska 99507
Funded 1996
Grant amount \$3,034,440
100% Occupied

Russian Jack Manor

Project #176-EE015
20 units
1260 Delasala Place
Anchorage, Alaska 99508
Funded 1999
Grant amount \$2,821,200
100% Occupied

Sutton Manor

Project #176-EE025
5 units
15816 North Glenn Highway
Sutton, Alaska 99674
Funded 2001
Grant amount \$891,100
Under construction

Jewel Lake Plaza

Project #176-EE014
20 units
8300 Jewel Lake Road
Anchorage, Alaska 99502
Funded 1998
Grant amount \$2,351,000
100% Occupied

Sutton Annex

Project #176-EE028
5 units
15838 North Glenn Highway
Sutton, Alaska 99674
Funded 2002
Grant amount \$891,100
Design phase

Sullivan Manor

Project #176-EE027
20 units
Anchorage, Alaska
Funded 2002
Grant amount \$3,620,500
Design phase

The Board of Directors works with Manor Management of Alaska, Inc. (MMA) on the development and operation of its current facilities as well as future projects. MMA was formed as a sister corporation to Manor Management Services, Inc. (MMS) specifically to provide housing and related services to seniors in Alaska. MMA was incorporated on July 29th, 1992.

Board meetings are held on a quarterly basis with the management team. Board members are asked to review financial statements from each facility, comment on facility operations, and provide support for project funding, design phase to project completion.

Attached for your review are photographs from our current facilities. Should you have any questions please contact Patrick C. O'Toole, President, MMA, at 1-800-201-4922.

Alaska Enfranchise
Facilities, Inc.

Providing safe,
Clean and affordable
Housing for Alaskan
Seniors.

Alaska Enfranchised Facilities, Inc. respectfully requests your assistance in providing legislation allowing for the development of senior housing, on land leased from the Alaska Railroad Corporation, using HUD's 202 program.

HUD's 202 program was initiated in the 1960's as a low interest loan program, designed to provide rental housing for low income persons sixty-two years of age and older. The program has evolved over the years and in the mid 1990's the program became a grant program whereby 501 C-3 not-for-profit applicants would receive the grant funds and use the money to build and operate housing for low income people sixty-two years of age and older.

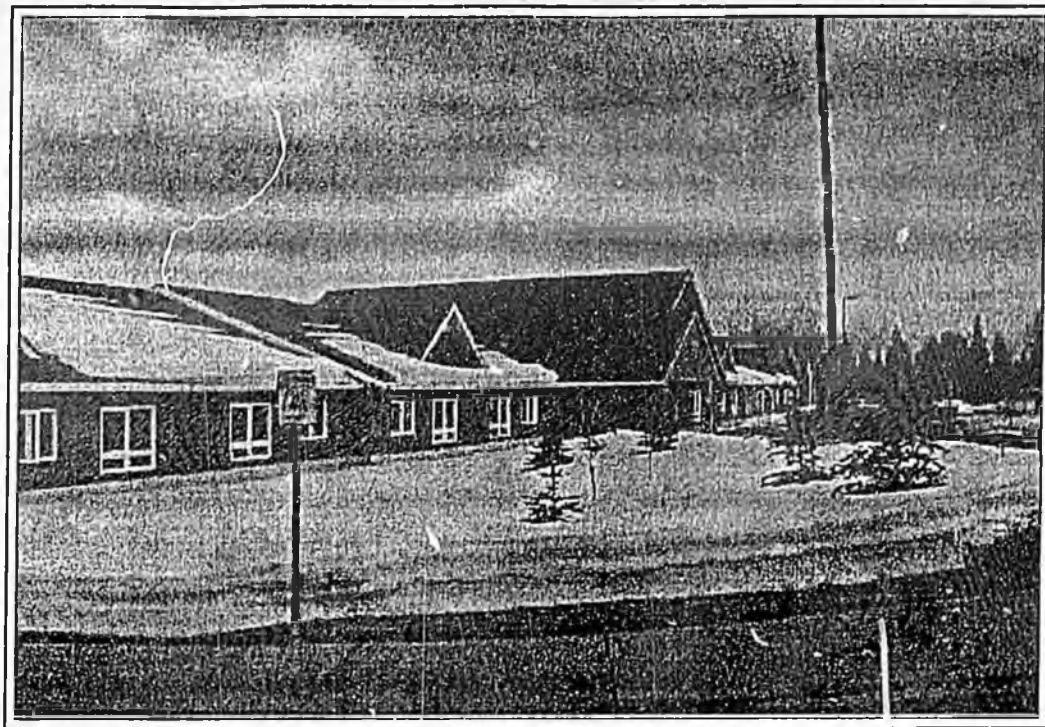
Each year HUD uses a formula to determine how many housing units to assign to each of the fifty states in two categories. The categories are rural and urban. Once the allocation is made the opportunity to apply for the grant funds is advertised to all potential not-for-profit applicants with a NOFA (notification of funding availability). The NOFA is typically posted on the HUD website each April.

The last several years Alaska's annual allocation has been twenty urban units and five rural units. The grant program allows for grant funded buildings to be built on leased land. Before the 2002 grant cycle the rules called for the duration of the lease to be a minimum of forty years. In the April 2002 NOFA the duration of the lease, necessary to build on leased land, was increased to seventy-five years.

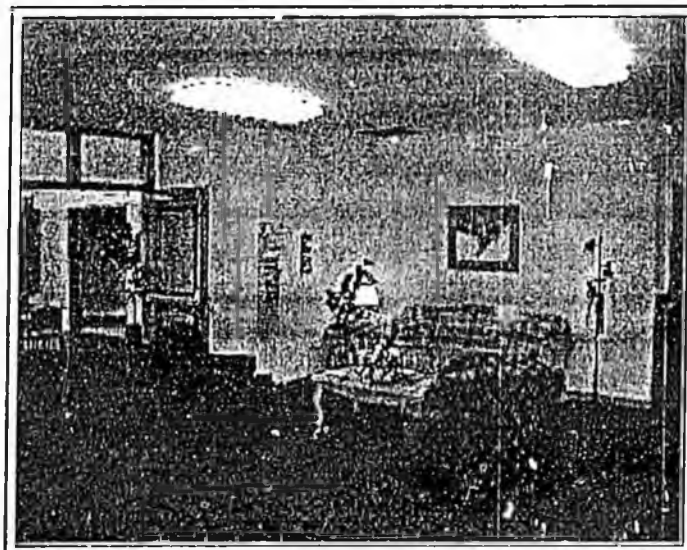
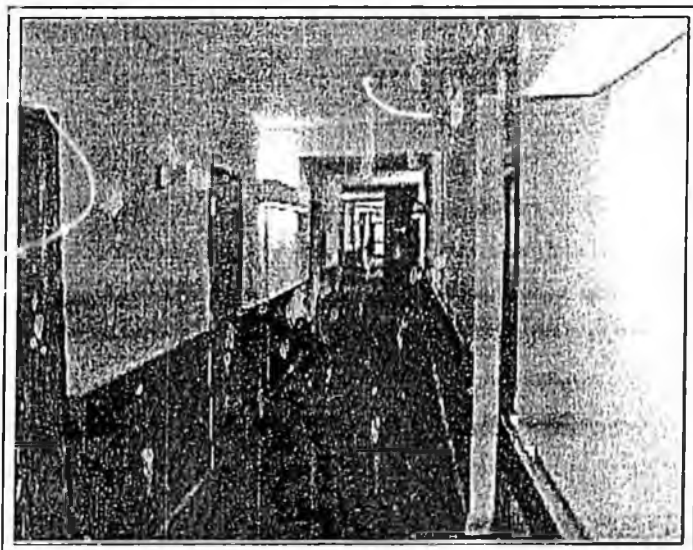
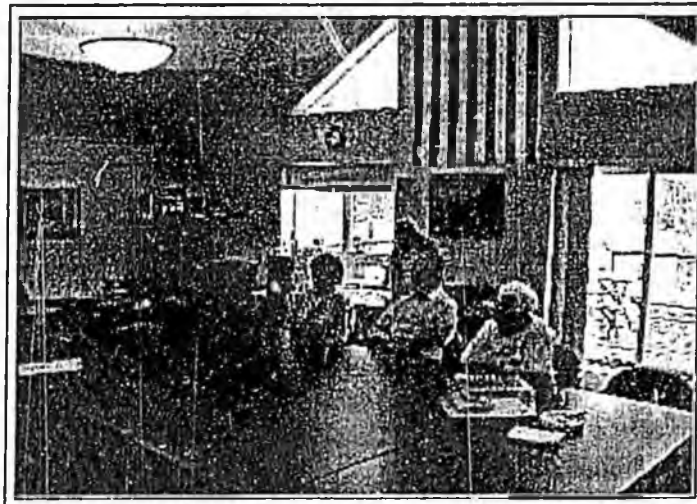
Alaska Enfranchised Facilities, Inc. has received seven grants in the past eight years. Four buildings are built and occupied in Anchorage. One building is under construction in Sutton, and later this summer another building will be built in Sutton and one in downtown Anchorage. These buildings total 115 housing units. Marc Marlow has acted as the contractor for most of the buildings built with the grants AEF has received to date. Mr. Marlow also acts as a facilitator for AEF, Inc., coordinating requirements for application in a timely manner as well as assisting in coordinating efforts after AEF, Inc. has received a grant.

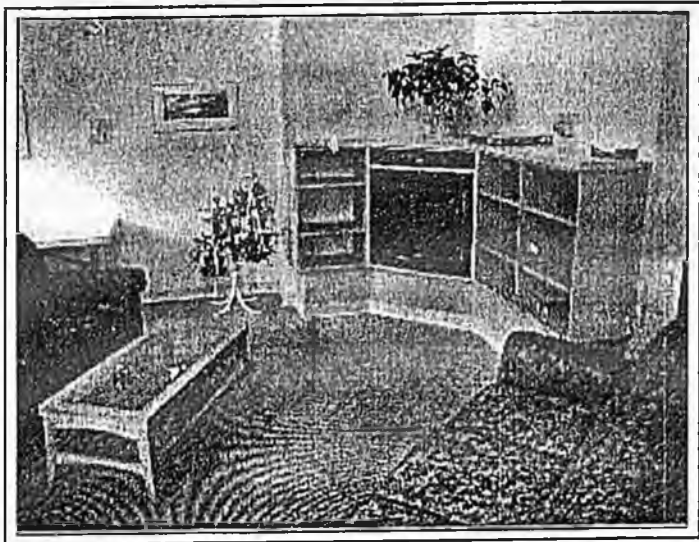
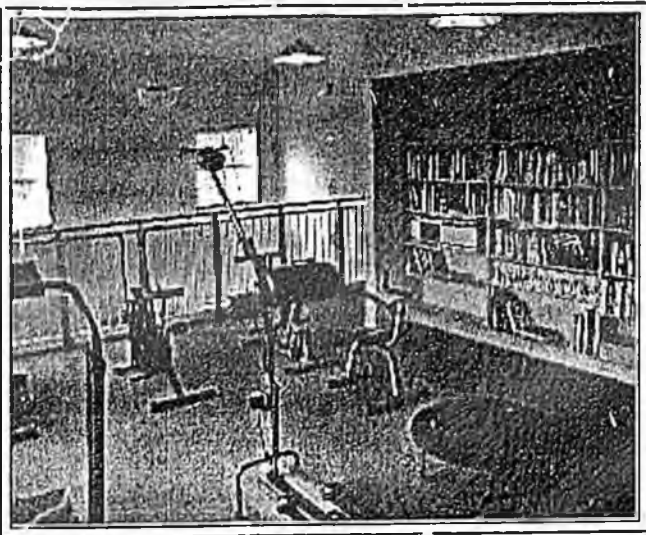
Please find attached a brochure of the buildings AEF, Inc. has finished for Alaska's elderly to date.

Alaska Enfranchised Facilities, Inc. desires to apply for the 2003 HUD 202 grant and hopes to build the building on Government Hill in Anchorage, on a piece of land that the Alaska Railroad Corporation owns. The Alaska Railroad Corporation is only allowed to lease land for a period not to exceed fifty-five years, unless a longer period is approved by the legislature. In so far as the 202 program requires a lease period of at least seventy-five years, the legislature's approval is hereby requested to allow the Alaska Railroad Corporation to lease the portion of Section 8, Township 13 North, Range 3 West, Seward Meridian that is owned by the Alaska Railroad Corporation for a period in excess of fifty-five years.



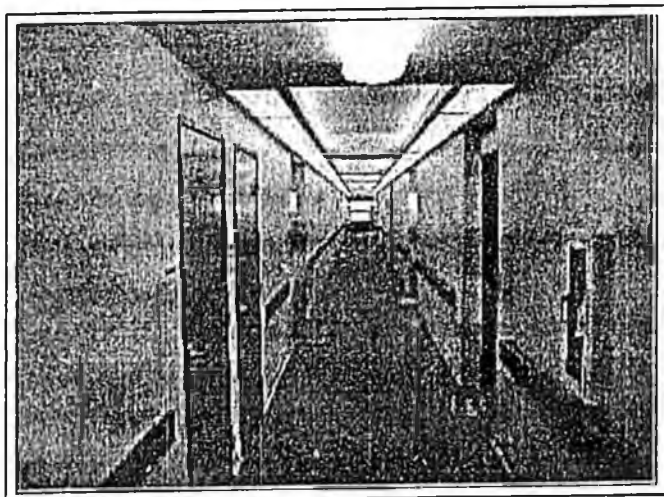
Muldoon Manor
#176-EE007





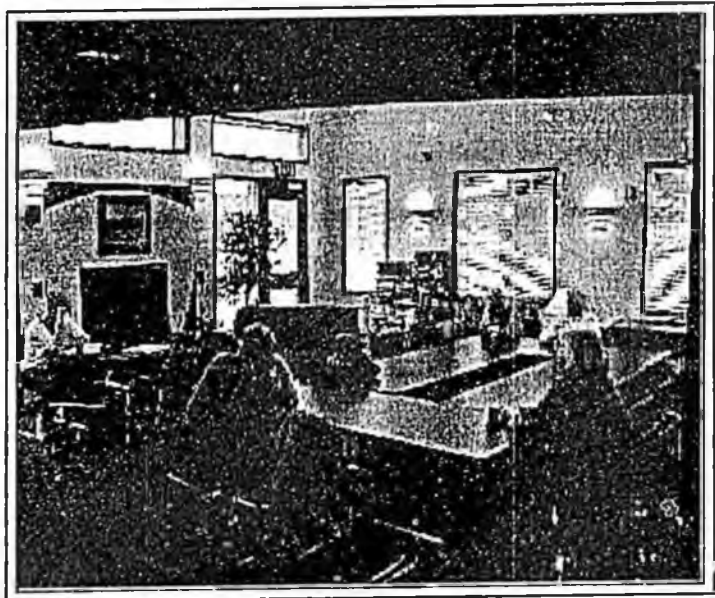
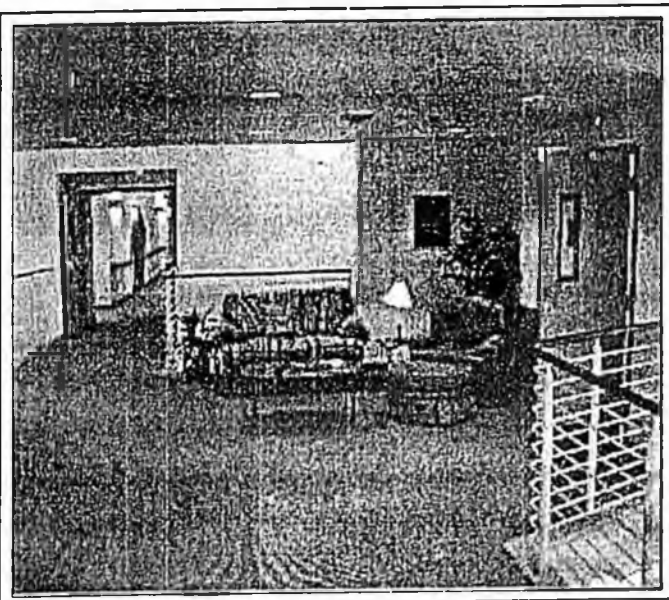
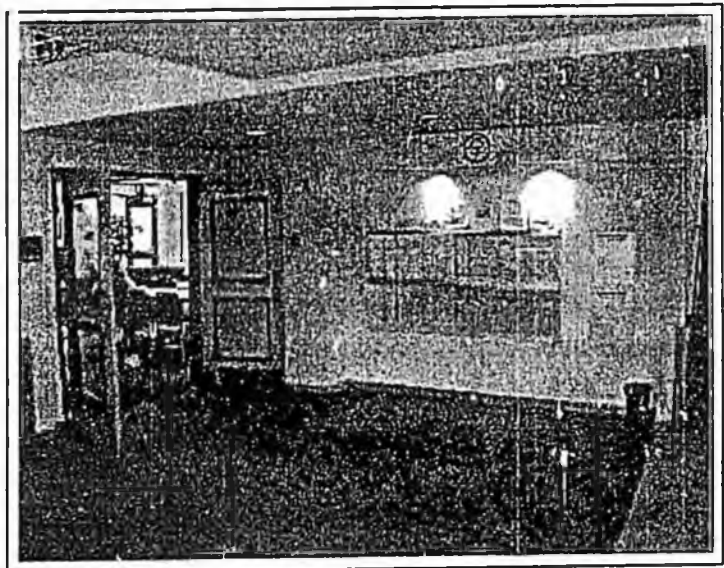
Russian
Jack
Manor

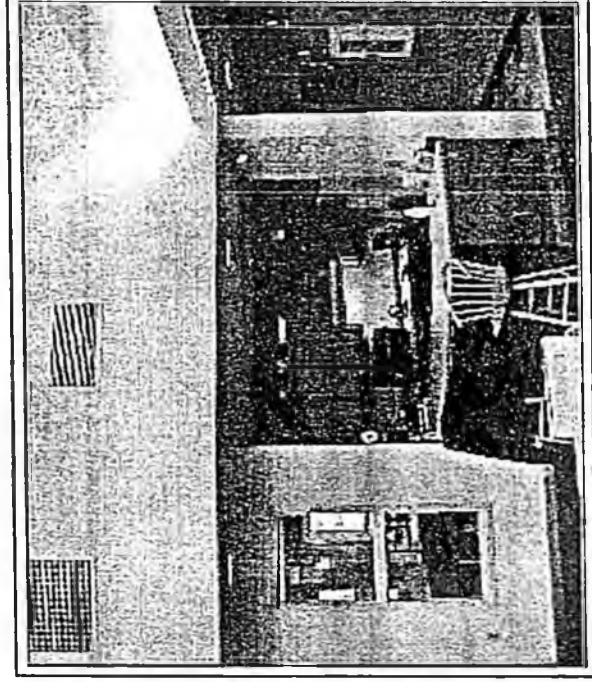
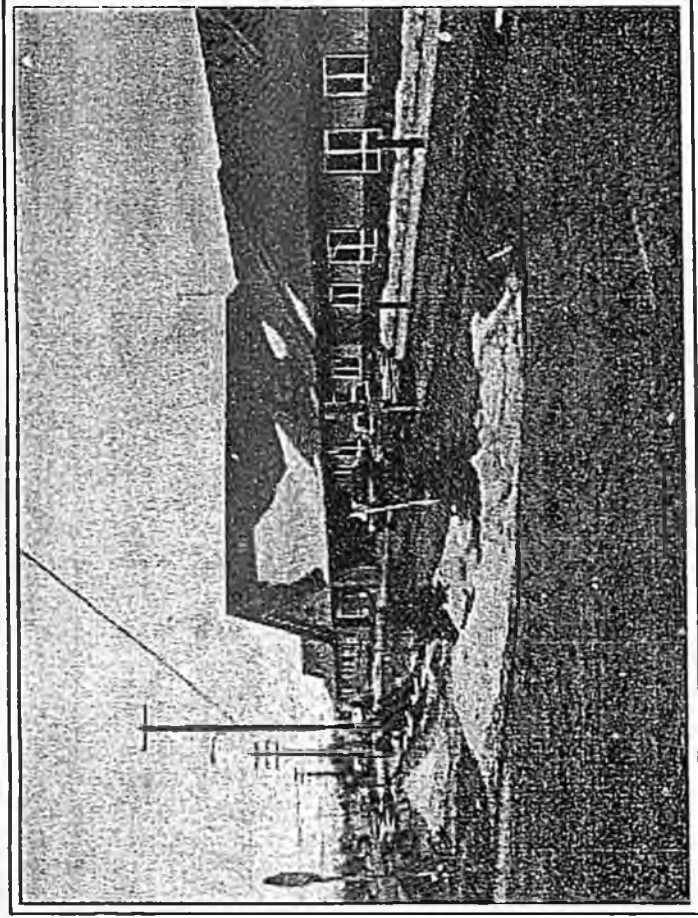
#176-EE015



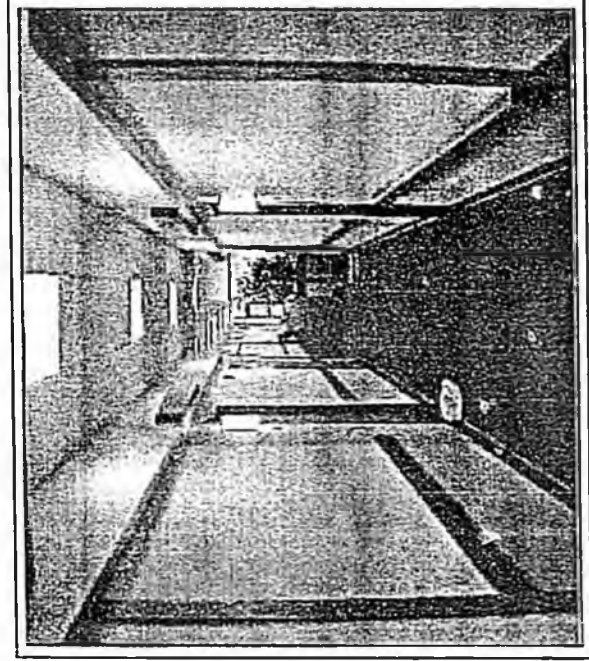


Commodore Park
Plaza
#176-EE010





Jewel Lake Plaza
#176-EE014



Alaska Railroad Corporation

Adopted: April 23, 2003

Resolution No. 2003-41

Relating to ARRC Contract No. 8371,
Ground Lease between ARRC and Marc
Marlow in Anchorage on Government
Hill

WHEREAS, ARRC Contract No. 8371, Ground Lease between ARRC and Marc Marlow, was approved by the Board of Directors at its June 27, 2002 regular Board meeting; and

WHEREAS, Mr. Marlow executed the lease effective September 1, 2002, for a 55-year lease of said property on Government Hill under Contract No. 8371; and

WHEREAS, Mr. Marlow has paid the lease rent pursuant to the contract since September 1, 2002; and

WHEREAS, Mr. Marlow desires to use said property to apply for a U.S. Department of Housing and Urban Development (HUD) Section 202 grant to construct a "HUD 202" senior housing project; and

WHEREAS, HUD requires a 75-year land lease for Section 202 projects to be constructed on leased land (said 75-year term to be existing as of the date of final approval by HUD of the grant application, currently estimated by Mr. Marlow to occur in early summer, 2004); and

WHEREAS, AS 42.40.285(4) (as amended in 2002) provides that ARRC may not lease its land for longer than 55 years without reserving the right to terminate the lease, unless the legislature approves the lease; and

WHEREAS, companion bills, HB 97 and SB 153, have been introduced for consideration by the 23rd Alaska Legislature, First Session, to allow ARRC to lease said property for a term of 75 years, subject to approval by ARRC Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the ARRC Board of Directors hereby approves amending the existing lease to Marc Marlow, ARRC Contract No. 8371, to provide for a 75-year term, subject to obtaining legislative approval, and further subject to receipt of a HUD Section 202 grant; and

Resolution No. 2003-41
Page 2

FURTHER RESOLVED, that said 75-year term shall commence and be effective upon the date of final approval by HUD of the grant application; and

FURTHER RESOLVED, it is the Board's intent and direction that, if Mr. Marlow (or his qualified assignee, if any) does not obtain such a HUD Section 202 grant, there shall be no extension of his lease term and Contract No. 8371 shall be limited to the existing term of 55 years.

This is to certify that I am the Secretary of the Board of Directors of the Alaska Railroad Corporation, and the above Resolution No. 2003-41 is a true and correct copy of the resolution adopted by the Alaska Railroad Corporation's Board of Directors at its regular meeting on April 23, 2003.

Date _____

James B. Blasingame
Board Secretary

Corporate Seal

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 31, 2003

SUBJECT: Is HB 97 local and special legislation (HB 97)

TO: Representative Vic Kohring
Attn: Sharron O'Dell

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether HB 97 is local or special legislation.

House Bill 97 provides legislative approval for a lease of specific land in Anchorage by the Alaska Railroad Corporation for a period of more than 55 years without reserving the right for the corporation to terminate the lease during the period of the lease. House Bill 97 is made necessary by AS 42.40.285 which prohibits the Alaska Railroad Corporation from engaging in certain activities (such as issuance of bonds, conveying its entire interest in corporation lands, extending rail lines, or entering into certain long term leases of corporation land) without the prior approval of the legislature by law.

Article II, sec. 19, Constitution of the State of Alaska limits the power of the Alaska Legislature to pass local or special legislation. Article II, sec. 19, Constitution of the State of Alaska states, in relevant part:

Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. . . .

Though the local and special legislation issue may well arise in the context of a lease of a specific parcel of land by an Act of the legislature, it is not certain that such a transfer would violate the prohibition against local and special legislation. The ultimate resolution of any local and special legislation challenge to a particular legislative transfer of railroad land to another entity would depend on the specific facts and circumstances surrounding the transfer.

The prohibition against local and special legislation has been construed several times by the Alaska Supreme Court. The fundamental test applied by the court in reviewing legislation under the local and special legislation clause focuses on the legislative goals underlying the legislation and the means used to advance the goals. If the legislation

Representative Vic Kohring
March 31, 2003
Page 2

bears a fair and substantial relationship to a legitimate state purpose, the legislation will be upheld, in spite of incidental local or private advantages. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. den., 432 U.S. 901 (1977). In the Lewis case, the court agreed that legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. Id. at 643. The case involved the Cook Inlet land exchange and the court accepted the premise that the land transfer, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of statewide significance.

The Alaska Supreme Court has also rejected a local and special legislation challenge to the legislative approval of modifications to oil and gas leases in the Northstar oil field at Prudhoe Bay. Baxley v. State of Alaska, 958 P.2d 422 (Alaska 1998). The court found that several factors of the leases distinguished them from other state oil and gas leases: numerous key terms of the leases were unique to the Northstar leases and the development history of the field was unique. The extent of legislative deliberations regarding the Northstar leases, the legislative findings supporting the approval of the modifications to the leases, and the narrow focus of the legislation all emphasized the uniqueness of the legislation. The unique nature of the legislation was an important factor in the court's determination that the legislation did not violate the prohibition against local and special legislation.

In a case where an Act was found to be impermissible local legislation, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the existing general law scheme for the establishment of boroughs, the Act was unconstitutional local legislation. Abrams v. State, 534 P.2d 91 (Alaska 1975).

Though the ultimate determination of whether certain legislation is local or special legislation lies with the Alaska Supreme Court, there is sufficient reason to believe that legislative approval of a specific lease as provided by HB 97 would be viewed by the court as similar to the legislative approval of the leases in the Baxley case. The legislature has provided by law that long term leases of Alaska Railroad Corporation land without a right to terminate the lease is prohibited unless approved by the legislature. Thus there is no way other than specific legislation to approve such leases. Land of the corporation is unique because the railroad and its land are subject to possible sale or lease. Under AS 42.40.940, the governor may sell or lease the Alaska Railroad and dissolve the corporation if the state can be assured that the railroad would continue to operate and if the state would receive the amount of money that it has expended for the railroad. The sale or lease of the railroad is itself subject to legislative approval by law. The legislature has a significant interest in the land of the corporation. The land of the corporation is one of the significant assets of the railroad. If the land of the railroad can be encumbered for long periods of time through long term leases issued by the corporation, then there is a risk that the marketability of the railroad would be impaired. The legislature has thus reserved to itself the power to approve certain actions of the

Representative Vic Kohring
March 31, 2003
Page 3

corporation that would affect the marketability of the railroad. The unique status of corporation land and the statutory requirement for legislative approval of certain long term leases by the corporation would support a determination that HB 97 is not local or special legislation if it were ever challenged on those grounds.

* * *

As the consequence of the requirement for legislative approval of certain actions by the Alaska Railroad Corporation under AS 42.40.285, the legislature has acted three times to approve the lease, transfer, or exchange of land by the corporation. The corporation was authorized by the legislature to enter into a long term lease of railroad land at Healy in 2000. Ch. 91, SLA 2000. The corporation was authorized by the legislature to acquire the DeLong Dock in Whittier from the federal government and to dispose of certain land in Whittier in 2000. Ch. 100, SLA 2000. The corporation was authorized by the legislature to transfer several parcels of land as part of land exchanges with the federal government, private corporations and individuals, and with state agencies in 2000. Ch. 116, SLA 2000.

If I may be of further assistance, please advise.

GU:lmb
03-115.lmb

Alaska Railroad Corporation

Sec. 42.40.285. Legislative approval required.

Unless the legislature approves the action by law, the corporation may not

- (1) exchange, donate, sell, or otherwise convey its entire interest in land;
- (2) issue bonds;
- (3) extend railroad lines; this paragraph does not apply to a spur, industrial, team, switching, or side track;
- (4) lease land for a period in excess of 35 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes;
- (5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with
 - (A) the Anchorage-Wasilla line change project on Elmendorf Air Force Base and Fort Richardson;
 - (B) the Fairbanks intermodal rail yard expansion project;
 - (C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).

History -

(Sec. 2 ch 153 SLA 1984; am Sec. 4 ch 59 SLA 1999)

Cross References -

For legislative approval of a lease of certain Alaska Railroad Corporation land at Healy for a period in excess of 35 years without reservation of the right of early termination, see sec. 3, ch. 91, SLA 2000 in the 2000 Temporary & Special Acts.

For legislative approval related to the Delong Dock at Whittier, see ch. 100, SLA 2000 in the 2000 Temporary & Special Acts.

For legislative approvals of the exchange of certain Alaska Railroad Corporation land with Eklutna, Inc., see sec. 1, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; of the exchange of certain Alaska Railroad Corporation land with the United States Department of the Army and the Department of the Air Force, see sec. 2, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; of the exchange of certain Alaska Railroad Corporation land with Chugach Alaska Corporation, see sec. 3, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts; of the exchange of certain Alaska Railroad Corporation land with the Municipality of Anchorage and with certain named individuals having adjacent parcels of land, see sec. 4, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts. For legislative intent and authorization giving the Alaska Railroad Corporation permission to engage in land transfers or conveyances affecting Chugach State Park, see secs. 5 - 8, ch. 116, SLA 2000 in the 2000 Temporary & Special Acts.

Amendment Notes -

The 1999 amendment, effective September 8, 1999, added paragraph (5) and made a related stylistic change.

**DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT**

**SECTION 202 SUPPORTIVE HOUSING
FOR THE ELDERLY**

Billing Code 4210-32-C

categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and RHS; e.g., public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition; the types of supportive services arrangements currently available in the area; and the use of such services as evidenced by data from local social service agencies or agencies on aging. Also, a description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the project.

(4)(b) A description of how the proposed project will benefit the target population and the community in which it will be located.

(4)(c) A description of the project, including the following:

(4)(c)(i) A narrative description of the building design, including a description of the number of units with bedroom distributions, any special design features, amenities, and/or community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

Note: If these community spaces, amenities, or features would not comply with the project design and cost standards of 24 CFR 891.120 and the special project standards of 24 CFR 891.210, you must state your ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features;

(4)(c)(ii) A description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(4)(c)(iii) If applicable, a description of any plans and the actions you have taken to create a mixed-finance/mixed-use project by developing additional units (i.e., in addition to the Section 202 units) with the use of Section 202 capital advance funds in combination with other funding sources. Specify the number of Section 202 units and the number of additional units from non-Section 202 funding sources. Provide

copies of any letters you have sent seeking outside funding for the non-Section 202 units and any responses thereto. You also must demonstrate your ability to proceed with the development of a Section 202 project that will not involve mixed-financing or a mixed-use purpose, as proposed in your application, in the event you are later unable to obtain the necessary outside funding or HUD disapproves your proposal for mixed-financing or a mixed-use.

Note: Approval of the Section 202 capital advance will not necessarily be approval of the mixed-finance/mixed-use proposal. If approved for a reservation of capital advance funds, you will be required to submit, after reservation of capital advance funds, a detailed proposal outlining how you will fund both development and operation of the additional units in accordance with HUD instructions that will be issued later. Based on the strength of your organization and HUD's prior experience with your projects, as well as your outline of your intentions, at the time of making the fund reservation, HUD will determine whether you will be permitted to submit a mixed-finance/mixed-use proposal at a later time. Only those Sponsors that indicate in their application for a fund reservation an intention to propose additional units will be eligible to submit, at a later time, a mixed-finance/mixed-use proposal for additional units. (A mixed-finance/mixed-use project, as used here, does not include the development of Section 202 units using secondary/supplemental financing or the development of a mixed-use project in which the Section 202 units are mortgaged separately from the other uses of the structure).

(4)(c)(iv) Describe your plan for completing the proposed project within the initial 18-month term of the fund reservation (optional).

(4)(d) Evidence that the Sponsor has site control and permissive zoning, including the following:

(4)(d)(i) Acceptable evidence of site control is limited to any one of the following:

(A) Deed or long-term leasehold which evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at least 75 years;

(B) Contract of sale for the site which is free of any limitations affecting ability to deliver ownership to you after you receive and accept a notice of Section 202 capital advance. The only condition for closing on the sale can be your receipt and acceptance of the capital advance. The contract of sale cannot require closing on a date earlier than the Section 202 closing.

(C) Option to purchase or for a long-term leasehold which must remain in effect for six months from the date on which the applications are due, and

must state a firm price binding on the seller. The only condition on which the option may be terminated is if you are not awarded a fund reservation. The option must be renewable at the end of the six months option period.

(D) Where the proposed site is subject to a mortgage under a HUD program (e.g., an earlier 202 or an FHA insured mortgage), you must submit evidence that consent to release of the site from that mortgage has been obtained or has been requested from HUD and from the mortgagee, if other than HUD.

(E) For sites to be acquired from a public body, evidence is needed that the public body possesses clear title to the site and has entered into a legally binding agreement to lease or convey the site to you after you receive and accept a notice of Section 202 capital advance. Where HUD determines that time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating that conveyance or leasing of the site is acceptable without imposition of additional covenants or restrictions and only contingent on the necessary approval action. Such a letter commitment will be considered sufficient evidence of site control.

Note: For this funding cycle, New York City-owned sites that are designated as community gardens and are involved in litigation will not meet site control requirements due to litigation involving those sites.

(4)(d)(ii) Whether you have title to the site, a contract of sale, an option to purchase, or are acquiring the site from a public body, you must provide evidence (a title policy or other acceptable evidence) that the site is free of any limitations, restrictions, or reverts which could adversely affect the use of the site for the proposed project for the 40-year capital advance period under HUD's regulations and requirements (e.g., reversion to seller if title is transferred). If the title evidence contains restrictions or covenants, copies of such covenants or restrictions must be submitted with the application. If the site is subject to any such limitations, restrictions, or reverts, the application will be rejected. Purchase money mortgages that will be satisfied from capital advance funds are not considered to be limitations or restrictions that would adversely affect the use of the site. If the contract of sale or the option agreement contains

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 97
(H) Publish Date: 3/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Long Term Leases of Alaska Railroad Land BRU Alaska Railroad Corporation
Sponsor Representative Kohring Component _____
Requester House Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 97 would authorize the Alaska Railroad Board of Directors to extend the term of a current lease under Alaska Railroad Contract No. 8371 beyond 55 years. If HB 97 bill passes, and the Alaska Railroad Board of Directors approves the lease proposal, revenue derived from the lease would be extended at the current fair market value rate, subject to the terms and conditions of the lease agreement.

Prepared by: Wendy Lindskoog, Director External Affairs Phone 907-265-2498
Division: Alaska Railroad Corporation Date/Time 3/5/03 4:48 PM
Approved by: Edgar Blatchford, Commissioner Date 3/5/2003
Agency: Department of Community & Economic Development

HB

124

Alaska State Legislature

Representative Jim Holm

District 9

Session

Capitol Building, Room 110

Juneau, AK 99801

Phone: (907) 465-3466

Fax: (907) 465-2937



Interim

119 N. Cushman St.

Fairbanks, AK 99701

Phone: (907) 456-7423

Fax: (907) 451-9293

HB124

SPONSOR STATEMENT

“An Act relating to commercial motor vehicle drivers and their employers and to railroad-highway grade crossings; and providing for an effective date.”

Although federal law and commercial driver training already state that certain commercial vehicles must approach with flashers and stop at all rail crossings, Alaska law currently does not require this. State law must be brought into compliance with Federal requirements in order to avoid the loss of between \$20,000,000 and \$40,000,000 in federal highway monies. HB124 will conform Alaska law to federal requirements.

The bill would prohibit an employer of a commercial vehicle driver from knowingly allowing, authorizing, or encouraging the driver to violate any federal, state, or municipal code or regulation relating to railroad-highway crossings. It also would require the court to disqualify a commercial motor vehicle driver for certain periods of time upon conviction of a federal, state or municipal code or regulation relating to railroad-highway crossings.

The administration has expressed support for this bill and the federal deadline for compliance has already passed; therefore, I urge prompt consideration of this bill in order that we do not lose federal Highway funds.

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

House District 9

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

House Bill 124

COMMERCIAL MOTOR VEHICLE DRIVERS/EMPLOYER

Sectional Analysis

Section 1 of the bill amends responsibilities of employers of commercial vehicle drivers to encourage compliance with federal code regarding railroad-highway grade crossings.

Section 2 of the bill amends responsibilities of employees (drivers) to require compliance with federal code regarding railroad-highway grade crossings.

Section 3 prescribes drivers' penalties for non-compliance.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB124
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title An Act relating to commercial motor vehicle BRU Measurement Standards & CVE
drivers and their employers Component Measurement Standards & CVE
 Sponsor Holm
 Requester HTRA Component No. 2332

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 If this legislation does not pass, the state of Alaska will receive sanctions by the Federal Highway Administration for not complying with Federal Motor Carrier Safety laws. The sanction will withhold 5% of the state's annual federal surface transportation funding, approximately \$17.5 million/year. This will result in a corresponding \$17.5 million reduction of the state's highway construction capital budget.

Prepared by: Dennis R. Poshard Phone 465-3900
 Division Special Assistant to Commissioner Date/Time 3/5/03 10:26 AM
 Approved by: Commissioner Mike Barton Date 3/5/2003
 Agency Alaska Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 124
 () Publish Date: _____

Revision Date/Time (Note if correction): N/A Dept. Affected: Public Safety
 Title An act relating to commercial motor BRU AST Detachment
vehicle drivers and their employers Component AST Detachment
 Sponsor Representative Holm
 Requester House Transportation Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
 Division Alaska State Troopers Date/Time 3/3/03 3:09 PM
 Approved by: William Tandeske, Commissioner Date 3/3/2003
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 124
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to commercial motor BRU Motor Vehicles
vehicle drivers..... Component _____
 Sponsor Rep Holm
 Requester (H) TRA Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The ICC Termination Act of 1995 (Public Law 104-88) contained a provision that required the Federal Highway Administration (FHWA) to adopt regulations requiring states to disqualify drivers of commercial vehicles that violate federal, state, or local laws or regulations pertaining to a railroad-highway grade crossing. The act also prohibited employers from allowing drivers to violate these provisions.

The number of railroad-highway grade crossing violations in Alaska is very low and it is not anticipated that this provision will have any substantial effect on drivers, employers, or state agencies.

Prepared by: Charles R. Hosack Phone 269-5559
 Division: Motor Vehicles Date/Time 2/28/03
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Department of Administration

STATE OF ALASKA

Interim:

119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
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Session:

State Capitol Building
Juneau, Alaska 99801
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Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

DATE: April 3, 2003

TO: Senator John Cowdery, Chair
Senate Transportation Committee

FROM: Representative Jim Holm

RE: HB 124

Please schedule HB 124, COMERCIAL MOTOR VEHICLHLE OPERATION RELATING TO RAILROAD-HIGHWAY GRADE CROSSINGS, for hearing in the Senate Transportation Committee at your earliest convenience.

Back-up information is attached.

Thank you very much for your help with this bill.

HB

127

MEMORIALS ON THE RIGHT OF WAY NATIONWIDE SURVEY

STATE	Allow DWI	Allow Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in place?:
Alabama							
Alaska							
Arizona							
Arkansas							
California	NO	NO	NO	N/A	N/A	N/A	YES, for a few months
Colorado	YES	NO	NO	2 years	\$100 family	Sign	NO
Connecticut	NO	NO	NO	N/A	N/A	N/A	NO
Delaware							
Florida	YES	YES	NO	1 yr min	State	Sign	NO
Georgia							
Hawaii	YES	YES	NO	1 week	Family	Flowers	NO
Idaho	YES	YES	NO	NONE	Family	Sign	YES
Illinois							
Iowa							
Indiana							
Kansas	YES	YES	NO	NONE	Family	Memorial	YES
Kentucky							
Louisiana	NO	NO	NO	N/A	N/A	N/A	NO
Maine							
Maryland	NO	NO	NO	N/A	N/A	N/A	YES, for a short period of time.
Massachussetts							
Michigan	NO	NO	NO	N/A	N/A	N/A	YES
Minnesota							
Mississippi	NO	NO	NO	N/A	N/A	N/A	YES
Missouri							
Montana	YES	YES	NO	NO	American legion	Cross only	YES

MEMORIALS ON THE RIGHT OF WAY NATIONWIDE SURVEY

STATE	Allowed DWI	Allowed Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in place?:
Nebraska	NO	NO	NO	N/A	N/A	N/A	YES
Nevada	NO	NO	NO	N/A	N/A	N/A	YES
New Hampshire	YES	YES	NO	6-months	Family	Memorial	YES
New Jersey	YES	YES	NO	NONE	Family	Memorial	YES
New Mexico	YES	YES	NO	1 yr min	Family	Sign	YES
New York							
North Carolina							
North Dakota	NO	NO	NO	N/A	N/A	N/A	YES
Ohio							
Oklahoma							
Oregon	NO	NO	NO	N/A	N/A	N/A	YES. The last legislative session attempted to deal with the issue and quickly backed off the subject entirely due to the heated emotions.
Pennsylvania	NO	NO	NO	N/A	N/A	N/A	YES. They also allow the planting of flowers.
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont	YES	NO	NO	NONE	Family	Sign	YES, for 1 month
Virginia	YES	YES	NO	NONE	Family	Memorial	YES
Washington	YES	YES	NO	6 months	Family	Sign	YES
West Virginia	YES	YES	YES	NONE	Family	Memorial	YES
Wisconsin							

MEMORIALS ON THE RIGHT OF WAY
NATIONWIDE SURVEY

STATE	Allowed DWI	Allowed Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in place?:
Wyoming	NO	NO	NO	N/A	N/A	N/A	YES

PACKET CONTENTS:

- Resolutions in support
- Legislative research report
- Bill summary, with description of changes
- Nationwide survey
- Fiscal note
- Sponsor statement
- HB127 version LS0299\Q

Alaska State Legislature

Representative Jim Whitaker
House of Representatives
District 10



Session
Capitol Building, Room 501
Juneau, Alaska 99801
Phone: (907) 465-3004
Fax: (907) 465-2070

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119 N. Cushman St. Suite 213
Fairbanks, AK 99701
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Fax: (907) 452-1146

Sponsor Statement

CS HB 127 (STA) – Roadside Memorials

When a person dies on an Alaska road, family and friends often express their grief by placing items near where the tragedy occurred, in a kind of memorial to their loved one. Sometimes, even strangers are moved to add to the memorial when particularly touched by the loss.

These memorials serve two purposes. One, to allow the grieving to express their sorrow, and two, to remind those who travel, of the inherent dangers in driving Alaska's roads, particularly when excessive speed or alcohol contributed to the cause of the accident. Many Alaskans instinctively check their speed and take extra care in driving when passing one of these personal memorials.

Recently, the State of Alaska Department of Transportation informed the creators of such memorials that these encroachments to the right of way would no longer be tolerated. They warned that the department would remove them if they were not taken down by a date certain. This action is in response to a perceived threat to federal highway funding if the state allowed the memorials, as well as an interpretation of the state law that bans billboards.

The liberty to express our grief, the desire to memorialize a fallen officer, the wish to recognize a tragedy among our community, is a very personal freedom that must not be unnecessarily infringed by government.

HB 127 sets out to clarify that, while the State does not attempt to discourage the placing of such memorials, they will be reasonably regulated so as not to allow unsafe distractions and hazards in Alaska's right of ways.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB127
(H) Publish Date: 3/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: An Act allowing certain roadside memorials to BRU Design and Engineering Services
be placed in the right-of-way of a state highway Component Norther Region D&ES
Sponsor: Whitaker
Requester: HTRA Component No. 2299

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dennis R. Poshard Phone 465-3900
Division: Special Assistant to Commissioner Date/Time 3/6/03 8:59 AM
Approved by: Commissioner Mike Barton Date 3/6/2003
Agency: Alaska Department of Transportation and Public Facilities

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ORIGINAL
COPIES

LEGISLATIVE RESEARCH REPORT

NOVEMBER 18, 2002



REPORT NUMBER 03.028

REGULATION OF PRIVATE ROADSIDE MEMORIALS

PREPARED FOR REPRESENTATIVE JIM WHITAKER

BY PATRICIA YOUNG, MANAGER

You asked for information about the regulation of roadside memorials. You were particularly interested in knowing if any state laws or regulations explicitly allow personal, private memorials along roadsides and the extent to which such memorials are regulated. You asked that we provide copies of pertinent regulations or statutes.

A roadside memorial is an object constructed, erected or placed along a roadside to commemorate or mark an event—usually the death of a loved one. While these markers often include crosses, they take a variety of forms and may or may not include plaques or inscriptions.

State laws and official highway policies generally prohibit unauthorized encroachment on a dedicated right-of-way and the placement of anything other than necessary signage and traffic indicators that conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. Despite such laws and policies, however, the spontaneous appearance of private roadside memorials is a phenomenon that occurs across the country. A number of states—including Alaska—have adopted formal programs for placing standardized markers on roadways where alcohol and drug related fatalities occur. A few of these programs—including Alaska's—also provide for markers for roadway fatalities not involving alcohol or drugs.

Even in states with such programs, however, many persons choose to place personal remembrances and adornments on the standard markers, or to create their own memorials, regardless of what the state offers. As one authority on the subject of private memorials points out,

... people erect roadside memorials regardless of official regulations. In such cases, most highway departments, recognizing the emotionally and spiritually

charged nature of the assemblages, choose to look the other way if at all possible.¹

We searched state statutes and administrative codes on Lexis; we also searched the Internet to identify states in which the regulation of private roadside memorials is at issue. Based on the results of our initial queries, we spoke with transportation officials in 13 states. Among those states, six (including Alaska) do not permit private memorials, but officials confirmed that unless the memorials pose immediate safety hazards or maintenance concerns, highway crews focus on more pressing duties. The other seven states we contacted allow private roadside memorials, either officially or unofficially, unless they pose a safety hazard or a significant maintenance problem, under the following conditions:

→ **Idaho** regulations adopted in 1992 provided that with a permit, individuals could erect memorials of a certain size and material, decorated with a gold star. According to highway officials, few people applied for the permits and most memorials continued to be of an individual character. The department policy was to move or remove them only if they presented some operational or safety issue. In 2001, lawmakers effectively rescinded the uniform design by passing a law providing that individuals may erect memorials along non-interstate roadways and directing the transportation department to promulgate rules regarding "size limitations and placement of memorials."²

→ **New Jersey** has an unofficial statewide policy allowing private memorials. According to transportation officials, persons do not need a permit, and their memorials are allowed to remain indefinitely. Administrative rules provide for persons to install private roadside memorials along the Atlantic City Expressway. The rules specify that the Expressway Authority must approve each project prior to its installation, that memorials will be removed after ten days, and that persons installing memorials without approval shall be subject to penalties (fines of \$150 for a first offense, \$300 for a second offense, and \$500 for any subsequent offense).³

→ **New Mexico** allows private memorials without statute, regulation, or written policy. According to the community relations director with the state's Department of Transportation, such memorials are part of the state's rich tri-cultural tradition and are "revered by everyone." When memorials must be removed for safety reasons, every effort is made to advise the person or persons who placed or erected them. In some notable instances, highway

¹ Holly Everett, Department of Folklore, Memorial University of Newfoundland, and author of *Roadside Crosses in Contemporary Memorial Culture* (Denton: University of North Texas Press, 2002), e-mail communication, November 12, 2002.

² Jeff Stratten, public affairs officer, Idaho Department of Transportation, (208) 334-8817. We include copies of IC 549-1316 and IDAPA 39.03.63 as Attachment A.

³ John Dourgarian, communications officer, New Jersey Department of Transportation, (609) 530-2124. We include NJAC 19:2-5.10 as Attachment B.

contractors have collected, catalogued, and stored memorials until they could be replaced following completion of projects.⁴

- ◆ **Texas** has no statutes, regulations, or official policy regarding private memorials, but they are allowed, and the state Department of Transportation has issued guidelines for their placement on the state highway system. According to highway officials, at one time the state attempted to restrict memorials to the signs sponsored by Mothers Against Drunk Driving to commemorate victims of drunk driving. When asked to expand the program to all highway fatalities, officials proposed a program whereby, for a \$100 fee, the department would install and maintain for 18 months a crash-worthy sign with the victim's name and date of death; after that period, the department would give the sign to the victim's family. The proposal engendered considerable debate, with strong factions on both sides of the controversy. Eventually, the state abandoned the proposed program. The guidelines are an attempt to coordinate the placement of private memorials and to ensure that they do not create a safety hazard. Even so, officials note that the department is consulted on fewer than half of the markers along the roads. As in other states, unless the markers clearly create a safety hazard—being constructed of metal embedded in concrete, for example—maintenance crews have the option of taking no action.⁵
- ◆ **Virginia** lawmakers recently passed a bill allowing in general terms for roadside memorials on state highways. The law calls for the state's transportation board to promulgate regulations regarding the size, distance from roadway, and other safety concerns. According to a spokesperson for the state's Department of Transportation, regulations are still in the planning stage, and the degree of personal expression in the design of the markers and whether individuals will be allowed to place them is unclear at this time.⁶
- ◆ **West Virginia** lawmakers in 2000 enacted legislation reflecting the state's informal policy of allowing private roadside memorials unless safety or maintenance considerations dictate otherwise. Among other provisions, the new law allows family members to place "decorations, flowers or other memorial ornaments or tributes" on the right-of-way near where the fatality occurred. Regulations implementing the law, which are published on the department's website, also allow family members to erect permanent memorial markers with a permit from the Department of Transportation.⁷

⁴ Kathie Lyendecker, community relations director, New Mexico State Highway and Transportation Department, (505) 827-5134. We include as Attachment C a departmental press release dated February 7, 2000.

⁵ Richard Kirby, maintenance operations director, Texas Department of Transportation, (512) 416-3034. We include as Attachment D a copy of the Texas guidelines for memorial markers within the right-of-way, as well as an informal survey the department conducted in 2000 on state's policies concerning such memorial markers.

⁶ Tamara Neale, media relations manager, Virginia Department of Transportation, (804) 786-6458. We include as Attachment E a copy of Virginia Code § 33.1-206.1.

⁷ Charles R. Lewis, engineer, West Virginia Department of Transportation, (304) 558-3063. We include as Attachment F copies of W. Va. Code § 17-20-1 and § 17-20-2, as well as the rules and regulations published on the departmental website at http://www.wvdot.com/3_roadways/3d1fa1_memorials.htm.

- ◆ **Wyoming** has an unofficial policy allowing individuals to place or erect roadside memorials. However, highway officials are in the process of developing guidelines and procedures to provide for the Department of Transportation to install non-religious signs or symbols to commemorate human fatalities along the state highway system. There will be no fees, and the markers will stand for five years. The policy—in its draft form—specifies that once the program is established, existing memorials will be allowed to stand for five years, but no new memorials will be allowed. Officials acknowledge that while some families may use the program, the more personal memorials will continue to appear, and “when the state removes them, more will return in their place.”⁸

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁸ Lieutenant Carl McDonald, safety and training officer, Wyoming Highway Patrol, (307) 777-4344. We include as Attachment G a copy of the Wyoming Department of Transportation's Draft Operating Policy on Roadside Memorials for Fatal Crashes, as well as a departmental press release dated July 3, 2002.

CS HB 127(STA) Bill Summary – With Committee Change Description

Section 1 Amends AS 19.25 to add new sections that

Sec. 19.25.260

- (a) permit a person to place a temporary memorial in the right of way but outside of the traveled way of a state highway.
- (b) States that a memorial must not interfere with highway use, safety, construction or maintenance.
- (c) States that the person who places the memorial
 - (1) must post their contact information on the memorial.
 - (2) must contact the department of the location of the memorial within 7 days of placement. (*added in State Affairs*)
 - (3) must provide contact information to the department.
- (d) States that a person may not place a political or commercial message on the memorial.
- (e) States that a person may not place reflective or distractive materials on a memorial.
- (f) States that the state is not liable for damage to a memorial. (*added in State Affairs*)
- (g) defines memorial

Sec. 19.25.270

- (a) Requires the person who placed the memorial to change, relocate, or remove the memorial if so directed by the department.
- (b) authorizes the department to require removal of nonconforming memorials.

Introduced by: Mayor Thompson
& Council Member Kawasaki
Date: March 10, 2003

RESOLUTION NO. 4054

A RESOLUTION IN SUPPORT OF HOUSE BILL 127, WHICH WOULD ALLOW THE PLACEMENT OF ROADSIDE MEMORIALS FOR THE VICTIMS OF A TRAFFIC ACCIDENT TO BE PLACED WITHIN THE RIGHT-OF-WAY OF A STATE HIGHWAY.

WHEREAS, certain staff of the Alaska Department of Transportation and Public Facilities have taken a position that will not allow the placement of personalized roadside memorials in memory of victims of traffic accidents.

WHEREAS, House Bill 127, as attached, will accommodate the interest of both the state and those wishing to place personalized roadside memorials; and

WHEREAS, the City Council believes that personalized memorials, safely placed in accord with House Bill 127, will not only honor the dead, but will also serve as a better way to alert motorists of the importance of driving responsibly; and

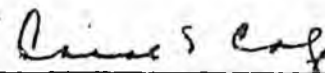
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fairbanks that the City Council supports passage of House Bill 127.


Passed, Approved and Effective this 10th day of March, 2003


Steve M. Thompson, City Mayor

ATTEST:

APPROVED AS TO FORM


Carol L. Colp, City Clerk


Herbert P. Kuss, City Attorney

Date:	# Of Pages	QUICK FAX™ OfficialFax	
TO: <u>Herb Kuss</u>		From: <u>Steve M. Thompson</u>	
Co./Dept.		Co./Dept. <u>City Clerk's Office</u>	
Fax:		Fax:	
Phone:		Phone:	
Note:		E-Mail:	

**MADD GOLDEN HEART CHAPTER
FAIRBANKS, AKASKA**

Resolution

March 4, 2003

RE: H. B. No. 127
Roadside Memorials

The Pending MADD Golden Heart Chapter of Fairbanks, Alaska, has voted in support of Rep. Jim Whitaker's House Bill Number 127, which allows for personal roadside memorials to be placed on or near the site of a traffic accident.

The following members have voted in support of the legislation:

Asa Dowdy, Jr.
Barbara Dowdy
Mary Ehrlander
Sally Ekland
Joe Joseph
Heather Koponen
Gabriele Larry
Bill Larry
Sandra McVeigh
Linda Pearson
Brenda Sadler
Pat Thurman
Michael Thurnes
Sandi Trumbower
Perry Williamson
Sue Williamson
Jennifer White

**MADD GOLDEN HEART CHAPTER
FAIRBANKS, AKASKA**

Resolution

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RE: H. B. No. 127
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Pat Thurman
Michael Thurnes
Sandi Trumbower
Perry Williamson
Sue Williamson
Jennifer White

HB

250

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

House District 9

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

Sectional Analysis

HB 250, State Contracts

5/7/3

NOTE: The word "CLAIM" is substituted for "CONTROVERSY" throughout the bill because "claim" is more technically correct and inclusive.

Section 1 and Section 4: Currently, if a contractor asserts a claim that cannot be resolved by agreement, the State can keep requesting more information from the contractor and thus "keep the clock running" until the State determines it has "enough" information. Section 4 allows the contractor to seek arbitration if the State does not issue a written decision by the due date. Section 1, on the other hand, allows the State to deny the claim, or a portion thereof, if the contractor does not furnish the requested information; it also prohibits the contractor from introducing new information later.

Section 2: Currently, state agencies have no penalty for missing deadlines, but if a contractor misses a deadline his claim is denied. This section places parameters on the State's deadlines, requiring the State to show good cause for an extension and allowing the contractor an opportunity to oppose the State's request for a second extension.

Section 3: "*Findings of fact about the claim*" and "*determination of any amount payable*" are added to the list of what the State's written decision must contain.

Section 5: The following new sections are added:

36.30.627 (a) provides that an appeal from the State's decision shall be resolved by binding and final arbitration

- on a claim less than \$250,000 if the contractor requests it,
- on a claim of more than \$250,000 if both the contractor and the State agree to it, or by a hearing if the contractor and the State do not agree to arbitration.

36.30.627 (b) defines what a claim includes.

36.30.629 allows the state to subpoena people and documents, and to take depositions, in hearings and arbitrations defined in this chapter.

Section 6: This section changes "controversy" to "claim" as it applies to binding and final arbitration.

Section 7: Currently, a contractor is not allowed to recover his costs or attorney fees. This new section allows the party who prevails in the case (the State or the contractor) to collect fees, and also to make a settlement offer, under the Alaska Rules of Civil Procedure.

Section 8: This substitutes "-" for "and", thus making the Commissioner's delegation powers in the appeal of a decision inclusive of all the sections 36.30.590 through 36.30.630.

Section 9: This section more clearly defines who receives the State's decisions and shortens the time frame.

Section 10: "*Controversy or claim*" becomes "*contract claim*" as regards penalties for misrepresentation.

Section 11: "*Expeditious administrative review*" becomes "*expeditious arbitration, hearing, and other administration review*."

Section 12: A new section is added to establish a venue for arbitration or hearing and a time frame for the State to issue a final decision. It also encourages the arbitrators or hearing officers to deliver timely decisions by disqualifying for a year them if they do not. Finally, it provides that any money awarded in the decision shall be paid within 45 days.

Section 13: A new paragraph is added giving the commissioner of administration power to adopt regulations establishing the procedures for arbitration and the qualifications for arbitrators.

Section 14: This removes "hearing" from the definition of arbitration.

Sections 15, 16, and 17 are temporary "uncodified" acts establishing 1) that the bill applies to a contract entered into on or after the bill's effective date, 2) that the commissioner of administration may immediately adopt regulations to implement the bill, and 3) that "controversy" be replaced with "claim" in all applicable statutes.

Section 18 provides for the bill to become effective immediately upon passage.

Letters of Support

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

8015 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

April 22, 2003

Representative Jim Holm
Co-Chair Transportation Committee
Alaska House of Representatives
Juneau, Alaska 998801-1182

Re: House Bill 250

Dear Representative Holm:

On behalf of the more than 600 member firms of the Alaska Chapter of the Associated General Contractors of America, I would like to express our support of House Bill 250. For more than two years, AGC has been meeting with the Alaska Department of Transportation and Public Facilities to resolve problems with the current construction claims process. HB 250 reflects the modifications that the parties agree are merited at this time.

The goals of the parties when discussions were initiated were to:

1. Streamline the system
2. Strive to improve the fairness of the process, and
3. Allow the prevailing party to recapture some of its costs associated with the claim.

AGC believes that HB 250 represents a significant improvement over the current claims process and achieves the goals set forth at the start of our deliberations.

AGC has not only worked closely with the Department of Transportation and Public Facilities, it has also sought the advice and consent of the Departments of Law and Administration. In so doing, AGC strived to minimize, if not eliminate, opposition to the bill. At this point we are unaware of any group or organization that may object to the HB 250.

FAIRBANKS
P.O. BOX 6005 • FAIRBANKS, AK 99706
TELEPHONE (907) 452-1809

SOLDOTNA
43335 KALIFONSKI BEACH ROAD, STE. 32 • SOLDOTNA, AK 99669
TELEPHONE (907) 262-8535

Accordingly, we request your support of this bill.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA



Richard Cattanach
Executive Director



GOODFELLOW BROS., INC. — GENERAL CONTRACTOR —

CL # 1630

April 23, 2003

Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Attention: Representative Jim Holm

Fax (907) 465-2937

Regarding: Revision to the Construction Claims Bill HB250

The construction claims bill that Associated General Contractors and the Department of Transportation and Public Facilities worked on for more than two years was introduced last week and moved from its first committee of referral. This bill attempts to speed up the claims process and allows the collection of some of the claims costs (i.e. attorney fees, accounts and claims consultants, etc.). We feel that this bill is more fair to all the parties involved in a claim. Please regard this as a letter of support for House Bill 250.

Respectfully,

Ben A. Northey
Alaska Manager



April 22, 2003

Representative Jim Holm
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801

6441 South Airpark Place
Anchorage, Alaska 99502-1809
(907) 245-1865
Fax: (907) 245-1744

Subject: HB 250

Dear Representative Holm:

Knik Construction Co., Inc. fully supports revisions to the State of Alaska contracting methods contained within HB 250.

Knik Construction Co., Inc. has been in business since 1973 and has performed many projects for the State of Alaska during its existence. As we understand the revisions contained within HB 250, the claims process would be timelier and allow the collection of some of the claims by the contractor; such as attorney fees and claim consultants.

For these reasons Knik would encourage your support of HB 250.

Very Truly Yours,

KNIK CONSTRUCTION CO., INC.


Steve Jansen
President

SJ:lmg

Cc: Richard "Dick" Cattanach

**SWALLING
CONSTRUCTION
COMPANY, INC.**

AN EQUAL OPPORTUNITY EMPLOYER
GENERAL CONTRACTOR #AA179



SETTING ALASKA SINCE 1947

www.swalling.com
P.O. Box 101039
ANCHORAGE, ALASKA 99510-1039
TELEPHONE (907) 272-3461
FACSIMILE (907) 274-6002
LOCATED AT 235 F St.

April 24, 2003

Sent Via Fax – 907-465-2937

Representative Jim Holm,
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Subject: HB 250

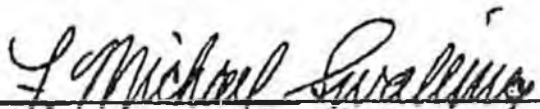

Dear Representative Holm,

I am writing this letter in support of HB 250 which addresses current inequities in the construction claims resolution process.

I recently settled two significant construction claims with DOT last year for a total of \$591,000. Swalling spent a total of \$250,000 in outside counsel and expert fees to bring those claims to settlement. Unlike other legal forums where the prevailing party receives some reimbursement for cost incurred Swalling received nothing. This legislation attempts to correct that inequity and gives DOT an incentive to address legitimate claims in a timely fashion before the contractor incurs significant costs.

I urge you to pass the bill as soon as possible.

Sincerely,


F. Michael Swalling; President 

STATE OF ALASKA



Interim:
119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:
State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

SPONSOR STATEMENT

House Bill 250, State Contracts

4/14/3

Construction claims occur when the parties to the contract disagree as to whether a specific element of a project is within the scope of work defined by a construction contract. For projects undertaken by the State of Alaska, the Alaska procurement code defines a process for resolving these differences.

Ideally such a process should resolve differences in a fair and expeditious manner.

At this time, however, the perception in the construction community is that the process has slowly deteriorated so that it is no longer fair or expeditious. As now prescribed, when a contractor files a claim, the procurement officer involved with the claim initially evaluates the claim and issues a ruling on the perceived merits. If the contractor is not satisfied, an appeal is made to the procurement officer's supervisor.

There is no review by an independent party unless a contractor elects to appeal the supervisor's decision. Even then, the hearing officer is selected by the State, which raises a concern about the true independence of the hearing officers, since the State has sole discretion to maintain the hearing officer list. Delays are rampant. Justice is delayed. Contractors are forced to expend money defending their claim, but that money cannot be recovered in the process. Small contractors cannot afford to participate in the claims process because of these costs. Claims of less than \$250,000 are frequently not pursued because of the great expense involved. The entire process is ripe for review and revision.

The purpose of HB 250 is to modify the construction claims process to once again create a fair and expeditious claims process. Specifically HB 250 will modify the procurement code pertaining to construction claims in the following manner:

1. If a procurement officer does not issue a written decision by the due date, the contractor may seek arbitration.
2. On appeals of all construction claims, the parties can agree to binding arbitration.
3. The timelines for decisions have been tightened, and redundant requirements have been eliminated.
4. An arbitrator or hearing officer who does not issue a decision by the deadline is disqualified for a year.
5. Qualifications for arbitrators and hearing officers will be established by the commissioner of administration in regulation.
6. The contractor is entitled to recover some of the claims costs incurred.

Prompt passage of HB 250 will expedite contractor's claims and return fairness to the process.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 250
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title State Contracts BRU _____
Component _____
Sponsor Holm _____
Requester H L & C Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	***	***	***	***	***	***
-----------------------------	-----	-----	-----	-----	-----	-----

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*** The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien
Division: Commissioner's Office
Approved by: Miké Barton
Agency: DOT&PF

Phone 465-3900
Date/Time 4/16/03 12:04 PM
Date 4/16/2003

HB

251

ALASKA STATE LEGISLATURE

Vice Chair:
Joint Armed Services Committee

Member:
Military and Veterans Affairs Committee
Labor and Commerce Committee
State Affairs Committee
Economic Development, Trade, &
Tourism Committee



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-3783
Fax: (907) 465-2293
Toll Free (877) 460-3783

Interim:
716 West 4th Avenue
Anchorage, AK 99501-2133
Phone: (907) 269-0174
Fax: (907) 269-0177

REPRESENTATIVE NANCY DAHLSTROM

ELMENDORF AFB • FORT RICHARDSON • BIRCHWOOD • FIRE LAKE • GOVERNMENT HILL • MULDOON
Representative_Nancy_Dahlstrom@legis.state.ak.us

Sponsor Statement

CSHB 251(FIN) am

“An Act relating to exemption of certain foreign pleasure craft from the mandatory pilotage requirements”

HB 251 authorizes access to Alaskan waters by a foreign registered pleasure craft that is 60ft or greater in overall length, but less than 175ft in overall length, when granted a waiver of pilotage. To travel in Alaskan waters, these pleasure craft must comply with certain state requirements.

For these foreign pleasure craft to enter Alaskan waters, a Marine Pilot must join and travel with the vessel to its first port of call. While in Alaskan waters, the vessel may further be required to take a Marine Pilot when navigating certain waterways. Before departing Alaska a Marine Pilot will again join the vessel and travel to its point of embarkation. The vessel will adhere to regulation established by the Board of Marine Pilots and are subject to civil penalties for violations.

A recent Legislative Budget and Audit Committee audit report supports these changes. This legislative audit (#08-20015-02 November 1, 2002) states under Recommendation No. 4, “The Board of Marine Pilots should seek statutory authority to allow the board the discretion to grant waivers of pilotage requirements to large pleasure craft.”

The intent of HB 251 is to accomplish recommendations identified in the Audit and provide Alaskan Maritime communities with increased tourism opportunities while preserving our precious waterways.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 251(L&C)
(H) Publish Date: 4/25/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Marine Pilot for Foreign Pleasure Craft BRU Occupational Licensing
Component Occupational Licensing
Sponsor Representative Dahlstrom
Requester House Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact.

Prepared by: Representative Tom Anderson Phone _____
Division: Chair, House Labor & Commerce Committee Date/Time 4/25/03 10:47 AM
Approved by: Representative Tom Anderson Date 4/25/2003
Agency: House Labor & Commerce Committee

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 251(FIN)
(H) Publish Date: 5/9/03

Revision Date/Time (Note if correction):
Title Marine Pilot for Foreign Pleasure Craft
Dept. Affected: DCED
BRU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Representative Dahlstrom
Requester House Finance
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES (1156)	102.0	102.0	102.0	102.0	102.0	102.0
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 251 (FIN) exempts foreign pleasure craft of 60 feet or less in overall length from the mandatory pilotage requirement. New funds are not required to implement this bill.

However, the bill is anticipated to generate new revenue as a result of civil fines imposed and the application fee for waiver from the pilotage requirement. Based on the fee proposed in the bill and estimates from the industry, the revenue is based on: 1) 6 pleasure crafts at 60' = 6 x \$1,500 = \$9,000; 2) 12 pleasure crafts at 120' = 12 x \$4,500 = \$54,000; 3) 6 pleasure crafts at 160' = 6 x \$6,500 = \$39,000. The revenue estimate is repeated in subsequent years however, the actual revenue will be based on the number of foreign registered pleasure crafts entering State waters.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144
Division Occupational Licensing Date/Time 5/8/03 2:30 PM
Approved by: Edgar Blatchford, Commissioner Date 5/8/2003
Agency Department of Community & Economic Development

THE
FOLLOWING
DOCUMENT(S)
ARE
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November 9, 2002

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF MARINE PILOTS
SUNSET REVIEW

November 1, 2002

Audit Control Number

08-20015-02

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(a) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, AS 08.03.010 (c)(10) states that the board will terminate on June 30, 2003, and will have one year from that date to conclude its administrative operations. .

In our opinion, the termination date for the Board of Marine Pilots should be extended. The regulation and licensing of qualified marine pilots benefits the public's safety and welfare. We recommend the legislature extend the termination date of the Board of Marine Pilots to June 30, 2007.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

Pat Davidson, CPA
Legislative Auditor

Recommendation No. 3

The legislature should consider amending current statutes in order to extend mandatory drug and alcohol testing to pilot organization trainees and apprentices.

Currently, trainees and apprentices do not participate in the random drug testing programs. This can be attributed to the language of the statute related to alcohol and drug testing programs administered by the Board of Marine Pilots. Alaska Statute 08.62.040(b)(2) states:

The board, may, by regulation make any other provision for proper and safe pilotage upon the inland and coastal water of and adjacent to the state and for the efficient administration of this chapter, including establishing a mandatory drug and alcohol testing program, including random tests, post-incident tests, and tests based upon reasonable cause, for pilots licensed [by the Board of Marine Pilots]. [Emphasis added]

Since the statute relates only to licensed pilots, individuals who are involved with associations as either trainees or apprentices are not subject random testing. Pilot associations report that most trainees and apprentices work for other employers involved in maritime activities. As such, they are likely to be subject to employer testing under federal regulations.

In our view, it would be better for apprentices and trainees to participate in random testing in conjunction with their training with the local association. This would ensure that all individuals who board and train on vessels in conjunction with the State's marine pilotage requirements are subject to random testing. It would also ensure that test results have been appropriately filed and reported. Accordingly, we recommend the legislature consider amending the current statute to extend the board's authority for alcohol and drug testing to include individuals who are in the process of becoming licensed pilots under the supervision of the local association.

Recommendation No. 4

The Board of Marine Pilots should seek statutory authority to allow the board the discretion to grant waivers of pilotage requirements to large pleasure crafts.

Under AS 08.62.180(7), foreign-registered pleasure craft of "less than 300 gross tons as measured [as specified in federal regulations]" are exempted from obtaining a licensed marine pilot. Therefore, pleasure crafts of 300 gross tons do require a marine pilot. As we have discussed in prior BMP sunset audits, effective enforcement of this particular statutory provision has historically been inconsistent, if not impossible. Reportedly, the number of private foreign-registered yachts that exceed the 300 gross ton limit is steadily increasing. Currently, these large vessels are generally either plying Alaska waters without the required pilot on board, or are being discouraged from coming to the state altogether because of the

prohibitive pilotage costs,⁴ and the impracticality of maintaining a pilot on board over an extended period of time.

A Juneau contractor who specializes in provisioning pleasure yachts, has contacted the MPC and BMP chair to suggest the board consider granting waivers on a case-by-case basis. The contractor cites Washington state law that permits the State's pilotage board to grant exemptions to yachts that do not exceed 500 gross tons and 200 feet in length. The waiver statute applies only to waters of the Puget Sound pilotage district, which suggests that BMP or the legislature could limit waivers to specified waterways.

It appears most pilots want the statute better enforced. As discussed in the survey results section of this report, over two-thirds of the pilots responding to our survey opposed exempting foreign-registered yachts from pilotage requirements.

With enforcement problematic, discretionary waivers provide a way to track impact

In practice, the statute is difficult to enforce. Scofflaws face little risk of sanction, while conscientious cruisers may be discouraged from traveling through state waters by the cost of compliance. If enforcement of the statute is unrealistic or given a low priority, the law should be modified to be more workable.

If the board was granted more discretion in statute to provide waivers to large yachts (similar to the situation involving vessels in Puget Sound), there would be documented evidence of the nature and extent of the potential impact.

By being able to consider and issue waivers on a case-by-case basis, the board could develop a sense of the impact of high-end pleasure cruising in the state. BMP could tabulate the average size involved with these larger yachts, and if there were perceived abuses, could begin limiting or eliminating waivers altogether on a discretionary basis. Such action would seem to be preferable to current situation whereby the individuals involved are either flaunting the statute with no effective consequence, or are avoiding Alaska waters due to the cost prohibitive nature of the fees involved.

Accordingly, we suggest the BMP seek authority from the legislature to amend this section of the pilotage statutes to allow it the discretion to grant waivers for foreign-registered pleasure craft that exceed an established size.

⁴ An individual who had been dissuaded from cruising through the waterways of Southeast Alaska stated in a June 14, 2002, letter to Governor Knowles, that he had been quoted a cost of "\$1,400 to \$2,200 per day depending on [the yacht's schedule]." The letter went on to estimate that this rate would result in a total cost of "approximately \$72,000 for [the] summer cruise."

Washington State

RCW 88.16.070

Vessels exempted and included under chapter – Fee – Penalty.

A United States vessel on a voyage in which it is operating exclusively on its coastwise endorsement, its fishery endorsement (including catching and processing its own catch outside United States waters and economic zone for delivery in the United States), and/or its recreational (or pleasure) endorsement, and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kelleet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report.

[1996 c 144 § 1; 1995 c 174 § 1; 1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

NOTES:

Intent – 1987 c 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of vessels from the provisions of this chapter." [1987 c 194 § 1.]

Severability -- 1977 ex.s. c 337: See note following RCW 88.16.005.

WAC 363-116-360 Exempt vessels. (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels or yachts, which are not more than five hundred gross tons (international), do not exceed two hundred feet in length, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least sixty days prior to planned vessel operations in the Puget Sound pilotage district where possible. Petitions filed with less than sixty days notice may be considered by the chair at the chair's discretion.

(b) The petition requesting exemption shall be on a board-approved form which shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the dates of planned operations, and such other information as the board shall require on its petition form.

(c) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be reviewed by the chair, who shall make a recommendation to the board to be considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist. Any grant of an interim exemption may contain such conditions as the chair deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include a requirement that the vessel employ the services of a pilot on its initial voyage into Puget Sound waters or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement.

(3) The recommendation of the chair shall be considered at the next regular or specially scheduled meeting of the board. Interested parties shall receive notice and opportunity for hearing at that time, provided that the party notifies the board at least five days in advance of the meeting of its desire for hearing.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
A. Yachts			
Up to 100 feet LOA	\$ 300	\$ 500	\$ 200
Up to 200 feet LOA	500	750	300
B. Passenger Vessels			
Up to 100 feet LOA	750	1000	400
Up to 200 feet LOA	1250	1500	500

[Statutory Authority: RCW 88.16.070 and 1995 c 174. 97-12-018, § 363-116-360, filed 5/28/97, effective 6/28/97. Recodified as § 363-116-360. 97-08-042, filed 3/28/97, effective 3/28/97. Statutory Authority: RCW 88.16.070. 93-07-077, § 296-116-360, filed 3/18/93, effective 4/18/93; 90-20-039, § 296-116-360, filed 9/25/90, effective 10/26/90; 88-09-015 (Order 88-6, Resolution No. 88-6), § 296-116-360, filed 4/13/88.]

RCW 88.16.005

Legislative declaration of policy and intent.

The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment of the state of Washington through the sound application of compulsory pilotage provisions in certain of the state waters.

The legislature further finds and declares that it is a policy of the state of Washington to have pilots experienced in the handling of vessels aboard vessels in certain of the state waters with prescribed qualifications and licenses issued by the state.

It is the intent of the legislature to ensure against the loss of lives, loss or damage to property and vessels, and to protect the marine environment through the establishment of a board of pilotage commissioners representing the interests of the people of the state of Washington.

It is the further intent of the legislature not to place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce.

[1977 ex.s. c 337 § 1.]

NOTES:

Severability – 1977 ex.s. c 337: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 337 § 18.]

RCW 88.16.150

General penalty – Civil penalty – Jurisdiction – Disposition of fines – Failure to inform of special directions, gross misdemeanor.

(1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent jurisdiction in any county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of ten thousand dollars for each violation. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor.

[1995 c 174 § 2. Prior: 1987 c 485 § 5; 1987 c 202 § 247; 1977 ex.s. c 337 § 8; 1969 ex.s. c 199 § 41; 1967 c 15 § 7; 1935 c 18 § 10; RRS § 9871-10; prior: 1888 p 179 § 27.]

NOTES:

Intent – 1987 c 202: See note following RCW 2.04.190.

Severability – 1977 ex.s. c 337: See note following RCW 88.16.005.

RCW 88.16.150

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STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS
2911 2nd Avenue, Suite 100
Seattle, Washington 98121
(206) 515-3904
(206) 515-3969 FAX

PETITION FOR VESSEL EXEMPTION FROM PILOTAGE REQUIREMENTS

_____ (DATE) _____ NEW _____ RENEWAL

1. Applicant:

Name _____

Address _____

Telephone _____

2. Owner of vessel, if different from applicant:

Name _____

Address _____

Telephone _____

3. Name of vessel and country of registry:

4. Type and use of vessel, including length (LOA) and gross tonnage (international):

5. Length of time sought for exemption when vessel will be exclusively in the waters of the Puget Sound Pilotage District and lower British Columbia:

6. Purpose of visit:

7. Names and addresses of captain, crew and passengers: (use additional sheets if necessary)

8. Experience of master and crew in waters of Puget Sound and lower British Columbia: (attach any government licenses)

9. Identities of the captain and/or crew who speak English:

10. Type and quantity of fuel and any other potentially environmentally damaging substances on board:

11. Brief description of navigational aids on board:

12. Brief description of communications equipment: (list accessible VHF channels)

13. List any propulsion, navigation or communication equipment not currently operational:

C Staying the COURSE

Despite wavering economies and the threat of global terrorism, 2002 luxury yacht order book is up 18.4% • Italy tops country listings • 11.4 miles of yachts under construction • Benetti tops builder list • Big gains by Germany, New Zealand, Australia, Denmark • 507 yachts over 80' under construction

THE LUXURY YACHT INDUSTRY IS DEMONSTRATING extraordinary resiliency in the face of threats from a sagging U.S. economy and global terrorism.

While the industry backed off from its red-hot 31% rate of growth in last year's order book, it still turned in a surprisingly robust 18.4% increase in total business. While gains were posted in nearly every quarter, the strongest corporate and national performers were tried-and-true companies and countries.

In terms of overall product categories, sailing yachts were up 12.5% and motor yachts 19.5%. In both motor and sailing yacht categories, however, the strongest segments were the upper and lower ranges. Sailing yacht orders between 90 and 99 feet were up 100%, while the 150-foot-plus sail segment jumped five orders or 50%. In the motor yacht sector, the 80- to 89-foot range leaped 38 orders, or 36.9%, while the 150-foot-plus range rose 11 orders to a total of 73, a jump of 17.7%.

The only drop in any segment was among 100- to 119-foot sailing yachts, which decreased by three orders, or 17.6 percent.

Reinforcing the industry trend toward ever-larger yachts, this year's order book reflects a two-foot increase in the average size of luxury yachts now under construction to 119.4

feet. This is due in no small measure to the 100-meter project started and stopped under a veil of secrecy by Lürssen and Blohm & Voss for a Brunei owner. Now code named *Platinum*, the structurally complete 525 footer has a new owner and will be finished in the Middle East.

In The Wake Of September 11th

In trying to gain perspective on the underlying strength of

the luxury yacht industry, numerous builders interviewed for this report said the majority of clients with whom they were working prior to the terrorist attacks of September 11th are moving forward with their projects. Feadship, for example, reported two new orders in the second week following the World Trade Center and Pentagon attacks. Paolo Vitelli, chairman of the Azimut-Benetti Group, reported that none of the negotiations underway at the time were broken off after the attacks, and that none of his clients had asked for a deposit to be returned.

"The strategy of the terrorists has not shown any effect," he said, adding his clients have openly expressed their support for a business-as-usual climate. "Things must move forward," Vitelli said, "or otherwise we're simply playing their game."

Henk deVries III, managing director of Feadship's DeVries Shipyard, draws a similar analysis. Following the attacks, deVries said he informally checked in with all his

Top 15 Builders

Yard Name	Number of Projects	Total Length	Average Length	2001 Rank
1. Azimut/Benetti	56	6,008'	107'	1
2. Lürssen	8	2,429'	304'	4
3. Ferretti	27	2,421'	90'	2
4. Feadship	13	2,353'	181'	3
5. SNP Rodriguez	22	1,957'	89'	5
6. Amels	10	1,890'	189'	7
7. Horizon	17	1,558'	92'	-
8. Royal Denship	11	1,470'	134'	-
9. Heesen	10	1,285'	129'	9
10. Trinity	8	1,218'	152'	8
11. Perini Navi	6	1,154'	192'	11
12. San Lorenzo	12	1,044'	87'	13
13. Destiny	10	1,025'	103'	-
14. Westport	8	936'	117'	-
15. Sunseeker	10	933'	93'	10

By the Editors of ShowBoats International
Data Compiled By Jamie Welch

Builder	Type	Name/Launch	Design Team	Engines
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ARGENTINA				
Tarrab	87	MY Beautiful Lady/Jan 2002	Tarrab	US/CAT

AUSTRALIA				
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• Aluminum Marine89 MY Powercat/2002				
Australian MY	98	MY Seastar 97/2002	Shead/Bonville	MTU
	145	MY Seastar 145/May 2002	Shead/Bonville	US/MTU
• Brisbane				
	132	MY 2003	Cohen	
Shipyards	165	MY 2003	Cohen	
	264	MY	Cohen	
• McConaghy				
	85	SY Maxi/2002	Reichel-Puoh	US/Yanmar
	85	SY Maxi/2002	Reichel-Puoh	Yanmar
Oceanfast	177	MY Perfect Prescription/Mar 2003	Oceanfast/Heywood	US/MTU
	185	MY Mercedes III/June 2003	Oceanfast/Bannenberg	US/CAT
	228	MY Horan Expedition Yacht/Dec 2003	Oceanfast/Sorogiovanni	Australia/CAT
Warren	85	MY Supernova ST/Nov 2001	Low/Sorogiovanni	MTU
	85	MY Supernova HT/Feb 2002	Low/Sorogiovanni	MTU
	114	MY 35M/Dec 2002	Curran/Lowe/Sorogiovanni	MTU

BRAZIL				
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Inaca	83	MY Amarella/Mar 2002	Inaca/Kirschstein	Italy/CAT
	90	MY Lembra/Sept 2002	Inaca/Kirschstein	US/CAT
McLainave	144	MY 144 MY/Dec 2001	Murray/Revereri	US/CAT

CANADA				
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• Cape Scott				
	86	MY Amnesia II/Dec 2001		MAN
Crescent	92	MY TBA/Nov 2001	Sarin/PCI	US/MTU
	112	MY Crescent Lady/Aug 2002	Sarin/Crescent/Rose	MTU
	120	MY Crescent Lady/2002	Sarin/Crescent/Rose	MTU
McQueens	88	MY TBA/Aug 2002	Pokela	US
Queenship	87	MY Souvenir/Nov 2001	Festa/Cole	US/CAT
	95	MY Cleo Marie/May 2002	Queenship/Apollonio/Espinosa	US/MTU
	98	MY Durand Marie/June 2003	Queenship/Apollonio/Espinosa	US/MTU
Sovereign Yachts	105	MY TBA/Jan 2003	Setzer	MTU
	120	MY Chairman/Feb 2002	Setzer/Knowles/Sovereign	MTU
	135	MY Cloud 9 /July 2002	Setzer/Sovereign	CAT
West Bay Sonship	82	MY 70-14/Nov 2001	West Bay Group	Venezuela/MTU
	82	MY 70-16/Mar 2002	West Bay Group	US/MTU
	88	MY 70-15/Feb 2002	West Bay Group	US/MTU
	88	MY 70-17/June 2002	West Bay Group	US/MTU
	89	MY 70-19/Nov 2001	West Bay Group	US/CAT
	103	MY 103-4/Sept 2002	Sarin/WBG/Vermeulen/Johnson	MTU

CHINA				
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Cheoy Lee	81	MY TBA	Festa	US/CAT
	103	MY TBA	Mulder/Robinson	US/MTU
	103	MY TBA/Fall 2001	Mulder/Puleo	US/MTU
	125	MY TBA	Mulder/Savio	US/CAT
	171	MY Seashaw II/Dec 2002	Mulder/Robinson	Singapore/MTU
Yantai Raffles	105	SY TBA/Apr 2002	Sparkman & Stephens/Mallard	US
	131	SY TBA/2003	Sparkman & Stephens/Mallard	US
	289	MY Asean Lady/Apr 2002	Mitchell/Raffles	Singapore/CAT

DENMARK				
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Royal Denship	80	MY 80 Flybridge/May 2002	Dixon/Zuretti	Europe/CAT
	80	MY 80 Open/Aug 2002	Dixon/Zuretti	Europe/CAT
	107	MY Dayboat/Oct 2003	Deino/Zuretti	MTU
	109	SY Aventura/Sept 2003	Hood/Denship/Hood	France/CAT
	110	SY 110 Sloop/Fall 2001	Castro/Zuretti	Europe/CAT
	127	SY 130 Bluebay/June 2002	Costa/Bluebay	Europe/CAT
	127	MY 125 Classic/Fall 2001	Denship/Zuretti	US/CAT
	135	MY 135 Classic/June 2002	Denship/Zuretti	Europe/CAT
	136	SY J-Boat/Nov 2003	Reichel-Puoh/Johnson	US/Lugger
	207	MY 208 Expedition/June 2002	Knudsen/Pottboll	US/CAT
	252	MY 240 Denso/Oct 2003	Deino/Zuretti	Deutz

EGYPT				
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- Debris	80	MY Debris 80/2001	Baritani/H2	MAN
	80	MY Debris 80/2002	Baritani/H2	MAN

• = New Addition to Global Order Book Builders

existing and prospective clients. "All of our clients we're working with are going ahead," he said. "Even with this horrible situation, the outlook at Feadship is good."

Lürssen's sales manager, Michael Bremen, said inquiries remain at a high level. "I refuse to be a pessimist," Bremen said. Despite the recent attacks, the outlook remains good for his company. "The recession was going to happen anyway," Bremen said, adding that U.S. Dollar/Euro currency exchanges remain favorable for U.S. buyers, a condition that is likely to continue. "Saber-rattling tends to strengthen the dollar," he said.

On the production side, several builders reported their chief concern was the backlog of orders in their dealer networks and inventory. The unwillingness to start new orders on speculation is reflected in the performance of companies such as England's Sunseeker, which this year slipped five notches to 15th place in the builder standings.

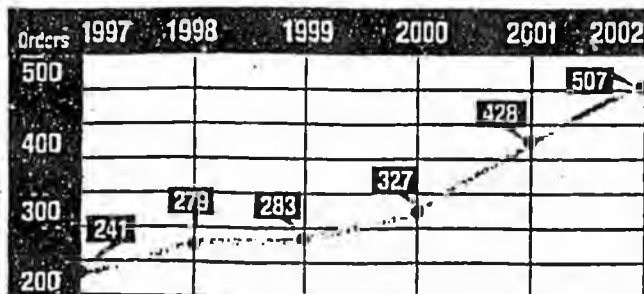
On the positive side of the production scale is the rise into the top-20 list of such companies as Lazzara Yachts and Destiny Yachts. The increased performance of these companies is due in large measure to their aggressive investment in recent years in new product development. "The time to move, the time to grow is on the downturn," said Dick Lazzara, CEO of Lazzara Yachts, which is introducing two new models, 80- and 106-footers, at the Fort Lauderdale International Boat Show. "It's time to pin our ears back and try to grow market share. We're just fortunate we started developing new products eighteen months ago. Now, every month that goes by will make us a stronger company."

Vitelli also remains bullish on the production side of his group. The Cannes Boat Show (just prior to the September 11th attacks) was excellent he said, and dealers both in Europe and the U.S. remain optimistic. For Azimut/Benetti's part, Vitelli said he is prepared to move forward with a planned Euro\$28 million investment in new construction capacity at the company's new Lusben yard in Viareggio.

Orders By Length & Year

Length	Sailing Yachts						Motor Yachts					
	'97	'98	'99	'00	'01	'02	'97	'98	'99	'00	'01	'02
80'-89'	5	7	7	14	16	17	45	75	48	62	103	141
90'-99'	7	9	8	4	5	10	20	31	36	43	38	44
100'-119'	7	7	12	14	17	14	71	58	72	71	95	103
120'-149'	6	6	12	14	16	16	32	41	39	47	68	74
150'+	5	4	3	8	10	15	43	41	45	40	62	73
TOTAL	30	33	42	54	64	72	211	248	241	273	364	435

Charting Upward Progress



Top 10 Builder Nations

Yard Name	Number of Projects	Total Length of Projects	Average Length	2001 Rank
1. Italy	170	17,686'	104'	1
2. US	99	11,235'	113'	2
3. Netherlands	61	9,267'	152'	3
4. Germany	12	3,127'	261'	5
5. New Zealand	22	2,570'	117'	7
6. Taiwan	24	2,176'	91'	-
7. Australia	14	1,937'	138'	-
8. UK	18	1,869'	104'	6
9. Canada	17	1,668'	98'	8
10. France	15	1,566'	104'	9

Gauging Brokerage/Charter Impact

While the order book reflects continued resiliency in the existing new-construction sector, weakness in both chartering and brokerage sales does not bode well for the short-term prospects of those sectors. Several brokers interviewed in the aftermath of September 11 reported that the only phone calls they received were those canceling pending deals. Charter agents and fleet managers reported charter cancellations for next summer's Mediterranean season.

But yacht broker Merle Wood of Merle Wood & Associates, said he's seen the market fluctuate wildly in the past and recover quickly. The issue is not one of not enough people of means to support the market. "Tons of people have tons more money than they had five years ago," he said. What will make the telephone start ringing again, Wood said, is when people begin to appreciate the safety and security large yachts represent. He noted that private airplane leasing and sales are already red-hot. The question many people will begin asking themselves is, "Do I want to check my family into a public resort somewhere, or do I want them to be on our own private, secure yacht?"

Others, such as Bob Saxon of Bob Saxon Associates, sees opportunities in the current upheaval. For one, he said, such periods of crisis always end up "winnowing out" the industry, ultimately leaving strong and responsive companies in a better position. His company is working quickly to "reshape the charter product" to make it more attractive to a wider audience. Noting the bankruptcy of Renaissance Cruise Lines, he is developing an all-inclusive charter package, including private air transportation, to make chartering more appealing to traditional high-end cruise line customers. "There are hundreds of thousands of stranded cruise ship passengers who are capable of purchasing a yacht charter vacation," Saxon said. Noting that the time is ripe for industry unity, Saxon said, "Everybody fears change. But the best way to cope with change is to create it yourself."

Who's On Top

Azimut/Benetti, with an astounding 64.7% jump in new orders, consolidated its position at the top of the overall builder category. A distant second is Lürssen, which increased its orders 60% to move up from fourth. Feadship, despite its 18% increase dropped to fourth behind Ferretti, which dropped from second to third in the rankings on a 3% dip in orders. When considering only custom builders, Feadship is third.

Builder	Type	Name/Launch	Design Team	Engines
DEBIRS (Continued)				
• Debirs (Continued)	80	MY Debirs 80/2002	Barlani/H2	MAN
• Ocean Classic	190	MY Ocean Classic One/July 2002	Ocean Classic/Freivaldt	CAT
FINLAND				
Baltic	140	SY TBA/2006	Jude/Vrolijk	Germany/CAT
	141	SY TBA/2003	Jude/Vrolijk	CAT
	147	SY TBA/2003	Reichel-Purtyff/3DDesign	US/CAT
Nautor's Swan	80	SY Swan 80/004/May 2002	Frers/Nautor	Yanmar
	80	SY Swan 80/009/May 2002	Frers/Nautor	Yanmar
	82	SY Swan 82/003/Mar 2002	Frers/Nautor	Yanmar
	82	SY Swan 82/005/Oct 2002	Frers/Nautor	Yanmar
	99	SY Swan 100/002/July 2002	Frers/Nautor	Perkins
	113	SY Swan 112/003/June 2002	Frers/Nautor	MTU
	113	SY Swan 112/004/Sept 2002	Frers/Nautor	MTU
FRANCE				
CIM	115	SY Maxi 115/Mar 2002	Berret-Racoupeau	France/MAN
CAN	105	SY Lady Barbarella/June 2002	GPA	Luxembourg/CAT
	140	MY Heloval/Sept 2002	CAN/Breitebach/Stirling	France/CAT
CNB	95	SY Grand Bleu V/Nov 2002	Briand/Vrjback	Europe/Cummins
Guy Couch	92	MY TBA/Nov 2001	Guy Couch	Europe/MTU
	92	MY TBA/May 2002	Guy Couch	Europe/MTU
	92	MY TBA/Aug 2002	Guy Couch	Europe/MTU
	92	MY TBA/Dec 2002	Guy Couch	Europe/MTU
	95	MY TBA/Dec 2001	Guy Couch	Europe/MTU
	120	MY TBA/2002	Guy Couch/Owner	Europe/MTU
• JFA	82	SY Yliu/Fall 2001	Vrolijk/GCA	Spain/Yanmar
	82	SY Sea Tenante/2002	Joubert/JFA/Kubie	UK
	122	MY Vrjback 122/2003	Vrjback/Gibrator	CAT
• Multiplast	110	SY Cruising Cat/2003	Other/The "A" Group	US
Ocea	132	MY TBA/2003	Hvelv/Tamada/Baudouin	
GERMANY				
Abeking	130	SY TBA/Dec 2001	Trop/Winch	MTU
& Rasoussen	188	MY TBA/Oct 2002	A&R/Starkley/Plato	CAT
	188	MY Excellence IV/Dec 2001	A&R/Starkley	US/CAT
	192	MY TBA/Oct 2003	A&R	CAT
Lürssen	192	MY TBA/2004		US/CAT
	200	MY TBA/2004		MTU
	238	MY TBA/2004	Oreno/Starkley	MTU
	239	MY TBA/2002		MTU
	335	MY TBA/2002		MTU
	360	MY TBA/2002		Wartsila
	410	MY TBA/2002		US/MTU
	455	MY TBA/2002		US/MTU
ITALY				
Affmarina	135	MY TBA/Sept 2002	Bachalupo/Spagnoli/Alarmanne	UK/MTU
Arno	80	MY Leopard 24/2002		MTU
(Rodriguez Group)	80	MY Leopard 24/2002		MTU
	80	MY Leopard 24/2002		MTU
	80	MY Leopard 24/2002		MTU
	88	MY Leopard 27/2002		MTU
	88	MY Leopard 27/2002		MTU
	88	MY Leopard 27/2002		MTU
	88	MY Leopard 27/2002		MTU
• Astondoa	82	MY Astondoa 82 GLX/2002		MTU
(Rodriguez Group)	82	MY Astondoa 82 GLX/2002		MTU
	82	MY Astondoa 82 GLX/2002		MTU
Azimut	80	MY #20/Fall 2001	Azimut/Righini/Galeazzi	Venezuela/CAT
	80	MY #21/Fall 2001	Azimut/Righini/Galeazzi	US/CAT
	80	MY #22/Nov 2001	Azimut/Righini/Galeazzi	US/CAT
	80	MY #23/Dec 2001	Azimut/Righini/Galeazzi	Germany/CAT
	80	MY #24/Jan 2002	Azimut/Righini/Galeazzi	Venezuela/CAT
	80	MY #25/Feb 2002	Azimut/Righini/Galeazzi	Mexico/MTU
	80	MY #26/Mar 2002	Azimut/Righini/Galeazzi	Europe/MTU
	80	MY #27/Apr 2002	Azimut/Righini/Galeazzi	Cyprus/MTU
	80	MY #28/May 2002	Azimut/Righini/Galeazzi	Europe/MTU

• = New Addition to Global Order Book Builders