Alaska Automobile Dealers Association

May 11, 2007

Senator Lesil McGuire
Alaska State Capitol Building #125
Juneau, Alaska 99801

Dear Senator McGuire,

The Alaska Auto Dealers Association, with the full support of the State of Alaska Department of Law, supports SB 164. SB 164 will clean up unintended consequences of the Dealer Practices Act which was passed several years ago. The language that will be deleted does not benefit dealers or consumers and is only being used to generate frivolous lawsuits against dealers.

AS.45.25.465 Subsection (C) requires a separate sticker be posted on **all** used vehicles. This sticker is unnecessary and redundant. Subsection (C)(1) requires that dealers inform the consumer that the vehicle is not subject to Alaska's "Lemon Law." Since Alaska's "Lemon Law" only applies to new vehicles, this requirement is unnecessary. Subsection (C)(2) requires that the dealer advise a customer that a vehicle is not subject to a manufacturers warranty. The presumption is that most used vehicles are not subject to a warranty, since most used vehicles are sold "as is". Further, required FTC postings for used vehicles (commonly known as the As-Is sticker) require dealerships to disclose whether the vehicle is sold as is or if the vehicle has any remaining manufacturers warranty. Finally, subsection (C)(3) requires dealerships to disclose whether the used vehicle was originally manufactured for sale in Canada or another foreign country. There was a "Canadian" vehicle influx of several years ago which was short term in nature. This portion of the separate sticker is also redundant as AS.45.25.470 requires a separate disclosure if a vehicle was originally manufactured for sale in Canada.

The only people who stand to benefit from Subsection (C)(1) are class action attorneys who have sued Alaskan dealerships who do not display this unnecessary and redundant sticker. Not displaying this sticker is an unfair trade practice violation which means the plaintiff's attorney can sue for treble damages and full legal costs even though the consumers have not suffered any actual harm or damages. There is a two year look back on unfair trade practices so a class action attorney can search for enough car buyers to create a class and then subpoena all records going back two years.

Two class action suits of this nature are progressing in Anchorage at this time. Dealerships are still predominantly family owned small businesses in the State of Alaska and frivolous litigation as described above could well bankrupt many well run and respected dealerships.

The Alaska Auto Dealers Association and Senior Assistant Attorney General Ed Sniffen all agree that there is no benefit to consumers or dealers provided by Subsection C which is why all parties have agreed that these amendments should be retroactive to the extent allowed by law. For the reasons outlined above, we support SB 164.

Sincerely,

Jon Cook
Alaska Auto Dealers Association
Legislative Director

Alaska Auto Dealers Association
P.O. Box 71577
Fairbanks, AK 99707

March 4, 2008

Senator Hollis French
Sent Via Email

Re: SB 164

Dear Senator French:

I would like to clarify the AADA's rationale for requesting the retroactivity provision of SB 164.

Recent testimony in the Senate Judiciary Committee from myself and Ed Sniffen, Senior Assistant Attorney General for the State of Alaska, regarding AS.45.25.465 Subsection (C) noted that the requirements contained in that section are either unnecessary or redundant. We also testified that the current statute does not benefit consumers, dealers or the State of Alaska. Actually, the current statute places many dealerships at significant risk of closure or bankruptcy which is why we are asking for retroactive application "to the extent allowed by law".

The only people who stand to benefit from Subsection (C) are class action attorneys who have or could sue Alaskan dealerships who do not or did not display this unnecessary and redundant sticker. Not displaying this sticker is an unfair trade practice violation which means the plaintiff's attorney can sue for treble damages and full legal costs even though the consumers have not suffered any actual harm or damages. There is a two year look back on unfair trade practices so a class action attorney can search for enough car buyers to create a class and then subpoena all records going back two years.

SB 164 calls for retroactive application "to the extent allowed by law." We spent a great deal of time discussing this provision with our legal counsel and Ed Sniffen before agreeing upon this compromise language. We all felt that the broad language regarding retroactivity would allow the matter to be decided by the courts for any current or future claims. We are aware of three class action suits against the same defendant with a portion of the claims relating to the statute in question.

We are more concerned about future claims which could arise under AS.45.25.465 Subsection (C). Without retroactive application, plaintiff's attorneys could pursue class action suits against dealerships going back two years from the effective date of SB 164 being signed into law given the look back allowed for unfair trade practice violations. We believe there is a significant risk of this occurring which is the main reason we're asking for retroactive application. Most Alaska dealerships were not even aware of the

requirements of AS.45.25.465 Subsection (C) until the three class action suits were filed as it was never the intent of the drafter of the statute, Mr. Sniffen, or the AADA, that used cars be included in these requirements back in 2004.

Potentially, thousands of dealership jobs are at risk due to a law that provides no benefit to consumers and which allows class action suits to proceed with the threat of treble damages and full legal costs even if the consumers have not suffered any actual harm or damages. These unintended consequences were not anticipated by anyone at the time the bill was passed back in 2004. To date, there has been no opposition to SB 164. I ask you and your fellow legislators to support and protect Alaskan owned businesses and jobs by passing SB 164.

Please do not hesitate to call me at 322-0362 should you or your staff have any questions regarding this matter.

Sincerely,

Jon Cook
Legislative Director

SARAH PALIN, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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February 19, 2008

Senator Lesil McGuire
State Capitol, Room 125
Juneau, AK 99801-1182

Re: SB 164 re Sale of Used Motor Vehicles

Dear Senator McGuire:

Thank you for sponsoring SB 164. As you know, this bill will repeal AS 45.25.465(c), a provision of the Automobile Dealer Act that requires used motor vehicle dealers to post a written disclosure in the window of every used vehicle that: (1) Alaska's "lemon law" does not apply, (2) the manufacturer's warranty may not apply, and (3) whether the vehicle was originally manufactured for sale in Canada or another foreign country. These provisions were added to Alaska law in 2004 to address a common practice at the time (which does not appear to be continuing today) involving the sale of "current model" used vehicles.

A "current model" used vehicle is a vehicle still within the manufacturer's current model year (i.e. still manufactured and offered for sale), but has been previously sold so that it is considered "used." Typically, these vehicles were purchased from dealers in Canada to take advantage of favorable exchange rates, then brought to Alaska with very low miles (sometimes 10 or less) and sold as "new." Because the vehicle had been sold once, it is no longer considered a new vehicle. This, in turn, excludes application of Alaska's lemon law, which only applies to new vehicles. In addition, some manufacturers would not honor warranties on vehicles manufactured for sale in Canada that were titled in Alaska.

Because these vehicles had all the earmarks of a new vehicle, consumers were sometimes mislead about the vehicle, buying what appeared to be a new vehicle when in fact it was used. Thus, the disclosure requirements of AS 45.25.465(c) were added to the statute in 2004 to protect consumers from this practice. Unfortunately, there appears to have been a drafting error when the statute was finalized. Instead of applying these requirements only to "current model" vehicles, the statute was passed with the language "used motor vehicle or current model vehicle." As the primary drafter of the statute, it was not the intent to require application of these disclosure requirements to all used vehicle sales.

In 2006, another statute was amended that addressed the sale of "current model" vehicles. AS 08.66.015 was amended to remove reference to the sale of current model vehicles. Instead, in order to sell a motor vehicle as "new," the vehicle must have a certificate of origin (which is lost upon first sale), and the dealer must have a franchise agreement with the manufacturer. The effect of this amendment was to treat all used vehicles the same, regardless of whether the vehicle happens to be a current model year vehicle.

Considering amendments to AS 08.66.015, we considered two potential "fixes" to address the over-broad requirements of AS 45.25.465(c). The first was to simply remove language in the statute that applies the disclosure requirement to all used vehicles, making the statute only applicable to "current model" vehicles. With the amendment of AS 08.66.015, however, this was problematic because all reference to current model vehicles was removed from the law. Thus, we would need to develop a definition of "current model vehicle" if this language were to remain.

The second approach, and the one adopted by SB 164, is to simply repeal this section. This makes sense for several reasons. First, the disclosure concerning the applicability of the manufacturer's warranty has been addressed by most manufacturers. We understand from the Automobile Dealer's Association that major manufacturers are honoring warranties on vehicles manufactured for sale in Canada. Second, the disclosure relating to vehicles manufactured for sale in Canada is already required by AS 45.25.470, so this disclosure is duplicative. Third, manufacturers have taken action to prohibit Canadian auto dealers from selling vehicles that are intended for resale in the United States. Finally, with the removal of the "current model" language of AS 08.66.015, it would add unnecessary requirements on auto dealers that will not add significant consumer protections.

The Department of Law supports this repeal, and is available to answer questions as this bill moves through the legislative process.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Clyde E. Sniffen, Jr.
Senior Assistant Attorney General

CES/ljt

cc: Russ Kelly
Mike Ford
Deborah Behr

Alaska "Lemon" Law

Article 06. MOTOR VEHICLE WARRANTIES

Sec. 45.45.300. Repairs required.

If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the defect or condition to the manufacturer of the vehicle or to the manufacturer's or distributor's dealer during the term of the warranty, the manufacturer, distributor, dealer, or a repairing agent shall make the necessary repairs to conform the vehicle to the express warranty.

Sec. 45.45.305. Replacement or refund.

If during the term of the express warranty or within one year from the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, dealer, or repairing agent is unable to conform the motor vehicle to an applicable express warranty after a reasonable number of attempts, the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, and, at the owner's option, shall replace the nonconforming vehicle with a new, comparable vehicle or shall refund the full purchase price to the owner less a reasonable allowance for the use of the motor vehicle from the time it was delivered to the original owner. A refund under this section shall be made to a lienholder of record, if any, and the owner, as their interests may appear.

Sec. 45.45.310. Notice by owner.

In order to claim a refund or replacement under AS 45.45.305, the owner shall give written notice by certified mail to the manufacturer and its dealer or repairing agent at any time before 60 days have elapsed after the expiration of the express warranty or the one-year period after the date of delivery of the motor vehicle to the original owner, whichever period terminates first, (1) stating that the vehicle has a nonconformity; (2) providing a reasonable description of the nonconformity; (3) stating that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and (4) stating that the owner demands a refund or replacement vehicle to be delivered on the 60th day after the mailing of the written notice. Within 30 days after receiving the notice required by this section the manufacturer may make a final attempt to conform the vehicle before a refund or replacement is made under AS 45.45.305.

Sec. 45.45.315. Exceptions.

An owner may not receive a refund or replacement under AS 45.45.300 - 45.45.360 if the manufacturer or distributor shows that the nonconformity complained of

(1) does not substantially impair either the use or the market value of the motor vehicle; or

(2) is the result of

(A) alteration of the motor vehicle by the owner or a person other than a dealer or repairing agent that is not authorized by the manufacturer or distributor; or

(B) abuse or neglect by the owner or a person other than the dealer or repairing agent.

Sec. 45.45.320. Presumption.

A presumption that a reasonable number of attempts have been made to conform a motor vehicle under an applicable express warranty is established if:

(1) the same nonconformity has been subject to repair three or more times by the manufacturer, distributor, dealer, or repairing agent during the term of the express warranty or the one-year period after delivery of the motor vehicle to the original owner, whichever period terminates first, but the nonconformity continues to exist; or

(2) the vehicle is out of service for repair for a total of 30 or more business days during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first; any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer, distributor, dealer, or repairing agent is excluded from the 30-day time period referred to in this paragraph.

Sec. 45.45.325. Parts availability.

A manufacturer whose vehicles are sold in the state through an authorized dealer shall provide its dealer or repairing agent with any part necessary to make a repair of a nonconformity covered under an express warranty, as soon as possible, without additional charge for freight or handling, if the part is not in the dealer's or agent's inventory when the nonconforming vehicle is brought to the dealer or repairing agent for repair.

Sec. 45.45.330. Failure to replace or refund.

A manufacturer or distributor who fails to refund the full purchase price of a motor vehicle or replace the motor vehicle when there is a requirement to do so under AS

45.45.300 - 45.45.360 is presumed to have committed an unfair trade practice under AS 45.50.471_.

Sec. 45.45.335. Resale without disclosure prohibited.

A motor vehicle returned under AS 45.45.305_may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

Sec. 45.45.340. Other rights and remedies.

The provisions of AS 45.45.300_- 45.45.360 do not limit other rights and remedies that may be available to the owner of a motor vehicle under other provisions of law. This section does not create a new cause of action against a dealer or repairing agent who sells or attempts to repair a motor vehicle found to be nonconforming under AS 45.45.300 - 45.45.360.

Sec. 45.45.345. Repair facilities.

A manufacturer or distributor of motor vehicles who authorizes the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities within the state that are able to perform the service and make the repairs required by the manufacturer's express warranty and by AS 45.45.300 - 45.45.360.

Sec. 45.45.350. Reimbursement of shipping costs.

A manufacturer or distributor who accepts the return of a nonconforming motor vehicle under AS 45.45.305_shall reimburse the owner for any reasonable cost incurred in shipping the vehicle to and from the nearest authorized facility for warranty service and repair of a nonconformity that causes the return of the vehicle.

Sec. 45.45.355. Arbitration or mediation.

If a manufacturer or distributor has established an informal dispute settlement procedure that substantially complies with the requirements of 16 C.F.R. 703, as that section may be amended, or if the manufacturer or distributor, after receipt of notice required by AS 45.45.310, offers in writing to participate in an arbitration or mediation process with the owner and the arbitration or mediation decision is binding on the manufacturer or distributor but not on the owner, and if the informal dispute settlement or arbitration or mediation process is approved by the attorney general, the provisions of AS 45.45.305 concerning refund or replacement or AS 45.45.350_concerning shipping costs do not apply to an owner who has not first resorted to the informal dispute settlement procedure or arbitration or mediation process.

Sec. 45.45.360. Definitions.

In AS 45.45.300 - 45.45.360,

(1) "dealer" means a person who has obtained a franchise from, or is authorized by, a motor vehicle manufacturer to engage in the retail sale and warranty repair of the manufacturer's new motor vehicles in the state;

(2) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's new motor vehicles in the state;

(3) "express warranty" or "warranty" means an express written warranty provided by the manufacturer of a new motor vehicle;

(4) "full purchase price" means the total price paid for a motor vehicle by the original owner, including costs added to the retail price, such as original registration fees, transportation fees, dealer preparation, and dealer installed options;

(5) "manufacturer" means a person who by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered under AS 28.10; but does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use;

(7) "nonconformity" means a defect or condition in a motor vehicle caused by a manufacturer, distributor, dealer, or repairing agent that substantially impairs the use or market value of a vehicle;

(8) "owner" means a purchaser, other than for resale, of a new motor vehicle, and a person to whom ownership of the motor vehicle is transferred in conformity with AS 28;

(9) "reasonable allowance" means an amount attributable to an owner's use of a motor vehicle; a "reasonable allowance" may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over seven years, plus an amount equal to the depreciation in value of the vehicle that is caused by

(A) any neglect or abuse by the owner; or

(B) body damage not caused by a nonconformity;

(10) "repairing agent" means a person who has been specifically authorized by a motor vehicle manufacturer or distributor to perform warranty repairs in the state on one or more of the manufacturer's or distributor's motor vehicles;

(11) "substantially impairs the market value" means a nonconformity that substantially decreases the dollar value of a vehicle to the owner when compared to the dollar value of a similar vehicle that does not have the nonconformity;

(12) "substantially impairs the use" means a nonconformity that prevents a motor vehicle from being operated or makes the vehicle unsafe to operate.

Chapter 45.25. MOTOR VEHICLE TRANSACTIONS

Article 01. APPLICABILITY; JURISDICTION; VENUE; CORPORATE AFFILIATES

Sec. 45.25.010. Applicability.

AS 45.25.020 - 45.25.320 apply to franchise contracts between a manufacturer and its new motor vehicle dealers in this state.

Sec. 45.25.020. Jurisdiction; venue.

(a) The courts of this state have jurisdiction over a legal dispute between a manufacturer located in or outside this state and a new motor vehicle dealer located in this state, and the dispute is governed by and interpreted and adjudicated under the law of this state.

(b) Venue for a dispute under (a) of this section is in the judicial district of this state where the new motor vehicle dealer's principal place of business is located.

Sec. 45.25.030. Corporate affiliates.

(a) A manufacturer may not use a subsidiary corporation, affiliated corporation, partnership, association, or other person to accomplish what would be prohibited for the manufacturer under this chapter.

(b) This section does not limit the right of a person included within the scope of this section to engage in reasonable and appropriate business practices consistent with an existing trade practice that is not prohibited by this chapter.

Article 02. FRANCHISE AGREEMENTS

Sec. 45.25.100. Consistency with state law.

The terms and conditions in an agreement between a manufacturer and a new motor vehicle dealer in this state, including a motor vehicle franchise agreement, that are inconsistent with the law of this state do not have any force or effect in this state.

Sec. 45.25.110. Termination of franchise agreements.

(a) A manufacturer may not terminate a franchise with a new motor vehicle dealer unless

(1) the manufacturer has

(A) satisfied the notice requirements of this chapter;

(B) shown that there is good cause for the termination of the franchise, and, if the reasons underlying the good cause can be corrected by the new motor vehicle dealer, the new motor vehicle dealer has failed for 60 days after delivery of the notice required by AS 45.25.120 to make the corrections; the circumstances identified under AS 45.25.120 (a)(2) for which a 15-day notice of termination is required do not qualify as reasons for which correction is allowed under this paragraph; or

(2) the new motor vehicle dealer has systematically engaged in fraud against consumers or the manufacturer or in the operation of the new motor vehicle dealership.

(b) Notwithstanding (a)(1) of this section, a manufacturer may not terminate a franchise agreement with a new motor vehicle dealer because of the death or incapacity of an owner if the owner is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(c) In this section, "good cause" includes when the new motor vehicle dealer fails to comply with or observe a material provision of the franchise agreement. For the purposes of determining good cause under this subsection, reasonable sales and service performance criteria and capital and facility requirements may be considered material provisions only if the criteria or requirements were communicated in writing to the new motor vehicle dealer within a reasonable period before the effective date of the termination or nonrenewal so that a reasonable opportunity was afforded over a period of not less than six months to comply with the criteria or requirements.

Sec. 45.25.120. Notice of termination.

(a) A manufacturer shall furnish a notice of termination of a franchise agreement to a new motor vehicle dealer at least

(1) 90 days before the effective date of a termination, except as required under (2) or (3) of this subsection;

(2) 15 days before the effective date of a termination when the new motor vehicle dealer

(A) is insolvent or is the subject of a bankruptcy or receivership proceeding;

(B) has failed to conduct its customary sales and service operations during its customary business hours for seven consecutive business days; this subparagraph does not apply to closures due to acts of God or circumstances beyond the direct control of the new motor vehicle dealer; or

(C) is convicted of a felony involving moral turpitude or fraud under the law of this state, another state, the federal government, a territory of the United States, or the District of Columbia;

(3) 180 days before the effective date of the termination if the manufacturer or distributor is discontinuing the sale of the product line.

(b) Notice required under (a) of this section must be in writing, shall be sent by certified mail or personally delivered to the new motor vehicle dealer, and must contain

(1) a statement of intention to terminate the franchise;

(2) a statement of the reasons for the termination; and

(3) the date on which the termination takes effect.

Sec. 45.25.130. Threat of termination.

(a) A manufacturer or manufacturer representative may not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with the manufacturer or a subsidiary of the manufacturer, or to do any other act unfair to the new motor vehicle dealer, by threatening to terminate a franchise agreement between the manufacturer or subsidiary of the manufacturer and the new motor vehicle dealer.

(b) This section does not prohibit a voluntary agreement between a manufacturer and a new motor vehicle dealer or between a distributor and a new motor vehicle dealer to settle legitimate disputes.

Sec. 45.25.140. Repurchase obligations on termination.

(a) Upon the termination of a new motor vehicle dealer's franchise agreement by the manufacturer or distributor, the manufacturer or distributor shall repurchase from the new motor vehicle dealer at

(1) the new motor vehicle dealer's net acquisition cost, if the motor vehicles have not been materially altered or damaged, all inventory consisting of unsold new motor vehicles that are current models and models that have been acquired from the manufacturer within the past two model years before receipt of the notice of termination;

(2) the new motor vehicle dealer price listed in the current parts catalog, less applicable allowances, new unused undamaged parts in their original, unbroken packaging, listed in the current price catalog and acquired from the manufacturer or distributor;

(3) fair market value, signs, equipment, and furnishings that bear a trademark or trade name, that have not been altered or damaged, and that were required by the manufacturer or distributor within five years preceding the notice of termination; and

(4) the new motor vehicle dealer's net acquisition cost, special tools that have not been altered or materially damaged that were purchased from the manufacturer or distributor within three years preceding the date of the termination.

(b) Within 90 days after the effective date of the termination, the new motor vehicle dealer shall return the property required by (a) of this section to be repurchased to the manufacturer or distributor at the manufacturer's or distributor's expense. The manufacturer or distributor shall pay the compensation for the property within 60 days after the tender of inventory and other items if the new motor vehicle dealer has clear title to the property and is in a position to convey that title to the manufacturer or distributor. If the property is subject to a security interest, the manufacturer or distributor may make payment jointly to the new motor vehicle dealer and the holder of the security interest, and the manufacturer or distributor may offset these payments.

Sec. 45.25.150. Required compensation for new motor vehicle dealer facilities.

(a) Upon termination by the manufacturer or distributor, the manufacturer or distributor shall compensate the new motor vehicle dealer for new motor vehicle dealer facilities a sum equivalent to the

(1) rent for the unexpired term of the lease or 18 months, whichever period is shorter, if the new motor vehicle dealer is leasing the new motor vehicle dealership facilities from a lessor other than the manufacturer or distributor; or

(2) reasonable rental value of the new motor vehicle dealership facilities for 18 months or until the facilities are leased or sold, whichever period is shorter, if the new motor vehicle dealer owns the new motor vehicle dealership facilities; the sum may be paid in monthly installments at the election of the manufacturer or distributor.

(b) This section does not relieve a new motor vehicle dealer of the obligation to mitigate damages under a lease, prevent a manufacturer from occupying and using the new motor vehicle dealer's facilities while paying rent, or preclude a manufacturer from negotiating a lease termination, sublease, or new lease.

(c) This section does not apply to a termination for

(1) insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under a bankruptcy or receivership law;

(2) failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days;

(3) conviction of the new motor vehicle dealer or its principal owners of a felony or a misdemeanor regardless of the punishment if the crime involves theft, dishonesty, or false statement;

(4) revocation of a license required for the new motor vehicle dealer to operate; or

(5) a fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor that is material to the new motor vehicle dealer's agreement.

(d) The payment required under (a) of this section is only required to the extent that the facilities were used for activities under the franchise agreement and only to the extent the facilities were not leased for unrelated purposes.

(e) If payment under (a) of this section is made, the manufacturer or distributor is entitled to possession and use of the new motor vehicle dealership facilities for the period for which the payment is paid.

Sec. 45.25.160. Prevention of or refusal to honor transfer of new motor vehicle dealership ownership.

A manufacturer may not unreasonably prevent or refuse to honor a transfer of ownership of a new motor vehicle dealership.

Sec. 45.25.170. Succession.

(a) A manufacturer or distributor may not prevent or refuse to honor the succession to a new motor vehicle franchise of an heir or devisee under a will of a franchisee, under a written instrument filed with the manufacturer or distributor designating any person as the successor franchisee, or under AS 13.06 - AS 13.36 (Uniform Probate Code), except that

(1) a designated successor must, within 60 days after the owner's death or incapacity, give the manufacturer or distributor written notice of the intent to succeed, and the designee must agree to be bound by all the terms and conditions of the current franchise agreement;

(2) the manufacturer or distributor may request from the designated successor personal and financial data that are reasonably necessary to determine the qualifications of the designated successor; the designated successor shall provide the information within 60 days after receiving the request;

(3) the manufacturer or distributor may not unreasonably withhold approval of the succession; if the manufacturer or distributor refuses to honor the succession, the manufacturer or distributor shall send written notice to the proposed successor within 60 days after receiving the information requested in (2) of this subsection or within 60 days after receiving the notice of the proposed successor's intent to succeed, whichever is later.

(b) The notice required by (a)(3) of this section must state the specific grounds for not approving the proposed successor. Within 30 days after the proposed successor's

receipt of the notice, the proposed successor may file a protest with the superior court to determine whether the manufacturer or distributor has unreasonably withheld approval.

(c) This section does not preclude the owner of a new motor vehicle dealership from filing with the manufacturer or distributor a written instrument designating any person as a successor. If there are competing successors, the written instrument governs who may submit a proposal as a successor.

Sec. 45.25.180. New dealerships.

(a) Before a manufacturer or distributor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give 90 days' written notice to each new motor vehicle dealer of the same line make in the relevant market area of the intention to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within that relevant market area.

(b) Within 30 days after receiving the notice required under (a) of this section or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer may bring a declaratory judgment action in the superior court of this state to determine whether good cause exists for the establishment or relocation of a proposed new motor vehicle dealer. If an action is filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the court has rendered a decision on the matter.

(c) This section does not prohibit

(1) the relocation of an existing new motor vehicle dealer to a new location not within four miles of an existing new motor vehicle dealer;

(2) the appointment of a successor new motor vehicle dealer at the same location as its predecessor or within a two-mile radius from any boundary of the predecessor's former location within two years from the date when the predecessor ceased operations or was terminated, whichever occurred later; or

(3) the entering into of a renewal of, replacement of, or succeeding franchise agreement with an existing new motor vehicle dealer whose operations will continue at the existing new motor vehicle dealer's current location.

(d) When determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the superior court shall consider the existing circumstances, including

(1) whether the establishment of an additional franchise or relocation of the existing new motor vehicle dealer appears to be warranted by economic and marketing conditions, including anticipated future changes;

(2) the retail sales and service business transacted by the protesting new motor vehicle dealer and other new motor vehicle dealers of the same line make with a place of business in the relevant market area to be served by the additional franchise or proposed new location of an existing new motor vehicle dealer during the three-year period immediately preceding the notice;

(3) the investment necessarily made and obligations incurred by the protesting new motor vehicle dealer to perform the protesting new motor vehicle dealer's obligations under existing franchise agreements;

(4) the permanency of the investment of the protesting new motor vehicle dealer; and

(5) whether it is beneficial or injurious to the public welfare for an additional franchise to be established or for the existing new motor vehicle dealer to be relocated.

(e) In this section,

(1) "relevant market area" means the greater of the area

(A) within a radius of 14 miles around an existing new motor vehicle dealer; or

(B) of responsibility defined in a governing franchise agreement;

(2) "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within two miles of the new motor vehicle dealer's established place of business.

Sec. 45.25.190. Arbitration.

In a controversy between a manufacturer and a new motor vehicle dealer under AS 45.25.010 - 45.25.320, neither the manufacturer nor the new motor vehicle dealer is required to submit the controversy to arbitration. If both the manufacturer and the new motor vehicle dealer agree to submit a controversy under AS 45.25.010 - 45.25.320 to arbitration, the arbitration shall be conducted under AS 09.43.020 - 09.43.180 (Uniform Arbitration Act), the manufacturer and the new motor vehicle dealer shall each select one arbitrator, and both the manufacturer and the new motor vehicle dealer shall select the third arbitrator.

Article 03. MANUFACTURER AND DISTRIBUTOR PRACTICES

Sec. 45.25.300. New motor vehicle dealership location and facilities.

A manufacturer may not require, coerce, or attempt to coerce a new motor vehicle dealer to change the location of the new motor vehicle dealership or to make any substantial alterations to the new motor vehicle dealership premises or facilities if the change or

alteration would be unreasonable or if there is not a sufficient supply of new motor vehicles to justify the expansion in light of the current market and economic conditions.

Sec. 45.25.310. Discrimination.

A manufacturer may not unfairly discriminate among new motor vehicle dealers with respect to warranty reimbursements or authority granted new motor vehicle dealers to make warranty adjustments with retail customers.

Sec. 45.25.320. Time limits on claim audits, claim denials, claim reductions, and charge backs.

(a) A manufacturer or distributor may not audit a claim, deny a claim, reduce the amount of a claim to be reimbursed to a new motor vehicle dealer, or charge back a portion of the claim to a new motor vehicle dealer if 18 or more months have passed since the new motor vehicle dealer submitted the claim or if 18 or more months have passed from the end of a manufacturer-sponsored incentive program related to the claim, whichever 18-month period ends later.

(b) The time restriction in (a) of this section does not apply if the manufacturer reasonably suspects that fraud is involved in the claim.

(c) In this section, "claim" means a claim made by a new motor vehicle dealer for compensation by the manufacturer or distributor for sales incentives, warranty repairs, and service incentives.

Article 04. DEALER PRACTICES

Sec. 45.25.400. Prohibited use of advertising terms.

(a) A motor vehicle dealer may not use the term "invoice," "factory invoice," "dealer invoice," "dealer cost," "wholesale price," or any other term of similar meaning in an advertisement for the sale of a motor vehicle.

(b) A motor vehicle dealer may use the term "manufacturer's suggested retail price," "MSRP," or "list price" in an advertisement for the sale of a motor vehicle, subject to the restriction on price comparisons in AS 45.25.450 and the following:

(1) the advertised price must reference the final price listed by the manufacturer on the monroney sticker, including accessories and options physically attached to the vehicle at the time of delivery to the dealer, plus any transportation charges, and minus all manufacturer discounts and savings;

(2) the manufacturer's suggested retail price or the list price does not include charges added by the dealer or options added to the vehicle by the dealer; and

(3) whenever using the term "manufacturer's suggested retail price," "MSRP," or "list price," the dealer may not represent that a buyer would save money by paying a price that is lower than the "manufacturer's suggested retail price," "MSRP," or "list price."

Sec. 45.25.410. Availability of advertised items.

A motor vehicle dealer may not advertise a new motor vehicle at a specified dealer price with the intent not to supply reasonably expected demand, unless the advertisement discloses the number of vehicles in stock at the advertised price.

Sec. 45.25.420. Display of motor vehicles.

A motor vehicle dealer shall display all vehicles advertised for sale for the duration of the sale period in a conspicuous and clearly visible location on the dealer's premises. The advertised sale price for each vehicle must be clearly marked on the vehicle so the consumer can readily identify the advertised price for the vehicle.

Sec. 45.25.430. Refusal to sell on advertised terms and conditions.

A motor vehicle dealer may not refuse to sell a motor vehicle on the terms and conditions that the dealer has advertised. This section does not apply if

(1) the dealer can document that the advertised term or condition was the result of an error on the part of the advertising medium or an outside advertising agent; or

(2) the refusal is based on an error that was made in good faith by the dealer and was clearly and conspicuously a mistake, and the dealer corrected the error as soon as the dealer knew or reasonably should have known of the error.

Sec. 45.25.440. Advertised price.

(a) When selling a motor vehicle, a motor vehicle dealer may not charge dealer fees or costs, except for fees actually paid to a state agency for licensing, registration, or title transfers, unless the fees or costs are included in the advertised price.

(b) In this section, "dealer fees or costs" includes dealer preparation fees, document preparation fees, surcharges, and other dealer-imposed fees and costs.

Sec. 45.25.450. Advertised price comparisons, reductions, and discounts.

(a) A motor vehicle dealer may not make a price comparison, price reduction, or price discount in an advertisement unless the comparison, reduction, or discount complies with this section.

(b) A motor vehicle dealer may advertise a price comparison for a new motor vehicle with the manufacturer's suggested retail price only if

(1) the dealer only uses the term "manufacturer's suggested retail price," "MSRP," or "list price";

(2) the advertised price references the final price listed by the manufacturer on the monroney sticker;

(3) the manufacturer's suggested retail price, MSRP, or list price does not include charges added by the dealer or options added to the vehicle by the dealer;

(4) the dealer clearly discloses that the manufacturer's suggested retail price, MSRP, or list price may not reflect the actual selling price for the vehicle in the dealer's trade area: and

(5) the dealer does not make a representation in the advertisement, including a reference to a "sale," "reduction," or "discount," that the comparison represents a saving to the consumer.

(c) A motor vehicle dealer may not use a competitor's price as a reference price unless

(1) the reference price is the competitor's current, bona fide price in the trade area of the dealer making the comparison;

(2) the comparison is to an identical or nearly identical vehicle that does not materially differ in model, style, design, name, brand, kind, or quality from the advertised product: and

(3) the dealer includes in the advertised price all charges that the competitor includes in the competitor's price.

(d) A motor vehicle dealer shall be in possession of documents and all other information necessary to substantiate all reference price claims when the claims are made and shall maintain this information in a readily accessible place for two years after the time the reference price claims are made.

Sec. 45.25.460. Advertising and selling practices generally.

(a) In addition to the provisions of AS 45.50.471 and regulations adopted under AS 45.50.471, a motor vehicle dealer

(1) shall include in an advertisement of a motor vehicle for sale all fees or charges, except fees or charges to be paid to a third party;

(2) may not represent the dealer document preparation fee as a government fee;

(3) may not advertise a specific motor vehicle for sale without identifying the vehicle by either its vehicle identification number, vehicle stocking number, or license number;

(4) may not advertise that free merchandise, gifts, or services will be provided by the dealer if a vehicle is purchased; in this paragraph, "free" includes merchandise or services offered for sale at a price less than the dealer's cost for the merchandise or services;

(5) may not use the term "rebate," "cash back," or a similar term in advertising the sale of a motor vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail buyer of the vehicle;

(6) may not require a person, in order to receive the advertised credit terms, to pay a higher price for a motor vehicle and any related goods or services than the cash price the same person would have to pay to purchase the same vehicle and related goods or services;

(7) may not advertise a guaranteed trade-in allowance or range of allowances unless the guarantee is provided by the manufacturer or distributor;

(8) may not affix to a new motor vehicle a supplemental price sticker containing a price that represents the dealer's asking price if the supplemental price sticker exceeds the manufacturer's suggested retail price, unless the supplemental sticker

(A) clearly and conspicuously, in the largest print appearing on the sticker other than the print size used for the dealer's name, discloses that the supplemental sticker price is the dealer's asking price, or words of similar meaning, and is not the manufacturer's suggested retail price;

(B) clearly and conspicuously discloses the manufacturer's suggested retail price; and

(C) states, if the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the difference and describes it as additional dealer mark-up;

(9) may not advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of the dealer, that a down payment is not required in connection with the sale of a motor vehicle when a down payment is in fact required;

(10) may not advertise an offer for the sale, lease, or purchase of a motor vehicle that does not contain the name of the dealer;

(11) may not represent and sell as a new motor vehicle a demonstrator vehicle or a motor vehicle that is a used motor vehicle; in this paragraph, "demonstrator vehicle"

(A) means a motor vehicle

(i) that has been assigned by a dealer for use by the dealership as an executive vehicle for promotional purposes, including being driven in the community;

(ii) that has not been licensed by a retail buyer; and

(iii) the title of which has not been transferred to a retail buyer;

(B) does not include a motor vehicle that has only been driven to demonstrate the motor vehicle to a prospective buyer;

(12) may not advertise that the dealer finances any person or does not reject any person's credit, or make similar claims;

(13) may not advertise or make a statement, declaration, or representation in an advertisement that cannot be substantiated in fact; the burden of proof of the factual basis for the statement, declaration, or representation is on the dealer.

(b) *[Repealed, Sec. 9 ch 171 SLA 2004].*

Sec. 45.25.465. Sales of used motor vehicles; required disclosures.

(a) Before the sale of a used motor vehicle, a motor vehicle dealer shall,

(1) when obtaining a used motor vehicle from an individual consumer, make a reasonable inquiry of the seller into the condition of the vehicle, including the accident and repair history of the vehicle; the information shall be recorded in writing and verified by the seller; the dealer shall provide this information to a prospective purchaser of the vehicle;

(2) when a motor vehicle dealer obtains a used motor vehicle from another motor vehicle dealer, a wholesaler, or an auction, disclose to a prospective purchaser of the vehicle that the vehicle was purchased from another dealer, a wholesaler, or an auction.

(b) Nothing in this section creates an express warranty by the dealer.

(c) When a motor vehicle dealer sells a used motor vehicle or a current model used motor vehicle, the motor vehicle dealer shall disclose to the buyer in writing in a manner that is clear and conspicuous and posted in the window of the vehicle

(1) that the warranty provisions of AS 45.45.300 - 45.45.360 do not apply to the purchase of the motor vehicle;

(2) that, if applicable, the vehicle is not subject to a manufacturer's warranty; and

(3) that, if applicable, the vehicle was originally manufactured for sale in Canada or another foreign country.

Sec. 45.25.470. Sales of vehicles manufactured for sale in a foreign country.

Before sale, a motor vehicle dealer shall disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country.

Sec. 45.25.480. Identification number plates.

A motor vehicle dealer may not knowingly purchase or sell a vehicle that has an altered or removed vehicle identification number plate, or alter or remove a vehicle identification number plate.

Sec. 45.25.490 Required documentation.

A motor vehicle dealer may not sell or offer to sell a motor vehicle unless the motor vehicle dealer holds a manufacturer's statement of origin, a title, or another properly executed document reasonably necessary to obtain the statement of origin or title for transfer of the vehicle to the buyer.

Sec. 45.25.500. Trade-ins.

A motor vehicle dealer may not transfer title to a trade-in vehicle or perform any repairs or reconditioning on a trade-in vehicle before the completion of the sales transaction for which the vehicle is a trade-in.

Sec. 45.25.510. Disclosure of damages.

(a) Before entering into a new motor vehicle sales contract, a new motor vehicle dealer shall disclose in writing to a buyer of the new motor vehicle any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or $1,000, whichever amount is greater. A new motor vehicle dealer is not required to disclose to a buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) If disclosure is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(c) In this section,

(1) "cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting and includes windshields, bumpers, hoods, or trim panels;

(2) "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

Sec. 45.25.520. Form of disclosures.

Except as provided in AS 45.25.460(a)(8)(A), if a disclosure is required by this chapter with respect to a motor vehicle advertisement, the disclosure must be made in a clear and conspicuous manner.

Sec. 45.25.530. Disclosure regarding receipt of commissions.

If a motor vehicle dealer's service operations employees receive a commission for the amount of work they perform, the motor vehicle dealer shall post a conspicuous sign that is visible to service customers that the dealer's service operations employees work on commission.

Sec. 45.25.590. Definitions.

In AS 45.25.400 - 45.25.590,

(1) "advertise," "advertised," "advertising," and "advertisement" include representations, whether made on or off store premises, made to persons in the print media, in the broadcast media, on the computer, in a brochure, in a flyer, by direct mail, by sign, or on a tag;

(2) "monroney sticker" means the window sticker required by 15 U.S.C. 1231 - 1233 (Automobile Information Disclosure Act);

(3) "motor vehicle," notwithstanding the definition of "motor vehicle" in AS 45.25.990, means a vehicle, including a trailer, that is required to be registered under AS 28.10, but does not include a motorcycle;

(4) "new motor vehicle," notwithstanding the definition of "new motor vehicle" in AS 45.25.990, means a motor vehicle that has not been titled to anyone and still retains the original manufacturer's certificate of origin.

Article 05. SALES AND SERVICE CONTRACTS

Sec. 45.25.600. Title transfer.

A motor vehicle dealer may not transfer the title for a motor vehicle to a buyer before all of the sale documents, including any finance contract arranged by the seller, are complete and executed in final form by all parties to the sale.

Sec. 45.25.610. Sales contracts.

(a) A motor vehicle sales contract must be in writing, signed by both the seller and buyer, and completed as to all essential provisions before the signing of the contract by the buyer and before delivery of the vehicle to the buyer.

(b) *[Repealed, Sec. 9 ch 171 SLA 2004].*

(c) If a motor vehicle dealer arranges financing for a buyer, the motor vehicle dealer may deliver the motor vehicle to the buyer before final approval by the financing entity if

(1) the buyer and seller sign an agreement separate from the motor vehicle installment contract on an 8 1/2 x 11 inch sheet of paper that clearly and conspicuously informs the buyer that final financing arrangements have not yet been approved and that clearly sets out the amount that will be financed, the annual percentage rate of the finance charge, the amount of the finance charge, the number and frequency of payments, and the amount of each payment;

(2) the separate agreement clearly and conspicuously informs the buyer that accepting delivery of the vehicle before final financing approval obligates the buyer to terms of the motor vehicle sales contract if the terms on the separate agreement are identical to the terms finally approved by the financing entity; and

(3) the separate agreement provides that the separate agreement, the motor vehicle sales contract, and any and all other conditions of the purchase will be void if any of the terms contained in the separate agreement are changed by either the motor vehicle dealer or the financing institution as a condition of sale or final financing approval.

(d) If a buyer's final financing is not approved and, as a result, the transaction is not completed, the motor vehicle dealer shall return the buyer's entire down payment, and the buyer's trade-in, if any, shall be returned to the buyer in the same condition and with not more than 100 miles accumulated on the odometer from when the motor vehicle was delivered to the motor vehicle dealer.

(e) In this section, "sales contract" includes an installment sales contract, a short-term sales contract, and a single-payment contract.

Sec. 45.25.620. Service contracts.

(a) A motor vehicle service contract must be in writing and contain all essential provisions regarding the administration of the contract. If a motor vehicle dealer presents a service contract to the customer as an "application" for a contract, it must be clearly and conspicuously marked as an application and must disclose the applicable rules for obtaining a final service contract.

(b) If a service contract is included in a motor vehicle sale, the seller shall, before delivery of the motor vehicle, give to the buyer a written statement with all pertinent blank spaces filled in that shall be signed by both the buyer and seller and that clearly and conspicuously

(1) explains the difference between a service contract and a warranty;

(2) discloses the maker of or obligor on the service contract;

(3) describes the relationship between the maker and the seller of the service contract;

(4) for a vehicle that is a used vehicle, notifies the buyer that the seller may not disclaim implied warranties if the seller is the maker or obligor of the service contract; and

(5) includes all other disclosures required by law.

(c) A motor vehicle dealer may not disclaim or limit implied warranties for a motor vehicle for which the motor vehicle dealer is a maker of a service contract sold for that motor vehicle. However, a motor vehicle dealer may disclaim or limit implied warranties as otherwise allowed by law, regardless of the make or model of the motor vehicle, if the motor vehicle dealer is merely the seller, not the maker, of the service contract and does not otherwise extend any written warranties on the motor vehicle that is purchased.

(d) In this section, "maker" means the person that makes, frames, and executes a service contract and assumes any obligation due to the buyer, but does not include a motor vehicle dealer who merely sells the service contract as the agent of a service contract company doing business in this state.

Sec. 45.25.630. Discharged amounts in motor vehicle leases.

(a) Notwithstanding another provision of law to the contrary, if the amount to be paid by a lessee under a motor vehicle lease includes a discharged amount, the inclusion of the discharged amount in the amount to be paid under the lease is not a loan of the discharged amount and is not subject to any law that regulates the disclosure of interest, the charging of interest, the amount of interest rates, or the lending of money.

(b) In this section, "discharged amount" means the amount, if any, that the lessor agrees to pay to discharge an outstanding obligation of the lessee under an existing motor vehicle agreement, loan, installment sales contract, or lease.

Article 06. GENERAL PROVISIONS

Sec. 45.25.900. Conflict with other law.

If a provision of this chapter conflicts with another provision of this title, this chapter controls.

Sec. 45.25.910. Remedial purpose.

The provisions of this chapter are remedial.

Sec. 45.25.990. Definitions.

In this chapter,

(1) "dealer" means a new motor vehicle dealer or used motor vehicle dealer;

(2) "dealership" means the business entity that is operated by a motor vehicle dealer;

(3) "distributor" means a person or entity who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains or sends distributor representatives within or to this state to sell or distribute new or used motor vehicles to motor vehicle dealers in this state; in this paragraph, "distributor representative" means a representative employed by a distributor branch, distributor, or wholesaler who sells or distributes new or used motor vehicles to franchised motor vehicle dealers in this state;

(4) "distributor branch" means a branch office maintained by a distributor or wholesaler who sells or distributes new or used motor vehicles to franchised motor vehicle dealers in this state;

(5) "franchise" means a written arrangement for a definite or indefinite period in which a manufacturer, distributor, or motor vehicle wholesaler grants to a motor vehicle dealer a license, sales and service agreement, or contract of any kind to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the wholesale or retail marketing of related motor vehicles or services;

(6) "franchised" means having a franchise;

(7) "fraud" includes a promise or representation not made honestly or in good faith, and an intentional failure to disclose a material fact;

(8) "good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade;

(9) "lease," except in AS 45.25.150_, means a contract by which a person owning a motor vehicle grants to another person the right to possess, use, and enjoy the motor vehicle for a specified period of time in exchange for periodic payment of a stipulated price and in which the use of the vehicle is granted for a period of 12 or more months;

(10) "manufacturer" means a person or the person's subsidiary who manufacturers, imports, distributes, or assembles new motor vehicles and includes an administrator, a distributor, a distributor branch, and a factory branch; in this paragraph, "factory branch" means a branch office maintained by a manufacturer for directing and supervising the representatives of the manufacturer;

(11) "manufacturer representative" means any employee or agent of a manufacturer who engages in the business of contacting a manufacturer's respective franchised dealers for the purpose of making or promoting the sale of the manufacturer's vehicles, parts, accessories, or services;

(12) "motor vehicle" means a motor vehicle that is required to be registered under AS 28.10, but does not include a motor home, a recreational vehicle, or a motorcycle;

(13) "motor vehicle dealer" has the meaning given in AS 08.66.350_, except that, in this paragraph, notwithstanding the definition of "motor vehicle" given in AS 08.66.350_, "motor vehicle" has the meaning given in this section;

(14) "motor vehicle salesperson" means a person who is employed by a motor vehicle dealer as a salesperson or sales representative to solicit, sell, lease, or exchange motor vehicles under the direction of a motor vehicle dealer;

(15) "new motor vehicle" means a motor vehicle that has not been previously sold to and registered to a person except a distributor, wholesaler, or motor vehicle dealer for resale;

(16) "new motor vehicle dealer" means a motor vehicle dealer for new motor vehicles or for new and used motor vehicles;

(17) "sale" means the issuance, transfer, agreement for transfer, exchange, gift, pledge, hypothecation, or mortgage in any form, whether by transfer in trust or otherwise, of a motor vehicle, an interest in a motor vehicle, or a related franchise;

(18) "service contract" means an optional agreement that is separate from a contract for the sale of a motor vehicle and that covers certain repair or maintenance functions beyond coverage provided by a warranty;

(19) "terminate" includes nonrenewal or cancellation;

(20) "used motor vehicle" means a motor vehicle that has been previously sold to and registered to a person other than a distributor, wholesaler, or motor vehicle dealer;

(21) "used motor vehicle dealer" means a motor vehicle dealer for used motor vehicles.

HJR

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HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: February 7, 2007 **FURTHER REFERRALS: Labor and Commerce**

Date of Committee Action: February 15, 2007

The TRANSPORTATION Committee considered: **HJR 8**

HOUSE JOINT RESOLUTION NO. 8 **WASHINGTON CONTAINER FEE**
Opposing the enactment by the Washington State Legislature of a bill proposing to impose a fee on the processing of shipping containers in the State of Washington because of the negative impact of the fee on the people and the economy of this state.

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HJR 8 (TRA)
***For Senate Bills with new title:* [ ] *Technical Title* [ ] *New Title: HCR*_____ [✓] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Leg.				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	DOGAN	X			
	Johnson	X			
	Kohring	X			
	Salmon	X			
Chair:	NEUMA	X			
Chair:					

REPRESENTATIVE BILL THOMAS
ALASKA STATE LEGISLATURE DISTRICT 5
e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebulicans.org/thomas/

State Capitol
Juneau AK, 99801-1182
907-465-3732
888-461-3732
FAX 907-465-2652

MEMORANDUM

DATE: 2-07-07

TO: Representative Johansen

FROM: Representative Thomas

RE: HJR 8 Opposing Washington State Container Tax

I respectfully request that you schedule HJR 8 for a hearing in House Transportation at your earliest convenience. HJR 8 asks that the Washington State Legislature not to enact additional fees on shipping containers being shipped to and from that state.

If you have any questions please contact by staff, Kaci Schroeder Hotch. Thank you.

REPRESENTATIVE BILL THOMAS
ALASKA STATE LEGISLATURE DISTRICT 5
e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebulicans.org/thomas/

State Capitol
Juneau AK, 99801-1182
907-465-3732
888-461-3732
FAX 907-465-2652

Sponsor Statement for HJR 8 Opposing the enactment by the Washington State Legislature of a shipping container tax.

Alaska depends heavily on goods shipped through ports in Washington state, which has long been a gateway to this state. In 2003, Alaska was the Puget Sound's 5th largest trading partner. The close economic connection between Alaska and Washington is responsible for at least 103,500 jobs and over $4 billion in labor earnings.

Currently there is a bill before the Washington State Senate that proposes to create a Freight Congestion Relief Account and taxation structure. A fee will be imposed on marine terminal operators at the rate of $50 per twenty-foot equivalent unit. The terminal operator will be allowed to keep 10% of the fee as compensation for accounting costs, but must remit the rest back to the state which will then go into this account.

With shipping fees in Alaska already astronomical this additional tax could be devastating to the flow of goods to and from this state. HJR 8 brings this negative impact to the attention of the Washington State Legislature and asks that the Washington State Legislature find some other means to fund infrastructure improvements to the ports of Washington. I strongly urge your support of this resolution.

MEMO

Dated: February 12, 2007

To: Tamara Cook
Director, Legislative Legal and Research Services

From: Representative Kyle Johansen

Re: Drafting of a Committee Substitute for HJR 8

Dear Tam:

Enclosed is draft language for an addition of language to HJR 8. The Transportation Committee would like to adopt the CS at a hearing this Thursday afternoon at 1:00 pm.

On page 2, line 26, insert:

FURTHER RESOLVED, the Alaska State Legislature urges the Attorney General for the State of Alaska to use the resources of the Department of Law to research the legal issues presented by a container tax as set out in SB 5207, and if such a tax is enacted, and the facts and law support it, to immediately file a complaint and request for an injunction in Federal Court and any other forum that could provide relief.

FURTHER RESOLVED the Alaska State Legislature urges Talis Colburg, Attorney General for the State of Alaska, to use resources of the Department of Law to research relevant issues presented by a container tax as set out in SB 5207 and if such a tax becomes law, to file a complaint and request for an injunction in Federal Court in Washington State.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHJR 8(TRA)
(H) Publish Date: 2/19/07

Revision Date/Time (Note if correction):
Dept. Affected: Legislature
Title "Opposing the enactment by the Washington State Legislature of a bill proposing to impose a fee on the..."
RDU Legislative Council
Component Various
Sponsor "Representatives Thomas, Samuels, Wilson, ..."
Requester Office of the Governor
Component No. 782

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
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**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*
This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
Phone 465-6626
Division Legislative Affairs Agency
Date/Time 2/13/07 10:00 AM
Approved by: Pamela Varni, Executive Director
Date 2/13/2007
Agency Legislative Affairs Agency

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 9, 2007

SUBJECT: GATT and Customs Convention o Containers
(Work Order No. 25-LS0731)

TO: Representative Kyle Johansen

FROM: Donald M. Bullock Jr.
Legislative Counsel

You asked for a review and comment on the validity of the fee proposed on containers by SB 5290 in light of Art. VII of the General Agreement on Tariffs and Trade (GATT) and the Customs Convention on Containers (CCOC). SB 5290 is being considered by the Washington State Legislature.[1]

As noted in an earlier memorandum to you regarding SB 5290, dated January 31, 2007, I am not sure what activity the bill proposes to subject to the fee. The bill refers to processing a container without defining what activity constitutes processing. For the purpose of this memo, I will assume that the proposed fee attaches in some way to a container that is either empty or carrying goods in international commerce.

GATT and CCOC are international trade agreements that address the shipment of goods and movement of containers. A shipping container is an interesting tool of commerce in that the container itself has value, moves across international boundaries, remains in one country for a period of time, and then moves out of that country either loaded or empty. Both GATT and CCOC recognize that the goods within a container are subject to duty and other fees, but distinguish fees applied to the contents of a container from those applicable to the container itself.

Article VII of GATT addresses the valuation of imported merchandise for customs purposes. For that purpose, the value of imported merchandise "should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise." Opponents of a fee on containers proposed for several major California ports claimed that a fee on shipping containers in those ports would breach obligations

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[1] In California, Senator Lowenthal has again introduced a bill to impose a container user fee on containers processed through the ports of Long Beach, Los Angeles, and Oakland. SB 974 was introduced on February 23, 2007, and is similar to Senator Lowenthal's SB 927 that was vetoed by Governor Schwarzenegger in September 2006.

under Art. VII.[2] However, Art. VII does not directly address a fee imposed on a container, and I have not found an interpretation that describes how a flat fee, such as the container fee, is addressed in Art. VII or is inconsistent with that article.[3]

Customs value is also the subject of the CCOC cited by opponents of state container fees. The CCOC defines "import duties and taxes" to include "Customs duties and all other duties, taxes, fees and other charges which are collected on, or in connection with, the importation of goods, but not including fees and charges limited in amount to the approximate cost of services rendered."[4] This definition is broad enough to be interpreted to include a fixed rate container fee such as that proposed in Washington; such a fee may fall within the language "in connection with, the importation of goods."

Under the COCC, "temporary admission" of a container is described as "temporary importation, subject to reexportation, free of import duties and taxes and free of import prohibitions and restrictions."[5] Thus, the CCOC could be interpreted to conclude that a flat fee imposed on a container that is being temporarily admitted into the United States in a Washington port is inconsistent with the convention. However, I expect the proponents of the fee would argue that the container fee is a fee "limited in amount to the approximate cost of services rendered," an imposition excluded from the definition of "import duties and taxes" in the CCOC.

In summary, I have not found a clear basis for concluding that the proposed Washington container fee is inconsistent with GATT; Art. VII of GATT seems limited to addressing the customs valuation of imported goods. However, I do find that the CCOC could be interpreted to preclude such a fee when the fee is imposed on a container that is temporarily admitted into the United States.[6]

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[2] See, e.g. Letter from Sandra L. Kennedy, President, Retail Industry Leaders Association, to Assemblywoman Judy Chu, Chair, Committee on Appropriations, California State Assembly (June 30, 2005) (opposing SB 760). The letter is published on the Internet at *http://www.retail-leaders.org/new/resources/CA%20SB%20760%20-%20RILA%20Oppose%20Letter%20-%20Asm%20Appr%2006-30-05.pdf* (accessed March 7, 2007). California Governor Schwarzenegger vetoed similar legislation — SB 927 — in September 2006.

[3] Perhaps those in opposition to the container fee that cite Art. VII characterize the fee as a form of customs duty that, being a flat fee, is not based on the value of the merchandise in the container.

[4] Customs Convention on Containers, 1972, ch. 1, art. 1(a).

[5] Customs Convention, ch. 1, art. 1(b).

[6] Governor Schwarzenegger not address possible conflicts with international agreements in his veto message when he vetoed the proposed California container fee. Other than

If I may be of further assistance, please advise.

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stating that there were other options that could be explored for the improvement of port infrastructure, he expressed concern that such a fee would harm California exporters. He wrote, "It is very important that any measure that increases fees that impact exporters not have the unintended consequences of negatively impacting the sale and delivery of goods grown and manufactured in California. SB 927, unfortunately could negatively impact these exports as well." Governor Schwarzenegger's veto message for SB 927 is published on the Internet at *http://gov.ca.gov/pdf/press/sb_927_veto.pdf* (accessed March 9, 2007).

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 January 31, 2007

SUBJECT: Proposed fee on processing shipping containers by Washington State (Work Order No. 25-LS0432)

TO: Representative Kyle Johansen

FROM: Donald M. Bullock Jr.
Legislative Counsel

You provided me with a copy of Senate Bill 5207 (SB 5207) that was introduced in the Washington State Legislature by Senators Haugen, Murray, and Spanel. You asked several questions about whether such a fee would be unconstitutional, would be preempted by federal law, or could be invalidated under some other legal theory.

The legality of the fee proposed in this bill is difficult to assess. The fee has not been enacted and the bill is unclear as to how the fee would be imposed. There is no precedence for this fee and therefore no conclusive or helpful legal authority to support a conclusion that the fee, if enacted, would be unconstitutional or invalid under the supremacy of federal law. As I mentioned to Randy Ruaro of your office, the California assembly passed a very similar fee in 2006, but the bill was vetoed by Governor Schwarzenegger.[1] Some of the issues you raise were discussed during the consideration of that legislation.

SB 5207 proposes a fee imposed on "the processing of shipping containers in the ports of Washington state."[2] The amount of the fee would be $50 per twenty-foot equivalent unit

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[1] The bill, SB 927, would have applied only to the ports of Los Angeles and Long Beach and proposed a tax of $30 per twenty-foot equivalent container length. Most containers are 40 feet in length and would have been subject to a $60 levy. Governor Schwarzenegger vetoed the bill on September 22, 2006. The governor's veto message is published on the Internet at *http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0901-0950/sb_927_vt_20060922.html* (accessed 1/26/2007).

[2] Sec. 3(1), S.B. 5207, 60th Legislature, 2007 Reg. Sess. (Wash. 2007), hereafter referred to as "SB 5207."

and would be payable by the marine terminal operator processing the container.[3] The amount of the fee is clear, however, the bill is vague on who is actually paying the fee and what activity is subject to the fee. These vagaries make it difficult to analyze the effect of the bill and to predict the outcome of a legal challenge, should the fee be enacted.

The Washington bill is not clear regarding who is actually paying the fee, although marine terminal operators are the persons responsible for collecting the fee. I base this conclusion on such phrases in the bill as "each marine terminal operator . . . may retain 10 percent of the fifty-dollar fee collected,"[4] "fee collected by marine terminal operators,"[5] "amount of revenue collected by the marine terminal operators,"[6] and "the fee required by this chapter, to be collected by the marine terminal operator."[7] Also, a marine terminal operator who "fails to collect the fee imposed . . . or, having collected the fee, fails to pay it to the department" is personally liable to the state for the amount of the fee.[8] No language describes who should be paying the fee to the operator.

I can think of a number of possible persons that might be the target of the fee proposed in the bill, such as an owner of a container, the person shipping the container, the person receiving the container, the railroad continuing to ship the container from a port, the trucking company delivering or removing the container from the port, the owner of the contents of the container, or some other person. In the California legislation, the person who bore the burden of the fee was clearly defined -- SB 927 provided for the port authority to "assess a use fee on the *owner of container cargo* moving through the port not to exceed $30 per [twenty-foot equivalent unit]."[9] [Emphasis added.]

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[3] Sec. 3(2), SB 5207. Sec. 2(3) of the bill defines "twenty-foot equivalent unit" to mean "measure of containerized cargo capacity equal to one standard twenty foot (length) by eight foot (width) by eight foot and six inches (height) container."

[4] Sec. 3(2), SB 5207.

[5] Sec. 3(3), SB 5207.

[6] Sec. 3(4), SB 5207.

[7] Sec. 5(1), SB 5207.

[8] Sec. 5(2), SB 5207.

[9] Sec. 2, 1746(c), S.B. 927, 2006 - 2006 Session (CA 2006), hereafter referred to as "SB 927." Sec. 2, 1746 was applicable to the Port of Los Angeles and a similar provision, Sec. 2, 1747 was applicable to the Port of Long Beach. No other ports were included in the bill.

The activity subject to the fee is not clear. The fee is imposed on "the processing of shipping containers," but the bill does not define "processing" or "process." I could not find a definition of "processing" applicable to shipping containers in the Revised Code of Washington nor in the United States Code. Perhaps future committees that consider the bill will define the activity that triggers the fee.

Depending on how the bill evolves, the proposed fee may be subject to challenges under the United States Constitution. The burden the levy puts on interstate and foreign commerce is a factor when considering whether the fee violates the commerce clause[10] or the dormant commerce clause.[11] The fee may also be subject to the constitutional prohibition against imposts and duties on imports and exports[12] and the tonnage clause.[13] If the fee is found to be levied upon or collected from a ship hauling the container being "processed," the reasonableness of the fee, the subject of levy, and the use of the proceeds may also have to comply with the restrictions in federal law, including in 33 U.S.C. 5(b). That subsection reads as follows:

> (b) No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or

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[10] "Congress shall have Power to . . . regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes[.]" Art. I, sec. 8, Constitution of the United States.

[11] *Willson v. Black Bird Creek Marsh Co.*, 27 U.S. 245, 252 (U.S. 1829). Note that in dissenting opinions, Justice Scalia has questioned the validity of the "negative" Foreign Commerce Clause that has been interpreted to prohibit state regulation of commerce. See, e.g., *Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60, 78-80 (U.S. 1993) (Scalia, J., concurring in part and concurring in the judgment). Justice Scalia has expressed the view that the Commerce Clause does not have a self-operative prohibition upon the State's regulation of commerce. Should the Supreme Court adopt Justice Scalia's interpretation, States would have a greater ability to regulate commerce in areas in which Congress has taken no action. Under the present interpretation, a state may not take action that Congress, should it choose to act, could over ride under its authority to regulate commerce under Art. I, sec. 8.

[12] "No state shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States: and all such Laws shall be subject to the Revision and Control of the Congress." Art. I., sec. 10, Constitution of the United States.

[13] "No State shall, without the Consent of Congress, lay any Duty of Tonnage . . . ." Art. I, sec. 10, Constitution of the United States.

> other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for--
>
> (1) fees charged under section 208 of the Water Resources Development Act of 1986 (*33 U.S.C. 2236*);
>
> (2) reasonable fees charged on a fair and equitable basis that--
>
> (A) are used solely to pay the cost of a service to the vessel or water craft;
>
> (B) enhance the safety and efficiency of interstate and foreign commerce; and
>
> (C) do not impose more than a small burden on interstate or foreign commerce; or
>
> (3) property taxes on vessels or watercraft, other than vessels or watercraft that are primarily engaged in foreign commerce if those taxes are permissible under the United States Constitution.

I think the bill's approach of targeting "processing" for the imposition of the fee is an attempt to distance the fee from interstate and international commerce concerns. The attempt may be an effort to characterize the fee as a type of fee that Washington may properly impose on most intrastate activities, such as a fee on a business or occupation. However, if "processing" includes the loading and unloading of a water craft transporting a container, the fee is more likely to be a burden on interstate and foreign commerce.

The United States Supreme Court adopted a test for determining whether a state tax violates the Domestic Commerce Clause in *Complete Auto Transit Corp. v. Brady*.[14] In *Itel Containers Int'l Corp. v. Huddleston*,[15] the court summarized the *Complete Auto Transit* test as follows:

> A state tax satisfies the *Complete Auto* Domestic Commerce Clause test "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State."

The foreign commerce clause raises two additional considerations beyond those in the commerce clause:

> (1) the enhanced risk of multiple taxation; and

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[14] 430 U.S. 274, 51 L. Ed 2d 326, 97 S. Ct. 1076 (1977).

[15] 507 U.S. 60, 73 (U.S. 1993).

> (2) the possibility that a state tax will "impair federal uniformity in an area where federal uniformity is essential."[16]

If the fee is applied to a "process" that is not subject to taxation in a foreign jurisdiction, the proposed fee may avoid the risk of multiple taxation. However, whether the fee might impair federal uniformity of tax treatment of foreign flagged commercial passenger vessels in violation of the foreign commerce clause cannot be ascertained from the current version of the bill.

The tonnage clause prohibits "all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port,"[17] and "reliance on tonnage duties to raise general revenues, to regulate trade, or to charge for the privilege of entering, lying in, or trading in a port."[18] The clause permits states to charge for services rendered to a vessel, such as pilotage, wharfage use of locks on a navigable river, or policing of a harbor,[19] or for ensuring the availability of a service, such as fire fighting, even though not every vessel will actually need the service.[20] Under a tonnage clause analysis, both the way in which the fee is imposed and the use of the fees collected would be subject to scrutiny.

Without knowing more about how the proposed fee in SB 5207 would be applied, even assuming it is limited to an activity within Washington State, I cannot say whether "it is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." A more clear description of the fee and how it will be imposed is also necessary before examining whether the fee may violate the constitutional prohibitions relating to foreign commerce and the import export clause or the tonnage clause. It is just too soon to tell.

Judging from those opposing SB 5207 at its first hearing, I anticipate that a number of groups are standing ready to challenge the fee if the bill is enacted. Those that favor the enactment of the bill look at the bill as a user fee that can be used to provide freight-related congestion relief through the improvement of freight rail infrastructure and state

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[16] *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 185 - 86 (1983).

[17] *Clyde Mallory Lines v. Alabama ex rel State Docks*, 296 U.S. 261, 265 (1935).

[18] *New Orleans S.S. v. Plaquemines Port, Harbor and Terminal District*, 874 F.2d 1018, 1023 (5th Cir. 1989).

[19] *Clyde Mallory Lines*, 296 U.S. at 265.

[20] *Plaquemines*, 874 F.2d at 1023.

highways that function as freight corridors.[21] Opponents of the proposed fee are concerned that the fee would divert container freight movement away from Washington ports and result in lost jobs. Opponents also assert that the fee is instead a tax and may be unconstitutional and violative of international treaties.[22]

For your information, the following testified for and against the legislation at a public hearing before the Senate Transportation Committee on January 24, 2007:[23]

> **PRO:** Larry Pursley, Washington Trucking Association; Doug Levy, Cities of Everett, Kent, Federal Way, Renton and Puyallup.
>
> **CON:** Mark Johnson, Washington Retail Association; Rich Berkowitz, Transportation Institute; Randy Ray, Pacific Seafood Processors; Jim Wilcox, Wilcox Farms/Washington Food Industry; Pat Jones, Washington Public Ports Association; Tim Farrell, Port of Tacoma; Terry Finn, Port of Seattle; Gordon Baxter, Masters, Mates and Pilots and Inland Boatmen's Union; Larry McKillip, United Transportation Union; Mike Elliot, Brotherhood of Locomotive Engineers; Karol Kingery, Marine Engineers Beneficial Association; Bill Stauffacher, Burlington Northern Santa Fe Railroad; Tom Parker, Union Pacific Railroad; Scott Hazelgrove, Pacific Merchant Shipping Association; Rick Wickman, Columbia River Steamship Operators.

The industry groups opposing the enactment of SB 5207 are similar and made arguments similar to those opposing the enactment of the California container fee that was vetoed by Governor Schwarzenegger. Again, the arguments against the fee include: job losses through loss of container business, the fee is unconstitutional, the fee violates federal limitations on the state taxation of freight carried on navigable waters, the fee conflicts with international treaties, and negative economic impacts on manufacturers, consumers,

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[21] Senate Bill Report. SB 5207 (Jan. 25, 2007). The report was prepared by "non-partisan legislative staff for the use of legislative members in their deliberations." The report is available on the Internet at *http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bill%20Reports/Senate/5207.SBR.pdf* (accessed 1/29/2007).

[22] *Id.* I listened to the Senate Transportation Committee Hearing that was streamed on the Internet on January 24, 2007. Opponents were concerned that freight would be diverted to Canadian and Mexican Ports, as well as other ports in Western states that did not have a similar fee. Prince Rupert was mentioned as one possible alternative port that has rail service and could be the transfer point for containers bound for the central part of the United States. The committee hearing may be downloaded from the Internet as an mp3 file at *http://198.239.32.186/Deliberations/2007010156.mp3* (accessed 1/29/2007).

[23] *Id.*

and farmers. SB 5207 is sponsored by Senators Haugen, Murray, and Spanel; Senator Haugen is the chair of the transportation committee, and Senator Murray is the vice-chair.

Should SB 5207 progress through the Washington Legislature and the details of how the new fee would be imposed be made clear, we may gain greater insight into the specific strengths and weaknesses of the fee when facing a legal challenge.

If I may be of further assistance, please advise.

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SENATE BILL REPORT
SB 5207

As of January 25, 2007

Title: An act relating to creating the freight congestion relief account to improve freight corridors with funding from the imposition of a fee on the processing of shipping containers.

Brief Description: Creating and funding the freight congestion relief account for the purpose of improving freight rail systems and state highways used as freight corridors through imposing a fee on the processing of shipping containers.

Sponsors: Senators Haugen, Murray and Spanel.

Brief History:
Committee Activity: Transportation: 1/24/07.

SENATE COMMITTEE ON TRANSPORTATION

Staff: David Ward (786-7341)

Background: The state has identified various and significant transportation projects that support enhanced freight mobility and capacity. Although the state has provided some funding for these projects, the level of funding is insufficient to provide the level of investment necessary to alleviate congestion levels that impact freight mobility and capacity.

Summary of Bill: A fee is imposed on the processing of shipping containers in the ports of Washington State. The fee must be imposed at the rate of $50 per twenty-foot equivalent unit (TEU) and is payable by the marine terminal operator processing the container. Marine terminal operators may retain 10 percent of the fee to offset costs associated with the proper reporting of the number of TEUs processed. The remainder of the fee must be remitted to the Department of Revenue (DOR).

The Freight Congestion Relief Account is created in the State Treasury. All receipts received by DOR from the imposition of TEU processing fees must be deposited in the account. The account is subject to appropriation, retains 100 percent of the interest income generated by the account, and may only be used to provide freight-related congestion relief through the improvement of freight rail infrastructure and state highways that function as freight corridors.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There should be a user fee to fund these critical investments and the return on investment should offset the costs. The system that comprises our state's freight infrastructure needs additional investment and, if possible, should include a component that would allow funding for projects adjacent to the state system that can demonstrably show significant ways to improve, link to, or offload pressure on state freight corridors.

CON: Seventy percent of containerized freight moving through Washington's ports is discretionary. Imposition of a fee on the processing of shipping containers will therefore divert container freight movement away from the state's marine ports. Critical family wage jobs will also be lost and a negative ripple effect will be felt throughout the state economy. Such a fee would also impair state export trade and Washington is a highly trade-dependent state. There are additional concerns that the fee is instead a tax and may well be unconstitutional in that it impedes interstate commerce, import/export activity and the movement of containerized cargo as governed by federal law and international treaty.

Persons Testifying: PRO: Larry Pursley, Washington Trucking Association; Doug Levy, Cities of Everett, Kent, Federal Way, Renton and Puyallup.

CON: Mark Johnson, Washington Retail Association; Rich Berkowitz, Transportation Institute; Randy Ray, Pacific Seafood Processors; Jim Wilcox, Wilcox Farms/Washington Food Industry; Pat Jones, Washington Public Ports Association; Tim Farrell, Port of Tacoma; Terry Finn, Port of Seattle; Gordon Baxter, Masters, Mates and Pilots and Inland Boatmen's Union; Larry McKillip, United Transportation Union; Mike Elliot, Brotherhood of Locomotive Engineers; Karol Kingery, Marine Engineers Beneficial Association; Bill Stauffacher, Burlington Northern Sante Fe Railroad; Tom Parker, Union Pacific Railroad; Scott Hazelgrove, Pacific Merchant Shipping Association; Rick Wickman, Columbia River Steamship Operators.

WORK ORDER REQUEST FORM

W.O. 25-LS0432

KEYWORDS: COMMERCE
TAXES
VESSELS

ASSIGNED: Bullock

REQUEST FOR: Research Opinion

TAKEN BY: Weed

SUBJECT: Washington Shipping Container Tax

REQUESTED FOR: REP JOHANSEN **BY:** Rep. Johansen **PHONE:** 465-3424

DELIVER TO: Rep. Johansen; Cap. 13

INSTRUCTIONS:
Please review the attached Washington state proposed legislation regarding a shipping container tax. Please discuss:
1) whether the tax is illegal under any body of federal laws, including the "dormant commerce clause doctrine;"
2) whether the state law would be preempted by federal law;
3) whether specific products may be preempted by federal laws;
4) whether there re other legal theories that would invalidate the tax.

OBTAIN	**SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]** **AUTHORIZED TO CONFER WITH** _____ _____ **RETURN** _____ _____ **TO REQUESTOR** **APPROVED** X **DIRECTOR, LEGAL SERVICES**
REVIEWED _____ **IN** 01/23/07 **DUE** _____ **TYPED: DRAFT** _____ **DATE** _____ **FINAL** _____ **DATE** _____ **PROOFED** _____ **DELIVERED** _____	**SPECIAL INSTRUCTIONS to TYPING/PROOFING** Request for FINAL

Sponsor

01/23/07 10:30 am

File

MEMO

Dated: January 24, 2007

To: Tamara Cook
Director, Legislative Legal and Research Services

From: Representative Kyle Johansen

Re: Proposed Washington State Shipping Container Tax

Dear Ms. Cook:

In addition to the legal issues discussed in my last memo regarding the proposed shipping container tax in Washington State, please consider the additional legal issues:

- The Port of Seattle being a designated Foreign Trade Zone and whether the imposition of a container tax / fee is allowed
- Whether an Alaska shipper sending goods into the Port of Seattle before further export out of Washington State would have to be exempt from the imposition of a container tax / fee under the Commerce Clause and Equal Protection Clause of the United States Constitution, See, Vinmar Inc., v. Harris County Appraisal District, 947 S.W.2d 554 (Tex. 1997)
- Whether the proposed container / tax fee would violate the import-export clause of the U.S. Constitution, See, Virginia Indonesia Company v. Harris County Appraisal District, 910 S.W. 2d 905 (Tex. 1995)

Cc: Karl Amylon

David Scott

From: Rep. Kyle Johansen
Sent: Wednesday, April 25, 2007 8:51 AM
To: David Scott
Subject: FW: WA Container Tax

From: Shari Gross [mailto:sharigross@sharigross.com]
Sent: Monday, April 23, 2007 9:34 AM
To: Rep. Kyle Johansen
Subject: WA Container Tax

Thanks for meeting with me last week. By way of follow up I thought you'd be interested to note that the Washington State Legislature passed SB 5207 before adjourning for the year. The measure changed significantly from its original form when it was introduced in January.

Let's stay in touch. Please get in touch with me anytime necessary, and also know that Alaska's interests are duly noted by the Port of Tacoma; we will continue our efforts to ensure that Alaska's special stake in the outcome is understood.

Shari Gross Teeple

SB 5207

SB 5207 creates the freight congestion relief account. Dollars from the account may only be used to provide congestion relief through the improvement of freight rail systems and state highways that function as freight corridors. The bill does not define freight corridors and does not fund the account.

SB 5207 requires the Joint Transportation Committee to conduct a study of possible funding mechanisms for this new freight congestion relief account. At a minimum, the study must:

- evaluate federal, state, incentive, and other project specific fees;
- analyze current taxes and fees paid by the freight industry and the projects the taxes and fees fund;
- assess other nonfreight-related fees and taxes that could be used to pay for freight congestion relief investments;
- assess how other states and countries pay for freight congestion relief investments;
- discuss the various approaches and their impacts on Washington competitiveness in freight movement;
- assess the imposition of a shipping container-based fee, port-related user fees, or other funding mechanisms on the demand elasticity of the movement of freight goods through Washington's container ports at various rates as well as forecast diversion of marine cargo at various price points;

- measure the return on investment in freight rail and highway-based infrastructure supported by the user fee and its impact on forecast growth in shipping container traffic and the movement of freight goods; and
- recommend the structure of a future project recommendation body including its membership, process, and selection criteria.

Finally, SB 5207 would create a stakeholder group of representatives of the freight sector to work with the JTC to identify critical freight congestion relief investments; identify alternatives for a dedicated funding source for freight congestion relief investments or user fees to fund specific freight congestion relief investments; and reviewing the final JTC study. Stakeholder group members will include:

- two representatives of container ports;
- one representative of trucking;
- one representative from railroads;
- one representative from international shipping;
- one representative from national shipping;
- two representatives of organized labor;
- two representatives of the import/export community;
- one representative from WSDOT; and
- one representative from FMSIB.

Transportation Budget

The Legislature adopted a transportation budget that provides the full funding promised for projects identified in the Nickel and Transportation Partnership Act (a.k.a. 9 cent gas tax).

The budget also holds forth the promise of new funding three projects during the second half of the biennium, paid for by the freight congestion relief account, provided the Legislature in 2008 adopts the funding recommendations put forward by the JTC.

"New" money in the transportation budget includes:

PROJECT	2008 Funding	Total Funding
SR-167 Extension	$40 million	$188.2 million
SR-509 Extension		$93.9 million
Stampede Pass	$25 million	$25 million

S-2240.4

SUBSTITUTE SENATE BILL 5207

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Haugen, Murray and Spanel)

READ FIRST TIME 03/05/07.

AN ACT Relating to a study to evaluate the imposition of a fee on the processing of shipping containers, port-related user fees, and other funding mechanisms to improve freight corridors; creating the freight congestion relief account; reenacting and amending RCW 43.84.092; adding a new section to chapter 46.68 RCW; creating new sections; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds and declares there is a need to mitigate the enormous burden imposed on the state transportation system by the overland movement of cargo shipped to and from Washington state ports. Accordingly, it is the intent of the legislature to alleviate this burden by studying the imposition of a fee on the processing of shipping containers through those ports. The study shall also examine other similar mechanisms for imposing and collecting port-related user fees, as well as other funding mechanisms. Enactment by the legislature of any funding mechanism identified by the study must require the use of the funds derived therefrom to provide congestion relief through the improvement of freight rail systems and state highways that function as freight corridors.

NEW SECTION. **Sec. 2.** Subject to availability of amounts appropriated for this specific purpose, the joint transportation committee shall administer a consultant study to evaluate the imposition of a fee on the processing of shipping containers, port-related user fees, and other funding mechanisms to improve freight corridors for deposit in the freight congestion relief account created under chapter 46.68 RCW.

(1) At a minimum, the study must: (a) Assess the imposition of a shipping container based fee, port-related user fees, and other funding mechanisms on the demand elasticity of the movement of freight goods through Washington's container ports at various rates as well as forecast diversion of marine cargo at various price points; (b) measure the return on investment in freight rail and highway-based infrastructure supported by the user fee and its impact on forecast growth in shipping container traffic and the movement of freight goods; (c) recommend the structure of a future project recommendation body including its membership, process, and selection criteria; (d) examine existing data on the health and environmental cost impacts of maritime shipping and the movement of freight goods on air quality near Washington's container ports. The scope of work for the study may be expanded to include analysis of other issues relevant to the imposition of container port-related user fees.

(2) The findings and recommendations of the report must be submitted to the transportation committees of the legislature by December 1, 2007.

(3) This section expires January 1, 2008.

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.68 RCW to read as follows:

The freight congestion relief account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to provide congestion relief through the improvement of freight rail systems and state highways that function as freight corridors. Expenditures from the account must, at a minimum, include funding for the following projects: State route 519 and associated access to port of Seattle; state route 509 connection to I-5 bypassing SeaTac airport; state route 167 port of Tacoma access to I-5 and state route 167 new alignment in Pierce

county; I-90 Snoqualmie Pass; grade separations in the East Spokane Valley; increased capacity of Stampede Pass rail corridor; rail bottlenecks and choke points along mainline routes, including but not limited to the Vancouver by-pass project; Kelso-Martin's bluff; Vancouver rail loop; Blakeslee junction and other mainline constrictions; and rail spur lines that support container freight traffic and facilities for container transloading.

Sec. 4. RCW 43.84.092 and 2006 c 337 s 11, 2006 c 311 s 23, 2006 c 171 s 10, 2006 c 56 s 10, and 2006 c 6 s 8 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, the energy freedom account, The Evergreen State College capital projects account, the federal forest revolving account, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster

reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional mobility grant program account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective

beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

--- END ---

impossible for the average worker or small business owner to decipher. The result is that claims stay open longer, on average, than almost any other jurisdiction. Claims managers need to spend more time talking with doctors, workers, and employers, and less time shuffling paper. The employer community will submit legislation to simplify the disability wage process, and we believe that a hearing will be conducted on this bill.

4. Workers are not empowered. Nearly every other state allows workers who are receiving disability benefits to voluntarily close the claims in exchange for a lump-sum payment and indefinite free medical treatment for the injury or occupati nal disease, but the powerful labor union and trial lawyer lobbies here will not allow such an option. Worker-choice bills will not receive a hearing this session. Instead, legislators will consider an expanded vocational rehabilitation program that would allow workers an opt out provision.

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Container Tax Meets Stiff Resistance from Business, Labor

"It's less than a box of apples or a couple bales of hay," Sen. Mary Margaret Haugen (D-Camano Island) said of her proposed $50 per twenty-foot equivalent unit (TEU) container tax during Wednesday's public hearing on SB 5207.

While that may not sound like much to the Senator, it adds up to substantial losses for Washington farmers.

A small hay operation we contacted exports about 80 forty-foot containers per month. The proposed fee would cost that farmer $96,000 per year. The cost to a mid-sized agricultural commodity trader we spoke with that ships some 7,200 forty-foot containers and 7,000 twenty-footers annually would face more than $1 million in added fees if Sen. Haugen's bill is enacted.

Dozens of witnesses signed in to testify against the bill. So many, in fact, that the Committee only allowed a few panels to be heard. The ports, retailers, Teamsters, Longshoremen and other maritime union representatives expressed their opposition to the bill. The only group to testify in support was the trucking industry.

Haugen, the Senate Transportation Chair, asked the audience if a $20 rate would be more acceptable. Farm Bureau will continue to oppose SB 5207 even at $20 per TEU because it threatens the viability of Washington's agricultural industry, which depends heavily on exporting its products to global markets.

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House Examines Commercial Trucking Regulations

On Wednesday, Jan. 24, the House Transportation Committee heard HB 1304, sponsored by Rep. Ruth Kagi (D-Lake Forest Park). The measure is the result of a study group that met during the past year to determine how to improve the safety of commercial vehicles. Unfortunately, in drafting the bill, an existing agricultural vehicle exemption was deleted. The unique use of farm vehicles needs to be considered as the final version of the bill is crafted. We have been assured this was an oversight, so we are hoping to work with the bill sponsors and all interested parties to ensure that the agricultural exemption is reinstated.

ALASKA STATE CHAMBER OF COMMERCE

Resolution 2007-001

A resolution of the Alaska State Chamber of Commerce opposing a bill to impose a fee on the processing of shipping containers in the State of Washington

WHEREAS, Washington State has been the primary gateway to Alaska before the first gold rush, more than 100 years ago; and

WHEREAS, Alaskans today depend on ships and barges leaving Washington State to move most necessities of daily life, and

WHEREAS many isolated Alaskan coastal communities without road access depend entirely on marine cargo shipped from Washington State for life sustenance; and

WHEREAS 97 percent by weight and 60 percent of the value of all goods shipped to Alaska are shipped via water from Washington State; and

WHEREAS most seafood harvested in Alaska and bound for market is shipped from Alaska to and through ports in Wa igton State, and

WHEREAS, the most recent data available from 2003, reports that the economic trade connection with Alaska and Puget Sound created at least 103,500 jobs and over $4,000,000,000 in labor earnings. Aside from the aerospace industry, Alaska was Puget Sound's fifth largest trading partner; and

WHEREAS, Senate Bill 5207, a bill pending before the Washington State Legislature, imposes a fee of $50 for each twenty-foot equivalent unit (TEU) on every cargo container traveling between Washington State and Alaska; and

WHEREAS, most cargo containers are at least two twenty-foot equivalent units and would be subject to a fee of $100 each time the container leaves Washington State and each time the container returns to that state, regardless of whether the container is empty, partially loaded, or full; and

WHEREAS Senate Bill 5207 would be detrimental to the trading relationship between Alaska and Washington State; and

WHEREAS, because of Alaska's unique dependence on ports in Washington State, enactment of Senate Bill 5207 would damage Alaska's economy and cripple many isolated communities in Alaska by raising the cost of living significantly; so

NOW, THERFORE, BE IT RESOLVED that the Alaska State Chamber of Commerce respectfully requests that the Washington State Legislature recognize the significant negative impact Senate Bill 5207 would have on the State of Alaska and the trading relationship between Washington State and Alaska; and

BE IT FURTHER RESOLVED that the Alaska State Chamber of Commerce opposes Senate Bill 5207, strongly urges the Washington State Legislature to consider alternative revenue sources for resolving Washington's freight mobility issues.

Signed this 13th day of February 2007

ALASKA STATE CHAMBER OF COMMERCE

Joe Marushack
Chair

ATTEST:

Wayne A. Stevens
President/CEO

COPIES of this resolution sent to:
Senator Mary Haugen. Chair, Senate Transportation Committee
The Honorable Chris Gregoire, Governor of Washington State
The Honorable Brad Owen, Lieutenant Governor of Washington State
Senator Rosa Franklin - President Pro Tempore
The Honorable Frank Chopp, Speaker of the Washington House of Representatives
Don Brunell, President/CEO, Association of Washington Business
The Honorable Sarah Palin, Governor of Alaska
The Honorable Ted Stevens, U.S. Senator
The Honorable Lisa Murkowski, U.S. Senator,
The Honorable Don Young, U.S. Representative

OCEAN BEAUTY SEAFOODS, INC.

Representative Kyle Johansen
Alaska State House of Representatives
Chairman, House Transportation Committee
State Capitol
Juneau, Alaska 99801

Dear Representative Johansen and Members of the House Transportation Committee:

Ocean Beauty Seafoods supports HJR8, the resolution opposing the proposed container fee bill in the Washington State legislature.

Alaskans need to do everything in their power to make sure the Washington lawmakers are fully aware of the impact their "Tax on Alaska" would have on Alaskans and the Alaska economy. HJR8 is a big step in that direction.

Ocean Beauty moved more than 2111 TEU's between Seattle and Southeast Alaska in 2006. That equates to a fee of $105,550 that our company alone would have had to pay. We simply cannot be competitive against farmed and foreign fish with that much increase in our transportation costs.

We urge you to pass HJR8 and send a loud message to the Washington state legislature that their bill, SB 5207 would have a major affect on the Alaskan economy, Alaska businesses, and Alaskan consumers.

Sincerely,

Mark Palmer

Mark Palmer

cc. Representative William Thomas

DEWITT & DEWITT LLC
PO Box 34761
Juneau, AK 99803-4761

February 10, 2007

The Honorable Bill Thomas
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

RE: HJR 8

Dear Representative Thomas.

On behalf of the Alaska Chapter of the National Federation of Independent Business (NFIB), I wish to express our support for House Joint Resolution 8. The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

HJR 8 correctly requests the Washington State Legislature not adopt an added fee on all cargo containers shipped to and from Washington ports as proposed by Senate Bill 5207. Such a fee would significantly increase the transportation costs of most good coming to Alaska. The added cost of exports from Alaska going through Washington ports would competitively disadvantage our products in the marketplace.

We have additional concerns that the fee is instead a tax and may well be unconstitutional in that it impedes interstate commerce, import/export activity and the movement of containerized cargo as governed by federal law and international treaty.

NFIB appreciates your willingness to call this issue to the attention of Alaska's State Legislature and our Congressional Delegation The negative effects of such an increase in transportation costs would have a significantly negative impact on both businesses and consumers in Alaska.

Sincerely Yours,

Dennis L. DeWitt
State Director
National Federation of Independent Business

cc: House Transportation Committee
House Labor & Commerce Committee

(907)723-6667 ddewitt@gci.net

TIES THAT BIND

The Enduring Economic Impact of Alaska on the Puget Sound Region

Commissioned by:

Tacoma-Pierce County Chamber of Commerce

Greater Seattle Chamber of Commerce

Author:

Robert A. Chase

Huckell/Weinman Associates, Inc.

September 2004

Acknowledgements

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Western Pioneer
Wells Fargo – Alaska

On the cover:

Photo illustration shows Alaska's Mount McKinley, above,
and Washington's Mount Rainier, as a reflection below.
Credit: Kevin McGowan, Strode McGowan Photography

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Executive Summary: Highlights of Major Findings

Alaska's economic relationship with the Puget Sound region is expanding, evolving, and enduring.

In this era of multi-national trade agreements, trade among states is seldom considered. Most companies' products and services are bought and sold within the local area or state or perhaps a nearby state and are not destined for foreign markets. The domestic market is the critical measure for many companies.

The TOTE ship Midnight Sun's maiden voyage. Photo by Davelle Riker, TOTE.

The Alaska trade is different, as Puget Sound and Alaska represent key markets for their respective resident companies. This economic interdependency now goes well beyond a century to when Puget Sound acted as provisioner for miners hoping to strike it rich in the Klondike.

Puget Sound is the primary gateway for Alaska. Proximity to one another helps, but over the decades, the connection has evolved, matured and grown, benefiting residents, workers, and companies within Alaska and Puget Sound.

This study — now in its third edition since 1985 — underscores what is increasingly clear: the economic ties between Puget Sound and Alaska are bound tightly. The economic relationship between the regions is growing stronger and deeper.

Some highlights from the latest study assessing the 2003 economic relationship include:

- The economies of Alaska and Puget Sound have been counter-cyclical, making the trading partnership a welcome economic asset for Puget Sound, especially as a stimulus that helps offset regional downturns.

- The most important direct impact of Alaska on the Puget Sound economy is the market it provides for regionally-produced exports. As a destination for all merchandise goods exports except aerospace, Alaska ranks fifth among all of its trading partners. In 2003, exports to Alaska from Puget Sound were valued at $3.77 billion, an increase of over 53 percent from the previous study findings in 1994.

- The value of exports tell the story of the maturing relationship between Alaska and Puget Sound. Of the total, a small increase in Puget Sound manufacturing exports is due in part to Alaska's growing population base. That base supports more "home-grown" products than in the past. A large increase in exports of services, however, reflects Alaska's transformation into a service-based economy that wants and needs specialized banking, accounting, legal, engineering, management, educational, and medical services available in the Puget Sound area.

- Puget Sound exports of goods and services to Alaska directly impact the regional economy. In addition, Puget Sound-based fishing, seafood processing and petroleum refining industries make use of Alaska natural resources. Now, over 46,000 jobs in Puget Sound companies are directly dependent upon the export trade with Alaska.

- The growth in jobs from the Alaska-Puget Sound trade relationship between 1994 and 2003 is substantial—equal to attracting a 1,000-employee company to the region each year.

- The comprehensive economic connection between Alaska and Puget Sound is immense. Indirect impacts arise in two ways. The first source is industries that do not export to Alaska, but provide other firms or industries with inputs needed to produce exports. Thus they benefit from the Alaska trade, even though they are not a direct partner. The second source of indirect impact arises from the spending of income earned by employees in export industries and export-serving industries. Such consumer spending produces an important ripple effect. Because of this, the Alaska connection affects every part of the Puget Sound economy. Today, over 103,000 jobs in Puget Sound are directly or indirectly tied to Alaska.

- The Puget Sound has always been the primary gateway to Alaska. This connection continues to grow and is a good barometer of the Alaska-Puget Sound economic relationship. By dollar value, about three-fifths of the goods reach Alaska by water and two fifths by air or truck via the Alcan Highway. By weight, 97 percent of the goods go by water.

- The Alaska cruise industry has enjoyed phenomenal growth in recent years. And while most of the ships still depart from Vancouver, B.C., a significant and growing number now sail from Seattle. This is particularly important because Puget Sound benefits from provisioning ships and spending by cruise ship guests when they visit Seattle. The number of cruise line passengers departing from Puget Sound for Alaska has risen from 14,000 in 1994 to 550,000 in 2004.

- Petroleum remains a hub of the Alaska-Puget Sound economic relationship, though the volume has declined in recent years. In 2003, $2.8 billion of Alaska crude oil came to Puget Sound refineries. Direct impact of this trade includes 1,990 jobs and 144.5 million in labor earnings.

- The Bering Sea and Gulf of Alaska provide more than half the total U.S. fishing harvest. While the value of the fishing harvest has declined from previous highs, fishing remains a vital link in Alaska-Puget Sound trade.

- As Alaska's economy diversifies and matures, its need for business services ranging from advertising to architecture rises. Computer software represents the most rapidly growing Puget Sound-based service sector.

- Traditionally, Alaskans have benefited from a windfall of federal spending, an economic sector that is on the rise again after a brief decline. The federal government spends more per capita on Alaska than on any other state, and accounts for 18 percent of Alaskans' personal income. Puget Sound benefits substantially from this windfall. In 2003, Puget Sound's exports to Alaska related to federal spending amounted to $86 million and created 1,295 jobs.

Puget Sound and Alaska are more than just healthy trading partners. Together they help one another excel in the good times and weather the bad times. Each fills significant economic needs of the other.

Introduction

Context and Background of Study

Trade between regions is a great generator of economic stability that spurs commerce and creates jobs.

The Fairbanks Provider rail barge with container racks, providing weekly scheduled service to Whittier, Alaska, sails out of Elliott Bay. Photo courtesy of Lynden Inc.

This report updates a periodic analysis of trade between Alaska, by far the nation's largest state, and the Puget Sound region, with its densely populated urban corridor from Bellingham to Tacoma.

First completed with data from 1985 and subsequently updated with 1994 data, these studies illustrate the economic importance of Alaska within the trade equation on Puget Sound. The initial report quantified for the first time the magnitude of the Alaska-Puget Sound link. In 1985, this Alaska impact generated some 57,000 jobs in Puget Sound, based on $1.6 billion worth of export activity from Puget Sound businesses (Table 1). In 1994, over 90,000 jobs with $2.4 billion in Puget Sound exports were directly tied to trade with Alaska. For 2003, the Alaska-Puget Sound economic connection has grown to some 103,500 jobs, with $3.8 billion of Puget Sound-based exports.

Table 1. Summary Economic Impacts of Alaska on Puget Sound, 1985, 1994, and 2003

Measure	1985	1994	2003
Exports (Millions of Current $)	$1,629.1	$2,388.9	$3,768.5
Direct Jobs	30,978	36,531	46,138
Direct Labor Earnings (Millions of Current $)	$671.9	$1,334.7	$2,151.8
Total (Direct and Indirect) Jobs	56,973	90,098	103,518
TOTAL (Direct and Indirect) Labor Earnings (Millions of Current $)	*NA*	*$2,923.2*	*$4,316.0*

Note: Direct earnings for 1985 are estimated; Total earnings for 1985 were unreported.

Puget Sound has often been described as more dependent on foreign trade than any region in the nation. This updated analysis is intended to show the continued importance of domestic trade between Alaska and Puget Sound. It also provides another point of reference, or updated benchmark, to compare data and trends over nearly two decades. As in previous studies, this 2003 study was commissioned by the Alaska Committees of the Chambers of Commerce of Tacoma and Seattle, together with the Ports of Seattle and Tacoma and private business firms with operations in Puget Sound and Alaska.

The link to Alaska has long been a significant asset of the Puget Sound economy and is one of the oldest and most enduring Pacific Rim relationships in the U.S. Alaska's economic history has often been described in terms of dramatic eras.

The first was the Klondike gold rush era that began in 1898, with Puget Sound serving as the supply center and staging area, a role it continued to play for the fur trade and other resource-based industries after the gold ran out.

Next came the military era that began with the World War II build-up and continued throughout the Cold War. Because of their unique and linked geographic position, Alaska and Puget Sound were the sites for a network of military bases and a high level of per capita defense spending in this era.

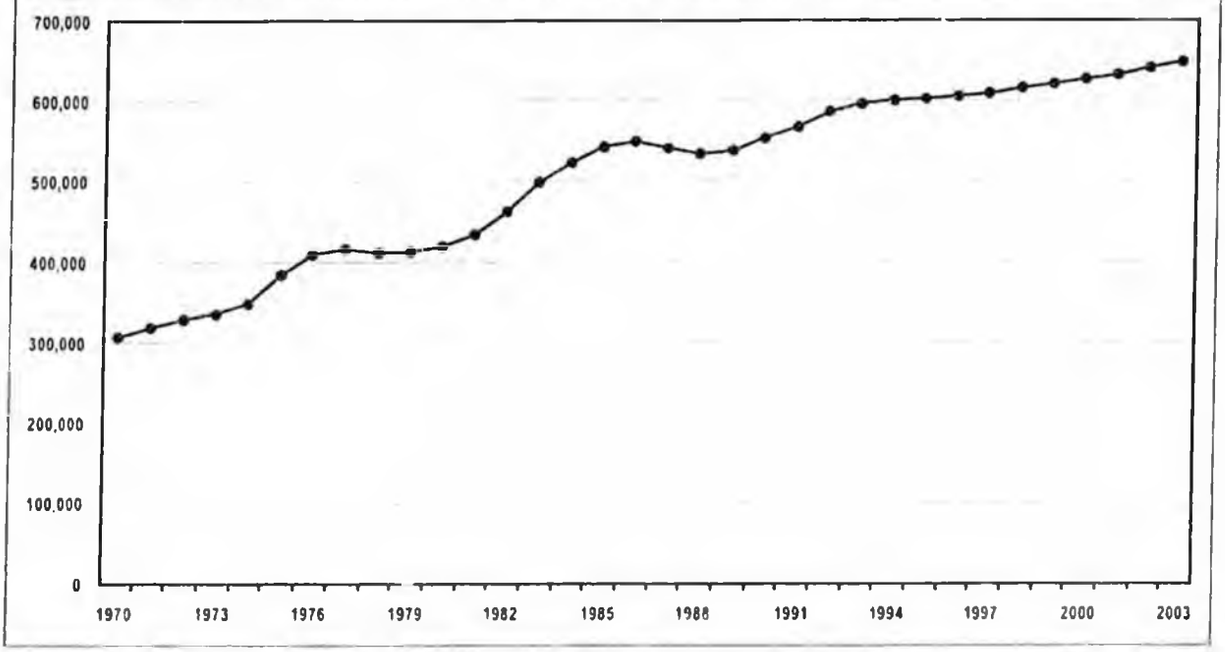
The third "energy" era began with the discovery in 1967 of the Prudhoe Bay oil field, which became the largest producing field in North America. The petroleum era hit full stride with completion of the Trans-Alaska Pipeline System (TAPS) in 1977 at a cost of $8 billion. The stimulus of the pipeline project and the flow of oil from Prudhoe Bay to Valdez, and then to refineries via tanker, had significant economic impacts on Puget Sound.

Alaska is now in a fourth era — one based on a more diversified, service-based economy. Alaska's economy, in part, mirrors the national transformation from a goods-producing, manufacture-based economy to one that increasingly provides services. Tourism, health care, professional services, and retail trade are now the dominant sectors in the Alaskan economy. In 2003, 80 of Alaska's top 100 employers were in service-providing sectors (Fried, 2004).

In its economic evolution, Alaska still retains elements of bygone eras — natural resources of fishing, forestry, and mining; military and government; and energy production. Traditional resource-based industries, particularly fishing and forestry, have been in decline but remain critical economic lifelines in Southeast Alaska and other coastal communities. Alaska continues to be highly dependent upon federal government spending, which supports one-third of all jobs in the state. Alaska's economic base — activities that generate domestic and foreign exports outside the state — still remains dominated by oil.

it is tempting and in some ways valid to use these eras to portray the Puget Sound-Alaska partnership. Yet, amidst the dramas of gold, war, oil and government, the regions have forged a less-spectacular tie involving the broad range of economic linkages that now exist between them. This has led over the decades not only to economic growth for both regions, but also to population growth rates in excess of the national average (Figure 1). Jobs, added by the successful businesses and industries that are based in Alaska and Puget Sound, have given those who want to pursue their dreams a practical basis for doing so.

Figure 1. Population of Alaska



Source: U.S. Census Bureau

Alaska—A Unique State

Alaska is an exceptional state, with a wealth of natural resources that is especially notable when measured against its relatively small population. Much of the state's economic history has focused on resource-related opportunities, from the Klondike Gold Rush of the 1898 to the discovery of oil on the North Slope in 1967. At the same time, the 49th state is by far the nation's largest with great expanses of rugged wilderness and more than 6,000 miles of coastline. Vast distances lie between Alaska and much of the United States.

Alaska's land mass of nearly 572,000 square miles is by far the largest among all states; one out of every six square miles in the United States is in Alaska. Over 95 percent of Alaska land is owned by federal and state government—more than any other state.[1] Two-thirds of Alaska is owned by federal government agencies such as the Bureau of Land Management, Forest Service, and National Park Service. Federal government ownership and influence is felt throughout Alaska.

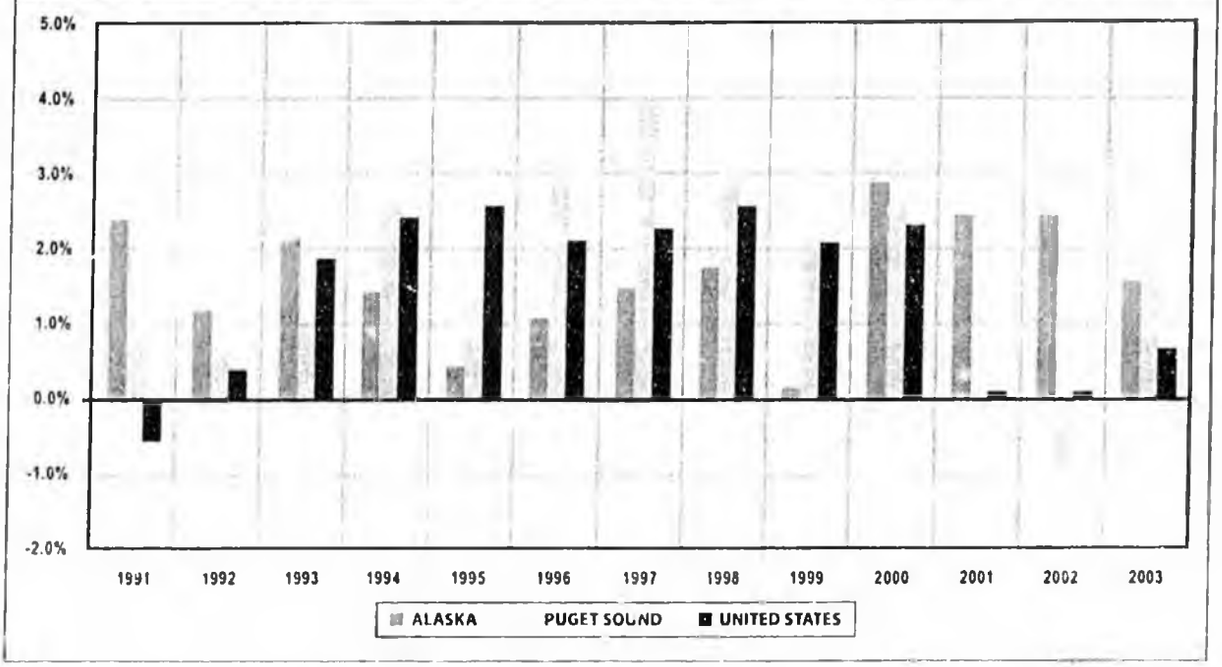
[1] In comparison, only 42 percent of Washington state's land mass is under Ffederal and state government ownership. In Puget Sound, Ffederal and state ownership is approximately 52 percent.

Alaska is a state of migrants. Only 38 percent of Alaskans were born in the state – the smallest percentage in the country. The military, with its regular rotation of troops and families, is a major stimulus to migration to and from Alaska. Migration patterns are mostly explained by the presence or lack of economic prosperity. The most common origins and destinations for Alaska migrants are other western states. The Puget Sound counties of King, Pierce, and Snohomish are among the leading counties providing the largest number of people moving to Alaska as well as the leading destinations for people leaving the state (Williams, 2004).

A compilation of data from 1985, 1994, and 2003 shows the evolution and growth of this special connection. While there is evidence that Alaska is producing some goods and services that were previously imported, demand for Puget Sound products has continued to increase. That demand has increased most rapidly in sophisticated product and service lines that are detailed below.

Figure 2 compares the recent performance of Alaska, Puget Sound and the U.S. in creating jobs. Each of the components has experienced the business cycle in distinct ways since 1990. In the early 1990s, Alaska boomed while Puget Sound and the nation were mired in either low growth or recession. The mid-to-late 1990s were less robust for the Alaska economy, compared to booming Puget Sound and national economies. Since 2000, as both the national and Puget Sound economies were in recession, Alaska recovered to the point of outperforming the nation. This counter-cyclical pattern makes the Alaska partnership a welcome economic asset for Puget Sound, especially as a stimulus that helps offset regional downturns.

Figure 2. Recent Economic Performance–Annual Change in Total Employment



Sources: U.S. Bureau of Economic Analysis; Alaska Department of Labor and Workforce Development, Research and Analysis Section; Washington Department of Employment Security, Labor Market and Economic Analysis Branch.

Table 2 shows the portion of total employment coming from each major sector in Alaska and the United States. Alaska diverges sharply from national norms in four sectors: government, mining, fishing, and manufacturing.

Table 2. Alaska and United States, Percent Share of Employment

	1985		1994		2003	
Sector	*Alaska*	*U.S.*	*Alaska*	*U.S.*	*Alaska*	*U.S.*
Services	20.4%	25.1%	24.7%	29.5%	27.1%	35.3%
Government	29.1%	15.5%	27.1%	14.9%	24.5%	14.0%
Federal, Civilian	5.4%	2.4%	5.0%	2.1%	4.3%	1.8%
Federal, Military	8.5%	2.2%	7.6%	1.7%	5.7%	1.3%
State and Local	15.2%	10.8%	14.6%	11.2%	14.5%	10.9%
Retail Trade	13.6%	16.3%	15.4%	16.7%	15.3%	14.3%
Finance, Insurance and Real Estate	7.3%	7.6%	4.8%	7.4%	5.8%	8.6%
Transportation and Utilities	6.5%	4.7%	7.6%	4.8%	8.0%	3.6%
Construction	8.0%	5.2%	5.0%	5.1%	5.3%	5.9%
Manufacturing	4.1%	15.9%	5.2%	13.1%	4.2%	11.7%
Fishing, Farming and Forestry	4.6%	3.7%	4.2%	3.3%	4.4%	2.4%
Mining	3.5%	1.1%	3.3%	0.6%	2.9%	0.5%
Wholesale Trade	2.9%	4.9%	2.6%	4.6%	2.5%	3.7%
TOTAL Employment (M & MM)	*318.1*	*124.5*	*365.7*	*145.2*	*420.4*	*168.1*

Notes: Total employment includes full and part-time wage and salaried workers, self-employed and unpaid family workers; in Alaska, total employment is in thousands (M); in U.S., total employment is in millions (MM). Sectors are ranked based on 2003 percent share of employment for Alaska. 2003 percents are estimates. Source: U.S. Bureau of Economic Analysis

Historically, government has had an expansive role in the Alaska economy. About one out of every four workers is employed at some level of government in Alaska. Local government – including local public education and native government – is Alaska's largest employer. Alaska far and away leads all other states in per-capita federal and state government support. Taxes on oil account for 85 percent of the state's general fund revenues, and all of the contributions to the Alaska Permanent Fund Corporation's assets ($26 billion); a portion of the Fund's earnings are distributed annually in the form of a dividend to all Alaska residents.

Mining and fishing have historically been an important source for employment and expenditures in Alaska. These natural resource-based sectors – largely dependent upon volatile economic swings – still account for a sizable portion of the Alaskan economy.

By contrast, Alaska's manufacturing employment share is less than 40 percent of the national average. This is despite the state's economic emphasis on construction and resource extraction, industries that require a significant level of manufacturing inputs for production.

In sectors where Alaska employment shares are low relative to the national average, Puget Sound often makes up the shortfall in required goods and services because of its proximity and economies of scale. This is clearly the case in manufacturing. The number of people in Puget Sound producing manufactured goods for Alaska is one-third as large as the number of such jobs in Alaska itself. The Puget Sound share of those jobs is down sharply from 1985 when the ratio was four Puget Sound jobs for every five Alaska jobs in manufacturing. Despite the overall decline, Puget Sound manufacturers have experienced gains vis-à-vis Alaska, particularly in the natural resource-related industries of seafood processing, lumber and wood products, pulp and paper; and petroleum refining.

Alaska-Puget Sound—A Unique Relationship

Alaska and Puget Sound remain strong, consistent trading partners and continue to enjoy one of the oldest Pacific Rim trading relationships. Puget Sound has long served as a preferred source of supply for basic products and as a distribution point for national and world marketing of Alaska goods. The basic logic to this link is that Puget Sound combines geographic proximity with economies of scale in producing a wide range of goods and services required by Alaskans.

The basis for trade has always been one of comparative advantage, the notion that any region enjoys the highest economic return when it concentrates on the output it can produce at greatest relative advantage and imports what can be produced at greatest relative advantage elsewhere. While self-sufficiency has sometimes been pursued by nations as a political goal, it is rarely the wisest course of economic action. Specialization and the related division of economic activities create mutual benefit among trading regions, leading to a higher standard of living and, in the case of Alaska and Puget Sound, a healthy degree of interdependence.

Puget Sound is often cited as the most foreign-trade dependent region in the United States. While foreign exports and imports capture the most attention in Puget Sound's leading gateway port facilities, the Alaska link continues to advance with increased jobs and the labor income connected with it.

The beneficial economic relationship Alaska and Puget Sound enjoy endures, expands, and evolves. Both Alaska and Puget Sound have transformed from goods-producing to services-providing economies. Increased diversification and changing dependencies in both economies continue to affect trade between Alaska and Puget Sound.

Principal Findings

On a per capita basis, Puget Sound is the nation's leading region in foreign export sales (U.S. Census Bureau, 1998). Domestic trade with Alaska also plays a crucial role in the region's economy

The most important direct impact of Alaska on the Puget Sound economy is the market it provides for regionally-produced exports As a destination for all merchandise goods[2] exports except aerospace, Alaska ranks fifth among all of its trading partners. The value of these exports — a key measure of the partnership from a Puget Sound perspective — is shown in Table 3. "Value of export" means the sale price at the point of production in Puget Sound. Any added charges for shipping are included separately as a transportation export.

Table 3. Puget Sound Exports to Alaska: 1985, 1994 and 2003

	Value of Exports (Millions of Current $)			*1994-2003 Percent Change*
Sector	*1985*	*1994*	*2003*	
Manufacturing	$735.4	$616.8	$971.0	18.9%
Services	$111.6	$307.1	$675.3	119.9%
Transportation	$576.3	$894.3	$1,503.2	68.1%
Trade	$166.2	$296.2	$429.4	45.0%
Finance, Insurance, Real Estate	$35.2	$59.7	$82.0	37.4%
Agriculture, Forestry, Mining	$4.4	$9.8	$13.4	37.0%
Other	NA	$5.0	$94.1	NA
TOTAL	*$1,629.1*	*$2,388.9*	*$3,768.5*	*54.1%*

Notes: Due to incomplete data within the "Other" category for 1994, the total percent change does not include the "Other" sector. "Other" includes construction and communications. "Services" includes business and professional services, personal services; education, social and health services, legal services, and others.

Percentage changes in the value of exports tell the story of the maturing relationship. The small increase in Puget Sound manufacturing exports is due in part to Alaska's growing population base. That base supports more "home-grown" products than in the past, including printing and publishing, fabricated metals, cement and concrete, food processing, chemicals, and refined petroleum products. The large increase in services reflects Alaska's transformation into a service-based economy that wants and needs specialized banking, accounting, legal, engineering, management, educational, and medical services. Top-end services tend to be concentrated in a few regional centers to a greater degree than manufacturing, and Seattle has long served as a key service supplier not only to Alaska but for much of the quadrant of the Lower 48 west of Minneapolis and north of San Francisco.

Adjusted for inflation, the real annual growth in the total value of Puget Sound exports to Alaska between 1994 and 2003 was 6.3 percent. The stagnant growth in the value of manufacturing exports is offset by robust growth in services. Inflation-adjusted growth of exports for transportation, trade, and finance-insurance-real estate was in the 4 to 7 percent range annually over the nine-year period. These sectors provide one of the best indicators of the evolving and expanding relationship between Alaska and Puget Sound. As both partners increase in population and economic power, their broad-based "quiet connection" continues to grow across the economy, though its importance is often obscured by dramatic policy issues and cyclical swings related to resource development.

[2] Merchandise goods refers to those products, supplies, raw materials, wares, and commodities that are movable. See appendix for glossary of terms.

Puget Sound exports of goods and services to Alaska directly impact the regional economy. Table 4 shows the direct impacts of jobs and labor earnings in Puget Sound from these regional exported goods and services to Alaska. In addition, Puget Sound-based fishing, seafood processing and petroleum refining industries make use of Alaska natural resources.

Table 4. Direct Alaska Job and Labor Earnings Impacts on Puget Sound, 1985, 1994 and 2003

	Labor Earnings (Millions of Current $)			*Jobs*			*Percent Change in Jobs*
Sector	*1985*	*1994*	*2003*	*1985*	*1994*	*2003*	*94-03*
Export-related	***$465.7***	***$765.6***	***$1,427.9***	***20,826***	***23,192***	***32,349***	***33.9%***
Goods and Services, Total	$320.5	$487.5	$965.7	15,952	16,478	23,772	36.4%
Manufacturing	$172.0	$167.9	$233.5	6,110	4,717	4,925	4.4%
Trade	$62.7	$117.4	$194.7	4,155	4,490	5,607	24.9%
Services	$62.9	$179.1	$446.3	4,092	6,632	11,108	67.5%
Finance, Insurance and Real Estate	$20.9	$18.4	$36.6	1,447	479	651	35.9%
Agriculture, Forestry and Mining	$1.2	$3.3	$5.0	139	134	146	9.0%
Construction	NA	NA	$47.1	NA	NA	1,295	NA
Utilities and Communication	$0.8	$1.4	$2.5	9	26	38	46.2%
Transportation	$145.2	$278.1	$462.2	4,874	6,714	8,578	27.8%
Resource-related	***$206.6***	***$569.1***	***$885.6***	***10,151***	***13,341***	***13,171***	***-1.3%***
Fisheries, Total	$155.0	$464.5	$670.9	8,574	11,536	10,094	-12.5%
Fishing Fleet	$125.0	$386.6	$482.5	6,000	8,726	5,950	-31.8%
Seafood Processing	$30.0	$77.9	$188.3	2,574	2,810	4,144	47.5%
Petroleum Refining, Total	$51.6	$104.6	$140.8	1,577	1,805	1,990	10.2%
Passenger Cruise	***NA***	***NA***	***$74.0***	***NA***	***NA***	***1,087***	***NA***
TOTAL	***$672.3***	***$1,334.7***	***$2,313.65***	***30,977***	***36,533***	***45,520***	***18.1%***

Notes: Earnings for fishing fleet and seafood processing are estimated for 1985; cruise-related impacts not available for 1985 and 1994. Due to incomplete data in 1994 for construction and passenger cruise industry, total percent change does not include these categories.

The growth in jobs from the Alaska-Puget Sound trade relationship between 1994 and 2003 was substantial — equal to attracting a 1,000-employee company to the region each year.

Table 5 shows the total direct and indirect economic impact of Alaska on Puget Sound. This is the most comprehensive measure of the Alaska connection to the Puget Sound economy. Indirect impacts arise in two ways. The first source is industries that do not export to Alaska, but provide other firms or industries with inputs needed to produce exports. Thus they benefit from the Alaska trade, even though they are not a direct partner.

Table 5. Total (Direct + Indirect) Alaska Job and Labor Earnings Impacts on Puget Sound: 1985, 1994 and 2003

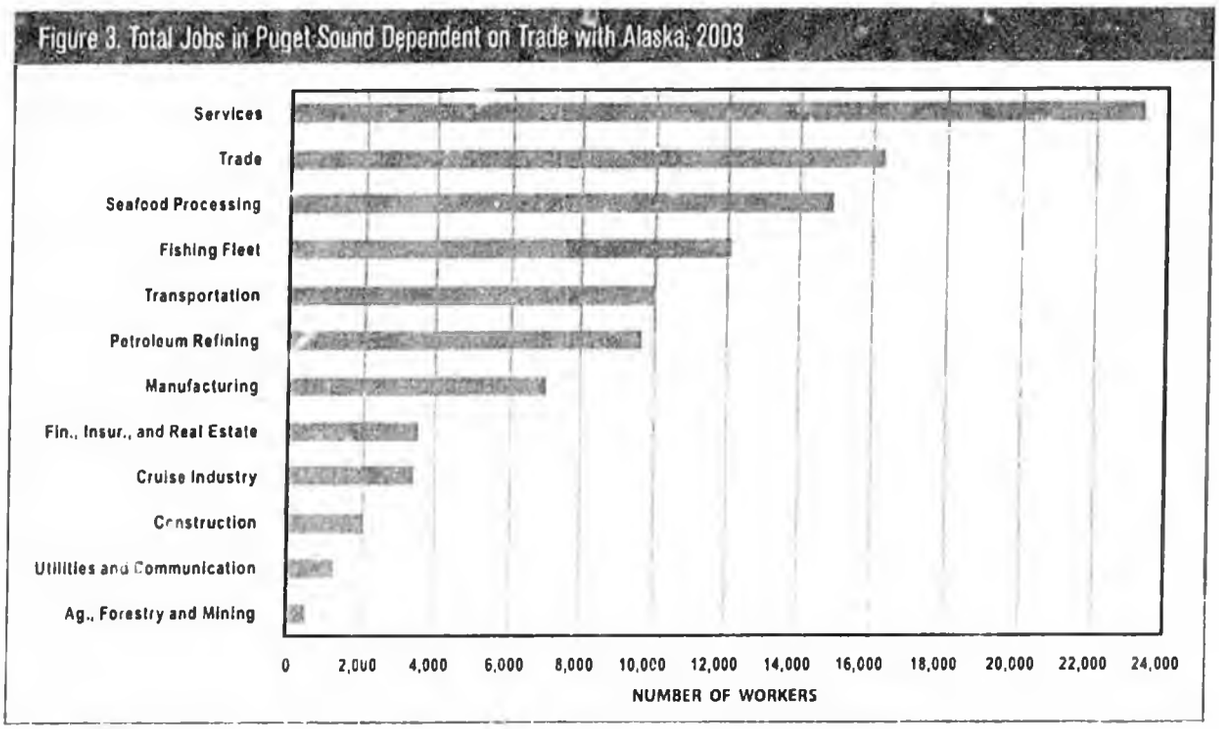
	Earnings (Millions of Current $)			Jobs			Percent Change in Jobs
Sector	1985	1994	2003	1985	1994	2003	94-03
Export-related	**$771.5**	**$1,589.6**	**$2,582.5**	**38,852**	**53,436**	**63,619**	16.2%
Goods and Services, Total	$599.7	$1,250.5	$2,057.5	32,907	44,889	53,671	16.1%
Manufacturing	$216.7	$235.9	$326.8	7,871	6,696	6,973	4.1%
Trade	$130.8	$298.6	$475.0	8,675	13,697	16,276	18.8%
Services	$178.0	$503.3	$899.5	11,220	19,199	23,343	21.6%
Fin., Insur. and Real Estate	$53.3	$137.3	$197.6	3,710	3,562	3,513	-1.4%
Ag., Forestry and Mining	$7.6	$14.5	$17.7	637	425	427	0.4%
Construction	$6.0	$11.0	$71.6	240	366	1,969	NA
Utilities and Communication	$7.3	$49.9	$69.3	554	944	1,170	24.0%
Transportation	$171.8	$339.1	$525.0	5,945	8,547	9,948	16.4%
Resource-related	**NA**	**NA**	**$1,733.6**	**18,121**	**36,661**	**39,899**	**-0.4%**
Fisheries, Total	NA	$1,082.6	$1,154.1	12,262	29,788	26,929	-9.6%
Fishing Fleet	NA	$756.8	$529.8	9,245	22,094	12,071	-45.4%
Seafood Processing	NA	$325.8	$624.3	3,017	7,694	14,858	93.1%
Petroleum Refining, Total	NA	$251.0	$419.7	5,859	6,873	9,569	39.2%
Cruise-related, Total	NA	NA	$159.8	NA	NA	3,401	NA
TOTAL	**NA**	**$2,923.2**	**$4,316.0**	**56,973**	**90,097**	**103,518**	**9.4%**

Notes: Total earnings in 1985 were not reported for resource-related sectors. Only indirect earnings and jobs for construction were reported in 1985 and 1993. Due to incomplete data for construction and cruise industry in 1994, the total percent change does not include these sectors.

The second source of indirect impact arises from the spending of income earned by employees in export industries and export-serving industries. Such consumer spending produces an important ripple effect. Because of this, the Alaska connection affects every one of the 62 economic sectors covered by the Puget Sound Input-Output model. An export may be defined simply as any sale to a buyer outside the region. Export industries create powerful leverage by drawing fresh infusions of wealth into the region. This leverage is the most powerful example of the "multiplier effect," the ability of one form of economic activity to ripple through the economy as income and purchasing power are circulated.

There are other Alaska-related impacts that do not fit neatly into Table 5, including the more than $500 million spent each year by Alaskans when they visit Puget Sound. For example, the Puget Sound region (notably Seattle) is headquarters for the federal government's Region X (Alaska, Oregon, Washington, and Idaho). Regional headquarters of various federal agencies generate some 350 Alaska-related jobs, with estimated earnings of $15 million.

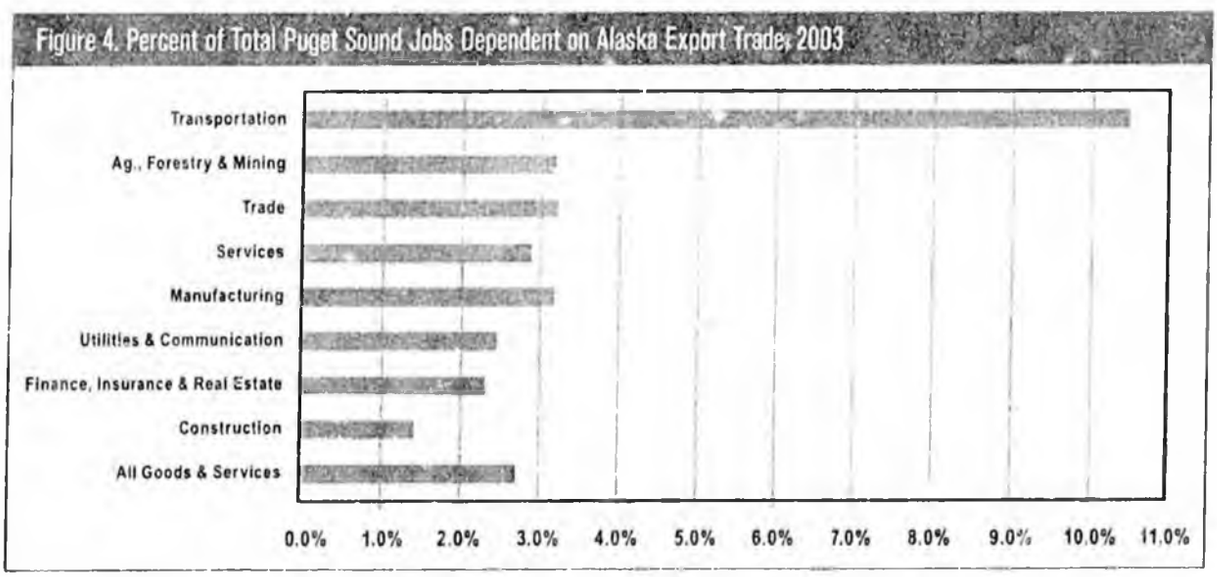
The portion of direct to indirect jobs varies widely by sector. For example, 38 percent of Puget Sound service industry jobs linked to Alaska are in firms exporting services directly. The remaining 62 percent are indirect: jobs in firms that support service exporters, and jobs supported by consumer spending of workers employed by both exporters and support firms.



The data presented in Tables 3-5 and Figure 3 measure the impact of Alaska in absolute terms, showing the Alaska-linked portion of the Puget Sound economy as if it were a stand-alone, separate entity. Figure 4 provides perspective on the relative importance of Alaska by showing the share of total economic activity it provides in the Puget Sound region. Across all sectors producing goods and services in Puget Sound, 103,518 jobs, almost 3 percent of the region's jobs, depend on the Alaska export market. A prominent sector is transportation, where nearly 10 percent of all jobs are Alaska-linked. Other major sectors exceeding the 3 percent mark are trade, manufacturing, and natural resources.

The share of Puget Sound jobs that are created by exports to Alaska are an important element in a diversified regional economy. It also generates a crucial margin of jobs, equal in size to the entire labor force that resides in the combined cities of Bellevue and Kirkland.

Two Puget Sound industries, petroleum and fishing, rely on Alaska-based resources. In these sectors, Puget Sound relies on Alaska as a source of raw material – 87 percent in petroleum refining and 85 percent in fishing and seafood processing. In the case of petroleum industries, Alaska provides a resource that is replaceable by other suppliers. By contrast, the Alaska fisheries are unique and irreplaceable, at least for Puget Sound-based fishing fleets and seafood processors.



Sectoral Analyses

TRANSPORTATION

Of the 95,003 transportation sector jobs in Puget Sound, 10.5 percent are related to trade with Alaska. In 2003, transportation sector exports to Alaska from Puget Sound totaled more than $1.5 billion, generating 9,948 total jobs and over $525 million in labor earnings. The detail for this sector is shown in Table 6.

Table 6. Alaska-Related Puget Sound Transportation Impacts, 1994 and 2003

	1994			*2003*		
Mode/Function	*Exports ($ Millions)*	*Jobs*	*Labor Earnings ($ Millions)*	*Exports ($ Millions)*	*Jobs*	*Labor Earnings ($ Millions)*
Railroad Transport	$0.0	29	$1.8	$0.0	29	$2.3
Local Transport	$0.0	202	$5.5	$0.0	254	$8.3
Trucking	$47.4	1,152	$30.4	$63.2	1,012	$40.2
US Postal Service	$8.8	327	$13.7	$12.5	377	$19.5
Water Transport	$453.6	3,304	$145.7	$819.2	3,108	$211.6
Air Transport	$358.9	2,550	$115.8	$570.6	4,390	$201.1
Pipeline	$0.0	1	$0.1	$0.0	2	$0.1
Transport Services	$25.7	955	$26.1	$37.7	777	$41.9
TOTAL	*$894.4*	*8,517*	*$339.1*	*$1,503.2*	*9,948*	*$525.0*

Notes: Transport services includes freight consolidators, freight forwarders, shipping agents, and transport brokers.

A Horizon Lines ship at the Port of Tacoma.
Photo by Kathleen Tomandl, Port of Tacoma.

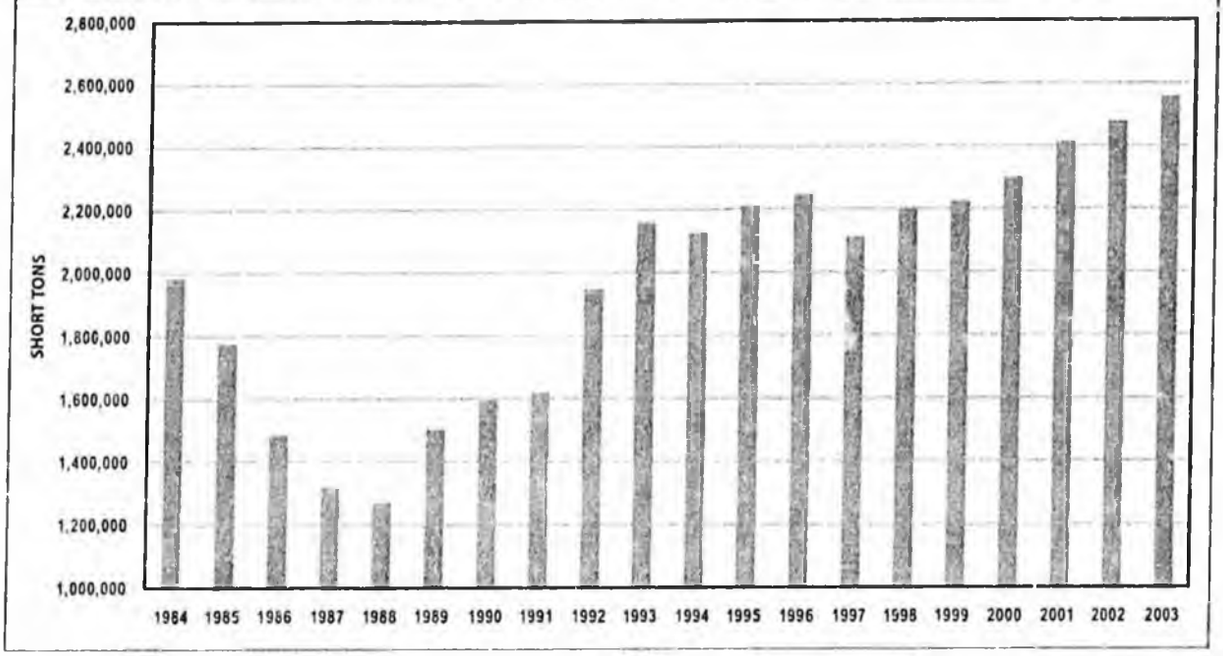
Waterborne Transportation

Waterborne transporters generated more than three fifths of the $1.5 billion transportation-related export trade to Alaska. By weight, 97 percent of all freight shipments between Puget Sound and Alaska are waterborne. The remaining 3 percent is divided between air freight and cargo transported by truck on the Alcan Highway and the Alaska Marine Highway ferry system.

Figure 5 shows the waterborne freight shipments (northbound) from Puget Sound to Alaska for the 1984-2003 period. The time period begins with high levels of waterborne freight shipments related to the Prudhoe Bay module and trans-Alaska pipeline construction in the early- to mid-1980s. The low levels of activity between 1986 and 1988 coincided with a severe recession and net job declines in Alaska. From that low point in 1988, shipments rebounded 67 percent by 1994, an average growth of 11 percent per year.

Waterborne shipments provide a good barometer for economic conditions in Alaska. For instance, while Puget Sound and national economic growth was robust during the mid-to-late 1990s, economic gains in Alaska were only modest. This is illustrated in the container shipments from Puget Sound to Alaska shown in the chart. 1999 marks the beginning of another period of robust growth in waterborne container shipments. In 2003, northbound container shipments from the Ports of Tacoma and Seattle surpassed 2.5 million tons, representing the fourth consecutive year of record tonnage to Alaska. In general, the growth trend in northbound waterborne container shipments reflects the overall economic growth enjoyed by Alaska since 1988.

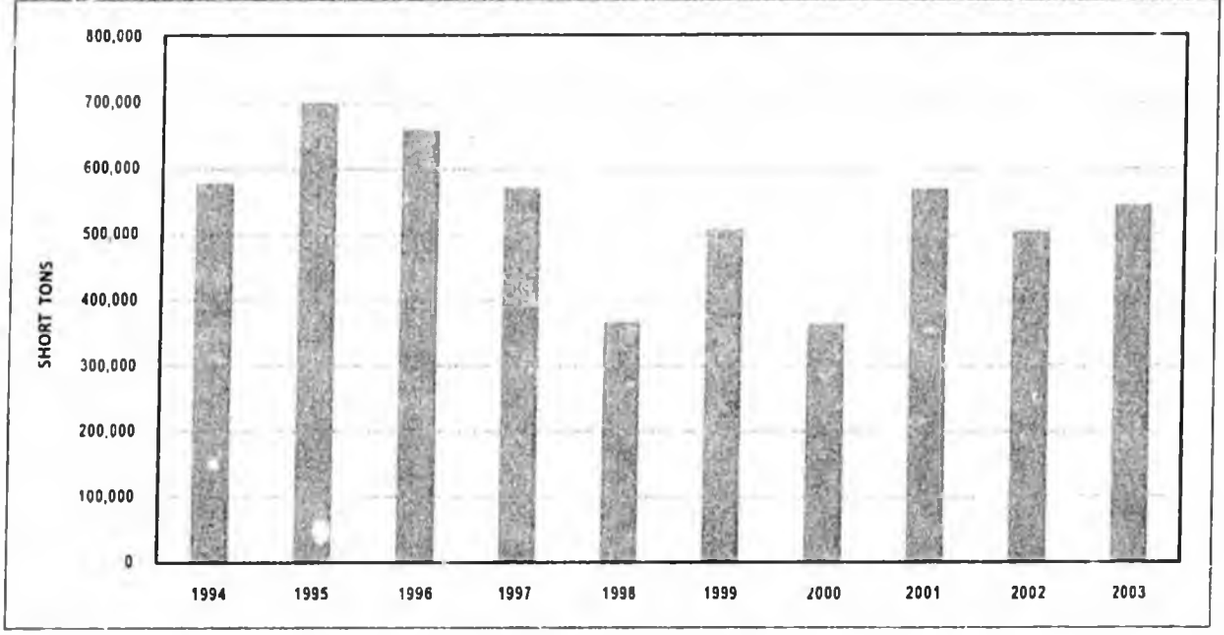
Figure 5. Puget Sound Waterborne Container Shipments to Alaska, 1984-2003



Sources: Port of Tacoma; Port of Seattle; individual vessel and barge lines; Army Corps of Engineers.

Puget Sound-based waterborne shippers also transport bulk commodities to Alaska—from refined petroleum products and chemicals to stone, sand, gravel and metal scrap. Given their volatility, trends in bulk commodity shipments are more difficult to interpret. Over the last ten years, bulk commodity shipments have averaged about 500,000 tons annually, with the lion's share in petroleum products from Puget Sound refineries (Figure 6).

Figure 6. Puget Sound Waterborne Bulk Cargo Shipments to Alaska, 1994-2003



Sources: Port of Tacoma; Port of Seattle; individual vessel and barge lines; Army Corps of Engineers.

In 2003, combined northbound waterborne container and bulk commodity shipments eclipsed the 3 million ton mark for the first time.

Because of its geographic location, Alaska must import food and food products to an unusual degree. Puget Sound suppliers are a major source of these imports. Other manufactured goods produced in Puget Sound are also included in waterborne cargo shipments, such as department store merchandise, building materials, and vehicles. Although a major supplier of crude oil, Alaska must import some of its refined petroleum products, and Puget Sound is its leading supplier. Puget Sound also serves as the warehousing and distribution center for Alaska. Goods from across the Lower 48 states are consolidated in the Puget Sound region for shipment north (Table 7).

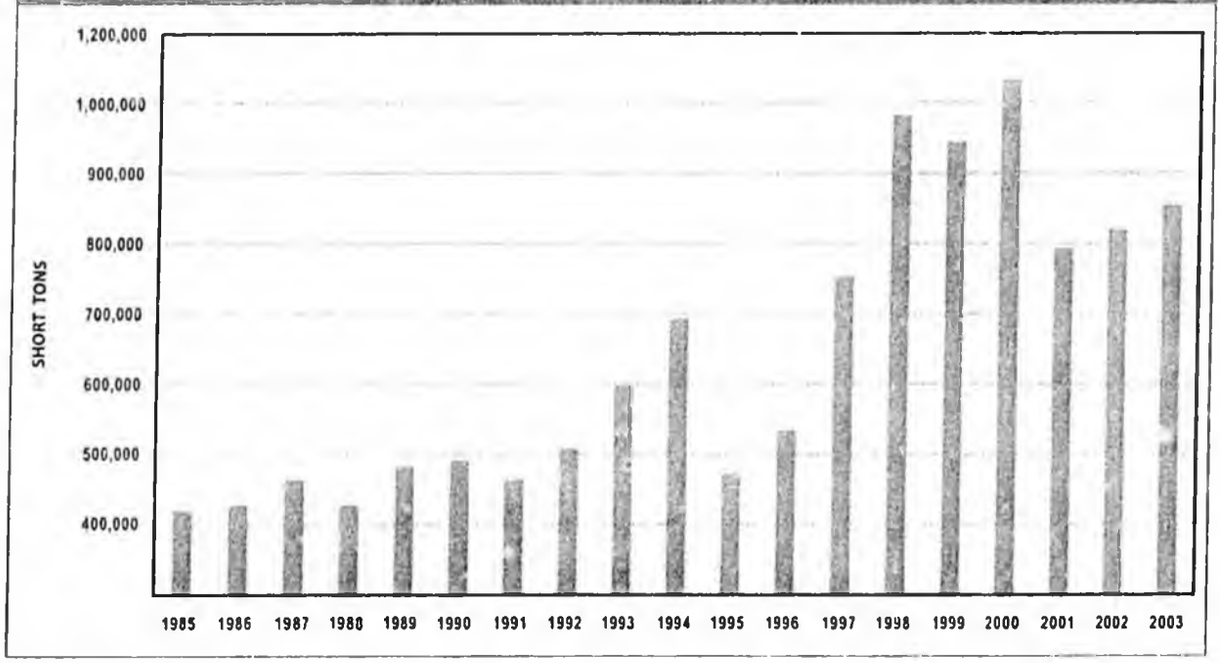
Table 7 Puget Sound Waterborne Cargo to Alaska, 2003

Category	*Weight (Short Tons)*	*Percent of Total*
Food Products	818,531	26.4%
General Goods (Including Dept. Store Merchandise)	582,097	18.8%
Petroleum Products	460,050	14.8%
Building Materials	430,175	13.9%
Household Goods	120,969	3.9%
Vehicles	118,068	3.8%
Chemicals	83,521	2.7%
Primary and Fabricated Metals	75,684	2.4%
Military Cargo	37,220	1.2%
Paper and Paperboard Products	26,153	0.8%
U.S. Mail	11,755	0.4%
Other	335,299	10.8%
TOTAL	*3,099,521*	*100.0%*

Source: Individual shippers.

Southbound shipments to Puget Sound from Alaska are shown in Figure 7. Although non-crude shipments vary annually, the trend has generally been upward, with an average of close to 1 million tons annually. The bulk of the southbound shipments is seafood products.

Figure 7. Alaska Waterborne Freight Shipments to Puget Sound, minus Crude Oil, 1985-2003



Sources: Army Corps of Engineers; individual vessel and barge lines

An Alaska Airlines jet takes off at Seattle–Tacoma International Airport. Photo by Don Wilson, Port of Seattle.

Air Cargo Transport

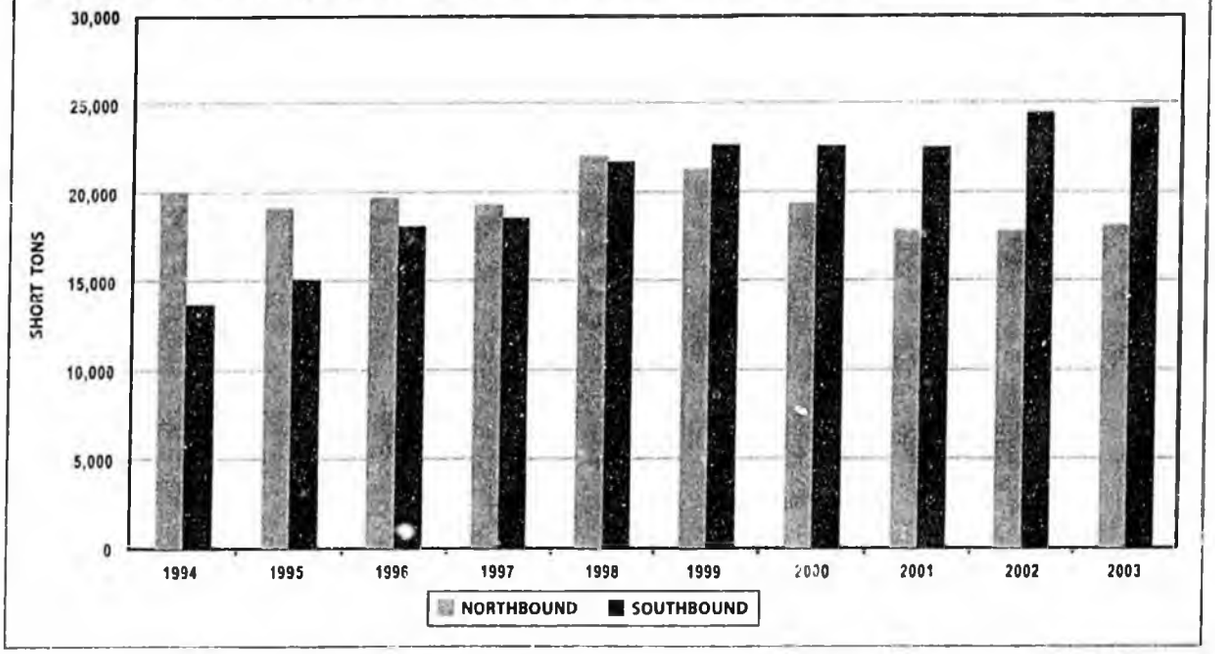
Air transport generated 38 percent of the total transportation export-related revenues of $1.5 billion in 2003. An estimated $79.3 million was from air freight and $491.3 million from passenger travel. Seattle-Tacoma and King County international airports are important staging areas for air cargo destined for Alaska, and air cargo represents a vital link in the transportation chain that supplies Alaska.

Air freight to Alaska includes more than small, high-value-per-pound items. Puget Sound air cargo destined for Alaska also includes fishing nets, diesel engines, construction materials, perishable food products, mail, and medical supplies. For many Alaska communities, air freight is the only shipping service available during several months of the year. For all communities, it is the only source of same-day service and just-in-time inventory.

For firms such as Federal Express, United Parcel Service (UPS), and Airborne Express, the Puget Sound-Alaska air cargo corridor is part of the great circle route to East Asia. This generates a volume of business not enjoyed by less-advantageously located areas of the U.S.

Southbound, a sizable share of air cargo is fresh fish, helping to make Puget Sound the warehousing/distribution hub for Alaska seafood. Figure 8 shows air cargo movement in both directions from a Puget Sound perspective.

Figure 8: Air Cargo Shipments between Puget Sound and Alaska, 1994-2003

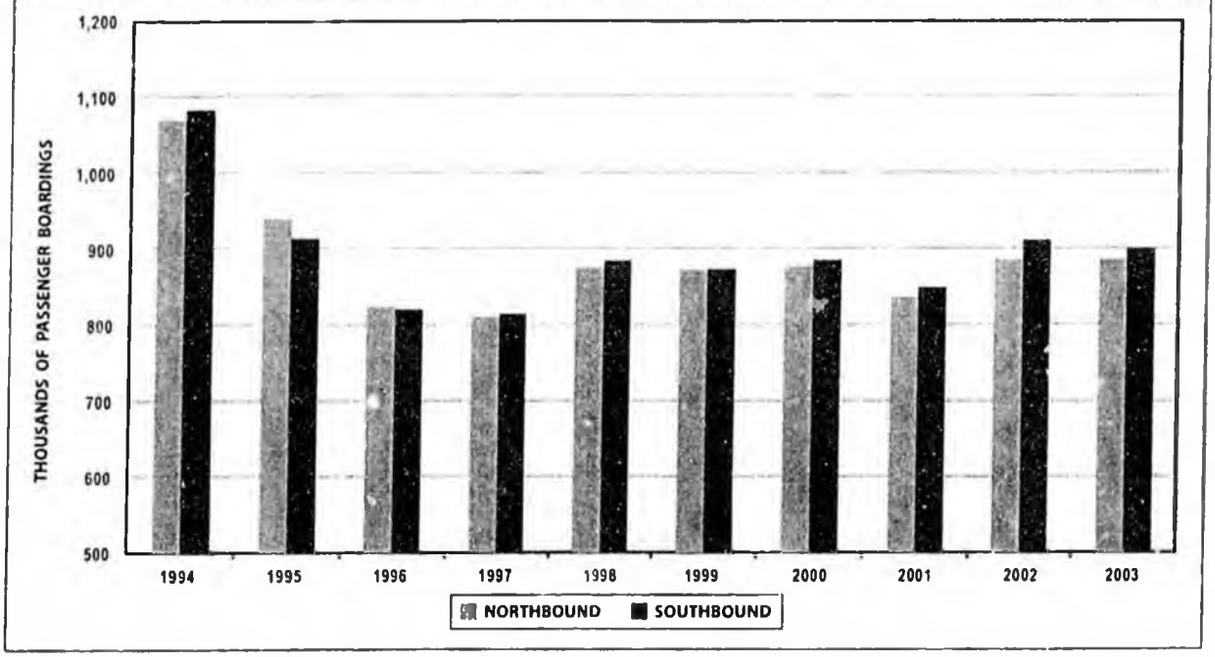


Source: Port of Seattle, Seattle-Tacoma International Airport

Air Passenger Transport

Historically, an outstanding performer in the Alaska-Puget Sound partnership is air travel. Eighty-six percent of the air transport export revenues are due to passenger travel, generating an estimated $491.3 million in 2003. Seattle-Tacoma International Airport passenger boardings to and from Alaska grew substantially between 1987 and 1994, more than doubling to over 2 million. Since the peak year of 1994, however, total boardings between Puget Sound and Alaska have declined by about 17 percent. Reasons for the decline include restricted business budgets and enhanced communications. Also, improved telecommunications technology and the internet have reduced the need for business travel. Alaska residents accounted for an estimated 300,000 total boardings in 2003 (Figure 9).

Figure 9. Air Passenger Boardings between Puget Sound and Alaska, 1994-2003



Source: Port of Seattle, Seattle-Tacoma International Airport