

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SCRA 1243

We believe that, if enacted, all three bills would enhance consumer welfare and allow New York to meet its other public policy goals. By allowing interstate direct shipping, the bills could allow New York residents to purchase a greater variety of wines at lower prices. Senate bill 1192 would provide the greatest benefits by allowing both out-of-state wineries and retailers to obtain out-of-state shipper's licenses. In addition, by requiring vendors and common carriers to comply with various regulatory requirements, similar to those adopted in other states, all three bills would allow New York to limit shipments to minors and to collect taxes on out-of-state shipments. Finally, the bills would remove one of the largest barriers to greater e-commerce in the wine industry. We base our analysis on a recent FTC staff report that extensively analyzed the direct shipping issue, and on the Commission's testimony at a recent congressional hearing (copies of both attached). A summary of our analysis is below:

- Variety. Direct shipping allows consumers to purchase many wines that are not available in nearby bricks-and-mortar stores. An FTC staff study found that 15% of a sample of popular wines available online were not available from retail wine stores within ten miles of McLean, Virginia. Direct shipping also gives consumers easier access to thousands of labels from smaller wineries.
- Prices. Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by having wine shipped directly to them. Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The FTC staff study suggests that, if consumers use the least expensive shipping method, they could save an average of 8-13% on wines costing more than \$20 per bottle, and an average of 20-21% on wines costing more than \$40 per bottle.
- Sales to minors. The states that permit interstate direct shipping generally report few or no problems with shipments to minors. These states have generally adopted less restrictive means of regulating interstate direct shipments, such as requiring that package delivery companies obtain an adult signature at the time of delivery. The pending bills contain these same types of safeguards.
- Taxes. Several states collect taxes on interstate direct shipments. States such as New Hampshire have sought to achieve voluntary compliance through less restrictive means, such as by requiring out-of-state suppliers to obtain permits. Most of these states report few or no problems with tax collection.
- E-commerce. State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine. Approximately half the states prohibit or severely restrict out-of-state suppliers from shipping wine directly to consumers. Many of these same states, however, allow intrastate direct shipping, such as from in-state wineries and retailers.

For these reasons, we believe that, if enacted, the bills would enhance consumer welfare and allow New York to meet its other public policy goals.

Interest and Experience of the Federal Trade Commission

The FTC is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.³ Under this statutory mandate, the Commission seeks to identify business practices and regulations that impede competition without offering countervailing benefits to consumers. In particular, Commission staff have often assessed the competitive impact of regulations involving alcohol distribution. For example, the staff has analyzed franchise laws that grant wholesalers preferential contract rights. In Illinois, the staff examined a bill that would have prevented suppliers from terminating contracts with wholesalers except for good cause, and suggested that the bill would harm consumers by limiting suppliers' flexibility in changing distributors.⁴ In North Carolina, the staff noted that a bill that would have tightened exclusive territorial arrangements between wineries and wholesalers would likely diminish consumer welfare.⁵ Another type of state regulation deters wholesalers from cutting prices. In Massachusetts, FTC staff discussed the consumer benefits of a proposal that would have repealed regulations requiring wholesalers to post prices on a monthly basis and to adhere to those posted prices for an entire month.⁶

FTC staff have also studied the direct shipping issue. In October 2002, the Commission held a workshop to evaluate possible anticompetitive barriers to e-commerce in wine and many other industries.⁷ At the workshop, FTC staff heard testimony from all sides of the wine issue, including wineries, wholesalers, and state regulators. The staff also gathered evidence from package delivery companies, the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), and regulators in states that allow direct shipping. Finally, FTC staff conducted the first empirical study of a wine market in a state that banned interstate direct shipping. The study examined the wine market in McLean, Virginia ("McLean study"), and compared the prices and choices that consumers could find in area stores to those available online. The authors chose McLean as a relevant retail area because the socio-economic status of many residents in McLean (and northern Virginia, generally) made it likely that several local bricks-and-mortar outlets would

³ Federal Trade Commission Act, 15 U.S.C. § 45.

⁴ FTC Staff Letter to Illinois Sen. Dan Cronin (Mar. 31, 1999), at <http://www.ftc.gov/be/v990005.htm>.

⁵ FTC Staff Letter to North Carolina Sen. Horton and Rep. Miller (Mar. 22, 1999), at <http://www.ftc.gov/be/v990003.htm>.

⁶ FTC Staff Statement to the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (June 26, 1996), at <http://www.ftc.gov/be/v960012.htm>.

⁷ Public Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet, 67 Fed. Reg. 48,472 (2002). The workshop's homepage is at <http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm>, its transcript is at <http://www.ftc.gov/opp/ecommerce/anticompetitive/021008antitrans.pdf>, and all of the panelists' written statements are at <http://www.ftc.gov/opp/ecommerce/anticompetitive/agenda.htm>.

cater to sophisticated wine drinkers.⁸ In July 2003 FTC staff issued a comprehensive report on the direct shipping issue ("Wine Report"),⁹ and in October 2003, the Commission testified at a related congressional hearing.¹⁰

Analysis of Pending Bills

All three bills would allow out-of-state vendors to ship wine directly to New York residents if those vendors satisfy certain regulatory requirements. Under Senate bill 1192, both out-of-state manufacturers and retailers could obtain an out-of-state shipper's license if those vendors hold a license to sell or manufacture wine in another state, and if that other state affords New York's vendors reciprocal treatment. To obtain an out-of-state shipper's license, vendors must pay an annual fee of \$125 and present New York's state liquor authority with a copy of a current license from the other state. A license allows vendors to ship wine directly to New York residents who are 21 years or older.

Senate bill 1192 imposes several requirements on out-of-state shippers. In sending the wine, the shipper must ensure that the delivery package has a conspicuous label noting that the package contains alcohol and requires an adult signature for delivery, and the shipper must require common carriers to obtain an adult signature at the time of delivery. In addition, the shipper must provide the state liquor authority with annual reports that include, among other information, the total volume of shipments into New York and the purchaser's name and birth date. The shipper must pay all state and local sales and excise taxes, keep records for three years, and consent to New York's jurisdiction for enforcement purposes. Finally, the bill gives the state liquor authority the power to suspend or revoke an out-of-state shipper's license.

Assembly bill 9560-A and Senate bill 6060-A have similar provisions, with a few important exceptions. These bills would allow only out-of-state wineries, not retailers, to obtain out-of-state shipper's licenses, and in addition to a license, an out-of-state winery would have to obtain a "certificate of authority" and a "registration as a distributor." The bills also cap wine shipments at two cases per month to any New York resident. Finally, the bills directly require common carriers to verify the age of recipients.

⁸ See Wine Report at 18 n.81. It is likely that, in larger markets, bricks-and-mortar retailers may offer somewhat more choices, and that in smaller markets, bricks-and-mortar retailers may offer somewhat fewer choices.

⁹ FTC Staff Report, *Possible Anticompetitive Barriers to E-Commerce: Wine* (July 2003), at <http://www.ftc.gov/os/2003/07/winereport2.pdf>.

¹⁰ See Prepared Statement of the FTC Concerning "E-Commerce: The Case of Online Wine Sales and Direct Shipment," Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives (October 30, 2003), at <http://www.ftc.gov/os/2003/10/031030ecommercewine.htm>.

I. The Bills Would Allow Consumers to Purchase a Greater Variety of Wines

The bills would substantially increase the variety of wines available to consumers. Through direct shipping, and particularly through the Internet, consumers can conveniently purchase many wines that are not available in nearby bricks-and-mortar stores. The Internet effectively expands the geographic market by allowing online vendors to compete nationally. An individual online store may feature more products than many bricks-and-mortar retail locations. More importantly, the total number of varieties available online may surpass the total number available in bricks-and-mortar stores that are within a reasonable distance of a particular consumer. As a result, direct shipping can give consumers convenient access to many more wines, including popular labels. Using the *Wine and Spirits* list of the top 50 most popular wines in America, the McLean study found that 15% of the wines available online were not available from retail wine stores within ten miles of McLean. For the bottles that were unavailable in the McLean vicinity, 8 out of 15 came from among the 20 most popular bottles.¹¹ In addition to popular wines, direct shipping also gives consumers access to thousands of smaller labels from around the country.

Bricks-and-mortar retailers may not have the demand or shelf-space to justify keeping a large variety of wines in stock. According to a trade association, domestic wineries produce approximately 25,000 wine labels, and even in a large market like Illinois, only slightly more than 500 of these labels are available through the three-tier system.¹² Moreover, smaller wineries may be unable to distribute their wines through the three-tier system. One court found that Florida's interstate direct shipping ban "has the practical effect of preventing many small wineries from selling their wine in Florida. This result occurs because it is not cost-effective for the smaller out-of-state wineries to acquire a Florida wholesaler."¹³ Another court found that the three-tier system "may lock most [out-of-state producers] out of any access to Texas markets, even if they are willing to take on the additional costs. Such discrimination is especially felt by small, family-run wineries with limited production."¹⁴

Consumers are likely to value having a variety of wines from which to choose. One wine magazine, for example, reviews over 10,000 different wines annually. Similarly, an economist

¹¹ See Wine Report, App. A. The FTC's Bureau of Economics contributed to the Wine Report, and the McLean study, which is attached to the report, has been published as Alan E. Wiseman and Jerry Ellig, *How Many Bottles Make a Case Against Prohibition?* (Bureau of Economics, Federal Trade Commission, Working Paper No. 258, March 2003).

¹² See Wine Report at 24.

¹³ *Bainbridge v. Bush*, 148 F.Supp.2d 1306, 1311 n.7 (M.D. Fla. 2001), *vacated on other grounds*, *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

¹⁴ *Dickerson v. Bailey*, 212 F.Supp.2d 673, 694-95 (S.D. Tex. 2002), *aff'd*, 336 F.3d 388 (5th Cir. 2003).

testified that "the value to consumers of direct wine shipments com[es] primarily from access to wines that are not available in their communities."¹⁵

II. The Bills Could Allow Consumers to Purchase Wine at Lower Prices

Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by purchasing wine online. Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The McLean study suggests that, if consumers use the least expensive shipping method, they could save an average of 8-13% on wines costing more than \$20 per bottle and an average of 20-21% on wines costing more than \$40 per bottle. In addition, direct shipping lets consumers avoid the "cost" of spending time to travel to a bricks-and-mortar store.¹⁶

Moreover, even if consumers choose to buy wine from a bricks-and-mortar retailer, direct shipping still encourages price competition between online and offline sources. In states that allow direct shipping, the Internet allows wineries and other merchants across the nation to compete with local bricks-and-mortar retailers. The Internet helps consumers comparison shop and lets suppliers compete in geographic markets that otherwise may be closed to them, perhaps due to the three-tier system or franchise laws.¹⁷ This competition likely forces down prices. One court found that the ban on interstate direct shipping constituted "economic protectionism, negatively impacting Texas consumers because of more limited wine selection and higher prices."¹⁸ Likewise, a Nobel laureate in economics has explained how direct shipping benefits consumers:

consumers benefit from free markets operated with the minimum government regulation required for consumer protection. . . . The restrictions on direct

¹⁵ See Daniel L. McFadden, Written Statement 2, at <http://www.ftc.gov/opp/e-commerce/anticompetitive/panel/mcfadden.pdf>. On the importance of variety, see Thomas B. Leary, *The Significance of Variety in Antitrust Analysis*, 68 ANTITRUST L.J. 1007 (2001). Some, however, have determined that consumers already have enough choices. See Statement of Juanita D. Duggan Concerning "E-Commerce: The Case of Online Wine Sales and Direct Shipment" 18, Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives (October 30, 2003) ("The average retail store in most States carries between 300 and 500 different wine brands at any given moment. Can you imagine selecting from that many toothpastes or contact lenses or cars?").

¹⁶ See generally Clifford Winston, *Conceptual Developments in the Economics of Transportation: An Interpretive Survey*, 23 J. ECON. LIT. 57, 77 (Mar. 1985) (discussing costs of travel time).

¹⁷ See, e.g., Public Comments, American Bar Association, Section of Antitrust Law at 10, at <http://www.ftc.gov/opp/e-commerce/anticompetitive/cc.mments/aba.pdf>.

¹⁸ *Dickerson v. Bailey*, 212 F.Supp.2d 673 (S.D. Tex. 2002), incorporating *Dickerson v. Bailey*, 87 F.Supp.2d 691, 709-10 (S.D. Tex. 2000), *aff'd*, 336 F.3d 388 (5th Cir. 2003).

purchase of premium wines and their interstate shipment that have been adopted by a number of States are, I believe, another example of abuse of the regulatory process to protect concentrated economic interests, going far beyond the minimum regulations needed to maintain the integrity of taxation and to protect minor consumers.¹⁹

Because all three bills permit direct shipping, all would increase competition and allow consumers to find lower prices. Of the three bills, Senate bill 1192 would increase competition the most by allowing out-of-state retailers, as well as wineries, to obtain out-of-state shipper's licenses. This additional competition likely would allow consumers to find even lower prices. The McLean study found that "the lowest online prices overwhelmingly come not from wineries, but from out-of-state retail outlets that have web-accessible inventories."²⁰

To provide New York consumers with the greatest benefits, the bills should ensure that licensing procedures for out-of-state vendors are not overly burdensome. For example, to ship into New York, Assembly bill 9560-A and Senate bill 6060-A require out-of-state wineries to obtain a "certificate of authority" and a "registration as a distributor" in addition to an out-of-state shipper's license. All three bills require out-of-state vendors to pay an annual fee of \$125. Such restrictions may constrain competition. Depending on the volume of purchases in a state, even seemingly small fees can deter smaller wineries from shipping wine.²¹ In addition, some states have created complex licensing procedures and regulations that deter suppliers and package delivery companies from shipping wine to those states. Furthermore, all three bills allow out-of-state vendors to obtain New York licenses only if those vendors are located in states that afford New York's vendors reciprocal treatment. This restriction will prevent some out-of-state vendors from shipping to New York residents, thereby somewhat limiting competition and consumer choice. To obtain the greatest benefits from competition, a policy should ensure that permit procedures, fees, and regulations are reasonably calculated to meet the state's legitimate regulatory goals.

III. States that Permit Interstate Direct Shipping of Wine Generally Report Few or No Problems with Direct Shipments to Minors

Although direct shipping can provide consumers with important benefits, policymakers have expressed concern that direct shipping might exacerbate the problem of underage drinking. As FTC staff recognized in the Wine Report and in other documents, underage alcohol use

¹⁹ See Daniel L. McFadden, Written Statement 1, at <http://www.ftc.gov/opp/e-commerce/anticompetitive/panel/mcfadden.pdf>.

²⁰ Wine Report at App. A 25 n.22.

²¹ See Wine Report at 41.

imposes significant costs, in both human and economic terms.²² In the context of the direct shipping of wine, however, the evidence shows that the states that permit interstate direct shipping generally report few or no problems with shipments to minors.

A. Evidence from States That Allow Direct Shipping

FTC staff contacted officials from many states that allow interstate direct shipping and asked them whether they had experienced problems with shipping to minors. These states generally report few, if any, problems with direct shipping to minors. Most of them do not believe that interstate direct shipment of wine to minors is currently a serious problem, although several of them believe that it is possible for minors to buy wine online. None of them report more than isolated instances of minors buying or even attempting to buy wine online.²³ State regulators uniformly expressed greater concern about underage access to alcohol through traditional avenues.

The state officials offered many possible explanations for their experiences. Several state officials opined that minors are more interested in beer and spirits than wine.²⁴ New Hampshire concluded that minors are less likely to purchase wine online because of the extra expense of ordering over the Internet.²⁵ This conclusion corresponds with the McLean study, which found that when transportation costs are included, lower-end wines are more expensive when purchased over the Internet than through the three-tier system.²⁶ Minors would have to pay a hefty premium, from 33-83%, to purchase a bottle of wine costing less than \$20 online and have it delivered to them via 2nd Day Air. Similarly, several state officials also commented that, based on their experience, minors were much more likely to buy alcohol through offline sources than over the Internet.²⁷ In a 2002 survey, large percentages of high school students, from 68-95%, said that it is "fairly easy" or "very easy" to get alcohol.²⁸

²² See *id.* at 26-38; FTC, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers* App. A, pp. iii-iv (Sept. 1999), at <http://www.ftc.gov/reports/alcohol/alcoholreport.htm>.

²³ See Wine Report at 26-40.

²⁴ See *id.* at 32 (chart summarizing state responses), App. B (letters from state officials). See also Wall Street Journal, Editorial, *The Carafe is Half Full*, WALL ST. J., July 3, 2003, at A10 (arguing that teenagers are not interested in expensive wines, and that "[t]hirty states allow wine shipments within their borders without a surge in teen drinking").

²⁵ *Id.* at App. B (New Hampshire letter).

²⁶ See *id.* at App. A.

²⁷ See *id.* at App. B (California testimony; letters from New Hampshire and Wisconsin).

²⁸ See *id.* at notes 47-50 and accompanying text.

Of course, the fact that states have received few complaints about direct shipments to minors does not establish that minors are not purchasing wine online. As noted by a Michigan Assistant Attorney General, minors who buy wine online are unlikely to report their purchases to the authorities, and neither the package delivery company nor the supplier may know or care that they are delivering wine to a minor.²⁹ FTC staff cannot rule out the possibility that minors are buying wine online undetected by state officials.

Nevertheless, the staff is aware of no systematic studies assessing whether direct shipping increases alcohol consumption by minors. FTC staff found only one study that might address the impact of direct shipping of wine on underage drinking. This study examines the impact of "home delivery" of keg beer and other alcohol on underage drinking from such traditional retailers such as local liquor stores.³⁰ Although the study raises important issues of concern, it provides little information upon which to assess interstate direct shipping of wine. The study does not specifically address online sales, interstate direct shipment via package delivery companies, or wine. For example, one of the study's key findings is that "[o]utlets providing delivery services were more likely to sell keg beer." Moreover, the study itself states that "data presented here do not reveal the frequency of delivery use or whether delivery purchases served as a primary source of alcohol," and the study does not assess whether home delivery or direct shipping increases underage alcohol consumption above the level that would occur without those channels.³¹

The data from state compliance checks, or stings, in theory could provide additional evidence on the impact of interstate direct shipping on underage drinking. Several states have conducted stings on interstate direct shipments of wine. Typically in these stings, states provide a minor with a credit card to see whether the minor can purchase wine online, and whether the supplier or package delivery company will refuse to deliver it to the minor. These data, however, are also inconclusive. Stings and anecdotes have shown that minors are able to buy wine online, but there are not enough data from which to conclude that minors can buy wine more or less easily online than offline. For instance, Michigan found that "[a]bout one in three websites contacted" (roughly 33%) agreed to sell alcohol to the minor with no more age verification than a mouse click, and that UPS delivery people did not properly verify the recipients' ages.³² On the other hand, New Hampshire has run compliance checks in the past but

²⁹ See Testimony of Irene Mead 196, at <http://www.ftc.gov/opp/ecommerce/anticompetitive/021008antitrans.pdf>.

³⁰ Linda A. Fletcher et al., *Alcohol Home Delivery Services: A Source of Alcohol for Underage Drinkers*, J. STUD. ALCOHOL 61: 81-84 (2000).

³¹ The National Academy of Sciences cites this study, and only this study, for the proposition that "[s]urveys of underage purchase of alcohol over the Internet or through home delivery show that small percentages (10 percent) of young people report obtaining alcohol in this manner." See *Reducing Underage Drinking: A Collective Responsibility* 174-75 (2004). As noted in the text, however, the cited study does not discuss the Internet or sales from out-of-state vendors.

³² See Wine Report at 35.

did not report any problems with interstate direct shipping to minors.³³ Moreover, the bricks-and-mortar sting data show comparable results. These stings typically find that minors are able to buy alcohol between 15-30% of the time. In Michigan, minors were able to buy alcohol 55% of the time after showing a valid Michigan license that identified the customer as a minor.³⁴ Ultimately, there are little data indicating whether a retail clerk is a more or less reliable gatekeeper than a common carrier's delivery person. Of course, efforts should be made to minimize underage purchases of alcohol, both online and offline, and New York's bills incorporate safeguards against direct shipping to minors.

B. Less Restrictive Regulatory Tools

Many states have decided that they can prevent direct shipping to minors through non-discriminatory, less restrictive means than a complete ban. For example, some states have applied the same types of safeguards to direct shipments that already apply to bricks-and-mortar retailers, such as requirements that package delivery companies obtain an adult signature at the time of delivery. In addition, several states, including Nebraska, New Hampshire, and Wyoming, require out-of-state suppliers to register and obtain permits (a permit can be conditioned on the out-of-state supplier's consent to submit to the state's jurisdiction). None of these states reported any problems with interstate direct shipping to minors.³⁵

New York's bills contain these types of safeguards. In sending the wine, the shipper must ensure that the delivery package has a conspicuous label, and the common carrier must obtain an adult signature at the time of delivery. In addition, the shipper must register with the state and consent to jurisdiction within New York for enforcement purposes. Finally, the bills give the state liquor authority the power to suspend or revoke an out-of-state shipper's license. Notably, New York's bills contain all of the safeguards recommended by both the National Academy of Sciences, which recommended "tightening access" rather than banning interstate direct shipping, and FTC staff.³⁶

To the extent that minors do buy wine online, some argue that they lack adequate enforcement tools against out-of-state suppliers. They contend that the states cannot readily inspect the records of out-of-state suppliers, and that because of jurisdictional constraints, "there is no easy way to shut [out-of-state suppliers] down if violations occur." They also argue that out-of-state suppliers have little incentive to prevent sales to minors, in part because of enforcement difficulties, but also because individual states can only punish out-of-state suppliers with the loss of a small part of their market, not the loss of a license. They note that, in contrast,

³³ See *id.* at App. B (New Hampshire letter).

³⁴ See *id.* (noting a success rate of 30% in bricks-and-mortar stings); Letter from Tina Schultz, National Alcohol Beverage Control Association, to FTC 2-4 (Jan. 31, 2002) (citing state statistics).

³⁵ See Wine Report at App. B (letters from Nebraska, New Hampshire, and Wyoming).

³⁶ See Wine Report; NAS, Reducing Underage Drinking: A Collective Responsibility 174-75 (2004).

they can readily inspect in-state wholesalers and retailers on-site, run compliance checks, and punish violators with the loss of a license, fines, and other penalties.³⁷

States, however, have a variety of legal remedies against out-of-state suppliers that ship to minors. The Twenty-First Amendment Enforcement Act gives state attorneys general the power to bring civil actions in federal court for injunctive relief against out-of-state suppliers that violate the state's liquor laws.³⁸ At the time the law took effect, in 2000, state authorities agreed that the Act would help them enforce their laws against out-of-state suppliers. The National Alcohol Beverage Control Association ("NABCA"), an association of state regulators, stated that the Act would "provide state governments with an effective tool to use in preventing the illegal interstate flow of alcohol beverages, some of which finds its way into the hands of underage drinkers."³⁹ NABCA also said that the Act would help states "overcome the jurisdictional hurdles" in enforcing their laws.⁴⁰ Finally, TTB, which has authority to revoke a winery's basic permit, will assist states in combating significant violations of state law.⁴¹

States also can request assistance from other states' alcohol agencies. New Hampshire will punish suppliers licensed in New Hampshire if another state proves that the supplier is shipping wine illegally into that state.⁴² Likewise, when officials in Louisiana learn of a violation, they have a duty to notify both TTB and the state that licensed the violator, and to "request those agencies to take appropriate action."⁴³

Overall, the evidence shows a few clear results. States that permit interstate direct shipping have adopted various procedural safeguards and enforcement mechanisms to prevent sales to minors. These states generally say that direct shipping to minors currently is not a serious problem, and that they have received few or no complaints about direct shipping to minors. The McLean study suggests that an interstate shipping ban primarily deprives consumers of access to lower-cost sources of high-end, expensive wines, and to a larger variety

³⁷ See Wine Report at 29-30.

³⁸ 27 U.S.C. § 122a (2002); Letter from Sheryl L. Walter, Acting Assistant Attorney General, U.S. Department of Justice, to Hon. Dennis Hastert, Speaker, U.S. House of Representatives 2 (May 3, 2001); *Bolick v. Roberts*, 199 F.Supp.2d 397, 442 (E.D. Va. 2002) (addendum), *vacated on other grounds*, *Bolick v. Danielson*, 330 F.3d 274 (4th Cir. 2003).

³⁹ Letter from James M. Goldberg, counsel for NABCA, to Jonathan Rusch, Special Counsel for Fraud Prevention, U.S. Department of Justice 2 (Mar. 19, 2001), attached as an enclosure to the Walter letter.

⁴⁰ *Id.* See also Wine Report at App. B (noting that Illinois could use the Act).

⁴¹ ATF, Industry Circular No. 96-3, Direct Shipment Sales of Alcohol Beverages (Feb. 11, 1997), at http://www.atf.treas.gov/pub/ind_circulars/ic_96-3.htm.

⁴² N.H. REV. STAT. ANN. § 178:14-a(VIII) (2000).

⁴³ LA. REV. STAT. ANN. § 26:359(G) (West 2001).

of all wines. FTC staff has seen no evidence indicating whether higher prices for these types of fine wines would curtail consumption significantly either among the general populace, minors, or problem drinkers. There is, therefore, apparently no empirical evidence that bans on interstate direct shipping promote temperance. Because New York's bills contain the same types of recommended safeguards as those adopted by states that allow interstate direct shipping and report few problems, it is likely that New York will experience few, if any, problems with direct shipments of wine to minors.

IV. States that Permit Interstate Direct Shipping of Wine Generally Report Few or No Problems with Tax Collection

Some states also have adopted less restrictive means of protecting tax revenues while permitting direct shipping, such as by requiring out-of-state suppliers to obtain permits and to collect and remit taxes.⁴⁴ New York's bills incorporate these types of requirements. Of these states, most report few, if any, problems with tax collection. Nebraska, for example, reports that they "have also not, as yet, had any problems with the collection of excise tax[es]."⁴⁵ North Dakota reports that "Taxes are collected. No problems to date that we are aware of."⁴⁶

To the extent that states have problems with out-of-state suppliers, they have addressed the problem in less restrictive ways than banning all interstate direct shipping. New Hampshire, for example, works with out-of-state suppliers:

[T]he State of New Hampshire Liquor Commission collects an 8% fee on all shipments into the State of New Hampshire. When the NH Liquor Commission discovers an improper shipment we contact the company and inform them of the laws in NH. Once the company learns of NH laws they normally get a permit or stop shipping into NH. The NH Liquor Commission is working with out-of-state supplier[s] and encouraging them to obtain a permit.⁴⁷

Furthermore, to the extent that out-of-state suppliers fail to comply voluntarily, states can report problems to TTB or other states, or use the Twenty-First Amendment Enforcement Act. On the other hand, there is no evidence showing that states must ban interstate direct shipping, rather than adopting a less restrictive alternative, to raise revenue.

Finally, regardless of whether states permit or prohibit interstate direct shipping, there is no reason to believe that legalized direct shipping would increase tax evasion. It is unlikely that

⁴⁴ See, e.g., LA. REV. STAT. ANN. § 26:359(B)(1); N.H. REV. STAT. ANN. § 178:14-a(V); NEV. REV. STAT. § 369.462.

⁴⁵ See Wine Report at App. B (Nebraska letter).

⁴⁶ See *id.* (North Dakota letter).

⁴⁷ See *id.* (New Hampshire letter).

states would increase illegal interstate direct shipping by creating procedures that would allow out-of-state suppliers to ship legally and pay taxes. Michigan, for example, reports that many out-of-state suppliers ship wine illegally into Michigan, and that those suppliers do not pay taxes to Michigan. Michigan, however, already prohibits out-of-state suppliers from shipping wine into Michigan, and out-of-state suppliers that ship into Michigan are already breaking the law. By legalizing direct shipping and requiring shippers to pay taxes as a condition for receiving a license, states could allow interstate direct shipping from out-of-state suppliers that comply with the law. If suppliers who currently ship illegally continue to ship illegally, then the level of tax evasion would remain unchanged, but if some suppliers who currently ship illegally decide to ship legally, then tax evasion would fall. Moreover, if interstate direct shipping increases overall commerce in wine, overall tax revenue could rise.⁴⁸

V. The Bills Would Promote E-Commerce and Interstate Commerce

The Internet lets consumers purchase an unprecedented array of goods and services from the convenience of their homes. Consumers can find thousands of goods, from thousands of suppliers around the country, and have those goods delivered to their doors. State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine. In states that ban interstate direct shipping, the bans prevent consumers from conveniently purchasing wine from suppliers around the country.⁴⁹

The direct shipping issue has broader implications for interstate e-commerce. In many industries, including many professional and financial services, states require that potential suppliers maintain a physical office within the state, or that they hire state residents.⁵⁰ Under current New York law, for example, out-of-state wineries can obtain a license to distribute and sell alcohol in New York only if they "comply with the licensing requirements of [New York] Law, including establishing and maintaining a physical presence in New York."⁵¹ These requirements ostensibly allow states to maintain tighter regulatory control over the supplier, but they also significantly raise the cost to online suppliers to doing business within a particular state. They deprive online suppliers of one of the main efficiency benefits of e-commerce, the ability to provide goods and services over large distances without the need for a substantial, far-flung physical presence. They also demonstrate how seemingly neutral restrictions can deprive online firms of a legitimate competitive advantage. State physical presence laws apply equally

⁴⁸ See *id.* at 39-40.

⁴⁹ See, e.g., Virginia Postrel, *A Look at Wine Sales over the Internet Shows the Price of Some Regulations in the Name of Consumer Protection*, N.Y. TIMES, July 17, 2003, at C2 (criticizing bans on interstate direct shipping as a barrier to e-commerce).

⁵⁰ At the workshop, FTC staff examined potentially anticompetitive barriers to e-commerce in many other industries: auctions; automobiles; caskets; contact lenses; cyber schools; online legal services; real estate, mortgages, and financial services; retailing; and telemedicine and online pharmaceutical sales. See Workshop Homepage, at <http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm>.

⁵¹ *Swedenburg v. Kelly*, 358 F.3d 223, 228-29 (2d Cir. 2004).

to in-state and out-of-state firms. In reality, though, these requirements impose disproportionate costs on online firms by diminishing or eliminating one of their advantages. Moreover, online firms, unlike bricks-and-mortar firms, may not enjoy the full financial benefits of maintaining an in-state office, because only part of their client base will reside in any particular state.

On the other hand, there is little evidence that in-state office requirements are necessary to advance consumer protection goals. For instance, there is little evidence that in-state office requirements reduce the incidence of consumer fraud by "fly-by-night" operators who deceive consumers and then disappear. FTC staff have ample experience demonstrating that deceptive lending can harm consumers, particularly for low-income and unsophisticated borrowers.⁵² There is, however, no necessary correlation between a lender's propensity to deceive consumers and the presence or absence of in-state offices or personnel. In a number of the most significant deceptive lending cases brought by the Commission, the lenders operated in-state offices.⁵³

Physical presence is not necessary to ensure accountability.⁵⁴ Nor is the issue of enforcement unique to wine. As with catalogue sales or online sales of other products, a variety of general laws and regulations protect consumers and provide legal remedies. Consumers can use general contract and tort law, as well as other specific state consumer protection laws and federal laws, to seek legal redress against out-of-state suppliers. State enforcement agencies can use a variety of legal tools, such as the Twenty-First Amendment Enforcement Act and cooperation with other states' enforcement agencies. Moreover, federal agencies, including the FTC, TTB, and Department of Justice, have authority to bring enforcement actions against sellers who violate the law. At best, physical presence requirements are an expensive, inefficient means of getting an incremental increase in regulatory authority. At worst, if extended to other industries, physical presence requirements could seriously imperil the growth of e-commerce.

Finally, your letter asked us to comment on arguments regarding "harm to the three-tier system." The FTC's statutory mandate, of course, is to promote competition and consumer welfare, not producer welfare. Having said that, the evidence suggests that expanded e-commerce would improve market conditions by giving wineries (including New York wineries), the first tier of the system, extra distribution outlets. Moreover, expanded e-commerce likely would not spell the end of bricks-and-mortar wholesalers or retailers. Because of shipping costs, consumers generally can find lower prices for less expensive wines in bricks-and-mortar stores.

⁵² See Prepared Statement of the Federal Trade Commission on Efforts to Combat Unfair and Deceptive Subprime Lending, before the Senate Special Committee on Aging 4-8, February 24, 2004, at <http://www.ftc.gov/os/2004/02/02242004subprimelendingtest.pdf>.

⁵³ See, e.g., *The Associates*, No. 1:01-CV-00606 (N.D. Ga. 2001); *First Alliance Mortgage Co., et al.*, No. SACV 00-964 DOC (Eex) (C.D. Cal. 2000); *Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002).

⁵⁴ Cf. *Swedenburg*, 358 F.3d at 237-38.

In states that permit interstate direct shipping, such as California and Illinois, wholesalers and retailers continue to enjoy the bulk of sales.⁵⁵

Conclusion

Based on an extensive review of the evidence, FTC staff believes that, if enacted, any of the bills would enhance consumer welfare and would allow New York to meet its other public policy goals. FTC staff also believes that Senate bill 1192 would provide greater benefits to consumers than Assembly bill 9560-A or Senate bill 6060-A, because that bill would allow both out-of-state wineries and retailers to obtain out-of-state shipper's licenses.

Respectfully submitted,

Todd J. Zywicki, Director
Office of Policy Planning

Susan A. Creighton, Director
Bureau of Competition

Howard Beales, Director
Bureau of Consumer Protection

Luke M. Froeb, Director
Bureau of Economics

Barbara Anthony, Director
Northeast Regional Office

⁵⁵ See Daniel L. McFadden, Written Statement 2, at <http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/mcfadden.pdf> ("If direct interstate wine shipments were reopened, I would foresee some competitive pressure on distributors and retailers, primarily from direct wine sales to large retailers, but no substantial restructuring of the industry. I find it particularly sad that the anti-interstate shipping legislation that has been passed is so disproportionate in its negative impact on consumers relative to the very modest protection it provides to traditional distributors and retailers").

Dear Representatives,

2/12/07

Under current statutes a private citizen in Alaska, such as yourself, can buy wine directly from wineries in other states via the internet but you cannot buy wine directly from an Alaskan winery. House Bill 34 will allow you the freedom to "Buy Alaska" if you so choose.

This developing Alaska industry needs your support to prosper. Please support Alaskan businesses and pass House Bill 34.

Steven Thomsen
Alaskan Wilderness Wines

**WINE INSTITUTE****KATIE JACOY
WESTERN COUNSEL**

February 6, 2007

**Representative Gabrielle LeDoux
Alaska State Capitol
Juneau, AK 99801****Re: Wine Institute Supports House Bill 34****Dear Representative LeDoux:**

Wine Institute, representing 886 California wineries, supports the local wine industry's effort to obtain a direct-to-consumer shipping privilege. HB 34 permits Alaska wineries to ship up to 5 gallons (about 25 – 750ml bottles) of wine to an individual in Alaska where importation is not prohibited. Most wineries around the country rely on direct-to-consumer shipping to service their customers' requests when a wine is not readily available to all consumers locally. WI recognizes that the direct-to-consumer shipping privilege is critical to satisfy consumer demand and to the growth and success of local wine industries, like Alaska's.

Sincerely,

**Katie Jacoy
Western Counsel**

HB

67

SENATE COMMITTEE REPORT

DATE: 5/3/07

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/11/07

Community and Regional Affairs Committee considered CS FOR HOUSE BILL NO. 67(FIN) am

HB 67 MUNICIPAL PROPERTY TAX EXEMPTIONS

"An Act relating to a mandatory exemption from municipal property taxes for certain college property, to a mandatory exemption from municipal property taxes for residences of certain widows or widowers, and to optional exemptions from municipal property taxes for property of certain fraternal organizations and for certain residences of law enforcement officers; and providing for an effective date."

and recommends:

- be replaced with SCS or CS HB 67 (CRA)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input checked="" type="checkbox"/>	New Title w/ SCR # _____




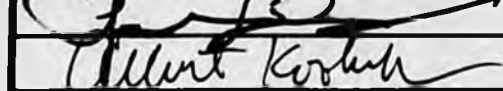
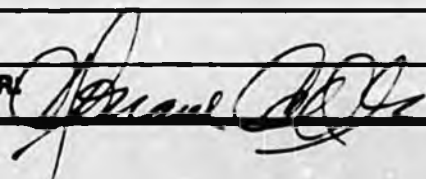
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>CGD</u>	<u>2/21/07</u>			<input checked="" type="checkbox"/>	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	<input checked="" type="checkbox"/>			
	Wagener			<input checked="" type="checkbox"/>	
	Stevens			<input checked="" type="checkbox"/>	
	Kookesh			<input checked="" type="checkbox"/>	
CHAIR 	Olson	<input checked="" type="checkbox"/>			

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

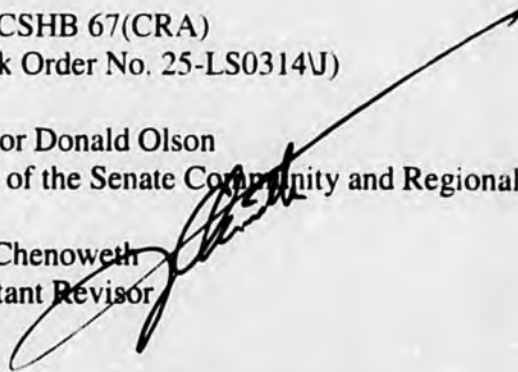
MEMORANDUM

May 11, 2007

SUBJECT: SCS CSHB 67(CRA)
(Work Order No. 25-LS0314J)

TO: Senator Donald Olson
Chair of the Senate Community and Regional Affairs Committee

FROM: Jack Chenoweth
Assistant Revisor



SCS CSHB 67(CRA) modifies the House-passed bill by converting the proposed mandatory property tax exemption for certain college property (bill section 1 of the House-passed version, CSHB 67(FIN) am) into an optional property tax exemption for college-owned property that is used for the college's non-educational purposes, subject to an exception for leasehold interests, as may be authorized by the municipality's governing body without necessity of ratification by public vote (bill section 3 of the measure accompanying this memo). The modification adds new material that necessitates a change in the bill title. The inclusion of amendment XA.2 also necessitates a title change. This is a bill title change in the measure's second ("other") house. The limitation of Uniform Rule 41(b) applies:

(b) An amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change.

In submitting the committee report, the Senate Community and Regional Affairs Committee should introduce the accompanying companion concurrent resolution waiving the application of the appropriate uniform rules in order to accommodate the amendment and the related bill title addition.

JBC:med
07-314.med

Enclosures

*moved
5/10/07
jsa*

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 67(FIN) am

1 Page 1, lines 4 - 5:

2 Delete "residences of law enforcement officers"

3 Insert "residential property"

4

5 Page 3, following line 30:

6 Insert a new bill section to read:

7 "* Sec. 3. AS 29.45.050(a) is amended to read:

8 (a) A municipality may exclude or exempt or partially exempt residential
9 property from taxation by ordinance ratified by the voters at an election. An exclusion
10 or exemption authorized by this subsection may be applied with respect to taxes levied
11 in a service area to fund the special services. An exclusion or exemption authorized by
12 this subsection may not exceed the assessed value of \$40,000 [\$20,000] for any one
13 residence."

14

15 Renumber the following bill sections accordingly.

16

17 Page 5, line 23:

18 Delete "and 5"

19 Insert "and 6"

House of Representatives Democratic Caucus

FOR STATEMENTS
L | BASIS | POWS
URE | GOVERNOR
Team Working Group
Letter to the Editor

• Homepage • BILL Listing • Sponsor Statements • Photo Gallery

REPRESENTATIVE MAX GRUENBERG

HB67

BILL STATUS

BILL TEXT

Statement PDF

BILL LOOKUP

SPONSORED

HB67



BILLS: ▾

Sponsor Statement

House Bill 67: "Municipal Property Tax Exemption"

The purpose of the bill is to encourage law enforcement officers to purchase homes and live in high crime areas. It allows a municipality to pass an ordinance giving an exemption up to \$150,000 of assessed valuation for a permanent residence owned and occupied by a law enforcement officer in a high crime area.

HB 67 Sectional Analysis

A municipality is a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or as a unified municipality. A municipality may, by ordinance, designate certain areas in which permanent residences owned and occupied by law officers are exempt from taxation up to \$150,000 of assessed value.

The areas so designated must be areas prescribed under a federal program in need of special assistance for urban development, neighborhood revitalization, or law enforcement. There is no requirement that such a program actually be utilized in order to meet this requirement. In the alternative, the areas may be delineated by ordinance on the basis of crime statistics maintained by the municipality.

The municipality may not request state funds to cover any shortfall created by this ordinance.

The municipality is given the latitude to define the term "law enforcement officer" by ordinance.

REPRESENTATIVE MAX GRUENBERG

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REPRESENTATIVE MAX GRUENBERG

HB67
STATUS

BILL STATEMENT

BILL TEXT

Statement PDF

BILL LOOKUP

SPONSORED

HB67



BILLS: ▾

Bill History/Action Display

BILL: HB 67

SHORT TITLE: MUNICIPAL PROPERTY TAX EXEMPTIONS

BILL VERSION: CSHB 67(FIN) AM

STATUS DATE: 05/02/07

CURRENT STATUS: TRANSMITTED TO (S)

SPONSOR(a): REPRESENTATIVE(s) GRUENBERG, CHENAULT, Lynn, Olson, Dahlstrom, Foster, Gara, Crawford, Thomas, Wilson, Roses

TITLE: "An Act relating to a mandatory exemption from municipal property taxes for certain college property, to a mandatory exemption from municipal property taxes for residences of certain widows or widowers, and to optional exemptions from municipal property taxes for property of certain fraternal organizations and for certain residences of law enforcement officers; and providing for an effective date."

Bill Root:

Display Bill Root

Next Bill

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Representative Mike Chenault

Representative Max Gruenberg

CSHB 67 (FIN) am (25-LS0314\X.A) – Municipal Property Tax Exemptions

Sponsor Statement

This bill makes several changes to the mandatory and optional municipal property tax exemptions allowed under Alaska law.

- The bill encourages law enforcement officers to purchase homes and live in high crime areas by allowing a municipality to pass an ordinance giving an exemption up to \$150,000 of assessed valuation for a permanent residence owned and occupied by a law enforcement officer in a high crime area.
- The bill clarifies that property owned by a private university is exempt from municipal property tax similar to a public university. If, the property is being used for a non-exempt purpose, the leasehold interest(s) will be subject to taxation.
- The bill provides for an optional municipal tax exemption for fraternal organizations if the property is used predominantly for charitable or fraternal purposes. In order to be eligible for the tax exemption, the municipality by ordinance and the voters in the municipality must approve a tax exemption for fraternal property.
- Finally, the bill allows widows and widowers of disabled veterans to retain their municipal property tax exemption. Under current law, these widows and widowers are ineligible for the tax exemption until they reach the age of 60.

Sectional Analysis

Section 1 of the bill provides a mandatory exemption for municipal property taxes for accredited four year colleges. This type of property has been tax exempt traditionally. However, an issue has arisen regarding property that is leased to a third party for non-educational purposes. This section will clarify the situation by keeping college and university property tax exempt, while allowing the leasehold interest to be taxed. This is a significant benefit to the colleges and universities as the lease proceeds are used to support the schools' educational programs. Current state law exempts University of Alaska property. This section extends the exemption to private accredited four-year

colleges and universities in Alaska. There is precedent for parity between public and private universities in existing law, such as the educational tax credit program.

Section 2 corrects a problem for the widows and widowers of disabled veterans. Under current law, widows and widowers of disabled veterans lose their municipal property tax exemptions until they reach the age of 60. In many cases, the widows and widowers are much younger than 60, and can lose the exemption when they need it the most, upon the death of their spouse. This section allows the widows and widowers of disabled veterans to retain the exemption.

Section 3 gives the municipalities the option of passing an ordinance providing a tax exemption for property owned by fraternal organizations and used for specific listed purposes. The ordinance must be ratified by the voters at an election. This section recognizes the charitable and other public purposes carried out by fraternal organizations in Alaska. In many rural areas, fraternal halls are major meeting centers for community events and are often major providers of social services as well.

Section 4 of the bill will encourage law enforcement officers to purchase homes and live in high crime areas. This will discourage crime in those areas with "cops in the neighborhood." It allows a municipality to pass an ordinance giving an exemption up to \$150,000 of assessed valuation for a permanent residence owned and occupied by a law enforcement officer in a high crime area. In Anchorage, the maximum exemption would equal approximately \$2,200 for one property. Municipalities are given discretion to determine the criteria for designating an area.

Section 5 makes the Act effective January 1, 2008 to coincide with the statutory municipal assessment date.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 67(CRA)
 (H) Publish Date: 2/21/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Muni Prop Tax Exemption For Police Homes RDU Community Assist & Ec Dev (405)
 Component Community Advocacy
 Sponsor Chenault, Gruenberg, Lynn
 Requester House Community & Regional Affairs Component No. 2703

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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation permits a municipality by ordinance to offer an optional exemption, not to exceed \$150,000 of the assessed value of real property, from municipal property taxes on certain residences of law enforcement officers. This legislation has no impact on the operations of the division.

Prepared by: Mike Black, Director Phone (907) 269-4535
 Division Community Advocacy Date/Time 2/5/07 11:17 AM
 Approved by: Emil Notti, Commissioner Date 2/5/2007
 Agency Commerce, Community, and Economic Development

(2) publishing in a newspaper of general circulation in the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization under AS 29.60.010 — 29.60.080 and priority revenue sharing for municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985; am § 3 ch 75 SLA 1997; am § 33 ch 83 SLA 1998)

Effect of amendments. — The 1997 amendment, effective July 1, 1997, rewrote this section. The 1998 amendment, effective July 1, 1998, in subsection (a) substituted "funding" for "foundation" in two places and made minor stylistic changes.

Sec. 29.45.030. Required exemptions. (a) [See delayed amendment note.] The following property is exempt from general taxation:

(1) municipal property, including property held by a public corporation of a municipality, state property, property of the University of Alaska, or land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest; however, an interest created by a nonexclusive use agreement between the Alaska Industrial Development and Export Authority and a user of an integrated transportation and port facility owned by the authority and initially placed in service before January 1, 1999, is taxable only to the extent of, and for the value associated with, those specific improvements used for lodging purposes;

(B) notwithstanding any other provision of law, property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity is taxable; this subparagraph does not apply to federal land granted to the University of Alaska under AS 14.40.380 or 14.40.390, to other land granted to the university by the state to replace land that had been granted under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the university under AS 14.40.365;

(C) an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality; however, a borough may not tax an interest in real property located in the borough and owned by a city in that borough;

(2) household furniture and personal effects of members of a household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended;

(8) property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law; except that a private leasehold, contract, or other interest in the property is taxable to the extent of that interest unless the property is located on a military base or installation and the property interest is created under 10 U.S.C. 2871 — 2885 (Military Housing Privatization Initiative), provided that the

leaseholder enters into an agreement to make a payment in lieu of taxes to the political subdivision that has taxing authority;

(9) natural resources in place including coal, ore bodies, mineral deposits, and other proven and unproven deposits of valuable materials laid down by natural processes, unharvested aquatic plants and animals, and timber.

(b) In (a) of this section, "property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of an educator in a private religious or parochial school or a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization; for purposes of this paragraph, "minister" means an individual who is

A) ordained, commissioned, or licensed as a minister according to standards of the religious organization for its ministers; and

B) employed by the religious organization to carry out a ministry of that religious organization;

(2) a structure, its furniture, and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(3) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under AS 09 (Code of Civil Procedure) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as the primary residence and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; or (3) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection, is exempt from taxation on the first \$150,000 of the assessed value of the real property. A municipality may, in case of hardship, provide for exemption beyond the first \$150,000 of assessed value in accordance with regulations of the department. Only one exemption may be granted for the same property and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves who is to receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560 — 44.62.570.

(f) To be eligible for an exemption under (e) of this section for a year, a municipality may by ordinance require that an individual also meet requirements under one of the following paragraphs: (1) the individual shall be eligible for a permanent fund dividend under AS 43.23.005 for that same year or for the immediately preceding year; or (2) if the individual has not applied or does not apply for one or both of the permanent fund dividends, the individual would have been eligible for one of the permanent fund dividends identified in (1) of this subsection had the individual applied. An exemption may not be granted under (e) of this section except upon written application for the exemption. Each municipality shall, by ordinance, establish procedures and deadlines for filing the application. The governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption and authorize the assessor to accept the application as if timely filed. If an application is filed within the required time and is approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of (e) of this section. If the application for exemption is approved after taxes have been paid, the amount of tax that the claimant has already paid for the property exempted shall be refunded to the claimant. The assessor shall

require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed under (e) of this section, and shall require a disabled veteran claiming an exemption under (e) of this section to provide evidence of the disability rating. The assessor may require proof under this subsection at any time.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement may be made to a municipality for revenue lost to it only to the extent that the loss exceeds an exemption that was granted by the municipality, or that on proper application by an individual would have been granted under AS 29.45.050(a). If appropriations are not sufficient to fully fund reimbursements under this subsection, the amount available shall be distributed pro rata among eligible municipalities.

(h) Except as provided in (g) of this section, nothing in (e) — (j) of this section affects similar exemptions from property taxes granted by a municipality on September 10, 1972, or prevents a municipality from granting similar exemptions by ordinance provided in AS 29.45.050.

(i) In (e) — (i) of this section,

(1) "disabled veteran" means a disabled person

(A) separated from the military service of the United States under a condition that is not dishonorable who is a resident of the state, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as 50 percent or more by the branch of service in which the person served or by the United States Department of Veterans Affairs; or

(B) who served in the Alaska Territorial Guard, who is a resident of the state, whose disability was incurred or aggravated in the line of duty while serving in the Alaska Territorial Guard, and whose disability has been rated as 50 percent or more;

(2) "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) One motor vehicle per household owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax under AS 28.10.431. An exemption may be granted under this subsection only upon written application on a form prescribed by the Department of Administration.

(k) The department shall adopt regulations to implement the provisions of (g) — (i) of this section.

(l) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operation on January 1, 1981, and incorporated as a fixture or part of the structure. The exemption provided by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure on January 1, 1981.

(m) For the purpose of determining property exempt under (a)(7) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superceded by applicable federal law:

(1) "developed" means a purposeful modification of the property from its original condition that effectuates a condition of gainful and productive present use without a substantial modification; surveying, construction of roads, providing utilities, and similar actions normally considered to be component parts of the development of the property but that do not create the condition described in this paragraph, do not:

developed state within the meaning of this paragraph; developed property, in order to remove the exemption, must be developed for purposes other than exploration, and be limited to the smallest practicable tract of the property actually used in the developed state;

(2) "exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources;

(3) "lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor; with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to that portion of the leased tract that is used solely for the purpose of exploration.

(n) If property or an interest in property that is determined not to be exempt under (a)(7) of this section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (a)(7) and (m) of this section.

§ 12 ch 74 SLA 1985; am §§ 1, 2 ch 91 SLA 1985; am § 44 ch 37 SLA 1986; am §§ 2 — 4 ch 70 SLA 1986; am § 3 ch 66 SLA 1991; am § 1 ch 85 SLA 1991; am § 14 ch 93 SLA 1991; am § 1 ch 54 SLA 1992; am § 4 ch 97 SLA 1992; am E.O. No. 99 § 71 (1997); am § 81 ch 21 SLA 2000; am § 2 ch 117 SLA 2000; am § 8 ch 136 SLA 2000; am § 1 ch 23 SLA 2001; am § 1 ch 42 SLA 2002; am § 1 ch 140 SLA 2004; am § 1 ch 44 SLA 2006)

Delayed amendment. — Under secs. 3 and 19, ch. 117, SLA 2000, as amended by sec. 2, ch. 74, SLA 2003, effective July 1, 2007, subsection (a) will be amended. Subsection (a) will read, on July 1, 2007, as follows: "(a) The following property is exempt from general taxation:

"(1) municipal property, including property held by a public corporation of a municipality, state property, property of the University of Alaska, or land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

"(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

"(B) notwithstanding any other provision of law, property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity is taxable; this subparagraph does not apply to federal land granted to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land granted to the university by the state to replace land that had been granted under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the university under AS 14.40.365;

"(C) an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality; however, a borough may not tax an interest in real property located in the borough and owned by a city in that borough;

"(2) household furniture and personal effects of members of a household;

"(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

"(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

"(5) money on deposit;

"(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

"(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended;

"(8) property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law, except that a private leasehold, contract, or other interest in the property is taxable to the extent of that interest unless the property is located on a military base or installation and the property interest is created under 10 U.S.C. 2871 - 2885 (Military Housing Privatization Initiative), provided that the leaseholder enters into an agreement to make a payment in lieu of taxes to the political subdivision that has taxing authority;

"(9) natural resources in place including coal, ore bodies, mineral deposits, and other proven and unproven deposits of valuable materials laid down by natural processes, unharvested aquatic plants and animals, and timber."

If ch. 136, SLA 2000 was not validly enacted, subsection (a) will read, on July 1, 2007, as follows:

"(a) The following property is exempt from general taxation:

"(1) municipal property, including property held by a public corporation of a municipality, or state property, or land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

"(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

"(B) notwithstanding any other provision of law, property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity is taxable; this subparagraph does not apply to federal land granted to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land granted to the university by the state to replace land that had been granted under AS 14.40.380 or 14.40.390;

"(C) an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality; however, a borough may not tax an interest in real property located in the borough and owned by a city in that borough;

of taxes levied upon the land or upon the taxable interest in the land during a single tax year, but the credit may be granted for more than one year. If the credit is granted for more than one year and the land or taxable interest in the land is conveyed, the portion of the credit remaining is extinguished. The ordinance may limit the availability of a credit to some, but not all types of improvements for which a credit may be granted under this section and to some, but not all areas of the municipality. A credit may only be granted for an improvement that has been constructed in compliance with state and federal laws. A credit may not be granted for an improvement

(1) required under state or federal law; or

(2) located more than 150 feet from the mean high tide line or ordinary high water line; in this paragraph, "ordinary high water line" means that line on the shore of the nontidal portion of a river or stream that reflects the highest level of water during an ordinary year and is established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

(c) [Repealed, § 3 ch 41 SLA 1995.]

(d) Before an ordinance is adopted under (a) of this section, it must be approved by the commissioner of fish and game. The commissioner of fish and game shall approve a proposed ordinance if the improvements for which a credit is authorized aid in protecting or restoring habitat as required under this section without regard to the percentage of the total protection or restoration that could be achieved by ideal improvement measures. Within 60 days after receipt of a proposed ordinance, the commissioner of fish and game shall notify the municipality in writing as to whether the proposed ordinance is approved or disapproved and, if the proposed ordinance is disapproved, shall state the basis for that determination. (§ 1 ch 40 SLA 1994; am §§ 1 — 3 ch 41 SLA 1995; am § 1 ch 34 SLA 2000)

Effect of amendments. — The 1995 amendment, effective August 23, 1995, deleted "and certified by the Department of Fish and Game under (c) of this section" from the end of the next-to-last sentence in subsection (b); repealed former subsection (c), relating to criteria by the department in determining whether an improvement is effective in accomplishing the

purposes listed in (a)(1) or (a)(2); and added subsection (d).

The 2000 amendment, effective August 9, 2000, substituted "a river" for "the Kenai River or a tributary of the Kenai River" in paragraphs (a)(1) and (a)(2).

Sec. 29.45.050. Optional exemptions and exclusions. (a) A municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this subsection may be applied with respect to taxes levied in a service area to fund the special services. An exclusion or exemption authorized by this subsection may not exceed the assessed value of \$20,000 for any one residence.

(b) A municipality may by ordinance

(1) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(D) all or any portion of private ownership interests in property that, based upon a written agreement with the University of Alaska, is used exclusively for student housing

for the University of Alaska; property may be exempted from taxation under this subparagraph for no longer than 30 years unless the exemption is specifically extended by ordinance adopted within the six months before the expiration of that period;

(2) classify as to type and exempt or partially exempt some or all types of personal property from ad valorem taxes.

(c) The provisions of (a) of this section notwithstanding,

(1) a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city in the borough, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city has the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes if

(A) the exemptions or exclusions have been adopted as to city taxes; and

(B) the city appropriates to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly;

(3) a city in a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax that have been granted by a home rule municipality in addition to exemptions authorized or required by law, and that are in effect on September 10, 1972, and not later withdrawn, are not affected by this chapter.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. The easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant. The municipality may provide by ordinance that, if the area subject to the easement is sold, leased, or otherwise disposed of for uses incompatible with the easement or if the easement is conveyed to the owner of the property, the owner must pay to the municipality all or a portion of the amount of the tax exempted, with interest.

(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

(h) A municipality may by ordinance partially or wholly exempt land from a tax for fire protection service and fire protection facilities and may levy the tax only on improvements, including personal property affixed to the improvements.

A municipality may by ordinance approved by the voters exempt from taxation the value that exceeds \$150,000 of real property owned and occupied as a permanent place of abode by a resident who is

- (1) 65 years of age or older;
- (2) a disabled veteran, including a person who was disabled in the line of duty while in the Alaska Territorial Guard; or
- (3) at least 60 years old and a widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection.

A municipality may by ordinance approved by the voters exempt real or personal property in a taxing unit used in processing timber after it has been delivered to the processing site from up to 75 percent of the rate of taxes levied on other property in that taxing unit. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration. In this subsection "taxing unit" means a municipality and includes

- (1) a service area in a unified municipality or borough;
- (2) the entire area outside cities in a borough; and
- (3) a differential tax zone in a city.

A municipality may by ordinance approved by the voters exempt from taxation pollution control facilities that meet requirements of the United States Environmental Protection Agency or the Department of Environmental Conservation. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration.

A municipality may by ordinance exempt from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska Housing Finance Corporation under AS 18.55.100 — 18.55.960 or by a regional housing authority formed under AS 18.55.996. However, the corporation may make payments to the municipality or political subdivision for improvements, services, and facilities furnished by it for the benefit of a housing project, and this subsection does not prohibit a municipality from receiving those payments or any payments in lieu of taxes authorized under federal law.

(m) A municipality may by ordinance partially or totally exempt all or some types of economic development property from taxation for up to five years. The municipality may provide for renewal of the exemption under conditions established in the ordinance. However, under a renewal, a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may by ordinance permit deferral of payment of taxes on all or some types of economic development property for up to five years. The municipality may provide for renewal of the deferral under conditions established in the ordinance. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral. In this subsection "economic development property" means real or personal property, including developed property conveyed under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), that

- (1) has not previously been taxed as real or personal property by the municipality;
- (2) is used in a trade or business in a way that
 - (A) creates employment in the municipality;
 - (B) generates sales outside of the municipality of goods or services produced in the municipality; or
 - (C) materially reduces the importation of goods or services from outside the municipality; and

(3) has not been used in the same trade or business in another municipality for at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed; this paragraph does not apply to inventories.

(n) A municipality may by ordinance classify as to type inventories intended for export outside the state and partially or totally exempt all or some types of those inventories from taxation. The ordinance may provide for different levels of exemption for different classifications of inventories. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application, which shall be a public document, for each exemption.

(o) A municipality may by ordinance partially or totally exempt all or some types of deteriorated property from taxation for up to 10 years beginning on or any time after the day substantial rehabilitation, renovation, demolition, removal, or replacement of any structure on the property begins. A municipality may by ordinance permit deferral of payment of taxes on all or some types of deteriorated property for up to five years beginning on or any time after the day substantial rehabilitation, renovation, demolition, removal, or replacement of any structure on the property begins. However, if the entire ownership of property for which a deferral has been granted is transferred, all tax payments deferred under this subsection are immediately due, and the deferral ends. Otherwise, deferred tax payments become due as specified by the municipality at the time the deferral is granted. The amount deferred each year is a lien on that property for that year. Only one exemption and only one deferral may be granted to the same property under this subsection, and, if an exemption and a deferral are granted to the same property, both may not be in effect on the same portion of the property during the same time. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral. An application for a deferral must specify when payment of taxes for each year of deferral will become due, together with an explanation of the reasons for each proposed date for consideration by the municipality. In this subsection, "deteriorated property" means real property that is commercial property not used for residential purposes or that is multi-unit residential property with at least eight residential units, and that meets one of the following requirements:

(1) within the last five years, has been the subject of an order by a government agency requiring environmental remediation of the property or requiring the property to be vacated, condemned, or demolished by reason of noncompliance with laws, ordinances, or regulations;

(2) has a structure on it not less than 15 years of age that has undergone substantial rehabilitation, renovation, demolition, removal, or replacement, subject to any conditions prescribed in the ordinance; or

(3) is located in a deteriorating or deteriorated area with boundaries that have been determined by the municipality.

(p) A municipality may by ordinance partially or totally exempt from taxation a private leasehold, contract, or other interest held by or through an applicant or proposed applicant in any property, assets, project, or development project owned by the Alaska Industrial Development and Export Authority under AS 44.88. Nothing in this subsection prohibits a municipality from entering into an agreement and receiving payments in lieu of taxes authorized under AS 44.88.140(b).

(q) A municipality may by ordinance partially or totally exempt from taxation land from which timber is harvested that is infested by insects or at risk of being infested by insects due to an infestation in the area in which the land is located. A municipality may provide that an exemption for land under this subsection applies only to increased

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assessed value that result from the timber harvest. A municipality may by ordinance partially or totally exempt from taxation improvements to real property, including personal property affixed to the improvements, if the improvements are

(1) located on land from which timber is harvested that is infested by insects or at risk of being infested by insects due to an infestation in the area in which the land is located; and

(2) used for or necessary to the harvest of the timber that is infested by insects or in danger of insect infestation.

(r) A municipality may by ordinance exempt from taxation an amount not to exceed \$10,000 of the assessed value of real property owned and occupied as a permanent place of abode by a resident who provides in the municipality volunteer (1) fire fighting services and is certified as a fire fighter by the Department of Public Safety, or (2) emergency medical services and is certified under AS 18.08.082. If two or more individuals are eligible for an exemption for the same property, not more than two exemptions may be granted. (§ 12 ch 74 SLA 1985; am § 1 ch 103 SLA 1985; am § 5 ch 70 SLA 1986; am § 1 ch 151 SLA 1988; am § 2 ch 73 SLA 1989; am § 1 ch 98 SLA 1989; am § 15 ch 93 SLA 1991; am § 107 ch 4 FSSLA 1992; am § 1 ch 66 SLA 1993; am § 1 ch 7 SLA 1994; am § 1 ch 65 SLA 1994; am § 1 ch 40 SLA 1995; am § 1 ch 70 SLA 1998; am §§ 1, 2 ch 8 SLA 1999; am § 4 ch 117 SLA 2000; am § 1 ch 54 SLA 2002; am § 1 ch 64 SLA 2002; am §§ 2, 3 ch 140 SLA 2004; am § 40 ch 56 SLA 2005; am § 2 ch 44 SLA 2006)

Revisor's notes. — Subsection (h) of this section was enacted as AS 29.53.025(h). Renumbered in 1985. Chapter 103, SLA 1985 also enacted, in § 2, AS 29.63.066, which provides an exemption identical to that set out in (h) of this section from taxes levied under former AS 29.63, repealed by § 88, ch. 74, SLA 1985. The provisions of former AS 29.63 were substantially incorporated in AS 29.45, and the addition of subsection (h) to AS 29.45.050 makes it unnecessary to codify § 2, ch. 103, SLA 1985 to achieve the legislature's purpose.

Subsection (r) was enacted as (q); relettered in 2002.

Cross references. — For authority to make an ordinance adopted under subsection (q) retroactive to January 1, 2001, see § 2, ch. 64, SLA 2002.

Effect of amendments. — The 1992 amendment, effective July 1, 1992, rewrote subsection (l).

The 1993 amendment, effective September 22, 1993, in subsection (n), deleted the former second and third sentences.

The first 1994 amendment, effective July 5, 1994, added paragraphs (b)(6)-(b)(9) and made a related stylistic change.

The second 1994 amendment, effective August 23, 1994, added former subparagraph (b)(2)(D).

The 1995 amendment, effective August 23, 1995, rewrote subsection (b).

The 1998 amendment, effective July 1, 1998, added subsection (o).

The 1999 amendment, effective July 1, 1999, in subsection (o), inserted "or totally" in the first sentence, inserted "beginning on or any time" in the first and second sentences, substituted "any" for "only", deleted "attributable to that part" following "tax payments" near the end of the third sentence, substituted

"The amount deferred each year is a lien on that property for that year" for "and the deferral attributable to that part ends", added "and, if an exemption and a deferral are granted to the same property, both

may not be in effect on the same portion of the property during the same time" at the end of the fifth sentence, and added the next-to-last sentence.

The 2000 amendment, effective July 1, 2000, added subsection (p).

The first 2002 amendment, effective January 1, 2003, added subsection (r).

The second 2002 amendment, effective June 20, 2002, added subsection (q).

The 2004 amendment, effective September 28, 2004, in subsection (a), inserted the second sentence, and substituted "subsection" for "section" and "\$20,000" for "\$10,000" in the last sentence; and, in subsection (o), substituted "10 years" for "five years" in the first sentence, inserted "demolition, removal" three times, added "meets one of the following requirements:" at the end of the introductory language, and inserted "within the last five years" and "environmental remediation of the property or requiring" in paragraph (1).

The 2005 amendment, effective June 25, 2006, updated a federal reference near the end of the introductory language in subsection (m).

The 2006 amendment, effective August 23, 2006, inserted "entire" in the third sentence of subsection (o), deleted "or, if ownership of any part of the property is transferred, all tax payments are immediately due" at the end of that sentence, and added the fourth and eighth sentences.

Editor's notes. — Section 3, ch. 64, SLA 2002, provides that subsection (q) is retroactive to January 1, 2001.

Section 4, ch. 44, SLA 2006, repealed § 2, ch. 8, SLA 1999, as amended by § 1, ch. 102, SLA 2002, and § 4, ch. 140, SLA 2004, which had directed the July 1, 2010, repeal of (o) of this section.

Legislative history reports. — For legislative letter of intent in connection with the enactment of (m) and (n) of this section by ch. 98, SLA 1989 (SCS CSHB 272(Fin) am S), see 1989 Senate Journal 1866.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

April 16, 2007

The Honorable Max Gruenberg
Alaska State Legislature
State Capitol, Room 110
Juneau, AK 99801-1182

Dear Representative Gruenberg:

I understand your House Bill 67, which seeks to improve public safety in Alaska communities where high rates of crime may occur, has been referred to the House Rules Committee. As you know, the Municipality of Anchorage (MOA) supported the original version of HB67, which sought to improve public safety in Alaska communities. We were pleased the bill expands the potential tax credit to \$150,000 for police officers to locate in high crime neighborhoods, and makes it subject to local approval.

CSHB 67(FIN) also will affect municipal taxation of property owned by Alaska Pacific University. In addition, the new version of the bill grants tax exempt status to certain fraternal organizations, subject to local approval. The MOA has no objection to these provisions.

We appreciate the opportunity to comment on the latest version of HB 67 and are pleased to answer any questions the committee may have. Thank you for working on this legislation.

Sincerely,

Mark Begich
Mayor

Community, Security, Prosperity



Alaska Pacific University

President:

Douglas M. North

Chair:

John Niles Wanamaker

Vice Chair:

Harry McDonald

Secretary:

Trigg Davis

Treasurer:

Jan Sieberts

David Beal
Mary Bettis
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Mark Tabbutt
Charles Totemoff
George Walton
Ral West
Donald G. Wilson
Eric E. Wohlforth

April 12, 2007

The Honorable Max Gruenberg
Alaska State House of Representatives
State Capitol, Room 110
Juneau, AK 99801-1182

Dear Representative Gruenberg:

I am writing to express the support of Alaska Pacific University for CSHB67 (FIN). Enactment of this bill will place all of Alaska's accredited post-secondary educational institutions on a level playing field with the University of Alaska in the realm of property taxation and enable these institutions to improve the important educational services they provide to Alaskans. In addition, section one of the bill affords Alaska Pacific University the important benefit of fiscal predictability. Since APU's inception, forty seven years ago, APU campus property has never been taxed. Then, in 2006, the Municipality changed its interpretation of state law and sent tax assessments to APU respecting certain buildings on campus. CSHB67 (FIN) will resolve the interpretation issue, re-establish the status quo, and provide fiscal stability for APU.

It should be noted that the Municipality of Anchorage is in support of the bill as written because it provides the Municipality with the ability to tax the lessee on leasehold improvements. This provision ensures that the tax benefits are experienced only by the accredited educational institution and only for the purpose of enhancing their educational services.

We appreciate the opportunity to comment and strongly recommend passage of the bill.

With good wishes,


Dr. Douglas M. North



Alaska State Legislature

Please enter into the record my testimony to the House Finance
committee name

Committee on HB 67, dated 4-11-07
bill # / subject public hearing date

On behalf of the KPB Administration, we are more comfortable with the current version of the bill that came out of the House Finance Committee on April 11th. We are pleased to see the mandatory exemption removed for the leasehold interest of University properties. In addition, we are also pleased to see that the fraternal organization exemptions would have to be approved by an ordinance ratified by the voters of a municipality. Finally, we feel more comfortable having an optional exemption available to peace officers.

While we are more comfortable with House Bill 67 and do not oppose its passage, we will monitor HB 67 as it continues through the legislative process and may provide further comment depending on the changes. We do oppose any amendments to House Bill 67 that would mandate exemptions contained in section two of the bill.

Signed: Shane Horan
Testifier
Assessor for the Kenai Peninsula Borough
Representing (optional)
144 N Binkley Soldotna, AK 99669
Address
(907) 714-2231
Phone number



MUNICIPAL FISCAL NOTES

Title: MUNI PROP TAX EXEMPTION FOR POLICE HOMES

Sponsor: Gruenberg

Bill Version: HB 67

Publish Date: 01/16/2007

Effect on Municipalities:

Operating Expenditures: (0)

Operating Revenues: (0)

Capital Expenditures: (0)

Capital Revenues: (0)

Change in Revenues: (0)

Analysis:

This legislation would allow municipalities to exempt, through ordinance, an area within its boundaries that meets eligibility requirements (is eligible under a federal program of special assistance for urban development, neighborhood revitalization, or law enforcement, or has a statistically higher occurrence of crime than the municipality as a whole) from taxation of up to \$150,000 per residence on a residence owned and occupied as the primary place of residence by a law enforcement officer. Up to two exemptions (\$300,000) may be granted if two law enforcement officers occupy the same residence.

The Alaska Municipal League does not oppose optional property tax exemptions. HB 67 will only affect those municipalities that choose to participate in this optional program.

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

HB 67 – Optional exemption from municipal property taxes

HB 67 gives municipalities, by ordinance, an option to offer a property tax exemption as one means to attract law enforcement officers to reside in areas of a community where there is a higher occurrence of crime than is found in the municipality as a whole.

The municipality must by ordinance adopt the tax exemption and define law enforcement officer.

If the municipality adopts an ordinance, it exempts from taxation an amount not to exceed \$150,000 of assessed value of real property for an officer who owns in whole or in part and occupies in whole or part a primary permanent residence in a designated area.

HB 67 gives communities a tool for use in attracting law enforcement officers and their families to areas of a community where crime is more prevalent.

The bill offers an incentive for an officer and his or her family to consider living in a designated area where there is a higher incident of crime.

Providing an incentive in the form of tax relief may help attract families of peace officers to neighborhoods where crime is an issue. If the quid pro quo is a neighborhood that is safer, the incentive will have been worth that, and much more.

2/6/07

Norman Cohen

From: Everett Robbins [president@apdea.org]
Sent: Monday, February 05, 2007 1:54 PM
To: Norman Cohen
Subject: RE: HB 67 - Municipal Property Tax Exemption for Law Enforcement Officers

Rep. Max Gruenberg
State Capitol, Room 110
Juneau, AK 99801

Dear Representative Gruenberg:

I am writing in support of the municipal tax exemption for law enforcement officers (House Bill 67). This legislation would allow a municipality to enact an ordinance designating eligible parcels of property exempt from taxation up to \$150,000 of the assessed value of the property. Eligible parcels of property are those (1) that are owned by and constitute the primary residence of a law enforcement officer; (2) that meet the eligibility requirements under a federal program of special assistance; and (3) that have a statistically higher occurrence of crime than the municipality as a whole.

We believe this bill would be instrumental in helping to reduce crime throughout Anchorage while also recognizing the contributions that law enforcement officers make in our communities. This bill would help to foster the concept of community policing by providing an incentive for law enforcement officers to work and live in neighborhoods most in need of police interaction and intervention. This bill may well help to relieve the economic costs to the municipalities, as well as private employers and individuals, that are generally associated with high-crime neighborhoods by encouraging law enforcement officers to insert themselves into their communities and assume a personal stake in the future of the neighborhood. The bill is also an important recognition of the services provided by individual law enforcement officers. In short, we believe this bill would be beneficial from both the public's perspective and any individual law enforcement officer who participates in the program.

Thank you for introducing this bill into the Alaska legislature. If it passes, Alaska will lead the way in recognizing the contributions that law enforcement officers make in our communities and the benefit that can be derived from permitting a property exemption for those officers who demonstrate their commitment to community policing. Please convey my wholehearted support for its passage to the relevant legislative committees and leaders of each chamber.

Sincerely,

Everett Robbins
President
Anchorage Police Department Employee's Association

2/5/2007

The amendment added to HB 67 on the House floor is intended to correct a problem that has been an issue for disabled veterans since they were added to the exemption program many years ago.

The current statutory language in this exemption program recognizes that upon the death of a senior citizen, the widow or widower of the program participant, if aged 60 or older, can retain the exemption without having to attain the age of 65.

When disabled veterans were added to the exemption statute, no changes were made to allow for the exemption to pass to the widow or widower upon the death of the disabled veteran. The same "60 years of age" language was kept. However, most disabled veterans participating in the program are much younger than the seniors in the program and the widow/widowers clause does not fit.

The amendment made on the House floor corrects this oversight and allows a widow or widower of a disabled veteran to retain the exemption upon the death of the veteran.

**Steve Van Sant
State Assessor**

Norman Cohen

From: Steve VanSant [steve_vansant@commerce.state.ak.us]
Sent: Tuesday, April 10, 2007 3:48 PM
To: Michael L Black
Cc: Sally A Saddler; Kathie Wasserman
Subject: HB 67
Attachments: steve_vansant.vcf

As you know, HB 67 was withdrawn from hearing in House Finance today because the amended version was not ready. (?) I am not sure what they might be doing to it, but I thought that since I will be gone the rest of this week, I should write down my concerns in case it is brought up before I return next Tuesday.

We have worked with Rep. Gruenburg's staff on the exemption of homes for police officers who move into an area with statistical higher degree of crime and feel comfortable with that portion of the bill.

The amendment for any 4 year University including U of A. and Alaska Pacific University, was amended which removed the total exemption of all that property and allowed a "possessory interest" assessment on any property which might be leased. The only problem, I have with this is that the language does two things. First, it exempts all university lands with the exception of leasehold interests. A.P.U. currently holds title to several pieces of property within the Mat-Su Borough located in Chase, Kroto Creek, Chickaloon and Caswell Lakes areas. Currently that property is on the tax roll as it is not used for "educational purposes." Under the proposed amendment that property would become exempt, simply because it belongs to the A.P.U. regardless of its use. Any property that someone chose to donate to the APU would also become exempt, if it wasn't leased to a third party.

Second, under current law, the assessor does not exempt leased property (such as the Alaska Spine Institute) located on APU property). The property is assessed and the assessment and tax bill go to the owner of the property, APU. If the taxes are not paid, the municipality may foreclose on the property. Under the amendment, any property leased by the APU could only have a possessory interest assessment made and the enforcement of the tax collection can only be made by taking personal action against the delinquent taxpayer as outlined in AS 29.45.320. While this may seem trivial, the fact is that the enforcement proceedings under this scenario could cost the more revenue.

The second amendment made to the bill would offer an optional exemption to municipalities for "fraternal organizations." The bill lists several uses that the property may be out to in order to receive the exemption and the last use is that of "fraternal." This exemption would apply to lodge organizations such as the Moose and Elks. These organizations are private

4/11/2007

membership only organizations and the lodges are not open for use by the general public. In most, cases, these lodges compete with private enterprise by having a bar and restaurant, which are not open to the public-***members only***- and yet want to enjoy a tax exemption at the expense of the general public. I am not talking about all the public service these organizations donate to the community. These lodges are for a private use and should not gain an exemption at our cost. Some people mistaking believe that taxes are some sort of penalty for owning property when, in fact, taxes are simply payment by all property owners to share the cost of services provided, even to those who have been exempted.

There are many taxpayers who voice their opposition to paying more taxes and each exemption simply increases every other property owners share of the tax burden.

Steve

Jane Ann Boer
Legislative Assistant
Senator Donald Olson
Capitol Building Rm 514

(907) 465-3707
jane_boer@legis.state.ak.us

From: Brenda @ Dr. Beal's Office [mailto:brenda@ddbeal.com]
Sent: Wednesday, May 09, 2007 4:00 PM
To: Sen. Donny Olson
Cc: Dr. David Beal
Subject: HB67

Dear Senator Olson:

I urge you to support HB67, which is before the Senate Community and Regional Affairs Committee, when you meet again on the bill tomorrow afternoon. Section One of the bill would give the regionally accredited, non-profit private universities in Alaska the same property tax exemption that is enjoyed by the University of Alaska. I believe that these universities, Alaska Pacific University and Sheldon Jackson College, are essential to Alaska and provide forms of education that are uniquely valuable to all Alaskans.

It should be noted that Alaska Pacific University, for instance, has not been assessed this tax in its first forty-seven years. The Municipality Assessor's office changed that situation two years ago. The Municipality now does not want to stand in the way of the State of Alaska granting an exemption to the qualifying institutions of higher education and recognizes the significant educational contribution that APU makes in the community at no cost to the state or the municipality. The Spine Institute itself can still be taxed by the Municipality, and HB67 would not change that. APU is a small university, but it does have a budget of \$14 million per year. Its economic contribution, without any direct support from the state, to Alaska is considerable.

This is not a tax break for the Spine Institute or its doctors. Only the University would get the exemption, and the monies go exclusively to educational purposes at a non-profit university. Moreover, the Spine Institute has an important educational function in relation to APU's degree programs in Health Services Administration.

For all these reasons, I urge you to support HB67 for the good of Alaska and its people.

Respectfully,

David D. Beal, M.D.

5/10/2007

North Slope Borough OFFICE OF THE MAYOR

P.O. Box 69
BARROW, ALASKA 99723
☎ 907 852-2611 ext. 200
Fax: 907 852-0337



Edward S. Ita, Mayor

May 10, 2007

Representative Anna Fairclough, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Community & Regional Affairs Committee
Alaska State Legislature

Via.Fax 465-2819
Via.Fax 465-4956

Representative Kevin Meyer, Co-Chair
Representative Mike Chenault, Co-Chair
House Finance Committee
Alaska State Legislature
Juneau, Alaska

Via.Fax 465-3476
Via.Fax 465-2833

Dear Chairman Fairclough and Chairman LeDoux:
Dear Chairman Meyer and Chairman Chenault:

As the legislative session comes to a close I want to thank you for your personal dedication and hard work on a number of issues that affect all Alaskans. One of the issues, however, that still needs your attention is the revenue sharing program. As you know, for much of the state's history revenues generated from our vast resources have been shared with all the people in Alaska through two main programs, revenue sharing to all communities and permanent fund dividends to all individuals. These programs have encouraged priorities and allowed concerns in our vastly different communities and families to be addressed.

The revenue sharing program is a great way for the state to support prioritized local concerns. For so many of the small rural communities, it is crucial for keeping the lights on and doors open, paying the sky-high fuel bills, maintaining operational water and sewer systems, ever-increasing costs of insurance, etc. Other communities may use the money to fix up potholes, improve parks and recreation opportunities, strengthen public safety forces or to address other basic local government concerns. I understand our largest city is very interested in using these funds for property tax relief. In the North Slope Borough, it is most likely that some of these funds will be used to continue to support and promote our "Healthy Community Initiative".

The federal government and every other state have some form of revenue sharing program. Alaska is a very rich state and I am hopeful that you will see fit to reinstate a revenue sharing program that is sustainable, predictable, flexible and inclusive of all communities and the populations they serve.

I appreciate the hard work you are doing. As an elected official I understand how difficult it is to balance competing interests. Good luck the rest of session. If you have questions for my administration please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward S. Itta". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Edward S. Itta
Mayor

cc: Mayor Elizabeth Hollingsworth, City of Atkasuk
Mayor George O. Paneak, City of Anaktuvuk Pass
Mayor Nate Olemaun, City of Barrow
Mayor Lon Sonsalla, City of Kaktovik
Mayor Carl Brower, City of Nuiqsut
Mayor George Kingik, City of Point Hope
Mayor Leo Ferreira, Native Village of Point Lay
Mayor John Hopson, Jr., City of Wainwright



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

May 8, 2007

Senator Donny Olson
Senate C&RA
State Capitol
Juneau, Alaska 99811

Dear Senator Olson,

When HB67 first appeared, the intent was to exempt law enforcement officers from property taxes if their residence was in a high crime area. We supported that bill. However, during the past few months, many new mandatory exemptions have been added. Those additions have made it no longer possible for us to support this bill.

At a time when municipalities find it impossible to gain approval for revenue sharing, municipalities continue to see a number of bills requiring those same municipalities to exempt more and more people from paying property taxes; one of the only means municipalities have to pay for the provision of local services.

This bill does not see a decrease in the total tax base going to municipalities. It simply requires a tax shift. There are residents of this state who cannot afford to pay the taxes on their home. They are not necessarily all from the groups mentioned in this bill.

Our first and foremost priorities have always revolved around local control. Unfunded mandates, such as this, erode that local control. We would support any tax exemptions being on an "as-needed basis." Meanwhile, we feel that if the State of Alaska would like to give tax exemptions, they should be willing to fund those tax exemptions.

We would be happy to work towards a "needs-based" solution with respect towards some of the later additions to this bill.

Sincerely,

Kathie Wasserman
Alaska Municipal League

Ginny Austerman

From: Sen. Donny Olson
Sent: Thursday, May 10, 2007 1:25 PM
To: Ginny Austerman
Subject: FW: HB67 - per Ed Rasmuson RE: Senate Comm. on Community & Regional Affairs
Importance: High

Jane Ann Boer
Legislative Assistant
Senator Donald Olson
Capitol Building Rm 514

(907) 465-3707
jane_boer@legis.state.ak.us

From: Debbie Roll [mailto:droll@alaskapacific.edu]
Sent: Thursday, May 10, 2007 11:17 AM
To: Sen. Donny Olson; Sen. Albert Kookesh; Sen. Joe Thomas; Sen. Gary Stevens; Sen. Tom Wagoner
Subject: HB67 - per Ed Rasmuson RE: Senate Comm. on Community & Regional Affairs
Importance: High

Dear Senators:

Mr. Ed Rasmuson is on the Alaska Pacific University Board of Trustees and the Executive Committee of the board. He has asked that I forward to you the email correspondence below, that APU President, Dr. Doug North, sent to the APU Board of Trustees and APU Foundation Directors. Mr. Rasmuson also asked that I inform you that the APU Board of Trustees are all in favor of HB67; the following trustees have been an integral part of helping APU with this matter: Carl Brady, Jr., Larry Carr (Trustee Emeritus), Harry McDonald, John Wanamaker, Liane Pelletier, Larry Cash, and David Beal. (32 trustees total).

Many thanks,

Debbie Roll

Asst. to Dr. North

Dear APU Board of Trustees and APU Foundation Directors:

HB67, the bill that would exempt APU from the property taxes newly imposed by the Municipality is now in the Senate Committee on Community and Regional Affairs. The five Senators on the committee are listed below. If you have a relationship with any of these, it is very important for them to hear from you in order to move the bill out of committee. Olsen, Kookesh, and Thomas are Democrats; Stevens and Wagoner are Republicans. Please do what you can. It has come down to the wire: **The Committee**

5/10/2007

meets this Thursday (tomorrow) at 3:30 pm.

The main talking points have been:

1. Levels the playing field with the University of Alaska
2. Returns APU (and Sheldon Jackson) to the tax exemption we had for the first 47 years
3. All the revenue goes into education.
4. The tenants have a direct educational function at APU, as contained in the Memorandum of Agreement with the Spine Institute
5. The tenants can still be taxed by the Municipality
6. The Municipality does not object to this bill (as evidenced by letters from the Mayor and others)

Thank you all for your efforts.

Doug North

SENATE COMMUNITY & REGIONAL AFFAIRS

BELTZ 211 3:30 PM T TH

Standing Committee

CHAIR: Senator Olson

VICE-CHAIR: Senator Kookesh
MEMBER: Senator Thomas
MEMBER: Senator Stevens
MEMBER: Senator Wagoner

ALASKA
STATE



ELKS ASSOCIATION

2007 - 2008 ALASKA STATE ASSOCIATION OFFICERS

JAN C. JONKER, President
422 Elderberry Ct.
Homer, AK 99603
(907) 235-5302

Email: president@alaskaelks.com

RICHARD FACKL, President Elect
P.O. Box 771653
Eagle River, AK 99577

MIKE LUHR, Vice President
P.O. Box 557
Petersburg, AK 99833-1308

DAVID CHARLESWORTH, Secretary
P.O. Box 290
Kenai, AK 99611

HARLEY RICK ECKERT, Trustee Chairman
P.O. Box 1249
Homer, AK 99603

GEORGE ELLIOTT, JR., Trustee
433 Glacier Ave.
Fairbanks, AK 99701

MARK DAUM, Trustee
P.O. Box 672
Sitka, AK 99835-0672

09 May 2007

Representative Kurt Olson
Representative Paul Seaton
Senator Gary Stevens

RE: HB 67: Municipal Property Tax Exemptions

Dear Representatives Olson and Seaton & Senator Stevens,

As President of the Alaska State Elks Association I am transmitting this letter on behalf of the 7,000+ members of the Alaska State Elks Association and the 17 Elks Lodges located across our great state. Please accept this letter in support of the passage of HB 67.

As a non-profit organization, 501(c)8 & 501(c)3 our benevolent organization is dedicated to providing many worthwhile causes in communities throughout Alaska expending tens of thousands of dollars and thousands of hours of volunteer time in support of our Elk programs as well as supporting other established programs in our communities.

The local Elks Lodges as well as the Alaska State Elks Association provide and fund numerous charitable programs aimed at our youth such as Drug Awareness Education Programs, basketball & soccer programs, after school programs, Drug & Alcohol Free Teen Dances and Youth Patriotic Programs. Our Youth Scholarship Programs through the local lodges and state association total in excess of \$50,000 annually. Over the course of the year ending March 31, 2006, the Elks Lodges and members in Alaska collectively contributed \$556,561.00 in cash contributions and an additional \$84,424.00 in non-cash items. We traveled a total of 20,839 miles and volunteered a total of 695,099 man-hours.

When calculated, using the Federal Government's formulas of charitable work at \$18.04 per volunteer hour and \$0.45 per mile driven performing charitable works, the total contributions by the Alaska Elks is \$1,366,924.19. A considerable donation to our communities by 7,000 members belonging to 17 Elks Lodges in Alaska.

We are also dedicated to providing assistance to our nation's active military members, their families and our nation's veterans. Currently, as adopted at our Annual State Convention in Sitka, this past week, we have launched a partnership with the Wounded Warrior Project by which we will donate in excess of \$20,000 to support the rehabilitation of our wounded military members. One of our national mottos is, "So long as there are Veterans, the Elks will never forget them". We have been supporting our military and veterans since WWI when the Elks built and donated the first two military field hospitals on the front lines of France and financed, constructed and equipped the first 700 bed Veterans Rehabilitation Hospital located in Boston which was donated to the War Department in 1918. The Elks also provided 40,000

rehabilitation, vocational and educational loans to disabled veterans, the precursor to what was to become the federal GI Bill.

The Elks have been involved with our communities, our youth and our veterans since our founding in 1868 and remain an active and viable component of our communities today. The passage of this bill will help insure that the Elks Lodges in Alaska continue to financially survive and remain able to support our communities. Undoubtedly, any property tax relief that may be provided by means of HB 67 will find its way back into our communities.

On behalf of the Elks across Alaska and our communities we urge you to adopt HB 67.

Regards,

Jan C. Jonker

Jan C. Jonker, President
Alaska State Elks Association
'Alaska Elks - Building Stronger Communities'

ROBERT A. MINTZ
550 W. 7th Avenue, Suite 1540
Anchorage, AK 99501
(907) 278-2277/fax 272-3695

May 10, 2007

Senator Donald Olson
State Capitol, Room 514
Juneau, AK 99801-1182

Re: HB 67

Dear Senator Olson,

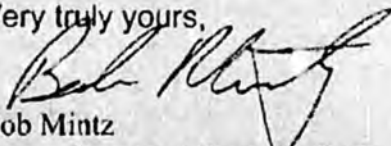
APU has historically leased space in buildings on campus in order to augment it's educational programs. Enclosed find a copy of the APU/Alaska Spine Institute (ASI) "use in connection with educational mission" agreement. This agreement is a requirement of the lease between APU and ASI. The lease does not give ASI unconditional use of the premises. Rather, the lease requires that ASI's use of the space leased must complement APU's educational mission.

This concept of educational "leveraging" campus property dates back to a 1979 agreement between APU and the Federal Bureau of Land Management which says, essentially, that a revenue producing facility combining commercial use with educational programs constitutes use for school purposes under the Federal land grant so long as the facility has a substantial relationship to an APU program and net income is used to support educational programs. A copy of the APU/BLM agreement is also enclosed. While the "school purpose" requirement in APU's land grants have expired, the concept embodied in the APU/BLM agreement reflects the educational mission intention of the APU Board of Trustees in entering into selective leases of on-campus property.

Note that Alaska law does not exempt, from Municipal property tax, private leaseholds, contracts or other interests in property even if the property is held by the State, the Municipality, UAA, or the Mental Health Trust. AS.29.45.030 (a)(1)(A) Likewise, private leaseholds, contracts, or other interests in property is generally taxable even if the property is owned by the United States. AS. 45.030 (a)(3).

Finally, note that UAA does in fact lease UAA owned space to others namely Subway of Alaska, the Anchorage School District and the State Departments of Corrections, Labor and Education.

Very truly yours,



Bob Mintz

cc: Senator Albert Rookesh
Senator Joe Thomas
Senator Gary Stevens
Senator Thomas Wagoner

**MEMORANDUM OF AGREEMENT
BETWEEN
ALASKA PACIFIC UNIVERSITY
AND
304 ASSOCIATES, LLC**

WHEREAS, pursuant to the space lease ("Space Lease") between Alaska Pacific University, (hereinafter "APU" or "Lessor") and 304 Associates, LLC (hereinafter "Lessee") the use of the lease premises furthers APU's educational mission, and

WHEREAS, the educational mission of APU is centered in the concept of "active learning" and inclusion of students in "real world" projects, both in courses and in the requirements for graduation, and

WHEREAS, the space lease requires that Lessor and Lessee enter into an agreement regarding use of the premises in connection with the Lessor's educational mission, and

WHEREAS, APU is establishing and expanding undergraduate and graduate programs in health services administration (HSA) and hiring faculty members for such programs, and

WHEREAS, such programs require instructional practitioners and sites at which students can carryout the active learning components of their curriculum, and

WHEREAS, APU is planning to offer additional health profession related courses and events in the general curriculum of the university,

APU and Lessee agree:

1. Lessee will use the lease premises to compliment the educational mission of APU.
2. The parties shall from time to time mutually establish a curriculum which may include, among other things, Lessee and its sublessees providing the following educational resources to APU, as long as to do so does not violate any regulation, statute, or agreement Lessee or any of its sublessees must adhere to:
 - a. Adjunct faculty to teach courses at APU, including courses that can be taught through APU's Rural Alaska Native Adult program (RANA).
 - b. "Experts" in health related subjects to lecture APU students. The experts will acquaint students with how issues and policies in HAS are handled in the real world and what are model practices.
 - c. Acquainting students with the administrative processes, architecture, and equipment relevant to a career in HSA.

supervisors for the practicums.

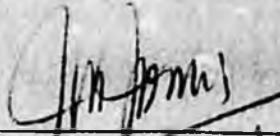
- f. Use of appropriate areas of the leased premises for APU courses in health related subjects.
 - g. Use of appropriate areas of the leased premises for recruiting sessions for health related programs at the Alaska Spine Institute.
 - h. Use of appropriate areas of the leased premises for receptions and exhibits of student work at the Alaska Spine Institute.
3. APU will provide Lessee proof of general liability insurance, naming Lessee and its sublessees as additionally insured.
 4. Lessee will provide APU proof of general liability insurance, naming APU as additionally insured.
 5. APU will hold Lessee and its sublessees harmless for damages or injuries that may occur through negligent actions.
 6. Lessee will hold APU harmless for damages or injuries that may occur through negligent actions on the part of Lessee.
 7. The parties shall enter into a further agreement further describing and defining the parties' obligations and responsibilities based on each curriculum.
 8. Nothing contained herein shall be construed as amending or modifying the Space Lease and to the extent of any conflict between the terms of the Space Lease and this Agreement, the terms of the Space Lease shall govern.

AGREED this 21st day of February, 2007.

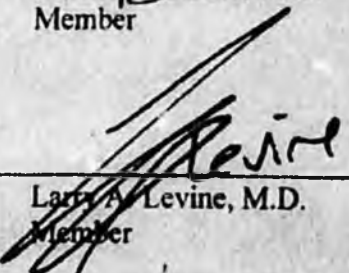
ALASKA PACIFIC UNIVERSITY

By: Douglas North
Douglas M. North
Its: President

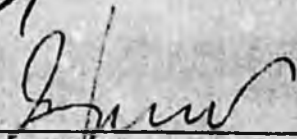
304 ASSOCIATES, LLC

By: 

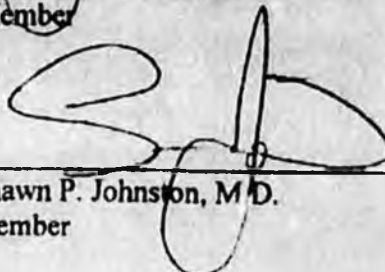
J. Michael James, M.D.
Its: Member

By: 

Larry A. Levine, M.D.
Its: Member

By: 

Michel L. Gevaert, M.D.
Its: Member

By: 

Shawn P. Johnston, M.D.
Its: Member

T188701VAGRmem