

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SSTA 12773

1 **SEC. 2. FAIRNESS DOCTRINE PROHIBITED.**

2 Title III of the Communications Act of 1934 is
3 amended by inserting after section 303 (47 U.S.C. 303)
4 the following new section:

5 **"SEC. 303A. LIMITATION ON GENERAL POWERS: FAIRNESS**
6 **DOCTRINE.**

7 "Notwithstanding section 303 or any other provision
8 of this Act or any other Act authorizing the Commission
9 to prescribe rules, regulations, policies, doctrines, stand-
10 ards, or other requirements, the Commission shall not
11 have the authority to prescribe any rule, regulation, policy,
12 doctrine, standard, or other requirement that has the pur-
13 pose or effect of reinstating or repromulgating (in whole
14 or in part) the requirement that broadcasters present op-
15 posing viewpoints on controversial issues of public impor-
16 tance, commonly referred to as the 'Fairness Doctrine',
17 as repealed in General Fairness Doctrine Obligations of
18 Broadcast Licensees, 50 Fed. Reg. 35418 (1985)."

○

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HJR 32
 (H) Publish Date: 2/21/2008

Identifier (file name): _____ Dept. Affected: _____
 Title Broadcasting Industry RDU _____
 Component _____
 Sponsor _____ Reprs Stoltze, Johnson Component Number _____
 Requester _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Eleanor Wolfe, Committee Aide Phone _____
 Division: House Labor & Commerce Committee Date/Time: 2/20/08 12:00 AM
 Approved by: Rep. Kurt Olson, Chair, Labor & Commerce Committee Date: _____

HJR

38

SENATE COMMITTEE REPORT

DATE: 3/19/08

FURTHER:

D. TE TURNED
IN TO OFFICE: _____

State Affairs Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 38(STA)

HJR 38 ISRAEL 60TH ANNIVERSARY

Recognizing the State of Israel on the 60th anniversary of its founding.

and recommends:

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

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____



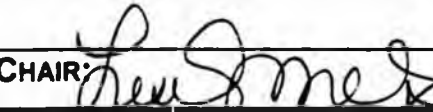
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
(H) STA	3/11/08			✓	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	✓			
	Strauss	X			
CHAIR: 	Maurice	✓			

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Economic Development, Trade & Tourism
Committee
Education Committee
Joint Armed Services Committee

Finance Subcommittees
Labor & Workforce Development
Community & Economic Development
Military & Veterans' Affairs



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Sponsor Statement

HJR 38

"Recognizing the State of Israel on the 60th anniversary of its founding."

While the plain language of this resolution is the best description of what it intends, in brief, the resolution simply recognizes and congratulates the people of Israel on the 60th anniversary of the establishment of their sovereign and independent modern state.

Over the past six decades, the people of Israel have persevered to build a strong and pluralistic democratic society in their biblical homeland, even in the face of frequent wars, on-going terrorist attacks, hostility and isolation among its Middle Eastern neighbors.

The people of Alaska share many connections with the people of Israel, individually, spiritually, and in other ways. Through this resolution, we express our support and appreciation for Israel and extend our best wishes to her people for a prosperous, peaceful and successful future.

The resolution is to be delivered to Israel's Consulate General to the Pacific Northwest, and to members of the Alaska delegation in Congress.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM

March 7, 2008

SUBJECT: Resolution recognizing the 60th anniversary of the creation of Israel (Work Order No. 25-I.S1569\A)

TO: Representative Bob Lynn
Attn: Nancy Manly

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

This memorandum accompanies the draft joint resolution you requested. Please be aware of the following issue.

As explained by the Third Circuit Court of Appeals, the foreign affairs power of the United States is vested in the federal government.

The formulation and administration of foreign affairs is vested exclusively in the federal government. Consequently, any state law that involves the state in the actual conduct of foreign affairs is unconstitutional. *United States v. Pink*, 315 U.S. 203, 233, 86 L. Ed. 796, 62 S. Ct. 552 (1942). See also, L. Tribe, *American Constitutional Law*, § 4-6, at 230 (2d ed. 1988) ("state action, whether or not consistent with current federal foreign policy, that distorts the allocation of responsibility to the national government for the conduct of American diplomacy is void"). In contrast, any action that has only "some incidental or indirect effect in foreign countries" does not intrude on the foreign relations power. *Zschernig v. Miller*, 389 U.S. 429, 432, 19 L. Ed. 2d 683, 88 S. Ct. 664. [**31] (1968) (citation omitted).

Trojan Techs. v. Pennsylvania, 916 F.2d 903, 913 (3d Cir. 1990). The United States Supreme Court Case, *United States v. Pink* quoted in the *Trojan* case quoted above, describes the legal principle applicable with regard to the foreign affairs powers more fully as follows:

We recently stated in *Hines v. Davidowitz*, 312 U.S. 52, 68, that the field which affects international relations is "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority"; and that any state power which may exist "is restricted to the narrowest of limits." There, we were dealing

Representative Bob Lynn
March 7, 2008
Page 2

with the question as to whether a state statute regulating aliens survived a similar federal statute. We held that it did not. Here, we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted. These are delicate matters. If state action could defeat or alter our foreign policy, serious consequences might ensue. The nation as a whole would be held to answer if a State created difficulties with a foreign power. *Cf. Chy Lung v. Freeman*, 92 U.S. 275, 279-280. Certainly, the conditions for "enduring friendship" between the nations, which the policy of recognition in this instance was designed to effectuate, are not likely to flourish where, contrary to national policy, a lingering atmosphere of hostility is created by state action.

United States v. Pink, 315 U.S. 203, 232-233 (1942). However, enforcement of national foreign relations power has been limited. The Third Circuit in 1990 stated:

On only one occasion has the Supreme Court struck down a state statute as violative of the foreign relations power. In *Zschernig* the Court held unconstitutional an Oregon statute which provided that a nonresident alien could not inherit from an Oregon decedent unless three conditions were met: (1) the alien's government must accord Americans the right to inherit on equal terms; (2) the alien's government must give Americans the right to receive payment in the United States of funds from foreign estates; and (3) foreign heirs inheriting from Oregon estates must be able to do so without confiscation by their government.

. . . The Court concluded that the "real desiderata" of Oregon court decisions were the foreign policy attitudes of local probate courts, attitudes that moved with the wax and wane of the cold war. *Id.* at 437. Applied in this way, the Court thought that the Oregon statute "held great potential for disruption or embarrassment." *Id.* at 435. The Court concluded that the statute had a direct impact upon foreign relations and had potential to affect adversely the power of the central government to deal with such problems. As such it was invalid. *Id.* at 441.

Trojan Techs. v. Pennsylvania, 916 F.2d 903, 913 (3d Cir. 1990).

In summary, the United States Constitution prohibits a state law that interferes with the foreign affairs powers of the federal government. It seems to me that the resolution proposed could be challenged on that basis even though it is in the form of a resolution rather than a law.

To avoid the constitutional issue, you might want to consider directing the resolution toward the President or Congress urging the federal government to take the actions listed in the resolves. This approach may accomplish your goals without offending the foreign

Representative Bob Lynn
March 7, 2008
Page 3

affairs power of the federal government.

If I may be of further assistance, please advise.

DCB:med
08-160.med

Enclosure


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Operation Magic Carpet

Golden Anniversary: Alaska Airlines helped roll out a Magic Carpet to Israel

When Alaska Airlines sent them on "Operation Magic Carpet" 50 years ago, Warren and Marian Metzger didn't realize they were embarking on an adventure of a lifetime.

Warren, a DC-4 captain, and Marian, a flight attendant, were part of what turned out to be one of the greatest feats in Alaska Airlines' 67-year history: airlifting thousands of Yemenite Jews to the newly created nation of Israel.



The logistics of it all made the task daunting. Fuel was hard to come by. Flight and maintenance crews had to be positioned through the Middle East. And the desert sand wreaked havoc on engines.

It took a whole lot of resourcefulness the better part of 1949 to do it. But in the end, despite being shot at and even bombed upon, the mission was accomplished—and without a single loss of life.



Known as the lost tribe of Israel, the Yemenite Jews had wandered the deserts for at least two centuries after being driven out of Palestine. Nomads, they had never seen an airplane and never lived anywhere but a tent.

Ironically, their faith included a prophecy that they would be returned to their Holy Land on the wings of eagles.

"One of the things that really got to me was when we were unloading a plane at Tel Aviv," said Marian, who assisted Israeli nurses on a number of flights. "A little old lady came up to me and took the hem of my jacket and kissed it. She was giving me a blessing for getting them home. We were the wings of eagles."

For both Marian and Warren, the assignment came on the heels of flying the airline's other great adventure of the late 1940s: the Berlin Airlift.



"I had no idea what I was getting into, absolutely none," remembered Warren, who retired in 1975 as Alaska's chief pilot and vice president of flight operations. "It was pretty much seat-of-the-pants flying in those days. Navigation was by dead reckoning and eyesight. Planes were getting shot at. The airport in Tel Aviv was getting bombed all the time. We had to put extra fuel tanks in the planes so we had the range to avoid landing in Arab territory."

British officials advised them that Arabs, angry over the establishment of the Jewish state, would certainly kill all the passengers and likely the whole crew if they were forced to land on Arab soil. Many planes were shot at.

Days often lasted between 16 and 20 hours and the one-way flights, in twin-engine C-46 or DC-4 aircraft, covered nearly 3,000 miles.

"We'd take off from our base in Asmara (in Eritrea) in the morning and fly to Aden (in Yemen) to pick up our passengers and refuel," Warren said. "Then we'd fly up the Red Sea and the Gulf of Aqaba to the airport at Tel Aviv to unload. Then we'd fly to Cyprus for the night. We couldn't keep the planes on the ground in Israel because of the bombings."

"One of our pilots got a little bit too close to Arab territory when flying into Israel from the Gulf of Aqaba and tracers started arching up toward the plane," Warren said. "Another one of our planes got a tire blown out during a bombing raid in Tel Aviv. One of our crews practically lived on their plane from the end of April through June."

Bob Maguire, another Alaska pilot, once had to drop down to several hundred feet above the ground, squirming through hills and passes, to evade Arab gunfire.



What Warren and Marian thought was a temporary assignment turned into a seven-month mission of mercy. It also launched a marriage that has also celebrated its golden anniversary. Warren and Marian were married in Asmara in January 1949.

"I had met Warren when I started working for Alaska in July of 1948," Marian said. "We had both worked the Berlin airlift. I was sent to Shanghai

and I didn't know where Warren was. I landed in Asmara after one flight and when the door of the plane opened, one of the guys who knew I'd been seeing Warren from time to time said he was in Tel Aviv and he'd be flying in the next day."



Before her Operation Magic Carpet flights in the Middle East, Marian, who retired from Alaska in 1952, assisted on flights from Shanghai transporting Jews who fled to China to escape persecution in Germany. When communists came to power in China, the German Jews took flight again to Israel.

"We had been doing a lot of trips, a lot of different kinds of trips," Marian said. "We realized this was going to be part of the history of Israel, but it seemed like more of an adventure at the time."

In all, with the help of Alaska Airlines, charter carriers and the military, more than 40,000 Yemenite Jews were airlifted to Israel between late 1948 and early 1950.

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R24

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HJR 38
 () Publish Date: _____

Identifier (file name): HJR 38 Dept. Affected: _____
 Title: Israel 60th Anniversary RDU: _____
 Component: _____
 Sponsor: House State Affairs Committee
 Requester: House State Affairs Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nancy Manly, Committee Aide
 Division: House State Affairs Committee
 Approved by: Representative Bob Lynn
Chair

Phone 465-2794
 Date/Time 3/11/08 12:00 AM
 Date 3/11/2008

HJR

40

ALASKA STATE LEGISLATURE

Co-Chair:
Joint Armed Services Committee

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Legislative Council

Member:
Dilettary Committee
Oil and Gas Committee
Military and Veterans Affairs Committee
Community and Regional Affairs Committee



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HJR40 Sponsor Statement

In 1997, Alaska's Legislature was the first of many states to petition the government of the United States to take action to develop and deploy a robust and layered missile defense system, including the most effective combination of land-, sea-, air-, and space-based architectures.

The Congressionally mandated Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack found, in its report delivered July 2004, that an EMP attack could be made by a rogue state against the United States using a low yield nuclear weapon detonated at a high altitude above the United States, and delivered by even a "relatively unsophisticated" short or medium range ballistic missile, and that such an EMP attack "has the potential to hold our society at risk and might result in the defeat of our military forces." Coastal states are perhaps more vulnerable to a missile launched from a container ship offshore. In such a scenario, the national origin of the attack might remain unknown.

This past June, the Alaska Legislature's Joint Armed Services Committee received a briefing from Commissioner Henry Kluepfel and Director Michael Frankel of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack regarding America's critical infrastructure vulnerabilities. Commissioner Kluepfel and Director Frankel also briefed members of the Adjutant Generals Association of the United States who were meeting in Anchorage at the same time.

On the basis of these and other briefings, Alaska's Division of Homeland Security and Emergency Management (in DMVA) has announced it will include EMP attack in its preparedness planning as this threat intersects with the full range of risks, threats and hazards confronting the state.

Maryland has pending legislation in its House and Senate to establish a task force to assess critical infrastructure vulnerabilities against broad scale attack such as electromagnetic pulse. The report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack urged state authorities and private-sector organizations to work with the Department of Homeland Security to develop draft protocols for implementation by emergency and other government responders following an EMP attack.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HJR 40
 (H) Publish Date: 4/1/08

Identifier (file name): _____ Dept. Affected: MVA
 Title: Relating to defending the state from electromagnetic impulses RDU _____
 Component: _____
 Sponsor: House Rules
 Requester: Joint Legislative Armed Services Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
OPERATING EXPENDITURES							
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	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

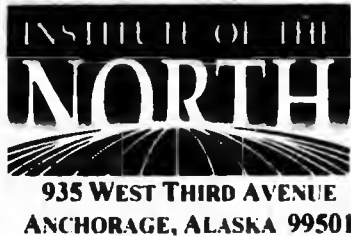
POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rachelle Fenderson, House Rules Assistant
 Division: House Rules Committee
 Approved by: Representative John Coghill, Chairman
House Rules Committee

Phone 465-3764
 Date/Time 3/27/08 12:00 PM
 Date 3/27/2008



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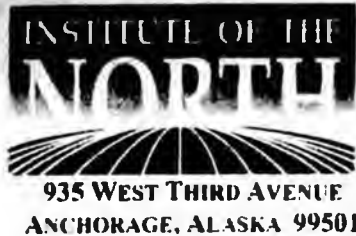
WALTER J. HICKEL
FOUNDER
BEN ELLIS
MANAGING DIRECTOR

ARCTIC ENERGY SUMMIT
SECRETARIAT

March 25, 2008

**FACT SHEET: Proposed resolution relating to the defense of Alaska
against electromagnetic pulse (EMP) attack**

- In 1997, Alaska's Legislature was the first of many states to petition the government of the United States to take action to develop and deploy a robust and layered missile defense system, including the most effective combination of land-, sea-, air-, and space-based architectures.
- The Congressionally mandated Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack found, in its report delivered July 2004, that an EMP attack could be made by a rogue state against the United States using a low yield nuclear weapon detonated at a high altitude above the United States, and delivered by even a "relatively unsophisticated" short or medium range ballistic missile, and that such an EMP attack "has the potential to hold our society at risk and might result in the defeat of our military forces." Coastal states are perhaps more vulnerable to a missile launched from a container ship offshore. In such a scenario, the national origin of the attack might remain unknown.
- This past June, the Alaska Legislature's Joint Armed Services Committee received a briefing from Commissioner Henry Kluepfel and Director Michael Frankel of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack regarding America's critical infrastructure vulnerabilities. Commissioner Kluepfel and Director Frankel also briefed members of the Adjutant Generals Association of the United States who were meeting in Anchorage at the same time.
- On the basis of these and other briefings, Alaska's Division of Homeland Security and Emergency Management (in DMVA) has announced it will include EMP attack in its preparedness planning as this threat intersects with the full range of risks, threats and hazards confronting the state.
- Maryland has pending legislation in its House and Senate to establish a task force to assess critical infrastructure vulnerabilities against broad scale attack such as electromagnetic pulse. The report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack urged state authorities and private-sector organizations to work with the Department of Homeland Security to develop draft protocols for implementation by emergency and other government responders following an EMP attack. This resolution of the Alaska Legislature makes it the policy of the state of Alaska to follow the relevant recommendations of the EMP Commission and it urges the Department of Homeland Security to support states in doing this work.



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ARCTIC ENERGY SUMMIT
SECRETARIAT

March 28, 2008

Talking points on the resolution relating to the defense of Alaska against electromagnetic pulse (EMP):

1. EMP Commission

- a. The Commission to Assess the Threat to the Nation from Electromagnetic Pulse Attack, mandated by Congress, to study effects of an EMP attack and US vulnerability.
- b. The Commission is chaired by Dr. William Graham, Science advisor under President Reagan and acting director of NASA during the Challenger accident. Congress continued its work for another year, partly to get states more active on this issue.
- c. Initial report issued in 2004 pointed to great vulnerabilities in US critical infrastructure. New volume of the report forthcoming this year.
- d. Military equipment and facilities have been preparing for EMP for some time. The report recommends that the Department of Homeland Security work with states on EMP preparedness planning for the civil sector.
- e. Joint resolution makes it policy of the state of Alaska to follow the recommendation of the EMP Commission and urges the federal government in general (specifically the Department of Homeland Security) to support states in doing this work

2. Explanation of EMP

- a. EMP caused by detonating nuclear device high in the atmosphere, sending a shock wave that works like lightning.
- b. Explosion won't kill anyone – directly.
- c. EMP disables the power grid, communications networks that depend on power, and generally renders our emergency response and communications capability ineffective. Most of our critical infrastructure all depends on power from the grid or generators and transformers attached to the grid.

3. Alaska and other state-level involvement on EMP issue

- a. In June 2007 Commissioner Hank Kluepfel and Executive Director Michael Frankel briefed Alaska's Joint Armed Services Committee and a gathering of the nations' Adjutants General hosted in Anchorage by Alaska's Adjutant General Craig Campbell.
- b. Alaska's State Emergency Response Commission is including EMP threats and effects in a rewrite of Alaska's state emergency response plan

c. **Legislation to create critical infrastructure protection task force introduced to Maryland's House and Senate this year**

4. **Missile defense link**

- a. **In 1997 Alaska Legislature was first to petition federal government to develop robust, layered missile defense system to protect all 50 states**
- b. **Defense architecture needed to protect against ballistic missile attack is same architecture necessary for defense against a single, Scud-type missile which could bring about an EMP attack**
- c. **It is important for Alaska, as a site for US missile defense, to be aware of the threats that could affect us, and continue to support defenses to deter or turn back those threats.**

Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack

Established by Congress through Title X National Defense Authorization Act for Fiscal Year 2006

March 28, 2008

The Honorable Lyda Green,
President, Alaska State Senate
The Honorable John L. Harris
Speaker, Alaska House of Representatives
The State Capitol
Juneau, AK 99801-1182

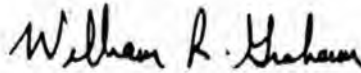
Dear Speaker Harris and Senator Green

I am honored to have this opportunity to commend your consideration of SJR 19 and HJR 40 introduced in both Houses of the Alaska legislature on behalf of the Joint Armed Services Committee. As you may know, the "US Congressional Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack" has been extended with bi-partisan support to complete its work outlined by Public Law 106-398 Title XIV including its responsibility to "recommend any steps it believes should be taken by the United State to better protect its military and civilian systems from EMP attack". The Commission's work has led us to the unanimous conclusions that "1) EMP is one of a small number of threats that can hold society at risk of catastrophic consequences, 2) "a determined adversary can achieve an EMP attack without having a high degree of sophistication" and, 3) that "the current vulnerability of our critical infrastructures can invite and reward attack if not corrected."

The approach embodied in your resolution is outstanding for a number of key reasons. First, it focuses on the necessity for preparedness and planning against the potential of massive disruption that is more likely to ensue in the absence of such planning. Secondly, it urges local government and the private sector to take the lead in identifying critical vulnerabilities in their infrastructures, which is the first critical step toward reducing the likelihood they might be exploited. At the same time, it recognizes that the issue requires a partnership between State-based planning efforts and the national and homeland security responsibilities of the Federal government. Finally, it proposes to include such planning efforts within the context of an all-hazards approach to the full range of risks confronting the State of Alaska.

I believe that any planning efforts and actions taken by the State of Alaska pursuant to the passage of this resolution would be a model for the rest of the nation to follow. As such, I believe the State will attract the advice and support of leading experts and organizations to provide whatever assistance the State and its local governments might need to make their own informed decisions regarding critical infrastructure protection. To that end, the Commission would certainly be willing to provide to Alaska information it has developed in pursuit of its mandate

Respectfully,



Honorable William R. Graham
Chairman

c.c. Senator Bill Wielechowski, Co-Chair, Joint Armed Services Committee

Representative Nancy Dahlstrom, Co-Chair, Joint Armed Services Committee

Correspondence should be sent to: EMP Commission, 1710 SAIC Drive, McLean VA 22102
ATTN: Dr Michael Frankel (703) 676-6955. michael.frankel@EMPcommission.org

HJR

41

SENATE COMMITTEE REPORT

DATE: 4/9/08

FURTHER:

DATE TURNED
IN TO OFFICE: _____

State Affairs Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 41(RLS)

HJR 41 REPEAL OF SEC. 511 OF P.L. 109-222

Urging the United States Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005).

and recommends:

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

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	4/8/08			✓	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Bundo			✓	
	Green	✓			
	French	X			
	French			✓	
CHAIR:	Melburn	✓			

Member

Standing Committees:
Judiciary
State Affairs

House Special Committee:
Ways & Means

Finance Subcommittees:
Administration
Courts

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.
House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Assistant Floor Leader

Interim:
716 W 4th Avenue, Rm 350
Anchorage, Alaska 99501-2133
Phone: (907) 269-0123
Fax: (907) 269-0124

Session:
Alaska State Capitol, Rm 110
Juneau, Alaska 99801-1182
Phone: (907) 465-4940
Toll Free: (866) 465-4940
Fax: (907) 465-3766

Email:
rep.max.gruenberg@legis.state.ak.us

SPONSOR STATEMENT FOR HJR41

BY: REPRESENTATIVE MAX F. GRUENBERG, JR.

This resolution urges Congress to repeal sec. 511 of P.L. 109-222, the Tax Increase Prevention and Reconciliation Act of 2005.

This provision was added by a congressional conference committee without benefit of any public hearings in either the House or Senate.

If this provision remains law, starting in 2011 it will require states and local governments that spend more than \$100 million each year on goods and services to withhold three percent of the price of those goods and services and transmit those funds to the IRS to apply to any taxes that may be owed by vendors.

Section 511 was enacted to save approximately \$7 million in federal taxes between 2011 and 2015. However, the effect of that law would increase the burden and costs to state and local governments by making them uncompensated and involuntary federal tax collectors, because no federal funding is provided.

Government officials have stated that this provision will be extremely difficult and expensive to implement, requiring major programming changes to their financial and accounting systems and the hiring of additional staff. The state's accounting system is 23 years old, and the state has had difficulty avoiding mandatory backup withholding, which would be costly and time-consuming. This provision would make mandatory withholding even more difficult to avoid.

Local businesses would be discouraged from bidding on state and local governmental contracts, because of the three percent withholding. This would dampen competitive bidding and probably raise prices to the state and local government.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HJR 41
 () Publish Date: 4/8/2008

Identifier (file name): _____ Dept. Affected: ADM
 Title Urging the United States Congress to repeal sec. 511 of P.L. 109 RDU _____
 Sponsor House Rules Component _____
 Requester _____ Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Rachelle Fenderson, House Rules Committee Aide
 Division: House Rules Committee
 Approved by: Representative John Coghill, Chairman
House Rules Committee

Phone 465-3719
 Date/Time 4/8/08 4:30 PM
 Date 4/8/2008

Government Alliance to Repeal 3% Withholding

Section 511 of the Tax Reconciliation Act (PL 109-222) requires that federal, state and local governments withhold 3% on payments made for most goods and services. However, the implementation of the new directive raises several issues for state and local governments.

Unfunded Mandate: The provision would impose significant costs which have been determined to exceed the threshold, making the legislation an unfunded mandate.

Increased Financial and Administrative Commitments: Implementation of the new provision would impose significant financial and administrative commitments for state and local governments. Many governments do not have systems that can handle a large increase in additional information reporting or that contain modules that can withhold and remit monies for each payment made. Even governments with more robust systems would have to undergo significant changes to their current software, which would entail additional administration and personnel. In most cases, significant modifications and/or new software would be required. Many government payment systems are antiquated. Furthermore, more category codes and greater complexity and processing would be needed to accommodate the exemptions, and in most cases, manual intervention would be necessary, thereby increasing the cost of implementation.

Additional Staff and Education: Even if the current systems could be amended or new systems could be purchased, additional staff resources will be necessary to carry out the new requirement. New duties would include reconciliation of withholdings and subsequent payment to the federal government, preparation of tax deposits, monitoring of agency payments, and increased compliance monitoring (i.e., lots of training necessary). Additional FTEs would also be required to track down payment errors, handle bad addresses, monitor changes in the law, and field telephone calls from vendors.

Increased Recordkeeping: The provision would require additional recordkeeping to track the required withholdings. Additionally, vendor files would need to be significantly expanded to accommodate all payments.

Increase in Cost for Goods and Services: Companies will simply pass the 3% withholding along in increased prices when dealing with governments. In turn, bids to governments will be higher and smaller businesses competing for government business will be at an unfair disadvantage.

Competitive Disadvantage: Because only governments and not private sector businesses are required to withhold 3%, governments will be at a significant disadvantage over private sector buyers, as vendors may choose not to contract with governments particularly when selling high-demand or scarce goods.

Cannot Withhold on Payments Made by Purchase Card: In order to implement the provision for purchase cards, buy-in from credit card companies would be necessary,

which in turn would raise the per transaction costs for governments. Standard credit card process would need to be significantly amended. Additional fees are anticipated. Furthermore, issues arise as to whether a payment would be exempt if using a purchasing card since in reality the bank is technically making the payment.

IRS Capacity Questionable: Additional reporting and withholding issues raise questions about the IRS's capacity to rectify withholding with corporate tax returns. The current lack of enforcement and staffing make it unlikely that a large increase in withholding and reporting could be enforced without a significant increase in resources.

Mechanisms to Collect Taxes and Punish Bad Actors are Already in Place – The Federal Government is Passing on Collection Responsibility to Lower Levels of Government: Essentially, state and local governments are being forced to act as tax collectors for the federal government. The provision to withhold 3% on payments is passing on collection duties from the federal government to the state and local levels. The provision is essentially a tax on vendors providing services to governments. Existing tax collection mechanisms have not been adequately enforced.

The \$6 Billion Estimated Tax Collection is an Acceleration of Receipts – Actual Collection is About \$215 Million Per Year: The provision is an attempt to increase collection from vendors who are not paying taxes. The \$6 billion estimate in the first year is actually the 3% withheld amount and does not consider reconciliation with corporate tax returns, which is shown in year two and thereafter to generate only \$215 million.

Bill History/Action for 25th Legislature

BILL: HJR 41

SHORT TITLE: REPEAL OF SEC 511 OF P.L. 109-222

BILL VERSION:

CURRENT STATUS: (H) RLS

STATUS DATE: 04.07.08

SPONSOR(s): RULES

HEARING: (H) RLS Apr 08 4:00 PM CAPITOL 120 Moved CSHJR 41(RLS) Out of Committee

TITLE: Urging the United States Congress to repeal sec. 511 of P.L. 109-222 (Tax Increase Prevention and Reconciliation Act of 2005).

Bill Number:

Jm-Date	Jm-Page	Action
04.07.08	2699	(H) READ THE FIRST TIME - REFERRALS
04.07.08	2699	(H) RLS
04.07.08	2699	(H) REFERRED TO RULES

Similar Subject Match or Exact Subject Match

INTERGOVERNMENTAL RELATIONS

MUNICIPALITIES

PUBLIC FINANCE

TAXATION

Bill Number:

[Return to Basis Main Menu \(25th Legislature\)](#)

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER, COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200

PHONE: (907) 485-2200

FAX: (907) 485-2135

April XX, 2008

The Honorable
United States Senate
Washington, DC 20510

Dear Senator XXXX,

As Commissioner of the Department of Administration for the State of Alaska, I am writing to express the State of Alaska's strong support for repealing Section 511 of the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2006, which requires governments to withhold 3% on payments made for most goods and services.

If enacted, Section 511 of TIPRA will impose an enormous burden on state and local governments, most of which do not have the systems or capacity to implement this onerous and costly withholding provision. Additionally, it will place governments at a competitive disadvantage as private sector businesses do not have to comply with this requirement.

As a state finance official, I have grave concerns regarding the impact of this poorly vetted provision on the current accounting and procurement systems in my state. Preliminary research indicates that not only will implementation costs be significant and include both administrative and financial commitments, but also that governments will face an increase in the costs of goods and services as vendors will simply pass along the 3% cost when bidding for government business.

I oppose Sec. 511 as an unfunded mandate and disagree with this new policy of shifting the burden of federal tax collection to state and local governments. I strongly urge you to support repealing this provision.

Sincerely,

Annette Kreitzer

Fact Sheet

Repeal Three Percent Withholding Tax on County Purchases

Issue: Section 511 of the Tax Increase Prevention and Reconciliation Act (P.L. 109-222) requires counties that spend more than \$100 million annually on purchases to withhold and remit to the IRS three percent of most payments for products and services.

NACo policy: NACo supports repeal of Section 511 of P.L. 109-222. This is among NACo's key federal legislative priorities for 2007.

Action needed: County officials should urge their members of Congress to cosponsor H.R. 1023 (Rep. Kendrick Meek, D-Fla., and Rep. Wally Herger, R-Calif.). This bill would repeal Section 511 of P.L. 109-222.

Background: H.R. 4297, the "Tax Increase Prevention and Reconciliation Act of 2006", was signed into law as P.L. 109-222 on May 17, 2006. Section 511 will require many counties beginning in 2011 to withhold federal taxes on nearly every payment for a service or product – from plumbing services to paper clips - with no minimum transaction and regardless of whether the payment is made by check or credit card. The requirement does not apply to the private sector. It is estimated to raise \$6 billion for the federal treasury through a first-year accounting gimmick and slightly more than \$200 million per year thereafter.

According to the Congressional Budget Office, this is an intergovernmental mandate with costs above the threshold of the Unfunded Mandates Reform Act. It will be very expensive for counties to implement and will require programming changes to financial and accounting systems and the hiring of additional staff. It will also likely discourage contractors from bidding on government contracts and increase the costs of procurement. Many of its requirements are unworkable as written and will require the Treasury Department to issue 'administrability rules'. This mandate is particularly egregious because it was inserted into the final version of an omnibus tax bill that had already passed both the House and Senate and was never subject to a formal vote, hearings or consultation with any state and local government officials or their national organizations.

On February 13, 2007, Representatives Kendrick Meek (D-Fla.) and Wally Herger (R-Calif.) introduced H.R.1023 to repeal this unfunded mandate on county government. NACo is asking members of Congress to cosponsor this legislation. It is important to demonstrate broad support for this legislation because it faces an uphill climb due to its \$7 billion price tag.

For further information, contact: Alysoun McLaughlin 202/942-4254 or amclaughlin@naco.org.



Advocacy: the voice of small business in government

August 31, 2006

VIA FACSIMILE and EMAIL

The Honorable Larry E. Craig
United States Senate
520 Hart Senate Office Building
Washington, DC 20510

RE: S. 2821 *Withholding Tax Relief Act of 2006*

Dear Senator Craig:

I am writing to express support for your legislation, S. 2821, the *Withholding Tax Relief Act of 2006* (S. 2821). This legislation will repeal section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) (TIPRA). The withholding provision in TIPRA is a broad new requirement mandating that federal, state and local governments withhold 3 percent from payments made for goods and services. Small business groups have expressed a high level of interest in S. 2821 to the Office of Advocacy (Advocacy). Advocacy takes its direction from small business groups which is why we are writing this letter of support.

Congress established Advocacy under Pub. L. 94-305 to represent the views of small businesses before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed in this letter do not necessarily reflect the views of the SBA or the Administration.

Section 511 of TIPRA presents significant challenges for small entities and state and local governments. American small businesses operate in an environment which challenges them to be competitive and remain profitable. The withholding provision will impede the cash-flow of small entities, presenting another obstacle to their success. Section 511 of TIPRA amounts to a tax penalty on government contractors without a clear path for reimbursement. The amount of the penalty is variable; for instance if a contract generates a small profit or no profit the additional withholding presents serious cash management challenges. Additionally, the

withholding provision inhibits the efficient use of capital because it will limit funds that can be used to reinvest in the business.

In fiscal year 2005, the Federal government spent over \$300 billion purchasing goods and services from businesses. Purchases from small businesses represented almost \$80 billion. Two-thirds of the Federal government procurement falls under the Department of Defense (DOD). The Government Accountability Office (GAO) issued a report entitled "DOD Payments to Small Businesses" (GAO-006-358, May 2006). GAO concluded that disruptions in cash flow caused by contracting with DOD can significantly affect the day-to-day operations of small businesses. Adding a 3 percent tax withholding requirement will only exacerbate the cash flow issues already experienced by small entities seeking to do business with the government.

In addition to the burdens that may be imposed on small businesses by the withholding provision, section 511 of TIPRA may have unintended administrative costs on all levels of government required to collect the tax. The withholding requirement at a minimum will require changes to be made to the accounting methods and software used by governmental jurisdictions. That may be why the Congressional Budget Office described the withholding provision as an unfunded intergovernmental mandate.

Repealing section 511 of TIPRA will help small businesses maintain their ability to provide goods and services to governments at all levels. Thank you for your efforts on behalf of small businesses. Advocacy looks forward to working with you and Congress to repeal this provision.

Sincerely,

/s/ _____
Thomas M. Sullivan
Chief Counsel for Advocacy

Government Withholding Relief Coalition

Join the Coalition

Home

Government Withholding Relief Coalition (GWRC)

The Government Withholding Relief Coalition (GWRC) was formed to repeal a sweeping new requirement mandating that federal, state, and local governments withhold 3 percent from payments for goods and services. This unprecedented withholding mandate will affect all government contracts as well as other payments, such as Medicare and grants, starting in 2011. Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) enacted this requirement into law.

Coalition Letters

- [July 17, 2007 - Letter to House Ways and Means Committee](#)
- [March 22, 2007 - Statement for the Record to House Small Business Committee](#)
- [March 12, 2007 - Letter to Senator Craig in support of S. 777](#)
- [March 8, 2007 - Letter to Treasury Department](#)
- [February 15, 2007 - Letter to Rep. Meek and Herger in support of H.R. 1023](#)
- [January 17, 2007 - Letter in opposition to use of 3% withholding as an offset](#)
- [October 16, 2006 - Letter to Representative Herger in support of H.R. 6242](#)
- [July 11, 2006 - Letter to Senator Craig in support of S. 2821](#)

Department of Treasury Solicitation for Comments on Implementation: Due April 28

- [Treasury's Notice 2008-38](#)

Resources

- [One-page summary of provision](#)
- [Talking Points](#)
- [Draft Letter to Congress for Businesses to Utilize](#)

Material

- [June 12, 2007 - Senators Collins and Coleman Letter](#)
- [March 13, 2007 - Dear Colleague letter in support of S. 777 - Senator Craig](#)
- [February 22, 2007 - Dear Colleague letter in support of H.R. 1023 - Rep. Meek and Herger](#)
- [September 19, 2006 - Letter from Senator Craig to Senate colleagues in support of S. 2821](#)
- [August 31, 2006 - Letter to Senator Craig from SBA Office of Advocacy in support of S. 2821](#)
- [May 9, 2006 - CBO Letter with Annual Budgetary Effects](#)

Bills to Repeal Provision

- [Senate - S. 2894 \(110th Congress\)](#)
- [Senate - S. 777 \(110th Congress\)](#)

- House - H.R. 1023 (110th Congress)
 - Senate - S. 2821 (109th Congress)
 - House - H.R. 6242 (109th Congress)
-



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 3, 2008

The Honorable Max Gruenberg
Alaska House of Representatives
State Capitol, Room 110
Juneau, AK 99811

Dear Representative Gruenberg:

I write to commend you for your sponsorship of a resolution urging repeal of a federal tax provision in the Tax Increase Prevention and Reconciliation Act of 2005, which is certain to have a detrimental effect on the Municipality of Anchorage and other government entities across our state. I also thank you for bringing this misdirected provision to our attention.

This provision would require cities and other government entities across the nation to withhold a 3 percent payment from nearly all vendors and contractors for federal income tax purposes, if it becomes effective in 2010 as currently intended. As your measure correctly points out, this could cause chaos to Anchorage's finance and computing systems, costing taxpayers thousands of dollars a year.

We support your call for repeal of this provision and again thank you for pursuing this important resolution in the current legislative session.

Sincerely,

Mark Begich
Mayor

Community, Security, Prosperity



Issue Brief: **New Government Withholding Provision Could Involve Costs to States**

National Association of State Budget Officers

October 3, 2006

444 N. Capitol Street, Suite 642 • Washington, DC 20001 • (202) 624-5382 (phone) • (202) 624-7745 (fax) • www.nasbo.org



BACKGROUND

On May 17, 2006, the *Tax Increase Prevention and Reconciliation Act of 2005* was signed into law. Major elements of this law include extending the fifteen percent tax rate on capital gains and dividends, and preventing an increase in the number of taxpayers subject to the Alternative Minimum Tax. Another important component of the law that received far less publicity, but could impact state and local governments, requires governments to withhold three percent on certain payments to persons providing property or services. The provision will not go into effect until 2011.

Specifics of Withholding Provision

The withholding provision extends the act of withholding to new areas. Under the withholding provision, all levels of government are required to withhold three percent on most payments for products and services. According to the summary provided by the Senate Finance Committee, the provision "requires withholding on certain payments to any person providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the state." Governments would then be required to remit three percent of most payments to the federal government for federal income tax purposes. The withholding provision will go into effect on January 1, 2011.

Prior law states that employers are required to withhold income tax on wages paid to employees, including wages paid to employees of federal, state, and local government. This law has not previously included withholding payments to workers who are not classified as employees, such as independent contractors. Instead, independent contractors and other taxpayers who receive income that is not subject to withholding are required to make estimated tax payments.

There are some exemptions to the withholding provision. First, localities and other political subdivisions of states with less than \$100 million of annual expenditures for goods or services are exempt from the withholding requirement. Second, the provision exempts payments made through a federal, state, or local government public assistance or public welfare program for which eligibility is determined by a needs or income test. Finally, the provision exempts payments of interest, payments for real property, payments to tax-exempt entities or foreign governments, intergovernmental payments, payments based on a classified or confidential contract, and payments made to a government employee not otherwise excludable with respect to their service as an employee.

Reasons for Withholding Provision

The main stated justification for the withholding provision is to attempt to undermine the misreporting of taxes by certain government vendors not currently subject to withholding. It is one of a series of steps designed to help minimize the tax gap. According to the IRS, in 2001 taxpayers paid \$345 billion less than what they should have paid. This caused the Joint Committee on Taxation (JCT) to produce a report in 2005 entitled *Options to Improve Tax Compliance and Reform Tax Expenditures*. The first recommendation of the report was to impose withholding on certain payments made by government entities. The JCT contended that a lack of a withholding requirement on non-wage payments leads to substantial underpayment of taxes each year. Additionally, the JCT argued that requiring withholding on government entities for non-wage payments would improve taxpayer compliance, promote fairness, and reduce the tax gap. According to government estimates, the withholding provision will raise \$7 billion for the federal government between 2011 and 2015.

ISSUES RAISED REGARDING WITHHOLDING PROVISION

State and local groups have begun to raise numerous concerns about the withholding provision. The law is vague in many areas, and specific regulations have yet to be established. Further details regarding the implementation of the withholding provision will be determined by the Department of Treasury. Currently, many state and local government associations are monitoring developments regarding the withholding provision. In addition to NASBO, these associations include the National Governors Association (NGA), the National Association of Counties (NACo), the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), the National Conference of State Legislatures (NCSL), the National League of Cities (NLC), the United States Conference of Mayors, the Federation of Tax Administrators (FTA), the National Association of State Retirement Administrators (NASRA), and the Government Finance Officers Association (GFOA). Some of the primary issues that have been raised concern:

- **Unfunded mandate** – As reported by the Congressional Budget Office (CBO), the Joint Committee on Taxation (JCT) has determined that the cost of the withholding provision exceeds the threshold specified in the *Unfunded Mandates Reform Act*.
- **Costs to States** – state and local governments will receive no funding from the federal government in exchange for providing this service. Additionally, states will likely have to make programming changes to financial and accounting systems, purchase new software, register vendors, possibly hire additional staff, and keep massive new data files and paper reports.

- Applies only to public sector – state and local governments would be required to withhold three percent on payments, but private companies would not. This could place state and local governments at a disadvantage.
- Lack of consultation – neither the original House nor Senate version of the *Tax Increase and Prevention Act of 2005* contained the withholding requirement. Instead, the provision was added in the conference committee. This prevented state and local governments from expressing their views on the measure.
- Perceived need for withholding arose regarding federal contracts – one of the main justifications for the withholding provision is that the Government Accountability Office (GAO) issued a report showing that 3,800 General Services Administration (GSA) federal contractors had tax debts. Instead of creating a withholding provision that applies to all levels of government, Congress could have passed a law that only applies to federal contractors.
- Inflating bids – vendors and contractors could increase their bids by three percent in order to compensate for withholding. This would cause state and local governments to spend additional funds.
- Purchasing cards – the provision also requires withholding on purchases made by purchasing cards. Many questions have been raised regarding how withholding can be accomplished using purchasing cards.
- Many unanswered questions – in addition to the other issues, many additional unanswered questions remain regarding withholding, including how to report withheld amounts to the IRS or payees, how payments must be sent, and who is exempt and who is not.

CURRENT STATUS OF WITHHOLDING PROVISION

Shortly after the *Tax Increase Prevention and Reconciliation Act of 2005* was signed into law this past May, Senator Larry Craig (R-Idaho) introduced legislation calling for the repeal of the withholding provision. Sen. Craig stated that, "Proponents of the withholding provision describe it as closing a loophole. That is nonsense. Reporting requirements are already in place for government contractors. All this does is buck the IRS's collection responsibilities to the taxpayers." In addition to Sen. Craig's legislation, Congressman Wally Herger (R-California) has also introduced legislation calling for repeal.

Furthermore, the National Association of Counties (NACo) has called for the repeal of the withholding requirement on the grounds that it is an unfunded mandate. Other state and local associations are continuing to monitor the issue and are hopeful that if the provision is not fully repealed, the Department of Treasury will take their concerns into consideration when establishing rules and guidelines.

If you would like additional information regarding the government withholding provision, please contact Brian Sigriz at (202) 624-8439 (bsigriz@nasbo.org) or Scott Pattison at (202) 624-8804 (spattison@nasbo.org) in NASBO's Washington D.C. office.

United States Senate

WASHINGTON, DC 20510

June 12, 2007

The Honorable Max Baucus, Chairman
The Honorable Charles E. Grassley, Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

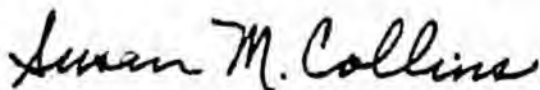
We write to you regarding the new 3% withholding tax on federal, state, and local government contracts for goods and services enacted as Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222). This 3% withholding tax is scheduled to go into effect in 2011.

While we understand and support your commitment to closing the tax gap, we do not believe that Section 511 is the appropriate means to achieve that goal. We are concerned that the 3% withholding provision is overbroad, and will unfairly penalize contractors that pay their taxes. Many of these contractors operate on very narrow profit margins – often 3% or less – and will be unable to comply with Section 511's withholding requirement without sacrificing the lion's share of their cash flow.

We are particularly concerned about the impact of the 3% withholding provision on small businesses in the construction industry. Contractors rely on their cash flow to finance investment and expansion, and as security for bonds they are required to hold in order to do business with the federal government. The 3% withholding requirement may so severely restrict cash flow that contractors will find it difficult or impossible to secure bond coverage, and as a result, many contractors will be driven out of the market. This, in turn, will lead to higher prices for the goods and services they supply to the federal government.

We are seeking a workable alternative to Section 511 that helps to address the problem of the tax gap without placing an undue burden on honest contractors. We would welcome the opportunity to work with you towards that end.

Sincerely,



SUSAN M. COLLINS
United States Senator



NORM COLEMAN
United States Senator

United States Senate

WASHINGTON, DC 20510

June 12, 2007

The Honorable Max Baucus, Chairman
The Honorable Charles E. Grassley, Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

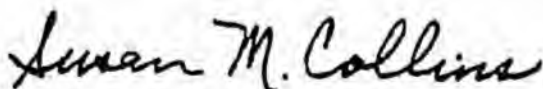
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Sincerely,



SUSAN M. COLLINS
United States Senator



NORM COLEMAN
United States Senator