

SENATE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR SHARP

Introduced: 1/13/97

Referred: CRA, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal taxes and fees levied on certain commercial vessels
2 operating in waterborne commerce for the privilege of entering into the port or
3 levied on passengers who may disembark from a commercial vessel at a port in
4 the state; and levying and providing for the collection and administration of fees
5 on passengers for the privilege of disembarking certain commercial vessels that
6 carry passengers in waterborne commerce at ports in the state; and providing for
7 an effective date."

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

9 * **Section 1.** STATEMENT OF PURPOSE AND INTENT. (a) Tourism in the state has
10 been marked by significant growth in the number of visitors to the state, especially visitors
11 arriving by cruise vessels, and by a series of accidents involving those visitors that have drawn
12 upon the emergency response resources of adjacent municipalities. Those patterns underscore
13 the need to improve the capacity, safety, and security of the ports and associated facilities of

1 the state and to provide a means by which to advance the ability of municipalities to respond
 2 when emergency conditions may so require. The legislature believes that passengers in
 3 commerce and the companies providing their carriage to and from the state should be required
 4 to pay a fair share of these expenses. The legislature is mindful of the strong interest recently
 5 expressed by officials and voters in some municipalities to begin to address these concerns
 6 through local levies. The legislature is concerned that enactment of a series of levies by
 7 various city and borough governments might ultimately prove detrimental to tourism
 8 throughout the state and consequently to the economies of the municipalities in which tourism
 9 is an important component. At the same time, the legislature is cognizant of the several
 10 constitutional tests -- constraints imposed by the commerce clause and the duty of tonnage
 11 provision of the United States Constitution, and equal protection considerations of the Alaska
 12 Constitution -- that are implicated when a levy is to be imposed and collected on commercial
 13 passengers and vessels that transport them.

14 (b) It is the intent of the legislature that this Act

15 (1) provide a means by which the state may impose and collect a single levy
 16 on passengers carried on commercial vessels and for the privilege of disembarking at ports
 17 in the state, share the proceeds of the levy with municipalities, directly, for purposes of
 18 making improvements to port and associated facilities, and, through the existing program of
 19 state revenue sharing with municipalities, to advance the ability of municipalities to respond
 20 when circumstances or conditions involving these passengers may so require;

21 (2) allow use of revenue recovered from the fee imposed by this Act as public
 22 officials may determine, but always consistent with the constraints set down by cases
 23 interpreting and applying the pertinent constitutional restraints; and

24 (3) except as may be required by current covenants and contracts, preempt the
 25 state's local governments from individually imposing disembarkation taxes and similar levies;
 26 however, if the levy proposed by this Act is found to be unconstitutional, it is the intent of
 27 the legislature to set aside the preemption and to restore to the state's municipalities the right
 28 of levy and collection of fees on passengers traveling in commerce and on the vessels that
 29 carry them.

30 * **Sec. 2.** AS 29.10.200 is amended by adding a new paragraph to read:

31 (54) AS 29.47.480 (taxation of certain commercial vessels operating in

1 waterborne commerce and of passengers who may disembark those vessels).

2 * **Sec. 3.** AS 29.47 is amended by adding a new section to read:

3 **Sec. 29.47.480. Taxes or fees on transportation by certain commercial**
 4 **vessels operating in waterborne commerce and on passengers who may disembark**
 5 **those vessels.** (a) Except when the tax or fee described in this subsection is being
 6 levied and collected on the effective date of this Act for the construction of a port or
 7 harbor improvement and the levy of the tax is required by a bond covenant or similar
 8 agreement to pay for the improvement or to pay bonds or notes relating to the
 9 improvement, notwithstanding other provisions of law, a municipality may not levy or
 10 collect a tax or fee

11 (1) on boats or vessels that are used in the common carriage of
 12 passengers in commerce if the tax is levied for the privilege of the boat or vessel
 13 entering into a port; or

14 (2) on passengers who may disembark a boat or vessel described in (1)
 15 of this subsection.

16 (b) This section applies to home rule and general law municipalities.

17 * **Sec. 4.** AS 43 is amended by adding a new chapter to read:

18 **Chapter 52. Excise Fees.**

19 **Article 1. Excise Fee Administration.**

20 **Sec. 43.52.010. Administration of fees.** (a) The department shall administer
 21 the fees imposed by this chapter.

22 (b) The department shall prescribe and furnish all necessary forms, and adopt
 23 all necessary regulations, for the fees imposed by this chapter.

24 **Sec. 43.52.020. Disposition of receipts.** The legislature may use the annual
 25 estimated balance of the account maintained under AS 37.05.142 for deposits into the
 26 general fund of the proceeds of the fees imposed by AS 43.52.100 - 43.52.199

27 (1) to make appropriations to the tax equalization account established
 28 in AS 29.60.060 to make the distributions authorized by AS 29.60.010 - 29.60.080;
 29 however, a municipality receiving a distribution under AS 29.60.010 - 29.60.080 must
 30 use for purposes that fairly relate to benefits provided in the municipality to passengers
 31 traveling in waterborne commerce a percentage of the amount received that is at least

1 equal to the percentage determined by dividing the total proceeds of the fees imposed
 2 under AS 43.52.100 - 43.52.199 and appropriated to the account established in
 3 AS 29.60.060 by the total amount appropriated to the account established in
 4 AS 29.60.060; and

5 (2) to make appropriations for purposes that will preserve or improve
 6 the capacity, safety, and security of ports and associated facilities in the state, with
 7 emphasis to be given to facilities that are used by boats and vessels operating in the
 8 common carriage of passengers in commerce.

9 **Article 2. Excise Fee on Passengers Traveling on Commercial Passenger Vessels.**

10 **Sec. 43.52.100. Levy of fee on passengers traveling aboard commercial**
 11 **passenger vessel.** There is imposed an excise fee on passengers traveling in
 12 waterborne commerce aboard a commercial vessel for the privilege of disembarking
 13 the commercial vessel when the commercial vessel visits the port to disembark
 14 passengers. The levy is imposed without regard to whether or not a passenger who
 15 may disembark the vessel actually leaves the vessel at the port.

16 **Sec. 43.52.110. Rate of fee.** The fee imposed by AS 43.52.100 is \$25 a
 17 passenger for each port that the commercial vessel visits in which the passenger has
 18 the privilege to disembark the vessel.

19 **Sec. 43.52.120. Liability for payment of fee.** The fee imposed by
 20 AS 43.52.100 - 43.52.199 shall be collected and is due and payable to the department

21 (1) by the person who provides transportation by commercial vessel to
 22 the passenger for whose privilege to disembark the commercial vessel the tax is
 23 payable; and

24 (2) in the manner and at the times required by the department by
 25 regulation.

26 **Sec. 43.52.130. Fee not applicable.** The provisions of AS 43.52.100 -
 27 43.52.199 do not apply to persons transported on a vessel of the Alaska marine
 28 highway system.

29 **Sec. 43.52.199. Definitions.** In AS 43.52.100 - 43.52.199,

30 (1) "commercial vessel" means a boat or vessel that is used in the
 31 common carriage of passengers in commerce;

1 (2) "fee" means the excise fee on passengers traveling in waterborne
2 commerce aboard commercial vessels who, upon arriving at a port in the state, have
3 the privilege to disembark the vessel;

4 (3) "passenger" means a person whom a common carrier has contracted
5 to carry from one place to another;

6 (4) "port" means a place, and the facilities within them, designated by
7 a municipality or the state for the loading and unloading of passengers from boats and
8 vessels.

9 * **Sec. 5.** PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, the
10 provisions of this Act are not severable.

11 * **Sec. 6.** This Act takes effect January 1, 1998.