

HOUSE FINANCE COMMITTEE  
April 27, 2001  
9:09 A.M.

TAPE HFC 01 - 100, Side A  
TAPE HFC 01 - 100, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 9:09 A.M.

MEMBERS PRESENT

Representative Bill Williams, Co-Chair  
Representative Eldon Mulder, Co-Chair  
Representative Con Bunde, Vice-Chair  
Representative Eric Croft  
Representative John Davies  
Representative Carl Moses  
Representative Richard Foster  
Representative John Harris  
Representative Bill Hudson  
Representative Ken Lancaster  
Representative Jim Whitaker

ALSO PRESENT

Representative Beth Kerttula; Michelle Brown, Commissioner, Department of Environmental Conservation; Mike Conway, Director, Division of Statewide Public Service, Department of Environmental Conservation; Lynne Smith, Staff, Representative Con Bunde; Mark Hickey, American Cancer Society, Coalition of Alaskans for Tobacco Free Kids, Juneau; John Bitney, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue; Craig Tillery, Assistant Attorney General, Environmental Division, Department of Law.

SUMMARY

HB 234 An Act relating to the financing of construction and renovation of certain public facilities; and providing for an effective date.

CS HB 234 (FIN) was reported out of Committee with a "do pass" recommendation and with a fiscal note by Department of Revenue.

HB 260 An Act requiring the owners or operators of certain passenger vessels operating in the marine waters of the state to register the vessels; establishing information-gathering, record keeping, and reporting requirements relating to

the vessels' graywater and sewage; prohibiting the discharge of untreated sewage from the vessels unless exempted; placing limits on discharges of treated sewage and gray water from the vessels unless exempted; establishing a commercial passenger vessel coastal protection fund; establishing a fee on commercial passenger vessels, that are not exempt from the fee, for each voyage during which the vessels operate in the marine waters of the state based on the overnight accommodation capacity of the vessels determined with reference to the number of lower berths; establishing penalties for failure to comply with certain laws relating to the vessels; authorizing the Department of Environmental Conservation to encourage and recognize superior environmental protection efforts related to commercial passenger vessels; authorizing exemptions from some laws relating to discharges from the vessels and from the fee requirements related to the vessels; requiring a report from the Department of Environmental Conservation concerning matters relating to the vessels; and providing for an effective date.

HB 260 was HELD in Committee for further consideration.

#HB234

HOUSE BILL NO. 234

An Act relating to the financing of construction and renovation of certain public facilities; and providing for an effective date.

Vice-Chair Bunde MOVED to ADOPT the new Amendment #1, 22-LS0863\0.2, 4/26/01. [Copy on File]. Representative Davies OBJECTED for discussion.

Vice-Chair Bunde explained that the amendment would secure the final 20% of the Tobacco Settlement money for funding smoking education and cessation and would remove any reference to the University.

Representative Davies asked for more detail. Vice-Chair Bunde explained that "taxable versus non-taxable" was still being debated. The amendment would provide the detail and vehicle to address the consequences.

Representative Davies questioned how the payout could be addressed through the legislation.

Representative Croft interjected that it is imperative that the final 20% of the money be used for tobacco cessation programs.

Vice-Chair Bunde explained that there is a moral connection with the use of that money.

MARK HICKEY, AMERICAN CANCER SOCIETY, COALITION OF ALASKANS FOR TOBACCO FREE KIDS, JUNEAU, discussed that the amendment would take the remaining 20% from the Master Settlement Agreement (MSA) and would trade it in the same fashion as the 40% was treated last year. The other 40% would be sold to the Alaska Housing Finance Corporation (AHFC) or to its subsidiary, the Northern Tobacco Securitization Program, with the intent to issue debt bonds. The corpus that comes from that would have to be appropriated to the account created in the bill. That account is located on Page 2, Section 3, the Smoking Education Account. That is where the money generated from the bond sale would be deposited and subject for legislative appropriation. The intent is to have that money used for prevention education cessation activities. The Legislature would have to appropriate annually out of that account for the program. He concluded that the amendment attempts to address that detail.

Representative Davies asked an estimate of annual funds that would be available. Mr. Hickey replied that AHFC has indicated that the range would be between \$40 to \$63 million dollars. Mr. Hickey stated the need was \$8.1 million dollars per year, in a perfect scenario. It could not be done at the proposed level. The recommendation is to provide that amount as close as possible, in the neighborhood of \$5-\$6 million dollars per year. He emphasized that number was conservative.

JOHN BITNEY, LEGISLATIVE LIAISON, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, responded that based on the current market condition, the amount would need to be in taxable bonds with a 25-year term. He believed that could generate about \$40 million dollars in proceeds.

Co-Chair Mulder commented that the intent was to put a "fence" around the payout. The payout averages \$6.82 million dollars. He commented that in order to maximize with a minimal amount of confusion, the language needs to clarify the intent.

Representative Croft argued that there would be a benefit to using the money for cessation programs. He pointed out that the proposed language moves the Legislature out of the program. He reminded members that the money is not guaranteed.

Vice-Chair Bunde agreed that it is important to do things the simplest way possible, however, there is a risk that the tobacco industry will fall on hard times and that the income stream would need to be securitized for other takers. He commented that the legislation would build a "moral fence" around the money. Vice-Chair Bunde wanted to guarantee various groups offering programs that there would continue to be an income stream.

Representative Hudson asked how much money would the 20% generate. Mr. Hickey replied that the annual average would be a little under \$5 million dollars, unsecuritized. In 2008, there would be an additional \$2.5 million dollars. Mr. Hickey pointed out that the formula is complicated.

Representative J. Davies WITHDREW his OBJECTION. There being NO further OBJECTION, the amendment was adopted.

Representative Foster MOVED to report CS HB 234 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 234 (FIN) was reported out of Committee with a "do pass" recommendation and with a fiscal note by Department of Revenue.

#HB260

HOUSE BILL NO. 260

An Act requiring the owners or operators of certain passenger vessels operating in the marine waters of the state to register the vessels; establishing information-gathering, record keeping, and reporting requirements relating to the vessels' gray water and sewage; prohibiting the discharge of untreated sewage from the vessels unless exempted; placing limits on discharges of treated sewage and gray water from the vessels unless exempted; establishing a commercial passenger vessel coastal protection fund; establishing a fee on commercial passenger vessels, that are not exempt from the fee, for each voyage during which the vessels operate in the marine waters of the state based on the overnight accommodation capacity of the vessels determined with reference to the number of lower berths; establishing penalties for failure to comply with certain laws relating to the vessels; authorizing the Department of Environmental Conservation to encourage and recognize superior environmental protection efforts related to commercial passenger vessels; authorizing exemptions from some laws relating to discharges from the vessels and from the fee requirements related to the vessels; requiring a report from the Department of Environmental Conservation

concerning matters relating to the vessels; and providing for an effective date.

Co-Chair Mulder provided an overview of the handout titled, "Comparison Between HB 260 HFC - HB 22 Kerttula - HB 183 Knowles". [Copy on File].

He noted that the handout addressed the following concerns:

- Permits
- Registration requirements
- Prohibited discharges
- Gray water standards
- Discharge of treated sewage of gray water
- Air quality
- Monitoring and environmental studies
- Safety exception
- Information gathering requirements
- Record keeping requirements
- Reporting requirements
- Fees
- Penalties
- Commercial passenger vessel coastal protection program
- Commercial passenger vessel coastal protection fund
- Covered vessels
- Geographic coverage
- Exemptions
- Regulations
- Definitions
- Statutory changes

Co-Chair Mulder stressed that the bill provides the State of Alaska a compromise and provides some certainty and some harsh penalties for those that do illegal activity. He added that the bill provides the industry with specifics and which marks must be met for the industry to operate in Alaska State waters. Co-Chair Mulder emphasized that HB 260 would go further than any other state throughout the United States to protect Alaska's water rights.

Representative Davies MOVED to INCORPORATE HB 260 into HB 22. Co-Chair Mulder OBJECTED.

Representative Davies advised that a lot of hard work had gone into HB 22. He added that HB 22 has been under negotiation for a much longer period of time. The normal

process would be to take the material from HB 260 and incorporate it into HB 22.

Co-Chair Mulder commented that HB 260 was substantially different from HB 22. He stated that there was not a need to replace that legislation and that HB 260 had merits to "stand on its own".

Representative Croft agreed that it would be appropriate to start with a bill that had a lower number. The content would be the same and the amendments would still apply. Co-Chair Mulder exclaimed that there had been no procedure previously established. He stated that HB 260 was an allowable option.

Representative Davies argued that there is a normal procedure and that the Committee works with the bill that has the lowest number.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies, Moses  
OPPOSED: Foster, Harris, Hudson, Lancaster, Whitaker, Williams, Mulder

Representative Bunde was not present for the vote.

The MOTION FAILED (3-7).

MICHELLE BROWN, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, spoke to the Alaska Cruise Ship Initiative and the four objectives:

- Steering committee members;
- Sub groups: wastewater, air, oil spill prevention, and environmental leadership;
- Meetings; and
- Formation of a website.

The first objective is to get the facts on cruise ship wastewater discharges and air emissions to find out whether there are problems. The Department developed testing parameters and protocols collaboratively so that they would not later disagree with what the results meant. The findings were for wastewater:

- Only 1 of 80 treated sewage samples met federal standards;
- More than 75% of the gray water samples exceeded the level required for treated sewage;
- Some gray water samples were as high as 50,000 times treated sewage limits; and

- No serious priority pollutant problems were found, the types of hazardous materials that RCCL discharged which led to the court actions.

Commissioner Brown continued, the findings for air were:

- 15% of opacity readings violated standards; and
- The limited ambient air testing down at four sites in Juneau did not show any excess of health-based standards.

Commissioner Brown noted that after the results revealed such serious problems, the Department started working with the industry on the second objective to find technology and management improvements. The industry has been looking at some potentially good treatment means. She noted that equipment testing and review process is still underway.

Commissioner Brown continued, the third objective set for the Cruise Ship Initiative was to establish a process for long-term compliance verification. Neither the State nor residents of coastal communities could ever allow themselves to be so ignorant of and powerless from the impacts from cruise ships' wastes.

The need for State oversight and monitoring program to verify compliance led the Governor to introduce legislation, HB 183. The bill would bring the cruise industry in line with every other industry in the State that presents the potential to pollute. For a successful compliance verification program, there must be clear standards for what, where, when, and how pollutants can be discharged or emitted. She submitted that Alaskans for Alaska should establish those standards. At that time, the State would need to verify that standards are being met. Commissioner Brown advised that credible verification would mean having the authority and funding to check compliance, and having enforcement authority for failures.

Commissioner Brown discussed in detail each program and the elements and how they relate in HB 260 as compared to the Governor's bill.

Commissioner Brown addressed the standards. The Governor's bill states that standards should be set consistent with federal law unless more protective standards were necessary such as protecting shellfish growing areas. HB 260 cedes the State's authority to establish standards to the federal Environmental Protection Agency (EPA). She commented that no state has ever given that authority over to the EPA, especially since the federal Clean Water Act provides that it is up to each state to set their own water quality standards.

She noted that it is troubling, since the recently passed federal cruise ship legislation, that HB 260 copies, virtually verbatim, and specifically allows Alaska to set its own standards and to develop its own programs to protect Alaska's own interests.

Commissioner Brown added that the specific reservation of the State's rights is exceptionally important because Alaska is the only place in the U.S. that cruise ships travel where the ships remain in state waters for the majority of their voyage. At other ports, the cruise ships come into port to load passengers and supplies and then head back out to international waters. Those vessels retain their wastes and discharge at high seas. In Alaska, State waters are the destination, not just a drop off point. Because of that the vessels discharge their wastes in State waters.

The next critical element of an oversight and monitoring program is a solid program of sampling and verification. The Governor's bill provides for that but HB 260 does not. She suggested that this could be a serious problem given the track record of that industry.

Commissioner Brown pointed out that the cruise ship industry said its wastes contained no hazardous materials. That was found to be false. The cruise ship industry stated that its sewage discharges were fully treated and met federal standards. She pointed out that last summer showed that only 1 of the 80 samples met standards. The industry claims that its untreated gray water was benign. Commissioner Brown noted that last summer, the Department learned that was not true and most samples looked like raw sewage.

Commissioner Brown stated that in each of the cases, once the truth was discovered, the industry acted to improve. However, a credible program cannot rely solely upon the industry self-testing and self-reporting without verification authority. It cannot rely solely upon the spotlight of getting caught to ensure improvement.

Commissioner Brown added that a credible oversight program must test for the pollutants that are of concern. The Governor's bill authorizes Department of Environmental Conservation to work with the industry and others to establish the list of contaminants to be tested and the frequency to test. HB 260 only identifies a very few potential water contaminants. It doesn't require any verification that industry is not discharging the types of toxic chemicals that the Royal Caribbean was caught discharging.

Commissioner Brown stated that an oversight and monitoring program must be flexible and developed in a way that

protects the environment, yet allows business time to come into compliance and continue to operate. The Governor's bill provided for negotiated rulemaking to set well defined protective conditions of operation so industry could test and ultimately employ new technologies until full compliance could be achieved.

She added that in contrast, HB 260 allows gray water to be discharged at "whatever" quality until 2003 with no alternative, interim protective measures until full compliance can be achieved. HB 260 also fails to address the air emissions testing program, the subject that Department of Environmental Conservation receives more complaints about than any other industrial operation.

Commissioner Brown summarized that the cruise industry has not been regulated and presents a threat to Alaska's air and water quality. The Department has worked with the industry to test their discharges and emissions. There is new technology. The Department has been working with the industry on the oversight and monitoring program to verify future compliance. Based on the track record of the industry, the State needs a strong oversight, monitoring, and compliance verification program that will allow the Alaska public to have confidence that the industry is meeting the standards expected from all other industries.

Representative Croft asked what the Royal Caribbean charge had been relating to their discharge.

CRAIG TILLERY, ASISTANT ATTORNEY GENERAL, ENVIRONMENTAL DIVISION, DEPARTMENT OF LAW, advised that the discharge had been oily waste, dry cleaning fluids, and photo chemicals, primarily silver.

Representative Davies asked for a comparison between HB 260 and the Governor's bill given the three-mile limit "donut holes".

Commissioner Brown explained that the Governor's bill would cover activities in State waters. HB 260 adopts the federal definitions only. She acknowledged that the industry had voluntarily closed the "donut" holes.

Representative Davies asked if HB 260 would limit the State to less than all state waters. Commissioner Brown understood that the legislation would expand State waters, not restrict them. He noted that the Governor's bill had not established the discharge provisions.

Representative Hudson questioned how HB 260 would compare with the essential elements as used by the State of Washington.

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Commissioner Brown replied that HB 260 goes further than any other state's legislation.

Representative Croft questioned how Alaska laws are enforced against a foreign flag vessel. Commissioner Brown explained that Alaska is allowed to establish standards for our own waters. The federal legislation specifically provides that Alaska could establish its own program as long as it does not contradict federal law. In most cases, federal law establishes the floor for the standard.

Co-Chair Mulder inquired what was wrong with the federal standards. Commissioner Brown emphasized that there is no federal standard for gray water.

Co-Chair Mulder asked the difference between sewage and gray water. Commissioner Brown stated that under State law, a difference is not made between gray water and sewage. She declared that a study needs to be undertaken to make that determination.

Representative Croft referenced Pages 3 & 4, the discharge of gray water. He asked if the Environmental Protection Agency (EPA) standards were appropriate. Commissioner Brown commented that HB 260 provides that the Alaska standard would be whatever EPA promulgates. Representative Davies clarified that regarding gray water, EPA presently has no standard.

Representative Croft asked what is going to happen until 2003 when the EPA standard comes into place. Commissioner Brown advised that there would be no standard until 2003.

Representative Croft questioned if the bill should pass, what standard would the State enforce for the next two summers. Commissioner Brown reiterated that there is no standard to enforce for the next two summers. She added that whatever the industry decides, is what the State will get. Commissioner Brown stressed that there is no standard to work with.

Representative Croft asked what the State could do if a foreign flag vessel dumps. Commissioner Brown replied that Alaska could only fine that vessel. That would be the State's sole authority. Mr. Tillery added that most of the vessels have offices in the United States and that the State of Alaska would be able to get to them through those offices.

Representative Croft pointed out that the alternative to the system of going to courts on fines would be a system of registration through a permit system. Mr. Tillery explained that with a permit system, Alaska would have the ability to fine the vessel for violating the permit. Alaska would have the authority to discuss with that specific line what would be allowed to be discharged in State waters.

Representative Croft asked what rights under HB 260, does Alaska have if a vessel repeatedly violates discharge standards in State waters. Mr. Tillery explained that is not a question which has been determined in the State of Alaska. There is a body of law in federal court that suggests that Alaska could prohibit them from State waters and could not control their activities. Under HB 260, that could not be done. Under the Governor's law, it would be allowed.

Representative Davies spoke to the definition of pollutants. He recommended limiting the topics of concern to gray water. Commissioner Brown stated that under the Governor's bill, the Department would look at all the potential pollutants and decide which to test for and which were of the most concern. HB 260 does not pick up most of the conventional pollutants. She noted that is important because in 2003, if EPA has not established standards, Alaska will end up with the standard recommended in HB 260. If the industry wants that, one of the easiest ways to kill fecal matter is the use of chlorine. She maintained that chlorine is very dangerous to aquatic life. Under the terms of HB 260, the State could not regulate the amount of chlorine being discharged. Commissioner Brown advised that there should be detailed water discussions when establishing the standards.

Representative Croft referenced Page 5, Lines 9-10, the gray water definition. He asked if there was evidence that the vessel had been using chlorine, how could that be established under HB 260. Commissioner Brown explained that chlorine is one of the topics that could be self-tested by the vessel. HB 260 is not authorized to establish requirements of what should be tested for.

Representative Hudson asked what section in HB 260 would preclude the State from monitoring discharges and the reduction of those impacts. Commissioner Brown understood that the bill would only provide regulatory authority to do a few things. The bill does not allow the Department authority to promulgate rules to see all aspects of it through. The funds could not be used to do the monitoring or study. Mr. Tillery added that the State does not have authority to have the funds to do that.

Representative Davies asked if "off-loading" was addressed in HB 260. Commissioner Brown noted that HB 260 does not

deal with that concern; however, both of the other bills do address it. The Governor's bill requests authority to create a solid waste management plan.

Co-Chair Mulder questioned what the issue was. Commissioner Brown responded that solid waste and hazardous waste facilities are tightly managed. Co-Chair Mulder argued that HB 260 is a water bill and addresses keeping Alaska's water clean. Commissioner Brown emphasized that the Governor's bill is about water, air and solid waste, all the potential impacts from industry.

Representative Croft referenced Page 4, Section ©, and asked if that section allowed for the State to say that State law is whatever it is decided to be. Mr. Tillery stated that setting up the law dealing with future amended statutes is a problem, particularly in this case, as it does not exist in current statute. The Legislature has no idea of what these laws will be and the Alaska Supreme Court has not spoken to the issue in the past 20 years. He indicated that each time he has checked the standards, the process of HB 260 would be declared illegal. The likely effect is that the standards would not be in effect in Alaska.

Representative Croft asked if the ability to change the standard would become problematic. Mr. Tillery explained that it would be a problem. If EPA had already adopted their regulations, then the Legislature could clearly adopt those. It becomes the illegal delegation of authority of the Legislature.

Co-Chair Mulder inquired if Mr. Tillery was stating that the standards proposed in HB 260 were "illegal provisions". Mr. Tillery replied that the Supreme Court has not spoken definitively. He added that in the four states that he had looked at, and dealing with the delegation by the legislature to the federal government for standards, each of those states has come to the conclusion that it would be an illegal delegation. Based on previous action by the Supreme Court, Mr. Tillery noted that it was his view, that it would be likely, that the Court would uphold that they are not legally permissible.

HB 260 was HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 10:20 A.M.