

HOUSE FINANCE COMMITTEE  
April 27, 2001  
6:58 PM

TAPE HFC 01 - 103, Side A  
TAPE HFC 01 - 103, Side B

CALL TO ORDER

Co-Chair Mulder called the House Finance Committee meeting to order at 6:58 PM.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Carl Moses  
Representative Bill Hudson

ALSO PRESENT

Representative Beth Kerttula; Gretchen Kaiser, Staff,  
Representative Kertulla; Robert Reges, Cruise Control Inc.,  
Juneau.

PRESENT VIA TELECONFERENCE

There were no teleconference participants.

SUMMARY

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 graywater 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 heard and HELD in Committee for further consideration.

#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' graywater and sewage; prohibiting the discharge of untreated sewage from the vessels unless exempted; placing limits on discharges of treated sewage and graywater 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 noted that the Committee would entertain amendments.

Representative Croft MOVED to ADOPT Amendment 1 (copy on file.) Co-Chair Mulder OBJECTED.

Representative Croft spoke in support of Amendment 1. He explained that the amendment would add findings contained in HB 183. He argued that more needed to be put on record regarding the factual findings of the Legislature relating to Alaskan water.

Co-Chair Mulder spoke against the amendment. He maintained that the findings are succinct and adequate.

Representative John Davies spoke in support of the amendment and pointed out that the findings in HB 260 do not give direct reasons for the legislation.

A roll call vote was taken on the motion to adopt Amendment 1.

IN FAVOR: Croft, Davies

OPPOSED: Harris, Lancaster, Whitaker, Bunde, Foster,  
Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (2-7).

Representative John Davies MOVED to ADOPT Amendment 2 (copy on file.) Co-Chair Mulder OBJECTED.

Representative John Davies argued in support. He observed that the amendment would add a number of permits to the legislation. He stressed the ability of getting people's attention and maintained that the amendment would provide the proper hammer to make sure that industry follows along.

Co-Chair Mulder argued that public publicity provides strong incentives to not violate the provisions. He added that the legislation has sufficient enforcement and noted that the Department of Law has the ability to prohibit a "bad actor" from returning to the state of Alaska. He maintained that the amendment would result in a "death sentence" (to the legislation).

Representative Davies did not think the penalties were sufficient to affect the industry. Co-Chair Mulder stressed that there is a strong disincentive to commit offences since a single bad incident would attract negative publicity.

In response to a question by Representative Whitaker, Co-Chair Mulder clarified that page 12, section 4; lines 6 - 15 pertain to the \$100 thousand dollar fine. Representative John Davies pointed out that the fine is a maximum of a \$100 thousand dollars.

Representative Whitaker summarized that there would be a \$100 thousand dollars for the initial violation. Violators of AS 46.14 would be liable, "to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable".

Co-Chair Mulder argued that there would additional penalties for the "reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation" He reiterated that there is a strong financial disincentive.

Mr. Regis clarified that any given penalty would be up to \$100 thousand dollars. Multiple violations and adverse environmental affects could be demonstrated to increase the amount from the minimum of \$500 hundred dollars. It might be possible to demonstrate multiple violations. Representative Croft summarized that adverse environmental affects caused by a single violation in the amount of \$250 thousand dollars would result in no more than a \$100 thousand dollar penalty.

Representative John Davies questioned if there would be additional penalties if the violation continued for 10 days. Mr. Regis noted that the initial violation would b \$100 thousand dollars. Each additional day would result in an additional \$10 thousand dollar penalty. He stressed that as a practical matter huge penalties are not granted and gave examples of previous litigation. He observed that resource violations might result in greater penalties.

Representative Whitaker expressed support for a higher fine of not more than \$500 thousand dollars and not more than \$50 thousand dollars for each additional day.

Mr. Regis explained that the section does not only apply to cruise vessels. If the provision is changed it is changed for all Alaskan businesses.

Representative John Davies asked what the appropriate sanction should be. Mr. Regis maintained that access should be denied to the court. He spoke in support of an administrative penalty, which was included in HB 22. Administrative sanctions are immediate and give operators the opportunity to fix problems. He emphasized that the penalty provision requires litigation and is rarely used. He noted that there are pros and cons to a permit system.

A roll call vote was taken on the motion.

IN FAVOR: Davies

OPPOSED: Croft, Harris, Lancaster, Whitaker, Bunde, Foster,  
Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (1-8).

Representative Croft MOVED to ADOPT Amendment 3:

(c) Except as provided in (f) of this section, AS 46.03.488, or other applicable law or regulation, beginning January 1, 2003, a person may not discharge graywater from a commercial passenger vessel into the marine waters of the state that has a fecal coliform bacterial count greater than 200 colonies per 100 milliliters or suspended solids greater than 150 milligrams per liter.

There being NO OBJECTION, it was so ordered.

Representative John Davies MOVED to ADOPT Amendment 4. He explained that the amendment would take out the language "upon request" in regards to information gathering requirements and add "offloading or release of a pollutant".

Co-Chair Mulder maintained that pollutants are already reported under RCRA. He observed that the key issue is the exchange of information and indicated that he would work on an amendment to encourage the transference of information.

Representative John Davies argued that the state needs an independent authority to have the information.

Representative John Davies WITHDREW Amendment 4.

Representative Croft MOVED to ADOPT Amendment 5. Co-Chair Mulder OBJECTED.

Representative Croft spoke in support of Amendment 5:

Page 5 lines 9 through 10:  
State, the owner or operator of the vessel shall collect samples of the vessel's pollutant discharges [TREATED SEWAGE AND GRAYWATER THAT IS BEING DISCHARGED] into the marine waters of the state

Page 5 line 21  
At a sampling frequency determined in regulations under AS 46.03.489 by the department [NO LESS FREQUENTLY THAN SAMPLES ARE REQUIRED TO BE COLLECTED UNDER FEDERAL LAWS AND REGULATIONS FOR TREATED SEWAGE OR GRAYWATER DISCHARGES].

Page 5 lines 25 through 30:

Biochemical oxygen demand (BOD, [AND] total suspended solids, and priority pollutants, as defined in the federal laws and regulations, in the samples with an analytical testing method that was approved by the department before the testing is conducted. [A LABORATORY USED FOR TESTING UNDER THIS SUBSECTION MAY NOT DISCLOSE THE TESTING RESULTS TO ANY PERSON OTHER THAN THE DEPARTMENT, THE UNITED STATES COAST GUARD, OR THE OWNER OR OPERATOR OF THE VESSEL.]

He explained that the amendment would address the issue of pollutant discharges in substitution of treated sewage and graywater.

Co-Chair Mulder argued that the focus of the bill is the discharge of wastewater into state waters and that the amendment is beyond the focus of HB 260.

Representative John Davies observed that there are separate discharge streams on some ships that are not covered. There is a possibility of heavy metals and other organics being discharged directly into the waters.

Co-Chair Mulder disagreed. He thought that discharges would go through the wastewater process. He emphasized that the inclusion of pollutant discharges go beyond the discharge of wastewaters. He added that they are covered under RCRA.

A roll call vote was taken on the motion to adopt Amendment 5.

IN FAVOR: Croft, Davies, Whitaker

OPPOSED: Harris, Lancaster, Bunde, Foster, Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (3-6).

Representative John Davies MOVED to ADOPT Amendment 6: There is no audit report privilege under AS 09.24.460 for this information. There being NO OBJECTION, it was so ordered.

Representative Croft MOVED to ADOPT Amendment 7 (copy on file.) Co-Chair Mulder OBJECTED.

Representative Croft explained Amendment 7.

INSERT:

Sec. 46.03.477. Monitoring and environmental studies. The department may engage in the following activities for commercial passenger vessels:

(1) direct monitoring of discharges or releases of

pollutants from those vessels;

(2) monitoring and studying of direct or indirect environmental impacts of those vessels; (3) researching ways to reduce impacts identified or studied under this section.

Representative Croft noted that the amendment would give the Department of Environmental Conservation the authority to sample. The issue is whether the industry should self-monitor.

Co-Chair Mulder argued against passage of the amendment. He maintained that the Department of Environmental Conservation could use their inspection ability to beat up the industry.

Representative John Davies maintained that there is no way to use the amendment as a heavy-handed tool if the law is not being broken.

Co-Chair Mulder felt that the issue was the presumption of guilt or innocence. Representative John Davies stressed the need to independently monitor releases.

Representative Croft pointed out that a physical inspection brought the suit against the Royal Caribbean Cruise Lines.

Co-Chair Mulder argued that if there were a reason to suspect that there is something wrong that there would be an ability to do an inspection.

Representative John Davies questioned why the department would not be given the authority to measure what is going on. Co-Chair Mulder observed that they could do monitoring but that funding would not be provided by the state. Representative Davies stressed that it takes money to do a monitoring program.

Representative Croft did not feel that the provision would be onerous. He maintained that monitoring is an essential part of making sure discharges are not improper and stressed that it should be paid by the fees. Representative Whitaker argued that there would be redundancy and a bureaucracy would be built, whose only goal would be to find something wrong with the industry.

Representative Croft pointed out that on page 10 the Department of Environmental Conservation only has authority to adopt regulations to implement exemptions. Co-Chair Mulder acknowledged the problem and noted that it would be addressed.

Representative John Davies noted that other industries have a fee structure for monitoring as part of the permit

process. He suggested a 50/50 fee basis, but did not know the costs involved. He acknowledged that the department has the general authority to monitor, but stressed the need for funding. The majority of the Department of Environmental Conservation's funding is federal, which comes with limitations. Co-Chair Mulder thought that there was already third party monitoring under the U.S. Coast Guard.

MICHAEL A. CONWAY, DIVISION OF AIR AND WATER QUALITY, DEPARTMENT OF ENVIRONMENTAL CONSERVATION responded to questions. He noted that the agency needs the ability to do spot checks or look at ships where the analysis reports indicate that something is wrong. The state of Alaska does not currently have the authority to board a vessel even if they suspect that something is wrong. The department works with the Coast Guard with the permission of the owner/operator. Monitoring of direct or indirect environmental impacts would be done through a third party process. Fiscal notes on previous bills showed the cost for third party contractors. The Department of Environmental Conservation has committed to not duplicating efforts of the federal government or Coast Guard. There is not funding or expertise to research ways to reduce impacts or to do technical reviews.

Vice-Chair Bunde noted that law enforcement has fines.

Representative John Davies pointed out that there is always a danger and there is a need to have police. The state needs the authority to get the information. Co-Chair Mulder emphasized that it is a philosophical issue on how "heavy handed" government would be allowed to become. Representative Davies argued in support of state oversight.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies

OPPOSED: Harris, Lancaster, Whitaker, Bunde, Foster, Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (2-7).

Representative John Davies WITHDREW Amendment 8.

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Representative Croft WITHDREW Amendment 9.

Representative John Davies MOVED to ADOPT Amendment 10:

Sec. 46.03.489. Regulations. The department may adopt regulations that are necessary for the implementation

of AS 46.03.460 - 46.03.490. The department shall use negotiated regulation making under AS 44.62.710 - 44.62.800, as appropriate, to develop the regulations.

There being NO OBJECTION, it was so ordered.

Representative Croft MOVED to ADOPT Amendment 11:

(6) "graywater" means galley, dishwater, bath, and laundry wastewater;

There being NO OBJECTION, it was so ordered.

Representative John Davies MOVED to ADOPT Amendment 12:

(2) "commercial passenger vessel" means a vessel that carries passengers for hire except that "commercial passenger vessel" does not include a vessel  
(A) authorized to carry fewer than 50 passengers;  
(B) that does not provide overnight accommodations for at least 50 passengers for hire; or  
(C) operated by the United States or a foreign government;

There being NO OBJECTION, it was so ordered.

Representative Croft MOVED to ADOPT Amendment 13. Co-Chair Mulder OBJECTED.

Page 10, following line 24:

INSERT: "offloading" means the removal of pollutants from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works;

Representative Croft spoke in support of the amendment. Co-Chair Mulder felt that it was a duplication of effort and not necessary.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies

OPPOSED: Harris, Lancaster, Whitaker, Bunde, Foster, Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (2-7).

Amendments 14 and 15 were held.

Representative John Davies MOVED to ADOPT Amendment 16.

Page 15, lines 12 through 19:

The report must include

- (1) a characterization, to the extent possible, of the risks to the marine and human environments posed by releases and offloadings [THE DISCHARGE OF SEWAGE AND GRAYWATER] from commercial passenger vessels;
- (2) evaluation of the pollution control and abatement [SEWAGE AND GRAYWATER TREATMENT SYSTEMS AND] technologies on the vessels; and
- (3) recommendations for future action by the state in relation to the matters discussed in the report.

Representative Kertulla spoke in support of the amendment. She noted that the industry currently does pollution control and abatement. She stressed that it would be nice to evaluate these activities to know what kind of controls are necessary. She emphasized that the amendment does not go back in to the bill in terms of substance. It would be a separate report on things that the industry currently does.

Co-Chair Mulder questioned why the industry would be required to issue reports about the risks to the marine and human environment posed by the release and offloading as opposed to the discharge of sewage and graywater. The legislation is about the water not the pollutants and off loadings or pollution control and abatement.

Representative Kertulla emphasized that the amendment would provide a more complete report. The report would provide a broader picture to see if there is anything else that "you would like to be controlling". She pointed out that the report could completely exonerate the industry or point out a problem. Releases happen with offloading. She did not think that the industry would oppose the report.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies, Whitaker

OPPOSED: Harris, Lancaster, Bunde, Foster, Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (3-6).

Co-Chair Mulder WITHDREW Amendment 17.

Co-Chair Mulder MOVED to ADOPT Amendment 18:

On page 7, following line 26

(d) The fee described in this section may not be imposed during any calendar year that begins on or after January 1, 2004, unless the legislature determines by law that imposition of the fee for that calendar year is required to pay for the department's operational and administrative costs necessary to carry out activities under AS 46.03.460 - 46.03.490 and under department regulations establishing standards for marine vessel visible emissions adopted under AS 46.14.

Page 13, line 24  
Delete all material.

(c) The legislature may make appropriations from the fund to the department to pay for the department's operational and administrative costs necessary to prepare a report that assesses the information received by the department under AS 46.03.475 for the cruise ship seasons of 2001, 2002, and 2003 and the information received by the department for the cruise ship season of 2000 and for the department's operational and administrative costs necessary to carry out activities under AS 46.03.460 - 46.03.490 and under department regulations establishing standards for marine vessel visible emissions adopted under AS 46.14.

Co-Chair Mulder explained that the amendment removes the repealler and leaves the fee structure in place in statute. Justification for the program would be required in the report. There being NO OBJECTION, Amendment 18 was adopted.

Co-Chair Mulder MOVED to ADOPT an amended Amendment 19.

Co-Chair Mulder noted that the allowable counts would be placed in statute.

Co-Chair Mulder MOVED to AMEND Amendment 19 delete page 4, line 7. He observed that this language was duplicative. There being NO OBJECTION, it was so ordered.

He explained that Amendment 19 as amended would amend the legislation to read:

(b) Except as provided in (f) of this section, AS 46.03.488, or other applicable law or regulation, a person may not discharge treated sewage from a commercial passenger vessel into the marine waters of the state that has a fecal coliform bacterial count greater than 200 colonies per 100 milliliters or suspended solids greater than 150 milligrams per liter.

(c) Except as provided in (f) of this section, AS 46.03.488, or other applicable law or regulation,

beginning January 1, 2003, a person may not discharge graywater from a commercial passenger vessel into the marine waters of the state that has a fecal coliform bacterial count greater than 200 colonies per 100 milliliters or suspended solids greater than 150 milligrams per liter.

There being NO OBJECTION, Amendment 19 was adopted.

Representative Croft MOVED to ADOPT Amendment 20. Co-Chair Mulder OBJECTED. Representative Croft noted that the amendment would broaden the title to "An Act relating to certain passenger vessels operating in the marine waters of the state; and providing for an effective date".

A roll call vote was taken on the motion.

IN FAVOR: Croft, Davies

OPPOSED: Harris, Lancaster, Whitaker, Bunde, Foster,  
Williams, Mulder

Representatives Moses and Hudson were absent from the vote.

The MOTION FAILED (2-7).

Co-Chair Mulder noted that work would continue on the exemption for smaller vessels.

HB 260 was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 8:13 p.m.