

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

April 19, 2001

1:18 p.m.

MEMBERS PRESENT

Representative Vic Kohring, Chair
Representative Beverly Masek, Vice Chair
Representative Drew Scalzi
Representative Mary Kapsner
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan
Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 244

"An Act relating to a grant of state land to the Denali Borough for a railroad and utility corridor and a railroad development project; repealing provisions relating to a grant of a right-of-way of land for a railroad and utility corridor to the Alaska Industrial Development and Export Authority; and providing for an effective date."

- MOVED HB 244 OUT OF COMMITTEE

SENATE BILL NO. 88

"An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 235

"An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

- MOVED HB 235 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 22

"An Act relating to certain passenger vessels operating in the marine waters of the state; and providing for an effective date."

- MOVED CSSSHB 22(TRA) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 244

SHORT TITLE:RIGHT-OF-WAY TO DENALI BOR. FOR RR/UTIL.

SPONSOR(S): REPRESENTATIVE(S)JAMES

Jrn-Date	Jrn-Page		Action
04/11/01	0959	(H)	READ THE FIRST TIME - REFERRALS
04/11/01	0959	(H)	TRA, RES
04/17/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/17/01		(H)	Heard & Held MINUTE(TRA)
04/19/01		(H)	TRA AT 1:00 PM CAPITOL 124

BILL: SB 88

SHORT TITLE:METROPOLITAN PLANNING ORGANIZATIONS

SPONSOR(S): SENATOR(S) PHILLIPS

Jrn-Date	Jrn-Page		Action
02/13/01	0356	(S)	READ THE FIRST TIME - REFERRALS
02/13/01	0356	(S)	TRA, CRA, FIN
02/20/01		(S)	TRA AT 1:30 PM BUTROVICH 205
02/20/01		(S)	Moved Out of Committee
02/20/01		(S)	MINUTE(TRA)
02/21/01	0451	(S)	TRA RPT 3DP 1DNP 1AM
02/21/01	0451	(S)	DP: COWDERY, WARD, WILKEN; DNP: ELTON;
02/21/01	0451	(S)	AM: TAYLOR
02/21/01	0451	(S)	FN1: ZERO([DOT&PF])
03/07/01		(S)	CRA AT 1:30 PM FAHRENKAMP 203
03/07/01		(S)	Moved Out of Committee
03/07/01		(S)	MINUTE(CRA)
03/09/01	0596	(S)	CRA RPT 2DP 1NR
03/09/01	0596	(S)	DP: TORGERSON, PHILLIPS; NR: AUSTERMAN
03/09/01	0596	(S)	FN1: ZERO([DOT&PF])
03/22/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532

03/26/01		(S)	FIN AT 6:00 PM SENATE FINANCE 532
03/26/01		(S)	Moved Out of Committee MINUTE(FIN)
03/27/01	0819	(S)	FIN RPT 3DP 2DNP 2NR
03/27/01	0819	(S)	DP: DONLEY, GREEN, LEMAN;
03/27/01	0819	(S)	NR: KELLY, WILKEN; DNP: HOFFMAN, OLSON
03/27/01	0819	(S)	FN1: ZERO([DOT&PF])
04/04/01	0933	(S)	RULES TO CALENDAR 1OR 4/4/01
04/04/01	0943	(S)	READ THE SECOND TIME
04/04/01	0944	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/04/01	0944	(S)	READ THE THIRD TIME SB 88
04/04/01	0944	(S)	PASSED Y15 N4 E1
04/04/01	0944	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/04/01	0944	(S)	OLSON NOTICE OF RECONSIDERATION
04/04/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/05/01	0960	(S)	RECON TAKEN UP - IN THIRD READING
04/05/01	0961	(S)	PASSED ON RECONSIDERATION Y12 N7 E1
04/05/01	0961	(S)	EFFECTIVE DATE(S) Y19 N- E1
04/05/01	0962	(S)	TRANSMITTED TO (H)
04/05/01	0962	(S)	VERSION: SB 88
04/06/01	0875	(H)	READ THE FIRST TIME - REFERRALS
04/06/01	0875	(H)	TRA, CRA
04/17/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/17/01		(H)	Heard & Held
04/17/01		(H)	MINUTE(TRA)
04/19/01		(H)	TRA AT 1:00 PM CAPITOL 124

BILL: HB 235

SHORT TITLE: DOT&PF-RELATED CONTRACT CLAIMS

SPONSOR(S): JUDICIARY BY REQUEST

Jrn-Date	Jrn-Page		Action
04/06/01	0882	(H)	READ THE FIRST TIME - REFERRALS
04/06/01	0882	(H)	TRA, FIN
04/17/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/17/01		(H)	Scheduled But Not Heard
04/19/01		(H)	TRA AT 1:00 PM CAPITOL 124

BILL: HB 22

SHORT TITLE: MARINE PASSENGER VESSELS
SPONSOR(S): REPRESENTATIVE(S) KERTTULA

Jrn-Date	Jrn-Page		Action
01/08/01	0029	(H)	PREFILE RELEASED 12/29/00
01/08/01	0029	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0030	(H)	TRA, RES, FIN
02/23/01	0410	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/23/01	0410	(H)	READ THE FIRST TIME - REFERRALS
02/23/01	0410	(H)	TRA, RES, FIN
04/19/01		(H)	TRA AT 1:00 PM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE JEANNETTE JAMES

Alaska State Legislature
Capitol Building, Room 214
Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HB 244.

JANET OATES, Staff

to Senator Randy Phillips
Alaska State Legislature
Capitol Building, Room 103
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of SB 88.

DAVID MILLER, Division Administrator

Federal Highway Administration
PO Box 21648
Juneau, Alaska 99802

POSITION STATEMENT: Testified on SB 88.

DOUGLAS GARDNER, Assistant Attorney General

Transportation Section
Civil Division (Juneau)
Department of Law
PO Box 110300
Juneau, Alaska 99811

POSITION STATEMENT: Testified on SB 88 and HB 235.

HEATHER MARTEL NOBREGA, Staff

to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the House Judiciary
Standing Committee, sponsor of HB 235.

DICK CATTANACH

Associated General Contractors of Alaska
4041 B Street
Anchorage, Alaska 99504

POSITION STATEMENT: Testified in support of HB 235.

JOHN WHEATLEY, Senior Vice President
Associated General Contractors of Alaska
1031 West 4th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HB 235.

MIKE MILLER

MB Contracting Company
7101 DeBarr Road
Anchorage, Alaska 99504

POSITION STATEMENT: Testified in support of HB 235.

KEVIN BRADY, Attorney
Oles Morrison Rinker & Baker
745 West 4th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 235.

BILL RENNO, Attorney
Oles Morrison Rinker & Baker
745 West 4th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 235.

DENNIS POSHARD, Legislative Liaison/Special Assistant
Office of the Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions on HB 235.

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Capitol Building, Room 430

Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of SSHB 22.

SPENCER WOOD, Lieutenant Commander
Seventeenth District Coast Guard Office - Juneau
U.S. Coast Guard
PO Box 25517
Juneau, Alaska 99802

POSITION STATEMENT: Provided information on SSHB 22.

RANDY RAY

U.S. Cruise Ship Association
PO Box 979

Mercer Island, Washington 98040

POSITION STATEMENT: Expressed his interest in seeing CSSSHB 22
move forward.

PAULA TERREL, Southeast Program Director
Alaska Marine Conservation Council
5025 Thane Road
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of SSHB 22.

JOHN HANSEN, President
North West CruiseShip Association
100.1111 West Hastings Street
Vancouver, British Columbia

POSITION STATEMENT: Testified in support of CSSSHB 22.

JOLENE RIELLY

National Ocean and Sciences Bowl
Juneau-Douglas High School
10014 Crazy Horse Drive
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of SSHB 22.

ADRIANA RODRIGUEZ

National Ocean and Sciences Bowl
Juneau-Douglas High School
10014 Crazy Horse Drive
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of SSHB 22.

ROBERT REGES, Member
Cruise Control, Inc.
226 Saint Ann's Avenue
Douglas, Alaska 99824

POSITION STATEMENT: Urged the committee to move CSSSHB 22 from committee.

JOE LeBEAU
Alaska Center for the Environment
PO Box 872922
Wasilla, Alaska 99687

POSITION STATEMENT: Urged the committee to move CSSSHB 22 from committee.

MICHELE BROWN, Commissioner
Department of Environmental Conservation (DEC)
410 Willoughby, Suite 303
Juneau, Alaska 99801

POSITION STATEMENT: Announced DEC's support of CSSSHB 22.

MICHAEL KRIEBER, Staff
to Representative Vic Kohring
Alaska State Legislature
Capitol Building, Room 24
Juneau, Alaska 99801

POSITION STATEMENT: As committee aide for the House Transportation Standing Committee, reviewed changes in the proposed CS for SSHB 22, Version O.

ACTION NARRATIVE

TAPE 01-30, SIDE A
Number 0001

CHAIR VIC KOHRING called the House Transportation Standing Committee meeting to order at 1:18 p.m. Members present at the call to order were Representatives Kohring, Scalzi, Kapsner, and Kookesh. Representative Masek joined the meeting as it was in progress.

HB 244-RIGHT-OF-WAY TO DENALI BOR. FOR RR/UTIL.

CHAIR KOHRING announced that the first order of business would be HOUSE BILL NO. 244, "An Act relating to a grant of state land to the Denali Borough for a railroad and utility corridor and a railroad development project; repealing provisions relating to a grant of a right-of-way of land for a railroad and utility corridor to the Alaska Industrial Development and Export Authority; and providing for an effective date."

Number 0086

REPRESENTATIVE JEANNETTE JAMES, Alaska State Legislature, came forth as sponsor of HB 244. [She referred to a question-and-answer handout provided in the committee packets, addressing questions asked at the previous hearing.] She stated that one of the questions was about the 40,000-acre parcel through the middle [of the area]. She explained the reason for that:

It is necessary to select the larger area in order to ensure the best possible right-of-ways surveyed. There needs to be a wide swath to select from, so that all the varied interests and concerns - from being a good neighbor to avoiding wildlife, habitat, or wetlands - can be addressed. In addition, it's ideal to have a larger parcel to select a smaller one from so it can meet specific needs for rail such as curves and grades.

REPRESENTATIVE JAMES noted that the next question was whether there needs to be a "drop-dead" date. She referred to past history on this project and said there is opposition from those who don't want anything to happen there at all. Her assessment is that there is a growing problem in that area because the road itself is not sufficient at this time. She said her biggest fear is that other people will demand a road. However, she is opposed to a road and thinks the railroad is more environmentally friendly. As for the drop-dead date, she said she couldn't figure out what it should be. If one were set, it would help those people who don't want it to happen, by confusing the issue and causing delays; therefore, she wasn't willing to put in a drop-dead date.

REPRESENTATIVE JAMES remarked that there was also a concern that this Kantishna Holdings project is a full-force contract; she said it isn't. The state is not saying, "Who wants to come and put a railroad in here?" The state government, Denali Borough, and Alaska Railroad [Corporation] will always retain all the ownership of the land. Another question, she said, was whether this right-of-way should be part of the borough's land selection. In response, she said:

I talked to the borough to see what was the status of their land selection as it is, because this says ... the maximum that they can get is 3,500 acres. More than likely, it will be about 1,400 acres, but we put the 3,500 acres in there because we didn't know what

the largest amount should be. They were entitled to 49,000 acres.

Currently, they have gotten 20,000 acres of their selection; the other 29,000 is still out there for selection. ... They went through a two-year process to figure out what lands to select by going to all the various communities in the Denali Borough and [asked] them which particular parcels they'd like to select so that they could have something in their community. And so that's how they designed and found this 49,000 acres of selection to be made.

Now, it turns out they weren't able to really walk all over every square foot of those parcels. And some of those parcels that they've already gotten in the 20,000 ... are just not going to be utilized at all, because there are wetlands and other things [that] they can't do anything with. ... They did not know that when they selected them. And in talking to DNR [Department of Natural Resources], DNR said they could give them back, but they can't get any replacements.

... I'm not willing to put it in the bill to say that it is part of their entitlement. However, if it turns out to be part of their entitlement when it goes through the other committees and gets to the end and people would demand that, then I would just wait and see if that's what people think.

Number 0578

REPRESENTATIVE JAMES stated that some people asked whether the "Stampede Trail" would be best because this goes through the middle of that area. In response to that, she said it is not a railroad route. In fact, it was built by Yutan Construction with an old D3 Caterpillar tractor, and would not even be considered a road if it were built today. She noted that no part of the proposed route crosses any designated wilderness areas.

REPRESENTATIVE JAMES, in response to the question of why a second access should be constructed just a few miles north of the existing park roads, said it is true this proposed right-of-way is just 17 miles north of the park entrance, but the two access routes are separated by a massive mountain range. Eventually, park visitors could complete a loop using the

existing roads for inbound or outbound portions while enjoying a unique viewing experience throughout the entire route. She added that it is not part of this plan, but it could happen. She noted that there is another \$1.32 million that has been appropriated for the construction of this access, and she thinks the Senator from that district has \$330,000 of matching funds.

CHAIR KOHRING surmised that there would be no committee substitute or modifications.

REPRESENTATIVE JAMES replied that she has no plans to make any amendments or provide a committee substitute.

Number 0767

REPRESENTATIVE KOOKESH remarked that most of the questions [Representative James addressed] were his; he was completely satisfied and had no objection to moving the bill out.

CHAIR KOHRING asked whether there has been any examination of the feasibility of running a rail line down [the existing road through the park].

REPRESENTATIVE JAMES responded that that has been discussed, but even though the road itself is not part of the park, there's an awful lot of past history about that road that still hasn't been determined in court. She remarked that it would be possible to put another rail line down through the park, perhaps south of the [existing road]. She added that she is a big supporter of accessing the parks by rail, as opposed to car. She noted that there are some really dangerous parts in that area; for example, the Polychrome Pass has a single-lane road with no guardrail.

CHAIR KOHRING commended Representative James for taking the lead on this issue. He said he thinks it is a very environmentally sound way of getting a large number of people in [the park] with minimal damage to the environment. He added that the economic development aspect helps to enhance tourism in the area by opening up this alternative access.

Number 0986

REPRESENTATIVE MASEK asked whether Kantishna Holdings, Inc., has been around for a while.

REPRESENTATIVE JAMES responded that she thinks it has been in existence for 10 or 12 years, having been formed for this specific project.

REPRESENTATIVE SCALZI moved to report HB 244 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 244 was reported from the House Transportation Standing Committee.

SB 88-METROPOLITAN PLANNING ORGANIZATIONS

CHAIR KOHRING announced that the next order of business would be SENATE BILL NO. 88, "An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

JANET OATES, Staff to Senator Randy Phillips, Alaska State Legislature, came forth on behalf of Senator Phillips, sponsor of SB 88. She stated:

Basically, the purpose of this bill is to assist in the Anchorage Metropolitan Area Transportation Study [AMATS], which does the planning for the Anchorage area road system. Senator Phillips and other legislators have been approached by many of our constituents who are frustrated with the process now, finding that many times priorities that community councils and community groups have established somehow are lost along the way when it comes to the actual carrying out of the priorities for the communities. And so Senator Phillips has introduced this bill that would put two legislators on the [AMATS Policy Committee].

Number 1286

REPRESENTATIVE MASEK indicated legislators already have connections with [DOT&PF] (Department of Transportation & Public Facilities) [because of the budget]. She mentioned the regional director of [DOT&PF], the commissioner of DEC (Department of Environmental Conservation), the mayor of Anchorage, and two municipal assembly members. She said she thinks the idea was that the Senate President and the Speaker of the House would designate a representative from each to be on the board. She added that it doesn't seem to fit in properly.

MS. OATES responded that she believes the feeling is that because state dollars are involved, there should be a tie-in with members of the legislature.

REPRESENTATIVE KOOKESH noted that the Municipality of Anchorage, by resolution, voted not to support this legislation. Second, one question from testifiers at the previous meeting was that if two legislators were put on the panel, how would they get away to go to the monthly meetings in Anchorage? Third, no matter how this is done, if legislators picked by the Senate or the House leadership are on the panel, there is going to be a bias.

REPRESENTATIVE KOOKESH noted that finally, there was a lot of discussion about the State of Hawaii allowing legislators to sit on its same board, and there is a constitutional question that still has to be answered. He said he doesn't think the legislature wants to get into a position [of having to] defend a constitutionally flawed position.

Number 1549

REPRESENTATIVE SCALZI remarked that he likes the concept of this, and thinks getting a couple of legislators on the board may be helpful. For example, he said the legislator that represented his district before had some frustrations as to why projects weren't being completed on time. On the other hand, he said, he knows there are two things that get in the way of this.

REPRESENTATIVE SCALZI stated that he doesn't think the constitutionality of providing the dual office on one board is such a big hurdle, but the way the board mandates the appointments is a problem for him. He said it is his understanding that the proper procedure is to be voted onto the board; the latitude for this group to do that now is available. He asked whether the Senator or other [legislators] interested in being on that board have submitted a proposal or a request that they be appointed.

MS. OATES responded that she would have to check with Senator Phillips.

REPRESENTATIVE KAPSNER stated that during the previous meeting there was reference to the possibility of disbanding AMATS if the legislature wasn't accommodated. She said it is her understanding that Anchorage wouldn't receive that federal funding anymore if there wasn't a municipal organization to deal with.

Number 1702

DAVID MILLER, Division Administrator, Federal Highway Administration (FHWA), came forth and stated that his program provides the vast majority of highway funding in the state.

REPRESENTATIVE KAPSNER asked, if there wasn't a municipal planning organization, what that would do to the transportation needs in Anchorage.

MR. MILLER responded that Title 23 requires that there be a metropolitan planning organization (MPO) for all areas over 50,000 in population. Without an MPO in place and without funding to it, there could be no federal highway funds going into Anchorage or the Matanuska-Susitna area.

REPRESENTATIVE KAPSNER asked what the dollar figure is on that.

MR. MILLER answered that he couldn't say off hand.

REPRESENTATIVE KOOKESH asked whether the federal statute also explains how people get put on the board.

MR. MILLER responded that it does. He said it is very specific. He stated:

A metropolitan planning organization may be redesignated by agreement between the governor and units of general-purpose local government that together represent at least 75 percent of the effective population, including the central city or cities as defined by the bureau of census as appropriate to carry out this section.

MR. MILLER stated that there was an original designation at some point in the past, and there are bylaws in place as to how new membership is added. In general, when the local affected officials, the AMATS board, and the local government change membership in accordance with their bylaws, that really doesn't constitute a designation that has happened in the past. An instance such as this, when the state legislature interjects itself into the existing process, would be considered a redesignation and would require undergoing that process.

Number 1882

REPRESENTATIVE KOOKESH asked whether that process requires input and involvement of the governor.

MR. MILLER responded that it does. If this legislation passes and the governor vetoes it or approves it, there would be implications down the road.

REPRESENTATIVE KOOKESH remarked that if there was a redesignation, it wouldn't guarantee that two legislators would be put on it, because a redesignation could mean just including two more members from the public.

MR. MILLER replied that that could very well be. He added that FHWA would like to see those decisions made at the local level under existing procedures and policies.

REPRESENTATIVE KAPSNER asked Mr. Miller whether he was opposed to this legislation.

MR. MILLER responded that he doesn't believe it is consistent with "134" in the intent of the federal legislation.

Number 1983

DOUGLAS GARDNER, Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law, came forth and stated that it is [the department's] position that the bill is unconstitutional as it's drafted. Having legislators place themselves upon a board that exercises executive powers - such as when a project will be built, which project will be built, how it will be funded, and where it will be placed on the priority list - is the type of activity that Article II, Section 2, of the Alaska constitution addresses with respect to "dual office" holding.

MR. GARDNER stated that he thinks it was Representative Masek who said the legislators have a key role in funding [DOT&PF] budgets and projects, but the implementation of those projects is an executive type of function. From the legal standpoint, he said, the department feels that this bill falls more into the category of the exercise of some of those executive powers.

REPRESENTATIVE KAPSNER noted that the Legislative Affairs Agency had supplied the committee with a legal opinion that says Hawaii has the same kind of prohibitions on dual office holdings. She asked Mr. Gardner whether there had been court contests.

MR. GARDNER responded that he has recently seen a memo [from legislative legal counsel] that identifies the fact that there is this similar constitutional provision on dual office holding in Hawaii, but he didn't see any case citations in the memo. He added that he can't say what the law is in Hawaii; however, he thinks he can say with confidence that [the department's] position is based on what it has been for the last 30 years.

Number 2205

REPRESENTATIVE KAPSNER disagreed with the premise that because Hawaii does this, even though it has the same prohibition against dual office holding in its constitution, it's something [Alaska] should do. She remarked that Hawaii does a lot of things that Alaska's not willing to do, such as allowing for aboriginal hunting rights, having two official state languages, having all streets named in the official language, and having "immersion" schools. Representative Kapsner said she doesn't think Alaska has taken the pattern of emulating Hawaii, and doesn't think [Alaska] should start now with AMATS. She added that she doesn't think it has been contested in Hawaii that the list changes with every different office holder.

REPRESENTATIVE SCALZI asked whether any part of the bill specifically speaks through the constitution about the dual office holding. He referred to a letter [dated March 14] from the Office of the Attorney General that states that the disqualifications speak to holding an office for pay. He asked whether the position on the board is a paid position.

MR. GARDNER answered that he does not know the parameters of the positions on AMATS in terms of payment.

REPRESENTATIVE SCALZI said that's the only thing in Section 5 on disqualifications that would preclude someone from having the inability to serve in two positions, unless they were both paid [positions]. Referring to wording on the second page [of the letter], he said it is an interpretation; if the interpretation is just from the statutory language, he thinks it's inadequate.

MR. GARDNER responded that the interpretation that was given of SB 88 in that letter was based on a number of prior attorney general opinions in Alaskan cases that were attached to [the letter]; unfortunately, he said, Representative Scalzi may not have had those attachments. With respect to payment, he said he doesn't think that whether the position is paid or unpaid changes the analysis. In an attorney general opinion from

December 27, 1996, it quotes language from an Alaskan case that may address Representative Scalzi's opinion. Mr. Gardner read to the committee:

The purpose of the prohibition is to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise of the executive, judicial, and legislative functions of our government.

MR. GARDNER added that he hadn't considered payment prior to this testimony, but can reconsider it if the committee would like. However, he thinks that was a strong statement by the Alaska Supreme Court. Mr. Gardner said he thinks the best answer is that separation of powers is designed to prevent the concentration of power in that AMATS board, which is really what the legislature would be doing if it placed two members on that board.

Number 2424

REPRESENTATIVE SCALZI commented that if that's the only language that case law was derived from, it seems inadequate; he thinks the argument expanded from this simple interpretation of having a dual office that pays is this: [a legislator] may not hold another office position for profit.

MR. GARDNER replied that the constitution is a document that ultimately is the Alaska Supreme Court's job to interpret. He said he just tried to convey to the committee the interpretation that his office has given, as part of its function in the constitutional system.

CHAIR KOHRING shared that he likes the concept of the legislation; however, he doesn't think there are the votes to move it out of the committee. Therefore, [the committee] will hold the bill over indefinitely.

[SB 88 was held over.]

HB 235- DOT&PF-RELATED CONTRACT CLAIMS

CHAIR KOHRING announced that the next order of business would be HOUSE BILL NO. 235, "An Act relating to the handling of and interest on contract controversies involving the Department of Transportation and Public Facilities or state agencies to whom

the Department of Transportation and Public Facilities delegates the responsibility for handling the controversies."

Number 2603

HEATHER MARTEL NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, came forth on behalf of the House Judiciary Standing Committee, sponsor of HB 235. She stated:

We have introduced this bill at the request of the Associated General Contractors [AGC] of Alaska. ... On public works projects in the state of Alaska, a contractor encountering a condition that requires a change in the contract is required to perform the work even if there is a dispute as [to] the appropriate adjustment.

Resolution of such a claim frequently takes a long time, as much as four yeas, and the state currently disallows interest on the amount of the ultimate settlement. This bill ... will require the interest to be given at the end of the adjudication of the matter, and when there's a settlement amount given ... prejudgment interest will be given.

CHAIR KOHRING asked Ms. Nobrega to explain what prejudgment interest means.

MS. NOBREGA explained that interest would start running from the day of the dispute until the matter is settled. She stated that there are a couple of different ways it could be settled.

CHAIR KOHRING asked who makes the settlement.

MS. NOBREGA responded that she believes a procurement officer can make a decision. She noted that the person could appeal at each level: a commissioner's [decision], a Department of Transportation and Public Facilities (DOT&PF) [decision], all the way up to a judicial decision. In response to a question by Chair Kohring, she said this applies universally, to all parties. It says the interest should be given to the contractor, the department, or a contracting agency.

CHAIR KOHRING asked Ms. Nobrega whether she could cite some examples that have occurred.

MS. NOBREGA responded that AGC would have the best examples. However, the Department of Law's opposition paper cites quite a bit of money it would have to give in prejudgment interest if required to do so. It indicates to her that this is a problem: these contractors aren't getting interest on their money.

Number 2780

DICK CATTANACH, Associated General Contractors (AGC) of Alaska, testified via teleconference, saying [AGC] understands the position of the Department of Law - it likes the idea of not having to pay interest. However, a contractor has to pay all his/her bills on time, out-of-pocket; frequently [the contractor] has to borrow money just to pay those bills. Controversies come up, which is why there is a claims process; it is resolved in terms of who is at fault and who has to pay.

MR. CATTANACH stated that [AGC] thinks interest on that money ought to be part of the costs of that claim, and the state ought to be responsible for its fair share if the claim goes in favor of the contractor. One thing [AGC] is concerned about is the sheer size of the state [government] and its ability to postpone claims. It places small contractors at a significant disadvantage when they are forced at times to settle claims at less than their realistic values; sometimes they go out of business because they can't afford to take on the state. He added that [AGC] doesn't think this type of interaction between the state and the contractor is just; it is bad public policy.

CHAIR KOHRING asked Mr. Cattanach whether he could justify this legislation as far as how many people have actually been impacted by this.

MR. CATTANACH responded that this impacts a good number of people each year. For example, a contractor right now who is working on a project on the Kenai Peninsula is basically out of business because of having to use the cost of the entire claim just to continue. In some cases, arbitrators award upwards of half a million dollars as prejudgment interest, only to have the Department of Law contest it, take it to court, and end up settling the claim for "pennies on the dollar."

Number 2928

CHAIR KOHRING asked whether the court process has worked for AGC.

MR. CATTANACH answered that it is a very expensive process. One thing [AGC] is working on with [DOT&PF] is a review of the entire claims process. His members say if their claim is less than \$150,000, it is not economical to pursue it because of the time involved and attorney fees.

Number 2975

JOHN WHEATLEY, Senior Vice President, Associated General Contractors of Alaska, testified via teleconference.

TAPE 01-30, SIDE B

MR. WHEATLEY stated:

Contractors are required to perform the work even if there is a dispute between the parties regarding adequate and appropriate compensation. Also, construction claims frequently represent differing of opinions between the owner and the contractor regarding whether or not particular work was included in the documents at the time of bid. Resolution of these differences takes time, and the state currently disallows any interest on the amounts of ultimate settlement.

A contractor incurs costs to complete the work. These costs, if recovered in a timely fashion, could be used to finance additional work and to support additional security bond credit. The inability to use these funds in their business could result in tremendous costs to the contractor in terms of lost projects, credit, and wages, [and] as we've heard in previous testimony, even their very existence.

Alaska courts generally recognize awarding prejudgment interest is necessary to make a plaintiff [whole] by compensating him for the use of money The State of Alaska should recognize the same principle in its claim-resolution process by paying interest on contract controversy. I urge you to support House Bill 235, allowing contract claims to be [calculated] the same as all other claims in the state of Alaska.

Number 2909

MIKE MILLER, MB Contracting Company, testified via teleconference. He stated that he has worked in the construction industry for 28 years in Alaska, and for 17 years for MB Contracting Company. He views this legislation as correcting an oversight in the [Alaska] Procurement Code. Prior to the procurement code, in the mid-to-late '80s, the state paid prejudgment interest. [The construction industry] is asking to be treated fairly.

CHAIR KOHRING asked Mr. Miller whether there is a system like this set up at the municipal level in Anchorage or Fairbanks.

MR. MILLER responded that he knows that they pay [prejudgment interest], but does not know how it is set up. When he took Legal Aspects of Engineering and Architecture at the University of Alaska Fairbanks in the late '70s, a footnote in his textbook mentioned that prejudgment interest was paid in Alaska as a matter of course. He suggested this seems to be oversight from when the model procurement code went to the procurement [code].

CHAIR KOHRING remarked that he asked the question to see if there is any system in place, either municipally or perhaps in other states, to use as an example of how it works elsewhere.

MR. MILLER said he is sure the federal C.F.R. (Code of Federal Regulations) covers it.

Number 2778

KEVIN BRADY, Attorney, Oles Morrison Rinker & Baker, testified via teleconference. He stated:

I have been involved with approximately four of these cases that have gone through the administrative claims process. ... I should point out that there are multiple layers of review: the beginning in the field, going up through the project management, going up through the ... appropriate [DOT&PF] division, going up through the commissioner, going through the hearing officer, and going through the judicial appeals. The fastest I've ever seen one of these actually go through the process is 24 months - 24 months on a \$750,000 award, which resulted in approximately \$90,000 in prejudgment interest, which the contractor never received.

From a legal standpoint, up through July of 1998, the commissioner's office routinely paid prejudgment interest for contractor claims. Some time after that, they arbitrarily decided that they no longer had to do it.

Suffice it to say that we view that as being wrong, and our efforts are to codify the preexisting requirement that they must in fact pay prejudgment interest. There [are] a number of reasons for doing [this], not the least of which is every city, every municipality, every federal agency [is] all required to pay prejudgment interest for contractor claims. For that matter, every state agency in the State of Alaska is required to pay prejudgment interest on other contract and court [claims]. There's simply no basis for [DOT&PF] not to pay general contractors prejudgment interest; it's fundamentally unfair and it's unfriendly to business.

... The last thing I'd like to mention is there's approximately a three-year period during which the department has declined to pay prejudgment interest. ... I know of four or five contractors who have filed claims and certified their claims within this three-year period, and their interest is basically hanging out there and accruing. I would like to encourage this committee, if it sees fit to pass this bill out, to make it retroactive to cover every contractor who has a pending claim as of the effective date of the legislation.

CHAIR KOHRING asked Mr. Brady when the [prejudgment] interest on claims failed to continue.

Number 2616

MR. BRADY responded that he is aware of one case. The last piece of correspondence he saw was signed by Commissioner Perkins, indicating he had approved the hearing officer's recommended decision in a case known as Quality Asphalt Paving, which included a component of interest at 10.5 percent from the date the claim was initially filed. Quality Asphalt Paving subsequently believed its award was too little and appealed it. In response to that, the Department of Law appealed the prejudgment interest issue; that has been the subject of a lot of pleadings and is currently en route to the supreme court.

BILL RENNO, Attorney, Oles Morrison Rinker & Baker, testified via teleconference. He stated that over the past few years [his firm] has had the opportunity to represent a number of contractors in claims against DOT&PF. He emphasized how long it takes a contractor to get through this process. He stated:

Right now in our office alone - and we're not the only law firm by any means that represents the contractor - ... we are involved in at least five or six cases that are in stages of the resolution process with [DOT&PF]. And as close as we are to a decision on this interest, ... my best guess is a year and a half to two years. The next step is to go from superior court to the supreme court. One of our clients has to file a notice of appeal by tomorrow. ... That decision in the supreme court - and that happens to be on Quality Asphalt - will affect all other pending claims. ...

We would strongly recommend that the effective date, if you choose to pass this bill, would be effective to ending claim. That's the only way ... the legislature can put an end to this long, arduous, costly process that a number of contractors have found themselves wrapped up in at this time.

Number 2519

MR. RENNO continued:

I guess the other point is, again, to go back and make sure that the committee members understand that [DOT&PF] essentially changed positions Everybody else pays interest. ... The reason you're not going to see other regimes is because, as a matter of course, this is paid.

What happened that derailed the process at [DOT&PF] is that the supreme court issued a decision called Danco [Danco Exploration v. DNR]. That decision actually involved a deposit on an oil lease with DNR [Department of Natural Resources]. The supreme court in that case said that the person who put down the deposit was not entitled to interest on his deposit. There's been reams of briefing on that case; I'm not going to get into it in detail. Just let me simplify it and say that case does not apply to this situation.

It was not a contractor court case; it was a lease deposit, and ... the Department of Law has latched on to that case and used that as an excuse to direct [DOT&PF] not to pay interest to contractors.

And to run that point home, I would like to quote from a letter that Mr. Cattnach received from Commissioner Perkins on March 17, 2000. At that time, Commissioner Perkins told Mr. Cattnach, "On the issue of paying prejudgment interest on a claim appeal, we are not avoiding making such payment by choice. Rather, we are following the advice of the attorney general's office that such payments are contrary to law."

So what has happened since [DOT&PF] has been instructed by the Department of Law that they don't have to pay interest [has] actually been ... a club against contractors. And let me give you [an] example of how that club has been used. ... After the hearing officer's decision, Quality thought they were entitled to more on the principal of their claim.

They appealed that to superior court. [DOT&PF] turned around after ... the commissioner had recognized that Quality was entitled to interest by adopting the hearing officer's decision. After that, [DOT&PF] reversed fields in response to Quality's appeal and cross-appealed and said, "We changed ... our minds: you are not entitled to interest." That is the case that's been tied up in superior court ... and is now heading toward the supreme court.

Well, let me take this one step further. Now it's going to the supreme court, and Quality's attorneys called the AGs [attorney generals] in Fairbanks handling this case and asked those AGs, "Would you agree to allow this to go to the supreme court on the interest issue only, and agree to pay us the principal amount of our claim that has been affirmed at the hearing officer level [and] that has been affirmed at the supreme court level?" The response from the AGs [was], "No, if you dare to appeal this interest issue, we are going to appeal all other issues in the case and you're not going to see a dime."

So that's the kind of abuse that has been going on from [DOT&PF] with regard to this interest issue.

Interest is needed in order to give these people an incentive to sit down with the contractors, early on in the process, and resolve these disputes, or otherwise pay the penalty of having to pay the contractor at the end of the day for two, three, four years of interest.

CHAIR KOHRING remarked that he was amenable to moving the bill if it was the will of the committee.

Number 2228

DOUG GARDNER, Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law, came forth and stated:

I guess I'd like to tell some of the things that Oles Morrison Rinker, the law firm that is here to further their clients' business interests, hasn't told you about this particular bill. First of all, we have heard the comments that [DOT&PF], in the past, has paid this interest, and we have queried a senior [DOT&PF] staff and asked them for situations where they have paid interest. They have been unable to provide us with any of those instances. I wouldn't be surprised if at some point [DOT&PF] may have -- and our clients often make mistakes. ... It may be that somehow or another, somewhere along the way, some interest was paid. ...

As Mr. Renno and Mr. Brady have indicated to you, ... we have been in litigation with their law firm for many years over contract claims and for ... quite a few months now on this issue. The Alaska Superior Court has twice ruled in the Quality Asphalt case ... that we have correctly interpreted Alaska law and that prejudgment interest is not paid on these claims.

The reason that prejudgment interest is not paid on administrative claims is because under Alaska law ... the state has sovereign immunity; it agrees to be sued for the things it agrees to be sued for. In AS 09.52.50 the state has specifically not agreed to be sued directly in superior court on administrative claims. There's a process that has been put together, which could be described as an alternate dispute resolution process where the contractor and the

[DOT&PF] represented by our office try and litigate these issues. But for claims like that, where there is no direct route into court, the payment of prejudgment interest just doesn't happen; it's not something that the state has waived its sovereign immunity to allow to have happen. ... A very closely analogous situation was raised in the Danco case.

Number 2078

MR. GARDNER continued:

... The other thing that I don't think was clear from any of the testimony so far is that the concept that's being advanced here is a concept, from what we've been able to determine, [that] is not a majority position in the country. The Associated General Contractors and Oles Morrison are representing to you that this is a great idea and a good thing to do. ... Other states have decided that they will pay liquidated claims, but they will not pay interest on unliquidated claims. And it gets a little complicated, but the bottom line is, the State of Alaska pays interest on a claim that's not disputed. If you've done work for us, and you're just owed the money and there's no dispute, we pay interest. If there is a disputed amount, then we don't pay interest on those types of claims for the reasons that I have just said.

Something that the legislators need to consider really carefully is, ... as a consequence, this bill affects all of the agencies and would make the cost of those projects, to the extent that any interest is owed on a claim, rise.

That brings the second issue up, which is how does the state pay for that kind of interest, if in fact it is owed? [DOT&PF] gets most of its funding through the Federal Highway Administration, ... gets some from FAA [Federal Aviation Administration] and some from Federal Transit Authority. But other agencies may get their funding through other federal agencies that don't participate in the payment of interest. ... The state will ultimately have to pay that interest one way or the other, whether the federal government participates or whether the state has to reach into general funds to pay those kinds of interest payments.

That's certainly a consequence that this committee should seriously consider. The other consequences in this legislation are some equal protection issues.

Number 1901

REPRESENTATIVE KOOKESH asked Mr. Gardner to describe what prejudgment interest is. He pointed out that in the sponsor statement it says, "This legislation would simply require that when a contract settlement with [DOT&PF] is in dispute and settled in favor of the contractor, interest must be paid to the contractor on the settlement amount from the date of the claim to the date of the decision." He said that doesn't sound like prejudgment to him.

MR. GARDNER responded that he thinks a lot of terms have been used to describe this. He said it could most accurately be described as interest on administrative claims.

REPRESENTATIVE KOOKESH asked when it is paid and whether it is paid prior to a settlement.

MR. GARDNER answered that it probably is not a good term to use in this situation.

CHAIR KOHRING asked Ms. Nobrega whether the legislation is retroactive.

Number 1746

MS. NOBREGA responded that it is her understanding that it would not be retroactive unless it was specifically stated as such.

CHAIR KOHRING commented that if it wasn't retroactive, other current claims might come to the forefront after the effective date of the legislation.

MS. NOBREGA said she is not sure.

CHAIR KOHRING remarked that assuming that were the case, he is curious as to how much money [DOT&PF] would potentially be liable to pay out in claims.

Number 1709

DENNIS POSHARD, Legislative Liaison/Special Assistant, Office of the Commissioner, Department of Transportation & Public

Facilities, came forth and stated his understanding that this bill would not affect claims retroactively.

MR. GARDNER said a bill is not retroactive unless it's specifically made retroactive. He believes there would be serious issues with respect to federal participation in a retroactive payment; he isn't sure FHWA would participate in that kind of payment, but the sense is that it probably would not, in which case the bill would have a seven-figure fiscal note. He added that to do something retroactively, under [Alaska's] constitution, similarly situated people must be treated similarly. A retroactive provision in this bill could really just be addressing the tip of the iceberg; there may be a massive amount of people who could be entitled to raise this issue.

REPRESENTATIVE KOOKESH referred to AS 09.52.50 and indicated the desire to have a legal opinion regarding sovereign immunity, as well as the state's ability to be sued, and to have to pay interest. He noted that people who testified described the prejudgment interest, but that it is not particularly mentioned in the bill. He suggested perhaps someone from AGC or Ms. Nobrega could answer that later.

Number 1492

REPRESENTATIVE SCALZI said he would like to move the bill out of committee; the remarks that the state would have to pay don't bother him, because he thinks it would bring the state into compliance with the private sector and push the DOT&PF to operate more efficiently. He remarked that he thinks when a contractor goes through different change orders on a good-faith basis and then all of a sudden is faced with having to appeal his or her case, the interest accrued is a big factor in the judgment and whether or not the contractor may remain solvent.

REPRESENTATIVE SCALZI moved to report HB 235 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KOOKESH objected. He stated:

I know that there's no retroactive clause in the bill, and even if there was, I know that we would have to think twice about supporting something like this because of the fiscal note it would generate. And if

people continue to want to have a retroactive clause, then we have a big problem.

... I have no problem with the sponsor statement saying that, if there's a problem and they go to a decision and there's interest owed somebody, after the decision is made, ... because I think that's fair. But at the same time, we need to know how much money that is ... because I think the state itself would have to come up with that money to pay that interest payment. ... The way I interpret prejudgment interest is that you pay it upfront. ...

And I really believe that if the state is relying on certain statutes that say we can only be sued by people who waive sovereign immunity, ... there's many people, ... especially in this legislature, who have stood up and said the state is a sovereign entity. And when you give away that sovereign entity to a contract or through a bill like this, then we have a problem.

Number 1270

REPRESENTATIVE MASEK said it seems many issues brought up deal with the financial portion, which the House Finance Standing Committee can deal with. Therefore, she will support moving the bill.

CHAIR KOHRING addressed Representative Kookesh and offered to put together a letter voicing any additional concerns.

REPRESENTATIVE KOOKESH said he didn't have any more problems with moving the bill out, and would work with [Michael Krieber, committee aide for the House Transportation Standing Committee] to put together a letter for the House Finance Standing Committee. He noted that he would still have the option of voting "no" on the floor. He said he wanted to be supportive, but wanted to state his objections and the reasons.

CHAIR KOHRING told Mr. Gardner he would look forward to the legal opinion as far as the sovereign immunity issue. He asked that copies be provided to himself, for circulation to committee members. He asked whether there was any further objection to the motion.

REPRESENTATIVE KOOKESH said he would object "just so I could vote no."

Number 1220

A roll call vote was taken. Representatives Masek, Scalzi, and Kohring voted in favor of moving the bill. Representative Kookesh voted against it. [Representatives Ogan, Wilson, and Kapsner were absent.]

CHAIR KOHRING announced that HB 235 was moved from the House Transportation Standing Committee by a vote of 3-1. He assured Representative Kookesh that his concerns would be forwarded to the House Finance Standing Committee. [Representative Kookesh was one of four signers of the bill report and thus HB 235 was forwarded to the Chief Clerk.]

REPRESENTATIVE KOHRING called for an at-ease at 2:40 p.m. The meeting was called back to order at 2:48 p.m.

HB 22-MARINE PASSENGER VESSELS

[Contains discussion of HB 183 and SB 134, the governor's proposed legislation on the same topic]

Number 1055

CHAIR KOHRING announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 22, "An Act relating to certain passenger vessels operating in the marine waters of the state; and providing for an effective date."

CHAIR KOHRING noted that there was a proposed committee substitute (CS) [Version 0] that was worked on with the cruise ship industry and Representative Kerttula.

REPRESENTATIVE KOOKESH expressed his desire to pass the proposed CS out that day. He noted that he had worked hard with the committee staff to get Version 0 before the committee.

CHAIR KOHRING reported that [Version 0] was acceptable to all parties involved.

Number 0892

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, testifying as the sponsor of SSHB 22, related her belief that

this is the vehicle to move forward. The fundamentals behind the bill and the proposed CS are to protect the state's right to know what is being emitted in the state's waters, in order that reasonable action with the industry to step forward can occur. At the House Transportation Standing Committee's April 12, 2001, work session, the committee had heard a presentation that identified the problems with cruise ship discharges based on last summer's sampling. For those living in downtown Juneau, the past summer was surprising due to the identification of high discharges of fecal coliform bacteria in graywater. She pointed out that the committee as well as the public have heard this information; thus the public expects the legislature to do something about this.

Number 0741

REPRESENTATIVE KERTTULA reiterated that SSHB 22 is a vehicle for addressing the cruise ship issues. Furthermore, this legislation complements U.S. Senator Murkowski's legislation, which took a great step forward in dealing with some of these problems. She said U.S. Senator Murkowski didn't preempt the state [with his federal legislation], but specifically allowed the state to work with the federal government in order to accomplish good changes for Alaska.

REPRESENTATIVE KERTTULA noted that [Version 0] places modest state requirements on the cruise ship industry. For example, cruise ships would have to register with the state, not only allowing a better relationship between the state and the industry, but also providing the state with the ability to get service [of process] on the industry, should the need arise.

REPRESENTATIVE KERTTULA explained that cruise ships would conduct sampling and testing, which would go directly to the state. She said this is somewhat of a state's rights issue in that the state can receive this information directly. There would also be a requirement for the industry to collect graywater samples and conduct routine tests for fecal coliform bacteria and other conventional pollutants at least twice during the cruise season.

REPRESENTATIVE KERTTULA explained that if a cruise ship doesn't discharge wastewater while in state waters, the ship doesn't have to report to the state. However, those that do discharge wastewater must report what, when, where, and how much they discharge; this information will be used to make decisions.

REPRESENTATIVE KERTTULA related her belief that the industry has made great steps forward to try to control this itself. Without a comprehensive picture, however, the appropriate path is not clear. She believes SSHB 22 moves the state where it needs to be, and that the proposed CS accomplishes what should happen in most of the important areas. Therefore, she encouraged Chair Kohring to move SSHB 22 forward today.

Number 0579

REPRESENTATIVE SCALZI moved to adopt the proposed CS, version 22-LS0238\0, Lauterbach, 4/19/01, as the working document. There being no objection, Version 0 was before the committee.

REPRESENTATIVE SCALZI offered as an amendment to page 3, lines 7 and 15, that "20" be replaced with "200 parts per [100 milliliters]".

Number 0460

SPENCER WOOD, Lieutenant Commander, Seventeenth District Coast Guard Office - Juneau, U.S. Coast Guard, clarified that it wouldn't be "parts per milliliters"; rather, it would be "200 colonies [of] fecal coliform per 100 milliliters," which is the current federal standard for marine sanitation devices.

Number 0387

REPRESENTATIVE SCALZI moved that the committee adopt the following amendment:

Page 3, lines 7 and 15:
Delete "20"
Insert "200 colonies"

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE KERTTULA thanked Representative Kohring and his staff, the House Transportation Standing Committee members, as well as the cruise ship industry. She also thanked those on teleconference.

Number 0304

RANDY RAY, U.S. Cruise Ship Association, testified via teleconference. He noted that he and the association's lobbyist, Ray Gillespie, have been working on this issue for two

years. He expressed interest in seeing this bill move forward. Not having the proposed CS in front of him, he said he would not comment. However, he looked forward to working with everyone on this legislation as it moved forward.

Number 0134

PAULA TERREL, Southeast Program Director, Alaska Marine Conservation Council (AMCC), testified via teleconference in support of SSHB 22 and requested that the committee forward this bill from committee. She informed the committee that AMCC is a statewide, community-based organization with a diverse membership. The AMCC considers SSHB 22 to be a right-to-know piece of legislation, which it strongly supports. One of AMCC's guiding principles is the promotion of sustainable and healthy fisheries, which is part of having sustainable communities [with healthy economies].

TAPE 01-31, SIDE A

MS. TERREL mentioned the [AMCC principles] of sound science, local and community input, and traditional knowledge. Such principles depend on the continued health of Alaska's marine waters. This legislation would ensure that the public has the information as well as the state.

Number 0155

JOHN HANSEN, President, North West CruiseShip Association, explained that the North West CruiseShip Association is an association of the nine cruise lines that operate in the Pacific Northwest. This year the association has 22 ships operating in the region. Since the committee has already heard much of the background, he said he would skip that portion of his testimony. Furthermore, the proposed CS changes some of the association's response to some things.

MR. HANSEN reported that the association recommends the following. First, the [legislation] should be carefully crafted in order to avoid ambiguity and overlapping with federal legislation or existing state law. Second, the standards expected of the industry should be clearly established. Third, there should be clear penalties for breach. Fourth, [the legislation] should contain provisions for state record keeping of ship discharges, and the records should be available. Fifth, there should be a program of monitoring and testing. Sixth, the industry should pay for reasonable monitoring, testing, and

research, which is consistent with industry practice. The association believes the proposed CS incorporates the aforementioned six principles, he said, and thus supports it.

Number 0461

JOLENE RIELLY, National Ocean and Sciences Bowl, Juneau-Douglas High School, came forth and informed the committee that the group has been researching the cruise ship waste, its history, and how it ties in with Alaska and the cruise ship industry. Ms. Rielly spoke in favor of SSHB 22 because she feels that it covers many of the areas in which cruise ships should comply.

Number 0560

ADRIANA RODRIGUEZ, National Ocean and Sciences Bowl, Juneau-Douglas High School, came forth and informed the committee that the group consisted of a team of four people who researched the topics included in SSHB 22. This bill is a major step forward in propelling the cruise industry and the state into a partnership. Ms. Rodriguez noted her support of SSHB 22 and expressed her hope that this will help the industry and Alaska.

CHAIR KOHRING asked if the students recognize the other side of this issue: the economic benefits that tourism brings to Alaska. He acknowledged that the students were present to achieve a balance between the economic and environmental sides.

MS. RIELLY and MS. RODRIGUEZ agreed that both sides of the issue should be reviewed.

MS. RODRIGUEZ, in response to Representative Kookesh, noted that she and Ms. Rielly are seniors at Juneau-Douglas High School.

Number 0751

ROBERT REGES, Member, Cruise Control, Inc., came forth and informed the committee that Cruise Control is working towards ensuring that the cruise industry mitigates its impacts. While Cruise Control recognizes the economic benefits of the cruise industry, it also recognizes the economic and social burdens this industry brings. Cruise Control's task is to ensure that those burdens are internalized and paid for by the operators. Although Cruise Control doesn't wish to diminish cruising in Alaska, it does want the industry to tell [the public] what it leaves behind; he believes providing such information is the purpose of SSHB 22. Furthermore, [Cruise Control] believes the

cruise industry should mitigate any impacts where feasible, and should pay for impacts that can't be mitigated.

MR. REGES acknowledged that the title change in the proposed CS will eliminate permits, which are included in the governor's bill [HB 183 and SB 134]. The title also "effectively eliminates discussions of head taxes," Mr. Reges noted, but indicated [Cruise Control] is working with others on an initiative. The title change sets up contention on certain issues for another time.

MR. REGES noted that [AS 46.03].463 speaks to "a person", while the remainder of the bill addresses an "owner or operator". For consistency, he suggested that "person" be changed to "owner or operator" on page 2, line 30, and on page 3, lines 1, 12, and 17. Mr. Reges informed the committee that he is an environmental attorney and has worked with the state and federal environmental statutes for years. He explained that ["owner or operator"] is the term of art that is used to describe all the persons who may be responsible for the operation of a vessel.

MR. REGES recalled discussion regarding whether existing laws are already satisfactory; to that, he replied no. From a business perspective, he told members, the cruise industry is one of the few industries in Alaska that isn't required to register or have an agent for service of process. For example, a carpenter from out of state can't come up and put a cabinet together without registering and getting an agent for service of process. Although this is not problematic when companies or their offices are based in the United States, that isn't the case with all cruise companies. Mr. Reges related his experience during his time with the Office of the Attorney General when he attempted to serve [process on] a cruise company with no office in the United States. Those provisions requiring registration and an agent for service of process don't exist elsewhere in statute for cruise owners and operators.

Number 1156

MR. REGES turned to the environmental section of the bill, the right to know provision. He acknowledged the possibility that an individual could, through the Freedom of Information Act and/or litigation discovery, secure the type of information being sought [in the right-to-know provision]. He informed the committee that he has been working with the Department of Environmental Conservation (DEC) steering committee since its inception. On numerous occasions, Mr. Reges said, he has

requested that he be able to review the opacity readings from the mid-1990s to last year. He has yet to see those readings. Mr. Reges characterized this as fundamental information that isn't readily available.

MR. REGES referred to the April 18, 2001, Anchorage Daily News article entitled, "Bush Backs Rule on Lead Emission." He quoted the following from that article:

The Bush Administration announced Tuesday that it would go forward with a regulation proposed by former president Bill Clinton to require thousands of businesses to make public the details of their emissions of lead into the environment. EPA Administrator Christine Whitman, in announcing the lead emission rules - ["again, a public right to know rule," Mr. Reges observed] - said that public scrutiny has helped reduce emissions of other toxic substances.

MR. REGES pointed out that this right to know is a tried and true rule. Therefore, Mr. Reges urged the committee to move this bill from committee.

Number 1346

JOE LeBEAU, Alaska Center for the Environment (ACE), testified via teleconference. Mr. LeBeau acknowledged that the committee supports clean air and water. However, everyone was surprised with last summer's [sampling] results. This bill will go further to increase the knowledge of the pollutants emitted into the environment. Mr. LeBeau urged the committee to move this bill forward.

Number 1401

MICHELE BROWN, Commissioner, Department of Environmental Conservation (DEC), testified via teleconference, reporting that DEC supports this legislation as a "right-to-know" bill. Thus far, the cruise ship industry is the only industry DEC knows of that operates in Alaska with such potential to pollute, although there is virtually no oversight by the state.

COMMISSIONER BROWN characterized the reporting and gathering of information included in this bill as an important first step. However, she expressed hope that the committee would hear the governor's bill next week. The governor's bill includes a more

comprehensive monitoring and oversight program that goes beyond information gathering.

COMMISSIONER BROWN pointed out that all other industries operating in Alaska have to report, make information available, and follow clean air and water rules. She echoed Mr. Hansen's earlier testimony regarding the need to have a program in place that would perform future verification, record keeping, systematic monitoring and testing, establish a way to pay for that activity and state oversight, as well as establish clear penalties for breach of the standards. Commissioner Brown reiterated DEC's support of [CSSSHB 22] and noted her hope that the committee would forward the bill today.

Number 1567

MICHAEL KRIEBER, Staff to Representative Vic Kohring, Alaska State Legislature, speaking as the committee aide for the House Transportation Standing Committee, pointed out that the key change included [Version 0] is the requirement for the treatment of graywater. If this legislation passes, Alaska would be the only place that would require the treatment of graywater.

MR. KRIEBER continued with the other changes. The title has changed in order to reflect the particular sections of the bill. Furthermore, language concerning the graywater treatment requirements and the monitoring have been added. Any reference to air-monitoring requirements has been deleted because existing state statutes and regulations cover that matter.

CHAIR KOHRING recognized concern that passage of legislation could result in an agency's interpreting the legislation differently from the intent of the legislation. He asked how that possibility can be addressed.

MR. KRIEBER pointed out that statute cites particular treatment levels. Therefore, the legislation states what the requirements would be; thus there would be no need for regulations. Mr. Krieber referred to page 8, [AS] 46.03.485, entitled "**Regulations.**" In the prior bill, language directed DEC to propose, review, and implement regulations. A good portion of that language was taken out because the treatment requirements were directly addressed.

MR. KRIEBER said the elimination of the regulations drafting process, coupled with an implementation date of 2003, will allow the treatment requirements to be in effect sooner than if the

regulatory process were in place. However, the bill does include the ability for the department to adopt regulations for the implementation of exemptions. He noted that there is the potential that various operators may not be "up to snuff" yet, although they are working with the department; the department should have flexibility to work with the industry in those circumstances.

Number 1804

REPRESENTATIVE KOOKESH thanked Mr. Kriebler for his help on this issue. He mentioned that his district includes communities throughout Southeast Alaska, which is where the impact of the cruise ship industry could be the greatest if there were a major problem.

CHAIR KOHRING noted that initially he didn't want to move this legislation; however, now that there is a proposed CS that is acceptable to the industry and seems to [alleviate] some of the environmental and economic concerns, he was open to advancing it. He said he was trying to listen to all sides and come to a consensus, to put forth something that is acceptable to the cruise ship industry, but not onerous with regard to prospective regulations and taxes. He mentioned that this legislation could return from the Senate in the form of a tax bill to which he is adamantly opposed; however, the title has been tightened so that a tax couldn't be added.

Number 1975

REPRESENTATIVE SCALZI noted his concern with any legislation that takes the monitoring agency out of the loop. He related his belief that the U.S. Coast Guard should perform the monitoring, whether it is oil-related or graywater discharge. He said that he is very satisfied with the modifications that resulted in the CS. However, he maintained that the U.S. Coast Guard and the Environmental Protection Agency (EPA) will still be involved with this because of the federal legislation.

REPRESENTATIVE SCALZI, in regard to Mr. Reges's suggestion for language changes, reminded members that this legislation has two more committee referrals where amendments could be addressed. Furthermore, three of the House Transportation Standing Committee members also sit on the House Resources Standing Committee, the next committee of referral.

REPRESENTATIVE SCALZI turned to the issue of a fee, which he felt would have been cumbersome and open to more debate. Now that this legislation strictly addresses monitoring, there is a modest fiscal note. Furthermore, the deletion of the air control language [was appropriate] because the issue of air quality would take an inordinate amount of time and testimony. Therefore, Representative Scalzi expressed his satisfaction with [Version 0] and noted his desire to move it forward.

Number 2122

REPRESENTATIVE MASEK said having two other committee referrals and the need to deal with this issue before the end of session make it incumbent upon the committee to forward this bill out of committee today. She, too, believes that the proposed CS is a step in the appropriate direction and can be further worked on in the other two committees of referral.

REPRESENTATIVE MASEK moved to report CSSSHB 22, Version 0 [22-LS0238\0, Lauterbach, 4/19/01], as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 22(TRA) was reported from the House Transportation Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 3:34 p.m.