

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION COMMITTEE

May 6, 2001
9:12 a.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Jerry Ward, Vice Chair
Senator Robin Taylor
Senator Gary Wilken
Senator Kim Elton

MEMBERS ABSENT

None

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 260(FIN) am

"An Act requiring the owners or operators of certain commercial passenger vessels operating in the marine waters of the state to register with the Department of Environmental Conservation; establishing information-gathering, record keeping, and reporting requirements relating to the vessels' graywater, sewage, hazardous substances, hazardous wastes, solid wastes, and other pollutants; establishing certain sampling, testing, reporting, and record-keeping requirements as terms and conditions of permitting discharges from the vessels; authorizing the Department of Environmental Conservation to provide for independent verification of compliance by the vessels, and to monitor and supervise discharges from the vessels; prohibiting the discharge of untreated sewage from the vessels; placing limits on discharges of treated sewage and graywater from the vessels; providing that there is no audit report privilege for complying with a requirement that the owner or operator of a commercial passenger vessel must report discharges of sewage or graywater that violate laws; establishing a fee, ranging from \$.70 - \$1.75 per berth, with a maximum of \$3,750 per voyage, on commercial passenger vessels that are not operated by the state 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; providing for a fee for vessels operated by the state to be determined by an agreement between the commissioner of environmental conservation and the commissioner of transportation and public facilities; authorizing the Department of Environmental Conservation to research, monitor, and study discharges and releases from commercial passenger vessels, including the opacity of air emissions from the vessels; 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 the Department of Environmental Conservation to adopt regulations to implement laws relating to commercial passenger vessels and directing the department to use negotiated regulation procedures, when appropriate, to develop the regulations; establishing a commercial passenger vessel coastal protection fund; requiring a report from the Department of Environmental Conservation concerning matters relating to the vessels; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

HB 260 - No previous Senate committee action.

WITNESS REGISTER

Mr. Dale Anderson
Aide to the House Finance Committee
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified for the sponsor of HB 260.

Mr. Tom Dow
North West Cruise Ship Association
1550-555 West Hastings Street
Vancouver BC V0N 1Y0 Canada
POSITION STATEMENT: Supports SCS CSHB 260(TRA)

Ms. Susan Burke
Gross and Burke
424 North Franklin St.
Juneau, AK 99801
POSITION STATEMENT: Explained the tonnage clause of the U.S. Constitution.

Mr. Mike Conway, Director
Division of Statewide Public Service
Department of Environmental Conservation
410 Willoughby Ave. Ste. 105
Juneau, AK 99801-1795
POSITION STATEMENT: Gave an overview of SCS CSHB 260(TRA).

Randy Ray, President
U.S. Cruiseship Association
P.O. Box 979

Mercer Island, WA 98040

POSITION STATEMENT: Supports SCS CSHB 260(TRA) with proposed amendments.

ACTION NARRATIVE

TAPE 01-18, SIDE A

Number 001

CHAIRMAN JOHN COWDERY called the Senate Transportation Committee meeting to order at 9:12 a.m. Senators Wilken, Ward and Cowdery were present.

#HB 260

HB 260-COMMER.PASSENGER VESSEL REGULATION & FEES

CHAIRMAN COWDERY announced that a proposed committee substitute was before the committee.

SENATOR WARD moved to adopt SCS CSHB 260(TRA), Version 0, as the working document of the committee and asked for unanimous consent. There being no objection, the motion carried.

CHAIRMAN COWDERY informed committee members of the changes made to CSHB 260(FIN)am:

1. On page 6, line 26, the word "effluent" was added after the word "narrative," and on page 6, line 27, the phrase "discharged from a commercial passenger vessel" was inserted after the word "graywater."

That change was made to clarify that the intent of the bill is not to give DEC the authority to adopt standards for treated sewage and graywater while onboard the vessels. The standards apply only to treated sewage and graywater that is discharged from vessels as effluent. This amendment also clarifies that DEC's regulatory authority only extends to commercial passenger vessels.

2. On page 7, Sec. 46.03.465(b), subparagraph (2) was deleted because its provisions are already covered in more specific language in subparagraph (1). On page 8, line 3, a typographical error was corrected - the word "discharge" was changed to "discharges."

3. On page 8, line 26, subsection (f) was added to Sec. 46.03.465 to prevent multiple reporting requirements of the same information to DEC, federal agencies and other states, as long as DEC receives that information. Only the information required under subsections

(b) and (d) is covered in subsection (f). The information required to be reported to DEC under subsection (a) should be included as well.

4. On page 9, line 31, and on page 10, lines 1 and 3, changes were made to Sec. 46.03.475(c)(1) and (2). Subparagraph (1) does not require vessel owners or operators to report to DEC a disposal or offloading of nonhazardous solid waste other than sewage in the marine waters of the state, including all of the waters of the Alexander Archipelago, if the disposal or offloading of that type of material is not required to be reported under any other state or federal law. Subparagraph (2) covered both the disposal and the offloading of hazardous waste or hazardous substances but that disposal is covered under other state and federal laws so reference to it in subparagraph (2) is unnecessary.

5. On page 11, line 20, a typographical error was corrected by capitalizing "AS."

SENATOR ELTON noted the amendments do not track with the page and line numbers in Version O.

CHAIRMAN COWDERY clarified that he was referring to the line and page numbers in the House version that were removed in the Senate Transportation Committee substitute. He informed committee members that Version O was worked out with DEC. He then asked for an explanation of the House Finance Committee version of the bill.

Number 502

MR. DALE ANDERSON, committee aide to the House Finance Committee, sponsor of HB 260, made the following statement.

Today, Mr. Chairman, you've been asked and given the opportunity to consider a bill that takes a comprehensive approach to establish Alaska state standards based on scientific data relating to cruiseship wastewater discharges in the state of Alaska. This far-reaching legislation will make Alaska the very first state in the nation to adopt requirements that build upon the landmark legislation recently enacted into law through the efforts of Senator Murkowski. This bill will prohibit the discharge of untreated sewage and prohibit the discharge of treated sewage that does not meet very strict standards and no other state does that. It also sets the very first graywater discharge standards in not just the United States but the entire world. Beginning in 2003, no cruiseships will be able to discharge graywater in

Alaskan waters that does not meet rigorous standards established in HB 260. It incorporates federally mandated U.S. Coast Guard inspections and monitoring of cruiseships, supplements the federal program with a separate state testing program without duplicating efforts and establishes strict civil and criminal penalties in Alaska for violations.

This legislation also meets very important criteria that Alaskans have said was critical for this type of environmental protection legislation. It regulates wastewater discharges, it provides for monitoring and research, it provides for independent verification of the integrity of the sampling by the cruise ship industry. It recognizes superior performance and it collects fees from the vessels to pay for the cost of this regulation.

Number 630

SENATOR WARD asked if this bill will apply to the Alaska Marine Highway System (AMHS).

MR. ANDERSON said it does not.

SENATOR WARD asked why the House decided to exclude the AMHS from pollution regulation.

MR. ANDERSON said that issue was discussed in the House. The House is very concerned that the AMHS is not included in this legislation.

SENATOR WARD asked why the AMHS was excluded.

MR. ANDERSON said at this juncture, the House decided that the primary focus is on the cruise ship industry.

SENATOR WARD asked if any discussion took place about not holding the AMHS to the same non-pollution standards as the cruise ships.

CHAIRMAN COWDERY suggested asking that question of a state agency official.

MR. ANDERSON finished reading his statement.

Our oceans and watersheds are very important to Alaska's economy, culture and environment and well being and this bill protects the quality of those waters by implementing critical regulations of the cruise ship industry at the state level. The bill is reasonable, appropriate, and very necessary and it simply requires the cruise industry

meet the standards to protect Alaska's environment based on scientific data. This legislation is not only comprehensive, it is clear in what the state demands of the cruise ship industry. It gives Alaskans the assurance that our waters will be protected and the cruise ship industry will be managed responsibly. This bill protects our state waters and protects the many jobs, especially here in Southeast Alaska, dependant on this industry. Thank you.

Number 786

SENATOR WARD noted that according to a local newspaper, the City and Borough of Juneau was dumping waste into the water and a city employee was fired. He asked Mr. Anderson if he looked into that type of pollution.

MR. ANDERSON said the focus of this bill is on the cruise ship industry.

SENATOR WARD asked if the House discussed discharges from communities.

MR. ANDERSON said that discussions about shore side disposal standards took place.

SENATOR WARD asked what the result of those discussions were.

MR. ANDERSON replied that one finding from that discussion was that the standards that will be enforced for the cruise ships are stricter than those for many shore side facilities.

SENATOR WARD asked if the debate in the House was about treating the pollution standards for on shore facilities differently than those for the cruise ships.

MR. ANDERSON answered that this bill sets a standard that has not been set before on any shipping industry.

SENATOR WARD asked if that differs from pollution from cities.

MR. ANDERSON said it is an additional standard.

CHAIRMAN COWDERY noted that he has introduced a bill related to surge and graywater that can be heard in committee at a later date. He asked to hear from representatives of the cruise ship industry.

Number 910

MR. TOM DOW, representing the Northwest Cruise Ship Association

(NWCA), which consists of the nine member lines that bring large vessels to Alaska, stated strong support for SCS CSHB 260(TRA) and urged the Senate to enact that legislation without adding any taxes. The NWCA believes that the technical corrections made in the latest version cleaned up some minor language errors in the bill. He offered to answer questions.

MS. SUSAN BURKE, a Juneau attorney, informed the committee she is representing the NWCA in connection with this legislation.

CHAIRMAN COWDERY commented that the cruise ships benefit the communities they stop in. He asked if this bill will have any effect on the time the ships are able to spend in port.

MR. DOW said the NWCA believes that this bill, as currently written, will not disrupt the current itineraries so it will have no impact on port time. The NWCA is not just looking at the provisions of the bill that apply right now, it is looking at what will apply two years from now when the vessels will have advanced technology in place. At that time, schedule disruptions will become less of an issue. The NWCA has worked very closely with the Administration on this legislation and can live with it.

MS. BURKE asked to address Mr. Dow's statement about adding a tax to SCS CSHB 260(TRA). She pointed out that any time a state or municipality wants to extract money from a business that operates in more than one taxing jurisdiction, one must look at the commerce clause of the U.S. Constitution. According to that clause, states cannot discriminate against interstate commerce in terms of taxation. However, when dealing with vessels, another provision of the U.S. Constitution comes into play: the tonnage clause. The tonnage clause prohibits a state from "laying any duty of tonnage on a vessel without the consent of Congress." Courts have interpreted that provision to include all taxes and duties regardless of their name or form and, even though not measured by the actual weight of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in port.

SENATOR WILKEN stated that Ms. Burke's topic is not germane to the committee's discussion since the committee is not talking about a tax.

MS. BURKE informed the Chairman that she believes the passenger fee provision in the bill could raise questions under the tonnage clause.

CHAIRMAN COWDERY said he intended to ask Ms. Burke to address the committee.

MS. BURKE continued. She explained that the tonnage clause essentially says that user fees can be imposed on vessels for

marine pilots, wharf fees, dock fees, and fees for impacts that are directly related to the presence of the vessel in the taxing jurisdiction. The tonnage clause does not allow a state or municipality to impose a tax on vessels and use the revenues for anything it wants to, for example education, that is not directly related to the impact. She pointed out that a provision on page 10, line 13, of Version O [Sec. 46.03.482(c)], provides that the legislature may make appropriations from the fund into which these passenger fees will be going for the purpose of preparing reports to the legislature required by the bill and to carry out the administrative costs and activities for the testing, sampling, regulating and monitoring that DEC will be doing under the provisions of this bill.

MS. BURKE said, in her opinion, the fact that Sec. 46.03.482(c) limits the use of the funds to things that are directly related to the cruise ship activities within the state will pass muster under the tonnage clause. Had that provision been more expansive, it would have raised serious problems under the tonnage clause.

Number 1289

SENATOR ELTON asked Mr. Dow if the environmental provisions of SCS CSHB 260(TRA) will be applied in the same manner to vessels of the AMHS.

MR. DOW said it is his understanding they will. The confusion arises from the fact that there have been several versions of this bill and that discussion has gone back and forth on the AMHS.

MS. BURKE said it is her understanding that the AMHS will be subject to the discharge standards in this bill. She does not believe the AMHS is subject to the passenger fee provision.

SENATOR ELTON said it is his understanding that because of the different ways passengers are carried, there will be a negotiated fee.

CHAIRMAN COWDERY suggested talking to DEC about that issue.

MR. DOW added that the NWCA has no objection to the departments working that out.

SENATOR WARD asked if the fee revenue could be used for port improvements under the tonnage clause in communities where cruise ships dock.

MS. BURKE said she believes it could.

SENATOR WARD asked if the state could supplant some of the money it will need for the AMHS if that revenue is used for port

improvements.

SENATOR ELTON said his guess is that any expenditure on a ferry facility that is not also a cruise ship facility might raise a legal question.

SENATOR WARD said he was referring to dock facilities that could be improved and transferred to the communities.

MR. DOW said he does not believe there is a single instance where the large vessels are using the same dock facilities as the AMHS. That may be true of the smaller vessels.

CHAIRMAN COWDERY noted that Senator Taylor joined the committee. He explained Ms. Burke cautioned the committee that putting a tax provision into the bill might create a constitutional problem.

SENATOR TAYLOR noted that he continues to oppose any taxation at this point. He asked if there might be a constitutional problem if fees are applied to other entities that might need repair.

MS. BURKE explained that it would be acceptable under the tonnage clause if the facilities are used by the entities that are paying the fees. If the facility is not used by the vessels and they get absolutely no benefit from it, and it has nothing to do with any impacts of the vessels' presence in the state - environmentally, in this particular issue, she believes there would be a problem.

SENATOR TAYLOR noted the legislature has never been allowed to create a dedicated fund because that violates the Alaska Constitution. He pointed out he has never heard the argument before that there must be a nexus in the application of the funds between the impact generated and the utilization of the funds. He said if that were the case, the state would not be able to use any of its oil income on anything except the pipeline.

Number 1576

MS. BURKE clarified that the tonnage clause of the U.S. Constitution focuses only on vessels, which is why it creates the problem here. It has been interpreted expansively as to what constitutes a tax measured by tonnage.

SENATOR TAYLOR asked about interstate commerce.

MS. BURKE said that is another issue entirely.

CHAIRMAN COWDERY asked a representative of the Department of Environmental Conservation (DEC) to come forward.

MR. MIKE CONWAY, Director of the State Public Service Division of DEC, gave the following overview of SCS CSHB 260(TRA). This legislation is the culmination of two years of work done by state and federal agencies, the cruise ship industry, and members of the public to answer questions about the effect of the cruise ship operations on the environment in Alaska. The effort began as the result of stories about cruise ship violations that occurred in the early to mid 1990s on the mixing of hazardous waste within cruise ship discharges. Other air emission violations occurred in the later part of the 1990s. Commissioner Brown was perplexed by the fact that this industry is not under the purview of DEC and about how to get a handle on cruise ship operations. She called the industry, the U.S. Coast Guard and the Environmental Protection Agency (EPA) together to begin a discussion.

SENATOR WARD commented that he believes Commissioner Brown's heart is in the right place but asked why the Administration has decided to put minimum guidelines on the cruise ship industry for waste discharge but not hold the AMHS or communities in Alaska to the same standard.

MR. CONWAY clarified the AMHS must comply with the same requirements as the cruise ship industry. The only exception is that the fee will be negotiated between the commissioners of DEC and DOTPF because of the year-round operations of the AMHS but the standards are exactly the same.

SENATOR WARD asked if the AMHS meets those standards today.

MR. CONWAY replied the AMHS is in the same situation as the cruise ship industry - some vessels meet the standards but some don't. They use the same marine sanitation devices (MSDs), which are devices used to treat sewage.

SENATOR WARD asked if the AMHS meets the standards in SCS CSHB 260(TRA) today.

MR. CONWAY said the AMHS does not meet them all.

SENATOR WARD noted that this committee heard testimony from the AMHS that it met all of the standards.

MR. CONWAY said according to this version of the bill, the answer is no, but according to state and federal law, the AMHS does meet the standards.

SENATOR WARD asserted that the AMHS is not in compliance with this draft.

MR. CONWAY said that is correct.

Number 1834

SENATOR WARD asked why the communities that are polluting Alaskan waters are not included in this bill.

MR. CONWAY said the simple answer is that communities get discharge permits, the cruise ships do not. He explained that communities have to meet the state water quality standards regarding discharges. Communities go through a 12 to 18 month permitting process where they take samples of the discharges. A risk analysis and assessment of local resources is done, because communities do not move like ships do. An assessment of resources in the area that could come into contact with the discharge is taken and calculations are done to determine whether the discharge will have any chronic or acute effect on the mixing zone - the point at which the discharge comes out of the pipe. The mixing zone must meet the state water quality standards.

SENATOR WARD asked if, because the City and Borough of Juneau (CBJ) is stationary, it has a different dumping standard and whether the faster a ship moves, the more it can dump.

MR. CONWAY explained that the tides and currents are taken into consideration for shore side facilities. Studies are being done right now on ship discharges and this bill allows that, at some point, the size and speed of the ship, the depth and volume of the discharge, and the currents and hull friction can be considered in the effect of the mixing. That study should determine what is in the water 100 feet away from the ship and will provide for a very similar process to what is used on the shore side facilities.

SENATOR WARD asked if DEC does not feel that shore side facility discharges need to be addressed now.

MR. CONWAY said DEC offered the cruise ship industry the option of using the same process that is used for shore side facilities but the option in the bill was preferable.

SENATOR WARD asked if DEC is satisfied with the pollution level at shore side facilities now.

MR. CONWAY said it is.

CHAIRMAN COWDERY asked if the cruise ship discharge is tested as it comes out of the vessel.

MR. CONWAY said that is correct.

CHAIRMAN COWDERY asked if the discharge from shore side facilities is tested offshore, in the mixing zone and, if so, why the testing is not equivalent.

MR. CONWAY answered that discharge is actually tested at the plant itself. A shore side treatment plant has an area surrounding it that does not meet the water quality standards.

CHAIRMAN COWDERY asked why.

MR. CONWAY replied because no technology is available to do that.

CHAIRMAN COWDERY said he is wondering why discharge from a shore side facility is tested one quarter mile from the plant while discharge from ships is tested onboard.

MR. CONWAY replied:

The testing is actually done at the plant - at the discharge on the shore side as well. What they've done is they've gone through the studies to calculate if - let's say you have a shellfish bed over here to the side that you want to protect, hypothetically. You want to make sure that the water here, which exceeds the water quality standards, does not affect your shellfish bed. So what they do is they require treatment on the shore side to be able to make sure that the area that exceeds those standards is limited and they back calculate that to what actually comes out of the pipe. So what they are measuring is what is coming out of the pipe, same as what they will measure with the ship. The only thing that we don't know now with the ship is what is this - and that's provided for. Everybody acknowledges that needs to be studied before you go and say - there's a provision, for instance, in the Murkowski legislation that sensitive areas can be designated and sensitive areas means that you can't discharge at all. Well, same sort of principle needs to apply. If there's some sort of parameter or constituent that's in that pollution, you don't want it to get to a subsistence bed or shellfish bed where people go, so you have to go through to do that calculation and justify that. We don't know what that is now and so in the discussions with the industry, the process that you see outlined here is something that, in the interim, until that's discovered, it's an approach that we've agreed to go with. At some point in the future, provided for in this, if we find out that 100 feet away from a ship there is nothing to be concerned about, right now there's a mile restriction and a six knot restriction on pumping, it could be that you could lift that mile restriction once you had it in place.

Number 2120

SENATOR TAYLOR asked if the shore side effluent is measured in the plant and calculated to the outfall and whether this legislation will require the same standard to be applied.

MR. CONWAY said it will be comparable. The piping on a ship is a bit different so the black water, which is the treated sewage water, will be measured. It is a little bit more difficult to measure at the "end of pipe" because ships would be required to put in more equipment and modifications that are not compatible with the integrity of the vessel.

SENATOR TAYLOR asked if DEC is able to discern, through mathematical and chemical calculations, whether the quality of the effluent is lower or higher than the effluent coming out from a pipe on the side of a boat and whether this bill provides for a higher standard than what communities are expected to meet.

MR. CONWAY said the standard is different for different treatment plants but the equivalency is at the edge of the mixing zone. The cruise ship industry, not having a mixing zone, has a set standard. An early draft of the bill had parameters of 200 fecal coliform per 100 milliliters and 100 total suspended solids. The governor's bill did not contain those numbers. Those numbers would be the standard required for every cruise ship but the standard for every shore side treatment plant is not the same. Every treatment plant has a permit, whereas no permit will be issued for a cruise ship.

Number 2240

SENATOR TAYLOR said he understands the justification for different standards since some of the treatment plants were permitted 15 years ago while newer plants are more efficient. He thought Senator Ward's concern was whether there is some level of uniformity for the state ferries, communities, and cruise ships.

CHAIRMAN COWDERY commented that everyone wants clean air and clean water. He asked why a double standard for the smaller cruise ship vessels and fishing boats is being considered.

MR. CONWAY answered that this legislation covers vessels with overnight accommodations for 50 passengers or more. All vessels fall under the federal law for sewage discharge, which requires that if a vessel has an installed toilet, it must have an MSD.

TAPE 01-18, SIDE B

SENATOR ELTON said, in response to comments about the Juneau incident, that the individual who was involved violated the law and that criminal charges have been filed. He commented that the Juneau incident gets to the issue of whether different standards

apply.

CHAIRMAN COWDERY asked if this individual was an employee.

SENATOR ELTON said he believes the employee was a supervisor.

CHAIRMAN COWDERY asked Mr. Conway if he has had a chance to read SB 225, which he sponsored.

MR. CONWAY asked if SB 225 changes the title and is applicable to all municipal treatment plants.

CHAIRMAN COWDERY said yes.

MR. CONWAY said that bill would put all communities and mines out of business.

CHAIRMAN COWDERY said he understands that and asked Mr. Conway if he doesn't want those entities to conform. He said his idea is that these standards must apply to everything if we're going to have clean air and water. He noted people come to Alaska because it is clean and we need to keep it that way. He was very disturbed by the negative publicity that got out around the world. He believes these problems should be solved here without going to the press.

MR. CONWAY said one option DEC considered was to put the cruise ship industry under a permit system, like every shore side facility, and have different standards for every vessel. That would be acceptable to DEC but it does not seem feasible.

CHAIRMAN COWDERY stated the standard should be clean air and clean water. He said to his understanding, Juneau has some untreated discharge.

SENATOR TAYLOR said it goes through a treatment plant.

MR. CONWAY said everything is required to go through the treatment plant.

CHAIRMAN COWDERY said he knows it is required but he was under the impression, from Commissioner Brown, that she is aware of some subdivisions that have untreated discharge.

MR. CONWAY explained those subdivisions have permits and are allowed to discharge above that standard.

SENATOR WARD asked if because of the old permitting system we have this Administration is allowing pollution to go on.

MR. CONWAY explained there is a permit for those facilities and if

ships were to have a permit DEC would have the same opportunity to look at what is occurring in the discharges.

SENATOR WARD asked if DEC plans to propose amendments so that the committee can put proper guidelines on this pollution problem so that there is no double standard.

MR. CONWAY said he is not aware of any effort to do that.

SENATOR WARD suggested that DEC make such an effort so that the problem can be resolved. He does not think the public understands the entire problem and has only heard about the cruise ships. He said the cruise ship problem doesn't begin to compare to the larger problem. Senator Ward asked if fast ferries will have to store waste.

MR. CONWAY explained that the fast ferries will have MSDs so the waste will be treated before it goes overboard. He pointed out this legislation will not apply to fast ferries because they will not have overnight accommodations for 50 or more people.

SENATOR WARD asked if the level of waste from a fast ferry will be higher than that from a cruise ship.

MR. CONWAY said it would be the same from using MSDs. The large cruise ship industry is working on improvements in technology so that the water quality of discharge will be of a drinking water quality. In his opinion, large cruise ships might have the ability to install that kind of equipment but smaller vessels will not be able to. DEC has had discussions with the U.S. flag industry about how that industry could be accommodated so that the standards are close to equivalent without putting them out of business.

SENATOR WARD asked who is polluting Alaska waters more, the vessels that will fall under this legislation or the vessels that do not.

MR. CONWAY answered the large passenger vessels, which are the focus of this bill, because of the number of passengers.

CHAIRMAN COWDERY asked how many months per year those vessels are in Alaska.

MR. CONWAY replied five to six months, from the first of May to the end of September.

SENATOR WARD noted the other ships are here year-round.

MR. CONWAY said the ships that are here during the winter are few and small so the number of passengers brought in by the large cruise ship industry still outnumber the year-round fleet by a tremendous number.

CHAIRMAN COWDERY asked about dumping facilities for live-aboards.

MR. CONWAY answered two types of MSDs are used. A Type 2 device treats the sewage. A Type 3 device is a holding tank that is pumped. Alaska has very few reception facilities so most vessels have a Type 2 MSD. The only requirement is that a vessel have an MSD, that it be certified by the Coast Guard and that it operate properly. What was discovered in this cruise ship initiative is that no one knew what was coming out of the MSDs.

CHAIRMAN COWDERY asked what happens when the Type 3 devices are full.

MR. CONWAY said the vessel is in violation if it pumps over the side unless it is in an area three miles from shore.

CHAIRMAN COWDERY asked if that is a common violation.

MR. CONWAY said DEC responds to complaints of that nature but he would have to check to see how often that occurs. The most common report in a small boat harbor is about an oil sheen.

SENATOR WARD asked if the crux of the problem is that 3,000 or 4,000 people on a cruise ship create a lot of pollution compared to a town or ship of 300 or 400.

MR. CONWAY said the potential is there for the pollution but the cruise ship industry is in compliance with treatment requirements.

SENATOR WARD asked if the fear is that the number of people on cruise ships is larger than a whole city.

MR. CONWAY said that has been the concern. At any one time in Southeast Alaska, when the cruise ships are in full scale, there are 45,000 people on the Inside Passage.

SENATOR WARD commented that he feels the attack on this industry was very poorly done if it is not a big violator. He said if this problem is going to be addressed, all polluters should be addressed equally. He said we don't have to have any raw sewage being dumped into our waters anywhere.

SENATOR TAYLOR said it is his understanding that the Juneau wastewater treatment plant was not operating correctly and rather than report that to DEC, the Juneau employee "watered" the report down.

MR. CONWAY said EPA is handling that violation so he is not familiar with the details of that case. He thought that is how the press characterized the incident.

SENATOR TAYLOR said it is hard to believe that the employee intentionally caused the Juneau plant to discharge higher levels if the plant was working properly. He then referred to Mr. Conway's statement that on a busy day, 45,000 passengers travel on the Inside Passage on cruise ships and said according to the census, 75,000 people are discharging into the waters of Southeast year round.

MR. CONWAY said he was speaking to the additional number of people on the cruise ships.

SENATOR TAYLOR said he is referring to the people with old permits that are using a sewage treatment system they installed themselves, or perhaps have no treatment systems at all. In some rural areas, people have a pipe to -4 foot tide that is for direct discharge. He repeated that we can't be too hypocritical when it comes to compliance and different standards and that the reason for the bill is so that someone can gain political headlines and political thunder from it. He noted what Senator Ward is asking is what is the real impact on the salt water.

CHAIRMAN COWDERY repeated that the committee is concerned about the double standard.

SENATOR ELTON said he disagrees that the motivations behind this bill are as previously described by Senator Taylor.

CHAIRMAN COWDERY said he believes they are because of all of the "PR" that goes out to the networks. He said this "PR" is not doing Alaska's fishing industry any good and it is not in Alaska's best interest. He repeated if Alaska has a problem, it should do its own laundry here.

SENATOR TAYLOR said he doesn't care what the motivation behind this bill is. He cares about the Pacific Ocean. His home is on that ocean and he does not want that water polluted. He cannot sit there and say that water is only being polluted by the ships from out of town when every one of his neighbors might be polluting it worse. He pointed out that he is glad that the sewage system was extended out to his house and in the 23 years he's lived there he knows his property has a straight pipe going out to minus 4 feet, which was permitted. He said it is not fair of Alaskans to do a wink and a nod knowing full well that the Governor's house itself is hooked up to a system that was out of compliance just this year. He repeated that he is tired of people being held to different standards. He added that the fishing and processing fleet that comes to Alaska each summer does not have any treatment facilities onboard.

MR. CONWAY said Senator Taylor has addressed the whole spectrum.

He noted that in Alaska, a number of people and communities have waivers from the federal government for the secondary treatment requirement because the communities just cannot afford a \$20 million treatment plant for 500 people. The communities with the capability have secondary treatment plants. Anchorage has a waiver.

CHAIRMAN COWDERY said that doesn't mean it is right.

MR. CONWAY explained the next level is sewage treatment for housing areas. Occupants of a multiple dwelling have to go through a plan review and get a permit. The third level is for individual homes with septic tank systems. DEC had a program to do plan approvals for those systems but it has not been funded for five or ten years. He pointed out that DEC devotes its resources to those that have the potential to do more harm.

SENATOR TAYLOR said he applauds the job DEC does as it is thankless work with a lot of critics. He commended the DEC Village Safe Water Program.

CHAIRMAN COWDERY said he talked to Commissioner Brown who said that fines and penalties are being considered for the Juneau wastewater plant.

MR. CONWAY repeated that is an EPA enforcement action so he is not aware of what EPA will do.

CHAIRMAN COWDERY asked about the wastewater not related to treatment plants.

MR. CONWAY replied the Bonnie Brae subdivision is under a compliance agreement. The first step, when a violation is detected, is to negotiate. In this case, the community has put forward the funds to hook that subdivision into the treatment plant. DEC gives those entities a period of time to get that line out there. Individually, as DEC gets notices of violations, it sits down with the owner to figure out what the owner can do. Fines and penalties are assessed when working with the owner hasn't been successful.

CHAIRMAN COWDERY thanked Mr. Conway and took further testimony.

MR. RANDY RAY, President of the U.S. Cruiseship Association (USCA), said his organization represents the U.S. flag small ship operators. The USCA endorses HB 260 with some amendments he would like the committee to consider. USCA's vessels primarily carry 36 to 138 passengers; one of its members is currently building a vessel that will carry 249 passengers and will come to Alaska in the 2002 season. USCA vessels are very different operationally and technologically from the large cruise ship vessels. USCA vessels

discharge about 4,000 gallons of graywater and black water per day while the large vessels discharge about 250,000 gallons of graywater and blackwater per day. All USCA vessels have MSDs that have been certified by the Coast Guard, but that technology is about 10 to 20 years old. To get certification, 40 samples are taken over 4 days. Two samples are thrown out and the remainder are averaged to come up with a number of 200 fecal coliform bacteria colonies per 100 milliliters, which is the standard in SCS CSHB 260(TRA). Not every sample from the MSDs used by the USCA vessels meets the 200 standard but the legislation requires that standard be met on every test.

MR. RAY said he visited a Seatrade conference in Miami a few months ago, the largest conference on cruise ships in the world. New MSDs are being built that will treat graywater and blackwater to almost drinking water standards. The manufacturers are building those MSDs for large ships only, as the equipment is designed for ships with a large amount of space below deck. USCA ships are much smaller and do not have the extra space below. The USCA asked the manufacturers to design them for smaller ships but the manufacturers are not currently putting any research and development funds in to shrink the size. In addition, these devices are designed to use freshwater, while USCA vessels use salt water in their MSDs. One USCA vessel looked at adding a 500 gallon tank for a sprinkler system for fire safety. That would require cutting the ship in half and adding 20 feet to the vessel.

MR. RAY said the USCA is facing a proposed law that requires it to meet effluent standards every time but the USCA does not expect to have now or in the near future the technology to enable it to meet that standard. This does not mean the USCA is doing nothing. Since last summer, the USCA discovered that its discharge results were just as bad as every other type of cruiseship in Alaska so it has been working quickly to train its members to make things work. Mr. Ray said the House recognized this dilemma and put a delayed implementation in the legislation for USCA-size vessels. The USCA proposed a more detailed amendment but the House ran out of time. Since then, the USCA has been working with all parties, including the Administration, to come up with technical language to fix the problem. The problem with the delayed implementation is that when the date passes, and USCA vessels will no longer be exempted, the USCA will be required to follow requirements that work for large vessels but not small vessels. For example, ships must discharge at least one mile from port and while underway. USCA vessels have found that by running their MSDs 24 hours per day, they have a better chance of meeting the standards. If those MSDs must be shut down while in port and started up when one mile from port, the discharge will probably violate the standard. Second, many USCA ships do not store graywater. The USCA has recently learned of small units that can be attached to the end of the pipe to treat the discharge at a low flow rate. To not be able to discharge in

port will throw 80 percent of the American fleet out of Alaska.

MR. RAY said the proposed amendments have been agreed to by the Administration. He noted the amendments require most provisions to apply to USCA vessels so that they must register and monitor and analyze their discharge. However, the amendments delay the standards because the USCA cannot meet them right now. The amendments also recognize the difference in the discharge procedures of small and large ships. He asked that the Senate continue to perfect the legislation before final passage.

SENATOR ELTON noted page 4, line 7, of SCS CSHB 160(TRA) contains language that reads, "The department may establish alternative terms and conditions of permitting discharges applicable to an owner or operators of a vessel who cannot practicably comply with the standard terms and conditions of permitting discharges under (b)"

MR. RAY said that section allows for some permissibility but it also says smaller ships have to meet another standard. Because of that, he has had lengthy discussions with the Administration.

CHAIRMAN COWDERY informed the committee that he received 12 proposed amendments late last night and that those amendments contain some conflicting provisions. He stated it is his intention to hold this bill and to work with the Administration and the USCA to get some acceptable solutions.

SENATOR WILKEN asked Mr. Ray if 80 percent of the ships on the list he provided would not come to Alaska if the bill passes and, if so, to name a few of those ships.

MR. RAY said the Sea Lion and Sea Bird are two vessels that do not have holding tanks for their graywater. He repeated that they may be able to put some equipment on the end of their pipes.

SENATOR WILKEN asked if the six Cruise West ships could not come to Alaska.

MR. RAY said some could but some could not. The larger vessels have more ability for storage than the smaller vessels.

SENATOR WILKEN asked if Mr. Ray was saying 80 percent of all USCA vessels could not come, rather than 80 percent of the vessels named on the list.

MR. RAY said it would probably apply to 80 percent of the ships on the list.

SENATOR TAYLOR commented that the Southeast Alaska economy has been devastated by the loss of the timber industry and residents were

told that the tourist industry is something they could work with. The tourist industry is concentrating on three or four towns: Sitka, Juneau, Ketchikan and Skagway. The communities of Petersburg and Wrangell have seen a drop in the number of large ships that visit. The small day boats are the only ships that visit those two communities with any frequency. Senator Taylor said if 80 percent of those vessels are lost, "the last guy leaving town in Wrangell better turn off the lights." He expressed frustration that this bill will regulate the small vessels out of Alaska while the small towns can run with no treatment at all.

CHAIRMAN COWDERY asked Mr. Conway to provide committee members with a list of the exempted and permitted communities with the dates of the exemption or permit.

SENATOR WARD asked Mr. Conway to also provide the committee with a list of the amended waivers over the past 15 years.

MR. CONWAY agreed to do so.

There being no further testimony or business to come before the committee, CHAIRMAN COWDERY adjourned the meeting at 10:42 a.m.
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