

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON ECONOMIC  
DEVELOPMENT, INTERNATIONAL TRADE AND TOURISM**

April 29, 2004  
12:20 p.m.

**MEMBERS PRESENT**

Representative Cheryll Heinze, Chair  
Representative Lesil McGuire, Vice Chair  
Representative Pete Kott  
Representative Nancy Dahlstrom  
Representative Vic Kohring  
Representative Sharon Cissna  
Representative Harry Crawford

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Jim Holm  
Representative Hugh Fate  
Representative Nick Stepovich

**COMMITTEE CALENDAR**

HOUSE BILL NO. 207

"An Act relating to taxes regarding certain commercial passenger vessels operating in the state; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 207

SHORT TITLE: TAX ON COMMERCIAL VESSEL PASSENGERS

SPONSOR(S): REPRESENTATIVE(S) GATTO

03/24/03	(H)	READ THE FIRST TIME - REFERRALS
03/24/03	(H)	EDT, TRA, FIN
01/27/04	(H)	EDT AT 10:00 AM CAPITOL 120
01/27/04	(H)	Heard & Held <Assigned to Subcommittee>
01/27/04	(H)	MINUTE(EDT)
03/30/04	(H)	EDT AT 10:00 AM CAPITOL 120

03/30/04 (H) -- Meeting Canceled --  
04/20/04 (H) EDT AT 5:30 PM CAPITOL 120  
04/20/04 (H) -- Meeting Canceled --  
04/22/04 (H) EDT AT 5:30 PM CAPITOL 120  
04/22/04 (H) -- Meeting Canceled --  
04/29/04 (H) EDT AT 12:00 AM SPEAKER'S CHAMBER

**WITNESS REGISTER**

REPRESENTATIVE CARL GATTO  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 207.

CODY RICE, Staff  
to Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes between Version I and Version S of HB 207.

JOE GELDHOF  
Responsible Cruising in Alaska  
Juneau, Alaska

POSITION STATEMENT: Urged the committee to report [HB 207] from committee.

JIM CALVIN, Partner  
McDowell Group  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 207, reviewed the McDowell Group's findings related to the Office of the Governor's projections of cruise-related costs.

SUSAN BURKE, Attorney at Law  
Gross & Burke, PC  
Juneau, Alaska

POSITION STATEMENT: Representing the North West CruiseShip Association, expressed concerns with Version S of HB 207.

CHUCK HARLAMERT, Juneau Section Chief  
Tax Division  
Department of Revenue  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 207, answered questions.

**ACTION NARRATIVE**

**TAPE 04-16, SIDE A**

Number 0001

**CHAIR CHERYLL HEINZE** called the House Special Committee on Economic Development, International Trade and Tourism meeting to order at 12:20 p.m. Representatives Heinze, McGuire, Kott, Kohring, Dahlstrom, Cissna, and Crawford were present at the call to order.

HB 207-TAX ON COMMERCIAL VESSEL PASSENGERS

[The counter numbers reflect the actual time.]

CHAIR HEINZE announced that the only order of business would be HOUSE BILL NO. 207, "An Act relating to taxes regarding certain commercial passenger vessels operating in the state; and providing for an effective date."

CHAIR HEINZE reminded the committee that at the last hearing HB 207 was assigned to a subcommittee, and therefore she requested a report from the subcommittee.

12:21

REPRESENTATIVE KOTT related that the subcommittee primarily wrestled with the legal questions that were presented at the last hearing on HB 207. The subcommittee couldn't reach a consensus on which direction to take. Furthermore, he said he felt that it was beyond the scope of the subcommittee to come to grips with the understanding of the legal aspects. Therefore, he announced his intent to report the legislation from the subcommittee without any changes.

12:23

REPRESENTATIVE DAHLSTROM moved to adopt CSHB 207, Version 23-LS0850\S, Kurtz, 4/28/04, as the working document. There being no objection, Version S was before the committee.

REPRESENTATIVE CARL GATTO, Alaska State Legislature, spoke as the sponsor of HB 207. He reminded the committee that this legislation originally had a \$100 head tax per passenger, which made it fairly easy to predict the amount of revenue that would be collected. He pointed out that tourism is a valuable and growing resource that has been able to progress without any

taxes. "If we're willing to tax ourselves and we're willing to tax the other industries that we have here, then I would like to treat tourism as one of our additional industries," he said. The goal of the \$100 head tax, he explained, was to provide a certain amount of money for Southeast Alaska to improve tourism facilities, a certain amount for education, and the remainder was to go into the general fund (GF).

REPRESENTATIVE GATTO opined that Version S has a \$5 tax per passenger per port, up to the first five ports. The remaining [\$5 tax per passenger after the fifth port or if there is less than five ports] would go into the GF. He explained that it costs the state a certain amount of money to host tourism passengers from the cruise ships. In fact, there is information that points out that the amount of money that would be collected from cruise ship passengers is less than the amount the state is expending. The reality is that even if services such as fire service and police service aren't utilized, they still need to be in place and maintained. The aforementioned is somewhat attributable to the volume of [visitors] to a community.

12:26

CHAIR HEINZE asked if the commissioner of the Department of Revenue would be the deciding factor with regard to where the money goes.

REPRESENTATIVE GATTO explained that if there are only three ports, the three ports would receive the \$5 per passenger tax and the remainder would go into the GF.

12:27

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, reviewed the changes between Version I and Version S. In Version S the tax was capped at \$50 per passenger per voyage. Version S also includes a \$5 per passenger tax at each of the first five ports and if there are less than five ports the first however many ports would receive the \$5 tax and the remainder [of the tax] would go into the GF. The tax in Version S is entirely based on costs to the state and local government attributable to the cruise ship passenger vessel industry as determined by the Department of Revenue. Mr. Rice pointed out that Version S changes the liability of the tax to be based on the vessel rather than the passengers. He noted that there are other technical changes were required in order to make revenue sharing between boroughs and cities work, which is related to

ownership of docks. In response to Chair Heinze, Mr. Rice explained that the first five ports will be determined by the department and will vary based on the cruise ships' itinerary.

REPRESENTATIVE GATTO emphasized the importance of the change to a vessel tax that is determined by the volume of passengers aboard the vessel.

12:29

REPRESENTATIVE CISSNA inquired as to whether the constitutional problems has been resolved.

REPRESENTATIVE GATTO recalled that there were three [legal] questions regarding the following: the tonnage clause, the commerce clause, and the Maritime Transportation Security Act of 2002 (MTSA 2002).

MR. RICE informed the committee that he has been in contact with the offices of U.S. Representative Don Young and U.S. Senator Ted Stevens. With regard to the MTSA 2002, section 445 essentially prohibits ad valorem taxes. The MTSA 2002 specifically targeted Yakutat, a community which placed a cruise ship tax on vessels that weren't docking in Yakutat. After discussing this with the attorney who drafted a recent amendment to the MTSA, the legislation was changed such that it should be more defensible.

REPRESENTATIVE GATTO explained that the City of Yakutat wanted to charge each passenger \$1 for simply sailing by because the city felt that when the cruise ships entered the bay it may have impacted the sea mammals and fishing. The aforementioned tax was never paid and [MTSA] determined that it should never be paid. However, the language of [MTSA] was fairly broad and didn't simply address Yakutat. In talking with the Congressional delegation, it was clear that the intent of [MTSA] wasn't to go beyond fixing the issue at Yakutat.

12:32

REPRESENTATIVE KOTT inquired as to why five ports was chosen. He related his understanding that if the ship docked at more than five ports, those ports after the fifth port wouldn't receive the passenger tax. The aforementioned seems to create a constitutional issue regarding equal protection.

REPRESENTATIVE GATTO informed the committee that typically cruise ships like to leave and return home on a Sunday. He related his belief that it takes a day-and-a-half to get here and the same on the return. Therefore, three days is spent going and coming combined, which leaves four days for visiting ports. It would be difficult to get in five ports. However, he agreed that if there were more than five ports, the issue Representative Kott raised would have to be addressed. Perhaps, \$25 would be distributed among all the ports equally rather than \$5 a port. Still, there is no desire to go over \$5 a port, which provides the borough \$2.50 and the city \$2.50. In further response to Representative Kott, Representative Gatto said he didn't know of any trips that stopped at six ports.

REPRESENTATIVE DAHLSTROM inquired as to the legislation's next committees of referral.

REPRESENTATIVE GATTO replied that the next committees of referral are the House Transportation Standing Committee and the House Finance Committee.

REPRESENTATIVE KOHRING expressed concern that the cruise ships may decide not to come to ports with taxes, which has happened in the past.

REPRESENTATIVE GATTO said that he would like to take away the ability of the cruise ships to do the aforementioned, which is referred to as "port pulling." With this tax, the cruise ship industry could make the best trip by choosing the ports it prefers rather than the [tax deciding which ports and for how long]. However, the money could be used as enhancement to entice the cruise ships to stop at a particular port.

12:40

REPRESENTATIVE KOHRING inquired as to whether there should be a tax on an industry that's experiencing substantial growth, especially when taxes are in conflict with a goal of increasing the growth of the economy.

REPRESENTATIVE GATTO pointed out that as the industry grows, the impact on the state also grows. He also pointed out that cruise ships always arrive full. Furthermore, many of the costs not included in the cruise are fairly expensive and in fact the cruise ship portion may only represent half of the [total cost]. Therefore, adding \$50 to the trip is inconsequential, which he determined after interviewing 100 cruise ship passengers. He

noted that his findings are in line with those of Channel 2, which delved into the matter when the tax was \$100. From that [data] Representative Gatto opined that this \$50 tax won't impede the growth of the cruise ship industry. Moreover, he recalled his cruise ship trips for which the price of the trip was listed separately from the port charges and taxes, which amounted to \$150.

12:46

REPRESENTATIVE MCGUIRE opined that [Version S] seems to address some of the legal concerns by making a better connection between the revenue to the types of services impacted at both the state and local level. However, the amount of the tax itself and how the tax is assessed remains troubling, she said. Collecting \$5 from the first five ports seems to be a logistical nightmare and an administrative burden, which lead her to suggest that the sponsor consider how it could be streamlined. Representative McGuire recalled that Kathryn Kurtz' memorandum said that a smaller fee with a more direct link to the provision services of the specific vessel would be easier to defend. She then turned attention to the memorandum dated January 27, 2004, from the Office of the Governor and the attachment entitled, "Cruise Ship Port Fees in Selected U.S. Ports". The aforementioned attachment specifies that the passenger fee in California and many other states utilize "embarking/disembarking" language and thus there is a clear activity to which the fee is linked. The data from the attachment also illustrates that the average fee is \$5, and therefore she inquired as to why the sponsor chose \$50.

REPRESENTATIVE GATTO clarified that under this legislation \$5 isn't collected at each port, rather the fee is collected all at once at the beginning of the trip and distributed to each of the five ports. With regard to the "embarking/disembarking" language, he pointed out that the [ship/passenger] isn't stopping at a port. He then turned to the amount of money given to each port and opined that it's not excessive.

REPRESENTATIVE MCGUIRE expressed the need for the sponsor to be able to defend how he arrived at the \$50. She further suggested that the sponsor think about a smaller amount that's directly attributable to those services impacted by the cruise ship passengers.

MR. RICE pointed out that in California the embarking/disembarking fee in Los Angeles is \$9.35 and \$5.00 for

San Diego, which is solely for passengers. This legislation specifies in Section 4 on page 2 that the tax will be based on the state and local government costs attributable to the commercial passenger vessel industry, but the tax can't in excess of \$50. However, if the commissioner determines that the actual costs are less, the per passenger tax can be less. "It's based solely on actual costs, as determined by the department," he clarified.

12:55

REPRESENTATIVE KOHRING expressed concern with the direction of this tax in light of the legislature dealing with the cruise ship industry, which has brought much to the state. He reminded the committee of the tonnage tax of 10 years ago that was eventually dropped. He also reminded the committee of the special session that former Governor Knowles called in regard to cruise ship regulations and fees.

MR. RICE said he believes Representative Kohring's reference to the tonnage tax refers to the 1999 legislation that repealed what was essentially a tax on all vessels, including oil tankers.

12:57

JOE GELDHOF, Responsible Cruising in Alaska, informed the committee that he actually worked for the legislature a few years ago, has experience with various tax, and cruise ship issues. He also informed the committee that he is an attorney and authored the local head tax initiative in Juneau. In the aforementioned endeavor he said he did much of the legal analysis related to the commerce clause and the tonnage clause. The result was [a proposal] for a local fee of \$5 per person to offset and mitigate the impact of having 800,000 visitors. Mr. Geldhof noted that he also worked for the Alaska State Legislature doing research and analysis [regarding the cruise ship industry] during the time when the Senate enacted the \$50 fee.

MR. GELDHOF emphasized that he isn't personally against the cruise ship industry, which has, by and large, a positive impact on the state. However, he noted his agreement with Governor Murkowski that the cruise ship industry should pay its fair share. The challenge is in regard to encouraging the industry to come and grow while providing a funding mechanism for the substantial infrastructure that's required. "There are real

costs to servicing this industry," he said. The further challenge is meeting the revenue flow in a manner consistent with constitutional [parameters]. Mr. Geldhof opined that former Governor Knowles walked away from a fairly reasonable deal when the Senate passed the first \$50 head tax. Since that time, the cruise ship industry has tacked on MTSA, section 445, which, on its face, restricts the ability of the [state] to levy a tax and attempts to make it so that the tax could only be spent on matters related to the cruise ship industry. Any industry would love the aforementioned, but that's not how things are done under the traditional commerce clause analysis. However, if one chooses to levy under the tonnage tax, those funds must be used on services related to the vessel.

MR. GELDHOF opined that the limit and exclusions of 12 passengers should be raised. In the past, federal and state law have held it much higher. He suggested setting the limit at 100 or 150 passengers. At that level, the small cruise ships are paying corporate income taxes and paying their fair share. The state doesn't need to regulate small cruise ships, in his personal opinion.

MR. GELDHOF concluded by saying that one has to pay attention to [MTSA] section 445, although it's not the "be all, end all." Furthermore, he suggested that almost all of the constitutional issues can be overcome with hard work. Finally, he reminded the committee of the governor's statement that the cruise ship industry must pay its fair share, and therefore he urged the committee to report the legislation from committee.

REPRESENTATIVE KOTT requested explanation of the 12 passenger [limit/exclusion].

MR. GELDHOF directed attention to page 4, lines 12-13, which is part of the definition of "commercial passenger vessel." In the work done over the last five or so years on various issues, the [limit] has always been much higher.

REPRESENTATIVE McGUIRE inquired as to the passenger capacity in Juneau.

MR. GELDHOF answered that [the exclusion] is for 150 or 250 [passengers].

**TAPE 04-16, SIDE B**

1:05

JIM CALVIN, Partner, McDowell Group, informed the committee that the McDowell Group has prepared most of the state's economic impact studies regarding the visitor industry. The McDowell Group has also prepared regional tourism industry economic impact studies in Southeast Alaska, the Interior, and Southcentral Alaska. Currently, the McDowell Group is preparing a comprehensive statewide assessment of the economic impact of the cruise industry. The study will review regional and local level impacts as well. He highlighted that a key part of the study is in regard to the impacts of the cruise industry on state government finances as well as local government finances.

MR. CALVIN told the committee that the McDowell Group was asked [by the North West CruiseShip Association] to review a letter from the governor's office that had inventoried some costs that are attributed to the cruise industry. The McDowell Group was to review the assumptions and determine whether the costs attributed to the cruise industry were reasonable, which has lead to his suggestion to make more realistic assumptions based on what is known about cruise ship passengers. He further suggested focusing on the general fund money that goes toward supporting the cruise-related activity. He also suggested focusing on the revenues that are generated. Mr. Calvin said that after going through the aforementioned, one finds that very few of these cost areas identified in the governor's letter hold any water. For instance, the international airport system receives no GF. "My point here is that, ... to the extent that your decision ... will be based on actual impacts on state government finances, you need to get some better data in front of you," he said. He commented that the issue of what happens at the local level is a completely different story. The McDowell Group has reviewed what happens to local governments in Southeast Alaska and found that the revenues generated in Juneau, Skagway, and Ketchikan from sales tax and property tax revenues from businesses that provide goods and services to the cruise ship industry far exceed the expenditures the local governments make to the cruise ship industry and its passengers. In Juneau, the sales tax revenue generated goes directly into the general fund.

REPRESENTATIVE KOTT surmised then that the port of calls in Southeast Alaska that have a sales tax are doing extremely well and are obtaining revenue that far exceeds the cost to the [local government] to entertain the cruise ship industry.

MR. CALVIN replied yes. He suggested that the committee think about the impacts of the cruise ship industry on a community.

The tourists get off the ships, wander through town, take bus tours, and leave money, much of which is taxable, behind due to purchases. Occasionally, there is an incident with the cruise ship industry that requires an ambulance. There is some trash to pick up and some communities utilize additional police during the summer tourism season. Therefore, the impact of the cruise ship industry is fairly minor in comparison to the sales tax revenues being obtained. However, he acknowledged this might not be the case in all the ports.

REPRESENTATIVE KOTT concluded, then, that the \$5 per first five ports proposed in HB 207 is a great deal.

MR. CALVIN responded, "It's going to be pure gravy into the local government coffer."

1:12

REPRESENTATIVE KOTT requested that Mr. Calvin explain the differences between his preliminary findings versus those of the governor's office.

MR. CALVIN emphasized that the McDowell Group is in the preliminary stage. However, he highlighted that the largest numbers are in relation to the international airport system, which doesn't receive any GF money. Furthermore, one can't ignore the federal money that comes into the international airport system.

REPRESENTATIVE KOTT commented that Representative Gatto just fixed the revenue sharing problem in Southeast Alaska.

CHAIR HEINZE asked if Mr. Calvin "had a feel" for the numbers from the governor's office in regard to from where they came and why.

MR. CALVIN answered that the governor's numbers seem to have come from a very cursory examination that was focused purely on finding costs, regardless as to whether they were general fund related costs, and ignored the revenue side of the matter. There wasn't an effort to find a net impact on state government. In response to Representative Kott, Mr. Calvin specified that the McDowell Group's full report will be available several months down the round. Currently, the focus is on local and state government financial impacts, which he estimated to be two to three weeks from completion.

1:15

SUSAN BURKE, Attorney at Law, Gross & Burke, PC, representing the North West CruiseShip Association, informed the committee that she had provided it with a summary of her comments from the prior meeting plus some additional comments.

REPRESENTATIVE KOTT asked if the summary addresses Version S. He also asked if Ms. Burke maintained the same constitutional issues with Version S.

MS. BURKE clarified that the summary she provided addresses the original legislation. After reviewing Version S for the last hour, she related that there are still serious legal problems. Firstly, she turned to the federal statute and drew attention to Kathryn Kurtz', Attorney, Legal and Research Services, memorandum dated February 16, 2004. She related that Ms. Kurtz believes the federal statute applies beyond Yakutat as does the attorney general, the former attorney of the City & Borough of Juneau, as well as herself. Ms. Burke pointed out that federal courts follow the plain meaning rule; and even if there is sliding scale interpretation, no court will look at statements provided after enactment, even those from the sponsor. Furthermore, the Congressional record has Congressman Don Young stating that this federal statute is to codify existing law, which she identified as the tonnage clause. She said she wasn't aware of any other existing law.

MS. BURKE turned to Version S, which refers to "costs attributable to commercial passenger vessel industry" and includes a list of the costs for the Alaska Railroad Corporation and state parks. However, the legislature's own counsel has advised that such can't be done under the federal Act because those aren't costs attributable to the cruise ship visitor industry. Furthermore, the way this [tax] is set up every year the commissioner of the Department of Revenue will determine the tax, which she characterized as an invitation for endless litigation. Ms. Burke emphasized that it's a terrible policy to have a different tax rate every year. Furthermore, there's no guarantee that the \$25 a passenger will be earned to give to the communities that can't justify the need for this money.

REPRESENTATIVE KOTT inquired as to how would the Department of Revenue make an analysis with regard to coming up with a new tax rate every year.

1:23

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, said that the Department of Revenue probably isn't the correct department because it doesn't have much expertise with regard to the buying costs of any activity within the state budget. Therefore, he suggested that the more appropriate entity to [make the analysis] would be Office of Management & Budget. The Department of Revenue is fairly adept at collecting monies and enforcing taxes, but it's not its specialty to analyze the state's budget in great detail. Mr. Harlamert said that one would need to take a historical view and apply [the tax] going forward

REPRESENTATIVE KOTT commented that the aforementioned appears to be a complex analysis.

MR. HARLAMERT said that if the [tax] is below \$50 per passenger, then it'll be fairly controversial and complex. However, if it's larger, then it would be much less troublesome.

CHAIR HEINZE announced that since the committee had just received Version S, she would recess to the call of the chair.

[HB 207 was held over.]

#### **ADJOURNMENT**

The House Special Committee on Economic Development, International Trade and Tourism meeting was recessed at 1:25 p.m. [This meeting did not reconvene.]