

AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE GATTO

TO: HCS SB 174(FIN)

1 Page 1, line 3, following "tax;": *(title amendment)*

2 Insert "providing for taxation of certain commercial ship vessels, pertaining to
3 certain vessel activities and related to ship vessel operations taking place in the marine
4 water of the State of Alaska;"

5
6 Page 1, following line 5:

7 Insert a new bill section to read:

8 **** Section 1.** AS 43.20.021(a) is amended to read:

9 (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as
10 amended, are adopted by reference as a part of this chapter. These portions of the
11 Internal Revenue Code have full force and effect under this chapter unless excepted to
12 or modified by other provisions of this chapter. However,

13 (1) nothing in this chapter or in AS 43.19 (Multistate Tax Compact)
14 may be construed as an exception to or modification of 26 U.S.C. 883; **and**

15 (2) the provisions of (1) of this subsection do not apply to
16 commercial passenger vessels, as defined in AS 43.52.199."

17
18 Page 1, line 6:

19 Delete "Section 1"

20 Insert "Sec. 2"

21

22 Renumber the following bill sections accordingly.

23

1 Page 2, line 14:

2 Delete all material and insert:

3 **** Sec. 3.** AS 43.52 is amended by adding new sections to read:

4 **Article 2. Excise Tax on Travel Aboard**

5 **Commercial Passenger Vessels.**

6 **Sec. 43.52.100. Levy of excise tax on overnight accommodations on**
 7 **commercial passenger vessels.** There is imposed an excise tax on travel on
 8 commercial passenger vessels providing overnight accommodations in the state's
 9 marine water.

10 **Sec. 43.52.110. Rate of tax.** The tax imposed by AS 43.52.100 - 43.52.199 is
 11 levied at a rate of \$46 a passenger a voyage.

12 **Sec. 43.52.120. Liability for payment of tax.** A passenger traveling on a
 13 commercial passenger vessel providing overnight accommodations in state marine
 14 waters is liable for the tax imposed by AS 43.52.100 - 43.52.199. The tax shall be
 15 collected and is due and payable

16 (1) by the person who provides travel aboard a commercial vessel for
 17 which the tax is payable; and

18 (2) in the manner and at the times required by the department by
 19 regulation.

20 **Sec. 43.52.130. Disposition of receipts.** (a) The proceeds from the tax on
 21 travel on commercial passenger vessels providing overnight accommodations in the
 22 state marine water shall be deposited in a commercial vessel passenger tax account in
 23 the general fund. The legislature may appropriate money from this account for the
 24 purposes described in (b) and (c) of this section, for state-owned port and harbor
 25 facilities, for other services to properly provide for vessel or watercraft visits, to
 26 enhance the safety and efficiency of interstate and foreign commerce, and for other
 27 lawful purposes as determined by the legislature.

28 (b) For each sailing of a commercial passenger vessel providing overnight
 29 accommodations, the commissioner shall identify the first five ports of call in the state
 30 and the number of passengers on board the vessel at each port of call. Subject to
 31 appropriation by the legislature, the commissioner shall distribute to each port of call

1 \$5 per passenger of the tax revenue collected from the tax levied under AS 43.52.100 -
2 43.52.199. If the port of call is a city located within a borough that is not unified with
3 the borough, the commissioner shall, subject to appropriation by the legislature,
4 distribute \$2.50 per passenger to the city and \$2.50 to the borough. Each port of call
5 receiving funds under this section shall use the funds in a manner calculated to
6 improve port and harbor facilities, and for other services to properly provide for vessel
7 or watercraft visits, and to enhance the safety and efficiency of interstate and foreign
8 commerce.

9 (c) Within the special commercial vessel passenger tax account established in
10 (a) of this section, a regional cruise ship impact subaccount is established. The
11 subaccount consists of 25 percent of the proceeds from the tax on travel aboard
12 commercial passenger vessels providing overnight accommodations in the marine
13 water of the state. Subject to appropriation by the legislature and regulations adopted
14 by the department, the commissioner shall distribute funds to municipalities or other
15 governmental entities within the Prince William Sound region, Southeast Alaska, or
16 any other distinctive region affected by cruise-ship-related tourism activities but not
17 entitled to receive funds based on port-of-call visitation as allowed by (b) of this
18 section. The commissioner shall make the distribution authorized by the subsection
19 only if the funds are used by the recipient to provide services and infrastructure
20 directly related to passenger vessel or watercraft visits or to enhance the safety and
21 efficiency of interstate and foreign commerce related to vessel or watercraft activities.

22 **Sec. 43.52.140. Administration.** (a) The department shall

23 (1) administer AS 43.52.100 - 43.52.199; and

24 (2) collect, and supervise and enforce the collection of, taxes due under
25 AS 43.52.100 - 43.52.199 and penalties as provided in AS 43.05.

26 (b) The department may adopt regulations to carry out the purposes of
27 AS 43.52.100 - 43.52.199.

28 **Sec. 43.52.150. Local levies.** Any municipality, whether home rule or general
29 law, that receives passenger ship fee funds under this chapter may not impose a similar
30 form of tax on travel on commercial passenger vessels engaged in activities involving
31 overnight accommodations for passengers in state marine water. Any form of tax on

1 travel on commercial passenger vessels engaged in activities involving overnight
 2 accommodations for passengers in state marine water enacted by a municipality,
 3 whether home rule or general law, before the effective date of AS 43.52.100 -
 4 43.52.199 shall expire one year after the date that AS 43.52.100 - 43.52.199 becomes
 5 law if that municipality elects to receive funds under this chapter.

6 **Sec. 43.52.199. Definitions.** In AS 43.52.100 - 43.52.199, unless the context
 7 otherwise requires,

8 (1) "commercial passenger vessel" means a boat vessel that is used in
 9 the common carriage of passengers in commerce; "commercial passenger vessel" does
 10 not include

11 (A) vessels with fewer than 250 berths or other overnight
 12 accommodations for passengers;

13 (B) noncommercial vessels, warships, and vessels operated by
 14 the state, the United States, or a foreign government;

15 (2) "marine water of the state" and "state marine water" have the
 16 meaning given to "waters" in AS 46.03.900, except that they include only marine
 17 water.

18 (3) "passenger" means a person with whom a common carrier has
 19 contracted for carriage from one place to another;

20 (4) "voyage" means any trip or itinerary lasting more than 72 hours.

21 * **Sec. 4.** AS 45.50.474 is repealed and reenacted to read:

22 **Sec. 45.50.474. Required disclosures in promotions on board cruise ships.**

23 (a) A person may not conduct a promotion on board a cruise ship that mentions or
 24 features a business in a state port that has paid something of value for the purpose of
 25 having the business mentioned, featured, or otherwise promoted, unless the person
 26 conducting the promotion clearly and fully discloses orally and in all written materials
 27 used in the promotion that the featured businesses have paid to be included in the
 28 promotion. Each written notice of disclosure required by this subsection shall be in a
 29 typeface of not less than 14 points and in a contrasting color calculated to draw
 30 attention to the disclosure.

31 (b) A person or other entity aboard a cruise ship conducting or making a sale

1 of tours, flightseeing operation or other shore-side activities to be delivered by a
2 vendor or other entity at a future port of call shall disclose, both orally and in writing,
3 the amount of commission or percentage of the total sale retained or returned to the
4 person making the sale. The person or entity aboard a cruise ship making or
5 attempting to make a sale of services or goods provided by a shore-side vendor shall
6 disclose the address and telephone number of the shore side vendor if asked by a
7 customer. Each written notice of disclosure required by this subsection shall be in a
8 typeface of not less than 14 points and in a contrasting color calculated to draw
9 attention to the disclosure.

10 (c) Each violation of this section constitutes an unfair trade practice under
11 AS 45.50.471, and shall result in a penalty of not more than \$100 for each violation.

12 (d) In this section, "cruise ship" means a ship that operates at least 48 hours in
13 length for ticketed passengers, provides overnight accommodations and meals for at
14 least 250 passengers, is operated by an authorized cruise ship operator, and is certified
15 under the International Convention for the Safety of Life at Sea or otherwise certified
16 by the United States Coast Guard.

17 * **Sec. 5.** AS 46.03.462 is repealed and reenacted to read:

18 **Sec. 46.03.462. Terms and conditions of discharges.** (a) An owner or
19 operator may not discharge any treated sewage, graywater, or other wastewater from a
20 large commercial passenger vessel into the marine waters of the state unless the owner
21 or operator obtains a permit under AS 46.03.100, which shall comply with the terms
22 and conditions of vessel discharge requirements specified in (b) of this section.

23 (b) The minimum standard terms and conditions for all discharge permits
24 authorized under this provision require that the owner or operator

25 (1) may not discharge untreated sewage, treated sewage, graywater, or
26 other wastewater in a manner that violates any applicable effluent limits or standards
27 under state or federal law, including state water quality standards governing pollution
28 at the point of discharge;

29 (2) shall maintain records and provide the reports required under
30 AS 46.03.465(a);

31 (3) shall collect and test samples as required under AS 46.03.465(b)

1 and (d) and provide the reports with respect to those samples required by
2 AS 46.03.475(c);

3 (4) shall report discharges in accordance with AS 46.03.475(a);

4 (5) shall allow the department access to the vessel at the time samples
5 are taken under AS 46.03.465 for purposes of taking the samples or for purposes of
6 verifying the integrity of the sampling process; and

7 (6) shall submit records, notices, and reports to the department in
8 accordance with AS 46.03.475(b), (d), and (e).

9 * **Sec. 6.** AS 46.03.463(b) is amended to read:

10 (b) Except as provided in (h) of this section [OR UNDER AS 46.03.462(c) -
11 (e)], a person may not discharge sewage from a commercial passenger vessel into the
12 marine waters of the state that has suspended solids greater than 150 milligrams per
13 liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that
14 the department may by regulation adopt a protocol for retesting for fecal coliform, if
15 this discharge limit for fecal coliform is exceeded, under which a discharger will be
16 considered to be in compliance with the fecal coliform limit if the geometric mean of
17 fecal coliform count in the samples considered under the protocol does not exceed 200
18 colonies per 100 milliliters. [UPON SUBMISSION BY THE OWNER OR
19 OPERATOR OF A SMALL COMMERCIAL PASSENGER VESSEL OF A PLAN
20 FOR INTERIM PROTECTIVE MEASURES UNDER AS 46.03.462(c)(2) AND (d),
21 THE DEPARTMENT SHALL EXTEND THE TIME FOR COMPLIANCE OF
22 THAT VESSEL WITH THIS SUBSECTION.]

23 * **Sec. 7.** AS 46.03.463(c) is amended to read:

24 (c) Except as provided in (h) of this section [OR UNDER AS 46.03.462(c) -
25 (e)], a person may not discharge graywater or other wastewater from a commercial
26 passenger vessel into the marine waters of the state that has suspended solids greater
27 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
28 100 milliliters except that the department may by regulation adopt a protocol for
29 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
30 which a discharger will be considered to be in compliance with the fecal coliform limit
31 if the geometric mean of fecal coliform count in the samples considered under the

1 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
2 owner or operator of a large commercial passenger vessel of a plan for interim
3 protective measures, the department shall extend the time for compliance of that vessel
4 with this subsection for a period of time that ends not later than January 1, 2003.
5 [UPON SUBMISSION BY THE OWNER OR OPERATOR OF A SMALL
6 COMMERCIAL PASSENGER VESSEL OF A PLAN FOR INTERIM
7 PROTECTIVE MEASURES UNDER AS 46.03.462(c)(2) AND (d), THE
8 DEPARTMENT SHALL EXTEND THE TIME FOR COMPLIANCE OF THAT
9 VESSEL WITH THIS SUBSECTION.]

10 * **Sec. 8.** AS 46.03.463(e) is repealed and reenacted to read:

11 (e) An owner or operator may not discharge any treated sewage, graywater, or
12 other wastewater from a large commercial passenger vessel into the marine waters of
13 the state unless the owner or operator obtains a permit under AS 46.03.100 and
14 46.03.462, and the vessel is not in an area where the discharge of treated sewage,
15 graywater, or other wastewater is otherwise prohibited.

16 * **Sec. 9.** AS 46.03.465(a) is repealed and reenacted to read:

17 (a) The owner or operator of a commercial passenger vessel shall maintain
18 daily records related to the period of operation while in the state, detailing the dates,
19 times, and locations, and the volumes and flow-rates of any discharges of sewage,
20 graywater, or other wastewater into the marine waters of the state, and provide
21 electronic copies of the records on a monthly basis to the department no later than five
22 days after each calendar month of operation in state waters.

23 * **Sec. 10.** AS 46.03.465(b) is repealed and reenacted to read:

24 (b) While a commercial passenger vessel is present in the marine waters of the
25 state, the owner or operator of the vessel shall provide an hourly report of the vessel's
26 location based on global positioning system technology and collect routine samples of
27 the vessel's treated sewage, graywater, and other wastewater that are being discharged
28 into the marine waters of the state.

29 * **Sec. 11.** AS 46.03.465(c) is repealed and reenacted to read:

30 (c) While a commercial passenger vessel is present in the marine waters of the
31 state, the department, or an independent contractor retained by the department, may

1 collect additional samples of the vessel's treated sewage, graywater, and other
2 wastewaters being discharged into the marine waters of the state.

3 * **Sec. 12.** AS 46.03.465(d) is repealed and reenacted to read:

4 (d) The owner or operator of a vessel required to collect samples under (b) of
5 this section shall ensure that all sampling techniques and frequency of sampling events
6 are approved by the department in a manner sufficient to ensure demonstration of
7 compliance with all discharge requirements under AS 46.03.462.

8 * **Sec. 13.** AS 46.03 is amended by adding a new section to read:

9 **Sec. 43.03.476. Ocean Rangers.** (a) An owner or operator of a large
10 commercial passenger vessel entering the marine waters of the state is required to have
11 a marine engineer licensed by the United States Coast Guard hired or retained by the
12 department on board the vessel to act as an independent observer for the purpose of
13 monitoring state and federal requirements pertaining to marine discharge and pollution
14 requirements and to ensure that passengers, crew, and residents at ports are protected
15 from improper sanitation, health, and safety practices.

16 (b) The licensed marine engineer shall monitor, observe, and record data and
17 information related to the engineering, sanitation, and health-related operations of the
18 vessel, including registration, reporting, record keeping, and discharge functions
19 required by state and federal law.

20 (c) Any information recorded or gathered by the licensed marine engineer shall
21 be promptly conveyed to the department and the United States Coast Guard on a form
22 or in a manner approved by the commissioner. The commissioner may share
23 information gathered with other state and federal agencies.

24 * **Sec. 14.** AS 46.03.480 is amended by adding a new subsection to read:

25 (e) An additional fee in the amount of \$4 a berth, is imposed on all large
26 commercial passenger vessels, other than vessels operated by the state, for the purpose
27 of operating the Ocean Ranger program established in AS 46.03.476; the program
28 shall be subject to legislative appropriation.

29 * **Sec. 15.** AS 46.03 is amended by adding a new section to read:

30 **Sec. 46.03.481. Citizens' suits.** (a) Any citizen of the State of Alaska may
31 commence a civil action (1) against an owner or operator of a large passenger vessel

1 alleged to have violated any provision of AS 46.03.460 - 46.03.490, or (2) against the
2 department where there is an alleged failure to perform any act or duty under
3 AS 46.03.460 - 46.03.490 that is not discretionary. No civil action may be commenced
4 under this section, however, prior to 45 days after the plaintiff has provided written
5 notice of the intent to sue to the attorney general.

6 (b) Subject to appropriation, as necessary, up to 50 percent and not less than
7 25 percent of any fines, penalties or other funds recovered as a result of enforcement
8 of AS 46.03.460 - 46.03.490 shall be paid to the person or entity, other than the
9 defendant, providing information sufficient to commence an investigation and
10 enforcement of AS 46.03.460 - 46.03.490 under this provision.

11 * **Sec. 16.** AS 46.03.760 is amended by adding a new subsection to read:

12 (g) An owner, agent, employee or operator of a commercial passenger vessel
13 as defined in AS 43.52.199 who falsifies a registration or report required by
14 AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a
15 provision of AS 46.03.250 - 46.03.313, AS 46.03.460 - 46.03.490, AS 46.14, or a
16 regulation, a lawful order of the department, or a permit, approval, or acceptance, or
17 term or condition of a permit, approval, or acceptance issued under AS 46.03.250 -
18 46.03.314, AS 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the
19 state for a sum to be assessed by the court of not less than \$5,000 nor more than
20 \$100,000 for the initial violation, nor more than \$10,000 for each day after that on
21 which the violation continues, and that shall reflect, when applicable,

22 (1) reasonable compensation in the nature of liquidated damages for
23 any adverse environmental effects caused by the violation, that shall be determined by
24 the court according to the toxicity, degradability, and dispersal characteristics of the
25 substance discharged, the sensitivity of the receiving environment, and the degree to
26 which the discharge degrades existing environmental quality; for a violation relating to
27 AS 46.14, the court, in making its determination under this paragraph, shall also
28 consider the degree to which the discharge causes harm to persons or property; this
29 paragraph may not be construed to limit the right of parties other than the state to
30 recover for personal injuries or damage to their property;

31 (2) reasonable costs incurred by the state in detection, investigation,

1 and attempted correction of the violation;

2 (3) the economic savings realized by the person in not complying with
3 the requirement for which a violation is charged; and

4 (4) the need for an enhanced civil penalty to deter future
5 noncompliance.

6 * **Sec. 17.** AS 46.03.463(d) and 46.03.463(g) are repealed.

7 * **Sec. 18.** Sections 3 and 5, ch. 153, SLA 2004, are repealed.

8 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
11 regulations to implement sec. 3 of this Act. The regulations take effect under AS 44.62
12 (Administrative Procedure Act), but not before the effective date of sec. 3 of this Act.

13 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 **SEVERABILITY.** Any portion of this legislation that is declared unlawful shall be
16 stricken in a manner that preserves the remaining portion of the remaining legislation to the
17 maximum extent possible.

18 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **REVISOR'S INSTRUCTION:** The revisor of statutes shall substitute "AS 43.52.010 -
21 43.52.099" for "this chapter" wherever "this chapter" occurs in AS 43.52.010 - 43.52.099.

22 * **Sec. 22.** Section 16, ch. 153, SLA 2004, is amended to read:

23 Sec. 16. Sections [3, 5,] 8, 10, 12, and 13 of this Act take effect January 1,
24 2016.

25 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c)."