

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 5, 2005

8:11 a.m.

MEMBERS PRESENT

Representative Kurt Olson, Co-Chair
Representative Bill Thomas, Co-Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Mark Neuman
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 2

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

- HEARD AND HELD

HOUSE BILL NO. 49

"An Act relating to municipal aid grants; and providing for an effective date."

- MOVED CSHB 49(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 2

SHORT TITLE: TAX ON COMMERCIAL VESSEL PASSENGERS

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	CRA, TRA, FIN
03/29/05	(H)	CRA AT 8:00 AM CAPITOL 124
03/29/05	(H)	Heard & Held
03/29/05	(H)	MINUTE(CRA)
04/05/05	(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HB 49

SHORT TITLE: MUNICIPAL AID GRANTS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

01/10/05	(H)	PREFILE RELEASED 1/7/05
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	CRA, FIN
03/03/05	(H)	CRA AT 8:00 AM CAPITOL 124
03/03/05	(H)	Heard & Held
03/03/05	(H)	MINUTE(CRA)
04/05/05	(H)	CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

JOHN PEARSON

Hyder Board of Trade, Inc.

Hyder, Alaska

POSITION STATEMENT: Testified in support of HB 2, with two modifications.

CODY RICE, Staff

to Representative Carl Gatto

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke on behalf of the sponsor of HB 2, Representative Gatto.

MIKE WINDRED

Alaska Travel Adventures

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 2.

DON HABEGER, Regional Vice President

Government & Community Affairs

Royal Caribbean Cruises

Juneau, Alaska

POSITION STATEMENT: Expressed concerns with HB 2.

SUSAN BURKE, Attorney at Law

Gross & Burke, PC

Juneau, Alaska

POSITION STATEMENT: Representing the North West Cruiseship Association, expressed legal concerns with HB 2.

REPRESENTATIVE NORMAN ROKEBERG

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 49.

ACTION NARRATIVE

CO-CHAIR BILL THOMAS called the House Community and Regional Affairs Standing Committee meeting to order at [8:11:15 AM](#). Representatives Olson, Thomas, Kott, LeDoux, and Neuman were present at the call to order. Representatives Kott and Cissna arrived as the meeting was in progress.

HB 2-TAX ON COMMERCIAL VESSEL PASSENGERS

CO-CHAIR THOMAS announced that the first order of business would be HOUSE BILL NO. 2, "An Act relating to taxes regarding certain commercial passenger vessels operating in the state; and providing for an effective date." [Before the committee was CSHB 2, Version 24-LS0003\G, Kurtz, 2/17/05.]

[8:12:10 AM](#)

CO-CHAIR OLSON moved to adopt CSHB 2, Version 24-LS003\L, Kurtz, 4/1/05, as the working document. There being no objection, Version L was before the committee.

[8:12:30 AM](#)

JOHN PEARSON, Hyder Board of Trade, Inc., informed the committee that Hyder, an unincorporated community of about 130 residents, is located at the Canadian border at the end of the Portland Canal. Hyder has a unique relationship with British Columbia. The community, while isolated, is directly linked to the Lower 48 by a paved highway. Tourism is the primary industry of Hyder. In fact, the U.S. Forest Service recorded 56,000 independent visitors who came to view the bears at Hyder. Last year was also the first year that Hyder was actively engaged in the cruise tourism industry. Next year, Hyder will increase port calls by about 300 percent. Mr. Pearson related support for HB 2 with the following two modifications. Mr. Pearson requested an exclusion of the Portland Canal because it is recognized as an international waterway similar to those waters that Alaska Marine Highway vessels travel from Bellingham to Ketchikan.

[8:15:10 AM](#)

REPRESENTATIVE NEUMAN inquired as to the location of the language in the legislation.

CO-CHAIR OLSON specified that the language [to which Mr. Pearson is referring] is "marine waters of the state", which is located on page 2, line 2 of Version L.

[8:16:44 AM](#)

MR. PEARSON informed the committee that the Portland Canal is flanked by British Columbia on one side and Alaska on the other side. Any vessel traveling between Prince Rupert, British Columbia, and Stewart, British Columbia, without ever making a port call in Alaska would be required to pass through Alaska waters, which is similar to the situation when the Alaska Marine Highway operated between Hyder, Alaska; Stewart, British Columbia; and Ketchikan, Alaska. Therefore, the request is to only exclude Portland Canal. He pointed out that only two U.S. communities are exempt from the Jones Act: Hyder, Alaska and Savannah, Georgia. Mr. Pearson related his belief that any vessel making landings at Stewart would be considered the same as any other community in Alaska.

MR. PEARSON announced that the Hyder Board of Trade, Inc., also seeks the inclusion of unincorporated communities while requiring documentation that indicates that there is a port call. This legislation, he related, provides unorganized communities the ability to do some economic development, in the area of tourism, that hasn't done before. He noted that for a community such as Hyder to meet the federal standards and mandates of homeland security is a major task.

[8:20:17 AM](#)

REPRESENTATIVE NEUMAN asked if British Columbia presently has a head tax.

MR. PEARSON replied no. In further response to Representative Neuman, Mr. Pearson clarified that he isn't requesting an exemption from taxation for Hyder. However, Hyder would like to share in the proceeds. Mr. Pearson, in response to Representative Neuman, specified that Hyder is an unorganized borough and wouldn't receive funds under this legislation. However, Hyder anticipates incorporating in the next five years, he related.

[8:22:05 AM](#)

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, confirmed that he and Mr. Pearson spoke on this issue. The sponsor's and Legislative Legal and Research Services' interpretation of HB 2 is that no matter whether a community is identified as organized or not if the community is identified as a port of call, that community will be considered one of the five ports of call and receive funds. The legislation only refers to an incorporated city within a borough, in which case the intention was to split the revenue because of shared port and harbor costs. With regard to vessels traveling between Canadian ports without stopping in an Alaskan port, under MTSA applying this tax would be illegal. He mentioned that the committee should have an amendment that would exempt vessels that don't stop at an Alaska port of call in order to provide some clarity.

[8:24:26 AM](#)

CO-CHAIR THOMAS related his understanding that the smaller vessels that anchor outside the port would be exempt from this proposed tax. However, he said he thought the idea was to [tax] those who impact Alaska.

MR. RICE said whether [such vessels are exempt from this proposed law] would depend upon the Department of Revenue's interpretation of the law. However, he suspected that anchoring wouldn't meet MTSA standards for taxation purposes and that passengers would actually have to be off-loaded.

CO-CHAIR THOMAS interjected that passengers are off-loaded from these vessels that are anchored [outside the port].

MR. RICE suggested then that in such a situation, it would likely be considered a port of call.

[8:26:06 AM](#)

MIKE WINDRED, Alaska Travel Adventures, spoke in opposition to HB 2. He characterized the proposal in HB 2 as a punitive tax with limited spending potential. Furthermore, the proposed tax doesn't tax the intended target, the cruise line, rather it taxes the visitor. Mr. Windred recalled the previous presentation on HB 2 from which he understood one of the reasons for the tax is that cruise lines make a lot of money, and therefore the state should receive a portion of it. However, that doesn't seem to be the correct avenue, he opined. Mr.

Windred pointed out that there has been no risk sharing when the cruise industry has built a \$600 million ship. In fact, there have been several small cruise lines, such as World Explorer Cruises, that stopped coming to Alaska after [the terrorist attacks of September 11, 2001] because it couldn't make enough money. Mr. Windred informed the committee that the cruise ship industry prefers a broad-based tax rather than a targeted tax. He highlighted that the other taxes mentioned: timber, mining, and oil taxes are industries that actually extract something from the state. However, the visitor industry is one in which the visitors leave something, money, when visiting. The aforementioned money is left with [the state's] businesses, which then in turn spend money in the state.

MR. WINDRED turned to the limited spending potential of the proposed tax revenues, which are directly tied to the ship and its cargo. This tax won't allow money to be deposited into the general fund to be distributed to outlying communities, which will be hurt the most by this proposed tax. This tax taxes the visitor rather than the industry, he highlighted. Furthermore, visitors already pay a substantial amount in port fees and dues. For example, a visitor to Juneau will pay about \$20 for ship pilotage fees, \$5 for Juneau's local head tax, \$1.18 for a port development fee, \$1 for a docking fee, and a \$.50 tonnage tax. Therefore, before a visitor has even left the ship he/she pays about \$28.00. In Juneau visitors also pay a sales tax, a loading permit fee, a land use fee, and an airport fee. The aforementioned doesn't include the expenses of goods a [tourism] company buys and on which it pays sales tax, not to mention corporate income taxes. Therefore, he charged that the visitor is already paying a substantial fee.

MR. WINDRED posed a scenario in which a family of four taking a \$1,000 per person cruise would face \$200 in taxes under this proposal. He informed the committee that surveys have shown an additional charge of \$50 would deter 17 percent of visitors from coming to Alaska. Moreover, 48 percent, including the aforementioned 17 percent, say the decision to visit Alaska would be marginal [with a \$50 tax]. Even those who come to Alaska will decide what not to do or spend when visiting Alaska. He suggested that those things cut first are the expensive back country/rural area tours, the extended tours, and the shore excursions. Mr. Windred said he can relate this with much certainty due to the experiences Alaska Travel Adventures has had.

[8:36:06 AM](#)

REPRESENTATIVE NEUMAN related his understanding that although the cruise ships make a substantial profit, they don't pay corporate taxes to the state.

MR. WINDRED agreed, but added that some of the subsidiaries of the cruise ships do [pay corporate taxes to the state], such as Gray Line of Alaska.

REPRESENTATIVE NEUMAN turned attention to Mr. Windred's earlier example of a cruise that costs \$1,000 per person, and pointed out that the \$200 tax for a family of four would be in relation to \$4,000 for a cruise for four. Representative Neuman recalled that Mr. Windred had said that a sales tax is charged on all the tours that Alaska Travel Adventures offers.

MR. WINDRED agreed.

CO-CHAIR THOMAS interjected that the sales tax is at the local level.

REPRESENTATIVE NEUMAN asked if [Alaska Travel Adventures] transfers the local level sales tax or does the company charge a fee on top of that local level sales tax.

MR. WINDRED clarified that Alaska Travel Adventures collects the appropriate sales tax for that local community and it's returned to the community.

REPRESENTATIVE NEUMAN characterized this proposal as a user fee. He related the burden that the tourism industry creates on local communities, which is a substantial cost to the local communities. He noted his disagreement with Mr. Windred's earlier suggestion that this proposed tax is to support the general fund (GF).

MR. WINDRED said that he couldn't think of an instance in which the individual or company using the [local] services didn't pay for the services directly. For instance, Bartlett Regional Hospital (BRH) does fairly well from the visitor industry. He suggested that BRH provides services to locals that it wouldn't be able to otherwise due to the [profit] made from the tourists. Therefore, he opined that most of the services are paid for by the visitors to the state. "I would have a hard time believing ... that there are places where there's a large burden on the state, where those people aren't paying for those services," he opined.

8:41:12 AM

REPRESENTATIVE CISSNA recalled Mr. Windred's earlier comment that the cruise lines bring something to the state. Representative Cissna pointed out that the cruise lines bring garbage and pollution. After talking with different communities about their local economy, she has discovered that the tourism industry is up. However, tourism isn't necessarily beneficial because it brings in many summer workers and those who build an industry for the summer are left with no income in the winter. The aforementioned people will rely on state services in the winter and thus it's a [burden] for the state and the local communities. With regard to medical services, she pointed out that medical services are already stretched in smaller areas. Representative Cissna concluded by opining that the proposal embodied in HB 2 sounds like a user tax because it pays for many of the services that have built up for the cruise line industry.

MR. WINDRED agreed, but said the issue with this legislation is in regard to how to tie the money to the [rural areas] when the tax collected has to be tied to the cruise ship and its cargo. At some point, the money can't be spent in a rural community because it isn't tied to the cruise ship. However, a 2 percent sales tax, even if it were seasonal, could be spent anywhere in Alaska, including rural communities.

8:45:20 AM

REPRESENTATIVE LEDOUX surmised that if the cruise ship tax revenue goes specifically to the directly impacted communities, then there would be more money in the state treasury to go to the more remote communities.

MR. WINDRED opined, "I think within the area that you'd be offsetting ... the state isn't spending a lot right now, that most of that is already either offset through the visitor or there isn't a very high cost there, at this point."

REPRESENTATIVE LEDOUX related her understanding that Mr. Windred had just testified that there are significant costs to the outlying areas, but those areas wouldn't be impacted by the cruise ship tax.

MR. WINDRED specified, "The place you'd have to offset to spend ... the general fund money elsewhere would be within the core of

where the ship is traveling. So, that wouldn't include that rural community."

REPRESENTATIVE LEDOUX surmised then that the tax revenue from the cruise ships places more money in the state treasury and it's spent on the communities directly impacted. Once those communities are addressed with the [cruise ship tax revenues], more GF is left for other areas.

CO-CHAIR THOMAS explained that the first five ports receive the revenue generated from the tax, and the remainder of the money is placed in the GF. The question then becomes how to get money to Point Barrow when the cruise ship visitors departed in Skagway and traveled by bus to [Point Barrow]. The chances that the money left in the GF is dispersed to rural areas is more difficult.

[8:48:23 AM](#)

REPRESENTATIVE LEDOUX recalled Mr. Windred's speculation that imposing a head tax would have ramifications for other land-based industries. Therefore, she asked whether Mr. Windred had a study illustrating that people visiting Juneau, with its \$5 head tax, have reduced their spending on land-based [tours] by \$5 a person.

MR. WINDRED replied no. However, during the same timeframe [as the \$5 tax was imposed in Juneau] several other large factors occurred, such as [the terrorist attacks of September 11, 2001] and the economic decline. Therefore, such a study would be difficult to perform.

REPRESENTATIVE LEDOUX asked if Mr. Windred would be able to prove that everyone spent \$5 less during a time when there aren't other factors to consider.

MR. WINDRED opined that a \$5 port tax wouldn't have nearly the impact as a \$50 port tax. However, \$200 in tax for a family of four is an impact on where that family spends its money. Mr. Windred said he would prefer the money be spent with [local businesses] that can then spend that money with the state, which helps the economy much more than the proposed tax revenue that goes directly to the GF. In fact, a statewide sales tax would encourage travel throughout the state.

[8:51:44 AM](#)

REPRESENTATIVE SALMON asked if other states charge a tax such as that proposed in HB 2.

MR. WINDRED replied not to his knowledge, although there are port fees in other states. The State of Alaska already has port fees for each community visited. He indicated that there aren't any specific head taxes to enter the state due to some interstate commerce laws.

REPRESENTATIVE SALMON asked if Alaska's port fees are comparable to those charged on the West Coast.

MR. WINDRED deferred to Mr. Habeger.

[8:53:17 AM](#)

REPRESENTATIVE CISSNA turned to independent travelers to Alaska, and asked if there have been studies regarding whether cruise ship visitors take a separate trip to outlying areas that aren't part of the [cruise].

MR. WINDRED confirmed that there are some studies regarding the number of individuals who, post cruise, take trips [to outlying areas]. He informed the committee that part of Alaska Travel Adventures is a recreational vehicle (RV) business. He further informed the committee that since [the terrorist attacks of September 11, 2001] people weren't willing to spend money on a package [that included a cruise and RV trip]. Mr. Windred said there is a huge tie in all the visitors that come to Alaska because of the marketing of the state. Cruise lines, he related, spend well over \$70 million on marketing Alaska, which creates an image of Alaska. Largest portion of the state's match [in marketing] amounts to about \$10 million spent on marketing in Alaska in the travel planner. One of the primary focuses of the travel planner is independent travel. He highlighted that the cruise ship industry is a huge portion of making the travel planner happen.

[8:57:35 AM](#)

MR. WINDRED, in response to Representative Cissna, explained that the travel booklet is put out by the Alaska Travel Industry Association, which is a private marketing group.

REPRESENTATIVE CISSNA interjected that the aforementioned private marketing group receives state assistance. She then pointed out that although Mr. Windred has used the RV business

as an example [of tourism reaching outlying areas], the real outlying areas aren't on the road system.

MR. WINDRED agreed, but pointed out that the booklet provides names and advertisements for direct bookings [to outlying/remote areas].

[8:59:17 AM](#)

REPRESENTATIVE NEUMAN recalled that the governor cut the tourism marketing funds quite a bit last year. He inquired as to how much the state pays [for marketing].

MR. WINDRED estimated that the state pays a little over \$4 million to match the funds the [tourism industry] puts forth [for marketing]. The total [funds for marketing] amounts to almost \$10 million.

[9:00:43 AM](#)

CO-CHAIR THOMAS pointed out that page 24 of the McDowell Group report in the committee packet may answer some of Representative Cissna's questions regarding the number of travelers to the Interior and what those travelers spend there. The report specifies that \$100 million was spent [by passengers and crew] in Southcentral and \$28 million in the Interior.

[9:01:11 AM](#)

MR. WINDRED referred to the January 27, 2004, letter from Michael Tibbles, Legislative Director, Office of the Governor. The aforementioned letter specifies that about \$115 million in state spending is [potentially] attributable to the cruise industry. However, the McDowell Group performed a study [dated April 22, 2004], which shows that instead of the \$155 million in state funds there was only about \$900,000 most of which came through the Division of Sport Fish and the fish and wildlife protection [division]. He said that both of the aforementioned are based on a percentage. From having run sport fishing businesses, Mr. Windred related that not many extra personnel are hired for enforcement, which seems to happen "because it's already there." In a situation in which the cruise ship industry disappeared and the charter boats no longer existed, the impact to the Division of Sport Fish would mainly be to its revenue side rather than its cost side. Therefore, he indicated his agreement with the McDowell Group's estimate of the cost to the Division of Sport Fish of \$600,000.

MR. WINDRED then directed attention to the McDowell Group's packet of information entitled, "The Economic Impacts of the Cruise Industry in Alaska, 2003" dated October 2004.

The committee took an at-ease from 9:04 a.m. to 9:21 a.m.

9:22:03 AM

DON HABEGER, Regional Vice President, Government & Community Affairs, Royal Caribbean Cruises (RCC), first addressed the uniqueness of HB 2 by pointing out that no other state has any kind of head tax such as proposed in HB 2. Although one might say Hawaii has a head tax, there are some major differences. One of which is that all of Hawaii's harbors are state-owned, and therefore it's all controlled by Hawaii's department of transportation. He explained that Hawaii does have a per passenger wharfage fee for the use of the dock, which ranges from \$.35-\$5.00. Hawaii does have other fees such as those based on the length of the vessel and the number of lines. Mr. Habeger then turned to the challenges [HB 2 would create for] Alaska businesses. He then provided a handout entitled, "Alaska Businesses Will Pay" to the committee. The aforementioned document includes a pie chart, which addresses the potential economic impact of a \$50 or \$100 head tax on consumers coming to Alaska. The response was that there would be a definite impact on the tourist's spending once he/she arrives in Alaska. Mr. Habeger opined that as "we get" further away from the core economic activity, Alaska's businesses are placed in more jeopardy. For example, one of the ground presidents of RCC visited Nome. While that individual likes Nome, it was determined that [offering tours] in Nome would be more challenging if the cost increased, such as would be the case with this proposed tax.

MR. HABEGER then turned to the [cruise ship] industry's own municipal revenue sharing. The earlier mentioned McDowell Group report discusses the over \$30 million that the industry pays for its usage of docks, including some private docks, bed taxes, and airport fees. Therefore, Mr. Habeger said [RCC] believes that the cost to the state and municipalities isn't as much as the industry brings to the state. Mr. Habeger then recalled an article regarding a Florida lawsuit that the sponsor referenced during his presentation. He informed the committee that the aforementioned lawsuit was dismissed without prejudice. The lawsuit was a class action suit that alleged that RCC was in the practice of overcharging customers through taxes and fees.

However, investigation showed that, in fact, RCC is under charging and thus the case was dismissed.

9:30:28 AM

REPRESENTATIVE LEDOUX related her understanding that at the end of a cruise, the passengers are given envelopes suggesting how much to tip employees on the ship. Therefore, she asked whether the cruise ship industry is worried that tips would detract from the on shore [revenues].

MR. HABEGER answered that it's not an area that has been considered. He highlighted that the cruise ship industry is a service industry, which often includes a tip portion of an employee's wage. Although the [cruise ship industry] provides suggested amounts, it's left to the discretion of the consumer of the service.

9:32:36 AM

SUSAN BURKE, Attorney at Law, Gross & Burke, PC, representing the North West Cruiseship Association (NWCA), informed the committee that HB 2 involves three areas of law: the tonnage clause of the U.S. Constitution; the MTSA; and the privileges and immunities clause of the U.S. Constitution. She explained that the privileges and immunities clause specifies that residents of one state enjoy the same privileges of immunity when they travel to another state. The aforementioned is referred to as the right to travel between and among the states. Furthermore, the equal protection clause of the U.S. and Alaska Constitutions specifies that similarly situated people can't be treated differently without a valid reason. Ms. Burke highlighted the language in the federal statute that restricts the proceeds of passenger fees to only provide services to the vessel. She said she understood the concerns of Representatives Neuman and Cissna regarding impacts from tourism to communities, but she pointed out that some of those impacts aren't from cruise ship tourists.

MS. BURKE reiterated that, by law, the proceeds [of the proposed tax] can only be used for services to the vessel. However, under the Commerce Clause the aforementioned have been limited to marine pilot fees, harbor only police, harbor fire protection, docking facilities, wharfing facilities, and the like. Under HB 2, \$5 of the \$50 fee goes to the municipalities in which each of the first five ports of call are located. Under HB 2, 25 percent [of the \$50 fee] is set aside for

regional impacts for Prince William Sound and Southeast Alaska. However, if it's not a port, she didn't see how, practically, the entity could provide a service to the vessel that enhances safety and efficiency. She said she couldn't think of anything on which the state, since it doesn't own any of the docks, could possibly spend the money. Therefore, she questioned the point of this proposal. Ms. Burke recalled Representative Gatto's remarks at a prior hearing in which he indicated that the purpose of the head tax is to compensate the state for its contributions to the industry. However, that's not a service to vessel. Therefore, she suggested that a broad-based sales tax that everyone has to pay is preferable to the proposal embodied in HB 2. Although the revenue going to the five ports of call comes close to meeting the requirements of MTSA, Juneau, a community that already charges \$5 per head, already finds itself in a difficult position finding projects that fall under the MTSA. The farther away from the port the project that uses these funds, the less likely the head tax is legal, she opined.

[9:39:39 AM](#)

MS. BURKE turned to the constitutional provision regarding the right to travel. In an old U.S. Supreme Court case, Crandall v. Nevada, the State of Nevada imposed a \$1 fee on anyone leaving the state by stagecoach or train. The case rose to the U.S. Supreme Court, which ruled that such a fee can't be imposed because people have to be able to travel freely between states. She emphasized that the U.S. Constitution doesn't allow such fees to be charged to residents of sister states. Furthermore, there are difficulties with regard to determining whether an individual is traveling on business or pleasure. She highlighted that the Commerce Clause specifies that one can't discriminate against nonresidents with regard to commerce. Therefore, Ms. Burke characterized [HB 2] as having a serious constitutional impediment even if one believes the matter can get past the tonnage clause and the federal statute issues.

[9:42:09 AM](#)

MS. BURKE moved on to the concept of user fees, and stated that there's no question that user fees are constitutional. However, there are limitations. For instance, user fees can only be charged to those who are actually using the service for which he or she is being charged. The aforementioned isn't the case with HB 2 because an individual that doesn't get off the cruise ship is charged the \$50 tax, and therefore the proposed tax isn't a user fee in that sense. "It's not a user fee in the sense that

cruise ship passengers are a peculiar source of the impact that may be perceived by communities," she stated. She highlighted that people from Anchorage who might travel to the Mat-Su Borough for summer recreational activities cause impacts. Ms. Burke explained that a legal user fee has to be nondiscriminatory and charged to residents and nonresidents alike, which this proposed tax doesn't do. In conclusion, she recalled Representative Gatto's testimony from a prior meeting in which he suggested that the courts could work out whether the legislation is constitutional or not. However, Ms. Burke opined that the legislature does have an obligation to be concerned about these constitutional issues.

[9:45:04 AM](#)

REPRESENTATIVE NEUMAN asked if there is any middle ground on this issue and the legal concerns raised by Ms. Burke.

MS. BURKE replied that for a passenger head tax the answer is no. Again, she suggested that a broad-based sales tax might work. This proposed tax won't work because of the federal statute specifying that the proceeds of this tax can't be used for anything other than a service to the vessel and the right to travel.

[9:46:28 AM](#)

REPRESENTATIVE LEDOUX referred to the memo from Mr. Tibbles, which highlights that many communities charge embarking or disembarking taxes. She asked if those taxes have been challenged constitutionally and if so, she inquired as to the outcome of such challenges. If there has been no constitutional challenge, she inquired as to why not.

MS. BURKE clarified that she hasn't researched each of those municipal taxes. However, she emphasized that those are municipal taxes and [those are all charged in municipalities] with ports. She further clarified that she hasn't researched whether the amount charged is reasonable in relation to the amount of services provided, although she assumed that the municipalities are providing services to vessels because they are ports. Ms. Burke reminded the committee that these vessels pay a head tax in Juneau and substantial port fees at every place they go in Alaska and elsewhere. Under the tonnage clause those are permissible. In further response to Representative LeDoux, Ms. Burke confirmed that the Interstate Commerce Clause would apply to municipalities as well as to the state.

9:48:04 AM

REPRESENTATIVE KOTT inquired as to how the related initiative would dovetail with HB 2.

MS. BURKE said that although she hasn't had an opportunity to review Version L, Version G is fairly similar to the initiative. Ms. Burke said that she didn't know what would happen if both HB 2 and the initiative were to pass.

CO-CHAIR THOMAS announced that HB 2 would be held over.

9:49:37 AM

REPRESENTATIVE KOTT asked if there is any data showing how many Alaskans actually participate in the cruise ship industry versus visitors.

MR. HABEGER answered that he didn't believe such research has been done. Although there is often review of market shares from various regions, he didn't believe the data is refined down to states. He said he would have to check into whether such information could be obtained.

REPRESENTATIVE KOTT turned to the transitional language in HB 2, which makes the legislation effective immediately. He inquired as to when families planning a cruise do so [in relation to the time of the cruise].

MR. HABEGER highlighted that consumer purchasing habits have changed since [the terrorist attacks of September 11, 2001] such that there was a shrinking of time before the decision-making process. However, that timeframe is expanding again. Mr. Habeger estimated that people plan a cruise about a year to six months in advance of the cruise.

REPRESENTATIVE KOTT surmised that if HB 2 takes effect on its effective date, there will be a large number of visitors who would've probably purchased tickets prior to November. Therefore, the cruise ship industry would be obligated to pay whatever tax is in place, although it hadn't passed it on to the consumer who purchased the ticket prior to the transitional date.

MR. HABEGER replied yes, adding that the industry would be faced with whether to seek the money from the consumer as an add-on or to pay for it from the cruise line's profit.

REPRESENTATIVE KOTT asked if it would be legal to seek the funds [for the newly implemented tax] from a consumer that has already purchased his or her ticket.

MS. BURKE said she wasn't sure of the answer, but she supposed it has to do with the incidence of the tax. Normally, a tax is imposed at the moment the object of the tax takes place. This proposed tax is more like an arrival tax, she opined. Therefore, in terms of traditional taxing concepts, the passenger would be obligated to pay it. In further response to Representative Kott, Ms. Burke specified that it wouldn't be retroactive if the tax is imposed on the act of arriving in Alaska.

REPRESENTATIVE KOTT suggested that there is some advertising by the cruise ship industry that would specify a price, but [upon passage of HB 2] the consumer would be asked to pay an additional tax.

MS. BURKE pointed out that this would be the state government imposing the tax and it would be the law. In further response to Representative Kott, Ms. Burke said that it would be a business decision whether to refund an individual's ticket [who didn't want to pay the additional tax]. She stated that she didn't believe the cruise line would be legally obligated to [refund tickets].

[10:00:04 AM](#)

CO-CHAIR THOMAS reminded the committee that HB 2 would be held over.

HB 49-MUNICIPAL AID GRANTS

CO-CHAIR THOMAS announced that the final order of business would be HOUSE BILL NO. 49, "An Act relating to municipal aid grants; and providing for an effective date."

[10:00:27 AM](#)

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor, noted that he has reviewed an amendment, labeled 24-LS0192\G.1, Cook, 4/1/05, from Representative Salmon.

Representative Rokeberg said that he wants to move the legislation so that he can request a hearing in the House Finance Committee. Representative Rokeberg related his understanding that the aforementioned amendment would add some \$10,000 for unincorporated areas. Representative Rokeberg recalled that before revenue sharing was not funded at all, [unincorporated communities] were granted funding that had decreased to the \$3,500 level. He left [whether to adopt the amendment] to the committee to decide, but noted that he's trying to manage the fiscal note rather than increase it.

[10:01:56 AM](#)

REPRESENTATIVE SALMON moved that committee adopt Amendment 1, labeled 24-LS0192\G.1, Cook, 4/1/05, which read:

Page 1, line 1, following "**grants**":

Insert "**for municipalities and certain unincorporated communities**"

Page 1, line 7, following "subsection.":

Insert "Each fiscal year the department shall pay a municipal aid grant of \$10,000 to each community. The department with advice from the Department of Law shall determine whether there is in each community an incorporated nonprofit entity or a Native village council that will agree to receive and spend the grant for the benefit of the community. If there is more than one qualified entity in a community, the department shall pay the grant to the entity that the department finds most qualified to receive and spend the money. The department may not pay the grant to a Native village council unless the council waives immunity from suit for claims arising out of activities of the council related to the grant. A waiver of immunity from suit under this subsection must be on a form provided by the Department of Law. If there is no qualified incorporated nonprofit entity or Native village council in a community that is willing to receive the grant, the grant for that community may not be paid. Neither this subsection nor any action taken under it enlarges or diminishes the governmental authority or jurisdiction of a Native village council."

Page 1, lines 10 - 11:

Delete "equal grants in the reduced amount to all municipalities"

Insert "grants reduced by an equal percentage to all municipalities and eligible communities"

Page 1, line 12, following "section,":

Insert

"(1) "community" means a place in the unorganized borough that is not incorporated as a city and in which 25 or more persons reside as a social unit;

(2)"

REPRESENTATIVE KOTT objected for discussion purposes.

[10:02:10 AM](#)

REPRESENTATIVE SALMON explained that Amendment 1 would provide \$10,000 to each municipality. He opined that it's unfair to the unorganized and smaller communities that wouldn't receive anything under HB 49. He commented that the \$10,000 was [randomly selected], and therefore returning to \$3,500 would even be acceptable.

[10:03:07 AM](#)

REPRESENTATIVE SALMON moved to amend Amendment 1 such that the grant amount of \$10,000 would be changed to \$3,500. There being no objection, the amendment to Amendment 1 was adopted.

Therefore, Amendment 1, as amended, was before the committee.

REPRESENTATIVE KOTT maintained his objection to Amendment 1, as amended.

[10:04:00 AM](#)

REPRESENTATIVE ROKEBERG, in response to Representative Neuman, confirmed that the legislature did pass legislation that added some \$6 million for fuel assistance to organized communities throughout the state.

CO-CHAIR THOMAS noted a House floor amendment to the aforementioned legislation that would've provided \$3,500 to unorganized communities failed.

[10:04:57 AM](#)

REPRESENTATIVE ROKEBERG interjected that the legislation wasn't intended as fuel assistance but rather [to provide assistance] with no strings attached.

[10:05:26 AM](#)

A roll call vote was taken. Representatives LeDoux, Neuman, Cissna, Salmon, and Thomas voted in favor of the adoption of Amendment 1, as amended. Representatives Kott and Olson voted against it. Therefore, Amendment 1, as amended, was adopted by a vote of 5-2.

[10:06:09 AM](#)

REPRESENTATIVE NEUMAN moved to report HB 49, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 49(CRA) was reported from the House Community and Regional Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [10:06:27 AM](#).