

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 3, 2007

8:05 a.m.

MEMBERS PRESENT

Representative Anna Fairclough, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Nancy Dahlstrom
Representative Mark Neuman
Representative Kurt Olson
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 212

"An Act authorizing the transfer of land from the Alaska Railroad Corporation to Eklutna, Inc.; and providing for an effective date."

- MOVED HB 212 OUT OF COMMITTEE

HOUSE BILL NO. 222

"An Act providing a credit for a municipal tax imposed on certain passengers traveling on commercial passenger vessels that provide overnight accommodations; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 212

SHORT TITLE: LAND TRANSFERS ALASKA RR & EKLUTNA

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

03/21/07	(H)	READ THE FIRST TIME - REFERRALS
03/21/07	(H)	CRA, FIN
04/03/07	(H)	CRA AT 8:00 AM BARNES 124

BILL: HB 222

SHORT TITLE: PASSENGER VESSEL TAX CREDIT
SPONSOR(s): REPRESENTATIVE(s) RAMRAS

03/26/07 (H) READ THE FIRST TIME - REFERRALS
03/26/07 (H) CRA, FIN
04/03/07 (H) CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

BEN MULLIGAN, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 212 on behalf of the sponsor,
Representative Stoltze.

CURTIS MCQUEEN, Corporate Affairs
Eklutna, Inc.;
Native Village of Eklutna
(No address provided)

POSITION STATEMENT: Testified on HB 212.

PAT GAMBLE, President & CEO
Alaska Railroad Corporation
Department of Commerce, Community, & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Requested the committee's approval of the
land transfer embodied in HB 212.

JIM ARNESEN, Corporate Land & Regulatory Manager
Eklutna, Inc.
(No address provided)

POSITION STATEMENT: During hearing of HB 212, requested that
the property be returned as soon as possible and be left in as
original condition as possible.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 222.

DON BULLOCK, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 222, answered
questions.

TIM BOURCY, Mayor
City of Skagway
Skagway, Alaska

POSITION STATEMENT: Testified in support of the concept of HB 222 and the cap it imposes.

GERSON COHEN
(No address provided)

POSITION STATEMENT: During hearing of HB 222, spoke as one of the sponsors of the cruise ship tax initiative.

MARVIN YODER
Seward, Alaska

POSITION STATEMENT: Testified on HB 222.

ALLEN SOREN, City Manager
City of Skagway
Skagway, Alaska

POSITION STATEMENT: Testified that the cap on individual credits at each port included in HB 222 is important to the City of Skagway.

BOB WEINSTEIN, Mayor
City of Ketchikan
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 222.

CHIP THOMA
Juneau, Alaska

POSITION STATEMENT: Testifying as a cruise initiative law supporter, urged the committee to reject HB 222.

ACTION NARRATIVE

CO-CHAIR ANNA FAIRCLOUGH called the House Community and Regional Affairs Standing Committee meeting to order at [8:05:35 AM](#). Representatives Fairclough, LeDoux, Dahlstrom, Neuman, Olson, and Cissna were present at the call to order. Representative Salmon arrived as the meeting was in progress.

HB 212-LAND TRANSFERS ALASKA RR & EKLUTNA

[8:06:25 AM](#)

CO-CHAIR FAIRCLOUGH announced that the first order of business would be HOUSE BILL NO. 212, "An Act authorizing the transfer of land from the Alaska Railroad Corporation to Eklutna, Inc.; and providing for an effective date."

[8:06:43 AM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, explained that HB 212 is land conveyance legislation in which land from the Alaska Railroad Corporation (ARRC) would be conveyed to Eklutna, Inc. In order for a land transfer to happen, ARRC has to request and obtain approval of the legislature to transfer the land known as the Eklutna Quarry, which is 48 acres [north of] Eagle River. Prior to the introduction of HB 212, ARRC, Eklutna, Inc., and the Native Village of Eklutna all worked out the logistics of what would occur with this parcel and signed a memorandum of understanding (MOU) to that effect. Everyone is [in agreement] with the deal and thus coming before the legislature is a formality. What has already been blasted in the quarry will be taken out and then the parcel will be conveyed to Eklutna.

[8:09:12 AM](#)

CURTIS MCQUEEN, Corporate Affairs, Eklutna, Inc.; Native Village of Eklutna (NVE), thanked the committee for hearing this matter, which has been lingering for 30 years. Mr. McQueen related that Eklutna, Inc. has worked closely with NVE, which is the tribal side of the organization. Over 30 years ago, Eklutna was promised this land and quarry through the Alaska Native Claims Settlement Act (ANCSA). Although ARRC, Eklutna, Inc., and NVE don't have the best history in regard to finding resolution, Mr. Gamble has been very proactive in attempting to resolve this matter. Over the last two years, an agreement was reached after working closely with ARRC.

[8:11:00 AM](#)

PAT GAMBLE, President & CEO, Alaska Railroad Corporation (ARRC), Department of Commerce, Community, & Economic Development, noted his agreement with Mr. McQueen in that ARRC hasn't had a great history with Eklutna as the 48 acres resulted in ARRC being taken to supreme court three times. However, there is rich potential with regard to the future of Eklutna. Mr. Gamble explained that after spending a day in NVE talking with the elders, he came to understand the deeper meaning of the quarry in relation to the culture. The aforementioned resulted a

cultural approach to the solution. He echoed earlier remarks that the Railroad Transfer Act specifies that ARRC must obtain approval from the legislature to transfer land, which is why HB 212 is before the committee today. Mr. Gamble highlighted [the importance] of the relationship ARRC has established with Eklutna through this process as there is promising development for Eklutna and ARRC. The geographic area [of Eklutna] holds a considerable future and ARRC is already discussing the possibilities of development through the area. Mr. Gamble characterized this transfer as a "no-brainer" because the intention is to pull up rocks and finds on the ground, cleanup the property, possibly adjust the face of the quarry, and pull up the track. All of the aforementioned will be performed per the MOU. In conclusion, Mr. Gamble requested the committee's approval of the land transfer embodied in HB 212.

[8:14:56 AM](#)

CO-CHAIR LEDOUX noted her appreciation for Mr. Gamble visiting NVE to actually see the situation.

MR. GAMBLE said the visit made all the difference in resolving the matter. He commented that this land transfer doesn't hurt ARRC, which he characterized as a good value for the state and the right thing to do.

[8:16:25 AM](#)

REPRESENTATIVE NEUMAN asked if any other reclamation is necessary to the area beyond taking out the rock that was blasted.

MR. GAMBLE replied no.

[8:17:24 AM](#)

CO-CHAIR FAIRCLOUGH asked if explosives will be able to be used to remove the materials off the property with 24-hour notice to the village.

MR. GAMBLE replied yes, noting that's specified in the MOU.

CO-CHAIR FAIRCLOUGH related her understanding that a conditional use permit will be required. The conditional use permit from planning and zoning that happened on December 4, 2006, specifies that ARRC shall seek jurisdiction from the U.S. Army Corps of Engineers (COE) and shall seek clean water authorization, as

necessary, from COE and the Environmental Protection Agency (EPA). The document further specifies that ARRC will sod and hydro seed the site in order to maintain runoff and air quality. The aforementioned is located on page 2 of the document and is different than the MOU. She inquired as to which is the abiding document.

MR. GAMBLE informed the committee that ARRC has already received the conditional use permit to pick up the rock. He said that he isn't familiar with the document to which Co-Chair Fairclough is referring and thus would need to obtain that information.

CO-CHAIR FAIRCLOUGH said that she merely wanted the record to reflect how the site will be left and whether NVE and Eklutna, Inc. are happy with planning and zoning's expectations for ARRC to leave the site with some vegetation. She related her belief that NVE and Eklutna, Inc. may want to return the area to its natural habitat.

[8:19:44 AM](#)

CO-CHAIR FAIRCLOUGH then turned to the disparity between the value of the materials coming off the site. She pointed out that the sponsor statement specifies that the value of the materials is approximately \$2 million while a letter dated January 22, 2007, specifies that the value is \$1 million.

MR. GAMBLE specified that the correct value is \$2 million. He explained that the \$1 million was the first review of the property and the material on the ground. Given the market value of those materials at the time, the estimate was \$1 million. However, once the actual tonnage and specific materials were determined, the estimate rose to \$2 million.

[8:21:12 AM](#)

JIM ARNESEN, Corporate Land & Regulatory Manager, Eklutna, Inc., informed the committee that Eklutna is interested in stopping the destruction. The area is barren rock and the residents don't want to sod and seed the area because there are no plans for the land at this point. He related that Eklutna, Inc. and NVE basically want the property to be returned as soon as possible and to be left in as original condition as possible. Mr. Arnesen then related that at one time Eklutna Reserve had 390,000 acres that was reduced to its current 1,200 acres around the village. Even within that 1,200 acres, other entities were allowed to come in and take various parcels from Eklutna.

However, once ANCSA passed, Eklutna reclaimed some of its land. The parcel addressed in HB 212 was addressed in ANCSA, mentioned in the Alaska National Interest Lands Conservation Act (ANILCA) and the 3(e) agreements. Because the federal government was using the property at the time, it wasn't available for selection. However, the [federal] legislation included an allowance for a future transfer, which is what is occurring with HB 212.

[8:23:47 AM](#)

REPRESENTATIVE NEUMAN inquired as to what will happen with the rail spur.

MR. ARNESEN related his understanding that after ARRC removes the materials on the ground, the rail spur will be removed.

[8:24:14 AM](#)

CO-CHAIR FAIRCLOUGH, upon determining no one else wished to testify, closed public testimony.

CO-CHAIR FAIRCLOUGH, relating her perspective as a resident of the area, said that NVE and Eklutna, Inc. have been outstanding community partners. In fact, Eklutna has leased the land on which Chugiak High School sits for \$1. She then applauded ARRC for taking a different direction, and noted that it benefits Alaska because it provides access to material that has been in dispute for many years. That material would reduce construction costs for future ARRC and highway projects.

[8:26:41 AM](#)

CO-CHAIR LEDOUX moved to report HB 212 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SALMON objected.

A roll call vote was taken. Representatives Olson, Cissna, Salmon, Neuman, LeDoux, and Fairclough voted in favor of reporting HB 212 from committee. Therefore, HB 212 was reported out of the House Community and Regional Affairs Standing Committee by a vote of 6-0.

The committee took an at-ease from 8:28 a.m. to 8:30 a.m.

HB 222-PASSENGER VESSEL TAX CREDIT

[8:29:37 AM](#)

CO-CHAIR FAIRCLOUGH announced that the final order of business would be HOUSE BILL NO. 222, "An Act providing a credit for a municipal tax imposed on certain passengers traveling on commercial passenger vessels that provide overnight accommodations; and providing for an effective date."

[8:29:53 AM](#)

CO-CHAIR LEDOUX moved to adopt CSHB 222, Version 25-LS0782\E, Bullock, 3/28/07, as the working document. There being no objection, Version E was before the committee.

[8:30:13 AM](#)

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor of HB 222, began by pointing out the changes embodied in Version E. On page 1, line 7, the amount that can be collected was capped at \$10 per port community in order to avoid any predatory communities seeking to take the entire amount. On page 1, line 12, after "tax", the word "fee" was inserted. He explained that HB 222 addresses the cruise ship head tax, which is largely borne by those visiting Alaska. Representative Ramras related that he isn't a great fan of litigation. Furthermore, he opined that there has been compounded growth in the cruise ship and hospitality industry. He mentioned that he spoke with Joyce Anderson, Select Committee on Legislative Ethics, regarding the nature of a close economic association, which [doesn't seem to be of concern] since he, as a member of the hospitality industry and a citizen legislator, doesn't benefit exclusively [from HB 222]. The concern is that if litigation ensues between the cruise ship industry and the state over the disposition of the cruise ship head tax, there will be a lessening of the aforementioned compounded growth. He indicated that he didn't believe a lack of growth would ever be recovered in the ensuing years. Therefore, he expressed interest in addressing that with legislation that constructively addresses the cruise ship head tax in a manner that lessens the likelihood of litigation between the state and the cruise ship industry.

[8:34:31 AM](#)

CO-CHAIR LEDOUX inquired as to how HB 222 will guarantee there won't be any litigation as there are a number of issues the cruise ship industry has related to the initiative.

REPRESENTATIVE RAMRAS opined, "I think time will tell." However, it remains valuable to have a constructive dialogue about this issue. Representative Ramras related his understanding that at this point information is being gathered on the matter. The issue, he explained, is regarding whether the compounded growth rate will be lost over the year when an industry experiences a stalled growth rate. Representative Ramras then turned to the breakdown of the \$50 cruise ship head tax. Of the \$50 head tax, \$4 is set aside for the ocean ranger program. Of the remaining \$46 of the head tax, one-quarter is placed in the regional impact fund that would presumably go to communities across the state. He questioned the legality of the aforementioned. He also questioned what could be done with the remaining \$35 of the head tax. Although the Department of Revenue (DOR) in its fiscal note, has indicated it can do what it will with [the \$35]. Representative Ramras noted his disagreement.

[8:38:32 AM](#)

REPRESENTATIVE RAMRAS drew the committee's attention to the numerous legal opinions included in the committee packet, which illustrate that under the U.S. Constitution and federal law revenues from the cruise ship initiative head taxes can only be used to pay the costs of a service to the vessel or watercraft. Therefore, he surmised that \$46 of the head tax can only be spent at the ports of call at which the vessels stop. The head tax can be broken into the following three pieces: \$4 for the ocean ranger program; \$11 for the regional impact fund; and \$35 meant to be used for port facilities. Representative Ramras pointed out that in addition to the state head tax, there are local head taxes. If the community of Juneau collected \$5 per cruise ship passenger, that money can only be used incrementally as the community doesn't have a mechanism to bond large projects. Therefore, HB 222 has the local communities surrender their local head tax as a credit against the state head tax. Through the bonding agency within DOR, [local communities] could bond huge projects into the state. The aforementioned could result in the enhancement of port communities.

[8:40:56 AM](#)

CO-CHAIR LEDOUX said that she didn't see anything in Version E that discusses bonding.

REPRESENTATIVE RAMRAS referred to page 1, lines 10-14, and characterized it as the enabling language allowing local port communities to apply to the state for credit and enable a bonding mechanism in order to do large projects.

CO-CHAIR LEDOUX reiterated that she doesn't see the connection.

[8:42:54 AM](#)

REPRESENTATIVE NEUMAN asked if communities can opt-out.

REPRESENTATIVE RAMRAS explained that a community could choose to do or not to do [a project]. However, once a project is designed by the local governing body and it sought assistance from the state, it would have an obligation to pledge the fees. He likened the aforementioned to how the fishing license fees are pledged for the next 20 years to service the \$78 million bond. He mentioned that the mayors of Juneau and Ketchikan are excited about the prospect of significant investment into the port facilities in those communities.

REPRESENTATIVE NEUMAN highlighted that many communities are impacted by tourism. In fact, over 4 million tourists come through his area annually and impact everything from roads to emergency services. He asked if HB 222 specifies that only the first five communities will receive the money or will it be spread throughout the state. He pointed out that generally monies coming into the state are placed in the general fund from where it's distributed. He requested more clarification with regard to dedicated funds.

REPRESENTATIVE RAMRAS opined that he doesn't believe it's legal under federal law, to which state law must conform, to utilize funds from a passenger head tax for uses other than servicing port communities and locations where vessels come in to port. He pointed out 33 U.S.C. Section 5, which "prohibits taxes or fees on vessels operating in navigable waters or their passengers, except in narrowly tailored circumstances that enhance the safety and efficiency of interstate commerce." The passenger tax imposed by the initiative doesn't come close to satisfying the test for a proper fee under that federal law. Representative Ramras then directed attention to the January 26, 2007, memorandum from Don Bullock, Legislative Counsel, Legislative Legal and Research Services Division, and highlighted the following sentences:

... the use of money from the tax in an area in which the vessel carrying taxable passengers does not operate may be disallowed under 33 U.S.C. 5(b) unless the money is used "solely to pay the cost of a service to the vessel or water craft."

State-imposed taxes related to the operation of vessels or other water craft are generally prohibited under 33 U.S.C. 5(b) with limited exceptions.

REPRESENTATIVE RAMRAS related that the exceptions are listed in 33 U.S.C. 5(b)(2)(A)-(C), as follows:

- (A) are used solely to pay the cost of a service to the vessel or water craft;
- (B) enhance the safety and efficiency of interstate and foreign commerce; and
- (C) do not impose more than a small burden on interstate or foreign commerce;

REPRESENTATIVE RAMRAS pointed out that by using the term "and" between (B) and (C) the statutory meaning is conjunctive and thus all three premises must apply for the exception to apply. He opined that motor coaches and railway coming north to Denali National Park and Preserve and up to Fairbanks don't qualify. Mr. Bullock's opinion concludes by stating:

There is a possibility that a court may not consider the state's "tax" at a rate of "\$46 a passenger per voyage" a "fee" when interpreting 33 U.S.C. 5(b)(1) and (2), in which case an exception under those paragraphs would not apply.

REPRESENTATIVE RAMRAS then related his belief that using the \$46 in head tax to go to communities without vessel traffic violates the Tonnage Clause of the U.S. Constitution, which the Supreme Court has interpreted "to prohibit any taxes or fees on vessels in interstate commerce except those directly related to services provided to those vessels."

[8:49:10 AM](#)

CO-CHAIR LEDOUX related her understanding that currently if Ketchikan has a \$10 head tax, then the tax would total \$60. This legislation would allow the cruise ships to pay \$40 to the state and \$10 to Ketchikan.

REPRESENTATIVE RAMRAS clarified that \$4 of the \$50 head tax is an environmental fee. He explained that a community that currently collects a local head tax is able to use it to effect very small projects annually because port enhancement is a significant investment by communities. If communities had the ability to bond for large projects, they could actually add jobs. The local community doesn't have the ability to take an annual locally collected head tax and apply it to a large bonding capacity. Therefore, if a community collects its local head tax and credits it against the state head tax, then that community could bond for a large project. Without such, he questioned the state's plan for money that must be dedicated to locations where vessels dock and provide for port facility enhancement.

CO-CHAIR LEDOUX questioned why this couldn't be accomplished with municipal bonds. She opined that HB 222 tinkers with the initiative such that it almost voids it.

REPRESENTATIVE RAMRAS stated that it's not his intention to negate the will of the people. However, he reiterated the need to [accomplish the initiative] in a manner that's legal under federal law and constructive for the communities impacted by port ships. He stressed that if litigation ensues between the state and the cruise ship industry, the workforce as well as communities facing inhibited growth of the cruise ship industry will suffer.

[8:53:53 AM](#)

REPRESENTATIVE RAMRAS concluded his testimony by pointing out that the use of the head tax funds must fit under federal law specifications. This legislation addresses how the passenger excise tax can be spread as a tax credit amongst municipalities that are ports of call to the cruise ship industry. Furthermore, HB 222 allows a municipality that's a port of call to have a guaranteed income source, which bond buyers would view as stable. Moreover, HB 222 would ensure that a municipality that's one of the first five ports of call for the vessel would be entitled to a credit against the tax equal to the lesser of \$10 or the actual amount of the passenger tax paid to each municipality. The formula is effective because the average number of ports at which each vessel stops is 3.5. The provisions of HB 222, he said, establish a predictable and stable form of funding that makes financing of significant port improvement projects a reality. Therefore, HB 222 will ensure a healthy cruise industry and reduce the chances of litigation.

For the aforementioned reasons, Representative Ramras urged the committee's support for HB 222.

[8:58:13 AM](#)

CO-CHAIR LEDOUX inquired as to whether the municipalities can bond themselves.

[8:58:22 AM](#)

DON BULLOCK, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, began by noting that he doesn't have particular expertise in bonding, although he acknowledged that municipalities have the option to bond directly and to utilize the services of the Municipal Bond Bank Authority. He commented that any bonding issue raises the question of how secure is the source of funds that will repay the bonds.

[8:58:58 AM](#)

CO-CHAIR FAIRCLOUGH requested that Mr. Bullock provide a brief framework as to why his opinion dated January 26, 2007, doesn't meet federal law. Co-Chair Fairclough announced that the committee would proceed to public testimony while Mr. Bullock reviewed the opinion.

[9:00:29 AM](#)

TIM BOURCY, Mayor, City of Skagway, reminded the committee that Skagway is and has been for many years a major port of call. Furthermore, Skagway has had a positive working relationship with the cruise industry over the years. In fact, he recalled that the City of Skagway didn't support the passage of the head tax. Mayor Bourcy emphasized that it's important to understand that the intent of [HB 222] was to put money back into the ports and the impacted areas, which Skagway supports. Mayor Bourcy then related support for the concept of HB 222 and the cap it imposes because it's important that all ports impacted can benefit from the legislation. With regard to municipal bonding, Mayor Bourcy related that the City of Skagway doesn't charge a port fee and wouldn't have the resources to bond for large projects. He likened HB 222 to the raw fish tax.

[9:03:25 AM](#)

CO-CHAIR LEDOUX opined that the City of Skagway could enact a tax to be used as the guarantee for bonding.

MAYOR BOURCY replied yes, adding that the City of Skagway may consider that if HB 222 moves forward.

9:03:58 AM

REPRESENTATIVE NEUMAN inquired as to other types of revenue available to communities such as Skagway.

MAYOR BOURCY specified that the City of Skagway doesn't receive fish tax money and its sales tax is the city's revenue source.

9:04:52 AM

GERSON COHEN, spoke as one of the sponsors of the cruise ship tax initiative that was passed in August 2006. Mr. Cohen provided the following testimony:

Every independent expert working in the cruise industry field interviewed during and after last year's election campaign was of the opinion that a head tax in Alaska wouldn't deter the arrival of cruise passengers to Alaska or change their spending habits. The amount of the tax is so small compared to their other expenditures for the trip that it's simply of no consequence. In fact, in the last five years, the industry has steadily raised its own prices by much more than the head tax in addition to increasing fuel surcharges and the demand for Alaska cruises remains rock solid. Alaska represents a large percentage of the worldwide cruise market and the industry has no intention of foregoing that revenue. For that matter, the cruise lines could pay the fee themselves and not burden the passengers if they truly felt it could dampen their enthusiasm for coming to Alaska. The cruise lines are making billions of dollars a year in profits and can certainly afford it. So, I don't understand the sponsor's statement about the cruise law either hurting the industry or inspiring them to sue the state. We purposely drafted the head tax portion of the new cruise law with an opt-in approach. Those municipalities that want to receive funding under the new state law must give up the opportunity to charge their own head tax. As you know, very few communities have had the political clout to independently charge a head tax. When Whittier instituted a \$1.50 tax, the industry moved to

Seward. When Whittier dropped their tax to woo the ships back eight years later, half of the ships announced that they were leaving Seward overnight. When Haines instituted a \$4 tour tax, the industry refused to allow Haines tour operators to raise their prices by 4 percent, which meant that the local operators had to pay the tax out of their own pocket. This is, of course, not the borough's intent and Haines rescinded the tax that was intended to pay for tourism infrastructure impacts on the community. If the municipalities that now charge taxes, Juneau and Ketchikan, keep their own taxes which total approximately \$12, the loser under HB 222 is the State of Alaska. Let's assume the Department of Revenue adopts regulations resembling the suggestions made in the new law for disbursement of head tax funds. Since no cruise ship visits more than five ports in Alaska on any given cruise, the rebate identified in House Bill 222 will come out of the portion of the tax intended for the state and will also lower the portion of the potential pool of funds that we suggested be set aside for the communities impacted by the industry who do not receive direct visits.

On the other hand, let's look at who might benefit from House Bill 222. Let's assume the cruise lines continue to have the passengers pay the tax, the credit identified is supposed to go back to the passengers. How will we know the cruise lines have not simply pocketed nearly 25 percent of the head taxes charged. One of the major cruise lines was recently caught charging passengers for a tax in the Caribbean that was being rebated by the port. It would seem likely that this will be an administrative nightmare for the state if we intend to verify that the money is, in fact, going back to passengers and would probably require significant staffing increases at the Department of Revenue. Even then, given the financial secrecy under which this industry has operated for so long - thanks to registering their ships in third world countries - who knows what records we would even be allowed to see. So, in summary, I honestly cannot understand why this bill has been drafted and sponsored because it doesn't put Alaska first; it can only reduce the revenue to Alaska approved by the voters and has the potential of giving a significant portion of the new tax to the industry

that didn't pay it in the first place. I would respectfully urge you to not move this bill out of committee.

9:08:56 AM

CO-CHAIR LEDOUX inquired as to whether Mr. Cohen knows of any legal opinions suggesting that the state's head tax through the initiative is constitutionally valid.

MR. COHEN noted that he's not an attorney and thus can't provide a legal opinion on the matter. However, he pointed out that 33 U.S.C. 5(b)(2)(A) says, "are used solely to pay the cost of a service to the vessel or water craft". The key definition is what is considered a service to the vessel. He interpreted that to mean that it didn't only apply to ports of call. When the initiative was first brought to the Office of the Lieutenant Governor for certification it was reviewed for a period of over five months by the state attorney general. If there was reasonable [finding] that the initiative was going to be found inconsistent with state or federal law, the initiative wouldn't have been certified, he opined.

9:11:03 AM

MR. BULLOCK said that two issues are brought up by 33 U.S.C. 5(b). The first issue is the federal supremacy clause. He explained that certain regulations by the federal government are in place of or superior to state provisions on the same provision. Mr. Bullock reviewed 33 U.S.C. 5(b)(2)(A)-(C) and pointed out that one must first determine whether there is a small burden on interstate or foreign commerce. If the aforementioned test is passed, then it has to be used for the two specific purposes listed in 33 U.S.C. 5(b)(2)(A)-(B). He noted that safety and efficiency could have a broader impact than just the vessel itself. If no funds were appropriated for these purposes it would be contrary to 33 U.S.C. 5(b). At the same time the federal Supremacy Clause may apply, the issue of a dedicated fund is in question due to the prohibition against such in the Alaska State Constitution in Article IX, Section 7, as follows:

SECTION 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This

provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

MR. BULLOCK explained that first one is looking at the cruise ship tax within the allowable purposes under 33 U.S.C. 5(b). If the money can't be used for any other purpose other than what's required by the federal law, the question is whether the head tax meets the specification of a federal program for which the tax is required. If the tax meets the aforementioned requirement, then the tax may avoid the issue of a dedicated fund under the Alaska State Constitution. Mr. Bullock said that he didn't know the answer to that and although the courts may face that matter at some point, the risk is present.

[9:14:26 AM](#)

CO-CHAIR LEDOUX inquired as to the probability that HB 222 would be constitutional.

MR. BULLOCK pointed out that part of the issue is raised only when the money is applied for a purpose allowed in the federal statute. With regard to the state constitutional issue, Mr. Bullock said that he didn't know whether there is a federal program requiring state participation that would make the cruise ship tax allowable under the prohibition against dedicated funds.

CO-CHAIR LEDOUX related her understanding that the legislature passes statutes with funding mechanisms, but specify in statute that it's not a dedicated fund.

MR. BULLOCK highlighted that along with the language that specifies that [the tax] isn't a dedicated fund is the language "may be appropriated for", which takes [the tax] out of the dedicated issue. There's a preference for an appropriation, but it's not binding and thus the money could be used for anything else.

[9:16:31 AM](#)

REPRESENTATIVE NEUMAN asked if any state law specifies that the funds collected from the head tax have to be used in the first five ports in which the vessel enters.

MR. BULLOCK pointed out that the initiative specifies that the first five ports visited by a ship that's taxed can receive \$5 per passenger per port. There is general language that allows for the money received from the tax to be appropriated in areas of the state where impacted. The federal statute applies in regard to whether the uses for which the money is appropriated fit within the requirements.

[9:18:20 AM](#)

MARVIN YODER directed attention to AS 43.52.230 regarding the disposition of receipts, which specifies that \$2.50 will be distributed to the city and \$2.50 to the borough. Since the borough doesn't have any port powers or place for cruise ships to dock, it's doubtful that [Seward] would be able to use those funds. Still, Seward's amount would be reduced without the passage of HB 222. He highlighted that the language in AS 43.52.230 specifies "subject to appropriation", which restricts an entity's ability to bond since it's not a secure source. Therefore, if Seward enacted its own tax, it would have a guaranteed source for bond repayment. He mentioned that Seward is interested in larger projects. Mr. Yoder related that HB 222 provides another look at imposing a tax locally that would be a credit against the \$50 passenger fee.

[9:21:02 AM](#)

CO-CHAIR LEDOUX questioned what prohibits Seward from passing a head tax even if HB 222 doesn't become law.

MR. YODER replied nothing. If the City of Seward imposed its own head tax/fee without HB 222, it would be in addition to the \$50 head tax imposed by the state. In further response to Co-Chair LeDoux, Mr. Yoder confirmed that Seward probably wouldn't be harmed by the aforementioned. However, it appears that the existing head tax has the ability to repair the port and put money into the port facilities. He noted that the City of Seward has been reluctant to add anything that would be over and above the other ports because it doesn't want to face reductions in cruise ship passengers.

[9:22:50 AM](#)

CO-CHAIR LEDOUX surmised then that the fear of cruise ship retaliation keeps the City of Seward from initiating a head tax without the passage of HB 222.

MR. YODER answered that Co-Chair LeDoux's characterization seems correct. He said that he feels very comfortable working within the \$50 umbrella.

[9:23:36 AM](#)

CO-CHAIR FAIRCLOUGH highlighted that the committee packet includes a letter from the City of Seward relating its support of the intent of HB 222.

[9:23:54 AM](#)

ALLEN SOREN, City Manager, City of Skagway, echoed earlier testimony that the cap on individual credits at each port is important to the City of Skagway.

[9:24:30 AM](#)

BOB WEINSTEIN, Mayor, City of Ketchikan, reviewed his elected service in Ketchikan, which has coincided with the growth of the cruise ship industry in Ketchikan. He opined that Ketchikan has a good working relationship with the cruise ship industry. About six years ago the City of Ketchikan initiated a long-term port facility development plan to make improvements to existing facilities in order to accommodate the largest ships that are likely to come to Alaska. As part of that effort, the city received legal advice regarding federal statutory and constitutional restrictions that apply to the use of marine passenger fees. He reminded the committee of Section 445 of the Maritime Transportation Security Act of 2002, which requires there to be a connection between the fee and the service to the vessel, passengers, and/or crew. He related his understanding that the aforementioned was at least partially attributable to an Alaska municipality considering a viewing tax such that [passengers] of a ship passing by a community from which the ship received no services would be charged a fee. The legal advisors to Ketchikan have said that Congress has inserted itself through that act regarding what fees can be charged and for what purpose.

MAYOR WEINSTEIN related that Ketchikan owns and operates substantial port facilities that provide services to cruise ships as well as to their passengers and crews. These facilities have become increasingly congested as the cruise industry has grown. The City of Ketchikan has implemented phase 1 of its plan to expand port facilities and improve some of the upland facilities in order to better provide for the safety of

tourists while alleviating the dangerous pedestrian and vehicular crowd that currently occurs when vessels are in port. Last summer, voters in the City of Ketchikan approved, by a 70 percent margin, a \$38 million revenue bond to pay for the port and the related improvements in phase 1. The debt service is being repaid through the implementation of a marine passenger fee approved by the city council. The fee for 2007 will be \$7 per passenger. The City of Ketchikan obtained financing from the Alaska Bond Bank. He said he didn't believe the Alaska Bond Bank's approval would've been forthcoming if the city had to rely on the legislature for annual appropriations rather than a reasonably guaranteed revenue stream. The aforementioned was confirmed in discussions with the Alaska Bond Bank's financial advisor yesterday who said that a pledge of ongoing revenues from something such as a marine passenger fee assessed by a port is superior to a pledge subject to annual appropriation.

MAYOR WEINSTEIN related that the current \$5 limit per port, which he characterized as arbitrary, for up to five ports, will direct an average of only \$18 of the \$50 collected for the communities impacted by the cruise ships. The aforementioned is based on the fact that cruise ships visit an average of 3.5 ports per cruise rather than 5 ports per cruise. Mayor Weinstein opined that the aforementioned isn't enough money to meet the needs of directly impacted communities. Furthermore, in the present formula none of the state fee goes to the municipalities that operate the ports of Ketchikan and Juneau since both communities have port fees that are equal or greater than \$5. Therefore, the amount referenced earlier is further reduced and places them at competitive disadvantage because the local fee is on top of the state's \$50 fee, which results in visitors to Ketchikan and Juneau paying more than visitors in other communities. In conclusion, Mayor Weinstein related his support of HB 222, which he viewed as consistent with the initiative, federal requirements, and requirements of lenders willing to fund port projects.

[9:32:38 AM](#)

CHIP THOMA began by noting that he is a supporter of the cruise ship initiative and worked on it, although he isn't paid by anyone involved in the initiative nor does he work in the tourism industry or against it. Mr. Thoma then paraphrased from the following written remarks [original punctuation provided]:

HB 222 would have a negative impact on the finances of the State of Alaska. Importantly, the bill would not

help municipalities cope with hosting the 1 million cruise passengers coming to Alaska each year in a compressed, 5 month season, May through September.

The proposed 'credit' that a cruise passenger would receive under HB 222 will never benefit that actual passenger. In reality, this is a tax rebate program that returns new state revenues directly to the cruise companies in Miami. For that reason alone, I oppose HB 222.

Also, HB 222 is not good public policy. It will again encourage competition between port towns to curry industry favor on ship taxes, rather than making sound, community-based decisions on long-term improvements to waterfronts. Local waterfront activities are the heart and soul of each town, and those uses and improvements should be made without undue cruise influence over summer taxes. The initiative ends the practice of comparing and selecting communities based on the local tax climate.

Instead, the cruise initiative is an opt-in, revenue-sharing program of choice for local municipalities. In the years ahead, there could be smaller cruise ports in the state that will benefit, such as Cordova, Valdez and Kodiak, because the cruise demand and market are certainly there. Other cruise ports that also benefit from the initiative are those that now have private cruise docks, such as Skagway and Whittier.

In these latter two ports, dock owners charge ships a private passenger fee for using their property. The new state fees would allow cruise ports without local head taxes to make extensive improvements to their adjacent city docks and harbor lands used by cruise passengers when they visit. This is a plus for all cruise ports.

As the initiative was written, each community has the choice when to opt-in or opt-out. They can choose to have the state collect and distribute the cruise taxes, or charge and bond for municipal cruise docks and improvements with local passenger fees, such as Ketchikan and Juneau do.

Juneau is the best example of a port community that has defined the uses and parameters of the cruise passenger fee, as those relate to the 2002 Maritime Security Act. That federal law says that reasonable passenger fees can be spent on cruise docks and adjacent access areas for the safe and efficient movement of passengers and cargo. I refer you to the opinions issued by Juneau Borough attorney Corso in 2003 and by Juneau Borough attorney Hartle in 2005 (attached) [included in the committee packet].

To paraphrase Abraham Lincoln, you can't fool all the people all of the time. 81,000 Alaskans voted correctly on the cruise initiative. They knew what they were voting for:

- Clean cruise ships, verified clean by Ocean Rangers;
- Fair state taxes spent on cruise infrastructure;
- Consumer protection for cruise passengers; and a
- Level playing field for Alaska businesses that want summer cruise customers.

The cruise lines in Alaska are a multi-billion dollar industry that overwhelms coastal towns throughout Alaska each summer. It is time that the state had a fair tax regime that provides new funds for the huge cruise infrastructure costs needed in the years ahead.

MR. THOMA related that Juneau envisions spending \$40 million just for security reasons as two large finger docks from the main dock must be constructed in order to block any access to cruise ships. Juneau plans to bond for that with its local head tax, but other communities should have the funds available from the initiative to pay for the projects out-of-pocket through the appropriation process.

In my estimation, the simplest and most courageous action by an Alaska Governor was taken by Jay Hammond, defining the ground rules for doing business in Alaska:

- Industry pays its own way, without subsidy;
- Industry does not pollute; and,
- All industries pay a fair share in state taxes.

That's why it is deeply offensive that a multi-billion dollar industry that is loosely regulated and poorly

controlled sends delegations of folks from Miami to Alaska to repeal state law, as just enacted by state voters. The ink was not even dry on the initiative results before an all-out repeal effort has transpired on every section of the 2006 initiative. Please reject HB 222 as a repeal of the cruise initiative. Thank you.

MR. THOMA highlighted that the August 2006 voter pamphlet has extensive discussion of the taxes on pages 12-14 and also contains statements in opposition to and support of the initiative. He offered to provide the voter pamphlet to the committee.

[9:37:36 AM](#)

MR. THOMA then informed the committee that there won't be a compounded growth rate in cruise ship tourism because towns are at maximum capacity. Therefore, the 15 percent growth rate experienced in the past has shrunk to 10 to 5 percent; still 35,000-50,000 more people come to Alaska each year. He noted that Juneau and Ketchikan bond for large projects as they have to ability to do so.

[9:38:55 AM](#)

REPRESENTATIVE NEUMAN asked if Mr. Thoma believes that the 81,000 voters who voted on the initiative thought all the funds collected from the \$50 fee should only go to ports of call or to the general fund to be spread evenly amongst all communities

MR. THOMA said that the aforementioned was rarely discussed in the campaign literature by either those opposing or supporting the initiative. However, he recalled that there was some discussion on talk radio in Anchorage regarding that some funds could be available for the Alaska Railroad Corporation because of the use of the railroad to haul cruise ship passengers. He related his understanding that Talkeetna could possibly use the funds because there is a demonstrable use of that area by cruise ship passengers. In further response to Representative Neuman, Mr. Thoma opined that the initiative was clear that the funds collected could only be used for ports of call and for the cruise ship infrastructure.

[9:40:43 AM](#)

MR. THOMA, in response to Representative Neuman, clarified that he doesn't support HB 222.

[9:40:55 AM](#)

CO-CHAIR FAIRCLOUGH, upon determining no one else wished to testify, closed public testimony.

[9:41:23 AM](#)

REPRESENTATIVE NEUMAN commented that he isn't comfortable with HB 222 at this point.

REPRESENTATIVE CISSNA noted her agreement.

CO-CHAIR LEDOUX said that she is very uncomfortable with HB 222.

REPRESENTATIVE SALMON stated his agreement with Co-Chair LeDoux.

[HB 222 was held over.]

[9:41:50 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:41:51 AM](#).