

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 17, 2007

8:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Kurt Olson

COMMITTEE CALENDAR

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 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
04/03/07	(H)	Heard & Held
04/03/07	(H)	MINUTE(CRA)
04/17/07	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 222.

JOHANNA BALES, Excise Audit Manager
Tax Division
Department of Revenue
Anchorage, Alaska

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

BRUCE BOTELHO, Mayor
City and Borough of Juneau
Juneau, Alaska

POSITION STATEMENT: Testified in support of CSHB 222, Version E.

BOB WEINSTEIN, Mayor
City of Ketchikan
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of CSHB 222, Version E.

GERSHON COHEN
Haines, Alaska

POSITION STATEMENT: Speaking as a co-sponsor of the 2006 ballot measure on cruise ship taxation, regulation and disclosure, testified in opposition to HB 222.

ACTION NARRATIVE

CO-CHAIR ANNA FAIRCLOUGH called the House Community and Regional Affairs Standing Committee meeting to order at [8:05:30 AM](#). Representatives Fairclough, LeDoux, Neuman, and Cissna were present at the call to order. Representatives Dahlstrom and Salmon arrived as the meeting was in progress.

HB 222-PASSENGER VESSEL TAX CREDIT

[8:05:55 AM](#)

CO-CHAIR FAIRCLOUGH announced that the only 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." Co-Chair Fairclough further announced that upon the request of the sponsor, the public testimony on HB 222 will be re-opened.

[Before the committee was CSHB 222, Version 25-LS0782\E, Bullock, 3/28/07, which was adopted April 3, 2007.]

8:05:59 AM

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, explained that he has asked that Mayor Botelho, a former attorney general for the State of Alaska, make a presentation on this matter. He expressed concern with regard to the obligation legislators have to pursue a responsible course of action. He inquired as to the fiduciary obligation of this committee and the legislature when contemplating the legal use of the cruise ship head tax. Standing in the way of those tax dollars going to the general fund are the Tonnage Clause and Commerce Clause of the U.S. Constitution. Therefore, HB 222 offers a viable, appropriate, and constitutionally legal way to spend the cruise ship tax collected so that the state isn't entered into any protracted litigation with the cruise ship industry. Representative Ramras opined that if the funds from the cruise ship tax are placed in the general fund to be used "willy-nilly", it will invite a rough and difficult approach. However, if these funds are used in an appropriate manner, as specified in the Tonnage Clause and the Marine Security Transportation Act of 2002, then [the legislature/state] can be responsible stewards of the will of the people and allocate those funds responsibly. Moreover, the result could be some magnificent port communities with some extraordinary infrastructure projects.

8:10:37 AM

CO-CHAIR LEDOUX recalled that the sponsor has said that one of the purposes of HB 222 is to avoid litigation between the cruise ship industry and the state. She asked if anyone from the cruise ship industry is present who can guarantee that if HB 222 passes, there won't be any litigation.

REPRESENTATIVE RAMRAS replied no. He then related his conflict of interest with his personal business, which involves [tourism]. He further related that he has written a letter to the Select Committee on Legislative Ethics requesting an advisory opinion that his behavior meets the ethical standard it should. Representative Ramras said that he hasn't spoken to the cruise ship industry regarding testifying on this, which he didn't believe to be germane to the issue [embodied in HB 222]. As a lay person, Representative Ramras said he has concluded that the state is outside of its boundaries to contemplate

placing these funds in the general fund to be used as the legislature sees fit. Therefore, he reiterated his concern that such action would invite a class action lawsuit. He reminded the committee that the cruise ship industry is merely collecting the tax on behalf of the passengers, whose rights would be in violation. He likened the situation to the bed tax and the liquor tax that he collects for the local governing bodies. Therefore, the legislature has an obligation to use the funds appropriately. Representative Ramras opined, "No, I have not considered it my obligation to ask the cruise ship industry to come forward with some kind of quid pro quo promise on that, but I think that if we behave legally and responsibly then we're not going to see the industry file a suit against us. But, if we trample over the U.S. Constitution and myriad of legal opinions that I've seen going back to the year 2000, then we will invite trouble."

[8:15:28 AM](#)

CO-CHAIR LEDOUX asked if the sponsor was aware that when asked, legislative counsel [to the committee] said he wouldn't hazard a guess as to who would prevail in litigation [over this matter]. Therefore, she opined that [who would prevail] doesn't seem to a certainty.

[8:16:05 AM](#)

CO-CHAIR FAIRCLOUGH then re-opened public testimony.

[8:16:20 AM](#)

JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue, pointed out that under HB 222, the cruise ship industry would still have to collect the \$46 passenger fee and would receive a credit of up \$10 per person per community visited if that community has its own marine passenger fee or tax. The credit doesn't go directly to the communities but rather to the individual that paid the state the commercial passenger vessel tax. She also pointed out that cruise ships have visited about 18 communities and each community would have to enact its own marine passenger fee in order to get the credit back. Included in those 18 communities are places such as Hoonah and Skagway, which would need to enact and administer their own tax. The way that the tax currently works, the smaller communities like Hoonah and Skagway could receive a \$5 per passenger fee and basically have the state administer the tax. She opined that the aforementioned was really the intent of the initiative. Ms.

Bales then pointed out that the passage of HB 222 passes could result in the cruise ship industry potentially having to report to 19 separate jurisdictions, including the state and all communities with a marine passenger fee. Furthermore, it's possible that some of the smaller communities wouldn't receive any funds at all, if the community found that it wasn't feasible for it to enforce and administer its own tax.

8:20:02 AM

REPRESENTATIVE CISSNA related her understanding that HB 222 doesn't allow the state to administer the local tax.

MS. BALES confirmed that all jurisdictions would have to enact and administer their own separate tax [under HB 222].

8:20:40 AM

REPRESENTATIVE NEUMAN opined that HB 222 [in its current form] isn't going to work. He then asked if the system would work if one or two of the impacted communities didn't enact its own tax.

MS. BALES clarified that those communities that don't enact a tax wouldn't receive anything or it would be significantly reduced versus what those communities would have received under the initiative. In further response to Representative Neuman, Ms. Bales said that she couldn't offer any way in which to fix [the legislation] within the existing language.

8:21:48 AM

CO-CHAIR LEDOUX posed a hypothetical situation in which two communities have a \$10 head tax, which would result in a \$20 credit. After taking out the funds for the ocean rangers, \$26 would be left. She asked if those other impacted communities that didn't enact a head tax would be able to receive the \$5 specified in the initiative. Co-Chair LeDoux related her understanding that HB 222 isn't abolishing the initiative, although it's changing it in an unacceptable way.

MS. BALES replied yes, explaining that under the current scheme in which Juneau and Ketchikan are the only communities with a head tax there would still be enough revenue to provide the first five ports of call. However, the way in which HB 222 is written there is a potential for the credit to fall below \$26 as other communities increase or enact other taxes.

8:24:25 AM

BRUCE BOTELHO, Mayor, City and Borough of Juneau, paraphrased from the following written remarks [original punctuation provided]:

I testify today on behalf of the assembly of the City and Borough of Juneau in support of Committee Substitute for House Bill 222, legislation that would provide a credit for certain municipal passenger fees against the statewide excise passenger tax established by 2006 Primary Election Ballot Measure No. 2.

I support the purpose that the sponsors sought to achieve in promoting the passenger tax: having users contribute to the infrastructure necessary to serve them in communities they visit by cruise ship. However, I believe that there is a fundamental flaw in the initiative that frustrates this purpose and that the Committee Substitute for House Bill 222 corrects that flaw. That flaw is the creation of a vast pool of money that can not be expended constitutionally. Let me explain.

Let me begin by addressing how Measure No. 2 is designed to work.

First, it imposes a \$46 tax on each passenger traveling in Alaska on a large commercial passenger vessel. The proceeds from the tax are placed in a special account within the general fund of the state. Each of the first five ports of call for each vessel's voyage within Alaska is entitled to receive \$5 per passenger per port visit.

Second, the initiative also establishes a "regional cruise ship impact fund" consisting of 25 percent of the total proceeds from the passenger tax. Regional cruise ship impact funds may be appropriated for distribution to local governments within regions of the state "impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation."

Finally, the remainder of the funds may be appropriated for "state-owned port and harbor facilities" or certain other services.

There are specific restrictions on these taxes.

- If a municipal port elects to receive its \$5 per passenger share of the state's passenger tax, it may not impose its own local passenger tax.

- Conversely, a municipality that imposes its own local passenger tax may not access either the \$5 per passenger share nor regional impact funds.
- Expenditure of the monies is limited to "provide services and infrastructure directly related to passenger vessel or watercraft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or watercraft activities."

This is the statutory scheme in place. How does this relate to the "fundamental flaw" in it? What's wrong with the scheme? The problems are of two kinds: constitutional and practical.

What are the constitutional problems? Federal law limits the kinds of taxes or fees that may be imposed on vessels in interstate commerce. Let me mention the laws I believe most directly apply: The Tonnage Clause of the United States Constitution (art. I, sec. 10) prohibits any taxes or fees on vessels except those directly related to services provided to those vessels.

[8:29:57 AM](#)

CO-CHAIR LEDOUX asked if the cruise ship industry lobbied for the tax specified in the earlier mentioned U.S. statute.

MAYOR BOTELHO replied yes, adding that legislation was introduced at the request of the cruise ship industry and successfully marshaled by U.S. Representative Don Young. He then continued paraphrasing from the following written testimony:

33 USC Section 5 prohibits authorizes the levy of "reasonable fees charged on a fair and equitable basis" that (A) are used *solely* to pay the cost of a service to the vessel; (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.

The sponsors of the initiative were aware of these restrictions and have tried to meet the high burden set by federal law. That's why the funds generated by this tax must be used "in a manner

calculated to improve port and harbor facilities and other services to properly provide for vessel or watercraft visits and to enhance the safety and efficiency of interstate and foreign commerce."

Yet this language is of little import when applied to the regional impact fund. That's because that fund is available only to those ports that are not today "ports of call", that is ports that are not visited by cruise ships at all. So, applying the federal statute, what conceivable service to a vessel should be recovered and on what basis? Similarly, what state-owned port, harbor facilities or other service is being directly rendered that would permit these funds to be expended? I suggest that few expenditures could meet the federal test.

8:32:30 AM

MAYOR BOTELHO continued:

What are the practical problems?

First, there is little incentive for major ports of call to take part in the state program, rather than maintain or establish their own passenger fees. Why is this?

(1) Municipalities are able to set higher or lower fees to meet local infrastructure needs without reliance on the state program. Thus, Juneau currently imposes two separate fees computed on the number of a vessel's passengers per port visit. The two fees now total \$8.00. Ketchikan currently imposes a \$7.00 per passenger fee.

(2) Municipal ports electing to receive the \$5 per passenger tax would be required to come to the legislature each year and seek an appropriation for that purpose. It leaves municipalities dependent upon the legislative process and having port monies traded for other capital projects. In addition, reliance on annual appropriations to bond for projects is difficult because local government would have no direct authority to impose and receive taxes related to the port to repay the bonded indebtedness.

8:35:08 AM

MAYOR BOTELHO continued:

Let me apply all of this to the initiative. For purposes of this exercise, I am assuming a year in which 1 million passengers arrive by cruise ship (slightly more than are actually projected for this season):

\$46,000,000 total amount to be remitted to the State

The cruise ship industry estimates that the average cruise ship vessel calls on 3.5 ports in Alaska. I've rounded up to four ports. The two largest ports of call, Juneau and Ketchikan do not participate. I have also assumed that a million passengers visited each of the next two ports of call. That allows me to subtract - **\$10,000,000** as the total amount remitted to municipalities.

That leaves a total of **\$36,000,000**. Another 25% is to be allocated to the regional impact fund. Again, it is doubtful whether much, if any, of that amount can be expended, but that amount totals **\$11,500,000**. That leaves a total of **\$24,500,000** to be expended on **state** harbors, ports and services to be used **solely** in direct service to cruise ship vessels. I submit that you cannot spend it. In the meantime, of the **\$46,000,000** theoretically set aside for support of local governments servicing cruise ship vessels, at most **\$10,000,000** reaches them.

Thus we are left with a municipal port revenue sharing program that will not work as intended: as a way to assist port communities to cope with cruise ship visits.

Fortunately, this problem can be fixed. Proposed Committee Substitute for House Bill 222 is one such way. The CS would allow municipal passenger taxes or fees to be taken as a credit against the State's \$46 tax, up to a maximum credit of \$10 per passenger, per community.

Let there be no question. Under this bill, the allowance of a tax credit will reduce the amount of proceeds going into the State general fund. And the cruise industry will end up remitting fewer total dollars to government entities, local and state, as a result.

But creating a credit is likely to achieve a couple of other results that I believe are highly desirable:

- Port cities that do not currently have a fee structure will be encouraged to enact one and to develop port projects that serve cruise ship passengers in the manner most compatible with their respective communities, without fear of adverse political consequences;
- In so doing, general fund revenues are taken off of the table—instead, the revenues go directly to communities—competition within the legislature for allocations is reduced.

To summarize: allowing the tax credit clearly benefits the port communities for the reasons I've outlined. At the same time, it will reduce the total amount of passenger tax proceeds received by the State. This reduction, however, should not raise major policy objections because of the severe legal restrictions on the ways that these tax proceeds may be spent.

[8:39:23 AM](#)

REPRESENTATIVE NEUMAN inquired as to what fees, taxes, low interest loans, and other grants are available to port of call communities.

MAYOR BOTELHO related that Juneau imposes the passenger head tax the funds from which are used for a variety of port-related projects, most of which are capital projects. Juneau also has a specifically approved program that allocates a portion of those funds for general government costs to [those services] that are impacted by visitors, such as ambulance service. The City and Borough of Juneau also imposes fees, moorage fees, that deal with direct operations and maintenance of the dock facilities. He noted that in Juneau all passengers are subject to the local sales tax.

REPRESENTATIVE NEUMAN opined that there are other low interest grants available for improvements, such as from the fish tax. He then opined that the Mat-Su Borough is impacted by cruise ship visitors. Therefore, he questioned how it's decided which communities are impacted.

MAYOR BOTELHO acknowledged that every community with visitors is impacted. The issue is whether the impact meets the constitutional screen as to the nexus of the impact and how

close it is to the vessel in port. He suggested that the earlier mentioned federal clauses pose obstacles that restrict the target solely to those communities directly serving the vessels. The farther away from the dockside, the more tenuous the nexus. With regard to potential lawsuits, the real test is with regard to the degree with which the government tries to comply with the law of the land, including the constitution. Mayor Botelho noted that the Juneau Airport has sought the use of passenger fees at the airport since many of the [cruise ship] passengers make use of the airport. However, the relationship [as determined by local officials] is too tenuous, he related.

8:45:53 AM

CO-CHAIR LEDOUX, assuming the initiative as written poses insurmountable constitutional issues, asked if the aforementioned could be remedied by simply shifting all of the money received through the initiative process to the directly impacted port communities rather than pass HB 222.

MAYOR BOTELHO replied yes, adding that the next test is to ensure that the port communities use the funds in a way that's consistent with the federal law. However, Mayor Botelho opined that it isn't as desirable because [the funds received from the passenger fee] would be subject to annual appropriation. The advantage of Version E is that the funds [collected for the passenger fee] aren't placed in the general fund and local communities can determine how much the passenger fee will be and how to use those funds without relying on the legislature.

CO-CHAIR LEDOUX surmised that if a local community doesn't enact the credit and the [passenger fee] funds are simply shifted to the directly impacted communities, local communities could still enact their own taxes. For example, nothing prohibits Juneau from opting-out of the state program and enacting or continuing its own taxes. She recalled Mayor Botelho mentioning that the passage of HB 222 would eliminate the fear of adverse political consequences when a community enacts its own head taxes. She then requested that Mayor Botelho elaborate on this fear communities have for enacting their own head tax.

MAYOR BOTELHO related that Juneau and Ketchikan and a few others are essential ports of call for the cruise ship industry. These essential ports of call are somewhat immune from pressures from the cruise ship industry and locals who rely on the industry. Mayor Botelho recalled his experience as the mayor of Juneau in the late 1980s when Juneau first considered a tax to which the

industry responded by threatening that cruise ships wouldn't visit Juneau. In fact, such was the case in another small Southeast community. He opined that this credit proposal is of little consequence because the overall amount remitted to the state by the cruise ship industry remains the same and thus the pressure on local policy makers is reduced, if not eliminated. The aforementioned is why, he said, that local communities would opt for their own port fee to which the cruise ship industry wouldn't object.

8:52:45 AM

REPRESENTATIVE CISSNA related her understanding from the Department of Revenue testimony that there is a problem with HB 222 as written in that it requires all communities, beyond the first five ports of call, to enact and administer their own taxation.

MAYOR BOTELHO reiterated that the limitation is regarding the nexus of the funds being used solely for the use of service to the vessel. The aforementioned is a high burden and as a consequence doesn't permit much, if any, expenditures from those impact funds. Recalling testimony from the Department of Revenue, Mayor Botelho pointed out that average individual vessels calls on 3.5 communities. Under the current legislation, only the first five ports of call have any "call" on the funds received from the passenger fee. Mayor Botelho again highlighted that there is already a limitation with regard to who can access funds by virtue of being ports of call as well as a constitutional and statutory restriction on where those funds can be spent.

8:56:13 AM

BOB WEINSTEIN, Mayor, City of Ketchikan, informed the committee that Ketchikan owns and operates substantial port facilities that provide direct services to cruise ships. Mayor Weinstein noted his agreement with Mayor Botelho's position as well as his legal analysis, which coincides with the legal opinions conducted on behalf of the City of Ketchikan regarding the appropriate use of port fees. He then recalled that a number of years ago the City of Ketchikan initiated a long-term port facility program development plan. In fact, last summer the voters in the City of Ketchikan approved a \$38 million revenue bond to pay for the port-related improvements. The aforementioned debt service is being paid through the implementation of a \$7 passenger. He then informed the

committee that from conversations with the bond bank's financial advisor and executive director he ascertained that financing revenue bonds for a large project is more likely to occur when there is a recurring guaranteed source of revenue rather than appropriated funds that are subject to approval each year. As mentioned earlier, the current \$5 per port limit for up to five ports will only direct \$18 of the \$50 fee to the communities impacted by the cruise ships. The aforementioned occurs if Ketchikan and Juneau receive their \$5. However, if 2 of the 3.5 communities cruise ships visit on average were taken off, a very small amount of the total collected would go to the first 5 ports. Again, the state is in a situation in which it will collect a substantial amount of money and the federal government has determined how it can be spent. This legislation maintains the \$50 passenger fee and those funds would be used for projects consistent with federal law. In fact, HB 222 [provides structure such that] it would be more likely that there will be port improvements, he opined. In closing, Mayor Weinstein related the City of Ketchikan's support for HB 222.

[9:01:02 AM](#)

REPRESENTATIVE NEUMAN highlighted the following proposed language from the initiative:

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

REPRESENTATIVE NEUMAN opined that the aforementioned language seems to say that if a municipality decides to participate and take the funds, then it can't impose or receive any other taxes. He asked if that ties the hands of the community with regard to determining its needs.

MAYOR WEINSTEIN opined that the aforementioned section [of the initiative] is part of the problem that HB 222 would fix. He reminded the committee that the City of Ketchikan has a nearly \$40 billion project that's under construction and is being financed by revenue bonds to which the city has pledged \$7 per marine passenger fee in order to pay the debt service. The City of Ketchikan intends to maintain this \$7 fee and, in fact, the bond covenants require that the City of Ketchikan keep it.

[9:03:06 AM](#)

CO-CHAIR LEDOUX questioned then why the City of Ketchikan cares about this tax since it can continue to levy the \$7 tax.

MAYOR WEINSTEIN said that the City of Ketchikan cares because it's one of the major ports and it's impacted by the vessels, passengers, and crews. Mayor Weinstein opined that the section of the initiative referenced by Representative Neuman is unfair because it penalizes communities such as Ketchikan and Juneau that try to develop port infrastructure while not allowing them access to a fee collected by the state from the passengers, vessels, and crews that visit their communities. Furthermore, Ketchikan has additional projects that it wishes to construct. Mayor Weinstein further opined that it will be difficult for Ketchikan to simply raise its local fee to pay for projects when the state is already collecting substantial funds that the federal law requires to be spent in ports of call.

CO-CHAIR LEDOUX asked whether an increase in Ketchikan's head tax to \$10 would cause the cruise ships to retaliate and not stop in Ketchikan.

MAYOR WEINSTEIN mentioned that Ketchikan has a good relationship with the cruise ship industry. Were Ketchikan to increase its passenger fee, it would be for specific projects that directly serve cruise ship passengers and crew. Mayor Weinstein said that the state is collecting money in excess of what the framers of the initiative intended. Clearly, the initiative does need amendment in order that the fees collected are spent in a manner that's consistent with federal law, which isn't currently the case.

[9:07:03 AM](#)

GERSHON COHEN, speaking as a co-sponsor of the 2006 ballot measure on cruise ship taxation, regulation and disclosure, commented that he was puzzled that Juneau and Ketchikan are

interested in amending the rule given that they have said they aren't going to opt-in to the program. He pointed out that the initiative was specifically drafted so that communities couldn't double dip. Furthermore, smaller communities contemplating a cruise ship passenger head tax face tremendous political pressure from the cruise ship industry. He recalled that Mayor Botelho remarked that the nexus between the amount of services provided to the vessel isn't black and white. Although no one knows how it will all play out, he expected that a number of communities will be able to clearly collect and spend the funds. He noted that other communities and countries have been collecting [passenger] fees and spending those without problems. Mr. Cohen expressed concern that if Juneau or Ketchikan increased their fees, their fees will come out of the cap and thus the amount available to everyone else will decrease significantly. Furthermore, the amount going to the state could go away. In conclusion, he informed the committee that there is a class action lawsuit regarding cruise ships collecting port fees and keeping them because the cruise ships were receiving rebates from the ports. He emphasized the need not to establish a similar situation in Alaska. Mr. Cohen concluded by relating his opposition to HB 222.

[9:11:52 AM](#)

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

[9:12:04 AM](#)

CO-CHAIR FAIRCLOUGH announced that HB 222 would be held over.

[9:12:08 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:12:09 AM](#).