

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 28, 2007

1:23 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Andrea Doll

**COMMITTEE CALENDAR**

HOUSE BILL NO. 164

"An Act relating to reporting of vessel location by certain commercial passenger vessels operating in the marine waters of the state, to access to vessels by licensed marine engineers for purposes of monitoring compliance with state and federal requirements, and to the obligations of those engineers while aboard the vessels; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 45(JUD)

"An Act relating to murder in the first degree."

- MOVED HCS CSSB 45(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 90

"An Act relating to bail."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 164

SHORT TITLE: OCEAN RANGERS & REPORTING VESSEL LOCATION

SPONSOR(S): TRANSPORTATION

02/28/07 (H) READ THE FIRST TIME - REFERRALS  
02/28/07 (H) TRA, FIN  
03/08/07 (H) TRA AT 1:30 PM CAPITOL 17  
03/08/07 (H) Heard & Held  
03/08/07 (H) MINUTE(TRA)  
03/13/07 (H) TRA AT 1:30 PM CAPITOL 17  
03/13/07 (H) Moved Out of Committee  
03/13/07 (H) MINUTE(TRA)  
03/14/07 (H) TRA RPT 2DP 1DNP 3NR  
03/14/07 (H) DP: KOHRING, JOHANSEN  
03/14/07 (H) DNP: DOOGAN  
03/14/07 (H) NR: FAIRCLOUGH, JOHNSON, NEUMAN  
03/14/07 (H) JUD REFERRAL ADDED AFTER TRA  
03/28/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 45

SHORT TITLE: PEACE OFFICER CONVICTED OF MURDER

SPONSOR(S): SENATOR(S) OLSON

01/16/07 (S) PREFILE RELEASED 1/12/07  
01/16/07 (S) READ THE FIRST TIME - REFERRALS  
01/16/07 (S) STA, JUD  
01/25/07 (S) STA AT 9:00 AM BELTZ 211  
01/25/07 (S) Heard & Held  
01/25/07 (S) MINUTE(STA)  
01/30/07 (S) STA AT 9:00 AM BELTZ 211  
01/30/07 (S) -- Rescheduled to 02/01/07 --  
02/01/07 (S) STA AT 9:00 AM BELTZ 211  
02/01/07 (S) Moved CSSB 45(STA) Out of Committee  
02/01/07 (S) MINUTE(STA)  
02/02/07 (S) STA RPT CS 4DP 1AM SAME TITLE  
02/02/07 (S) DP: MCGUIRE, STEVENS, GREEN, BUNDE  
02/02/07 (S) AM: FRENCH  
02/05/07 (S) JUD AT 1:30 PM BELTZ 211  
02/05/07 (S) -- Meeting Canceled --  
02/08/07 (S) JUD AT 3:30 PM BUTROVICH 205  
02/08/07 (S) Moved CSSB 45(JUD) Out of Committee  
02/08/07 (S) MINUTE(JUD)  
02/12/07 (S) JUD RPT CS 1DP 3NR 1AM SAME TITLE  
02/12/07 (S) DP: FRENCH  
02/12/07 (S) NR: THERRIault, WIELECHOWSKI, HUGGINS  
02/12/07 (S) AM: MCGUIRE  
03/02/07 (S) ENGROSSED

03/05/07 (S) TRANSMITTED TO (H)  
03/05/07 (S) VERSION: CSSB 45(JUD)  
03/07/07 (H) READ THE FIRST TIME - REFERRALS  
03/07/07 (H) JUD  
03/28/07 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE KYLE JOHANSEN

Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As chair of the House Transportation Standing Committee, sponsor of HB 164, presented the bill and responded to questions.

CHIP THOMA

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 164, provided comments and responded to questions.

RANDALL RUARO, Staff

to Representative Kyle Johansen

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 164, provided comments on behalf of Representative Johansen, chair of the House Transportation Standing Committee, sponsor of HB 164.

DON HABEGER

Royal Caribbean Cruises, Ltd., and Celebrity Cruises, Inc.

Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 164.

DAVID OTNESS

(No address provided)

POSITION STATEMENT: Provided comments during discussion of HB 164.

GERSHON COHEN

Haines, Alaska

POSITION STATEMENT: During discussion of HB 164, provided comments as one of the joint prime sponsors of the ballot initiative pertaining to cruise ship taxation, regulation, and disclosure.

LYNN TOMICH KENT, Director

Division of Water  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska  
POSITION STATEMENT: Responded to questions during the discussion of HB 164.

ALLEN SOULE  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during the discussion of HB 164.

JOHN SHIVELY, Vice President  
Government and Community Relations  
Holland America Line  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during the discussion of HB 164.

SENATOR DONNY OLSON  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of SB 45.

GAIL SCHUBERT, Executive Vice President & General Counsel  
Bering Straits Native Corporation  
(No address provided)  
POSITION STATEMENT: During discussion of HB 45, provided comments and requested that the legislation be known as the "Sonya Ivanoff Law".

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska  
POSITION STATEMENT: Responded to questions during discussion of SB 45.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:23:35 PM](#). Representatives Dahlstrom, Coghill, Lynn, Holmes, and Ramras were present at the call to order. Representatives Samuels and Gruenberg arrived as the meeting was in progress. Representative Doll was also in attendance.

HB 164 - OCEAN RANGERS & REPORTING VESSEL LOCATION

1:25:45 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 164, "An Act relating to reporting of vessel location by certain commercial passenger vessels operating in the marine waters of the state, to access to vessels by licensed marine engineers for purposes of monitoring compliance with state and federal requirements, and to the obligations of those engineers while aboard the vessels; and providing for an effective date."

CHAIR RAMRAS mentioned that he has a [business] relationship with members of the cruise ship industry, and that he has disclosed that relationship with both the Alaska Public Offices Commission and the Select Committee on Legislative Ethics.

CHAIR RAMRAS turned the gavel over to Vice Chair Dahlstrom.

1:28:34 PM

REPRESENTATIVE KYLE JOHANSEN, Alaska State Legislature, as chair of the House Transportation Standing Committee, sponsor of HB 164, introduced the bill. He relayed that when the ballot initiative regarding cruise ship taxation, regulation, and disclosure passed, he became cognizant of the potential cost of the Ocean Ranger program, adding that because of various reports he'd read he felt that such an expenditure didn't make sense. Through overviews, the House Transportation Standing Committee spoke to the Department of Environmental Conservation (DEC) regarding how the department would be implementing the program, and to various members of the cruise ship industry regarding what steps they've taken in the last few years to meet and exceed the standards - pertaining to the effluent coming off the ships - set by both federal and state regulatory agencies. The House Transportation Standing Committee also spoke with the contractor that the DEC hires to go on board the cruise ships, and to a professor from the University of Alaska regarding what actually occurs on board ships right now. Representative Johansen said that based on the information gathered at such meetings, the House Transportation Standing Committee chose to introduce HB 164 to address the issues raised.

REPRESENTATIVE JOHANSEN spoke of the initiative process and pointed out that when the legislature considers issues, it has the advantage of getting far more information than members of

the public do when they are considering whether to pass a ballot initiative. He relayed that the House Transportation Standing Committee has concluded, "We could have a program that met the intent of the people," adding that most of the debate focused on whether [the people serving as Ocean Rangers] would be riding on the ships between ports. He suggested that the House Judiciary Standing Committee ought to consider the constitutionality of [replacing the language of the ballot initiative with HB 164], and that the language passed by initiative was not vetted as thoroughly as any proposed language that goes through the committee process would have been. He assured committee members that HB 164 is intended to reflect the intent of the voters while being practical to implement and addressing a couple of troublesome points in the initiative language such as the fact that only a marine engineer can serve as an Ocean Ranger; this is a troublesome requirement because "the only pool of marine engineers" in the state are currently already working for the Alaska Marine Highway System (AMHS).

REPRESENTATIVE JOHANSEN offered his understanding that the fiscal note for HB 164 pares "the program" down to only seven employees, and that the House Finance Committee will consider, among other things, whether those positions ought to be contracted out.

[1:36:31 PM](#)

CHAIR RAMRAS, noting that he himself has been the sponsor of a ballot initiative, asked whether HB 164 is actually honoring the Ocean Ranger program or is merely stealing the guts of the initiative from its [joint prime] sponsors.

REPRESENTATIVE JOHANSEN offered his belief that the cruise ship initiative was "sold" to the public as \$50-head tax, and that it doesn't apply to certain class and size cruise ships or to AMHS vessels. He noted that the Alaska State Constitution says that the legislature has the ability to amend, at any time, adopted ballot initiatives, and offered his belief that ballot initiatives don't go through the same drafting process as legislation and are thus poorly written. He said that the DEC, for example, has testified that it received no direction from the initiative regarding how to implement the program, and so his goal is to fine tune the policy adopted by the voters and make implementation of the [Ocean Ranger] program practical. If there isn't actually a problem [occurring on cruise ships], then the legislature ought to be able to tailor the program to fit the goals of the initiative, he opined.

[1:42:44 PM](#)

CHAIR RAMRAS asked whether, if HB 164 is adopted, the onboard monitoring of vessels at sea would change to merely having the U.S. Coast Guard receiving an hourly report via Global Positioning System (GPS) and having the Ocean Rangers boarding ships only while at port. If so, he questioned, would that be undermining the will of the voters.

REPRESENTATIVE JOHANSEN [to the latter question] said he does not think it would. Mentioning that he rarely reads the entirety of a voter pamphlet, he opined that what the voters wanted was to have the water that comes out of the cruise ships meet or exceed all of the standards set by both the state and federal government - that's the bottom line for clean water and healthy fish. If this can be accomplished without spending \$3.7 million, then it's something that he can support, he added.

REPRESENTATIVE LYNN said he likes to think that the voters are casting informed votes, and he is not willing to question the motives of the voters when they vote a particular way.

REPRESENTATIVE JOHANSEN surmised that whether voters understood what they were voting on is now a moot point because the ballot initiative did pass and is now being put into law. He said of the ballot initiative language that it is not well drafted, that it doesn't take certain information into consideration, and that it is not workable for the state.

[1:48:25 PM](#)

CHAIR RAMRAS pointed out that although the different aspects of the ballot initiative were severable, voters were required to vote on the initiative in its entirety. One portion imposed a \$46 per-passenger per-voyage tax on commercial passenger vessels with 250 or more berths, and one portion imposed a \$4 per-passenger per-voyage fee [to fund the Ocean Ranger program]. He noted that the language under number "2" of the statement in support of the initiative says:

**Meet Alaska water quality standards** - Alaskans need clean water and healthy fish. Cruise ships are the only major polluters not required to have a discharge permit and meet ALL Alaska water quality standards. Everyone else has a permit; no new permitting program is necessary. Nearly every major cruise line has

felony convictions for dumping, tampering with pollution control equipment, or falsifying documents to the Coast Guard. This initiative places an independent marine engineer observer on every ship (paid through the passenger tax) to monitor discharges, inspect equipment, and verify logbook entries. The cruise lines have proven they cannot be trusted to help keep Alaska's waters clean and productive.

CHAIR RAMRAS said that the cruise ship industry that he knows continues to improve its record of achievement in maintaining clean water and taking care of fish habitats, adding that as a restaurant owner he doesn't need an employee of the DEC to be on hand in his kitchen to monitor the substances he pours down his grease trap. He offered his belief that the will of the people can be maintained, and that the bill can be modified via amendment to allocate the balance of Ocean Ranger fee funds to address the will of the people in a constructive fashion. He thanked the bill sponsor for attempting to measure the people's resources while maintaining the intent of the Ocean Ranger fund. The amendment he will be offering, he relayed, will better honor the intent of the people without providing for redundant monitoring. He offered his belief that the cruise ship industry has learned from its mistakes over the years and now has an exemplary record.

REPRESENTATIVE JOHANSEN, referring to testimony heard in the House Transportation Standing Committee, remarked that there is quite a difference between the way cruise ships operated in the past and how they've been operating since the laws were changed significantly in the year 2000. He offered his hope that the House Judiciary Standing Committee will focus its attention on the constitutional issue pertaining to amending a ballot initiative.

[1:54:04 PM](#)

CHIP THOMA relayed that he's provided members with additional information for their packets, that he's a supporter of the initiative and was involved in helping it get passed, that he was involved with what he called the "cruise ship initiative" that Governor Knowles "put together in the mid-90s," and that he is very aware of the issues involving the cruise ships - the issues that were the basis for the recent initiative. He pointed out that 81,000 people voted to pass the initiative, that [the Ocean Ranger program] is fully paid for and supported

by cruise ship passengers, and that every poll of passengers has shown wide-spread support for "these antipollution measures worldwide." He said this information raises the question of, what is the cruise ship industry so afraid of, and suggested that what it fears is having someone onboard while the ships are running between ports; this is because sewage is discharged at night, and the whole purpose of the [Ocean Ranger program] is to have someone onboard the ships to observe that discharge.

MR. THOMA posited that the ballot initiative language does not require "24/7 coverage." "We only want them there observing the discharges," he remarked; consequently, only one ranger is required per ship and he/she needn't stay on the ship while it is in port. There is plenty of money in the program to provide for this sort of monitoring. Most of the exaggerated costs, he relayed, are associated with paying the ships \$3,000 per week for each observer to have a berth and meals. That is the stem of the budget problem; without paying that unnecessary cost, the state could save \$1.5 million.

MR. THOMA offered his understanding that there has been a very successful fisheries observer program in the North Pacific for 30 years and this program has never been a burden on the industry. He expressed his hope that the governor and the legislature will support the initiative process, adding that the Alaska voters and cruise ship passengers approve of "this measure," and that there are adequate funds for the program. The onboard observer program [established by] the initiative is vital in order to "trust but verify" the actions of foreign-owned cruise ships as they do business in Alaska's waters. He pointed out that pages 12 and 13 of the voter pamphlet contain extensive language by both the Legislative Affairs Agency and the DEC regarding the marine engineers that would serve as Ocean Rangers, that the initiative's statutory language pertaining to Ocean Rangers is located on page 17, and that the statement in support and the statement in opposition to the initiative can be found on pages 19 and 20.

MR. THOMA said that according to the initiative's sponsors, polling done before the vote indicated that the highest approval was specifically for the Ocean Ranger program. The people of Alaska want to see that discharges are being made properly and that there aren't any [extra] pipes under the sewage systems like there were in the past. He mentioned that the reason he became involved in this issue is that before the year 2000, the ships' sewage systems, in almost every case, were not working and were not properly maintained; the ships were therefore

targeting and dumping [untreated] sewage into what he referred to as "doughnut holes" - home to a lot of fish and a lot of whales - throughout the waters of Southeast Alaska, and because these locations were three miles offshore, federal law allowed the dumping. That practice ended due to efforts made by then-U.S. Senator Frank Murkowski, and the goal of [current efforts like the ballot initiative] is to ensure that such dumping never happens again.

VICE CHAIR DAHLSTROM asked whether he is one of the sponsors of the ballot initiative.

MR. THOMA said he is not. In response to questions, he offered his belief that voters, particularly those in Southeast Alaska, were voting to clean up cruise ships, that the issue wasn't about taxing visitors to the state, and that the Ocean Ranger program can probably function on only \$2.5 million per year.

CHAIR RAMRAS opined that all that is needed is to monitor the effluent and wastewater systems currently in place on cruise ships to ensure that they are working, and that this can be done while the ships are in port, thereby allowing any extra money to be redirected to further honor the intent of the ballot measure - that being to have clean oceans and healthy fish.

MR. THOMA, in response to a further question, explained that his interest in the subject stemmed from the realization that [at one point in time] members of the cruise ship industry were lying about whether their sewage treatment systems were working; once these lies were brought to light, members of the industry immediately took steps to fix their systems. The Ocean Ranger program is meant to provide a "trust but verify" situation with regard to cruise ships and their discharge practices.

[Following was a brief discussion regarding how the committee would be proceeding with regard to testimony.]

[2:06:26 PM](#)

RANDALL RUARO, Staff to Representative Kyle Johansen, Alaska State Legislature, said, on behalf of Representative Johansen, chair of the House Transportation Standing Committee, sponsor of HB 164, that HB 164 is a reasonable response to the risks posed to Alaska's waters by the cruise ship industry because the fleet has recently been transformed dramatically such that 24 out of 29 vessels will be operating with advanced wastewater systems, systems so efficient that they've been found by both the DEC and

the Environmental Protection Agency (EPA) to transform effluent into clean water. Furthermore, the DEC, in its 2/9/04 report, says that since the passage of "the Alaska cruise ship laws," large cruise ships have installed advanced wastewater treatment systems that meet the U.S. Coast Guard's stringent requirements pertaining to continuous discharge; that the wastewater quality on large ships has improved dramatically; and that the wastewater samples taken indicate that the wastewater is not expected to cause toxicity to the marine environment and will pose no human health risk. Similar results were garnered by testing conducted by the EPA. Therefore, Mr. Ruaro opined, today's cruise ship fleet is now completely different from the fleet that Mr. Thoma became familiar with [when he began his work on this issue].

REPRESENTATIVE COGHILL pondered whether it was the initiative that generated the aforementioned fleet makeover.

[2:11:39 PM](#)

DON HABEGGER, Royal Caribbean Cruises, Ltd., and Celebrity Cruises, Inc., said that the state, at one time, responded to a practice that is no longer part of the cruise ship industry, that practice being the bypass of oily water separators. The aforementioned felonies pertained to that practice, not to the treatment of wastewater. However, even before that point in time, the industry engaged in a common practice that was in compliance with both international law and federal law, that practice being that beyond either "the three-mile land mark" or state waters, ships could discharge wastewater - both black and gray wastewater. When the state brought its concern regarding this practice to the industry, the industry agreed to dialog with the DEC and stakeholder groups; this dialog led to some investigative work wherein the "type two" marine sanitation devices (MSDs) used at that time were found to produce "high counts." In response, the state passed legislation, as did the federal government, that prohibited discharging in the Alexander Archipelago unless [the discharge] met certain standards. Via research and development efforts, new technology was developed, and his organization has committed \$100 million to installing the new technology in its whole fleet and anticipates being 100 percent compliant by next year.

MR. HABEGGER, in response to a question, explained that at one time, the "type two MSD" met the Coast Guard standard for marine sanitation devices; that gray water comes from sinks, washbasins, and galleys; that black water comes from urinals and

toilets; and that most ships handle gray and black water separately though some do handle them together.

[2:16:56 PM](#)

DAVID OTNESS - after relaying that he is originally from Petersburg, that his grandfather began fishing out of Petersburg around the year 1910, and that he has been on the water his whole life - said he is now engaged in shellfish mariculture. He proffered that if any members were able to partake in the "feed" put on by the Alaska Shellfish Growers Association (ASGA), then they can appreciate how clean [the ASGA] wants to keep Alaska's waters, particularly when selling raw products. He mentioned that he is in the U.S. Merchant Marines currently serving as a captain, also sails as an unlicensed engineer, and has been following this issue pretty closely. He said he continues to question the industry regarding whether it is really "stepping up to the plate and doing what's right."

MR. OTNESS pointed out, for example, that when the representative from the cruise ship industry gave an explanation of what constitutes black water, Mr. Otness said the representative neglected to mention that a large amount of "photo chemicals" were also dumped in the waters that constituted the fishing grounds of Mr. Otness's grandfather. Even as recently as last year, Mr. Otness relayed, a friend of his who was shrimp trawling in Wells Passage hauled up a whole net full of "chef-cut cantaloupe and various melons"; the dumping of such material is completely against the law and has been since the 1980s. He mentioned the large volume of passengers that cruise ships carry and the volume of sewage created by those passengers, adding that [Alaskans] have had bad luck with cruise ships and their discharging practices.

MR. OTNESS said the intent of the ballot initiative was clear, and that members of the cruise ship industry have not proven to be trustworthy enough for [citizens such as himself] to believe them. As Mr. Thoma said, Mr. Otness remarked, "trust but verify," and opined that [the Ocean Ranger program] is a pretty cheap way of doing that. Discharging by cruise ships doesn't occur at the dock, and so it is not redundant to have an Ocean Ranger monitor a cruise ship while it is out of port, because that is when discharging occurs. Although cruise ships are now using the aforementioned new treatment systems, they will only produce clean effluent when they are functioning, and given that such systems can break down, he said he questions whether the cruise ships have the capacity to hold all their sewage while

traveling through Alaska's waters - the answers to such questions will only come to light if there are observers aboard ship. In conclusion, he suggested that if the legislature attempts to change the [ballot initiative], there will be many who will fight against such a change.

REPRESENTATIVE GRUENBERG indicated that he has questions regarding the state of the technology being used and why engineers, specifically, are needed on board the cruise ships. He noted that the summary on page 13 of the voter pamphlet says in part: "Two marine engineers working alternating twelve-hour shifts would be placed on each cruise ship operating in Alaska waters." This language appears to be somewhat at odds with Mr. Thoma's comments about merely having observers [monitor the ships while they are between ports], Representative Gruenberg remarked.

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GERSHON COHEN explained that he is one of the joint prime sponsors of the ballot initiative, and mentioned that they'd had one of the most remarkable signature drives in that they'd spent the least amount of money and had more districts represented than any other ballot initiative to date. He relayed that the "single subject rule" was originally raised when the ballot initiative was submitted, and the attorney general reviewed the initiative for five months and came back with a finding that it did meet the single subject rule. Mr. Cohen said he was troubled by Representative Johansen's comment that he didn't actually read all the information available in the voter pamphlet. With regard to the comment that the ballot initiative was "sold" as a \$50 head tax, Mr. Cohen pointed out that prior to the election, the industry regularly made great efforts to tell the voting public about all the different aspects of the initiative.

MR. COHEN, with regard to the comment that there was an oversight with regard to the AMHS and small ships, explained that the ballot initiative was submitted in 2003, and the law exempting small ships and the AMHS law passed in 2004, but by that point the language in the initiative was already set; should the legislature wish to remedy that issue, he remarked, the initiative's sponsors would be amenable. He pointed out that the concern the ballot initiative sponsors' have is one of scale - the discharge from small boats with small numbers of passengers doesn't matter to the same extent as the discharge

from ships carrying 5,000 to 7,000 passengers, particularly when the treatment system onboard a cruise ship is not functioning.

MR. COHEN, with regard to the comment that there are not enough engineers, remarked:

Unfortunately [the] DEC didn't really do very much from the time that this measure passed back in August until January, and now ... they seem to be getting more up to speed in terms of getting these programs - both this program and the permitting program - lined out, and it's our belief that there are actually plenty of engineers out there; if [the DEC] put out [a request for proposals (RFP)] to a management firm that does these types of services, [the DEC] will find that we're not going to be robbing Peter to pay Paul here in taking engineers off the ferries.

MR. COHEN, with regard to why the initiative's sponsors felt the initiative was necessary, said the concern centered not so much on the fact that the levels of fecal coliform bacteria being discharged were way over the limit, but on the fact that the cruise ship industry was using the gray wastewater and black wastewater streams to mask the other chemicals that were being dumped - for example, photo chemicals and dry cleaning fluids.

MR. COHEN opined that if the legislature amends an initiative to the point of taking away its intent, the legislature is essentially repealing the initiative - which is prohibited by the Alaska State Constitution - and offered his belief that if HB 164 passes as currently written, then it will be found to be unconstitutional. He went on to say:

There seems to be a great confusion about the difference between observing and testing. ... Other portions of the new law directly address how often sampling will be performed and what standards must be attained for compliance. The Ocean Ranger program is not primarily about testing - it is about observing. As Chip Thoma mentioned earlier, for over 30 years we've had observers in the open ocean fishing fleet. I first came to Alaska in 1981 as an observer on a Korean stern trawler in the Bering Sea; I moved here permanently just over a year later. There's no doubt in my mind that my presence on that foreign ship helped stop the illegal capture of Alaska halibut, crab, and salmon. And this is the main function of

the Ocean Ranger program; their presence will go a long way [toward] deterring future failures of [the cruise ship industry] to comply with our discharge regulations. As has been mentioned, they've been convicted on multiple occasions for dumping, and [have] multiple felony convictions.

One of the issues that's always raised to me by folks who are talking to me about this issue is that, "Well, that was then and this is now, and why is this still an issue to you - why do you still not trust the cruise [ship] industry?" Well, I'll give you one very recent example: Just a couple of months ago, a ship in the south pacific - that is, a "P&O ship," ... which is a subsidiary of Carnival Cruise lines, as is Holland America and Princess and others - knowingly contracted with a local person on a little island in the south pacific ... called Vanuatu ... to remove hundreds of thousands of gallons of oil sludge that they were supposed to be taking to Australia to be treated, and ... dumped them on that island. They paid this guy to come meet the ship with a (indisc.) truck and he took these ... hundreds of thousands of gallons of oil sludge [and dumped them] ... into a large ... hole in the volcanic rock on this island, and the people on the island are so furious at this point that to my knowledge they are still not picking up passengers at the dock with the taxis and the buses.

MR. COHEN said that the issue is not whether the cruise ship industry is doing this sort of dumping in Alaska but rather whether there is a corporate ethic, and has it existed for many years, that would give Alaskans concern that although the ships might have the equipment on board to perhaps do a good job of treating the ship's waste, will that equipment actually be used, particularly when no one is watching. The Ocean Ranger program was included in the ballot measure because it is not sufficient to simply have someone inspect the ships while they are in port; someone must be on the ships at all times while they are in Alaska waters because the industry has shown that it attempts to get away with illegal dumping and discharge whenever possible.

MR. HABEGGER, in response to a question, concurred that when his company was discharging black wastewater beyond the three-mile limit in Alaska, doing so was permissible at that time.

MR. COHEN asserted that the exemption under the Clean Water Act that the industry has been claiming in order to be able to discharge without a permit was never intended for use by ships carrying 5,000 passengers - the exemption was intended to be used by fishing boats and cargo ships.

[2:34:13 PM](#)

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), in response to a question, explained that the current cruise ship program that the DEC runs includes annual registration - available online - for both large and small cruise ships; that there are regulatory requirements in place which limit the quality of wastewater discharges from vessels; that there is a requirement for vessel-specific sampling plans which will require the monitoring of wastewater discharges two times per calendar year; that that data, which is collected by independent third parties, is reported to the DEC; that vessels must record the dates, times, locations, volumes, and flow rates of sewage, gray water, and other wastes into Alaska's waters; that cruise ship companies must make those records available to the DEC; that the DEC does conduct independent inspections of vessels, usually while they are in port; that the DEC takes "visible emission readings" from the smokestacks while ships are in port; that when necessary, the DEC does take enforcement actions; and that occasionally the DEC will conduct other types of studies.

MS. KENT, in response to a further question, said that the DEC, to a certain extent, has the ability to conduct unannounced, random inspections while ships are underway, but doing so is challenging because of security issues. On rare occasions, DEC staff have traveled with the vessel. The Ocean Ranger program as provided for via the initiative included requirements that go beyond what the DEC currently does; she offered her understanding that there is a requirement that an Ocean Ranger be on board a vessel when it enters "marine waters," and that the Ocean Ranger is supposed to observe - for the purpose of monitoring - state and federal requirements for marine discharge and pollution requirements and ensure that passengers, crew, and residents at port are protected from improper sanitation, health, and safety practices.

MS. KENT, in response to another question, said that U.S. Coast Guard licensed marine engineers, which are referenced in Sections 2 and 3 of HB 164, are generally trained at a maritime academy and have sufficient sea time and experience with vessel

power and propulsion systems. Although such personnel come with a lot of training and significant experience, they are not trained in the environmental and public health rules necessary for acting as observers on cruise ships; therefore there is still a significant training issue that must be addressed.

REPRESENTATIVE GRUENBERG asked what efforts the DEC is making to comply with the initiative, what the cost of complying will be, and how long the process of complying will take.

MS. KENT relayed that last fall the DEC put in a budget request to fund the Ocean Ranger program, and "hired and completed a contracted report for a contractor" to help the DEC consider options for placing Ocean Rangers on board vessels; for example, options pertaining to training requirements, scheduling, and logistics. Currently, the DEC is working on a contract to implement the Ocean Ranger program, and intends to "ramp up" the program - as it was passed by the voters via the initiative - as quickly as possible.

[2:41:08 PM](#)

MR. RUARO, responding to a question regarding the capacity of the aforementioned advanced wastewater systems, said that testimony [heard in the House Transportation Standing Committee] indicates that ships often have two to three times, and sometimes ten times, the capacity of the average daily flow of waste from the ship, and that no ship operates without at least two systems in place. He also mentioned that the 27 large cruise ships which operated in Alaska in 2006 were inspected a total of 403 times by U.S. health inspectors, and passed all but five of those inspections.

CHAIR RAMRAS asked whether the text found under "FACT #5" of the document provided in members' packets entitled, "Statement of Facts from Testimony and Documents Presented to the House Transportation Committee, EPA Records, and U.S. Public Health Service Records Showing the Risk to Alaska From Wastewater Pollution or Health and Sanitation Issues by Today's Fleet of Large Cruise Ships is Very Low" provides an accurate representation of what the DEC does.

MS. KENT indicated that that text appears to be accurate.

REPRESENTATIVE GRUENBERG asked why an Ocean Ranger program is necessary or beneficial, given that all "these various systems" are supposedly in place.

MS. KENT said the DEC is simply responding to the requirements outlined in the ballot initiative, which go beyond what the DEC is currently required to do.

REPRESENTATIVE GRUENBERG asked whether the DEC has taken a position regarding whether the Ocean Ranger program is necessary or beneficial.

VICE CHAIR DAHLSTROM reiterated that the DEC is merely responding to the ballot initiative, and surmised that the DEC is not in a position to comment on how it feels about the Ocean Ranger program.

[2:50:16 PM](#)

ALLEN SOULE said he voted for the ballot initiative, and relayed that he has some concerns regarding the Ocean Ranger program. He offered his belief that the ballot initiative passed because the people wanted the extra security and comfort of knowing that the waters of Alaska are being protected, and so to remove the Ocean Ranger program would be doing a disservice to the voters; regardless that perhaps the Ocean Ranger program might need to be adjusted, to simply remove it would not be honoring the wishes of the voters. Mentioning that he has worked with the U.S. Corps of Engineers and that it too at times has faced a shortage of trained personnel, he suggested that the DEC ought to be able to train sufficient personnel in order to make the Ocean Ranger program workable. In conclusion, he said he wants to believe that the legislature will do the right thing and will work through the difficulties posed by the ballot initiative.

[2:55:13 PM](#)

JOHN SHIVELY, Vice President, Government and Community Relations, Holland America Line, said that the company has operated under standards set by the federal government and has met those standards. He opined that the manpower issue is an important one, remarking that in order to be certified by the U.S. Coast Guard as a marine engineer, one must have extensive training and experience, particularly when serving as an Ocean Ranger. He offered his belief HB 164 makes sense because the DEC can train a lesser number of people and obtain the necessary information. In conclusion, he remarked that cruise ships also discharge during the day, not just at night as some have claimed, and, in some cases, with the right equipment, are allowed to discharge wastewater continually. In response to a

question, he said there is a cost to his company for the Ocean Ranger program because the person will have to be supervised by ship personnel due to security considerations.

MR. COHEN, in response to a question, said that the [joint prime sponsors] of the ballot initiative are himself and Joe Geldhof.

VICE CHAIR DAHLSTROM, after ascertaining that no one else wished to testify, closed public testimony on HB 164.

[2:59:17 PM](#)

CHAIR RAMRAS referred to Amendment 1, labeled 25-LS0585\A.1, Kane, 3/28/07, which read:

Page 1, line 4, following "**vessels;**":

Insert "**creating the Alaska ocean protection and enhancement fund and the Alaska ocean protection and enhancement program;**"

Page 2, following line 21:

Insert a new bill section to read:

"\* **Sec. 4.** AS 46.03 is amended by adding new sections to read:

**Sec. 46.03.483. Alaska ocean protection and enhancement fund.** (a) The Alaska ocean protection and enhancement fund is established as a sub-account in the commercial passenger vessel environmental compliance fund established in AS 46.03.482.

(b) The sub-account established in (a) of this section consists of the following, all of which shall be deposited in the sub-account on receipt:

(1) money received by the department in payment for fees under AS 46.03.480(d);

(2) money appropriated to the sub-account by the legislature;

(3) money received by the department from private sources to be expended on the Alaska ocean protection and enhancement program established in AS 46.03.484; and

(4) earnings on the sub-account.

(c) The legislature may make appropriations from the sub-account to

(1) pay for the Ocean Ranger program established in AS 46.03.476;

(2) fund grants under the Alaska ocean protection and enhancement program established in AS 46.03.484; and

(3) fund the activities of the Alaska Ocean Protection and Enhancement Advisory Board established in AS 46.03.484(b).

(d) Nothing in this section creates a dedicated fund.

**Sec. 46.03.484. Alaska ocean protection and enhancement program.** (a) There is established in the department the Alaska ocean protection and enhancement program. The commissioner may, in consultation with the Alaska Ocean Protection and Enhancement Advisory Board established in (b) of this section, award grants to eligible applicants for

(1) studies to assess the effects from vessel traffic on air quality, water quality, and marine life in and near Alaska marine water and to recommend mitigation and prevention of adverse effects;

(2) activities to remediate or clean up pollution or debris from vessel traffic in or near Alaska marine water;

(3) educational programs designed to inform the public about the importance of maintaining air and water quality standards for Alaska's marine water; and

(4) other activities that the commissioner determines will foster the protection and enhancement of Alaska marine water.

(b) There is established the Alaska Ocean Protection and Enhancement Advisory Board consisting of not more than seven and not fewer than five members, as determined by the commissioner. The governor shall appoint the board members. The governor shall appoint at least two members of the board from nominations provided by the owners or operators of large commercial passenger vessels and at least two members from nominations provided by nonprofit corporations eligible to receive grants under this section. Members of the advisory board serve without compensation but are entitled to per diem and travel expenses as authorized under AS 39.20.180.

(c) The department shall adopt regulations for the administration of the Alaska ocean protection and enhancement program, including

(1) additional criteria for eligible applicants and eligible projects;

(2) application forms and deadlines for receiving applications;

(3) grant evaluation criteria; and

(4) audit and other procedures to ensure proper expenditure of grant funds.

(d) In this section, "eligible applicant" means

(1) a nonprofit corporation organized under the laws of this state if the corporation has been in existence for at least two years at the time of the grant application and has as one of its purposes the promotion of air or water quality in Alaska marine water or the protection of marine life in Alaska marine water;

(2) a municipality that demonstrates potential effects from vessel traffic in the marine water within the boundaries of the municipality;

(3) an entity under federal law that demonstrates potential effects from vessel traffic within the areas of subsistence use; or

(4) other entities that the commissioner determines are affected by effects of vessel traffic in Alaska marine water."

Renumber the following bill sections accordingly.

CHAIR RAMRAS, after relaying that Amendment 1 would create the Alaska ocean protection and enhancement fund, referred to three letters of support included in members' packets from three nonprofit organizations: the Alaska SeaLife Center, the Gulf of Alaska Keeper (GoAK), and the Alaska Ocean Observing System (AOOS).

CHAIR RAMRAS made a motion to adopt Amendment 1.

REPRESENTATIVE LYNN objected.

CHAIR RAMRAS explained that the Alaska ocean protection and enhancement fund would be governed by an Alaska Ocean Protection And Enhancement Advisory Board consisting of between five and seven members appointed by the governor; a couple of the board members would be chosen by the cruise ship industry and a couple of the board members would be nominated by the nonprofit organizations that would be eligible for grants under the provisions of Amendment 1. He said his intent is to craft a solution to the concerns that have been raised. Rather than see the \$4 fee used for a redundant purpose, he relayed, Amendment 1, as the Ocean Ranger program is altered to bring monitors on

board ships while they're in port, would free up a great deal of funds for the goal of ensuring that Alaska has clean water and healthy fish. He then read Amendment 1's proposed AS 46.03.484(a)(1)-(4), and indicated that these would be the tasks set for applicants applying for the aforementioned grants.

CHAIR RAMRAS opined that it is the purview of the legislature to amend ballot initiatives, and said he is hopeful that Amendment 1 will pass the test laid out by the courts regarding amending ballot initiatives. He suggested that the committee review Amendment 1 with that question in mind, as well as with the question of whether it honors the intent of the ballot initiative as the legislature interprets it. He said he does not want to impact the collection of the \$4 fee, but would rather see it used for the greater good of the ocean's ecosystem. He asked members to review the aforementioned letters, and opined that Amendment 1 and HB 164 provide the committee with the opportunity to be proactive in making the oceans a better place. In conclusion, he indicated that [Amendment 1] would allow individuals and private organizations to donate additional monies to the Alaska ocean protection and enhancement fund established by Amendment 1.

VICE CHAIR DAHLSTROM relayed that the committee would hold HB 164 over with the motion of whether to adopt Amendment 1 left pending.

SB 45 - PEACE OFFICER CONVICTED OF MURDER

[3:08:35 PM](#)

VICE CHAIR DAHLSTROM announced that the final order of business would be CS FOR SENATE BILL NO. 45(JUD), "An Act relating to murder in the first degree."

VICE CHAIR DAHLSTROM returned the gavel to Chair Ramras.

[3:09:38 PM](#)

SENATOR DONNY OLSON, Alaska State Legislature, sponsor, after offering recognition of all the hard work done by Alaska's law enforcement personnel, relayed that SB 45 is intended to address a situation in which a police officer violates the public trust by using his/her position to commit murder. He explained that SB 45 mandates that the maximum penalty be applied in situations where a police officer is found guilty of using his position to commit the crime of murder in the first degree, noted that SB 45

is supported by the Department of Law (DOL), and asked that the committee vote favorably on the bill.

3:12:30 PM

GAIL SCHUBERT, Executive Vice President & General Counsel, Bering Straits Native Corporation, said that on behalf of the corporation and the residents of the Bering Straits region, she is respectfully requesting that the House Judiciary Standing Committee name SB 45 the "Sonya Ivanoff Law." This name was not included in the original bill, was added in the Senate State Affairs Standing Committee, and was deleted by the Senate Judiciary Standing Committee, Ms. Schubert explained. She then provided some personal information about the late Sonya Ivanoff, and relayed that on May 26, 2006, the corporation's board of directors adopted a resolution in support of the proposed new law as did the Norton Sound Health Corporation, the Alaska Federation of Natives, and Kawerak, Inc. The Bering Straits Native Corporation took this action for a variety of reasons, one being that the law enforcement officer who murdered Sonya Ivanoff had a fundamental and sworn duty to serve the community, safeguard lives and property, protect the public, and respect the constitutional rights of all to liberty, equality, and justice.

MS. SCHUBERT said: "We believe that law enforcement officers should rightfully be held to a higher standard because of their position of authority and responsibility." At the trial, she relayed, it was found that the law enforcement officer used his authority to lure Sonya Ivanoff into his police vehicle, after which he savagely murdered her. In doing so, the law enforcement officer breached his fundamental duty as a police officer and set forth a tidal wave of distrust against law enforcement officers and the judicial system that has reverberated throughout the Native community in western Alaska. During the sentencing hearing, she relayed, the State's prosecutor cited AS 12.55.125 as justification for imposing a prison sentence of 99 years; the State's attorney - Rick Svobodny - opined that an equivalent sentence should result if a police officer is convicted of murder in the first degree for a crime committed while the officer is on duty, and the presiding judge - Ben Esch - agreed and imposed the maximum prison sentence of 99 years.

MS. SCHUBERT said that the Bering Straits Native Corporation board of directors believes that the legislature has an opportunity to restore confidence in the justice system for all

Alaska residents and to ensure that justice is equally applied. In conclusion, she said that the corporation's board and the residents of the [Bering Strait region] strongly urge that SB 45 be named the "Sonya Ivanoff Law" so that the death of this vibrant young woman will not have been in vain.

CHAIR RAMRAS said that the committee would research the issue of whether it is possible to name legislation after someone specific.

REPRESENTATIVE LYNN, noting that he is a former police officer, observed that this type of crime gives a black eye to law enforcement officers everywhere. Therefore, he opined, even if it is possible to name SB 45 after Sonya Ivanoff, doing so would remind the public of the evil deed of one police officer who did not represent the law enforcement community as a whole.

REPRESENTATIVE DAHLSTROM opined that Mr. Svobodny represented the State extremely well during the aforementioned trial.

[3:18:49 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 45(JUD) out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 45.

REPRESENTATIVE HOLMES said she doesn't want SB 45 to interfere with the ability of law enforcement officers to perform their duties.

SENATOR OLSON said it is not his intention to prohibit law enforcement officers from fulfilling their duties. He pointed out that SB 45 will only apply when a law enforcement officer is found guilty of first degree murder and used his/her position to commit that murder; SB 45 is not going to affect a police officer during his/her normal line of duty.

REPRESENTATIVE LYNN offered his understanding that HB 45 won't apply in accidental shooting situations; it would only apply in instances of premeditated murder.

REPRESENTATIVE GRUENBERG characterized the title of the bill as being very broad, and referred to the language being added to AS 12.55.125(a): **"(5) the court finds by clear and convincing**

evidence that the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder". He referred to the Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004) case, and questioned whether the phrase, "the court finds by clear and convincing evidence" would be interpreted to be referring to a jury.

[3:24:31 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that the DOL is of the opinion that SB 45 does not raise a Blakely issue because it doesn't provide for a sentence beyond the maximum sentence within a specific sentencing range; under SB 45, the jury won't have to find an aggravating factor in order to impose the sentence of 99 years because that sentence is the only sentence available for the crime listed therein. In response to comments and a question, she offered to provide the committee with documentation that will support the DOL's opinion on this issue.

REPRESENTATIVE GRUENBERG asked whether the phrase, "clear and convincing evidence" provides a high enough standard to withstand a constitutional challenge.

MS. CARPENETI offered her belief that it will, and offered to get the committee further information on that point. In response to further questions, she surmised that the definition of "peace officer" found in Title 1 is broader than the definition of "police officer" found in Title 18, and that the sponsor intended to use the same term in proposed AS 12.55.125(a)(5) as is currently used in AS 12.55.125(a)(1) - that term being "peace officer".

REPRESENTATIVE GRUENBERG said he is questioning whether the definition should be broadened further.

MS. CARPENETI indicated that the term "peace officer" has been used in the past, and that the DOL is comfortable with that term as currently defined.

REPRESENTATIVE DAHLSTROM withdrew her motion to report CSSB 45(JUD) from committee.

[3:30:45 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 1, labeled 25-LS0183\A.2, Luckhaupt, 1/29/07, which read:

Page 1, following line 2:

Insert a new bill section to read:

"\* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Sonya Ivanoff Act."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 2, line 13:

Delete "Section 1"

Insert "Section 2"

REPRESENTATIVE LYNN objected, and reiterated his belief that naming the bill after the victim will tend to give a black eye to law enforcement agencies.

CHAIR RAMRAS relayed that the sponsor has indicated to him that he favors Amendment 1.

A roll call vote was taken. Representatives Coghill, Samuels, Holmes, Gruenberg, Dahlstrom, and Ramras voted in favor of Amendment 1. Representative Lynn voted against it. Therefore, Amendment 1 was adopted by a vote of 6-1.

[3:32:05 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 45(JUD), as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCS CSSB 45(JUD) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:32 p.m.