

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

March 13, 2007

1:34 p.m.

MEMBERS PRESENT

Representative Kyle Johansen, Chair
Representative Mark Neuman, Vice Chair
Representative Anna Fairclough
Representative Craig Johnson
Representative Vic Kohring
Representative Mike Doogan

MEMBERS ABSENT

Representative Woodie Salmon

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."

- MOVED HB 164 OUT OF COMMITTEE

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

WITNESS REGISTER

RANDALL RUARO, Staff
to Representative Johansen

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As committee aide to House Transportation Standing Committee, presented HB 164.

LYNN TOMICH KENT, Director
Division of Water
Department of Environmental Conservation
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 164, answered questions.

RUTH HAMILTON HEESE, Assistant Attorney General
Environmental Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 164, answered questions.

ACTION NARRATIVE

CHAIR KYLE JOHANSEN called the House Transportation Standing Committee meeting to order at [1:34:18 PM](#). Representatives Johansen, Fairclough, Neuman, Johnson, Kohring, and Doogan were present at the call to order.

HB 164-OCEAN RANGERS & REPORTING VESSEL LOCATION

[1:34:30 PM](#)

CHAIR JOHANSEN 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."

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RANDALL RUARO, Staff to Representative Johansen, Alaska State Legislature, reminded the committee that last week it received testimony about the difference between the cruise ship fleet prior to 2002 and after 2002. Prior to 2002, only two out of 24 vessels in Alaska operated with an advanced wastewater treatment

system (AWTS). In today's fleet, 24 out of 29 large cruise vessels operating in Alaska have AWTS. The number and trend is growing every year, he said. In fact, the aforementioned increase is an 1,100 percent increase over the past five years. He highlighted testimony at the prior hearing in which it was related that AWTS are state-of-the-art systems in wastewater treatment technology that has been described as a system of bioreactors and filters that basically treat wastewater through enhanced aerobic digestion and low pressure membrane filtration.

MR. RUARO further recalled testimony from the prior hearing in which it was related that AWTS allow the vessels to meet discharge requirements and perform better, up to 50 percent below the legal limits. Furthermore, the U.S. Coast Guard, in documents provided to the committee, has said AWTS allow the wastewater discharged by cruise ships traveling in Alaska's waters to be clean enough to drink and is some of the cleanest wastewater ever seen. Mr. Ruaro turned to DEC's report after reviewing several years of cruise ship discharge data. He highlighted the following statements made in DEC's February 9, 2004, report:

Since the passage of the Alaska cruise ship laws, large cruise ships have installed AWTS systems that meet the stringent U.S. Coast Guard requirements for continuous discharge. The quality of the wastewater on large ships has therefore improved dramatically.

WET testing results and a comparison of sample results, indicate that the effluent from these advanced systems is not expected to cause toxicity to the marine environment. No human health risk is posed by the low concentration of tested pollutants found in wastewater samples and the wastewater samples indicate that hazardous materials are not being discharged through these wastewater treatment systems.

Test results indicated wastewater effluent from large ships do not pose a risk to aquatic organisms, even during stationary discharges. And none of the pollutants mentioned above are present in concentrations that would cause risk to human health.

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MR. RUARO, recalling the testimony regarding the monitoring and testing of the samples that is currently being performed,

reminded the committee that some of the sampling of the cruise ship wastewater systems is unannounced, staff work in teams of two, the staff usually have a four-year degree in a science field, and are trained how to properly take samples. Furthermore, DEC has staff who monitor and evaluate the sample taking. He noted that there's a list of 25 specific criteria that DEC watches for and the results are reported to DEC and the U.S. Coast Guard in writing. He recalled that the company performing the monitoring has passed all the DEC audits of its work in 2006. Additionally, a scientist with a PhD from the University of Alaska Southeast periodically boards the cruise ships to observe and report on the sampling procedures and review the testing techniques of the laboratories. He recalled that the monitoring company reported that it also passed all of the audits by the professor as well. Mr. Ruaro highlighted that all of the people involved in wastewater management for cruise ships are required to follow the sampling and testing procedures agreed upon by the U.S. Coast Guard and DEC in the Quality Assurance/Quality Control Plan (QA/QCP), which is Tab 13 in the committee packet. The aforementioned plan is reviewed and updated annually. He also recalled Ms. Kent's, DEC, testimony from the prior hearing in which she stated that the current system is adequate and no further additions are necessary.

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MR. RUARO then turned to health and safety inspections. He informed the committee that federal statutes provide the U.S. public health service jurisdiction over health and safety on cruise ships. The federal statutes are cited in the "Vessel Sanitation Program Operations Manual" published by the Centers for Disease Control. Mr. Ruaro mentioned that upon further research he discovered that in 2006 the 27 cruise ships operated by major lines in Alaska were inspected a total of 403 times by trained federal inspectors. All but five of those inspections were passed. Furthermore, none of the 27 vessels have had a failed health and safety inspection in the last five years. Mr. Ruaro characterized the standard on which these vessels are being inspected as a white glove standard.

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MR. RUARO then moved on to the legislation itself, which clarifies and amends the Ocean Ranger Program created by Ballot Measure 2 [the Cruise Ship Ballot Initiative passed by Alaska voters in August 2006]. He submitted that the legislation aligns the scope of the program with the fairly low level of

risk presented to Alaska's waters by large cruise ships while saving the state millions, as specified in DEC's fiscal note. Section 1 clarifies that the U.S. Coast Guard will receive the real-time hourly reports of vessel locations. Section 2 clarifies that owners or operators are only required to allow an ocean ranger onboard the vessel at times designated by the commissioner when the vessel is in the port. Therefore, HB 164 does amend the scope of the Ocean Ranger Program. Section 3 amends the scope of the public health duties to be performed by ocean rangers by limiting them to duties associated with monitoring, observing, and recording data and information related to the recordkeeping and wastewater discharge functions on the vessels required by state and federal law.

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REPRESENTATIVE NEUMAN highlighted the importance of recognizing that a ballot initiative is the voice of the public. He then asked if HB 164 will meet all the requirements specified in the ballot initiative.

MR. RUARO stated that HB 164 reduces the scope of the Ocean Ranger Program as well as the scope of the duties of the ocean rangers. However, he opined that the overall goal of protecting Alaska's waters isn't negatively impacted because the facts illustrate that the aforementioned is already being adequately accomplished.

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REPRESENTATIVE NEUMAN inquired as to which pollutants are tested in the wastewater samples and the concentrations at which they are found.

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation, said that she would have to review the initial reports in order to determine all of the parameters that are monitored. However, she recalled that conventional pollutants, those pollutants that would normally be found in sewage, are monitored. Furthermore, the analysis is run for priority pollutants, which include metals and pesticides. The standards that DEC uses to evaluate the sample data from the Alaska water quality standards are designed to protect human health.

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REPRESENTATIVE NEUMAN asked whether there is any way that the cruise ships can bypass the treatment equipment. He expressed the need to ensure that the equipment being used and monitored by the environmental engineers can't be altered when no ocean ranger is on board.

MR. RUARO recalled Mr. Phillips' testimony that it is difficult to subvert the system and that usually there are two AWTs on board these ships, which provides more than sufficient capacity to handle the load.

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REPRESENTATIVE NEUMAN asked if there have been any penalties, problems, or fines reported or levied by any oversight agencies in the last several years.

MS. KENT answered that over the past few years the types of violations that have occurred have primarily been related to air opacity. The types of problems with wastewater discharges have primarily been with how samples are collected. Ms. Kent said, "By and large we've had very few situations that require the department to take an enforcement action in the last few years."

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REPRESENTATIVE DOOGAN inquired as to how the testimony from the industry and DEC change the fact that the initiative was approved.

MR. RUARO replied that he didn't believe anything can change the fact that the initiative was approved. However, the legislature is given the express authority to amend initiatives. Mr. Ruaro opined that the facts and the record support the legislature's action in amending the initiative.

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REPRESENTATIVE DOOGAN recalled that DEC started the testing program in 1999 or 2001 and the cruise ship industry began improving the onboard wastewater treatment in 2002, and voters approved the initiative in 2006. From that chain of events, can we not assume that the voters were rejecting the notion that the current wastewater treatment program was sufficient, he asked.

MR. RUARO acknowledged that the aforementioned is one assumption that could be made. However, it remains within the

legislature's prerogative to review the facts and amend an initiative, which he referred to as a check and balance on the initiative process.

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CHAIR JOHANSEN added that the initiative didn't just address the Ocean Ranger Program as it included other things, such as the head tax and disclosure of business records.

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REPRESENTATIVE DOOGAN opined that the committee shouldn't proceed under the assumption that 83,000 Alaskans didn't know what they were doing when they voted for the initiative.

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REPRESENTATIVE NEUMAN recalled that when he was approached to sign the ballot initiative, he discovered that some of the proposed initiative language was different than how it was verbally presented. Therefore, ballot initiatives can be somewhat confusing, he opined.

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MS. KENT clarified that while she spoke to the effectiveness of the current program at one of the prior hearings, she wanted to be clear that DEC is moving ahead quickly with implementation of the law as written. With regard to the enforcement data, Ms. Kent related that in 2000 there were 15 air opacity violations, which decreased to 2 in 2005. For the last few years, DEC has issued either no or one notice of violation for fecal coliform [counts that exceed the specifications]. Also, each year there have been several compliance letters having to do with sampling protocol issues.

MS. KENT, in response to Representative Neuman, explained that the state has requirements with regard to the opacity of emissions that come from the vessels and from other facilities. There are limitations with regard to the thickness of the smoke and how long it can last. In regard to how HB 164 would affect DEC's plan, she stated that the ballot initiative [requires] ocean rangers to ride with the vessels while in Alaskan waters, while HB 164 would only require ocean rangers to be onboard the vessel while it's in port. Under the ballot initiative, the ocean rangers are also responsible for ensuring that passengers,

crew, and residents at ports are protected from improper sanitation, health, and safety practices. However, under HB 164 the responsibilities of ocean rangers would be limited primarily to wastewater discharge issues associated with the vessels.

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MR. RUARO noted that the legislature also has the authority to determine whether to appropriate funds, which would seem to automatically include a review of the facts of the initiative.

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REPRESENTATIVE JOHNSON, regarding the expanded responsibilities of the ocean rangers, asked if the state is going to be responsible if someone gets sick. If the aforementioned is the case, he asked if the state could be [held liable] for [sick passengers].

MS. KENT reiterated that the initiative requires that the ocean rangers evaluate health and safety issues.

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RUTH HAMILTON HEESE, Assistant Attorney General, Environmental Section, Civil Division (Juneau), Department of Law, opined that it would be fair to say that there's some exposure for health, sanitation, and safety issues given the current status of the law and the broad language related to the duties of the ocean rangers. However, the extent of exposure won't be known until a suit is brought and an allegation that the ocean ranger didn't fulfill his/her duty is made.

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REPRESENTATIVE JOHNSON opined that the only entities with deeper pockets than the cruise ship industry and the oil industry, would be the state. Therefore, he further opined that the state would be the target of a suit [in which an ocean ranger is alleged to have not fulfilled his/her duty in the protection of the health and safety.]

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REPRESENTATIVE FAIRCLOUGH pointed out that usually the causer of a particular incident is the proportionately responsible party in any litigation. Therefore, while Alaska and an ocean ranger

may be held as a party in suit, the person who actually caused the problem, the cruise industry in noncompliance, would be more proportionately penalized. As with everything the [legislature] does on behalf of the state, the state could be held in a liable position. However, she opined that the industry would be held to the standard in a court of law. She reiterated that in the end the responsible party for an outbreak onboard a ship would be the cruise ship and the particular governing body onboard at the time.

REPRESENTATIVE JOHNSON clarified that his point is that the state would be the governing body onboard the ship responsible for the health and sanitation, as per statute.

MS. HEESE noted her agreement with Representative Fairclough that there would be a variety of defendants reviewed in a situation in which there is [an outbreak or accident]. However, one must also remember that there are other agencies that also hold primacy above the ocean rangers with regard to certain precautions that are to occur onboard the ship. For instance, the U.S. Center for Disease Control, the U.S. Coast Guard and the Environmental Protection Agency may all have some supremacy over the ocean rangers' duties. Still, the variety of defendants doesn't eliminate the state from the potential risk of exposure to suit.

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MR. RUARO then turned to the legislature's ability to amend [initiatives] and recalled an article in the Juneau Empire that described the Alaska Constitution as written in such a manner that it's easy to understand, a characterization with which he said he agreed. He pointed out that in Article XI, Section 6, the constitution specifically grants the legislature the authority to amend an initiative, although it can't repeal an initiative. Mr. Ruaro submitted that the legislature has full authority to amend initiatives. The plain language definition of the term "amend" from Webster's and the American Heritage Dictionary is to alter a measure formally by adding, deleting, or rephrasing. Given the plain language of Article XI, he opined that the legislature is free to amend the initiative in the manner that HB 164 presents. Mr. Ruaro highlighted that the constitution specifies that the legislature can amend the entire initiative. Therefore, it's important to consider the initiative as an entire piece rather than several small pieces. In this case, this initiative reached the outer limits of the single subject rule which it must follow. The proponents of the

initiative argued that the initiative was a single subject. The legislation before the committee today only affects three parts of the wastewater portions of the initiative. Mr. Ruaro related his position that HB 164 is simply an amendment and does not repeal the initiative, especially in light of the various things the initiative does. Furthermore, the Warren v. Thomas case in which the court addressed the scope of the legislature's authority to amend an initiative regarding conflict of interest laws. The legislature amended the initiative by expressly repealing one section and two subsections as well as impliedly repealing other sections. The court upheld the legislature's act, noting that the legislature's actions didn't necessarily mean that the act as a whole [the initiative] was repealed. Therefore, Mr. Ruaro opined that HB 164 is constitutional.

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CHAIR JOHANSEN clarified that the intent of HB 164 is not to fly in the face of what the voters wanted. However, the Alaska State Constitution provides the legislature the authority to amend initiatives to make them work properly. The [goal] is to practically implement the program [passed through the initiative].

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REPRESENTATIVE DOOGAN pointed out that while it is true that HB 164 only applies to a section of the initiative, it's the only section before the committee. He suggested that the committee review whether it is repealing the section of the initiative before it in HB 164. Representative Doogan opined that this legislation addresses the section of the initiative that places observers onboard cruise ships and is changing that section to "people who do something in ports." He said he wasn't sure what these ocean rangers will be doing in the ports because there is already an existing system that tests whether wastewater systems work in ports. However, there is no existing program in which individuals test wastewater while the cruise ships are at sea and discharging waste. Therefore, HB 164 would eliminate the program [specified in the initiative] in which individuals are onboard the cruise ship at sea when the waste is being discharged.

REPRESENTATIVE DOOGAN said that he has read the history of the courts' rulings on the initiative process and he didn't see how Section 3 [would be constitutional]. He opined, "I don't think you can take a section that says, 'including but not limited to'

and then limit it and not in essence be repealing that section." The one case in point refers to a State of Washington case in which its legislature did exactly the opposite of what the initiative said and the courts held that the legislature exceeded its authority. The aforementioned was adopted by reference as a precedence for the Warren v. Thomas case mentioned earlier. Therefore, he surmised that the question is what is the net affect of [HB 164]. He further surmised that it's reasonable to assume that when voters approved the initiative, they thought they would be placing independent observers onboard these ships while in Alaska water. This legislation changes the aforementioned, and thus Representative Doogan opined that HB 164 is a repeal of that provision. Furthermore, Representative Doogan said he didn't believe the changes in HB 164, save the change in Section 1, can be made.

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REPRESENTATIVE FAIRCLOUGH recalled testimony, which she said is swaying her to support HB 164, relating that the limited number of marine engineers in the state are all working in the Alaska Marine Highway System (AMHS). With regard to whether there is a process to train marine engineers, she related that she was told it would be a long process for someone to become an authorized licensed marine engineer. Therefore, she opined that the initiative is asking for something that can't be provided and thus it seems that there has to be a change because what the initiative requires can't be implemented.

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REPRESENTATIVE NEUMAN opined that the initiative process provides the legislature with [information] regarding what the citizens of the state want. He indicated that if a better way to provide those services is found, it's the legislature's job to do so. He recalled testimony from DEC reporting that there haven't been any violations in wastewater treatment in recent years and there isn't any way to bypass the ship's systems. Therefore, Representative Neuman said that he feels comfortable that the waters of Alaska are safe, which he opined was the purpose of the initiative. Representative Neuman opined that [with HB 164] the program has been improved.

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CHAIR JOHANSEN noted his agreement with Representative Neuman. He highlighted that in the Warren v. Thomas case the majority

decision was that the Washington State Legislature did exercise its discretion properly.

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REPRESENTATIVE DOOGAN related his understanding that the initiative doesn't specify that the marine engineers have to be residents of Alaska, and therefore he surmised that the pool of qualifying people could be U.S. Coast Guard certified marine engineers from any place.

REPRESENTATIVE FAIRCLOUGH acknowledged that employing nonresidents is a possibility, but she said she didn't believe that's what the voters voted for.

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CHAIR JOHANSEN recalled that this question was raised to one of the authors of the initiative during the committee's overview of the Ocean Ranger Program to which the response was that those who aren't quite qualified to be in the engine rooms in other places would probably be available. Chair Johansen then questioned the effect of this [initiative] on the AMHS and indicated that it will be problematic to simply open the gates to all qualified engineers.

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REPRESENTATIVE FAIRCLOUGH acknowledged that there are others [outside of Alaska] who are capable of becoming a licensed marine engineer in Alaska. She then highlighted the seasonality of the industry and that there would be a limited period of time in which the part-time help would be necessary. Therefore, she questioned whether the state would employ [these marine engineers] all year when these positions may only be necessary for four to six months.

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REPRESENTATIVE NEUMAN moved to report HB 164 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DOOGAN objected.

A roll call vote was taken. Representatives Neuman, Fairclough, Johnson, Kohring, and Johansen voted in favor of reporting HB

164 from committee. Representative Doogan voted against it. Therefore, HB 164 was reported out of the House Transportation Standing Committee by a vote of 5-1.

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ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:24 p.m.