

MINUTES
SENATE FINANCE COMMITTEE
May 4, 2007
2:08 p.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately [2:08:06 PM](#).

PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Kim Elton
Senator Joe Thomas
Senator Fred Dyson

Also Attending: MILES BAKER, Staff to Co-Chair Stedman; JEFF BUSH, Juneau Assembly Member; CHIP THOMA; BOB WEINSTEIN, Mayor, City of Ketchikan; TOM DOW, Vice President of Public Affairs, Carnival Corporations;

Attending via Teleconference: From Seward: PHILLIP OATES, City Manager, City of Seward; from an offnet location: JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue.

SUMMARY INFORMATION

SB 168-PASSENGER VESSEL TAX CREDIT

The Committee heard from the bill's sponsor, representatives of the municipalities of Juneau, Seward and Ketchikan, and another interested party. The bill was held in Committee.

SB 53-BUDGET: CAPITAL, SUPP. & OTHER APPROPS

The Committee adopted a committee substitute and the bill was held in Committee.

#sb168
[2:08:09 PM](#)

SENATE BILL NO. 168

"An Act providing a credit for the payment of certain municipal passenger taxes or fees against the excise tax on travel aboard commercial passenger vessels; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

[2:09:11 PM](#)

MILES BAKER, Staff to Co-Chair Stedman, introduced this legislation as a Senate Finance Committee bill. A "cruise ship initiative" passed by Alaskan voters in 2006 established a \$50 per passenger excise tax, \$4 of which was to fund an Ocean Ranger program. A regional cruise ship impact fund would receive 25 percent of the remaining \$46. From the outstanding \$35, \$5 was to be allocated to each of the first five ports of call. Two of the most heavily visited ports, Juneau and Ketchikan, currently had municipal head taxes in law. According to the initiative, a municipality with an existing head tax would not be eligible for the \$5 allocation from the \$50 passenger tax.

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Mr. Baker explained that this bill would allow ports that currently imposed municipal head taxes to "recoup" those fees from the \$50 excise tax. The existing taxes were \$8 in Juneau and \$7 in Ketchikan, and this bill would allow those fees to be paid from the \$35 balance of the head tax. Thus, municipalities with existing taxes would receive the same amount per person as before the initiative passed, and passengers would not pay the additional \$15 in taxes for the ports of Juneau and Ketchikan.

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Senator Thomas calculated that if the first five ports of call had municipal head taxes of \$10 each the entire \$50 tax would be expended to cover those costs.

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Mr. Baker allowed that was "theoretically" correct. In reality, fewer than five ports of call were visited in Alaska, with the

average being 3.4 ports of call per ship. The \$35 amount was based on an average of \$10 per each of the 3.4 ports. In the future, if ships began to visit more ports of call, modifications to the formula would be necessary.

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Senator Elton asked if "port of call" included destinations such as Glacier Bay in which the ship did not anchor or tied up.

Mr. Baker was unsure of the definition of "port of call", but would provide that information to the Committee.

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JEFF BUSH, Juneau Assembly Member, testified on behalf of Juneau Mayor Bruce Bothelo. He provided testimony as follows [copy on file].

I am here to testify in support of Senate Bill 168, legislation that would provide a credit for certain municipal passenger fees against the statewide excise passenger tax established by the 2006 primary election ballot measure 2. The City of Juneau supports the purpose that the sponsors sought to achieve in promoting the passenger tax; that is, having the users contribute to the infrastructure necessary to serve the communities they visit by cruise ship. However, I believe there is a fundamental flaw in the initiative that frustrates the purpose, and that Senate Bill 168 is designed to cure. That flaw is the creation of a vast pool of money at the State, that cannot be expended constitutionally. You've heard from the previous speaker how the initiative currently works, so I won't review that. The problems that exist with the initiative are two-fold. There's a constitutional problem, and also a practical problem. Federal law limits the kinds of taxes or fees that may be imposed on vessels in interstate commerce through the tonnage clause, Article I Section 10 of the United States Constitution, which prohibits any taxes or fees on vessels except those directly related to services provided to those vessels. 33 U.S.C. Section 5, a recent federal enactment based upon the tonnage clause has been interpreted to mean, to be a clarification of the tonnage clause of the constitution. And that section 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 tried to meet the high burden set by the federal law in the initiative by putting language in the initiative that says that the tax may 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." But this language is of little import when you try to apply it to the regional impact fund, which is the 25 percent portion of the tax. That's because that fund is available only to be used in ports that are not today ports of call. And that in other words, ports that are not visited by the cruise ships at all. So applying the federal statute what conceivable service to a vessel should be recovered by these ports, and on what basis. Similarly, what State owned port, harbor facility, or other service is being directly rendered that would permit these funds to be expended - that's for the rest of the funds. I suggest that few expenditures could meet the federal test.

Regarding the practical problems: first, there's little incentive for major ports of call to take part in the State program rather than maintain or establish their own passenger fees. Municipalities right now may set higher or lower fees to meet whatever local infrastructure needs they have without reliance on the State program. Thus, Juneau, as I'm sure most of you know, currently imposes two separate fees that total \$8, while Ketchikan imposes a \$7 per passenger fee. Municipal ports electing to receive the \$5 as passed in the initiative per passenger instead of imposing their own fee would be required to come to the legislature each year and seek an appropriation for that purpose. It leaves municipalities dependant on the legislative process and having port monies traded for other capital projects. In addition, reliance on annual appropriations to bond for projects is probably impossible. As recognized by the Department of Revenue in the fiscal note on this bill, passage of this legislation is necessary

to remove the disincentive for communities to pass local passenger tax ordinances. There's a disincentive because right now, there's the incentive, if a local community other than Juneau and Ketchikan attempts to pass a local tax initiative on the cruise industry that's an added tax burden onto the current situation to the cruise industry, and there's very strong political pressure placed on those communities. And so there's, the ports do not have the incentive to create local taxes and end result is that they don't have funds available to do what the initiative was purportedly meant to do.

Co-Chair Stedman asked Mr. Bush to conclude his testimony.

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Mr. Bush concluded that an estimated \$24 to \$25 million in revenues collected from the excise tax would remain in the State's possession and could not be expended due to the federal regulations governing allowable usage of those funds. The amendments in SB 168 would reduce the amount of unusable revenues collected under the provisions of the initiative.

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PHILLIP OATES, City Manager, City of Seward, testified via teleconference from Seward in support of the bill. He spoke of the improvements to port infrastructure that this legislation would provide, allowing Seward to compete in the world market while complying with federal regulations.

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CHIP THOMA, of Juneau testified in opposition of the bill. He was a "strong supporter" of the cruise ship initiative as passed by voters. He submitted written testimony [copy on file] and read his statement into the record as follows.

SB 168 would have a negative impact on the finances of the State of Alaska. Importantly, this bill would not help municipalities cope with hosting the one million cruise passengers coming to Alaska each year in a compressed five month season. The "credit" that a cruise passenger should receive under SB 168 will never reach that Alaska ship passenger, as there are no requirements in SB 168 to return

these fees to passengers. In reality, this is a tax rebate program that returns new state revenues directly to cruise companies in Miami. For these reasons, I oppose the bill. Also, SB 168 is not good public policy. It encourages competition between Alaska port towns to solicit industry favor on ship taxes, rather than making sound, community-based decisions on expensive improvements to waterfronts. Local waterfront activities are the heart and soul of each coastal town, and decisions should be made without constant pressure over summer passenger fees. The new cruise law ends the industry practice of comparing and selecting communities based on their local tax climate. It no longer makes any difference.

Instead, the cruise law is an opt-in, revenue-sharing program of choice for local municipalities. In years ahead, there will be many new cruise ports in the state that will benefit, such as Cordova, Valdez and Kodiak, because cruise demand and the market are certainly there. Other cruise ports that can benefit now from the initiative are those that have private cruise docks, such as Skagway, Whittier and Hoonah. In these latter port towns, dock owners charge a private passenger fee for using their properties. New state revenues would allow municipalities with cruise ports, but without local passenger fees, to make extensive capital improvements to adjacent city docks, harbors and lands used by passengers when they visit. This is a great benefit to the industry, all cruise passengers, and local ports.

As the initiative is written, each community has the choice when to opt-in or to opt-out. They can choose to have the State collect and distribute the cruise taxes, or to charge and bond for municipal cruise docks and improvements with local passenger fees, such as now occurs in Ketchikan and Juneau. Juneau is the best example of a port community that has legally defined the uses of cruise passenger fees, as contained in the 2002 Maritime Security Act. This federal law says that reasonable passenger fees can be spent on cruise docks and adjacent access areas for the safe and efficient movement of passengers and cargo. I have included the opinions issued by Juneau Borough attorney Corso in 2003 and by Juneau Borough attorney Hartle in 2005 [copy on file].

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Mr. Thoma continued his testimony as follows.

Eighty-one thousand Alaskans voted correctly on the cruise initiative, and they knew what they were voting for: Clean cruise ships verified by Ocean Rangers, consumer disclosure for cruise passengers, and fair State taxes to be spent on cruise infrastructure. The cruise lines in Alaska are a multi-billion dollar industry that overwhelms coastal towns throughout Alaska each summer. It is time that the State had a fair tax regime that provides new funds for the huge cruise infrastructure costs needed in the years ahead.

Over three decades ago Governor Jay Hammond defined the ground rules for industries doing business in Alaska: Industry pays its own way, without subsidy; industry does not pollute; and all industries pay a fair share in State taxes. The ink was not even dry on the initiative results before an all-out repeal effort ensued on every section of the 2006 initiative. Passage of SB 168 would be a repeal of the cruise initiative. According to the AG's opinion of February 6, such a repeal would be found unconstitutional in 2007 and 2008. I urge you to hold SB 168 in committee this interim, and review the collection and application of State cruise taxes during the summer cruise season. Thank you.

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Senator Elton asked how "head taxes" were collected, and how a rebate of those taxes would function.

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Mr. Thoma understood that each cruise fare contained charges for "port fees", which could be as high as \$80 total. Thus, a passenger visiting both Juneau and Ketchikan could be charged as much as \$65 in port fees, including the \$50 initiative tax. To expect the cruise companies to issue \$15 rebate checks to each passenger would be "ludicrous".

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Senator Elton assumed that the price of the cruise would reflect a flat \$50 port fee, rather than incorporating the Juneau and Ketchikan fees into a \$65 total port fee.

Mr. Thoma remarked that the methods for collecting port fees were set by each cruise company according to internal policies, and the \$50 limit Senator Elton suggested was not included in the proposed legislation.

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JOHANNA BALES, Excise Audit Manager, Tax Division, Department of Revenue, testified via teleconference from an offnet location. She shared that the Department of Revenue did not support this bill. For this legislation to be successful, each community would be required to adopt its own head tax, and each passenger would receive a credit for that tax if they visited the port. Smaller communities were "enthusiastic" to receive funds under the cruise ship initiative. This bill established several funds, including the cruise ship impact fund. Other monies could be utilized to fund cruise ship related projects such as sidewalk construction, road expansion and bike paths. The passage of SB 168 would remove the State's ability to fund those projects with the cruise passenger excise tax.

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BOB WEINSTEIN, Mayor, City of Ketchikan, testified in support of the legislation. He opined that the bill would correct "flaws" within the 2006 initiative by providing infrastructure and services directly related to the activities of cruise passengers. He reviewed his public service record in Ketchikan, and divulged that the growth of the tourism industry had coincided with the stagnation of other economic sectors such as timber. Ketchikan's long-term port facilities development plan supported port and harbor improvements as well as mitigation of tourist-related impacts such as congestion. These projects could be funded in compliance with the federal regulations with the passage of SB 168.

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Mr. Weinstein informed that the Ketchikan port project was financed through the Alaska Bond Bank, and would likely not have been approved if the city was only able to identify annual

legislative appropriations as revenue sources. The bond bank gave preference to projects that would be funded by a tax levied by municipalities, rather than reliance on annual appropriations from the State.

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Mr. Weinstein reiterated the structure and function of the passenger excise tax. He stressed that the regional impact fund was designated to be used by ports that were not currently visited by cruise ships, yet the funds must be expended to provide services and infrastructure directly related to cruise ship visits. Based on the \$5 per port per passenger allocation of the \$50 tax, and considering the average of 3.4 ports visited by each ship, the maximum payout to ports would be \$17. The ballot measure also denied funds to communities that levy their own taxes, thus reducing the payout to local cruise ship ports to \$7 per passenger. The \$28 balance would be "stranded" and unavailable for disbursement to ports that rendered services to cruise ships.

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Mr. Weinstein noted that the proposed legislation would benefit all ports, not just large ports of call.

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Mr. Weinstein opined that the initiative did not support port communities as intended. He stressed the federal requirements that the tax dollars be spent on projects and services to benefit the cruise industry, and that this goal could best be accomplished by allowing communities to levy local taxes to be reimbursed through the tax revenues collected.

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TOM DOW, Vice President of Public Affairs, Carnival Corporations, informed that Carnival Corporations was the parent company of Princess, Holland America and Carnival Cruise lines. According to existing law, government fees and taxes were itemized separately on each passenger's ticket. All fees collected were rebated to the government that levied the tax, thus the cruise company did not profit from the taxes charged to passengers. Port fees and taxes were "regularly" credited back

to passengers if a port was missed on the cruise due to weather, illness, or any other unforeseen circumstance. Credits in the amount of the missed port fees were issued to each passenger's folio onboard, thus negating the need to issue thousands of rebate checks. He suggested an amendment to require that rebates be paid directly to passengers if that issue was of concern to the legislature.

The bill was HELD in Committee.

#sb53

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SENATE BILL NO. 53

"An Act making appropriations, including capital appropriations, supplemental appropriations, and appropriations to capitalize funds; and providing for an effective date."

This was the fifth hearing for this bill in the Senate Finance Committee.

Co-Chair Hoffman offered a motion to adopt CS SB 53, 25-GS1014\L, as a working document.

Without objection the committee substitute, Version "L", was ADOPTED.

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FRED FISHER, Staff to Co-Chair Stedman, introduced the Senate Finance Committee substitute, reminding that the bill was transmitted from Governor Palin as a "bare bones" request.

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Mr. Fisher informed that Sections 1 through 6 contained capital appropriations and grants totaling \$237.4 million in general funds to accommodate the Governor's requests, and \$198.2 million general funds for legislative priority projects. The total proposed capital budget was \$435.6 million general funds and \$1,495,600,000 in total capital expenditures. This committee substitute also contained the remaining supplemental

appropriations for fiscal year 2007 (FY07), in addition to FY08 operating appropriations. Sections 7 through 9 represented operating recommendations to fund the monetary terms of collective bargaining agreements reached with the Labor, Trades and Crafts Unit and the Teachers' Education Association of Mt. Edgecumbe, for a total of \$3.8 million in general funds and \$6.7 million total.

Mr. Fisher continued that Sections 10 through 24 of the bill contained the proposed funding levels for the remaining FY07 supplemental requests, totaling \$55.9 million in general funds and \$95.4 in total funds.

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Mr. Fisher remarked that Sections 25 through 31 were Language sections associated with capital projects. Sections 32 through 47 and Section 49 were reappropriation recommendations. Section 48 contained appropriations from the Railbelt Energy Fund, totaling approximately \$75 million. Sections 50 and 51 would appropriate any remaining surplus dollars to the Constitutional Budget Reserve fund and the Alaska Housing Finance Corporation (AHFC) sub-corporation.

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ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [5:50:29 PM](#)