

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 12, 2007

5:26 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 168

SHORT TITLE: PASSENGER VESSEL TAX CREDIT

SPONSOR(S): FINANCE

05/02/07	(S)	READ THE FIRST TIME - REFERRALS
05/02/07	(S)	FIN
05/04/07	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
05/04/07	(S)	Heard & Held
05/04/07	(S)	MINUTE(FIN)
05/07/07	(S)	FIN RPT 2DP 5NR
05/07/07	(S)	DP: STEDMAN, ELTON
05/07/07	(S)	NR: HOFFMAN, THOMAS, DYSON, HUGGINS, OLSON
05/07/07	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/07/07	(S)	Moved SB 168 Out of Committee
05/07/07	(S)	MINUTE(FIN)
05/09/07	(S)	JUD REFERRAL ADDED
05/12/07	(S)	JUD AT 2:00 PM BUTROVICH 205
05/12/07	(S)	JUD AT 5:15 PM BUTROVICH 205

WITNESS REGISTER

Miles Baker, Staff
Senate Finance Committee
Alaska Capitol Building
POSITION STATEMENT: Presented SB 168

Chip Thoma
Juneau, AK
POSITION STATEMENT: In opposition to SB 168

Jerry Burnett, Director
Administrative Services Division
Department of Revenue
Juneau, AK
POSITION STATEMENT: In opposition to SB 168

Bruce Botelho, Mayor
City & Borough of Juneau
Juneau, AK
POSITION STATEMENT: Commented on SB 168

Mike Barnhill, Assistant Attorney General
Civil Division
Labor and State Affairs Section
Department of Law
Juneau, AK
POSITION STATEMENT: Available for questions on SB 168

Alan Sorum, City Manager
City of Skagway
Skagway, AK
POSITION STATEMENT: In support of SB 168

Bob Weinstein, Mayor
City of Ketchikan
Ketchikan, AK
POSITION STATEMENT: In support of SB 168

Tom Dow
Carnival Corporation
POSITION STATEMENT: Available for questions on SB 168

Vanta Shafer, Mayor
City of Seward
POSITION STATEMENT: In support of SB 168

Gershon Cohen
Haines, AK

POSITION STATEMENT: In opposition to SB 168

Joe Geldhof
Juneau, AK

POSITION STATEMENT: In opposition to SB 168

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [5:26:25 PM](#). Present at the call to order were Senators Therriault, McGuire, Wielechowski, and Chair French.

SB 168-PASSENGER VESSEL TAX CREDIT

CHAIR FRENCH announced the consideration of SB 168.

MILES BAKER, Staff to the Senate Finance Committee, sponsor of SB 168, said that the bill was introduced to address a perceived issue with the \$50 passenger excise tax imposed on cruise ship passengers. The tax is attached to the price of the ticket; four dollars are required to go to the Department of Marine Conservation and 25 percent of the balance goes to the Regional Cruise Ship Impact Fund; SB 168 addresses the remainder which is supposed to be distributed to ports of call. Juneau and Ketchikan are the two most visited ports and already levy local municipal taxes on passengers; the tax revenue has been used to secure revenue bonds for port improvements and service provision. The money can only be used for boat or passenger support to stay within federal law. The initiative envisioned that the first five ports of call could claim five dollars per passenger.

[5:30:16 PM](#)

CHAIR FRENCH asked which provision Mr. Baker was referring to.

MR. BAKER replied that he didn't know the exact provision, but there were several people in the audience who could answer the question.

He explained that the sponsors intended for \$25 of the balance to be allocated to the first five ports of call. Usually only three or four ports are visited, so there may be money left over; however, the initiative only addresses the requirement

that a municipality has to give up its local tax to receive the initiative tax. Most of this money is already secured with bonds and can't be given up, so communities are not eligible to accept any of the head tax funds. In essence a passenger is buying a ticket while paying \$50 in addition to the taxes imposed by the municipalities they visit. The bill will allow a credit against the head tax of up to ten dollars per port for municipal taxes.

[5:34:29 PM](#)

CHIP THOMA, representing himself, said that he supported the head tax initiative. He explained that the bill before committee would rebate the cruise ship tax before it's even collected, and would deprive smaller Alaskan ports of locally-collected funding. Ships are getting bigger, more numerous and need more ports of call; existing ports are maxed-out. Cruise ship docks need to be built in other parts of the state.

[5:36:37 PM](#)

CHAIR FRENCH asked if there are no cruise ship docks in Whittier.

MR. THOMA replied that regardless, more docks will be needed in places like Valdez and Kodiak.

CHAIR FRENCH asked for the total list of places where ships stop in Alaska.

MR. THOMA replied that ships stop in Ketchikan, Hoonah, Juneau, Skagway, Sitka, Whittier, and Seward.

[5:37:27 PM](#)

MR. THOMA continued to say that the bill will deny funding to smaller and future ports to build facilities. Under current statute, communities can choose to be included in the state passenger fee program or impose tax locally; they can't and shouldn't do both, but SB 168 would impose a double-dipping program. It would squeeze out small competitor ports that need money to expand their services.

[5:39:00 PM](#)

SENATOR WIELECHOWSKI asked where the remaining \$21 of the tax fees goes.

MR. THOMA replied that half goes into a regional fund, and the rest remains in the passenger fee fund.

SENATOR WIELECHOWSKI asked what would happen if the bill is passed.

MR. THOMA replied that the refund money would go back to the cruise companies which would devise a way of crediting passengers.

SENATOR WIELECHOWSKI asked if the five dollars per port of call would count as the money shared with municipalities cited in statute.

MR. THOMA concurred.

SENATOR WIELECHOWSKI asked if the law is changed it would change the initiative as well.

MR. THOMA replied that the paragraph in question was the explanation from the Department of Revenue; what would be changing was on another page.

[5:41:28 PM](#)

SENATOR WIELECHOWSKI said that it seems as if the changes lay out a general scheme of revenue distribution.

MR. THOMA replied that it's an outline; revenues haven't been collected yet. It's up to towns whether or not they want to keep their local taxes.

He then gave examples of different towns and the way their taxes are collected. The bill is designed to help emerging ports develop their docks.

[5:43:25 PM](#)

CHAIR FRENCH asked if money is taken from the head tax a town can't have its own tax.

MR. THOMA replied that that was correct. The real effect is that Juneau and Ketchikan can raise their fees to total 20 dollars off the top of the head tax. He advised that the improvements needed by the Juneau dock be paid for from the state fund.

[5:44:48 PM](#)

SENATOR WIELECHOWSKI asked if any money collected goes outside of the ports.

MR. THOMA replied that if Anchorage wants to be a cruise ship port it will receive money.

SENATOR WIELECHOWSKI said that there are many cruise ship passengers in Anchorage, but there's no dock.

MR. THOMA replied that one could be built with available funds.

SENATOR WIELECHOWSKI said that if there's a needed way to break up funding, some could be given to towns that have a lot of tourist impact like Anchorage.

MR. THOMA replied that if Anchorage could demonstrate impact, it would get funding.

[5:46:10 PM](#)

CHAIR FRENCH said that he could imagine people saying that money should be used solely to pay vessel-related costs.

MR. THOMA replied that services also include accrued uses.

[5:46:46 PM](#)

SENATOR MCGUIRE said that the initiative allows for funding for public safety costs, agreed that Anchorage is impacted by visitors, and wondered if the impact has ever been measured.

MR. THOMA replied that Juneau pays for services but the cost has never been tested.

[5:48:00 PM](#)

JERRY BURNETT, Director, Administrative Services Division, Department of Revenue (DOR), said that the DOR doesn't support the bill because it reduces revenue by \$15 million in 2007 and ultimately \$34 million including all ports of call.

[5:49:21 PM](#)

SENATOR WIELECHOWSKI referenced a paragraph and asked if the lost money would come from shared revenues.

MR. BURNETT replied that the \$15 million lost would be from the head-taxes for Ketchikan and Juneau.

SENATOR WIELECHOWSKI said that the voters had a description of how they wanted the revenues to be spent, and asked if the bill would change what was voted on in that ballot measure.

MR. BURNETT replied that it would; Ketchikan and Juneau currently charge taxes which would come out of the vessel tax, and that would reduce the other numbers available for distribution.

SENATOR WIELECHOWSKI asked if that change would be unconstitutional.

MR. BURNETT replied that he couldn't answer the question.

[5:51:15 PM](#)

SENATOR THERRIAULT asked for an explanation of the constraints on the extra money accruing to the state treasury, and if there are funds that can't be accessed because the local governments are charging their own taxes.

MR. BURNETT said that someone from the Department of Law could best answer.

SENATOR THERRIAULT asked if, without changes, there will be a balance in the state treasury with limitations to access.

MR. BURNETT replied that without the change there will be a larger balance in the state treasury. However the legislature chooses to appropriate the money is at its discretion.

[5:53:05 PM](#)

SENATOR THERRIAULT asked if there are federal limitations on how the money can be spent.

MR. BURNETT replied that to the extent that expenditures can be made, the bill would reduce the amount available for the legislature to spend.

[5:53:56 PM](#)

BRUCE BOTELHO, Mayor, City and Borough of Juneau, said that the committee should analyze the way the legislature can spend the

tax money. There's no doubt that many communities could make use of the money; he said he has no disagreement in that respect with the initiative's sponsors or Mr. Thoma. The issue is the extent to which the monies collected under the initiative can be spent by the legislature.

MAYOR BOTELHO referenced the 2002 Maritime Transportation Security Act sponsored by Representative Don Young regarding how taxes are levied on cruise ship passengers. The difficulty with the issue is how the fees are used to pay only watercraft maintenance; he explained how Juneau has a system for using passenger fees for public facilities and that the city has made a judgment that it has satisfied law in using funds to do so.

[5:58:00 PM](#)

SENATOR WIELECHOWSKI said that he can't recall the federal government telling the state that it can't tax something, and asked if the federal statute is constitutional.

MAYOR BOTELHO said that the general proposition is probably correct, but there's a clause within the constitution that allows the statute to be constitutional; the wisdom is questionable but not the constitutionality.

MAYOR BOTELHO continued to say that one of the problems in the initiative is that the language makes the tax only available to communities impacted by tourism, but it's in opposition to the law that the funds must be available only to the vessel.

[6:01:42 PM](#)

CHAIR FRENCH said that the federal statute says how the fees are to be charged, and wondered whether the construction of a dock in a town without one would be considered to be in service to the vessel.

MAYOR BOTELHO said that under rules of statutory construction, the statute would have said "a" vessel rather than "the" vessel if it meant to refer to future construction.

[6:02:47 PM](#)

SENATOR THERRIAULT said that if a dock is constructed, a vessel and its passengers would be using the facility; he doesn't see the connection between the people paying the fee and the facility yet to be built.

CHAIR FRENCH said that of the seven ports of call, there is still the possibility of distributing funds to ports not visited by the ship. The language regarding "the" vessel may cause trouble for fund distribution.

[6:04:28 PM](#)

MAYOR BOTELHO said that in each case there are vessels that might not call on certain ports in one trip. The entitlement will depend on whether there is a port of call and if the community has decided not to charge its own passenger fee.

[6:05:37 PM](#)

MIKE BARNHILL, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law, said that he was available for questions.

CHAIR FRENCH asked if the bill is constitutional.

MR. BARNHILL said that should the initiative in its current form be challenged in court or in an amended form, it would fall to the Department of Law to defend it. Thus the department needs to be cautious and not undermine its position, so he couldn't categorically say that it's either. However he could share the cases that the court would turn to evaluate the issue.

He explained that the court would try to determine whether the bill was an unconstitutional repeal. He referenced a historical case regarding a voter initiative, and said that it was not found to be repealing the constitution. It does seem that the legislature has the power to amend the initiative, but without frustrating the initial purpose. In this particular case, arguments could be made either way. The bill essentially caps the total tax that can be imposed on a passenger to \$46.

CHAIR FRENCH asked if he was speaking about the bill or the initiative.

MR. BARNHILL replied that he was talking about the initiative.

[6:10:16 PM](#)

CHAIR FRENCH asked if Juneau voted overwhelmingly for the cruise ship tax initiative.

MR. THOMA replied that the city supported it by 62 percent in downtown and 60 percent overall.

SENATOR THERRIAULT asked if the numbers were reversed in Ketchikan.

MR. THOMA replied that it was supported at 48 percent in Ketchikan.

CHAIR FRENCH said he was trying to figure out the intent of the local voters in terms of exceeding \$50.

[6:11:15 PM](#)

SENATOR THERRIAULT said that one couldn't jump to conclusions because Juneau voters might not have had a clear idea of the repercussions.

MR. BARNHILL said that it's hard to define the intent of voters on an initiative.

SENATOR THERRIAULT asked for Mr. Barnhill's opinion on whether there will be a balance in the treasury that won't be accessible, and if it would be sweepable.

MR. BARNHILL replied that the balance will grow, and it would be sweepable. The appropriations from the fund could be challenged, and the legal risk would depend on to what purposes the fund could be spent. If the services are closely tied to the vessel, the legal risk would be low. More attenuated expenses mean an increased risk, but the Department of Law is there to defend the legislature no matter what.

CHAIR FRENCH asked each online testifier to limit their testimony to two minutes.

[6:14:23 PM](#)

ALAN SORUM, City Manager, City of Skagway, said that there is no municipal head tax in that city; there were 750,000 visitors last year and the city looks forward to funding from the initiative to move forward with development projects. Skagway does not oppose the bill.

[6:15:39 PM](#)

BOB WEINSTEIN, Mayor, City of Ketchikan, said he's in support of the bill, which will correct a clause in the initiative and will make sure that the funds are spent in a manner consistent with federal law. He quoted extensively from the ballot for the head tax initiative and the initiative's sponsor statement, and how it provides for spending of the head tax funds. The funds can't be used in another manner; SB 168 makes sure the funds are spent in the original manner intended.

MAYOR WEINSTEIN continued to explain the manner in which the tax money will be divvied up and spent. The bill doesn't touch the regional impact fund. Under the initiative, each port of call is entitled to \$5 per passenger; thus \$25 of the \$46 would go to local ports. In reality few vessels visit five ports; realistically only \$17 goes to ports. The ballot measure also denies funds to any port that assesses local fees, so Juneau and Ketchikan don't receive any money. On average only \$7 of the \$35 can be used for the purpose determined in the bill, so the rest of the money is idling in the general fund. Small communities should be able to benefit from the tax, and \$46 would be adequate for all port communities.

He added that federal law requires a marine vessel fee; the best way of complying with such requirements is making realistic use of the money in the tax account by ensuring that taxes go to local communities for improving infrastructure. While opponents are entitled to their opinion, the language in the initiative is the best indication of what the voters intended.

[6:23:27 PM](#)

CHAIR FRENCH asked if Tom Dow was only there to answer questions.

TOM DOW, with Carnival Corporation, said yes.

[6:23:52 PM](#)

VANTA SHAFER, Mayor, City of Seward, urged the passage of SB 168. Seward has several projects it would like to fund with head tax fees but it would be difficult to retry for appropriations every year. Passage of the bill will meet the intent of the voters.

[6:24:48 PM](#)

GERSHON COHEN, Haines resident, said that the purpose of the statewide head tax is to remedy the fact that smaller communities don't have the power to have their own municipal taxes. He explained how the cruise industry prevented Haines from imposing a head tax, and how without political clout it's impossible to fight the industry. There are many tourism impacts in communities without ports, which are borne by local property taxes.

MR. COHEN said that SB 168 would allow the cruise lines to receive part of the head tax; it's completely out of line with the intent of the voters. On-board credits would allow the ships to pocket millions in head-tax money.

He said that he doesn't deny the right of the legislature to amend the initiative, and that the tonnage clause in the constitution won't affect the tax.

[6:32:07 PM](#)

JOE GELDHOF, Juneau resident, said that Mr. Barnhill's testimony was appropriate. He gave an example of how certain uses of the tax money could be found constitutional or not; there is an intermediate ground subject to interpretation, and the legislature should be mindful of state and federal law in its decision. Passage of the bill will impair the revenue coming into the general fund; there are special interests behind the drive to amend the bill. There is clear and convincing evidence that some testimony is influenced by the Northwest Cruise Association. The tax is not related to tonnage; it's an excise tax on individuals. The federal law is implicated but the tonnage tax is not.

MR. GELDHOF re-stated that the issue is not a tonnage tax case, and the legislature should work around the issue for the betterment of Alaskans. There's nothing wrong with collecting the taxes and using them judiciously.

[6:39:01 PM](#)

SENATOR WIELECHOWSKI agreed that the issue doesn't seem to address the tonnage tax, and there would be tenth amendment implications; he asked if there are other states that charge head taxes, and if they have been challenged.

MR. GELDHOF said that there's a variety of taxes in the US; some are similar and some are much higher. They're all port fees, and are collected and presumably paid.

[6:41:41 PM](#)

SENATOR THERRIAULT said that the language in the constitution allows the legislature to make modifications to deal with such issues. He referenced contradicting pieces of legislation, and said that an initiative writer can't determine what an amendment is and what an appeal is; that's the issue that the legislature is dealing with.

[6:43:48 PM](#)

MR. GELDHOF said he understood the point, and agreed that all votes don't go through people like him. The legislature has the ability to amend, and has a fair amount of discretion. His objection with 168 is that it reduces the amount of money the state has to spend; the mayors involved will probably raise their municipal fees. It's bad public policy and should be put to an interim study.

[6:46:18 PM](#)

SENATOR THERRIAULT asked Mr. Dow how on-board credits work.

MR. DOW explained how refunds would be processed. He added that his statement regarding refunding was improperly represented earlier; he clarified how port fees are re-credited to customers.

CHAIR FRENCH closed public testimony on SB 168 and recessed the meeting to the call of the chair at [6:48:38 PM](#).