

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

January 26, 2017

1:33 p.m.

MEMBERS PRESENT

Representative Louise Stutes, Co-Chair
Representative Adam Wool, Co-Chair
Representative Matt Claman
Representative Harriet Drummond
Representative Chuck Kopp
Representative Mark Neuman
Representative Colleen Sullivan-Leonard
Representative David Eastman (alternate)

MEMBERS ABSENT

Representative Gabrielle LeDoux (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 51

"An Act relating to the regulation of wastewater discharge from small commercial passenger vessels in state waters; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 51

SHORT TITLE: SMALL VESSEL WASTEWATER EXEMPTION

SPONSOR(S): TRANSPORTATION

01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	RES, FIN
01/20/17	(H)	TRA REPLACES RES REFERRAL
01/20/17	(H)	BILL REPRINTED 1/20/17
01/26/17	(H)	TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

MATT GRUENING, Staff
Representative Louise Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 51 on behalf of Representative Stutes, prime sponsor.

COMMISSIONER LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 51.

BEN WHITE, Acting Program Manager
Cruise Ships Program
Division of Water
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: During a meeting for HB 51, answered questions regarding the department's best management practice (BMP) plans.

MICHAEL NEUSSL, Deputy Commissioner
Alaska Marine Highway System (AMHS)
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of AMHS and DOT&PF in support of HB 51.

ACTION NARRATIVE

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CO-CHAIR LOUISE STUTES called the House Transportation Standing Committee meeting to order at 1:33 p.m. Representatives Stutes, Wool, Claman, Kopp, Neuman, and Sullivan-Leonard were present at the call to order. Representative Drummond arrived as the meeting was in progress.

HB 51-SMALL VESSEL WASTEWATER EXEMPTION

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CO-CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 51, "An Act relating to the regulation of wastewater discharge from small commercial passenger vessels in state waters; and providing for an effective date."

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MATT GRUENING, Staff, Representative Louise Stutes, Alaska State Legislature, presented HB 51 on behalf of Representative Stutes,

prime sponsor. Mr. Gruening read from the sponsor statement included in the committee packet, which read as follows:

House Bill 51 would reinstate statutes that exempt the state ferries and other small passenger vessels from large cruise ship wastewater discharge requirements, instead allowing them to discharge wastewater under Best Management Practices (BMP) plans.

Alaska Statutes require commercial passenger vessels to have a permit from the Alaska Department of Environmental Conservation (DEC) to discharge wastewater into waters of the state. The effluent limits in the permit are to be based on levels of treatment that can be achieved using an advanced wastewater treatment system (AWTS).

An exemption in the statute was made for smaller ships - including the state ferries - in recognition of the problems they would have installing AWTS on board their smaller vessels.

Alternative measures designed to protect Alaska waters and fish, primarily through the employment BMP plans and designation of no-discharge areas, were imposed on these vessels. The intent of the BMP plans is for the vessels to continually improve their wastewater performance. Sampling, monitoring and compliance assistance along with BMP review and approval has generated improved operation of these systems since the program's inception.

The exemption language in the statute expired on January 1, 2016 leaving the small vessels without a viable means to comply with the statutory permitting provisions. This bill would restore the statutory exemption along with DEC's authority to require the alternative requirements such as BMP for the smaller vessels.

Without the changes in the proposed bill, state ferries and small cruise ships would have to install AWTS technology, which would be cost and space prohibitive. Additionally, most small cruise ships and state ferries lack available space and weight capacity to install AWTS, creating potential stability issues.

DOT&PF estimates the cost to retrofit ferries is over \$5 million.

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), testified in support of HB 51. He said that the BMP plan has been used for small commercial passenger vessels for over 10 years and that there has been significant improvement in the quality of wastewater from the vessels. Commissioner Hartig offered his belief that the BMP plan has worked really well in terms of protecting the environment while simultaneously ensuring the economic viability of Alaska ferries and small cruise vessels. He stated that HB 51 would return the regulation to what was in place before the sunset of the provision in AS 46.03.462(a)(2) that occurred automatically in 2016. Commissioner Hartig explained that the change was not foreseen and came as a surprise. He further stated that the department is looking to return to the status quo, which he opined has been working well.

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COMMISSIONER HARTIG suggested that the key provision in HB 51 is Section 4. He explained that the language in Section 4, "the best management practices for protecting the environment to the maximum extent feasible," is the criteria used to approve a BMP. He referred to language in Section 4 [beginning on line 6 through line 9] of the bill, which read as follows:

"best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

COMMISSIONER HARTIG reiterated that this language worked for the state, the vessels, and the environment before, and the department urges passage of HB 51.

COMMISSIONER HARTIG explained that small vessels are defined by Alaska statute as having 50-249 lower berths and that that definition includes the Alaska state ferries.

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REPRESENTATIVE NEUMAN inquired about the difference of language in subsection (k) for operators of small vessels as "may" verses the department "shall." He offered his interpretation that

"may" means operators of small commercial vessels don't have to submit plans for alternative terms if they do not want to. He suggested that subsection (k) appears to be the "nuts and bolts" of the bill but lacks any "concept of where they're going on that." Representative Neuman asked the commissioner to respond.

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COMMISSIONER HARTIG answered that before its sunset AS 46.03.462(a) provided two ways small commercial passenger vessels could discharge wastewater into marine waters in compliance with state requirements. Under the first option, small vessels elect the same permitting process as large cruise ships and would need an advanced wastewater treatment system (AWTS). This option exists now and would continue to exist under HB 51; however small vessel operators are not likely to opt for it. The proposed legislation would bring back the second option, which was "sunsetting," and that is for small vessel operators to submit a best management practice (BMP) to DEC for approval. He stated that if the plan met the criteria in Section 4 of the bill, "shall" would direct the department to approve the plan.

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REPRESENTATIVE NEUMAN requested information on the intentions of the department in implementing these regulations. He stressed his strong concern for the amount of regulations already in place.

CO-CHAIR STUTES offered her understanding that the regulations are already in place.

COMMISSIONER HARTIG answered that is correct. He stated that the department's intention is to reinstate what has previously been in place for at least the past 10 years and that there is no need to create any new regulations. Commissioner Hartig offered the expertise of Mr. White and others in the room from the department to speak in more detail to how the regulations have worked in the past.

REPRESENTATIVE CLAMAN raised awareness to the purpose of HB 51 in addressing the "sunsetting" of the regulations last year, and he asked if there is a sunset date for the proposed legislation.

COMMISSIONER HARTIG offered his understanding that the department does not intend to sunset the proposed legislation. He

explained that the legislation is self-renewing in the sense that the best [emphasis on "best"] BMP must be in place in order for the department to approve and the provision allows for the integration of upgraded technology, as it becomes available.

REPRESENTATIVE CLAMAN clarified his understanding that the aforementioned scenario would be a regulatory issue and not something for which the department would have to seek approval from the legislature every time technology improves.

COMMISSIONER HARTIG explained that the department would set standard, five-year terms on the permits to allow for improvements in technology.

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CO-CHAIR STUTES asked Mr. White to address some of Representative Neuman's concerns.

BEN WHITE, Program Manager, Cruise Ships Program, Division of Water, Department of Environmental Conservation (DEC), explained that 18 AAC 69.046 is the current regulation in place with DEC that describes requirements for BMP plans; it has been in place since 2006.

REPRESENTATIVE KOPP provided his understanding that HB 51 wouldn't change anything about the regulations and that the proposed legislation is intended to allow the department to continue doing business the way it has been in terms of how it treats commercial passenger vessels below a certain size.

MR. WHITE responded that is correct.

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CO-CHAIR WOOL asked why a small passenger vessel would have a large cruise ship wastewater discharge requirement.

MR. WHITE elucidated that there are currently two options for wastewater discharge permitting for commercial passenger vessels: one is through the general permit for large vessels, which was issued in 2013, and the other is through the exemption for smaller vessels. He explained that without the small vessel exemption in existence, the only option would be for all vessels to go through the same permitting process as large vessels.

CO-CHAIR WOOL offered his understanding, that [without the exemption for smaller vessels, which would be renewed under HB 51] there is a "one-size-fits-all" requirement that doesn't work for all vessels.

MR. WHITE confirmed that is correct.

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MICHAEL NEUSSL, Deputy Commissioner, Alaska Marine Highway System (AMHS), Department of Transportation & Public Facilities (DOT&PF), testified that DOT&PF and AMHS support HB 51. He explained that HB 51 would reinstate the BMP plan exemption which is valuable to the AMHS because it allows operations to continue as they have been without major expense.

MR. NEUSSL, in response to Representative Neuman's earlier question about the language of "may verses shall," said that "may" is used because small vessel operators, such as the AMHS, can choose to use the BMP plan alternative compliance method. He conveyed that if small vessel operators do not choose to use the exemption, then the higher standards of the large cruise ships apply. He reiterated that it is not a requirement for small commercial passenger vessel operators to apply for the BMP plan alternative, but that in some cases it's in their best interest.

REPRESENTATIVE NEUMAN offered his understanding that small vessel operators could either decide to upgrade their wastewater or elect to not upgrade.

MR. NEUSSL answered that is correct. He explained that HB 51 contains two options: the standards that exist for large cruise ships, which could be complied with by everyone, and the exemption [for small commercial passenger vessels], which allows the alternative compliance method of an approved BMP plan, which HB 51 attempts to reinstate.

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CO-CHAIR STUTES inquired about the water quality under the current BMP plan in comparison to the water quality that comes from the wastewater facility in Juneau.

MR. NEUSSL illustrated that the discharge standards are not specified in the BMP portion of the bill and that the goal of not specifying a limit is to allow for continued improvement.

He said that with each successful upgrade to the marine sanitation devices, the water quality improves. He deferred Co-Chair Stutes' question about municipal wastewater treatment plant discharge standards to DEC.

CO-CHAIR STUTES shared her insight that while the majority of the ferries in AMHS are old, the wastewater systems onboard are not antiquated.

MR. NEUSSL confirmed that regardless of what year the vessel was built, there have been many upgrades to the marine sanitation devices or wastewater treatment systems. He stated that the larger vessels in the AMHS fleet - which would be covered under HB 51 - all had major upgrades to the marine sanitation devices between 2009 and 2011. He noted the relationship that formed between departments, as part of the BMP plan, where DOT&PF worked and trained under the guidance of DEC to improve water quality discharge standards within the limits of space feasibility of holding the equipment onboard.

CO-CHAIR STUTES asked what actions AMHS would be required to take in order to upgrade the wastewater systems equivalent to that of the 250-plus berth requirements.

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MR. NEUSSL explained that the requirement would pertain to four vessels currently in the fleet and would require an AWTs to be installed. He stated that the department conducted a study in 2008 on the M/V Taku and found the estimated cost was \$1.25 million. He disclosed that the Motor Vessel (M/V) Taku estimated cost would have to be multiplied four or five times and then calculated for inflation from 2008 to 2016 dollars in order to assess the cost of installing an AWTs on all necessary AMHS vessels. He restated that the expense for the AMHS fleet to meet the advanced wastewater discharge standards would exceed \$5 million.

CO-CHAIR STUTES requested information on what the available space requirement would be on the ships.

MR. NEUSSL answered that an AWTs is not only a more complex marine sanitation device for handling graywater and black water discharges and processing it accordingly, but is also larger in size than the existing marine sanitation systems that are currently onboard the vessels. He further stated that it remains to be seen if an AWTs would fit into the existing marine

sanitation device spaces or whether modifications would need to be made. Mr. Neussl disclosed that the department has not conducted advanced studies of exactly which system would be placed on which ships or what that would mean in terms of stability. He added that at this time the department is just working off estimates from the contractors.

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REPRESENTATIVE KOPP clarified that the exemption in HB 51 would apply to five state ferries and 10 smaller commercial passenger vessels with carrying capacities of between 50 and 249. He raised awareness to a provision in the BMP plan approval that prohibits discharging in areas designated as refuges, sanctuaries, and critical habitat areas, as defined under AS 16.20, and he mentioned that Cook Inlet is now a critical habitat for beluga. Representative Kopp expressed concern that [the no discharge zone provision] may come as a surprise for any of the aforementioned vessels.

MR. NEUSSL answered that the department is aware of the prohibited areas and has existing BMP plans that clearly spell out where the vessels can and cannot discharge. He disclosed that because of the vessels running to Bellingham, Washington, the department has been closely watching a recent proposal that is looking to place the entirety of the Puget Sound in a "no discharge zone." He said the issue is a matter of whether the AMHS vessels have the space available to store the wastewater until a dump zone is reached. He explained that the vessels discharge far from shore, while underway, so as to ensure maximum mixing of discharge rather than dumping in areas closer to shore where the discharge would be more concentrated.

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REPRESENTATIVE CLAMAN stated his understanding that one of the hazards of not renewing the statute would be that small vessel owners would be forced to update and upgrade their vessel to have large cruise ship standard wastewater treatment facilities onboard, which could make the vessel unstable and ultimately nonfunctional. He stressed that failure to enact this statute would have negative regulatory effects not only on the AMHS, but also on existing commercial operators who have been in compliance over the past decade.

MR. NEUSSL offered his belief that is correct. He said that there are potentially unintended consequences of that

regulation. He restated that the BMP plan has been in place for 10 years and that during that time the department has worked closely with DEC and seen significant improvement of its wastewater discharge quality.

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REPRESENTATIVE NEUMAN asked whether HB 51 would allow "a carve out for state ferries." He clarified that he was asking whether the same standards would apply if the fleet were owned privately and not by the state.

MR. NEUSSL replied that HB 51 would enact a BMP statute that would require the owner/operator of the vessel, regardless of whether that is the state or a private operator, to submit a BMP plan to DEC for approval. He further explained that HB 51 and the BMP plan exemption is not a specific "carve out" for AMHS.

CO-CHAIR WOOL inquired about which standard would apply to the two new ferries currently under construction.

MR. NEUSSL answered that the two new Alaska Class Ferries do not have onboard processing and underway discharge systems, but instead have hold and pump-ashore capabilities. He explained that because many of AMHS's smaller ferries - such as the fast ferries and the Alaska Class Ferries - are day boats or shorter operating vessels that contain both black and gray water but have no discharge system, they pump ashore at home port where the discharge is then piped or trucked to the municipal wastewater facility.

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CO-CHAIR STUTES [moved] to change the sponsorship of HB 51 to the House Transportation Standing Committee.

[2:00:01 PM](#)

REPRESENTATIVE NEUMAN objected.

CO-CHAIR STUTES clarified the motion.

[2:00:34 PM](#)

A roll call vote was taken. Representatives Kopp, Drummond, Claman, Wool, and Stutes voted in favor of the motion.

Representatives Neuman and Sullivan-Leonard voted against it. Therefore, the motion passed by a vote of 5-2.

[HB 51 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:01 p.m.