HB

164

Alaska State Legislature

HOUSE TRANSPORTATION COMMITTEE

HB 164 – Cruise Ship Location Reports and Ocean Ranger Access to Vessels

This legislation narrows the broad language of Ballot Measure 2: "The Cruise Ship Initiative". This bill will allow the Department of Environmental Conservation (DEC) to implement the initiative in a reasonable way. A way that reflects the low level of risk large cruise ships present to Alaskans and the waters and marine resources of the state. In no way does HB 164 ease or lessen the federal and state environmental laws that have regulated cruise ship discharges since 2001.

This bill:

- Clarifies that hourly reports of vessel locations are to be submitted to the United States Coast Guard
- Clarifies the times that an "Ocean Ranger" is allowed on a vessel as "times designated by the commissioner [of DEC] while the vessel is in an Alaska port
- Clarifies that an "Ocean Ranger" must comply with the vessel's approved United States Coast Guard security plan while aboard the vessel
- Clarifies that while onboard a vessel, the Ocean Ranger's job duties include monitoring, observing, and recording data and information related to the registration, record-keeping, and discharge functions already required by federal and state law

Below are a number of facts that support making these clarifications or changes to the initiative provisions:

- In 2001, only 2 of 24 large cruise ships (8%) entering Alaska waters had installed advanced wastewater treatment systems. In 2006, 24 of 29 large cruise ships (82%) entering Alaska waters had installed wastewater treatment systems
- Of all the large cruise ships operating in Alaska waters, only those with properly maintained and operated advanced wastewater treatment systems were approved under federal and state laws to discharge wastewater in Alaska
- In 2004, DEC issued a report titled: "Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska" that found wastewater effluent from large cruise ships with advanced wastewater treatment systems does not pose a risk to aquatic organisms.
- The same DEC study also determined that "No human risk is posed by the low concentration of tested pollutants found in wastewater samples"
- The same DEC study found that wastewater samples "indicate that hazardous materials are not being discharged through these (large cruise ship) wastewater systems
- Since 2001, federal and state laws have been implemented regulating cruise ship discharges and already impose requirements such as a Quality Assurance / Quality Control Plan and a Vessel Specific Sampling Plan to ensure accurate monitoring, sampling, recording, and analysis of cruise ship discharges.

This bill should also significantly reduce or eliminate the need for the state to pay an estimated $2.0 million dollars in state general funds to implement the Ocean Ranger program.

N.

25-LS0585\V.2
Kane
4/23/07

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 164( ), Draft Version "V"

Page 2, line 7: - B

Delete "between two Alaska ports" FAILED 3-4

Amend #1 P2-L3 - "may" to "shall" - Adopt

25-LS0585\V.1
Kane
4/23/07

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 164( ), Draft Version "V"

Page 1, line 1, following "**vessel location**":

Insert "**and wastewater discharges**"

Page 1, following line 13:

Insert new bill sections to read:

"*** Sec. 2.** AS 46.03.475(f) is amended to read:

(f) **Except as required by (h) of this section, upon** [UPON] request of the department, the information required under this section shall be submitted electronically.

*** Sec. 3.** AS 46.03.475 is amended by adding a new subsection to read:

(h) When operating in the marine waters of the state, the owner or operator of a large commercial passenger vessel shall electronically report to the department each discharge of treated sewage, graywater, and other wastewaters into the marine waters of the state immediately after the discharge occurs."

Renumber the following bill sections accordingly.

Page 2, line 26:

Delete "Sections 1 and 2"

Insert "Sections 1 - 4"

HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: March 14, 2006 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/23/07

The JUDICIARY Committee considered: **HB 164**

HOUSE BILL NO. 164 **OCEAN RANGERS & REPORTING VESSEL LOCATION**

"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."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB164 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [✓] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DEC		✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gruenberg			X	
	LYNN				X
	Coghill	✓			
	Dick				
	SAMUELS			X	
	Holmes			X	
(handed gavel to)	RAMRAS	X			
Chair:			X		
Chair:					

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB164-LAW-ENV-4-7-07
Bill Version: HB 164
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law

Title: An Act relating to ocean rangers and reporting vessel location
RDU: Civil
Component: Environmental

Sponsor: TRANSPORTATION
Requester: HOUSE JUDICIARY
Component No.:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The bill would implement the Ocean Ranger program (per the Ballot Initiative #2) in such a way as to only require coverage while cruise ships are in an Alaskan port. Enactment of the bill is not anticipated to have any fiscal impact on the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
Phone 465-5427
Division: Administrative Services Division
Date/Time 4/7/07 12:05 PM
Approved by: Robert Meiners for Talis Colberg, Attorney General
Date 4/7/2007
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 164
(H) Publish Date: 3/14/07

Revision Date/Time (Note if correction):
Dept. Affected: Dept of Environmental Conservation

Title: Commercial passenger vessels operating in Alaska waters
RDU: Division of Water
Component: Water Quality
Sponsor: House Transportation Committee
Requester: House Transportation Committee
Component No.: 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	(203.1)	(203.1)	(203.1)	(203.1)	(203.1)	(203.1)
Travel	(47.0)	(47.0)	(47.0)	(47.0)	(47.0)	(47.0)
Contractual	(4,340.5)	(4,340.5)	(4,340.5)	(4,340.5)	(4,340.5)	(4,340.5)
Supplies	(195.1)	(195.1)	(195.1)	(195.1)	(195.1)	(195.1)
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)	(4,785.7)	(4,785.7)	(4,785.7)	(4,785.7)	(4,785.7)	(4,785.7)
TOTAL	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**	**(4,785.7)**

Estimate of any current year (FY2007) cost: (495.3)
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: X

POSITIONS

Full-time	-2	-2	-2	-2	-2	-2
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The impact of the proposed legislation will reduce the cost significantly from the FY2008 Governor's Amended budget. The total projected cost of implementing the Ocean Ranger program per the Ballot Initiative #2 is $5,600.0. HB 164 would reduce the costs to $814.4. The Governor's Amended budget ($5,600.0) was based on placing 2 Ocean Rangers on board for 24 hour coverage while the ship was in Alaska waters. The proposed legislation would result in coverage only while the ships are in an Alaskan port.

Prepared by: Lynn J. Tomich Kent
Phone: 907-269-7599
Division: Director
Date/Time: 3/7/07 12:00 p.m.
Approved by: Larry Hartig - Commissioner
Date: 3/1/8307
Agency: Department of Environmental Conservation

FISCAL NOTE #1

STATE OF ALASKA **BILL NO.** HB 164
2007 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Following are the line item expenditure calculations for the for the proposed legislation:

Personal Services: The Governor's Amended FY2008 budget included 4 positions. Under HB 164, DEC needs two positions to administer the program: EPM I program manager (R21), EEII (R23 - head "ocean ranger" based at DEC). This is a reduction of 2 positions from Governor's Amended budget.

Governor's Amended budget	$373.5
Reduction in cost due to HB164	($203.1)
Revised cost	$ 170.4

Travel: Line item includes travel for DEC program staff for implementing the program.

Governor's Amended budget	$55.0
Reduction in cost due to HB164	($47.0)
Revised cost	$8.0

Contractual: The contractual cost includes cost of the ORs and other program related costs such as public notices, staff training, and legal support. DEC will fund ORs under contract, rather than attempt to hire them directly as state employees. Significant reductions from the Governor's Amended budget in needs for wireless work stations, cell phones, and other communication needs with reduction of ORs. In addition, there are significant reductions in cost since there will be no contract with cruiselines for 7-day passage berths for ORs under proposed HB164. 20K reduction in need for GPS tracking as HB164 assumes USCG will do this tracking.

Seven (7) new ocean rangers (ORs), 2 in Juneau, 2 in Ketchikan, 1 in Southcentral area, and 2 that will travel to other Southeast ports of call. No actual ridership between ports. The assumption is that the ORs will work for 12 hours maximum per day, whether inspecting or in travel status. (Contract includes : hourly pay, COLA, and benefits.) Vessel inspections require a minimum of 4 hours per vessel; no more than 2 vessels/day can be inspected per OR.

Governor's Amended budget	$4,931.5
Reduction in cost due to HB164	($4,340.5)
Revised cost	$591.0

Supplies: Some reductions in gear because of reduced number of ORs. Training and monitoring material needs may also see some reductions.

Governor's Amended budget	$240.0
Reduction in cost due to HB164	($195.1)
Revised cost	$45.0

Ballot Measure 2 – Summary

(Sections and subsections of the initiative amended by HB 164 are marked with ******)

Section	Effect
#1 **Excise Tax on Travel Aboard Commercial Passenger Vessels**	Adds an entirely new chapter to Title 43
New AS 43.52.010	Imposes excise tax on overnight accommodations on commercial passenger vessels
New AS 43.52.020	Sets the rate of the tax
New AS 43.52.030	States that passengers are liable for the tax and requires "the department" to collect it in a manner and at times set by the department through regulation
New AS 43.52.040(a)	Requires deposit of the proceeds in a special account "Commercial Vessel Passenger Account" in the general fund and then attempts to restrict the legislature's authority to spend these funds
New AS 43.52.040(b)	Requires the commissioner to identify the first five ports of call in the state and then "subject to" the appropriation by the legislature, distribute to each port of call, $5 per passenger under certain conditions
New AS 43.52.040(c)	Creates a new "Regional Cruise Ship Impact Fund" as a subaccount and requires 25% of the proceeds from the tax to be deposited in the account. Also, sets up a formula for distributing funds to municipalities, and restricts the funds to certain uses
New AS 43.52.050(a)	Requires the department to administer the tax collections, and supervise and enforce collections of taxes and penalties
New AS 43.52.050(b)	Grants the department authority to adopt the regulations necessary for the administration of the chapter
New AS 43.52.060	Preempts municipal laws that tax commercial passenger vessels
New AS 43.52.095	Definitions
#2 **Games of Chance and Contests of Skill on Ships Operating On Waters Within the Jurisdiction of Alaska**	Adds a New Chapter for Taxes on Games of Chance
New AS 05.16.010	Defines what activities the new tax applies

	to
New AS 05.16.020	Levies the tax authorized above and provides that the department of revenue will administer the collection of the taxes
New AS 05.16.030	Provides that the tax proceeds will be deposited in the "Commercial Passenger Tax Account" in the general fund
#3 **Internal Revenue Code Adopted By Reference**	Repeals AS 43.20.021
New AS 43.20.021(a)	Adopts IRS statutes as part of chapter 43.20 except as modified by other provisions
New AS 43.20.021(b)	State that nothing in this chapter or in the Multistate Tax Compact may be construed as an exception to or modification of 26 U.S.C. 883
#4 **Cruise Ships and Wastewater Discharge Permits**	Repeals AS 46.03.462
New AS 46.03.462	Requires owners or operators of large commercial passenger vessels to obtain a permit and comply with its terms and conditions before discharging treated sewage, graywater, or other wastewater; requires owners or operators to maintain reports; requires owners or operators to collect and test samples and provide reports; requires owners and operators to report discharges; requires owners and operators to allow the department access to the vessel at the time samples are taken for purposes of taking the samples or for purposes of verifying the integrity of the sampling process and to submit records, notices and reports to the department
#5 **Cruise Ships and Wastewater Permits**	Amends AS 46.03.463
Repeals AS 46.03.463(d) and reenacts AS 46.03.463(e)	Prohibits discharge unless the owner or operator has a permit and is not in an area where discharge of treated sewage, graywater or other wastewaters is otherwise prohibited
#6 **Cruise Ships and Wastewater Recordkeeping and Other Requirements**	Repeals and reenacts AS 46.03.465
New AS 46.03.465(a)	Information gathering, daily records, period of operation, discharges, and provide

	electronic copies on a monthly basis to the department
New AS 46.03.465(b) **********	Requires a vessel to provide hourly reports on its location and to collect samples using a technique approved by the department
New AS 46.03.465(c)	Allows the department or an independent contractor to collect samples while the vessel is present in the marine waters of the state
New AS 46.03.465(d)	Requires the owner or operator of a vessel to use approved sampling techniques
New AS 46.03.465(e)	Requires owner or operator to pay for costs of sampling, etc.
New AS 46.03.465(f)	When in compliance with information requirements
#7 **Cruise Ships and Wastewater – Ocean Rangers**	Amends AS 46.03 to include new provisions on Ocean Rangers and Citizen lawsuits
New AS 46.03.476(a) **********	Requires owners or operators to have a licensed marine engineer on board the vessel at some time for the purpose of monitoring discharge and pollution requirements
New AS 46.03.476(b) **********	Requires the licensed engineer to monitor information related to the engineering, sanitation, and health related operations of the vessel, etc.
New AS 46.03.476(c)	Requires transmission of information
New AS 46.03.481	Citizen suit provisions
#8 **Fees from Head Tax Dedicated to Paying for the Ocean Ranger Program**	Amends AS 46.03.480
New AS 46.03.480(d)	Imposes additional tax of $4 per berth for the purpose of operating the Ocean Ranger program
#9 **Cruise Ships and Wastewater**	Amends AS 46.03.760
New AS 46.03.760(f)	Civil penalties for violations of wastewater provisions
New AS 46.03.760(f)(1) – (4)	Sets amount of reasonable compensation in formula in the nature of liquidated damages and provides that all parties are entitled to such damages except the state, describes additional damage entitlements and measures
#10 **Required Disclosures in Promotions and Shoreside Sales on Board**	Repeals and reenacts AS 45.50.474

Cruise Ships	
New AS 45.50.474(a) – (c)	Disclosures in promotions on shoreside sales and penalties for violations
#11 **Severability Clause**	Severability clause
#12 **Effective Date**	Effective date clause

Commercial Passenger Vessel Environmental Compliance Program Technical Assistance

Ocean Ranger Program
Cruise Ship Ballot Measure
Implementation

March 7, 2007

Prepared on behalf of the
Alaska Department of Environmental Conservation

Submitted by:

3300 Foster Avenue
Juneau, Alaska 99801

Table 4A: Estimated Costs to Deploy One Ocean Ranger on Each Ship for Options 1-4 (Based on 2006 Season)

Week of	Number of Ships in Alaska	Option 1: Ride Continuously	Option 2: Embark & Disembark at Canadian Pilot Station	Option 3: Board/Disembark at First/Last Alaska Pilot Station	Option 4: Board/Disembark at First/Last Alaska Port of Call
4/30/2006	1	$ 5,200.00	$ 9,000.00	$ 6,900.00	$ 4,650.00
5/7/2006	5	$ 26,000.00	$ 45,000.00	$ 34,500.00	$ 23,250.00
5/14/2006	18	$ 93,600.00	$ 162,000.00	$ 124,200.00	$ 83,700.00
5/21/2006	24	$ 124,800.00	$ 216,000.00	$ 165,600.00	$ 111,600.00
5/28/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
6/4/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
6/11/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
6/18/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
6/25/2006	27	$ 140,400.00	$ 243,000.00	$ 186,300.00	$ 125,550.00
7/2/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
7/9/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
7/16/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
7/23/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
7/30/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
8/6/2006	27	$ 140,400.00	$ 243,000.00	$ 186,300.00	$ 125,550.00
8/13/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
8/20/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
8/27/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
9/3/2006	27	$ 140,400.00	$ 243,000.00	$ 186,300.00	$ 125,550.00
9/10/2006	25	$ 130,000.00	$ 225,000.00	$ 172,500.00	$ 116,250.00
9/17/2006	18	$ 93,600.00	$ 162,000.00	$ 124,200.00	$ 83,700.00
9/24/2006	7	$ 36,400.00	$ 63,000.00	$ 48,300.00	$ 32,550.00
Season Total		$ 2,490,800.00	$ 4,311,000.00	$ 3,305,100.00	$ 2,227,350.00

Table 4B: Estimated Costs to Deploy Ocean Rangers for Cruise Season Using Options 5 and 6

	Option 5: Ride Randomly Selected Legs (Port to Port) of a Cruise Ship Voyage	Option 6: Inspect Vessels While in Port
Number of Ocean Rangers deployed	10	6-8
Cost per Week	$52,000.00	$25,200.00 - $33,600.00
Cost per Season (20 weeks)	$1,040,000.00	$504,000.00 - $672,000.00

Alaska Division of Elections

INITIATIVE PETITION BILL LANGUAGE
by Petition Sponsors

Petition ID: 03CTAX

FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA

Posted 7/13/06

Proposed Bill:

FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA

Be it enacted by the People of the State of Alaska:

***Section 1.** AS 43 is amended by adding a new chapter to read:
Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.
Sec. 42.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine waters.
Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of $46 a passenger per voyage.
Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial

passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department
(1)) by the person who provides travel aboard a commercial vessel for which the tax is payable; and
(2) in the manner and at the times required by the department by regulation.
Sec. 43.52.040. Disposition of receipts. (a) (a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.
(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call $5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute $2.50 per passenger to the city and $2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or water craft visits and to enhance the safety and efficiency of interstate and foreign commerce.
(c) "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or water craft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or water craft activities.
Sec. 43.52.050. Administration. (a) The department shall
(1) administer this chapter; and
(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.
(b) The department may adopt regulations necessary for the administration of this chapter.
Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.
Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include
(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;
(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.
(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.
(4) "voyage" means any trip or itinerary lasting more than 72 hours.

* **Sec. 2.** AS 05, is amended by adding a new chapter to read:
Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.
Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.
Sec. 05.16.020. Tax on gambling activities authorized by AS 05.16.010. There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 3% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.
Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

*Sec. **3.**AS 43.20.021 is repealed and reenacted as follows:
Sec. 43.20.021(a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.
(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.
(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43.52.095.

***Sec 4.**AS 46.03.462 is repealed and re-enacted as follows:
Sec. 46.03.462. Terms and conditions of discharge permits.(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.
(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:
(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;
(2) shall maintain records and provide the reports required under AS 46.03.465(a);
(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);
(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and
(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

***Sec. 5.** AS 46.03.463 is amended to read as follows:
Sec. 46.03.463(d) is repealed.
Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.
Sec. 46.03.463(g) is repealed.

***Sec 6. AS 46.03.465** repealed and reenacted to read as follows:
Sec. 46.03.465. Information-gathering requirements (a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.
(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.
(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.
(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.
(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.
(f) if the owner or operator of a commercial passenger vessel has, when complying with another state of federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

***Sec. 7.** AS 46.03 is amended to include new provisions as follows:
Sec. 46.03.476. Ocean Rangers. (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.
(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.
46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.
(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

$4 under tx for Ocean Rangers.

*__Sec. 8.__ AS 46.03.480 is amended as follows:
Sec. 46.03.480 is amended by adding a new section to read:
(d) An additional fee in the amount of $4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.
Sec. 46.03.480(d) shall be repealed and reenacted as 46.03.480(e).

*__Sec. 9.__ As 46.03.760 is amended as follows:
Sec. AS 46.03.760 is amended by a lding a new section to read:
(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $5000 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,
(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or dam ge to their property;
(2) reasonable costs incurred by the state in det ion, investigation, and attempted correction of the violation;
(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and
(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

***Sec. 10.** AS 45.50.474 is repealed and reenacted to read as follows:
Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships.(a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.
(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.
(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than $100 for each violation. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

Section 11. Severability. It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

Section 12. Effective Date. This Act takes effect 90 days after enactment.

End

Initiative Petition Status Report

Alaska Division of Elections Home Page

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

FACT #1: In 2006, 83% Of The Cruise Ship Fleet Operated In Alaska Waters With "State Of The Science" Advanced Wastewater Treatment Systems.

Lynn Kent, Director of the Division of Water for the State DEC, Captain Roussel, and Captain Phillips testified and provided a spreadsheet showing that prior to 2002, (the old fleet) there were only 2 cruise ships in Alaska out of 24 total vessels that operated with advanced wastewater treatment system. (AWTS) In 2006, today's fleet, 24 out of 29 (82%) of large cruise ships have advanced wastewater treatment systems (AWTS) and those numbers have been increasing every year.

This represents an 1100 percent increase in vessels operating with AWTS in Alaska waters in just about the amount of time it took for the 2003 initiative to make it to the ballot in 2006. (The 4 vessels without AWTS are holding wastewater until they are outside state waters)

FACT #2: Cruise Ships With AWTS Produce Effluent So Clean, They Are Certified To Discharge Continuously While Moving Or Tied Up In Port By The United States Coast Guard.

Captain Roussel and Captain Phillips testified that AWTS represent the state of the art in wastewater treatment technology. The technology was described as "a system of bioreactors and filters that basically treat wastewater through enhanced aerobic digestion and low pressure membrane filtration."

Captain Roussel and Captain Phillips testified that AWTS not only allow the ships to meet Alaska's wastewater discharge requirements (AS 46.03.460 – AS 46.03.490) they allow them to beat them. With discharge levels in some areas far below the legal limits.

Lt. Dan Buschbaum, the Assistant Chief of Inspections for the USCG here in Juneau, Alaska has stated: "Some of the wastewater discharged by cruise ships traveling in Alaska's waters [those with AWTS] is actually clean enough to drink" and "the advanced wastewater treatment systems employed with this option are discharging some of the cleanest wastewater ever seen". ***Winter 2005-2006 edition of Coast Guard Proceedings,*** "Cleaning up Wastewater".

Ms. Kent from DEC testified there has not been a Notice of Violation for a wastewater violation issued to a large cruise ship in the last 2 years.

(Note: The USCG has jurisdiction over AWTS and has issued regulations describing how AWTS must be designed, constructed, installed, operated, and maintained, as well as setting effluent levels that must be met before a ship with an AWTS will be certified to discharge continuously. ***33 CFR Part 159.***)

FACT #3: The State DEC Tested Effluents From Ships With Advanced Wastewater Systems And Found They Do Not Present A Hazard To Humans Or The Environment.

On February 9, 2004, the State Department of Environmental Conservation issued a report after collecting and studying several years of data from samples of cruise ship wastewater discharge and concluded:

"Since the passage of the Alaska cruise ship laws, large cruise ships [have] installed advanced wastewater treatment 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." **Page 55**

"WET testing results and a comparison of sample results with Alaska Water Quality Standards 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. The wastewater samples indicate that hazardous materials are not being discharged through these wastewater treatment systems." **Page 35.**

"Test results indicate that wastewater effluent from large ships with advanced wastewater treatment systems does not pose a risk to aquatic organisms, even during stationary discharges. ... None of the pollutants

mentioned above are present in concentrations [that would] cause risks to human health." **Page 55-56.**

FACT #4: The Federal EPA Has Tested Effluent From Ships With AWTS And Found The Systems Are Very Effective In Removing Pollutants.

On December 12, 2000, Congress passed HR 4577 which contained Title XIV. Title XIV set discharge standards for sewage and graywater from large cruise ships in Alaska. The law also authorized EPA to develop additional standards if necessary. EPA conducted sampling of wastewater discharge from 4 vessels in 2004 and made finding like these which are from a test of the wastewater from the cruise ship *Veendam*:

"The Zenon treatment system successfully removed almost all pathogen indicators (greater than 99%) and most classical pollutants, metals, and organics. Two pathogen indicators, fecal coliform and *E. coli* were not detected in any of the 15 effluent treatment samples, ... The treatment system removed almost all BOD [biochemical oxygen demand] (greater than 99%), COD [chemical oxygen demand] (97%), total organic carbon (TOC) (93%), settleable residue (greater than 99%) and TSS [total settleable solids] (greater than 99%) ..." ***Sampling Episode Report, Holland America Veendam***, Executive Summary, March 2006, p. vii.

FACT #5: Monitoring Of Pollution Discharges From Vessels Is Already Occurring By The USCG, DEC, And Independent Contractors.

Title XIV also required the USCG to expand its current vessel inspection program to include all discharge control equipment on cruise ships, required sampling and testing of sewage and graywater discharges, authorized unannounced inspections and logbooks recording all sewage and graywater discharges. The USCG's system has been put into place in cooperation with DEC and the industry.

Mr. Wetzel from Admiralty Environmental, the independent contractor now conducting sampling and testing on the cruise ships described this process as including unannounced sampling and regularly scheduled sampling by his teams, most of which occur in port.

Mr. Wetzel and Ms. Kent from DEC testified how under the current program, a DEC employee who is actually trained in science and proper monitoring and sample taking, periodically boards a vessel with the teams from Admiralty Environmental, watches them perform their work, evaluates that work, (which includes a list of 25 specific criteria) and reports the results in writing to DEC and the Coast Guard. Admiralty Environmental passed all its DEC and University of Alaska audits in 2006.

Mr. Wetzel also testified that in addition to his two trained employees taking samples, and the DEC employee periodically auditing their work, a scientist with a Ph.D., from the Univ rsity of Alaska also periodically boards the ships to observe and report on the sample procedures and also reviews the testing techniques of the lab receiving and analyzing the samples.

Mr. Wetzel and Ms. Kent also reviewed for the Transportation committee the sampling and testing procedures in the Quality Assurance / Quality Control Plan which is reviewed and updated annually by the Coast Guard and DEC. This plan is designed by the regulating agencies to ensure proper sample taking, proper testing, proper recording of results, and proper reporting of results to the regulating agencies.

Mr. Wetzel and Ms. Kent also discussed how in addition to complying with the QA / QCP each vessel is required to submit a vessel specific sampling plan (VSSP). A VSSP describes the specific AWTS aboard each vessel (Zenon Bioreactor System, etc.) and how contingencies will be handled in the event of a malfunction.

FACT #6: The United States Public Health Service Is Already Conducting Health And Sanitation Inspections On Cruise Ships And The Ships Are Passing The Inspections.

Federal statutes give the United States Public Health Service jurisdiction over health and safety on cruise ships. Those federal statutes are

cited on pages 152 to 162 of the Vessel Sanitation Program Manual published by the Centers for Disease Control.

The 27 large cruise ships operated by major lines in Alaska in 2006 were inspected a total of 403 times by trained federal health, safety, and sanitation inspectors. These ships passed 99% of those inspections. (All but 5 inspections). None of the 27 vessels had failed a health and safety inspection in the last 5 years, and that single failed inspection was the last one for these vessels in over a decade.

Table updated on 5/22/06 by DEC

2006 Large[1] Commercial Passenger Vessels Discharge Status and Wastewater Treatment

Vessel Operator	Vessel Name	Passenger Capacity (actual)	Crew Capacity	Total Persons on Board[2]	Blackwater (BW) Treatment System Manufacturer	Graywater (GW) Treatment System Manufacturer	Discharging in Alaska[3] & Subject to sampling program		Type of Treatment System
							BW	GW	
Carnival Cruise Lines	*Carnival Spirit*	2125	934	3059	Trilon/Rochem	Rochem UF	No	Yes	Rochem is a reverse osmosis ultrafiltration system.
Celebrity Cruises	*Infinity*	2038	997	3035	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Celebrity Cruises	*Mercury*	1870	909	2779	Biopure/Rochem	Mixed with BW	Yes	Yes	Rochem is a reverse osmosis ultrafiltration system.
Celebrity Cruises	*Summit*	2449	960	09	Hamann/Lazarus	None	No	No	Hamann/Lazarus is dilution and filtration system.
Holland America	*Oosterdam*	1824	800	2624	Rochem	Mixed with BW	Yes	Yes	Rochem is a reverse osmosis ultrafiltration system.
Holland America	*Ryndam*	1266	588	1854	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Holland America	*Statendam*	1266	588	1854	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Holland America	*Veendam*	1266	588	1854	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Holland America	*Volendam*	1440	620	2060	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Holland America	*Westerdam*	1848	800	2648	Rochem Bio-filtration	Rochem LPRO	Yes	Yes	Rochem is a reverse osmosis ultrafiltration system.
Holland America	*Zaandam*	1460	620	2080	Zenon	Mixed with BW	Yes	Yes	Zenon is a biological reactor and ultrafiltration system.
Holland America	*Zuiderdam*	1848	800	2648	Rochem Bio-filtration	Rochem LPRO	Yes	Yes	Rochem is a reverse osmosis ultrafiltration system.
Kyma Ship Management	*Topaz*	999	Unknown	999 + crew	Unknown	Unknown	No	No	
Mitsui O.S.K. Passenger Line	*Nippon Maru*	500-999	Unknown	Unknown	Unknown	Orca II	No	No	
Norwegian Cruise Lines	*Norwegian Star*	2240	1100	3340	Scanship	Mixed with BW	Yes	Yes	Scanship is a biological reactor and ultrafiltration system.
Norwegian Cruise Lines	*Norwegian Sun*	2002	950	2952	Scanship	Mixed with BW	Yes	Yes	Scanship is a biological reactor and ultrafiltration system.
Norwegian Cruise Lines	*Norwegian Wind*	2100	700	2800	Scanship	Mixed with BW	Yes	Yes	Scanship is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Coral Princess*	1950	850	2800	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Dawn Princess*	1950	900	2850	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Diamond Princess*	2670	1238	3908	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Island Princess*	1950	850	2800	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Regal Princess*	1596	660	2256	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Sapphire Princess*	2670	1238	3908	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Princess Cruise Line	*Sun Princess*	1950	870	2820	Hamworthy Bioreactor	Accomodations mixed with BW	Yes	Accomodations Only	Hamworthy is a biological reactor and ultrafiltration system.
Radisson Seven Seas	*Seven Seas Mariner*	769	431	1200	Hamworthy Bioreactor	Mixed with BW	Yes	Yes	Hamworthy is a biological reactor and ultrafiltration system.
Royal Caribbean Cruises Ltd.	*Radiance of the Seas*	2100	859	2959	Unknown	Unknown	No	No	
Royal Caribbean Cruises Ltd.	*Serenade of the Seas*	2100	850	2950	Scanship	Mixed with BW	Yes	Yes	Scanship is a biological reactor and ultrafiltration system.
Royal Caribbean Cruises Ltd.	*Vision of the Seas*	2400	800	3200	Hydroxyl	Unknown	No	No	Hydroxyl is an activated oxidation process.
Silver Shadow Shipping	*Silver Shadow*	435	305	740	Biopure/Marisan	Mixed with BW	Yes	Yes	

[1] A large vessel has overnight accommodations for 250 or more passengers.

[2] Capacity is calculated from Registration, Vessel Specific Sampling Plan, or Juneau Cruiseship Schedule. Actual number of passenger aboard varries dependent upon sales.

[3] Alaska water extends 3 miles from the coastline and includes the Alexander Archipelago. Only vessels that discharge into Alaska waters are required to meet wastewater sampling and reporting requirements.

The wastewater systems on these vessels meet stringent effluent limits and are approved by the U.S. Coast Guard to discharge continuously.
These vessels are not discharging in Alaska waters during the 2006 season.

Table updated 5/4/06 by DEC

2006 Small[1] Commercial Passenger Vessels Wastewater Treatment

Vessel Operator	Vessel Name	Passenger Capacity (lower berth)	Crew Capacity	Total Persons on Board	Blackwater Treatment System Manufacturer	Graywater treatment	Discharging in Alaska[2] & Subject to sampling program		Type of Treatment System
							BW	GW	
Alaska Marine Highway System	*Columbia*	157	66	223	Omnipure	Mixed with BW	Yes	Yes	Macerator Chlorinating System
Alaska Marine Highway System	*Kennicott*	162	42	204	Orca	Mixed with BW	Yes	Yes	Macerator Chlorinating System
Alaska Marine Highway System	*Malaspina*	138	50	188	Omnipure	Mixed with BW	Yes	Yes	Macerator Chlorinating System
Alaska Marine Highway System	*Matanuska*	136	50	186	Omnipure	Mixed with BW	Yes	Yes	Macerator Chlorinating System
Alaska Marine Highway System	*Taku*	55	42	97	Effluent Technology	Mixed with BW	Yes	Yes	Macerator Chlorinating System
America West Steamship	*Empress of the North*	235	85	320	Orca	Chlorine	Yes	Yes	Macerator Chlorinating System
CruiseWest	*Spirit of 98*	96	26	122	Red Fox	None	Yes	Yes	Biological Chemical
CruiseWest	*Spirit of Alaska*	78	21	99	Omnipure	None	Yes	Yes	Macerator Chlorinating System
CruiseWest	*Spirit of Columbia*	78	21	99	Omnipure	None	Yes	Yes	Electrocatalytic
CruiseWest	*Spirit of Discovery*	84	21	105	Red Fox	None	Yes	Yes	Biological Chemical
CruiseWest	*Spirit of Endeavour*	102	28	130	Omnipure	None	Yes	Yes	Electrocatalytic
CruiseWest	*Spirit of Oceanus*	114	64	178	Hamworthy	None	Yes	Yes	Biological & Filtration
Hapag-Lloyd	Bremen	164	94	258	unknown	unknown	No	No	Unknown
New World Management	*Yorktown Clipper*	138	37	175	Omnipure 12MX824-27	Chlorine	Yes	Yes	Electrocatalytic
Lindblad Expeditions	*Sea Bird*	70	28	98	Omnipure 12M	Chlorine	Yes	Yes	Electrocatalytic
Lindblad Expeditions	*Sea Lion*	68	28	96	Omnipure 12M	Chlorine	Yes	Yes	Electrocatalytic
New World Management	*Clipper Odyssey*	128	76	204	Consillium Neptumatic	Chlorine	Yes	Yes	Macerator Chlorinating System

[1]A small vessel has overnight accommodations for 50-249 passengers. A large vessel has overnight accommodations for 250 or more passengers.

[2]Alaska water extends 3 miles from the coastline and includes the Alexander Archipelago. Vessels discharging in Alaska water must sample their wastewater twice per season.

Cleaning Up Wastewater

The Coast Guard, state and federal regulators, and the cruise ship industry collaborate to improve wastewater quality.

by Lt. Dan Buchsbaum
Assistant Chief of Inspections, U.S. Coast Guard Marine Safety Office Juneau, Alaska

and Ms. Jennifer Kiefer
Technical Writer, SAGE Systems Technologies

We all know that the quality of drinking water is stringently regulated. But did you know that wastewater is also regulated? In fact, some of the wastewater discharged by cruise ships traveling in Alaska's waters is actually clean enough to drink! Perhaps drinkable wastewater does not sound too exciting, but the partnership and technology that has created it definitely is.

Regulating Wastewater...as a Team

Alaska is renowned for its spectacular scenery, and cruise ships are a highly visible part of that scene. Each year, the ships transport more than one million people around the beautiful coastlines, bringing with them great revenue—and leaving behind a considerable amount of wastewater. Concerned by this growing environmental pollution, Alaska has spent the last decade focused on implementing cleaner wastewater standards. The result has been crystal clear success.

In 1999 the Alaska Department of Environmental Conservation (ADEC) organized the Alaska Cruise Ship Initiative (ACSI) to review the cruise ship industry's waste management and disposal practices within Alaskan waters. There were many groups involved, including the U.S. Coast Guard, Environmental Protection Agency (EPA), cruise industry representatives, various Alaskan tribes, environmental groups, and concerned Alaskans. It quickly became apparent that the concern first voiced by Alaskans was shared by many.

In a great display of solidarity, the regulatory agencies

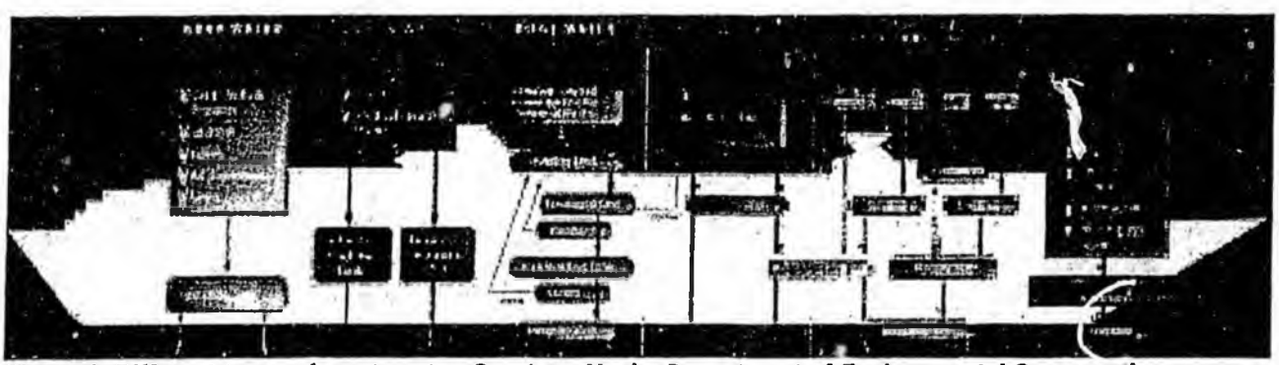


Figure 1: Different types of wastewater. Courtesy Alaska Department of Environmental Conservation.

tion regarding the type of wastewater being discharged (Figure 1), but also the location and quantity of the discharges. With the passing of the various regulations, this information is now effectively captured and monitored. Specifically, the state's CPVEC program requires that each ship maintain comprehensive records of its wastewater discharges. Included in these records are the amount and types of pollutants being discharged.

Figure 3: Scanship advanced wastewater treatment system on a Norwegian Cruise Line vessel. Pictured are two shipboard marine engineers charged with running the system. Courtesy Norwegian Cruise Lines.

Understandably, there is some overlap between the federal and state requirements, so ADEC (specifically, its CPVEC program staff) and the Coast Guard work together closely. For example, if a ship plans to discharge in Alaskan waters, it must provide both ADEC and the Coast Guard with a vessel specific sampling plan (VSSP). The VSSP contains the intended sampling techniques and analytical testing methods of the ship's discharge; it must demonstrate that samples will be representative of the wastewater discharged from that specific ship.

According to Ms. Moana Leirer, an environmental program specialist with ADEC, large cruise ships—which are defined by Alaskan law as 250+ passengers and federal law as 500+ passengers—have one of three options for wastewater discharge that must first be approved by the CPVEC program. These ships can:

1. hold their wastewater, discharging it outside of Alaskan waters (wastewater is therefore not sampled);
2. discharge their wastewater once they are at least one nautical mile from shore and traveling at least six knots (wastewater samples are required and must meet certain effluent standards); or
3. operate advanced wastewater treatment systems that are certified by the Coast Guard for continuous discharge.

A continuous discharge of wastewater, allowed by option three, initially sounds contradictory to the environmental concerns that provided the impetus for the many wastewater discharge regulations. However, the advanced wastewater treatment systems employed with this option are discharging some of the cleanest wastewater ever seen.

Advanced Wastewater Treatment Systems

In addition to the great partnership forged between the regulatory agencies and industry for this massive environmental cleanup, the second part of this success story is the technology that has been developed to improve the wastewater itself. While the regulations were first being formed, many of the cruise ship companies were already evaluating several advanced wastewater treatment systems. These included chemical treatment and mechanical decanting, activated oxidation and oxidant disinfection, reverse osmosis filtration, and bio-reactor/filtration.

Today, while some employ a reverse osmosis filtration system, the majority of cruise ships are using various combinations of enhanced bio-reactor/filtration systems. There are currently four basic designs from dif-

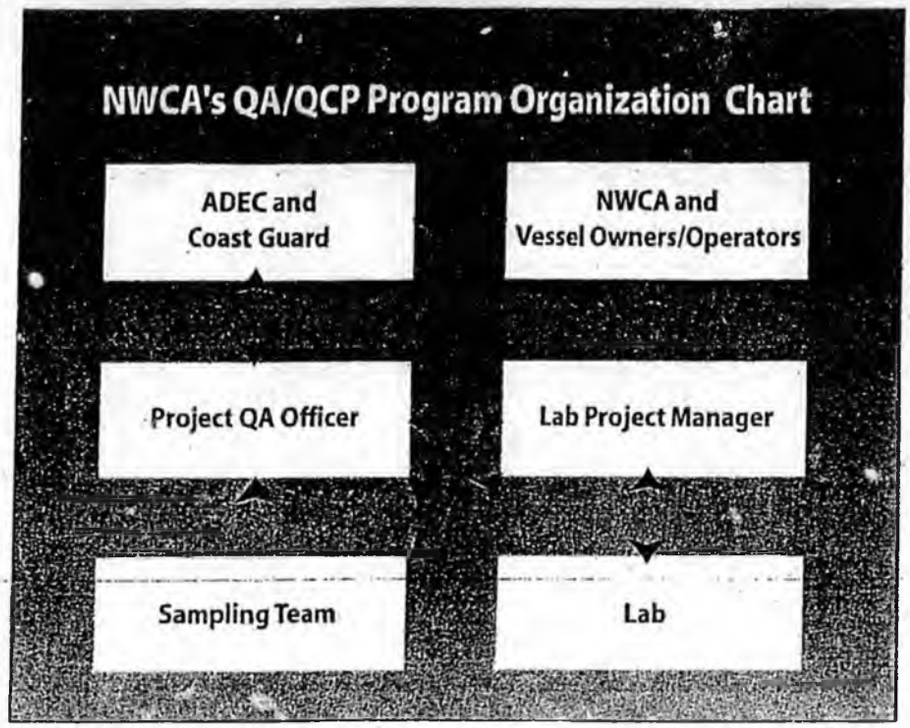


Figure 4: North West Cruise Ship Association's QA/QCP organization chart. Courtesy North West Cruise Ship Association.

set of sampling standards and lab analysis. According to Mr. Wetzel, reliable and representative samples are crucial to achieving valid readings. Therefore, specific sample collection procedures are detailed in each QA/QCP and each ship's VSSP is also submitted to the sampling team. With all groups working from the same documents, there is a stronger certainty that consistent sampling methods are followed and that samples are collected from appropriate and representative locations.

The Coast Guard also verifies installation of the sampling ports on the ships and reviews operations of the advanced wastewater treatment systems during their annual vessel examinations. Additional verification occurs during sampling events because exactness is vital to obtaining a true reading. For example, if a sample port is located too close to certain equipment, then the wastewater has not had a chance to mix before discharging and can produce a tainted sample.

While a third-party sampler takes all the required wastewater samples, it is the responsibility of the ship owner or operator to submit a report on the analytical results of sampling. The sampling analytical report must include the following:

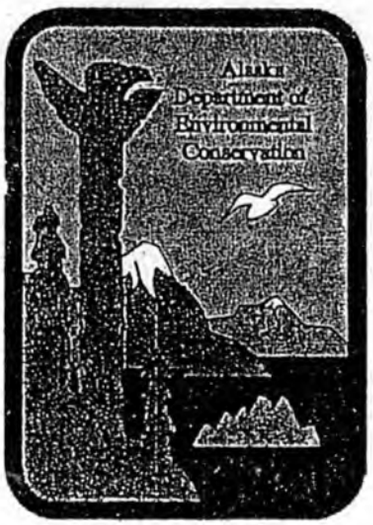
1. date, time, and onboard location where each sample was collected;
2. sampling technique and analytical testing method used for each sample;
3. quality assurance and quality control analysis of the sampling, analytical testing, and analytical data;
4. analytical results;
5. any deviation from the approved plans submitted under 18 AAC 69;
6. type of wastewater sampled; and
7. if necessary, a notification that re-sampling is occurring. [1]

All sample analysis results are submitted by the independent labs directly to the Coast Guard and are reviewed to ensure that each ship is actually meeting all the requirements. The information is later released by ADEC. While samples do occasionally fall out of range, a compliance scheme allows the Coast Guard to average samples to ensure a ship meets compliance on a monthly basis versus an individual sampling event. Since the QA/QCP's inception in 2002, there has been an average of only one bad sample every two months, but these bad samples are usually later shown to have been tainted.

While it may sound confusing, the primary goal of a QA/QCP is to keep wastewater discharge as clean and pollutant-free as possible. In fact, NWCA's QA/QCP tests for 250 different pollutants, substantially more than the 16 pollutant tests required by the Coast Guard.

Other States Implement Alaska's Standards

Alaska's success story has traveled far, including to such distant states as Maine, Washington, and Hawaii. In a great example of knowing when not to reinvent the wheel, the state of Maine essentially adopted the Coast Guard's existing regulations for Alaska (33CFR159, Subpart E) with only two noticeable changes: substituting "Maine" for "Alaska" and "State of Maine Department of Conservation" for "Coast Guard Captain of the Port." Regulations in Washington have also adopted many of Alaska's regulations but require additional record keeping requirements. Officials in Hawaii are currently working on



Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska

Alaska Department of Environmental Conservation

Commercial Passenger Vessel Environmental Compliance Program

February 9, 2004

Risk Characterization

ADEC expects that only large cruise ships with advanced wastewater treatment systems will discharge wastewater in Alaska in the future. WET testing results and a comparison of sample results with Alaska Water Quality Standards 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.

The wastewater samples indicate that hazardous materials are not being discharged through these wastewater treatment systems.

Most organisms need some minimum concentration of zinc to function properly. Toxicity of zinc to an organism depends on feeding habits. Plants and most fish would not be adversely affected, but many invertebrates could be affected by ingestion of sufficient quality of particulates containing zinc. The toxicity of zinc, as well as other metals, is reported to be influenced by a number of chemical factors including cadmium, magnesium, hardness, pH, and ionic strength. These factors appear to affect the toxicity of zinc by influencing the proportion of available zinc or by inhibiting the sorption or binding available by biological tissues. Alaska has a water quality standard of 81.0 µg/L of dissolved zinc in saltwater based on chronic effects to aquatic life.

As with copper, zinc is an essential element in humans at low doses. Human ingestion of zinc is generally not a concern. The Recommended Daily Allowances for adults is 15 mg/day.[98]

7.2. Cumulative Impact

Large Ships

Since the passage of the Alaska cruise ship laws, large cruise ships installed advanced wastewater treatment 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. During 2003, all the large cruise ships that discharged wastewater in Alaska had these advanced systems. Ships that did not have advanced systems discharged outside 3 nautical miles. The 2003 data is the most representative of the wastewater quality that ADEC expects in the future. Therefore, we will focus on the risks presented by the 2003 data.

In 2003, ships were sampled for 16 conventional pollutants and 160 priority pollutants. **The vast majority of these pollutants were not detected.** Only ammonia, copper, nickel, and zinc did not regularly meet Alaska Water Quality Standards at the end of pipe (Table 10).

The Science Advisory Panel concluded in *The Impact of Cruise Ship Wastewater Discharge on Alaska Waters* that effluent from a typical large ship will be diluted by a factor of at least 50,000 during underway discharge.[99] By applying this dilution factor, the concentration of all pollutants would meet Alaska Water Quality Standards in the receiving water during underway discharge.

ADEC was concerned about the impacts on the receiving water caused by stationary wastewater discharge. In order to address this issue, ADEC calculated the dilution factor during stationary discharge for each large ship during a worst case scenario. (See Appendix D Cruise Ship Stationary Discharge Modeling for more information.) The lowest dilution value for each effluent type was then used to calculate the anticipated concentration of each pollutant in receiving water during stationary discharge (Table 11). After applying the dilution factor, no tested pollutant would exceed Water Quality Standards.

Whole Effluent Toxicity (WET) testing was done in 2003 on 4 of the 18 large ships that discharged in Alaska. Test results indicate that **wastewater effluent from large ships with advanced wastewater treatment systems does not pose a risk to aquatic organisms,** even

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[98] EPA 440/5-80-079 October 1980 Ambient Water Quality Criteria for Zinc.

[99] Science Advisory Panel "The Impact of Cruise Ship Wastewater Discharge on Alaska Waters," November 2002 http://www.state.ak.us/dec/press/cruise/documents/impact/dilutionwastewater.htm

during stationary discharges. ADEC will continue WET testing on the advanced wastewater treatment systems during 2004. This test gives insight into the wastewater's effect on marine organisms. This test indicates that exceedances of ammonia, copper, nickel and zinc Water Quality Standards at the end of pipe are not harming aquatic life.

None of the pollutants mentioned above are present in concentrations should cause risks to human health.

Small Ships

ADEC reviewed data collected from small commercial passenger vessels from 2001 through 2003. These ships have not installed new wastewater treatment systems on their vessels and the effluent quality has remained relatively consistent.

During the evolution of the sampling protocol, pollutants have been added and deleted as appropriate. In 2003, ships were sampled for 16 conventional pollutants and 160 priority pollutants. **The vast majority of these pollutants were not detected.** The eight (8) pollutants that did not regularly meet Alaska Water Quality Standards at the end of pipe are included in Table 15.

The Science Advisory Panel concluded that the dilution factor caused by the underway discharge by a small ship would be based on the width, draft, and speed of the vessel divided by the discharge rate and multiplied by a factor of 3.[100] With the aid of this dilution, we would expect all pollutants to meet Alaska Water Quality Standards during underway discharge.

ADEC was concerned about the impacts on the receiving water caused by stationary wastewater discharge. In order to address this issue, ADEC calculated the dilution factor caused by stationary discharge for each small ship during a worst case scenario. (See Appendix D Cruise Ship Stationary Discharge Modeling for more information.) The lowest dilution value for each effluent type was then used to calculate the expected concentration of each pollutant in receiving water during stationary discharge (Table 16). Even with the benefit of dilution, we predict the stationary discharge of wastewater from small ships contain concentrations of free chlorine, fecal coliform, copper, and zinc that exceed Alaska Water Quality Standards.

The marine environment is very sensitive to the concentrations of free chlorine. In fact the water quality standards are below the methods of detection for chlorine. The concentration of chlorine in mixed blackwater and graywater during 2002 was found in excess of 100 times the Alaska Water Quality Standards. The predicted concentration of chlorine from this discharge was 10 times the standard in receiving water and therefore did pose a risk to aquatic life during stationary discharges.

The fecal coliform concentrations in receiving water indicate that it is important for these ships to avoid anchoring in areas used for shellfish aquaculture or areas frequently used for subsistence and recreational shellfish harvesting. Most of the shellfish farms in Southeast Alaska are located between Ketchikan and Petersburg. ADEC evaluated the small ship routes and the location of

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[100] The Science Panel has developed a formula for predicting dilution/dispersion in the wake of small cruise ships.
Dilution factor = 3 x (ship width x ship draft x ship speed)/(volume discharge rate);
http://www.state.ak.us/dec/press/cruise/documents/impact/dilutionwastewater.htm

-CFR Data is current as of August 4, 2005

Title 33: Navigation and Navigable Waters

Browse Previous

PART 159—MARINE SANITATION DEVICES

Section Contents

Authority: 33 U.S.C. 1322(b)(1); 49 CFR 1.45(b). Subpart E also issued under authority of sec. 1(a)(4), Pub. L. 106–554, 114 Stat. 2763; Department of Homeland Security Delegation No. 0170.1.

Source: CGD 73–83, 40 FR 4624, Jan. 30, 1975, unless otherwise noted.

Subpart A—General
top
§ 159.1 Purpose.
top
This part prescribes regulations governing the design and construction of marine sanitation devices and procedures for certifying that marine sanitation devices meet the regulations and the standards of the Environmental Protection Agency promulgated under section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322), to eliminate the discharge of untreated sewage from vessels into the waters of the United States, including the territorial seas. Subpart A of this part contains regulations governing the manufacture and operation of vessels equipped with marine sanitation devices.

§ 159.3 Definitions.
top
In this part:

Coast Guard means the Commandant or his authorized representative.

Discharge includes, but is not limited to, any spilling, leaking, pouring, pumping, emitting, emptying, or dumping.

Existing vessel includes any vessel, the construction of which was initiated before January 30, 1975.

Fecal coliform bacteria are those organisms associated with the intestine of warm-blooded animals that are commonly used to indicate the presence of fecal material and the potential presence of organisms capable of causing human disease.

Inspected vessel means any vessel that is required to be inspected under 46 CFR Ch. I.

Length means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments are not to be included in the measurement.

Manufacturer means any person engaged in manufacturing, assembling, or importing of marine sanitation devices or of vessels subject to the standards and regulations promulgated under section 312 of the Federal Water Pollution Control Act.

Marine sanitation device and device includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

New vessel includes any vessel, the construction of which is initiated on or after January 30, 1975.

Person means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel.

Public vessel means a vessel owned or bare-boat chartered and operated by the United States, by a State

Sampling Episode Report
Holland America Veendam
Sampling Episode 6503

Executive Summary

March 2006

EXECUTIVE SUMMARY

Sampling Episode Report for Holland America Veendam

This Sampling Episode Report describes the sampling and analysis activities to characterize wastewater (graywater and sewage) generated and discharged by the cruise vessel Holland America Veendam while in Alaska waters. This sampling took place from June 20 through June 25, 2004, under the direction of the U.S. Environmental Protection Agency (EPA). The sampling program is part of EPA's data collection effort to evaluate whether to develop wastewater discharge standards, under 33 USC 1901 Note, for cruise vessels authorized to carry 500 or more passengers for hire when operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. EPA will use information from the sampling of this vessel and three other cruise ships in Alaska to characterize wastewater generated and discharged by large cruise vessels with advanced wastewater treatment systems.

EPA selected the Holland America Veendam to characterize the performance of the Zenon Environmental Inc. membrane bioreactor treatment system, an advanced wastewater treatment system that uses aerobic biological oxidation followed by ultrafiltration and ultraviolet disinfection. Samples were collected of vario wastewater sources (laundry, accommodations, food pulper, and galley wastewater); influent to the treatment system (combined graywater and sewage); influent to the ultraviolet (UV) disinfection component of the treatment system; effluent from the treatment system; source water; wastewater treatment residuals (screening solids and wastewater biosludge); and incinerator ash. Wastewater source samples were collected for a single 24-hour sampling period, while samples of the influent to and effluent from the treatment system were collected for five consecutive 24-hour sampling periods.

Strap-on ultrasonic flow meters were installed near the sampling locations for laundry wastewater, influent to treatment, and effluent from treatment to collect flow data and, in some cases, to trigger automatic sampling machines. In addition, flow data were collected from the Veendam's in-line flow meters installed on the graywater and sewage feeds to the treatment

system (which, combined, represent the influent to the treatment system) and on the effluent from the treatment system.

Various sample collection methods (composite by flow, composite by time, grab, and grab composite) were used depending on the sampling point and analyte. Tested analytes included pathogen indicators (fecal coliform, *E. coli*, enterococci), classical pollutants, total and dissolved metals, volatile and semivolatile organics, pesticides, polychlorinated biphenyls, and dioxins and furans. Not all samples were analyzed for all target analytes.

The food pulper wastewater samples showed the highest concentration among graywater sources for the majority of analytes, most notably *E. coli* and enterococci, oil and grease, nutrients, and solids. Accommodations wastewater samples had the highest concentration for 11 of the analytes, including fecal coliform, organics, and several metals. Laundry wastewater samples showed the highest concentration for five analytes, including alkalinity and several dissolved metals.

Because of water conservation measures onboard cruise ships (such as vacuum toilets), key analytes such as pathogen indicators, biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), and total suspended solids (TSS) are found at much higher concentrations in the influent to the Veendam wastewater treatment system than in typical domestic wastewater. Of the 54 metal analytes tested for, 27 were detected in every influent to treatment system sample. Among the 365 target analytes for volatile and semivolatile organics, pesticides, and polychlorinated biphenyls, only 9 were detected in any influent to treatment samples, most at concentrations close to their detection limits.

The Zenon treatment system successfully removed almost all pathogen indicators (>99%) and most classical pollutants, metals, and organics. Two pathogen indicators, fecal coliform and *E. coli*, were not detected in any of the 15 effluent treatment samples, while one indicator, enterococci, was detected in 2 samples at close to the detection limit. The treatment system removed almost all BOD_5 (>99%), COD (97%), total organic carbon (TOC) (93%), settleable residue (>99%) and TSS (>99%). The treatment system reduced ammonia, total

Kjeldahl nitrogen (TKN, which measures both ammonia and organic forms of nitrogen), and total phosphorus by approximately 75%, while nitrate/nitrite levels remained relatively unchanged. The treatment system was highly efficient at removing particulate metals, and removed dissolved metals at an average of 37%. The treatment system removed most of the volatile and semivolatile organics to concentrations below detection levels.

The Zenon wastewater treatment system generates two types of residual waste: screening solids (from two coarse screens at the beginning of the treatment system) and waste biosludge (excess biological mass from the treatment system's bioreactor). Screening solids are collected monthly for disposal on shore. Waste biosludge is pumped to a double-bottom holding tank for overboard discharge outside of 12 nautical miles from shore. Most of the analytes detected in these residual wastes were also detected in the influent to the treatment system. For many analytes, concentrations in the screening solids and waste biosludge exceeded those in the influent to treatment, suggesting that these analytes are removed from the system in these waste streams.

On average, each person generated approximately 62 gallons of untreated sewage (17 gallons) and graywater (45 gallons) per day. The average discharge from the treatment system was approximately 58 gallons of treated wastewater per person per day.

Summary of CDC Health Inspections
Cruise Ships Operating in Alaska

Cruise Ships Of Major Cruise Lines Operating in Alaska / 2006	Number of Inspections / Time Period	Failed Inspections
Carnival Spirit	13 inspections / 6 year time period	0
Infinity	12 inspections / 6 year time period	0
Mercury	19 inspections / 10 year time period	0
Summit	11 inspections / 7 year time period	0
Oosterdam	7 inspections / 4 year time period	0
Ryndam	26 inspections / 14 year time period	0
Statendam	30 inspections / 14 year time period	2 failed inspections both of which occurred in 1993 ship first put into service. No failed inspections since 1993.
Veendam	23 inspections / 12 year time period	0
Volendam	15 inspections / 7 year time period	0
Westerdam	5 inspections / 3 year time period	0
Zaandam	15 inspections / 8 year time period	0
Zuiderdam	9 inspections / 5 year time period	0
Norwegian Star	11 inspections / 6 year time period	0
Norwegian Sun	11 inspections / 6 year time period	0
Norwegian Wind	28 inspections / 15 year time period	0
Coral Princess	9 inspections / 4 year period	0
Dawn Princess	23 inspections / 11 year period	0
Diamond Princess	7 inspections / 4 year period	0
Island Princess	8 inspections / 4 year period	0
Regal Princess	33 inspections / 16 year period	2 failed inspections, no failed inspections since 1994.
Sapphire Princess	5 inspections / 3 year period	0

Sun Princess	23 inspections / 11 year period	0
Seven Seas Mariner	13 inspections / 6 year period	1 failed inspection, no failed inspection since 2001.
Radiance of the Seas	13 inspections / 6 year period	0
Serenade of the Seas	8 inspections / 4 year period	0
Silver Shadow	8 inspections / 6 year period	0
Vision of the Seas	18 inspections / 10 year period	0
27 Ships	**Total: 403 inspections**	**Total failed inspections: 5**

Cleaning Up Wastewater

The Coast Guard, state and federal regulators, and the cruise ship industry collaborate to improve wastewater quality.

by Lt. Dan Buchsbaum
Assistant Chief of Inspections, U.S. Coast Guard Marine Safety Office Juneau, Alaska

and Ms. Jennifer Kiefer
Technical Writer, SAGE Systems Technologies

We all know that the quality of drinking water is stringently regulated. But did you know that wastewater is also regulated? In fact, some of the wastewater discharged by cruise ships traveling in Alaska's waters is actually clean enough to drink! Perhaps drinkable wastewater does not sound too exciting, but the partnership and technology that has created it definitely is.

Regulating Wastewater...as a Team

Alaska is renowned for its spectacular scenery, and cruise ships are a highly visible part of that scene. Each year, the ships transport more than one million people around the beautiful coastlines, bringing with them great revenue—and leaving behind a considerable amount of wastewater. Concerned by this growing environmental pollution, Alaska has spent the last decade focused on implementing cleaner wastewater standards. The result has been crystal clear success.

In 1999 the Alaska Department of Environmental Conservation (ADEC) organized the Alaska Cruise Ship Initiative (ACSI) to review the cruise ship industry's waste management and disposal practices within Alaskan waters. There were many groups involved, including the U.S. Coast Guard, Environmental Protection Agency (EPA), cruise industry representatives, various Alaskan tribes, environmental groups, and concerned Alaskans. It quickly became apparent that the concern first voiced by Alaskans was shared by many.

In a great display of solidarity, the regulatory agencies

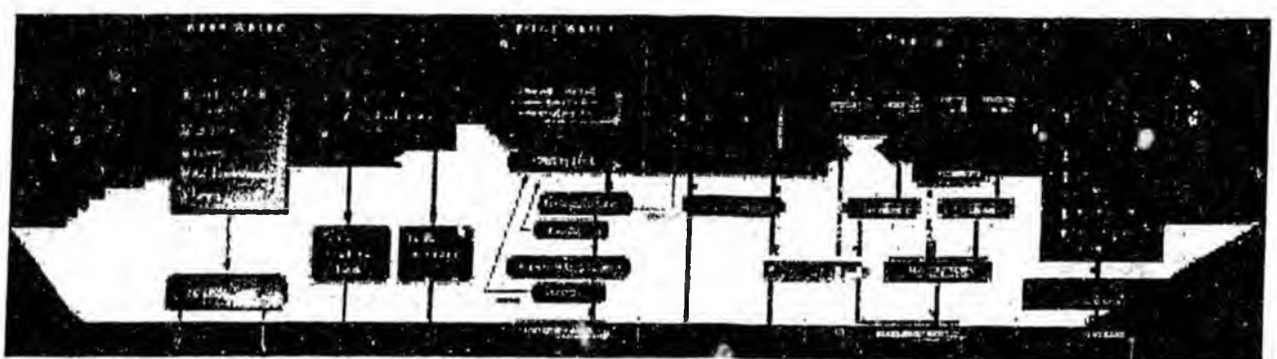

Figure 1: Different types of wastewater. Courtesy Alaska Department of Environmental Conservation.

and the cruise ship industry approached the problem from the same side. All parties seemed willing to contribute as much assistance and information as possible. Mr. David Eley, a consultant at that time for ADEC, noted that "cruise ships are very competitive in marketing, but, when it comes to such matters as environmental standards and security, they all work very closely together. They know that one accident or dirty discharge affects the health of the entire industry, not just one line. One definitely gets the impression that the cruise industry feels that collaboration is not only the right thing to do, it is good business practice."

While federal standards already defined concentration limits of certain pollutants, many unknowns remained. How much wastewater the cruise ships were actually discharging was not really known. The ACSI set out to establish baseline information regarding the wastewater discharges, enlisting most of the cruise ships to conduct voluntary wastewater sampling during the summer of 2000. The sampling included treated blackwater (such as sewage) and graywater (such as wastewater from showers, the galley, and laundry).

There were no standards for graywater at that time. However, the Coast Guard required that blackwater waste from cruise ships contain no more than 200 fecal coliforms per 100 ml. Fecal coliform is a bacteria found in the intestines of mammals and is used as an indicator that other disease-causing organisms may be present. ACSI's sampling revealed that the blackwater contained as many as 16 million fecal coliform per 100 ml and that the graywater contained as many as 32 million fecal coliform per 100 ml. Needless to say, the surprising results demanded immediate improvement.

The Alaska legislative community sprang into action, and the first set of regulatory improvements was passed by Congress in December 2000, with Title XIV-Certain Alaska Cruise Ship Operations. These regulations set wastewater discharge standards for large cruise ships in Alaskan waters. Tasked with implementing and enforcing Title XIV, the Coast Guard soon after published Title 33 of the U.S. Code of Federal Regulations, Part 159, Subpart E, which prescribed the regulations governing the discharges. Alaska Statute 46.03.460 – 46.03.490 joined the federal law in July 2001, placing its own set of strict guidelines on wastewater discharge. This statute also established ADEC's Commercial Passenger Vessel Environmental Compliance (CPVEC) program to ensure cruise ship compliance with the established discharge standards. Regulation 18 AAC 69, which became effective in November 2002, presented the requirements necessary to join the CPVEC program.

Throughout the two years that these various regulations were being formed, the cruise ship industry continued to play a valuable role in their development. Recognizing that lots of money and time would need to be invested to improve the wastewater discharges, the industry was understandably eager to have the standards established. Set standards allowed the industry to contract for new, advanced wastewater treatment technologies.

The Regulations Take Effect

A major concern since the beginning of the Alaska Cruise Ship Initiative was not just the lack of informa-

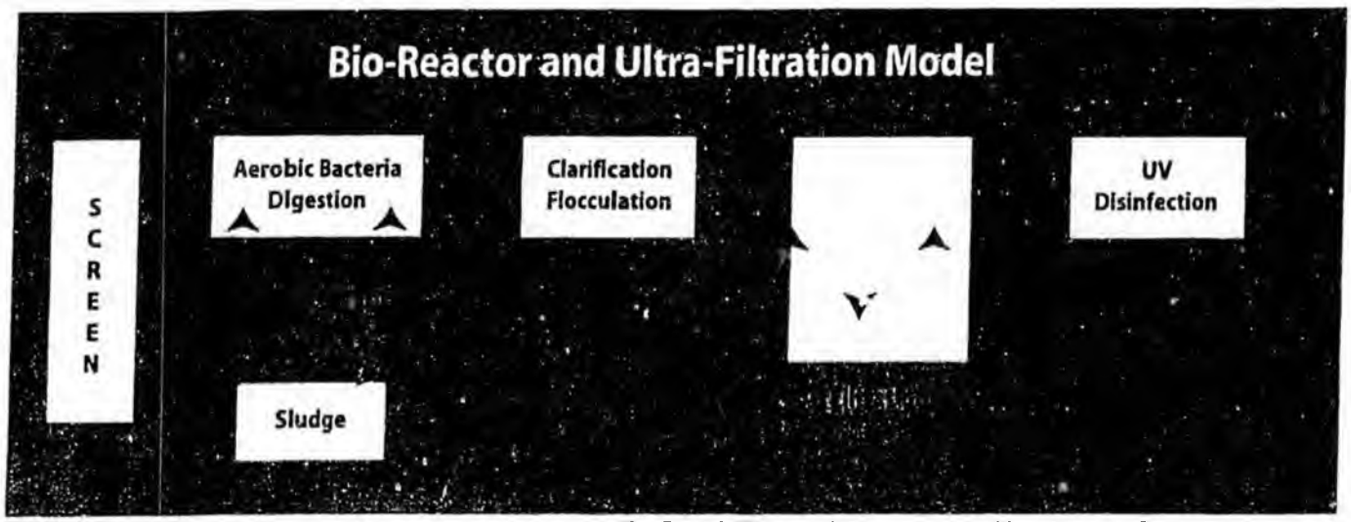

Figure 2: Wastewater treatment systems. Courtesy Mr. David Eley and Ms. Carolyn Morehouse, Cape Decision International Services, Inc.

tion regarding the type of wastewater being discharged (Figure 1), but also the location and quantity of the discharges. With the passing of the various regulations, this information is now effectively captured and monitored. Specifically, the state's CPVEC program requires that each ship maintain comprehensive records of its wastewater discharges. Included in these records are the amount and types of pollutants being discharged.

Figure 3: Scanship advanced wastewater treatment system on a Norwegian Cruise Line vessel. Pictured are two shipboard marine engineers charged with running the system. Courtesy Norwegian Cruise Lines.

Understandably, there is some overlap between the federal and state requirements, so ADEC (specifically, its CPVEC program staff) and the Coast Guard work together closely. For example, if a ship plans to discharge in Alaskan waters, it must provide both ADEC and the Coast Guard with a vessel specific sampling plan (VSSP). The VSSP contains the intended sampling techniques and analytical testing methods of the ship's discharge; it must demonstrate that samples will be representative of the wastewater discharged from that specific ship.

According to Ms. Moana Leirer, an environmental program specialist with ADEC, large cruise ships—which are defined by Alaskan law as 250+ passengers and federal law as 500+ passengers—have one of three options for wastewater discharge that must first be approved by the CPVEC program. These ships can:

1. hold their wastewater, discharging it outside of Alaskan waters (wastewater is therefore not sampled);
2. discharge their wastewater once they are at least one nautical mile from shore and traveling at least six knots (wastewater samples are required and must meet certain effluent standards); or
3. operate advanced wastewater treatment systems that are certified by the Coast Guard for continuous discharge.

A continuous discharge of wastewater, allowed by option three, initially sounds contradictory to the environmental concerns that provided the impetus for the many wastewater discharge regulations. However, the advanced wastewater treatment systems employed with this option are discharging some of the cleanest wastewater ever seen.

Advanced Wastewater Treatment Systems

In addition to the great partnership forged between the regulatory agencies and industry for this massive environmental cleanup, the second part of this success story is the technology that has been developed to improve the wastewater itself. While the regulations were first being formed, many of the cruise ship companies were already evaluating several advanced wastewater treatment systems. These included chemical treatment and mechanical decanting, activated oxidation and oxidant disinfection, reverse osmosis filtration, and bio-reactor/filtration.

Today, while some employ a reverse osmosis filtration system, the majority of cruise ships are using various combinations of enhanced bio-reactor/filtration systems. There are currently four basic designs from dif-

ferent manufacturers—Hamworthy, Rochem, Scanship, and Zenon being the most popular—but all function relatively the same (Figure 2). Hamworthy, Scanship (Figure 3) and Zenon are each biological reactor and ultrafiltration systems, while Rochem is a reverse osmosis ultrafiltration system.

The bio-reactor/filtration systems use an integrated system of enhanced aerobic digestion and low-pressure membrane filtration to treat the wastewater. Tank collection and sorting of waste that contains oils is critical to the process, since most of the systems cannot handle the introduction of oils. Soapy materials and biological agents are the primary targets for treatment. Ultraviolet radiation, which prevents reproduction of live bacteria like fecal coliform, is typically applied to the wastewater before it is sent to a holding tank or discharged overboard. Filtration is essential to all systems in sorting out solids, which are then handled by incineration or other solid waste disposal methods. One of the drawbacks of these bio-reactor/filtration systems, which also occurs with the reverse osmosis system, is that solid sludge is produced and must, therefore, be properly handled and disposed.

Maintaining Quality Assurance

As mentioned earlier, any cruise ship operating an advanced wastewater treatment system that wishes to have continuous discharge allowances must be certified by the Coast Guard for this purpose. First, though, each ship must submit the required VSSP to ADEC for approval. Once approved, the VSSP is submitted to the Coast Guard Captain of the Port, along with certification that the ship's treated wastewater already meets the minimum regulatory standards. The ship must present satisfactory sampling results from five separate days over a 30-day period.

Also crucial to receiving the continuous discharge permit is the development of a quality assurance/quality control plan (QA/QCP), which formalizes and standardizes the manner in which discharge sampling tests are collected and analyzed. To best ensure accurate samples, the QA/QCP also requires duplicate sampling, sampling audits, and a lab technical systems audit. It also lists all the pollutants to be tested and the EPA analytical methods to be used.

The QA/QCP must be approved by all affected parties, including the Coast Guard, ADEC, each participating laboratory project manager since multiple labs can be used to test samples, and the overall project quality assurance officer who oversees all the labs. This multiple approval requirement helps standardize the lab work and provides some oversight to ensure that the labs provide consistent data.

Once certified for continuous discharge, the Coast Guard requires the ship to submit two samples per month. The ship is also tested randomly twice per season by a third-party sampling team—once for conventional pollutants and once for conventional and priority pollutants. All testing is paid for by the cruise ships. These samples are closely monitored by the Coast Guard and ADEC, most notably through the QA/QCP.

To remain eligible for the continuous discharge permit, each ship's QA/QCP must be updated yearly to include the following information:

- sampling techniques and equipment;
- sampling preservation methods and holding times;
- transportation protocols, including chain of custody;
- lab analytical information including methods used, calibration, detection limits, and the lab's internal QA/QC procedures;
- quality assurance audits to determine the effectiveness of the QA program; and
- procedures and deliverables for data validation, to assess data precision and accuracy, the representative nature of the samples drawn, comparability, and completeness of measure parameters.[1]

While each ship is allowed to maintain its own QA/QCP, the majority of the 47 large cruise ships transiting Alaskan waters during the 2005 season have been represented by the North West Cruise Ship Association (NWCA) and use its specific QA/QCP (Figure 4).

Sampling

The number of samples in each sampling event is based upon the ship's configuration, its wastewater management practices, and the wastewater quantities discharged during the sample team's visit. Blind sample duplicates are also collected, which assess overall method variability and can assess bias or analytical errors not otherwise detected by the lab.

Mr. David Wetzel, president of Admiralty Environmental and lab project manager for NWCA's QA/QCP sampling project, helped develop the initial

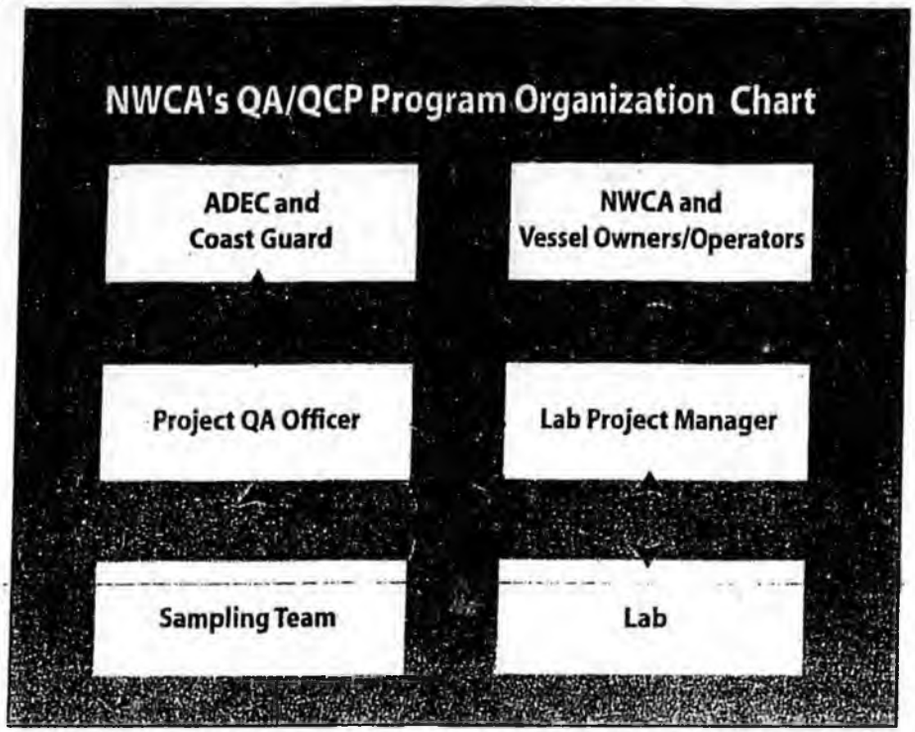

Figure 4: North West Cruise Ship Association's QA/QCP organization chart. Courtesy North West Cruise Ship Association.

set of sampling standards and lab analysis. According to Mr. Wetzel, reliable and representative samples are crucial to achieving valid readings. Therefore, specific sample collection procedures are detailed in each QA/QCP and each ship's VSSP is also submitted to the sampling team. With all groups working from the same documents, there is a stronger certainty that consistent sampling methods are followed and that samples are collected from appropriate and representative locations.

The Coast Guard also verifies installation of the sampling ports on the ships and reviews operations of the advanced wastewater treatment systems during their annual vessel examinations. Additional verification occurs during sampling events because exactness is vital to obtaining a true reading. For example, if a sample port is located too close to certain equipment, then the wastewater has not had a chance to mix before discharging and can produce a tainted sample.

While a third-party sampler takes all the required wastewater samples, it is the responsibility of the ship owner or operator to submit a report on the analytical results of sampling. The sampling analytical report must include the following:

1. date, time, and onboard location where each sample was collected;
2. sampling technique and analytical testing method used for each sample;
3. quality assurance and quality control analysis of the sampling, analytical testing, and analytical data;
4. analytical results;
5. any deviation from the approved plans submitted under 18 AAC 69;
6. type of wastewater sampled; and
7. if necessary, a notification that re-sampling is occurring. [2]

All sample analysis results are submitted by the independent labs directly to the Coast Guard and are reviewed to ensure that each ship is actually meeting all the requirements. The information is later released by ADEC. While samples do occasionally fall out of range, a compliance scheme allows the Coast Guard to average samples to ensure a ship meets compliance on a monthly basis versus an individual sampling event. Since the QA/QCP's inception in 2002, there has been an average of only one bad sample every two months, but these bad samples are usually later shown to have been tainted.

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Other States Implement Alaska's Standards

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similar regulations and have a memorandum of understanding signed, but there are some area-specific concerns. Because freshwater has a negative reaction on coral, Hawaii is understandably—but ironically—worried about too much clean water being discharged with the advanced wastewater treatment systems.

For other states or areas wanting to implement advanced wastewater treatment systems and the requirements that come with them, Mr. Wetzel points out that the focus should first be an agreement among all affected parties of the end goal, such as what types of discharges will be allowed or the quantity of the overall discharge. Mr. Wetzel observed that both the regulatory agencies and industry in Alaska recognized early on that completely eliminating discharges in Alaskan waters was not realistic, but that creating certain discharge standards was a more appropriate goal. Because this mutual agreement and goal recognition were realized early on, Mr. Wetzel notes, the positive changes were implemented so quickly.

EPA is also looking closely at Alaska's success. Authorized to create additional standards at its discretion, EPA is currently in the process of evaluating the cruise ship wastewater discharge requirements in Alaska. It recently distributed a review, "Survey Questionnaire to Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska," to all cruise ships authorized to carry 500 or more passengers for hire that traveled to Alaska in 2004. EPA also sampled wastewater from cruise ships to evaluate the onboard performance of various advanced wastewater treatment systems. Under Title XIV, EPA plans to develop standards for discharges of blackwater and graywater from cruise ships into Alaskan waters. Proposed changes to existing regulations are expected in mid-2006.

Proving the Technology Valuable

According to Mr. Wetzel, the greatest benefit of advanced wastewater treatment systems is the vast improvement of Alaska's water quality. He notes that these systems have reduced the discharge to being superior to even a municipal discharge on land. Mr. Wetzel attributes these improvements, in large part, to the collaboration between regulatory agencies and industry.

Mr. Eley wholeheartedly agrees. As one of the first participants in the ACSI, Mr. Eley remains involved today as a member of the QA/QCP review team. He remarks that the process from its very beginnings evolved quickly but that everyone was working toward the same goal: "I've never seen new technology and new engineering move so fast. And now all the groups are taking the technology and different practices and moving it forward; doing what's best for the environment."

These systems are not without obstacles, however, notes Mr. Richard Pruitt, director of environmental and public health programs for Royal Caribbean Cruise Lines (RCCL). Since RCCL installed its first advanced wastewater treatment system in 2001, RCCL has endured many learning curves. First, installation of the systems themselves has proven tricky. According to Mr. Pruitt, each system takes up a tremendous amount of space—a precious commodity on ships. Lots of technical resourcefulness is required in figuring out how to fit a system into an already compact area. This task is made especially more difficult since ships—even those in the same class—are often designed differently, thereby presenting each installation with its own set of placement dilemmas.

Financially, there is a huge initial cost in capital, and the continual costs of personnel time and operations, including electricity consumption, are substantial. Mr. Pruitt also observes that the systems themselves are still relatively new and continually being modified to meet the demands of each ship, so there are added costs involved with working out those specific issues. However, despite any drawbacks or concerns, both RCCL and Norwegian Cruise Lines have already agreed to install these systems fleet-wide.

In 2003 the cruise ships operating advanced wastewater treatment systems were sampled for 16 conventional pollutants and 160 priority pollutants. The vast majority of these pollutants were not detected, showing a dramatic improvement in the quality of the wastewater. Success is undeniable.

References

[1] Http://www.dec.state.ak.us/water/cruise_ships/pdfs/2004qaqcplan.pdf.

[2] Alaska law 18 AAC 69.055: Sampling and analytical testing report.

About the authors: Lt. Dan Buchsbaum has been in Coast Guard Reserve for 15 years serving as a marine inspector and recently assigned as assistant chief of Marine Inspection, Marine Safety Office Juneau, Alaska, where he is in charge of approvals for advanced wastewater treatment systems. His civilian career includes marine surveyor, marine insurance investigator, and offshore pipeline construction.

Ms. Jennifer Kiefer is a freelance technical writer currently working with SAGE Systems Technologies, LLC, on Coast Guard-specific projects. Prior to this assignment, Ms. Kiefer spent six years contracting as a technical writer at U.S. Coast Guard Headquarters in Washington, D.C.

Permits Estimates by Sector*

Summary - there are just over 200 permits covering approximately 2500 facilities. Of those, almost 1800 are placer mines, mostly small, recreational-sized mines.

	Individual Permits	General Permits	Facilities
Domestic	136	8	173
Seafood	9	3	203
Mining	14		14
Placer mines		3	1765
Industrial Stormwater		1	224
Log Transfer	2	2	90
Oil and Gas	14	3	68
Other	13		13
Municipal Stormwater	4		4
	192	20	2554

*Permit estimates are pending continued data reconciliation between state and EPA. Once the state recieves primacy for the permitting program, DEC will cover additional domestic discharges under general permits.

LETTERS ABOUT OCEAN RANGERS: Both of these letters appeared in the Anchorage Daily News and Juneau Empire.

Ocean rangers should be onboard cruise ships 100 percent of time

I have been following the ocean ranger argument with interest. When I voted for the initiative I thought it called for 100 percent at-sea coverage of cruise ships, and that the head tax on cruise ship passengers would cover the costs of the program. Now the Legislature wants to tweak the initiative so coverage at best would be intermittent at sea. Meanwhile, the state would have to pay for the ocean rangers' staterooms.

The fishing industry in Alaska has been required to carry at-sea observers for years at the individual vessel's expense. The fishing vessels pay (through third-party contractors) all expenses for the observers including salaries, insurance and travel. In addition, the fishing vessels provide meals and lodging while the observers are onboard. Why should the cruise industry get a free ride? Why should the state of Alaska have to pay the cruise line to berth an ocean ranger?

The cruise industry utilizes the resources of Alaska just as the fishing industry does and should be bound by the same principles and standards. Ocean rangers should be onboard 100 percent of the time and their costs should be borne by the cruise ship industry.

---- Jim H. Branson, executive director (retired)

North Pacific Fishery Management Council

Need for cruise ship observers imperative to ensure compliance

While negotiating with the cruise industry over delinquent head tax, the people of Yakutat discovered that cruise ships were discharging sewage from the 480,000 passengers and crew that visit each year into our bay. Our beaches are where our residents gather clams, kelp, muscles and a multitude of other subsistence foods, so you can imagine our concern. In addition to subsistence, Yakutat Bay is the home of our gillnet and troll fishery. After extensive negotiations, the industry reluctantly agreed to stop dumping, but there is no way to determine if they're living up to our agreement.

During the negotiations, we were assured we would be notified immediately of any environmental mishaps. A week after our 2003 meeting, a cruise ship struck a reef at the head of our bay, putting a 120-foot crease and a 10-foot hole in its hull, dumping whatever was in its ballast tanks. Yakutat was not notified, like promised a week earlier. The ship went aground at the head of our bay and continued on to Seward, a distance of over 300 miles, with a 10-foot hole in its hull.

An observer would ensure that ships are not dumping illegally, and environmental mishaps are reported.

---- Dave Stone, mayor

City and Borough of Yakutat

As cruise-ship traffic rises, so does the muck

4/20/07

By LAURIN SELLERS
THE ORLANDO SENTINEL

PORT CANAVERAL, Fla. — The few weathered shrimp boats that still sail into Port Canaveral are dwarfed by a fleet of luxury liners.

In the past two decades, Canaveral has transformed itself from a commercial fishing and cargo hub into the world's second-busiest cruise port, more than tripling its passenger counts to 4.6 million last year and pumping hundreds of millions of dollars into the region.

But what's good for the economy could be harming the environment, activists warn.

More ships certainly means more pollution," said Terri Shore, spokeswoman for Friends of the Earth, a national organization pushing for stricter regulations on the cruise industry. "There are very few enforceable standards on cruise-ship dumping and air pollution."

Seven cruise ships now call Port Canaveral home, and several others include it in their seasonal and special-occasion itineraries. Also, the gambling vessels Sterling Casino and SunCruz Casino sail daily from the Brevard County coast.

Environmentalists say a typical cruise ship on a one-week voyage generates more than 50 tons of garbage; 210,000 gallons of sewage; 1 million gallons of "gray water" from sinks, showers and galleys; and 35,000 gallons of oil-contaminated water. Much of the waste — some treated and some not — is dumped directly into the ocean, Shore said.

Ballast water, which is seawater pumped into the hulls of ships to keep them stable, also has created concerns. The water typically is taken in at one port and dumped at a destination port, possibly introducing invasive species into the area.

In recent years, the cruise industry, which paid hefty fines for illegal dumping during the 1990s and early 2000s, has taken steps to clean up its act by retrofitting cruise ships with advanced wastewater-treatment systems, upgrading systems to separate oil from water, and recycling or incinerating other waste.

But Shore and other environmentalists say it is not enough.

They are anxiously awaiting the results of a seven-year study by the U.S. Environmental Protection Agency to determine whether additional standards are needed. EPA's report could be released later this year, a spokeswoman said.

Port Canaveral officials said they routinely monitor water quality around the port and have found no problems.

"Port Canaveral is one of the most proactive ports in the country when it comes to protecting the environment, but we're cognizant of the limitations of state and federal laws," said Stan Payne, executive director.

Under federal law, it is illegal to dump untreated sewage closer than three miles from shore. Laws also regulate releasing bilge, ballast water and other waste.

But from 1993 to 1998, cruise ships nationwide were involved in 87 confirmed cases of illegal discharges of oil, garbage and hazardous waste, records show. Officials could not recall any recent cases involving cruise ships at Port Canaveral, whose passenger count is topped only by Port of Miami.

In 2001, Royal Caribbean admitted it had installed special piping to bypass pollution-control devices and was ordered to pay $33.5 million to settle dumping complaints that occurred between 1994 and 1998.

In 2002, Carnival Corp. was fined $18 million and placed on probation for falsifying records to cover up pollution by six ships. That same year, Norwegian Cruise Lines paid a $1 million fine for falsifying records involving the discharge of oily and other hazardous waste into the ocean.

And in April 2003, several cruise lines agreed to pay $75,000 to research ways of handling ballast water after environmental groups sued, saying it was being discharged illegally into shoreline waters.

The industry says it has cleaned up its act.

"The cruise-line industry has come an extremely long way since the days of the pollution violations a decade ago," said Michael Crye, vice president of Cruise Lines International Association, the largest in the nation with 160 vessels, including the major cruise lines. "The cruise industry today recognizes this environment is one we all share and is very important to our future. In order for us to prosper, we have to be good stewards, good neighbors."

Crye said CLIA's mandated practices and procedures now meet or exceed federal laws. For instance, the industry voluntarily agreed to follow stricter international guidelines that prohibit dumping sewage within 12 miles of shore, instead of three.

"But nobody is sure how well it's enforced," Shore said. "They (Coast Guard inspectors) would have to be there right at the moment to catch them. It's amazing that any got caught at all."

The law only requires that ships have approved and operable sanitation devices on board, said Lt. Patrick Eiland, supervisor of the Coast Guard's marine-safety detachment at Port Canaveral.

At least twice a year, inspectors board the ships to ensure the devices are working properly, he said. But no tests are done on the effluent that is pumped from them into the ocean.

"It could be filled with contaminants," Shore said.

Florida's gambling ships typically follow the minimum state standards, dumping hundreds of gallons of human waste daily three miles from shore.

"Each year, 1 million people use the bathroom off Canaveral alone," said state Rep. Bob Allen, a Republican, who is pushing state legislation to force gaming ships to haul their sewage to land-based pump-out stations.

"We're not picking on the gambling ships," Allen said. "It wouldn't matter if they were hosting a Christian Science Monitor reading room. It's the quantity and the frequency."

4/11/07

Dear Representative Fairclough,

Thank you for requesting information substantiating the need for the Ocean Ranger Program. The following table represents a partial list of discharges, violations, and convictions by the cruise industry in recent years. This list is by no means exhaustive, in large part because the industry is not under independent observation while under way. It is reasonable to assume there are more significant incidents that never see the light of day. I have also attached a recent newspaper article regarding the November 2006 dumping by a P&O cruise ship of ~100,000 gallons of waste oil on the island of Vanuatu. I hope this information helps you understand why Alaskans voted to establish the Ocean Ranger program, based on the analogous fisheries observer program that has served Alaska well for over thirty years.

I appreciate your concern for this matter.

Gershon Cohen Ph.D., Co-sponsor of the Alaska Cruise Ship Ballot Initiative

907-766-3005, Gershon@aptalaska.net

Significant Pollution and Environmental Violations and Fines, 1998 - 2007

(The information in this table was copied from the website www.cruisejunkie.com, and includes incidents reported by the media and in public documents)

Year	Ship, Cruise Line Explanation of Offense(s)	Fine	Nature of Offense
January 2007	*Dawn Princess*, Princess Cruises The cruise line agreed to a plea bargain under which it pays a fine of $200,000 and restitution of $550,000 after criminal charges were filed. The company was charged with failing to operate at a slow, safe speed while near humpback whales and in 2001 hit and killed a humpback.	$750,000	Whale strike
November 2006	*Mercury*, Celebrity Cruises The Seattle Times reports today that Celebrity Cruises faces a fine for the Mercury dumping 500,000 gallons of untreated wastewater into Puget Sound. Though it initially claimed it hadn't dumped, shipboard documents contradicted the company's claim. The dumping happened 10 times over nine days in September and October 2005.	$100,000	Untreated Wastewater
March 2006	*Texas Treasure*, Corpus Christi Day Cruise The ship's operator pled guilty to obstructing a US Coast Guard investigation into whether the ship had illegally discharged waste oil and deliberately bypassed its pollution prevention equipment. The incidents occurred in October 2004. Sentencing is scheduled for April 25, 2006; the proposed plea agreement includes a $300,000 fine and the institution of an Environmental	$300,000	Oil discharges

	Compliance Plan.		
March 2005	Disclosures of violation of MOU between the State of Hawai'i and the cruise industry: On March 12th the Honolulu Advertiser reported that Norwegian Cruise Line America's Pride of Aloha discharged about 70 tons of treated effluent into Honolulu Harbor last month, violating a voluntary agreement with the state. The state's agreement with the cruise ships allows such discharges at least a mile out from shore while traveling at least 6 knots. On March 16th, West Hawaii Today reported it had received numerous calls that Holland America's Statendam discharged what appeared to be "brown water" into Kailua Bay for about 15 minutes to 20 minutes before it moved further out to sea. Several of the callers reported the discharge left a "brown mark" on the vessel's side.	None	Violation of MOU
January 2005	The Washington State Department of Ecology issued a press release indicating 3 violations of its MOU with the cruise industry. One violation occurred on May 13 in Port Angeles, when Holland America Line's *Zaandam* discharged treated effluent through an advanced wastewater treatment system that Ecology had not approved. The *Zaandam* made only one port call in Washington in 2004. Princess Cruises' *Sapphire Princess* discharged treated effluent throughout the 2004 season through an advanced treatment system that had not received Ecology approval. The ship also released untreated waste water from its galleys and laundry during one voyage between Seattle and Victoria in June. Ecology is investigating the June discharge.	None	Violation of MOU
December 2004	*SunCruz*, JAB America JAB America, Inc., pled guilty to charges that one (1) of its vessels, the SunCruz VI, dumped garbage off its deck into waters of the United States while departing from Port Everglades on April 24, 2004. US Coast Guard surveillance equipment observed and recorded several filled plastic garbage bags being dumped overboard from the vessel into Government Cut near Fort Lauderdale.	Unknown	Plastic and garbage
November 2004	Holland America Line (Carnival Corporation) In August 2004, Holland America Line was notified by the National Park Service that the Volendam and Statendam may have violated opacity standards while operating in Glacier Bay. On November 10, 2004, NPS notified Holland America Line in separate letters that a Violation of Record would be entered in the permanent park files for each ship.	None	Air opacity
October 13, 2004	*Pride of Aloha*, NCL America Discharged approximately 300 gallons of effluent into Hilo Harbor	None	Violation of MOU
June 2004	Holland America Line (Carnival Corporation) Former Vice President, Richard K. Softye, was fined $10,000 after pleading guilty to falsely certifying that Holland America Line was performing environmental audits when it wasn't. He was also ordered to perform 450 hours of community service while on probation for	$10,000	Falsifying record

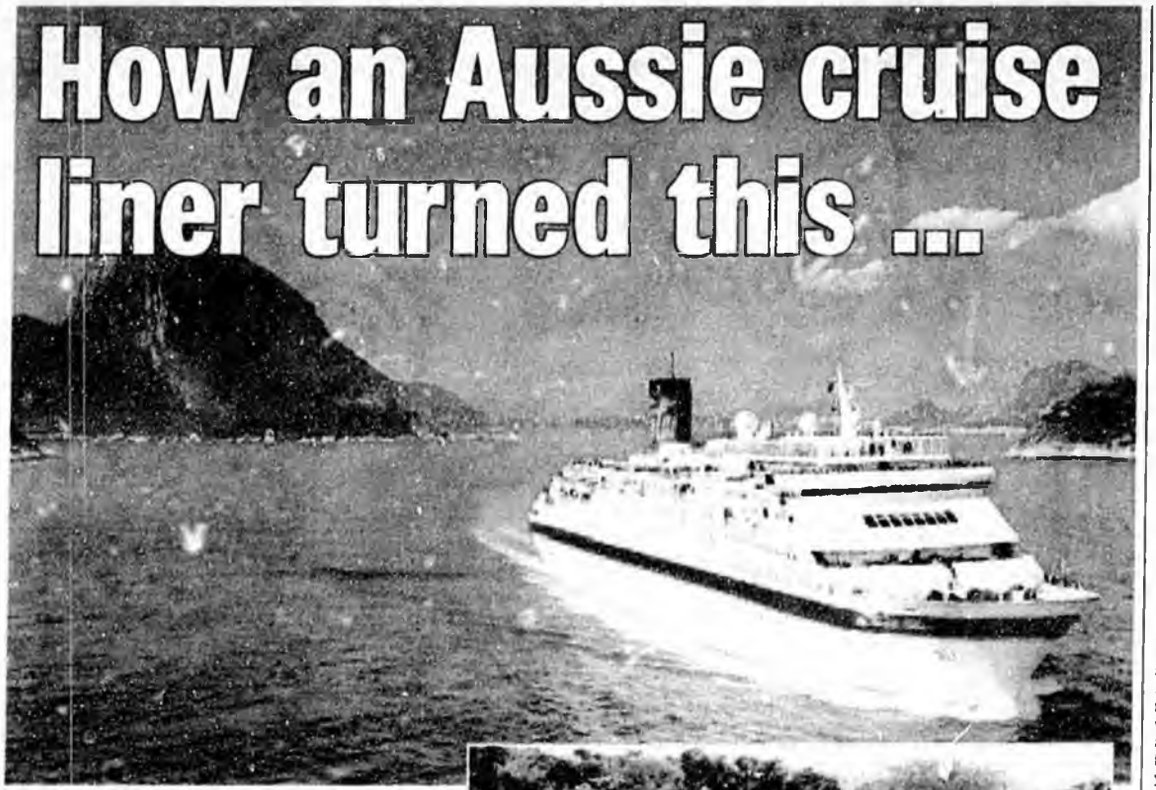
	three years.		
March 2004	Carnival Corporation Carnival Corporation reported in its 10Q filing with the Securities and Exchange Commission tha. on March 5, 2004, Holland America Line notified the United States and Netherlands governmental authorities that one of its chief engineers had admitted to improperly processing bilge water on the Noordam. A subsequent internal investigation determined that the improper operation may have begun in January 2004 and may have continued sporadically through March 4, 2004. The matter had also been raised by Coast Guard officials in San Juan, Puerto Rico to their counterparts in Tampa following a report to them of the incidents. It isn't clear whether Holland America's self-report predates the report made by the Coast Guard. Holland America Line and three shipboard engineers have received grand jury subpoenas from the Office of the U.S. Attorney in Tampa, FL (where the ship was homeported). (See CCL 10Q filed with the SEC on April 8, 2004)		Bilge water
December 2003	The Honolulu Advertiser reported there had been at least 14 violations of Hawai'i's MOU with the cruise industry in the first year. See Hawai'i MOU.html	None	Violation of MOU
October 2003	Carnival Cruise Line Carnival Cruise Line paid $200,000 administrative fee to settle with the California State Lands Commission over the cruise line's noncompliance with state ballast water discharge law.	$200,000	Ballast water
August 2003	Carnival Corporation In a petition filed with the U.S. District Court in Miami late last month, Carnival's probation officer in Fort Lauderdale, Fla., accused the company of violating terms of its probation by filing 12 false audit reports and asked that Carnival be required to pay another community-service fine. Carnival officials said they fired three environmental-compliance employees responsible for the reports. But the company did not admit to violating its probation.		Falsifying records
August 2003	At the new cruise ship terminal at the Port of Seattle, cruise ships fail to abide by requirement to use low-sulfur diesel while docked – a violation of the state environmental mandates for the project.		Air pollution
May 2003	Norwegian Sun, Norwegian Cruise Line The ship is cited by the State of Washington for an illegal discharge of 16,000 gallons (40 tons) of raw sewage into the Strait of Juan de Fuca (just off Whidbey Island, a popular vacation resort). The strait is known to be habitat for Orca whales.		Sewage discharge
February 2003	Norwegian Wind, Norwegian Cruise Line A couple aboard the ship reported observing whole beer bottles, whole wine bottles, beer and pop cans, corks, plastic plates, plastic utensils, plastic cups and organic material all being tossed into the ocean from the back of the ship. The ship was between Hawaii and Fanning Island. The company insists it did nothing	None	Disposal of plastics and other garbage

	illegal. The incident is being investigated by the US Coast Guard and EPA.		
January 2003	*Ecstasy*, Carnival Cruise Line The company reported an accidental discharge of 60 gallons of grey water while anchored at Avalon Bay (Catalina Island, California), approximately one-half mile from land.	None	Graywater discharge
October 2002	*Crystal Harmony, Crystal Cruises* Reported in March 2003 that contrary to a written promise to not discharge in the Monterey Bay Marine Sanctuary, the ship discharged 36,000 gallons of treated bilge, treated sewage, and grey water. The company stated that it didn't report the discharge because it wasn't illegal -- it only represented that they didn't keep their promise.	None -- but ship banned for life from Monterey, CA; Crystal banned for 15 years	Sewage discharge
Summer 2002	Holland America Line 1 ship cited for violations of air opacity regulations	$27,500	Air pollution
August 2002	*Ryndam*, Holland America Line Approximately 40,000 gallons (250 according to HAL) of sewage sludge discharged into Juneau harbor. The incident was reported by harbormaster staff. The brown, thick substance is being tested by Alaska's DEC for fecal coliform, pH, and biochemical demand levels.	$2 million in December 2004	Sewage discharge
July 2002 Plea Agreement	*Norway and "at least one other ship"*, Norwegian Cruise Line Norwegian Cruise Line pled guilty to on numerous occasions from 1997 through April 2000 that it routinely circumvented the oily water separator, allowing oily bilge to be discharged directly into the sea. The company was given a lenient sentence because it reported its practices to the Department of Justice.	$1.5 million ($1 million fine and $500,000 in court-ordered community service to fund environmental projects in South Florida	Oil discharges
April 2002 Plea Agreement	*Ecstasy, Fantasy, Imagination, Paradise, Sensation, Tropicale*, Carnival Corporation Carnival Corporation pled guilty to numerous occasions from 1996 through 2001 that it discharged oily waste into the sea from their bilges by improperly using pollution prevention equipment. In addition, the company falsified Oil Record Books in order to conceal its practices. The plea agreement only focuses on Carnival Cruise Line (and dismisses any future charges against other Carnival Corp. subsidiaries), however it only applies to the Southern District of Florida. Other federal jurisdictions may pursue independent investigation and prosecution.	$18 million ($9 million fine and $9 million in court-ordered community service to fund environmental projects in South Florida	Oil discharges
December 2001	*Zenith*, Celebrity Cruises A compliance audit under the plea agreement between Royal Caribbean and the US Department of Justice found that a 55-gallon drum of hazardous waste generated by the print shop was landed at Tampa as non-hazardous waste.	None	Improper disposal of hazardous waste
October 2001	*Spirit of Oceanus*, Cruise West Discharged 24,000 gallons of graywater in the port of San Diego		Graywater discharge
Summer 2001	Carnival Cruise Line, Celebrity Cruises, Crystal Cruises, Holland America Line, Norwegian Cruise Line,	Carnival Cruise Line ($27,500 -- suspended) Celebrity Cruises ($55,000, 1.2	Air pollution

	Princess Cruises 11 ships (six companies) cited for violations of air opacity regulations	suspended) Crystal Cruises ($55,000 – 1/2 suspended) Holland America ($27,500 – suspended) Norwegian Cruise Line ($27,500) Princess Cruises ($55,000 – suspended) Royal Caribbean Int'l ($27,5000 – suspended)	
June 2001	*Rhapsody of the Seas*, Royal Caribbean International Discharged 200 gallons of graywater into Juneau harbor.	Unknown (up to $25,000 is allowed)	Graywater discharge
June 2001	*Mercury*, Celebrity Cruises Discharged treated wastewater at Juneau without required permits. Tests of the wastewater indicated that it was more acidic than permitted for discharging within a mile of shore.	Unknown (up to $25,000 is allowed)	Wastewater discharge
May 2001	*Westerdam*, Holland America Line Discharged gray wastewater while docked in Juneau – estimated by Holland America Line at 30 to 100 gallons (the pump's output is 200 gallons per minute, so the estimate appears low).	Unknown (up to $25,000 is allowed)	Graywater discharge
May 2001	*Norwegian Sky*, Norwegian Cruise Line Discharged black water (sewage) for 20 to 30 minutes (meaning a waste stream of up to three-quarters of a mile) while the vessel was en route from Juneau to Ketchikan and within 3 miles of the Alexander Archipelago. Fecal coliform counts were 3500 times the allowable federal standard and total suspended solids 180 times the standard.	Unknown (up to $25,000 is allowed)	Sewage discharge
Jan - May 2001	*Holiday*, Carnival Cruise Line Discharges 768,000 gallons of greywater (nearly 40,000 gallons per week for 20 weeks) into the port of San Pedro, California	None	Graywater discharge
Summer 2000	Carnival Cruise Line, Celebrity Cruises, Crystal Cruises, Holland America Line, Norwegian Cruise Line, Princess Cruises, World Explorer Cruises 15 ships (7 companies) cited for violating Alaska's state smoke-opacity standards when they were docked in Juneau between mid-July and mid-August	Carnival Cruise Line ($27,500) Celebrity Cruises ($55,000) Crystal Cruises ($55,000) Holland America ($165,000 – $55,000 suspended) Norwegian Cruise Line ($27,500) Princess Cruises ($55,000) World Explorer Cruises ($27,500 – $10,000 suspended)	Air pollution
January 2000 Plea Agreement	Royal Caribbean Cruises Ltd. State of Alaska charged RCCL in August 1999 for seven counts of violating state laws governing oil and hazardous waste disposal. In January 2000, RCCL pled guilty to dumping toxic chemicals (including dry-cleaning fluid) and oil-contaminated water into the state's waters.	$3.5 million	Discharge of toxic chemicals, oil discharge
Summer 1999	Carnival Cruise Line, Celebrity Cruises, Holland America Line, Norwegian Cruise Line, Princess Cruises, World Explorer Cruises 13 ships(six companies) charged by the Environmental Protection Agency for air pollution violations in the waters of Juneau, Seward and Glacier Bay	Carnival Cruise Line ($55,000) Celebrity Cruises Holland America ($55,000) Norwegian Cruise Line ($55,000) Princess Cruises ($110,000) World Explorer Cruises (unknown)	Air pollution
July 1999 Plea Agreement	*Grandeur of the Seas, Majesty of the Seas, Monarch of the Seas, Nordic Empress, Nordic Prince, Song of America, Song of Norway, Sovereign of the Seas, Sun*	$18 million ($3.5 million designated for the National Fish and	Oil discharge, discharge of hazardous

	Viking, Royal Caribbean Cruises Ltd. The company pled guilty in six jurisdictions to charges of fleet wide practices of discharging oil-contaminated waste, regularly and routinely discharging without a permit wastewater contaminated by pollutants through its ships' gray water systems, and making false material statements to the Coast Guard. These practices occurred fleet-wide into 1995 and occurred on one ship as late as 1998. Among the violations supporting this guilty plea were repeated oil discharges from the Nordic Prince into the waters of Alaska's Inside Passage during 1994. Jurisdictions: Miami ($3 million), New York City ($3 million), Los Angeles ($3 million), Anchorage ($6.5 million), Puerto Rico ($1 million), US Virgin Islands ($1.5 million)	Wildlife Foundation and $2.5 million to the National Park Foundation)	waste, falsifying records
September 1998	*Island Adventure*, Meridian Ship Managers 200 gallons of fuel oil spilled into the Intracoastal Waterway, Port Everglades, FL	$5000	Oil spill
June 1998 Plea Agreement	*Sovereign of the Seas, Monarch of the Seas, Song of America, Nordic Prince, Nordic Empress*, Royal Caribbean Cruises Ltd After *Sovereign of the Seas* was found discharging oily bilge waste approximately 8-12 miles from San Juan Harbor, PR on October 25, 1994, an investigation found the ship's engineers routinely discharged oily waste overboard instead of processing it through the ship's oily water separator. In addition, employees on all five ships falsified oil record books and made false statements to the Coast Guard to conceal illegal discharge practices.	$8 million ($1 million designated to the National Fish and Wildlife Foundation	Oil discharge, falsifying records
June 1998 Plea Agreement	*Nordic Empress*, Royal Caribbean Cruise Ltd Ship observed and filmed by Coast Guard aircraft as it discharged oil while en route to Miami, FL. The company pled guilty to the willful presentation of a false oil record book for the ship during a US Coast Guard Investigation. In addition, investigations revealed that the ship had been fitted with a bypass pipe allowing employees to discharge bilge waste from the ship without first processing it through an oily water separator	$1 million	Oil discharge, falsifying records
June 1998 Plea Agreement	*Rotterdam*, Holland America Line In 1994, discharged waste 13 times in 10 days into Alaskan waters. The ship had fixed, permanent piping that allowed oily waste to be discharged directly overboard.	$2 million ($1 million fine, $1 million restitution)	Oil discharge
March 1998	*Statendam*, Holland America Line 210 gallons of oil spilled into Los Angeles Main Channel, CA	$800 fine $50,000 restitution	Oil discharge

How an Aussie cruise liner turned this ...



ENVIRONMENTAL HAZARD: Vanuatu locals are outraged over the dumped engine "sludge".

P&O PASSENGERS on the Brisbane-based Pacific Star have faced a backlash from Vanuatu locals, furious over allegations the cruise liner has illegally dumped up to 500,000 litres of oil.

News of the mass dumping of engine "sludge" infuriated taxi drivers who went on strike, refusing to transport P&O passengers from the cruise ship terminal to Port Vila and forcing them to walk the 5km into town.

Police and the Vanuatu Maritime Authority are investigating the dumped oil while local government authorities are calling for harsh fines, totalling $35 million (VUV 3 billion), to be issued.

P&O has apologised for the dumping since it was discovered by Sunshine Coast Daily journalist Michele Sternberg, who visited the Teouma dump site while holidaying on the island.

She said the level of environmental vandalism was "unimaginable".

"This is dumping on a massive scale.

"It appears they've dug deep holes, lined some with a thin plastic and just poured hundreds of thousands of litres of oil in.

"When news broke, someone's come in and tried to cover some of the oil with dirt but it's still seeping out."

She said the main concern at the picturesque Teouma site was that about 100 villagers lived within 800 metres of the dump site and a school was less than 1km away.

"This area is on the side of a hill and below is a river which the villagers use for drinking, washing and their children swim in.

"The river is in the direct line of this oil spill."

Pacific Star passengers were horrified to learn of the oil dumping when they arrived in Vanuatu last week, some saying they would boycott P&O in future.

"I would get off now and fly home, except I've paid so much money for this cruise," said one passenger, who did not want to be named.

The captain of the P&O Pacific Sky would have been "well aware that Vanuatu is not capable of receiving engine dirty oil", according to Commissioner of Maritime Affairs Jess John Napuati.

He said the ports of Apra in Guam, Noumea in New Caledonia, Papeete in French Polynesia and Suva, Vuda Point and Lautoka in Fiji are Regional Ships' Waste Reception Centres. Vanuatu is not.

The cost of oil disposal in nearby Noumea and Fiji is about $US30,000.

P&O is alleged to have paid just $A230 per truckload to dump in Vanuatu.

"The oil spill ... is of high interest to every inhabitant of Vanuatu since such an incident may occur in the future if appropriate measures are not taken," said Mr Napuati.

Port Vila Municipality confirmed the dumping site at Teouma was approved only for sewage disposal and similar wastes.

Ernest Bani, of the Vanuatu Environment Unit, has called for the company to remove all the oil from the dump site.

"I don't think that P&O giving an apology is enough because it doesn't help the situation.

"It's something we can't accept and just saying 'we're sorry' is not good enough."

Vanuatu law provides for the boat to be confiscated and held until a court case settles the matter, according to Michele Kalwarat, Acting Secretary-General of Shefa Provincial Council.

Meanwhile, a former Pacific Star employee has alleged that he witnessed the dumping of oil at sea from the cruise ship in October 2005, which left a 3km oil slick.

He said that from the casual nature in which the dumping was carried out, it appeared that the practice was not a one off.

NEWS BRIEFS

Body in river

POLICE have found a body in a river in south-east Queensland where a man went missing on Saturday night. A police spokeswoman said the discovery was made in the Mary River, south of Maryborough, at about 11.15am yesterday. Police are yet to confirm whether the body is that of a 21-year-old man who went missing after swimming in Maryborough's Riverside Park. — AAP

Chemical scare

ELEVEN coal miners have received treatment in a central Queensland hospital after being exposed to a potentially hazardous substance. The workers from the underground section of BHP Billiton's Gregory mine, north of Emerald, were taken by ambulance to Emerald Hospital about 12.30am yesterday. A spokeswoman said the men had been exposed to the industrial chemical potassium superoxide. — AAP

Anti-smoking ads

A GRAPHIC new anti-smoking commercial which features a female smoker disfigured by mouth and throat cancer has aired in Queensland. The commercial is the second in a series of major health warnings about smoking, with the first focusing on amputation risks. Because of its graphic nature, the new advertisement will air after 9.30pm. — AAP

Track drinkers

POLICE patrolling Flemington racecourse during Melbourne Cup Week have reported an "alarming" surge in underage drinking. Victoria Police Inspector Stephen Mutton said 138 young people were caught either drinking or in possession of alcohol during the four race days. Police and security staff also confiscated almost 50 false or altered forms of identification in just one day. — AAP

Tip-off claims

NSW coalition MPs Adrian Piccoli and Andrew Constance have strongly rejected claims they tipped off sacked Aboriginal Affairs Minister Milton Orkopoulos about a police investigation into child sex allegations. The pair were dragged into the scandal after sworn claims by ALP backbencher Jan Burnswoods. — AAP

HB164

Investor Relations

Overview

Latest Conference Call

Q4 2006 Royal Caribbean Cruises Ltd. Earnings Conference Call
Monday, February 5, 2007 10:00 a.m. ET

Latest Press Release

04/02/07
Royal Caribbean International, Celebrity Cruises Award 15 Marine Conservation Grants Totaling $796,000

View all Press Releases

RCL (Common Stock)	
Exchange	NYSE (US Dollar)
Price	$42.12
Change (%)	▼ 0.04 (0.09%)
Volume	849,000

Data as of 04/02/07 4:00 p.m. ET
Minimum 20 minute delay
Refresh quote

Corporate Information

1050 Caribbean Way
Miami, FL 33132
Phone (305) 539-6000

Transfer Agent

American Stock Transfer and Trust Company
6201 15th Avenue
Brooklyn, New York 11219
800-937-5449
www.amstock.com

Corporate Counsel

Bradley Stein
Royal Caribbean Cruises Ltd
1050 Caribbean Way
Miami, FL 33132

Independent Accountants

PricewaterhouseCoopers, LLP
1441 Brickell Avenue, Suite 1100
Miami, FL 33131-2330

Investor Relations Contact

Greg Johnson
Phone (305) 539-6153
Fax (305) 539-0562
investorrelations@rccl.com

Press Releases

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Royal Caribbean International, Celebrity Cruises Award 15 Marine Conservation Grants Totaling $796,000

MIAMI, April 2 /PRNewswire-FirstCall/ -- The Royal Caribbean International and Celebrity Cruises Ocean Fund awarded $796,000 on March 30 in 15 new grants to marine conservation and environmental organizations, including a $100,000 grant to The Conservation Fund for its Alaska land preservation program and a $100,000 grant to Conservation International for its campaign to conserve Caribbean biodiversity.

Almost $9 million has been awarded to 64 non-profit organizations working to protect the marine environment since the fund's inception in 1996. The mission of the Ocean Fund is to support efforts to restore and maintain a healthy marine environment, minimize the impact of human activity on this environment, and promote awareness of ocean and coastal issues and respect for marine life.

"There are so many fascinating and vital marine conservation efforts under way by our grant applicants," said Richard Fain, chairman and CEO of Royal Caribbean Cruises Ltd. "We applaud our 2007 Ocean Fund grant recipients for their efforts in research, education and developing innovative technologies that help preserve the world's oceans."

The complete list of 2007 Ocean Fund grant recipients is as follows:

-- Audubon of Florida: $30,000 to continue satellite telemetry tracking of migration patterns of roseate spoonbills in the Florida Bay Ecosystem.
-- Blue Ocean Institute: $50,000 to support Safe Seas, a program that works with communities in the Pacific to keep albatrosses and sea turtles from drowning in longline and gillnet fishing gear, and to reduce hunting of sea turtles in Latin America.
-- Caribbean Conservation Corp.: $40,000 to produce a video series, "Ocean Fund Eco-Explorations," in partnership with Open Water Media. The videos will be used in the new Barrier Island Sanctuary Management and Education Center in Melbourne Beach, and for distribution to schools and museums.
-- Conservation International: $100,000 for continued support for its Campaign to Conserve Caribbean Biodiversity: in the Saba Bank/Netherlands Antilles; the Straits of Florida; the Dominican Republic; and the Southern Caribbean World Heritage Site.
-- Earthwatch Institute: $25,000 for creating an Ocean Fund Marine Science Educators fellowship program for high school teachers from Florida and Texas to participate in field research expeditions.
-- Harvard Medical School, Center for Health & Global Environment: $50,000 to create exhibits for its "Healthy Ocean, Healthy Humans" project to accompany a related film, which will be shown at aquariums and museums.
-- Island Dolphin Care: $25,000 to fund developing educational materials and to maintain the facility's touch tank, seven aquariums, and exterior tidal pool to serve critically ill and special-needs children in Key Largo, Fla.
-- The Nature Conservancy: $50,000 for its program to promote conservation of coastal habitats in southeast Alaska; and $50,000 to design coral reef management strategies in Florida.
-- Oregon Institute of Marine Biology of the University of Oregon: $45,000 to buy a scanning electron microscope to help identify and determine growth rates of small organisms related to toxic algal blooms, invasive species, and fisheries management.
-- Perry Institute for Marine Science: $30,000 to evaluate marine-

protected areas in the Bahamas, both existing and proposed, and to improve protection of coral reefs through adaptive management.

-- Shake-A-Leg Foundation Miami: $75,000 for continued support for $3.95-million eco-island project to provide educational, recreational, and island restoration activities for students with disabilities and at-risk youth.

-- South Florida National Parks Trust: $25,000 to hire a second full-time ranger to lead environmental education programs for 4th- through 8th-grade students at Biscayne National Park.

-- University of Miami Rosenstiel School of Marine & Atmospheric Science: $51,000 for to continue the Royal Caribbean Fellowship Program to support two incoming graduate students.

-- World Wildlife Fund: - $50,000 in support of its Smart Gear initiative, to reduce the bycatch of endangered marine species by encouraging the development of innovative, practical and cost-effective fishing technologies.

Royal Caribbean Cruises Ltd. is a global cruise vacation company that operates Royal Caribbean International, Celebrity Cruises and Pullmantur. The company has a combined total of 34 ships in service and six under construction. It also offers unique land-tour vacations in Alaska, Australia, Canada, Europe and Latin America. Additional information can be found on www.royalcaribbean.com, www.celebrity.com, www.pullmantur.es or www.rclinvestor.com.

SOURCE Royal Caribbean Cruises Ltd.
-0- 04/02/2007
/CONTACT: Lynn Martenstein, +1-305-539-6573, or Jennifer Smith +1-305-539-6574, both of Royal Caribbean Cruises Ltd.
/Web site: http://www.royalcaribbean.com
http://www.celebrity.com
http://www.pullmantur.es
http://www.rclinvestor.com /
(RCL)

CO: Royal Caribbean Cruises Ltd; The Royal Caribbean International and Celebrity Cruises Ocean Fund
ST: Florida
IN: TRA LEI ENV
SU: NPT RCY

AM-HB
-- CLM356 --
6520 04/02/2007 14:10 EDT http://www.prnewswire.com

TO : House Judiciary Committee Members
FR: Chip Thoma, Juneau, Cruise Initiative Supporter
RE: HB 164, relating to Ocean Rangers
DATE: March 28, 2007

The Cruise Initiative was approved by 81,000 Alaska voters in the August, 2006 primary election. It is scheduled for implementation in May. The proposal today in HB 164 would gut the onboard observer program, though it is fully paid for and supported by cruise passengers. Every passenger poll has shown widespread support for these anti-pollution measures, worldwide.

There is no good reason to eliminate this section. In fact, doing so begs the question, What Are The Cruise Lines So Afraid Of? HB 164 repeals part of the Cruise Initiative before it is even implemented.

The issue is certainly not cost. The initiative language does not require 24/7 coverage, as all ship discharges are made at night, while underway. Consequently, only one Ranger is appropriate per ship, working the night shift, and observing the ship discharges.

Full funding is there, and will be every year, to run an accountable cruise ship observer program. It will not cost "more than $5 million" as the critics have portrayed it. Most of that exaggerated cost involves paying the ships $3000 per week for each observer to have a berth and meals. THAT is the budget problem, not the $4 observer tax.

Also, there has been a very successful fisheries observer program in the North Pacific for 30 years that has never been a burden to the industry. In fact, fisheries and consumers benefit from this program.

In conclusion, the observer section of the Cruise Initiative should be supported by the Governor and the Alaska Legislature. Alaska voters and cruise passengers approve of the measure, and there are adequate funds to operate every year.

The onboard observer program of the cruise initiative is vital to "Trust, but Verify" the actions of these foreign-owned ships as they do business, BIG BUSINESS, in Alaska waters. Thank you.

A.D.N. Compass Submission

A loose definition of a watershed event might be "a singular defining moment that marks a paradigm shift in thought and actions, and which causes long –term systematic change of lasting significance".
On a symbiotic note, a "watershed event" of a more base definition, the Cruise Ship Initiative of 2006, which demanded long –term changes of lasting significance in physically managing our watersheds-------and had the impetus to become a reality through the initiative and legislative processes----- instead has been altered by the House Transportation Committee to something not even remotely similar to its original intent.

When pondering the Cruise Ship Initiative or indeed the Pebble Mine, a number of similarities continue to crop up in how the affected economic/industrial parties respond when they feel their corporate interests threatened. First they mount vast campaigns spending millions of dollars spinning the web of half-truths and dire economic predictions if things don't go their way. Then they divide area towns with the promise of wealth on one hand, and economic catastrophe on the other if they don't get their way. This tactic was used against Haines, Seward and Whittier. The initiative resolved this divide and conquer ploy by making it a state-wide policy.

When their propaganda fails and initiatives pass, rather than being good citizens and conceding the people of Alaska mean business in keeping our waters clean, the companies immediately respond by hiring high-priced P.R. lobbyists such as former heads of purely pro-tourist organizations in Anchorage and another high-profile politician/tour entrepreneur individual from Interior Alaska. Pebble is reportedly paying one prominent S.W. Alaska Native political activist $300,000 annually to tout its gospel. They would much rather fight for every dime they can get than actually working with seriously concerned citizens for a long term productive relationship. The cruise industry refers to our state as their "Alaska Property" in the tourism parlance and I find it offensive that they would be so presumptuous after so many years of callously polluting our waterways.

This lack of transparency on their part further hurts their cause when they lobby legislators to water down (how appropriate) the heart of an initiative's intent.
I've worked in the resource extractive sector of our economy for many years including marine transportation and it could be said I'm going against work opportunity for myself by speaking out. So be it. I'm also a passionate advocate for shellfish mariculture which depends on clean water to maintain our reputation for the worlds' best seafood
I am certainly not a raving greenie who is against rational development and I find a former House Speaker's comments as usual disturbing and offensive. She doesn't have any more roots in this place than me, but she is always willing to advocate for any project no matter the ultimate cost.
Jobs are absolutely necessary indeed, but jobs at the cost of destruction of what makes Alaska the unique place it is will always be unacceptable no matter how many foreign owned corporations howl about their sacred profits.

The cruise industry says "Trust us", just as they did in the recent committee hearings where they violated the intent and turned the Ocean Ranger program into a redundant, emasculated Dock Ranger show. How absolutely despicable when you get the true picture of how inconsequential the dollar amounts are to effect a ship-board observation program relative to the cruise industry's world-wide revenues.
In an AP story from Miami (home of Carnival Cruises) just after last years election, it was estimated the cost of the industry absorbing the head tax and implementing the observer program out of pocket would cost between .09 and .11 cents on values of approximately $40 per share. This is indeed a big business and no matter how they sugar-coat it they are about profits and nothing else.

Their supposedly new "green" approach as evidenced by deeds such as last year where a friend of mine hauled up a shrimp trawl full of chef-cut melon rinds from 200 fathoms in Wells Passage (PWS) begs to differ. Canadian beaches on the Inside Passage are fouled with greasy soap scum from their wakes. If they cared you'd think they would obey laws and voluntarily change, but think again. Alaskans have been victimized for years and unless vigilant, the industry bean counters will prevail.

Our watersheds from Bristol Bay through Canada are priceless. So whatever these companies have to pay to keep them as noted, it is still the best deal for us and them.

David Otness
Seward, Alaska

Jobs are Alaska's Future

ALASKA DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

FAX Transmittal

SARAH PALIN, GOVERNOR

Employment Security Division

Seward Job Center
PO Box 1009
Seward, AK 99664-1009
Phone: 907-224-5276
Fax: 907-224-5277

To: REP NANCY DAHLSTROM	**Date:** 3-29-07
Fax No.:	**Fax No. of Sender:**
From: DAVID OTNESS	**Subject:**

Page 1 **of** 4

COMMENTARY ON HB 164

FROM 3-28 TESTIMONY

HB 164
House Judiciary Committee

March 29, 2007
Seward, Alaska

Dear Rep Dahlstrom,

This is regarding my testimony on HB 164 yesterday. My comments were off the cuff as I wasn't aware of the committee meeting until reading the ADN late in the morning. I shall try to clarify.

FYI, I am a quite conservative individual, although not politically affiliated. I was one of Gov. Palin's most ardent supporters for the duration of the 2006 campaign and first offered my encouragement in 2005. In yet another pro-Palin commentary piece unpublished by the ADN, I brought up the injustices heaped upon you and Rep Lynn by the former power structure and how change was needed, even if it meant getting some Democrats elected. Rep Doogan is actually surprising me positively. The point is, we constituents were very dissatisfied with how our state's business was being conducted and that people of principles were being excluded. Working for candidate Palin refocused and energized myself and obviously many others.

Regarding HB 164, I know of no other means to describe the efforts of Reps Jonansen and Ramras than as an unmitigated attempt to thwart the will of the people as expressed in Proposition 2. Even in heavily cruise industry dependent Seward it passed by a reasonable margin after the summer-long onslaught of commercials from the industry. These two representatives, by all appearances, show an apparent industry bias masked as "efficiency" in HB164 and the proposed amendment.

We, the People, did not ask for funding for the Sea Life Center, GOA Keeper, or the other group mentioned in the proposed amendment; we demanded on-board oversight of an industry with a bad track record world-wide, rather than probation or unconditional parole. Indeed, the ballot initiative's passage should be viewed as posting a bond rather than the outright pardon this bill ingenuously pre-supposes to foist upon a very educated public. This puts foxes in the hen house and inmates running the asylum. I <u>am</u> trying to be civil in the face of my perceived corruption of the initiative's intent. Please forgive my seeming temerity, I am passionate about my life-long home and at 56 years of age see a lot of forces arrayed against the long term gain we might achieve by getting this right the first time.

Because of yesterday's technical difficulties during the committee hearing, I was not able to hear the full testimony until it came up on "Gavel to Gavel" at 0100 hrs this morning. I found Mr. Shively's comments somewhat perplexing regarding a full-time cruise ship supervisor needed for individual Ocean Rangers based on "security". A U.S. Merchant Mariner's Document, (MMD), is a Federally recognized high security I.D. issued by the Department of Homeland Security, which oversees the U.S. Coast Guard. We are even being required to obtain biometric-scan I.D. cards in addition to our original documents. I know because it is another $140.00 out of my pocket to stay employed.

As Merchant Mariners we are sworn in and take an oath to protect and defend the U.S. Constitution just as other members of the Armed Forces.
I feel Ocean Rangers should take the same oath to the State of Alaska.
We also have extensive first aid, firefighting and other relevant required safety procedural training at AB (able bodied seaman) ratings and above.

With the intent of the initiative intact, I would like to offer up a logical and reasonable compromise to the parties.

Whether through smaller tonnage Marine Engineer endorsements, or even Unlicensed Engineers, there is a pool of people who can qualify to do the job description with adequate training specific to the wastewater systems of these ships. I would even consider the wastewater training myself, and know others who would. If this is construed as looking for a job, forget it. There is so much work in the marine field right now we are worried about Congress authorizing foreign nationals to fill U.S. jobs. It only points to the need we have to encourage young people to fill so many available jobs in all sectors of our economy. Last year, the average age in the U.S. Merchant Marine was 48 years. And these are well paying jobs. Whatever occurs, this suggestion is a possible solution

It seems to me the sanitation aspects of passenger safety and health should be monitored onshore by HACCP trained DEC personnel. It's a whole new ballgame with re-circulating air systems that harbor potential pathogens.
Mr. Ruaro's assertion of passing 405 USPHS inspections makes me wonder how many were based on Norwalk virus outbreaks rather than overboard discharge issues, and if it is really possible to get a handle on these diseases without a trained epidemiologist aboard as well.
Perhaps a comparative study could be initiated to ascertain our DEC efforts relative to containment in other states/countries. This is a serious health issue in our state that could cause further, more serious outbreaks than we have experienced in our towns so far.

This industry is a double –edged sword, there is as much not to like about it as there is to like. We must address both sides honestly and effectively.

Any help I can offer on this matter, please don't hesitate to contact me at: 907-362-6100 or

diounderthevolcano@yahoo.com

Sincerely, Captain David J. Otness

I am enclosing an ADN Compass piece submission I sent in this week.
Thanks for hearing me out.

Emily Stancliff

From: Terry [terry@pobox.mtaonline.net]

Sent: Monday, March 26, 2007 12:55 PM

To: Rep. Jay Ramras

Cc: Rep. John Coghill; Rep. Ralph Samuels; Rep. Nancy Dahlstrom; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg

Subject: ocean rangers

Rep Ramras:

I have mostly found as a legislator in Juneau, you voting with the voice of reason. I hope that you are ready to buck the tide regarding the eliminating the ocean rangers in HB164.

I urge you to do the right thing and drop any amendments to this citizen's initiative. Everyone knows you can massage numbers to make a point. If your members really feel that cost is a factor then I suggest you let the initiative stand as it is written and bring it back to the table after the time in which you have real numbers to make the point.

These kinds of antics in Juneau are why the public loses faith in the system. Again I urge you as chair to allow the initiative to remain as it was originally passed by a vote of the people.

Thank you for your consideration.

Terry Snyder
Big Lake, Alaska

AOOS
Alaska Ocean Observing System
1007 W. Third Avenue, Suite 100
Anchorage, AK 99501
907.644.6703 – phone
907.644.6780 – fax
www.aoos.org

March 27, 2007

Representative Jay Ramras
Alaska State House of Representatives
Juneau, AK

Dear Representative Ramras:

I am director of the Alaska regional component of a new federal program dedicated to doing a better job of monitoring Alaska's oceans and coast. The program is end-user driven, and scientifically based. Our goal is to tie together all the disparate pieces of monitoring that currently exist – federal, state, local and private, integrate them into products that decision-makers find useful, and help determine the significant gaps that need to be filled. We've made a start at this and you can find it on our website: www.aoos.org.

This is a challenge in Alaska, given our 43,000 miles of coastline, most of which is remote, and often extreme weather conditions. The program that I am operating has the same funding level as that of southern California – 43,000 miles of coastline versus 500 or so. We continue to hear about the need to show state, local and private financial support whenever possible.

Establishing an Alaska Oceans Fund would be a tremendous asset to Alaska and provide significant leveraging opportunities. Funds could be used to provide real-time information on tides, winds, waves, currents, and other ocean conditions that are important to all marine navigators, whether they be recreational boaters, tug and barge companies, or cruise ships. A system like this would be used by the Coast Guard search and rescue teams for boats in distress, by the fishing fleet looking for better forecasts of ocean conditions during season openers, by all vessels transiting Alaska waters so they operate more safely and reduce the possibility of future oil spills, and by resource managers and permitters. Funds also could be used to better predict harmful algal blooms and other diseases that could negatively impact shellfish and fish, map essential habitats, and predict coastal erosion events. The list goes on.

Funds could also be used for ocean education activities. The vast majority of Alaskans live on or near the coast, yet many are not well informed about the importance of the ocean in our lives. Alaska could take a lead role in helping promote ocean literacy. One opportunity to promote responsible ocean stewardship is with citizen-based science – getting school kids, as well community residents, to take an active role in monitoring their backyard.

I serve on a national advisory committee that provides advice to the federal ocean research and management agencies. We are urging folks all across the country to take action to implement the recommendations that came out of the President's Commission on Ocean Policy. Establishing an Alaska Oceans Fund is an exciting concept and would be an important step for Alaska. I can assure you that there will be no end of potential uses of those funds that could go a long ways in ensuring that Alaskans continue to have a healthy ocean.

Sincerely,

Molly McCammon

Molly McCammon
Director
Alaska Ocean Observing System

Emily Stancliff

From: Katie Mangelsdorf [katiem@pobox.mtaonline.net]
Sent: Sunday, March 25, 2007 10:47 PM
To: Rep. Jay Ramras
Subject: HB 164

Dear Rep. Jay Ramras,

I voted for the cruise ship initiative that Rep. Carl Gotto supported. This initiative was passed by the residents of the State of Alaska, therefore it is your responsibility to uphold the voice of the people. I did my homework and understood just what the initiative entailed before I voted and there is a very good reason for having the "Ocean rangers" onboard the cruise vessels. My question is: What iwas the motivatio: of the Transportation Committee to overthrow a vote of the people?

I urge you to please validate my vote by not allowing HB 164 to go any further.

Thank you very much.

Sincerely,

Katie Mangelsdorf

Emily Stancliff

From: Anne Kilkenny [annekilkenny@hotmail.com]
Sent: Saturday, March 24, 2007 10:43 AM
To: Rep. Jay Ramras; Rep. John Coghill; Rep. Ralph Samuels; Rep. Nancy Dahlstrom; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg
Subject: HB164

Representative,

I knew what I was doing when I voted for the cruise ship head tax and Ocean Ranger program, and I know what you're doing to gut it, and I don't appreciate it. I expect better of you. Shame!

Anne Kilkenny
P. O. Box 870163
Wasilla, AK 99687-0163
907 376-6225

Trying to help

Emily Stancliff

From: David Stone [situkrock1@hotmail.com]
Sent: Sunday, March 11, 2007 7:58 PM
To: Rep. Jay Ramras; situkrock@yahoo.com
Subject: HB 164

Jay,

I am asking you to vote against HB 164. Yakutat needs observers on cruise ships. The attached letter to Anchorage Daily New to published, will demonstrate the need for observer when ships come into Yakutat Bay

Thanks

Dave Stone, Mayor-City and Borough of Yakutat

Emily Stancliff

From: Gary E. Hess [gdhess@aptalaska.net]
Sent: Sunday, March 11, 2007 10:03 AM
To: Rep. Jay Ramras
Subject: HB 164

I would like to strongly recommend passage of HB 164. Gary E. Hess

Emily Stancliff

From: william schmidtkunz [matanuskawoodworks@gci.net]
Sent: Wednesday, March 28, 2007 6:09 AM
To: Rep. Jay Ramras
Subject: House Bill 164

March 28, 2007

Representative Ramras,

The vote of the people in August regarding the cruise ship industry is obvious. We want ocean rangers on the cruise ships to monitor activities closely, not on shore. The voters perfectly understand the implications of their vote. What we do not understand is why the legislature feels it is necessary to place the concerns of the cruise ship industry above those of Alaskans. This bill must go no further!

Sincerely

William Schmidtkunz
Box 26
Sutton, Alaska 99674
907-746-1852

Emily Stancliff

From: claire fitzgaireld [clea@mtaonline.net]

Sent: Tuesday, March 27, 2007 8:28 PM

To: Rep. Jay Ramras; Rep. John Coghill; Rep. Ralph Samuels; Rep. Nancy Dahlstrom; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg

Subject: Cruise Ship Initiative

I am incensed that some of our legislators are attempting to change the wishes of the people as voted upon last fall. I am referring to the Cruise Ship initiative that would put ocean rangers on each ship in order to monitor how the ships dispose of waste while at sea. Everyone knows that past behavior is the best indicator of future behavior and the cruise chip industry has already been fined for illegal dumping. The only way to stop this pollution is to have ocean rangers on each ship and THAT is what people wanted when they voted last fall.
To add insult to injury some legislators have said that we did not understand what we were voting for when we cast our ballot. HOW ARROGANT!!!!! HOW INSULTING!!!! HOW PATERNALISTIC!!!!
Stop messing around and trying to ignore the will of the people. You are wasting your time and you have precious little time to Juneau that you can waste one moment of it. Get busy with more important things like ETHICS. And I don't mean the band-aid approach you are presently using. We need ethics reforms that have real meaning.

Claire Fitzgaireld
PO Box 248
Willow, AK 996[illegible]

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 26, 2007

SUBJECT: Constitutionality of CSSB 121( ) (Work Order No. 25-LS0734\L)

TO: Senator Kim Elton
Attn: Paula Cadiente

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion as to whether CSSB 121( ) (version L) offends the Alaska constitutional prohibition against the repeal of an initiated law. It is my opinion that the Committee Substitute, if challenged, will be found by a court to be constitutional. In this instance, without the benefit of a bright-line rule or clear precedent, a review of the relevant legal and historical information is helpful in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

> The final constitutional provision states in pertinent part:
>
> > An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . . .

> The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

> The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974) . . . .
>
> [T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant . . . . Finally, the amended law still imposes substantial disclosure requirements on public officials and

> effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.
>
> . . .
>
> For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

2006 Ballot Measure No. 2, Secs. 4, 5, and 6

AS 46.03.462, 46.03.463, and 46.03.465 owe their current form to the 2006 Initiative entitled "An Initiative providing for taxation of certain commercial ship vessels, pertaining to certain vessel activities, and related to ship vessel operations taking place in the marine waters of the State of Alaska; and providing for an effective date." The initiative repealed and reenacted AS 46.03.462 and 46.03.465, and amended AS 46.03.463. These sections of the initiative are now the subject of amendment in CSSB 121( ) (version L). The pertinent inquiry is whether the contemplated amendment of these sections so vitiates the initiative as to "constitute its repeal." Warren v. Boucher at 737.

In summarizing the changes made to these sections, the August 22, 2006 Ballot[1] encapsulated the effect as "requir[ing] cruise ship operators to gather and report more information, and to get a new sort of permit for sewage, graywater or other wastewater before discharging in state marine waters." The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet[2] was marginally more informative: "[the initiative] requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges

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[1] See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet, *available at* http://www.gov.state.ak.us/ltgov/elections/publications.php.

[2] See Id.

without a permit. It changes the monitoring and record keeping requirements for waste water discharges." In the voter pamphlet, in the "Ballot Measure 2, Statement In Support" and "Ballot Measure 2, Statement In Opposition" pages, there was more rhetoric than analysis, and all discussion was directed at, or concerned, "cruise ships." There was no discussion of discharge or information gathering requirements from and for small commercial passenger vessels. This was the extent of analysis provided to the electorate about secs. 4, 5, and 6 of the initiative.

The initiative repealed and reenacted AS 46.03.462 and amended AS 46.03.463 (which prior to the initiative had provided terms, conditions, limitations, and prohibitions on discharges for all commercial passenger vessels) to apply only to large commercial passenger vessels, resulting in small passenger vessels dropping out of the regulatory regime altogether. It seems quite unlikely that this was an intended effect of the initiative.

While the initiative left AS 46.03.465 applicable to all commercial passenger vessels, I do not believe that the exception proposed by CSSB 121( ) "operates as a repeal of [the initiatives] provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, 243 P.2d at 42. The draft returns small commercial passenger vessels to the regulatory framework of the chapter, an effort which is not at odds with the essence of the changes made by the initiative, or the will of the electorate.

Amendment of AS 46.03.462, 46.03.463, and 46.03.465 in CSSB 121( )

If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas (1977), the changes that would result by the enactment of CSSB 121( ) are constitutional. Ballot Measure No. 2 was aimed at the cruise ship industry. This is reflected in the "Statement In Support" and the initiative's provisions rather myopic focus on "large commercial passenger vessel[s]". I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is entirely sufficient in this instance to prevent the present amendments from being interpreted by a court as offending art. XI, sec. 6 of the Alaska Constitution. The bill draft's proposed amendments to AS 46.03.462, 46.03.463, and 46.03.465 address only three of eleven substantive sections (the twelfth provided an effective date) of the initiative, and the draft does not seek to change any application of the initiative's provisions to the "large" cruise ship industry at which it was directed. For these reasons, if the amendment were to be challenged, a court could find that the amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, 243 P.2d 38, 42 (Cal. 1952).

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-208.med

LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

STEPHEN M. RUMMAGE
DIRECT (206) 628-7755
steverummage@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

MEMORANDUM

TO: John Hansen
President, NorthWest Cruise Ship Association

FROM: Stephen M. Rummage, Davis Wright Tremaine LLP
Susan A. Burke, Gross & Burke

DATE: February 28, 2007

RE: Legislative Authority to Amend Initiatives – House Bill 154

I. Introduction.

You have asked us to provide our opinion as to whether House Bill 154, which would amend certain provisions of the recently enacted cruise ship initiative dealing with environmental monitoring, would be constitutional under Article XI, § 6, of the Alaska Constitution. Under that section of the constitution, an initiative "may not be repealed by the legislature within two years of its effective date. It may be amended at any time."[1]

You also have asked us to review and comment on a recent Attorney General's opinion, which concludes that Article XI, § 6, would prohibit the Legislature from repealing provisions of the cruise ship initiative that impose a tax on gambling activities aboard large cruise ships during the two year period of limitation provided by the Constitution.[2]

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[1] Voters adopted the cruise ship initiative, designated "Ballot Measure 2" by the Division of Elections, at the August 2006 primary election. The initiative went into effect on December 17, 2006. Thus, the Legislature can repeal the initiative in its entirety after December 17, 2008, and it may amend it during the two year limitation period.

[2] In an opinion letter to Representative Bob Lynn, dated February 6, 2007, the Attorney General responded to two questions: first, whether the tax on cruise ship casino gambling activities would open the door for Alaska Natives to operate casino gambling establishments on Indian lands in Alaska; second, whether the Legislature could amend the initiative by repealing the casino gambling tax, so as to avoid opening the door for Indian gaming. The Attorney General concluded that the cruise ship gambling tax would not open the door to casino gambling on Indian lands in Alaska. He went on to conclude that, even if it did, the Legislature could not repeal the tax without violating the prohibition contained in Article XI, § 6, against legislative repeal of an initiative for a period of two years after its effective date.

II. House Bill 164's Proposed Amendments.

House Bill 164 would amend certain of the initiative's environmental provisions in the following ways:[3]

- The initiative requires a cruise ship to provide hourly reports of the vessel's location based on Global Positioning System technology, but is silent as to whom the reports are to be provided.[4] House Bill 164 would clarify that the reports must be provided to the United States Coast Guard.

- The initiative requires the owner or operator of a large commercial passenger vessel "entering the marine waters of Alaska" to have an "Ocean Ranger" – a licensed marine engineer hired or retained by the State – on board the vessel to act as an independent observer to monitor state and federal marine discharge and pollution requirements.[5] House Bill 164 provides that the marine engineers would be allowed on board the vessels only when the vessels are in port. The bill also would add a provision requiring the marine engineers to comply with the vessel's approved United States Coast Guard security plan while on board the vessel.

- In addition to monitoring activities related to marine discharge and pollution requirements, the initiative requires the marine engineers "to insure that passengers, crew, and residents at ports are protected from improper sanitation, health, and safety practices."[6] House Bill 164 would retain the duty to monitor marine discharge and pollution requirements, but would remove the duty to monitor improper sanitation, health and safety practices.

For the reasons outlined below, we believe these proposed amendments would be within the Legislature's authority to amend an initiative within the two year period of prohibition against repeal.

III. The Legislature Has Broad Power to Amend Initiatives.

The Alaska Supreme Court has addressed the Legislature's constitutional authority to amend an initiative measure in three decisions. Only one of the three, *Warren v. Thomas*, 568 P.2d 400 (Alaska 1977), directly concerned the Legislature's power to amend an initiative after its adoption and within two years of its effective date. The other two, *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975), and *State v. Trust the People*, 113 P.3d 613 (Alaska 2005), interpreted a related provision of the Alaska Constitution, Article XI, § 4, which provides that a proposed initiative will be rendered void and not placed on the ballot if the Legislature adopts "substantially the same" measure prior to the vote on the initiative.

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[3] A copy of House Bill 164 is attached.

[4] *See* AS 46.03.465(b).

[5] *See* AS 46.03.476(a).

[6] *See* AS 46.03.476(a) and (b).

In *Boucher*, the court addressed for the first time the issue of how much a legislative enactment could vary the terms of an initiative and still be considered "substantially the same" for purposes of keeping the initiative off the ballot. The initiative at issue would have placed before the voters a proposed act regulating various aspects of campaign financing and expenditures. Before the initiative was placed on the ballot, the Legislature passed another campaign financing law. The Lieutenant Governor determined that the legislation was "substantially the same" as the proposed initiative and notified the initiative's sponsor that the initiative was void and would not be placed before the voters. The sponsor sued, seeking to reverse the Lieutenant Governor's determination.

Finding little in the Constitutional Convention debates to assist it in determining the meaning of the term "substantially the same," the Court looked to the "total structure contemplated in Article XI of our constitution in the matter of direct legislation." *Boucher*, 543 P.2d at 736. In the course of that review, the Court commented as follows on the scope of the Legislature's amendment power under Article XI, § 6:

> The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that ***initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature***. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

543 P.2d at 737 (emphasis added). The Court cautioned, however, that a legislative amendment that "so vitiates an act passed by initiative as to constitute its repeal" would not be permitted within the two year limitation period. *Id.*

Ultimately, the Court concluded that the legislative enactment at issue was "substantially the same" as the initiative, even though the legislative enactment omitted several of the initiative's provisions and changed a number of others. In describing its inquiry, the Court explained that substantial similarity would exist if the legislative act achieved "the same general purpose as the initiative" and did so by "means or systems which are fairly comparable." 543 P.2d at 736. The Court went on to note:

> It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be

> allowed the legislature to vary from the particular features of the initiative.

Id. Two years later, in *Warren v. Thomas*, the Alaska Supreme Court squarely considered whether legislative amendments to an adopted initiative dealing with conflict of interest and financial disclosure by public officials constituted a prohibited repeal.[7] The Court in *Thomas* quoted with approval its previous statements in *Warren v. Boucher* concerning the Legislature's broad authority to amend an initiative after its adoption. Addressing the Legislature's changes, the Court noted that certain provisions of the initiative were repealed and re-enacted in "modified form." *Thomas*, 568 P.2d at 403. In addition, the Legislature expressly repealed one section of the initiative and two subsections and impliedly repealed other sections, as they were inconsistent with provisions the Legislature adopted. *Id.* & nn.8-10.

The Court emphasized that "this does not necessarily mean that the act as a whole was repealed." *Id.* The Court held that the amendments did not "so emasculate the law that it . . . [was] effectively repealed." *Id.* With regard to the Legislature's "considerable language changes," the Court found that the changes merely "clarify and render the law more precise." *Id.* With regard to the Legislature's other changes, the Court noted that while penalties had been reduced, they were still "significant," and concluded: "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* Thus, the amendments "preserve[d] . . . [the initiative's] basic structure and purpose." 568 P.2d at 404.

The most recent decision addressing these issues was *State v. Trust the People*. Like *Warren v. Boucher*, this case considered whether a legislative enactment was "substantially the same" as a proposed initiative so as to void the initiative and keep it off the ballot. The initiative proposed to enact a law that would bar the governor from making an appointment to fill a vacancy in the office of United States Senator. Under the initiative, all vacancies would be filled by popular election. Before the initiative was placed on the ballot, the Legislature passed a law under which the governor could make a temporary appointment, effective until certification of the results of a special election called to fill the vacancy. The Lieutenant Governor determined that the initiative was void because the Legislature had enacted a measure that was "substantially the same." The initiative sponsors filed suit challenging the Lieutenant Governor's determination.

On appeal, the Alaska Supreme Court reaffirmed its statements in *Warren v. Boucher* concerning the meaning of "substantially the same measure." It summarized the holding in *Boucher* as having developed a three-part test for determining substantial similarity:

> A court must first determine the scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally it must consider

[7] *Warren v. Thomas* is the only Alaska Supreme Court decision that deals directly with the legislature's power to amend an initiative.

> whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.

Trust the People, 113 P.3d at 621. Applying these principles to the legislative enactment, the Court held that it was ***not*** "substantially the same." The Court first found that the initiative's subject matter – filling a vacant senate seat – was "far narrower than the subject matter of campaign finance reform" considered in *Warren v. Boucher*, which was "broad and complicated, touching upon a great range of topics." *Id.* Accordingly, the Court held that the Legislature should be "accorded less latitude in its attempts to 'vary from the particular features of the initiative.'" *Id.* (footnote omitted). The Court then considered the initiative's purposes and the legislation, and found that they had ***opposite*** objectives. The initiative sought to preclude gubernatorial appointment altogether in the process for filling senate vacancies; the legislation allowed gubernatorial appointment in all cases pending an election to fill the vacancy. Accordingly, the Court held the legislative enactment was not "substantially the same" and ordered the Lieutenant Governor to place the initiative on the ballot.

Although *Trust the People* considered whether a legislative enactment was sufficiently similar to a proposed initiative to "short circuit" the initiative process and keep the initiative measure off the ballot, the opinion addresses the scope of the Legislature's power to amend an initiative after its adoption. The State had argued in support of its position on substantial similarity that the Legislature could have made the same amendments after adoption of the initiative under the authority of Article XI, § 6, to amend an initiative at any time. The Court, however, found this argument unpersuasive, stating that the power to amend under Section 6 was broader than the power to void an initiative by enacting substantially similar legislation:

> But the power to avoid an initiative by enacting legislation should not be equated with the power to amend an initiative adopted by the voters. While the *dicta* in *Warren v. Boucher* might be read to equate the two powers, they are not equal. This is because ***the Alaska Constitution contains no explicit limitation on the legislature's power to amend an initiative*** enacted by the voters, but it does contain such a limitation on the legislature's power to avoid a proposed initiative: Legislation designed to avoid a vote on a proposed initiative must be "substantially the same" as the initiative.

113 P.3d at 623. Applying these principles to the proposed amendments, we believe they do not constitute a repeal of the initiative as a whole, and that a court would view the proposed legislation as within the Legislature's amendment power under Article XI, § 6.

IV. The Proposed Amendments Would Not Constitute a Repeal of the Initiative.

When the issue is whether the Legislature has exceeded its amendment authority, the Alaska Supreme Court has looked only at whether the amendments "preserve [the initiative's] basic structure and purpose." *Warren v. Thomas*, 568 P.2d at 404. In other words, because the Legislature's power to amend is broader than the power to void an initiative by enacting substantially similar legislation, the Court has ***not*** applied to amendments the same test

formulated to decide whether a legislative enactment is "substantially the same" as a proposed initiative.

Here, we believe House Bill 164 leaves the basic structure and purpose of the initiative untouched, thus satisfying the test set forth in *Warren v. Thomas*.

Vessel Location Reports to the Coast Guard

House Bill 164 clarifies that the required GPS hourly vessel location reports would be provided to the United States Coast Guard. The initiative does not specify where the reports should be sent.[8] This clarification should not present any issue.[9]

Limitation of Ocean Ranger Observations to Vessels in Port

The initiative provides that the owner or operator of a large cruise ship must have an Ocean Ranger on board "when entering Alaska waters." For purposes of this memorandum, we assume the sponsors intended that there be an Ocean Ranger on board each large cruise ship at all times while the vessel is in Alaska waters. House Bill 164 would limit the Ocean Rangers' access to the vessels to those times when the vessel is docked at, or anchored in, an Alaska port. Accordingly, the amendment arguably might alter the sponsors' intent in proposing this section, i.e., providing the opportunity for constant monitoring by the Ocean Rangers. Nonetheless, we believe such a change would fall within the Legislature's amendment authority.[10]

The Alaska Supreme Court has ruled that the Legislature has authority to make changes to initiatives that depart from the sponsor's intent or purpose as to particular sections, so long as the amended act preserves the goals and intent of the initiative as a whole. In other words, the Court does not analyze the purposes of each individual section that the Legislature has amended to determine whether an amendment to that section departs from the purpose of that section. If that were the test, it would be virtually impossible for the Legislature to correct "initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable" – which is the point of Article XI, § 6. *Warren v. Boucher*, 543 P.2d at 737. Further, a section-by-section analysis would have led to a different result in *Warren v. Thomas*, where the Court gave effect to an amendment that repealed some sections and subsections of a campaign finance law. In that case, the Court held that the Legislature's repeal of several sections did not repeal the initiative "as a whole" because the remaining

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[8] The initiative's sponsors may have intended hourly vessel location reports to be sent to the Alaska Department of Environmental Conservation. It makes more sense, however, to have the reports provided to Coast Guard. Real-time hourly vessel location information has obvious security implications, and the Coast Guard has authority to oversee vessel security.

[9] *See Warren v. Thomas*, 568 P.2d at 403, where the Court, among other things, approved an amendment clarifying the initiative at issue.

[10] The legislation proposes additional language requiring Ocean Rangers to comply with the vessel's approved Coast Guard security plan. This addition simply makes the Ocean Ranger program more workable and does not interfere with the program's purposes. We cannot conceive that a court would view this addition as constituting a repeal of the initiative as a whole.

provisions still provided a comprehensive regulatory regime for conflict of interest and financial reporting by public officials. *Warren v. Thomas*, 568 P.2d at 403.

Here, although the amendment would limit Ocean Ranger access to vessels, it would retain the concept of on-board monitoring by an independent observer.[11] As the Court noted in *Warren v. Boucher*, when it comes to amending an initiative, the Legislature has broad discretion to substitute its judgment for that of the initiative sponsors if it determines that particular provisions of the initiative are "ill-advised." The Legislature reasonably could conclude that having an Ocean Ranger on board vessels at all times would waste time and resources for little purpose, particularly in light of the fact that most large cruise ships now visiting Alaska are equipped with advanced wastewater treatment facilities that minimize the likelihood of discharging pollutants into Alaska waters. The Legislature also could reasonably conclude that periodic port visits by independent observers, coupled with the existing level of Coast Guard oversight and testing, would suffice to provide the necessary level of monitoring to ensure that such systems remain functioning.[12]

We do not believe a court would view this modest adjustment as a repeal of the initiative. The initiated law, as amended, still would require vessels to obtain wastewater discharge permits, still would require vessels to allow independent observation and monitoring by Ocean Rangers, and still would require vessels to comply with Alaska's water quality standards. The overall purposes of the initiative's environmental protection provisions – to protect Alaska's waters from pollution – would remain intact.

Limitation of Ocean Ranger Monitoring Duties to Wastewater Discharges.

The initiative provides that, in addition to monitoring state and federal requirements for wastewater discharges, the Ocean Rangers also would be required to "insure that passengers, crew, and residents at ports are protected from improper sanitation, health, and safety practices." House Bill 164 would limit Ocean Ranger monitoring to wastewater discharges.

In our view, the Legislature reasonably could conclude that marine engineers lack the expertise to monitor health and safety practices generally. The Legislature also might conclude that citizens of Alaska do not face sufficient threats from cruise ship health and safety practices to warrant the expenditure of state resources on monitoring those issues. Given the clear focus of the initiative's environmental provisions on clean water and cruise ship wastewater discharges, a

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[11] We understand that on a typical itinerary for a 7-day Alaska cruise, a vessel would spend nearly 40 percent of its total time in Alaska in port, while a vessel on a 7-day itinerary that includes a Gulf of Alaska crossing would spend just over 30 percent of its total time in port. Thus, the Legislature could reasonably conclude that providing access to vessels only while in port still would provide significant monitoring opportunities for Ocean Rangers.

[12] The few large cruise ships not equipped with advanced wastewater treatment systems are not authorized to discharge wastewater within Alaska marine waters. For those vessels, unless an Ocean Ranger were on duty aboard the vessel 24 hours a day (and we understand the sponsors did not intend for them to be), the Ocean Rangers would have to rely on post-discharge vessel log entries for much of their monitoring in any event. The Legislature could reasonably conclude that monitoring of that nature could be done just as effectively while the vessels were in port, which still would afford Ocean Rangers adequate opportunities to perform tests to determine if any unauthorized discharges had occurred between Alaska ports.

court probably would not view removal of these unrelated duties from the Ocean Rangers' monitoring activities as constituting a repeal of the initiative.

In conclusion, we believe a court would not view the amendments proposed in House Bill 164, either individually or cumulatively, as constituting a prohibited repeal of the initiative within the two year period of limitation.[13]

V. Comments on the Attorney General's Opinion.

You have asked us to review and comment on the Attorney General's recent conclusion that repeal of the 33 percent tax on gross receipts from cruise ship casino gambling activities would constitute a repeal of the initiative prohibited under Article XI, § 6.

In the course of his opinion, the Attorney General reviewed and cited the same Alaska Supreme Court cases that we have discussed in this memorandum. In our view, however, the Attorney General has interpreted these cases too narrowly. Most notably, the Attorney General read *Warren v. Thomas* as limiting the amendment power to amendments that serve only to "clarify and render the law more precise." He also suggests that "any bill that would enact an outright repeal of three sections of the cruise ship initiative . . . would be seen as unconstitutional." But in *Warren v. Thomas*, the Court mentioned clarifying amendments only in discussing amendments that modified the language of certain sections of the initiative. In another part of its opinion, the Court upheld additional amendments that ***expressly repealed whole sections*** and subsections of the initiative and repealed other provisions of the initiative by implication – a point the Attorney General does not mention, and one that cannot be reconciled with his narrow interpretation of the amendment power.

For the reasons set forth above, we believe that any assessment of a repeal of the gambling tax would need to consider its impact on the initiative as a whole, bearing in mind the Legislature's unquestioned power to "alter[] or correct[]" "initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable." *Warren v. Boucher*, 543 P.2d at 737. In our view, the Legislature reasonably could conclude that opening up the opportunity for Alaska Natives to conduct casino gambling on Indian lands in Alaska would be "ill-advised" and harmful to the well being of Alaska's citizens and that the harm would outweigh whatever benefits the initiative sponsors sought to achieve by including the gambling tax as part of their ballot measure.[14] In that event, an amendment to the initiative in the form of a repeal of the gambling tax (like the repeals considered in *Warren v. Thomas*) would serve precisely the function that the constitutional convention delegates envisioned when they framed Article XI, § 6.

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[13] We understand the Legislature may be considering additional amendments to the cruise ship initiative. Without having specific proposals to review, however, we cannot render a meaningful opinion as to whether they would come within the Legislature's power to amend. We can say that the Legislature could enact separate bills amending different sections of the initiative without violating the prohibition against repeal. Assuming that all of the enactments were challenged in court, we believe a court likely would look at the cumulative effect of the amendments to determine if, taken together, they preserve the basic structure and purpose of the initiative.

[14] Like the Attorney General, we assume for purposes of our review of the Legislature's amendment power that the cruise ship gambling tax would have the effect of allowing Alaska Natives to operate casinos with slot machines, roulette, and other casino type games typically conducted on cruise ships.

If the Legislature made such a determination and repealed the cruise ship gambling tax, the remaining provisions of the act would continue to address the initiative's major purposes. In terms of revenue generation, the passenger tax would remain in place, as would the provision amending the corporate income tax statutes to require cruise lines to report income from foreign vessel operations.[15] Further, the stricter environmental provisions would remain, and cruise lines still would need to meet enhanced disclosure obligations. As the Alaska Supreme Court explained in both *Warren v. Boucher* and *State v. Trust the People*, the broader the subject matter of the initiative (and the subject matter here is broad indeed), the more the Legislature may vary from the initiative and still enact a law that is "substantially the same" for purposes of removing the initiative from the ballot. Because the power to amend is even broader than the power to void an initiative, it follows that the Court would take into account the breadth of an initiative when determining whether legislative amendments amount to a repeal in violation of Article XI, § 6. For these reasons, we respectfully disagree with the Attorney General's analysis.

SMR:SAB:ps
Attachments

[15] Apart from generating revenue, the only other purpose of the two taxing measures included in the initiative appears to be ensuring that cruise lines pay the same taxes that everyone else in Alaska must pay. *See* Sponsors' Statement in Support of Ballot Measure 2, 2006 Primary Election Voter Pamphlet at 19. The 33 percent tax on cruise ship gambling, however, considerably overshoots the sponsors' stated purpose. Alaska law does not impose any tax on the proceeds of the vast majority of authorized charitable gaming in Alaska, such as bingo, lotteries, and various "Classics." The only tax on charitable gaming proceeds is on the distribution of pull tabs – but that tax is only 3 percent of the gross receipts less prizes awarded. AS 05.15.184. The Legislature reasonably could conclude that allowing cruise ships to avoid this tax would be a small price to pay to avoid the possibility – unintended by the sponsors of the initiative or the voters – that imposition of a tax on cruise ship casino gambling would open the door to casino gambling by Alaska Natives on Indian lands in Alaska.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

February 26, 2007

The Honorable Bill Stoltze
State House of Representatives
State Capitol, Room 501
Juneau, AK 99801

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

During a budget hearing on February 15, 2007, you requested that our office provide you with an analysis on two matters related to voter initiatives. You asked, first, for a summary of the case law on the legislature's authority to amend a law enacted by voter initiative within two years of enactment, and second, for a history of the legislature's amendments to initiatives during those first two years. The reason to examine the legislature's authority to change an initiated law during the first two years that the law is effective is the prohibition in the Alaska Constitution against the repeal of an initiative during those years. Alaska Const., art. XI, sec. 6. This limit on repeal has been interpreted to restrict the legislature's power to amend an initiated law during its first two years even though the Constitution expressly permits amendments to initiated laws at any time.

1. Summary of the case law

The Alaska Supreme Court has addressed the legislature's authority to amend an initiated law in three cases, although it has reviewed the actual exercise of this authority in only one case. The first case in which the Court discussed the subject is *Warren v. Boucher,* 543 P.2d. 731, 737 (Alaska 1975), a case reviewing the legislature's exercise of its authority to void an initiative petition by enacting substantially the same measure in legislation. Alaska Const., art. XI, sec. 4. The power to amend was described as "broad" and "a check or balance against the initiative process." 543 P.2d. at 737.

The Court speculated that the purpose of the power to amend was

> to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be *altered or corrected* rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. [*Id.* (emphasis added).]

Two years later, in *Warren v. Thomas,* 568 P.2d 400, 402-03 (Alaska 1977), the Court considered a challenge to the legislature's amendment of laws adopted by initiative. The initiated laws concerned public official financial disclosure, and the legislature amended them soon after they became effective. The amendments moved the deadline for filing financial disclosure reports from February to April of 1975 and excused public officials leaving office from the obligation to file. Although the amended laws differed in many respects from the initiative measure, the Court found that the amendments did not amount to a repeal: "[t]here are considerable language changes, but, these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant," and "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* at 402. The changes were not found to so vitiate the regulatory scheme "as to 'constitute its repeal.'" *Id.* (quoting *Boucher,* 543 P.2d. at 737). Although it upheld the amendments under review in *Thomas*, the Court clearly viewed the prohibition against repeal as a limitation on the legislature's authority to amend an initiative. For an amendment to be authorized during the first two years of an initiative, it must continue to further the intent of the voters.

The third case in which the Court discussed the legislature's power to amend an initiative was *State v. Trust the People,* 113 P.3d 613, 623 (Alaska 2005). That case concerned the legislature's exercise of its power to supplant an initiative measure by passing a substantially similar law, rather than its power to amend after an initiative is enacted by the voters. Although the Court recognized that the power to supplant is somewhat narrower than the power to amend, the Court relied in part upon its earlier decision in *Thomas.* The Court characterized *Thomas* as holding that "amendments to popularly-initiated legislation must still 'effectuate the intent of the electorate,' and an amendment that 'so vitiates an act passed by initiative as to constitute its repeal' is not acceptable." *Id.* at 623 (quoting *Thomas*, 568 P.2d at 403).

In *Trust the People* the Court identified three factors relevant to determining whether a proposed initiative and legislation were substantially the same. Although this

"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the meaning of any law. AS 01.05.031.

If you have additional questions or further assistance is required, please do not hesitate to contact me.

Sincerely,

Talis J. Colberg
Attorney General

Enclosures

cc w/enc: John Bitney, Legislative Liaison, Office of the Governor
AAG D. Behr, Legislation & Regulations, Acting Legislative Liaison,
Office of the Attorney General

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2023
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 23, 2007

SUBJECT: The cruise ship initiative and the Maritime Transportation Security Act of 2002. (Work Order No. 25-LS0431)

TO: Representative Mike Hawker
Attn: Juli Lucky

FROM: Donald M. Bullock Jr.
Legislative Counsel

You asked whether the use of funds from taxes imposed under AS 43.52[1] as enacted by voter approval of Initiative 03CTAX on August 22, 2006 violates provisions of the Maritime Transportation Security Act of 2002 (MTSA).

In my opinion, funds from taxes imposed under the initiative may be appropriated for purposes compatible with sec. 445 of the MTSA, codified at 33 U.S.C. 5(b), but the amount and imposition of the tax may still be subject to scrutiny under that code section.

The initiative imposes an excise tax on "commercial passenger vessels providing overnight accommodations in the state's marine water."[2] The amount of this marine passenger tax is $46 a passenger per voyage.[3] The passenger is liable for the tax and the person providing the travel on the commercial passenger vessel is responsible for collecting the tax from the passenger and paying the amount to the Department of Revenue (department).[4] The department is required to deposit the proceeds from the tax in a special "commercial vessel passenger tax account" in the general fund.[5] The legislature may appropriate money from this account for the purposes described in AS 43.52.230(b) and (c), as well as "for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and

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[1] The tax imposed by the initiative is codified at AS 43.52.200 - 43.52.295.

[2] AS 43.52.200.

[3] AS 43.52.210.

[4] AS 43.52.220.

[5] AS 43.52.230(a).

efficiency of interstate and foreign commerce, and such other lawful purposes as determined by the legislature."[6]

The federal law you referred to, codified at 33 U.S.C. 5(b), includes a general prohibition and limited exceptions. That subsection reads as follows:

> (b) No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for--
>
> (1) fees charged under section 208 of the Water Resources Development Act of 1986 (*33 U.S.C. 2236*);
>
> (2) reasonable fees charged on a fair and equitable basis that--
>
> (A) are used solely to pay the cost of a service to the vessel or water craft;
>
> (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; or
>
> (3) property taxes on vessels or watercraft, other than vessels or watercraft that are primarily engaged in foreign commerce if those taxes are permissible under the United States Constitution.

The prohibition in the first part of the subsection seems to apply to the marine passenger tax. The tax is "levied upon or collected from any vessel or other water craft, or from its passengers;" it is levied and collected by a non-Federal interest -- the state; and the commercial passenger vessel carrying passengers subject to the tax "is operating on [ ] navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters."[7]

The general prohibition in the early part of the subsection is followed by limited exceptions in the latter part. The exceptions in (1) and (3) of the subsection do not seem applicable -- the marine passenger tax is not being charged under 33 U.S.C. 2236, nor is it a property tax. Money could be appropriated from the commercial vessel passenger tax account for a purpose described by subparagraphs (2)(A) - (C) since the account is not a dedicated fund and the legislature has the power to appropriate that money for purposes not listed in AS 43.52.230. However, even if the money was appropriated and used for qualifying purposes under subparagraphs (2)(A) - (C), the tax would still be subject to scrutiny to determine whether the tax is a reasonable fee, is being charged on an equitable

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[6] *Id.*

[7] 33 U.S.C. 5(b).

basis, and does not impose "more than a small burden on interstate or foreign commerce." These are subjective standards and I do not predict how a court would rule if the marine passenger tax should be challenged under 33 U.S.C. 5(b).

In conclusion, an appropriation of the proceeds of the marine passenger tax imposed under AS 43.52.200 - 43.52.295 for the purposes described in 33 U.S.C. 5(b)(2)(A) - (C) could be compatible with some of the limitations on the usage of funds under the Maritime Transportation Security Act of 2002. However, the tax itself would be subject to further scrutiny to ascertain whether the amount and application of the tax are reasonable, fairly and equitably applied, and do not impose more than a small burden on interstate or foreign commerce.

If I may be of further assistance, please advise.

DMB:ljw
07-025.ljw

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

May 19, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project" included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

> (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska **either** to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid **or to tidewater at a point on Cook Inlet** and includes

> planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,

for Gregg D. Renkes
Attorney General

GDR:LHH:tag

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

May 24, 1999

The Honorable Tony Knowles
Governor
P. O. Box 110001
Juneau, AK 99811-0001

Re: HCS CSSSSB 94(FIN) -- Relating to the Medical Use of Marijuana
A.G. file no: 883-99-0037

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed HCS CSSSSB 94(FIN), relating to the medical use of marijuana.

The medical marijuana law enacted by voter initiative in the 1998 general election contained ambiguous language, and as a result contained a large number of provisions that make the law difficult to administer, difficult to enforce, and difficult to interpret. These problems could not have been envisioned by the voters.

The goal of this Administration was to fix the problems in the voter initiative in order to make the law work, that is, to give effect to the intent of the voters to allow marijuana to be used to address debilitating medical conditions under appropriate controls.

In assessing HCS CSSSSB 94(FIN) (hereafter referred to as SB 94), it is helpful to bear in mind that the legislature heard a great deal of testimony about the potency and profitability of marijuana. In addition to consistent police testimony that marijuana grown in Alaska is among the most potent grown anywhere in the world, the legislature took testimony from medical marijuana users. In particular, the House Judiciary Committee heard very compelling testimony from a user who described how, in the last few months, he was able to stop using prescription narcotic pain medications by substituting marijuana. This individual testified that he had been taking an amount of narcotics that would likely kill an ordinary person who had not built up a level of tolerance to the drugs. He also indicated that marijuana of this quality sells for $500-600 per ounce, which was supported by police testimony that Alaska-grown marijuana often sells for $4,000-5,000 per pound, or more. Thus the testimony showed that marijuana is a powerful drug capable of producing similar pain-killing effects as narcotics, and creating an enormous profit potential, all of which supported the

legislature's desire that medical use of marijuana remain under appropriate controls and not be subject to abuse.

Legal Standard

Under art. XI, sec. 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. Alaska case law holds that the legislature has broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). There seems to be a sliding scale analysis, such that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." Medical use of marijuana is a fairly narrow topic, so we should assume for purposes of this analysis that a court will look more closely at any amendments than they would if the subject matter were broader. Nevertheless, the legislature can amend an initiative if the amendments "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977). As discussed more fully below, we believe that the amendments to the initiative made by this bill are valid because a court will find that they are certainly much more than a "hollow gesture" toward medical use of marijuana. 543 P.2d at 739.

Moreover, much of the original initiative still remains. For example, the proponents of the initiative specifically did not require a prescription by the physician, so as to avoid what they characterized as the practice in other states in which the federal authorities threatened action against doctors writing such prescriptions. SB 94 retains this provision and requires only that the physician consider other approved medications and treatments. By not requiring a formal prescription, SB 94 avoids an argument that the amendment is simply a "subterfuge to frustrate the ability of the public to obtain consideration and enactment" of a law allowing use marijuana for medical purposes. *Id.*

Main Changes made to the Initiative

The Department of Health and Social Services, Department of Public Safety, and Department of Law identified several changes needed to make the medical marijuana law work, and SB 94 addressed most of these issues. The issues that were important to this Administration were:

- Recognize that marijuana, like other prescription drugs, should be a controlled substance, regardless of how it is used.
- Prohibit patients from selling or distributing marijuana.
- Limit the number of patients who can be supplied marijuana by the same person.
- Require mandatory registration with the Department of Health and Social Services.

- Limit possession to one ounce and six plants.

- Allow police to take action in medical marijuana cases just as with misuse of a prescription for a narcotic drug, and make the legal burden of proof for medical marijuana consistent with that applied to other drugs.

- Allow access to the registry in criminal investigations.

Each of these points is discussed below and analyzed in terms of the legal standard set out above.

Marijuana Should Be a Controlled Substance, Regardless of How It Is Used. The medical marijuana initiative provides that marijuana used for medical purposes is not a "controlled substance." AS 11.71.190(b). This seemingly insignificant change has serious legal consequences because many other state laws depend on the phrase "controlled substance." For example, it is a crime to possess a firearm while under the influence of alcohol or a controlled substance. AS 11.61.210(a)(1). Thus, because medical marijuana is no longer a "controlled substance," a patient intoxicated on marijuana could lawfully possess and use a firearm. Although the laws relating to driving while intoxicated use a different definition of controlled substance, and thus we believe that a patient can be convicted for driving after using marijuana, an attorney for the legislature has written an opinion that suggests that it is possible a court would not allow prosecution or conviction for driving while intoxicated.

By continuing to treat marijuana as a "controlled substance," SB 94 takes into consideration the potential for abuse of the drug, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Prohibit Patients from Selling or Distributing Marijuana. The medical marijuana initiative contains an oddly worded provision that would allow registered patients to sell or give marijuana to anyone else, as long as the registered patient did not know that the buyer was not eligible to be registered. AS 17.37.040(a)(3). The legislature heard testimony that this could lead to the problem encountered in California, where retail outlets, euphemistically called "marijuana clubs," sprung up after the medical marijuana initiative was enacted in that state.

There was legislative testimony that the price of marijuana in California clubs ranged from $20 to $120 for one-eighth of an ounce, thus offering a product selling for nearly $1,000 per ounce. One large marijuana club in San Francisco had profits of $1 million per month before it was shut down. Although California authorities were able to close that business, it appears that the Alaska medical marijuana initiative would allow selling by patients.

SB 94 takes into consideration the potential for abuse of the drug and making a profit on its use, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Limit the Number of Patients Who Can Be Supplied Marijuana by the Same Person. The initiative is silent as to the number of patients who can be supplied marijuana by a single caregiver. If one person is allowed to supply marijuana to multiple patients, at least two problems are created. First, the designated caregiver would be allowed to possess one ounce plus six plants for each patient, thus allowing large growing operations, and the caregiver could transport and distribute multiple ounces of marijuana. Second, the caregiver would almost certainly have a large profit-making incentive and could easily take advantage of patients, as was done in the California marijuana club selling marijuana for triple the price of gold. SB 94 also prohibits convicted felony drug offenders from being caregivers and raises the minimum age for caregivers to 21, which is consistent with laws relating to possession of alcohol.

SB 94 also changed the definition of "primary caregiver," so as to give patients a broader choice of persons to assist them in obtaining marijuana. Moreover, the bill also eases a restriction in the initiative by allowing each patient to have a primary caregiver, as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. Thus, while SB 94 imposes some different requirements on caregivers in light of the potential for abusing the drug and making a profit on its use, at the same time the bill allows patients additional flexibility to designate "caregivers."

The changes to the laws on caregivers do not repeal the initiative.

Mandatory Registration. The marijuana initiative allows patients to register with the Department of Health and Social Services, but does not require it. From a quick reading of the initiative, it is not immediately apparent that persons are allowed to use marijuana for medical purposes even if they have not registered with the Department of Health of Social Services. Yet a careful legal review discloses that this is the result. AS 17.37.030(a).

The optional registration was described in testimony by many police administrators as a serious practical problem for the police. If a person tells a police officer that he or she is possessing marijuana for medical purposes, but is not registered, the officer has two choices, neither of which is acceptable: the officer can seize the marijuana and arrest the person, thus possibly depriving someone of a substance the person legitimately needs for medical care, or the officer can let the person go on his or her way, thus in essence overlooking a criminal act if the person cannot legally use the substance.

The prime sponsor of the initiative testified that some persons with debilitating conditions may choose not to register because they believe it is a violation of their privacy. However,

those fears should be allayed because the application process for registration does not require the patient to disclose the nature or symptoms of their condition. Moreover, the police will not have access to the registry for general investigative purposes and will be allowed access only to confirm that a person who claims to be registered is in fact registered. Mandatory registration is a protection for patients, because the police will be able to determine immediately that they can lawfully use marijuana for medical purposes.

Mandatory registration also cures unintended problems that arise because the initiative treats registered users differently from unregistered users in several ways. One of the examples of this different treatment is that registered patients cannot use marijuana in public. AS 17.37.040(a)(2). Yet there is no similar restriction for unregistered users. Unregistered persons who uses marijuana in public can therefore do so freely, as long as they can show they have a medical need to use marijuana. This difference in treatment is hard to justify, and thus a registered patient is likely to be able to convince a court that it is a denial of equal protection of the laws, and a restriction on their right to use marijuana, that a registered patient is prohibited from doing in public what an unregistered person can do. Without mandatory registration, the initiative would allow marijuana to be openly used in public, which could lead to a backlash against the law.

Even though SB 94 requires registration for all marijuana users, whereas the initiative makes registration optional, we do not believe this change can be characterized as a repeal of the initiative as lawful medical use of marijuana is still permitted under the bill.

Limit Possession to One Ounce and Six Plants. SB 94 limits patients to possessing one ounce plus six plants of marijuana. The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. AS 17.37.020(a). As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified." AS 17.37.020(b). SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there was no testimony before any committee that explained why that is so from a medical perspective. One medical marijuana user who testified in House Judiciary Committee did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there was evidence presented that this is a large amount of marijuana for personal use for medical purposes.

There was testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that

is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS Committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.

The three mature marijuana plants allowed by SB 94 provide an average of 12 ounces of usable marijuana. The committee testimony showed that the three other plants provide an average of three more ounces, for a total of 15 ounces of usable marijuana in plant form. Thus the testimony establishes that one ounce plus six plants, on average, yields one pound of usable marijuana.

The House Judiciary Committee heard testimony from a user of marijuana for medical purposes, who indicated that his medical needs required one ounce of marijuana every 10 days. The House HESS Committee heard testimony from a federal official who indicated that each marijuana cigarette uses about one-half gram of marijuana, thus yielding 56 cigarettes per ounce. The federal official's testimony assumed a duration of effectiveness lasting only two hours per cigarette, which means a person would need eight cigarettes per day to stay under the influence of marijuana for 16 hours, or essentially all their waking hours. Even at this unrealistically high rate of consumption of low-grade marijuana, one ounce would last a week for a heavy user of marijuana for medical purposes.

The testimony before the legislature thus shows that a patient with one ounce plus six plants has, on average, access to 16 ounces of marijuana, which provides a constantly regenerating 16-week supply, even if they use it at a rate that keeps them intoxicated all the time. There was no evidence, and no testimony, that this amount is not adequate for patients for medical purposes.

The portion of the ballot initiative that allows more marijuana if the patient proves it is "medically justified" raises two primary issues. The first issue is the practical difficulty created for police officers if every patient is allowed to possess a different amount of marijuana, depending upon what the patient can later show in court. Testimony by police officials showed that the best approach for both police officers and patients is a clear "bright line" rule that establishes a set amount that can be possessed. This was a matter of policy for the legislature to consider.

The second issue revolves around the "medical justification" that would authorize more than one ounce plus six plants. While this can be characterized as a question of medical care, it appears that this, too, was a policy matter for the legislature.

In terms of actual *medical* justification, a patient needs only enough marijuana for his or her immediate use. Anything more than that is not a matter of medical *need*, but a matter of convenience for the patient or the patient's caregivers.

It may very well be the case that possessing four ounces of usable marijuana, or eight ounces, or possessing 12 plants or 24 plants is more convenient for the patient than one ounce plus six plants. But there was no testimony in any committee that there is any possible *medical* justification for greater amounts than one ounce plus six plants. The issue for the legislature, then, was whether the increase in convenience outweighs the risks in allowing greater amounts of marijuana to be freely possessed, grown, and transported by patients and caregivers. Whether to allow more marijuana than one ounce plus six plants therefore appears to be a pure policy question for the legislature, rather than a medical one.

Given the testimony before the legislature about the potency and profitability associated with marijuana, we believe that a court would find that the one-ounce-plus-six-plants limit in SB 94, with no provision for possession of greater amounts, is a proper exercise of the legislature's authority to amend the medical marijuana law.

Allow Police to Take Action in Medical Marijuana Cases Just As with Misuse of a Prescription for a Narcotic Drug, and Make the Legal Burden of Proof for Medical Marijuana Consistent with That Applied to Other Drugs. The medical marijuana initiative gave registered patients immunity from arrest, prosecution, and conviction for any offense related to medical use of marijuana, even if the patient possessed more than the legal limit of marijuana. AS 17.37.030(b). Even if the state had evidence that the person possessed a large amount of marijuana, police and prosecutors could take no action. Although the prime sponsor of the initiative has indicated that this was not the intent of the initiative, it is certainly the plain meaning of the initiative. SB 94 removes this provision, and thus allows the police to make arrests just as they would with any other misused prescription drug: if it a felony offense, they can arrest if there is probable cause to believe that a crime has been committed, and if it is a misdemeanor offense the offense must also have been committed in the officer's presence. SB 94 also removes similar restrictions on the authority of police to seize and forfeit evidence, thus allowing general Alaska law to control those actions.

SB 94 brings the medical marijuana law into conformity with other laws that make it an "affirmative defense" if a person seeks to rely on a statutory exemption to otherwise illegal conduct. For example, the concealed handgun law requires the registered person to prove he or she is registered and that the carrying of the handgun conformed to the law. More directly to the point, however, Alaska law for many years has required that users and dispensers of controlled substances have the burden of proving by a preponderance of the evidence that they are entitled to any exemption or exception in the controlled substances laws. AS 11.71.350. Thus SB 94 puts medical users of marijuana in exactly the same position as users of prescription drugs.

Given that this allocation of burden of proof does not appear to unduly restrict access to prescription drugs, it is not a repeal of the marijuana initiative. Similarly, it is not a repeal to remove the practical impediments to police officers, by allowing them to use general laws relating to arrests and forfeiture actions, just as they can with any other prescription drug.

Allow Access to the Registry in Criminal Investigations. This Administration favored a provision allowing police access to the registry in the course of a criminal investigation. SB 94, however, retains the language in the initiative that allows access only if a person claims to be a registered patient or caregiver. We believe that this level of confidentiality will interfere with some police investigations, and make police investigative efforts more difficult. The Administration may wish to consider requesting amendments in the future if this proves to be unworkable or not in the state's best interest.

Other Changes. SB 94 changes the medical standard for a physician to recommend marijuana to a patient, by requiring the doctor to consider other approved medications and treatments. With new pain killers coming on the market all the time, as well as the availability of new nausea medications and FDA-approved synthetic THC (delta-9-tetrahydrocannabinol, the active ingredient in marijuana), it would seem to be sound medical practice to consider these other approved alternatives before advising a patient to use an unregulated substance of unknown purity and potency.

Although SB 94 does change the medical standard, by requiring doctors to consider other approved medications before recommending marijuana, this is certainly a much more flexible standard than expressed in a recent report by the Institute of Medicine of the National Academy of Sciences, and it does not constitute a repeal. The sponsor of SB 94 circulated information to legislative committees about the report, which stated that, given the health risks associated with smoked marijuana, short-term use of marijuana by certain patients was justified only if the "failure of all approved medication to provide relief has been documented." *Marijuana & Medicine: Assessing the Science Base* (Recommendation 6), National Academy Press, Washington, D.C., 1999.

A long-time Alaska physician testified in the House HESS Committee and stated that in his experience almost all requests for marijuana for medical purposes come not from patients with terminal illnesses, but from patients with chronic conditions who will be using marijuana indefinitely. The physician testified that research showed marijuana has seven times the amount of tar and other potentially cancer-causing substances as cigarettes and that there was therefore the potential (although specific research had not been done) that marijuana presented seven times the cancer risk of cigarettes. Thus the legislature certainly had an adequate record upon which to make a change in the standard to be applied by physicians, and the change in the medical standard does not repeal the initiative.

In addition to tightening up the medical marijuana law, SB 94 relaxed some requirements of the initiative. First, it allowed marijuana to be transported by patients and caregivers. The marijuana initiative defined medical use of marijuana to include transportation of marijuana. The initiative went on to say that registered patients could not "engage in medical use of marijuana" in public. This meant that marijuana could not be transported. Although this provision might have been struck down as unconstitutional (as discussed above), the law might very well have imposed a practical burden on patients and caregivers. Second, as discussed above, although SB 94 limits each

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader ranger of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,

Deborah E. Behr

for Bruce M. Botelho
Attorney General

BMB:DJG:jf

Westlaw.

543 P.2d 731
(Cite as: 543 P.2d 731)

Warren v. Boucher, Alaska 1975.
Supreme Court of Alaska.
Clifford E. WARREN, Appellant,
v.
H. A. (Red) BOUCHER and State of Alaska, Appellees.
No. 2315.

Nov. 28, 1975.

Plaintiff sued for declaratory and injunctive relief to compel lieutenant governor to place initiative proposal on ballot, although lieutenant governor had determined that initiative was void since substantially similar to an act of the legislature. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., rendered summary judgment for defendant and plaintiff appealed. The Supreme Court, Connor, J., held that the statute permitting lieutenant governor to determine substantial similarity between act and proposal is not an unconstitutional delegation of judicial power to the executive and that the measures were substantially similar within constitutional provision permitting legislature to void an initiative by passing a substantially similar measure.

Affirmed.

Erwin, J., dissented and filed opinion in which Burke, J., joined.

West Headnotes

[1] Statutes 361 ⇐301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Constitutional provisions for determination of election contests as prescribed by law and defining " by law" as identical with "by the legislature," gave legislature power to enact method of determining whether act and initiative provision are substantially the same, so as to void initiative. AS 15.45.210; Const. art. 5, § 3; art. 11, § 4; art. 12, § 11.

[2] Constitutional Law 92 ⇐70.1(1)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.1 In General
92k70.1(1) k. In General. Most Cited Cases
Court is disinclined to pass judgment on means selected by legislature to accomplish legitimate purposes unless such means clearly violate Constitution.

[3] Constitutional Law 92 ⇐80(1)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(C) Executive Powers and Functions
92k78 Encroachment on Judiciary
92k80 Powers, Duties, and Acts Under Legislative Authority
92k80(1) k. In General. Most Cited Cases

Statutes 361 ⇐302

361 Statutes
361IX Initiative
361k302 k. Constitutional and Statutory Provisions. Most Cited Cases
Statute authorizing lieutenant governor to determine whether act is substantially the same as initiative proposal, so as to void initiative, is not unconstitutional delegation of judicial function to executive officer. AS 15.45.210; Const. art. 11, § 4

[4] Constitutional Law 92 ⇐12

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k12 k. In General. Most Cited Cases
Purposes and intentions of framers of Constitution must be inferred from language of Constitution itself with careful regard for apparent aim framers had in mind.

[5] Statutes 361 ⇐301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Under constitutional provision permitting legislature to void initiative petition by enacting " substantially the same measure," legislature's discretion is reasonably broad; there is substantial similarity if in the main the act achieves same general purposes as initiative and accomplishes purpose by means or systems which are fairly comparable; it is not necessary that the two measures correspond in minor particulars or even as to all major features and the broader the reach of the subject matter, the more latitude must be allowed legislature. Const. art. 11, § 4.

[6] Statutes 361 ⇐301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Legislative act relating to election campaigns was substantially similar to initiative proposal relating to campaign contributions, expenditures, and their limitations, despite differences between the measures, and act effectively displaced initiative. AS 15.13.010 et seq., 15.45.210; Const. art. 11, § 4.

*731 Clifford E. Warren, pro se.
Timothy G. Middleton, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and BURKE, JJ.

*732 OPINION

CONNOR, Justice.

This case raises issues regarding the initiative procedure in Alaska. Specifically, it is concerned with the process and conditions, if any, by which enactments of the legislature can operate to prevent an initiative from appearing on the ballot.

I.

The procedural history antedating this appeal is undisputed. Prior to the regular 1974 session of the Alaska legislature, an initiative petition entitled 'An Act relating to campaign contributions, expenditures, and their limitations' was filed with the lieutenant governor. During that session, the legislature enacted Ch. 76, SLA 1974. That act is entitled, 'An Act relating to the election campaigns; and providing for an effective date.'

Pursuant to AS 15.45.210,[FN1] the lieutenant governor, H. A. (Red) Boucher, sought to determine whether the act and the initiative were substantially the same. An opinion of the attorney general, Norman C. Gorsuch, was sent to the lieutenant governor in a letter dated June 17, 1974. The attorney general's opinion was that the measures were substantially the same and, therefore, the initiative was void. The lieutenant governor concurred and notified the initiative committee that the initiative would not appear on the ballot.

FN1. AS 15.45.210 provides:
'If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.'

This case was initiated on June 25, 1974, when Clifford E. Warren filed a 'Complaint for Declaratory Judgment' in the superior court. Warren sought a preliminary injunction requiring

the lieutenant governor to place the initiative on the primary ballot of August 27, 1974, or alternatively, on the general election ballot.

Oral argument was heard on June 28, 1974, and th preliminary injunction was denied.

On July 16, 1974, Warren brought a petition for review to this court. The petition was initially denied, but on motion for reconsideration review was granted and, on August 20, 1974, we remanded the case to the superior court with directions to proceed to a final determination of the action as expeditiously as possible.

On September 6, 1974, Judge Carlson granted summary judgment for defendants in a memorandum decision. From that judgment this appeal has been taken.

II.

Warren offers two significant arguments in contending that the initiative should be placed before the voters. He asserts that:
(1) AS 15.45.210[FN2] is unconstitutional because the legislature has improperly delegated a judicial function to an executive officer;

FN2. Id.

(2) Ch. 76, SLA 1974 and the initiative are not substantially similar;
Several additional arguments are offered by appellant, though not all of them warrant extended analysis.

III.

Appellant strongly urges that AS 15.45.210 improperly delegates to the lieutenant governor the duty of determining, in the first instance, whether an act and an initiative are 'substantially the same.' He argues that this law violates the separation of powers doctrine by vesting the construction of constitutional language in an executive officer of the state, rather than in *733 the courts.[FN3] The statute, enacted in 1960, provides:

FN3. Warren also contends that AS 15.45.210 violates Alaska Constitution, Art. III, Sec. 22.
'All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

'Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.'
Obviously, the statute was enacted to effectuate Art. XI, Sec. 4, of the Alaska Constitution. That provision states:
'Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.'

[1] At the outset, we note that Art. XI, Sec. 4, does not expressly confer on any branch or agency the power to determine whether an act and an initiative are 'substantially the same.' However, Alaska Constitution, Art. V, Sec. 3, declares in part:
'There procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law.'

Alaska Constitution, Art. XII, Sec. 11, provides, in part: 'As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers.'

We conclude that these constitutional provisions, when read in harmony, give the legislature the power to enact a method of determining whether two provisions are 'substantially the same,' as used in Art. XI, Sec. 4, of the Alaska Constitution.

[2] The legislature has expressly delegated its power in this regard to the lieutenant governor,[FN4] subject to review by the courts.[FN5] In reviewing that delegation of power, we reiterate that we are disinclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes, unless such means clearly violate the Constitution. DeArmond v. Alaska State Development Corp., 376 P.2d 717, 724 (Alaska 1962).

FN4. See AS 15.45.210, n. 1, supra.

FN5. AS 15.45.240 provides:
'Any person aggrieved by a determination made by the lieutenant governor may bring an action to have the determination reviewed within 30 days of the date on which notice of the determination was given by any appropriate remedy in the superior court.'

Courts in modern times have been reluctant to declare legislation unconstitutional on the ground of improper delegation of power.[FN6] Indeed, Professor Louis L. Jaffe, in commenting on the United States Supreme Court's attitude toward such challenges, has noted:

FN6. See generally, Jaffe, An Essay on the Delegation of Legislative Power, 47 Colum.L.Rev. 359 and 561 (1947).

'The Court has given the Congress a latitude broad enough for almost any administrative experiment presently believed necessary.'[FN7]

FN7. Id. at 581.

*734 And Professor Kenneth C. Davis has stated:
'We have learned that the danger of tyranny or injustice lurks in unchecked power, not in blended power.'[FN8]

FN8. K. Davis, Administrative Law Text s 1.08, at 25 (1972).

This does not mean that the legislature has an unlimited right to delegate its responsibilities. But where it would be impractical or cumbersome for the legislature to undertake the task in question, a limited delegation, subject to appropriate review, has been upheld.[FN9]

FN9. See e. g., Union Bridge Co. v. United States, 204 U.S. 364, 387, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadowlark Farms, Inc. v. Ill. Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (1974); Leininger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948).

[3] Turning to the case at bar, the legislature has divested itself of a fact finding task which has no direct relation to that body's law making functions. Comparative analysis of varying pieces of legislation can be an arduous and time consuming endeavor. We find that the delegation in this case is based on sound, practical considerations.

In delegating the responsibility to the lieutenant governor,[FN10] the legislature has assigned the task to the person who is in charge of administering and supervising the conduct of all state elections.[FN11] In addition, the lieutenant governor performs extensive ministerial functions related to the initiative process.[FN12] Thus, the legislature has delegated its authority to a logical governmental officer.

FN10. The delegation initially went to the secretary of state, but that office was

supplanted by the creation of the lieutenant governor's post in 1970.

FN11. See AS 15.15.010 et seq.

FN12. See AS 15.45.010 et seq.

The delegated function, in this instance, is definitionally narrow. The lieutenant governor, aided by the attorney general, must make a simple factual determination: Are two documents substantially the same in their content? In carrying out this determination, the lieutenant governor is not formulating policy. The framers of the Alaska Constitution have already decided that an initiative is void if legislation, which is substantially the same, exists. By determining whether two documents are substantially the same, the lieutenant governor is simply effectuating constitutional policy.

Similar non-discretionary delegations have been upheld in other jurisdictions. [FN13] The Alaska legislature has expressly afforded an aggrieved party the right to judicial review.[FN14] In these circumstances, we hold the delegation of power in AS 15.45.210 to be both reasonable and constitutional.

FN13. See, e. g., Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617, 627-28 (1952); Hodges v. Dawdy, 104 Ark. 583, 149 S.W. 656, 658-59 (Ark.1912); Leininger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948); Schmidt v. Gronna, 68 N.D. 488, 281 N.W. 57, 60 (1938); Brazelll v. Ziegler, 26 Okl. 826, 110 P. 1052 (1910); White v. Welling, 89 Utah 335, 57 P.2d 703, 705 (1936).
Cf. Union Bridge Co. v. United States, 204 U.S. 364, 385-86, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadow Lark Farms, Inc. v. Illinois Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (Ill.App.1974); Joseph E. Seagrams & Sons, Inc. v. Hostetter, 45 Misc.2d 956, 258 N.Y.S.2d 442, 451 (Sup.Ct.1965).

FN14. See n. 5, supra.

IV.

Warren also urges that the superior court erred in ruling that the initiative and the act are 'substantially the same.'

In his memorandum decision of September 6, 1974, the trial judge undertook to define the phrase 'substantially the same,' as used in Article XI, Sec. 4, of the Alaska Constitution. He concluded that the phrase is broad enough to include a statute which 'treats the same problem as that sought to be reached by the proposed initiative.' He then granted summary judgment for the state because he found that ***735** the statute and the initiative 'attempt to reach the same results, more effective election campaigns.'

In reaching his definition, the trial judge relied, in part, on commentary which accompained the Constitutional Convention Committee's Proposal No. 3, concerning initiatives and referendums. That proposal, in pertinent part, stated:
'. . . Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. . . .' (emphasis added)

The commentary, which did not refer to any specific phrase within Proposal No. 3, stated:'If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.'

Supsequent to the introduction of Proposal No. 3, several amendments to it were made. Article XI, Sec. 4, now reads:
'An intiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.' (emphasis added)

In view of the changes which this provision underwent after its introduction, we find the committee commentary which guided the trial court to be less than conclusive. As we stated in Walters v. Cease, 388 P.2d 263, 266 (Alaska 1964):
'While such a statement might have been a valuable aid for ascertaining the intention of the convention with respect to the constitutional provision then under consideration, it loses any value it may have had because Proposal No. 3 . . . was later amended so as to materially change its meaning.' (footnotes omitted)

The committee proposal was first taken up by the constitutional convention as a committee of the whole. Later the proposed article was considered a number of times through floor discussions of some length, and numerous amendments were adopted. However, there is no helpful discussion of what was the intended scope of the words 'substantially the same measure.' Thus the ultimate construction of this critical language devolves upon this court.

[4] Our dissenting colleagues rightly observe that the article on direct legislation was the subject of extensive debate at the constitutional convention. They read the term 'substantially the same measure' as permitting legislative displacement of an initiative only within rather narrow confines. However, we find nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean. Many views were expressed by individual delegates, but these expressions do not in this instance provide a reliable guide to what the constitutional convention as a whole intended by the adoption of the phrase in question, or what it meant to the voters who ratified the constitution. In order to interpret this language we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.[FN15]

FN15. The dissent refers to the frustrations experienced by Alaskans under territorial government, and the deeply felt need for self-government which led to convening the constitutional convention as part of the statehood movement. Nothing in that background, however, has any direct bearing on how the term 'supstantially the same measure' should be interpreted.

***736** The words 'substantial or 'substantially' are relative, inexact terms. Their meaning is quite elusive. Application of Scroggins, 103 Cal.App.2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only be reference to all the circumstances surrounding the context in which they are used. Atcheson, T. & S.F. Ry. v. Kings County Water District, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term 'substantially the same measure' must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.

It is evident that the framers wanted to avoid a constitutional system in which any and all types of law could be enacted by direct legislation. Thus they placed a number of specific restrictions upon its use. Art. XI, Sec. 4, states:
'The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.'

A less absolute, more relative restriction on the use of the initiative comes about by reason of the language which must be construed in the case at bar. By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have

required that an initiative could be voided only by legislative enactment of 'the measure initiated'. Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that 'substantially the same measure' be enacted by the legislature in order to void an initiative petition.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

[5] Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complx or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

We are fortified in this understanding of the constitutional language, and the intention of the framers, by a companion provision of the constitution. Under Art. XI, Sec. 5, an initiative, once enacted, cannot be repealed by the legislature within two years of its effective date. But it may be amended at any time. Here, as with Art. XI, Sec. 4, a considerable change occurred in the constitutional convention in the language first proposed and that finally adopted. Committee Proposal No. 3 (Committee on Direct Legislation, Amendment*737 and Revision, December 9, 1965), provided:
'No law passed by initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years.'

The final constitutional provision states in pertinent part:'An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . ..'

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.[FN16]

FN16. The discussions on the floor of the constitutional convention reveal a belief by a number of framers that a countervailing consideration would act as a balance against legislative arbitrariness in this respect. It was believed that the natural desire of many legislators to be re-elected, or at least to demonstrate creditable performance as public officials, would cause them to think carefully before amending an initiative out of existence, because of the effect which such action might have on the electorate in the future.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words 'substantially the same measure.' For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We,

of course, are not passing here on the question of whether an amendment so vitiates an act passed by initiative as to constitute its repeal.

Turning now to the initiative and legislative act before us, it is clear that they both cover the same general subject matter. Both are aimed at the control of election campaign contributions and expenditures. The main points of similarity in the two measures are these: The amount a candidate may spend on his campaign is limited; contributions and expenditures must be reported; contributions of $100 or more under the act, and all contributions under the initiative, must be reported; the persons covered include candidates for governor, lieutenant governor, and state legislature;[FN17] criminal misdemeanor penalties are imposed for the violation of the respective provisions of both measures;[FN18] acceptance of anonymous contributions is prohibited; a responsible campaign treasurer must be appointed by each candidate; certain violations under each measure work a forfeiture of nomination or election; required reports must be made available for inspection by the public; and provision is made for citizen enforcement of the law, by court action under the initiative, and under the act by a complaint to the election***738** compaign commission and appeal to the supreme court.

FN17. The initiative covers all municipal elections. The act permits a municipality to exempt itself from the coverage of the law. The initiative covers candidates for Congress, while the act does not. It should be noted that candidates for federal office are regulated extensively by the federal election campaign disclosure act passed in 1972. See 2 U.S.C. ss 431-454.

FN18. AS 15.13.120(a) imposes penalties of up to one year of imprisonment or a fine up to $5,000 for violation of the act. We do not view the act, as does the dissent, as eliminating almost all individual penalties for enforcement.

Under the initiative a watchdog committee is created, composed of three members of each major political party and three independent persons, plus one member from any other recognized political party. The ultimate appointive authority as to the committee is in the governor. Under the act there is created an election campaign commission. The governor appoints to the commission two members from each major political party, and they select by majority vote a fifth member.

There are certain points of contrast between the two measures. The initiative places most of the supervisory and administrative responsibilities on the lieutenant governor. The act places these functions in the election campaign commission. The initiative requires commercial advertisers to file reports of political advertising; the act does not require this. The initiative attempts to place out-of-state contributors under the jurisdiction of the Alaska courts; the act is silent on this subject.[FN19] The act defines and regulates political groups formed to support or oppose a political candidacy; the initiative does not reach such groups. Under the act a $1,000 limit is placed upon individual contributions; the initiative imposes no limit. Under the initiative candidates for governor and lieutenant governor cannot use more than 40% of their expenditures for 'communications media.' The act contains no such limitation.

FN19. This does not mean that out-of-state contributions go unregulated. Under the act these contributions must be reported; they may not exceed $1,000 in the aggregate per annum for any one candidate; and it is a criminal offense to accept a contribution in violation of the act. See AS 15.13.040, .070, and .120(a)(6).

The dissent views the act as eliminating all subpoena or investigatory power of the watchdog committee. However, the act, AS 15.13.030, requires that the commission must receive and hold open for public inspection the reports filed under the act. The commission is empowered to adopt regulations necessary to effectuate and clarify the act, and to conduct investigations of claimed

violations of the act. AS 15.13.030(10) and .120(d). If the commission finds that violations have occurred it must report them to the attorney general for action. The attorney general may, of course, obtain subpoenas by resort to grand jury proceedings. We do not view the act as hampering investigation and prosecution of prohibited activities. Therefore, the elimination of the watchdog committee's subpoena power does not, in our opinion, create a significant difference between the two measures.

We are unable to accept the view, expressed in the dissent, that enforcement of the act will be less effective because violations must be referred to the attorney general. The practical or political problems posed by that method of enforcement, as contrasted with the watchdog committee envisaged by the initiative, may not in actuality operate as a serious barrier to enforcement. To some extent such problems inhere in the process of criminal prosecution generally. The countervailing forces are an aroused public opinion and the constitutional obligation resting on the executive to see that the laws are faithfully executed. These forces are operative in the porcessing of criminal matters of all types. We will not assume that practical or political considerations will frustrate effective enforcement.

The act does not place limitations on media spending, does not impose reporting requirements on media, does not require permits for media advertising, and does not provide for the reporting of surplus funds collected, in the same manner as does the initiative. But that is not to say that these subjects are unregulated. Under AS 15.13.110(d) all persons supplying services to any candidate must maintain a record of each transaction and must file appropriate reports with the commission. While the act does not limit the amount of media *739 spending, it does limit total spending by any candidate. Surplus funds will be reported under AS 15.13.110 which requires that a report shall be filed on December 31 of each year for expenditures and contributions not reported earlier in that year.

That the act contains no requirement for equal charges by media and equal time to candidates is moderated in part by applicable federal law. Under 47 U.S.C. Sec. 315(a)(2) a broadcasting licensee must afford equal opportunity to all other candidates for a given office.[FN20]

> FN20. See Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), for an exposition of the fairness doctrine, which is distinct from the statutory equal time requirement.

The power of the watchdog committee to delay certification of candidates or to bring charges requiring a delay of certification has been eliminated in the act. But the act declares void the nomination or election of a condidate who violates the act, and provides for an expeditious judicial procedure to determine such cases.

Both measures control the total amount of expenditures by candidates as to primary and general elections. The specific amounts limited in each measure vary. As to the candidates for governor and lieutenant governor the amounts work out nearly the same.[FN21] As to candidates for the House the initiative limits expenditures to $6,000, while the act limits them to about $7,000. The initiative limits Senate campaign expenditures to $8,000, while the formula used under the act results in a limit of about $14,000.

> FN21. The proposed initiative, Sec. 2(a)(1) limits expenditures by or on behalf of a candidate for governor or lieutenant governor to exactly $125,000. The legislative enactment, AS 15.13.070(f)(1) utilizes a formula which limits expenditures by or an behalf of a candidate for governor or lieutenant governor to '40 cents times the total population of the state according to the latest United States census figures . . .' The official United States Decennial Census, last taken in 1970, sets the population of the State of Alaska at 302,173. Thus candidates for governor and lieutenant governor would be restricted to expenditures of $120,869.20

under the legislative act, as compared with $125,000 under the proposed initiative.

In short, the statute is not a hollow gesture toward the regulation of election campaigns. It sets up workable machinery to ensure compliance. Quite possibly the legislature felt that an election campaign commission could better handle the prescribed administrative and supervisory duties than could the lieutenant governor, and that such a commission would be more effective than the watchdog committee contemplated by the initiative. In making such a choice the legislature would not be vitiating the aims of the initiative but making those aims more feasible of achievement.

Various other differences can be found in the two measures, but they are not significant enough to make a material difference in our decision.

Viewing the two measures as a whole we find that they accomplish the same general goals. They adopt similar, although not identical, functional techniques to accomplich those goals. The variances in detail between the measures are no more than the legislature might have accomplished through reasonable amendment had the initiative become law. Nothing is present here to suggest that the act was a subterfuge to frustrate the ability of the public to obtain consideration and enactment of a comprehensive system to regulate election campaign contributions and expenditures.[FN22] No doubt other changes will be made in the law, in response to newly perceived needs and in the light of experience gained in the administration of the act. The same would be true had the initiative been placed upon the ballot and become law.

FN22. On the contrary, a number of differences between the initiative and the act can be explained by the possibility that the legislature might have regarded certain features of the initiative to be subject to constitutional attack or to be practically unworkable. We do not, however, express an opinion on the constitutionality of any of the particular provisions of either measure.

*740 [6] It is our opinion that substantial similarity exists between the two measures. The act effectively displaced the initiative. The lieutenant governor was correct in withholding the initiative from the ballot. We affirm the judgment of the superior court.

Affirmed.

ERWIN and BURKE, JJ., dissent.
ERWIN, Justice, with whom BURKE, Justice joins, dissenting.
I dissent.

The power of initiative and referendum is the basic recognition that under our republican form of government the ultimate political power exists with the people and not in some legislative body.[FN1] These provisions permit the people to enact laws when the legislature refuses to act, or repeal acts of the legislature which are unpopular or unfair. Moreover, it is an additional check and balance on the governmental process because it acts upon the legislative awareness that such power exists with the people[FN2]

FN1. 2 Alaska Constitutional Convention Proceedings, 931-975. See particularly the statements of Delegates Marston and Taylor, 959-961, before defeat of the motion to delete all reference to referendum in the article on 973.

FN2. Fischer, Alaska Constitutional Convention, 79-81 (University of Alaska Press, 1975).

One set of critics at the constitutional convention claimed, however, that its limitations make it less than effective as a popular tool of government. They argued that the requirement of obtaining a large number of signatures from residents in order to put the issue before the voters significantly limited the use of the initiative process in all but a few cases.[FN3]

FN3. Id. at 79.

Now the majority opinion further restricts this process by countenancing substantial legislative limitation of the initiative procedure. When this court determines that the legislature may decide how much of the legislation supported by the people they want, the basic political right of initiative disappears, for it is not the will of the people that is paramount, it is the will of the legislature.

I find that the minutes of the Alaska constitutional convention and the commentary thereon are not as limited as the majority opinion indicates.

The initial proposal filed by the Committee on Direct Legislation contained the following language:
. . . Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. . . .[FN4]

FN4. 6 Alaska Constitutional Convention Proceedings, 19.

In the accompanying commentary the committee explained the content of the legislative enactment in the following terms:
If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people. (emphasis added) [FN5]

FN5. Id. at 23; 2 Alaska Constitutional Convention Proceedings, 929.

The discussion and amendment of this initiative proposal was perhaps the most extensive and hotly contested[FN6] of the entire constitution, covering 7 1/2 days of proposals and conter proposals.[FN7] This discussion included an extensive debate on the power to amend as being the power to amend and not the power to destroy.[FN8]

FN6. Fischer, supra note 2, at 79-81.

FN7. 2 Alaska Constitutional Convention Proceedings, 928-1200; 3 Alaska Constitutional Convention Proceedings, 2960-2993.

FN8. 2 Alaska Constitutional Convention Proceedings, 1173-1177.

***741** Subsequently the convention changed the proposal to provide as follows:
A referendum petition may be filed at any time. The secretary of state shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.[FN9] (emphasis added)

FN9. Section 4, Article XI, Alaska Constitution.

The majority opinion finds this constitutional history inclusive and suggests that it may be supportive of the conclusion that the convention intended to give wide latitude to the legislature to change the initiative. I find it supports the exact opposite conclusion because of the extensive debate on the convention floor concerning the need for the initiative process, which was the subject of public hearings during the Christmas recess of the constitutional convention.

Further, the political climate of Alaska preceding, during and after the constitutional convention does not support a theory of distrust of the popular electorate of the legislation it would sponsor. Alaska's history is replete with instances of frustration to get an absentee government in Washington to deal with pressing problems.[FN10] In fact, such inaction was the greatest single boost to statehood. The members of the Alaska constitutional convention understood, more than most, the necessity of the initiative process for unpopular acts-for without it, the long years of struggle to achieve local control over our political

destiny would have been cheapened.

FN10. Gruening, Many Battles, pp. 281-396 (Liveright 1973); Gruening, The State of Alaska, Chapter 28: 'Self Government: The Quest for Statehood,' p. 460 (Random House 1954).

In this case the legislature took the initiative title and enacted a measure which clearly was more politically palatable to them, but which is definitely not 'substantially the same' as the initiative sponsored by the people.

In reviewing the referendum and the statute, I find that of the 19 separate sections of the initiative, only six are the same as the statute, and as part of the six I am including the section dealing with the powers and duties of the watchdog committee and the reporting system, which is only 50% of that stated in the initiative.

Seven sections have been eliminated entirely by the statute. This includes:
1. All references to United States senators and congressmen.[FN11]

FN11. Section 2 of Initiative.

2. Coverage of local elections is changed to local option.[FN12]

FN12. Section 18 of Initiative.

3. The requirement that out-of-state contributors submit themselves to Alaska jurisdiction.[FN13]

FN13. Section 13 of Initiative.

4. Almost all individual penalties for enforcement of the provisions of the act.[FN14]

FN14. Sections 7 and 19 of Initiative.

5. All subpoena or investigatory power of the watchdog committee.[FN15]

FN15. Section 4 of Initiative.

6. All limitations on media spending.[FN16]

FN16. Section 2 of Initiative.

7. All requirements for equal charges by media and for equal time to candidates.[FN17]

FN17. Section 16 of Initiative.

8. Almost all reporting requirements by media, as well as all requirements that permits be obtained before media advertising is undertaken by a candidate.[FN18]

FN18. Section 5, 6 and 15 of Initiative.

9. All requirements for the reporting and disposition of surplus funds collected.[FN19]

FN19. Section 10 of Initiative.

***742** 10. Most definitions and the statement of purpose.[FN20]

FN20. Sections 1 and 20 of Initiative.

In addition, the dollar amount of expenditures has been changed in every instance to a higher figure.

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Govern or/Lt. Governor	$125,000	to	$130,000
House	6,000	to	7,500
Senate	8,000	to	15,000[21]

FN21. Section 2 of Initiative. The majority refers to the last decennial census of 1970 to suggest $120,000 as the figure for Governor. However, constantly new census figures are validated to show changes for federal-state revenue-sharing purposes. The latest figures for 1975 make the $130,000 figure conservative.

Whereas the initiative required the disclosure of persons who contributed in excess of $50 to a candidate, the measure passed by the legislature requires only contributors of $100 or more need to be identified and reported. [FN22] Moreover, every section dealing with failure to report, false reports, or perjury in reporting has been deleted, together with those provisions which provide for substantial fines for all people who refuse access to the records of a candidate.[FN23] In addition, all sections permitting citizens to sue to enforce the provisions of the initiative have been eliminated.[FN24]

FN22. Section 9 of Initiative.

FN23. Section 7 of Initiative.

FN24. Section 19 of Initiative.

All power of the watchdog committee to delay certification to candidates or to being charges requiring a delay of certification has been eliminated,[FN25] as has the power of the court to declare the second highest vote-getter elected where expenditure violations were found.[FN26]

FN25. Section 3 of Initiative.

FN26. Section 19 of Initiative.

Additionally, the legislature removed most enforcement teeth by requiring that any violation found by the commission must be referred to the Attorney General for a decision of whether or not the violator would be prosecuted.[FN27] The discretion to prosecute is an area of intense controversy, but such clearly depends upon factors outside the issue of whether or not a violation has occurred.[FN28] Such things as the manpower of the office, the priority of work, and the seriousness of other problems[FN29] can combine to make enforcement of this area somewhat improbable. To these practical problems is added a political reality which casts shadows over the decision to prosecute or not to prosecute. The Attorney General is appointed by the Governor; thus there is an unknown political factor which can effect the decision where the candidate or issue is one approved by the political party in power.

FN27. AS 15.13.120(d).

FN28. See Public Defender Agency v. Superior Court of Third Judicial District, 534 P.2d 947, 949-951 (Alaska 1974), for a discussion of the Attorney General's discretion to decline prosecution in child support cases.

FN29. Fischer, supra note 3, at 949.

While the act does not explain how the watchdog committee will obtain evidence of violations without investigative or subpoena power, the statute is clear that there is no method of delaying certification or removing a candidate who is in violation without a court proceeding.[FN30] Further,

any case for voiding the election filed by the Attorney General must then be heard by the Supreme Court of Alaska as an original proceeding, [FN31] rather than in the normal way of all other cases in the District or Superior Court. Since the Supreme Court must sit as five judges, it is a cumbersome body to hear fact disputes, particularly in view of its divided geographic situs and other work load. This process becomes even more cumbersome and somewhat questionable if constitutional rights of jury trial in certain cases [FN32] and ***743** statutory rights [FN33] to appeal all cases to the Supreme Court are considered.

FN30. AS 15.13.120(b).

FN31. AS 15.13.120(b).

FN32. See Baker v. City of Fairbanks, 471 P.2d 386, 401-402 (Alaska 1973), for a discussion of cases where jury trial is required.

FN33. AS 22.05.010.

The initiative recognized these problems by permitting the commission and private parties to bring suit to enforce its provisions and gave to the committee investigative and subpoena power to insure compliance. The elimination of these provisions goes to the heart of the enforcement provision and leaves, to a large extent, an illusory remedy. The intiative and the measure passed by the legislature have the same title and some similar reporting requirements, but by no stretch of the imagination are they substantially the same.[FN34]

FN34. The only similar section found in AS 15.13.010-110 provide for
(1) a monitoring committee (.020 to .030);
(2) the reporting of contributions over $100.00 (.040);
(3) the registration of groups and the appointment of a treasurer (.050 and .060);
(4) limitations of spending by candidates in various races (.070);
(5) certain reporting requirements of contributors and a schedule for candidates (.080 to .110).
Additionally, the legislature added a tax credit of $50.00 from state income tax for political contributions. Also, publication of an election pamphlet containing background information on the candidates, costing each House candidate $25.00 and each Senate candidate $50.00.

The majority attempts to excuse the need for a number of the deleted sections by noting that certain federal reporting requirements or court decisions make them unnecessary. While disregarding the proposition that federal laws can provide effective regulation for Alaska elections when all complaints must be filed in Washington, D.C., I submit that this argument misses the point. The question is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative. It is for the people to provide the decision in situations such as this because the legislature failed to act until prodded by the electorate. P their inaction the legislators simply lost their ability to challenge the utility of the provisions. Their only power was to nearly duplicate the initiative, for that is just what the words 'substantially the same' mean.

The majority's final suggestion that the powers and duties referred to in several of the eliminated sections can be implied from other provisions of AS 15.13 flies in the face of two canons of construction which have been adopted in almost every jurisdiction: (1) criminal statutes are to be strictly construed, and (2) where there has been a material change in language of an act, it is presumed that the legislature intended to indicate a change in legal rights and obligations thereunder.[FN35]

FN35. See Horack, Sutherland Statutory Construction, Vol. 1, s 1930, p. 412-414 (3rd Ed.1943).

I agree with the implication of the majority opinion that the sections eliminated affect the workings of the commission and various other provisions throughout the statute. However, I an unable as a matter of logic to find the flexibility in the act passed by the legislature to cover the gaps left by

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those sections deleted from the original initiative.

I would reverse the decision of the trial court and remand this case with instructions to place the initiative on the ballot of the next general election.

Alaska 1975.
Warren v. Boucher
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END OF DOCUMENT

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C

Briefs and Other Related Documents

Supreme Court of Alaska.
STATE of Alaska, Loren Leman, Lieutenant Governor, and Gregg D. Renkes, Alaska Attorney General, Appellants.
v.
TRUST THE PEOPLE, the Initiative Committee Sponsoring 03SENV, consisting of Eric Croft, Harry T. Crawford, Jr., and David Guttenberg, Appellees.
No. S-11288.

May 27, 2005.

Background: Initiative committee sought review of denial of certification by Lieutenant Governor to place proposed initiative on ballot that would have restricted governor's power to temporarily appoint United States senators. The Superior Court, Third Judicial District, Anchorage, Mark Rindner, J., ordered Lieutenant Governor to certify initiative for inclusion on ballot. The State appealed.

Holdings: The Supreme Court, Carpeneti, J., held that:
(1) proposed initiative was not "substantially the same" as legislation that addressed the same topic, and therefore proposed initiative was not void, and
(2) constitutionality of proposed initiative was not ripe for review before next election.
Affirmed.

West Headnotes

|1| Appeal and Error ⇐842(1)
30k842(1) Most Cited Cases
The appellate court reviews questions of state and federal constitutional law using its independent judgment.

|2| Statutes ⇐302
361k302 Most Cited Cases
The appellate court liberally construes state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations, but liberal construction of federal constitutional provisions is not appropriate.

|3| Statutes ⇐303
361k303 Most Cited Cases
Proposed initiative that would have restricted the governor's power to temporarily appoint a United States senator was not "substantially the same" as legislation that addressed the same topic, and therefore proposed initiative was not void; proposed initiative would have completely removed from the governor all power to make temporary appointments to the office of United States Senator, and ensured that such decisions would be made by the voters, while the legislation preserved in all cases the governor's power to make such temporary appointments. Const. Art. 11, § 4.

|4| Statutes ⇐303
361k303 Most Cited Cases
A three-part test is used to determine whether a proposed initiative and legislation are substantially the same, thereby rendering void the proposed petition: the court first determines the scope of the subject matter, and affords the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow, the court next considers whether the general purpose of the legislation is the same as the general purpose of the initiative, and finally, the court must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative. Const. Art. 11, § 4.

|5| Constitutional Law ⇐46(1)
92k46(1) Most Cited Cases
Constitutionality of proposed initiative to restrict the governor's power to temporarily appoint a

United States senator, by ensuring that such decisions were left to the voters, was not ripe for review before the next election; although the State asserted that the initiative contravened the Seventeenth Amendment to the federal Constitution, providing that the legislature of any state may empower the governor to make temporary appointments of United States senator, pre-election review could be extended only to subject-matter restrictions that arose from Alaska law, and that specifically addressed the initiative process, or to proposals that were clearly unlawful under controlling authority. U.S.C.A. Const.Amend. 17.

***614** Joanne M. Grace, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellants.

Peter J. Aschenbrenner, Aschenbrenner Law Offices, Inc., Fairbanks, and Jeffrey M. Feldman, Feldman & Orlansky, Anchorage, for Appellees.

Peter J. Maassen, Ingaldson, Maassen & Fitzgerald, Anchorage, for Amicus Curiae Alaska Public Interest Research Group.

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices.

OPINION

CARPENETI, Justice.

I. INTRODUCTION

Because of the need for resolution of the issues raised in this case before the election, we issued our Order on August 20, 2004, with an opinion to follow. This is that opinion. [FN1]

> FN1. The Order provided:
> Trust the People, an initiative committee, submitted an initiative that proposed to determine the manner in which vacancies in Alaska's two United States Senate seats would be filled; after some delay in the certification process, Trust the People filed suit against Lieutenant Governor Loren Leman. The Lieutenant Governor eventually denied certification of the initiative, determining that the Seventeenth Amendment of the United States Constitution prohibited enactment of the proposed law by initiative. Following oral argument on the issue, Superior Court Judge Mark Rindner ruled that the constitutionality of the initiative should not be considered unless and until the voters enact the initiative into law; accordingly, he held that the Lieutenant Governor erred by denying certification of initiative and ordered him to certify the initiative. Pursuant to the superior court's order, the initiative was certified; it was subsequently placed on the ballot for the November 2004 statewide general election.
> On June 5, 2004 House Bill (H.B.) 414, "An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'; and providing for an effective date" was enacted into law. On June 15, 2004 the Lieutenant Governor removed the initiative from the ballot and the state moved to dismiss this appeal as moot on the grounds that H.B. 414 and the initiative were substantially the same, and that the initiative was therefore void under article XI, section 4 of the Alaska Constitution. Trust the People filed a separate case in superior court seeking a declaratory judgment that the proposed initiative must be placed on the November ballot. On July 8, 2004 we issued an order in which we informed the parties that we would consider the issue of substantial sameness when we considered the merits appeal involving the Seventeenth Amendment from the first superior court action. Oral argument was held before this court on July 21, 2004.
> **IT IS ORDERED:**
> 1. The law enacted to supplant the initiative (HB 414) is not substantially the same as the initiative because (1) it provides that the governor will fill a senate

vacancy by appointment, whereas the initiative provides that all vacancies will be filled by popular election, and (2) eliminating gubernatorial appointments from the process of filling senate vacancies is a primary objective of the initiative. Therefore, the initiative is not void, and the state's motion to dismiss this appeal as moot is DENIED.

2. Judge Rindner did not err in declining to consider whether the initiative violates the Seventeenth Amendment unless and until it is approved by the voters and in ruling that the lieutenant governor wrongfully denied certification of the initiative. The general rule is that a court should not determine the constitutionality of an initiative unless and until it is enacted. There are two exceptions to this. First, where the initiative is challenged on the basis that it does not comply with the state constitutional and statutory provisions regulating initiatives, courts are empowered to conduct pre-election review.

Second, courts are also empowered to conduct pre-election review of initiatives where the initiative is clearly unconstitutional or clearly unlawful. Neither exception applies to this case. The first exception does not apply because the present challenge does not involve state constitutional and statutory provisions regulating initiatives. The second exception does not apply because the initiative is not clearly unconstitutional: whether the Seventeenth Amendment permits or precludes lawmaking by initiative with respect to filling senate vacancies presents an open and fairly debatable constitutional question. The decision of the superior court, deferring review of the initiative and directing the lieutenant governor to certify the initiative, is AFFIRMED.

3. The initiative entitled "An Act Relating to Filling a Vacancy in the Office of United States Senator" (03-SENV) shall be placed on the ballot.

4. An opinion will follow.

A citizens' group obtained sufficient signatures to place on the November 2004 ballot an initiative restricting the governor's power to temporarily appoint a United States senator. This case concerned whether the initiative should go before the voters.

***615** The Alaska Constitution provides that if the legislature enacts legislation that is "substantially the same" as a proposed initiative, the initiative is void. Because the legislature enacted legislation that addresses the same topic, the lieutenant governor removed the initiative from the ballot. This case first required us to determine whether the legislation is "substantially the same" as the initiative so as to render it void under the Alaska Constitution. We decided this question in the negative. Because we concluded that the principal purpose of the initiative is to completely remove from the governor all power to make temporary appointments to the office of United States senator, while the effect of the legislation is to preserve in all cases the governor's power to make temporary appointments to that office, we held that the legislation is not "substantially the same" as the initiative.

The Seventeenth Amendment to the United States Constitution provides that "the legislature" of any state may empower the governor to make a temporary appointment of a United States senator when a vacancy occurs in that office. The state argues that this power is reserved to the Alaska State Legislature and may not be exercised by the people through the initiative. The initiative sponsors respond that this dispute is not subject to resolution before the election; they claim that it will only be ripe for decision if the initiative passes. Thus, the case required that we determine whether pre-election review of the initiative is appropriate under our law. We decided this question also in the negative. We concluded that pre-election review may extend only to subject-matter restrictions that arise from Alaska law and that specifically address the initiative process or to proposals that are clearly unlawful under controlling authority. Because the

proposed initiative meets neither of these tests, we held that it should go before the voters and that the state's Seventeenth Amendment challenge was premature.

Accordingly, we directed the lieutenant governor to place the initiative on the November ballot.

II. FACTS AND PROCEEDINGS

In Alaska the people's right to enact legislation by initiative is guaranteed by article XI of the Alaska Constitution, which states: "The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum." [FN2] Once an application for a proposed initiative has been signed by one hundred qualified voters, it is filed with the lieutenant governor, who must certify the initiative if he finds it in the proper form. [FN3]

FN2. ALASKA CONST., art. XI, § 1. There are certain subject matter limitations on the people's power to enact initiatives. Initiatives "shall not be used to dedicate revenue, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation." ALASKA CONST., art. XI, § 7. The proposed initiative now before the court does not implicate any of these limitations.

FN3. ALASKA CONST., art. XI, § 2.

On September 4, 2003 an initiative committee named Trust the People sought to exercise the power granted by article XI. The committee submitted an initiative application for a proposed bill entitled "An Act Relating to Filling a Vacancy in the Office of United States Senator" (03-SENV, also referred to as "the initiative"). The proposed initiative was intended to repeal former AS 15.40.010, which gave the governor the power to fill a vacancy in the office of United States senator by appointment. Under the prior law, if thirty months or less remained in a vacating senator's term, the governor's appointee would serve as senator for the remainder of the term. When the initiative was submitted, AS 15.40.010 provided:

> When a vacancy occurs in the office of United States senator, the governor, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, shall
> (1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy, and is, on the date of appointment, a member of the same political party as that which nominated the predecessor in office to fill the ***616** vacancy temporarily until the vacancy is filled permanently by election; and
> (2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[[FN4]]

FN4. *See* Ch. 4, § 1, SLA 2002. This statute was amended on June 5, 2004 by H.B. 414. *See* Ch. 50, SLA 2004.

Under the proposed initiative, all vacancies in the office of United States senator must be filled by the voters in a special election and the governor would have no power of appointment. Under the proposed initiative there could be no incumbency advantage because no temporary appointment would be permitted. The procedural aspects of the special election (timing, term limits, primaries, etc.) would mirror the current method by which vacancies in the office of United States representative are filled by special election. [FN5] We set out the proposed initiative in its entirety in the margin. [FN6]

FN5. *See* AS 15.40.140-.220.

FN6. *Section 1.* AS 15.40.140 is amended to read: *Sec. 15.40.140. Condition and time of calling special election.* When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by

proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.

Section 2. AS 15.40 is amended by a adding a new section to read:

Sec. 15.40.165. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election by the director.

Section 3. AS 15.40.200 is amended to read:

Sec. 15.40 200. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States senator or United States representative, as appropriate, at the special election and requests that the name of the candidate nominated be placed on the ballot.

Section 4. AS 15.40.220 is amended to read:

Sec. 15.40.220. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Section 5. AS 15.40.310 is amended to read:

Sec. 15.40.310. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Section 6. AS 15.40.470 is amended to read:

Sec. 15.40.470. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of state senators, including the provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination

> of the votes and of recounts, contests, and appeal; and provision for absentee voting.
> *Section 7.* AS 15.40.010, 15.40.050, 15.40.060, 15.40.070, 15.40.075, 15.40.130, and [ ] 15.40.135 are repealed.
> *Section 8. Effective Date.* This Act takes effect January 1, 2005.

***617** After the initiative was submitted to Lieutenant Governor Loren Leman, it was referred to the Department of Law for pre-certification review. When a month passed and the initiative had not been certified, Trust the People filed a complaint against Lieutenant Governor Leman and Attorney General Gregg Renkes ("*Trust the People I* "). Trust the People alleged that Lieutenant Governor Leman and Attorney General Renkes were unlawfully delaying certification in violation of Alaska statutory and constitutional law. Trust the People sought a declaratory judgment that the lieutenant governor was required to immediately certify the initiative and prepare petitions and booklets for circulation. A hearing concerning the delay was held on October 10, 2003 before Superior Court Judge Mark Rindner. At the hearing the parties agreed that by October 27, 2003 the lieutenant governor would either certify the initiative and provide Trust the People with petition booklets as required by law or provide Trust the People with a written denial of certification. A written order concerning the parties' agreement was entered on October 13, 2003.

On October 20, 2003 the Department of Law issued an opinion stating that the initiative "is not a proper exercise of the law making power reserved to the people under Article XII, Section 11 of the Alaska Constitution." [FN7] The Department of Law determined that, under the Seventeenth Amendment to the United States Constitution, the people do not have the power to determine by initiative the method by which vacancies in the office of U.S. senator will be filled. The Seventeenth Amendment states in full:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.
> When vacancies happen in the representation of any state in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided.* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.
> This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Concluding that the plain language of the Seventeenth Amendment vests the power to determine how to fill U.S. Senate vacancies exclusively in each state's formal representative body, the department recommended that the lieutenant governor not certify the initiative because it proposed a law that may not be enacted via the initiative process. Lieutenant Governor Leman denied certification of the initiative on October 21, 2003.

On October 30, 2003 Judge Rindner conducted a hearing regarding the denial of certification. Trust the People argued that the lieutenant governor's power to deny certification of initiatives was limited to "precise state constitutional ... guidelines" (presumably those set out in article XI, section 7 of the Alaska Constitution) and had therefore been improperly exercised in this case. Trust the People

> FN7. Article XII, section 11 of the Alaska Constitution provides:
> As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to the law-making powers. *Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people though the initiative, subject to the limitations of Article XI.*
> (Emphasis added.)

also argued that any question regarding the constitutionality of the initiative could be addressed through review by the courts only if and when the voters of Alaska passed the initiative. The state argued that Lieutenant Governor Leman had the power to deny certification if the initiative concerned a subject that was outside the people's initiative power, and that denial was proper in this case because under federal constitutional law, the method of filling U.S. Senate vacancies cannot be determined by initiative.

***618** Relying on our decision in *Kodiak Island Borough v. Mahoney*, [FN8] Judge Rindner ruled that the constitutionality of the proposed initiative should not be considered unless and until the Alaska voters enact the initiative into law. Accordingly, Judge Rindner held that Lieutenant Governor Leman erred by denying certification and ordered him to certify the initiative and provide petition books to Trust the People. [FN9] Judge Rindner emphasized that he was not reaching the merits of the state's Seventeenth Amendment argument. The state appealed but did not seek a stay of the superior court's order. Trust the People circulated the petition and obtained almost 50,000 signatures. On October 30, 2003 Lieutenant Governor Leman certified the petition for inclusion on the ballot for the November 2004 statewide general election.

> FN8. 71 P.3d 896 (Alaska 2003). In *Mahoney* we held that a municipal clerk, in determining whether an initiative "would be enforceable as a matter of law," should only reject a petition that violates any of the liberally construed statutory or constitutional restrictions on initiatives or that proposes a substantive ordinance where controlling authority establishes unconstitutionality. *Id.* at 900. *See infra* discussion at Part IV.B.
>
> FN9. *Trust the People v. State of Alaska*, No. 3AN-03-12217 Ci. (Alaska Super., November 3, 2003).

Briefing for the appeal of the superior court's decision was completed by early May. On June 5, 2004 House Bill (H.B.) 414, "An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'; and providing for an effective date" [FN10] was enacted into law without Governor Murkowski's signature. [FN11] House Bill 414 provides in pertinent part:

> FN10. H.B. 414, 23rd Legis., 2d Sess. (2004).
>
> FN11. *See* bill history for H.B. 414, available at http://www.legis.state.ak.us/basis (last visited July 27, 2004). Under the Alaska Constitution, when the legislature is not in session, the governor has twenty days to sign or veto a bill, or it will become law without his signature. ALASKA CONST. art. II, § 17. Because the governor neither signed nor vetoed H.B. 414, it became law without his signature.

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

LEGISLATIVE INTENT. It is the desire of this legislature that the provisions of secs. 2-8 and 10 of this Act, which are substantially similar to those proposed in an initiative petition, not be repealed for at least two years after the Act's effective date.

Section 2. AS 15.40.140 is amended to read:

Sec. 15.40.140 Condition and time of calling of special election. When a vacancy occurs in the office of ***United States senator*** or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in ***the*** general election year ***during which a candidate to fill the office is regularly elected,*** the governor may not call a special election.

> **Section 3.** AS 15.40 is amended by adding a new section to read:
> **Sec. 15.40.145. Temporary Appointment of United States Senator.** When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Following passage of H.B. 414, this court on June 9 asked the parties to address whether the case was moot, or to file a motion to dismiss. On June 16 Lieutenant Governor Leman removed the initiative from the ballot. The lieutenant governor, concurring with an opinion from Attorney General Renkes, determined that the proposed initiative was void because it was "substantially similar" to H.B. 414. The state then sought to dismiss its appeal to this court, arguing that passage of H.B. 414 had rendered the appeal moot.

*619 Trust the People opposed dismissal, claiming that the proposed initiative and H.B. 414 were not substantially the same. Trust the People filed a new action in the superior court, seeking a declaratory judgment that the proposed initiative must be placed on the ballot for the statewide general election in November 2004 and requesting injunctive relief to prohibit the state from interfering with a popular vote on the initiative ("*Trust the People II* "). [FN12] Trust the People argued that Lieutenant Governor Leman's removal of the initiative from the ballot violated state statutory and constitutional law. The state sought to stay the proceedings in *Trust the People II* pending our resolution of its appeal in *Trust the People I*. Superior Court Judge Morgan Christen denied the state's motion and ordered expedited consideration of the case. The state then filed a petition for review, seeking to reverse the superior court's denial of a stay.

> FN12. *Trust the People v. Leman*, No. 3AN-04-08185 Ci.

On July 8 we issued an order granting the state's petition for a stay in *Trust the People II*. We informed both parties that we would consider the issue of mootness on an expedited basis when we considered the merits of *Trust the People I*. Oral argument was held July 21, 2004. On August 20, 2004 we issued the order set out in footnote 1.

In addition to the briefs filed by the parties to this case, the Alaska Public Interest Research Group (AKPIRG) has filed a brief as *amicus curiae*.

III. STANDARD OF REVIEW

[1][2] This appeal raises questions of both state and federal constitutional law, which we review using our independent judgment. [FN13] We liberally construe state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations. [FN14] Liberal construction of federal constitutional provisions, however, is not appropriate. [FN15]

> FN13. *See State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 65 (Alaska 2001) (questions of law reviewed *de novo*).
>
> FN14. *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).
>
> FN15. *See Bailey v. Alabama*, 219 U.S. 219, 239, 31 S.Ct. 145, 55 L.Ed. 191 (1911) ("[A state's] power to create presumptions is not a means of escape from [federal] constitutional restrictions.").

IV. DISCUSSION

Resolution of this case requires consideration of two issues: (1) Is the initiative void under article XI, section 4 of the Alaska Constitution, which states that an initiative is void if the legislature passes "substantially the same" measure? (2) Should the state's Seventeenth Amendment challenge to the proposed initiative be resolved before the initiative is put on the ballot?

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A. Is the Proposed Initiative Void Under Article XI, Section 4 of the Alaska Constitution Because It Is "Substantially the Same" as H.B. 414?

[3] Article XI, section 4 of the Alaska Constitution provides:

> An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*[[FN16]]
>
> > FN16. The procedure for finding an initiative void on grounds of substantial sameness is codified in AS 15.45.210:
> > If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.
> > The lieutenant governor's decision to remove an initiative from the ballot on this ground is subject to judicial review. AS 15.45.240.

(Emphasis added.)

The proposed initiative states in relevant part that:

> ***620** When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.

The proposed initiative would repeal the statutory provisions in AS 15.40.010 empowering the governor to make a temporary appointment to fill a senate vacancy. According to the impartial summary of the initiative prepared for the petition booklets by the lieutenant governor, the initiative "would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held."

Following the submission of the initiative to the lieutenant governor for placement on the ballot, the Alaska legislature passed H.B. 414. In contrast to the proposed initiative, H.B. 414 retains the governor's temporary appointment power in every case in which a senate vacancy might arise. House Bill 414 states in relevant part:

> When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Notwithstanding this difference, the lieutenant governor determined that the initiative and H.B. 414 are substantially the same. Accordingly, he deemed the initiative void and removed it from the ballot. The parties sharply dispute whether the initiative and the bill are in fact "substantially the same."

The definition of "substantially the same" is not apparent from the text of the Alaska Constitution. And in ***Warren v. Boucher***, [FN17] we noted that there is "nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean" or that offers any "helpful discussion of what was the intended scope of the words." [FN18] We also noted that "the words 'substantial' or 'substantially' are relative, inexact terms," whose meaning is "quite elusive." [FN19]

We therefore examined the question "against the total structure" of Alaska's constitutional system of direct legislation. [FN20]

FN17. **543 P.2d 731 (Alaska 1975).**

FN18. ***Id.* at 735.**

FN19. ***Id.* at 736.**

FN20. ***Id.***

[4] We noted that the original proposal of the Constitutional Convention Committee called for "[l]aws proposed by initiative [to] be submitted to the voters ... unless the legislature enacts *the measure* initiated ...." [FN21] The insertion of "substantially the same measure" in place of "the measure" demonstrated that the framers wished to allow some flexibility to the legislature. [FN22] At the same time, we noted the framers' conviction that popular enactment of legislation should not be frustrated by legislative veto. [FN23] We ultimately decided that a legislative act is "substantially the same" as the initiative it seeks to supersede if "in the main the legislative act achieves the same general purpose as the initiative [and] accomplishes that purpose by means or systems which are fairly comparable." [FN24] We also noted that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." ***621** [FN25] Thus, ***Warren*** developed a three-part test to determine whether a proposed initiative and legislation are substantially the same: A court must first determine the scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next, it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally it must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.

FN21. ***Id.* at 735** (quoting Constitution Convention Committee's Proposal No. 3) (emphasis added).

FN22. ***Id.* at 736.**

FN23. ***Id.* at 737.**

FN24. ***Id.* at 736.**

FN25. ***Id.***

Turning to the first part of the test, we note that the subject matter of the legislation and the initiative before us--filling senate vacancies--is narrow. It is far narrower than the subject matter of campaign finance reform that we considered in ***Warren***. The legislation in ***Warren*** was broad and complicated, touching upon a great range of topics, including campaign spending limits, reporting of contributions and expenses, restrictions on anonymous contributions, penalties for non-compliance, the creation of an elections oversight committee to monitor elections, and several other topics. [FN26] In the present case, the legislation is simple and straightforward, essentially dealing with only one substantive topic: filling of a U.S. Senate vacancy. We agree with Trust the People's assessment that "[t]he simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." As such, we begin our analysis with the view that the legislature should be accorded less latitude in its attempts to "vary from the particular features of the initiative." [FN27]

FN26. ***Id.* at 737-38.**

FN27. ***Id.* at 736.**

Turning to the next part of the test, we consider the general purpose of both the initiative and H.B. 414. The controversy before us differs fundamentally from the issue we addressed in *Warren*. In that case, both the initiative and the proposed legislation imposed greater controls over election contributions and expenditures; and despite some differences, it was clear that they both addressed the subject matter in similar ways. [FN28] (Indeed, the dispute in *Warren* turned almost exclusively on the third part of the test, the means by which the competing

versions of the law sought to vindicate their clearly common purpose of campaign finance reform.) We stated that the legislature's changes to the initiative did not "vitiate[ ] the aims of the initiative, but ma[de] those aims more feasible of achievement." [FN29] The legislature had made numerous changes to the initiative that implicated the scope of the law, its enforcement mechanisms, and other structural issues concerning the regulation of campaign finance reform. But because these changes were seen as promoting the shared goals of both the bill and the initiative, we were willing to accept the legislature's bill as "substantially the same" as its initiative counterpart, even though there were in fact differences in the texts. [FN30] But we cannot find that the competing versions of the legislation before us in this case share a common purpose. Indeed, as we explain more fully below, we believe the initiative and H.B. 414 have opposite objectives.

FN28. ***Id.*** **at 737-39.**

FN29. ***Id.*** **at 739.**

FN30. ***Id.*** **at 739-40.** As the dissent in ***Warren*** pointed out, "of the 19 separate sections of the initiative, only six are the same as the statute," and "[s]even sections have been eliminated entirely by the statute." ***Id.*** **at 741** (Erwin, J., dissenting).

In order to determine the respective purposes of H.B. 414 and the initiative, we look to their texts to determine intent. [FN31] This, in turn, requires us to review the circumstances surrounding the origins of the initiative.

FN31. *See Falcon v. Alaska Pub. Offices Comm'n,* 570 P.2d 469, 472 (Alaska 1977).

As amended in 1998, AS 15.40.010 provided in relevant part:

> When a vacancy occurs in the office of United States senator, the governor, within 30 days after the date of the vacancy, shall (1) appoint a qualified person ... to fill the vacancy temporarily until the vacancy*622 is filled permanently by election; and (2) ... call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[[FN32]]

FN32. Ch. 30, § 1, SLA 1998.

In 2002 the legislature amended the statute to restrict the governor from filling a vacancy until at least five days had passed from the date of the vacancy. [FN33] It was against this background that Trust the People formed for the purpose of changing the law by initiative. What was the intent of that initiative?

FN33. Trust the People argues that the proposed initiative arose out of voter frustration with this change in the law. According to Trust the People, the essential aims of the initiative are "to remove the appointment power from the Governor, in direct response to Governor Murkowski's appointment of his daughter to fill his own Senate seat," and to "eliminate totally the incumbency advantage for appointed Senators never elected by the voters." The state "does not agree with all aspects" of Trust the People's factual claims, which it argues are based on unsubstantiated opinions. Our resolution of this case does not require us to determine whether there is merit to the assertions of Trust the People.

We have previously held that in determining the meaning that voters might attach to a ballot initiative, we will look to published arguments made in connection with the initiative. [FN34] At the time of our August 20, 2004 order, [FN35] there was very little published material available because the voters' handbook has not yet been published. However, the lieutenant governor's neutral statement of the initiative's purpose, prepared pursuant to state law [FN36] for the petition booklets, was available for our review. The lieutenant governor, in his neutral statement of the

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purpose of the proposed initiative, wrote that the initiative "would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held." Trust the People insists that H.B. 414 does not accomplish this purpose, but instead achieves precisely the opposite result.

FN34. *Falcon,* 570 P.2d at 472 n. 6.

FN35. *See supra* note 1.

FN36. *See* AS 15.45.180(a).

The critical difference between the proposed initiative and the bill is that while the proposed initiative precludes gubernatorial appointment of a United States senator in *each and every case of vacancy,* H.B. 414 permits the governor to make a temporary appointment pending an election to fill the vacancy in each and every case. This means that, while the proposed initiative provides that in every instance Alaska's United States Senate seats will be filled only by Alaskan voters, H.B. 414 would allow an unelected executive appointee to fill the seat for an interim period that could last as long as five months. [FN37]

FN37. House Bill 414 provides that the governor need not call a special election for U.S. senator where a vacancy occurs less than sixty days prior to the primary election in a general election year. Primary elections are generally held in the last week of August, and general elections in early November, with the results certified in late November or early December, at which point the winning candidate is sworn in as senator. Therefore, were a senatorial vacancy to occur in late June of a general election year, the governor's appointee would serve for roughly five months, or until the end of November. *See* the State of Alaska Division of Elections website, at http://www.gov. state.ak.us/ltgov /elections/homepage .html# results.

The state argues that the initiative and the bill are "substantially the same" because they "accomplish the same general goal." That is, "under both the act and the initiative, a special election largely replaces the appointment process, unless the relevant general election will occur soon after the vacancy." But the state's argument does not take into consideration the two critical differences noted above between the texts of H.B. 414 and the proposed initiative: (1) H.B. 414 retains the executive appointment power in every case while the proposed initiative repeals that power entirely, which means that (2) H.B. 414 allows appointees to fill U.S. Senate seats while the initiative seeks to ensure that an unelected appointee will never represent Alaska in the U.S. Senate. We conclude that these differences are so important that it cannot be said that the proposed initiative and H.B. 414 are "substantially the same."

623** The state advances another argument to support its conclusion that H.B. 414 is substantially the same as the initiative. It notes that, pursuant to article XI, section 6 of the Alaska Constitution, the legislature may amend an initiative's terms at any time. [FN38] The state asserts that had the legislature not passed H.B. 414 to replace the initiative, it could just as easily have made the same changes to the law by amending the initiative once it was enacted. In *Warren,* we noted that the legislature's amendatory power is broad and, in *dicta,* we suggested that the legislature's power to supplant an initiative by enacting new legislation might be identical to its power to amend. [FN39] But the power to avoid an initiative by enacting legislation should not be equated with the power to amend an initiative enacted by the voters. While the *dicta* in ***Warren v. Boucher might be read to equate the two powers, they are not equal. This is because the Alaska Constitution contains no explicit limitation on the legislature's power to amend an initiative enacted by the voters, [FN40] but it does contain such a limitation on the legislature's power to avoid a proposed initiative: Legislation designed to avoid a vote on a proposed initiative must be "substantially the same" as the initiative. [FN41] Finally debate surrounding the adoption of article XI, section 4 reflects the framers' concern that the legislature be given only "the power to amend and

not the power to destroy." [FN42] Thus, even amendments to popularly-initiated legislation must still "effectuate [ ] the intent of the electorate," [FN43] and an amendment that "so vitiates an act passed by initiative as to constitute its repeal" is not acceptable. [FN44]

FN38. The Constitutional Convention Committee's original proposal also stated that "[n]o law passed by initiative may be ... amended or repealed by the legislature for a period of three years," but this too was changed to the present constitutional language that an initiated law "may not be repealed by the legislature within two years of its effective date [but] may be amended at any time ...." Constitutional Convention Committee Proposal No. 3, Section 4 (Dec. 9, 1955).

FN39. ***Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975).**

FN40. *See* ALASKA CONST., art. XI, § 6.

FN41. ALASKA CONST., art. XI, § 4.

FN42. ***Warren*, 543 P.2d at 740** (Erwin, J., dissenting).

FN43. *Warren v. Thomas*, 568 P.2d 400, 403 (Alaska 1977) ("considerable language changes" in legislature's amendments of popularly-initiated law only served to "clarify and render the law more precise," and thus did not repeal it).

FN44. ***Warren v. Boucher*, 543 P.2d at** 737.

The essential inquiry, then, is whether any difference between H.B. 414 and the initiative "so vitiates" the initiative's uncontradicted general purpose as to render H.B. 414 not "substantially the same." Trust the People asserts that, by "continu[ing] the governor's appointment power and merely expand[ing] the period during which a special election is required," H.B. 414 "preserves" and "codifies" both the governor's appointment power and the incumbency advantage given to his appointees when they later stand for election. According to Trust the People, the initiative and the bill thus "materially differ." The state does not deny that this difference exists, but seeks to downplay or justify its effects, insisting that "[t]he act and the initiative do accomplish the same general goal," and that the short-term nature of the governor's appointment power under H.B. 414 "is not significant in light of the more general goals of the initiative and the act."

The state also argues that the legislature's modifications to the proposed initiative were necessary, because the initiative, as drafted, is ill-conceived legislation that could seriously cripple or frustrate the sound workings of government. According to the state, even a temporary vacancy in one of Alaska's United States Senate seats (which, under the initiative's framework could last as long as five months) could damage Alaska's "interests in the national government" and "make a difference in the passage of legislation important to Alaska." The state further argues that "[f]illing senate vacancies quickly also could be a matter of national importance," because "a terrorist attack on the Capitol could wipe out the United States Senate," and "[t]he ability of one branch of the federal government ***624** to function might depend on the states' ability to fill vacant seats quickly." While the state raises serious policy arguments in favor of H.B. 414, they relate to the wisdom of the legislation--and thus are more properly directed to the voters considering the proposed initiative--and not to the question whether the proposed initiative and H.B. 414 are substantially the same. As has been noted, the relevant judicial inquiry "is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative." [FN45]

FN45. ***Id.* at 743** (Erwin, J., dissenting).

The state also contends that an appointee running for a vacant seat in a general or special election may not necessarily derive any benefits from his or her status as an incumbent, thereby minimizing the

differences between H.B. 414 and the proposed initiative. The state asserts that "[a] temporary appointee who is thousands of miles from Alaska and is trying to learn how to be a senator right before the election might be at a disadvantage as against a candidate present in Alaska, garnering support and raising money." "Indeed," the state says, "someone wishing to permanently fill the seat might well decline to take a temporary appointment." But had the legislature truly sought to assure that Alaska maintained competent representation in Washington while eliminating any incumbency advantage for a temporary appointee, it could have tailored H.B. 414 to forbid a governor's appointee from running for election after appointment. In fact, the legislative history indicates that such a provision was proposed and rejected. [FN46] This casts considerable doubt on the state's claim that H.B. 414 is substantially the same as the proposed initiative.

> FN46. The minutes of the Senate State Affairs Committee's March 18, 2004 discussion of H.B. 414 indicate that Senator Gretchen Guess proposed an amendment that would have prevented a governor's temporary senate appointment from standing for reelection in a subsequent special election. Senator Guess explained that she was "worried that the temporary appointee has an incumbency advantage," and that this would be "at odds with the intent" of the initiative, "which is to make a clean process that is separate from an appointment." The amendment failed.

We conclude that the intent of the proposed initiative is to strip the governor of appointment power, to ensure that occupants of Alaska's seats in the United States Senate are chosen by the voters, and to eliminate all of the perceived advantages that an incumbent appointee might receive in a special or general election to fill the vacancy. House Bill 414 preserves the power of gubernatorial appointment in every case of a vacancy, it allows vacancies in the United States Senate to be filled first by executive appointment rather than only by the voters, and it preserves potential incumbency advantages that might be conferred on the executive's appointee. Because the initiative and H.B. 414 seek to accomplish different objectives, they do not share a common purpose and they are not "substantially the same." Accordingly, we hold that the initiative has not been voided by enactment of H.B. 414.

B. Should the Constitutionality of the Proposed Initiative Be Reviewed Before the November 2004 Election?

[5] The state argues that, even if the petition were not voided on grounds of "substantial sameness," we should hold that it cannot be placed on the November ballot because the Seventeenth Amendment to the U.S. Constitution does not allow the proposed change to be made by initiative. Trust the People and the *amicus* respond that pre-election review of the initiative is premature and that we should only determine its constitutionality if the proposal is adopted at the election. The state rejects this contention, arguing that pre-election judicial review is appropriate because, it claims, the initiative violates the Seventeenth Amendment. Because we conclude that pre-election judicial review may extend only to subject matter restrictions that arise from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or to proposals that are clearly unlawful under controlling authority, we agree with Trust the People and the *amicus* that pre-election review is not appropriate in this case. Accordingly, we affirm ***625** the decision of the superior court holding that the lieutenant governor could not engage in pre-election review of the Seventeenth Amendment issue.

As we have recognized on other occasions, " articles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process." [FN47] Specifically, article XI, section 7, describes certain express subject-matter restrictions:

> FN47. *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).

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> The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.[[FN48]]
>
> FN48. Alaska Const., art. XI, § 7. These restrictions are mirrored in AS 15.45.010.

Article XII, section 11, in turn, specifies that the electorate's power to legislate by initiative is always "subject to" these express restrictions; section 11 also more generally recognizes that the initiative process may be implicitly restricted by other provisions, but only if such provisions make the process "clearly inapplicable":

> *Unless clearly inapplicable,* the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.[[FN49]]
>
> FN49. Alaska Const., art. XII, § 11 (emphasis added). *See also Brooks,* 971 P.2d at 1028-29 (describing constitutional history of section 11 as indicating that its "clearly inapplicable" language meant that initiative process was inapplicable only when "55 idiots would agree that it was inapplicable").

These provisions largely define the permissible scope of pre-election subject-matter review in Alaska. [FN50] Early on, in *Boucher v. Engstrom,* [FN51] we approvingly noted "the general rule that courts will refrain from giving advisory opinions on the constitutionality of statutes," but recognized that an exception to this principle would apply "in regard to review of initiatives prior to submission to the electorate for approval." [FN52] As we expressly described it in ***Boucher,*** this exception applied to a limited set of challenges:

> FN50. There is an additional basis for pre-election review in Alaska, not argued in the case before us: "[G]eneral contentions that the provisions of an initiative are unconstitutional" may be considered pre-election "only ... if 'controlling [a]uthority' leaves no room for argument about its unconstitutionality." *Alaska Action Ctr., Inc. v. Municipality of Anchorage,* 84 P.3d 989, 992 (Alaska 2004) (quoting *Kodiak Island Borough v. Mahoney,* 71 P.3d 896, 900 (Alaska 2003)) and *Brooks,* 971 P.2d at 1027. We provided an example of the type of clearly controlling authority that might allow a proposed initiative to be removed from the ballot: "The initiative's substance must be on the order of a proposal that would 'mandat[e] local school segregation based on race' in violation of *Brown v. Bd. of Educ.* before the clerk may reject it on constitutional grounds." *Alaska Action Ctr.,* 84 P.3d at 992 (citations omitted). In this case, the state concedes that the provisions of the proposed initiative would be "perfectly constitutional and above reproach" if enacted by the legislature.
>
> FN51. 528 P.2d 456 (Alaska 1974) *overruled on other grounds by McAlpine v. Univ. of Alaska,* 762 P.2d 81 (Alaska 1988).
>
> FN52. *Boucher,* 528 P.2d at 460.

> This court, ... although recognizing the general limitation that only enacted legislation is subject to judicial review, [has] held that our courts are empowered to review an initiative to ascertain whether it complies with *the particular constitutional and statutory provisions regulating initiatives.* [ ][FN53]]
>
> FN53. *Id.* (citing *Walters v. Cease,* 394 P.2d 670 (Alaska 1964); *Starr v. Hagglund,* 374 P.2d 316 (Alaska 1962)) (emphasis added).

We stressed that it was necessary to apply the exception to this set of challenges in order to enforce the meaning of the initiative process as set out in Alaska's constitution. We said:

> The people for their own protection have provided that the initiative shall not be employed

with respect to certain matters. Unless the courts had power to enforce those exclusions, they would be futile.[[FN54]]

FN54. *Id.* (quoting *Bowe v. Sec'y of the Commonwealth*, 320 Mass. 230, 69 N.E.2d 115, 128 (1946)).

In initiative cases decided since *Boucher*, we have consistently restated the language of *Boucher* that limits pre-election review to ***626** cases involving compliance with "the particular constitutional and statutory provisions regulating initiatives." [FN55] Most recently, in *Alaska Action Center, Inc. v. Municipality of Anchorage*, [FN56] referring to this type of challenge, we stressed that "[s]eparation of powers principles are not offended by this procedure, as these restrictions were devised to prevent certain questions from going before the electorate at all." [FN57]

FN55. *See, e.g., Brooks*, 971 P.2d at 1027 (quoting ***Boucher***); *Alaska Action Ctr.*, 84 P.3d at 992 (quoting *Brooks* 's quotation from ***Boucher***); *Whitson v. Anchorage*, 608 P.2d 759, 761-62 (Alaska 1980).

FN56. 84 P.3d 989.

FN57. *Id.* at 992.

Alaska Action Center involved a challenge to a municipal clerk's decision rejecting a proposed initiative on the ground that it provided for an appropriation, in violation of article XI, section 7, and AS 29.26.100. In deciding the claim, we expressly followed the conventional rule that an initiative may be reviewed before going to the voters to ensure compliance with "the particular constitutional and statutory provisions regulating initiatives." [FN58] Finding that "[t]he proscriptions of AS 29.26.100 and article XI, section 7 of the Alaska Constitution are such limitations," we concluded that pre-election review was proper. [FN59] Thus, *Alaska Action Center* simply applied the test articulated in *Boucher*. To be sure, *Alaska Action Center* distinguished this kind of reviewable "subject-matter" challenge from "[o]ther challenges ... grounded in 'general contentions that the provisions of an initiative are unconstitutional.' " [FN60] But this distinction simply describes a baseline for pre-election review; although it usefully points out that pre-election review of an initiative proposal usually involves a subject-matter challenge--as opposed to a general claim of substantive illegality--it does not say that all subject-matter challenges must automatically qualify for full pre-election review.

FN58. *Id.*

FN59. *Id.* at 993.

FN60. *Id.* at 992 (quoting *Brooks*, 971 P.2d at 1027).

By consistently pointing out that pre-election review is needed to ensure compliance with "the particular constitutional and statutory provisions regulating initiatives"--that is, with those restrictions specifically "devised to prevent certain questions from going before the electorate"--our cases establish that pre-election review does not encompass all potential subject-matter restrictions, but extends only to the restrictions imposed by Alaska constitutional and statutory provisions regulating the initiative process. So interpreted, our cases make pre-election review appropriate to ensure compliance with the express initiative restrictions set out in article XI, section 7. Our cases similarly allow pre-election review, under article XII, section 11, to ensure compliance with subject-matter restrictions set out in other legal provisions; but under the express terms of article XII, section 11, the scope of review would be limited to cases of obvious non-compliance-- cases where the initiative process would be "clearly inapplicable." [FN61]

FN61. *See, e.g., Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003) (comparing section 11's "clearly inapplicable" requirement to stringent test applicable when executive order declares statute unconstitutional); *Brooks*, 971 P.2d at 1029 (describing section 11's "clear

idiot" test).

By contrast, the state argues that our cases stand for the proposition that whenever the issue is whether voters can enact the law by initiative, it is appropriate for pre-election review. The state thus argues for a broad rule that would allow a full range of pre-election review of all subject-matter challenges, "regardless of the source of the restriction." In arguing that full pre-election review is appropriate for even those subject-matter challenges "not enumerated in Alaska law," the state overlooks the limiting language noted above that we have employed in several cases.

The state argues that we reviewed the constitutionality of an initiative prior to its placement on the ballot in *Yute Air Alaska, Inc. v. McAlpine*. [FN62] Challengers to the initiative in *Yute Air* argued that the initiative ***627** was unconstitutional because it concerned two subjects, which violated article II, section 13 of the Alaska Constitution which requires that every bill be confined to one subject; [FN63] they also argued that the initiative directed the executive to seek repeal of the Jones Act, and was thus unconstitutional because it was not a proper subject for an initiative under article XI, section 1 of the Alaska Constitution, which limits the use of the initiative to the enactment of laws. [FN64] We resolved these questions on the merits before the initiative was placed on the ballot. [FN65] The state argues that because we reviewed an initiative to determine if it violated a subject matter limitation not enumerated in article XI, section 7 of the Alaska Constitution in *Yute Air*, we should now likewise determine whether the people are restricted from enacting by initiative legislation on the subject of filling of senate vacancies before the election. But unlike the challenge raised here, which alleges that the Federal Constitution prohibits enactment by initiative, the challenge to the initiative in *Yute Air* concerned two limitations placed on the initiative process by the Alaska Constitution. Thus, pre-election review in *Yute Air* did not violate our holding in *Boucher v. Engstrom* that such review should be limited to ascertaining whether an initiative is in compliance with constitutional provisions that regulate legislative enactment via initiative. [FN66]

FN62. 698 P.2d 1173 (Alaska 1985).

FN63. *Id.* at 1175.

FN64. *Id.*

FN65. *Id.* at 1177.

FN66. 528 P.2d 456, 460 (Alaska 1974).

The state also relies on *Alaskans for Legislative Reform v. State*, [FN67] in which an initiative that would have imposed term limits on legislators was denied a place on the ballot. We note at the outset that no party in that case opposed pre-election review. As Judge Shortell noted in his opinion (adopted by this court), the issue was not raised at the trial level because "both parties [had] the intention of obtaining pre-election dispositive review." [FN68] It appears that there was no consideration by any court at any level of the question whether pre-election review was proper. Second, to the extent that *Alaskans for Legislative Reform* supports pre-election review of claims that a term limits initiative is unconstitutional, it appears to have been overruled by *Kodiak Island Borough v. Mahoney*, [FN69] where we declined to allow pre-election review of a term-limits proposal. [FN70] Finally, since Judge Shortell ordered the initiative removed from the ballot, the case was clearly ripe for immediate review; [FN71] indeed, the only way for this court to avoid pre-election review would have been to declare *sua sponte* that Judge Shortell erred in addressing the constitutional issue.

FN67. 887 P.2d 960 (Alaska 1994).

FN68. *Id.* at 962 n. 6.

FN69. 71 P.3d 896 (Alaska 2003).

FN70. *Id.* at 897

FN71. *Alaskans for Legislative Reform,*

887 P.2d at 966.

The state also relies on *Brooks v. Wright*, [FN72] arguing that it raised a subject-matter claim that was subject to pre-election review. But for present purposes, it is crucial to take account of the exact nature of the claim raised in *Brooks*. The case involved an initiative proposing to ban all use of wolf snares. The challengers alleged that article VIII of the Alaska Constitution did not allow the initiative process to be used for game-management purposes because the language of that constitutional provision and the provision's grant of trustee-like powers to the state implicitly gave the legislature exclusive authority to manage Alaska's natural resources. [FN73] But while basing their pre-election challenge on this constitutional theory, the initiative's opponents did not actually seek review of their article VIII claim, as such. Instead, they argued more narrowly that the implied subject-matter restriction imposed by article VIII violated the "clearly inapplicable" test of article XII, section 11: "under Article XII, the initiative process is 'clearly inapplicable' to resource management ***628** decisions[.]" [FN74] So asserted, the challenge in *Brooks* did more than claim a "subject-matter" restriction embedded in article VIII; it further asserted that this restriction implicated one of the Alaska Constitution's "particular" provisions governing the proper scope of initiatives: article XII.

FN72. 971 P.2d 1025 (Alaska 1999).

FN73. *Id.* at 1027-29.

FN74. *Id.*

Our opinion in *Brooks* resolved the constitutional claim by applying article XII, section 11's "clearly inapplicable" test. Our opinion acknowledged that "[p]re-election review of challenges to ballot initiatives is limited to ascertaining 'whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives' " [FN75] and that "[a]rticles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process." [FN76] After noting that the challengers did not claim a violation of "one of the enumerated Article XI limitations," we took pains to point out that they argued, instead, that the initiative process was " 'clearly inapplicable' to resource management decisions" under article XII. [FN77] We then applied the article XII standard and concluded that neither prong of the challengers' claim that article VIII impliedly restricted using the initiative process to ban wolf snares was sufficiently persuasive to establish that the proposed wolf-snare ban was " 'clearly inapplicable' to the initiative process under Article XII." [FN78]

FN75. *Id.* at 1027 (citing *Boucher*, 528 P.2d at 460).

FN76. *Id.*

FN77. *Id.*

FN78. *Id.* at 1030, 1033.

Brooks thus based its ruling on the article VIII issue by using article XII's "clearly inapplicable" standard. By so doing, it treated the claim as a permissible pre-election challenge under the narrow rule enunciated in *Boucher*, which, as already mentioned, expressly limits the scope of pre-election review to "particular constitutional [or] statutory provisions regulating initiatives." Thus, *Brooks* strongly supports the rule that when an alleged subject-matter violation hinges on an implied constitutional restriction outside the specific restrictions enumerated in article XI, section 7--as the challenge did in *Brooks*--it is eligible for pre-election review only if it meets article XII, section 11's "clearly inapplicable" test.

The state also relies on *Whitson v. Anchorage*. [FN79] But that case supports the conclusion that pre-election review is not appropriate here. In *Whitson*, the Municipality of Anchorage challenged an initiative in court before submitting it to the voters. The municipality contended that, if enacted, the proposed initiative would violate provisions of state law implicitly limiting the electorate's right to enact an ordinance on the topic covered by the

proposed initiative. [FN80] In opposing this challenge, the initiative's proponents argued that the challenge was premature and could not be decided before the election. But we disagreed, specifically concluding that the provision qualified for pre-election review because it "plainly ... would conflict" with state law and was "in clear conflict with a state statute." [FN81] *Whitson* thus illustrates an application of the clear "controlling authority" exception to the general rule against pre-enactment review that we referred to in *Alaska Action Center*. [FN82]

FN79. 608 P.2d 759 (Alaska 1980).

FN80. *Id.* at 761.

FN81. *Id.* at 761-62.

FN82. 84 P.3d 989, 992 (Alaska 2004). *See* discussion *supra* note 50.

In sum, a narrow interpretation of the permissible scope of pre-election review is faithful to our case law, [FN83] is supported by the strong policies that generally disfavor advisory opinions, and is justified by the limited purpose of pre-election review--to protect the Alaska Constitution's express provisions defining the initiative process. [FN84] Because the ***629** subject matter at issue here--filling senate vacancies--is not specifically barred from the initiative process under article XI, section 7, nor "clearly inapplicable" under article XII, section 11, nor is its resolution clear under controlling authority, we conclude that the proposed initiative meets the test for submission to the voters. Its ultimate compliance with the Seventeenth Amendment falls outside the proper scope of the lieutenant governor's pre-election review.

FN83. *See, e.g., Brooks*, 971 P.2d at 1027 (quoting *Boucher*, 528 P.2d at 460 *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988)); *Alaska Action Ctr.*, 84 P.3d at 992 (quoting *Brooks*'s quotation from *Boucher*).

FN84. *Boucher*, 528 P.2d at 460. *See also Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168-70 (Alaska 1991).

V. CONCLUSION

Because H.B. 414 is not "substantially the same" as 03SENV, the initiative is not void under the Alaska Constitution. Because the state's Seventeenth Amendment argument does not involve a subject matter restriction arising from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or a proposal that is clearly unlawful under controlling authority, we AFFIRMED the superior court's decision to deny pre-election review of the Seventeenth Amendment issue.

For these reasons, we directed the lieutenant governor to place Trust the People's initiative, 03SENV, on the general election ballot.

113 P.3d 613

Briefs and Other Related Documents (Back to top)

- 2004 WL 4908352 (Appellate Brief) State's Reply Brief (May 3, 2004)
- 2004 WL 4908350 (Appellate Brief) Brief of Appellees (Apr. 19, 2004)
- 2004 WL 4908351 (Appellate Brief) Brief of Amicus Curiae Alaska Public Interest Research Group (Apr. 1, 2004)
- 2004 WL 4908349 (Appellate Brief) State's Appellant Brief (Feb. 2, 2004)

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Westlaw.

568 P.2d 400
(Cite as: 568 P.2d 400)

C

Warren v. Thomas,Alaska 1977.

Supreme Court of Alaska.

Clifford E. WARREN, Appellant,

Frank Harris, Intervenor,

v.

Lowell THOMAS, Jr., Lieutenant Governor and the State of Alaska, Appellees.

No. 2919.

Sept. 2, 1977.

Action was brought in which plaintiff sought to prevent legislature's amendments to conflict of interest law, which was enacted by initiative, from becoming effective. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., granted state summary judgment, and plaintiffs appealed. The Supreme Court, Connor, J., held that: (1) legislature has broad powers to amend law enacted by initiative, and (2) amendments did not effect a "repeal" of the initiated law in violation of state constitutional provision.

Affirmed.

West Headnotes

|1| Constitutional Law 92 ⇐12

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k11 General Rules of Construction

92k12 k. In General. Most Cited Cases

Constitutional provision should receive a reasonable and practical interpretation in accordance with common sense.

|2| Statutes 361 ⇐133

361 Statutes

361IV Amendment, Revision, and Codification

361k132 Acts Which May Be Amended

361k133 k. In General. Most Cited Cases

Legislature has broad powers to amend a law enacted by initiative. Const. art. 11, §§ 6, 7.

|3| Statutes 361 ⇐158

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k158 k. Implied Repeal in General. Most Cited Cases

Implied repeal of an act is disfavored and will be limited to that which is necessary to carry out intent of legislature.

|4| Statutes 361 ⇐170

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k170 k. Re-Enactment or Revival of Act Repealed. Most Cited Cases

If it is reasonable to do so, provisions of a law enacted by initiative or portions thereof which are repealed and reenacted in a modified form are to be considered as a continuation of the original law which is to be construed with the amendments.

|5| Statutes 361 ⇐164

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k160 Implied Repeal by Act Relating to Same Subject

361k164 k. Repeal by Amendatory Act in General. Most Cited Cases

Legislature's amendments, which pertained to conflict of interest law enacted by initiative, which had effect of repealing certain portions of such law, which involved several language changes clarifying and rendering the initiated law more precise but which permitted such law to continue to impose substantial disclosure requirements on public officials and to effectuate electorate's intent that those in position of public trust be held to high

standard of financial disclosure, did not effect a " repeal" of the initiated law in violation of state constitutional provision. AS 39.50.010 et seq., 39.50.020(b), 39.50.060(a), 39.50.070, 39.50.150; Const. art. 11, § 6.

*400 Clifford E. Warren, pro se.
Rodger W. Pegues, Asst. Atty. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for appellees.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR and BURKE, Justices.

OPINION

CONNOR, Justice.

This appeal concerns the 1975 amendments by t' legislature to AS 39.50, Alaska's conflict of interes law which was enacted by initiative.

On August 27, 1974, an initiative entitled "An Act relating to conflict of interest of public officials" was passed by the people of Alaska. Under article XI, s 6 of the Alaska Constitution the initiative became effective ninety days after the election results were certified, that is, on December 11, 1974. On February 8, 1975, the legislature amended the law to provide that the disclosure statements of certain public officials were to be filed on April 1, 1975, rather than February 9, 1975. The amendment also provided that officials who left office on or after December 11, 1974, and before April 1, 1975, were *401 not required to file a statement. See Ch. 2, SLA 1975 (effective February 8, 1975). The law was amended and revised again in the spring of 1975, effective April 1. See Sec. 28, ch. 25, SLA 1975. It is entitled " An Act relating to conflict of interest; and providing for an effective date." The amendment changed the date for filing the financial statements from April 1, 1975, to April 15, 1975. See AS 39.50.150.

Clifford E. Warren originally filed this action to challenge certain regulations passed in connection with, and revisions made to, the conflict of interest law. He subsequently filed an amended complaint seeking to prevent the 1975 amendments to the law from becoming effective. Warren then filed a motion for summary judgment seeking to have the amendments declared void. A hearing was held on April 21, 1976, and summary judgment was granted in favor of the state.[FN1] This appeal follows:

> FN1. Mr. Frank Harris, a proponent of another initiative, intervened to challenge the legislature's power to amend an initiated statute, but has not filed an appearance on appeal.

Warren raises two important issues concerning the constitutionality of the legislature's action:

1. Whether the legislature has the power to amend a law enacted by the initiative procedure;

2. Whether the amendments to the initiative constitute a repeal of the initiated law in violation of article XI, s 6 of the Alaska Constitution.

Several additional arguments are raised but do not warrant extensive discussion.[FN2]

> FN2. Warren argues that by changing the date of compliance from 60 days after the effective date of the law (February 6, 1975) to April 1, 1975, the legislature changed the effective date of the law itself.
>
> This argument lacks merit since the extension of time in which public officials must file their disclosure statements has nothing to do with the date that the initiative itself became law. That occurred on December 11, 1974, and was not affected by the February amendment. See Alaska Const. art. XI, s 6.

Warren also argues that a considerable number of legislators have not complied with the disclosure requirements. He was under the impression that the disclosure statements were due on the day the initiative became law and, therefore, when the new legislators took office on January 20, 1975, they were in noncompliance with AS 39.50. However, the disclosure statements were not due until February 9 (April 15 as amended).

Article XI, s 1, of the Alaska Constitution provides

that the people of Alaska may "propose and enact laws by the initiative. . . ." Article XI, s 6 provides: "If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law."

[1] According to this plain language the legislature may not repeal a law passed by initiative for two years, but may pass an amendment at any time. We interpret this provision in accordance with the general principle of statutory construction that a constitutional provision should receive a reasonable and practical interpretation in accordance with common sense.[FN3] Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 915 (1968); 2A Sutherland, Statutory Construction, s 49.03 (4th *402 ed. Sands 1973).[FN4] Moreover, it has been held that in the absence of a specific restriction the legislature may amend or repeal a law passed by initiative. [FN5]

FN3. Warren correctly points out that the statements of delegates at the constitutional convention concerning the provisions for the initiative and referendum process have limited usefulness as interpretative aids. In Warren v. Boucher, 543 P.2d 731, 735 (Alaska 1975), we recognized that the many views expressed by individual delegates coupled with the numerous revisions of the initiative and referendum articles militate against using convention minutes as interpretative guides. Moreover, there was less than a general consensus concerning the virtues of direct legislation. See V. Fischer, Alaska's Constitutional Convention 79-81 (1975).

FN4. Accord, Calif. Employment Comm'n v. Municipal Court, 62 Cal.App.2d 781, 145 P.2d 361, 363 (1944); Opinion of the Justices, 308 Mass. 619, 33 N.E.2d 275, 279 (1941); State v. Babcock, 175 Minn. 103, 220 N.W. 408, 410 (1928); see Application of Pioneer Mill Company, 53 Haw. 496, 497 P.2d 549, 552-53 (1972).

FN5. Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 913 (1968); Zilesch v. Polk County, 107 Or. 659, 215 P. 578, 582 (1923); cf., e. g., Staples v. Bishop, 225 Ark. 936, 286 S.W.2d 505 (1956). See also Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952). See generally 6 McQuillin, The Law of Municipal Corporations s 21.03 (3d ed. 1969); Annot., 33 A.L.R.2d 118, 1121 (1954), and cases collected therein.

In Cottingham, supra, the Montana Supreme Court recognized that the legislature's plenary power to amend or repeal legislation passed by initiative must not contravene "an express limitation or prohibition of the Constitution of either Montana or the United States." Id. 328 P.2d at 913. In Alaska such a limitation is contained in art. XI, s 6, with respect to the power to repeal.

[2] In Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975), we recognized that the legislature is vested with broad authority to amend laws enacted by the people through the initiative process. Warren, however, argues that Warren, supra, reaffirms the intent of the framers of the Alaska Constitution that the legislature may interfere with the initiative process by amending an initiated law only where it creates a potential danger to the operation of governmental functions.[FN6] The issue presented in that case is different than that presented here. There we were concerned with whether the legislature had short-circuited the initiative process by passing a law that was substantially the same as the proposed initiative. But, as we recognized, the legislature has broad powers to amend an initiative.[FN7]

FN6. There was considerable concern over

whether the Alaska Constitution should contain any provisions for initiative and referendum. See V. Fischer, supra. In order to protect the machinery of government, certain limitations were placed upon the use of the initiative and referendum, see art. XI, s 7, though otherwise the citizens of Alaska and the legislature are coequal. Zilesch, supra, at 582.

FN7. We stated:

"The final constitutional provision states in pertinent part:

'An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. . . .'

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words 'substantially the same measure.' For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We, of course, are not passing here on the question of whether an amendment so vitiates an act passed by initiative as to constitute its repeal."

543 P.2d at 737.

[3] The central issue in the case at bar is whether the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." Id. at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely " housekeeping," and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. "(A)n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." *403Meyers v. Board of Sup'rs of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952); see also W. R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974). The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. John Hancock Mut. Life Ins. Co. v. Haworth, 68 Idaho 185, 191 P.2d 359, 363 (1948); 1A Sutherland, Statutory Construction, s 23.09 (4th ed. Sands 1972). See also 6 McQuillin, Law of Municipal Corporations s 21.09 (3d ed. 1969) (repeal of ordinances by implication disfavored). In the case at bar, one section [FN8] and two subsections [FN9] were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.

FN8. AS 39.50.140 (penalties for accepting bribes).

FN9. AS 39.50.040(b)(6) (duty of trustee of blind trusts to file for trustor); AS 39.50.030(c) (exemption from compliance by Alaska Supreme Court because of profession).

[4] Other sections were impliedly repealed by virtue of inconsistent amendatory provisions.[FN10] However, this does not necessarily mean that the act as a whole was repealed. When AS 39.50 was amended certain of its provisions or portions thereof were repealed and reenacted in a modified form. [FN11] Where it it reasonable to do so, these provisions are considered to be a continuation of the original law which is to be construed with the

amendments. Green v. State, 462 P.2d 994, 1000 (Alaska 1969); 1A Sutherland, supra, s 22.33 at 191; accord, e. g., Security Life and Accident Company v. Heckers, 177 Colo. 455, 495 P.2d 225, 227 (1972); John Hancock Mut. Life Ins. Co., supra, 191 P.2d at 362.

FN10. For example, under AS 39.50.060 the penalties for violations were changed from $500-$5,000 to $100-$1,000 and from a period of up to one year's imprisonment to a period of up to six months.

FN11. E. g., AS 39.50.020(b).

[5] Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant. See AS 39.50.060(a) and AS 39.50.070. Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

Warren challenges the state's reliance on State v. Meyers, 51 Wash.2d 454, 319 P.2d 828 (1957), in support of its argument that the amendments to AS 39.50 do not effectively repeal this law. In Meyers, supra, the people of Washington passed an initiative providing for the redistricting of the state, using the census tract rather than the election precinct as the unit of population for the purpose of informing senatorial and legislative districts. This was in an effort to cure legislative noncompliance with the constitutional provision on apportionment and to better reflect the population configuration of the state. The legislature amended the initiative by reinstating the use of the election precinct. This action was challenged as violating the state constitutional prohibition against the repeal, but not the amendment, of initiated laws. On appeal the Washington Supreme Court found the amendment to be valid. Defining the words "to amend" broadly, the court said that an "amendment may effectually supplant or destroy the original charter, and institute a new policy altogether." Id., 319 P.2d at 831. The dissent argued that the legislature's action emasculated the theory of the initiative and thwarted the constitutional process. Id., 319 P.2d at 840. Nevertheless, the majority opinion concluded that the legislature properly exercised its discretion in determining that the precinct method was more suitable. Id., 319 P.2d at 834.

As Warren argues, there is much merit in the dissent in Meyers as to the scope of the legislature's power to amend laws enacted by initiative, but we are not presented with ***404** a similar case. The amendments to AS 39.50, which preserve its basic structure and purpose, fall far short of the drastic changes made to the apportionment scheme by the Washington legislature.

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of the initiated law.

AFFIRMED.

Alaska 1977.
Warren v. Thomas
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Opening

Mr. Chairman, members of the committee, thank you for taking the time to hear HB 164 again and for the opportunity to discuss the legislature's constitutional power to check and balance initiatives by amending them.

Ms. Sonia Christensen from our office is with me today. We know the committee is very busy so we will move as quickly as we can. Mr. Chairman, with your permission, we would like to take questions after getting through the presentation.

Mr. Chairman, members of the committee, Alaska's Constitution may be the best state constitution in the nation. It's a great Constitution because it sets up a strong system of checks and balances. These checks and balances make sure no one entity or branch of government has unrestricted discretion to exercise power.

The constitution's "checks and balances" extend to the initiative process in several ways, including restricting subject matter of initiatives,

prohibiting initiatives from appropriating funds and giving the legislature the power to amend an initiative.

Turning to Alaska's Constitution and Article XI, section 6. That section says:

["A]n initiated law ... is not subject to veto, and may not be repealed by the legislature within two years of its effective date. **It may be amended at any time.**

This language grants the legislature the power to immediately amend an entire initiative as long as those changes do not amount to a repeal of the entire initiative.

So what does the word "amend" mean? I feel a bit awkward posing this question to legislators, but let's review it a bit.

Here are some of the definitions I found of the word "amend".

[CITE -DEFINITIONS]

Mr. Chairman, using these common dictionary definitions, the legislature clearly has broad power "check and balance" an entire initiative by making changes. This is also the most likely way that voters understood

the term "amend" when they ratified Art. XI, sec., 6 with the rest of the constitution in 1959 by a 2-1 vote.

THE MINUTES FROM THE CONSTITUTIONAL CONVENTION ALSO PROVIDES SOME INSIGHT THAT THE LEGISLATURE'S POWER TO AMEND IS VERY BROAD.

Mr. Chairman, the initiative issue took up a lot of time of the delegates at the Constitutional Convention. Sonia may have a better idea, but I think there are over a 100 pages of minutes on the issue.

There were several votes on various issues with initiatives. The first vote called for immediately after the proposal was brought to the delegates was to drop the whole initiative process as unnecessary. A majority of delegates voted to keep the initiative process in the Constitution, but there were a group of delegates strongly opposed having an initiative process at all.

On the specific issue of the legislature's power to change initiatives, there were a number of different proposals submitted. Early on, Delegate Hellenthal offered an amendment that would have allowed the legislature to

completely repeal or amend an entire initiative immediately. That amendment passed 27-25 but was incorrectly recorded by the clerk and later voided, leaving the issue open again.

The debate continued. Delegate Ralph Rivers finally resolved it by offering language allowing the legislature to immediately "amend" an initiative. He defended his amendment by stating Alaskans could trust the legislators they had just elected to make reasonable changes to an initiative.

After Mr. Rivers described his amendment, delegates understood the legislature would have broad authority to amend initiatives.

Delegate Kilcher, a member of a small group of about 8 – 10 delegates who did not want any legislative power to amend an initiative described his concern with the amendment:

"we have seen what amending can do on this floor and in the legislature. It [an initiative] can be crippled sufficiently to make repealing seem merciful ..."

Delegate Vic Fisher reminded delegates during the debate that the:

"the power to amend is the power to destroy"

The delegates understood they were granting the legislature broad authority to check and balance initiatives. Mr. Rivers amendment passed 40 yeas -8 nays, with 7 members absent.

THE COURT CASES SUPPORT A BROAD DEFINITION OF THE LEGISLATURE'S POWER TO AMEND

Mr. Chairman, there is only one Alaska Supreme Court case ***Warren v. Thomas*** that directly addressed the legislature's power to amend initiatives.

In ***Warren v. Thomas,*** an initiative passed in 1974. The single subject of the initiative was conflicts of interest by public officials.

In 1975, the legislature delayed the date executive branch appointees would have to file financial disclosures. The legislature also expressly repealed a section (AS 39.50.140 – penalties for bribes) and two subsections (AS 39.50.040(b)(6) (duty of trustee of blind trust to file for trustor) and (AS 39.50.030(c)) (exempting members of the Alaska Supreme Court from disclosure requirements). The penalties for a willful violation of the

disclosure requirements were also reduced from $500 - $5,000 and up to one year in jail to $100 - $1,000 and six months.

The initiative sponsor felt the legislature's changes were so harmful to the initiative that he sued all the way to the Alaska Supreme Court claiming the legislature had repealed the initiative.

The court held in favor of the legislature. The legal test applied by the court was whether the legislature's amendments, which included the express repeals of whole sections, strangled the initiative so badly that the entire initiative was effectively repealed. The court concluded the legislature's changes did not effectively strangle the entire initiative.

Under ***Thomas*** we know, the legislature can make broad changes to an initiative, including changes that the sponsors don't agree with and do not further the purpose of the initiative. (In fact, there is only one state in the nation whose Constitution imposes this requirement. The Arizona Constitution restricts legislative amendments to changes that "furthers the purposes of such measure" That language is not in our Constitution).

Besides ***Thomas,*** there is another case that is helpful, although this case dealt with the ability of the legislature to bump an initiative off the ballot by passing a law that is "substantially similar" to an initiative.

THE BROADER THE SUBJECT MATTER AND SCOPE OF THE INITIATIVE, THE BROADER THE LEGISLATURE'S AUTHORITY TO MAKE AMENDMENTS.

In 1975 the Alaska Supreme Court in ***Warren v. Boucher*** 543 P.2d 731, 736 (Alaska 1975) set out a very important principle related to the legislature's power to amend initiatives. That principle was that as the subject matter of an initiative expands, so does the legislature's power to amend. The exact quote from the court was: "The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative".

So if initiatives sponsors choose to gamble they can get enough votes to pass their initiative by putting the kitchen sink in it, they run the risk of expanding the power of the legislature to later amend it.

In this case, the cruise ship initiative was so broad, it flunked the single subject rule and had to be pulled back and redrafted. The cruise ship

initiative consisted of over 30 different new sections and subsections of Alaska law. Procedurally, it added new laws, it repealed and reenacted laws, and even incorporated by reference provisions of the U.S. tax code. Substantively, it had everything from imposing new taxes on passengers and gambling to creating new executive branch programs to administer the taxes, to determining how and what purposes the new tax revenue could be used for, to requiring wastewater permits for cruise ships, to the Ocean Ranger provisions, to provisions of the federal tax code to consumer protection, and on and on.

The sponsors of the initiative gambled they could get enough support to pass their initiative if they made it this broad. That gamble came with the risk described by the ***Warren v. Boucher*** court, that the legislature's power to amend would expand and be very broad as well.

Under ***Boucher*** and ***Thomas,*** HB 164 is a reasonable change to one part of the initiative that is well within the legislature's broad authority to make. I urge the chair and members to move it forward to the Finance committee.

25-LS0585\N
Kane
4/23/07

CS FOR HOUSE BILL NO. 164( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

"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 a wastewater treatment operator for purposes of monitoring compliance with state and federal requirements, to the obligations of that operator while aboard the vessels, and to the qualifications of the wastewater treatment operator; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 46.03.465(b) is amended to read:

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide **to the United States Coast Guard** an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling

technique approved by the department.

* **Sec. 2.** AS 46.03.476 is repealed and reenacted to read:

Sec. 46.03.476. Ocean Rangers. (a) The commissioner may require the owner or operator of a large commercial passenger vessel to allow a wastewater treatment operator hired or retained by the department on board the vessel at random times determined by the commissioner to perform the duties described in (b) of this section while the vessel is in port in Alaska or operating in Alaska waters between two Alaska ports.

(b) While on board a large commercial passenger vessel, the wastewater treatment operator shall

(1) act as an independent observer for the purpose of monitoring compliance with state and federal requirements pertaining to marine discharge and pollution requirements;

(2) monitor, observe, and record data and information related to marine discharge and pollution requirements in state and federal law, including registration, reporting, and record-keeping requirements.

(c) While on board the vessel the wastewater treatment operator shall comply with the vessel's approved United States Coast Guard security plan.

(d) Any information recorded or gathered by the wastewater treatment operator shall be promptly conveyed to the department and the United States Coast Guard on a form or in a manner approved by the commissioner. The commissioner may share information gathered with other state and federal agencies.

(e) In this section, "wastewater treatment operator" means a Level III wastewater treatment operator certified by the department under the authority of AS 46.30.080.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 1 and 2 of this Act are retroactive to December 17, 2006.

* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg. Legal

Fax #: 2029 Number of pages including cover: 1

From: Jane Pierson

Date: April 23, 2007

Re: HJUD CS for CSHB164 (25-LS0585\N)

Might you please draft a HJUD CS for CSHB164 25-LS0585\N, to include the following change:

P.2, L.3 please change "may" to "shall"

25-LS0585\N
Kane
4/23/07

CS FOR HOUSE BILL NO. 164( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

- less than $4 collected
- some challenge 1st 3 years
- State staffs or K the way toll roads

A BILL

FOR AN ACT ENTITLED

"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 a wastewater treatment operator for purposes of monitoring compliance with state and federal requirements, to the obligations of that operator while aboard the vessels, and to the qualifications of the wastewater treatment operator; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 46.03.465(b) is amended to read:

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide **to the United States Coast Guard** an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling

technique approved by the department.

*** Sec. 2.** AS 46.03.476 is repealed and reenacted to read:

Sec. 46.03.476. Ocean Rangers. (a) The commissioner may require the owner or operator of a large commercial passenger vessel to allow a wastewater treatment operator hired or retained by the department on board the vessel at random times determined by the commissioner to perform the duties described in (b) of this section while the vessel is in port in Alaska or operating in Alaska waters between two Alaska ports.

(b) While on board a large commercial passenger vessel, the wastewater treatment operator shall

(1) act as an independent observer for the purpose of monitoring compliance with state and federal requirements pertaining to marine discharge and pollution requirements;

(2) monitor, observe, and record data and information related to marine discharge and pollution requirements in state and federal law, including registration, reporting, and record-keeping requirements.

(c) While on board the vessel the wastewater treatment operator shall comply with the vessel's approved United States Coast Guard security plan.

(d) Any information recorded or gathered by the wastewater treatment operator shall be promptly conveyed to the department and the United States Coast Guard on a form or in a manner approved by the commissioner. The commissioner may share information gathered with other state and federal agencies.

(e) In this section, "wastewater treatment operator" means a Level III wastewater treatment operator certified by the department under the authority of AS 46.30.080.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 1 and 2 of this Act are retroactive to December 17, 2006.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Ramras

25-LS0585\V
Kane
4/20/07

CS FOR HOUSE BILL NO. 164( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

"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, to the obligations of those engineers while aboard the vessels, and to the qualifications of the marine engineer; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 46.03.465(b) is amended to read:

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide **to the United States Coast Guard** an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling technique approved by the department.

dept - DEC Waste water operator

* **Sec. 2.** AS 46.03.476 is repealed and reenacted to read:

Sec. 46.03.476. Ocean Rangers. (a) The commissioner may require the owner or operator of a large commercial passenger vessel to allow ~~a marine engineer licensed by the United~~ States Coast Guard and hired or retained by the department on board the vessel at random times determined by the commissioner to perform the duties described in (b) of this section while the vessel is in port in Alaska or operating in Alaska waters between two Alaska ports.

(b) While on board a large commercial passenger vessel, the marine engineer shall

(1) act as an independent observer for the purpose of monitoring compliance with state and federal requirements pertaining to marine discharge and pollution requirements;

(2) monitor, observe, and record data and information related to marine discharge and pollution requirements in state and federal law, including registration, reporting, and record-keeping requirements.

(c) While on board the vessel the marine engineer shall comply with the vessel's approved United States Coast Guard security plan.

(d) Any information recorded or gathered by the marine engineer shall be promptly conveyed to the department and the United States Coast Guard on a form or in a manner approved by the commissioner. The commissioner may share information gathered with other state and federal agencies.

(e) The commissioner shall adopt regulations prescribing the qualifications for a marine engineer to be able to carry out the duties required under this section.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 1 and 2 of this Act are retroactive to December 17, 2006.

* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

PRIMARY ELECTION VOTER PAMPHLET

It's your right.
It's your responsibility!

DIVISION OF ELECTIONS

Table of Contents

Primary Election Day is Tuesday, August 22, 2006

HELP YOUR COMMUNITY!
BE AN ELECTION OFFICIAL

ARE FAIR AND EFFICIENT ELECTIONS IMPORTANT TO YOU?

YOU CAN HELP PROTECT VOTERS' RIGHTS, SERVE YOUR COMMUNITY,
AND GET PAID TO DO IT.

The regional election supervisors in our four regional offices appoint election officials for every election that the state conducts.

If you are interested in serving as an election official, contact the elections office nearest you.
(Office locations on the back cover of this publication)

This publication was prepared by the Division of Elections, produced at a cost of $.15 per copy to inform Alaskan voters about issues appearing on the 2006 Primary Election Ballot per AS 15.58.010 and printed in Anchorage, Alaska.

State Capitol
Juneau, Alaska 99801
907.465.3520 465.5400 FAX
www.ltgov.state.ak.us

550 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263 FAX
Lt_Governor@gov.state.ak.us

Lieutenant Governor Loren Leman

August 2006

Dear Alaska Voter:

The Division of Elections and I are pleased to provide you with the *2006 Primary Voter Pamphlet*, your guide to the August Primary Election. I hope this is useful to you as you prepare to vote.

Perhaps the most important principle in our State constitution is in the Declaration of Rights, Article 1, Section 2:

> *All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.*

The first and last word always remains with the true owners—not bureaucracies, not the courts—but the people. The best way to ensure you have that word is to exercise your right to vote.

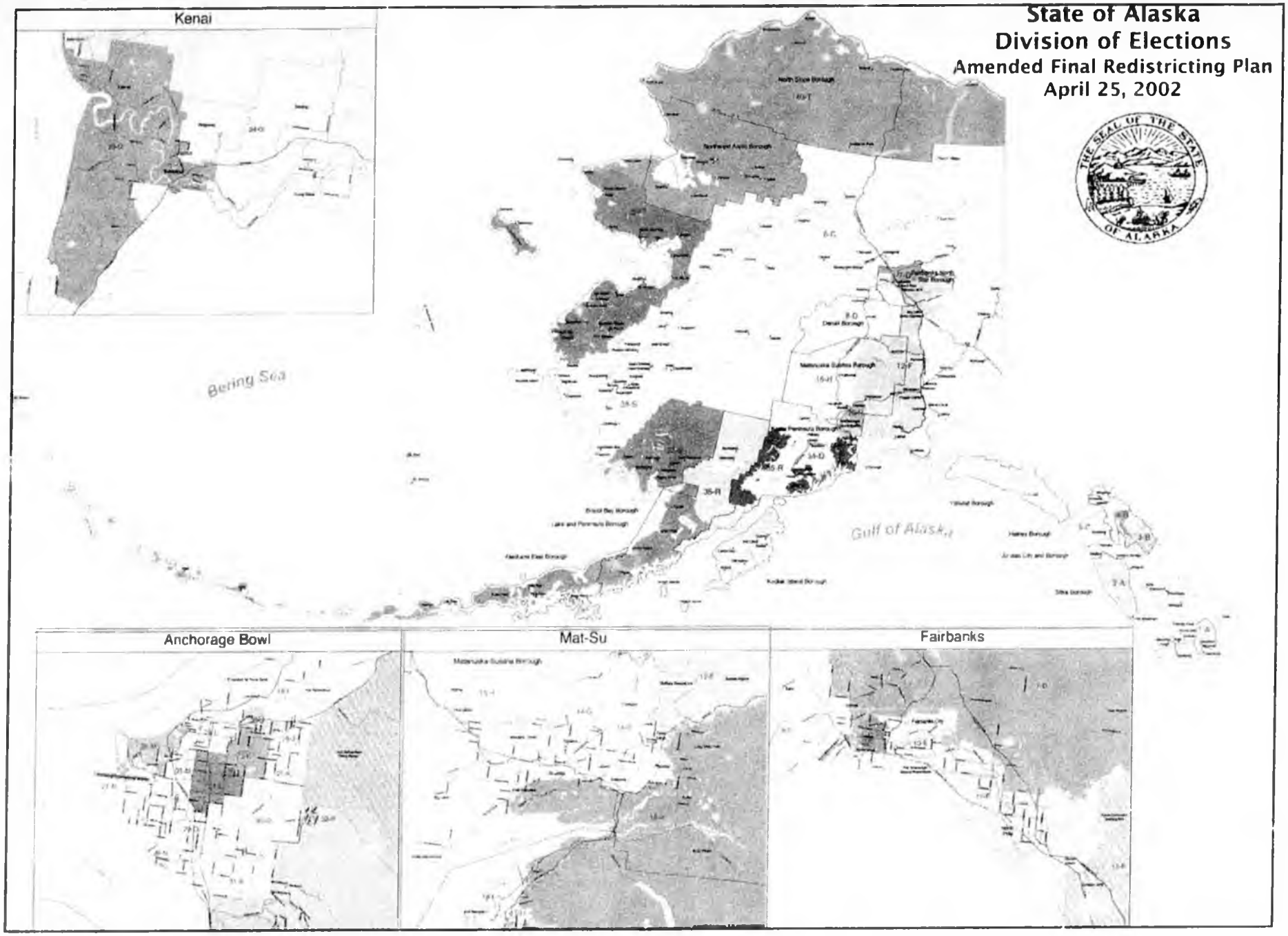
In Alaska many races have been decided by just a handful of votes. One vote has and will continue to make a difference. That vote could be yours. I hope you will exercise your important right to shape the form of our governments and who our leaders are by voting on August 22.

Sincerely,

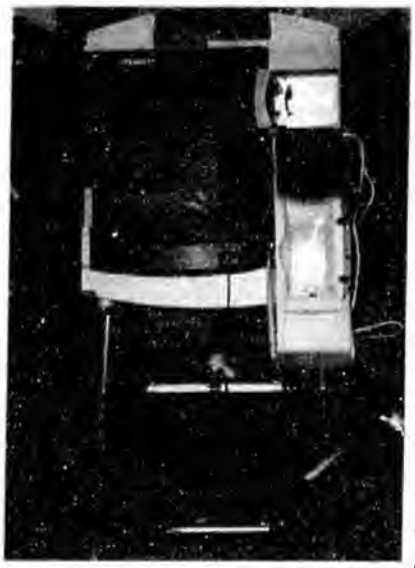
Loren Leman

Loren Leman
Lieutenant Governor

State of Alaska
Division of Elections
Amended Final Redistricting Plan
April 25, 2002



Alaska's New Touch Screen Voting Machine



Through the funding of the federal Help America Vote Act (HAVA), Alaska has purchased a touch screen machine for each of the state's 439 polling places, which will be used in the 2006 Primary Election. The touch screen machines allow voters with disabilities the ability to cast a private and independent ballot. The touch screen machines will be available for any voter who wishes to vote on them; however, those with disabilities will have priority in using them. The touch screen machines accommodate visually impaired and blind voters, as well as those with mobility issues.

The voter casts an electronic ballot, and confirms his or her selection with a voter verifiable paper trail produced by the touch screen. This paper print-out is secured behind a screen and is treated as an official ballot in the event of a recount or audit.

A FEW TOUCH SCREEN VOTING MACHINE FAQs:

Q: How will visually impaired and disabled voters cast an independent ballot?
A: The touch screen machines can be used in many different ways to accommodate different disabilities, and offer large print, high-contrast and audio-only ballots. The ballot appearing on the touch screen can be voted using "pointer sticks" for those with limited or no use of their hands or arms.

Q: What is stored on the voter access card?
A: The voter access card holds ballot information that is read by the touch screen machine and presented to the voter. The voter access card holds only ballot information, not results, and is unusable after being used to vote until it is re-encoded by a poll worker. It does not hold information about the voter or how he or she voted.

Q: How is the voter access card encoded?
A: The voter access card is encoded by poll workers using a device called an encoder that looks much like a small calculator and contains ballot information from the Division of Elections.

Q: Can a voter access card be used to vote twice?
A: No, once a voter has finished voting, the voter access card must be re-encoded by a poll worker before being used by another voter.

Q: How will the paper ballots be transported after an election?
A: As voters cast their ballots, the paper record is collected in a security canister inside the touch screen machine's printer module. Once voting ends, ballots will be secured and treated as other paper ballots are.

For more information contact your local elections office or visit the Division of Elections' website: http://www.elections.state.ak.us

Primary Election – Ballot Choices

There are three ballot types:

Ballot Type	Political Parties
Combined with Ballot Measures	Alaska Democratic Party Alaska Libertarian Party Alaskan Independence Party Green Party of Alaska
Republican with Ballot Measures	Alaska Republican Party
Ballot Measures Only	No candidates *This ballot is for voters who do not want to vote for any candidate*

The ballot type you are eligible to vote is based upon your party affiliation listed on the precinct register.

YOU MAY VOTE ONLY **ONE** BALLOT TYPE

If your party affiliation listed on the register is:	Below is the ballot you are eligible to vote:
A – Alaskan Independence Party	Combined OR Measures Only
D – Alaska Democratic Party	Combined OR Measures Only
G – Green Party of Alaska	Combined OR Measures Only
L – Alaska Libertarian Party	Combined OR Measures Only
M – Republican Moderate Party	Combined OR Measures Only
R – Alaska Republican Party	Combined OR Republican OR Measures Only
N – Nonpartisan	Combined OR Republican OR Measures Only
O – Other	Combined OR Measures Only
U – Undeclared	Combined OR Republican OR Measures Only
V – Veterans Party of Alaska	Combined OR Measures Only

If you want a different ballot type than what the precinct register shows you are eligible for, you must vote a questioned ballot.

If you do not want to vote for any political party candidates, you may request the Ballot Measures Only ballot.

Sample Ballot

STATE OF ALASKA
PRIMARY ELECTION
AUGUST 22, 2006

OFFICIAL XXXX PARTY BALLOT

Completely fill in the oval ● opposite the name of each candidate or question for whom you wish to vote.

UNITED STATES REPRESENTATIVE
(vote for one)

US REPRESENTATIVE CANDIDATE	XXXX

STATE REPRESENTATIVE DISTRICT XX
(vote for one)

STATE REPRESENTATIVE CANDIDATE	XXXX

GOVERNOR
(vote for one)

GOVERNOR CANDIDATE	XXXX

BALLOT MEASURE NO. 1
Campaign Contribution Limits, Lobbying and Disclosure
03DISC

YES
NO

LIEUTENANT GOVERNOR
(vote for one)

LT GOVERNOR CANDIDATE	XXXX

BALLOT MEASURE NO. 2
Cruise Ship Taxation, Regulation and Disclosure
03CTAX

YES
NO

STATE SENATOR DISTRICT X
(vote for one)

STATE SENATOR CANDIDATE	XXXX

VOTE BOTH SIDES

Card #5

Ballot Measure 1

Campaign Contribution Limits, Lobbying, and Disclosure

BALLOT LANGUAGE

This initiative would decrease the maximum amount an individual may give a candidate or group from $1,000 to $500, and decrease the amount an individual may give a political party for any purpose from $10,000 to $5,000. It would decrease the amount a group may give a candidate, or group, from $2,000 to $1,000. It would decrease the amount a group may give to a political party from $4,000 to 1,000. It would require groups to disclose the name, address, occupation, employer, date and amount given by each contributor for contributions more than $100 during a calendar year. It would reduce from 40 to 10 the hours a person who is not a professional lobbyist could lobby in any 30-day period before having to register as a lobbyist. It would require legislators, public members of the select committee on legislative ethics, and legislative directors to disclose outside income sources greater than $1,000.

SHOULD THIS INITIATIVE BECOME LAW?

⬭ Yes

⬭ No

LEGISLATIVE AFFAIRS AGENCY SUMMARY

This bill lowers the limit on campaign contributions. Under this bill, a person could give $500 a year to a candidate's campaign. That's half of what is allowed now. Personal gifts to political parties would be capped at $5,000. A gift by a group would be limited to $1,000 a year. Groups would have to report more about donors. For gifts over $100 to a group, the group would have to report the true source of the gift. The group would also have to report the donor's job and the donor's employer. The bill changes the meaning of "lobbyist." This would make someone who lobbies 10 hours a month report. Now it's 40 hours. It reduces the amount of pay a legislator can receive for personal services without reporting the income. This also applies to certain legislative employees, and members of the legislative ethics committee.

STATEMENT OF COSTS AND REVENUES FOR BALLOT MEASURE 1 - INITIATIVE 03DISC - Prepared by the Alaska Public Offices Commission (APOC)

As required by AS 15.58.020(b), the Alaska Public Offices Commission has determined that there would not be significant costs to APOC for implementing the law proposed in Ballot Measure 1 - Initiative 03DISC.

FULL TEXT OF PROPOSED LAW

AN ACT RELATING TO CONTRIBUTION LIMITS, LOBBYISTS, AND DISCLOSURE

Be it enacted by the people of the State of Alaska:

Section 1. AS 15.13.070(b) is amended to read:
(b) an individual may contribute not more than
(1) $500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party.
(2) $5,000 per year to a political party.

Section 2. AS 15.13.070(c) is amended to read:
(c) A group that is not a political party may contribute not more than $1,000 per year
(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate,
(2) to another group, to a non-group entity, or to a political party.

Section 3. AS 15.13.040(b) is amended to read:
(b) Each group shall make a full report upon a form prescribed by the commission, listing
(1) the name and address of each officer and director,
(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services

The text of this bill is presented as submitted by petition sponsors.

being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

Section 4. AS 24.45.171(8) is amended to read:

(8) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation or profession.

Section 5. AS 24.60.200 is amended to read:

Sec. 24.60.200. Financial disclosure by legislators, public members of the committee, and legislative directors. A legislator, a public member of the committee, and a legislative director shall file a disclosure statement, under oath and on penalty of perjury, with the Alaska Public Offices Commission giving the following information about the income received by the discloser, the discloser's spouse or domestic partner, the discloser's dependent children, and the discloser's nondependent children who are living with the discloser:

(1) the information that a public official is required to report under AS 39.50.030, other than information about gifts;

(2) as to income in excess of $1,000 received as compensation for personal services, the name and address of the source of the income, and a statement describing the nature of the services performed; if the source of income is known or reasonably should be known to have a substantial interest in legislative, administrative, or political action and the recipient of the income is a legislator or legislative director, the amount of income received from the source shall be disclosed;

(3) as to each loan or loan guarantee over $1,000 from a source with a substantial interest in legislative, administrative, or political action, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists.

Section 6. Effective Date. This Act takes effect January 1, 2005.

Ballot Measure 1

Campaign Contribution Limits, Lobbying, and Disclosure

STATEMENT IN SUPPORT

THE "TAKE OUR STATE BACK" INITIATIVE

Corruption is not limited to one party or individual. Ethics should be not only bi-partisan but also universal. From the Abramoff and Jefferson scandals in Washington D.C. to side deals in Juneau, special interests are becoming bolder every day. They used to try to buy elections. Now they are trying to buy the legislators themselves.

Alaskans deserve to know who is paying our legislators and funding their campaigns. In 2004 the Legislature wrote its own rules to govern its conduct and it reduced or eliminated any real restrictions or disclosure requirements.

Measure 1 ensures that you know who is paying your legislator and who is lobbying them. It limits the amount of special interest influence in legislative campaigns and closes the soft money loophole.

Vote "Yes" on Measure 1.

Measure 1 takes our State back in four specific ways.

1. REQUIRES LEGISLATORS TO DISCLOSE WHO IS PAYING THEM.

Under the rules the Legislature wrote for themselves, a legislator can earn thousands of dollars on the side from special interests with no disclosure. We deserve to know who is paying our legislators and why. Measure 1 requires that a legislator disclose any income over $1,000. Period.

2. REQUIRES LOBBYISTS TO REGISTER.

The Legislature rewrote the law so that only a few lobbyists are now required to register. This is a major loophole. Without this registration, there is no disclosure of who is paying lobbyists to influence our legislature. Measure 1 requires any lobbyist who works over ten hours per month to register and to disclose who is paying for the lobbying.

3. LIMITS CAMPAIGN CONTRIBUTIONS TO $500.

Most Alaskans don't write huge checks to political campaigns. The more special interests can contribute, the more influence they have over our politicians. Measure 1 limits contributions to $500 from an individual and to $1,000 from a group.

4 CLOSES THE SOFT MONEY LOOPHOLE.

The Legislature created another major loophole. It allows unlimited donations to political parties. No limit at all. Measure 1 places a $5,000 limit on these donations. On the national level, Sen. John McCain and Sen. Russ Feingold have been champions of limiting soft money. We have the chance to take the first step here in Alaska to limit soft money by passing Measure 1.

Vote to **TAKE YOUR STATE BACK.**

Vote "YES" on Measure 1

Chancy Croft
President, Alaska State Senate
1975-1976

Rick Halford
President, Alaska State Senate
1993-1994, 2001-2002

Lowell Thomas, Jr.
Former Lieutenant Governor
Former State Senator

Ballot Measure 1

Campaign Contribution Limits, Lobbying, and Disclosure

STATEMENT IN OPPOSITION

This initiative diminishes citizen rights and participation while increasing incumbent power.

Our individual right of free speech is radically reduced in Section 1. Our maximum contribution to a candidate or party is cut in half. Challengers can raise less money, thwarting your ability to change elected public officials. This initiative empowers incumbents and the wealthy self-funded candidate.

Our right of free speech to influence elections is further eroded in Section 2. The maximum contribution a group may make to a candidate is reduced by half.

Contribution transparency in the Alaskan campaign disclosure law is destroyed in Section 3. The initiative is a step backward. The change eliminates the disclosure of some donor names and addresses. What do the sponsors, who are all legislators, plan to hide from citizen view?

Section 4 changes the lobbyist definition by chopping a citizen's time to communicate with public officials from 40 to 10 hours per month. More employees of small businesses must register as lobbyists. Eleven hours work in a single month demands filing 16 reports in a two year period. Instead of accepting this ridiculous new burden that discloses their client list to their competitors, most businesses will abandon citizen representation and hire a professional lobbyist. Furthermore, these 'new' lobbyists are prohibited from contributing to any candidate outside of their own legislative district. That is a terrible blow to all citizen's rights. The incumbents, including the initiative sponsors, are protected from well-funded challengers.

The change of income disclosure limits increases the reporting burden materially. While inflation over the decades has effectively reduced this limit, this change from $5000 to $1000 simply increases the paper process without meaningful information.

Gloria Shriver, Founder
Alaska Excellence in Public Service

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

BALLOT LANGUAGE

This initiative would impose a $46 per person per voyage tax on large cruise ships to pay for vessel services. It would provide for the proceeds from the tax to be deposited in the state general fund and, subject to appropriation by the legislature, distributed to municipalities. It would levy a tax on cruise ship gambling activities in state waters. It would change the way cruise ship corporate income tax is calculated. It would require cruise ship operators to gather and report more information, and get a new type of permit for sewage, graywater or other wastewater before discharging in state marine waters. It would assess a $4 per passenger berth fee and require large cruise ships to have state-employed marine engineers (Ocean Rangers) licensed by the Coast Guard to observe health, safety and wastewater treatment and discharge operations. It would authorize citizen lawsuits against an owner or operator of a large cruise ship, or against the Department of Environmental Conservation, for an alleged violation of any permit condition, provision of environmental statutes or performance of duties. It would also enable a person who provides information leading to enforcement of the law to receive 25 to 50 percent of fines imposed. It would impose additional requirements on disclosures about on-ship promotions of shore-side businesses.

SHOULD THIS INITIATIVE BECOME LAW?

⬭ Yes

⬭ No

LEGISLATIVE AFFAIRS AGENCY SUMMARY

Part of this bill is about cruise ship taxes. It imposes a $46 a person tax on cruise ship passengers. That money goes into a special account in the state's general fund. The legislature may appropriate part of that money to the vessel's ports of call. But, towns that receive that money cannot impose local cruise ship head taxes. The bill also taxes gambling on cruise ships. The tax is 33 percent of the cruise ship's adjusted gross income from the gambling. The bill changes the state's corporate income tax law so it could be applied to cruise ships.

The bill also changes environmental laws that apply to cruise ships. It requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges without a permit. It changes the monitoring and record keeping requirements for wastewater discharges. It establishes a new ocean ranger program. A ranger is a marine engineer. It requires each cruise ship to have a ranger on board. The ranger is an independent observer. The ranger monitors compliance with pollution laws. The bill imposes a four-dollar fee per berth for operating the ranger program. It gives private citizens the right to sue for discharge violations. It also establishes financial penalties for violations of environmental laws.

Finally, the bill regulates sales on cruise ships. Persons paid to mention or promote a business in a state port must say they are paid. Written materials must also say that the person is paid. Persons selling tours and other shore-side activities on board a cruise ship must disclose how much they are paid for each sale. A seller must give the address and phone number of the shore-side business if asked. It makes violation of these laws an unfair trade practice.

STATEMENT OF COSTS AND REVENUES FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX - Prepared by the Alaska Department of Revenue

As required by AS 15.58.020(b), the Alaska Department of Revenue has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 - Initiative 03CTAX.

COSTS

In order to administer the tax collection process required by this initiative, the Department of Revenue would require six new positions, at an estimated cost of $626,000 per year for staff and associated costs.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

REVENUES

This initiative would impose an excise tax of $46 per passenger per voyage on travel on commercial passenger vessels with 250 or more berths, and a "Ranger fee" of $4 per passenger berth.

We assume that 2007 cruise ship activity will be similar to the scheduled 2006 cruise ship activity. We cannot predict whether the excise tax might impact the number of passengers.

Assuming the ships sail at 100 percent capacity, we estimate the $46 per passenger excise tax would be applied to approximately 900,000 passengers in the 2007 season, resulting in revenue of approximately $41 million. About $14 million of that revenue would be shared with municipalities at which the cruise ships stopped. Twenty-five percent of the total, or approximately $10 million, would be placed in a "Regional Cruise Ship Impact Fund," to be distributed to other affected municipalities. The $4 per berth Ranger fee would bring in approximately $3.6 million.

Net revenues to the state, after deducting costs for the Departments of Revenue and Environmental Conservation, and deducting the $24 million in shared revenues cited above, would be approximately $14.4 million.

This initiative would impose a tax of 33 percent of the adjusted gross income from operation of gaming or gambling activities on ships operating in Alaskan waters.

The Department has no data on the extent or profitability of cruise ship gaming in Alaskan waters, and therefore cannot calculate revenues from the proposed gaming tax.

This initiative would also change the way the corporate income tax is calculated for the cruise ship industry. The Department does not have adequate data to estimate the effects of this change on corporate income tax revenue.

STATEMENT OF COSTS FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX- Prepared by the Alaska Department of Environmental Conservation

As required by AS 15.58.020(b), the Alaska Department of Environmental Conservation ("DEC") has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 Initiative - 03CTAX.

The initiative would require DEC to develop and maintain a new permit program for Large Commercial Passenger Vessels ("cruise ships") to replace the current program for regulating these vessels. It would also require DEC to place marine engineers ("Ocean Rangers") licensed by the Coast Guard on the cruise ships to monitor compliance with State and Federal environmental laws. Two marine engineers working alternating twelve-hour shifts would be placed on each cruise ship operating in Alaska waters.

The cost to the state during the first full year of the implementation of this initiative is estimated to be approximately $5.6 million.

FULL TEXT OF THE PROPOSED LAW

FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA

Be it enacted by the People of the State of Alaska:

* **Section 1.** AS 43 is amended by adding a new chapter to read:

Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.

Sec. 43.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

accommodations in the state's marine water.

Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of $46 a passenger per voyage.

Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department

(1) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

Sec. 43.52.040. Disposition of receipts.
(a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.

(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call $5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute $2.50 per passenger to the city and $2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or water craft visits and to enhance the safety and efficiency of interstate and foreign commerce.

(c) A "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or water craft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or water craft activities.

Sec. 43.52.050. Administration.
(a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include
(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

* Sec. 2. AS 05, is amended by adding a new chapter to read:

Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.

Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.

Sec. AS 05.16.020. Tax on gambling activities authorized by AS 05.16.010. There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

* **Sec. 3.** AS 43.20.021 is repealed and reenacted as follows:

Sec. 43.20.021(a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.

(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43.52.095.

* **Sec 4.** AS 46.03.462 is repealed and re-enacted as follows:

Sec. 46.03.462. Terms and conditions of discharge permits. (a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:

(1) may not discharge untreated sewage, treated sewage, graywater, or other waste-

waters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

* **Sec. 5.** AS 46.03.463 is amended to read as follows:

Sec. 46.03.463(d) is repealed.

Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.

Sec. 46.03.463(g) is repealed.

* **Sec 6. AS 46.03.465** repealed and reenacted to read as follows:

Sec. 46.03.465. Information-gathering requirements. (a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.

(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.

(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.

(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.

(f) if the owner or operator of a commercial passenger vessel has, when complying with another state of federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

* **Sec. 7.** AS 46.03 is amended to include new provisions as follows:

Sec. 46.03.476. Ocean Rangers. (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.

46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action

(1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or

(2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

* **Sec. 8.** AS 46.03.480 is amended as follows:

Sec. 46.03.480 is amended by adding a new section to read:
(d) An additional fee in the amount of $4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

Sec. 46.03.480(d) shall be repealed and reenacted as 46.03.480(e).

* **Sec. 9.** AS 46.03.760 is amended as follows:

Sec. AS 46.03.760 is amended by adding a new section to read:

(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 – 46.03.314, 46.03.460 – 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 – 46.03.314, 46.03.460 – 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $5000 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

* **Sec. 10.** AS 45.50.474 is repealed and reenacted to read as follows:

Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships. (a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than $100 for each violation. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

* **Sec. 11. Severability.** It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

* **Sec. 12. Effective Date.** This Act takes effect 90 days after enactment.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

STATEMENT IN SUPPORT

The cruise lines should follow Alaska's taxation and pollution rules like everyone else. This initiative protects our fisheries and helps pay for cruise ship impacts on Alaskan communities by establishing/requiring:

1. **$50 passenger tax** - Alaskans pay tourism taxes when traveling Outside and independent tourists pay taxes on rental cars and lodging in Alaska. Cruise passengers willingly pay similar fees throughout the world. A typical cruise, including tickets, airfare, shopping, tours, gambling, and alcohol, costs over $3000. A $50 fee won't make people choose a cruise to New Jersey - therefore there will be no negative impact on Alaska's tourism economy. Federal law requires the funds be spent "servicing the industry," for example, maintaining ports and harbor infrastructure. This tax will help SUPPORT the Alaska tourism economy. Communities preferring their own tax program can opt out of the statewide program.

2. **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.

3. **End tax evasion** - All legal gambling operations in Alaska, except those on cruise ships, pay 1/3 of their profits to charity or in tax. Lucrative cruise line casino operations in Alaska pay nothing. Alaska corporations pay Corporate Income Tax. The cruise industry lobbied for and was granted a specialized income tax exemption for revenue from foreign registered ships. Under the initiative, the cruise lines will pay the same taxes that local businesses and U.S. registered vessels pay on their income and gambling profits.

4. **Support local businesses** - Since 1994, Alaska law has required oral and written disclosure to passengers by cruise lines when they receive commissions for promoting shore-based tours/businesses. Cruise line promotions are presented as "advice" when they are really "advertisements." This is unfair to local businesses that can't afford the steep, advertising commission. This initiative will require cruise lines to disclose the size of their commissions which will help local businesses compete for tourism dollars. No local businesses will have to report anything.

The cruise lines are "selling" Alaska - while impacting our docks, roads, public facilities, wildlife, and the quality of our lives. This initiative will do nothing to turn visitors away; it will help keep our tourism industry sustainable while protecting the needs of all Alaskans. The Miami/Vancouver-based cruise lines make billions in profits by registering their ships in third world countries to avoid paying U.S. income taxes and wages. The cruise lines can easily afford to play by Alaska's rules like everyone else.

Please vote YES on Ballot Measure 2!

RESPONSIBLE CRUISING IN ALASKA

Gershon Cohen, Haines, Alaska

Joe Geldhof, Juneau, Alaska

The statement printed on this page is the opinion of the author(s) and is presented as submitted to the Division of Elections.

Ballot Measure 2

Cruise Ship Taxation, Regulation and Disclosure

STATEMENT IN OPPOSITION

Vote "No" on Ballot Measure 2
It just doesn't make sense!

Dear fellow Alaskans,

Ballot Measure 2 is a direct attack on Alaska's economy. It will hurt our tourism industry -- a growing industry and the 4th largest employer of Alaskans. Additional taxes, lost jobs and more lawsuits in Alaska are not the answer. **Ballot Measure 2 deserves a "No" vote on August 22nd.**

The Alaska State Chamber of Commerce, Anchorage Chamber of Commerce, City of Fairbanks, Associated General Contractors of Alaska, Southeast Conference, Alaska Travel Industry Association, Resource Development Council, Juneau Chamber of Commerce, City of Skagway and the Ketchikan Chamber of Commerce and several hundred others all **oppose Ballot Measure 2 because it's bad for Alaska.**

Measure 2 will:

Mandate four additional new taxes including a state wide head tax of $50 per person, $100 per couple, and $200 for an average family of four. Rising oil prices are driving up the cost of living, which has reduced all travelers' budgets. Imposing more taxes and fees on top of the other additional travel costs will keep tourists away and hurt our economy instead of helping it.

Force the disclosure of confidential business information about Alaska's local small businesses to competitors including those in the lower 48. No other business in Alaska is required to disclose this type of information. Forced disclosure would reduce the pre-purchase of tours and excursions, hurting Alaska businesses.

Raise costs and discourage tourism to Alaska. Tourists already pay millions of dollars in taxes and fees on their plane tickets, hotels, restaurants, tours and shopping. Additionally, there are more than 26,000 local jobs provided by the tourism industry contributing tens of millions of dollars to our strong economy. Measure 2 would increase costs, discourage tourism and reduce spending at our local businesses.

Open the door and create new motives for lawyers to file predatory lawsuits. Lawyers will be allowed to file suit and collect up to 50% of any fines collected. Out-of-state attorneys will line up and flood Alaska's court systems with frivolous lawsuits. The Measure would even allow individuals to sue the state of Alaska.

Increase the amount of bureaucratic red tape, bureaucracy and size of state government in Alaska. Measure 2 creates a new layer of state bureaucracy, red tape, paperwork and unnecessary government regulations that don't provide any additional benefits to Alaskans or the environment. Increasing the number of state bureaucrats, cost of state government and the amount of red tape doesn't solve anything.

Tourism is over a $2 billion dollar industry in Alaska. Attacking the tourism industry through Measure 2 and attempting to pass more taxes, unnecessary and redundant government regulations, and tourism disincentives is the wrong move.

Threatening Alaska's economy, over 26,000 local jobs and thousands of small businesses across the state isn't the answer.

Also endorsing this letter: Mayor Bob Weinstein, City of Ketchikan, Chris Anderson, ORSO and Glacier BrewHouse - Anchorage

Vote "No" on Ballot Measure 2.

Carol Fraser
Aspen Hotels of Alaska

Steve Frank
Rivers Edge Resort in Fairbanks

Marc Langland
President Fiscal Policy Council of Alaska

Absentee Voting

In Person/By Mail/By Fax/Special Needs Voting

GENERAL INFORMATION ABOUT ABSENTEE VOTING

In accordance with Alaska law, any voter may vote before Election Day for any reason. You may vote absentee in person, by mail, by fax or vote a special needs ballot through a personal representative.

ABSENTEE IN PERSON

Beginning on **August 7, 2006**, you may vote absentee in person at any of the regional elections offices or other voting sites established by the Division of Elections. Ballots for all 40 districts are available at all regional elections offices. Absentee voting officials will only have ballots for their house district. On Election Day, these stations will offer absentee in person voting.

ABSENTEE BY MAIL

Absentee ballot applications are available and can be submitted after January 1st of each calendar year, up to 10 days prior to each election for any state elections during that year. You can request a ballot for a specific election or for all elections in the year. To receive an absentee ballot by mail, you must first send an application so that your voter registration can be verified. **Apply early to ensure timely delivery of your ballot.** All absentee by mail ballot applications must be received **AT LEAST 10 DAYS** prior to the election. Voted absentee by mail ballots must be postmarked on or before Election Day.

ABSENTEE BY FAX

Absentee by fax should be your last alternative for casting your ballot. You may apply for an absentee by fax ballot beginning on August 7, 2006 by completing a by fax application. Your completed application must be received by 5:00 pm AST on or before August 21, 2006. If you choose to return your voted ballot by fax, you voluntarily waive a portion of your right to a secret ballot. **Voted fax ballots may be returned by fax before 8:00 pm AST on Election Day and may also be returned by mail, postmarked on or before Election Day.**

SPECIAL NEEDS VOTING

A qualified voter who is unable to go to the polls due to age, serious illness or a disability may apply for a special needs ballot through a personal representative. A personal representative can be anyone over 18, except a candidate for office in the election, the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union. The personal representative may obtain a ballot for the voter beginning on August 7, 2006 through August 22, 2006 at any regional elections office or any absentee voting site. In addition, special needs ballots may be obtained at the precincts on Election Day.

Contact any Division of Elections office to obtain a by mail or by fax application. For additional information on by mail and by fax voting, contact the Absentee Voting Section. For information on in person and special needs voting, contact the regional elections office nearest you. Absentee voting information is also available online:

http://www.elections.state.ak.us

MAIL OR FAX YOUR COMPLETED ABSENTEE BY MAIL BALLOT APPLICATION TO:

DIVISION OF ELECTIONS
ABSENTEE VOTING SECTION
619 E. SHIP CREEK AVE. #329
ANCHORAGE, ALASKA 99501-1677
PHONE: (907) 375-6400 - FAX: (907) 375-6480

Voter Rights/Assistance While Voting

Primary Election Day is August 22, 2006

The polls will be open from 7:00 a.m. to 8:00 p.m. on Election Day. TO LOCATE YOUR POLLING PLACE PLEASE CALL 1-888-383-8683. IN ANCHORAGE, PLEASE CALL 269-8683. The following information explains basic voting rights and will help voters with special needs.

Election information is also available on the Division of Elections' website:
http://www.elections.state.ak.us

ASSISTANCE WHILE VOTING

If you have difficulty voting because of a disability, difficulty reading or writing English, or for any other reason, you may bring someone to help you at the polls. The person you bring may go into the voting booth with you and help you vote. This person may be an election official, family member, friend, bystander, campaign worker, or anyone else who is not a candidate for office in the election, the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union. This is your right under federal law.

NON ENGLISH SPEAKING VOTERS

Alaska Native and Tagalog language assistance is available at many polling places throughout the state. Let the Division of Elections know ahead of time if you will need this service when you vote.

HEARING IMPAIRED VOTERS

The Division of Elections has a TTY telecommunications device, which allows hearing impaired voters to obtain general information about elections by calling (907) 465-3020.

VISUALLY IMPAIRED VOTERS

Magnifying ballot viewers for the visually impaired will be available at all polling places and absentee voting sites, in addition to touch screen machines, which will offer magnified, high-contrast and audio ballots.

Audio tape recordings of the **2006 Primary Election Voter Pamphlet** are available from the Alaska State Library, Talking Book Center, located in Anchorage. Telephone the library at (907) 269-6575 for information.

PHYSICALLY DISABLED VOTERS:

If you have difficulty gaining access to your polling place, or if you have accessibility questions about your polling place, please let the Division of Elections know. We make every effort to ensure that polling places are accessible to all Alaskans.

EMERGENCY ABSENCES:

If you are unable to vote at your polling place for the Primary Election and did not have time to apply for an absentee by mail ballot or to vote absentee in person, you may be able to vote by fax. The application period for voting by fax begins on **August 7, 2006** and applications must be received by **5:00 p.m.** AST on **August 21, 2006**.

IF YOU HAVE QUESTIONS OR WOULD LIKE MOR[E] INFORMATION ABOUT OUR SPECIAL SERVICES, PLEASE CONTACT ANY REGIONAL ELECTIONS [O]FFICE.

Region I	**JUNEAU: (907) 465-3021**	**KENAI: (907) 283-3805**
Region II	**ANCHORAGE: (907) 522-8683**	**MAT-SU: (907) 373-8952**
Region III	**FAIRBANKS: (907) 451-2835**	
Region IV	**NOME: (907) 443-5285**	

Understanding Ballot Rotation for 2006

For the 2006 Primary Election, the following races will be up for election: U.S. Representative, Governor, Lt. Governor, 10 State Senate Districts and 40 State House Districts. All ballot rotation will take place by State House District.

Candidates for the U.S. Representative, Governor and Lt. Governor races will be placed on the first ballot (House District 1) in alphabetical order. Then, beginning with the House District 2 ballot, candidates will rotate by the top candidate moving to the bottom of the race and all other candidates moving up one position. This rotation will continue through all 40 State House District ballots.

Each State Senate District is comprised of two State House Districts. For the 10 State Senate races, there will be a random draw of the letters of the alphabet to determine the order of how the candidates will be placed on the first State House District ballot. For the second State House District, in which the State Senate District appears, the candidates will rotate by the top candidate moving to the bottom of the race and all other candidates moving up one position.

For the 40 State House District races, there will be a random draw of the letter of the alphabet to determine the order of how the candidates will be placed on the State House District ballot.

There will be one random draw of the letters of the alphabet for both the State Senate and State House District races.

State of Alaska - Division of Elections
Official Ballot
House District 1

US Representative	Governor or Lt. Governor
› Apple, Joe	› Arctic, Jones
› Banana, Mary	› Barrow, Margaret
› Cantaloupe, Susie	› Caribou, Jamie

State Senate District A	State House District 1
› Jackson, Henry	› Jack, Shelly
› Darby, Meghan	› Queen, Whitney
› Wakefield, Sandie	› King, Joseph

State of Alaska - Division of Elections
Official Ballot
House District 2

US Representative	Governor or Lt. Governor
› Banana, Mary	› Barrow, Margaret
› Cantaloupe, Susie	› Caribou, Jamie
› Apple, Joe	› Arctic, Jones

State Senate District A	State House District 2
› Darby, Meghan	› Glenn, Marty
› Wakefield, Sandie	› Arrow, Don
› Jackson, Henry	› Seward, Doreen

State of Alaska - Division of Elections
Official Ballot
House District 3

US Representative	Governor or Lt. Governor
› Cantaloupe, Susie	› Caribou, Jamie
› Apple, Joe	› Arctic, Jones
› Banana, Mary	› Barrow, Margaret

State House District 3
› O'Malley, Grace
› Minnesota, Rachel
› Abbott, Mable

STATE OF ALASKA
Division of Elections
P.O. Box 110017
Juneau, Alaska 99811-0017

NON-PROFIT ORGANIZATION
US POSTAGE
PAID
DIVISION OF ELECTIONS

TO LOCATE YOUR POLLING PLACE CALL: 1-888-383-8683
In Anchorage: 907-269-8683

REGIONAL ELECTIONS OFFICES

Region I Elections Office
(House Districts 1-5, 33-36)
9109 Mendenhall Mall Road, Suite 3
P.O. Box 110018
Juneau, Alaska 99811-0018
Phone: (907) 465-3021

Kenai Elections Office
11312 Kenai Spur Highway,
Suite 45
Kenai, Alaska 99611
Phone: (907) 283-3805

Region III Elections Office
(House Districts 6-12)
675 7th Avenue, Suite H-3
Fairbanks, Alaska 99701-4594
Phone: (907) 451-2835

Region II Elections Office
(House Districts 13-32)
2525 Gambell Street, Suite 100
Anchorage, Alaska 99503-2838
Phone: (907) 522-8683

Matanuska-Susitna Elections Office
North Fork Professional Building
1700 E. Bogard Road, Suite B102
Wasilla, Alaska 99654
Phone: (907) 373-8952

Region IV Elections Office
(House Districts 37-40)
Alaska State Office Building
103 Front Street
P.O. Box 577
Nome, Alaska 99762-0577
Phone: (907) 443-5285

Election information is also available on the Division of Elections' website at:
http://www.elections.state.ak.us

25-LS0585\A.1
Kane
3/28/07

AMENDMENT #1 W/D

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: HB 164

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.

Gulf of Alaska Keeper

5933 E 12th Avenue
Anchorage, Alaska 99504

March 28, 2007

By: Email

Representative Jay Ramras
Chairman, House Judiciary Committee

Re: Ocean Ranger Legislation

Dear Representative Ramras:

I am Co-director of Gulf of Alaska Keeper (GoAK). GoAK is a 501c3 non-profit that conducts large marine-debris remediation projects in Prince William Sound and along the Gulf of Alaska northern coast. Over the past six years we cleaned hundreds of miles of PWS beaches. Last season alone, using volunteers and a professional crew, we cleaned 350 miles of coastline around all the islands in the Knight Island archipelago, removing 35 tons of plastic debris that filled 46 large dumpsters. We also conducted marine-debris surveys on an additional 300 miles of coast.

Plastic marine debris is a very serious environmental threat that has largely gone unrecognized or is simply ignored. While generally viewed as an aesthetic problem, or at most a problem that causes animal deaths via entanglement or by ingestion of plastic items, there is a much more threatening aspect to plastic marine debris. Plastic is loaded with all sorts of inherent toxic chemicals, such as phthalates. In addition to plastic's inherent chemicals, plastic marine debris floating in the North Pacific Gyre adsorb huge quantities of nasty industrial pollutants emanating from factories in Russia and Asia. These airborne industrial pollutants, including very toxic Persistent Organic Pollutants (POPs) such as dioxin and PCPs, condensate out over the North Pacific and settle into the ocean.

Plastic trash from western Pacific Rim countries covers huge patches of the northern Pacific. Studies indicate that there is 10 times as much plastic by weight in the North Pacific Gyre than there is phyto and zoo-plankton. Researchers in Japan and from the University of Washington have discovered that plastic marine debris very efficiently adsorbs nasty chemical toxins, accumulating loads of POPs on the surface of the plastic that are as much as one million times higher than the amount of POPs in the surrounding water column. Plastic caught in the North Pacific Gyre drifts around for years soaking up POPs and other pollutants. The frightening aspect of this is that eventually prevailing currents and winds drive this plastic debris onto northern Gulf of Alaska and Prince William Sound shorelines. Once on the shoreline, storms and surf over time grind the plastic into tiny toxic particles that are ingested by small inter-tidal organisms at the base of the food chain. Scientists around the world are beginning to show that these toxins then bio-accumulate up the food chain, threatening higher trophic levels including fish, wildlife and humans. GoAK recently began a project with the UAA chemistry department to analyze and track this toxicity problem throughout the inter-tidal ecosystem.

As the attached photos illustrate, northern Gulf of Alaska and Prince William Sound shorelines are flooded with nearly incomprehensible amounts of toxic plastic marine debris, almost all of which originated from foreign countries or offshore fleets. These photos are of a massive plastic debris field on Gore Point, a small finger of land projecting from the southeast Kenai Peninsula

into the Gulf of Alaska. This particular debris field covers 120 000 square yards and is several feet deep in places. Another nearby debris field is at least twice as big. Sadly, this area is on the shores of Kachemak Bay State Park Wilderness. Storms have driven the toxic plastic debris deep into the surrounding forest and critical inter-tidal spawning and rearing habitat.

Gore Point is not an anomaly. Similar debris fields inundate northern Gulf of Alaska and Prince William Sound shorelines. The beaches on the Gulf of Alaska side of Montague, Hinchinbrook, Hawkins, Kayak and other islands are covered with thousands of tons of toxic plastic debris. GoAK's primary goal is to remove it all. We also began a marine-debris monitoring program, establishing monitoring sites throughout the region that will be visited each year so that we can eventually ascertain the debris accumulation rate and to hopefully identify debris sources.

Each year, hundreds of volunteers donate thousands of hours to GoAK's marine debris project. The Whittier charter fleet donates vessels and time. The City of Whittier donates facilities and disposal of the collected debris. GoAK also has a professional marine-debris remediation crew that cleans beaches throughout the summer. Even with all of our volunteers and in-kind donations, this is a very expensive project. We spend the entire year raising money so that we can afford to keep crews and volunteers in the field during the short summer season. We receive limited funding from federal, private and foundation grants. However, we must still raise nearly $300,000 to meet this season's project goals. Although nearly all of the shoreline that we clean is State tideland, GoAK has never received State funding or agency support. NOAA federal grants require one-to-one matching funds. Some private foundation grants require the same match. State funding could be used to satisfy the matching grant requirements, thereby leveraging State funds. GoAK's projected marine-debris remediation budget this season just for cleaning a few central PWS islands and Gore Point is $500,000. It will cost tens, if not hundreds, of millions of dollars to clean the northern Gulf of Alaska and Prince William Sound shoreline. While GoAK will make a valiant effort, the task will be almost impossible to complete without strong, sustained State financial support. Too much of our time is spent raising money...time that could be better spent actually removing plastic debris from critical habitat.

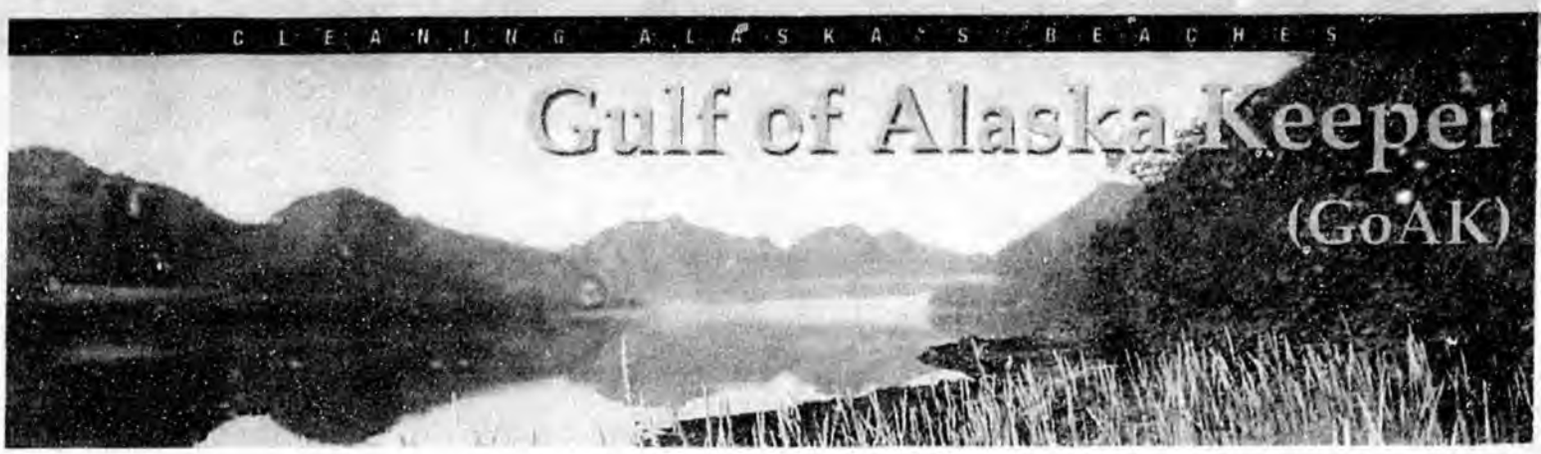
GoAK has no position on the Ocean Ranger program itself. However, we strongly believe that if the money intended for the Ocean Ranger program was instead put into an Environmental Trust to fund programs such as GoAK's marine-debris remediation project, it would provide immediate and far-reaching benefits to Alaska's critical coastal habitat and dependent communities. Fish and wildlife, commercial fishermen, sportsmen, hunters, subsistence users, the tourism industry and many others would directly benefit from this simple reallocation of funds because the money could be spent to directly protect the resources they all depend upon. For these reasons, GoAK strongly supports your legislation to reallocate the Ocean Ranger funding.

Sincerely,

Chris Pallister

Chris Pallister
Co-director
Gulf of Alaska Keeper

C L E A N I N G A L A S K A ' S B E A C H E S



Gulf of Alaska Keeper (GoAK)

...From sea to shining sea...

GoAK - Dedicated to cleaning shorelines in Prince William Sound and the Gulf of Alaska

May 2006 PWS Cleanup

Over 100 volunteers collected over 600 bags of trash and cleaned 30 miles of shoreline.

Ongoing PWS Cleanup

During June through August 2006, GoAK collected more than 35 tons of marine debris.

Montague Island Survey

Twice during 2006, GoAK surveyed the outer coast -- LOTS of trash observed!

Gore Point Survey Oct 2006

In 2007, GoAK plans to tackle Gore Point -- a gargantuan catcher's mitt of debris.

Naked Island Survey

Oct. 2006, GoAK surveyed Naked Island as a prelude to 2007 volunteer cleanup.

GoAK Needs Your Help

Since the dawn of plastics, immeasurable amounts of plastics have been dumped into our oceans worldwide. After drifting for years in ocean currents, storms drive the debris onto our shorelines. Plastic marine debris (MD) is not only unsightly, but also poses risks to our intertidal ecosystems.

In the late 1990's, a small, dedicated group of citizens became alarmed at the increasing amount of plastics, derelict fishing gear, styrofoam, and other marine debris that is collecting in "pristine" Prince William Sound.

GoAK is Born

Beginning in 2001, small-scale local cleanups in Prince William Sound were initiated successfully out of Whittier, Alaska. During the following 5 seasons, volunteers worked eastward from Whittier, cleaning approximately 70 miles of sensitive coastal habitat.

Discovering more and more debris-choked beaches and faced with the daunting task of cleaning more than 3500 miles of shoreline in Prince William Sound alone, the non-profit Gulf of Alaska Keeper (GoAK) formed in 2005 to expand and fund the program.

2006 and Beyond

In 2006, GoAK launched a highly successful cleanup of over 350 miles of extremely rugged and remote shorelines of the Knight Island archipelago; an equivalent of **46 large dumpsters (35 tons)** of marine debris were removed from the islands and hauled to Whittier.

A pile of derelict fishing gear awaits removal during the 2006 cleanup on Knight Island in Prince William Sound.

Over 300 miles of beach surveys were conducted in 2006 along Knight Island, the outer coast of Montague Island, western PWS, Gore Point, and Naked Island. 2007 field plans include marine debris removal and further surveying, but the challenge grows as GoAK focuses effort further away from immediate land-based resources. We can no longer rely primarily on volunteer efforts.

An estimated 100,000 marine mammals and 2 million seabirds die *each year after* ingesting or being caught in plastic debris. (Garrison, Oceanography, 2005)

Given that the majority of marine debris swirls in from the Pacific Ocean, we often wonder how much more is out there. We may not be able to eliminate the source, but through volunteer and funded efforts, we can do our part to tackle this problem -- starting in our own Alaskan backyard.

Contact: Chris Pallister, Co-director • Gulf of Alaska Keeper • 907.[illegible] • chris[illegible]

Prince William Sound Shoreline Cleanup

May 18-20, 2007

Wanted:
Any volunteers (18 years or older) who are willing to work to help make the Sound more pristine.

Location of cleanup:
Naked and Peak Islands

Logistics:
Three days, two nights, overnight camping on the beach, or sleeping on a boat; limited number of kayakers who want to work will be accomodated

Departure point:
Whittier at 9 a.m. at the Alaska Seakayakers in the Triangle area

Transportation:
Sea kayak transporters and other volunteer vessels (non-refundable deposit of $40 for beach campers, or $50 for overnight on boat required to reserve passenger space)

What to bring:
Gloves, layered clothing, rain gear, camping gear, food and water, serrated knives, garden shears, pry bars, etc.

For more information or to sign up to help, contact Chris Pallister at chris@goak.org

Sponsored by the Gulf of Alaska Keeper (GoAK) and the Marine Conservation Alliance Foundation with support from a host of other user-groups of PWS

1 ...From Sea to Shining Sea

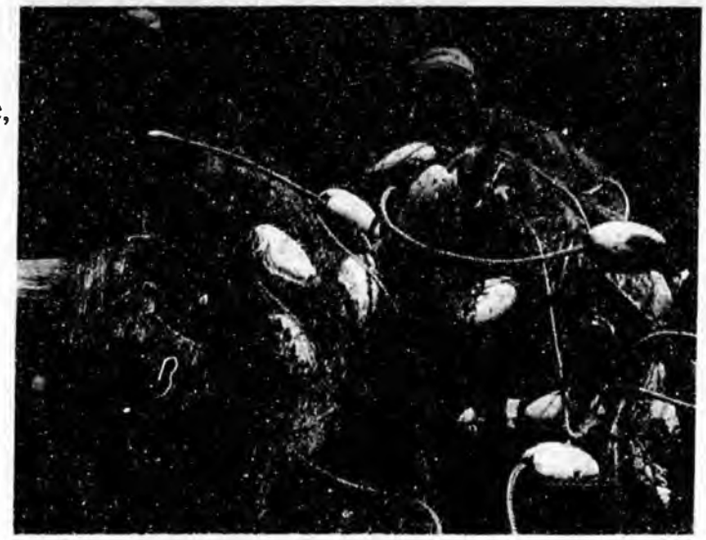
Gore Point, Alaska

In this case, these words of national pride have turned into national shame. The world's oceans have been used far too long as a dumping ground. Instead of magically disappearing; durable goods such as this plastic marine debris (MD) fouling a coastal forest floor have come back to haunt us. While many people shake their heads at sights like this and maybe dig around in them a bit for "Treasures"; the debris is rarely picked up and hauled away to a proper waste facility. This particular site in Kachemak Bay State Wilderness Park has accumulated plastic debris since the beginning of the age of plastics sometime in the 1950's. There is much more here than meets the eye, as this debris field is many feet deep. Sadly, it is only one of thousands of marine-debris sites along Alaska's vast, rugged, and intricate shoreline.

It is easy to disregard these debris piles as just an aesthetic problem, but it is becoming increasingly apparent that there is much more to this issue than meets the eye. Plastic products inherently contain toxic chemicals. Furthermore, plastic drifting for years in the North Pacific Ocean absorbs industrial pollutants. These toxin loaded plastic items eventually drift ashore where many animals, such as bears and otters, chew them into small pieces. It is suspected that this may be a pathway by which toxic chemicals are accumulating in wildlife. In addition, derelict plastic fishing nets and other products such as six-pack rings and masses of ropes, are notorious for ensnaring and drowning many marine mammals. In addition, countless numbers of seabirds and turtles die gruesome deaths after ingesting small plastic debris.

...From Sea to Shining Sea

We all contribute to the plastic MD problem even if unwittingly. Because we all share the blame, we all have an obligation to clean up the mess. It is a huge problem that no organization can do by itself. But, Gulf of Alaska Keeper (GoAK) is doing everything it can do to combat the problem in the Gulf of Alaska and associated watersheds. GoAK is a 501C3 non-profit group dedicated to MD removal and other water-quality issues. One of our primary objectives is to remove MD from our critical shoreline habitat.



Lost Fishing Net

As these pictures attest, plastic MD comes in countless forms. Unfortunately, much of it is very labor intensive and time consuming to remove. Nets and ropes become entangled with logs and other debris. They must be laboriously cut away piece by piece. Additionally, beach sand saturates the weave of the nets and ropes which quickly dulls or ruins cutting implements.

Bear-Chewed Styrofoam Mess

Styrofoam is our particular bane, and it is everywhere. It is easily broken into thousands of small bits by wave action and also by animals that delight in chewing on it. Styrofoam bits are very difficult to clean up but because of its propensity for absorbing toxic chemicals, GoAK believes that as much as possible needs to be removed. GoAK is experimenting with techniques to efficiently remove Styrofoam.

Entangled Plastic Tubing

...From Sea to Shining Sea

What Can We Do?

Even if mankind suddenly stopped throwing plastic debris overboard, there will always be storms, floods, and other sorts of accidents that flush MD into the oceans. So it is unlikely that there will soon be an alternative to manually removing MD from the intertidal zone.

Headed for the Dumpsters

As an example of mutual cooperation between cleanup partners, the City of Whittier Alaska generously donates dumpsters and landfill fees to the GoAK MD Remediation Project. Only with the help of partners such as Whittier will we be able to continue our quest to remove this overwhelming mess from Alaska's shorelines.

Good Riddance!

It takes a great deal of dedication, planning, logistical support, and funding to make a significant impact removing MD from Alaska's vast coastline. Only through strong financial, volunteer, and partner support, can we can continue to make good progress.

Yet Another Load

...From Sea to Shining Sea

Over the past five years, GoAK members zealously cleaned beaches in Alaska's Prince William Sound. Over the first four seasons, using only volunteer labor and support, over 70 miles of coastline were cleaned and tons of debris hauled back to Whittier for proper disposal. In 2006, recognizing the need for greater progress, we combined the popular volunteer effort with a professional MD remediation effort. Concurrent with the beach cleanup, GoAK collects dead marine mammals and seabirds for federal agencies. We also find and report land– use violations to the landowners. In addition, GoAK conducts MD surveys each season and has established 16 MD monitoring sites which will be cleaned and quantified every year. Mostly though we pick up, yank, tear, pull, cut, and use any other means available to remove MD from the water and shoreline. We also have to occasionally chase off a bear or two and tolerate some lousy weather.

During the 2006 season, 100 volunteers cleaned 30 miles of shoreline from Bay of Isles on Knight Island to the northern tip of Eleanor Island in Prince William Sound. Our field crew removed all of the MD collected by the volunteers then continued cleaning the rest of the Knight Island Archipelago. After covering nearly 350 more miles of shoreline the GoAK field crew removed 2,200 bags of debris that filled 46 large dumpsters. With additional financial support, we are excited to think of what can be accomplished in the future.

Who Are We?

Nick Ted Ryan Doug

The 2006 Field Crew

Bryn Loves the Derelict Nets

The Final Plea for Donations

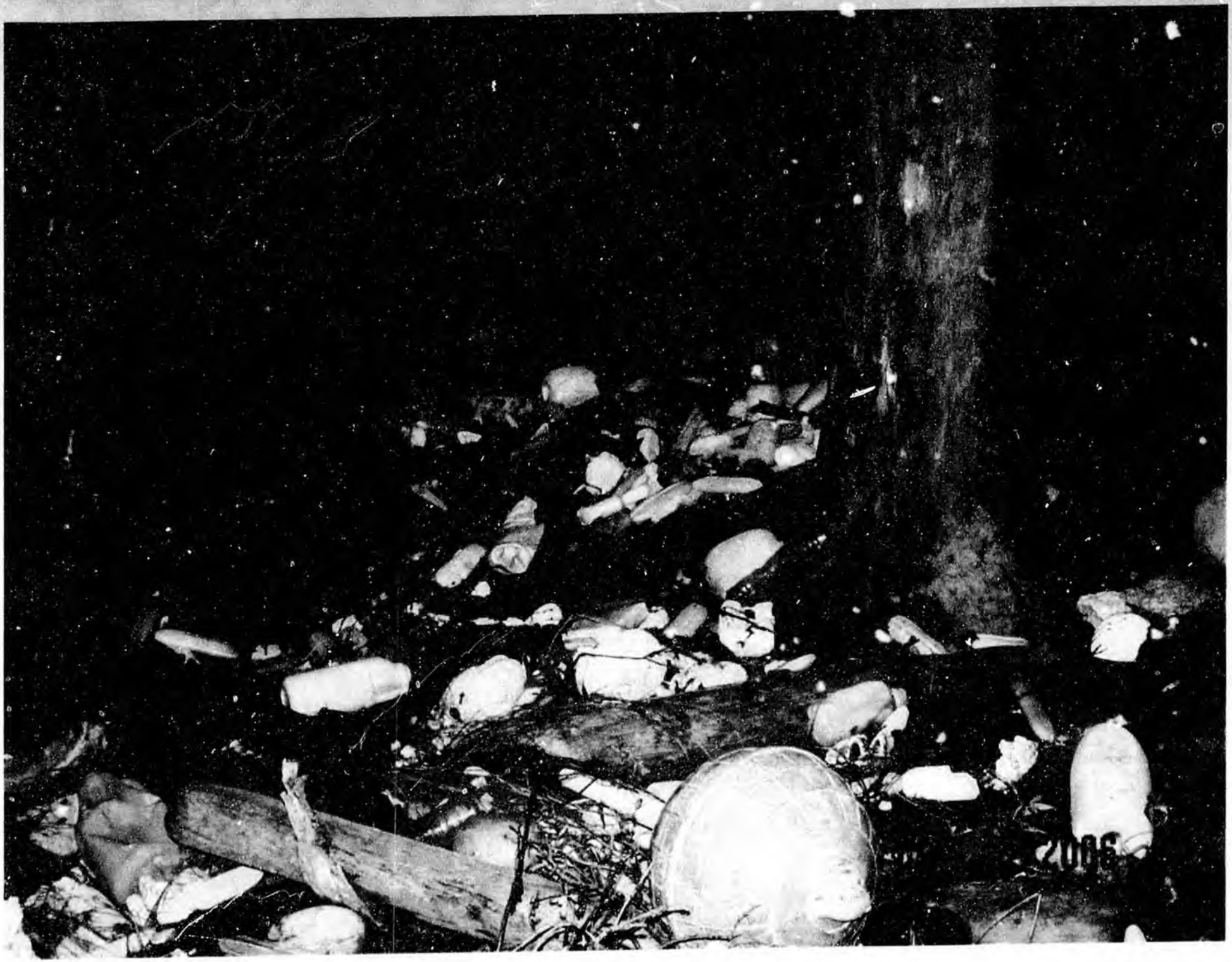
During the course of our cleanups, it quickly became apparent that an incredibly wide range of sources have contributed to the MD problem. Some legal, some illegal. Some accidental, some intentional. These contributors range from the general public to industries such as shipping, oil, and fishing. The plastic products found on our beaches range from shotgun shells and fireworks parts to fishing nets, rope, and everything in between. So, we are sending a plea for funding help to all sources, both private and industry, to please help us clean Alaska's shorelines and help protect our valuable and critical intertidal resources. This can be a win-win situation for all involved. The world's commerce can continue as normal and GoAK will make everybody look good by using our combined resources to keep our shorelines shining from sea to shining sea.

Ingot Island Volunteers

Now What Do We Do?

Nothing But Net!

Contact: Chris Pallister
Co-director GoAK
907-345-0166
chris@goak.org


2006

Gulf of Alaska Keeper

5933 E 12th Avenue
Anchorage, Alaska 99504

March 28, 2007

By: Email

Representative Jay Ramras
Chairman, House Judiciary Committee

Re: Ocean Ranger Legislation

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Sincerely,

Chris Pallister

Chris Pallister
Co-director
Gulf of Alaska Keeper

Alaska SeaLife Center
windows to the sea

March 27, 2007

Honorable Chairman Jay Ramras
House Judiciary Committee
Alaska State Legislature
House of Representatives
Juneau, AK

Dear Representative Ramras:

I am the Director of the Alaska SeaLife Center. The Center is a private, not-for-profit organization with the mission of understanding and maintaining the integrity of the marine ecosystem of Alaska. We have structured the organization to accomplish this mission through four primary mission lines: research, rehabilitation, conservation, and education. Though some have mislabeled us the Seward SeaLife Center, our mission is to support all of Alaska on marine issues.

Taking on the challenge of dealing with marine ecosystems in Alaska is an enormous task. The geographic range of our mission is enormous. Understanding marine ecosystems is a complex challenge. The working conditions for our field work can be quite challenging. And, as with a number of other institutions we partner with, there are not enough fiscal resources to allow us to do all that could and should be done.

We have long advocated a broader view of funding research, rehabilitation, conservation, and education programs in Alaska. We work hard to leverage the dollars we receive and can generate, but finding long-term, reliable funding streams to support long-term programs is difficult. We would support the development of an Ocean Fund that would ensure that Alaskan organizations are able to compete for funds that support our mission programs that provide a critical role in helping the State to oversee and manage the use of our marine ecosystems. I can provide a number of examples as to the types of activities that we engage in that could benefit from such a program, but I'll only provide a few examples below.

We have defined needs for active research programs on the direct impacts of marine uses on the ocean itself—from the perspective of the animals that live within it, the communities that surround and depend on it, and the businesses and industry that use it. We have the State's only Marine Mammal Stranding Center, and are first responders along with other agencies in any individual animal rehabilitation case, mass stranding, or unusual mortality event. We have a significant investment in the expertise and facilities to conduct these activities, and we need long-term funding opportunities to ensure that we can keep this unique capacity in Alaska. We have

EXECUTIVE DIRECTOR'S OFFICE
301 Railway Avenue • P.O. Box 1329 • Seward, Alaska 99664
Phone (907) 224-6349 • Fax (907) 224-6360
www.alaskasealife.org

both formal and informal education platforms within the Center, via distance delivery, and through outreach programs. New curriculum and programs should be developed to link the next generation of marine stewards to the real issues that the State faces. We have the skill and the connections, but lack the resources to develop specific programs on air and water quality issues and how they relate to the health of the ocean and the marine animals that we study. We have almost 150,000 visitors a year that we can educate about marine issues. We have the ability to tell the message of how well Alaska manages these resources to the rest of the nation, but lack the funding to develop and market such a program. We are actively engaged in marine conservation and clean up activities. We are building a long-term monitoring program that focuses on the North Gulf of Alaska region. And the list goes on.

There is much discussion right now about the outcome of a new tax revenue stream that will be coming into the State through the cruise industry. I would advocate the vision of establishing an Ocean Fund that could provide a long-term benefit to the understanding and maintaining of the marine ecosystems of Alaska. This would be a unique approach that would bring the contribution of this industry player and the State together for the long-term good of Alaska. If structured right, such a fund would be a tremendous leverage point for existing Alaskan organizations that are working to ensure that our marine resources are well managed. Alaska has already established the benchmark for the nation as it relates to management of marine ecosystems. This is an opportunity to take that commitment to the next level. This would allow us broader ability to ensure we do things right, to prove it when we do so, and to communicate it to those that need to and should know.

Sincerely,

Tylan Schrock
Executive Director
Alaska SeaLife Center

CC Senator Gary Stevens
Representative Paul Seaton