

SB

121



SENATOR KIM ELTON

SB 121

Sponsor Statement

"An Act relating to discharge from small commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date."

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

When the Legislature enacted the alternate compliance provision in 2004, the drafters and the legislature did not account for the proposed initiative that eventually became law in 2006 and inadvertently repealed Chapter 153, SLA 04.

The initiative was drafted, submitted to the Division of Elections and certified in 2003. The signatures were subsequently gathered and the initiative was the subject of litigation. It was eventually approved by the voters in August 2006.

The problem developed because the supporters and drafters of the 2004 Legislation did not check the pending initiative for potential conflicts. This understandable oversight was unintended by the drafters of the initiative and the Legislature. Sponsors of the initiative do not oppose the corrective action applied by this bill.

It is appropriate under these circumstances to reenact the 2004 provisions.

ALASKA SENATE

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SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to cruise ship discharge RDU Civil
 Component ENVIRONMENTAL
 Sponsor SENATOR(S) ELTON
 Requester SENATE LABOR & COMMERCE 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						
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CHANGE IN REVENUES ()						
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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

Check 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)

See page 2.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division: Administrative Services Division Date/Time 3/19/07 4:12 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 3/19/2007
 Agency: Department of Law

FISCAL NOTE # 1

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSSB 121(L&C)

ANALYSIS CONTINUATION

As described in the sponsor's statement, the bill "...adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing 'best management practices' passed by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04." This assertion in the sponsor statement appears to be essentially correct, although the bill apparently proposes, as a new concept, that all commercial passenger vessels (large and small) be required to have a GP when discharging in the state, rather than just large vessels as contemplated under the initiative. Law and DEC are still reviewing the bill to see if it deviates in any other respect from the previous implemented best management practices program. The bill was introduced by an apparent unintended consequence resulting from voter approval of the cruise ship initiative in August 1996 and its inadvertent repeal of Chapter 153, SLA 04. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title Act relating to discharge from commercial RDU Division of Water
passenger vessels Component Water Quality
 Sponsor Senator Eiton
 Requester Labor and Commerce 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						
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						
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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)*

There is no fiscal impact associated with this legislation.

Prepared by: Lynn J. Tomich Kent Phone 907-269-7599
 Division Director Date/Time 3/16/07 4:50 PM
 Approved by: Larry Hartig, Commissioner Date 3/19/2007
 Agency Department of Environmental Conservation

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HAND DELIVERED

March 16, 2007

Senator Kim Elton,
Alaska State Senate
Alaska Capitol
Juneau, Alaska 99801

Re: SB 121

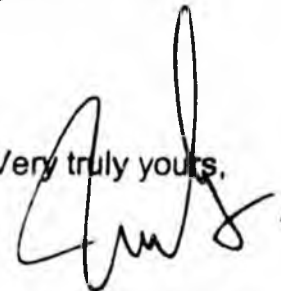
Dear Senator Elton:

I have reviewed SB 121, an act that would reinstate the "alternate compliance program" for small cruise vessels. This program was previously enacted by the Alaska Legislature in 2004 as Chapter 153, SLA 04. The alternate compliance provisions were eliminated with the passage of the recent cruise ship initiative in 2006 as a result of a drafting oversight in 2004. This oversight is completely understandable given that the cruise ship initiative was drafted and submitted in 2003 but not effective until 2006.

I have consulted with the other drafters and proponents of the 2006 cruise ship initiative; everyone that was involved with the successful initiative believes SB 121 should be promptly enacted and made effective as spelled out in the bill.

The legislature is to be commended for seeking to fix this matter. Thank you for seeking a just solution to this issue.

Very truly yours,



Joseph W. Geldhof

Copy: Gershon Cohen

LEGAL SERVICES

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

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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\A)

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. Grasley 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 Ballot¹ 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 Pamphlet² 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

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

² See Id.

Senator Kim Elton
March 26, 2007
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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



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 watercraft 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 watercraft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or watercraft 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 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 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.

***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 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.

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



LAWS OF ALASKA

2004

Source
HB 522 am

Chapter No.

AN ACT

Relating to discharges from small commercial passenger vessels; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to discharges from small commercial passenger vessels; and providing for an
2 effective date.

3

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

6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

7 (1) the Department of Environmental Conservation was required under sec. 8,
8 ch. 1, FSSLA 2001, to submit a report to the governor recommending whether small
9 commercial passenger vessels should remain in the commercial passenger vessel
10 environmental compliance program; due to concerns regarding discharges while vessels are
11 stationary in port or at anchorage, the department recommended that small commercial
12 passenger vessels remain in the commercial passenger vessel environmental compliance
13 program;

14 (2) small commercial passenger vessels built after December 31, 2003, can be

1 designed, constructed, and equipped to fully comply with the water discharge standards in
2 AS 46.03.460 - 46.03.490; and

3 (3) older small commercial passenger vessels, built before January 1, 2004,
4 cannot comply with AS 46.03.462(c) and 46.03.463(b) and (c) due to limitations of maritime
5 construction, United States Coast Guard stability restrictions, and licensing requirements;
6 therefore, a different regulatory scheme should be devised for this category of small
7 commercial passenger vessels.

8 (b) It is the intent of this Act to create a regulatory system that allows older small
9 commercial passenger vessels to continue to operate in Alaska waters, while taking steps to
10 minimize discharges and harm to the marine environment from vessel activities.

11 * Sec. 2. AS 46.03.462(a) is amended to read:

12 (a) An owner or operator required to register under AS 46.03.461 shall comply
13 with [EITHER] the standard terms and conditions of vessel discharges specified in (b)
14 of this section, [OR] the alternative terms and conditions of vessel discharges specified
15 in (c) of this section, or the alternative terms and conditions included in the plan
16 approved by the department under (e) of this section.

17 * Sec. 3. AS 46.03.462(a) is amended to read:

18 (a) An owner or operator required to register under AS 46.03.461 shall comply
19 with either the standard terms and conditions of vessel discharges specified in (b) of
20 this section or [,] the alternative terms and conditions of vessel discharges specified in
21 (c) of this section [, OR THE ALTERNATIVE TERMS AND CONDITIONS
22 INCLUDED IN THE PLAN APPROVED BY THE DEPARTMENT UNDER (e) OF
23 THIS SECTION].

24 * Sec. 4. AS 46.03.462(d) is amended to read:

25 (d) Alternative terms and conditions of vessel discharges approved by the
26 department under (c) of this section may, if determined appropriate by the department,
27 include a waiver by the department of portions of the requirements of AS 46.03.463
28 and 46.03.465, for the time period that the department determines to be appropriate.
29 Alternative terms and conditions of vessel discharges approved by the
30 department under (e) of this section may, if determined appropriate by the
31 department, include a waiver by the department of portions of the requirements

1 of AS 46.03.463 for the time period for which the plan submitted under (e) of this
2 section is approved.

3 * Sec. 5. AS 46.03.462(d) is amended to read:

4 (d) Alternative terms and conditions of vessel discharges approved by the
5 department under (c) of this section may, if determined appropriate by the department,
6 include a waiver by the department of portions of the requirements of AS 46.03.463
7 and 46.03.465, for the time period that the department determines to be appropriate.
8 [ALTERNATIVE TERMS AND CONDITIONS OF VESSEL DISCHARGES
9 APPROVED BY THE DEPARTMENT UNDER (e) OF THIS SECTION MAY, IF
10 DETERMINED APPROPRIATE BY THE DEPARTMENT, INCLUDE A WAIVER
11 BY THE DEPARTMENT OF PORTIONS OF THE REQUIREMENTS OF
12 AS 46.03.463 FOR THE TIME PERIOD FOR WHICH THE PLAN SUBMITTED
13 UNDER (e) OF THIS SECTION IS APPROVED.]

14 * Sec. 6. AS 46.03.462 is amended by adding new subsections to read:

15 (e) The owner or operator of a small commercial passenger vessel may submit
16 a plan for alternative terms and conditions of vessel discharges if the keel of the vessel
17 was laid before January 1, 2004. Except as provided in (f) of this section, the
18 department shall approve the plan for a three-year period if the department finds that
19 the alternative terms and conditions in the plan incorporate the best management
20 practices for protecting the environment to the maximum extent feasible. The
21 department shall adopt regulations to implement this subsection but may not require
22 an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the
23 retrofitting requires additional stability testing or relicensing by the United States
24 Coast Guard. In this subsection, "best management practices" means schedules of
25 activities, prohibitions of practices, maintenance procedures, and other management
26 practices to prevent or reduce the pollution of the marine waters of the state.

27 (f) A plan submitted under (e) of this section after December 31, 2012, may
28 not be approved by the department for a period extending beyond December 31, 2015.

29 * Sec. 7. AS 46.03.463(b) is amended to read:

30 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
31 [AS 46.03.462(c) - (d)], a person may not discharge sewage from a commercial

1 passenger vessel into the marine waters of the state that has suspended solids greater
2 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
3 100 milliliters except that the department may by regulation adopt a protocol for
4 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
5 which a discharger will be considered to be in compliance with the fecal coliform limit
6 if the geometric mean of fecal coliform count in the samples considered under the
7 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
8 owner or operator of a small commercial passenger vessel of a plan for interim
9 protective measures under AS 46.03.462(c)(2) and (d), the department shall extend
10 the time for compliance of that vessel with this subsection.

11 * **Sec. 8.** AS 46.03.463(b) is amended to read:

12 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
13 [AS 46.03.462(c) - (e)], a person may not discharge sewage from a commercial
14 passenger vessel into the marine waters of the state that has suspended solids greater
15 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
16 100 milliliters except that the department may by regulation adopt a protocol for
17 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
18 which a discharger will be considered to be in compliance with the fecal coliform limit
19 if the geometric mean of fecal coliform count in the samples considered under the
20 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
21 owner or operator of a small commercial passenger vessel of a plan for interim
22 protective measures [UNDER AS 46.03.462(c)(2) AND (d)], the department shall
23 extend the time for compliance of that vessel with this subsection.

24 * **Sec. 9.** AS 46.03.463(c) is amended to read:

25 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
26 [AS 46.03.462(c) - (d)], a person may not discharge graywater or other wastewater
27 from a commercial passenger vessel into the marine waters of the state that has
28 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
29 than 200 colonies per 100 milliliters except that the department may by regulation
30 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
31 coliform is exceeded, under which a discharger will be considered to be in compliance

1 with the fecal coliform limit if the geometric mean of fecal coliform count in the
2 samples considered under the protocol does not exceed 200 colonies per 100
3 milliliters. Upon submission by the owner or operator of a large commercial
4 passenger vessel of a plan for interim protective measures, the department shall extend
5 the time for compliance of that vessel with this subsection for a period of time that
6 ends not later than January 1, 2003. Upon submission by the owner or operator of a
7 small commercial passenger vessel of a plan for interim protective measures under
8 AS 46.03.462(c)(2) and (d), the department shall extend the time for compliance of
9 that vessel with this subsection.

10 * **Sec. 10.** AS 46.03.463(c) is amended to read:

11 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
12 [AS 46.03.462(c) - (e)], a person may not discharge graywater or other wastewater
13 from a commercial passenger vessel into the marine waters of the state that has
14 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
15 than 200 colonies per 100 milliliters except that the department may by regulation
16 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
17 coliform is exceeded, under which a discharger will be considered to be in compliance
18 with the fecal coliform limit if the geometric mean of fecal coliform count in the
19 samples considered under the protocol does not exceed 200 colonies per 100
20 milliliters. Upon submission by the owner or operator of a large commercial
21 passenger vessel of a plan for interim protective measures, the department shall extend
22 the time for compliance of that vessel with this subsection for a period of time that
23 ends not later than January 1, 2003. Upon submission by the owner or operator of a
24 small commercial passenger vessel of a plan for interim protective measures [UNDER
25 AS 46.03.462(c)(2) AND (d)], the department shall extend the time for compliance of
26 that vessel with this subsection.

27 * **Sec. 11.** AS 46.03.463(e) is amended to read:

28 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
29 (e) [AS 46.03.462(c) - (d)], a person may not discharge any treated sewage, graywater,
30 or other wastewater from a large commercial passenger vessel into the marine waters
31 of the state unless

1 (1) the vessel is underway and proceeding at a speed of not less than
2 six knots;

3 (2) the vessel is at least one nautical mile from the nearest shore,
4 except in areas designated by the department;

5 (3) the discharge complies with all applicable vessel effluent standards
6 established under the federal cruise ship legislation and any other applicable law; the
7 standards under the federal cruise ship legislation and other applicable law may be
8 adopted by regulation by the department; and

9 (4) the vessel is not in an area where the discharge of treated sewage,
10 graywater, or other wastewater is prohibited.

11 * **Sec. 12.** AS 46.03.463(e) is amended to read:

12 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
13 (d) [AS 46.03.462(c) - (e)], a person may not discharge any treated sewage, graywater,
14 or other wastewater from a large commercial passenger vessel into the marine waters
15 of the state unless

16 (1) the vessel is underway and proceeding at a speed of not less than
17 six knots;

18 (2) the vessel is at least one nautical mile from the nearest shore,
19 except in areas designated by the department;

20 (3) the discharge complies with all applicable vessel effluent standards
21 established under the federal cruise ship legislation and any other applicable law; the
22 standards under the federal cruise ship legislation and other applicable law may be
23 adopted by regulation by the department; and

24 (4) the vessel is not in an area where the discharge of treated sewage,
25 graywater, or other wastewater is prohibited.

26 * **Sec. 13.** AS 46.03.462(e) and 46.03.462(f) are repealed.

27 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **RETROACTIVE EFFECT FOR 2004 SEASON.** (a) If the owner or operator of a
30 small passenger vessel whose keel was laid before December 31, 2003, submits a plan under
31 AS 46.03.462(e), enacted by sec. 6 of this Act, within 30 days after the effective date of this

1 section and the Department of Environmental Conservation accepts the plan, the plan is
2 considered to be approved retroactively to the first day the vessel operated in the marine
3 waters of the state in 2004.

4 (b) The plan of an owner or operator is considered to be submitted by the deadline in
5 (a) of this section if initial submission is by that date, notwithstanding that amendments to the
6 plan may be required after that date in order for the department to approve the plan.

7 (c) Notwithstanding (a) and (b) of this section, the retroactive effect of the
8 department's approval under this section applies only if the plan submitted under
9 AS 46.03.462(e) is approved by December 31, 2004.

10 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **RETROACTIVITY.** Sections 1, 2, 4, 6, 7, 9, and 11 of this Act are retroactive to
13 January 1, 2004.

14 * **Sec. 16.** Sections 3, 5, 8, 10, 12, and 13 of this Act take effect January 1, 2016.

15 * **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect immediately under
16 AS 01.10.070(c).



SENATOR KIM ELTON

MEMORANDUM

DATE: March 23, 2007
TO: Senator John Cowdery, Chair
Senate Rules Committee
FROM: Senator Kim Elton
SUBJ: Scheduling request for SB 121

I respectfully request that you schedule SB 121, an Act relating to discharge from small commercial passenger vessels.

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed unanimously by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

Ballot measure 2 inadvertently repealed HB 522 and this bill would reinstate that legislation.

Attached are a sponsor statement and copy of the bill with a Zero Fiscal Note as moved out of Senate Labor and Commerce.

SENATOR KIM ELTON

MEMORANDUM

DATE: April 11, 2007

TO: Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
House Resources Committee

FROM: Senator Kim Elton

SUBJ: Hearing Request for SB 121, an Act relating to discharge from commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date.

I respectfully request that you schedule a hearing for SB 121, an Act relating to discharge from small commercial passenger vessels.

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed unanimously by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

Ballot measure 2 inadvertently repealed HB 522 and this bill would reinstate that legislation.

Attached are a sponsor statement and copy of the bill with a Zero Fiscal Note as moved out of Senate Labor and Commerce and subsequently passed unanimously on the Senate Floor.

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

January 24, 2007

SUBJECT: Technical corrections related to the 2006 Primary Initiative related to Cruise Ships (Work Order No. 25-LS0175\A)

TO: Representative Craig Johnson
Co-Chair of House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

*May introduce
leg. on this
H Resources*

One of the ballot measures that passed at the 2006 primary election errors in statutes that are within the jurisdiction of your committee.

The 2006 Primary Election Ballot Measure No. 2 repealed and reenacted AS 46.03.462, but failed to conform cross-references and also failed to address delayed amendments. I have drafted a bill for your consideration that would fix these problems by deleting the cross-references and repealing the delayed amendments. It may be that your committee does not want to address this issue but this office believes it should be brought to your attention.

An explanation of the problem and the bill follows.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.462:

AS 46.03.462(a) and (b) set out "standard terms and conditions of vessel discharges" into the state's marine water.

Under former AS 46.03.462(c), enacted by ch. 1, FSSLA 2001,

(c) The [D]epartment [of Environmental Conservation] may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under (b) of this section, or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under (b) of this section. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if

(1) the vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) the vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under (b) of this section but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

(3) an experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

This subsection, subsection (c), had the effect of authorizing the department to establish alternative standards for discharges that differed from the so-called "standard terms and conditions of vessel discharges" set out in former and current subsection (b) of AS 46.03.462.

Further, under former AS 46.03.462(e), added by sec. 6, ch. 153, SLA 2004,

(e) The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges if the keel of the vessel was laid before January 1, 2004. Except as provided in (f) of this section, the department shall approve the plan for a three-year period if the department finds that the alternative terms and conditions in the plan incorporate the best management practices for protecting the environment to the maximum extent feasible. The department shall adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard. In this subsection, "best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

This subsection, subsection (e), authorized the department to approve plans and alternative terms and conditions for discharges from certain vessels constructed before 2004. Under related provisions of ch. 153, SLA 2004, the authority to approve these plans and alternative terms was scheduled to expire January 1, 2016.

Finally, sec. 4, ch. 153, SLA 2004, proposed an amendment to former AS 46.03.462(d) to authorize certain small vessel discharge waiver provisions. Again, under related provisions, the authority to allow these waivers was to expire January 1, 2016.

Section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminated the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former subsection (c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former subsections (d) and (e).

Sections 3 and 5, ch. 153, SLA 2004, effective January 1, 2016, would restore the language of subsections (a) and (d) to read as they did before their amendments elsewhere in that 2004 Act. Section 13, ch. 153, SLA 2004, also effective January 1, 2016, would repeal AS 46.03.462(e) and (f), provisions under which the department had discretion to set alternative vessel discharge plans and conditions.

Given the initiative's elimination of the alternative authorities and its imposition of a single set of discharge standards, however, provisions proposing to revert to former language or to authorize exceptions, eliminated by the intervention of the voter-approved initiative, become obsolete or are at least inconsistent with the initiative's direction. Section 3 of the accompanying bill draft proposes the repeal of these three bill sections, sections 3, 5, and 13, ch. 158, SLA 2004, affecting subsections or amendments to subsections within AS 46.03.462.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.463:

As noted earlier in this memo, section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminates the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former AS 46.03.462(c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former AS 46.03.462(d) and (e). In actuality, the initiative's section 4 retains material identified as AS 46.03.462(a) and (b) but eliminates material identified as AS 46.03.462(c) - (f).

AS 46.03.463(b), amended by sec. 7, ch. 153, SLA 2004 (the same amendments are thereafter repealed by sec. 8, ch. 153, SLA 2004, effective January 1, 2016), incorporates references to "AS 46.03.462(c) - (e)" and "AS 46.03.462(c)(2) and (d)"; sec. 4 of the initiative renders these references obsolete because, due to the drafting device chosen in the initiative, subsections (c) - (e) no longer exist. Section 1 of the accompanying bill draft proposes to eliminate the references in subsection (b) that are made obsolete by the initiative.

AS 46.03.463(c), amended by sec. 9, ch. 153, SLA 2004, (the same amendments are thereafter repealed by sec. 10, ch. 153, SLA 2004, effective January 1, 2016), also

Representative Craig Johnson
January 24, 2007
Page 4

incorporates references to "AS 46.03.462(c) - (e)" and "AS 46.03.462(c)(2) and (d)"; sec. 4 of the initiative also renders these references obsolete. Section 2 of the accompanying bill draft proposes to eliminate the references in subsection (c) that are made obsolete by the initiative.

AS 46.03.463(e), amended by sec. 11, ch. 153, SLA 2004, (the same amendments are thereafter repealed by sec. 12, ch. 153, SLA 2004, effective January 1, 2016), also incorporates a reference to "AS 46.03.462(c) - (e)," but the subsection is itself directly amended by the initiative. Because of the direct amendment by the initiative, a separate treatment of that subsection is not proposed in the accompanying bill draft.

The so-called repealing amendments, reversing changes made to AS 46.03.463(b), (c), and (e), are rendered obsolete by the initiative and are proposed for repeal by section 3 of the bill draft; in that bill section, the references are to "secs. 8, 10, and 12" of ch. 153, SLA 2004.

*

Because the amendments to AS 46.03.463(b) and (c) by the initiative took effect December 17, 2006, the substantive amendments are proposed to be given retroactive effect to that date and the bill, in its entirety, is proposed to have immediate effect. The retroactive section could be deleted if you wish.

JBC:med
07-040.med

Enclosure

cc: Representative Carl Gatto
Senator Charlie Huggins

25-LS0175A
Chenoweth
1/24/07

BILL NO.

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

BY

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending provisions affecting allowable discharges from vessel operating in**
2 **state marine water to conform to the 2006 Primary Election Ballot Measure 2 that**
3 **affects ship vessel operations taking place in state marine water and repealing as**
4 **obsolete certain delayed amendments to state laws related to vessel discharges because**
5 **of the effect of that ballot measure; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1. AS 46.03.463(b) is amended to read:**

8 (b) Except as provided in (h) of this section [OR UNDER AS 46.03.462(c) -
9 (e)], a person may not discharge sewage from a commercial passenger vessel into the
10 marine waters of the state that has suspended solids greater than 150 milligrams per
11 liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that
12 the department may by regulation adopt a protocol for retesting for fecal coliform, if
13 this discharge limit for fecal coliform is exceeded, under which a discharger will be

1 considered to be in compliance with the fecal coliform limit if the geometric mean of
2 fecal coliform count in the samples considered under the protocol does not exceed 200
3 colonies per 100 milliliters. [UPON SUBMISSION BY THE OWNER OR
4 OPERATOR OF A SMALL COMMERCIAL PASSENGER VESSEL OF A PLAN
5 FOR INTERIM PROTECTIVE MEASURES UNDER AS 46.03.462(c)(2) AND (d),
6 THE DEPARTMENT SHALL EXTEND THE TIME FOR COMPLIANCE OF
7 THAT VESSEL WITH THIS SUBSECTION.]

8 * Sec. 2. AS 46.03.463(c) is amended to read:

9 (c) Except as provided in (h) of this section [OR UNDER AS 46.03.462(c) -
10 (e)], a person may not discharge graywater or other wastewater from a commercial
11 passenger vessel into the marine waters of the state that has suspended solids greater
12 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
13 100 milliliters except that the department may by regulation adopt a protocol for
14 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
15 which a discharge will be considered to be in compliance with the fecal coliform limit
16 if the geometric mean of fecal coliform count in the samples considered under the
17 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
18 owner or operator of a large commercial passenger vessel of a plan for interim
19 protective measures, the department shall extend the time for compliance of that vessel
20 with this subsection for a period of time that ends not later than January 1, 2003.
21 [UPON SUBMISSION BY THE OWNER OR OPERATOR OF A SMALL
22 COMMERCIAL PASSENGER VESSEL OF A PLAN FOR INTERIM
23 PROTECTIVE MEASURES UNDER AS 46.03.462(c)(2) AND (d), THE
24 DEPARTMENT SHALL EXTEND THE TIME FOR COMPLIANCE OF THAT
25 VESSEL WITH THIS SUBSECTION.]

26 * Sec. 3. Sections 3, 5, 8, 10, 12, and 13, ch. 153, SLA 2004, are repealed.

27 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 RETROACTIVITY. Sections 1 and 2 of this Act are retroactive to December 17,
30 2006.

31 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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

COPY

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MEMORANDUM

January 24, 2007

SUBJECT: Technical corrections related to the 2006 Primary Initiative related to Cruise Ships (Work Order No. 25-LS0175A)

TO: Senator Charlie Huggins
Chair of Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

One of the ballot measures that passed at the 2006 primary election contains drafting errors in statutes that are within the jurisdiction of your committee.

The 2006 Primary Election Ballot Measure No. 2 repealed and reenacted AS 46.03.462, but failed to conform cross-references and also failed to address delayed amendments. I have drafted a bill for your consideration that would fix these problems by deleting the cross-references and repealing the delayed amendments. It may be that your committee does not want to address this issue but this office believes it should be brought to your attention.

An explanation of the problem and the bill follows.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.462:

AS 46.03.462(a) and (b) set out "standard terms and conditions of vessel discharges" into the state's marine water.

Under former AS 46.03.462(c), enacted by ch. 1, FSSLA 2001,

(c) The [D]epartment [of Environmental Conservation] may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under (b) of this section, or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under (b) of this section. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if

(1) the vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) the vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under (b) of this section but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

(3) an experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

This subsection, subsection (c), had the effect of authorizing the department to establish alternative standards for discharges that differed from the so-called "standard terms and conditions of vessel discharges" set out in former and current subsection (b) of AS 46.03.462.

Further, under former AS 46.03.462(e), added by sec. 6, ch. 153, SLA 2004,

(e) The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges if the keel of the vessel was laid before January 1, 2004. Except as provided in (f) of this section, the department shall approve the plan for a three-year period if the department finds that the alternative terms and conditions in the plan incorporate the best management practices for protecting the environment to the maximum extent feasible. The department shall adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard. In this subsection, "best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

This subsection, subsection (e), authorized the department to approve plans and alternative terms and conditions for discharges from certain vessels constructed before 2004. Under related provisions of ch. 153, SLA 2004, the authority to approve these plans and alternative terms was scheduled to expire January 1, 2016.

Finally, sec. 4, ch. 153, SLA 2004, proposed an amendment to former AS 46.03.462(d) to authorize certain small vessel discharge waiver provisions. Again, under related provisions, the authority to allow these waivers was to expire January 1, 2016.

Section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminated the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former subsection (c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former subsections (d) and (e).

Sections 3 and 5, ch. 153, SLA 2004, effective January 1, 2016, would restore the language of subsections (a) and (d) to read as they did before their amendments elsewhere in that 2004 Act. Section 13, ch. 153, SLA 2004, also effective January 1, 2016, would repeal AS 46.03.462(e) and (f), provisions under which the department had discretion to set alternative vessel discharge plans and conditions.

Given the initiative's elimination of the alternative authorities and its imposition of a single set of discharge standards, however, provisions proposing to revert to former language or to authorize exceptions, eliminated by the intervention of the voter-approved initiative, become obsolete or are at least inconsistent with the initiative's direction. Section 3 of the accompanying bill draft proposes the repeal of these three bill sections, sections 3, 5, and 13, ch. 158, SLA 2004, affecting subsections or amendments to subsections within AS 46.03.462.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.463:

As noted earlier in this memo, section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminates the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former AS 46.03.462(c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former AS 46.03.462(d) and (e). In actuality, the initiative's section 4 retains material identified as AS 46.03.462(a) and (b) but eliminates material identified as AS 46.03.462(c) - (f).

AS 46.03.463(b), amended by sec. 7, ch. 153, SLA 2004 (the same amendments are thereafter repealed by sec. 8, ch. 153, SLA 2004, effective January 1, 2016), incorporates references to "AS 46.03.462(c) - (e)" and "AS 46.03.462(c)(2) and (d)"; sec. 4 of the initiative renders these references obsolete because, due to the drafting device chosen in the initiative, subsections (c) - (e) no longer exist. Section 1 of the accompanying bill draft proposes to eliminate the references in subsection (b) that are made obsolete by the initiative.

AS 46.03.463(c), amended by sec. 9, ch. 153, SLA 2004, (the same amendments are thereafter repealed by sec. 10, ch. 153, SLA 2004, effective January 1, 2016), also

Senator Charlie Huggins

January 24, 2007

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The so-called repealing amendments, reversing changes made to AS 46.03.463(b), (c), and (e), are rendered obsolete by the initiative and are proposed for repeal by section 3 of the bill draft; in that bill section, the references are to "secs. 8, 10, and 12" of ch. 153, SLA 2004.

*

Because the amendments to AS 46.03.463(b) and (c) by the initiative took effect December 17, 2006, the substantive amendments are proposed to be given retroactive effect to that date and the bill, in its entirety, is proposed to have immediate effect. The retroactive section could be deleted if you wish.

JBC:med
07-026.med

Enclosure

cc: Representative Carl Gatto
Representative Craig Johnson

LEGAL SERVICES

COPY

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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JBC:med
07-039.med

Enclosure

cc: Representative Craig Johnson
Senator Charlie Huggins

25-LS0175A
Chenoweth
1/24/07

BILL NO.

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

BY

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 "An Act amending provisions affecting allowable discharges from vessels operating in
2 state marine water to conform to the 2006 Primary Election Ballot Measure 2 that
3 affects ship vessel operations taking place in state marine water and repealing as
4 obsolete certain delayed amendments to state laws related to vessel discharges because
5 of the effect of that ballot measure; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 46.03.463(b) is amended to read:

8 (b) Except as provided in (h) of this section [OR UNDER AS 46.03.462(c) -
9 (e)], a person may not discharge sewage from a commercial passenger vessel into the
10 marine waters of the state that has suspended solids greater than 150 milligrams per
11 liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that
12 the department may by regulation adopt a protocol for retesting for fecal coliform, if
13 this discharge limit for fecal coliform is exceeded, under which a discharger will be

Cruise ship companies form new Alaska association

Group seeks better relations with state

THE ASSOCIATED PRESS

ANCHORAGE — Major cruise ship companies that operate in Alaska have formed a new association aimed at improving relations

with Alaskans.

The Alaska Cruise Association will be headed up by John Binkley, a former state senator and current member of the Alaska Railroad Corp.

"The cruise lines themselves have realized they need better representation in Alaska," Binkley said

Monday.

The biggest part of his job, Binkley said, will involve trying to change cruise industry business practices to be more in line with what Alaska communities want.

He will visit cruise ports in Alaska to find out what changes are needed, he said.

Binkley's family operates two popular Fairbanks tourist attractions, a paddlewheel boat river tour and a gold mine tour.

The cruise industry suffered a financial and political blow in August when Alaska voters imposed new measures, including a \$50 per passenger tax, environmental

monitoring and enforcement of a rule that requires cruise lines to disclose commissions they receive from shore-based tour operators and stores advertised on ships.

Binkley said the vote showed the cruise industry it needed to be a better corporate citizen.

"The cruise lines see this as an

evolution of our presence in Alaska," said Adam Goldstein, president of Royal Caribbean International.

Initial funding for the Alaska Cruise Association will come from the eight cruise lines serving Alaska. The Alaska Cruise Association will try to bring local issues to the attention of the large companies.