

ALASKA LEGISLATIVE COUNCIL 1989

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apportion nights spent in transit between Canada and Alaska, assuming there is an equivalent Canadian tax, there should be no apportionment problem if the tax is calculated based on nights spent on Alaska waters.

The final commerce clause test element is whether the tax discriminates against interstate commerce. This prong of the Complete Auto test, according to the Alaska Supreme Court, means that a state cannot impose a tax which discriminates against interstate commerce by providing a direct commercial advantage to local businesses relative to interstate business. Sjong v. Department of Revenue, 622 P.2d 967, 973 (Alaska 1981).

### **The Tonnage Clause**

The tonnage clause is a relative of the commerce clause; it too is concerned with ensuring the free flow of commerce between states. It prohibits a state from laying "any Duty of Tonnage" without the consent of Congress. The term "tonnage" originally referred to the internal capacity of a vessel. Clyde Mallory Lines v. Alabama ex rel State Docks, 296 U.S. 261, 265 (1935). However, the clause has been interpreted more expansively to include "all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port." *Id.* The clause prohibits "reliance on tonnage duties to raise general revenues, to regulate trade, or to charge for the privilege of entering, lying in, or trading in a port." New Orleans S.S. v. Plaquemine Port, Harbor and Terminal District, 874 F.2d 1018, 1023 (5th Cir. 1989).

The clause permits states to charge for services rendered to a vessel, such as pilotage, wharfage, use of locks on a navigable river, or policing of a harbor, Clyde Mallory Lines, 296 U.S. at 265, or for ensuring the availability of a service, such as fire fighting, even though not every vessel will actually need the service. Plaquemines, 874 F.2d at 1023.

The first question to ask in a tonnage clause analysis is whether the tax in question fits into the tonnage clause framework--whether it might reasonably be construed as a charge for the privilege of entering, trading in, or lying in a port.

West Virginia considered this issue in Hartley Marine Corporation v. Mierke, 474 S.E.2d 599 (W.Va. 1996). The statute challenged in that case taxed the use or consumption by "motor carriers"--including buses, trucks, and aircraft as well as barges and watercraft--of fuel purchased outside the state. *Id.* at 672. The court held:

Appellants urge this Court to view the use tax at issue as a charge for navigation of the rivers in violation of the Duty of Tonnage Clause. If this use tax were solely imposed for fuel consumption on the waters of this state, Appellants' arguments would be more convincing. The use tax at issue, however, is not a prohibited toll on the use of this state's navigable waterways, but an excise tax on the use of fuel which is imposed on all motor carriers operating within this state, including, buses, trucks, trains, and aircraft.

Id. at 612. Because the tax did not fall exclusively on users of the state's waterways, the court did not see it as a tonnage tax.

The tax imposed in West Virginia affected vessels and buses and aircraft, as well as commercial passenger vessels. A tax dealing exclusively with commercial passenger vessels may be more vulnerable to a tonnage clause argument.

Hawaii imposes fees for anchoring and mooring in state harbors. In Barber v. Hawaii, 42 F.3d 1185 (9th Cir. 1994), the plaintiffs argued that mooring and anchorage fees collected by the state were a duty on tonnage that violated the federal tonnage clause. The plaintiffs conceded that under the Clyde Mallory case, a state was permitted to charge reasonable fees for services rendered. They apparently also conceded that provision of restroom facilities, parking, trash disposal and security services would be sufficient to satisfy the requirements of the Clyde Mallory case. The plaintiffs then tried to argue that because the services provided were open to the public and not provided specifically for those paying the fees, that the state was effectively not providing those services. The court rejected this argument finding that Hawaii in fact provided services in exchange for the mooring and anchorage fees, and that the fees were not a duty on tonnage. Barber v. Hawaii, 42 F.3d at 1196.

The plaintiffs in Barber v. Hawaii apparently did not argue the tonnage clause issue very well, and the court's discussion of the clause is cursory. However, the case upheld the fees in question. In contrast, a recent Rhode Island case held that a registration fee on all boats operated in Rhode Island waters for more than 90 days was an unconstitutional tonnage tax, because the revenues from the fee would not necessarily be used for services benefitting boaters. State v. Turnbaugh, 705 A.2d 530 (R.I. 1997).

The Rhode Island statute provided that the proceeds from the registration fee, subject to approval of the General Assembly, should be allocated to fund expenses of the Department of Environmental Management, harbor maintenance, boating safety and other boating related programs. Id. at 532. The court wrote:

[I]t should be noted that any funds collected under the provisions of this chapter were required to be allocated, distributed, and used subject to the approval of the General Assembly. Thus this alleged restricted receipt account was entirely subject to being used as a general-revenue measure and not merely for the purpose of providing services to boats, boaters, and navigational improvements.

The court rejected the state's argument that the registration fee was merely a property tax, and instead concluded that it was "a classic form of tonnage tax specifically prohibited by the Constitution of the United States." Id. at 533.

Representative Carl Gatto

March 19, 2003

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Unlike the Ninth Circuit case cited above, the Rhode Island case would not be binding precedent on a federal district court in Alaska. Neither the Ninth Circuit case nor the Rhode Island case would be binding on an Alaska state court, but a state court might regard such authorities as persuasive. The Rhode Island decision certainly demonstrates that the tonnage clause is not a dead letter, and in light of the Rhode Island decision, caution would certainly be in order in imposing any fee or tax exclusively on vessels, unless the proceeds were used to provide services to vessels.

#### **Other Potential Constitutional Issues**

A number of other constitutional provisions might be raised in an attack on a tax on passengers traveling on commercial passenger vessels.

If a tax can survive scrutiny under the second prong of the Complete Auto test and is at least minimally rational, it can probably survive a due process challenge as well. See Keane v. Local Boundary Commission, 893 P.2d 1239, 1248 (Alaska 1995) ("As long as services are available, the issue of usage by the taxpayer is irrelevant."); Katmailand, Inc. v. Lake and Peninsula Borough, 904 P.2d 397, 402 (Alaska 1995).

Equal protection is another potential issue. Alaska uses a sliding scale equal protection test, but the interests involved in taxation fall at the low end of the scale and are reviewed under "relaxed scrutiny." *Id.* at 401, n. 6. The federal equal protection clause requires only that the tax be "rationally related to a legitimate governmental interest." *Id.* at 401. As the Alaska Supreme Court observed, "[t]axes are rarely found to be without a rational basis." *Id.* at 400.

Other potential arguments might be based on the foreign commerce clause or the privileges and immunities clause of the federal constitution.

#### **Conclusion**

A head tax on cruise ship passengers might encounter challenges based on several provisions of the United States constitution, particularly the commerce clause and tonnage clauses.

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HOUSE BILL NO. 207

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GATTO

Introduced: 3/24/03

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes regarding certain commercial passenger vessels operating in  
2 the state; and providing for an effective date."

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

4 \* Section 1. AS 43 is amended by adding a new chapter to read:

5 Chapter 52. Excise Tax on Passengers Traveling Aboard

6 a Commercial Passenger Vessel.

7 Sec. 43.52.010. Levy of excise tax on passengers traveling aboard a  
8 commercial passenger vessel. There is imposed an excise tax on passengers  
9 traveling in the marine waters of the state aboard a commercial passenger vessel that  
10 provides overnight accommodations.

11 Sec. 43.52.020. Rate of tax. The tax imposed by this chapter is levied at a  
12 rate of \$100 a passenger a voyage.

13 Sec. 43.52.030. Liability for payment of tax. (a) A passenger traveling in  
14 the marine waters of the state aboard a commercial passenger vessel that provides

1 overnight accommodations is liable for the tax imposed by this chapter. The tax

2 (1) shall be collected by the person who provides the travel to the  
3 passenger; and

4 (2) is due and payable to the department

5 (A) by the person who provides the travel to the passenger,  
6 regardless of whether the person actually collects the tax from the passenger;  
7 and

8 (B) in the manner and at the times required by the department  
9 by regulation.

10 (b) A passenger is not liable for the tax under this chapter if that passenger  
11 was liable for the tax within the preceding 30 days.

12 (c) A person who provides travel for a passenger who, under (b) of this  
13 section, would not be liable for the tax under this chapter is not required to collect and  
14 pay the tax to the department if the person reasonably believes that the passenger is  
15 not liable for the tax under (b) of this section.

16 **Sec. 43.52.040. Disposition of proceeds.** The proceeds from the tax imposed  
17 by this chapter shall be deposited in the general fund.

18 **Sec. 43.52.050. Administration.** (a) The department shall

19 (1) administer this chapter; and

20 (2) collect, and supervise and enforce the collection of, taxes due under  
21 this chapter and penalties as provided in AS 43.05.

22 (b) The department may adopt regulations to carry out the purposes of this  
23 chapter.

24 **Sec. 43.52.900. Definitions.** In this chapter, unless the context otherwise  
25 requires,

26 (1) "commercial passenger vessel" means a vessel that is used in the  
27 common carriage of passengers in commerce; "commercial passenger vessel" does not  
28 include a

29 (A) vessel with an overnight accommodation capacity for fewer  
30 than 12 passengers;

31 (B) noncommercial vessel or a vessel operated by the state, the

1 United States, or a foreign government; or

2 (C) vessel licensed under AS 16.05.490 and used in charter  
3 service for the recreational taking of fish and shellfish;

4 (2) "marine waters of the state" means the marine bays, sounds, rivers,  
5 inlets, straits, passages, canals, Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic  
6 Ocean within the territorial limits of the state, and all other bodies of marine water that  
7 are wholly or partially within the state or are under the jurisdiction of the state;

8 (3) "passenger" means a person with whom a common carrier has  
9 contracted for carriage from one place to another.

10 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 TRANSITION: REGULATIONS. Notwithstanding sec. 4 of this Act, the  
13 Department of Revenue may proceed to adopt regulations to implement sec. 1 of this Act.  
14 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
15 effective date of sec. 1 of this Act.

16 \* Sec. 3. Section 2 of this Act takes effect immediately.

17 \* Sec. 4. Section 1 of this Act takes effect January 1, 2004.

## LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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### MEMORANDUM

March 22, 2002

**SUBJECT:** Cruise Ship Head Tax; SB 290

**TO:** Senator John Cowdery  
Attn: Don Smith

**FROM:** Kathryn L. Kurtz *KLK*  
Legislative Counsel

An excise tax on passengers traveling on commercial passenger vessels might engender challenges based on the commerce and tonnage clauses of the Constitution of the United States.

#### Commerce Clause

When the framers wrote the federal constitution, they were very concerned about removing barriers to free trade between the states. This concern was addressed in the Commerce Clause in Article I, section 8 of the Constitution of the United States. The commerce clause expressly permits Congress to regulate commerce among the several states. It has also been interpreted to include a "negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even where Congress has failed to legislate on the subject." Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 179 (1995).

The Supreme Court has developed a four-part test for determining the validity of a tax under the federal commerce clause:

- (1) whether the activity taxed has a sufficient nexus with the taxing state;
- (2) whether the tax is fairly related to benefits provided by the state to the taxpayer;
- (3) whether the tax is fairly apportioned to local activities; and
- (4) whether it discriminates against interstate commerce.

Siong v. State Department of Revenue, 622 P.2d 967, 973 (Alaska 1981), *citing* Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977).<sup>1</sup>

<sup>1</sup> Although this is an older case, the four-part test it describes is still good law. *See for example* Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 183 (1995). Sometimes courts first analyze whether a law treats in-state and out-of-state interest

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The first prong of the Complete Auto deals with "nexus," or the quantity and quality of connections between the taxing state and the activity being taxed. The many interactions between cruise ships and coastal communities in Alaska would be found sufficient to satisfy the first prong of the Complete Auto test. Cruise ships and ferries provide overnight accommodations in part to enable passengers to enjoy the goods, services, and attractions available on shore in Alaskan communities. Cruise ships and ferries dock in Alaska ports, purchase goods and services from local vendors, and cruise ships sell on-shore tours and other services to disembarking passengers. Other state taxes involving vessels have easily met this prong of the Complete Auto test by virtue of less extensive contacts with shore. See Siong v. State, Department of Revenue, 622 P.2d 967, 970-971 (Alaska 1981); Hartley Marine v. Mierke, 474 S.E.2d 599, 608-609 (W. Va. 1996).

The second prong, requiring a fair relationship to benefits provided by the state to the taxpayer, is also easily met. This relationship need not be especially close. According to the United States Supreme Court,

If the event is taxable, the proceeds from the tax may ordinarily be used for purposes unrelated to the taxable event. ... The bus terminal may not catch fire during the sale, and no robbery may be foiled while the buyer is getting his ticket, but police and fire protection, along with the usual and usually forgotten advantages conferred by the State's maintenance of a civilized society, are justifications enough for the imposition of a tax.

Oklahoma Tax Commission v. Jefferson Lines, 514 U.S. at 199-200 (upholding an Oklahoma sales tax on the full price of bus tickets, including tickets for travel between states).<sup>2</sup> See also Hartley Marine v. Mierke, 474 S.E.2d at 610 ("There simply is no requirement that the tax imposed result in a direct and attributable benefit to a taxpayer.") Cruise ships and disembarking ferry and cruise ship passengers use many services provided by state and local government. For purposes of the commerce clause, it is not necessary that each vessel or passenger actually need or use each service in order to justify the tax.

The apportionment prong of the Complete Auto test is intended to ensure that "each State taxes only its fair share of an interstate transaction." *Id.* at 184, quoting Goldberg v. Sweet, 488 U.S. 252 (1989). Although there may be some question about how to

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differently, and then move to the Complete Auto test. See Barber v. Hawaii, 42 F.3d 1185, 1194 (9th Cir. 1994); Hartley Marine Corporation v. Mierke, 474 S.E.2d 599, 607 (W.Va. 1996).

<sup>2</sup> Similarly, to satisfy the requirements of due process, the relationship does not have to be particularly close--"[a]s long as the services are available, the issue of usage by the taxpayers is irrelevant." Keane v. Local Boundary Commission, 893 P.2d 1239, 1248 (Alaska 1995).

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apportion nights spent in transit between Canada and Alaska, assuming there is an equivalent Canadian tax, there should be no apportionment problem if the tax is calculated based on nights spent on Alaska waters.

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The first question to ask in a tonnage clause analysis is whether the tax in question fits into the tonnage clause framework--whether it might reasonably be construed as a charge for the privilege of entering, trading in, or lying in a port.

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*Id.* at 612. Because the tax did not fall exclusively on users of the state's waterways, the court did not see it as a tonnage tax.

The tax imposed in West Virginia affected vessels and buses and aircraft, as well as commercial passenger vessels. A tax dealing exclusively with commercial passenger vessels may be more vulnerable to a tonnage clause argument.

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The plaintiffs in Barber v. Hawaii apparently did not argue the tonnage clause issue very well, and the court's discussion of the clause is cursory. However, the case upheld the fees in question. In contrast, a recent Rhode Island case held that a registration fee on all boats operated in Rhode Island waters for more than 90 days was an unconstitutional tonnage tax, because the revenues from the fee would not necessarily be used for services benefitting boaters. State v. Tumbaugh, 705 A.2d 530 (R.I. 1997).

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If a tax can survive scrutiny under the second prong of the Complete Auto test and is at least minimally rational, it can probably survive a due process challenge as well. See Keane v. Local Boundary Commission, 893 P.2d 1239, 1248 (Alaska 1995) ("As long as services are available, the issue of usage by the taxpayer is irrelevant."); Katmailand, Inc. v. Lake and Peninsula Borough, 904 P.2d 397, 402 (Alaska 1995).

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#### **Conclusion**

A head tax on cruise ship passengers might encounter challenges based on several provisions of the United States constitution, particularly the commerce clause and tonnage clauses.

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**LEGAL SERVICES**

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**MEMORANDUM**

May 5, 2000

**SUBJECT:** Cruise Ship Head Tax

**TO:** Representative Ramona Bernes

**FROM:** Pamela Finley   
 Revisor of Statutes

You have asked whether there are legal problems with adding a cruise ship head tax like that in CSSB 308(FIN) to HB 3002.

**Single Subject**

HB 3002 addresses public employee compensation and benefits. The only conceivable link between HB 3002 and a cruise ship head tax would be "public finance," but this may be too broad to be upheld. See *Harbor v. Deukmejian*, 742 P.2d 1290 (Calif. 1987). Of course, the Senate could decide to introduce and pass the "head tax" bill as separate legislation.

**Constitutional Issues**

The tax in CSSB 308(FIN) may be subject to constitutional challenges. In particular, I think it might engender challenges based on the commerce and tonnage clauses of the Constitution of the United States.

**Commerce Clause**

When the framers wrote the federal constitution, they were very concerned about removing barriers to free trade between the states. This concern was addressed in the Commerce Clause in Article I, section 8 of the Constitution of the United States. The commerce clause expressly permits Congress to regulate commerce among the several states. It has also been interpreted to include a "negative command, known as the dormant commerce Clause, prohibiting certain state taxation even where Congress has failed to legislate on the subject." *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175, 179. (1995).

The Supreme Court has developed a four-part test for determining the validity of a tax under the federal commerce clause:

- (1) whether the activity taxed has a sufficient nexus with the taxing state;
- (2) whether the tax is fairly related to benefits provided by the state to the taxpayer;
- (3) whether the tax is fairly apportioned to local activities; and
- (4) whether it discriminates against interstate commerce.

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Sjong v. State Department of Revenue, 622 P.2d 967, 973 (Alaska 1981), citing Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977).<sup>4</sup>

The first prong of the Complete Auto deals with "nexus," or the quantity and quality of connections between the taxing state and the activity being taxed. The activity taxed by a bet tax would be either the provision of accommodations, or the privilege of renting or using accommodations, depending on how the tax was structured. In either case, the many interactions between cruise ships and coastal communities in Alaska would be sufficient to satisfy the first prong of the Complete Auto test. Cruise ships and ferries provide overnight accommodations in part to enable passengers to enjoy the goods, services, and attractions available on shore in Alaskan communities. Cruise ships and ferries dock in Alaska ports, purchase goods and services from local vendors, and cruise ships sell on-shore tours and other services to disembarking passengers. Other state taxes involving vessels have easily met this prong of the Complete Auto test by virtue of less extensive contacts with shore. See Sjong v. State Department of Revenue, 622 P.2d 967, 970-971 (Alaska 1981); Hartley Marine v. Mierke, 474 S.E.2d 599, 608-609 (W. Va. 1996).

The second prong, requiring a fair relationship to benefits provided by the state to the taxpayer, is also easily met. This relationship need not be especially close. According to the United States Supreme Court,

If the event is taxable, the proceeds from the tax may ordinarily be used for purposes unrelated to the taxable event. ... The bus terminal may not catch fire during the sale, and no robbery may be foiled while the buyer is getting his ticket, but police and fire protection, along with the usual and usually forgotten advantages conferred by the State's maintenance of a civilized society, are justifications enough for the imposition of a tax.

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<sup>4</sup> Although this is an older case, the four-part test it describes is still good law. See for example Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 183 (1995). Sometimes courts first analyze whether a law treats in-state and out-of-state interests differently, and then moves to the Complete Auto test. See Barber v. Hawaii, 42 F.3d 1185, 1194 (9th Cir. 1994); Hartley Marine Corporation v. Mierke, 474 S.E.2d 599, 607 (W. Va. 1996).

<sup>5</sup> Similarly, to satisfy the requirements of due process, the relationship does not have to be particularly close—"[a]s long as the services are available, the issue of usage by the taxpayers is irrelevant." Keane v. Local Boundary Commission, 893 P.2d 1239, 1248 (Alaska 1995).

Representative Ramona Barnes

May 5, 2000

Page 3

Cruise ships and disembarking ferry and cruise ship passengers use many services provided by state and local government. For purposes of the commerce clause, it is not necessary that each vessel or passenger actually need or use each service in order to justify the tax.

The apportionment prong of the Complete Auto test is intended to ensure that "each State taxes only its fair share of an interstate transaction." *Id.* at 184, quoting Goldberg v. Sweet, 488 U.S. 252 (1989). Although there may be some question about how to apportion nights spent in transit between Canada and Alaska, assuming there is an equivalent Canadian bed tax, there should be no apportionment problem. If the tax is calculated based on nights spent on Alaska waters.

The final commerce clause test element is whether the tax discriminates against interstate commerce. This prong of the Complete Auto test, according to the Alaska Supreme Court, means that a state cannot impose a tax which discriminates against interstate commerce by providing a direct commercial advantage to local businesses relative to interstate business. Sjong v. Department of Revenue, 622 P.2d 967, 973 (Alaska 1981). The coverage of the proposed tax (which does not affect non-commercial vessels, or vessels with fewer than 50 berths) is very similar to that of Juneau's cruise ship head tax ordinance. John Corso, the City Attorney for the City and Borough, has expressed concern that the cruise industry will challenge the city's ordinance based on this prong of the Complete Auto test. Memo from John R. Corso to the Mayor and Assembly, dated July 22, 1999. Mr. Corso opined that the Juneau head tax "would have a much better chance of surviving a discrimination claim" without those exemptions. *Id.*, page 4. That point is worth considering in regards to the proposed tax.

#### The Tonnage Clause

The tonnage clause is a relative of the commerce clause; it too is concerned with ensuring the free flow of commerce between states. It prohibits a state from laying "any Duty of Tonnage" without the consent of Congress. The term "tonnage" originally referred to the internal capacity of a vessel. Clyde Mallory Lines v. Alabama ex rel State Docks, 296 U.S. 261, 265 (1935). However, the clause has been interpreted more expansively to include "all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port." *Id.* The clause prohibits "reliance on tonnage duties to raise general revenues, to regulate trade, or to charge for the privilege of entering, lying in, or trading in a port." New Orleans S.S. v. Plaquemines Port, Harbor and Terminal District, 874 F.2d 1018, 1023 (5th Cir. 1989).

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The first question to ask in a tonnage clause analysis is whether the tax in question fits into the tonnage clause framework—whether it might reasonably be construed as a charge for the privilege of entering, trading in, or lying in a port.

West Virginia recently considered this issue in Hartley Marine Corporation v. Mierke, 474 S.E.2d 599 (W.Va. 1996). The statute challenged in that case taxed the use or consumption by "motor carriers"—including buses, trucks, and aircraft as well as barges and watercraft—of fuel purchased outside the state. *Id.* at 672. The court held:

Appellants urge this Court to view the use tax at issue as a charge for navigation of the rivers in violation of the Duty of Tonnage Clause. If this use tax were solely imposed for fuel consumption on the waters of this state, Appellants' arguments would be more convincing. The use tax at issue, however, is not a prohibited toll on the use of this state's navigable waterways, but an excise tax on the use of fuel which is imposed on all motor carriers operating within this state, including, buses, trucks, trains, and aircraft.

*Id.* at 612. Because the tax did not fall exclusively on users of the state's waterway, the court did not see it as a tonnage tax.

The tax imposed in CSSB 308(FIN) is distinguishable from the tax in the West Virginia case, however, because it affects commercial passenger vessels exclusively (not vessels and buses and aircraft, like the West Virginia tax). That makes it more likely that a court will entertain a tonnage clause argument.

Hawaii imposes fees for anchoring and mooring in state harbors. In Barber v. Hawaii, 42 F.3d 1185 (9th Cir. 1994), the plaintiffs argued that mooring and anchorage fees collected by the state were a duty on tonnage that violated the federal tonnage clause. The plaintiffs conceded that under the Clyde Mallory case, a state was permitted to charge reasonable fees for services rendered. They apparently also conceded that provision of restroom facilities, parking, trash disposal and security services would be sufficient to satisfy the requirements of the Clyde Mallory case. The plaintiffs then tried to argue that because the services provided were open to the public and not provided specifically for those paying the fees, that the state was effectively not providing those services. The court rejected this argument finding that Hawaii in fact provided services in exchange for the mooring and anchorage fees, and that the fees were not a duty on tonnage. Barber v. Hawaii, 42 F.3d at 1196.

The plaintiffs in Barber v. Hawaii apparently did not argue the tonnage clause issue very well, and the court's discussion of the clause is cursory. However, the case upheld the fees in question. In contrast, a recent Rhode Island case held that a registration fee on all boats operated in Rhode Island waters for more than 90 days was an unconstitutional tonnage tax, because the revenues from the fee would not necessarily be used for services benefiting boaters. State v. Turnbaugh, 705 A.2d 530 (R.I. 1997).

Representative Ramona Barnes  
May 5, 2000  
Page 5

The Rhode Island statute provided that the proceeds from the registration fee, *subject to approval of the General Assembly*, should be allocated to fund expenses of the department of environmental management, harbor maintenance, boating safety and other boating related programs. *Id.* at 532. The court wrote:

[I]t should be noted that any funds collected under the provisions of this chapter were required to be allocated, distributed, and used subject to the approval of the General Assembly. Thus this alleged restricted receipt account was entirely subject to being used as a general-revenue measure and not merely for the purpose of providing services to boats, boaters, and navigational improvements.

The court rejected the state's argument that the registration fee was merely a property tax, and instead concluded that it was "a classic form of tonnage tax specifically prohibited by the Constitution of the United States." *Id.* at 533.

Unlike the Ninth Circuit case cited above, the Rhode Island case would not be binding precedent on a federal district court in Alaska. Neither the Ninth Circuit case nor the Rhode Island case would be binding on an Alaska state court, but a state court might regard such authorities as persuasive. The Rhode Island decision certainly demonstrates that the tonnage clause is not a dead letter, and in light of the Rhode Island decision, caution would certainly be in order in imposing any fee or tax on exclusively on vessels, unless the proceeds were used to provide services to vessels. A bed tax that was imposed on beds on land as well as beds in ships would probably avoid tonnage clause problems.

#### Other Potential Constitutional Issues

There are a number of other constitutional provisions frequently used to challenge tax statutes which might be raised in an attack on the proposed tax.

If a tax can survive scrutiny under the second prong of the *Complete Auto* test and is at least minimally rational, it can probably survive a due process challenge as well. See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1248 (Alaska 1995) ("As long as services are available, the issue of usage by the taxpayer is irrelevant."); *Katmailand, Inc. v. Lake and Peninsula Borough*, 904 P.2d 397, 402 (Alaska 1995).

Equal protection is another potential issue. Alaska uses a sliding scale equal protection test, but the interests involved in taxation fall at the low end of the scale and are reviewed under "relaxed scrutiny." *Id.* at 401, n. 6. The federal equal protection clause requires only that the tax be "rationally related to a legitimate governmental interest." *Id.* at 401. As the Alaska Supreme Court observed, "[t]axes are rarely found to be without a rational basis." *Id.* at 400.

Other potential arguments might be based on the foreign commerce clause or the privileges and immunities clause of the federal constitution.

Representative Remona Barnes

May 5, 2000

Page 6

**Conclusion**

Putting a cruise ship head tax in HB 3002 would raise serious single subject questions. In addition, a tax like that in CSSB 308(FIN) might encounter challenges based on several provisions of the United States constitution, particularly the commerce clause and tonnage clauses.

PF:pl

00-180.plm

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB222-COM-DCA-04-02-07  
 Bill Version: HB 222  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_

Dept. Affected: Commerce

Title Passenger Vessel Tax Credit

RDU Community Assist & Ec Dev (405)

Component Community Advocacy

Sponsor Ramras

Requester House Community & Regional Affairs

Component No. 2703

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

This legislation provides that a passenger liable for the tax under AS 43.52.220 would be entitled to a credit against the tax equal to the total amount of the passenger tax paid to one or more of the first five municipalities that are ports of call for the vessel on which the passenger is traveling. The credit is equal to the amount paid. This provision retroactively takes effect on December 17, 2006.

This legislation would have no fiscal impact on the division, nor would it financially impact the first five municipalities that are ports of call. They would still collect their local tax from the passenger.

Prepared by: Mike Black, Director  
 Division: Community Advocacy  
 Approved by: Emil Notti, Commissioner  
 Agency: Commerce, Community, and Economic Development

Phone 907.269.4535  
 Date/Time 4/2/07 3:25 PM  
 Date 4/2/2007

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB222-DOR-TAX-4-2-07  
 Bill Version: HB 222  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue 04  
 Title: Passenger Vessel Tax Credit RDU: Taxation and Treasury  
 Sponsor: \_\_\_\_\_ Component: Tax Division  
 Requester: Representative Ramras Component No.: 2476  
House Community and Regional Affairs

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	*	*	*	*	*	*
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 attached.

Prepared by: Johanna Bales and Nels Tomlinson Phone (907) 269-6628  
 Division: Tax Date/Time 2 April 2007/12:00  
 Approved by: Jerry Burnett Date 2 April 2007  
 Agency: Dept. of Revenue

**FISCAL NOTE**

**STATE OF ALASKA  
2007 LEGISLATIVE SESSION**

**BILL NO. HB 222**

**ANALYSIS CONTINUATION**

**Bill Language:** This bill would grant commercial vessel passengers who are liable for the \$46 tax under AS 43.52.220 a tax credit equal to any passenger taxes they may pay in any of their first five ports of call.

**Revenues:** Since Juneau and Ketchikan currently have a \$5 and a \$7 tax on commercial vessel passengers, respectively, this bill will cost the state at least \$12 per passenger. Since the cruise industry projects approximately one million passengers for the 2007 cruise season, we anticipate that this will cost the state approximately \$12 million in fiscal year 2008.

One effect of this bill will be to remove the current dis-incentive for communities to tax cruise passengers. Each community will have the option to tax passengers, and that tax will effectively be paid by the state rather than by the passenger, up to a total of \$46 for all communities. Therefore, we anticipate that by the next cruise season, more communities will have imposed passenger taxes which take advantage of the credit. These hypothetical local taxes will be higher than the \$5 which the ports of call could get from the state. Therefore, it is possible that this measure could eventually erode essentially all of the state's revenues from the commercial passenger vessel tax.

The current law calls for the state to share \$5 per passenger with each of the first five ports of call which do not charge their own tax. The state is also called to share 25% of the money collected with regions which are impacted by the cruise industry. Funds for impacted regions could potentially be reduced to nothing by this bill.

**Expenditures:** It is not anticipated that this bill will result in any additional expenditures for the Department of Revenue.

# 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

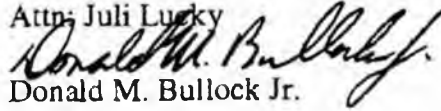
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 26, 2007

**SUBJECT:** 33 U.S.C. 5(b) and appropriations (Work Order No. 25-LS0451)

**TO:** Representative Mike Hawker  
Attn: Juli Lucky

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You asked whether appropriations from revenue received from the cruise ship passenger tax in AS 43.52.200 - 43.52.295 must be used for an appropriate purpose only in an area in which the passenger vessel operates to avoid conflict with 33 U.S.C. 5(b).<sup>1</sup>

The short answer is that the use of money from the tax in an area in which the vessel carrying taxable passengers does not operate may be disallowed under 33 U.S.C. 5(b) unless the money is used "solely to pay the cost of a service to the vessel or water craft."

State-imposed taxes related to the operation of vessels or other water craft are generally prohibited under 33 U.S.C. 5(b).<sup>2</sup> with limited exceptions. That subsection of the United States Code 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--

---

<sup>1</sup> I provided you with a general discussion of the limitations on the use of revenues derived from the cruise ship passenger tax in a memo dated Jan. 23, 2007, under Work Order No. 25-LS0431.

<sup>2</sup> 33 U.S.C. 5(b) was enacted in 2002 and amended in 2003. P.L. 107-295, Title IV, § 445, 116 Stat. 2133 (2002); P.L. 108-176, Title VIII, § 829(a), 117 Stat. 2597 (2003).

(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. [Emphasis added.]

Note the emphasized words "and" and "or" in the excerpt above. The word "or" in 33 U.S.C. 5(b)(2)(C) means that any one or more of the three options in 33 U.S.C. 5(b)(1) - (3) qualifies as an exception to the general prohibition on state<sup>3</sup> "taxes, tolls, operating charges, fees, or any other impositions." On the other hand, the word "and" that is emphasized in the excerpt at the end of subparagraph (2)(B) implies that the state's use of "reasonable fees" must meet all three criteria under paragraph (b)(2).

The use of the words "and" and "or" and the problems of possible ambiguity are discussed in Dickerson, *The Fundamentals of Legal Drafting*, 2d ed. (1986), sec. 6.2, pp. 104 - 14. The introduction to the discussion in Dickerson is as follows:

Problems of multiple modifications or reference are perhaps best approached through the peculiar uncertainties involved in the use of "and" and "or." The difference between "and" and "or" is usually explained by saying that "and" stands for the conjunctive, connective, or additive and "or" for the disjunctive or alternative. The former connotes "togetherness" and the latter tells you to "take your pick." So much is clear.

Dickerson at 104.<sup>4</sup>

In other words, if the fees were used to enhance the safety and efficiency of interstate and foreign commerce and do not impose more than a small burden on interstate or foreign commerce, but are not used to pay the cost of service to the passenger vessel linked to the fee, the fee would be prohibited under this section. To qualify as an exception under paragraph (b)(2) to the general prohibition in subsection (b), the purpose of the appropriation must meet all three criteria; an appropriation for expenditure in an area in which the vessel does not operate would fail to qualify unless the money is somehow used "solely to pay the cost of service" to the passenger vessel.

---

<sup>3</sup> The state is a "non-federal interest" and is therefore subject to the general prohibition and limited exceptions in 33 U.S.C. 5(b).

<sup>4</sup> Dickerson is referenced numerous times in the *Manual of Legislative Drafting* (2005). See, e.g., pages 60, 68, and 72.

Representative Mike Hawker  
January 26, 2007  
Page 3

In closing, and with reference to the memorandum to you dated January 23, 2007 that also discussed 33 U.S.C. 5(b), note that a "fee" and a "tax" may not be the same thing for the purposes of that subsection. The terms "taxes" and "fees" are listed separately in the first sentence in the subsection, "fees" are referred to in subparagraphs (1) and (2), and "taxes" are referred to subparagraph (3). There is a possibility that a court may not consider the state's "tax" at a rate of "\$46 a passenger per voyage" a "fee" when interpreting 33 U.S.C. 5(b)(1) and (2), in which case an exception under those paragraphs would not apply. I cannot predict whether a distinction may be made between the two, but wanted to point this possibility out to you.

If I may be of further assistance, please let me know.

DMB:ljw  
07-030.ljw

## HB 222 - Summary of Legal Opinions

The Initiative's \$46.00 passenger head tax violates federal law in at least three ways:

**First**, it violates 33 U.S.C. § 5, which prohibits taxes or fees on vessels operating in navigable waters, or their passengers, except in narrowly tailored circumstances that enhance the "safety and efficiency" of interstate commerce. The passenger tax imposed by the Initiative does not come close to satisfying the test for a proper fee under 33 U.S.C. § 5.

To summarize Donald Bullock's, January 26, 2007 memorandum to Representative Mike Hawker. The use of money from the tax in an area in which the vessel carrying taxable passengers does not operate may be disallowed under 33 U.S.C. 5(b) unless the money is used "solely to pay the cost of a service to the vessel or watercraft."

State-imposed taxes related to the operation of vessels or other water craft are generally prohibited under 33 U.S.C.(b)(2), with limited exceptions. These exceptions in subsection (b)(2) read as follows:

- (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.

By using the word *and* the statutory meaning is conjunctive, connective, or additive, meaning that all three premises must apply for this exception to apply. Therefore, to qualify as an exemption under paragraph (b)(2) to the general prohibition in subsection (b), the purpose of the appropriation must meet all three criteria.

The opinion concludes by stating. There is a possibility that a court may not consider the state "tax" at a rate of "\$46 a passenger per voyage" a "fee" when interpreting 33 U.S.C. 5(b)(1) and (2), in which case an exception under those paragraphs would not apply.

**Second**, it violates the Tonnage Clause of the United States Constitution, which the Supreme Court has interpreted to prohibit any taxes or fees on vessels in interstate commerce except those directly related to services provided to those

vessels. Here, the tax operates not as a user fee but as a revenue generating device, which is clearly prohibited under the Tonnage Clause.

Under the Tonnage Clause of the U.S. Constitution, Article 1, Section 10, which provides, "No state shall, without the Consent of Congress, lay any Duty of Tonnage..." The tonnage clause prohibits charges "for the privilege of entering, trading in, or lying in a port," but permits charges "for services rendered to and enjoyed by the vessel, such as pilotage, wharfage, or charges for the use of locks on a navigable river, or fees for medical inspection." *Clyde Mallory Lines v. State of Alabama*, 296 U.S. 261 (1935). However, the prohibition against tonnage duties does not extend to charges made by state authority for services rendered to and enjoyed by the vessel. See Attorney General, Gregg Renkes' letter to Representative Cheryll Heinze, dated May 16, 2003.

Furthermore, Kathryn Kurtz wrote in her February 16, 2004 legal opinion to Representative Carl Gatto, "Other services included on the list, such as state parks and the Alaska Railroad, appear to have a much more attenuated relationship to the vessels that may not be sufficient to bring them under the rubric of 'services to vessels' for purposes of the Tonnage Clause."

**Third**, it violates the Commerce Clause under Article 1, Section 8 of the United States Constitution. The tax fails the "internal consistency" test, which asks whether interstate commerce would be unduly burdened if every state imposed a similar tax, as well as the requirement that the tax be fairly related to the services provided by the state.

For the reasons stated above, it is our belief that the Initiative's \$46.00 passenger head tax violates federal law and that funds collected under the "Regional Cruise Ship Impact Fund" can only be distributed to municipalities that actually are ports of call to the cruise ship industry and not throughout the State of Alaska as the Initiative language implied.

TO: H Community & Regional Affairs Committee  
FR: Chip Thoma, Juneau, Cruise Initiative Law Supporter  
RE: HB 222, Taxation of Cruise Lines Issues  
DATE: April 17, 2007

I apologize for not being present this morning, but I have jury duty.

Importantly, I submitted written testimony April 3 on HB 222 with attached legal opinions from Juneau City & Borough attorneys Corso & Hartle. The opinions demonstrate how Juneau has correctly applied the new federal law to spend its cruise passenger fees. The fees have benefited the cruise lines, their passengers and the local community through improved capital infrastructure and CBJ services.

The present cruise tax law specifically benefits ALL parties and treats port communities equally, but prohibits communities from "double-dipping"; charging a local tax and participating in the state revenue sharing program. This allows future cruise ports capital funds for infrastructure without draining the new cruise fund, and allows existing ports with private docks to also apply for state appropriations from that cruise fund. Some examples of ports with private docks are Skagway, Hoonah, and Whittier.

Present and future ports that could well benefit from existing cruise law are Sitka, Cordova, Valdez, Kodiak and Unalaska. I urge you to reject HB 222, and to hold interim hearings this summer in some of these smaller communities. The Committee can then determine the true fiscal impact of cruise ships, and a fair state taxing regime that benefits all Alaska port communities. Thank you for your balanced consideration of these important policy and tax matters. CT

TO: H Community & Regional Affairs Committee 4-17-07

Attached is the Primary Election Voter Pamphlet which was sent to all state voters in early August, 2006.

The Voter Pamphlet was very clear about the uses of the new passenger fee fund, stating that "towns that receive that money cannot impose local cruise ship head taxes." Page 12, Leg. Affairs Summary.

Page 13 of the Pamphlet has a long section on the use of revenues, the establishment of "Impact Funds", and the estimated level of revenues generated for the state of Alaska.

Page 14 contains the initiative language on the disposition of receipts from the passenger tax, including allowed uses, determining the ports-of-call and the status of impact funds.

On Page 19, the statement in support describes the uses of passenger fees and states, "Communities preferring their own tax program can opt-out of the new state program."

Finally, Page 20, the opposition statement, does not discuss the taxing regime at all, though there was full opportunity to do so. I note that Mayor Weinstein of Ketchikan is listed on the opposition page as endorsing that letter, again, without any discussion of taxation.

I hope this Alaska Voter Pamphlet is instructive to the Committee that full and adequate notice was given, and that local and state taxation was thoroughly discussed, except by initiative opponents.

Thank you for considering this information. Chip Thoma, Juneau



### City of Seward

P.O. Box 167  
Seward, Alaska 99664-0167

Main Office (907) 224-4050  
Facsimile (907) 224-4038

City of Seward, Alaska  
1963 1965 2005



Hon Anna Fairclough  
Co-Chairperson  
House Community and Regional Affairs

Hon Gabrielle Ledoux  
Co-Chairperson  
House Community and Regional Affairs

Honorable Chairpersons

The City of Seward would like to go record in support of the intent of HB 222 and what we understand to be a forthcoming proposed amendment from the sponsor Rep Ramras.

It is our understanding that under federal law revenue from head taxes and fees can only be used to "service the vessel" much like fees charged to aircraft passengers can only be used to "service the aircraft" at airport facilities.

It follows then that these funds can only legally be spent at ports of call where cruise ships actually visit.

The concepts proposed by HB222 go a long way to make the Cruise initiative passed by the voters much more effective in getting the revenues to the port cities where the "vessel servicing" costs actually are.

In addition the bill structures things so that a predictable and stable revenue flow makes financing of significant qualitative improvement to port facilities a possibility.

Thank you for the opportunity to comment.

Sincerely,

*Vanta Shafer*

Vanta Shafer  
Mayor

✓

# SOUTHEAST CONFERENCE

*Working for strong economies, healthy communities, and a quality environment in Southeast Alaska*

April 6, 2007

Representative Jay Ramras  
State of Alaska  
State Capitol, Room 118  
Juneau, AK 99801-1182

227

RE: Southeast Conference Comments on HB 222

Representative Ramras,

Southeast Conference is a regional, nonprofit corporation that advances the collective interests of the people, communities and businesses in Southeast Alaska. Members include municipalities, Native corporations and village councils, regional and local businesses, civic organizations and individuals from throughout the region. The mission of Southeast Conference is to undertake and support activities that promote strong economies, healthy communities, and a quality environment in Southeast Alaska. After deliberation and recommendations by the Southeast Conference Tourism Committee, Southeast Conference offers the following comments.

The initiative passed last year provides for a marine passenger fee of \$50 per passenger to be imposed upon all passengers of large cruise ships calling at ports in the State. The current arbitrary \$5 limit per port, for up to five ports, as written in the initiative will, based on the real ship schedules: direct an average of only \$18 of the \$50 to the communities that are directly impacted by the cruise ships. This is because the average cruise ship stops at 3.5 ports. In our opinion, this is not enough money to meet needs in directly affected communities.

In the present formula, **none** of the state fee goes to the municipalities that have port fees equal to or greater than \$5. This further reduces the amount above and it puts ports with local port fees at a big competitive disadvantage against ports without such fees because the port fee is now on top of the \$50 tax per person.

We believe that without amendment the formula contemplated by the initiative may not comply with federal law. In 2002 Congress passed Section 445 of the Maritime Transportation Security Act, which essentially requires a connection between the fee, and a service to the vessel, passengers, and/or crew. The present formula does not appear to comply with that requirement.

We believe that HB 222 will encourage the cruise lines to work with each port community to develop a plan to provide improvements to port and related facilities, and set a fee at an appropriate level to do so. This should result in a much more productive relationship between cruise lines and their host communities.

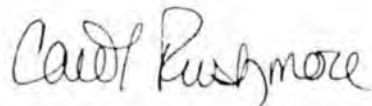
Letter to Jay Ramras  
April 6, 2007  
Page 2 of 2

Furthermore, we believe that HB 222 helps assure that marine passenger fees flow to local communities so that those being impacted the most by the cruise ships can improve their port infrastructure and compete on the world market with ports around the world that are making significant investments.

Finally, we believe that HB 222 is consistent with the initiative, as \$50 would still be assessed against each passenger on cruise vessels entering Alaska waters, and with federal law, as the fees collected would be spent on services reasonably related to the vessels, their passengers, and their crews.

Southeast Conference urges you and your colleagues to pass HB 222 this session.

Sincerely,



Carol Rushmore  
President

Cc: House of Representative Members ✓

TO: House Community & Regional Affairs Committee

FR: Chip Thoma, Juneau, Cruise Initiative Supporter

RE: HB 222 Written Testimony & Legal Opinions

DATE: April 3, 2007

Here is my submitted written testimony from the hearing today in your committee on HB 222, the Cruise Tax Credit.

I have also attached two legal opinions that explain the application and use of passenger fees in Alaska, as defined by federal law. I hope these opinions and my testimony help you in deciding to reject HB 222 as an unnecessary repeal of the 2006 Cruise Initiative.

Thank you for considering this information.

TO: House Community and Regional Affairs Committee  
FR: Chip Thoma, Juneau, Cruise Initiative Supporter  
RE: HB 222, Cruise Tax Credit  
DATE: April 3, 2007

HB 222 would have a negative impact on the finances of the State of Alaska. Importantly, the bill would not help municipalities cope with hosting the 1 million cruise passengers coming to Alaska each year in a compressed, 5 month season, May through September.

The proposed 'credit' that a cruise passenger would receive under HB 222 will never benefit that actual passenger. In reality, this is a tax rebate program that returns new state revenues directly to the cruise companies in Miami. For that reason alone, I oppose HB 222.

Also, HB 222 is not good public policy. It will again encourage competition between port towns to curry industry favor on ship taxes, rather than making sound, community-based decisions on long-term improvements to waterfronts. Local waterfront activities are the heart and soul of each town, and those uses and improvements should be made without undue cruise influence over summer taxes. The initiative ends the practice of comparing and selecting communities based on the local tax climate.

Instead, the cruise initiative is an opt-in, revenue-sharing program of choice for local municipalities. In the years ahead, there could be smaller cruise ports in the state that will benefit, such as Cordova, Valdez and Kodiak, because the cruise demand and market are certainly there. Other cruise ports that also benefit from the initiative are those that now have private cruise docks, such as Skagway and Whittier.

In these latter two ports, dock owners charge ships a private passenger fee for using their property. The new state fees would allow cruise ports without local head taxes to make extensive improvements to their adjacent city docks and harbor lands used by cruise passengers when they visit. This is a plus for all cruise ports.

As the initiative was written, each community has the choice when to opt-in or opt-out. They can choose to have the state collect and

distribute the cruise taxes, or charge and bond for municipal cruise docks and improvements with local passenger fees, such as Ketchikan and Juneau do.

Juneau is the best example of a port community that has defined the uses and parameters of the cruise passenger fee, as those relate to the 2002 Maritime Security Act. That federal law says that reasonable passenger fees can be spent on cruise docks and adjacent access areas for the safe and efficient movement of passengers and cargo. I refer you to the opinions issued by Juneau Borough attorney Corso in 2003 and by Juneau Borough attorney Hartle in 2005 (attached).

To paraphrase Abraham Lincoln, you can't fool all the people all of the time. 81,000 Alaskans voted correctly on the cruise initiative. They knew what they were voting for:

- Clean cruise ships, verified clean by Ocean Rangers;
- Fair state taxes spent on cruise infrastructure;
- Consumer protection for cruise passengers; and a
- Level playing field for Alaska businesses that want summer cruise customers.

The cruise lines in Alaska are a multi-billion dollar industry that overwhelms coastal towns throughout Alaska each summer. It is time that the state had a fair tax regime that provides new funds for the huge cruise infrastructure costs needed in the years ahead.

In my estimation, the simplest and most courageous action by an Alaska Governor was taken by Jay Hammond, defining the ground rules for doing business in Alaska:

- Industry pays its own way, without subsidy;
- Industry does not pollute; and,
- All industries pay a fair share in state taxes.

That's why it is deeply offensive that a multi-billion dollar industry that is loosely regulated and poorly controlled sends delegations of folks from Miami to Alaska to repeal state law, as just enacted by state voters. The ink was not even dry on the initiative results before an all-out repeal effort has transpired on every section of the 2006 initiative. Please reject HB 222 as a repeal of the cruise initiative. Thank you.



# M *CBJ Law Department* MEMORANDUM

**To:** Assembly Finance Committee

**From:** John R. Corso, City & Borough Attorney 

**Subject:** Port Fees; federal law

**Date:** April 21, 2003

## I. Discussion

Last week, KTOO broadcast a story about the Murkowski administration reaction to recent changes in federal maritime law. The law in question is the Maritime Security Act of 2002, which, among other changes, amended 33 USC §5 to provide:

(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); or
- (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.

The reference in (b)(1) is to a long-established program for harbor project fee review by the Federal Maritime Commission. The Port Director administers this program for CBJ. I have attached copies of the new language and the referenced FMC statute.

The new statutory language essentially restates the constitutional rule described in my July 22, 1999 memorandum to the Assembly on the passenger fee initiative. Briefly, the rule is that we can impose a fee on visitors only to the extent we provide a service to visitors. We cannot charge them a fee for services we provide to someone else, such as ourselves.

Some services, such as dock construction and maintenance, are clearly justifiable as a service to ships and passengers. Others are less defensible. The statute will prevent the most flagrant abuses, such as a fee imposed on ships that merely pass through local waters without stopping. So said Congressman Young in the November 22, 2001 *Congressional Record*, attached. However, it can be used in less egregious circumstances as well. Mr. Young speculated that "generally taxes will not be allowed under this section". *Id.*

Even though the statute does not break any new legal ground, it does provide a reasonably clear and concise statement of the law. In this respect, it is more usable, (both for us and for plaintiffs) than a fuzzy principle extracted from constitutional text and a few judicial cases; which is all we had to work with before the statute.

Also, the statute adds some new emphasis to the constitutional rule. The new language says that fees must be use "solely" to provide a service to the vessel, must "enhance the safety and efficiency" of interstate and foreign commerce, and must impose only a "small" burden on that commerce. We must await judicial interpretation to learn exactly what these qualifiers mean, but they certainly do not make things easier for local port fees.

According to the KTOO story, the Murkowski administration has concluded that the new law prohibits passenger fees. I'm not sure that the Attorney General shares this view: informal contact with his staff suggests that they see it pretty much as I do.

## **II. Conclusion:**

For the most part, the new statute just restates existing constitutional law. It makes no fundamental changes and does not invalidate our port or passenger fees.

However, it will serve to focus attention on how we use the fee revenue. Also, the statutory language is slightly more stringent than the constitutional rule it supplements. As a result, we should take extra care to spend passenger fee revenues on programs (or parts of programs) that benefit only the people who pay the fee. We may not balance our budget by taxing people who cannot vote.



**M** *CBJ Law Department*  
**MEMORANDUM**

**To:** Mayor and Assembly  
**From:** John W. Hartle, City Attorney *JWH*  
**Subject:** Fees on Cruise Lines; Resolution 2294b.  
**Date:** March 12, 2005

You have asked for an analysis of the objections raised by Jim Reeves of Dorsey and Whitney regarding the proposed increases in cruise line fees in Resolution 2294b. I have analyzed all the cases cited by Mr. Reeves, and the other major case law as well. The short answer is that, while there is always some risk regarding particular expenditures, and federal law does provide special protection to interstate and foreign shipping, it appears that the present proposal would pass muster under the U.S. Constitution because the proposal is a fee for services and facilities that benefit the cruise industry, rather than a tax to raise general revenues.

***The Tonnage Clause.***

The Tonnage Clause of the U.S. Constitution gives the shipping industry a measure of special protection from state and local taxation. The clause provides: "No State shall, without the Consent of Congress, lay any Duty of Tonnage." U.S. Const. Art. I, § 10, cl. 3. It was added to the Constitution on September 15, 1787, according to the notes of James Madison, essentially as a supplement to the Commerce Clause, which also serves to limit state and local regulation or taxation of interstate or foreign commerce.

Under the Tonnage Clause, a municipality cannot levy a general tax on ships for the privilege of entering port; fees for services and facilities, however, can be imposed. There are many cases that make this point. Closest to home is the July, 2004, Superior Court decision in *Polar Tankers, Inc. v. City of Valdez*. Case No. 3AN-00-9665CI. In that case, the court struck down the City of Valdez's Ordinance 99-17 which imposed the "Tanker Tax," a business personal property tax levied mainly on oil tankers. Because the tax was imposed for the admitted purpose of raising general revenues, not based on a particular service or facility for the tankers, the court struck it down.

The fee increase proposed in Resolution 2294b, by contrast, is not intended as a general revenue measure. The resolution would impose fees for the purpose of constructing facilities outlined in the Long-Range Waterfront Plan that benefit the cruise industry. See Resolution 2294b, Sec. 2(e), pg 3, line 22. Courts have consistently found that state or local fees for services or facilities do not violate the Tonnage Clause. In 1877, the U.S. Supreme Court summarized the law as follows:



To determine whether the charge prescribed by the ordinance in question is a duty of tonnage, within the meaning of the Constitution, it is necessary to observe carefully its object and essence. If the charge is clearly a duty, a tax, or burden, which in its essence is a contribution claimed for the privilege of entering the port of Keokuk, or remaining in it, or departing from it, imposed, as it is, by authority of the State, and measured by the capacity of the vessel, it is doubtless embraced by the constitutional prohibition of such a duty. *But a charge for services rendered or for conveniences provided is in no sense a tax or a duty.* It is not a hindrance or impediment to free navigation. *The prohibition to the State against the imposition of a duty of tonnage was designed to guard against local hindrances to trade and carriage by vessels, not to relieve them from liability to claims for assistance rendered and facilities furnished for trade and commerce.*

*Keokuk Northern Line Packet Co. v. City of Keokuk*, 95 U.S. 80, 84 -85 (1877) (emphasis added).

125 years later, courts are still saying the same thing:

"[A] charge for services rendered or for conveniences provided is in no sense a tax or a duty. It is not a hindrance or impediment to free navigation."); see also *Barber v. Hawai'i*, 42 F.3d 1185, 1196 (9th Cir.1994) ("[A] state is not prohibited from charging reasonable fees in return for services rendered.")...For example, a harbor fee charged for the use of restroom facilities, parking, trash disposal, and security is not a "duty of tonnage" because services are provided in exchange for the fee. See *Barber*, 42 F.3d at 1196. Similarly, if fees are for pilotage, wharfage, use of locks on a navigable river, or for medical inspection, those fees are not unconstitutional duties of tonnage. See *Clyde Mallory*, 296 U.S. at 266, 56 S.Ct. 194.

*Captain Andy's Sailing, Inc. v. Johns*, 195 F.Supp.2d 1157, 1172 (D.Hawai'i 2001).

A fee charged to ensure that emergency services are available is also not a duty of tonnage, even if not every ship paying the fee needs the service.

*New Orleans Steamship Ass'n v. Plaquemines Port, Harbor & Terminal Dist.*, 874 F.2d 1018, 1023 (5th Cir.1989), cert. denied, 495 U.S. 932 (1990).

### *The Commerce Clause.*

The Commerce Clause of the U.S. Constitution provides: "The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states . . ." Allocating this authority over foreign and interstate commerce to Congress means that such authority is *not* allocated to states or municipalities; the negative sweep of the Commerce Clause precludes state or local regulation. There are many cases interpreting the Commerce Clause from the earliest days of the federal courts. In the context of shipping, however, the Commerce Clause is not as restrictive as the Tonnage Clause. If a fee or practice is allowed under the Tonnage Clause, the Commerce Clause is not likely to prohibit it.

*The Maritime Transportation Security Act of 2002.*

As a fairly recent enactment of Congress, this act has no body of developed case law interpreting it. However, from its plain language, it can be seen as the most restrictive of the three main areas of federal law restricting municipal fees on shipping interests. Although not mentioned in Mr. Reeves' memo regarding Resolution 294b, the Maritime Security Act of 2002 provides his best argument. It provides:

(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 2236 of this title;
- (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.

This federal statute, among others, in my view comprises "the Consent of Congress" contemplated by the Tonnage Clause. Accordingly, if a project fits its requirements, it will pass muster under the Tonnage Clause and the Commerce Clause as well. This is the statute CBJ has been acting under since its enactment. Sponsored by Rep. Don Young, it was intended to clarify the requirements of the Commerce Clause, according to his address to Congress upon its passage:

Section 445 [the Act] addresses the current problem, and the potential for greater future problems, of local jurisdictions seeking to impose taxes and fees on vessels merely transiting or making innocent passage through navigable waters subject to the authority of the United States that are adjacent to the taxing community. We are seeing instances in which local communities are seeking to impose taxes or fees on vessels even where the vessel is not calling on, or landing, in the local community. These are cases where no passengers are disembarking, in case of passenger vessels, or no cargo is being unloaded in the case of cargo vessels and where the vessels are not stopping for the purpose of receiving any other service offered by the port. In most instances, these types of taxes would not be allowed under the Commerce Clause of the United States Constitution. Unfortunately, without a statutory clarification, the only means to determine whether the burden is an impermissible burden under the Constitution is to pursue years of litigation. . .

Conference Report on S. 1214, Maritime Transportation Security Act of 2002; Speech of Hon. Don Young, of Alaska, in the House of Representatives, Thursday, November 14, 2002.

The requirements of this federal statute appear to be straight out of the case law, particularly, the Fifth Circuit's summary of the U.S. Supreme Court *Clyde Mallory* decision. See *Plaquimines*, 874 F.2d 1018, 1021(5th Cir. 1989). One additional issue raised is that of the requirement that any fee "not impose more than a small burden on interstate or foreign commerce . . ." All indications are that the cruise industry is financially healthy at this time, and that the proposed additional one dollar per passenger could be contractually passed on to the cruise consumer, and, therefore, would not impose more than a small burden on interstate or foreign commerce.

***Conclusion.***

Resolution 2294b would increase the Port Development Fee by one dollar per passenger. Because the resolution requires that all funds collected by the Port Development Fund be spent on projects outlined in the Long-Range Waterfront Plan that benefit the cruise industry, the fee increase would very likely survive a challenge based on the case law from the U.S. Supreme Court and the U.S. Court of Appeals for the Ninth Circuit. In my view, so long as CBJ continues its vigilance in following the requirements of federal law and close cooperation with the industry in making expenditures (as required by Resolution 2294b), a legal challenge would be unlikely to succeed.

## TESTIMONY ON HOUSE BILL 222

Bruce M. Rotelho, Mayor  
City and Borough of Juneau

I testify today on behalf of the assembly of the City and Borough of Juneau in support of Committee Substitute for House Bill 222, legislation that would provide a credit for certain municipal passenger fees against the statewide excise passenger tax established by 2006 Primary Election Ballot Measure No. 2.

I support the purpose that the sponsors sought to achieve in promoting the passenger tax: having users contribute to the infrastructure necessary to serve them in communities they visit by cruise ship. However, I believe that there is a fundamental flaw in the initiative that frustrates this purpose and that the Committee Substitute for House Bill 222 corrects that flaw. That flaw is the creation of a vast pool of money that can not be expended constitutionally. Let me explain.

Let me begin by addressing how Measure No. 2 is designed to work.

First, it imposes a \$46 tax on each passenger traveling in Alaska on a large commercial passenger vessel. The proceeds from the tax are placed in a special account within the general fund of the state. Each of the first five ports of call for each vessel's voyage within Alaska is entitled to receive \$5 per passenger per port visit.

Second, the initiative also establishes a "regional cruise ship impact fund" consisting of 25 percent of the total proceeds from the passenger tax. Regional cruise ship impact funds may be appropriated for distribution to local governments within regions of the state "impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation."

Finally, the remainder of the funds may be appropriated for "state-owned port and harbor facilities" or certain other services.

There are specific restrictions on these taxes.

- If a municipal port elects to receive its \$5 per passenger share of the state's passenger tax, it may not impose its own local passenger tax.
- Conversely, a municipality that imposes its own local passenger tax may not access either the \$5 per passenger share nor regional impact funds.
- Expenditure of the monies is limited 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."

This is the statutory scheme in place. How does this relate to the "fundamental flaw" in it? What's wrong with the scheme? The problems are of two kinds: constitutional and practical.

What are the constitutional problems? Federal law limits the kinds of taxes or fees that may be imposed on vessels in interstate commerce. Let me mention the laws I believe most directly apply:

- The Tonnage Clause of the United States Constitution (art. I, sec. 10) prohibits any taxes or fees on vessels except those directly related to services provided to those vessels.
- 33 USC Section 5 prohibits authorizes the levy of “reasonable fees charged on a fair and equitable basis” that (A) are used *solely* to pay the cost of a service to the vessel; (B) enhance the safety and efficiency of interstate and foreign commerce; *and* (C) do not impose more than a small burden on interstate or foreign commerce.

The sponsors of the initiative were aware of these restrictions and have tried to meet the high burden set by federal law. That's why the funds generated by this tax must be used "in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or watercraft visits and to enhance the safety and efficiency of interstate and foreign commerce."

Yet this language is of little import when applied to the regional impact fund. That's because that fund is available only to those ports that are not today "ports of call", that is ports that are not visited by cruise ships at all. So, applying the federal statute, what conceivable service to a vessel should be recovered and on what basis? Similarly, what state-owned port, harbor facilities or other service is being directly rendered that would permit these funds to be expended? I suggest that few expenditures could meet the federal test.

What are the practical problems?

First, there is little incentive for major ports of call to take part in the state program, rather than maintain or establish their own passenger fees. Why is this?

(1) Municipalities are able to set higher or lower fees to meet local infrastructure needs without reliance on the state program. Thus, Juneau currently imposes two separate fees computed on the number of a vessel's passengers per port visit. The two fees now total \$8.00. Ketchikan currently imposes a \$7.00 per passenger fee.

(2) Municipal ports electing to receive the \$5 per passenger tax would be required to come to the legislature each year and seek an appropriation for that purpose. It leaves municipalities dependent upon the legislative process and having port monies traded for other capital projects. In addition, reliance on annual appropriations to bond for projects is difficult because local government would have no direct authority to impose and receive taxes related to the port to repay the bonded indebtedness.

Let me apply all of this to the initiative. For purposes of this exercise, I am assuming a year in which 1 million passengers arrive by cruise ship (slightly more than are actually projected for this season):

**\$46,000,000** total amount to be remitted to the State

The cruise ship industry estimates that the average cruise ship vessel calls on 3.5 ports in Alaska. I've rounded up to four ports. The two largest ports of call, Juneau and Ketchikan do not participate. I have also assumed that a million passengers visited each of the next two ports of call. That allows me to subtract - **\$10,000,000** as the total amount remitted to municipalities.

That leaves a total of **\$36,000,000**. Another 25% is to be allocated to the regional impact fund. Again, it is doubtful whether much, if any, of that amount can be expended, but that amount totals **\$11,500,000**. That leaves a total of **\$24,500,000** to be expended on state harbors, ports and services to be used solely in direct service to cruise ship vessels. I submit that you cannot spend it. In the meantime, of the **\$46,000,000** theoretically set aside for support of local governments servicing cruise ship vessels, at most **\$10,000,000** reaches them.

Thus we are left with a municipal port revenue sharing program that will not work as intended: as a way to assist port communities to cope with cruise ship visits.

Fortunately, this problem can be fixed. Proposed Committee Substitute for House Bill 222 is one such way. The CS would allow municipal passenger taxes or fees to be taken as a credit against the State's \$46 tax, up to a maximum credit of \$10 per passenger, per community.

Let there be no question. Under this bill, the allowance of a tax credit will reduce the amount of proceeds going into the State general fund. And the cruise industry will end up remitting fewer total dollars to government entities, local and state, as a result.

But creating a credit is likely to achieve a couple of other results that I believe are highly desirable:

- Port cities that do not currently have a fee structure will be encouraged to enact one and to develop port projects that serve cruise ship passengers in the manner most compatible with their respective communities, without fear of adverse political consequences;
- In so doing, general fund revenues are taken off of the table—instead, the revenues go directly to communities—competition within the legislature for allocations is reduced.

To summarize: allowing the tax credit clearly benefits the port communities for the reasons I've outlined. At the same time, it will reduce the total amount of passenger tax proceeds received by the State. This reduction, however, should not raise major policy objections because of the severe legal restrictions on the ways that these tax proceeds may be spent.

**HB**

**232**



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** April 4, 2007

**TO:** Representative Fairclough, Co-Chair  
Representative LeDoux, Co-Chair  
House Community and Regional Affairs Committee

**FROM:** Representative Kevin Meyer

**RE:** Request to Schedule House Bill 232 *Alcohol Sale/Purchase/Distribution*

Please schedule HB 232 *Alcohol Sale/Purchase/Distribution* for a hearing in the House Community and Regional Affairs Committee at your earliest convenience.

HB 232 is based on recommendations from the Alaska Rural Justice Commission and establishes a database for written order sales, a pilot project for alcohol delivery sites, makes changes to the statutes governing the transfer of a liquor license and other changes to statute to reduce bootlegging in dry communities. HB 232 is the companion bill to SB 128.

Included in this packet:

- HB 232 *Alcohol Sale Purchase Distribution*
- Sponsor Statement
- Sectional Analysis
- Backup materials: (SB 128)
  - Informational Primer on State Liquor Law Effect on Local Economic Development (City of Wasilla)
  - Tanana Chiefs Conference
  - Testimony of Loretta Bullard



# REPRESENTATIVE KEVIN MEYER

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HOUSE DISTRICT 30

## Sponsor Statement

### HB 232

*Alcohol Sale/Purchase/Distribution*

Alaska, along with many other states, finds itself in the position of needing to protect residents of rural communities from bootleggers of alcohol. Various alcohol abuse educational programs have been in place in rural Alaska for a number of years, but they have not served to halt the illegal importation and sale of alcohol to Alaska's rural communities. HB 232 helps curb bootlegging by allowing the Alcoholic Beverage Control (ABC) Board, at the request of the communities of Bethel and Kotzebue, to establish a pilot program for alcohol delivery. If opened, these sites would operate for a period of three years.

House Bill 232 is aimed at preventing bootleggers from ordering alcohol from numerous package stores in violation of the local option. Alcohol Local Option Provisions require that the ABC Board, in conjunction with package store licensees, create and maintain a database documenting the sale, distribution, and purchase of alcoholic beverages, ordered in writing, from persons residing in damp local option communities. The bill requires that a package store consult the database before filling a written order from a person residing in the local option area. The database will be available to package store licensees and their agents and employees, law enforcement officers, probation and parole officers, and the ABC Board. Information in the database will not be available to the public.

The bill also corrects an inadequacy in state liquor law that hampers the ability of large hub communities to attract investment in family oriented restaurants. There are now allowances for the transfer of a borough license to a city within the borough's borders in order to meet public demand and promote economic development.

Email: Representative\_Kevin\_Meyer@legis.state.ak.us • Toll Free: (866) 465-1945

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476

Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197



# REPRESENTATIVE KEVIN MEYER

## HOUSE DISTRICT 30

### SECTIONAL ANALYSIS CS FOR House Bill 232

**Sections 1 and 2** require the Alaska Beverage Control (ABC) Board, after working with package store licensees, to create and maintain a database that keeps track of written orders for alcohol from persons residing in damp local option communities. A package store licensee must consult the database before filling a written order from the local option area to ensure that the customer has not already ordered the alcohol that the local option allows for that particular month. Any order filled must be immediately entered in the database. The information would be used to prevent bootleggers from ordering alcohol from numerous package stores in violation of the local option. The information in the database may only be used as specifically allowed by package stores and law enforcement; the information in the database would not be public information.

**Section 3** prohibits a package store from shipping alcohol in response to a written order from a person residing in a local option area to any address other than the address of the person ordering the alcohol. However, if the person ordering the alcohol lives in an area where a community delivery site has been established, the alcohol must be shipped to the delivery site.

**Sections 4 and 5** correct an omission in state law that does not allow for transfer of liquor licenses in large hub communities from the organized borough to within city limits of the community. For example, communities like Wasilla, Kenai, or North Pole may have only a few licenses within the city, but the cities serve large populations outside city limits. The bill would allow transfer of licenses available in the surrounding borough into the city center, to promote economic development in businesses such as family-oriented restaurants. The transfer would require the approval of the governing body of both the borough and the city.

**Sections 6, 7, 11, and 12** prohibit a person from purchasing alcoholic beverages in a local option area from another person who is selling the alcohol in violation of the local option. This conduct would be a class A misdemeanor. Under current law, AS 04.16.200(b), the person selling alcohol in violation of a local option would be guilty of a class C felony. Sections 6 and 11 include conforming amendments for the new provisions in Sections 7 and 12.

**Section 8** extends the period after a local option has been adopted in a community from 12 to 24 months, before an election may be held to remove the option or to change the option to a less restrictive alternative. It would also provide that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36 month period, rather than the 18 month period in current law.

**Section 9** prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a community that has elected to be dry. The penalty for this violation would be a class A misdemeanor.

**Section 10** prohibits a person in a dry local option area from possessing ingredients or equipment with the intent to use them in the creation of home brew. This conduct would be a class A misdemeanor.

**Sections 13 and 14** amend the forfeiture provisions for violation of AS 04.11.499. The law would allow for the forfeiture of alcohol that was purchased from a person who brought the alcohol into the community in violation of the community's local option. They would not allow for the forfeiture of an airplane or other vehicle upon conviction of a person for the purchase of alcohol from a bootlegger.

**Section 15** would allow the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue, if the Board is requested by either community to do so. If opened, the sites would operate for a period of three years.

**Sections 16 – 20** include an instruction to the revisor of statutes and effective dates.

## **Informational Primer on State Liquor Law Effect on Local Economic Development**



The City of Wasilla, in partnership with cities, boroughs, and developers from around the State is seeking to rectify an inadequacy in state liquor law that hampers the ability of hub communities to attract investment in high-end and family oriented restaurants. State law currently allows for 1 such license for every 3,000 residents of a community, so in communities such as Wasilla, Kenai, or North Pole there may be only 2-3 full liquor licenses allocated to go around for restaurants to use. The problem is these communities serve population areas outside of their city limits which are many times their own city population thus providing a large market for restaurants. Since so few licenses are allowed and there is no way to augment the number of liquor licenses allowed in a city the result is a lack of dining options, particularly high end or family oriented dining options in these communities and their surrounding areas.

The City of Wasilla itself has been approached by numerous higher end and family oriented dining groups interested in locating in our city, only to learn such location is impossible because a large component of their business model is the sale of wine and mixed drinks with dinner, which they cannot do here without an outlandish outlay of capital to secure an existing liquor license from within the closed liquor license market.

Instead of seeking to create more liquor licenses we feel it would be good public policy to use existing licenses more efficiently by making use of existing borough allocated licenses in hub cities within those boroughs.

We are suggesting the state liquor license law be changed in the following ways:

1. Restaurants within cities should be allowed to use beverage dispensary liquor licenses allocated to their boroughs when and only when both the city and borough agree to such a use.

*Since these licenses are allocated to the boroughs to serve their populations and the cities act as the commercial hub servicing these same populations it would seem logical that a borough could transfer one of its licenses to city control to meet borough commercial needs.*

2. Such transfers would only be allowed for restaurants transferring beverage dispensary liquor licenses.

*This legislation is not intended to allow for proliferation of package liquor stores, bars, or other liquor distribution venues outside of sit-down dining establishments.*

3. Such transfers should only be allowed in boroughs with a population of 40,000 or more.

*Since this legislation is intended to service the needs of larger suburban populations it seems logical to permit it only where such populations are large enough to warrant such action.*

Please contact Casey Reynolds, Economic Development Planner for the City of Wasilla at (907) 373-9030 to discuss our ideas and the process to change liquor license laws in Alaska.



**TANANA CHIEFS CONFERENCE, INC.**

122 FIRST AVENUE  
FAIRBANKS, ALASKA 99701-4897

March 27, 2007

Dear Members of the Senate Community and Regional Affairs,

Re: In support of SB 128

As you know, issues related to the abuse of alcohol remain of grave importance to the health, safety, and welfare to the people of the Tanana Chiefs Conference Region. Senate Bill 128 proposes to take several steps forward in improving the regulation of alcohol in our villages.

- We support the establishment of a statewide database designed to allow a package store licensee to access, reducing the amount of alcohol that might otherwise go into a restricted area under AS 04.11.150(g).
- The provision to prohibit shipment of alcohol to addresses other than where the purchaser lives is of critical importance to our villages. Too often a buyer will have alcohol shipped to a nearby village that does not have a prohibition, cause a great deal of trouble in that village, and then illegally imports that alcohol into their own village.
- Extending the timeframe that local option law may be conducted to a less restrictive option, and extending the timeframe for conducting an election more than once are both excellent amendments to existing law, allowing for more stability and encouraging healthy behaviors.

- We support the provision which adds a prohibition on possession of homebrew ingredients with intent to manufacture alcohol.
- We support the addition of a penalty for a person purchasing alcohol from another person who had transported it illegally into a village.

Thank you for consideration of our support for the measures in Senate Bill 128, and for your hard work during this legislative session.

Sincerely,

Jerry Isaac, President

Tanana Chiefs Conference

122 First Ave

Fairbanks, AK 99701

1-800-478-6822

Good Afternoon. Thank you for this opportunity to testify on SB 128. My name is Loretta Bullard. I am President of Kawerak, the regional non-profit consortium providing non-health services throughout the Bering Straits Region of Alaska. I also serve on the Alaska Rural Justice and Law Enforcement Commission representing Village Public Safety Officer contractors in the State.

Alcohol and substance abuse is the nucleus around which many of rural Alaska's social problems revolve. Alcohol is a contributing factor in many, if not the majority of suicides, homicides, child sexual abuse and physical neglect, domestic violence situations, and accidenta' death and injuries in rural Alaska. It is a 100% factor in children diagnosed to be FAS and FAE. I estimate that 90% of the Alaska Natives serving time in Alaska correctional facilities, are serving time for offenses conducted under the influence of alcohol, for consuming alcohol while on probation, or for importing or brewing alcohol in violation of local option laws. Alcohol abuse has a huge impact on Alaska families and on the State fiscal situation.

I am testifying in support of SB 128. Many of the provisions contained in SB 128 are practical solutions that were developed as part of the RJLC work group process. In this process, we had individuals from around the State of Alaska participate in work groups to develop options for consideration by the Commission, which if implemented, would improve rural justice and safety throughout the State of Alaska. Work group members included representatives from the Department of Law, Department of Public Safety, rural residents, Alaska Legal Services, Alaska Federation of Natives as well as several Commissioners.

Provisions contained in SB 128 will help to curtail the importation of alcohol into communities that have opted to be damp or dry under Alaska Statutes by:

- Creating a statewide data base that will enable package store outlets to confirm that duplicate shipments are not being shipped to any particular individual in violation of the limits imposed by law. Currently, an individual could order 20 shipments from 20 different outlets - much of which would no doubt be bootlegged. This would greatly curtail bootlegging activity in rural Alaska.
- Requires that alcohol shipments only be shipped to a purchaser's home address. This prevents alcohol from being shipped to nearby damp or wet communities, and then subsequently being imported into dry communities in violation of the local option law.
- Providing the opportunity for Bethel and Kotzebue to set up Alcohol Beverage Delivery Site Pilot Projects. As we understand it, Barrow established such a site a number of years ago which has proven to be a huge success in controlling the amount and delivery of alcoholic beverages into their community.

The language would also limit the ability of a community to remove a local option or change to a less restrictive option - such that a revote could not be conducted during the first 24 months after the local option was adopted or more than once in a 36 month period. This would give the community time to fully experience whether the local option

law is working for the community – and limit flip flopping due to organizing by very persuasive individuals at the local level.

The recommendations in SB 128 primarily address the supply side of the issue. I encourage the Alaska legislature to also make additional funds available to address the demand for and treatment of alcohol and substance abuse. Alaska families, communities and the State budget would benefit if the State proactively explored and set in place means to prevent and minimize the impact alcohol and substance abuse has on Alaska's communities and families, before problems occur – as opposed to locking up individuals after the fact.

While the provisions contained in SB 128 reflect only a small portion of the options that were developed, if implemented, they are a step in the right direction. Attached to my testimony, is a list of the options that were developed by the Alcohol workgroup for the consideration of the Commission. I wanted to note that there are many more options that have not yet been fully explored and recommended by the Commission, simply because we ran out of funding to continue our work.

Unfortunately, the Rural Justice and Law Enforcement Commission's funding got tied up in the federal budget "continuing resolution no-earmark" policy, such that the Commission has not received 2007 federal funds to continue our work. A request was submitted to the State Legislature in February by the Commission asking for stop gap funding to help the Commission continue its work until such time as federal funding again becomes available. Since its inception in 2004, the Commission has been funded by federal receipts. I hope that the legislature will see fit to support this very worthwhile commission.

Thank you for this opportunity to testify.

## Alcohol Workgroup Options

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# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB232-LAW-CJL-4-10-07  
 Bill Version: HB 232  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to alcohol sale, purchase and RDU Criminal  
distribution Component Criminal Justice Litigation  
 Sponsor REPRESENTATIVE(s) MEYER  
 Requester HOUSE CRA 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 amend current statute to further regulate the sale, distribution and shipment of alcohol into damp communities across the state through the creation and use of a statewide database for records of purchase and shipment of alcoholic beverages to persons residing in such communities. It would also authorize the establishment of pilot community distribution sites in Kotzebue and Bethel to be operated by the ABC Board. The bill would also amend provisions of statute addressing the purchase of alcohol.

The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Admin. Services Manager Phone 465-5427  
 Division: Administrative Services Division Date/Time 4/10/07 9:03 AM  
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 4/10/2007  
 Agency: Department of Law

Editor's note: As of R acting under AS 44.62.11; torney relocated former 1 104.647, to reflect Execut ive Order 110 relocat

more than 12 cases of wine, or more than 36 liters of distilled spirits, and of any customer who engages in a regular practice of ordering alcoholic beverages in similarly large quantities;

(2) shall immediately notify the board of any customer who places one or more written orders within a monthly period for, in the aggregate, more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages for shipment to an area that has restricted the sale of alcoholic beverages under AS 04.11.491.

(3) repealed 7/19/2000.

(o) If alcoholic beverages are not delivered to the purchaser personally on the licensed premises, title to the alcoholic beverages passes from the licensee to the purchaser at the time the alcoholic beverages are packed and addressed to the purchaser and payment is received, and these actions are sufficient to constitute a sale on the licensed premises.

(p) A package store licensee may not ship alcoholic beverages

- (1) to a person other than the purchaser;
- (2) in response to a telephonic order; or
- (3) by taxi cab.

(q) After written notification to the board by a local option municipality that it has imposed a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4), a package store licensee that sells alcoholic beverages by written solicitation under AS 04.11.150(a) may not ship or deliver alcoholic beverages into that municipality until payment for the taxes is collected at the licensed premises in accordance with the ordinances of that municipality. The licensee shall remit the payments of taxes to the municipality for which the tax was collected. (Eff. 11/29/81, Register 80; am 3/31/85, Register 93; am 10/24/87, Register 104; am 7/30/89, Register 111; am 5/1/94, Register 130; am 5/11/96, Register 138; am 9/11/98, Register 147; am 7/19/2000, Register 155; am 8/24/2001, Register 159)

Authority:	AS 04.06.090	AS 04.11.491	AS 04.16.052
	AS 04.06.100	AS 04.11.497	AS 04.16.060
	AS 04.11.010	AS 04.11.503	AS 04.16.125
	AS 04.11.150	AS 04.16.051	AS 04.21.010

Editor's note: As of Register 166 (July 2003), and acting under AS 44.62.125 (b)(6), the regulations attorney relocated former 15 AAC 104.645 to 13 AAC 104.645, to reflect Executive Order 110 (2003). Executive Order 110 relocated the Alcoholic Beverage

Control Board from the Department of Revenue to the Department of Public Safety. The history note for 13 AAC 104.645 carries forward the history from former 15 AAC 104.645.

13 AAC 104.647. Package store license delivery permit. (a) A package store licensee may obtain a non-transferable permit to deliver wine or champagne in a gift basket with a floral arrangement to a cruise ship or hotel under AS 04.11.150(i) by submitting a completed permit application on the form prescribed by the board along with a \$50 application fee. A permit issued under this subsection is valid until there is a transfer of ownership of the package store license, or the permit is voluntarily surrendered by the permittee or revoked by the board. The board may prescribe forms for the required written record of deliveries made under AS 04.11.150(i).

(b) A package store licensee may obtain a non-transferable permit to deliver alcoholic beverages to a wedding or wedding reception or other social event under AS 04.11.150(j) by submitting a completed permit application on the form prescribed by the board along with a \$50 application fee. A permit issued under this subsection is valid until there is a transfer of ownership of the package store license, or the permit is voluntarily surrendered by the permittee or revoked by the board. The board may prescribe forms for the required written record of deliveries made under AS 04.11.150(j). (Eff. 8/24/2001, Register 159)

Authority:	AS 04.06.100	AS 04.16.051	AS 04.16.150
	AS 04.11.150	AS 04.16.060	

13 AAC 104.650. applies to all stockin unit in a guest room

(b) A holder of a t the board for a pern license issued unde refrigerated unit in 04.11.090(g).

(c) A permittee m room only to the pe years of age or olde agent, or the perm: refrigerated unit in t

(d) A permittee n containers from a re

(1) distilled spi ounces;

(2) wine or vinc

(3) beer, ale, or

(e) A permittee, t restock the supply c permittee, agent, or

(1) a drunken p

(2) a person un

(3) illegal gamb

or

(4) the amount refrigerated unit,

(f) A refrigerated unit key or coded ac authorized to have tl access to the refrige access to the guest r

(g) A permittee sl

(1) all employe stocked in the refi

(2) a refrigerate beverage dispensa 04.16.010(a) and (

(3) a refrigerat beverages only by no other person, w alcoholic beverage refrigerated unit;

(4) a permittee beverages require( contained in a re manufacturer of tl ate for sale to a cc

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB232-DPS-ABC-4-12-07  
 Bill Version: HB 232  
 () Publish Date: \_\_\_\_\_

Revision Date/Time CORRECTION: 4/12/2007 9:07 Dept. Affected: Public Safety  
 Title "An Act relating to the sale, distribution, and RDU Statewide Support  
purchase of alcoholic beverages; . . . a state database . . ." Component ABC Board  
 Sponsor Representative Meyer  
 Requester House Community and Regional Affairs Component No. 2690

**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	61.9	61.9	61.9	61.9	61.9	61.9
Travel	7.6	7.6	7.6	7.6	7.6	7.6
Contractual	244.0	49.0	15.0	15.0	15.0	15.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	3.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>317.5</b>	<b>119.5</b>	<b>85.5</b>	<b>85.5</b>	<b>85.5</b>	<b>85.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	317.5	119.5	85.5	85.5	85.5	85.5
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>317.5</b>	<b>119.5</b>	<b>85.5</b>	<b>85.5</b>	<b>85.5</b>	<b>85.5</b>

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	1	1	1	1	1	1
Part-time						
Temporary						

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

This fiscal note reflects the costs of building, maintaining, and monitoring the database set out in Sections 1-3 of the bill. This will include working closely with package stores that sell alcoholic beverages by written order. There is a high first year cost to reflect building the database. The database will then need to be maintained and monitored in subsequent years.

The estimated one-time cost for paying for a contractor to construct the database is \$269,000 over two years (\$235.0 in FY2008, \$34.0 in FY2009). Continuing costs include one new position, a Criminal Justice Technician I, Range 12, to perform data input, liaise with and train package store subscribers to  
 contd. on page 2

Prepared by: Doug Griffin, Executive Director Phone 907-269-0351  
 Division: Alcoholic Beverage Control Board Date/Time 4/12/07 9:07 AM  
 Approved by: Walt Monegan, Commissioner Date 4/12/2007  
 Agency: Department of Public Safety

**FISCAL NOTE**

**STATE OF ALASKA  
2007 LEGISLATIVE SESSION**

**BILL NO. HB 232** \_\_\_\_\_

**ANALYSIS CONTINUATION**

the database, troubleshoot problems with the database, reconcile and audit records contained in the database, provide information to ABC Investigators, Alaska State Troopers, and municipal law enforcement agencies that may use written order records to support criminal investigations, and other duties associated with running this new program within the ABC Board operation. On-going contractual support to maintain the database is estimated at \$6,000 per year.

Section 15 of the bill calls for the creation, by the ABC Board, of alcoholic beverage delivery sites in Bethel and Kotzebue if requested by the respective local governing bodies. At this time, it is not known whether these delivery sites will be requested so they are not reflected in the fiscal note. Creation of these delivery sites will be very expensive. It will require leasing or building large buildings and staffing the delivery sites with state employees or contractors. The Department of Public Safety procurement section is presently assisting in research to see if adequate buildings are available for lease in Kotzebue and Bethel.

# Alaska State Legislature



Rep. Sharon Cissna  
Rep. Nancy Dahlstrom  
Rep. Mark Neuman  
Rep. Kurt Olson  
Rep. Woodie Salmon

State Capitol, Room 124  
Juneau, AK 99801-1182  
Co-Chairs  
Rep. Gabrielle LeDoux  
(907) 465-3882 FAX 465-4956  
Rep. Anna Fairclough  
(907) 465-3777 FAX 465-2819

## COMMUNITY & REGIONAL AFFAIRS COMMITTEE

Date: April 16, 2007

To: House C&RA Members

From: Representative Gabrielle LeDoux, Co-Chair  
Representative Anna Fairclough, Co-Chair

Re: Comments & Questions on HB 232

CC: Members of House Bush Caucus  
Ginny Austerman, Office of Senator Donny Olson  
Mike Pawlowski, Office of Representative Kevin Meyer  
Annie Carpeneti, Department of Law

---

Hello All,

We wanted to be sure that we had a clear understanding of the major issues that came out of our April 12<sup>th</sup> hearing on HB 232 Alcohol Sale/Purchase/Distribution.

1. Database confidentiality. Should Sec. 1 (pp. 1-2) be amended to require that the board purge the statewide database of individual alcohol purchase records every 30-60 days to ensure that people's privacy is protected?
2. Possession of common household ingredients. Should Sec. 10 ( p. 5) be amended to read: (1) "may not possess quantities of sugar, artificial sugar, malt or yeast **that exceeds the amount for personal use in one year** with the intent to use the material or equipment to create an alcoholic beverage;" or (2) "may not possess quantities of sugar, artificial sugar, malt, yeast or any other material **and** [OR] equipment with the intent to use the material or equipment to create an alcoholic beverage," indicating that the equipment and the materials must both be present?

3. Local control for the time frame of the election. Should Sec. 8 (p. 5) be amended to allow the community to determine the period of time before an election on the local option?

If any of you have additional concerns that we have not discussed in committee, please contact Sonya (2487) in Representative LeDoux 's office before the next hearing on this bill, scheduled for Tuesday, April 24.

**Sonya Hymer**

---

**From:** Sonya Hymer  
**Sent:** Thursday, April 12, 2007 10:56 AM  
**Subject:** A new bill on bootlegging  
**Attachments:** HB232-DPS-ABC-4-12-07.pdf; SECTIONAL FOR RURAL JUSTICE SENATE VERSION.pdf; Sponsor Statement HB 232.pdf

Dear Community Leaders,

Gabrielle asked me to write to you regarding HB 232, which we heard this morning in the House Community & Regional Affairs Committee (CRA). The bill would clamp down harder on bootlegging in rural areas. This bill will be heard again two weeks from now. Please forward this email to anyone who might be interested. Also, please write to me or call with your comments. Here is a link to the bill and its hearing schedule: [http://www.legis.state.ak.us/basis/get\\_complete\\_bill.asp?session=25&bill=HB232](http://www.legis.state.ak.us/basis/get_complete_bill.asp?session=25&bill=HB232). I have attached a few relevant documents: a sponsor statement and sectional analysis of the bill, both written by the bill's sponsor, and a fiscal note from the Department of Public Safety.

Best regards,  
Sonya

Sonya Hymer, Legislative Aide  
Representative Gabrielle LeDoux  
State Capitol  
District 36  
phone: (907) 465-2487  
fax: (907) 465-4956

**Sonya Hymer**

---

**From:** Sonya Hymer  
**Sent:** Monday, April 16, 2007 3:44 PM  
**To:** Rep. Bryce Edgmon; Rep. Richard Foster; Rep. John Harris; Rep. Kyle Johansen; Rep. Reggie Joule; Rep. Gabrielle LeDoux; Rep. Mary Nelson; Rep. Woodie Salmon; Rep. Bill Thomas; Rep. Peggy Wilson  
**Cc:** Ginny Austerman; Rep. Anna Fairclough; Mike Pawlowski; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Nancy Dahlstrom; Rep. Sharon Cissna  
**Subject:** HB 232 Alcohol Sale/ Purchase/ Distribution  
**Attachments:** HB 232 - Amendment.SH.doc

To the House Bush Caucus:

Your comments are sought by the House CRA Committee on House Bill 232, which affects alcohol sale, purchase, and distribution. During the first hearing on this bill last week, members of the CRA Committee expressed concern over this bill's effect in rural communities. The CRA would like to invite all members of the House Bush Caucus to participate in the next CRA hearing on HB 232, scheduled for Tuesday, April 24, at 8 a.m. in Room 124. Attached is a memo to House CRA members summarizing their discussion at the last hearing. Please get in touch with me (2487) if I can provide you with further information.

Best regards,  
Sonya

Sonya Hymer, Legislative Aide  
Representative Gabrielle LeDoux  
State Capitol  
District 36  
phone: (907) 465-2487  
fax: (907) 465-4956

4/18/2007

25-LS0831\C  
Bullard  
5/4/07

**CS FOR HOUSE BILL NO. 232(CRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES MEYER, Salmon**

**A BILL**

**FOR AN ACT ENTITLED**

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain purchases of alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

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

\* **Section 1.** AS 04.06 is amended by adding a new section to read:

**Sec. 04.06.095. Statewide database.** The board, after consulting with package store licensees, shall create and maintain a statewide database that contains a monthly record of the alcohol purchases by, and shipments made to, a person who resides in a municipality or established village that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2). Except as otherwise specifically provided in this section, the information contained in the database is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.220. Information in the database is available only to

1 (1) a package store licensee, agent, or employee to consult before  
2 shipping alcohol to a purchaser in a restricted area as provided in AS 04.11.150(g);

3 (2) a law enforcement officer;

4 (3) a probation or parole officer; and

5 (4) the board.

6 \* Sec. 2. AS 04.11.150(g) is amended to read:

7 (g) If a shipmen. is to an area that has restricted the sale of alcoholic  
8 beverages under AS 4.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
9 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half  
10 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt  
11 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt  
12 beverages if the municipality or established village has adopted the lower amount by  
13 local option under AS 04.11.491(g). Before shipping alcohol to a purchaser in a  
14 restricted area, a package store licensee, agent, or employee shall consult the  
15 database maintained by the board under AS 04.06.095 for any alcoholic beverage  
16 shipments made to the purchaser during that calendar month by a package store  
17 licensee, agent, or employee. A package store licensee, agent, or employee may  
18 not ship an amount of alcoholic beverages to a purchaser in a restricted area  
19 that, when added to the amount already shipped exceeds the amount authorized  
20 by this subsection. A package store licensee, agent, or employee shall immediately  
21 enter into the database the date and the amount of alcoholic beverages shipped to  
22 the purchaser.

23 \* Sec. 3. AS 04.11.150(h) is amended to read:

24 (h) A package store licensee, agent, or employee may not

25 (1) divide or combine shipments of alcoholic beverages so as to  
26 circumvent the limitation imposed under (g) of this section; or

27 (2) in response to a written order, ship alcohol to a purchaser at an  
28 address other than the address where the purchaser resides or, if the purchaser  
29 resides in a municipality or established village that has adopted a local option  
30 under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2) for which a community  
31 delivery site has been designated under AS 04.11.491(f), to an address other than

that community delivery site except as provided by AS 04.11.491(f)(1) and (2).

\* Sec. 4. AS 04.11.499 is amended to read:

**Sec. 04.11.499. Prohibition of importation after election.** If a majority of the voters vote to prohibit the importation of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense the sacramental wine. [IN THIS SECTION,

(1) "BRING" MEANS TO CARRY OR CONVEY OR TO ATTEMPT OR SOLICIT TO CARRY OR CONVEY;

(2) "SEND" MEANS TO CAUSE TO BE TAKEN OR DISTRIBUTED OR TO ATTEMPT OR SOLICIT TO CAUSE TO BE TAKEN OR DISTRIBUTED, AND INCLUDES USE OF THE UNITED STATES POSTAL SERVICE;

(3) "TRANSPORT" MEANS TO SHIP BY ANY METHOD, AND INCLUDES DELIVERING OR TRANSFERRING OR ATTEMPTING OR SOLICITING TO DELIVER OR TRANSFER AN ALCOHOLIC BEVERAGE TO BE SHIPPED TO, DELIVERED TO, OR LEFT OR HELD FOR PICK UP BY ANY PERSON.]

\* Sec. 5. AS 04.11.499 is amended by adding new subsections to read:

(b) A person who resides in a municipality or established village that has adopted a local option under AS 04.11.491(a) or (b) may not purchase alcohol from another person who has sent, transported, or brought an alcoholic beverage into the municipality or established village in violation of the local option.

(c) In this section,

(1) "bring" means to carry or convey or to attempt or solicit to carry or convey;

1 (2) "send" means to cause to be taken or distributed or to attempt or  
 2 solicit to cause to be taken or distributed, and includes use of the United States Postal  
 3 Service;

4 (3) "transport" means to ship by any method, and includes delivering  
 5 or transferring or attempting or soliciting to deliver or transfer an alcoholic beverage  
 6 to be shipped to, delivered to, or left or held for pickup by any person.

7 \* Sec. 6. AS 04.11.507(f) is amended to read:

8 (f) Notwithstanding any other provisions of law, an election under (b) or (c) of  
 9 this section to remove a local option or to change to a less restrictive option than the  
 10 local option previously adopted under AS 04.11.491 may not be conducted during the  
 11 first 24 [12] months after the local option was adopted or more than once in a 36-  
 12 month [AN 18-MONTH] period.

13 \* Sec. 7. AS 04.16.020 is amended by adding a new subsection to read:

14 (c) A person may not purchase alcohol by written order on behalf of another  
 15 person who resides in a municipality or established village that has adopted a local  
 16 option under AS 04.11.491(a)(5) or (b)(4).

17 \* Sec. 8. AS 04.16 is amended by adding a new section to read:

18 **Sec. 04.16.035. Possession of ingredients for homebrew in certain areas.** A  
 19 person residing in an area that has adopted a local option to prohibit the sale,  
 20 importation, and possession of alcoholic beverages under AS 04.11.491(a)(5) or (b)(4)  
 21 may not possess sugar, artificial sugar, malt, yeast, or any other material or equipment  
 22 with the intent to use the material or equipment to create an alcoholic beverage.

23 \* Sec. 9. AS 04.16.250(e) is amended to read:

24 (e) A person who sends, transports, or brings alcoholic beverages into a  
 25 municipality or established village in violation of AS 04.11.499(a) [AS 04.11.499] is,  
 26 upon conviction,

27 (1) guilty of a class A misdemeanor if the quantity of alcoholic  
 28 beverages is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12  
 29 gallons of malt beverages; or

30 (2) guilty of a class C felony if the quantity of alcoholic beverages is  
 31 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12

1 gallons or more of malt beverages.

2 \* **Sec. 10.** AS 04.16.200 is amended by adding a new subsection to read:

3 (f) A person who purchases alcohol in violation of AS 04.11.499(b) is guilty  
4 of a class A misdemeanor.

5 \* **Sec. 11.** AS 04.16.220(a) is amended to read:

6 (a) The following are subject to forfeiture:

7 (1) alcoholic beverages manufactured, sold, offered for sale, possessed  
8 for sale, or bartered or exchanged for goods and services in this state in violation of  
9 AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or otherwise  
10 stored in violation of AS 04.21.060; alcoholic beverages sold or offered for sale in  
11 violation of a local option adopted under AS 04.11.491; alcoholic beverages  
12 transported into the state and sold to persons not licensed under this chapter in  
13 violation of AS 04.16.170(b); alcoholic beverages transported in violation of  
14 AS 04.16.125;

15 (2) materials and equipment used in the manufacture, sale, offering for  
16 sale, possession for sale, or barter or exchange of alcoholic beverages for goods and  
17 services in this state in violation of AS 04.11.010; materials and equipment used in the  
18 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
19 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
20 in an area in violation of a local option adopted under AS 04.11.491;

21 (3) aircraft, vehicles, or vessels used to transport or facilitate the  
22 transportation of

23 (A) alcoholic beverages manufactured, sold, offered for sale,  
24 possessed for sale, or bartered or exchanged for goods and services in this state  
25 in violation of AS 04.11.010;

26 (B) property stocked, warehoused, or otherwise stored in  
27 violation of AS 04.21.060;

28 (C) alcoholic beverages imported into a municipality or  
29 established village in violation of AS 04.11.499(a) [AS 04.11.499];

30 (4) alcoholic beverages found on licensed premises that do not bear  
31 federal excise stamps if excise stamps are required under federal law;

1 (5) alcoholic beverages, materials, or equipment used in violation of  
2 AS 04.16.175;

3 (6) money, securities, negotiable instruments, or other things of value  
4 used in financial transactions or items of value purchased from the proceeds derived  
5 from activity prohibited under AS 04.11.010 or in violation of a local option adopted  
6 under AS 04.11.491;

7 (7) a firearm used in furtherance of a violation of this title.

8 \* **Sec. 12.** AS 04.16.220(i) is amended to read:

9 (i) Upon conviction for a violation of AS 04.11.010 or 04.11.499(a)  
10 [04.11.499], if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of  
11 this section, the court shall, subject to remission to innocent parties under this section,

12 (1) order the forfeiture of an aircraft to the state;

13 (2) order the forfeiture of a vehicle or watercraft if

14 (A) the defendant has a prior felony conviction for a violation  
15 of AS 11.41 or a similar law in another jurisdiction;

16 (B) the defendant is on felony probation or parole;

17 (C) the defendant has a prior conviction for violating  
18 AS 04.11.010 or 04.11.499(a) [04.11.499]; or

19 (D) the quantity of alcohol transported in violation of this title  
20 was twice the presumptive amounts in AS 04.11.010(c).

21 \* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 **ALCOHOLIC BEVERAGE DELIVERY SITE PILOT PROJECT.** (a) The Alcoholic  
24 Beverage Control Board established by AS 04.06.10 shall, if requested by the local  
25 governing body of Bethel, establish a site in Bethel and, if requested by the local governing  
26 body of Kotzebue, establish a site in Kotzebue for delivery of alcoholic beverages. The  
27 delivery sites shall be operated as sites designated under AS 04.11.491(f) are operated. Each  
28 site shall, if established, begin operation on July 1, 2008, and shall continue in operation as  
29 long as a local option under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2) is in effect in each  
30 community. However, each site shall stop operation on June 30, 2011, regardless of whether a  
31 local option is in effect in each community on that date.

1 (b) The delivery site established in Bethel under (a) of this section shall serve as the  
2 delivery site under AS 04.11.494 for Bethel and shall be established after consultation with  
3 public, private, and nonprofit agencies in Bethel.

4 (c) The delivery site established in Kotzebue under (a) of this section shall serve as  
5 the delivery site under AS 04.11.494 for Kotzebue and shall be established after consultation  
6 with public, private, and nonprofit agencies in Kotzebue.

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

9 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the  
10 heading of AS 04.11.499 from "Prohibition of importation after election" to "Prohibition of  
11 importation or purchase after election."

12 \* **Sec. 15.** Section 13 of this Act is repealed.

13 \* **Sec. 16.** Section 2 of this Act takes effect July 1, 2008.

14 \* **Sec. 17.** Section 15 of this Act takes effect June 30, 2011.

15 \* **Sec. 18.** Except as provided in secs. 16 and 17 of this Act, this Act takes effect  
16 immediately under AS 01.10.070(c).



# Alaska State Legislature

Please enter into the record my testimony to the ALC HOUSE COMMUNITY AND REGIONAL AFFAIRS committee name  
 committee on HB 232 / SEC. 5 (N) dated 4/26/07  
 bill/subject

HELLO LEGISLATURE'S

I AM CONTACTING YOU AS A OWNER OF A LIQUOR LICENSE. I AM OPPOSED TO THE PROPOSED AMENDMENT THAT WOULD ALLOW THE RELOCATION OF AN EXISTING LICENSE FROM OUTSIDE A CITY INTO A CITY WITHIN THE SAME BOROUGH. WE NOW HAVE AVENUES TO INCREASE THE NUMBERS OF LICENSES IN A CITY IF THE NEED IS PRESENT. AS AN OWNER OF A LICENSE THAT IS LOCATED WITHIN A CITY I SEE NO BENEFIT AND ONLY A DECREASE IN VALUE OF MY LICENSE IF THIS AMENDMENT WERE TO PASS.

Thank-you for your time

*Wade Ball*

Signed:

WADE BALL KODIAK

Testifier

WADE BALL INC. DBA "THE VILLAGE BAR"

Representing (Optional)

408 MARINE WAY KODIAK

Address

486 3412

Phone No.

**Sonya Hymer**

---

**From:** Andy [ynot@gci.net]  
**Sent:** Thursday, April 19, 2007 9:57 AM  
**To:** Rep. Gabrielle LeDoux; Sen. Gary Stevens  
**Subject:** Hb 232/SB128 and Ellis's "plastic garbage bag tax bill"

Hi Gabrielle and Gary:

Here are a couple of bills which need the "no" vote (Please). The data base bill sounds good on paper but is a "no" for several reasons. The bill relates to written orders to liquor stores going to persons in "damp communities"--it provides for a statewide ABC sanctioned data base by individual of liquor orders by month --so that the current maxims (the threshold of purchases which the State allows to customers before a presumption of bootlegging activity occurs) are not exceeded. What the bill presupposes is that the ABC board has the staff available to impliment such a mandate, all retailers (including small mom and pop operations like myself), have computer capability to "immediately access and update such a data base", persons whom this bill is directed at will not just use different family names to purchase this alcohol and thus not exceed these monthly limits, and all communities have online access on a daily basis to determine this information. I think this bill will fall short in most or all of these categories.

One summer I was working in Barrow and what struck me as I landed in this "damp"(at that time) town were the pallets of beers stacked up at the airport. Even to this day, I would imagine that most of the liquor arriving in most of the "problem towns" arrives by airplane. As long as we have the ABC board under the State Troopers and they have a presence in many of these communities -why isn't the effort to discover who the bootleggers are directed at where the product enters the community?. The ABC board /Troopers spend thousands of dollars on stings running underage purchases into our joints--how about directing some of this effort after "unlicensed bootleggers"? I will be looking for a job shortly--give me about eight hours in each town and I will give you a list of bootleggers operating there--this is not rocket science.

Lastly--this bill is a huge intrusion into people's right to privacy. This is Big Brother tactics.

Second bill is Ellis's "\$. 15 a plastic garbage bag tax"--(to cut down on landfill) costs. Sounds good- bad idea--you are just adding another \$65.00 to a box of plastic bags which gets added to the cost of your groceries. I think what we need is some Public Education on what is filling up our landfills. My experience tells me that it is cardboard and other wood products. Do you know that Kodiak does not burn its cardboard or scrap lumber any more because they do not have a burn pile area?. I would be more in favor on requiring combustibile materials (which do not give off extreme amounts of airborne pollution) to be burned. Waste disposal is a problem which all communities are grappling with. There probably is something that the State of Alaska could do to help solve these problems---like apply for some CleanAir waivers-(if appropriate) Ellis' bill is "garbage". It deserves a "no vote", please!

Sincerely yours,

Andy Lundquist

**Sonya Hymer**

---

**From:** Andy [ynot@gci.net]  
**Sent:** Thursday, May 03, 2007 10:31 AM  
**To:** Rep. Gabrielle LeDoux  
**Subject:** Fw: HB 232/ SB128

Hi Gabrielle,

I know you folks are really busy. Hope you have a second to read this. The "license transfer" part of this bill is even more objectionable to me than the data base part.

Sincerely yours,  
Andy Lundquist

----- Original Message -----

**From:** Andy  
**To:** Sen. Gary Stevens  
**Sent:** Thursday, May 03, 2007 10:27 AM  
**Subject:** HB 232/ SB128

Previously I wrote to you concerning these bills. There is another facet of these bills which is more objectionable than the "big brother" data base and that is the liquor license transfer change. Current law distinguishes between "city licenses" and "borough licenses". Under this law --(with some caveates)--"borough licenses" could become "City licenses" if both local governments agree..

What this law would do is dump the economics of liquor license values on its head--many people have purchases City licenses at prices which vastly exceeded those in the Borough--by changing this law this way--those people will suffer great economic hardship if this bill passes. The growth in the Mat-Su valley is driving this bill--lets not let this unique Mat-Su situation destroy the economics of the liquor license value system for the entire State. A no vote is greatly appreciated.

Sincerely,  
Andy Lundquist

**HB**

**243**

During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4833  
Fax (907) 465-4586  
1-800-782-4833

Representative\_Reggie\_Joule@legis.state.ak.us



During Interim:  
P.O. Box 673  
Kotzebue, Alaska 99752  
(907) 442-3880  
Fax (907) 442-3022

**Alaska State Legislature**  
**REPRESENTATIVE REGGIE JOULE**

Date: March 10, 2008

To: Representative Anna Fairclough, Co-Chair Community and Regional Affairs  
Representative Gabrielle LeDoux, Co-Chair Community and Regional Affairs

From: Representative Joule *RJ*

Re: Request for Hearing

I would like to formally request a hearing on CS HB 234, "An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board." I have attached the committee substitute, sponsor statement, fiscal note, sectional analysis, and some other pertinent information. If possible we would appreciate a hearing in March. If you have any questions or concerns, please contact our office. I appreciate your consideration of this request.

During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4833  
Fax (907) 465-4586  
1-800-782-4833

Representative Reggie\_Joule@legis.state.ak.us



During Interim:  
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**Alaska State Legislature**  
**REPRESENTATIVE REGGIE JOULE**

**Sponsor Statement**

**CS HB 234 ( ) Coastal Management Plan**

**"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board"**

CS HB 234 is an effort to improve the partnership between the State of Alaska and coastal communities under the Coastal Zone Management Program. This legislation will give coastal districts a seat at the table in the review of proposed state and federal resource development actions. An effective review process that accounts for local concerns will encourage local support for important responsible development projects in our coastal communities.

The bill focuses on three primary areas:

- 1) It provides clarification that districts may develop meaningful policies.
- 2) It establishes a Coastal Policy Board made up of resource agencies and coastal districts to agree on policy issues, approve regulations, and district management plans.
- 3) It brings water and air quality concerns of the Department of Environmental Conservation back to the table during consistency reviews.

This bill attempts to correct problems brought about by the enactment of HB 191. I support responsible development of our coastal resources. I believe that this can best and most expeditiously be accomplished through restoring some meaningful involvement of coastal communities in development decisions that directly affect them.

**CS House Bill 234 Coastal Management  
Sectional Analysis**

- Sec. 1:** Establishes the Alaska Coastal Policy Board which will be composed of four coastal district members and the commissioners of natural resources, fish and game and environmental conservation; and outlines provisions for administrative support to assist the Board.
- Sec. 2:** Provides authority for the Department of Natural Resources to adopt regulations for the Alaska Coastal Management Program (ACMP) that have been approved by the Board.
- Sec. 3:** Establishes powers for the Board including the ability to take reasonable action to carry out provisions of AS 46.39 (Coastal Management Administration) and AS 46.40 (The Alaska Coastal Management Program). The Department retains the authority to issue "consistency determinations" regarding consistency of projects with the ACMP statewide standards and coastal district enforceable policies.
- Sec. 4:** Establishes duties of the Board.
- Sec. 5:** Makes the Board subject to the Administrative Procedures Act in AS 46.39.900.
- Sec. 6:** Establishes authority for the Board to approve ACMP program changes and to evaluate the effectiveness of district plans.
- Sec. 7:** Adds "subsistence" to the list of values included in the ACMP objectives.
- Sec. 8:** Makes a conforming amendment requiring approval of ACMP regulations adopted by the Department and exclusion of the Department of Environmental Conservation (DEC) from the ACMP. Deleted language relating to the duties of the Board has been moved to Section 10.
- Sec. 9:** Retains DEC's authority for determining consistency of matters it regulates. Requires public notice for DEC consistency findings for projects located on federal lands and waters when there are no DEC authorizations.
- Sec. 10:** Moves language deleted from AS 46.40.040(a) to a new section outlining responsibilities of the Board. Subsection (d) clarifies that aspects of air and water discharges not covered by DEC laws or regulations may be reviewed for consistency with the statewide standards and district enforceable policies. DEC retains authority to determine a project's consistency with its laws.
- Sec. 11:** Establishes authority for the Board to approve coastal district plans that are required to be submitted every 10 years, as well as outlining criteria for new coastal district management plans.
- Sec. 12:** Establishes authority for the Board to approve coastal district plans if it finds the plans meet the district plan criteria. Establishes the Board's role in mediation of decisions on the approval of district plans.
- Sec. 13:** Outlines requirements for Board approval of district plans. Amends three criteria for approval of enforceable policies to clarify what policies may address.
- Sec. 14:** Clarifies legislative intent of Chapter 24 SLA 03 (HB 191) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.
- Secs. 15, 16 and 17:** Make conforming amendments regarding approval of ACMP regulations by the Board.
- Sec. 18:** Makes a conforming amendment regarding approval of ACMP regulations by the Board and replaces the term "subsequent review" with the commonly used term "elevation." Requires concurrence of resource agencies for resolutions of elevations of a proposed consistency determination.

- Sec. 19:** Clarifies that the aspect of an activity covered by a general or nationwide permit is removed from the scope of an ACMP consistency review while allowing individual review of aspects of an activity not covered by the general or nationwide permit. Eliminates exemption of air and water quality permits from the coordinated ACMP review process.
- Sec. 20:** Makes a conforming amendment regarding Board approval of coastal district plans.
- Sec. 21:** Clarifies that the ACMP regulations shall address activities on federal waters and that seismic surveys in federal Outer Continental Shelf Waters are subject to ACMP reviews.
- Sec. 22:** Makes a conforming amendment regarding approval of ACMP regulations by the Board, including regulations listing which authorizations trigger a consistency review and the list of activities that are categorically or generally consistent (i.e., activities that do not require an individual ACMP review).
- Sec. 23:** Exempts federal activities and federally-permitted activities from the 90-day review schedule. This exemption allows extension of reviews for projects with federal approvals which tend to be more complex reviews. Requires suspension of the 90-day time frame when an applicant is required to provide additional information.
- Sec. 24:** Establishes the Board's role in reviewing a petition regarding non-implementation of a coastal district program.
- Sec. 25, 27 and 28:** Make conforming amendments to Board action on a petition. [See Sec. 24]
- Sec. 26:** Clarifies that Board orders are subject to enforcement by superior courts.
- Sec. 29:** Makes a conforming amendment to Board approval of district plans including areas meriting special attention.
- Sec. 30:** Makes a conforming amendment to the definition of "coastal zone" regarding Board's role in approving coastal boundary changes.
- Sec. 31:** Makes a conforming amendment to the definition of "district coastal management plan" regarding Board's role in approving district plans.
- Sec. 32:** Makes a conforming amendment to the definition of "enforceable policy" regarding Board's role in approving policies included in district plans.
- Sec. 33:** Defines "Board" in the definitions section.
- Sec. 34:** Repeals AS 46.40.096(i) because the DEC authorizations are no longer removed from the consistency review process.