

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 5, 2003

8:43 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Pete Kott
Representative Ralph Samuels
Representative Ethan Berkowitz
Representative David Guttenberg

MEMBERS ABSENT

Representative Cheryll Heinze

OTHER LEGISLATORS PRESENT

Senator Ben Stevens
Senator Gary Stevens

COMMITTEE CALENDAR

HOUSE BILL NO. 90

"An Act relating to a salmon product development tax credit under the Alaska fisheries business tax and the Alaska fisheries resource landing tax; and providing for an effective date."

- MOVED CSHB 90(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 104

"An Act relating to payment of the fisheries business tax and to security for collection of the fisheries business tax."

- MOVED CSHB 104(FSH) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 90

SHORT TITLE:TAX CREDIT FOR SALMON DEVELOPMENT

SPONSOR(S): REPRESENTATIVE(S)STEVENS

Jrn-Date	Jrn-Page		Action
02/10/03	0170	(H)	READ THE FIRST TIME - REFERRALS

02/10/03	0170	(H)	FSH, RES, FIN
02/12/03	0203	(H)	COSPONSOR(S): WOLF
02/26/03		(H)	FSH AT 8:30 AM CAPITOL 124
02/26/03		(H)	Heard & Held MINUTE(FSH)
03/05/03		(H)	FSH AT 8:30 AM CAPITOL 124

BILL: HB 104

SHORT TITLE: PAYMENT OF FISHERY BUSINESS TAX

SPONSOR(S): REPRESENTATIVE(S) STEVENS

Jrn-Date	Jrn-Page		Action
02/14/03	0215	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0215	(H)	FSH, RES, FIN
03/05/03		(H)	FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

SENATOR BEN STEVENS

Alaska State Legislature;

Chair, Joint Legislative Salmon Industry Task Force

Juneau, Alaska

POSITION STATEMENT: Presented sponsor statement for HB 90.

SENATOR GARY STEVENS

Alaska State Legislature;

Joint Legislative Salmon Industry Task Force

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the Joint Legislative Salmon Industry Task Force on HB 90; presented sponsor statement for HB 104.

CHUCK HARLAMERT, Juneau Section Chief

Tax Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Provided technical guidance regarding HB 90.

CHRIS GARCIA, Fisherman

Cook Inlet Fishermen's Fund

Kenai, Alaska

POSITION STATEMENT: Testified on HB 90, offering suggestions; testified in support of HB 104 and clarified concerns.

CHERYL SUTTON, Staff

to the Joint Legislative Salmon Industry Task Force
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions on HB 90.

ACTION NARRATIVE

TAPE 03-12, SIDE A
Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 8:43 a.m. Representatives Seaton, Wilson, Kott, Samuels, and Berkowitz were present at the call to order. Representative Guttenberg arrived as the meeting was in progress. Representative Heinze was excused due to illness.

HB 90-TAX CREDIT FOR SALMON DEVELOPMENT

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 90, "An Act relating to a salmon product development tax credit under the Alaska fisheries business tax and the Alaska fisheries resource landing tax; and providing for an effective date." [Before the committee, adopted as a work draft on 2/26/03, was Version D, labeled 23-LS0525\D, Utermohle, 2/25/03.]

Number 0168

SENATOR BEN STEVENS, Alaska State Legislature; Chair, Joint Legislative Salmon Industry Task Force ("Task Force"), as sponsor of HB 90, said the Task Force thinks the bill is one of the highest priorities that could be adopted by the legislature. He said the intent of HB 90 is to entice investment into the processing sector of the industry and to make changes in terms of what products are being produced. In light of the broad issues being faced by the industry, the package of bills put forth by the Task Force could have an impact on the 2003 harvest and production cycle. He commented that not every sector of seafood business is losing money - groundfish, crab, and halibut make money. A prudent investment scenario would be that an individual or company would invest money where there was money to be made; investments are not in salmon because there is an opportunity to make money in other areas. This bill is designed to encourage investors in the seafood business to invest their money in the salmon business.

SENATOR BEN STEVENS referred to the fiscal note and said that the assumptions of changes in revenue are assumptions that people will be enticed to make investments and he asked, "What is going to be the change in revenues if we don't have them make investments?" He mentioned that there are plants in Southeast Alaska and all around the state that are not even scheduled to open and said this bill addresses an integral part of getting investments into industry so that plants will open, retooling will get done, new products will be made, and as an ultimate goal, the ex-vessel value will be raised.

Number 0495

SENATOR GARY STEVENS, Alaska State Legislature; Joint Legislative Salmon Industry Task Force, said he was in agreement with Senator Ben Stevens' testimony.

SENATOR BEN STEVENS urged the committee to pass the bill, and commented that the legislature is the policymaking body, the finance committee is the policymaking body with regard to revenue, and the departments implement what the legislature chooses to enact.

Number 0626

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, testified that he was available to provide technical guidance. He noted that his comments were intended to be regarded as recommendations rather than as a position on policy. He said the changes in revenue refer only to outgoing revenue and do not account for potential increases resulting from additional salmon processing in the state. Mr. Harlamert reviewed technical comments pertaining to the fiscal note. He said his basic comment [from the meeting of 2/26/03] was the need for clarification as to whether the "taxpayer" refers to the legal entity or to the facility.

MR. HARLAMERT said he thought it was the intent of the drafters to refer to the legal entity so that a taxpayer who makes an investment in one facility can use the credit generated from that investment to offset tax liability from another facility. This advantage allows for building credit into business plans more effectively; leverages the impact of the credit; and also maximizes the benefit generated from credit, if that credit is good and well designed. Conversely, if there have been mistakes with the credit, this will also leverage problems with the credit. He said that when a taxpayer is allowed to offset

liability from any facility, the impact of the credit is maximized.

Number 0898

MR. HARLAMERT continued with comments pertaining to Sec. 43.75.035(c) [Section 1 of the bill], which provides a mechanism for providing partial credit to investments in vessels that process fish within or outside of Alaska. It was previously brought up in committee [House Special Committee on Fisheries meeting of 2/26/03] that the provision needs a basis for making that determination. A decision needs to be made whether it is a raw rate, which will favor fisheries that are low-value in Alaska relative to salmon processing outside of Alaska, or is a ratio based on the value of fish being processed within and outside of Alaska, which would favor high-value fisheries that are conducted in Alaska.

MR. HARLAMERT said this was a simple choice and he didn't know how big of an impact this decision would have. Another comment made in the meeting of 2/26/03 was that the carryover of credit should be designated as using a first-in, first-out basis, so that taxpayers who continue to generate credit for all three periods don't fall prey to losing credit; that is, a taxpayer who continues to generate credit for all three periods and is still limited in liability to 50 percent of taxed salmon won't have credits expiring. The department suggests that the first credits be used first, before other credits.

MR. HARLAMERT commented on [Sec. 43.75.035(f)], saying this provision denies the credit when the taxpayer is delinquent on [certain taxes, including those] under Title 43. For this provision to be effective, it should be "beefed up" and dealt with more completely, or else dropped. As it reads now, the taxpayer merely needs to be paid up for one day per year and could be delinquent during the rest of the year and could still get the credit.

Number 1085

MR. HARLAMERT continued that "the meat" of the department's comments pertain to Sec 43.75.035(g), in which the definition in that subsection defines what the credit will amount to in the end. He said the existing bill credits only new property and doesn't allow credit for used property. He said this has the advantage of avoiding entirely tax-motivated transactions. He pointed out that if a credit is worth 50 percent of the cost,

there is a lot of incentive to misbehave, which puts the state at risk of not getting deserved money. He said there are perfectly legitimate investments pertaining to used property, and the committee might consider how to make the credit more effective, allowing for both new and used property that is used for the first time in Alaska - a credit for bringing this investment into the state, whether it is new or used.

Number 1190

SENATOR BEN STEVENS asked, if new or used property were allowed, how it would be determined that the property was "first time to Alaska."

MR. HARLAMERT replied that could be done by reviewing the documentation and finding the "to-from shift," which was a standard compliance activity.

Number 1242

SENATOR BEN STEVENS commented that it was the intent of the Task Force to include only new equipment. He stated that the intent was to encourage or to entice "new investment in new equipment for new products, not new investment for old equipment for the same products."

REPRESENTATIVE BERKOWITZ agreed with Senator Ben Stevens, and referenced post-World War II Japan, when there was no infrastructure and the country was rebuilt with totally new equipment, resulting in a modernized economy in a short period of time. He contrasted this with Russia, where old equipment was imported and stolen from Europe, resulting in a bogged-down economy. He said the idea of HB 90 was to encourage new capital, so the focus should be on new equipment. Representative Berkowitz asked for a calculation of the dollar difference in subsection (c) between basing the numerator and the denominator on the weight of raw salmon as opposed to value.

MR. HARLAMERT replied that he could provide a ratio of weight to value of salmon on floating processors throughout the state.

Number 1405

CHAIR SEATON suggested that the financial aspects of the bill could be handled by the House Finance Committee, unless this committee had any particular reasons for getting into those details.

MR. HARLAMERT testified that [Sec. 43.75.035(g)(3)] contained big problems with the definition of "qualified investments." He said that too much was being packed into a single paragraph. He referred to "qualified investment" on page 2, line 20, as being the largest technical problem, potentially contributing to unpredictable results that are not the intent of the bill. He said the definition requires that depreciable property be used predominately for value-added salmon products, without defining "value-added" or "salmon products", which is followed by a list of possible candidates - a threshold list, not an all-inclusive list - of what processes and equipment qualify for the credit.

MR. HARLAMERT said the single largest problem is that there is no benchmark; "value-added" has not been defined and there is not a qualifying, compatible definition of "salmon product." As the bill is written, it's feasible to apply for the credit by off-loading any kind of machine at the end of a season and running a single salmon through the machine. He said he understood the intent of this bill as not including headed-and-gutted products or products shipped outside to be further processed outside of the state. However, the way the bill is written, that goal is not accomplished. He reiterated the desire that definitions for "value-added" and "salmon products" be constructed and clarified.

Number 1772

SENATOR GARY STEVENS, speaking as a member of the Task Force, said the purpose of bill is to encourage new investment; it is a credit for an investment - for something purchased. He questioned why anyone would intentionally bring up equipment while having no intention of using it just to get an investment credit on it.

MR. HARLAMERT responded that it was unlikely that those things would be done just for the credit, but that by circumstance, those behaviors would occur, and would result in qualifying for the credit. For example, upgrading a heading-gutting-freezing operation could qualify for the credit, even if it wasn't done solely because of the credit. Under existing federal tax rules, with appreciation, in some cases the tax laws would almost cover the entire cost.

MR. HARLAMERT said the department's second serious technical suggestion was that without a "claw-back" [recapture] provision, qualifying for the credit could occur even if the property was

never, in essence, used in Alaska. For example, property could be diverted on its way to Asia; if that property was in Alaska for just one day and one salmon was run through it, one could still qualify for the credit.

SENATOR GARY STEVENS said there was no intention of encouraging misbehavior and that perhaps the finance committee could deal with this issue.

Number 2000

CHAIR SEATON said his problem was more with the definition of "value-added salmon products" because the intention was not to imply that a tax credit would be applied if new equipment was going to be used to continue the same operations. He said he understood the department's attempt to clarify "new operations" and the department's need to define "value-added salmon", especially with the wording, "beyond gutting of [the] salmon". He said that there probably needs to be an amendment that says "not including heading and gutting", since the intent is probably not to allow for the bringing in of a new heading machine. He added that he is not sure how to get there regarding "value-added".

Number 2130

MR. HARLAMERT addressed retroactivity. He said a retroactive credit is essentially buying things that have already occurred, and he suggested that the drafters pay attention to the effective date of the credit. He said an advantage of being retroactive is that decisions are not unduly influenced, whereas if the credit was made effective for investment after July 1, a 50 percent credit could influence inappropriate business conduct. One solution would be to adopt an effective date coinciding with some point in the legislative process - a date that would allow time for decisions to be made with relative anonymity.

MR. HARLAMERT said investments made between January 1, 2003, and December 31, 2005, would qualify. He said he was making a comment on the retroactive aspect. Stating that some transactions have already occurred this year, he said it seems odd to allow for credits that have already occurred, adding that it was "just a matter of whether we want to get the most for our money."

CHAIR SEATON noted that said this was separate from the claw-back provision referred to earlier.

MR. HARLAMERT said he was referring to Section 4, the date of retroactivity.

Number 2318

REPRESENTATIVE SAMUELS asked if the department's position was that retroactivity should be eliminated.

MR. HARLAMERT suggested that because a retroactive credit pays for 50 percent of assets that have already been bought, it is more of a subsidy than an incentive. He said this may or may not be the intended use of these funds and that perhaps a more effective use of the available revenues to be credited would be those that are only prospective.

REPRESENTATIVE SAMUELS mentioned that in certain fisheries people would miss the whole upcoming season if the effective date were the end of May. He said that people who are following this legislation are already taking a risk in case the bill doesn't pass.

SENATOR GARY STEVENS said this "hit the nail on the head" and that the intent of setting the date at January 1, 2003, is to have an impact this coming season.

Number 2425

REPRESENTATIVE GUTTENBERG said he doesn't see the retroactive clause as problematic if there is a good definition of "value-added."

REPRESENTATIVE SAMUELS referred to the changes in revenue on the fiscal note. He asked what assumptions were made as far as who would be taking advantage of the credit.

MR. HARLAMERT said it was impossible to say. He said in the last credit, which was a loose and broad credit, a lot more credits were claimed than could be applied against the tax. That credit was limited to 50 percent of a tax on any fish. He said he doesn't remember the exact investment that was not credited because of the 50 percent limitation, but it was substantial. He said a 50 percent credit pays, up front, for half of an asset, but the taxpayer still gets federal and state tax benefits for that investment in terms of depreciation, which

really cuts down the cost of the asset - and "people will pay attention to that." He said he expected that in the third year, "we will essentially max out."

CHAIR SEATON said a 50 percent tax credit is 50 percent of the tax liability, but not 50 percent of the cost of the equipment. The equipment may cost considerably more than the amount of money that is being put in. For example, if a \$100,000 piece of equipment has \$10,000 worth of credit, this does not pay half of the cost of the machinery. However, if the machinery cost \$20,000, applying \$10,000 worth of credit would still be possible. Hopefully, this [legislation] would be successful in stimulating an investment much larger than double the tax credit.

Number 2584

MR. GARCIA referred to "new property" on page 2, line 18, and acknowledged that the trading of property back and forth would need to be prevented, but he was also interested in not discouraging small, new businesses. He suggested the language "property that's never been used for the purpose of this tax credit" as a possible correction. In reference to an earlier comment on equipment being used only once before being shipped to Asia, he offered the language, "the equipment must be installed and kept in service for the entire time of this tax credit." He said he had no problem with the retroactive date being January 1, 2003, adding that if that date were changed, the person who is taking a chance and currently investing for this upcoming season would be penalized. He said January 1, 2003, was reasonable as a retroactive date.

CHAIR SEATON, after ascertaining that there was no further public testimony, said he would like to move the bill out, but a few issues need to be addressed. He said the department's suggestion to further define "value-added" is important, as is the claw-back provision so that people would have to maintain usage of the equipment. He asked if the committee would like to accept those two amendments, in principle.

Number 2733

REPRESENTATIVE WILSON suggested the committee pass the bill out, with the understanding that [the House Finance Committee] look at those two areas and include the Task Force in the process, since the Task Force knows the intent of the legislation.

CHAIR SEATON asked Senator Gary Stevens if tightening up a definition of "value-added" and also having a claw-back provision would be agreeable to the Task Force.

Number 2793

SENATOR GARY STEVENS responded that he hoped further discussion would take place, although he was not ready to endorse a claw-back provision. He said if the committee could send the bill on, without saying it must be a certain way, he would support the finance committee's having that discussion.

REPRESENTATIVE GUTTENBERG asked about the definition of "new property", commenting that somebody might set up a processing plant, buy all used facilities from somebody else, completely retool it, enhance it, have it for 20 years, but wouldn't be eligible for the credit because the property is not new.

SENATOR GARY STEVENS said the intention of the Task Force was not used, but new investment and new equipment; he said he was comfortable with "new investment, new equipment."

REPRESENTATIVE SAMUELS concurred and said that the upside of eliminating "used" outweighs the downside. He said the state's tracking of used equipment would be relatively impossible, whereas when new capital comes in to the state, the purpose is clear.

Number 2931

CHAIR SEATON suggested deleting "beyond gutting of the salmon" and inserting "but not including heading and gutting". He said with regard to a splitting machine that left half of the head on, that is not heading because the head hasn't been removed. He said "that wouldn't exclude that piece from being value-added" because it's not a traditional header. He said he thought the intent was to get away from traditional heading-and-gutting machines, as those aren't what is being called "value-added."

Number 2985

CHERYL SUTTON, Staff to the Joint Legislative Salmon Industry Task Force, Alaska State Legislature, said those items are being addressed and it is not necessary for the committee to labor over the exact wordings, since there is no disagreement. She said she is aware of the intent of the bill and the committee's

intent and is working with Legislative Legal & Research Services.

TAPE 03-12 SIDE B

Number 2962

REPRESENTATIVE WILSON moved to report CSHB 90, Version 23-LS0525\D, Utermohle, 2/25/03, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 90(FSH) was reported from the House Special Committee on Fisheries.

HB 104-PAYMENT OF FISHERY BUSINESS TAX

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 104, "An Act relating to payment of the fisheries business tax and to security for collection of the fisheries business tax."

Number 2906

SENATOR GARY STEVENS, Alaska State Legislature; Joint Legislative Salmon Industry Task Force, sponsor of [HB 104], noted that this is a bill that would help to develop the economy of the fishing industry. He said the bill is geared to attract the small processors and to hopefully expand processing operations in Alaska. He pointed out that the fiscal impacts are minimal. He mentioned that this is an issue of investment and of economic development and is geared toward attracting new business development. He added that all of the penalties that are currently in the law will continue to apply. He said the department [Department of Revenue] has looked at this closely and has indicated that out of some 500 licenses, only about one dozen would opt for this; so this is a small piece that may help small processors. He added that large processors would probably not be interested in paying their taxes on a monthly basis because they would rather keep their money while they can and pay it when they have to.

Number 2836

REPRESENTATIVE KOTT moved to adopt the proposed committee substitute (CS) for HB 104, Version 23-LS0533\H, Utermohle, 3/3/03, for the purposes of discussion. There being no objection, Version H was before the committee.

The committee took a brief at-ease from 9:40 to 9:42 a.m.

SENATOR GARY STEVENS reiterated that big processors probably would not take advantage of this, but the smaller processors operating on the edge, without large amounts of money or property to put up for liens, might take advantage of this option.

CHAIR SEATON asked if this bill mirrored a bill that was passed last year - a bill that allowed people to continue to export fish that wasn't processed within the state.

SENATOR GARY STEVENS confirmed that this was the case.

Number 2750

CHRIS GARCIA, Fisherman, Cook Inlet Fishermen's Fund, said he thought the bill was good but he was confused by a few things. He referred to page 1, line 8, which read "an applicant that does not process a fishery resource in the state may elect to avoid the requirements of (a) and (b) of this section". He asked why an applicant would apply if he/she was not going to process fish.

CHAIR SEATON replied that the language was from a bill which passed last year that allowed people who didn't process fish in the state to use this new provision of bonding and paying by the 15th of the month.

Number 2750

MR. GARCIA said he was definitely not opposed to the bill but questioned the redundancy of line 8 on page 1.

SENATOR GARY STEVENS said that the language, "that does not process a fishery resource in the state", was being deleted.

MR. GARCIA said that solves his question.

Number 2630

REPRESENTATIVE WILSON moved to report CSHB 104, Version 23-LS0533\H, Utermohle, 3/3/03, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 104(FSH) was reported from the House Special Committee on Fisheries.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at approximately 9:48 a.m.