

HOUSE CS FOR CS FOR SENATE BILL NO. 124(FIN) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/8/05

Offered: 5/8/05

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to requirements to obtain and maintain a fisheries business license;**
2 **relating to security required of fish processors and primary fish buyers; and providing**
3 **for an effective date."**

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

5 * **Section 1.** AS 43.75.011 is amended by adding a new subsection to read:

6 (c) Proceedings to suspend or revoke a license under AS 43.75.020(b)(3)(B)
7 are governed by AS 44.62.

8 * **Sec. 2.** AS 43.75.020 is amended to read:

9 **Sec. 43.75.020. Application for license.** (a) Application for a license shall
10 be filed with the department and accompanied by an annual fee of \$25. A separate
11 annual fee is required for each plant specified in the application covered by the
12 license. The application must contain the name of the applicant, the line of business to
13 be licensed, place of business, and other facts that the department prescribes. The
14 applicant shall state that the applicant, **as a condition of obtaining and maintaining**

1 the license, agrees to pay

2 (1) the taxes levied under this title [TAX IMPOSED BY
3 AS 43.75.015 OR 43.75.100], and that the applicant will make a return and pay
4 the taxes [TAX] at the time provided by law;

5 (2) any seafood marketing assessment levied under AS 16.51;

6 (3) contributions imposed under AS 23.20 (Alaska Employment
7 Security Act);

8 (4) any administrative penalties assessed under AS 18.60.093 for a
9 violation of a provision of AS 18.60.010 - 18.60.105; and

10 (5) any applicable fishery sales, use, or severance taxes imposed by
11 a municipality in the state.

12 (b) Upon receipt of an [THE] application in proper form under (a) or (c) of
13 this section, accompanied by the annual fee, the department shall issue the license if
14 the

15 (1) applicant has paid in full, including interest and penalties, the
16 following:

17 (A) taxes levied under this title; and

18 (B) any assessments under AS 16.51;

19 (2) department has not received notification from the Department
20 of Labor and Workforce Development that the applicant has failed to pay in full

21 (A) an assessment of delinquent contributions that is final
22 under AS 23.20.205(c) or 23.20.220(c); or

23 (B) an administrative penalty that is final under
24 AS 18.60.093 or 18.60.097; and

25 (3) department has not received a copy of

26 (A) a final judgment obtained against the applicant for
27 unpaid fishery sales, use, or severance taxes imposed by a municipality in
28 the state; or

29 (B) a final administrative determination against the
30 applicant from a municipality in the state for unpaid fishery sales, use, or
31 severance taxes imposed by the municipality; the administrative

1 **determination must be accompanied by a certification by the municipality**
 2 **that the municipal administrative process is consistent with constitutional**
 3 **requirements of due process and that the applicant has exhausted all**
 4 **administrative remedies under the applicable municipal administrative**
 5 **process.**

6 (c) Instead of a license issued under (a) of this section, the department may
 7 issue a direct marketing fisheries business license to a licensed commercial fisherman
 8 who processes fishery resources caught using a vessel that does not exceed 65 feet in
 9 overall length and is owned or leased by the commercial fisherman. The licensee may
 10 place into commerce in the state and outside of the state processed or unprocessed
 11 fishery resources caught using the vessel described in the license. Fishery resources
 12 that are caught using the vessel and owned by the licensee from the time of harvest
 13 through sale, as defined by the department by regulation, may be processed by the
 14 licensee on the vessel, at a shore-based facility, or by means of custom processing
 15 services obtained by the licensee. An application for a direct marketing fisheries
 16 business license shall be filed with the department and accompanied by an annual fee
 17 of \$25. A separate direct marketing fisheries business license and annual license fee
 18 are required for each vessel on which processing is performed. The application must
 19 state the name and address of the applicant, the fishery resources for which the
 20 applicant holds a commercial fishing entry permit or interim-use permit or quota
 21 share, a description of the vessel and each shore-based facility where the applicant will
 22 process fishery resources, and other information that the department prescribes by
 23 regulation. The application must state that the applicant, **as a condition of obtaining**
 24 **and maintaining the license,** agrees to pay the **taxes, assessment, employment**
 25 **security contributions, and penalties as set out in (a)(1) - (5) of this section** [TAX
 26 IMPOSED BY AS 43.75.015(d) OR 43.75.100, AND THAT THE APPLICANT
 27 WILL MAKE A RETURN AND PAY THE TAX AT THE TIME PROVIDED BY
 28 LAW]. A person who holds a direct marketing fisheries business license may not
 29 under that license (1) purchase fishery resources for resale or processing for sale; or
 30 (2) process fishery resources for another licensed commercial fisherman or for a
 31 fisheries business licensed under this chapter. In this subsection, "licensed

1 commercial fisherman" means a natural person who holds a commercial fishing entry
 2 permit or interim-use permit issued under AS 16.43 or a quota share issued under
 3 federal law.

4 * **Sec. 3.** AS 43.75.055 is amended by adding a new subsection to read:

5 (g) Real property, a surety bond, or other security being used to secure
 6 payment of the tax for the year preceding the application year may also be used to
 7 secure payment of the estimated tax for the application year if the security is
 8 acceptable to the department and the applicant has not failed to pay a tax under this
 9 chapter in a timely manner during any of the three years preceding the application
 10 year.

11 * **Sec. 4.** AS 44.25.040 is repealed and reenacted to read:

12 **Sec. 44.25.040. Security for certain obligations.** (a) A person applying for a
 13 license as a fish processor or primary fish buyer shall file with the commissioner of
 14 revenue a performance bond, conditioned upon the promise to pay the following:

15 (1) wages owing to all persons employed by the fish processor or
 16 primary fish buyer, including contractual employee benefits;

17 (2) independent registered commercial fishermen for the price of the
 18 raw fishery resource purchased from them;

19 (3) fees owing for the service of transporting raw fish;

20 (4) contributions imposed under AS 23.20 (Alaska Employment
 21 Security Act).

22 (b) A fish processor or primary fish buyer that processes more than 30,000
 23 pounds of fish a year or purchases more than \$30,000 of fish a year shall file a
 24 performance bond with the commissioner in the amount specified in this subsection.
 25 The amount of the bond is \$10,000 unless, during the five years preceding the
 26 application, one of the following has occurred:

27 (1) a final judgment in excess of \$10,000 was awarded against the
 28 bond required under this section; if the final judgment against the bond was in excess
 29 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of
 30 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of
 31 the bond is increased to a total of \$100,000;

1 (2) the commissioner has determined that the fish processor has
 2 engaged in the business of fish processor in the state or the primary fish buyer has
 3 engaged in the business of primary fish buyer in the state while not in compliance with
 4 this section and has not yet satisfied a final judgment entered against the fish processor
 5 or primary fish buyer for payment for labor furnished to, raw fishery resources
 6 purchased by, or raw fish transportation services provided to the fish processor or
 7 primary fish buyer; if the fish processor has engaged in the business of a fish processor
 8 or the primary fish buyer has engaged in the business of primary fish buyer while not
 9 in compliance with this section and has not yet satisfied a final judgment for payment
 10 for labor furnished to, raw fishery resources purchased by, or raw fish transportation
 11 services provided to the fish processor or primary fish buyer, the amount of the bond
 12 is increased to a total of \$100,000; or

13 (3) the commissioner has determined under (j) of this section that a
 14 claim against the bond filed by the Department of Labor and Workforce Development
 15 under (i) of this section met the requirements in (i) of this section; if the amount of the
 16 claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond is
 17 increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the
 18 amount of the bond is increased to a total of \$100,000; an increase in bond amount
 19 under this paragraph may not be imposed until 45 days after the commissioner
 20 determines under (j) of this section that the claim of the Department of Labor and
 21 Workforce Development met the requirements in (i) of this section.

22 (c) A fish processor or primary fish buyer that processes 30,000 pounds or less
 23 of fish a year and purchases \$30,000 or less of fish a year shall file a performance
 24 bond with the commissioner in the amount specified in this subsection. The amount of
 25 the bond is \$2,000 unless, during the preceding five years, one of the following has
 26 occurred:

27 (1) a final judgment in excess of \$2,000 was awarded against the bond
 28 required under this section; if the final judgment against the bond was in excess of
 29 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of
 30 \$10,000; if the final judgment against the bond was \$10,000 or more, the amount of
 31 the bond is increased to a total of \$20,000;

1 (2) the commissioner has determined that the fish processor has
2 engaged in the business of fish processor in the state or that the primary fish buyer has
3 engaged in the business of primary fish buyer in the state while not in compliance with
4 this section and has not yet satisfied a final judgment entered against the fish processor
5 or primary fish buyer for payment for labor furnished to, raw fishery resources
6 purchased by, or raw fish transportation services provided to the fish processor or
7 primary fish buyer; if the fish processor has engaged in the business of fish processor
8 or primary fish buyer has engaged in the business of primary fish buyer while not in
9 compliance with this section and has not yet satisfied a final judgment for payment for
10 labor furnished to, raw fishery resources purchased by, or raw fish transportation
11 services provided to the fish processor or primary fish buyer, the amount of the bond
12 is increased to a total of \$20,000; or

13 (3) the commissioner has determined under (j) of this section that a
14 claim against the bond filed by the Department of Labor and Workforce Development
15 under (i) of this section met the requirements in (i) of this section; if the amount of the
16 claim was in excess of \$2,000 but was less than \$10,000, the amount of the bond is
17 increased to a total of \$10,000; if the amount of the claim was \$10,000 or more, the
18 amount of the bond is increased to a total of \$20,000; an increase in bond amount
19 under this paragraph may not be imposed until 45 days after the commissioner
20 determines under (j) of this section that the claim of the Department of Labor and
21 Workforce Development met the requirements in (i) of this section.

22 (d) If a fish processor who has filed a performance bond under (c) of this
23 section processes more than 30,000 pounds of fish in a year or purchases more than
24 \$30,000 of fish in a year, the fish processor shall, within seven days after the day on
25 which the 30,000 pound threshold or the \$30,000 threshold is exceeded, notify the
26 commissioner and comply with (b) of this section. If a fish processor who has filed a
27 performance bond under (c) of this section processes more than 30,000 pounds of fish
28 in a year or purchases more than \$30,000 of fish in a year, and does not comply with
29 (b) of this section within seven days after the date on which the 30,000 pound
30 threshold or the \$30,000 threshold is exceeded, the fish processor shall suspend
31 processing fish until a bond has been filed under (b) of this section.

1 (e) If a primary fish buyer who has filed a performance bond under (c) of this
 2 section purchases more than \$30,000 of fish in a year, the primary fish buyer shall,
 3 within seven days after the day on which the \$30,000 threshold is exceeded, notify the
 4 commissioner and comply with (b) of this section. If a primary fish buyer who has
 5 filed a performance bond under (c) of this section purchases more than \$30,000 of fish
 6 in a year, and does not comply with (b) of this section within seven days after the date
 7 on which the \$30,000 threshold is exceeded, the primary fish buyer shall suspend
 8 purchases of fish until a bond has been filed under (b) of this section.

9 (f) A fish processor or primary fish buyer may use only a surety bond, cash
 10 deposit, or other negotiable security as a performance bond under this section. The
 11 surety must be satisfactory in the determination of the commissioner. The use of other
 12 negotiable security as a performance bond must be in a form acceptable to the
 13 commissioner. The commissioner shall waive the filing of a performance bond under
 14 this section if

15 (1) the fish processor or primary fish buyer has more than \$10,000 in
 16 lienable real property located in the state and provides proof of the property in a form
 17 satisfactory to the commissioner;

18 (2) the fish processor or primary fish buyer is not required under (b) or
 19 (c) of this section to post a bond in excess of \$10,000; and

20 (3) within the five years preceding the application under AS 43.75.020,
 21 an employee, fisherman, or contracted raw fish transporter has not obtained a final
 22 judgment against the fish processor's or primary fish buyer's bond under this section.

23 (g) If an applicant for a license as a fish processor or primary fish buyer has
 24 complied with this section, the Department of Revenue may issue that applicant a
 25 license to engage in the business of fish processor or primary fish buyer.

26 (h) A claim against a fish processor or primary fish buyer for failing to pay an
 27 employee for wages or contractual benefits owed, for failing to pay an independent
 28 registered fisherman for the price of raw fishery resource purchased from the
 29 fisherman, or for failing to pay an independent contractor for the transportation of raw
 30 fish may be brought upon the bond filed under this section in the superior court of the
 31 judicial district in which the work was done or in any judicial district in the state in

1 which jurisdiction may be obtained. If an action is brought upon the bond, a copy of
 2 the complaint shall be served by registered or certified mail upon the commissioner at
 3 the time the suit is filed. The commissioner shall transmit a copy of the complaint and
 4 any judgment to the surety or holder of the negotiable security. If a judgment is
 5 entered against cash deposited with the commissioner, the commissioner, upon receipt
 6 of a certified copy of a final judgment, shall pay the judgment from the amount of the
 7 deposit. The commissioner shall maintain a record, available for public inspection, of
 8 all suits commenced under this subsection.

9 (i) A claim against a fish processor or primary fish buyer for failing to pay
 10 contributions imposed under AS 23.20 may be brought by the Department of Labor
 11 and Workforce Development against the bond filed under this section by filing a claim
 12 against the bond with the commissioner, along with proof, satisfactory to the
 13 commissioner, that the fish processor or primary fish buyer

14 (1) received a notice of assessment under AS 23.20.205;

15 (2) did not pay the amount specified in the notice of assessment within
 16 30 days after receiving the notice of assessment or, if the assessment was contested
 17 under AS 23.20.220, within 30 days after receiving the department's final decision
 18 under AS 23.20.220(c); and

19 (3) did not file an appeal of the assessment under AS 23.20.220 or
 20 filed an appeal but did not initiate a proceeding for judicial review under
 21 AS 23.20.445 within 30 days after the department's final decision under
 22 AS 23.20.220(c).

23 (j) If the commissioner determines that the Department of Labor and
 24 Workforce Development has met the claim requirements in (i) of this section, the
 25 commissioner shall forward the claim and supporting documents to the surety or
 26 holder of the negotiable security. If the fish processor or primary fish buyer has
 27 deposited cash with the commissioner, the commissioner shall pay the claim of the
 28 Department of Labor and Workforce Development from the amount of the deposit. If
 29 the commissioner determines that the Department of Labor and Workforce
 30 Development has not met the claim requirements in (i) of this section, the
 31 commissioner shall provide the Department of Labor and Workforce Development

1 with written notice of the deficiency of its claim.

2 (k) If a performance bond is insufficient to satisfy all claims filed against it
 3 under this section, claims brought against the bond under (h) of this section have
 4 priority over a claim filed against the bond under (i) of this section. The Department
 5 of Labor and Workforce Development shall return to the commissioner money
 6 received from a claim filed against a fish processor's or primary fish buyer's
 7 performance bond under (i) of this section if an employee, fisherman, or contracted
 8 raw fish transporter obtains a final judgment under (h) of this section against that fish
 9 processor's or primary fish buyer's bond and the

10 (1) fish processor or primary fish buyer has not replenished the bond
 11 after it was used to cover the claim filed under (i) of this section; or

12 (2) final judgment obtained by the employee, fisherman, or contracted
 13 raw fish transporter is more than the amount of the bond available under (b) or (c) of
 14 this section.

15 (l) The term of a performance bond expires two years after the fish processor
 16 or primary fish buyer is no longer licensed in this state, except that if, during that two-
 17 year period, a claim has been asserted against the bond, the term of the bond is five
 18 years. If the surety on the bond wishes to cancel the bond, the surety may do so by
 19 giving the commissioner written notice of intention to cancel. The cancellation is
 20 effective 30 days after the notice is delivered to the commissioner.

21 * **Sec. 5.** AS 44.25.042 is amended by adding a new subsection to read:

22 (h) If the commissioner determines under AS 44.25.040(j) that a claim filed
 23 under AS 44.25.040(i) is sufficient to allow collection against the performance bond
 24 filed under AS 44.25.040, the fish processor's or primary fish buyer's license shall be
 25 suspended until the amount of the claim under AS 44.25.040(i) is paid in full and the
 26 performance bond is replenished.

27 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).