

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

January 17, 2006

4:06 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative John Coghill
Representative John Harris
Representative Lesil McGuire
Representative Ethan Berkowitz
Representative David Guttenberg

MEMBERS ABSENT

Representative Vic Kohring

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 164(FIN)

"An Act relating to the salmon product development tax credit; providing for an effective date by amending an effective date in sec. 7, ch. 57, SLA 2003; and providing for an effective date."

- MOVED HCS CSSB 164(RLS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 164

SHORT TITLE: SALMON PRODUCT DEVELOPMENT TAX CREDIT

SPONSOR(S): SENATOR(S) STEDMAN

04/06/05	(S)	READ THE FIRST TIME - REFERRALS
04/06/05	(S)	RES, FIN
04/15/05	(S)	RES AT 3:30 PM BUTROVICH 205
04/15/05	(S)	Moved SB 164 Out of Committee
04/15/05	(S)	MINUTE(RES)
04/18/05	(S)	RES RPT 3DP 1DNP 1NR 2AM
04/18/05	(S)	AM: WAGONER, ELTON
04/18/05	(S)	DP: STEDMAN, STEVENS B
04/18/05	(S)	DP W/AMENDMENTS: DYSON
04/18/05	(S)	DNP: SEEKINS
04/18/05	(S)	NR: GUESS
04/28/05	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/28/05	(S)	Moved CSSB 164(FIN) Out of Committee
04/28/05	(S)	MINUTE(FIN)

04/29/05	(S)	FIN RPT CS	3DP	2NR
		SAME TITLE		
04/29/05	(S)	DP: GREEN, HOFFMAN, DYSON		
04/29/05	(S)	NR: WILKEN, OLSON		
05/02/05	(S)	TRANSMITTED TO (H)		
05/02/05	(S)	VERSION: CSSB 164(FIN)		
05/03/05	(H)	READ THE FIRST TIME - REFERRALS		
05/03/05	(H)	RES, FIN		
05/04/05	(H)	RES AT 1:00 PM CAPITOL 124		
05/04/05	(H)	-- Meeting Canceled --		
05/06/05	(H)	RES AT 1:00 PM CAPITOL 124		
05/06/05	(H)	Scheduled But Not Heard		
05/07/05	(H)	RES RPT 5DP 4NR		
05/07/05	(H)	DP: ELKINS, SEATON, CRAWFORD, LEDOUX, SAMUELS;		
05/07/05	(H)	NR: OLSON, KAPSNER, GATTO, RAMRAS		
05/07/05	(H)	RES AT 9:30 AM CAPITOL 124		
05/07/05	(H)	Moved Out of Committee		
05/07/05	(H)	MINUTE(RES)		
05/09/05	(H)	FIN RPT 2DP 6NR 1AM		
05/09/05	(H)	DP: FOSTER, MEYER;		
05/09/05	(H)	NR: STOLTZE, JOULE, MOSES, HOLM, KELLY, CHENAULT;		
05/09/05	(H)	AM: HAWKER		
05/09/05	(H)	FIN AT 8:30 AM HOUSE FINANCE 519		
05/09/05	(H)	Moved Out of Committee		
05/09/05	(H)	MINUTE(FIN)		
05/10/05	(H)	RETURNED TO RLS COMMITTEE		
01/17/06	(H)	RLS AT 4:00 PM FAHRENKAMP 203		

WITNESS REGISTER

SENATOR BERT STEDMAN
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Testified as sponsor of SB 164.

KIM CARNOT, Staff
 to Senator Bert Stedman
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Answered questions about SB 164.

TIM COTTONGIM, Manager
 Fish Group
 Tax Division
 Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions about SB 164.

ACTION NARRATIVE

CHAIR NORMAN ROKEBERG called the House Rules Standing Committee meeting to order at [4:06:03 PM](#). Representatives Guttenberg, Coghill, Harris, McGuire, Berkowitz, and Rokeberg were present at the call to order.

SB 164-SALMON PRODUCT DEVELOPMENT TAX CREDIT

[4:06:35 PM](#)

CHAIR ROKEBERG announced that the first order of business would be SB 164, "An Act relating to the salmon product development tax credit; providing for an effective date by amending an effective date in sec. 7, ch. 57, SLA 2003; and providing for an effective date."

[4:06:38 PM](#)

REPRESENTATIVE COGHILL moved to adopt the proposed House committee substitute (HCS) for SB 164, Version 24-LS0589\C, Kane, 12/19/05 as the working document.

REPRESENTATIVE BERKOWITZ objected in order to discuss the distinction in Section 5 between Version C and Version S.

[4:07:15 PM](#)

SENATOR BERT STEDMAN, Alaska State Legislature, sponsor of SB 164, told the committee that there wasn't enough time to work on this legislation last year. So the current version postdates to the first of January. He said several years ago the salmon industry had hard economic times, which led to a salmon task force to help turn around the industry. He stated that SB 164 is a tax credit bill as recommended by the task force.

[4:10:58 PM](#)

REPRESENTATIVE HARRIS asked what kind of tax the credit is for.

SENATOR STEDMAN answered that it refers to state corporate income tax, and it is a 50 percent tax credit. He said it will expire December 31, 2008, and there are three additional years of carry forward--to use it or lose it. The industry has had a

tax credit that has been challenged by the state, because "some firms used a fairly aggressive definition of what would qualify, and it wasn't as effective as we would like." He said SB 164 seeks to eliminate abuses and target the industry to modernize in order to compete with "farmed fish and other things that we are at a disadvantage to." He said there is "no interest in allowing the industry to...buy used equipment, equipment from subsidiaries or other gaming mechanisms that someone may want to employ to drive this tax credit." He stated that the tax credit targets value-added enhancement beyond heading, gutting and freezing fish. He noted that the canning process was reviewed and found to have remained unchanged for generations, so it is good to encourage the industry to explore modernized alternatives, such as the flip-top can or the vacuum pouch, which is expensive and labor intensive. He said the legislature should encourage the industry to evolve from the traditional canning line.

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REPRESENTATIVE HARRIS asked for the reason for the CS.

SENATOR STEDMAN said that without the CS there would be a "gap in the dates," and therefore Version C has an effective date of January 1, 2006, allowing a smooth transition from the old tax credit to the new. He noted that there is some interest in a date extension beyond 2008, but he doesn't support that. He pointed out that the three-year carry forward allows the legislature a chance to review the issue. Furthermore, without an extension, processors are encouraged to upgrade equipment sooner rather than later. He said the hope is to increase the processing industry's margins, which should ripple throughout the industry and the devastated communities of coastal Alaska.

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REPRESENTATIVE MCGUIRE surmised that the tax credit could be applied to three subsequent years, so that "you could engage in the activity that we want to promote in one year, and not applying the tax credit for that year, but waiting then for another couple years when you may not be engaging in that activity and apply it."

SENATOR STEDMAN clarified that when a person or business purchases equipment, half of that cost could be applied against taxes as soon as possible. He said a tax credit is more valuable sooner than later. The cutoff at 2008 with a carry forward to

2012 benefits an entity with enough capital improvements to exceed the credit allowance in the first year to carry it forward and not lose it.

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REPRESENTATIVE MCGUIRE said a company may want to move forward with all capital improvements, but it can space out the application of the credit to maximize the benefit.

SENATOR STEDMAN said, "Correct, sort of." He added that a business's capital budgeting is affected by other factors, "so when they purchase that equipment, whatever tax year that that's in, then they're going to want to use as much of that tax credit that year as absolutely possible" and use whatever is left the following years. Three years allows time for companies to do their capital budgeting process, including making decisions and ordering equipment.

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REPRESENTATIVE MCGUIRE said it is unusual and that she would love to give to charity or incur medical expenses in one year, and delay the deduction to the following year when she had higher earnings. "But the tax laws don't work that way on the federal level."

SENATOR STEDMAN said by looking at it as an expense, that would be true, but it is not in the best interest of the state to provide a 100 percent tax credit in the first year. The state would want to encourage upgrades without giving up the revenue source, he stated.

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REPRESENTATIVE BERKOWITZ said Version S differs in two ways: section 4, which refers to canned salmon, and section 6, which refers to the availability of credit for conversion of pop-top cans, and he asked why those were removed in Version C.

The committee took an at-ease from 4:22 to 4:23.

SENATOR STEDMAN said there has been some re-numbering; "the change in the bill is just a backdating to January 1." He said the essence of the bill has not been changed.

[4:24:10 PM](#)

CHAIR ROKEBERG said it looked like there was a change.

REPRESENTATIVE BERKOWITZ suggested legal help with the drafting.

[4:24:43 PM](#)

REPRESENTATIVE BERKOWITZ said he also had a question about the triggering that is in section 4, noting there is an effective date that is either January 1, 2012 or the date of a notification about a court case. "Is there a pending case?" he asked.

SENATOR STEDMAN said the termination date is 2012, the next sentence refers to if there is a violation of the Commerce Clause, and section (b) deals with violating the Commerce Clause in the United States Constitution.

REPRESENTATIVE BERKOWITZ said he has never seen that kind of severability.

CHAIR ROKEBERG said a sunset date requires it.

REPRESENTATIVE BERKOWITZ said that normally it would say "or determination by a court that it's unconstitutional. There is a specification here that it's solely unconstitutional according to the Commerce Clause." He asked if there is a court case or an anticipation that it is violative of the Commerce Clause.

SENATOR STEDMAN replied no, it "is basically an extension of current tax credit in place today with more stringent language as far as what the...private sector can do to secure that tax credit."

[4:27:02 PM](#)

REPRESENTATIVE MCGUIRE said the concern is with the reference to products produced out of the state. She explained that Section 3 refers to salmon products with a pop-top that can be produced in Alaska or another state, so there is no violation of the Commerce Clause. Section D makes a distinction between out-of-state and in-state products, she said, "and that traditionally can be viewed as a violation of the Commerce Clause."

CHAIR ROKEBERG asked Senator Stedman if he was the original bill sponsor.

SENATOR STEDMAN said he wasn't an attorney and he wasn't the original sponsor of the bill that first created the tax credit.

[4:28:12 PM](#)

REPRESENTATIVE BERKOWITZ said the severability clause refers to section 1 and is just a simple extension until 2008. It doesn't specify which subsection, he said. "What we see in section 4 in the C Version, it says 'this act' -- section 3 -- 'takes effect on the earlier date, 2012 or else when there's notification that there's been a final judgment.'" He added that he understands Representative McGuire, "but that's not what it says."

CHAIR ROKEBERG asked what was in section 1.

REPRESENTATIVE MCGUIRE said, "That's the whole thing; that's the tax credit."

REPRESENTATIVE BERKOWITZ said, ".035 is the salmon product development tax credit, and .036 is a salmon utilization tax credit." He added that the modifications to .035 (b) in Version C extends subsection (b) to December 31, 2008. He said section 4 refers to section 3 of Version C, which is the value-added product section, and it takes effect either at 2012 or after notification of final judgment.

CHAIR ROKEBERG said, "That's not entirely true because section 4 speaks to section 7, which is section 3 of section..."

REPRESENTATIVE BERKOWITZ said, "It just doesn't add up."

[4:30:34 PM](#)

SENATOR STEDMAN said his aide will try to clear it up.

[4:30:42 PM](#)

KIM CARNOT, Staff to Senator Stedman, Alaska State Legislature, said the drafter of the bill told her that the language in section 4 of the work draft refers to the existing statute. The citation is AS 43.75.035, she said.

[4:31:52 PM](#)

CHAIR ROKEBERG asked about the 50 percent maximum tax credit as related to an installment sales contract. "Can you get more than 50 percent if you game it up?" he asked.

SENATOR STEDMAN said the gaming reference is for equipment that does not provide value-added enhancement. It "could be other things within the industry or rebuilding older machinery rather than new machinery."

CHAIR ROKEBERG said, "You did mention the fact that you could have a subsidiary buy some equipment and start a new depreciation schedule and then re-qualify or qualify for a tax credit."

SENATOR STEDMAN said that was what he meant by the gaming portion of the bill. The concern, he said, is "whenever you do these tax incentives or development incentives, a particular company--and a lot of companies have subsidiaries out of state--that they don't buy used equipment from subsidiaries that they owned, brought it up to Alaska, and then wanted a tax credit on it. We want new equipment brought into the organization."

CHAIR ROKEBERG asked if used equipment would not qualify.

SENATOR STEDMAN said buying used equipment from a subsidiary will not be allowed. He said he is trying to prevent abuse of the tax credit.

CHAIR ROKEBERG asked, "So if in '06 this applies, I buy something this year, and I have six years to take the 50 percent write down?"

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SENATOR STEDMAN answered that for something purchased in 2006, the tax credit would be applied then, or it could be carried over to 2007 or 2008.

CHAIR ROKEBERG asked if 50 percent "is all you get on a particular piece of equipment, notwithstanding installment sales, any financing methods or anything else. But if you don't have an income to write it off against, you can carry it forward. That's the intention of the 2012 date, right?"

SENATOR STEDMAN said the 50 percent is on corporate income tax, "so you can't erase your corporate income tax to zero with tax credits."

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The committee took an at-ease from 4:36 p.m. to 4:38 p.m.

[4:38:20 PM](#)

SENATOR STEDMAN clarified that page 1, line 10 applies to new equipment.

[4:38:51 PM](#)

REPRESENTATIVE GUTTENBERG asked what the return to the state has been so far.

SENATOR STEDMAN said that the recent downturn in the fishing industry is now turning around, and noted that the return to the state could be measured "from many angles." He said by looking at the corporate income tax collected, ex-vessel value of the product, and the values of the permit, insurance, vessels, and employees, it is pretty clear that the salmon task force and the legislature have enhanced the overall value of the state's fisheries. He added that using a tax credit to stimulate capital investment "in a particular channel" and having it not run indefinitely is in the best interest of the state. He said the legislature can come back and review the "state of the industry."

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REPRESENTATIVE HARRIS said he supports providing incentives to processors to modernize antiquated equipment because the industry was lagging, "and I think [the legislation] may have done that or at least is beginning to do that, and to extend it out" is very beneficial.

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CHAIR ROKEBERG said, "It appears that the documentation provided by the committee aide indicates that fundamentally the entire sections of 43.70.035 and .036 are included in section 1 of the bill that we are amending before us...and the language regarding the legal effects of the section 4 language in the CS before us is, as I assume, the analysis by the judiciary chair, about why there is section 1 specific date and section 2, a constitutional severability situation."

[4:44:09 PM](#)

REPRESENTATIVE BERKOWITZ removed his objection.

There being no further objection, Version 24-LS0589\C, Kane, 12/19/05 was before the committee.

[4:44:25 PM](#)

REPRESENTATIVE MCGUIRE suggested asking the drafter for better severability language, so it can be easily understood by the average public. She added that there is no intention to extend a tax credit to those in arrears, and she asked what happens when someone is in appeal and the final ruling goes against the taxpayer. She asked if the state can get the money back.

SENATOR STEDMAN said, "Most of the companies, if not all of them, are in contact with the tax division of the state, making sure that their heavy capital investments will qualify. And if someone decides that they are going to go ahead and make an expense and put it down as a tax credit and file it away and is ruled that it doesn't qualify, [that person] will get a bill plus interest."

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REPRESENTATIVE BERKOWITZ said Representative Guttenberg raised an interesting point. He said this statute has been in effect for a couple of years, and he would like to know how often the credit has been used and what the benefits and costs have been.

[4:47:59 PM](#)

TIM COTTONGIM, Fish Group Manager, Tax Division, Department of Revenue, said SB 164 addresses a credit against the raw fish tax not the corporate income tax. He added that there would not be an instance where there was no income to offset the credit. "If they were processing, there would be income tax to apply the credit on."

CHAIR ROKEBERG asked, "So they could accrue it and carry it forward if they weren't fishing. If the prices were low and they wanted to spend the summer in Puerto Vallarta...they could carry it forward?"

MR. COTTONGIM said yes.

[4:49:06 PM](#)

MR. COTTONGIM explained that arrearage doesn't occur until after appeal rights have lapsed, "so in an instance where they've appealed something, we don't consider it to be in arrears even if they don't prevail. It is only when the decision is rendered and they don't pay within the time allotted that it becomes in arrearage."

REPRESENTATIVE MCGUIRE suggested that as long as someone appeals, the tax credit could be used.

MR. COTTONGIM said that could happen, but appeals are usually legitimate.

CHAIR ROKEBERG referred to the fiscal note where the estimates of change in revenue for 2007 is only \$100,000, and asked what the impacts were for 2004 and 2005.

MR. COTTONGIM said his department wasn't certain of the impact when the bill was first passed, but it estimated that the total credit claimed would be about \$1.5 million each year. He said the estimated \$100,000 impact of Version C for the first two years is an estimate of the effect of pop-top cans on the state's revenue.

[4:50:57 PM](#)

REPRESENTATIVE BERKOWITZ asked if there were \$1.5 million worth of credits taken in 2004 and 2005.

MR. COTTONGIM said it's proven to be \$1.5 million for each of those years.

REPRESENTATIVE HARRIS surmised that there has been \$3 million worth of investing in the last two years due to the tax credit.

MR. COTTONGIM replied yes--at least--because it is limited to 50 percent.

[4:52:15 PM](#)

REPRESENTATIVE BERKOWITZ asked about expenditures prior to 2004; did the incentive make a difference?

MR. COTTONGIM said the department has no way of knowing.

[4:53:43 PM](#)

REPRESENTATIVE HARRIS moved to report the proposed HCS CSSB 164, Version 24-LS0589\C, Kane, 12/19/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 164(RLS) was reported from the House Rules Standing Committee.

[4:54:09 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 4:54 p.m.