

HB

969

(9)

# COMMITTEE REPORT

## HOUSE

3/21/80

FURTHER: FINANCE

Date: 3/21/80

Mr. Speaker:

The Committee on RESOURCES has had HB 969

"An Act relating to salmon fisheries enhancement."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN



# Alaska State Legislature

## House

### HOUSE RESOURCES COMMITTEE

#### FISH & GAME ISSUES

Alvin Osterback, Chairman

Pouch V, State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### HEARING NOTIFICATIONS

Re: Salmon Enhancement tax

CALL	DATE INFORMED	LETTER/PHONE	INFORMED	HEARING DATE
HB <del>969</del> 969	3/28	3720 3799 747-6850 262-4441 424-7511 2320 6-2820 4100 4163 789-7231 789-7231 3500 3738 6-9400	Rep. Gardiner Rep. Malone Northern S.E. Regional Aquaculture Assoc. Derek Poon to testify Southern S.E. Regional Aquaculture Assoc. Ron Wendte and Welt Laerich to testify Cook Inlet Aqua. Assoc. - Floyd Heimlich to testify Prince William Sound Aqua. Assoc. Revenue Dept. David Ziemer to prepare fiscal note for Donahue, Dep. Commissioner of Taxation to testify United Fishermen of Alaska Dept. of Fish & Game F.R.E.D. Division of F & G Bruce Wing - Fishery Research Biologist Auke Bay Lab Dick Myren - Auke Bay Lab Geron Bruce - Gillnetters Assoc. Bob Palmer - Governor's Office Rep. Nels Anderson - to notify Imerpuk Aqua. Assoc. Alaska Trollers Assoc.	3/31

AMENDMENT NO. 1 HB 969

Page 7, line 23

Delete Sec. 8 and replace with the following:

Sec. 8. Sections 5, 6 and 8 of this Act take effect on the publication date of a decision by the Alaska Supreme Court in the appeal of State of Alaska v. Wayne Alex, et al (Supreme Court File No. 5065), if the decision holds that the provisions of AS 16.10.530 do not violate the Alaska Constitution.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - TUNEAU 99811

March 31, 1980

The Honorable Alvin Osterback  
Co-Chairman  
House Resources Committee  
Room 118 - Capitol Building  
Juneau, Alaska 99811

Dear Mr. Osterback:

Re: House Bill No. 969

House Bill No. 969, an act relating to salmon fisheries enhancement, was introduced in the House on March 21, 1980 and was referred to the House Resources and Finance Committees.

For the consideration of the House Resources Committee, I am enclosing studies of Fiscal Notes prepared by Gary Jenkins, Director, Audit Division and Barbara Sorenson, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,



E. H. Sorenson  
Special Assistant

cc: The Honorable Bill Miles  
Co-Chairman  
House Resources Committee

The Honorable Doug Meek as  
Chairman  
House Finance Committee

Joseph J. Brydon  
Deputy Commissioner  
Department of Revenue

Gary Jenkins, Director  
Audit Division  
Department of Revenue

Vicki Wright  
Research Section  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 969  
 Title An Act relating to salmon fisheries enhancement.  
 Requested by House Resources & Finance Committees Date 3/26/80

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_ Revenue \_\_\_\_\_  
 Program Category Affected \_\_\_\_\_ Fiscal Services \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_ Audit Division \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		72.7	72.7	72.7	72.7	72.7
200 TRAVEL		5.5	5.5	5.5	5.5	5.5
300 CONTRACTUAL		9.5	9.5	9.5	9.5	9.5
400 COMMODITIES		1.4	1.4	1.4	1.4	1.4
500 EQUIPMENT		2.6	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>92.7</b>	<b>89.1</b>	<b>89.1</b>	<b>89.1</b>	<b>89.1</b>

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		92.7	89.1	89.1	89.1	89.1
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached memorandum to R. D. Stevenson dated 3/26/80.

IV. DATE March 26, 1980 PREPARED BY *Ray Jenkins*  
 AGENCY Department of Revenue, Audit Division  
 PHONE 465-2320  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

# MEMORANDUM

TO:  R. D. Stevenson  
Special Assistant  
Department of Revenue

DATE: March 26, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins  
Director  
Audit Division

SUBJECT: House Bill No. 969

This bill would establish a salmon enhancement tax at 3 percent of the value of salmon sold to a processor. The processor will be charged with collecting tax at the time of purchase. There is one potential significant enforcement problem in that the legislation does not define how the value of the salmon is to be determined for purposes of the tax. It is recommended that the bill be amended to provide for the determination of value.

It is anticipated that there will be approximately 220 processors to process salmon. Each processor will be required to file a return on a monthly basis. To handle the initial review and processing functions, we will need two permanent full time Tax Examiner positions. To accomplish the audit functions, we will require the addition of one Revenue Auditor position.

The proposed Section 43.76.025(b) provides that the processor collecting the tax shall maintain records reflecting the location of the catch of the fishery resource. However, nowhere else in the proposed law is there any indication of what the processor is to do with this information. Is it intended that the monthly return to the Department of Revenue should account for the catch by location, or is the processor to send some type of report to the Department of Commerce and Economic Development? It is recommended that this subsection be modified to clearly state the intent with regard to this information.

1	POSITION TITLE <b>Tax Examiner I</b>			RANGE/STEP <b>10 A</b>	BARG. UNIT. <b>G</b>	LOCATION	GGV	APPROV.	DISAPP.					
2	TYPE OF POSITION <b>PFT</b>	STAFF MONTHS <b>12</b>	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.						
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:								
	1	2	3											
4	PERSONAL SERVICES: SALARY		17,004		It is anticipated that there will be approximately 220 processors to process salmon and each processor will be required to file a return on a monthly basis. To handle the initial review and processing functions we will need two permanent full time Tax Examiner positions.									
5	BENEFITS		2,528											
6	FICA		1,131											
7	HEALTH INS.		1,524											
8	TOTAL PERSONAL SERVICES		22,187											
9	TRAVEL													
10	CONTRACTUAL		3,160											
11	COMMODITIES		450											
12	EQUIPMENT		1,200											
13	OTHER													
14	TOTAL COST		26,997											
15	CODE	FUNDING SOURCE												
16		FED RCPTS.												
17		GF MATCH												
18		GEN FUND		26,997										
19		I-A RCPTS												
20		PGM RCPTS												
21		OTHER												
21	CONTINUATION													
22	ADDITION	<b>X</b>	<b>FOR B&amp;M USE ONLY</b>											
4A KEY NUMBER				COLUMN NO.										

AGENCY Department of Revenue PROGRAM AREA Revenue Collection & Management

DRU Audit Division

FY 81

**13** REQUEST FOR NEW POSITION

COMPONENT \_\_\_\_\_

Page 1 of 3

REVISED DATE \_\_\_\_\_

1	POSITION TITLE Tax Examiner I			RANGE/STEP 10 A	BARG. UNIT. G	LOCATION	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.	
3	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
4	PERSONAL SERVICES: SALARY		17,004						
5	BENEFITS		2,528						
6	FICA		1,131						
7	HEALTH INS.		1,524						
8	TOTAL PERSONAL SERVICES			22,187					
9	TRAVEL								
10	CONTRACTUAL			3,160					
11	COMMODITIES			450					
12	EQUIPMENT			1,200					
13	OTHER								
14	TOTAL COST			26,997					
	CODE	FUNDING SOURCE							
15		FED RCPTS.							
16		GF MATCH.							
17		GEN. FUND		26,997					
18		I-A RCPTS.							
19		PGM RCPTS.							
20		OTHER							
21	CONTINUATION								
22	ADDITION		X FOR B&M USE ONLY						
4A KEY NUMBER				COLUMN NO.					

JUSTIFICATION:

It is anticipated that there will be approximately 220 processors to process salmon and each processor will be required to file a return on a monthly basis. To handle the initial review and processing functions we will need two permanent full time Tax Examiner positions.

AGENCY Department of Revenue PROGRAM AREA Revenue Collection & Management

BRU Audit Division

FY 81

13 REQUEST FOR NEW POSITION.

COMPONENT \_\_\_\_\_

Page 2 of 3

REVISED DATE \_\_\_\_\_

1	POSITION TITLE Revenue Auditor I			RANGE/STEP 14 A	BARG. UNIT. G	LOCATION	GO/	APPROV	DISAPP.					
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG							
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:								
	1	2	3											
4	PERSONAL SERVICES: SALARY		22,089		It is anticipated that there will be approximately 220 processors to process salmon and each processor will be required to file a return on a monthly basis. To accomplish the audit functions, we will require the addition of one Revenue Auditor I position.									
5	BENEFITS		3,285											
6	FICA		1,469											
7	HEALTH INS.		1,524											
8	TOTAL PERSONAL SERVICES		28,367											
9	TRAVEL		5,500											
10	CONTRACTUAL		3,160											
11	COMMODITIES		450											
12	EQUIPMENT		1,200											
13	OTHER													
14	TOTAL COST		38,677											
15	CODE	FUNDING SOURCE												
16		FED RCPTS												
17		GEN. FUND		38,677										
18		I-A RCPTS												
19		PCM RCPTS												
20		OTHER												
21	CONTINUATION													
22	ADDITION		X		FOR B&M USE ONLY									
4A KEY NUMBER _____				COLUMN NO. _____										

AGENCY Department of Revenue PROGRAM AREA Revenue Collection & Management

ORU Audit Division

FY 81

**13** REQUEST FOR NEW  
POSITION.

COMPONENT \_\_\_\_\_

Page 3 of 3

REVISED  
DATE \_\_\_\_\_

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. H 4 969  
 Title An act relating to salmon fisheries enhancement  
 Requested by \_\_\_\_\_ Date 3-28-80

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL						

FUNDING (Millions of Dollars)

GENERAL FUND	-0-	approximately 1.5 annually			
FEDERAL FUNDS					
OTHER (Specify Fund Source)					

POSITIONS

FULL TIME					
PART TIME					
TEMPORARY					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The bill proposes a salmon enhancement tax at 1 percent of the value of salmon sold by a limited entry permit holder to a licensed processor. The tax is to be levied in areas where a qualified regional aquaculture association received approval for such levy by the majority of the qualified permit holders in the area. The tax can be renewed or terminated by the Commissioner of Revenue upon recommendation of the Commissioner of Commerce and Economic Development and the regional association.

The above estimate is for those regulated associations only which did levy mandatory assessments until the assessments were declared invalid by the courts. The estimate is based on data obtained from those regulated associations, and some catch and value statistics from the Department of Fish and Game. It is assumed that associations will not be admitted until July 1, 1989.

(continued)

IV. DATE 3/28/80 PREPARED BY [Signature]  
 AGENCY Revenue  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (Bill/Resolution Number)

## ANALYSIS

There are three more regional associations in the State which would qualify for the proposed levy. Potential collections in those areas are not included in the above estimate.

**SOUTHERN SOUTHEAST REGIONAL  
AQUACULTURE ASSOCIATION, INC.**

P.O. Box 6916

(907)225-9605

Ketchikan, Alaska 99901

Rep. Alvin Osterback, Co-Chairman  
Rep. Bill Miles, Co-Chairman  
House Resources Committee  
Pouch V  
Juneau, Alaska 99811

March 24, 1980

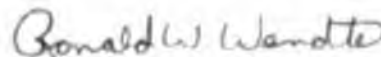
Dear Rep. Osterback and Rep. Miles,

I would like to thank you for the opportunity last Thursday to address the Resources Committee and also, thank you for the extra time you and the Committee took to listen to concerns about HRC 50.

Southern Southeast Regional Aquaculture was pleased to familiarize the Committee with our activities and many accomplishments. The Committee's concern for our fisheries and support for the private non-profit program is appreciated.

It is my understanding that three pieces of legislation were introduced Friday to get at the heart of some of the issues expressed at your hearings. I would urge your Committee's expedited consideration of HB 969, HB 970, and HB 971. I and my staff are available as needed to discuss these bills and the whole program.

Sincerely,



Ronald W. Wendte  
Executive Director

cc: House Resource Committee Members  
Speaker of the House

RWW/lr

**PRIVATE NON PROFIT HATCHERIES**

AMENDMENTS TO HB 969

Page 2, line 18      Change title. THREE PERCENT SALMON ENHANCEMENT TAX.

Page 2, line 20      After "value of salmon" add: ",As defined in AS 43.75.140(7),"

Page 2, line 23      After "(b) A" add: "three percent."

Page 2, line 2      Add new section 43.76.011:

Sec. 43. 76.011 TWO PERCENT SALMON ENHANCEMENT TAX.

(a) A person holding a limited entry permit under AS 16.43.010 - 16.43.380 shall pay a salmon enhancement tax at the rate of two percent of the value of salmon as defined in AS 43.75.140(7) the person sells to a processor licensed under AS 43.75.011. The processor shall collect the salmon enhancement tax at the time of the sale.

(b) A two percent salmon enhancement tax may only be levied or collected under (a) of this section

(1) in a region designated by the commissioner of fish and game for the purpose of salmon production under AS 16.10.375;

(2) if there exists in that region an association determined by the commissioner of fish and game to be a qualified regional association under AS 16.10.380; and

(3) if the qualified regional association approves the salmon enhancement tax under AS 43.76.015.

Page 3, line 3           Delete present section, add new section  
AS 43.76.015:

Sec. 43.76.015. ELECTION TO APPROVE OR TERMINATE

SALMON ENHANCEMENT TAX. (a) A qualified regional association may conduct an election under this section after the commissioner of commerce and economic development approves:

(1) the form of the notice to be published by qualified regional association;

(2) the form of the ballot to be used in the election;

(3) the registration and voting procedures for the approval or termination of the tax.

(b) The salmon enhancement tax is levied under AS 43.76.010 or AS 43.76.011 on the effective date stated on the ballot when:

(1) the tax is approved by a majority of all of the eligible interim and permanent limited entry holders voting in one single election in each region as established pursuant to AS 16.10.380 and;

(2) the election results are certified by the commissioner of commerce and economic development.

(c) The qualified regional association shall adopt the following procedures for conducting an election under this chapter;

(1) At least one public meeting shall be held not less than 30 days prior to the date the ballots must be postmarked to explain the reason for the proposed tax and

the registration and voting procedure to be used for the voting. Notice of the meeting shall be given by;

(a) mailing the notice to each person eligible to vote and;

(b) posting the notice in at least three public places within the region and;

(c) publishing the notice in at least one newspaper of general circulation in the region at least once per week for two consecutive weeks prior to the meeting.

(2) mail a ballot to each individual interim and permanent limited entry permit holder eligible to vote. The ballots shall be mailed to each eligible voter twice, once not more than 45 days and the second time not less than 15 days prior to the date the ballots must be postmarked to be counted. Procedures shall be adopted so that only one ballot from each eligible voter is counted.

(d) The ballot shall state the following;

(1) whether a tax should be levied under AS 43.76.010 or AS 43.76.011,

(2) the boundaries of the region in which the tax would be levied,

(3) the effective date for the levy of the tax,

(4) the date on which the ballots must be postmarked in order to be counted,

(e) The ballots shall be returned by mail and counted by the commissioner of commerce and economic development or

a person approved by the commissioner.

(f) The interim and permanent limited entry holders eligible to vote are those listed by the commercial fisheries entry commission as the legal owner of the permit 90 days prior to the date set that the ballots must be postmarked to be counted.

(g) An election to terminate a salmon enhancement tax shall be conducted under the same procedural requirement established under this section for an election to approve a salmon enhancement tax.

Page 5, line 13      Delete Sec. 43.76.020, replace with following:

Sec. 43.76.020.    TERMINATION OF SALMON ENHANCEMENT TAX.

(a) A salmon enhancement tax levied under AS 43.76.010 or AS 43.76.011 may be terminated by the commissioner of revenue upon majority vote at an election held under Sec. 015 of this section in the region in which the tax is levied.

(b) A salmon enhancement tax shall be terminated by the commissioner of revenue under (a) of this section following an election in a region if:

(1) a petition is presented to the commissioner of commerce and economic development requesting termination of the salmon enhancement tax which is signed by at least 25 percent of the number of persons who were qualified to vote under AS 43.76.015 in the election approving the salmon enhancement tax in the region;

(2) an election is held in accordance with AS 43.76.015; the ballot shall ask the question whether the salmon enhancement tax for the region shall be terminated. The ballot shall be worded so that a "yes" vote is for continuation of the salmon enhancement tax and a "no" vote is for termination of the salmon enhancement tax;

(3) a majority of the people eligible to vote cast a ballot for the termination of the salmon enhancement tax;

(4) the qualified regional association provides notice of the election in accordance with AS 43.76.015 within two months after receiving notice from the commissioner of commerce and economic development that a valid petition under (1) of this subsection has been received.

Page 6, line 20      After AS 43.76.010 add "or AS 43.76.011"

Page 6, line 25      After "reflecting the" add "regional association identified pursuant to AS 16.10.375 in which the fishery resource was caught and shall report to the Department of Revenue by March 1 of each year the total value as defined in AS 43.75.140(7) of each species caught in each regional association area.

Page 6, line 25      After (.) add: "and shall report to the Department of Revenue by March 1 of each year."

Page 6, line 26      Add new section (c):

(c) The tax collected under this chapter shall be deposited in the General Fund. The legislature may make appropriations based on this revenue to the department of commerce and

economic development for the purposes of providing funding for qualified regional associations. The legislature may base an appropriation for a region on the value of fisheries resources caught in that region rather than the value of the fisheries resources sold in that region, where those values differ.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

(907) 465-3685

April 16, 1980

The Honorable Terry Gardiner  
Alaska State Legislature  
House of Representatives  
Pouch V  
Juneau, Alaska 99811



Re: Constitutionality of HB 969  
Salmon Assessments  
Our file J-66-597-80

Dear Representative Gardiner:

You have asked for our comments on HB 969, relating to salmon fisheries enhancement. You requested our analysis both of the constitutionality of the bill as presently drafted, and in relation to Judge Compton's decision holding the old mandatory assessment program unconstitutional.

The present bill differs in every important respect from the mandatory assessment program. Judge Compton held that AS 16.05.530 is unconstitutional for the reasons that it is in fact a tax, and as a tax is improperly dedicated to a specific purpose; that the regional associations are not "service areas", and that the legislature may not delegate to either the associations or a commissioner the power to tax. As discussed in detail below, the present bill imposes a tax but does not dedicate it, makes no attempt to characterize regional aquaculture associations as service areas, and does not (with the suggestions below) improperly delegate the taxing power.

Dedication

Under the mandatory assessment program, an association voted to impose an assessment, the assessment was then collected from all the fishermen in the area by the processors, and returned directly to the regional associations. The disbursement to the associations was made without any act by the legislature. The present bill imposes a tax, to be levied on a regional basis only after certain conditions are met. One of the conditions is a vote by a majority of the limited entry permit holders in the salmon fisheries in the region. Once the tax is imposed, it is collected by the processors and forwarded to the Department of Revenue (for deposit in the general fund). This bill clearly imposes the tax for the purpose of providing a revenue source for funding the aquaculture associations; however, the language of the bill makes it clear that the legislature is making no attempt to bind future legislatures to take that action. While this legislature, if it passes the bill, is expressing an intent to return by appropriation the tax moneys collected, it also recognizes that this expression of intent does not guarantee that the funds will be treated in a like manner in the future. The tax is simply not dedicated.

Earlier drafts of this bill contained additional language under the section entitled "Collection of Tax and Disposition of Proceeds" (43.76.025) which specifically directed that the proceeds from the tax would be deposited

in the general fund. We can see no good reason for deleting this language, and recommend that it be included again.

While the bill as presently drafted certainly implies that the proceeds will be deposited in the general fund, specific language to that effect will strengthen the bill.

Delegation

The bill as drafted raises several delegation issues, none of which, in our opinion, is fatal to the bill (with the suggestions herein).

1. Tax on a condition. It might be argued that the provision allowing each association to vote on whether or not to impose the tax is an improper delegation to the association of the taxing power. However, the legislature here is doing the taxing, leaving only the imposition of the tax subject to the occurrence of some outside condition (i.e., the vote of the association). Legislation of this type is commonly upheld, and is not invalid simply because it is left to a vote of the persons affected to decide whether or not it should be imposed. The analysis of the relevant cases is that the legislature has the power to impose the tax without the consent of those affected, can impose it subject to whatever conditions it chooses, and thus can impose it subject to the condition that a majority of those affected approve it. See, Currin v. Wallace, 306 U.S. 1, 15, 16 (1938), U.S. v. Rock Royal Co-op, 307 U.S. 533, 577, 578 (1938). Similarly, the legislature has the power to limit

the duration of its legislation as it sees fit, and can likewise lift the imposition of the tax subject to a condition, here the vote of the association.

The other two conditions required before the imposition of the tax are in a sense delegated to the commissioner of fish and game: that the region be designated by him for the purpose of salmon production, and that there exist a regional association determined by him to be a qualified regional association. Delegations to executive departments are proper where sufficient standards are established, and in our opinion the standards set out in AS 16.10.375 and 16.10.380 are sufficient to make the delegation proper.

2. Reduction of tax. The bill as presently drafted provides that the tax may be reduced to a percentage less than three percent by several methods. The first two methods are discussed below, as they apply to termination; the third method is upon a majority vote by the association. This is the weakest section of the bill, for by leaving with the association the power to set the rate of the tax, a strong argument can be made that the association has been delegated the power to tax. The problem might be eliminated by including language which sets out precise standards for when an association could reduce the tax, and to what percentage.

but these standards might be difficult to draft.

It is our understanding that the objective of the reduction provision is to allow an association to set the rate at two percent, that is, that only two alternatives are contemplated: two percent or three percent. In fact, the old mandatory assessment section was amended to read that the assessment could be either two percent or three percent. As a practical matter, it is understood that the Cook Inlet Regional Association would choose to participate in a two percent tax, as that was the rate of the assessment in that region. As such, a cleaner method for removing the delegation problem would be to add another section to the bill which imposes a two percent tax, subject to the same conditions required for the three percent tax, and allow an association to elect to impose one tax or the other. Thus, an association can by election fulfill the condition of either the two percent tax or the three percent tax. The provisions for reduction of the tax should then be deleted.

3. Termination of tax. As noted briefly above, the same analysis that permits the imposition of the tax on a condition also permits the termination on a condition. The legislature has the power to enact a tax for a limited duration; it can condition that duration on the occurrence of an outside event. Thus, a vote by an association to terminate the tax is not an improper delegation.

However, the bill as presently drafted provides two additional methods for termination: upon the recommendation of the commissioner of commerce, and upon request of the association board of directors. While the second method might arguably be just as proper as a vote by the entire association, the first is probably an improper delegation to the commissioner of commerce, as there are no standards set out delineating when he should exercise that power. It is our understanding that a redraft of the bill is presently being prepared which eliminates these two provisions, and the bill will be better without them.

Service areas.

HB 969 does not designate regional aquaculture associations as service areas, and none of the problems that Judge Compton found with the mandatory assessment program in that area can arise.

Other problems.

The election procedures set out in proposed sec. 43.-76.015 of the bill call for voting at one of two public meetings or by mail. As written, the procedures are confusing, and we recommend that this section be redrafted.

Finally, \* Sec. 8 of the bill has the effect of repealing the tax imposed should the mandatory assessment provision (AS 16.10.530) be held constitutional by the Alaska Supreme Court. The original bill required that the holding be "as applied before July 13, 1979". CS for HB 969 now reads

The Hon. Terry Gardiner

April 16, 1980  
Page 7

that the holding be that "AS 16.10.530 does not violate the Constitution". Conceivably, the court might hold that AS 16.10.530 is constitutional, but not as previously applied. Under the committee substitute, then, the tax would be repealed but the old program could not be reinstated, and the association would be left without a source of funds.

Attached is a copy of the bill which incorporates our suggestions, with the exception of those referred to under "Other problems".

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:

  
Deborah Vogt  
Assistant Attorney General

DV:d1m

Attachment

# TELEGRAM

HB 969

W.A.SCOM, INC.  
PHONE: 586-6442  
NOME, AK 99802

1980 MAR 31 PM 12 55

URGENT 123 KETCHIKAN ALASKA 54 03-31 1005Z 80Z

RYE REP ALVIN OSTERBACK CHAIRMAN

HOUSE RESOURCES COMMITTEE

JUNE 27 80

1980

UNABLE TO ATTEND MEETING OF 1980 ASSOCIATION'S FIGHTERS

WILLING TO PROVIDE FUNDING FOR AQUACULTURE ASSOCIATION. WE

HAVE ALREADY MADE INVESTMENT IN ENHANCEMENT OF FISH RESOURCES

FOR THE FUTURE. WE COULD EFFORTS TO STOP WALK, BUT OUR POLICY

ABOUT FUNDS GOING TO GENERAL FUND WOULD BE TO INVEST

IN THE PART OF RECORD.

SIG: ALPHETI, 2325 D13 WINDCAST ALASKA STATE

HEAD OFFICE: 605 618-1115

# TELEGRAM

ASSOCIATION  
PHONE: 2-1000  
JUNEAU, AK 99802

HB 969

22055 HAINES AV 04-03 0150 PST

PMS ALVIN COSTERBACK ST HOUSE

POUCH V

JUNEAU 341

MANY FISHERMEN REJECT TAXES BEING IMPOSED UPON THEM.

MAY ALSO OPPOSE REGIONAL AGRICULTURE ASSOCIATIONS.

ED MAY 1,

BOX 617

HAINES AK