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HOUSE COMMITTEE REPORT

(11)

Date Referred: February 9, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/23/90

The FINANCE Committee considered:

HB 400

HOUSE BILL NO. 400 FISHERIES BUSINESS TAX AND LICENSE

"An Act relating to the fisheries business tax and license, and to persons subject to the tax and the licensure requirement; establishing civil penalties for failure to obtain a fisheries business license; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 400 (FIN) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) 1/8/90 Dept Revenue
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>Ronald J. Larson</u> Larson	<u>Roll E. Phillips</u> Phillips	↓		
<u>Steve Swackhammer</u> Swackhammer	<u>Shultz</u> Shultz	✓		
<u>Ulmer</u> Ulmer				
<u>Barnes</u> Barnes				
<u>Kaponen</u> Kaponen				
<u>Watts</u> Watts				

Chairman's Signature
Ronald J. Larson Larson

STATE OF ALASKA
1990 LEGISLATIVE SESSION

cc

No. 1

BILL VERSION: HB 400

PUBLISH DATE: HOUSE 1/8/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Civil penalties for failure
to obtain fisheries business license
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	500.0	500.0	500.0	500.0	500.0	500.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See Attached:

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Steven E. Kettel

Phone: (907) 465-2320
Date: December 5, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Hugh Malone

Date: December 5, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Adopted

Law Log #0015
Analysis
Prepared by:
Steven E. Kettel
Director
Income and Excise Audit Division

Analysis

Failure to obtain a license prior to processing will trigger a monetary penalty scheme under the proposal. The penalties escalate as subsequent violations occur. The bill will create civil penalties for processing fish without a license. This will make it much easier for the Department to enforce the law, and will give the Department the leverage it needs to obtain fisheries business license applications and tax prepayments from fish processing companies.

This legislation was recommended by the legislative audit completed on June 9, 1989. Recommendation No. 5 stated that the Department of Revenue should seek legislation for more stringent penalties for operating a fisheries business without a fisheries business license.

Revenue Impact

We cannot anticipate the number of processors that will fail to obtain proper licensing and consequently be penalized. We do believe that voluntary compliance, especially among floating processors, will improve dramatically and increase tax collections by \$500,000 - \$1 million.

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 400 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the fisheries business tax and
7 license, and to persons subject to the tax and the
8 licensure requirement; establishing civil penalties
9 for failure to obtain a fisheries business license;
10 and providing for an effective date."

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

12 * Section 1. AS 43.75.011 is amended to read:

13 Sec. 43.75.011. FISHERIES BUSINESS LICENSE. A person engaging
14 or attempting to engage in a fisheries business or in an activity
15 described in AS 43.75.100 shall first apply for and obtain a license
16 as provided in AS 43.75.020.

17 * Sec. 2. AS 43.75.011 is amended by adding a new subsection to read:

18 (b) The commissioner may assess a civil penalty against a person
19 required to have a license under (a) of this section who fails to
20 obtain the license. The civil penalty for a violation of (a) of this
21 section may not exceed \$5,000 the first time a civil penalty is
22 assessed, \$10,000 for a second assessment, \$15,000 for a third assess-
23 ment, \$20,000 for a fourth assessment, and \$25,000 for a fifth or
24 subsequent assessment. The commissioner may not assess a person more
25 than one civil penalty for a violation of (a) of this section in a
26 30-day period.

27 * Sec. 3. AS 43.75.020 is amended to read:

28 Sec. 43.75.020. APPLICATION FOR LICENSE. (a) Application for a
29 license shall be filed with the department and accompanied by an

1 annual [INITIAL] fee of \$25. A separate annual [INITIAL] fee is
2 required for each plant specified in the application covered by the
3 license. The application shall contain the name of the applicant, the
4 line of business to be licensed, place of business, and other facts
5 which the department prescribes. The applicant shall state that the
6 applicant agrees to pay the [LICENSE] tax imposed by AS 43.75.015 or
7 43.75.100, and that the applicant will make a return and pay the tax
8 at the time provided by law.

9 (b) Upon receipt of the application in proper form, accompanied
10 by the annual [INITIAL] fee, the department shall issue the license.

11 * Sec. 4. AS 43.75.100(a) is amended to read:

12 (a) A person taking, purchasing, or otherwise acquiring a fish-
13 ery resource that [COVERED BY THIS CHAPTER WHICH] has not been subject
14 to the tax imposed in AS 43.75.015 is subject to the tax levied in
15 AS 43.75.015 on the value of the fishery resource if the person

16 (1) transports the fishery resource to a point outside the
17 taxing jurisdiction of the state for subsequent processing or sale
18 outside the taxing jurisdiction of the state;

19 (2) sells the fishery resource outside the taxing jurisdic-
20 tion of the state; or

21 (3) has the fishery resource processed by a fisheries
22 business in the state.

23 * Sec. 5. This Act takes effect January 1, 1991.
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LETTER OF INTENT-HOUSE BILL 400

In order to clarify current policy under A.S. 43.75.140 (11), section 5 of this act was amended. To insure tax compliance, the language "or compensation for delivery" was added to the definition of value. This amendment does not establish new policy but rather makes explicit both the taxpayer's liability and department authority.

By Representative Swackhammer

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Alaska MUNICIPAL League


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217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

February 8, 1990

MEMORANDUM

TO: Representative Cliff Davidson, Co-Chairman
 Representative Curt Menard, Co-Chairman
 Members of the House Resources Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: HB 400 - Relating to fisheries business tax and license

The Alaska Municipal League supports HB 400. The Alaska Municipal League's 1990 Municipal Platform (relevant excerpt attached) includes support for the continuation of the Fisheries Business Tax Program (AS 43.75) and "urges the Legislature and the state administration to take all necessary steps to strengthen the reporting and collection efforts of the Fisheries Business Tax Program to ensure equitable operation of the program and maximum return to Alaska's municipalities" and to the State.

HB 400 expands the authority of the Department of Revenue to assess fines against persons who are required to have a fisheries business license under AS 43.75.011 but fail to obtain the license. The AML supports HB 400 and urges its passage as one way to improve enforcement of the program for equity and maximum return.

The AML would like to work with the Committee on any other ways to improve enforcement and collections under the Fisheries Business Tax Program, HB 33 - Extending the Fisheries Business Tax Credit Program, and on legislation to share fisheries business tax revenues from the off-shore processors (see additional attached excerpt from AML's Platform). Thank you.

Attachments

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Fisheries Business Tax Program

The Alaska Municipal League urges the Legislature and state administration to take all necessary steps to strengthen the reporting and collection efforts of the Fisheries Business Tax Program to ensure equitable operation of the program and maximum return to Alaska's municipalities. The League supports continuation of the Fisheries Business Tax Program established by AS 43.75, including the provision that 50 percent of the revenues generated from the tax are to be shared with municipalities.

AS 43.75.015 establishes the Fisheries Business Tax (commonly referred to as the "raw fish tax") Program, which is administered by the Department of Revenue. Each fisheries business, i.e., processor, operating within the State, whether off shore or on shore, is liable for these taxes, which are levied at different rates depending on the nature of the processing involved (AS 43.75.015).

By statute (AS 43.75.130), 50 percent of the total tax liability under the program from processors operating within an incorporated municipality is refunded to the local government (city, borough, or a portion to each for processing that occurred in a city within a borough). The payments to local governments under this program, which are intended to compensate for the additional costs of providing government services to fisheries businesses, constitute a major portion of the annual budget in some municipalities. In FY 89, for example, 53 municipalities received over \$15.7 million, with shares ranging from as little as \$52.50 (Mekoryuk) to over \$1.7 million (Bristol Bay Borough and Kodiak Island Borough). The \$1.7 million received by the Kodiak Island Borough represented 27 percent of its total budget for the year.

AS 43.75.032, which was enacted in 1986 and remains in effect until January 1, 1992, allows processors a tax credit for up to 50 percent of capital expenditures made to increase product diversity or quality, promote production efficiency and capacity, or contribute to the development of a cooperative seafood industrial park. The statute allows this credit for a maximum of three consecutive years, which must begin in tax years 1987 through 1989.

Tax credits granted are deducted from the balance of the total taxes due after the municipalities' shares are distributed, which includes revenues from all processors operating outside municipal boundaries as well as 50 percent of what is due from those operating inside municipalities. Municipalities may choose to grant an additional tax credit to be deducted from their share of the revenue. The table below compares total net revenue (minus the tax credit) and the amount distributed to municipalities. It does not include information on the total tax liability, nor the amount of tax credit granted. Net revenue to the State has dropped during the past few years because of the formation of a new municipality, the Aleutians East Borough, in 1987 and because of the tax credit program. The net revenue projections for FY 1990 and FY 1991 are the mid-case scenario of the Department of Revenue.

Table 9. Fisheries Business Tax Shared Revenue Program

Fiscal Year	Total Net Revenue to State ^a	Payments to Municipalities
1985	\$18,695,205	\$6,503,103
1986	21,129,128	6,773,558
1987	27,025,050	8,076,553 ^b
1988	22,675,575	8,050,024 ^c
1989	26,759,425	15,721,755 ^d
1990	22,400,000 ^e	15,626,200 ^e
1991	23,000,000 ^e	18,000,000 ^e

^a Total revenue figures available from the Department of Revenue for these years are net of tax credits granted to processors.

^b FY 87 distribution was \$8,076,553, of which \$116,553 was for prior year prepayments encumbered in FY 86 but not eligible for distribution until FY 87. This amount was \$600,001 less than the amount earned because of an appropriation shortfall.

^c Plus \$600,001 in a supplemental appropriation for FY 87.

^d Plus \$3,411,196 in a supplemental appropriation for FY 88.

^e Estimated

Source: Alaska Department of Revenue

From the municipalities' point of view, there are two types of threats to this program, which is so important to Alaska's coastal communities: (1) inadequate administration of the program, which leads to a breakdown in collection, reporting, and enforcement operations and, thus, a lower rate of tax collection than should be expected, and (2) a change in the distribution formula.

Of great concern to the League and its members is improvement of the program's reporting, enforcement, and collection efforts. Any breakdown in the administration of the program results in lower revenues for both the State and local governments. In 1988, legislation was passed to allow the Department of Revenue to share fisheries business tax return information with municipal officials to help both parties determine whether, in fact, processing activity is being reported accurately. However, the department's administration of the program has some serious problems that are blocking fair, equitable, and accurate collection and distribution of fisheries business taxes due.

The Division of Legislative Audit recently completed an audit of the program ("A Special Report on the Department of Revenue Income and Excise Audit Division Fisheries Business Tax Program," June 9, 1989). That report suggests several changes that would improve the operation of the program, including better accounting practices, automation of record keeping, and expanded audit efforts to verify information reported and to identify unlicensed processors.

The League supports the implementation of these suggestions and other methods to improve the collection and reporting activities of the program. This support includes support for funding necessary to automate the record keeping system for the fisheries

business tax program and to increase the audit staff to the level necessary to administer the program in an equitable manner.

Also of concern are attempts to change the distribution formula. During the 1989 legislative session, one suggestion for dealing with the State's anticipated revenue shortfall was to change the statutorily defined distribution formula from a 50 percent State/50 percent local share to 70 percent State/30 percent local share. This change, which would have amounted to a 40 percent reduction in the amount received by local governments, would have been disastrous, particularly to communities that are dependent on this revenue source.

The League opposes any efforts to reduce the local governments' share of this tax. In addition, the League favors distribution of 50 percent of the revenue derived from processors located outside municipal boundaries to impacted municipalities; these funds currently remain in the state general fund (see "Fiscal Stability Measures" item above). The League also supports extension of the tax credit program and application of the tax credit to cooperative or municipal utility construction related to onshore fisheries development.

The Alaska Municipal League supports establishment of a program to share fisheries business tax proceeds from offshore processors with affected municipalities to mitigate the impacts of the fisheries on the provision of local services.

Coastal municipalities must provide additional governmental services because of the impact of seafood processors, both within and outside municipal boundaries. It is important that tax receipts from all types of processors be shared with the municipalities affected by their operations.

Under the provisions of AS 43.75, Fisheries Taxes, all processors must pay a fisheries business tax to the State. Only the portion of the tax collected as a result of processing activity that takes place within municipal boundaries is shared with municipalities. This is intended to help offset the demands on local services resulting from the influx of people, demand for utilities, increased use of health facilities, additional call for law enforcement, and other impacts that result from the fish harvesting and processing activities. The formula for distribution of these tax revenues is based on the revenue generated from fisheries business operations occurring within municipal boundaries. The municipalities get 50 percent, and the State retains 50 percent. Shared fisheries tax revenues are a substantial source of revenue for many local governments: in FY 89, for example, 53 municipalities received over \$15.7 million, with shares ranging from as little as \$52.50 to over \$1.7 million (Bristol Bay Borough and Kodiak Island Borough).

Current statutes provide that the revenue generated from fish processing plants located outside municipal boundaries goes entirely to the State and is not shared with local governments, in spite of the fact that the activities of these processors do impact local governments. Many municipalities have to provide additional services as a result of offshore processing operations outside their borders, for instance health services, garbage hauling, and expanded law enforcement activities. These impacts can be significant to municipalities and their taxpayers, especially in proportion to the level of service provided to their permanent municipal population. However, the State, which does not provide services at the local level, receives the tax receipts from the processors operating outside municipal boundaries.

In FY 1989, the total tax liability of processors was \$41.3 million. Of this, \$31.4 million was attributable to processing activity that took place within municipal boundaries (resulting in a \$15.7 million distribution to municipalities). The balance, \$9.9 million, was attributable to processors operating outside municipalities and

was retained by the State. If this had been shared 50/50 with affected municipalities, local governments would have received up to \$4.5 million to help mitigate the additional costs of providing services to processors and their employees.

The League supports a program that would share the fisheries business tax revenues generated from processors located outside municipal boundaries with those communities that can demonstrate an effect on municipal operations resulting from the processors' activities. During FY 86, the Department of Community and Regional Affairs conducted a pilot project to allocate revenues from offshore processing activities to municipalities, and legislation (HB 314/SB 454) was introduced in 1988 that would have made such a program permanent. The impact of offshore processors on local government operation is, if anything, increasing, and municipalities, which must provide services to such processors, should be given a share of the revenue received by the State from them.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ce
14B400

January 8, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that allows the commissioner of revenue to assess a civil penalty against a person who is required to obtain a fisheries business license under AS 43.75.010, but who fails to do so. The penalty assessed for a failure to obtain a license is \$5,000 for a first occurrence. Penalties for subsequent occurrences increase by increments of \$5,000, to a maximum of \$25,000. The bill also makes four housekeeping amendments.

AS 43.75.011 -- 43.75.140 require fish processors and certain others to obtain a license and pre-pay any estimated fisheries business taxes before the processing or other disposition of fish takes place. Failure to obtain a license is punishable under AS 43.05.290 only after a criminal conviction.

The Department of Revenue estimates there to be as many as 50 unlicensed floating fish processors that are working within Alaska's territorial waters. It is believed that compliance with the fisheries tax statutes would be enhanced by authorizing the department to assess civil penalties against those who fail to obtain the required license.

Sections 1, 3, and 4 of the bill make "housekeeping" changes. The change in sec. 1 amends AS 43.75.011 to make clear that a person who is not engaged in a "fisheries business" (as defined in AS 43.75.140) but who is subject to the fisheries business tax under AS 43.75.100, must obtain a fisheries business license. For example, a commercial fisherman selling his or her Alaska catch outside the state, or a fish buyer who transports fish, taken in Alaska, outside the state for processing, is, under AS 43.75.100,

liable for payment of the fisheries business tax. It has been the department's long-standing interpretation of AS 43.75 that such a person must obtain the same license required of a fisheries business.

Section 3 of the bill deletes confusing references in AS 43.75.020 to the "initial" fee (i.e., the license fee), and clarifies that the license fee is an annual fee. Section 3 also deletes the word "license" where it precedes "tax" in AS 43.75.020, and replaces that outdated reference with a reference to the statutes in AS 43.75 that impose the fisheries business tax.

Section 4 of the bill deletes the phrase "covered by this chapter," which modifies the term "fishery resource" in AS 43.75.100(a). "Fishery resource" is defined in AS 43.75.140, making that modifying phrase unnecessary and confusing.

I urge your early and favorable consideration of this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor