

**SB**

**124**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 124  
(S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Fisheries Business License and RDU Investments (122)  
Fish Processor/Primary Buyer Bonds Component Investments  
Sponsor Rules  
Requester By Request of the Governor Component No. 383

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation changes requirements to obtain and maintain a fisheries business license, and to the bonding requirements for fish processors and primary fish buyers. It does not impact the operations of the division.

Prepared by: Greg Winegar, Director Phone 907 465 2510  
Division: Investments Date/Ti: 2/4/05 6:25 PM  
Approved by: Edgar Blatchford, Commissioner Date 2/4/2005  
Agency: Department of Commerce, Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: SB 124  
(S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title: Relating to requirements to obtain and RDU \_\_\_\_\_  
maintain a fisheries business license Component \_\_\_\_\_  
Sponsor: Rules Committee  
Requester: Governor Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone 465-6137  
Division: Legislative Liaison Date/Time 12/16/04 3:01 PM  
Approved by: Commissioner Kevin Duffy Date 12/16/2004  
Agency: Alaska Department of Fish & Game

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: SB 124  
(S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: "An Act relating to requirements to obtain RDU: Employment Security  
and maintain a fisheries business license..." Component: Unemployment Insurance  
Sponsor: Rules  
Requester: Governor ment Number: 2276

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation changes bonding requirements for fish processors and primary fish buyers. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Tom W. Nelson, Director Phone: 465-5933  
Division: Employment Security Division Date/Time: 2/24/05 10:47 AM  
Approved by: Greg O'Claray, Commissioner Date: 2/24/2005  
Agency: Department of Labor and Workforcu Development

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: SB 124  
(S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: "An Act relating to requirements to obtain RDU: Labor Standards and Safety  
and maintain a fisheries business license..." Component: Wage and Hour  
Sponsor: Rules  
Requester: Governor Component Number: 345

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation changes bonding requirements for fish processors and primary fish buyers. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855  
Division: Labor Standards and Safety Date/Time: 2/24/05 10:47 AM  
Approved by: Greg O'Claray, Commissioner Date: 2/24/2005  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6  
Bill Version: CSSB 124(L&C)  
(S) Publish Date: 4/27/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Bonds & Accountability: Processors/UI RDU Revenue Programs & Services  
/UI/OSHA Component Tax Division  
Sponsor Governor  
Requester House Rules Committee Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>25.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The bill represents several modifications to existing fisheries business tax licensing and surety bond requirements: 1) it adds the Seafood Marketing Assessment, UI tax, OSHA fines, and local fish taxes to the list of liabilities that must be paid in full to obtain and hold a fisheries business license; 2) lowers the requirements for payment of UI tax from a processors surety bond while retaining priority for employees and fishermen; and 3) increases protections in place for employees and fishermen by modifying the rules under which bonding requirements are raised for processors that fail to pay employees, fishermen, or UI tax.

We do not expect to incur additional costs as a result of the legislation. We expect to collect additional Seafood Marketing Assessments under this legislation.

Prepared by: Chuck Harlamert Phone 465-2320  
Division Tax Division Date/Time 4/1/05 8:11 AM  
Approved by: Tom Boutin, Deputy Commissioner Date 4/1/2005  
Agency Rever.uc

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

5/7/05  
adopted  
AMENDMENT 1

OFFERED IN THE HOUSE  
TO: CSSB 124(L&C)

1 Page 2, lines 22 - 24:

2 Delete all material and insert:

3 "(3) department has not received a copy of

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

7 (B) a final administrative determination against the  
8 applicant from a municipality in the state for unpaid fishery sales, use, or  
9 severance taxes imposed by the municipality; the administrative  
10 determination must be accompanied by a certification by the municipality  
11 that the municipal administrative process is consistent with constitutional  
12 requirements of due process and that the applicant has exhausted all  
13 administrative remedies under applicable municipal administrative  
14 process."

24-GS1013L  
Utermohle  
5/6/05

adopted M/O 5/7/05

HOUSE CS FOR CS FOR SENATE BILL NO. 124( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

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 43.75.020 is amended to read:

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

13 (1) the taxes levied under this title [TAX IMPOSED BY  
14 AS 43.75.015 OR 43.75.100], and that the applicant will make a return and pay

1 the taxes [TAX] at the time provided by law;

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

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

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

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

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

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

14 (A) taxes levied under this title; and

15 (B) any assessments under AS 16.51;

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

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

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

22 (3) department has not received a copy of a final judgment  
23 obtained against the applicant for unpaid fishery sales, use, or severance taxes  
24 imposed by a municipality in the state.

25 (c) Instead of a license issued under (a) of this section, the department may  
26 issue a direct marketing fisheries business license to a licensed commercial fisherman  
27 who processes fishery resources caught using a vessel that does not exceed 65 feet in  
28 overall length and is owned or leased by the commercial fisherman. The licensee may  
29 place into commerce in the state and outside of the state processed or unprocessed  
30 fishery resources caught using the vessel described in the license. Fishery resources  
31 that are caught using the vessel and owned by the licensee from the time of harvest

1 through sale, as defined by the department by regulation, may be processed by the  
2 licensee on the vessel, at a shore-based facility, or by means of custom processing  
3 services obtained by the licensee. An application for a direct marketing fisheries  
4 business license shall be filed with the department and accompanied by an annual fee  
5 of \$25. A separate direct marketing fisheries business license and annual license fee  
6 are required for each vessel on which processing is performed. The application must  
7 state the name and address of the applicant, the fishery resources for which the  
8 applicant holds a commercial fishing entry permit or interim-use permit or quota  
9 share, a description of the vessel and each shore-based facility where the applicant will  
10 process fishery resources, and other information that the department prescribes by  
11 regulation. The application must state that the applicant, as a condition of obtaining  
12 and maintaining the license, agrees to pay the taxes, assessment, employment  
13 security contributions, and penalties as set out in (a)(1) - (5) of this section [TAX  
14 IMPOSED BY AS 43.75.015(d) OR 43.75.100, AND THAT THE APPLICANT  
15 WILL MAKE A RETURN AND PAY THE TAX AT THE TIME PROVIDED BY  
16 LAW]. A person who holds a direct marketing fisheries business license may not  
17 under that license (1) purchase fishery resources for resale or processing for sale; or  
18 (2) process fishery resources for another licensed commercial fisherman or for a  
19 fisheries business licensed under this chapter. In this subsection, "licensed  
20 commercial fisherman" means a natural person who holds a commercial fishing entry  
21 permit or interim-use permit issued under AS 16.43 or a quota share issued under  
22 federal law.

23 \* Sec. 2. AS 43.75.055 is amended by adding a new subsection to read:

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

30 \* Sec. 3. AS 44.25.040 is repealed and reenacted to read:

31 **Sec. 44.25.040. Security for certain obligations.** (a) A person applying for a

1 license as a fish processor or primary fish buyer shall file with the commissioner of  
2 revenue a performance bond, conditioned upon the promise to pay the following:

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

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

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

8 (4) contributions imposed under AS 23.20 (Alaska Employment  
9 Security Act).

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

15 (1) a final judgment in excess of \$10,000 was awarded against the  
16 bond required under this section; if the final judgment against the bond was in excess  
17 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of  
18 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of  
19 the bond is increased to a total of \$100,000;

20 (2) the commissioner has determined that the fish processor has  
21 engaged in the business of fish processor in the state or the primary fish buyer has  
22 engaged in the business of primary fish buyer in the state while not in compliance with  
23 this section and has not yet satisfied a final judgment entered against the fish processor  
24 or primary fish buyer for payment for labor furnished to, raw fishery resources  
25 purchased by, or raw fish transportation services provided to the fish processor or  
26 primary fish buyer; if the fish processor has engaged in the business of a fish processor  
27 or the primary fish buyer has engaged in the business of primary fish buyer while not  
28 in compliance with this section and has not yet satisfied a final judgment for payment  
29 for labor furnished to, raw fishery resources purchased by, or raw fish transportation  
30 services provided to the fish processor or primary fish buyer, the amount of the bond  
31 is increased to a total of \$100,000; or

1 (3) the commissioner has determined under (j) of this section that a  
2 claim against the bond filed by the Department of Labor and Workforce Development  
3 under (i) of this section met the requirements in (i) of this section; if the amount of the  
4 claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond is  
5 increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the  
6 amount of the bond is increased to a total of \$100,000; an increase in bond amount  
7 under this paragraph may not be imposed until 45 days after the commissioner  
8 determines under (j) of this section that the claim of the Department of Labor and  
9 Workforce Development met the requirements in (i) of this section.

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

15 (1) a final judgment in excess of \$2,000 was awarded against the bond  
16 required under this section; if the final judgment against the bond was in excess of  
17 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of  
18 \$10,000; if the final judgment against the bond was \$10,000 or more, the amount of  
19 the bond is increased to a total of \$20,000;

20 (2) the commissioner has determined that the fish processor has  
21 engaged in the business of fish processor in the state or that the primary fish buyer has  
22 engaged in the business of primary fish buyer in the state while not in compliance with  
23 this section and has not yet satisfied a final judgment entered against the fish processor  
24 or primary fish buyer for payment for labor furnished to, raw fishery resources  
25 purchased by, or raw fish transportation services provided to the fish processor or  
26 primary fish buyer; if the fish processor has engaged in the business of fish processor  
27 or primary fish buyer has engaged in the business of primary fish buyer while not in  
28 compliance with this section and has not yet satisfied a final judgment for payment for  
29 labor furnished to, raw fishery resources purchased by, or raw fish transportation  
30 services provided to the fish processor or primary fish buyer, the amount of the bond  
31 is increased to a total of \$20,000; or

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

10 (d) If a fish processor who has filed a performance bond under (c) of this  
11 section processes more than 30,000 pounds of fish in a year or purchases more than  
12 \$30,000 of fish in a year, the fish processor shall, within seven days after the day on  
13 which the 30,000 pound threshold or the \$30,000 threshold is exceeded, notify the  
14 commissioner and comply with (b) of this section. If a fish processor who has filed a  
15 performance bond under (c) of this section processes more than 30,000 pounds of fish  
16 in a year or purchases more than \$30,000 of fish in a year, and does not comply with  
17 (b) of this section within seven days after the date on which the 30,000 pound  
18 threshold or the \$30,000 threshold is exceeded, the fish processor shall suspend  
19 processing fish until a bond has been filed under (b) of this section.

20 (e) If a primary fish buyer who has filed a performance bond under (c) of this  
21 section purchases more than \$30,000 of fish in a year, the primary fish buyer shall,  
22 within seven days after the day on which the \$30,000 threshold is exceeded, notify the  
23 commissioner and comply with (b) of this section. If a primary fish buyer who has  
24 filed a performance bond under (c) of this section purchases more than \$30,000 of fish  
25 in a year, and does not comply with (b) of this section within seven days after the date  
26 on which the \$30,000 threshold is exceeded, the primary fish buyer shall suspend  
27 purchases of fish until a bond has been filed under (b) of this section.

28 (f) A fish processor or primary fish buyer may use only a surety bond, cash  
29 deposit, or other negotiable security as a performance bond under this section. The  
30 surety must be satisfactory in the determination of the commissioner. The use of other  
31 negotiable security as a performance bond must be in a form acceptable to the

1 commissioner. The commissioner shall waive the filing of a performance bond under  
2 this section if

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

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

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

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

14 (h) A claim against a fish processor or primary fish buyer for failing to pay an  
15 employee for wages or contractual benefits owed, for failing to pay an independent  
16 registered fisherman for the price of raw fishery resource purchased from the  
17 fisherman, or for failing to pay an independent contractor for the transportation of raw  
18 fish may be brought upon the bond filed under this section in the superior court of the  
19 judicial district in which the work was done or in any judicial district in the state in  
20 which jurisdiction may be obtained. If an action is brought upon the bond, a copy of  
21 the complaint shall be served by registered or certified mail upon the commissioner at  
22 the time the suit is filed. The commissioner shall transmit a copy of the complaint and  
23 any judgment to the surety or holder of the negotiable security. If a judgment is  
24 entered against cash deposited with the commissioner, the commissioner, upon receipt  
25 of a certified copy of a final judgment, shall pay the judgment from the amount of the  
26 deposit. The commissioner shall maintain a record, available for public inspection, of  
27 all suits commenced under this subsection.

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

1 commissioner, that the fish processor or primary fish buyer

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

3 (2) did not pay the amount specified in the notice of assessment within  
4 30 days after receiving the notice of assessment or, if the assessment was contested  
5 under AS 23.20.220, within 30 days after receiving the department's final decision  
6 under AS 23.20.220(c); and

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

11 (j) If the commissioner determines that the Department of Labor and  
12 Workforce Development has met the claim requirements in (i) of this section, the  
13 commissioner shall forward the claim and supporting documents to the surety or  
14 holder of the negotiable security. If the fish processor or primary fish buyer has  
15 deposited cash with the commissioner, the commissioner shall pay the claim of the  
16 Department of Labor and Workforce Development from the amount of the deposit. If  
17 the commissioner determines that the Department of Labor and Workforce  
18 Development has not met the claim requirements in (i) of this section, the  
19 commissioner shall provide the Department of Labor and Workforce Development  
20 with written notice of the deficiency of its claim.

21 (k) If a performance bond is insufficient to satisfy all claims filed against it  
22 under this section, claims brought against the bond under (h) of this section have  
23 priority over a claim filed against the bond under (i) of this section. The Department  
24 of Labor and Workforce Development shall return to the commissioner money  
25 received from a claim filed against a fish processor's or primary fish buyer's  
26 performance bond under (i) of this section if an employee, fisherman, or contracted  
27 raw fish transporter obtains a final judgment under (h) of this section against that fish  
28 processor's or primary fish buyer's bond and the

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

31 (2) final judgment obtained by the employee, fisherman, or contracted

1 raw fish transporter is more than the amount of the bond available under (b) or (c) of  
2 this section.

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

9 \* Sec. 4. AS 44.25.042 is amended by adding a new subsection to read:

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

15 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

## HSCSSB124

<b>CSSB 124</b>	<b>HSCSSB 124</b>
<p>Obligations that processors must pay to operate expanded to include taxes under Title 43, and:</p> <p style="text-align: center;">Seafood Marketing Assessments                      Employment Security Contributions                      OSHA Fines                      Local Fish Taxes</p>	<p><b>Same as SB 124</b></p>
<p>Tax security requirements eased during bridge period between January 1 and March 31</p>	<p><b>Same as SB 124</b></p>
<p>Beneficiaries of Labor Bond unchanged</p> <p style="text-align: center;">Fishermen                      Employees                      Dept. of Labor - ESC</p>	<p>Beneficiaries of Labor Bond Expanded</p> <p style="text-align: center;">Fishermen                      Employees                      Dept. of Labor - ESC</p> <p style="text-align: center;"><i>Adds</i>                      FishTenders</p>
<p>Basic Bond Requirements Unchanged</p> <p style="text-align: center;">Processors &lt; 30,000 lbs - \$2,000                      Processors &gt; 30,000 lbs - \$10,000</p> <p style="text-align: center;">All Fish Buyers - \$10,000</p>	<p>Basic Bond Requirement Eased for Small Operators</p> <p style="text-align: center;">Processors &lt; 30,000 lbs - \$2,000                      Processors &gt; 30,000 lbs - \$10,000</p> <p style="text-align: center;">Fish Buyers &lt; \$30,000 - \$2,000                      Fish Buyers &gt; \$30,000 - \$10,000</p>
<p>Triggers that increase bonding requirements made more responsive to processor behavior</p>	<p><b>Same as SB 124</b></p>
<p>Restrictions placed on use of real property in lieu of a labor bond</p>	<p><b>Same as SB 124</b></p>

## SB 124 / HB 192

### Overview

The bill adds Employment Security Contributions, OSHA fines, and the Seafood Marketing Assessment to the list of obligations that a processor must be current with to hold a fisheries business license. Current law requires processors to be current with their taxes under Title 43, principally fish taxes and the corporate net income tax. The change will significantly improve collections of the added obligations and reduce the degree to which employers and employees subsidize non-paying employers. The provisions are contained in Section 1 of the bill.

The bill streamlines the process under which the Department of Labor and Workforce Development collects unpaid Employment Security Contributions from a processor's labor bond. Existing law requires a court ordered judgment - an expensive and sometimes ineffective process. Priority for claims is given to employees and fishermen. The provisions are contained in Section 2 of the bill.

The bill modifies bond requirements to increase bond levels and restrict the form of the bond in response to processor behavior. These provisions are contained in Section 2 of the bill.

- Bond level made more responsive to processor behavior. Existing law increases the bond requirement if the bond is insufficient to satisfy a claim actually paid from the bond. Processors who have failed to pay ESC, employees or fishermen can avoid higher bond requirements by simply paying the judgment directly. The bill specifies that bond levels are adjusted upward in response to a judgment without regard for the source of payment under this bill.
- Restriction on use of real property in lieu of bond. Under current law, processors with real property in Alaska are not required to post bond if their equity is at least equal to their bond requirement. It is normally not economically feasible to pursue claims against the processors real property, particularly for small claims. The bill prohibits the use of real property in lieu of bond by processors' who incur a judgment for unpaid wages or fish. The use of real property is also denied any processor that fails to pay ESC of \$10,000 or more.

CS SENATE BILL No. 124

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

SECTIONAL ANALYSIS  
OFFICE OF THE ATTORNEY GENERAL

Section 1: Amends 43.75.020(a) to require a fisheries business license applicant to agree to pay, as a condition of their license, all title 43 taxes, seafood marketing assessments under AS 16.51, employment security contributions imposed under AS 23.20, administrative penalties assessed for a State occupational safety and health standards violation, and local fishery sales taxes. Current law requires payment of taxes under title 43 only.

Amends 43.75.020(b) to require the Department of Revenue (department) to deny an applicant a license if the applicant has failed to pay any of the obligations they agreed to pay in 43.75.020(a).

Section 2: Amends 43.75.055 to allow an applicant for a fisheries business license to secure payment of estimated tax for the year of application using security already provided to the department to secure payment of unpaid tax for the prior year as long as the department approves of the security previously posted and the applicant has timely paid their title 43 taxes in the preceding three years.

Section 3: This section repeals and reenacts AS 44.25.040 as follows:

44.25.040(a) requires a fish processor or primary fish buyer to file a performance bond with the department, promising to pay: 1) wages and contractual benefits to their employees, 2) fisherman for fish purchased from them, and 3)

employment security contributions required by AS 23.230. This subsection restates existing law.

44.25.040(b) sets the presumptive amount of the bond at \$10,000 for all primary fish buyers and processors who process at least 30,000 pounds of fish per year. This restates existing law. This subsection also describes three events which trigger an increase in the bond amount, if this event took place within five years of the current licensing year.

(1) Final Judgment: a final judgment against the bond can increase the amount of the bond. If the final judgment is more than \$10,000 but less than \$50,000, the bond requirement is increased to \$50,000. If the final judgment is \$50,000 or more, the bond requirement is increased to \$100,000. This makes a change to existing law. Existing law requires the bond to actually be used to satisfy the judgment before the bond amount can be increased. The \$10,000, \$50,000, and \$100,000 bond levels are unchanged.

(2) Department finding of non-compliance: if the department discovers the licensee is operating without a bond or with a bond that is less than the required amount, and also has an unsatisfied judgment to an employee or fisherman, the bond requirement is increased to \$100,000. This restates existing law.

(3) Delinquent Employment Security Contributions: the bond amount can also increase if the department has allowed the Department of Labor to collect against the bond for delinquent employment security contributions. If the amount of the delinquency is more than \$10,000, but less than \$50,000, the bond requirement is increased to \$50,000. If the amount of the delinquency is \$50,000 or more, the bond requirement is increased to \$100,000. There is a 45 day wait period before these bond increases go in effect after Department of Labor has given the department notice of the licensee's delinquency.

Current law required a final judgment to collect against the bond for delinquent employment security contributions and does not provide a wait period.

44.25.040(c) sets the presumptive amount of the bond at \$2,000 for processors who process 30,000 pounds of fish per year or less. This subsection also describes the same three events which trigger an increase in the bond amount in (b), if this event took place within five years of the current licensing year. The amounts of the bond, and bond increases are unchanged.

(1) Final Judgment: a final judgment against the bond can increase the amount of the bond. If the final judgment is more than \$2,000 but less than \$10,000, the bond requirement is increased to \$10,000. If the final judgment is \$10,000 or more, the bond requirement is increased to \$20,000. This restates existing law with the minor modification noted in (b)(1).

(2) Department finding of non-compliance: If the department discovers the licensee is operating without a bond or with a bond that is less than the required amount, and also has an unsatisfied judgment to an employee or fisherman, the bond requirement is increased to \$20,000. This restates existing law.

(3) Delinquent Employment Security Contributions: The bond amount can also increase if the department has allowed the Department of Labor to collect against the bond for delinquent employment security contributions. If the amount of the delinquency is more than \$2,000 but less than \$10,000, the bond requirement is increased to \$10,000. If the amount of the delinquency is \$10,000 or more, the bond requirement is increased to \$20,000. There is a 45 day wait period before these bond increases go in effect after Department of Labor has given the department notice of the licensee's delinquency. Current law required a final judgment to collect

against the bond for delinquent employment security contributions and does not provide a wait period.

44.25.040(d) requires a processor who posted a \$2,000 bond under subsection (c) to notify and post with the department a \$10,000 bond within a week of exceeding the 30,000 pounds a fish per year threshold, or cease operations. This subsection restates existing law.

44.25.040(e) describes the different forms of performance bonds that are acceptable: surety bond, cash deposit, or other negotiable security. This subsection also requires the department to waive the posting of a bond if the licensee demonstrates to the department they have sufficient equity in the real property to cover their required bond amount and they are not required to post an increased bond amount due to one of the three events set out in (b) or (c). Current law allows the use of real property in lieu of bond for amounts in excess of \$10,000 irrespective of the processor or primary fish buyer's record of paying fishermen, wages, or employment security contributions.

44.25.040(f) provides that the department may issue a license upon a showing the licensee has posted the bond required by this section. This subsection restates existing law.

44.25.040(g) describes the process for an employee, fisherman, or fish tender to file a civil action to collect against the bond posted under this section. This subsection also describes the department's obligation to inform the surety of the existence of a civil action and keep a record of these actions. This section restates current law except that the existing authority for the commissioner to accept assignment of a claim against the bond, and to bring suit on behalf of the assignor is repealed.

44.25.040(h) describes the requirements the Department of Labor must follow to file an administrative claim against the bond for delinquent employment security contributions. These requirements are designed to assure the licensee has been afforded due process at the administrative level before the licensee's bond can be used to satisfy Department of Labor's administrative claim. This subsection is new law.

44.25.040(i) describes the process the department is to follow after deciding to accept or deny the Department of Labor's request to collect their administrative claim from the bond under (h). This subsection is new law.

44.25.040(j) preserves the priority for using the bond to satisfy the claims of fisherman and employees over the Department of Labor's administrative claims under (h). This is achieved by requiring the Department of Labor to 'kick back' to the department money they received from the bond if a fisherman or employee subsequently gets a judgment against the bond under (g) and the: 1) licensee has not replenished the bond after it was used to satisfy Department of Labor's claim, or 2) amount of the fisherman or employee's judgment exceeds the amount of the bond currently posted. This section is new law.

44.25.040(k) provides for the bond's expiration two years after the processor or buyer is no longer licensed. However, if during this two year waiting period, a claim is filed against the bond, the bond will not expire until five years after the processor or buyer is no longer licensed. This subsection also provides for a 30 day notice by the surety to cancel a bond posted under this section. This section restates existing law.

Section 4: Amends 44.25.042 to require the department to suspend the processor or buyer's license if the

Department of Labor has been allowed to collect against the bond using their administrative claim under AS 44.25.040(i) and the licensee does not immediately replenish the bond. This is new law.

Section 5: The section provides an immediate effective date.



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## Egegik processor also owes students

**BOUNCED CHECKS:** Turks among those who have filed for wages.

The Associated Press

(Published: August 13, 2004)

KODIAK -- Exchange students from Turkey are among workers who have filed claims for unpaid wages against a fish processor operating in Egegik.

The Turkish exchange students traveled to Alaska to work at Woodbine Alaska Fish Co. and were paid with checks that bounced.

Woodbine, which is now closed, has left both fishermen and cannery workers unpaid and owes taxes from last year. The company has numerous wage claims filed against it by the state, said Sandy Cannon, supervising investigator for the Alaska Department of Labor.

"We heard there would be 18, but so far 15 students have filed wage claims. We still have outstanding wage claims -- there are quite a few," Cannon said.

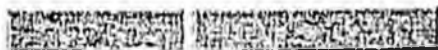
Egegik is on the west side of the Alaska Peninsula, 326 miles southwest of Anchorage.

The students were sponsored by the Council of International Education Exchange, one of the United States' largest university student exchange programs.

The students are on an inbound student exchange summer work and travel program to the United States, exchange program vice president Elizabeth O'Neill said.

"We are working on the students' behalf to try to get to the bottom of the set of circumstances there and make sure they get the wages they are due for the work they completed," she said.

As soon as the issue came to its attention, the organization sent a staff member to the Woodbine cannery to investigate. Several of the students already had left for Kodiak or other communities, she said.



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## STORY

### Slipshod management leaves workers unpaid

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Article published on Wednesday, August 11th, 2004  
By DEANNA COOPER  
Mirror Writer

A group of Turkish exchange students traveled to Alaska to work at Woodbine Alaska Fish Company in Egegik for the summer season, but discovered they got the raw end of the deal when their checks bounced.

Woodbine, which is now closed, has left both fishermen and cannery workers unpaid and owes taxes from last year. They have numerous wage claims filed against them by the state, said supervising investigator for the Alaska Department of Labor, Sandy Cannon.

"We heard there would be 18, but so far 15 students have filed wage claims. We still have outstanding wage claims (against Woodbine) — there are quite a few," Cannon said.

The students were sponsored by the Council of International Education Exchange (CIEE), one of the United States' largest university student exchange programs. It is a nonprofit organization that has been in existence since 1947 and is involved in student exchange programs globally.

The students are on an inbound student exchange summer work/travel program to the United States.

CIEE vice president Elizabeth O'Neill said, "They are part of a program that enables them to come to the U.S. and work during their summer university holiday period and see a bit of the U.S. They return back to their studies in the fall.

"There have been some problems involving one particular employer. We're currently investigating the circumstances with respect to the students and their paychecks. As we understand it, some of the checks are coming back with insufficient funds," O'Neill said.

"We are working on the students' behalf to try and get to the bottom of the set of circumstances there and make sure they get the wages they are due for the work they completed," she said.

As soon as the issue came to their attention, CIEE sent a staff member to the Woodbine cannery to investigate the situation. When the staff member arrived, several of the students had already left the cannery and came to

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O'Neill said if there are students remaining in Kodiak with difficulties, they should get in touch with CIEE staff or their legal sponsor.

"We're still working to ensure that the students get paid, but we don't have a resolution yet," she said.

CIEE sponsors the students to travel to and work in the United States, and they offer around-the-clock support to the students.

"We not only want to make sure they get the money they are due, but we have moved some students to other jobs outside of Alaska. We assist students throughout their stay in the summer, that is one of our main roles," O'Neill said.

Unpaid workers are a small part of the larger story. A source currently involved in the ongoing investigation of the Woodbine Company who spoke on the condition of anonymity said around 30 Turkish students worked at the Woodbine cannery in Egegik during the course of the summer. Most of them left and went to three different places, Valdez, Nikiski and Kodiak.

"As I understand it, the paychecks the students received when they left Woodbine all bounced. Last week four students from Kodiak flew to Egegik to demand paychecks for themselves and their other friends still in Kodiak.

As the students flew in, the owner of the company was flying out, the source said.

The students spent two days in Egegik and left empty-handed, but were soon sent some money, though it is unclear if they were paid in full. Other workers received nothing.

"The owner promised to wire transfer the money into the other people's accounts but she has been promising that all summer long. Nobody has held their breath," the source said.

"There are fishermen who have not been paid since last year. Last year they received checks that bounced. The owner wrote them replacement checks this year that have also bounced. We have an open case for issuing bad checks and there is a warrant out for her arrest for credit card fraud," he said.

Woodbine has been operating in a slipshod manner for years, but some years are worse than others. This is one of the bad years, he said.

He said U.S. marshals seized the company's two tenders in Egegik, the Naknek Spirit and the Egegik Spirit for nonpayment of a loan. They have had several other liens placed against their property and business.

"The owners have made a lot of empty promises. They still owe the city of Egegik about \$40,000, which does not include taxes from last year or this year.

"They were able to get their license to operate a business by paying the state, but the state doesn't need the money as badly as these small villages. They rely on that money to purchase their winter fuel supply," the source said.

"They are playing with the lives of the people who stay in the villages all winter long while they live in their multi-million dollar house in California," he said, adding that when the owner and her husband left they didn't let

anyone know they were leaving. "They just disappeared," he said.

"I believe they took off because the owner knew she was going to be arrested, and she got out of here a day before it happened."

The Alaska Department of Labor continues to investigate the situation.

The students remaining in Kodiak could not be located for comment.

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