

ALASKA LEGISLATURE

1018

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

92

**HB**

**264**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/28/93

FURTHER:

DATE TURNED INTO OFFICE: 5-4-93

The Finance Committee considered CS FOR HOUSE BILL NO. 264(FIN)

"An Act levying and providing for the collection of and disposition of the proceeds of a fishery resource landing tax; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (FINANCE)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts \_\_\_\_\_ Letter of Intent
- further referral to the \_\_\_\_\_

- do pass
- do not pass
- no recommendation
- individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
Revenue	4/1/93		794.0
DC & ED	4/12/93		9860.0

Appropriation No Fiscal Note

**DO PASS:**

\_\_\_\_\_  
*Steve Kiser*  
 \_\_\_\_\_  
*George DeLoach*  
 \_\_\_\_\_  
*Bob Wherry*  
 \_\_\_\_\_

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
*Tim Kelly - No Rec*  
 \_\_\_\_\_  
*J. Kuntz*      *Nil Rec*  
 \_\_\_\_\_

1. DO PASS  
 Co-Chair: Signature/Recommendation

2. NO RECOMMENDATION  
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1

Bill Version: CSHB 264 (FSH)

(H) Publish Date: 4/13/93

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Title: Fishery Resource Landing Tax

Sponsor: House Rules

Requestor: House Rules

Department Affected: Commerce and Economic Development

BRU: Alaska Seafood Marketing Institute

Component: \_\_\_\_\_

COMPONENT SERIAL NO. 0393

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	860.0	860.0	860.0	860.0	860.0	860.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	860.0	860.0	860.0	860.0	860.0	860.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND						
SOURCE: General Fund	860.0	860.0	860.0	860.0	860.0	860.0

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	860.0	860.0	860.0	860.0	860.0	860.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	860.0	860.0	860.0	860.0	860.0	860.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Fred Fisher, Administrative Officer

Phone: 465-5571

Division: Alaska Seafood Marketing Institute

Date: 4/9/93

Approved by Commissioner: Paul Fuhs

Agency: Commerce and Economic Development

Date: 4-12-93

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Rev 1/93  
ORIGINAL

# FISCAL NOTE

N<sup>o</sup> 2

Bill Version: CSHB 264 (FSH)

(H) Publish Date: 4/13/93

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Revision Date:	Dept. Affected: <u>Revenue</u>
Title: <u>Fishery Resource Landing Tax</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>House Rules</u>	Component: <u>Income and Excise Audit</u>
Requestor: <u>House Rules</u>	COMPONENT SERIAL NO. <u>113</u>

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	58.0	58.0	58.0	58.0	58.0	58.0
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>94.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>
<b>CAPITAL</b>						

REVENUE FUND SOURCE: General Fund	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0
	860.0	860.0	860.0	860.0	860.0	860.0

FUNDING:	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF	94.0	84.0	84.0	84.0	84.0	84.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>94.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>

POSITIONS:	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by:	Larry E. Meyers, Director <i>Larry E. Meyers</i>	Phone: <u>465-2320</u>
Division:	Income and Excise Audit Division	Date: <u>April 1, 1993</u>
Approved by Commissioner:	Darrel J. Rexwinkel <i>Darrel J. Rexwinkel</i>	Date: <u>April 1, 1993</u>
Agency:	Department of Revenue	

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AMENDMENT

*Offered  
5-4-93 # 1*  
*Failed  
4-3*  
*Peane, Keely,  
Kertula  
in favor*  

---

*rest opposed*

OFFERED IN THE SENATE

TO: CSHB 264(FIN)

Page 3, line 1, after "(b)":

Insert "A taxpayer other than a taxpayer who is eligible for a credit under (a) of this section may claim as a credit, against not more than 11.37 percent of the tax under this chapter that is due on the value of the fishery resource harvested, the taxpayer's contributions made during the tax year to a nonprofit corporation incorporated under the laws of the state that are used by the recipient for training in the state for employment in the seafood industry as set out in (a)(2) of this section.

(c)"

Reletter the following subsections accordingly.

Page 3, line 2, after "(a)":

Insert "or (b)"

Page 3, line 10, after "(a)":

Insert "or (b)"

Page 3, line 24:

Delete "AS 43.77.040(b)"

Insert "AS 43.77.040(c)"

SENATE FINANCE COMMITTEE (4)  
Amendment Number: \_\_\_\_\_  
Bill Number: HB 264  
Sponsor: Keely Date: 5/14/93  
Logged In By: Br

# FISCAL NOTE

N<sup>o</sup> 2

Bill Version: CSHB 264 (FSH)

(H) Publish Date: 4/13/93

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

Revision Date:		Dept. Affected:	Revenue
Title:	<u>Fishery Resource Landing Tax</u>	BRU:	<u>Revenue Operations</u>
		Component:	<u>Income and Excise Audit</u>
Sponsor:	<u>House Rules</u>		
Requestor:	<u>House Rules</u>	COMPONENT SERIAL NO.	<u>113</u>

Expenditures/Revenues: (Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
<b>OPERATING</b>						
PERSONAL SERVICES	58.0	58.0	58.0	58.0	58.0	58.0
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>94.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>
<b>CAPITAL</b>						

<b>REVENUE FUND SOURCE: General Fund</b>	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0
<b>FUNDING:</b>	860.0	860.0	860.0	860.0	860.0	860.0

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	94.0	84.0	84.0	84.0	84.0	84.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>94.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>	<b>84.0</b>

**POSITIONS:**

<b>FULL-TIME</b>	1	1	1	1	1	1
<b>PART-TIME</b>						
<b>TEMPORARY</b>						

Estimate of current year (FY93) impact: \$ 0

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

Prepared by:	Larry E. Meyers, Director	Phone: <u>465-2320</u>
Division:	Income and Excise Audit Division	Date: <u>April 1, 1993</u>
Approved by Commissioner:	Darrel J. Rexwinkel	Date: <u>April 1, 1993</u>
Agency:	Department of Revenue	

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### Analysis

This bill amends AS Title 43 by adding a chapter to provide for a fishery resource landing tax. The landing tax would be imposed on fisheries resources brought into or landed in the state. The tax would be calculated by multiplying the value of the fishery resource by 3.3%.

Persons subject to the landing tax would be required to file a return with the department on a calendar year basis. The return and tax payment would be due April 1 after the close of the calendar year. Taxes collected on .3% of the value of the fishery resource will be paid into a separate account, the balance of which may be appropriated by the legislature to the Alaska Seafood Marketing Institute (ASMI).

All remaining taxes collected will be paid into a separate account in the general fund. Of that amount, fifty percent will be shared to cities and boroughs in the same manner as fisheries business taxes under AS 75, subject to appropriation by the legislature.

Based on the Department of Revenue's 1991 Fish Tax Study, landing tax revenues are estimated as follows:

	<u>Value</u>	<u>3% Portion</u>	<u>.3% Portion</u>
Landing Tax	\$285,700.0	\$8,600.0	\$860.0
Less Amount Shared (50%)		<u>(4,300.0)</u>	<u>N/A</u>
Net Landing Tax		<u>\$4,300.0</u>	<u>\$860.0</u>

### Operating Costs

Personal Services	
Revenue Auditor III - Anchorage (Range 18A)	58.0
Travel	
Compliance and Review	10.0
Audits	10.0
Contractual	5.0
Supplies	1.0
Equipment	
Computer and Modular Furniture (FY 94)	10.0

AMENDMENT

*Offered  
5-4-93 # 1*

*Failed  
4-3*

*Peane, Kelly,  
Kerthick  
in favor*

*rest opposed*

OFFERED IN THE SENATE

TO: CSHB 264(FIN)

Page 3, line 1, after "(b)":

Insert "A taxpayer other than a taxpayer who is eligible for a credit under (a) of this section may claim as a credit, against not more than 11.37 percent of the tax under this chapter that is due on the value of the fishery resource harvested, the taxpayer's contributions made during the tax year to a nonprofit corporation incorporated under the laws of the state that are used by the recipient for training in the state for employment in the seafood industry as set out in (a)(2) of this section.

(c)"

Reletter the following subsections accordingly.

Page 3, line 2, after "(a)":

Insert "or (b)"

Page 3, line 10, after "(a)":

Insert "or (b)"

Page 3, line 24:

Delete "AS 43.77.040(b)"

Insert "AS 43.77.040(c)"

SENATE FINANCE COMMITTEE  
Amendment Number: 4  
Bill Number: HB 264  
Sponsor: Kelly Date: 5/4/93  
Logged In By: Br

5-3-93  
JFC  
Szymanski

LETTER OF INTENT  
HB 264

It is the intent of the Legislature in order to prevent a scenario of double-taxation, that HB 264 provide a credit to taxpayers for taxes equivalent in nature to those imposed under AS 43.75 , AS 43.76 and AS 43.77 that are paid to another jurisdiction in which the fishery resource was sold. This provision is intended to include as equivalent those taxes, duties and fees paid by taxpayers to a foreign jurisdiction upon this landing and entry of such fishery resources into such jurisdiction.

8-LS0941M.3  
Chenoweth  
4/29/93

AMENDMENT

# 1

OFFERED IN THE SENATE

TO: CSHB 264(FIN)

Page 2, line 9, after "under":

Insert "this chapter or under"

AMENDMENT

# 2

OFFERED IN THE SENATE  
TO: CSHB 264(FIN)

Page 5, lines 28 - 29:

Delete all material and insert:

"(3) "landing"

(A) means the act of unloading or transferring a fishery  
resource:

(B) does not include the unloading or transferring of a fishery  
resource for direct export from this jurisdiction into foreign commerce;"

A M E N D M E N T

#3

OFFERED IN THE SENATE  
TO: CSHB 264(FIN)

Page 1, lines 6 - 10:

Delete all material and insert:

"Sec. 43.77.010. LANDING TAX. (a) Except as provided in (b) of this section, a person owning a fishery resource that is not subject to AS 43.75 but that is brought into the jurisdiction of, and first landed in, this state is liable for and shall pay a landing tax on the value of the fishery resource.

(b) The landing tax imposed by this chapter does not apply to a fishery resource brought into the jurisdiction of, and first landed in, this state if the landing of the fishery resource involves the physical transfer of the fishery resource for direct export from this jurisdiction into foreign commerce.

(c) The amount of the landing tax is 3.3 percent of the value of the fishery resource at the place of the landing."

# Alaska State Legislature

Representative Carl E. Moses



CLERK  
HOUSE RULES COMMITTEE

CHAIRMAN  
HOUSE SPECIAL FISHERIES COMMITTEE

MEMBER  
FINANCE SUBCOMMITTEES  
FISH AND GAME  
PUBLIC SAFETY

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## SPONSOR STATEMENT FOR FINANCE COMMITTEE SUBSTITUTE FOR HB 264 FISHERY RESOURCE LANDING TAX

House Bill 264 would establish a new tax on fisheries resources that are caught and processed in the Exclusive Economic Zone (those waters under U.S. jurisdiction that are directly off Alaska) but are then landed within Alaska's jurisdiction. These processed resources are currently not subject to any Alaska state tax.

The offshore factory trawl fleet operating within the EEZ has been extremely profitable. It is now fully Americanized, with most vessels based in the state of Washington. The trawl fleet that would be subject to this tax primarily targets groundfish, with incidental catches of crab, halibut, herring and salmon - all species important to Alaska's resident fishermen and processors, and their coastal communities. Alaska provides significant benefits and services to the offshore fleet, and incurs additional fishery management and enforcement costs as well. Coupled with the impact the operations have on local Alaska communities, the tax is one way to compensate the state for these services.

House Bill 264 would impose a modest tax of 3.3% of the value of the processed resource which is landed in Alaska for shipment to market elsewhere. ASMI would receive the .3% portion of the tax collected. The new landing tax would place the offshore fleet on the same level as the onshore fleet in terms of state taxation.

The Finance Committee CS for HB 264 would authorize a very narrow tax credit that would be limited to the tax on the value of the fishery resource harvested under a community development quota program. The potential value of this tax credit is about \$290,000, a

very small portion of the Department of Revenue's estimated total tax of \$8.6 million generated by this legislation . The tax credit would only be allowed if the equivalent amount of funds was given to a nonprofit corporation for use in Alaska fisheries development, training and employment, and any credit would first be approved by the Department of Revenue, in consultation with the Department of Community and Regional Affairs. The credit would only apply to the municipal share of the tax.

The Finance Committee Substitute also changed the definition of "value" used in computing the tax. This change was requested by the fishing industry to give more clarification and certainty in how the tax would be determined.

The original legislation had given the taxpayer a credit for equivalent taxes paid in other "states." The Finance Committee extended that credit to taxes equivalent "in nature" paid in other "jurisdictions," which could also include foreign countries. The Department of Revenue does not believe this change will have significant effect on the revenues generated.

Back-up

**DEPARTMENT OF REVENUE  
SECTIONAL ANALYSIS  
CS FOR HOUSE BILL NO. 264 (FIN)**

**An Act Levying and Providing for the Collection of and Disposition of the Proceeds of A  
Fishery Resource Landing Tax and Providing For An Effective Date.**

**Section 1** adds a new chapter in AS 43 to implement a landing tax. The landing tax is both designed and intended to be a compensatory tax to complement the fisheries business tax under AS 43.75. The landing tax is intended to compensate the state for the burdens that the EEZ catcher/processor fleet imposes upon the state and local communities, as well as for the benefits the EEZ catcher/processor fleet receives from the state and local communities.

The state has various research, management and enforcement responsibilities in connection with the offshore fisheries, and the EEZ catcher/processor fleet has a significant presence in the state including transferring the processed product, taking on and disembarking crew, taking on fuel and supplies, discharging waste, and seeking sheltered waters. The state and local communities are impacted through the additional burdens placed upon educational systems, road maintenance, public safety, airports, docks, hospitals, and other social programs.

Fisheries businesses in the state pay for these benefits and burdens through the fisheries business tax and the landing tax is a substantially equivalent levy designed to impose a comparable burden on interstate commerce. In a real sense, the EEZ catcher processors are conducting fisheries businesses in the state to no less a degree than in-state operators. The landing tax is not a fee on the fisheries resources simply moving through the state, it is instead a quid pro quo for the services and benefits conferred upon the processed resources whereby they pay their own way. The landing tax thus achieves an equality of treatment between local and interstate commerce conducting fisheries businesses in the state.

The landing tax imposed under AS 43.77.010 will apply to processed fishery resources that are not subject to AS 43.75 (the Fisheries Business Tax provisions). A fisheries resource that is subject to tax under AS 43.75 is not subject to the landing tax in AS 43.77.

The Fisheries Business Tax in AS 43.75 applies to fishery resources that are either caught or processed in Alaska. Therefore, the landing tax provisions will apply to fishery resources that are both caught and processed outside the jurisdiction of Alaska and thereafter brought into the state and first landed in this state.

Department of Revenue  
CS For House Bill No. 264 (FIN)  
April 27, 1993

The landing tax will apply to processed resources that are first landed in the state of Alaska rather than in another state or foreign country. The landing tax does not apply if the processed resources are first landed in another state or foreign country. A first landing outside the jurisdiction of a state or foreign country, such as in United States jurisdictional waters, is not a landing in a state or foreign country and does not prevent the Alaska landing tax from applying. The tax rate is 3.3% of the value of the processed fishery resources at the place of the landing.

AS 43.77.020 provides that a person subject to the tax must file a return reporting the value of the resources landed that are subject to the tax and the point of landing, as well as such other information as may be required by the department in regulations. The return is to be made on a calendar year basis and is due before April 1 of the following year, as is the case with the Fisheries Business tax return. An extension of time to file may be granted by the department but the tax remains due and payable before April 1. The tax due and payable as shown on the return will be a "net" tax after reduction for tax credits authorized under AS 43.77.030 (other taxes paid) and AS 43.77.040 (approved contributions).

AS 43.77.030 provides a credit against the landing tax on a fishery resource for processing and salmon enhancement type taxes paid to another jurisdiction in which the fishery resource was caught, processed, or sold. The credit is only available for those taxes that are equivalent in nature to AS 43.75 and AS 43.76. Sales taxes, import or export fees or taxes, income taxes, and similar taxes and fees are not equivalent to AS 43.75 and AS 43.76 and would not qualify for the credit. The credit provision is intended to avoid certain constitutional challenges to the tax, although few, if any, resources that are first landed in Alaska will be subject to a tax in another jurisdiction that is equivalent in nature to AS 43.75 and AS 43.76.

AS 43.77.040 allows a credit for certain contributions by taxpayers that harvest fishery resources under a community development quota ("CDQ"). The credit is limited to 45.45% of the tax that is specifically attributable to the resources harvested under the CDQ. The contributions that qualify for the credit must be made to an Alaska nonprofit corporation and the nonprofit corporation must use the funds for certain specified purposes. The recipient of the funds from the nonprofit must use the grant in Alaska for one of the specified purposes, such as receiving training in the state for employment in the seafood industry.

A taxpayer must apply to the department to obtain the credit. The Department,

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CS For House Bill No. 264 (FIN)  
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in consultation with the Department of Community and Regional Affairs, must approve or disapprove the application within 60 days. The credit is available in the calendar year of the contribution against the tax liability under AS 43.77 for that calendar year. The credit will be taken by a taxpayer on the return that is filed in the succeeding calendar year. Therefore, the credit is shown on the return as a reduction in the tax liability for that year - the credit is not a rebate provision. The department shall revoke a tax credit and recover erroneously granted credits if it is later determined the contribution does not qualify for the credit or the taxpayer is in arrears in the payment of any tax under AS 43.

AS 43.77.050 provides that the tax paid on the levy of .3% of the value of the fishery resource is to be deposited into the general fund in an account for the use of the Alaska Seafood Marketing Institute ("ASMI") upon appropriation by the legislature.

After payment of the ASMI portion of the tax, the remainder of the tax collected is paid into a separate account in the general fund for appropriation by the legislature for revenue sharing with municipalities. However, the amount that may be appropriated for revenue sharing is reduced by the amount of the tax credits authorized under AS 43.77.040. This reduction is merely an accounting entry to achieve the legislative intent that the tax credits granted under AS 43.77.040 reduce dollar for dollar the amount of revenue shared to municipalities. The revenue retained by the state in the general fund is therefore not impacted by the contribution credit provision as the cost of the credit is borne by the municipalities.

AS 43.77.060 contains the revenue sharing provisions. The maximum amount available for sharing with municipalities and cities is 50% of the tax collected on 3% of the value of the fisheries resources. The .3% of the 3.3% tax that is deposited under AS 43.77.050 into a separate account for appropriation to ASMI is not available for revenue sharing. These revenue sharing provisions generally mirror the revenue sharing provisions in AS 43.75.130 and AS 43.75.137 that apply to the Fisheries Business Tax. However, tax credits granted under AS 43.77.040 reduce dollar for dollar the revenue shared back to municipalities.

AS 43.77.070 gives the department the authority to adopt regulations to interpret and implement the landing tax provisions.

AS 43.77.200 contains definitions. A taxable fishery resource for purposes of this chapter is necessarily a fishery resource that has been processed. An

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unprocessed fishery resource in the state, if otherwise taxable, would be subject to AS 43.75.

Landing is defined as the act of unloading or transferring a fishery resource. A taxable landing can take place over water or on land. For instance, a factory ship might catch and process fishery resources on the high seas outside the Alaska 3 mile limit, transfer the processed resources to a second vessel on the high seas, and the second vessel might enter the 3 mile jurisdiction of Alaska and transfer the product to a third vessel. The Fisheries Business Tax under AS 43.75 would not apply because the fishery resources were both caught and processed outside the state. However, the landing tax would apply at the point the second vessel transferred the product to the third vessel. There has been no previous landing in any other state or foreign country so the first landing of the processed resources is in Alaska. The owner of the fishery resources aboard the second vessel at the moment of unloading or transfer is liable for the landing tax.

The valuation of the fishery resources for purposes of computing the tax is the statewide average price paid for the fishery resource in that tax year as reported by the Department of Fish and Game. The statewide average price paid for the fishery resource is an average value for unprocessed fisheries resources as reported on fish tickets. The values reflected on the fish tickets are generally ex vessel values, or the value of the resource at the vessel after harvesting.

The use of the statewide average price paid will accomplish two results. First, it will simplify the determination of the tax value and, second, it will roughly approximate the value that would otherwise have been applicable under the Fisheries Business Tax provisions.

While the value for purposes of the landing tax, as a result of the use of a statewide average unprocessed price as a base, may be lower than the actual value as determined by a similar taxpayer under AS 43.75, the landing tax will not generally result in a higher tax burden than that incurred under AS 43.75. That is because the statewide average price paid is based on unprocessed product and therefore does not include the value added from the act of processing, packaging, or transportation. The value added to fishery resources from processing is not generally included in taxable value under AS 43.75, and CSHB 264 thereby achieves an equality in the tax burden.

**Section 2** amends AS 29.60.450(b) to provide for apportionment and allocation

Department of Revenue  
CS For House Bill No. 264 (FIN)  
April 27, 1993

of landing tax shared revenues by the Department of Community and Regional Affairs to eligible municipalities.

**Section 3** amends AS 29.60.450(f) to provide that "fishery resource landing tax production value" has the meaning given the term "value" under the landing tax provisions in AS 43.77.

**Section 4** provides that the Act takes effect on January 1, 1994 and applies to fishery resources that are first landed in the state on that date.

The Department of Revenue strongly supports CS for House Bill No. 264.

**HOUSE BILL NO. 264**  
**LANDING TAX QUESTIONS AND ANSWERS**

Question 1. Who is impacted by this legislation?

Answer Those operators who both catch and process outside Alaska and bring the processed product into the state. The legislation is aimed at catcher/processors in the Exclusive Economic Zone ("EEZ") that currently pay no Fisheries Business Tax.

Question 2. Why are the EEZ catcher/processors not subject to the Fisheries Business Tax?

Answer The Fisheries Business Tax only applies if fishery resources are either caught or processed in Alaska. Since the catcher/processors catch and process in the EEZ exclusively, the Fisheries Business Tax does not apply to them.

Question 3. Why should the state impose the tax if the resources are not caught or processed in Alaska?

Answer Alaska provides significant benefits and services and incurs fishery management costs with respect to the resources to various degrees. Coupled with the impact the operations have on local Alaska communities, the tax is one way to compensate the state for these services.

Question 4. Will the Fisheries Business Tax and the Landing Tax apply to the same resource and result in a double tax burden?

Answer No. The Fisheries Business Tax applies to unprocessed fishery resources while the Landing Tax applies to processed fishery resources. If the Fisheries Business Tax applies, the Landing Tax will never be applicable.

Question 5. Does the Landing Tax apply to fishery resources that are first landed in another state or foreign country and again landed in Alaska?

Answer No. The Landing Tax only applies if the first landing is in this state.

Question 6. Does the Landing Tax apply to fishery resources that are first landed in Alaska and then immediately shipped outside the state?

Answer Yes. The Landing Tax applies to fishery resources that are unloaded or transferred in Alaska without regard to the final destination.

Question 7. Which party is subject to the Landing Tax where a sale occurs upon the first landing in Alaska?

Answer The seller will generally be liable for the tax. The tax is imposed on the owner of the resource at the moment of unloading or transfer.

Question 8. How is taxable value determined?

Answer Value is the lesser of the fair market value of the processed resource at the time and place of the transfer or the statewide average price paid for the unprocessed resource as determined by the Department of Fish and Game. Generally, the statewide average price will be the lower value. The statewide average prices will be determined by Fish and Game and made available to taxpayers for use in filing the tax returns.

Question 9. Is the taxable value zero if there is no statewide average price for a particular year?

Answer No. The Department will adopt regulations to substitute other prices in that event or require the use of fair market value.

Question 10. How does the landing tax rate compare to the rates under the Fisheries Business Tax?

Answer The Landing Tax rate of 3.3% is equivalent to the 3.3% paid by a shore-based fisheries business under the Fisheries Business Tax and Alaska Seafood Marketing Institute ("ASMI") provisions.

Question 11. Is the Landing Tax revenue shared with municipalities?

Answer Yes. The tax collected on .3% of the value is envisioned for ASMI and 50% of the remaining tax is shared in the same manner as under the Fisheries Business Tax provisions as summarized below:

Landings Within Municipalities

--Unified municipalities and cities in unorganized boroughs	50%
--City located within a borough	25%
--Borough where landed within city	25%
--Borough where landed outside a city	50%

except for a city within a borough incorporated after June 16, 1987:

--Year of incorporation	45% to city	5% to borough
--1st year after incorporation	40% to city	10% to borough
--2nd year after incorporation	35% to city	15% to borough
--3rd year after incorporation	30% to city	20% to borough

except a city may adopt an ordinance to transfer some of its revenues to the borough.

Landings Outside Municipalities

--50% of the tax that is otherwise not shared is transmitted to the Department of Community and Regional Affairs for sharing under AS 29.60.450.

<u>Hypothetical</u>	<u>Ex. One</u>	<u>Ex. Two</u>
Value of fishery resources	\$10,000	\$10,000
Tax Rate	3.3%	3.3%
Tax before credits	\$330	\$330
Credit Claimed (45.45% maximum and 10%)	\$150	\$ 30
Tax due shown on return and paid by taxpayer	\$180	\$300
Amount to ASMI under AS 43.77.040(a)	\$ 30	\$ 30
<b>Amount remaining in general fund</b>	<b>\$150</b>	<b>\$270</b>
Reduction for tax credits per AS 43.77.040(b)	\$150	\$ 30
Amount available for revenue sharing	\$ 0	\$240
<b>50% to municipalities under AS 43.77.040</b>	<b>\$ 0</b>	<b>\$120</b>
<b>Amount retained by General Fund</b>	<b>\$150</b>	<b>\$150</b>

Note: If a taxpayer pays only a part of the tax, ASMI always gets all of its share before the state general fund and the municipalities.

Re: House Bill 264

BERING SEA COMMERCIAL FISHERIES DEVELOPMENT FOUNDATION

The Bering Sea Commercial Fisheries Development Foundation is an Alaska non-profit corporation. It was founded in June of 1991 and maintains offices in Anchorage, Alaska. The Foundation is fully funded by contributions from members of the American Factory Trawler Association ("AFTA").

- Purpose: To assist coastal villages of Western Alaska develop the expertise and infrastructure needed to engage in the commercial fisheries of the Bering Sea area.

- Areas Serviced: Coastal villages of Western Alaska from Atka Island in the Aleutians to Nome.

- Management: Six prominent Alaskans serve on the Board of Directors and select projects for Foundation funding. Board members include: Harvey Samuelson, Dillingham; John Binkley, Fairbanks; Tim Towarak, Unalakleet; Ed Crane, Anchorage; Dr. John White, Bethel; and Mark Snigeroff, Atka.

- Funding: AFTA members are assessed for each ton of groundfish processed by their vessels in the Bering Sea and Gulf of Alaska during each fishing year. Foundation assessments totalled more than \$1,000,000 by the end of 1992.

- Projects: To date, the Foundation has sponsored eight projects in Western Alaska. The most prominent is the Foundation's widely-heralded training program which, as of today has seen:

- ° More than 150 Western Alaskans
  - ° Recruited from coastal villages
  - ° Trained at AVTEC's facility in Seward
  - ° Hired as seafood processing workers on board AFTA vessels
- ° By the end of the 1993 "A" season, training program graduates had accumulated
  - ° 14,740 person days of employment
  - ° \$1.7 million in wages

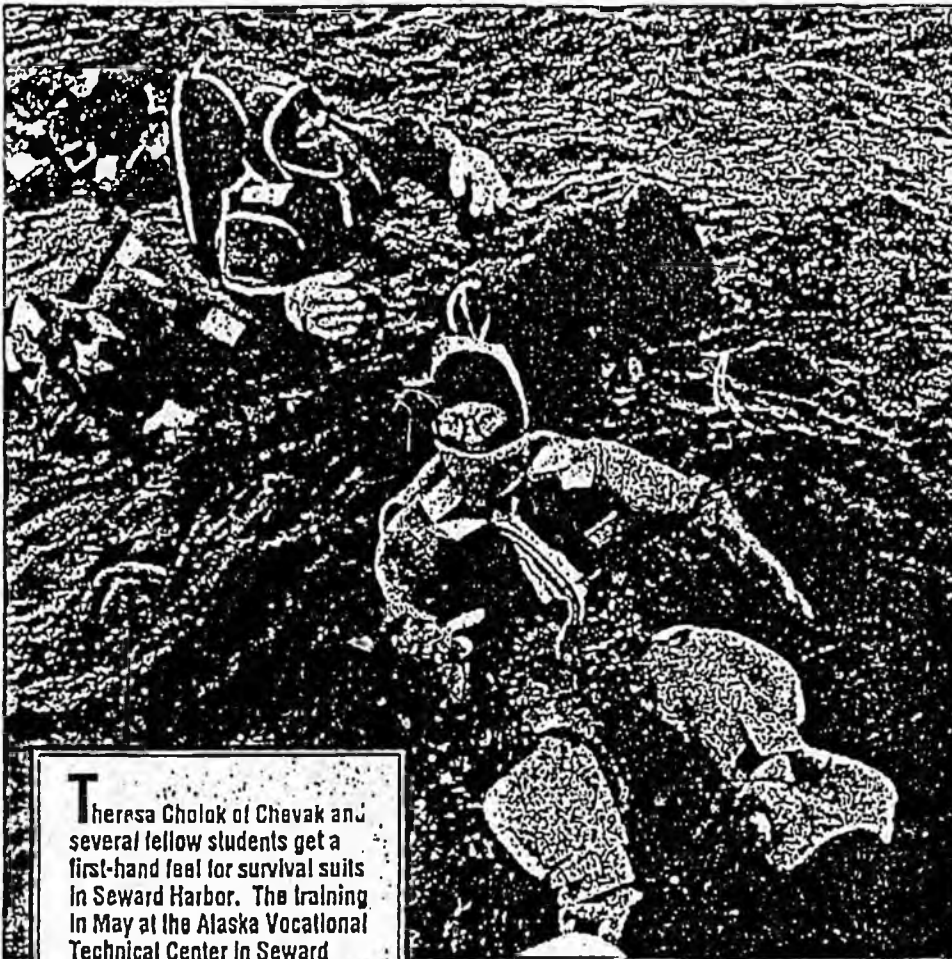
° By the end of 1993, more than 300 people from coastal villages in Western Alaska will have been recruited, trained and/or employed as a result of the Foundation's training program; and will be earning in excess of \$3.5 million per year in wages.

# REGIONAL

**BERING SEA  
COMMERCIAL  
FISHERIES  
DEVELOPMENT  
FOUNDATION**



NOVEMBER 1992



**T**heresa Cholok of Chevak and several fellow students get a first-hand feel for survival suits in Seward Harbor. The training in May at the Alaska Vocational Technical Center in Seward included in-the-water survival training.

## **TRAWLER TRAINING: *ready in 10 days***

**W**orking on a factory trawler requires extensive training in areas ranging from survival at sea to bacteriology.

A training program put together by the Bering Sea Commercial Fisheries Development Foundation offers a short-course curriculum to Western Alaska residents at the Alaska Vocational Technical Center in Seward.

"It's 10 days of very intensive training," said Gale Vick, who coordinates the program for the Foundation.

Areas covered include:

- Emergency Medical Training introduction.
- Cardio-pulmonary resuscitation certification.
- In-the-water survival training in survival suits.
- Basic trawl operations and crane safety.

*See Page 2*

**W**estern Alaska is a resource rich and cash poor region with one of the highest unemployment rates in the state.

Thanks to a new Foundation, however, to date more than 70 of the region's people have received training in fish processing techniques, and most have immediately found work on factory trawler processing ships. Jobs

## **FOUNDATION promotes teamwork**

are virtually assured since the industry strongly supports the training program at the Alaska Vocational Technical Center in Seward.

The new organization is the Bering Sea Commercial Fisheries Development Foundation, which was created in June 1991, with contributions from the American Factory Trawler Association (AFTA). AFTA is committed to making regular payments to the Foundation, but leaves decisions on how the money is spent

*See Page 3*

## TRAWLER TRAINING *Continued from page 1*

- Bacteriology.
- Interpersonal skills for the isolated environment of a ship at sea.
- Fire fighting, suppression and prevention.

Vick said the training program is the result of a feasibility study undertaken about a year and a half ago by the American Factory Trawler Association (AFTA) that was designed to look into what it would take to get Western Alaskans employed in the trawler industry. She based her study on a program she helped design for Doyon Drilling which focused on the specific needs of the people in the region. The recommendation resulting from the study was that the training program should run for four weeks at the Alaska Vocational Technical Center (AVTEC) in Seward. The Foundation's board said that was too long, so she eventually compromised on 10 days of training in an 11-day period with one day off.

"The training runs 8:30 a.m. to 5 p.m., plus some evenings," she said. The cost of the training is approximately \$2,200 per student. The two AVTEC instructors are Dennis Lodge, head of the fisheries department and well known in the fisheries industry, and Jim Herbert, an instructor and commercial fisherman. AVTEC Director John Lohse and Training Administrator Mark Ganser provide support services.

Vick said 16 people were trained in the first group in a pilot program that started New Year's Day. The second ses-

sion was held in April and included 20 people, and the third was held in May with 20 people. The fourth session wound up Oct. 16 and included 15 people.

The next session will be Dec. 14-23, followed by a session starting Jan. 5.

Vick said the Alaska Department of Community and Regional Affairs has agreed to participate in the training program and pays tuition, room and board for students eligible under the Job Training Partnership Act. She noted that even with \$500 per student paid by DCRA, the Foundation is still paying the bulk of the costs because of the high cost of travel from Western Alaska to Seward and coordination costs.

The training program has a "zero tolerance" policy on the use of drugs and alcohol, just as the trawler fisheries industry. All students are drug tested, and any who fail are terminated from the program.

During the training, any student who creates a disturbance of any kind, especially if alcohol or drugs are involved, is immediately sent home, Vick said.

Vick said one of the most exciting aspects of the training program is that employers interview students at the end of the training, and so far, any student who wanted a job has found one almost immediately.

Students must be at least 18 years old in order to be accepted, and Vick said the average age of participants has been about 25. Much older students have been trained, however, she said.

Most of the students so far have been men, Vick said, but she added that the program is actively recruiting women.

The Foundation has steadily revised the methods for selecting students. The current selection process is to review all applicant listings with selected committees at each participating village.

Applicants who are obviously overqualified for entry level training will be referred to companies directly. This does not mean that the Foundation endorses these applicants as hires. The Foundation will be reviewing higher levels of technical training in 1993.

Per the request of the Foundation Board of Directors, the Foundation is currently assessing training facilities in Dillingham, Bethel, Nome, St. Mary's, Dutch Harbor and St. Paul. This review will be finalized in December 1992.

Being able to get intensive training in a short 10-day period — with a job virtually guaranteed at the end — may sound like a dream to people in Western Alaska. The Bering Sea Commercial Fisheries Development Foundation is making it a reality. ■



## FOUNDATION established in 1991

The Bering Sea Commercial Fisheries Development Foundation was founded in 1991 by members of the commercial fisheries industry to promote the development of economies in Western Alaska Bering Sea coastal communities.

To achieve this objective, the Foundation provides the commercial fisheries industry with the opportunity to make tax deductible contributions to the Foundation.

The Foundation has financial resources to assist Western Alaska residents who are interested in expanding their capabilities to participate in the commercial fisheries industry. While

there is no established limit to the amount of funding that may be requested, the applicant is advised that the Foundation does not view itself as the sole source of funding available to Western Alaska Bering Sea coastal communities.

*Priority areas for funding within Western Alaska include:*

- Education/Training/Employment

*See Page 3*

## FOUNDATION *Continued from page 1*

to the Board of Directors.

"This training program is one of the most visible of our projects," said Dewey Schwalenberg, executive director of the Bering Sea Commercial Fisheries Development Foundation. "We are currently assessing the number of contract days & dollars earned for 1992." Schwalenberg said the training is just the beginning in a long list of goals the Foundation's Board has set, focusing on providing funding for locally determined Western Alaska community-based projects.

The Foundation was established to promote the development of economies in the Western Alaska Bering Sea coastal communities.

John Binkley of Fairbanks, President of the Foundation, said there is a definite need for an effort to develop fisheries industries in Western Alaska.

"There is a tremendous wealth of resources at the back door of one of the poorest areas of Alaska," he said.

To achieve its objective the foundation provides the commercial fisheries industry with the opportunity to make tax deductible contributions to the Foundation. Members of AFTA annually contribute by a self-imposed per ton assessment on the pollock taken in the Bering Sea.

Bering Sea communities can submit proposals to get funding for projects to improve community socio-economic conditions.

It is hoped that the people can participate as entrepreneurs in the processing and marketing of fisheries and seafood products and as community members in education and training for

**"There is a tremendous wealth of resources at the back door of one of the poorest areas of Alaska."**

—John Binkley

safe participation and survival in the fisheries industry. Both Binkley and board member Ed Crane of Anchorage said the first year has been one of organization and goal setting. They both said they felt starting the training program was a tremendous accomplishment and that they hope to expand it.

Binkley said he hopes that eventually the Foundation can explore the possibility of regional training. He also said he supports the concept of having groups of trained people within villages so that crews could participate in the fishing industry on a village level.

"It would be similar to the fire fighting program," he said, noting that such a system would be culturally sensitive.

Binkley also said he was pleased that small grants of at least \$500 were made to villages in Western Alaska to help them participate in the new Community Development Quota program, a federal and state effort that has endowed more than 60 Western Alaska villages with 7.5 percent of the Bering Sea pollock.

The ambitious CDQ program was created this year to ensure that pollock harvest rights go to Western Alaskans. In a number of villages, however, the local officials needed help in getting organized to participate. The Foundation offered grants to help with travel costs. ■

## DIRECTOR'S MESSAGE

by Dewey Schwalenberg

Executive Director  
*Editor's Note: The Executive Director of the Bering Sea Commercial Fisheries Development Foundation has been onboard since the office opened in 1991. His most recent position before moving to Alaska was as Executive Director of the Native American Fish & Wildlife Society, headquartered in Broomfield, Colo. A teacher, professional wildlife manager and fisheries biologist, he spent more than 20 years working in the natural resource field in North America.*

With this first issue of the Bering Sea Commercial Fisheries Development Foundation's fact sheet, we're hoping to introduce ourselves and let Bering Sea residents know who we are and what we hope to accomplish.

This first fact sheet is aimed at the most important people we deal with in our foundation, the residents of Western Alaska who have a tie with the fishing industry.

I hope very much to be meeting more and more of you as the Foundation grows into its place in Alaska. But I sure hope you don't see me up on the podium.

I don't believe the purpose of a foundation is to tell people what projects to do. We don't lead people down a gilded path. What we do hope to do is support development in the context of what a community wants to do.

Of course, that's all tempered with some realism. We can't be an open funding source to every idea. If people come up with a good idea that will solve a problem within a community, we can sit down and talk. Our money will go for creating employment.

See Page 4

- Economic Development and Construction
- Start-up Fisheries
  - Equipment Purchase
- Revolving Loan Requests
- Research/Publications

- CDQ Community Business Planning Grants
- Marketing Development
- Social Welfare Grants
- Scholarship Grants

.....  
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 Bethel, Alaska 99559

*Continued from page 3*

providing training that leads to employment and generating income that goes directly to community members. We're not as interested in a "trickle-down" effect as we are income that goes directly to the family. If that's the case, then the Foundation will be supportive of it.

I look forward to working with you in the future. We've got our work cut out for us, but the possibilities are as exciting as they are unlimited.

*The Bering Sea Commercial Fisheries Development Foundation does not view itself as the sole source of funding available to Western Alaska coastal communities. As only one of such sources of funding — and a small source at best — we recommend that all other sources of funding be explored for possible match and challenge grant options that may exist.*

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BULK RATE  
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 Anchorage, AK

Re: House Bill 264

LEVELING THE PLAYING FIELD

Two of the largest members of the Pacific Seafood Processors Association ("PSPA") are Unisea (owned 100% by Nippon Suisan) and Westward Seafoods (owned 100% by Taiyo). These two seafood giants are based in Tokyo, Japan, and between the two of them, control 80% of the shoreside processing capacity for groundfish in the Bering Sea (they own all four plants in Dutch Harbor). PSPA's lobbyist claims that he only wants to "level the playing field" by assessing offshore processors the same tax that his Japanese-owned shorebased plants pay.

If the Japanese processors' lobbyist truly wanted to "level the playing field," he could start by asking those companies to support measures that would:

- ° Eliminate the Japanese import quota system for seafood that heavily favors companies such as Nippon Suisan and Taiyo by protecting them from competition from American firms;
- ° Open up the Japanese seafood importation and distribution system that has been controlled by Nippon Suisan and Taiyo for decades;
- ° Require shoreside plants in the U.S. to have a majority of U.S. ownership (as is required for offshore processing vessels);
- ° Require shoreside plants to hire a minimum of 75% U.S. labor (as is required for offshore processing vessels); and
- ° Prohibit the Nippon Suisan and Taiyo fishing fleets from operating in the Donut Hole where they harvested in excess of one million tons a year during the latter part of the 1989's and early 1990's, decimating pollock stocks in that area and in adjacent U.S. waters in the Bogoslof area.

**ISSUE: TRAWLERS WANT ALL OF ALASKA'S FISH**

- \* Each year 7% of the federal allocation for Pollock is given to the shoreside for CDQ's.
- \* Additionally, the percentage of Pollock caught in the Bering Sea by Shoreside is increasing each year.

1989 Shoreside Catch was @ 15%  
Offshore @ 85%

1990 Shoreside Catch was @ 22%  
Offshore @ 78%

1991/92 Shoreside Catch was @ 28%  
Offshore @ 72%

- \* Shoreside tried to get Fed. Government to make a 50/50 allocation. For the years, 1992 thru 1995, inclusive, the Fed. Gov. did allocate the following:
  - a. 35% of Bering Sea Pollock to Shoreside.  
65% to Offshore.
  - b. 100% of Gulf of Ak. Pollock to Shoreside.
  - c. 90% of Gulf of Ak. Cod to Shoreside.  
10% to Offshore.
  - d. No allocation split made for Bering Sea Cod.

**ISSUE: FACTORY TRAWLERS "STOLE" OREGON'S WHITING FISH**

- \* Prior to 1990, \* 5% of Whiting went Onshore \* 95% caught by Shoreside catcher boats & processed by non-American, Foreign mother/ships \* 1991 @ 18 - 22% onshore while American Factory Trawlers, 78 - 82% \* 1992 @ 28% onshore while American Factory Trawlers, 72%
- \* 1993 Federal Government reserved 21% for shoreside and opened remaining 79% to BOTH shoreside and factory trawlers \* The government's best guess is that shoreside will do 30% in 1993 \* The above shows the offshore did not "steal" Oregon's Whiting \* The Whiting Rule is only good for 1993 season \* In 1994, Factory Trawlers are EXCLUDED from initial licenses for Whiting fish and other Pacific coast groundfish \* They must BUY someone else's license to participate.

**ISSUE: "WHITEFISH" FISHING IN RUSSIA**

- \* A few (approximately five) factory trawler companies fished in Russia in 1992 - Product was trans-shipped through Dutch Harbor/Unalaska.
- \* The Japanese owners (TAIYO and NIPPON-SUISAN) of the Dutch Harbor/Unalaska shore-side plants ALSO own shore-side plants in Russia and have Russian Whitefish quota.
- \* TAIYO and NIPPON-SUISAN owned and operated the MAJORITY of the vessels that caught and processed Pollock in the "Donut Hole" which is an area outside both Russian and USA 200 mile zone in international waters.
- \* They OVER-FISHED the area. They reduced the U. S. Pollock stocks and used the "Donut Hole" as a staging areas to ILLEGALLY fish U. S. waters in the Bering Sea.
- \* TAIYO and NIPPON-SUISAN, who own shore-side plants in Dutch Harbor/Unalaska, control the world fish market on Salmon, Pollock and other fish.

**ISSUE: SALMON BY-CATCH**

- \* Factory Trawlers do catch salmon while fishing for Pollock, Cod, Rockfish.
- \* They are required by federal law to carry federally trained observers 100% OF THE TIME, they fish in U. S. waters. Their by-catch is fully documented.
- \* Shoreside catcher boats ALSO catch salmon while fishing for other fish.
- \* Shoreside catcher vessels, under federal law have observers approximately 30% of the time.

**ISSUE: THE DUTCH HARBOR CLINIC**

- \* Factory Trawler companies have contributed both money and equipment (X-ray equipment) to the clinic.
- \* Trawlers "pay-as-they-use" when they use the clinic.
- \* Factory Trawler employees are present in Dutch Harbor only a small fraction of the time that shoreside employees are present...due the short seasons and limited species that they fish for.

**ISSUE: "LEVEL PLAYING FIELD"**

- \* NIPPON-SUISAN and TAIYO, CONTROL the world fish market.
- \* Factory Trawler companies compete directly with them in these world fish markets.
- \* The Dutch Harbor shoreside plants are owned by them.
- \* The federal Government Accounting Office (GAO)'s 1991/92 report, using data from State of Alaska, showed that groundfish shoreplants in Alaska, were 80% owned by the Japanese.
- \* The at-sea catcher/processors & motherships are only 30% foreign owned.
- \* By federal law, the at-sea fleet must be 51% American owned. This is not true for onshore plants which can be 100% foreign owned.
- \* By federal law, the at-sea fleet must employ at least 75% Americans or registered aliens. This is not true for shoreside plants which can use 100% foreign labor.
- \* The affects of foreign domination can be recalled by the 1991 Salmon Price issue in Bristol Bay or by any American trying to sell fish products, such as surimi (pollock paste), in Japan.

## DIVISION OF LEGAL SERVICES

FEB 22 1993

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Mail Stop 3101

150 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

February 22, 1993

SUBJECT: State taxation of interstate commerce: Proposal to levy and collect a tax on fisheries resources caught outside the state but brought into the state for introduction into the stream of interstate commerce (Work Order No. 8-LS0684)

TO: Representative Carl Moses  
ATTN: Molly McCammon

FROM: Jack Chenoweth  
Legislative Counsel

Your recent contact with Legislative Counsel George Utermohle advised of a potential measure proposing to impose a tax on the landing of fisheries resources caught outside the state--presumably from waters above the outer continental shelf beyond the three-mile state boundary--but brought into the state's jurisdiction--across a dock or harbor facility, or through an airport--for purposes of eventual transport outside the state, i.e. introduction into interstate commerce. You have asked the office to summarize potential legal issues that may arise out of that legislation.

## I

Since the proposed measure apparently would address state taxation and state regulation of interstate commerce, it necessarily invites scrutiny under the United States Constitution's commerce clause--clause 3, section 8 of article I. <sup>1/</sup> Historically, that clause has served as a significant check on state efforts to expose business activities to multiple tax liability and to unique forms of regulatory action.

At the outset, I should note that a state tax is not per se invalid because it imposes a burden on interstate commerce. States may require goods and services in interstate commerce that enter the taxing jurisdiction to contribute to the jurisdiction's treasury.

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<sup>1/</sup> The provision declares that "[t]he Congress shall have power . . . to regulate commerce with foreign nations, and among the several states . . . ."

Representative Carl Moses  
February 22, 1993  
Page 2

The approach generally invoked in commerce clause analysis has involved consideration of the links that exist between the taxpayer and the taxing jurisdiction, on the one hand, versus the burden that the tax would impose on interstate commerce. The approach generally adopted in recent cases derives from the United States Supreme Court's disposition of Complete Auto Transit v. Brady, 430 U.S. 274, 51 L.Ed.2d 326, 97 S.Ct. 1076 (1977), in which the court identified the factors or elements that needed to be considered in evaluating the effects of a state- or locally-imposed tax on goods or services in interstate commerce: (1) does the activity that is subject to tax have a substantial nexus with the taxing state; (2) does it discriminate against interstate commerce; (3) does it fairly relate to services claimed to be provided within or by the taxing state; and (4) is the tax fairly apportioned. As a general rule, a tax on interstate commerce will be sustained if the court can find that the state has a sufficient connection to the business activity that is to be taxed; that, as between in-state and interstate commerce, the tax is imposed equitably; and that the tax imposed fairly relates to the state's nexus--its contact or connection--to the business activity that is the subject of the tax.<sup>2/</sup> If all of these factors are properly addressed, the tax should survive a commerce clause challenge.<sup>3/</sup>

In a decision that would seem to be important for this state's efforts to tax resources brought in from outside the limits of the state's jurisdiction, under the Complete Auto Transit test, the court has struck down a first-use tax on federal outer continental

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<sup>2/</sup> Establishing nexus is probably the critical element of three. It can be tricky. There are precedents that may be cited to support the conclusion that delivery of product within a state--International Harvester Co. v. Department of the Treasury, 322 U.S. 340, 88 L.Ed. 1313, 64 S.Ct. 1019 (1944) (sales of Indiana goods to an out-of-state buyer, who took possession of the goods for transport out of the state sufficient to justify payment of the Indiana gross receipts tax), State Tax Commission of Utah v. Pacific States Cast Iron Pipe Co., 372 U.S. 605, 10 L.Ed.2d 8, 83 S.Ct. 925 (1963) (sales of Utah-made goods manufactured to meet specifications of out-of-state jobs and required to be shipped out of state, when title passes and delivery is made at seller's place of business in state with transfer by purchaser, who receives a credit for freight charges incurred, subject to Utah state sales tax)--and that transfer of possession to a purchaser of a product within a state--McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 84 L.Ed. 565, 60 S.Ct. 338 (1940) (negotiation of contract for sale of coal and delivery of coal within New York City meant that transfer of possession occurred within the city and made the transaction subject to the city's sales tax) are each sufficient to establish the required nexus.

<sup>3/</sup> Any debate in this area may prompt discussion or analysis as to whether a state levy violates the so-called "dormant" Commerce Clause--that is, whether the state action, while not actually contrary to an expressed or exercised Act of the Congress, nevertheless threatens the values the Commerce Clause was intended to serve. The analytical mechanism is, of course, the test first laid down in Complete Auto Transit cited earlier.

Representative Carl Moses  
February 22, 1993  
Page 3

shelf natural gas <sup>4/</sup> imposed by Louisiana. Maryland v. Louisiana, 451 U.S. 725, 68 L.Ed.2d 576, 101 S.Ct. 2114 (1981). Conceding that Louisiana has an interest in protecting natural resources within its jurisdiction, the court nonetheless rejected the state's contention that the levy was a proper compensatory tax. <sup>5/</sup> It found that there was no evidence of justification for the levy and collection of the tax in order to equalize tax treatment of natural gas in interstate and local commerce, and declared that the state does not have an interest in being compensated for the severance or removal of resources from adjacent federally owned lands of the outer continental shelf.

## II

The levy that you describe in this forthcoming measure may prompt a due process objection under the 14th Amendment. Still, to the extent the commerce clause test is met, satisfaction of that test should also answer the usual concerns that attend due process objections. <sup>6/</sup>

## III

State taxation of goods and services in interstate commerce also offers grounds for a potential "supremacy clause" <sup>7/</sup> challenge. Generally, under that clause, a state

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<sup>4/</sup> The tax was imposed on the "first use" of any natural gas imported into the state of Louisiana which had not been previously subjected to taxation by another state or by the United States. Most OCS-produced gas was piped ashore for processing, chiefly the removal of liquid hydrocarbons.

<sup>5/</sup> A "compensatory tax," as I understand, is a state imposed levy on a substantially equivalent good or service that is itself already taxed in order to assure uniform treatment of goods and materials within the jurisdiction. A use tax imposed as a complement to a locally-imposed sales tax is an obvious example.

<sup>6/</sup> What you have described is a tax measure. Courts traditionally are deferential to state revenue raising efforts if a due process objection is interposed. Generally, in the consideration of the tax under a due process analysis, the courts will look for evidence of (1) a minimal connection between the interstate activity that is the subject of the tax and the taxing state, and (2) a rational relationship between the income attributed to the jurisdiction levying the tax and the "intrastate" elements of the enterprise that are the subject of the jurisdiction's levy. Trinova Corp. v. Michigan Dept. of the Treasury, 498 U.S. --, 112 L.Ed.2d 884, 111 S.Ct. 818 (1991). These factors appear as included elements within federal commerce clause analysis.

<sup>7/</sup> Under the "supremacy clause," article VI, clause 2 of the United States Constitution,

(continued...)

Representative Carl Moses  
February 22, 1993  
Page 4

statute is void to the extent it conflicts with a federal statute. The courts are prepared to find evidence of conflict if compliance with the state law stands as an obstacle to the accomplishment of the objectives of Congress. While there has been much Congressional interest in fisheries at least since initial passage of the Magnuson Act, I don't know of any particular federal statutory or regulatory provision that would bar or otherwise present an asserted obstacle to a proposed state levy of the kind you have briefly described. Still, in any legislative review of the proposed measure, the point deserves consideration.

#### IV

Finally, to round out this memo, though I am not familiar with the specifics of the tax that the administration may have under consideration, to the extent that the fisheries products leave a state dock or airport bound for another nation, the proposed levy may be construed to violate the implied limitation or prohibition on Congressional authority to regulate foreign commerce.<sup>8/</sup> My hunch, however, is that federal authority as to goods and services in foreign commerce would not provide a basis for challenge of a tax statute independent of that provided by the interstate commerce clause.

JBC:pl  
93-116.plm

---

<sup>2/</sup>(...continued)

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

<sup>8/</sup> Under article I, sec. 8, the Congress is authorized to exercise power with respect to the regulation of foreign commerce, while article I, sec. 10, constrains the states from imposing any "duty of tonnage" without Congressional consent.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL APR 7 1993

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-2398  
FAX: (907) 465-2417

April 6, 1993

The Honorable Carl Moses, Chairman  
House Special Committee on Fisheries  
Alaska House of Representatives  
Room 204  
State Capitol  
Juneau, Alaska 99811-1182

RE: HB 264 - relating to  
a fisheries landing tax

Dear Representative Moses:

We have reviewed the memorandum from Legislative Affairs attorney Jack Chenoweth to House Speaker Ramona Barnes as requested at the hearing on HB 264 on April 5. This memo explores the possible constitutional bases for challenge of the legislation.

We agree with the memo's identification of constitutional issues and the discussion of the two important commerce clause cases cited. Applying the holdings of *Complete Auto Body v. Brady*, 430 U.S. 274 (1977) to the taxing scheme envisioned by HB 264, we believe the tax can be defended. First, the activity has a substantial nexus with Alaska and fairly relates to services provided or available. The vessels used to transport the fisheries resources either use or have the availability of use of Alaska port facilities, refueling capabilities, navigational aids, safety and rescue availability, as well as others. Second, the tax would be fairly apportioned; there would be no discrimination in favor of residents.

We believe *Maryland v. Louisiana*, 451 U.S. 725 (1981) can be distinguished. In that case, Louisiana only taxed natural gas that would go into interstate commerce after merely passing through Louisiana; residents were given substantial protection from the impact of the tax. These are the chief failures of the Louisiana scheme. In addition, Louisiana asserted that the tax was linked to severance taxes, however, the Court rejected this argument as the gas subject to the tax came exclusively from outside Louisiana's

The Honorable Carl Moses, Chairman  
House Special Committee on Fisheries


April 6, 1993  
Page 2

jurisdiction. House Bill 264 would establish a tax on landings within the State of Alaska. It is clearly not a severance tax.

Once again, we are not making a definitive determination of constitutionality and agree that the legislation may be subject to challenge. We do continue to believe that the landing tax is defensible.

If you wish to discuss this, please do not hesitate to contact me; my number is 465-2398.

CHARLES E. COLE  
ATTORNEY GENERAL

By:   
Vincent L. Usera  
Assistant Attorney General

cc: Jack Chenoweth  
D. Behr

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 26, 1993

Hon. Darrel Rexwinkel  
Commissioner  
Department of Revenue  
P.O. Box 110400  
Juneau, Alaska 99811-0400

Dear Commissioner Rexwinkel:

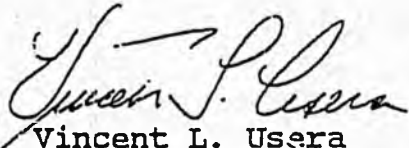
You have asked that we comment on the constitutionality of the proposed legislation which would institute a landing tax on processed fisheries resources taken outside Alaskan waters but subsequently brought into the State. "Landing" would be defined as the act of unloading or transferring a fishery resource inside Alaska waters.

We believe the tax to be constitutionally defensible because the tax would be triggered only by activities within State waters and because there is a sufficient nexus between the availability of State services and resources and a vessel to justify the tax. See, e.g., *Sjong v. State, Dep't of Revenue*, 622 P.2d 967 (Alaska 1981).

This letter will serve to confirm the Department of Law's position that the proposed legislation is constitutionally defensible. We will be available for further analysis should you require.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By:   
Vincent L. Usara  
Assistant Attorney General

VLU/ps  
cc: K. Lethin, Leg. Liaison  
Office of the Governor

D. Behr, AAG

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
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- KEY BANK BUILDING  
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FAX: (907) 451-2846
- P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

RECEIVED  
ALASKA DEPARTMENT OF REVENUE

MAR 26 1993

COMMISSIONER'S OFFICE

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

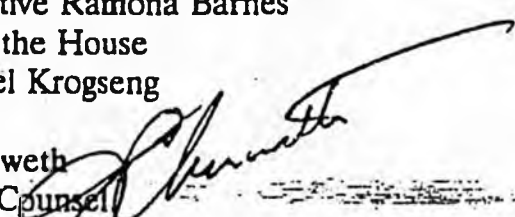
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 31, 1993

**SUBJECT:** Potential constitutional questions in House Bill 264 (Work Order No. 8-LS0941\E)

**TO:** Representative Ramona Barnes  
Speaker of the House  
ATTN: Mel Krogseng

**FROM:** Jack Chenoweth  
Legislative Counsel 

House Bill 264 imposes a fishery resource landing tax.

A fishery resource land tax involving fish harvested outside the state but brought into or landed in the jurisdiction may raise questions under the United States Constitution's commerce clause, clause 3, section 8 of article I; a question under the federal due process provision of the Fourteenth Amendment; a potential "supremacy clause" question under clause 2 of article VI of the United States Constitution; and a possible claim under applicable provisions of the federal constitution involving federal regulation of foreign commerce.

I

The most serious constitutional question is probably the one relating to scrutiny under the United States Constitution's commerce clause--clause 3, section 8 of article I. Historically, that clause has served as a significant check on state efforts to expose business activities to multiple tax liability and to unique forms of regulatory action.

A state tax is not per se invalid because it imposes a burden on interstate commerce. States may require goods and services in interstate commerce that enter the taxing jurisdiction to contribute to the jurisdiction's treasury.

The approach generally invoked in commerce clause analysis has involved consideration of the links that exist between the taxpayer and the taxing jurisdiction, on the

one hand, versus the burden that the tax would impose on interstate commerce. The approach generally adopted in recent cases derives from the United States Supreme Court's disposition of Complete Auto Transit v. Brady, 430 U.S. 274, 51 L.Ed.2d 326, 97 S.Ct. 1076 (1977), in which the court identified the factors or elements that needed to be considered in evaluating the effects of a state- or locally-imposed tax on goods or services in interstate commerce: (1) does the activity that is subject to tax have a substantial nexus with the taxing state; (2) does it discriminate against interstate commerce; (3) does it fairly relate to services claimed to be provided within or by the taxing state; and (4) is the tax fairly apportioned. As a general rule, a tax on interstate commerce will be sustained if the court can find that the state has a sufficient connection to the business activity that is to be taxed; that, as between in-state and interstate commerce, the tax is imposed equitably; and that the tax imposed fairly relates to the state's nexus—its contact or connection—to the business activity that is the subject of the tax. If all of these factors are properly addressed, the tax should survive a commerce clause challenge.

However, in a decision that would seem to be important for this state's efforts to tax resources brought in from outside the limits of the state's jurisdiction, under the Complete Auto Transit test, the court has struck down a first-use tax on federal outer continental shelf natural gas imposed by Louisiana. Maryland v. Louisiana, 451 U.S. 725, 68 L.Ed.2d 576, 101 S.Ct. 2114 (1981). The tax had been imposed on the "first use" of any natural gas imported into the state of Louisiana which had not been previously subjected to taxation by another state or by the United States. Most OCS-produced gas was piped ashore for processing, chiefly the removal of liquid hydrocarbons. Conceding that Louisiana has an interest in protecting natural resources within its jurisdiction, the court nonetheless rejected the state's contention that the levy was a proper compensatory tax. It found that there was no evidence of justification for the levy and collection of the tax in order to equalize tax treatment of natural gas in interstate and local commerce, and declared that the state does not have an interest in being compensated for the severance or removal of resources from adjacent federally owned lands of the outer continental shelf.

## II

The levy imposed by HB 264 may prompt a due process objection under the 14th Amendment. However, to the extent the commerce clause test is met, satisfaction of that test should also answer the usual concerns that attend due process objections.

## III

The state's taxation of goods and services in interstate commerce also offers grounds for a potential "supremacy clause" challenge. Generally, under that clause, a state statute is void to the extent it conflicts with a federal statute. The courts are prepared to find evidence of conflict if compliance with the state law stands as an

Representative Ramona Barnes

March 31, 1993

Page 3

obstacle to the accomplishment of the objectives of Congress. While there has been much Congressional interest in fisheries at least since initial passage of the Magnuson Act, I don't know of any particular federal statutory or regulatory provision that would bar or otherwise present an asserted obstacle to a proposed state levy of the kind you have briefly described. Still, in any legislative review of the proposed measure, the point deserves consideration.

#### IV

Finally, to the extent that the fisheries products leave a state dock or airport bound for another nation, the proposed levy may be construed to violate the implied limitation or prohibition on Congressional authority to regulate foreign commerce. My hunch, however, is that federal authority as to goods and services in foreign commerce would not provide a basis for challenge of a tax statute independent of that provided by the interstate commerce clause.

JBC:pl

93-261.plm

House Finance Committee Testimony  
Saturday, April 24, 1993

My name is Dr. Jeffery Koenings, and I have recently been named the Director of the Commercial Fisheries Management and Development Division of the Alaska Department of Fish and Game.

The administration and the Department of Fish and Game strongly endorse this bill which establishes an act levying and collecting a fishery resource landing tax and providing for an effective date.

Commissioner Rosier has outlined the department's support, but more recent testimony has questioned the state's involvement in this area. As director of the state's commercial fisheries management, I am here to provide an overview of our involvement. I'll try to be brief, but the degree of the department's involvement or to do justice to the department's efforts may not allow it.

There are several areas where the Alaska Department of Fish and Game provides coordination and support of the management of Exclusive Economic Zone, or EEZ, fisheries. Specifically

○ Bycatch Management

The department assists and may lead the development of amendment packages and analysis of alternatives to manage bycatch of shellfish, salmon, and herring.

○ Data Collection Program

The state participates in the development of the federal data collection program (fish tickets, processor product reports, observers). We continue to provide technical review of and biometric assistance for the data collection program.

The department collects, edits, and enters groundfish and shellfish fish tickets, logbooks, and other fishery reports.

The department is responsible for the shellfish observer program.

The department collects and analyzes stock assessment and fishery monitoring information through PACFIN.

○ Rockfish Management

The department manages the Southeast demersal shelf rockfish fishery. It also actively participates in monitoring total mortality for Gulf of Alaska rockfish and is working to refine management to conserve rockfish stocks.

The department actively works to implement more effective management tools for the developing nearshore rockfish fishery that occurs primarily in state waters.

○ Shellfish Management

The department is responsible for managing all shellfish fisheries in the Gulf of Alaska. This responsibility includes stock assessment and fishery monitoring activities.

The department is also responsible for managing Bering Sea shellfish fisheries under fishery management plan guidelines. This responsibility includes fishery monitoring and joint stock assessment (i.e., NMFS conducts Eastern Bering Sea trawl survey; ADF&G a crab tagging study and Alaska Peninsula and Aleutian Islands crab surveys).

○ Sablefish Management

The department monitors the shorebased sablefish fishery and provides this information to NMFS on an inseason basis.

The department cooperates with NMFS in sablefish stock assessment and biological sampling.

○ Scientific Oversight and Review Responsibilities

State scientists, through the Scientific and Statistical Committee and planning teams, actively participate in developing and reviewing methods of stock assessment and recommending allowable biological catches and overfishing limits for groundfish stocks in Bering Sea, Aleutian Islands, and Gulf of Alaska waters.

State scientists, through the SSC and planning teams, review technical merits of planning and regulatory amendments.

○ International Efforts to Limit Interception of Pollock in Central Bering Sea

State scientists have been actively involved in developing a multinational management regime for Central Bering Sea fisheries. These efforts have resulted in a moratorium on fishing within the "donut hole" and substantial progress toward a management regime that will provide sustainable yield fisheries as well as significant opportunities for U.S. fishermen to harvest the Aleutian Basin pollock.

Finally, a number of permanent staff have had all or part of their time assigned to the above responsibilities. The department believes the pressing need to expand its involvement further, but is limited by current funding levels.

Thank you.

HB 264



2550 Denali Street, Suite 1201  
 P. O. Box 92074  
 Anchorage, Alaska 99509-2070  
 (907) 276-2007

April 29, 1993

Senator Drue Pearce, Co-Chair  
 Senate Finance Committee  
 State Capitol  
 Juneau, AK 99801-1182

Post-It™ brand fax transmittal memo 7871		# of pages > 3	
To	SEN. PEARCE	From	ED CRANE
Co.		Co.	CFAB
Dept.		Phone #	276-2007
Fax #	465-3872	Fax #	279-7913

Dear Senator Pearce:

This is to express some concerns about HB264, which we understand has been referred to the Senate Finance Committee for consideration.

My concern is not with the substance of the bill in total. Rather, it is for the potentially negative effect on some very successful activities which have provided dramatic benefits to rural residents in Western Alaska.

I am one of six elected Alaska Directors of the Bering Sea Commercial Fisheries Development Foundation. The two-year-old Foundation was formed, as its name implies, to channel financial support for fisheries-related development into Western Alaska communities. It is funded through self-imposed and production-based levies on members of the American Factory Trawler Association who harvest in the Bering Sea.

I take pride in the Foundation and in my involvement with it. It is a professionally staffed and highly focused structure which will, I believe, stand up well to any scrutiny and which has accomplished much in 16 months of actual operations.

Although the Foundation has made a few grants for specific projects, its "signature" effort has been a series of training programs. Each program has taken 15 to 20 carefully selected young unemploy individuals from Western Alaska Villages, put them through an intensive and rigorous training under a contract with AVTEC in Seward, and provided for interviews with factory trawler operators. To date, 115 totally new jobs have been created. Many of our graduates have now made multiple trips into the Bering Sea fishery and/or have been promoted from their entry-level positions.

Although the first few training programs were fully funded (including all transportation and subsistence costs for trainees) by the Foundation, we now enjoy limited participation and support from the State (DC & RA) and other organizations. Please note from the enclosed summary (prepared for another purpose) of the training programs to date that our Foundation has borne \$190,600 of the total costs of \$226,800.

*Alaska Commercial Fishing and Agriculture Bank*

Senator Drue Pearce, Co-Chair  
April 29, 1993  
page 2

The point of all this is that we believe the Foundation represents a highly effective and efficient means of achieving great public good with what are, in essence, royalties from the Bering Sea fisheries. We note that HB264 provides credits against the proposed landing tax for amounts paid to another State. We are concerned that passage of HB264 with its implicit costs, will result in significantly reduced funding for the Foundation. That would, of course, be averted if the bill were amended to also provide for a credit against the proposed tax for amounts paid to the Foundation. We realize time is short on the Legislative clock, but we would be happy to assist in pursuing this matter immediately if passage of HB264 cannot be deferred to the 1994 session.

Thank you for your consideration.

Very truly yours



Edward E. Crane  
President

EEC:saw  
8287

enclosures

# BERING SEA COMMERCIAL FISHERIES DEVELOPMENT PROGRAM

## TRAINING PROGRAM SUMMARY

<u>Training Programs</u>	<u>TP1</u>	<u>TP2-3</u>	<u>TP4</u>	<u>TP5</u>	<u>TP6</u>	<u>TP7</u>	<u>TP8</u>	<u>TOTALS</u>
Number of Students Entering Training	16	40	23	20	18	20	15	152
Number of Students Certified	15	33	14	15	13	15	10	115
Number of Students Terminated (Drinking/Drugs)	1	2	7	5	5	4	5	29
Number of Students Withdrawn (Other) <sup>1</sup>	0	5	2	0	0	1	0	8

### Financial Statistics

	<u>Total Cost of Training</u>	<u>Average Cost of Training Per Student - Certified</u>	<u>Average Cost of Training Per Student - All Enrolled</u>
Training Program 1	\$34,649.40	\$2,309.96	2,165.59
Training Program 2-3	48,457.61	1,468.42	1,211.44
Training Program 4	45,434.92	3,245.36	1,975.44
Training Program 5	32,130.55	2,142.04	1,606.53
Training Program 6	29,916.62	2,301.28	1,662.04
Training Program 7	36,230.83	2,415.39	1,811.55
Training Program 8 <sup>2</sup>			
<b>Total Spent on Training</b>	<b>\$226,819.93</b>		
<b>Total Spent on Training by Foundation</b>	<b>190,589.10</b>		
<b>Overall Average Cost of Training Per Student</b>		<b>\$1,972.35</b>	<b>1,492.24</b>

<sup>1</sup> Withdrawn for family emergencies, National Guard, license testing, changed mind, etc.

<sup>2</sup> Final figures unavailable at this time for Training Program 8 (3/31-4/10/93)

Figures Effective 4/22/93



SEAFOOD  
DIVISION

Tyson Seafood Group 1900 West Nickerson Street, Suite 200 • P.O. BOX 79021 • Seattle, WA 98119 • Phone (206) 282-3445

April 30, 1993

Honorable Drue Pearce  
Alaska State Senate  
State Capital  
Juneau, Alaska 99801-1182

Dear Senator Pearce:

Tyson Foods, through its purchase of Arctic Alaska Fisheries Corporation, has entered the seafood business. We intend to make seafood an important part of our "center of the plate" food business. We would like to accomplish this by expanding our Alaska fisheries operations. This would involve expansion of existing and development of new facilities in Alaska. The extent to which we proceed with these plans will depend on the economic environment provided by the State of Alaska.

House Bill 264 would establish a 3.3 percent tax (on the basis of raw fish value) on fish caught and processed outside State of Alaska waters and trans-shipped inside State waters. We estimate this tax would cost the Tyson Seafood Division upwards of 1.5 million dollars next year. We have a fleet of 31 vessels which engage in catching and processing groundfish and shellfish at sea off Alaska. Because of declining prices in the world fish market, we have nearly half of those vessels tied to the dock today. There simply are insufficient margins to keep those vessels operating. Enactment of House Bill 264 will significantly add to the cost of doing business in Alaska and result in the tying up of additional vessels. We cannot expand our investments in Alaska while we are being forced to tie up our vessels.

The State of Alaska could not pick a worse time to burden the Alaska offshore fishing industry with additional expenses. There are few if any Alaska groundfish participants that had profitable operations last year and the outlook for the next few years is no brighter. We strongly encourage you to put House Bill 264 on hold in your Finance Committee. The bill is seriously flawed and most likely not legal. Rather than putting dollars into our Alaska operations, we will be forced to put them into litigation if the bill is enacted. We encourage you to ask for a thorough legal analysis of this bill before giving it further consideration.

Our industry currently assesses itself 75 cents per metric ton of groundfish caught to fund the Western Alaska Fisheries Development Foundation. This program has proven tremendously successful in providing employment for Western Alaska residents. House Bill 264 does not contain any provisions for tax credits for our funding of the Foundation. We can assure you that funding will stop if such a tax credit is not included.

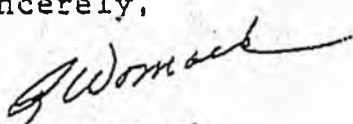
Another important provision that should be included is a credit for duties we pay on products shipped to foreign countries. The bill does not include such a credit and in effect taxes foreign commerce. This is illegal and needs your attention.

House Bill 264 imposes the same levy on at-sea catcher/processors as is imposed on onshore catcher/processors. This is totally unfair. At-sea catcher/processors provide all their own support services at sea, while shoreside operators depend on the State and communities to provide the basic support services. Each sector of the industry should be taxed proportionately to its receipt of services.

The tax imposed through enactment of House Bill 264 would negatively impact the entire offshore industry. This would result in curtailment of operations, loss of jobs, and decreased spending in Alaska coastal communities where we re-provision and obtain repairs. House Bill 264 will not have the positive economic effect for the State and its communities that is foreseen. We urge you to keep this bill in committee and thoroughly analyze it. It needs revisions to be fair and acceptable to the affected industry.

Thank you for your consideration of this matter.

Sincerely,



Robert Womack  
President

MEMORANDUM

DATE: 30 April 1993

TO: Senator Druce Pearce  
From: *Mike Szymanski*  
Mike Szymanski  
The Fishing Company of Alaska

SUBJECT: CSHB 264 (FIN)

STATE TAX AUTHORITY CONCERNING EXPORTS

State jurisdiction over taxation is limited by the U.S. Constitution. States also have Constitutionally limited authority in matters of foreign commerce and are specifically precluded from authority to tax exports or the act of exportation of articles of commerce. Such authority rests solely with the Congress. The U.S. Constitution does not permit the State of Alaska to impose a landing tax on exports of fishery products or on the act of exportation of fishery products.

Operators of U.S.-flag factory trawlers and freezer/longliners export fishery products directly from their catcher/processor vessels to foreign jurisdictions. Such transfers do not constitute a "landing" within the generally accepted legal definition thereof. Exports are transferred at sea directly from the U.S. vessel to a foreign-flag tramp steamer (common carrier) for delivery to a foreign customer in a foreign port. The transfer of cargo represents the act of exportation of the fishery product. Control by the U.S. company over the exported product ceases when the transfer is made. In order to protect the safety of the crews of both the U.S. fishing vessel and of the foreign-flag carrier, these transfers are often made within the territorial sea, particularly within the jurisdictional waters of the State of Alaska.

An amendment is needed to clarify that it is not the intent of the State of Alaska to violate the U.S. Constitution by attempting to improperly exert authority to tax exports or the act of exportation of fishery products. Failure to achieve this clarification in the statute will result in the implementation of the tax being enjoined and the policy being decided in the Federal Court of jurisdiction rather than in the State legislature where such policy is traditionally established.

The proposed amendment to Section 43.77.010 of the proposed legislation clarifies that the landing tax imposed by this legislation will not apply to a fishery resource which is brought

*Letter of  
intent and  
amendment #1*

*Amendment #3*

Senator Drue Pearce  
Page 2

into the Territorial Sea of the State of Alaska and which is directly exported to a foreign jurisdiction. The proposed amendment to Section 43.77.200 of the proposed legislation also provides clarification that fishery resources to which the landing tax applies do not include those fishery resources which are transferred at sea for direct export. Again, both amendments are intended to explicitly acknowledge the fundamental Constitutional limitation of state authority to tax exports or the act of exportation of fishery products.

AMENDMENT  
#2

#### DOUBLE TAXATION

As currently drafted, CSHB 264(FIN) would create a scenario of double taxation. Section 43.77.030 of the proposed legislation provides a potential credit for the landing taxes that would be paid pursuant to this proposed legislation against taxes imposed under other statutes, specifically AS 43.75 and AS 43.76. However, this section does not provide for a credit against the landing tax that would be paid by a taxpayer under this legislation for those taxes which the taxpayer pays which are equivalent in nature to the landing tax imposed under this legislation. Thus, a taxpayer would be precluded from receiving a credit for landing taxes of an equivalent nature paid to another state or a foreign jurisdiction. This omission creates a double-taxation scenario, particularly in the case of taxes paid to foreign jurisdictions.

Amendment  
#1

The proposed amendment to Section 43.77.030 is intended to eliminate this scenario of double-taxation on fishery resources. The proposed amendment would clarify in a very simple way the intent of the provision to grant a credit against the landing tax to be imposed under this legislation for landing taxes of an equivalent nature paid by the taxpayer to another jurisdiction.

In addition to the amendment to the legislation itself, it is important for the legislature to provide some guidance as to the intended meaning of "equivalent in nature". While subsequent application of this term will require analysis on a case-by-case basis, the proposed letter of intent clarifies that taxes, duties and fees paid by taxpayers to a foreign jurisdiction upon the landing of the fishery resources in a foreign jurisdiction are intended to be considered as equivalent in nature to the landing tax to be imposed in this legislation and will help ensure that a double-taxation scenario does not develop in such a situation.

Senator Drue Pearce  
Page 3

OTHER ISSUES REQUIRING FURTHER STUDY

CSHB 264 (FIN) as presently drafted raises other serious Constitutional questions which warrant full analysis and consideration. States are precluded under the Equal Protection Clause of the Constitution from discriminating between residents of its states and residents of other states. Case law is replete with clear-cut decisions striking down the efforts of States to impose greater fees and taxes on non-residents than residents, particularly in the area of natural resources, and specifically fisheries. This becomes even more dubious when the resource is under the primary jurisdiction of the federal government. It is not clear if the rate of tax to be imposed under CSHB 264 (FIN) is on parity with the equivalent taxes paid by residents and, thus, if it is violative the Constitution in this respect.

Furthermore, the rate of tax under any jurisdiction is generally reflective of the degree of economic activity inherent in the activity to be taxed. The economic activity of transferring cargo from one vessel to another is not comparable to the economic activity of processing fish in a processing plant. Using the economic activity of processing fish in a shoreside plant as a basis for comparison, it is not clear if the tax rate to be imposed by this legislation (or the credits to be made available) are commensurate with the inherent economic activity of transferring cargo from one vessel to another. Again, in this respect, the tax may be found as discriminatory against non-residents of Alaska and thus violative of the U.S. Constitution.

These issues require much greater analysis and consideration provide a strong rationale for suspending further legislative consideration of this bill until a comprehensive analysis of the bill, in cooperation with the affected constituencies, is completed.

MAY 01 1993 12:11 FROM NPA

North  
Pacific  
Longline  
Association



May 1, 1993

Senator Drue Pearce  
Alaska State Senate  
Juneau, AK

RE: CSHB 264 (FIN); Amendments, Constitutionality

Dear Senator Pearce:

The North Pacific Longline Association represents freezer-longliners which catch and process groundfish in the Exclusive Economic Zone of the Gulf of Alaska and Bering Sea. All of this work is done outside of Alaska. The finished product is offloaded into transports within the territorial sea and is put directly into foreign commerce - our markets are in Europe and the Far East.

In the course of our operations we purchase food, fuel, services, etc. from Alaska businesses - making a substantial contribution to Alaska's economy. Any use of state facilities is on a pay-as-you-go basis.

Freezer-longliners are relative newcomers to the groundfish fishery. They are able to harvest groundfish, particularly cod in a conservation-oriented manner, with minimal bycatch mortality and discards. Only when federal authorities eliminated the Japanese-dominated longline fisheries off Alaska were U.S. fishermen able to gain access to premium markets. Our vessels are heavily capitalized, and are particularly vulnerable to market fluctuations. A flood of cheap Russian white fish product in international markets has lowered prices drastically and has created an economic crisis in our industry. The landing tax proposed in CSHB 264 (FIN) could drive many of us out of business.

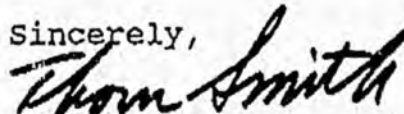
We support the proposed amendment to Section 43.77.010 of the bill, which makes it clear that the landing tax would not apply to product processed outside state jurisdiction and transferred directly into foreign commerce. The commerce clause of the United States Constitution reserves to Congress the power to regulate and tax foreign commerce. We also support the proposed amendment to Section 43.77.030, which would prevent double taxation.

In our view the constitutionality of the proposed landing tax has not been demonstrated. It has not been shown that there is an adequate nexus linking at-sea processing activity with the state to justify taxation. Finished product is merely transferred from one vessel to another in state waters - no processing takes place - and the carriers depart for foreign ports. Any use we make of state facilities is on a pay-as-you-go basis; there has been no showing that the proposed tax bears a fair relationship to the services provided by the state. The tax may discriminate against nonresident U.S. citizens. Regulation of commerce with foreign nations is specifically reserved to Congress, and regulation of fisheries in the EEZ is governed by federal statutes.

We feel that it would be a mistake to move this legislation forward without a thorough legal analysis of these issues. At a minimum, the proposed amendments should be adopted to avoid legal challenge.

Thank you for your attention. I hope these comments will encourage the legislature to pursue its business in a responsible manner.

Sincerely,



Thorn Smith  
Executive Director

5-3-93  
JFC

PATTON, BOGGS & BLOW  
2550 M STREET, N.W.  
WASHINGTON, D.C. 20037  
(202) 457-6000

TXT TELEX: 197780  
TELECOPIER: 457-6315

May 2, 1993

BACKGROUND MEMORANDUM

Re: Unconstitutionality of HB 264

I. INTRODUCTION

House Bill 264 would establish a tax on fisheries resources caught outside Alaska waters but landed within the State's jurisdiction. In relevant part, the proposed bill provides that "[a] person owning a fishery resource that is not subject to AS 43.75 but that is brought into the jurisdiction of, and first landed in, this state is liable for and shall pay a landing tax . . . ." Thus, by its terms, the proposed bill seeks to tax a person that catches fish and processes it outside Alaska waters and transfers the processed catch in state waters to a foreign tramper headed for a foreign destination. We believe that, if challenged, a court is likely to strike down the legislation as unconstitutional.

II. ANALYSIS

Under Article I, section 8, clause 3 of the U.S. Constitution, the Congress has the plenary authority "[t]o regulate Commerce with foreign Nations, and among the several states . . . ." As the State's Attorney General recognizes, the proposed legislation raises potential constitutional problems under clause 3. We do not believe the proposed legislation can be defended under the cases cited by the Attorney General in an April 6 letter to Chairman Moses or other cases not cited in the letter.

Under Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977), the proposed legislation will survive constitutional challenge only if it "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." By its terms, however, the proposed legislation is not limited to vessels that

## PATTON, BOGGS &amp; BLOW

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regularly call at Alaska ports or otherwise use the services of the state. Rather, it would apply against a vessel that entered state waters once and transferred its catch to a foreign trumper. As applied to such a person, the tax could not be shown to have a substantial nexus with the taxing State. Nor could it be shown that the tax in any way related to services provided by the State. The Attorney General's letter suggests, for example, that the vessel potentially has the use of state ports or state rescue services. But a court would require a specific showing that the person against which the tax would be levied actually availed itself of these services.

The Supreme Court's opinion in Maryland v. Louisiana, cited by the Attorney General, confirms the unconstitutionality of the proposed legislation. The Supreme Court struck down Louisiana's First-Use Tax on natural gas produced from OCS wells outside state waters that moved through processing plants in Louisiana before moving through interstate pipelines to consumers in other states. 451 U.S. 725, 760 (1981). The activity the State of Alaska now proposes to tax is comparable. Fish caught outside state waters and merely transferred within state waters before being carried to a foreign destination or other state would be subject to taxation. The simple act of transferring the processed fish to a trumper would appear to be no more significant than processing natural gas at a processing facility before moving into interstate commerce. The act of processing natural gas was not considered by the Supreme Court to give Louisiana the power to levy a tax. We would expect a similar finding if the proposed legislation were enacted.

Another Supreme Court case, not cited by the Attorney General, provides an additional basis for challenging the proposed legislation. In Japan Line, Ltd., v. County of Los Angeles, 441 U.S. 434 (1979), the Supreme Court held that Los Angeles could not levy an ad valorem property tax on shipping containers owned by foreign corporations, even though some of the containers were present in the state at all times. See also Northwest Airlines, Inc. v. Commissioner of Revenue, 247 N.W.2d 33 (1976) (airplanes en route to foreign destination not subject to aviation fuel tax on bonded aviation fuel purchased in state); Scandinavian Airlines System, Inc. v. Los Angeles County, 363 P.2d 25 (1961) (foreign-owned and based aircraft flown exclusively in foreign commerce not subject to personal property tax). When instruments of foreign commerce are involved, the Supreme Court

## PATTON, BOGGS &amp; BLOW

-3-

held that a state bears an even heavier burden than the one imposed under the Complete Auto decision. See 441 U.S. at 451. The law will be struck down if it "creates a substantial risk of international multiple taxation . . . [or] prevents the Federal Government from 'speaking with one voice when regulating commercial relations with foreign governments.'"

We understand that title to processed fish often has passed to the foreign buyer before the transfer occurs in state waters. By its terms, the proposed legislation would be applied against the foreign owner of the fish. Notwithstanding proposed section 43.77.030, the tax might lead to international multiple taxation. Moreover, the legislation would appear to be inconsistent with Congress's authority to regulate foreign commerce. The State in these instances would effectively be levying a tax on a product moving in foreign commerce. States, however, have no power to tax exports, a power reserved to Congress under Article I, section 8, clause 3 of the Constitution. As Legislative Affairs attorney Jack Chenoweth recognized in his memorandum of March 31, "the proposed levy may be construed to violate the implied limitation or prohibition on Congressional authority to regulate foreign commerce."

## III. CONCLUSION

In enacting the proposed legislation, the State of Alaska would invite litigation that could lead to the tax being struck down as unconstitutional. We believe that, if challenged, the proposed legislation is likely to be struck down. The state runs the risk that all taxes collected would have to be refunded if a single taxpayer is able to demonstrate that the tax is unconstitutional.

PATTON, BOGGS &amp; BLOW

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110400  
JUNEAU, ALASKA 99811-0400  
TELEPHONE: (907) 465-2300  
FACSIMILE: (907) 465-2389

May 3, 1993

Honorable George Jacko  
Alaska State Legislature  
State Capitol, Rm 125  
Juneau, AK 99801-1182

Dear Senator Jacko:

Brice Edgmon of your staff requested a letter regarding the Department of Revenue's position on HB 264 relating to a fisheries landing tax.

A fish tax study conducted by the Department of Revenue with Department of Fish & Game assistance recommended legislation establishing a landing tax. The tax rate recommended in that study was 5% of the value of the landed, processed product.

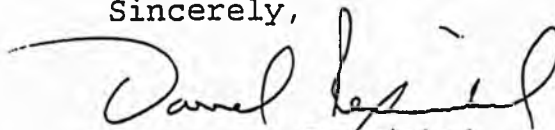
The Department of Revenue working with the Governor's Office drafted legislation that Representative Moses introduced under sponsorship of the House Rules Committee. With the same definitions for the tax base, the legislation proposed a 3.3% tax rate with .3% of that amount available for appropriation to the Alaska Seafood Marketing Institute. That is the legislation that is currently being considered by the Senate Finance Committee.

The current version of the legislation, CSHB 264(FIN), contains several amendments adopted by the House Finance Committee. One of those amendments allows landing tax credits for CDQ's that make donations to allowable non-profit organizations for certain purposes including training, education and capital improvements related to fisheries in the State of Alaska. There are provisions of this tax credit proposal that eliminate the State of Alaska's liability and call for the tax credit amount to be paid out of the shared tax amount. The total liability is estimated to be between \$150,000 and \$250,000 for the tax credits. The administration agreed to this tax credit. We are opposed to any other tax credit provisions at this time.

The General Fund revenue estimate is \$4,300,00 with a like amount available before tax credits for sharing with municipalities. ASMI stands to receive up to \$860,000 for marketing.

The Department is available if you have other questions concerning this legislation and supports its passage.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darrel J. Rexwinkel".

Darrel J. Rexwinkel  
Commissioner

cc: Kris Lethin, Office of the Governor  
Representative Carl Moses

93-085

# GKV & Sons

GALE K. VICK  
P.O. BOX 220221  
ANCHORAGE, ALASKA 99522-0221  
(907) 248-4264 (phone) (907) 561-4315 (fax)

FAX TRANSMISSION \_\_\_\_\_ pages

DATE: MAY 4, 1993

TO: MEMBERS, ALASKA STATE LEGISLATURE  
SENATE FINANCE COMMITTEE  
JUNEAU, ALASKA

NAME	FAX	PHONE:
SEN. GEORGE JACKO	465-2997	465-4942
SEN. STEVE FRANK	465-4714	465-3709
SEN. DRUE PIERCE	465-3872	465-4993
SEN. TIM KELLY	465-3756	465-3822
SEN. STEVE REIGER	465-2069	465-3879
SEN. BERT SHARP	465-2070	465-3004
SEN. JAY KERTULLA	465-3805	465-6600

FROM: GALE K. VICK, Training Contractor to the Bering Sea Commercial Fisheries  
Development Foundation

RE: HB 264  
Landing Tax Legislation  
Amendment for credit for foundation donations

I am writing to request your support for industry tax credits for educational and economic foundation donations. This is a critical need which has a direct bearing on a project that has been enormously successful in the last two years - the Bering Sea Commercial Fisheries Development Foundation Seafood Processing Training Program. So far, this has resulted in 152 successful completions with over 90% hire. There is a current class of 20 attending AVTEC in Seward, bringing the number to 172 graduates. There are 12 classes scheduled for the '93-94 school year, resulting in 240 additional graduates. All graduates are tracked and monitored for maximum employment and advancement opportunities. Classes for upper level training are in the developmental stage. All students are from Western Alaskan villages, including Bristol Bay, Norton Sound, Northwest Arctic, Yukon-Kuskokwim, Aleutian-Pribilofs. The money they earn goes directly back into their communities. The long range target is at least 1000 jobs in both off-shore and on-shore fishing. **WE CANNOT CONTINUE THIS EFFORT WITHOUT INDUSTRY SUPPORT.**

In all my years working with all the major companies in Alaska through the Tanana Chiefs Conference in the Interior and with the Kotzebue Technical Center, I have never seen such a commitment on the part of industry to *finance* and subsequently hire so many people from rural Alaska. This is truly an exceptional program which has every indication of getting even better.

We must encourage industry to continue their support. I urge you to pass the amendment which would grant them a tax credit for their donations to foundations such as this one.

Thank you very much!

MAY 03 1993

# **BSFA** Bering Sea Fishermen's Association



725 Christensen Drive  
Anchorage, Alaska 99501  
(800) 770-6519 (Within Alaska)  
(907) 279-6519  
FAX (907) 258-6688

*Serving western Alaska small boat fisheries since 1980*

May 5, 1993

The Honorable Drue Pearce  
Co-Chair  
Senate Finance Committee  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Pearce:

The Coastal Villages Fishing Cooperative, the Norton Sound Economic Development Corporation, the Yukon Delta Fisheries Development Association, and the Bristol Bay Economic Development Corporation wish to express their support for CS For House Bill No. 264 (Fin), "An Act levying and providing for the collection of and disposition of the proceeds of a fishery resource landing tax; and providing for an effective date". The bill passed the Alaska House of Representatives on April 27, 1993 and is now awaiting action in the Senate Finance Committee.

When HB 264 was being considered by the House, the above four Community Development Quota corporations requested an amendment that would provide a limited tax credit on CDQ-harvested fish only. The funds from this credit would be used specifically for CDQ corporation nonprofit community development activities. The House Finance Committee incorporated this amendment in its CS, which passed the House.

The above CDQ corporations endorsed CSHB 264 when it was before the House and wish to reiterate their endorsement today. The current version will assist the corporations in their efforts to achieve the goals that have been set for the CDQ program by the state and federal governments. Additionally, the above CDQ corporations support the principle that the State of Alaska should derive equitable revenue from its resource industries, as embodied in CSHB 264.

Various specific and valid concerns have been raised about the structure of the landing tax. We feel these can be worked out through statutory amendments in future years.

Freight Management Services, Inc.  
P.O. Box 976  
Dutch Harbor, AK 99692

MAY5, 1993  
SENATOR KERTULLA  
STATE CAPITOL  
JUNEAU, AK

DEAR SENATOR KERTULLA

AS A THIRTEEN YEAR MEMBER OF THIS DYNAMIC FISHING COMMUNITY, I AM WRITING TO EXPRESS MY CONCERN FOR THE OPPOSITION TO THE AMENDMENT OF HB264 THAT WOULD PROVIDE A TAX CREDIT TO FACTORY TRAWLERS WHOM INVEST TIME AND MONEY INTO THE BERING SEA COMMERCIAL FISHERIES DEVELOPMENT FOUNDATION. I MUST ADMIT IGNORANCE ON MUCH OF WHAT HAPPENS IN THE HOUSE AND THE REASONS FOR SUCH OPPOSITION.

AS YOU KNOW, JOB OPPORTUNITIES IN COASTAL ALASKA ARE FAR AND FEW BETWEEN, AND THE FOUNDATION HAS STARTED A PROGRAM WITH FACTORY TRAWLER MONEY THAT IS PROVING TO BE A WINNER. THAT IS WHY I AM CONFUSED AS TO WHY A TAX CREDIT SHOULD NOT BE APPLIED TO COMPANIES THAT INVEST IN THIS PROGRAM.

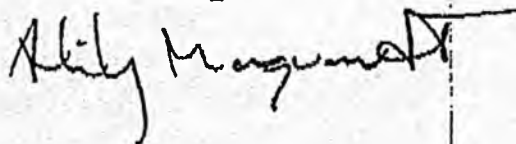
I AM ALSO INTERESTED IN LEARNING ABOUT TAX CREDITS THAT DO APPLY TO SHORE PLANTS WITH SIMILAR PROGRAMS. OR DO SHORE PLANTS HAVE SIMILAR PROGRAMS ? IF SO, IT SEEMS THAT SUCH OPPOSITION TO FACTORY TRAWLERS IS SIMPLY A CALCULATED "LOW BLOW" IF YOU WILL, JUST TO REINFORCE THE DISPARITY BETWEEN THE ONSHORE/OFFSHORE CONTINGENTS.

WHY SHOULD LOCAL KIDS OPPORTUNITIES FOR EMPLOYMENT AND TRAINING BE PUT IN THE MIDDLE OF WHAT HAS BEEN A BITTER DISPUTE BETWEEN TWO GIANT ADVERSARY'S ?

I THINK THAT IT IS VERY UNFORTUNATE THAT THE BATTLE FOR SUPERIORITY IN THE FISHING INDUSTRY HAS BECOME SO STEEPED IN RESENTMENT, THAT A PROGRAM WITH SUCH OBVIOUS BENEFITS TO A GROUP OF YOUNG PEOPLE WHOM NEED AND DESERVE TRAINING AND INCOME IS AT RISK.

I APPRECIATE YOUR TIME AND CONSIDERATION FOR THESE KIDS.

BEST REGARDS,  
SHIRLEY MARQUARDT



AMERICAN FACTORY  
TRAWLER ASSOCIATION

Joe Blum  
Executive Director

ISSUES RAISED BY HB 264

4039 21st Avenue West • Suite 400 • Seattle, Washington 98199  
Telephone: 206-285-5139 • Fax: 206-285-1841

- I. Bill: HB 264 (FIN) Fisheries Landing Tax (Moses)
- II. HB 264 proposes to tax at 3.3% the first landing in Alaska of fishery products made from fish caught and processed outside State waters.
  - \* 50% of tax would go to the State
  - \* 50% of tax would be allotted to local governments (90% of this portion would go to Dutch Harbor/Unalaska)
  - \* A Tax Credit for those communities participating in the State/Federal fisheries Community Development Quota program is permitted.
  - \* 0.3% goes to A.S.M.I.
- III. Issues:
  1. Legal:
    - \* The fishery products being taxed are made from fish that is caught and processed in federal waters entirely outside of the state's jurisdiction .
    - \* The only taxable event in the State of Alaska is the offloading of finished fish products in state waters
    - \* Virtually all of the fish products are immediately transferred to tramper vessels for shipment to foreign ports or ports in the lower

programs and fisheries economic development projects in Western Alaska. Students attend the Seward Training Facility and go to work in fish processing. The American Factory Trawlers Association provides 100% of the funding for the Foundation. To date the offshore sector (AFTA) has employed over 125 Western Alaskans on Factory Trawlers. They receive well in excess of minimum wage. Under HB 264 there is NO TAX CREDIT provided to citizens who have supported the Foundation; yet similar training programs supported by shoreside operators are given a tax credit in the existing Fisheries Business Tax.

Conclusion: The Bill as written raises serious Constitutional issues with respect to fairness and equity and its impact on domestic interstate and foreign commerce. The bill should be referred to Senate Judiciary Committee and a substantive legal review conducted. The bill needs to be reviewed over the summer by the various parties to see if the objectives of the State can be met in a fair and equitable manner.

AMERICAN FACTORY  
TRAWLER ASSOCIATION

Joe Blum  
Executive Director

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    - \* The only taxable event in the State of Alaska is the offloading of finished fish products in state waters
    - \* Virtually all of the fish products are immediately transferred to tramper vessels for shipment to foreign ports or ports in the lower

\* A tax of this nature raises serious questions under the U.S. Constitution's

\* Commerce clause (interference with foreign and/or domestic interstate commerce);

\* Equal Protection clause;

\* Due Process clause; and

\* Supremacy clause

\* No definitive legal opinion has been done, nor has the bill been referred to the Senate or House Judiciary Committees.

2. Equity and Fairness:

\* Dutch Harbor: While there is some drain on local government resources from the "offshore" sector, it is not anywhere near the drain by the "shoreside" operators. Nevertheless, the 3.3% proposed tax for offshore production is the same level as the shoreside pays under the existing Fisheries Business Tax. The tax imposed under HB 264 makes no effort to balance the relative burdens (costs) imposed on the local community by offshore vs. onshore processing operations.

\* Under the existing Fisheries Business Tax the shoreside operators receive a number of tax credits that apply generally. HB 264 only provides limited credits for CDQ participants. Non-CDQ fishermen have no credits under HB 264.

3. Bering Sea Commercial Fisheries Development

Foundation:

\* The Bering Sea Commercial Fisheries Development Foundation is an Alaska Foundation that funds training

programs and fisheries economic development projects in Western Alaska. Students attend the Seward Training Facility and go to work in fish processing. The American Factory Trawlers Association provides 100% of the funding for the Foundation. To date the offshore sector (AFTA) has employed over 125 Western Alaskans on Factory Trawlers. They receive well in excess of minimum wage. Under HB 264 there is NO TAX CREDIT provided to citizens who have supported the Foundation; yet similar training programs supported by shoreside operators are given a tax credit in the existing Fisheries Business Tax.

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**HIB**

**267**

**HFIN**

**FILE**



# FISCAL NOTE

No. 1  
 Bill Version: SSHB 267  
 (H) Publish Date: 3/2/94

**STATE OF ALASKA**

**1994 LEGISLATIVE SESSION**

Revision Date: February 1, 1994 Department Affected: Education  
 Title: An Act increasing elementary and secondary instructional units for certain school districts with 800 or fewer students in ADM ... BRU: K-12  
 Component: Foundation  
 Sponsor: Foster  
 Requestor: Foster COMPONENT SERIAL NO. 141

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	3,372.1	3,439.5	3,508.3	3,578.5	3,650.1	3,723.1
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3,372.1</b>	<b>3,439.5</b>	<b>3,508.3</b>	<b>3,578.5</b>	<b>3,650.1</b>	<b>3,723.1</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3,372.1	3,439.5	3,508.3	3,578.5	3,650.1	3,723.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>3,372.1</b>	<b>3,439.5</b>	<b>3,508.3</b>	<b>3,578.5</b>	<b>3,650.1</b>	<b>3,723.1</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0

**ANALYSIS:** (Attach a separate page if necessary.) This legislation would amend AS 14.17.041 by adding a new table for single site school districts serving less than 800 students in average daily membership. The increase will result from a declining percentage increase in K-12 instructional units as the districts, grouped by size, increase in average daily membership. The Department of Education has assumed an ADM increase of 2% a year.

Prepared by: Eddy Jeans Phone: 465-8685  
 Division: School Finance Date: February 1, 1994

Approved by Commissioner: Jerry Covey  
 Agency: Education Date: February 1, 1994

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

ALASKA DEPARTMENT OF EDUCATION  
 FY95 FOUNDATION PROGRAM  
 HB 267

The Department of Education has not verified the unit  
 computations submitted by the local school districts.

	PROJ. FY95 ADM	K-12 Units	Single site Units	AREA DIFF.	Single site Allocation
ADAK	150.00	16.00	1.92	1.27	\$148,840
ALEUTIAN REGION	16.00	3.20	0.38	1.31	30,500
ANNETTE ISLANDS	407.00	33.13	2.65	1.03	166,530
CORDOVA	511.15	40.08	3.21	1.11	217,160
CRAIG	363.00	30.20	2.42	1.03	151,890
DILLINGHAM	523.00	40.38	3.23	1.27	250,100
GALENA	149.00	16.42	1.97	1.30	156,160
HOONAH	270.00	24.00	1.92	1.08	126,270
HYDABURG	115.00	13.58	1.63	1.03	102,480
KAKE	181.00	18.07	2.17	1.03	136,640
KASHUNAMIUT	228.00	21.20	2.54	1.33	206,180
KLAWOCK	225.00	21.00	2.52	1.03	158,600
NENANA	190.00	18.67	2.24	1.20	164,090
NOME	727.95	53.98	3.24	1.34	264,740
PELICAN	45.00	7.13	0.86	1.08	56,730
PETERSBURG	733.00	54.50	3.27	1.00	199,470
SKAGWAY	135.00	15.00	1.80	1.05	115,290
ST. MARY'S	103.00	12.58	1.51	1.30	119,560
TANANA	106.00	12.83	1.54	1.30	122,000
UNALASKA	396.00	32.40	2.59	1.27	200,690
WRANGELL	533.00	41.53	2.49	1.00	151,890
YAKUTAT	150.00	16.00	1.92	1.08	126,270
<b>TOTALS</b>	<b>6,257.10</b>	<b>541.88</b>	<b>48.02</b>		<b>\$3,372,080</b>

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: SSHB 267

BY REPRESENTATIVE GRUSSENDORF

Page 1, line 1, after "Act":

Insert "relating to the calculation of instructional units used in determining state aid for education and"

Page 1, after line 4:

Insert a new bill section to read:

"\* Section 1. AS 14.17.031(b) is amended to read:

(b) If the total elementary and secondary instructional units that a school district is eligible to receive under (a) of this section decrease by five [10] percent or more from one fiscal year to the next, the school district may use the last fiscal year before the reduction as a base fiscal year and offset its reduction according to the following schedule: (1) for the first fiscal year after the base fiscal year, the school district is eligible to receive the total elementary and secondary instructional units determined under (a)(1) of this section plus 75 percent of the difference in total elementary and secondary instructional units between the base fiscal year and the first fiscal year after the base fiscal year; (2) for the second fiscal year after the base fiscal year, the school district is eligible to receive the total elementary and secondary instructional units determined under (a)(1) of this section plus 50 percent of the difference in total elementary and secondary instructional units between the base fiscal year and the second fiscal year after the base fiscal year; (3) for the third fiscal year after the base fiscal year, the school district is eligible to receive the total elementary and secondary instructional units determined under (a)(1) of this section plus 25 percent of the difference in total elementary and secondary instructional units between the base fiscal year and the third fiscal year after the base fiscal year. The schedule established in this subsection is available to a school district for the three fiscal years

following the base fiscal year only if the total elementary and secondary instructional units received by the school district under (a)(1) of this section for each fiscal year are less than the total elementary and secondary instructional units received by the school district in the base fiscal year. This subsection does not apply to a decrease in total elementary and secondary instructional units resulting from a loss of enrollment that occurs as a result of a boundary change under AS 29."

Page 1, line 5:

Delete "Section 1."

Insert "Sec. 2."

Renumber the following bill section accordingly.



# Alaska State Legislature

Please enter into the record my testimony to the House Finance  
 committee name

committee on HB 267 Education , dated March 7, 1994  
 bill/subject

In 1987 the current foundation formula funding was put into place. At that time an inequity in the formula was identified, resulting in a large decrease in money for single site districts. Although the legislature recognized the inequity they chose to implement the foundation formula as it was with a promise to fix the formula the following year in 1988. Seven years later the inequity still exists and has not been fixed. It could be fixed in HB 267. Please pass HB 267. It is the best solution to a very long standing problem.

Signed: Deborah Miller *Deborah Miller*  
 Testifier

Nome Public Schools  
 Representing (Optional)

P.O. Box 1923 Nome, Alaska 99762  
 Address

443-3083 (hmn) 443-5236 (wic)  
 Phone No.

## **SPONSOR'S STATEMENT**

HB 267 would add a subsection to the school foundation formula that would increase funding for school districts which are comprised of one funding community (single site school districts) and which have an average daily membership (ADM) of 800 or less students. A background and analysis of the issue has been prepared for the Single Site School District Consortium and is included in the packet of information pertaining to the bill. There are also two illustrations of what happens in comparable sized school districts when one district has more than one funding site. Please see the FY93 Foundation Program Calculations for Aleutians East, Annette, Haines and Southeast Is. which shows the amount of funding generated for each district. Note that Annette and Haines are single site districts. The second set of comparisons are for Chugack and Skagway.

This change in the foundation formula should not be considered to be an increase in school funding. Funding that was provided as a grant during the last fiscal year would be transferred to the foundation formula and be subjected to the same proration as other funding.

The State Board of Education Voted to support HB 267 at its 01/12/94 meeting. Their support was "contingent upon appropriation of sufficient additional funds to implement it." (Please see the enclosed "Single Site" portion of the minutes from 01/12/94.)

The packet also contains letters of support from the Alaska Association of School Administrators and NEA-Alaska and others.

## POSITION PAPER: DEPARTMENT OF EDUCATION

Division School Finance Bill Number HB267

Bill Title An Act increasing elementary and secondary instructional units for certain school districts with 800 or fewer students in ADM; and providing an effective date.

Sponsor Foster

This legislation proposes to give more state aid to public school districts that serve less than 800, K-12 students in a dense community, connected by road. The increase will result from a declining percentage increase in the number of K-12 instructional units as the district grows in average daily membership, grouped by size. Unlike the current foundation formula, this approach provides a significant difference in funding based on one student for a district at the break points between groups. This stair step approach to funding K-12 units was eliminated in 1937, with the current foundation program.

Given the Governor's budget, the Department does not support HB267. Currently, the Foundation program is short funded in both fiscal year 1994 and 1995. Twenty one of the twenty two single site school districts that would benefit from this legislation have already received a discretionary grant for fiscal year 1993-94. The effective date of this legislation would require a second payment. Both payments are intended to compensate for the same perceived inequity in the current Public School Foundation Formula. Yet no one has objectively quantified what the perceived inequity is. One thing common to the group of single site school districts is that each has only one funding community. Due to the small size and lack of dispersion, each single site district does have the option to house all of its students, as well as its administrative functions on one site, eliminate travel from site to site, eliminate itinerant staff and avoid multiple purchases of like items. This should be the least expensive type of school district alternative, having the most potential for savings. However, the Department recognizes that this may be more of an economic issue, based on past practice, than an educational programmatic issue.

At present, the only conclusive statement that can be clearly documented and undisputed is that single site districts of the same average daily membership (ADM) as multiple site school districts generate less instructional units and, as a result, less basic need than do the multiple site school districts. This difference can be resolved one of two ways, if in fact a resolution is necessary: 1) amend the formula to reduce the effects of the front loading and basic need for multiple site school districts or 2) amend the formula to increase basic need for single site school districts.

Based on the districts that would benefit from this statutory change, it appears that when a district generates enough K-12 units it is not disadvantaged by the current formula. At some point economies of scale must fit the current formula, indicating that a greater need may exist in districts which earn the least instructional units. Although,

H  
C  
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H

this proposed formula is based on a declining percentage increase in the number of K-12 units, it in fact, awards a greater number of units and absolute dollars as district size increases.

The Board of Education does not support any increase to single site school districts, if that increase will result in a loss to any other school district. The arguments and evidence have not been so compelling as to generate support at the cost of others. Although the Board acknowledged no inequity in the current formula, the Board did agree that if all K-12 supplementals and the unit value are funded in full, then it could support HB257.

APPROVED:

Director DUANE F. GUILLEY Division SCHOOL FINANCE

Signature *Duane F. Guiley* Date JANUARY 24 1994

Commissioner/Deputy *Phil Weber*

Signature *Phil Weber* Date 1/25/94

# Small Single Site School District Funding

## Issue

*To revise Title 14, Chapter 17 Public School Foundation Program to include an increase for schools with one funding community (site) and 800 or fewer average daily membership (ADM).*

## Background

The present public funding act was passed in the 1987 Legislative Session. During the Legislative hearings there was much discussion concerning the adequacy of the funding formula for small single site school districts i.e. districts of up to 1,000 (750, 525, 100-525) in enrollment that were a single funding community. No one was sure of the impact of the new formula on these districts and an appropriation of two million dollars was made to the State Department of Education to address unique and emergency circumstances substantiated by school districts to the Department. Subsequent fiscal year appropriations were made to the Department for specific school districts, the majority of which were single site school districts.

A review of testimony on CSHB 126 (Fin.) (Chapter 91 SLA 1987), and the discussions in subsequent years on supplemental appropriations for single site school districts, shows that the Legislature believes there is a need for some adjustment in the foundation program for single site school districts. Certainly the passage of supplementals for FY88 (2), 90, 91, 92 and 93 shows there is a continuing need for additional support to single site districts. The major questions concerning the issue are: what size districts should receive additional support, how much support, and how to incorporate the adjustments into the foundation program?

## Analysis

There has been general agreement that single site districts as large as the Nome School District need some adjustment. For purposes of analysis single site school districts of 1000 or fewer in ADM will be divided into three groups, i.e. districts of 1-250 ADM, 251-525 ADM and 526-1,000 ADM. These groups are selected for analysis because they generally follow breakpoints in the present formula for K-12 instructional units. These districts were analyzed on a per ADM basis for changes that have occurred in state funding, local effort, P.L. 81-874 funds, fund balances, property values, supplemental support and pupil teacher ratios (PTR) since FY86. FY86 was selected as the base year because it had the highest state support for public education in the history of the State. The Aleutian Region REAA and the schools in the Aleutian East Borough were excluded from the analysis because of a lack of comparable data, and the North Slope Borough and Valdez City districts were excluded because of extremely high local property values.

## Analysis (continued)

The procedure that was used for analysis purposes was to:

- accumulate the changes in each area listed above incorporating the changes required by the FY88 Foundation Act, and
- dividing the cumulative changes per ADM by the K-12 instructional unit basic need for FY91.

This determined the percentage of gain or loss by group as if there had been no supplemental support, allowing a comparison between what has been appropriated for supplementals and what the analysis shows as needed.

## Findings

1. Single site school districts of 1-250 had a loss of 19.96%.
2. Single site districts of 251-525 had a loss of 10.00%.
3. Single site districts of 526-1000 had a loss of 5.06%.
4. The rest of the school districts as a group had a loss of 1.87%.
5. The data would suggest that single site school districts of 1-250 should receive an additional 18.09% (19.96% -1.87%) of K-12 units, single site districts of 251-525 an addition of 8.13%, and single site districts of 526-1,000 an addition of 3.19%.
6. However, the 1-250 group of single site school districts received about a 4.50% more in supplemental support and exceeded the required 4 mill local effort by about 1 mill more than the other two groups, yielding about another 1.5% advantage, leaving that group at about a 12% adjusted loss. The 526-1,000 group of single site school districts started with a significantly higher pupil teacher ratio and increased it by almost one-fifth, which means that the group cut their programs beyond what the other groups did, reflecting about a 3% lower loss than they should have, had they received a higher level of supplemental support.

## Recommendation

The above analysis and findings support the following recommendation for increased support to single site school districts of 800 or fewer in ADM .

ADM	Percent of K-12 Units
1-250	12
251-525	8
526-800	6

*Analysis and Findings prepared for the Single Site School District Consortium by Dr. Nat Cole, January 28, 1992. Background updated and recommendation modified by Single Site School District Consortium February 1993.*

Small Single Site School Districts

Funding Analysis

TABLE I

Sch Dist. Size in ADM	A ACTUAL FY91 ADM	B AV. SUPP. PER ADM	C FY90 LOCAL EFF ≥ 4 MILLS PER ADM	D ADJ LOC EFF CNG PER ADM	E F90-F86 FND BAL PER ADM	F F88-91 LO EF/ADM CNG @ 4 MIL	G ST FND/ADM F86-F91	H PL874/ADM F88-F91	I C3B PL874 ADJUST/ADM
Total ADM 1-250	2046.1	500	517	-420	-986	-35	-1766	-209	802
Total ADM 251-525	2095.45	142	430	-235	-325	3	-928	532	200
Total ADM 526-1000	2171.15	116	331	-47	-512	-33	-1014	1022	46
Total Other Districts	99321.25		646	-22	-102	-618	123	212	56

TABLE II

Sch Dist. Size in ADM	J CUM CNGS/ADM	K CUM CNGS/ADM PER YEAR	L F91 K-12 BASIC ND PER ADM	M CUM CNG AS % OF F91 BN INC SUPP	N AV SUPP AS % OF F91 BN	O CUM % CNG WITHOUT SUPP	P CNG LOC EFF C3B ≥ 4 MILLS IN F90
Total ADM 1-250	-2613	-523	7226	-7.23%	-6.92%	-14.15%	-5.81%
Total ADM 251-525	-754	-151	5284	-2.85%	-2.69%	-5.55%	-4.45%
Total ADM 526-1000	-537	-107	5343	-2.01%	-2.17%	-4.18%	-0.88%
Total Other Districts	-351	-70	4913	-1.43%	0.00%	-1.43%	-0.44%

TABLE III

Sch Dist. Size in ADM	Q GRAND TOTAL % CNG/ADM	R ONE MILL PER ADM	S LOCAL MILL EFFORT ≥ 4 MILLS	T PTR F88	U PTR F90	V % INC PTR F90VS86
Total ADM 1-250	-19.96%	151	3.43	7.13	8.96	25.66%
Total ADM 251-525	-10.00%	187	2.30	9.59	10.92	13.83%
Total ADM 526-1000	-5.06%	138	2.39	11.62	13.82	18.90%
Total Other Districts	-1.87%	219	2.94	13.05	13.73	5.25%

## Column Explanation Tables I-III

### *School District Size In ADM:*

Total ADM 1-250 : Is single site school districts with average daily memberships (ADM) of 1-250.

Total ADM 251-525: Is single site school districts of 251-525 ADM.

Total ADM 526-1000: Is single site school districts of 526-1000 ADM.

Total Other Districts: Is all other school districts except Valdez, North Slope , Aleutian East and Aleutian Region as noted in the analysis section of the report.

Column A: Actual FY 91 ADM: Foundation ADM for fiscal year 1991

Column B: Average Supplementals Per ADM: Total supplemental support FY 86-91 divided by the number of supplementals received divided the FY 91 ADM.

Column C: F 90 Local Effort Greater Than 4 Mills Per ADM: Shows the per ADM local effort of school districts greater than the 4 mills required by the foundation act in effect in FY 88.

Column D: Adjusted Local Effort Change Per ADM: Shows the difference in local effort per ADM in FY 86 minus FY 90. This represents the local effort change made by school districts over the 5 year period FY 86- FY90. Negative represents more local effort and positive less local effort.

Column E: F 90- F 86 Fund Balance Per ADM: Shows the loss(-) or gain (+) in fund balance per ADM between FY 86 and FY 90.

Column F: FY 88\_FY91 Local Effort Per ADM change at 4 Mills: Shows the increase (-) or decrease (+) in required local effort resulting from the change in local property valuations per ADM between FY 88 and FY 90. That is the change in state foundation funding ( Column G ) would have been greater or lesser had the property values remained the same.

Column G: State Foundation Per ADM FY 86 less FY 91: Shows the loss (-) or gain (+) in state foundation payments per ADM between FY 86 and FY 91. Columns F, H and I are adjustments to this number for required local effort (F) and P. L. 874 (H,I).

Column H: P. L. 874 per ADM FY 88 less FY 91: Shows the gain (-) or loss (+) in P. L. 874 from FY 88 to FY 91. A gain reduced state aid and a loss increased state aid compared to no change.

Column I: City and Borough P. L. 874 payments that were first taken into consideration in FY 88 and which adjusts positively to the foundation change (Column G). That is the loss in state funds for city and borough school districts due to the 874 payments was an intentional adjustment and should show as a reduction in the change in Column G.

Column J: Cumulative Changes Per ADM: Shows the net result of the changes in Columns D through I.

Column K: Cumulative Changes Per ADM Per Year: Column J divided by the five years FY 86 through FY 90 to get the average change to apply to FY 91 K-12 Basic Need.

Column L: FY 91 K-12 Basic Need Per ADM: Shows the FY 91 dollars per ADM that represents the amount of K-12 Basic Need. This is the number that the changes from FY 86 to FY 91 are compared to determine the needed percent change in the K-12 Instructional Units for the single site school districts.

Column M: Cumulative Changes AS A Percent Of FY 91 Basic Need Including Supplementals: Shows the average adjusted changes per year brought about by changes in local effort up to 4 mills, change in fund balance, change in P. L. 874 and state foundation change. It also includes the supplemental support shown in Column B which when relating to foundation payments must be adjusted out to show how districts foundation payments are affected without the supplementals.

Column N: Average Supplemental AS A Percent Of FY 91 Basic Need: Shows the effects of not having the supplementals in Column B.

Column O: Cumulative Percent Change Without The Supplemental: Shows the sum of Columns M and O.

Column P: Change In Local Effort With City And Borough's Local Effort Greater Than 4 Mills In FY 90 FY86 Less FY 90: Shows the local effort increase (-) above 4 mills in FY 90.

Column Q: Grand Total Percent Change Per ADM: Shows the total changes as a percent of FY 91 K-12 Basic Need.

Column R: One Mill Per ADM: Shows the dollars per ADM generated by one mill.

Column S: Local Mill Effort Greater Than 4 Mills.

Column T: PTR FY 86: Shows the pupil teacher ratio for FY 86.

Column U: PTR FY 90: Shows the pupil teacher ratio for FY 90.

Column V: Percent Increase In PTR FY 90 Verses FY 86.

FY93 Foundation Program Calculations

#1

	Aleutians East	Annette	Haines	Southeast Is.
ADM	391.00	404.00	432.30	418.00
K-12 Units	48.08	32.93	37.34	76.27
Area Differential	1.31	1.03	1.05	1.04
Adjusted Units	62.98	33.92	39.21	79.32
Basic Need	\$3,841,780	\$2,069,120	\$2,391,810	\$4,838,520
Req. Local / PL81-874	(627,031)	(1,285,286)	(490,388)	(593,718)
State Foundation Aid	\$3,214,749	\$783,834	\$1,901,422	\$4,244,802

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Following Per ADM

Basic Need	\$9,826	\$5,122	\$5,533	\$11,575
Req. Local / PL81-874	1,604	3,181	1,134	1,420
State Aid	\$8,222	\$1,940	\$4,398	\$10,155

The units and basic need presented on this spreadsheet only represent the K-12 student population. These numbers do not reflect the additional Bilingual/Bicultural, Special Education or Vocational Education units.

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