

1104

HRES

HB

304

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HB

350

10

1 inconsistent with the constitution or the laws of the State  
of Alaska or the United States.

⑪  
\* (E) →

3 \* Sec. 4. IMPLEMENTATION. (a) In view of present state  
4 fiscal constraints, the Board of Fisheries, Board of Game,  
5 and the department shall implement AS 16.05.223 and 16.05.224,  
6 enacted in sec. 2 of this Act, within the fish and game re-  
7 source regions established by AS 16.05.222, also enacted in  
8 sec. 2 of this Act, in accordance with the following schedule,  
measured from the effective date of the Act:

9 (1) no less than one region within one year;

10 (2) no less than three additional regions within  
two years; and

11 (3) all regions within three years.

12 (b) During the implementation period stated in (a) of  
13 this section, all existing local advisory committees in other  
14 regions shall continue to function under the present regulations.

15 \* Sec. 5. CONSTRUCTION. If any provision of this Act is  
16 incompatible with AS 16.05.260, the provision of this Act  
governs.

⑫  
\* (E) →

18 \* Sec. 7. ~~Sec. 6 of this Act takes effect three years after~~  
19 ~~the effective date of the remaining sections of this Act.~~  
20 ~~The remaining sections of this Act take effect immediately~~  
21 ~~in accordance with AS 01/10.070(c).~~

EXPLANATION OF THE REVISIONS TO HOUSE BILL 304

(Note: All references to lines are from original HB-304.)

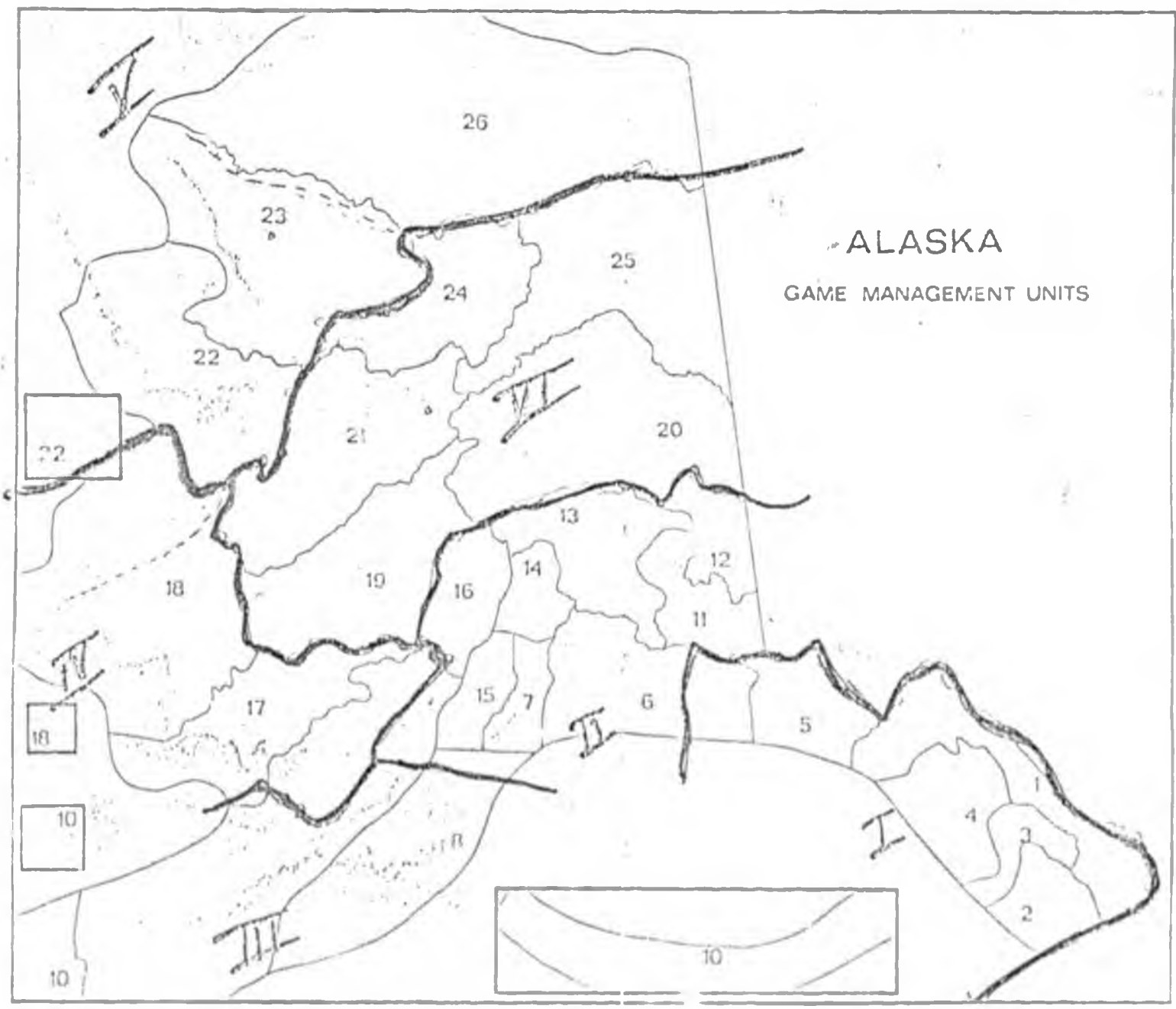
1. Line 12, There is no reason to distinguish between rural and other Alaska residents.
2. Line 15, The word advisory was added to better reflect the role of the public.
3. Line 18, "and development" was deleted because it was not considered appropriate to develop fish and game.
4. Line 19 and 20, The number of regions was revised to conform to the existing five game management regions. Actually the number of regions should be left up to the Boards so the best boundaries can be drawn to allow management of the resources of game, sport, and commercial fish. These boundaries may not be the same for basic management reasons. In fact, at present, there are three separate systems drawn by ADF&G for management.
5. Line 21 of page 1 and Line 1 - 28 of page 2, Since the boundaries are to be established by the Boards all area definition has been omitted.
6. Line 29 of page 2, Lines 1 - 29 of page 3, and Line 1 - 2 of page 4, The existing advisory committee system should remain as detailed in AS 16.05.260. The Boards have authority to deal with advisory committees now and will be making changes in their joint meeting of March 1979.
7. Line 8 - 11 of page 4, Paragraph (b) was deleted and new wording was added to allow for a coordinator in each region as determined by the Boards. We feel this may be the single most important factor to permit better local input to the fish and game regulatory system.
8. Line 12 of page 4, To better control what and when the Regional Councils meet, etc., we believe the Boards shall be given an oversight authority.
9. Line 18 - 25 of page 4, Since the regulatory powers of the councils are deleted, this wording is not needed. These councils are advisory only and should serve to advise and educate the local advisory committees.
10. Line 2 - 3 of page 5, As the councils are to serve the advisory committees, it was necessary to revise this wording.

11. Line 10 - 16 of page 5, Paragraph (e) is no longer required since the Councils are to serve the advisory committees.

12. Line 3 - 3 of page 6, This language concerns local advisory committees. Since no change is recommended in the existing system, Sec. 6 and Sec. 7 are not required.

HR 304

GOVERNOR'S PROPOSAL



ALASKA  
GAME MANAGEMENT UNITS

...ita River downstream  
...anika River; bounded  
...a River from its con-  
...er upstream to Dexter  
...of Dexter Creek to its  
...divide between the  
...ainages to the head of  
...along the west bank of  
...of the Yanert River,  
...th bank of the Yanert  
...up the east bank of  
...k of Moose Creek to

...portion of Unit 20  
...of the Tanana River  
...er and the Tolovana  
...includes the north

Feb 304

February 26, 1979

The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill which provides for the establishment of Regional Fish and Game Councils and Fish and Game Resource Regions. It also provides for the improvement of the local fish and game committee system.

This bill draws from the best elements of other proposed legislation, and from my own administrative proposal which was prepared by the Department of Fish and Game after considerable public review. It is nearly identical to a draft produced recently by the Alaska Federation of Natives, Inc.

The bill establishes six Fish and Game Resource Regions with Regional Fish and Game Councils and provides for establishment of local fish and game committees with mutually exclusive geographic areas of interest.

Each local committee area would be a local, contiguous, and relatively uniform area in terms of habitat and life-style. Committee members would be knowledgeable local residents, appointed by the joint boards. The chairpersons of local committees would comprise the regional councils.

The regional councils and the local committees would be responsible for expressing to the joint boards local views regarding management plans, regulations, and other fish and wildlife concerns, and for presenting recommendations to the boards to which the boards must respond.

To ensure that this proposed system will work, one section provides for funding to cover travel and per diem costs of council and committee members, a crucial lack in

the past. In view of current state fiscal problems, however, I am proposing that only one region be implemented during FY 80, with the others following later.

Sincerely,

*S/JSH*

Jay S. Hammond  
Governor



REGIONAL RESOURCE COUNCILS

ASSUME

-	1 position to assist Advisory Committees and Region Council - Range 14 with benefits	=	\$33,100
-	travel and per diem for region * this amount above amount budgeted for Advisory Committee travel	=	18,000
-	contractual support of Council	=	7,000
-	commodities and supplies	=	900
-	equipment	=	<u>1,000</u>
	TOTAL		\$60,000

IMPLEMENTATION

ASSUME

-	1 Council in FY '80 include 1 in FY '80 request	=	-0-
-	4 Councils in FY '81 - 60.0 x 4	=	240.0
-	6 Councils in FY '82 - 60.0 x 6	=	360.0
-	no inflation added until FY '83 after FY '83, inflation at 6%		

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

HOUSE BILL NO. 304

By THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

"An Act establishing Fish and Game Resource Regions, Local Fish and Game Committees, and Regional Fish and Game Councils; and providing for an effective date."

Fish and Game

Introduced in the House 2-27, 19 79

HISTORY IN THE HOUSE

19 79  
Feb. 27 Read first time and referred to Committee on Resources and Finance

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed  
Signed by Speaker  
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19  
Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed  
Signed by President  
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19  
Received from Senate

Concurred in Senate amendment thus adopting:  
VOTE

Failed to concur in Senate amendment; asked Senate to recede  
VOTE

Senate receded from amendment  
VOTE

Senate failed to recede from amendment  
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House  
VOTE

CC adopted by Senate  
VOTE

To enrolling  
Reported correctly enrolled  
Sent to Governor

by Governor

Filed with Lt. Governor

Chapter No.



HB 304

MEMO

Date: March 9, 1979  
To: Representative Bill Miles, Co-chairman;  
✓ Representative Alvin Osterback, Co-chairman;  
and members, House Resources Committee  
From: Frank Flavin, Ombudsman  
Subject: House Bill 304

77

Attached is a report of our findings concerning an investigation of the Anchorage Fish and Game Advisory Committee. The problems revealed here are reflective of the types of problems experienced by any advisory group that lacks the full support of the agency concerned.

If Fish and Game advisory committees are to be expanded or strengthened I would recommend that the administrative support required by the Department of Fish and Game be clearly spelled out.

The language in Section 2, AS 16.05.224 (b), page 4, lines 8-11 of HB 304, is a good start but the inclusion of a training program for the committees and councils and an annual reporting requirement on the types of assistance provided would be helpful.

I also feel that the Department should be directed to assist local boards in determining user groups who must be represented on the local boards. [Sec. 2, AS 16.05.223 (c), page 3, lines 15-22 of HB 304].

Finally, the advisory committee concept as set out in this bill reduces the objectivity of the advisory committee by their dependence on the Department for both data and administrative assistance. As an alternative to our first two suggestions, it may be advisable to establish an independent advisory committee coordinator's office attached to the Department of Fish and Game but independent, or through another vehicle such as the Public Forum.

rj  
Attachments



# Ombudsman

Frank Flavin

State of Alaska  
360 "K" Street, Room 246  
Anchorage, Alaska 99501

(907) 276-4011

August 22, 1978

Commissioner Ronald Skoog  
Department of Fish and Game  
Subport Building  
Juneau, Alaska 99811

Re: Ombudsman Complaints A78-0305,  
A78-0328, A78-0329 and A78-0332  
(Pending)

Dear Commissioner Skoog:

In March, 1978, this office received the above-captioned complaints from individuals in the Anchorage area alleging that some of the activities of the Anchorage Area Fish and Game Advisory Committee are conducted in violation of the Alaska Administrative Code or in a manner that is not consistent with good principles of public administration.

During the course of our review of the activities of the Anchorage Area Fish and Game Advisory Committee, representatives of the Ombudsman's Office observed one of the Committee's public hearings, interviewed individual committee members, interviewed members of the public interested in the Committee's activities, and met with officials of the Department of Fish and Game, including Commissioner Ronald Skoog. One formal hearing was held by this office in connection with this investigation, and a thorough review was made of the Committee's records. Near the end of our inquiry, a private meeting was held with members of the Anchorage Committee for the purpose of exchanging views, reviewing our preliminary findings, and obtaining further input from the Committee members regarding recommendations to improve the process for public input and access to the Committee.

Pursuant to AS 16.05.260, some 50 area advisory committees have been established in various communities throughout Alaska to provide public input to the Boards of Fisheries and Game on fish and game matters. The area advisory committees hold public hearings and meetings, make recommendations to the Boards of Fisheries and Game on proposed regulations, and provide a valuable public forum on the management of fish and game resources. Due to geographical distances and demographic differences between Alaskan communities throughout the State, there have been considerable variations in the manner in which the area advisory committees function and the amount of community involvement in each committee. During our investigation, we have endeavored to keep these factors in mind. We also recognize that committee members are unpaid volunteers who donate their time and have very limited resources at their disposal. As far as we have been able to ascertain, our investigation of the Anchorage area committee is the first in depth and critical evaluation by an independent agency of a Fish and Game advisory committee anywhere in the State. Even though each Fish and Game advisory committee functions autonomously, we believe that some of our findings regarding the Anchorage Committee may have relevance to Fish and Game advisory committees in other parts of the State.

The following are the specific allegations that were made regarding the Anchorage Area Advisory Committee, and our findings. At the end of this report, we will set forth recommendations which we believe will help to resolve some of the problems we found during the course of our investigation.

ALLEGATION 1: The composition of the Anchorage Area Advisory Committee is not representative of the resource user groups in the Anchorage area.

Finding: Indeterminate.

According to the Alaska Administrative Code, "Each advisory committee shall be composed of persons well informed on the fish and game resources of the locality . . . and shall be representative, in so far as possible, of the resource user groups of the general area." (5 AAC 96.020). In attempting to evaluate the facts concerning this allegation, we found that there is no clear definition of what constitutes a user group, no generally accepted criteria for delineating the constituency of each user group, and no clear figures on how many people in the Anchorage area are in each resource user group. While the number of residents with fishing and hunting licenses in the Anchorage area are available, there are no figures available on the number of non-consumptive users there are. Indeed, there is no generally accepted definition of non-consumptive user groups. In addition, there is a significant

overlap between residents who both hunt and fish, between people who hold commercial and sport fishing licenses, and even between people who have both consumptive and non-consumptive interests. Without more precise definitions of terms, more information on the nature of constituencies in various groups and more data on the numbers of each group, it is not possible to make a completely accurate determination of this allegation.

To date, the Anchorage Area Advisory Committee has made no systematic attempt to identify what resource user groups there are in the Anchorage area or how many people there are in each group. In other words, it is difficult to determine just who the Committee actually represents other than the members themselves. Many of the committee members contend that the Anchorage Committee represents all interests while several other members and a number of people in the community claim the Committee only represents a narrow cross section of user groups in the Anchorage area.

It is possible to make some tentative observations on the current make-up of the Committee's membership, based on how Committee members themselves defined their own interests in interviews with an Ombudsman investigator and on the basis of letters of nomination which many of the Committee members wrote when they were seeking election to the Committee. Based on this criteria, the present Committee membership appears to be disproportionately represented by individuals who identify themselves as sports hunters and/or sports fishermen. Thirteen of a total of fifteen members identify themselves in this category as consumptive users. The remaining two members of the Committee identify themselves as primarily non-consumptive users. Among the majority of consumptive users, however, there is some overlapping of interests. Two are engaged in commercial fishing at least part of the year, and one of these is closely related to a professional guide. A third individual earns a small part of his living as a wildlife photographer, as well as being an avid hunter. Two other consumptive sports users have strong ties to environmental groups or frequently vote with the two non-consumptive users, depending on the issues raised in the proposal. Thus the Anchorage Committee appears to be dominated by consumptive sports users, while commercial users and non-consumptive users constitute small minorities. There is no representative of subsistence users on the Committee, nor is there any representation of Native groups or associations, even though these groups are significant economic and cultural factors in the Anchorage area.

Several committee members take the position that user groups should only be represented to the extent that such users attend the Committee's meetings. Under such a criteria, these members claim, the Anchorage Committee is fully representative of the area user groups. However, this criteria appears inaccurate if

one makes a comparison between the number of people testifying on several controversial regulation proposals last winter and the votes of the Committee members on those same proposed regulations. At the Committee's hearing on March 15, 1978, approximately half of the people who testified on the proposal to close the Eagle River drainage area to hunting and trapping supported the proposal. The Committee, however, voted by a 9-3 margin to keep the area open to hunting. At the telecommunications hook-up several weeks later, which allowed Anchorage residents to testify before the Game Board Hearing in Fairbanks, the vast majority of people who testified favored closing the Eagle River area to hunting and trapping.

The views expressed on this one issue alone, as well as the Committee's vote, does not necessarily indicate that the Anchorage Committee is unrepresentative of local user groups. There has been, however, a considerable increase in the number of non-consumptive users who have been attending committee meetings in the last two years, while there has been little or no change in the proportional representation of non-consumptive users on the Anchorage Committee. As Alaska's principal urban center, Anchorage probably has the largest proportion of non-consumptive users of any community in the State. However, without clear criteria for identifying resource user groups and the numbers of their constituents in the community, it is difficult to make more than tentative observations as to whether or not the Anchorage Area Advisory Committee is representative of the resource user groups in the area.

In the immediate future, the continued growth of Anchorage as an urban center will continue to place increasing pressure on fish and wildlife resources in this area. As the pressure on the resources continues to mount, it is likely that a greater number and variety of resource user groups will attempt to obtain representation on the Committee. It seems likely that the debate over how the resources should be managed will become more intense. Since the Anchorage Area Committee, like other area fish and game advisory committees, selects its own new members, this office believes that the Committee should give greater consideration to defining which resource users there are in the community and making a more sustained effort to see that the Committee's membership is as representative of the resource users as possible (See Recommendations at the end of this report).

ALLEGATION 2: During the past two years, some of the meetings of the Anchorage Area Advisory Committee have been held in private homes rather than in public places.

Finding: Partially Justified/Rectified.

The Alaska Administrative Code does not prohibit fish and game advisory committee meetings from being held in private homes. In many Alaskan communities, such meetings are routinely held in private residences with no adverse consequences. However, in a large metropolitan community such as Anchorage, holding public meetings in private homes can have adverse consequences. First of all, a private residence may not have the facilities to accommodate the number of people who might want to attend the meeting. Access might also be a factor discouraging attendance. Another factor of concern stems from the polarity of views and feelings engendered by different philosophies on how resources should be managed. Conducting public meetings in private homes could discourage the expression of diverse views if a participant does not feel comfortable in the home of someone who holds strong contrary views. For these reasons, public meetings and hearings should be held, as a matter of good public administration, in public places where there are sufficient facilities, good access, and a setting which encourages the widest possible expression of viewpoints and opinions.

Such facilities are not available in many Alaskan communities, but they are available in Anchorage. In the last two years, there have only been two meetings of the Anchorage Committee that were held in private homes. One was a continuation of a meeting held at a local junior high school when the building had to be vacated after 11 p.m. The other meeting in a private home took place on short notice when there was not time to arrange for a public meeting place and to get out sufficient advance publicity. Both of these meetings were held in 1977, and since that time, all of the Committee's meetings have been held in public places. As a result, we find that this is no longer a serious concern, and that the problem has been fully rectified by the Committee.

ALLEGATION 3: During the past two years, meetings of the Anchorage Area Advisory Committee have not been adequately publicized in advance.

Finding: Justified/Partially Rectified.

The Alaska Administrative Code (5 AAC 96.050 Bylaw Number 16) requires that all meetings and hearings of the advisory committees shall be advertised in the locality where the committee is organized. The Anchorage Area Advisory Committee holds essentially two different kinds of meetings: 1.) public meetings, usually in the evenings, to which it tries to give public notice, and 2.) breakfast or executive meetings in which there is no public notice. The latter meetings are usually held in the early morning hours on an irregular basis and are used primarily as planning sessions.

The most serious problem with providing adequate notice for the first category of meetings was a lack of funds to pay for the advertising. Committee members frequently used public service announcements or submitted stories to the local newspapers, but in a community the size of Anchorage, mass advertising is also necessary to inform the public of upcoming meetings. In the past, some Committee members have paid for advertising out of their own pockets, and it has only been in the last year that funds became available from Juneau. The amount and exact source of those funds, however, was never made clear to the Committee. As of July 1, 1978, the Committee has been allocated \$500.00 for expenses, which include advertising. While there has been some improvement in giving public notice of meetings during the last six months, there still have been lapses of coordination within the committee in arranging for adequate public notice of their regular meetings.

The executive or so-called "breakfast" meetings have never been advertised. There has been a diversity of opinion among Committee members as to whether these meetings are "public" in nature, but the Alaska Administrative Code clearly states that "Meetings and hearings of this advisory committee shall be open to the public." These meetings have not been given public notice as required in the regulations, and the public does not have the opportunity to observe or participate if it is not given adequate prior notice of when and where the meetings will be held. The Regulations require that the meetings be open to the public, but this does not necessarily mean that the public can participate. The Anchorage Committee may hold sessions where the public is not able to participate, but the public must be able to observe. The amount of publicity required for executive meetings would be considerably less than for the Committee's regular meetings. [Note: AS 44.62.310 provides that agency meetings (including committees) be open to the public and that reasonable public notice be afforded. See specifically AS 4462. 10(b) in regard to executive sessions.]

ALLEGATION 4: There are no minutes for many of the Anchorage Advisory Committee's meetings which were held during the last two years.

Finding: Partially Justified.

The Alaska Administrative Code (5 AAC 96.050 Bylaw Number 14) requires that "Minutes shall be kept of all meetings of the committee." In our investigation of this allegation, we found that during 1977, minutes were kept for many, if not all of the executive or "breakfast" meetings, but there were no minutes kept for many of the publicly held meetings. For the first one-third of 1978, there are minutes of the publicly held meetings, but no

minutes were taken at the executive meetings held during that period of time. When the Committee held a meeting for the purpose of showing a film or sponsoring a speaker, there has generally been no minutes taken for that meeting. As a result, there is no record of when many of the Committee's meetings were held, which Committee members were present, how many members of the public attended and what transpired at the meeting. In addition, we found that the minutes were scattered among more than two members of the Committee, and the minutes of several meetings were "lost" or "misplaced."

Minutes of the meetings serve a variety of functions. These include providing information on the scope of the Committee's activities, public interest and participation in the Committee's activities, and information about the attendance and participation of Committee members. The minutes also provide new committee members with a valuable resource about past Committee activities as well as ideas for programs and educational activities that the Committee might wish to sponsor in the future. And finally, the minutes of the meetings provide the Advisory Committee Coordinator's office with information about new members and as well as data on which to base decisions about providing funds to advisory committees. We find that the Committee has not kept a satisfactory record of their activities as required by the Administrative Code.

ALLEGATION 5: Nomination of new members to the Anchorage Advisory Committee have, on occasion, been held in private homes rather than in public places.

Finding: Unsupported.

We have found no evidence that nominations for new members were made in meetings not held in public places.

ALLEGATION 6: Election of new members to the Anchorage Area Advisory Committee have, on occasion, been held in private homes rather than in public places.

Findings: Partially Justified/Rectified.

In our investigation of this allegation, we found that the Anchorage Area Advisory Committee held a meeting on February 2, 1977 for the purpose of voting on nominations for new members which had been received at a publicly held meeting two weeks earlier. At the meeting on February 2, there were seven or more vacant positions available on the Committee, and the Committee voted to elect all seven persons who had been nominated.

For the same reasons listed in our findings on Allegation 2, we find that meetings of the Anchorage Committee should be held in public places rather than in private homes. While all of those nominated were elected to the Committee, meeting in a

private home for this purpose may have stifled the opportunity for anyone present at the meeting to question the qualifications of any of the nominees. In any case, we found no evidence of such a situation and this incident does not appear to be a serious one. Nomination and election of new members in 1978 were held at public meetings, and the Committee has made clear its intention to hold nominations and election of new members in public places in the future.

ALLEGATION 7: Members of the public have been unable, despite repeated requests to obtain copies of minutes of meetings of the Anchorage Committee.

Finding: Justified.

During the last year and a half, several complainants made a number of requests to examine the minutes of the Anchorage Committee's meetings. Several of these requests were in writing, although most of these requests were made verbally to the Committee's chairman, Ted Forsi. Mr. Forsi promised to bring the minutes to the Committee's meetings for public inspection, but when he repeatedly failed to do so, the complainants concluded that either no minutes were being kept or they were being withheld for some unspecified purpose.

As a part of our investigation, this office made a formal written request to Mr. Forsi on March 31, 1978 to examine the Committee's minutes. Six weeks later, and after several verbal reminders, the minutes were still not made available. Mr. Forsi stated that the minutes were scattered between his home and office, and he had not had time to get them together. When asked for a specific date when the minutes would be available, Mr. Forsi, refused to give a date and indicated that our request was a low priority. At that time, pursuant to AS 24.55.170(2), it was necessary to issue a subpoena for the minutes. They were finally made available to this office on May 22.

While Mr. Forsi told the complainants that the minutes had been available in his office for their inspection, this apparently was not the case. In any event, we find that the records of the Committee's meetings should be available for public inspection at the Committee's regular meetings. Copies of the minutes of the Committee's meetings should also be available for public inspection at the local Fish and Game Department office.

ALLEGATION 8: Members of the public have been unable, despite repeated requests to the Chairman, to obtain copies of or inspect letters of nomination for new members of the Anchorage Committee.

Finding: Justified.

As in Allegation 7, several members of the public asked to inspect letters of nomination that had been submitted to the Committee by individuals who sought to be elected to the Committee. The request to inspect the minutes was made for the purpose of attempting to evaluate the criteria used by the Committee for selecting new members. The Chairman, Mr Forsi, denied the request, but when the matter was discussed by the whole Committee, it was decided that the letters should be available for inspection. Mr. Forsi promised the complainants that he would bring the letters of nomination to subsequent meetings of the Committee, but he did not do so. When this office made a written request to the Chairman of the Committee to inspect the letters of nomination, we encountered the same problems in securing access to these documents as in examining the Committee's minutes. Access to the letters was obtained by this office only after the issuance of a subpoena.

ALLEGATION 9: The Anchorage Advisory Committee had no vice chairman for an unusual length of time.

Finding: Unsupported.

The term of the former vice chairman of the Anchorage Committee, George Elledge, expired in December 1977. The Committee postponed election of a new vice chairman until after the election of new members to the Committee in early 1978. This was not completed until February, and a new vice chairman, Bruce Griggs, was elected in April. We find that the Committee's decision to wait until new members had been elected before selecting a new vice chairman was reasonable and based on practical considerations.

ALLEGATION 10: The Anchorage Area Advisory Committee has not submitted annual reports or copies of its minutes of meetings to the Game Board as required by State regulations.

Finding: Justified.

In our investigation of this allegation, we found that the Anchorage Committee does not send the Coordinator either a year-end annual report or complete copies of the minutes of its meetings. According to the Committee's Chairman, a year-end report or regular submission of Committee minutes to the Coordinator's office is unnecessary. The only official business which the Committee conducts, according to Mr. Forsi, is the Committee's votes on proposed fish and game regulations. Copies of the Committee's recommendations, he added, are sent to the Fish and Game Boards and constitute "in essence our annual report" of the Committee's activities.

The Alaska Administrative Code (5 AAC 96.050) requires that each area advisory committee submit an annual written report of

its activities for the year to the Advisory Committee Coordinator. This requirement may also be met, according to the Regulations, if minutes of each meeting and all changes in membership status are submitted to the Coordinator on a regular basis after each meeting throughout the year. We find that the Anchorage Committee has not met the requirements of the Administrative Code. Failure to meet the reporting requirements not only prevents the Coordinator's office from knowing about the scope of the Committee's activities and the extent of public interest in fish and game management, it also prevents the Coordinator from receiving information on which to base funding of Committee activities.

ALLEGATION 11: Meetings of the Anchorage Area Advisory Committee are not conducted in accordance with Roberts Rules of Order.

Finding: Justified.

Section 5 AAC 96.050 Bylaw Number 18 states that advisory committee "meetings shall be conducted according to the latest edition of Roberts Rules of Order." Chairman Ted Forsi claims that he follows Roberts Rules in conducting most of the Committee's formal meetings. When he was asked by an investigator from this office whether he had a copy of Roberts Rules, Mr. Forsi said he did not. Under subsequent questioning, he demonstrated a lack of knowledge of and familiarity with Roberts Rules. There are several procedural matters in the Committee's meetings which could be improved upon if the guidelines set down in Roberts Rules were utilized. One improvement, for example, would be for the Committee to formally adopt the minutes of the previous meeting at each new meeting.

ALLEGATION 12: Public testimony of the Anchorage Area Advisory Committee hearing on March 15, 1978 at Romig Junior High School was not recorded.

Finding: Unsupported.

There is no requirement in the Alaska Statutes and Administrative Code that public hearings have to be recorded. It is however, common practice among State agencies to record public meetings and hearings. The Anchorage Area Committee does not have the resources or equipment to record testimony made at its public hearings. It also does not have the resources to transcribe tape recordings of testimony. If the Committee does obtain additional resources in the future, or if recording equipment along with clerical staff to transcribe the recordings is made available through the local Fish and Game Department office, then the Committee might wish to consider whether it would be desirable to record testimony at its hearings. It is certainly useful to have a complete record before making decisions, but the Committee would no doubt wish to weigh the advantages against the disadvantages of possibly discouraging citizens from testifying.

ALLEGATION 13: Deliberations and voting on proposed game regulations by the Anchorage Area Advisory Committee at its March 15, 1978 hearing were held at such a late hour that it made it difficult or impossible for members of the public to attend that portion of the hearing.

Finding: Justified/Rectified.

At the Committee's March 15 hearing, testimony was heard from 7 p.m. to 11 p.m. on 265 proposals that had been submitted to the Game Board. At approximately 11 p.m. the Committee began its deliberations and voting on the various proposals, starting with the two proposals on which there had been the most public testimony. At approximately 11:25 p.m. the meeting was adjourned to a nearby restaurant because the auditorium that had been used up to that point was supposed to be vacated by 11 p.m. Deliberations and voting continued at the restaurant until approximately 3 a.m.

Several Committee members and a number of people in the audience opposed adjourning the meeting to another location because of the late hour. They requested that the deliberations and voting be continued on the following evening or at another suitable time. The Committee Chairman and a majority of the members of the Committee opposed meeting on another night because of schedule conflicts. As a result, approximately twenty people, who had stayed until 11:30 p.m. to listen to the deliberations and voting, did not attend the rest of the meeting held at the restaurant because of the late hour.

We find that the Committee did not allot sufficient time for testimony, deliberations and voting on the 265 proposals. We find that after 11:30 p.m. or midnight is an unreasonable hour to hold a public meeting. The holding of deliberations and voting at such a late hour serves to discourage public attendance at that part of the meeting. We believe that this problem could have been avoided by better planning and scheduling on the part of the Committee. The Committee has indicated to this effect that they intend to schedule their hearings in the future on Saturdays or over two evenings when there are a large number of proposals for consideration. We believe that such a solution will afford a reasonable opportunity for public testimony as well as an opportunity for the public to observe the voting.

ALLEGATION 14: The Anchorage Advisory Committee extends special privileges at its hearings to Dave Harkness, the Area Biologist for the Department of Fish and Game; privileges that are not accorded to members of the public or to other agencies concerned with wildlife resources. Through this special status, Mr. Harkness is able to exercise considerable influence with the Anchorage Committee in opposing public proposals which run counter to the philosophies or policies of the Department of Fish and Game.

Finding: Partially Justified.

In our investigation of this allegation, we did not find any evidence of inappropriate conduct or wrongdoing on the part of Mr. Harkness. We did find a serious problem, however, with the procedure established by the Committee for receiving testimony at its hearings. We find that the procedure utilized by the Committee at its March 15, 1978 hearing on game regulation proposals was unfair, and it is on the basis of this particular problem that we find the complaint to be partially justified.

The area advisory committee system was set up to provide public input into the formulation of fish and game regulations. The advisory committees are supposed to be autonomous, and it was for this reason that the Alaska Administrative Code specifically prohibits Fish and Game Department personnel from being members of the advisory committees. However, the Fish and Game Department, as the agency responsible for collecting data and managing the resources, provides a significant amount of input into advisory committee hearings through the comments and presentations of local employees who attend advisory committee meetings.

At the hearing on March 15, 1978, the Anchorage Area Committee set down guidelines to limit the amount of time that each individual could testify due to the large number of people at the meeting. People in the audience were not allowed to make comments or ask questions of the person testifying. At the end of a person's allotted time, Committee members could ask the person questions, but people in the audience were not allowed to ask questions or make comments. This ground rule would have been reasonable had it been universally enforced. On a number of occasions, Dave Harkness, who was seated in the audience, was allowed to make comments on the testimony of individuals who were testifying. On two occasions, Mr. Harkness's comments were solicited by individual members of the Committee, while on several other occasions, his comments were unsolicited. In at least three of these cases, his comments directly contradicted the testimony of persons who had the floor. Mr. Harkness was the only individual allowed to make comments from the audience on another person's testimony. The Chairman of the Committee did not identify Mr. Harkness, and it was not clear whether Mr. Harkness was speaking as a private citizen or an employee of the Fish and Game Department. At no time during the hearing did Mr. Harkness or any other Fish and Game employee appear in front of the room to give testimony in the manner prescribed for other individuals. Mr. Harkness was also allowed to participate in the deliberations of the Committee prior to voting, a privilege that was not extended to other people in the audience.

We find that to afford Fish and Game Department employees the opportunity to interrupt and refute another person's testimony is unfair and improper. The Committee did not adhere to its own guidelines set forth at the outset of the meeting in which members of the audience were prohibited from making comments on the testimony of the individual who holds the floor. By soliciting Mr. Harkness' comments from the audience or allowing him to refute comments of the person testifying, the Committee places the Fish and Game Department Representative in an adversarial role against individuals giving testimony that conflicts with data provided by the Department or policies advocated by the Department. Such a procedure serves to intimidate the public and to discourage people from actively participating in the Committee hearing process. Since the opportunity to refute testimony of individuals or participate in the committee's deliberations was not granted to other individuals or representatives of other agencies, we find that the procedure utilized at the March 15 hearing provided Mr. Harkness with a special status inconsistent with the purpose of the advisory committee system.

The principal issue here is not one of limiting the input of Fish and Game Department personnel at advisory committee meetings, but rather the procedures and timing utilized to facilitate participation by the Fish and Game Department representatives. Fish and Game Department employees had the opportunity to make their own presentation before the Committee in the same manner as other individuals. Given the fact that the Fish and Game Department has much of the available data on the resources, it is not unreasonable for the Committee to provide a longer interval of time for Fish and Game people to make their presentation. Fish and Game employees should not have the right to interrupt and refute a person's testimony whenever they feel that person's testimony is erroneous or misleading. Committee members had the opportunity, under the guidelines set up at the beginning of the meeting, to ask questions of the person testifying to clarify any facts or points that might be unclear. We find that this provided a sufficient safeguard against misleading or erroneous data being given at the hearing. Fish and Game officials are not afforded the opportunity to interrupt and comment upon each person's testimony at the hearings of the Fisheries and Game Boards, and they should not be afforded such a privilege by area advisory committees.

#### OBSERVATIONS:

While this investigation has revealed some serious problems with the manner in which the Anchorage Area Advisory Committee conducts some of its activities, in some ways, it is surprising the Committee has done as well as it has in view of the complexity

of its tasks and the lack of procedural guidance and support from the Advisory Board Coordinator's office in Juneau. Committee members are not paid for their time, have limited resources, and can hardly be expected to bring with them to the Committee a background in public administration. We find that the Anchorage Committee, and by inference, other area advisory committees could benefit by greatly increased support and guidance from the Department. Following our recommendations to the Anchorage Committee, we are including a separate list of recommendations to the Advisory Committee Coordinator. We believe that these recommendations if adopted, will provide greater support and more information to the various advisory committees, and enable them to be more effective in carrying out their tasks.

RECOMMENDATIONS to the ANCHORAGE AREA ADVISORY COMMITTEE:

1. We recommend that the Anchorage Committee in cooperation with the Coordinator's office make a study to define and identify the resource users groups in the Anchorage area, as well as the constituencies and numbers of individuals in each user group. The purpose of this recommendation is to clarify what groups of resource users in the area the Committee does and should represent. It would seem likely that the Committee would make such an assessment periodically to assess changing patterns in resource user groups in the local area.

2. We recommend that the Anchorage Area Committee make a sustained effort to recruit and select new members to the Committee that represent resource users who are not currently represented or who are currently underrepresented.

3. We recommend that all meetings of the Anchorage Area Committee be given adequate public notice pursuant to 5 AAC 96.05.050 Bylaw Number 16.

4. We recommend that the Anchorage Area Committee make greater use of the resources available at the local Fish and Game Department office for the purpose of giving advance notice for their meetings. These resources would include access to mailing lists, posting notices at the Fish and Game Office and use of the office's telephone recorded message to the public.

5. We recommend that the Anchorage Committee make greater utilization of resources in the community for giving public notice of their meetings, such as posting notices in sporting goods stores and sending notices to local sportsmen's organizations, environmental groups, etc.

6. We recommend that the Anchorage Committee keep minutes of all of its meetings, including information on members present at each meeting, an estimate of the number of other people attending and a brief sketch of major issues discussed and any significant decisions made by the Committee.

7. We recommend that the Anchorage Committee have a copy of all the minutes of its meetings available for public inspection at all regular committee meetings.

8. We recommend that the Anchorage Committee make arrangements with the local Fish and Game Department office to post notices and to maintain copies of the Committee's minutes for public inspection.

9. We recommend that upon request, letters of nomination be made available for public inspection at regular Committee meetings. To avoid any misunderstanding, we also recommend that the Committee advise prospective nominees that the letters of nomination will be public documents and will be available to the public for inspection upon request.

10. We recommend that the Anchorage Committee submit either an annual report of its activities or copies of its meetings to the Advisory Committee Coordinator as required by State Regulations.

11. We recommend that the chairman or vice chairman of the Anchorage Committee obtain a copy of Roberts Rules of Order and utilize them as the basis for conducting Committee meetings.

12. We recommend that the Anchorage Committee restructure the guidelines for public testimony at its hearings in such a manner as to give both members of the public and employees of the Fish and Game Department ample opportunity to testify without being placed in unnecessarily adversarial roles.

#### RECOMMENDATIONS for the ADVISORY COMMITTEE COORDINATOR'S OFFICE:

1. We recommend that the Advisory Board Coordinator make a comprehensive survey of resource user groups throughout the State before setting guidelines for user group representation for advisory committees Statewide. Such a survey should include a polling of members of each committee as to the resource user groups in their local area, as well as to what extent those groups are represented by the Committee. Any guidelines established should give recognition to the vast differences between communities as well as regional differences.

2. We recommend that the Advisory Board Coordinators provide assistance to the local area committees in identifying resources that are available to the committees from local Fish and Game offices. These resources might include postage and mailing,

clerical assistance, posting of notices in Department Offices, utilization of telephone message recorders, and access to audio equipment for hearings and meetings when necessary.

3. We recommend that the Advisory Board Coordinator provide each advisory committee member with a resource handbook which explains the function of advisory committees and includes the relevant statutes and regulations. Other useful information which could be provided in the handbook would be an explanation of requirements for notifying the public of all meetings, requirements for making committee minutes and other documents available to the public on request, outline the basic concepts of Roberts Rules of Order, and basic statutory requirements concerning public meetings and records, etc.

4. We recommend that the Advisory Committee Coordinator's Office solicit budget requests from each committee annually in time for the committees to make their requests before the final budget requests are made by the Coordinator's office.

RECOMMENDATIONS for the LOCAL FISH AND GAME DEPARTMENT OFFICE  
IN ANCHORAGE:

1. We recommend that the Anchorage Office of the Fish and Game Department consult with the local advisory committee as to the possibility to making the following resources available to the local advisory committee:
  - a. facilities for posting notices and maintaining copies of committee minutes for public inspection;
  - b. use of the Office's recorded telephone message for giving public notice of committee meetings and activities;
  - c. use of Office clerical staff and mailing for committee business;
  - d. availability of audio and recording equipment for the committee's public hearings.

Since this report of the findings of our investigation includes formal recommendations by this office, may we please have a response from the Department and Committee within a reasonable length of time. Normally, a period of 30 days is provided, but given the time of year and the fact that the Anchorage Committee does not meet frequently during this time of year, we are willing to extend that length of time for the Advisory Committee, if you require more time to respond to our recommendations. Should you wish to discuss any part of this report, please feel free to call me at 276-4011. I am willing to undertake further discussions and negotiations, if necessary to reach reasonable and workable solutions to the Committee's problems.

Sincerely,



Frank Flavin  
Ombudsman

RB/FF:gpw

cc: Marion Williams, F&G Advisory Committee Coordinator  
John Vania, F&G Anchorage Office

H B

306

Mtg 3/8/79 - Tabled after testimony



A M E N D M E N T

Offered in the HOUSE

By Osterback

TO: HOUSE BILL NO. 306

Page 3, line 7:

After "by-products," delete the remainder of the paragraph and insert:

except fish species which have been designated by the commissioner of fish and game as a developing commercial species under AS 16.05.050(12);

Page 6, following line 20, insert:

\* Sec. 13. AS 16.05.050 is amended by adding a new paragraph to read:

(12) not later than October 31 of each year, designate and provide to the commissioner of revenue the names of those species of fish of which there is a significant supply and for which there is a developing commercial market.

Renumber subsequent sections.

# COMMITTEE REPORT

## HOUSE

FURTHER: C&RA and then  
FINANCE

February 27, 1979

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

Mr. Speaker:

The Committee on RESOURCES has had HB 306

"An Act relating to fisheries taxes; eff. date."

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

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

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

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\_\_\_\_\_  
CHAIRMAN

PR 306

February 27, 1979

The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting at the direction of Governor Jay S. Hammond a bill revising Alaska's fisheries tax.

This bill standardizes the tax rate and tax base for the fishery tax statute at six per cent of the raw value regardless of the species of fish being processed or method of processing.

Currently the tax statute contains several different rates and tax bases depending upon the type of fish processed and the type of processing used. For example, salmon canneries are currently taxed the heaviest based upon three per cent of the average wholesale price during the last five years. Freezer ships and floating cold storages are taxed at four per cent of the raw value while other canneries are taxed at two per cent of the raw value. Shore-based cold storages on the other hand are taxed at only one per cent of the raw value. This bill more equitably imposes a single rate for all processing operations and raises the rate to six per cent.

It is estimated that this change will raise approximately an additional 12 million dollars in the first year. The bill proposes to use this additional revenue to fund fishery enhancement projects at both the state and municipal level.

First of all, the bill provides that 1/3 of the revenue collected in a municipality will be shared with that municipality. Of that amount, 1/2 is general revenue sharing while the other 1/2 must be used for docks and other fishery enhancement programs. It is estimated that all municipalities will receive more revenue sharing under this bill than under current law by at least two times and in most cases by even more.

Secondly, the bill provides that 1/3 of the revenue may be appropriated by the legislature to the Commercial Fishing and Agriculture Bank until the bank is fully capitalized based upon the projected capital needs of the bank. This will provide badly needed capital for funding resident fishermen and fish processing needs. Without additional funding as proposed in this bill, it is doubtful that the state can afford additional appropriations into the Commercial Fishing and Agriculture Bank or other fishery enhancement projects this year.

Thirdly, the bill provides that the remaining 1/3 of the revenue would go to the general fund to maintain the present level of general fund revenues to the state.

I am concerned, under our present fiscal condition, about providing a funding source for future fishery enhancement programs in the state and this bill would provide that source at both the state and municipal level while at the same time making a badly needed reform of the outdated fishery tax statute.

Sincerely,

S/KD

Kent Dawson  
Executive Assistant  
to the Governor

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HOUSE BILL NO. 306 Page 1 of 3  
 Title An Act relating to fisheries taxes  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL  
 Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected Audit Division  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

FUNDING (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will raise an additional 12 million dollars and bring total fish tax collections to 20 million dollars. These collections will be split evenly among the general fund, revenue sharing to municipalities, and the commercial fishing and agriculture bank, until fully capitalized. It is estimated that revenue sharing to municipalities would be increased by about 4 million dollars as shown in the attached breakdown. It would also allow an annual appropriation to the commercial fishing and agriculture bank of approximately 7 million dollars. Revenue to the general fund would be increased by approximately 1 million dollars and then by a greater amount when the commercial fishing and agriculture bank is fully capitalized. A breakdown of the distribution of revenues is shown in the attached pages.

IV. DATE 2/26/79 PREPARED BY   
 AGENCY Department of Revenue  
 PHONE: 467-300  
 Original Legislative Finance  
 cc: Budget and Management  
 (Prime Sponsor (Print Name of Legislator Named))

FISH TAX PROPOSAL  
(1977-1978)

COMMUNITIES	TOTAL REVENUE COLLECTED		REVENUE SHARED	
	EXISTING	PROPOSED	EXISTING - (20%)	PROPOSED (33-1/3%)
ANCHORAGE CITY & BOROUGH	\$ 202,598.29	\$ 529,886.46	\$ 40,519.66	\$176,452.19
STOL BAY	463,903.02	636,982.85	92,780.60	212,115.28
CORDOVA	558,723.88	988,707.05	111,744.77	329,239.44
CRAIG	14,073.75	84,192.50	2,814.75	28,036.10
DILLINGHAM	164,010.31	983,561.86	32,802.06	327,526.09
HAINES BOROUGH*	177,336.56	320,918.67	35,471.84	106,890.40
HAINES	45.34	147.04	4.53	24.48
HOMER	64,678.37	255,447.72	6,467.84	42,532.05
HOONAH	11,196.27	67,052.62	2,239.25	22,328.52
HYDABURG	7,820.15	46,795.90	1,564.03	15,583.03
JUNEAU CITY & BOROUGH	40,163.84	240,608.04	8,032.77	80,122.48
KENAI BOROUGH*	327,087.01	782,202.92	132,326.36	523,952.65
KENAI	340,080.00	593,964.91	34,008.00	98,895.16
KETCHIKAN GATEWAY BOROUGH*	273,231.39	405,771.01	70,299.04	195,012.13
KETCHIKAN	156,529.09	359,702.06	15,652.76	59,890.39
KING COVE	58,042.28	251,198.56	11,608.46	83,649.12
KLAWOCK	113,605.53	153,100.14	22,721.11	50,982.35
KODIAK BOROUGH*	416,239.21	562,447.54	182,757.95	753,621.31
KODIAK	995,101.01	3,401,359.50	99,510.10	566,326.35
NENANA	69.63	292.78	13.93	97.50
PELICAN	59,580.57	357,108.42	11,916.11	118,917.10
PETERSBURG	498,258.45	1,084,785.50	99,651.69	361,233.57
ST. MARY'S	1,175.00	6,925.00	235.00	2,306.03
SELDOVIA	11,513.43	68,830.58	1,151.34	11,460.29
SEWARD	252,817.79	664,213.70	25,281.78	110,591.58
SITKA CITY & BOROUGH	36,542.35	218,879.10	7,308.47	72,886.74
UNALASKA	701,343.38	2,915,587.34	140,269.07	970,890.60
WRANGELL	57,829.92	146,603.37	11,565.98	48,818.92
YAKUTAT	7,302.94	43,442.64	1,460.59	14,466.40
and Point			14533.00	87,200.00

\* Includes additional Revenue Sharing from cities within borough.

Figures are based upon 1978 collections for the 1977 tax year and may differ from budget figures based upon fiscal year cutoff.

GENERAL FUND PORTION  
(1977-1978)

EXISTING SYSTEM

\$7,088,926

PROPOSED SYSTEM

\$8,235,133

COMMERCIAL FISHING AND AGRICULTURE BANK  
(1977-1978)

EXISTING SYSTEM

\$ -

PROPOSED SYSTEM

\$6,834,368

REVENUE SHARING  
(1977-1978)

EXISTING SYSTEM

\$1,211,074

PROPOSED SYSTEM

\$5,432,761

TOTALS  
(1977-1978)

EXISTING SYSTEM

\$8,300,000

PROPOSED SYSTEM

\$20,502,263

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

HOUSE .....BILL..... NO. ....306  
 By ..THE RULES COMMITTEE BY...  
 REQUEST OF THE GOVERNOR

"An Act relating to fisheries taxes; and providing for an effective date."

Fisheries taxes

Introduced in the House 2-27, 1979

HISTORY IN THE HOUSE

19 79 Read first time and referred to Committee on

Feb. 27 Resources and C&RA and Finance  
 Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date  
 Yeas Yeas  
 Nays Nays  
 Absent Absent  
 Excused Excused

Reconsideration

PASS Effective Date  
 Yeas Yeas  
 Nays Nays  
 Absent Absent  
 Excused Excused  
 Reported correctly engrossed  
 Signed by Speaker  
 Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19 Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date  
 Yeas Yeas  
 Nays Nays  
 Absent Absent  
 Excused Excused

Reconsideration

PASS Effective Date  
 Yeas Yeas  
 Nays Nays  
 Absent Absent  
 Excused Excused  
 Reported correctly engrossed  
 Signed by President  
 Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 Received from Senate

Concurred in Senate amendment thus adopting:  
 VOTE

Failed to concur in Senate amendment: asked Senate to recede  
 VOTE

Senate receded from amendment  
 VOTE

Senate failed to recede from amendment  
 VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House  
 VOTE

CC adopted by Senate  
 VOTE

To enrolling  
 Reported correctly enrolled  
 Sent to Governor

by Governor

Filed with Lt. Governor

Chapter No.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HOUSE BILL NO. 306 Page 1 of 3  
 Title An Act relating to fisheries taxes  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL  
 Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected Audit Division  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)


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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will raise an additional 12 million dollars and bring total fish tax collections to 20 million dollars. These collections will be split evenly among the general fund, revenue sharing to municipalities, and the commercial fishing and agriculture bank, until fully capitalized. It is estimated that revenue sharing to municipalities would be increased by about 4 million dollars as shown in the attached breakdown. It would also allow an annual appropriation to the commercial fishing and agriculture bank of approximately 7 million dollars. Revenue to the general fund would be increased by approximately 1 million dollars and then by a greater amount when the commercial fishing and agriculture bank is fully capitalized. A breakdown of the distribution of revenues is shown in the attached pages.

IV. DATE 2/26/79 PREPARED BY   
 AGENCY Department of Revenue  
 PHONE 465-2100  
 Original: Legislative Finance  
 cc: Budget and Management  
 Print Sponsor (First Legislator Named)

FISH TAX PROPOSAL  
(1977-1978)

COMMUNITIES

TOTAL REVENUE COLLECTED  
EXISTING ----- PROPOSED

REVENUE SHARED  
EXISTING - PROPOSED  
(20%) (33-1/3%)

<u>COMMUNITIES</u>	<u>TOTAL REVENUE COLLECTED</u> EXISTING ----- PROPOSED		<u>REVENUE SHARED</u> EXISTING - PROPOSED (20%) (33-1/3%)	
ANCHORAGE CITY & BOROUGH	\$ 202,598.29	\$ 529,886.46	\$ 40,519.66	\$176,452.19
BRISTOL BAY	463,903.02	636,982.85	92,780.60	212,115.23
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HYDABURG	7,826.15	46,795.90	1,564.03	15,583.03
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SEWARD	252,817.79	664,213.70	25,281.78	110,591.58
SITKA CITY & BOROUGH	36,542.35	218,879.10	7,308.47	72,886.74
UNALASKA	701,345.38	2,915,587.34	140,269.07	970,890.60
WRANGELI	57,829.92	146,603.37	11,565.98	48,618.92
YAKUTAT	7,307.94	43,442.64	1,460.59	14,466.40

\* Includes additional Revenue Sharing from cities within borough.

Figures are based upon 1978 collections for the 1977 tax year and may differ from budget figures based upon fiscal year cutoff.

GENERAL FUND PORTION  
(1977-1978)

EXISTING SYSTEM

\$7,088,926

PROPOSED SYSTEM

\$8,235,133

COMMERCIAL FISHING AND AGRICULTURE BANK  
(1977-1978)

EXISTING SYSTEM

\$ -0-

PROPOSED SYSTEM

\$6,834,368

REVENUE SHARING  
(1977-1978)

EXISTING SYSTEM

\$1,211,074

PROPOSED SYSTEM

\$5,432,761

TOTALS  
(1977-1978)

EXISTING SYSTEM

\$8,300,000

PROPOSED SYSTEM

\$20,502,263

Pr 306

February 27, 1979

The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting at the direction of Governor Jay S. Hammond a bill revising Alaska's fisheries tax.

This bill standardizes the tax rate and tax base for the fishery tax statute at six per cent of the raw value regardless of the species of fish being processed or method of processing.

Currently the tax statute contains several different rates and tax bases depending upon the type of fish processed and the type of processing used. For example, salmon canneries are currently taxed the heaviest, based upon three per cent of the average wholesale price during the last five years. Freezer ships and floating cold storages are taxed at four per cent of the raw value while other canneries are taxed at two per cent of the raw value. Shore-based cold storages on the other hand are taxed at only one per cent of the raw value. This bill more equitably imposes a single rate for all processing operations and raises the rate to six per cent.

It is estimated that this change will raise approximately an additional 12 million dollars in the first year. The bill proposes to use this additional revenue to fund fishery enhancement projects at both the state and municipal level.

First of all, the bill provides that 1/3 of the revenue collected in a municipality will be shared with that municipality. Of that amount, 1/2 is general revenue sharing while the other 1/2 must be used for docks and other fishery enhancement programs. It is estimated that all municipalities will receive more revenue sharing under this bill than under current law by at least two times and in most cases by even more.

LOCAL 2111

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Secondly, the bill provides that 1/3 of the revenue may be appropriated by the legislature to the Commercial Fishing and Agriculture Bank until the bank is fully capitalized based upon the projected capital needs of the bank. This will provide badly needed capital for funding resident fishermen and fish processing needs. Without additional funding as proposed in this bill, it is doubtful that the state can afford additional appropriations into the Commercial Fishing and Agriculture Bank or other fishery enhancement projects this year.

Thirdly, the bill provides that the remaining 1/3 of the revenue would go to the general fund to maintain the present level of general fund revenues to the state.

I am concerned, under our present fiscal condition, about providing a funding source for future fishery enhancement programs in the state and this bill would provide that source at both the state and municipal level while at the same time making a badly needed reform of the outdated fishery tax statute.

Sincerely,

S/KD

Kent Dawson  
Executive Assistant  
to the Governor

HB 306

§ 43.75.010

REVENUE AND TAXATION

§ 43.75.010

Article 1. Salmon Canneries and Certain Fish Processors.

Section

- 10. Fisheries business licenses
- 20. Application for license
- 30. Filing return and payment of tax

Section

- 50. Violations and penalties
- 55. Security for collection of taxes

**Sec. 43.75.010. Fisheries business licenses.** (a) A person engaging or attempting to engage in any of the following lines of business in connection with the state's commercial fisheries shall first obtain a license on the basis of the following license taxes which are hereby levied.

(1) Salmon canneries, both shore-based and floating, shall pay an annual tax equal to three per cent of the value of the raw fish purchased or obtained for canning during the year. For the purpose of this license, the raw fish value of each kind of salmon is considered to be a dollar value equal to the average wholesale price obtained for the finished product by Alaska salmon canneries during the months of August, September, October, November and December of the last five years immediately preceding the license year. Salmon received by salmon canneries and diverted for purposes other than canning are valued at the average prevailing price on the fresh fish market for that fish and are subject to an annual license tax of one per cent of the value.

(2) Herring processing plants in the business of canning, curing, salting, freezing, or making meal or oil or other processed products including sale of bait herring by either processing plant or bait herring fisherman shall pay an annual license tax equal to one per cent of the value of the raw herring. The value of the raw material under this license is the actual price paid for the herring including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. This value applies to herring caught in company-owned or subsidized boats operated by employees of the processor or under lease or other agreement.

(3) Crab canneries, both shore-based and floating shall pay an annual license tax equal to two per cent of the value of the raw crabs. The raw crab value for the purpose of this license is the actual price paid for the raw crab either by cash or its equivalent according to (2) of this section for herring processing plants.

a) Clam canneries shall pay a license tax equal to two per cent of the value of the raw clams, with the value to be determined according to (3) of this section for crab canneries, on razor clams. Butter clams are taxed in the same manner at the rate of one per cent of the value of the raw clams.

(b) "Wholesale price" includes all receipts whether in the form of money, credits, or other valuable considerations received from the sale of the finished product without deduction for the cost of property sold, the cost of the material used, insurance costs, labor or service costs, label and labeling costs, transportation and storage cost, interest paid,

taxes, losses, or any other expense except cash discounts allowed on sales not to exceed one and one-half percent, commissions actually paid to independent brokers not to exceed five per cent, and swell allowance not to exceed one-tenth of one per cent.

(c) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically cans or processes the above fishery resources shall be liable for and shall pay to the department the whole tax imposed by this section. In determining this tax liability the person, firm, or corporation may not deduct from the value of the raw fishery resources canned or processed the value of any raw fishery resources canned or processed for other persons, firms, or corporations, but shall include this as a part of the value of the raw product obtained for canning or processing. (§ 1 ch 82 SLA 1949; am § 1 ch 113 SLA 1951; am § 1 ch 146 SLA 1962; am §§ 1, 2 ch 84 SLA 1967)

**Revisor's note.** - Section 1 ch 113 SLA 1951 began "Subsection (a) of Section 1 of Chapter 82, Session Law of Alaska 1949, is hereby amended to read as follows" and after these words appeared subsection (a), incorporating the rate amendment, but eliminating a paragraph numbered (1) which appeared in ch 82 SLA 1949. Section 1 ch 146 SLA 1962 makes a similar amendment, again without mentioning the paragraph numbered (1). This paragraph appears in AS 43.75.010 as the last sentence of subsection (1) and is included in the provision on the assumption that there was no legislative intention to omit it.

**Effect of amendment.** - The 1967 amendment substituted "three per cent" for "six per cent" in the first sentence of subsection (a) (1), deleted "50 per cent of" preceding "the average wholesale price" in the second sentence of such subsection, inserted "the last five years immediately preceding" in such sentence, and added subsection (c).

**A tax on the business of catching and canning salmon is not a property tax.** *Pacific Am Fisheries v Territory of Alaska*, 2 F 2d 9 (9th Cir. 1924), *aff'd*, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

**"Canning" is activity of salmon cannery which is taxed.** - Under this section the salmon cannery activity which is taxed is that of "canning," whether the raw fish are "purchased or otherwise obtained." *Arctic Maid v Territory of*

*Alaska*, 277 F.2d 120 (9th Cir. 1960), *rev'd on other grounds*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**No discrimination in favor of local cannery against freezer ships.** - As between the tax laid on local cannery by this section and those laid on "freezer ships," by AS 43.75.060 there is no discrimination in favor of the former and against the latter. *Alaska v Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Since tax on freezer ships did not exceed six per cent.** - No matter how the tax on "freezer ships" is computed, it did not exceed the six per cent tax on local cannery imposed by this section. *Alaska v Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**And any difference does not violate commerce clause.** - If there is a difference between the taxes imposed on freezer ships and the taxes imposed on their competitors, they are not so "palpably disproportionate" as to run afoul of the commerce clause. *Alaska v Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**For case discussing priority of claims for license taxes under prior law in a bankruptcy proceeding, see In re King Salmon Fisheries Co.**, 7 Alaska 97 (1923).

**Constitutionality of former provisions taxing salmon canneries on basis of number of cases packed.** - See *Territory of Alaska v Pacific Am Fisheries*, 7 Alaska 160 (1924), *aff'd*, 2 F 2d 9 (9th Cir. 1924).

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aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 276 (1925).

Applied in *Schlothan v. Territory of Alaska*, 276 F.2d 806 (9th Cir. 1960), cert. denied, 362 U.S. 890, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960); *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D.

Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Cited in *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

Am. Jur. reference. — 51 Am. Jur., Taxation, § 594.

**Sec. 43.75.020. Application for license.** (a) Application for a license shall be filed with the Department of Revenue and accompanied by an initial fee of \$25. A separate initial fee is required for each plant specified in the application covered by the license. The application shall contain the name of the applicant, the line of business to be licensed, place of business, and other facts which the department prescribes. The applicant shall state that he agrees to pay the license tax, and that he will make a return and pay the tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied by the initial fee, the department shall issue the license as of the date the application is filed or mailed, and the applicant may carry on the business from the date the application was actually made. (§ 2 ch 82 SLA 1949)

**Sec. 43.75.030. Filing return and payment of tax.** (a) A person subject to the tax shall file a return stating the value of raw fisheries products processed during the license year, computed as required by §§ 10 — 50 of this chapter, and such other information as the department prescribes by regulation. The return shall show the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, he shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business he has custody and control.

(b) The return shall be made on the basis of the calendar year to the Department of Revenue at Juneau before April 1 after the close of the calendar year.

(c) The department may prescribe regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.

(d) The tax shall be paid before April 1 after the close of the calendar year.

(e) Every person engaging or attempting to engage in a business for which a license is required under §§ 10 — 50 of this chapter shall keep such records, make such statements under oath, file such returns, and comply with such regulations as the commissioner of revenue may prescribe.

(f) When the department considers it is necessary, it may require a person, by notice served upon him, to file a return, make such statements under oath, or keep and display to it such records as it considers

sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from the information which it can obtain. A return made by the department is prima facie good and sufficient for all legal purposes. (§ 3 ch 82 SLA 1949; am §§ 2, 3 ch 146 SLA 1962)

Applied in *Schlothan v. Territory of Alaska*, 276 F 2d 806 (9th Cir.), cert. denied. 362 U.S 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

**Sec. 43.75.050. Violations and penalties.** (a) Repealed by § 3 ch 166 SLA 1976.

(b) Repealed by § 3 ch 166 SLA 1976.

(c) If a part of a deficiency in the tax is due to fraud with intent to evade tax, 50 per cent of the total amount of the deficiency, in addition to the deficiency, shall be assessed and collected.

(d) Repealed by § 3 ch 166 SLA 1976.

(e) Repealed by § 4 ch 94 SLA 1976.

(f) A person who wilfully fails to obtain a license, pay a tax, make a return, keep or display a record, or supply the information at the time required by law or regulation, in violation of §§ 10 — 55 of this chapter, is, in addition to other penalties provided by law, guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, together with the cost of prosecution.

(g) A person who wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter is guilty of a felony, and, upon conviction, is subject to the penalty prescribed for perjury.

(h) In this section "person" includes an officer, agent, or employee of a corporation or a member, agent, or employee of a partnership who, as an officer, agent, employee, or member, is under duty to perform the act in respect to which the violation occurs. (§ 4 ch 82 SLA 1949; am § 1 ch 17 SLA 1968; am §§ 1, 2 ch 55 SLA 1968, am § 4 ch 94 SLA 1976; am § 3 ch 166 SLA 1976)

**Cross references.** — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion of a deficiency of the tax, see AS 43.05.220. As to interest on taxes, see AS 43.05.225. For provisions creating a lien for unpaid taxes or license fees, see AS 43.10.035.

**Effect of amendments.** — The first 1976 amendment repealed subsection (e), which made a tax under this article and the penalties and interest on the tax a lien, and provided generally for such lien.

The second 1976 amendment repealed subsections (a), (b) and (d), which provided for an additional amount to be added to the tax for failure to file a return within the time prescribed by law or regulation due to wilful neglect, for a penalty if the tax is not paid when due, and for the assessment and collection of interest on the amount determined as the deficiency in the tax, respectively.

**Legislative committee report.** — For report on ch. 55, SLA 1968 (HR 484), see 1968 House Journal, p. 324.

This section relates to the license tax imposed on salmon canneries. Territory of Alaska v. Arctic Maid, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Qualifying as taxpayer under duress.** — One need not incur the risk of penalties, while the validity of the tax is being ascertained judicially, in order to qualify as a taxpayer under duress. State v. Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

For cases construing former provisions similar to repealed subsection (e), see Territory of Alaska v. Arctic Maid, 16 Alaska 126, 140 F. Supp. 190 (D. Alaska

1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961); Schlothan v. Einstoss, 17 Alas. 253 (1957), aff'd, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960); Schlothan v. Territory of Alaska, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

**Applied in Territory of Alaska v. American Can Co.**, 14 Alaska 534, 117 F. Supp. 819 (D. Alas. 1954); Territory of Alaska v. Arctic Maid, 15 Alaska 667, 135 F. Supp. 164 (D. Alas. 1955).

**Quoted in Territory of Alaska v. Craig Enterprises**, Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

**Sec. 43.75.055. Security for collection of taxes.** Each applicant for a license under this chapter shall in or with his application state under oath the amount of each of the products which he expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the state against which the tax may be collected and other information with respect to description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department. (§ 4 ch 84 SLA 1967)

**Article 2. Cold Storages and Other Fish Processors.**

**Section**  
60 Fisheries business licenses  
70 License application and fee  
80 Duty to pay tax and keep records

**Section**  
90 Violations and penalties  
95 Security for collection of taxes

**Sec. 43.75.060. Fisheries business licenses.** A person engaging or attempting to engage in any of the following lines of business in connection with the state's commercial fisheries shall first obtain a license.

(1) Shore-based cold storages and other fish processors, except salmon canneries, herring processing plants, crab canneries, and clam canneries otherwise licensed shall pay an annual license tax equal to one per cent of the value of the raw halibut, halibut livers and viscera,

salmon and bottom fish, shellfish or other fishing resource bought or obtained for processing through freezing, salting, or other method. The value of the raw material under §§ 60 — 90 of this chapter is the actual price paid for it, including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. The value applies to the raw material procured in company-owned or subsidized boats operated by employees of the processor or under lease or other arrangement.

(2) Freezer ships and other floating cold storages shall pay an annual license tax equal to four per cent of the value of the raw halibut, halibut livers and viscera, salmon and bottom fish, shellfish, or other fishing resource bought or obtained for processing through freezing, salting, or other method, or the taking of crab for export without such processing. The value of the raw material under §§ 60 — 90 of this chapter is the actual price paid for it including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. The value applies to the raw material procured in company-owned or subsidized boats operated by employees of the processor or under lease or other arrangement.

(3) In (1) of this section, "shore-based cold storages and other fish processors" mean those cold storages and processing plants which are permanently attached to the land or have remained in the same location for a period of not less than one calendar year. Any cold storage or processing plant removed from the state is a floating cold storage under (2) of this section from the day of removal.

(4) Cold storages and fish processing plants which are not shore-based under (3) of this section are "floating cold storages" under (2) of this section.

(5) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically processes the above fishery resources shall be liable for and shall pay to the department the whole tax imposed by this section. In determining this tax liability the person, firm, or corporation may not deduct from the value of the raw fishery resources processed the value of any raw fishery resources processed for other persons, firms, or corporations, but shall include this as a part of the value of the raw product obtained for processing. (§ 1 ch 97 SLA 1949; am § 1 ch 116 SLA 1951; am § 1 ch 102 SLA 1955; am § 1 ch 88 SLA 1966; am § 3 ch 84 SLA 1967)

**History of section.** — See *State v Wakefield Fisheries, Inc.*, Sup Ct Op No 779 (File Nos 1397, 1398), 493 P 2d 166 (1972); *State v Reefer King Co.*, Sup Ct Op No 1344 (File Nos 2605, 2606, 2607), 559 P 2d 38 (1976).

**Effect of 1966 amendment.** — Prior to the 1966 amendment, the legislature intended to distinguish between types of processes as well as locale of the operation.

The higher tax was directed at those particular floating processors who could otherwise evade local regulation and taxation, yet exploit a valuable state resource *State v Wakefield Fisheries, Inc.*, Sup Ct Op No 779 (File Nos 1397, 1398), 493 P 2d 166 (1972).

It was the 1966 amendment to the statute which first created a distinction between "shore-based" and "floating" processors.

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based solely on the movements and locations of the vessels. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Prior to 1966, the primary distinguishing feature of the "floating" processor was its method of processing its catch, rather than its movement in the waters. At that time, the higher four percent tax was directed only at floating freezer or "cold storage" ships which took crab for export without processing it in Alaska. All other processors, both ashore and afloat, were taxed at the lower rate of one percent. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**Characterization of legislative intent in *State v. Wakefield Fisheries, Inc.*, no longer meaningful.** — The characterization of the legislative intent in *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972), which was based on an earlier version of this section, is no longer meaningful since this section was amended to remove the distinction between types of processors and to widen the class of processors to be subject to the higher tax. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**This section imposes no burden on interstate commerce, or any artificial rigidity on the salmon industry, by requiring the catching of salmon in Alaska and imposing restrictions on the shipment of fish out of Alaska prior to canning.** *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), *aff'd*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**This section, which imposes a higher tax upon "floating" processors than upon "shore-based" processors, is not unconstitutional as applied to floating processors on the ground that it violates the commerce clause of the United States Constitution.** *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**Since the classification of processing ships as "floating" processors is based not upon their interstate movement, but upon their movement within Alaskan waters, for the purposes of application of this section, there is no interstate movement, and, therefore, there is no burden nor even an incidental impact upon interstate commerce.** *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**Nor does it affect fish laws of United States.** — The imposition by the Alaska legislature of license taxes under this section relating to the commercial fisheries of Alaska to provide revenue does not in any way alter, amend, modify, or repeal the existing fish laws of the United States applicable to Alaska. *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), *aff'd*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Classification of section does not deny equal protection.** — The classification which imposes different tax rates on "floating" and "shore-based" processors does not constitute a violation of the federal and state guarantees of equal protection. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**It was not arbitrary for the legislature to conclude that "shore-based" processors, with at least a year's commitment to one location, were to be preferred over floating processors, which distributed economic benefits over several locations.** *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**The distinction between mobile and stationary processors can easily be characterized as a tax incentive, to encourage "shore-based" processors, and in this light, the tax differential bears a fair and substantial relationship to the goal of encouraging societal contributions of the type made by "shore-based" processors, especially since conversion from "floating" to "shore-based" is a simple matter of remaining in one location for a calendar year.** *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**It is valid legislative classification.** — Imposing a tax of one per cent on the value of fish taken on the line of business of shore-based cold storages, while imposing a four per cent tax on the line of business of freezer ships and other floating cold storages is a valid legislative classification. *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), *aff'd*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**And there is no discrimination in this section between residents and nonresidents.** *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), *aff'd*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Nor between freezer ship operators and local cannery operators under AS 43.75.010.** — As between the tax laid on local cannery AS

43.75.010 and those laid on "freezer ships," by this section there is no discrimination in favor of the former and against the latter, for no matter how the tax on "freezer ships" is computed, it did not exceed the six per cent tax on the local canners. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

And any difference is not invalid under the commerce clause. — If there is a difference between the taxes imposed on these freezer ships and the taxes imposed on their competitors, they are not so "palpably disproportionate" as to run afoul of the commerce clause. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

The tax imposed by this section is an occupation tax. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

It is computed on the "value" of the fish bought or obtained for processing through freezing. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

"Value" is the measure of the tax, not the taxable event. — *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

The taxable event is "processing" the "business" of "freezer ships and other floating cold storages." *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

In freezer ship operations there is a preliminary local business being conducted, an occupation made up of a series of local activities which the state can constitutionally reach. Catching the fish or obtaining them in other ways from the local market is but an extension of the freezer ship's operations within Alaska's waters. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

The process of gathering fish either through the catcher boats that are a part of a freezer ship fleet or through independent operators is a "local activity." *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Which state may tax. — Alaska's jurisdiction to tax freezer ship operations within her territorial waters — whether those activities are taking fish or purchasing fish taken by others — is clear. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Where some of the fish taken by freezer ship operators were taken in Alaska's waters or otherwise acquired there, the freezer ship operators were engaged in

business in Alaska when they operated their freezer ships. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

"Freezer ships" and "factory ships" distinguished. — See *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

The test contained in subsection (3) is clear and unequivocal. A broad reading of this provision is not demanded. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

The type of attachment contemplated by subsection (3) is some palpable physical attachment or a permanent berthing. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Vessel situated in such a manner as to permit pedestrian access from land onto the processing vessel would meet this test. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Removal of vessels for repairs. — Removal of vessels from the state for drydock repairs does not require reclassification under the higher rate of taxation. *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

Removal of vessels for periodic repairs and maintenance should not destroy the continuity of the period during which the vessels are deemed to be at fixed locations for one calendar year. *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

Processors disqualified from "shore-based" status. — Where, in addition to the yearly trips to Seattle for maintenance, the processors also sailed among several Alaskan communities to conduct their processing operations, they were disqualified from "shore-based" status under this section. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

To the extent that the continued operations of a processing vessel demand out-of-state ship maintenance, vessel movement will not be deemed to eliminate a processor's "shore-based" status. But a processor which engages in the type of activity as do processors sailing among several Alaskan communities to conduct their processing operations cannot expect to be able to claim "shore-based" status. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

No showing that state selectively enforced this section against certain floating processors. — See *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Applied in *Arctic Maid v. Territory of Alaska*, 277 F.2d 120 (9th Cir. 1960), rev'd

in 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Am. Jur. reference. — 51 Am. Jur., Taxation, § 594.

**Sec. 43.75.070. License application and fee.** (a) Application for a license shall be filed with the Department of Revenue and accompanied by an initial fee of \$25. A separate initial fee is required for each plant specified in the application. The application shall contain the name, the line of business, place where the business is to be carried on, and other facts which the department prescribes. The applicant shall state that he agrees to pay the license tax, make a true return, and pay the tax at the time provided by law.

(b) Upon receipt of the application in the proper form accompanied by the initial fee, the department shall issue the license as of the date the application is filed or mailed, and the applicant may carry on the business from the date the application was actually made. (§ 2 ch 97 SLA 1949)

**Sec. 43.75.080. Duty to pay tax and keep records.** The requirements for making returns, the time and place for payment of tax, and the obligation to keep records and make them available to the department are the same as prescribed in the business license tax law for salmon canneries. (§ 3 ch 97 SLA 1949)

**Sec. 43.75.090. Violations and penalties.** (a) The liability to file returns and pay interest and deficiency assessments, and the subjection of property to liens are the same as prescribed in the license tax law for salmon canneries.

(b) A violation of §§ 60 — 95 of this chapter or the regulations issued under §§ 60 — 95 of this chapter is a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. (§ 4 ch 97 SLA 1949; am § 1 ch 30 SLA 1968)

**Cross reference.** — See note to AS 43.5050

**Legislative committee report.** — For report on ch 30, SLA 1968 (HB 412), see 1968 House Journal, p. 144

**Qualifying as taxpayer under duress.** — One need not incur the risk of penalties,

while the validity of the tax is being ascertained judicially, in order to qualify as a taxpayer under duress. *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972)

**Sec. 43.75.095. Security for collection of taxes.** Each applicant for a license under this chapter shall in or with his application state under oath the amount of each of the products which he expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the state against which the tax may be collected and other information with respect to

description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. However, if the applicant purchases salmon for export from Alaska in the round, the amount of the bond shall be \$50,000 unless the applicant is the owner of lienable real property in the state of a value of at least \$50,000, and the bond shall be conditioned upon payment to the fisherman of the full purchase price for the salmon and the payment of the tax in full when due. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax. (5 5 ch 84 SLA 1967)

**Article 3. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.**

<p>Section 100 Tax imposed on taking of fisheries products</p>	<p>Section 110 Duty of taxpayer and payment of tax 120 Violations and penalties</p>
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**Sec. 43.75.100. Tax imposed on taking of fisheries products.** A person taking the fisheries products enumerated in §§ 10 — 50 or 60 — 90 of this chapter who sells the products to freezer ships, floating cold storages or floating canneries outside the taxing jurisdiction of the state is subject to the tax set out in §§ 10 — 50 of this chapter for the fisheries products enumerated in §§ 10 — 50 of this chapter, and is subject to the tax set out in §§ 60 — 90 of this chapter for the fisheries products enumerated in §§ 60 — 90 of this chapter. (5 1 ch 190 SLA 1959)

*Am. Jur. references.* — 11 Am Jur., Commerce, ¶ 119, 51 Am Jur., Taxation, ¶ 262, 206

**Sec. 43.75.110. Duty of taxpayer and payment of tax.** A person subject to taxes under §§ 100 — 120 of this chapter shall make a return stating the value of raw fisheries products taken during the license year for sale to freezer ships, floating cold storages, or floating canneries outside of the taxing jurisdiction of the state computed as required by §§ 100 — 120 of this chapter, and other information to carry out the provisions of §§ 100 — 200 of this chapter as may be prescribed by the department. The return shall contain the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury.

If a receiver, trustee, or assign is operating the property or business, he shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business he has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner of revenue are the same as those prescribed in the business license tax law for salmon canneries. (§ 2 ch 190 SLA 1959)

**Sec. 43.75.120. Violations and penalties.** (a) The liability to file returns and pay interest and deficiency assessments, and the subjection of property to liens is the same as prescribed in the business license tax law for salmon canneries.

(b) A violation of §§ 100 — 120 of this chapter or the regulations issued under §§ 100 — 120 of this chapter is a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. (§ 3 ch 190 SLA 1959)

**Article 4. General Provisions.**

**Section**

- 130 Refund to local governments
- 135 Additional refund to boroughs and cities

**Sec. 43.75.130. Refund to local governments.** The commissioner of revenue shall pay to each organized borough and each city of the first class 10 per cent of the amount of tax revenue collected in the borough or city from taxes levied by §§ 10 — 90 of this chapter. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970; am § 10 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "city of the first class" for "city of the first, second, and third classes". **Legislative committee report.** — For report on ch. 69, SLA 1970 (HB 364), see 1970 House Journal Supplement No. 2, p. 7.

**Sec. 43.75.135. Additional refund to boroughs and cities.** In addition to the payment allowed in § 130 of this chapter, the commissioner of revenue shall pay to each organized borough 10 per cent of the amount of tax revenue collected in the borough from taxes levied by §§ 10 — 90 of this chapter and shall pay to each city of the first class located in the unorganized borough 10 per cent of the amount of the tax revenue collected in the city from taxes levied by §§ 10 — 90 of this chapter. (§ 1 ch 89 SLA 1963; am § 1 ch 120 SLA 1969; am § 11 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "city of the first class" for "city of the first, second, and third classes".

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - JUNEAU 99811

March 8, 1979

The Honorable Alvin Osterback  
Co-Chairman  
House Resource Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Osterback:

You have requested the Department of Revenue look at fish tax receipts that would be collected if a tax rate based on the effective current canned salmon rate was applied uniformly.

The breakdown of revenues on the attached sheets is based on a tax rate of 4.45 percent. This rate was arrived at by taking the raw value of salmon used by canneries, \$121,758,700 (based on Fish And Game Catch Estimates) and dividing it by the FY 1978 tax collected from canneries, \$5,420,438.

The total amount of revenue that would be collected using a 4.45 percent rate would be \$15,205,850. A further breakdown of this total is attached for your information.

Sincerely,



John R. Messenger  
Acting Commissioner

GENERAL FUND PORTION  
(1977-1978)  
Based on 4.45%

EXISTING SYSTEM

\$7,097,820

PROPOSED SYSTEM

\$6,139,472

COMMERCIAL FISHING AND AGRICULTURE BANK  
(1977-1978)

EXISTING SYSTEM

\$ -0-

PROPOSED SYSTEM

\$5,068,617

REVENUE SHARING  
(1977-1978)

EXISTING SYSTEM

\$1,202,180

PROPOSED SYSTEM

\$3,997,761

TOTALS  
(1977-1978)

EXISTING SYSTEM

\$8,300,000

PROPOSED SYSTEM

\$15,205,850

FISH TAX PROPOSAL  
(1977-1978)  
Based on 4.45%

COMMUNITIES	REVENUE SHARED	
	EXISTING (20%)	PROPOSED (33-1/3%)
ANCHORAGE CITY & BOROUGH	\$ 40,519.66	\$130,868.76
BRISTOL BAY	92,780.60	157,318.90
CORDOVA	111,744.77	244,183.72
CRAIG	2,814.75	20,793.45
DILLINGHAM	32,802.06	242,915.29
HAINES BOROUGH*	35,471.84	79,277.08
HAINES	4.53	18.16
HOMER	6,467.84	31,544.62
HOONAH	2,239.25	16,560.33
HYDABURG	1,564.03	11,557.42
JUNEAU CITY & BOROUGH	8,032.77	59,424.20
KENAI BOROUGH*	132,326.36	388,598.39
KENAI	34,008.00	73,347.27
KETCHIKAN GATEWAY BOROUGH*	70,299.04	144,634.06
KETCHIKAN	15,652.76	44,418.73
KING COVE	11,608.46	62,039.79
KLAWOCK	22,721.11	37,811.93
KODIAK BOROUGH*	182,757.95	558,936.10
KODIAK	99,510.10	420,025.56
NENANA	13.93	72.31
PELICAN	11,916.11	88,196.89
PETERSBURG	99,651.69	267,915.01
ST. MARY'S	235.00	1,710.31
SAND POINT	14,533.00	60,817.00
SELDOVIA	1,151.34	8,499.72
SEWARD	25,281.78	82,022.13
SITKA CITY & BOROUGH	7,308.47	54,057.69
UNALASKA	140,269.07	720,077.51
WRANGELL	11,565.98	36,207.38
YAKUTAT	1,460.59	10,729.25

\* Includes additional Revenue Sharing from cities within borough.

Figures are based upon 1978 collections for the 1977 tax year and may differ from budget figures based upon fiscal year cutoff.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
 Title An Act relating to fisheries taxes  
 Requested by Representative Alvin Osterback Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected Audit Division  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

If a tax rate of 4.45 percent is used as a base, an additional \$7 million would be raised bringing the total fish tax collections to \$15.2 million. These collections will be split evenly among the general fund, revenue sharing to municipalities, and the commercial fishing and agriculture bank, until fully capitalized. It is estimated that revenue sharing to municipalities would be increased by about 3 million dollars as shown in the attached breakdown. It would also allow an annual appropriation to the commercial fishing and agriculture bank of approximately 5 million dollars. With a 4.45 percent rate, revenue to the general fund would decrease by about \$1 million dollars, but would increase considerably when the commercial fishing and agriculture bank is fully capitalized in a few years. A breakdown of the distribution of revenue is shown on the attached pages.

IV. DATE \_\_\_\_\_ PREPARED BY John T. Messenger  
 AGENCY Department of Revenue  
 PHONE 465-2300  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

# City of Seldovia

P. O. DRAWER B

TELEPHONE 234-7643

SELDOVIA, ALASKA 99663

March 15, 1979

CSSB 132  
HB 306

Honorable Representative Alvin Osterback  
Co-Chairman, House Resource Committee  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Osterback:

Enclosed is City of Seldovia's Resolution #79-9. A Resolution in opposition of House Bill 306 - Raw Fish Tax and any related Senate bills.

Sincerely

CITY OF SELDOVIA



Donald G. Caswell

City Manager

ck

Enclosure

A RESOLUTION IN OPPOSITION OF HB 306 - RAW FISH TAX

WHEREAS, HB 306 has been introduced which would standardize the raw fish tax at 6% of raw value regardless of species of fish being processed or the method of processing, and

WHEREAS, the fishing industry is the major economy of Seldovia and this industry is presently depressed in this area, and

WHEREAS, increases in taxation of this industry will bring harm to processor and fisherman alike, and will further depress the economy of our area,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Seldovia, that this municipality hereby urges a vote of Do Not Pass on HB 306, and any related Senate bills.

PASSED AND APPROVED THIS \_\_\_\_\_ day of March, 1979.

*Darlene Crawford*  
\_\_\_\_\_  
Darlene Crawford,  
Mayor

ATTEST:

*Elaine M. Giles*  
\_\_\_\_\_  
Elaine M. Giles  
City Clerk

(SEAL)

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

BUREAU, ALASKA 99502

1979 MAR 13 AM 4 24

*CSSB132*  
*HB 306*

02337 NL TDA CORDOVA ALASKA 50 03-12 430P AST

PMS REP ALVIN OSTERBACK

'UN

THE CORDOVA DISTRICT FISHERIES UNION OPPOSES HB306, TO  
IMPOSE SUCH A DRAMATIC TAX INCREASE ON FISHERIES PRODUCTS BEFORE  
EVALUATING THE IMPACT ON THE FISHING INDUSTRY COULD BE CATASTROPHIC.  
WE DO SUPPORT HB36 WHICH CALLS FOR AN APPROPRIATION FOR A STUDY  
OF ALASKA FISHERIES TAX LAWS IN WHICH THE IMPACT OF HB306 SHOULD  
BE ADDRESSED.

CORDOVA DISTRICT FISHERIES UNION BOX 939 CORDOVA

BOB BLAKE, CHAIRMAN

TELETYPE *CSSB/3*

RCA ALASKA COMMUNICATIONS, INC.  
PHONE: 586-6442  
JUNEAU, ALASKA 99802

*HB306*

02080 POM TDA KODIAK ALASKA 15 03-10 ~~18707447A 10~~ PM 5 26

PMS REP ALVIN OSTERBACK

JUN AK

PLEASE OPPOSE SB132 HB306 AND HB193. THESE BILLS ARE UNFAIR TO  
OUR FISHERMEN.

PEGGY CROSS

BOX 2541

KODIAK ALASKA 99615

Alaska Shrimp Trawlers Association

POST OFFICE BOX 991  
KODIAK, ALASKA 99615



QSSB 132

HB 306

March 9, 1979

Rep. Alvin Osterback

In response to House Bill 306 and Senate Bill 132 - Raw Fish Tax

We strongly object to the proposed increase in the Raw Fish Tax and the way it is being handled. We feel that above and beyond disagreeing with the terms of this bill, even more outrageous is the denial of due process of law presently taking place. (In regard to the butchering and railroading of Senate Bill 132.)

Already crippled by excess licenses, permits, taxes and other regulations, this behind-the-back attack on the fisheries could be the death blow for the Alaskan fishing industry.

In effect, this Bill would force the progressive Alaskan fishermen to become part of the Seattle-based fleet in an effort to maintain even a minimal profit margin. Although legislative action at this date indicates otherwise, the fisheries represent a major industry with a heavy impact on the continued economic stability of this state.

With the passage of this Bill, the presently under-utilized bottomfish fishery will never get off the ground as a shore-based fishery, and at best, would never come close to reaching its full potential.

We request you, our representative, to make known our extreme disapproval of the terms and concepts set forth in this Bill, and our disappointment in the way it is being handled.

Thank you for your consideration in this matter.

I am,

Alvin R. Burch  
Manager

cc: Senators Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Hohman, Kelly, Kertula, Meland, Mulcahy, Ray, Rodey, Sackett, Stimson, Sturgulewski, Sumner, Tillion, Ziegler. Rep. Zharoff, Gov. Hammond, Keith Specking, United Fishermen's Marketing Assn., Fishermen's Wives Assn., Kodiak, Rep. Terry Gardiner, Rep. Brian Rogers, United Fishermen of Alaska, Kodiak Seafood Processors Assn.

CS58132

# KODIAK AREA CHAMBER OF COMMERCE

HB 306



March 9, 1979

AN OPEN LETTER TO THE GOVERNOR OF ALASKA AND THE MEMBERS OF THE STATE LEGISLATURE:

Gentlemen:

The Kodiak Area Chamber of Commerce strongly opposes the proposed increase in the Raw Fish Tax, and deplores the ram-rod methods used to push this measure into law.

The increased tax will have a most serious impact on the economy of Kodiak and all the other fishing communities in the State. It will not only immediately affect the fishermen and the processors, it will be most detrimental to every person in the fishing communities, and the snow-ball effect will ultimately lower the economy of the entire State and all its citizens.

The carrot on the stick, calling for returning a larger percentage of the tax to local governments, is an obvious ploy designed to gain support from Legislators representing districts that would benefit financially. While they grab the free lunch carrot, Kodiak and the other fishing communities are being beaten with the stick.

The Chamber urges the Legislators to stop all debate on this issue until public hearings are held in all fishing communities, including Kodiak, in order to more fully understand the impact on the fishing communities and the ultimate effect the increased Raw Fish Tax will have on the economy of the State.

Sincerely,

*Art Jordan*  
Art Jordan, Manager  
KODIAK AREA CHAMBER OF COMMERCE

AJ/bz

CSSB 102

HB 306

P. O. Box 37  
Kodiak, AK 99615  
March 10, 1979

Senator Robert Mulcahy  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

RE: SB 132/HB 306

Dear Senator Mulcahy:

We are writing this letter to state our strong objections to the above-mentioned bill which would up the raw fish tax to 6% from its present 1%.

First of all, the most obvious fact is that the increase is so pronounced as to raise the question why the jump of 5%? But beyond that is the point that we as individuals are for less taxation regardless of the limitation in services. If Proposition 13 in California last year was any example, we certainly aren't the only ones for less taxation.

There is a theory which we believe is very valid, namely that government can't tax a company. Companies only pass any taxes on to the consumer by marking up the price of their product. A solution to the problem of inflation is not further taxation, which was stipulated as being one of the reasons that this bill was initiated in the first place.

Most of the seafood that comes from Alaskan fisheries (i.e. crab and shrimp) are already very high-priced products, barely in competition with the same foreign products. This proposed increase in the fish tax should help substantially in putting Alaskan seafood products out of the market completely. Being a luxury item, people in the United States are going to stop buying it if the price becomes too exorbitant.

Alaska's fishery resources are extremely important to a good many people in this State: fishermen and their families, cannery employees, and all the services and suppliers connected with seafood processing. To see Alaska's fisheries become too inhibited or slow down all together would certainly not help the State or the livelihoods of those who derive their income from fisheries.

As far as providing revenue to the municipalities, Kodiak for one is an example of a city who has more than enough money at present. A fact that was made clear in the arguments the City used in trying to persuade the Joint Committee on Community and Regional Affairs that it should be allowed to annex parts now in the borough. We sincerely hope that you take a good look at this bill and consider just how destructive it could be.

Sincerely,

*Cynthia M. Pistorese*

Cynthia M. Pistorese  
Secretary (Pacific Pearl Seafoods)

*DR Pistorese*

David R. Pistorese  
(Fisherman)

cc: Representative Alvin Osterback  
Alaska House of Representatives



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

CSSB 132  
Kulis  
Special

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 12, 1979

The Honorable Clem Tillion  
President of the Senate  
Alaska State Legislature

Re: CSSB 132

Dear Mr. President:

On March 9, 1979, you requested me, in my capacity as chairman of the Senate Judiciary committee, to review the captioned bill and to report to the Senate as to its constitutionality.

At the outset, I should state that the following comments are mine and mine alone; I do not profess to speak for the other members of the Judiciary committee. It should likewise be noted that I do not claim any special expertise in the field of constitutional law, nor have I had sufficient time to devote to the research which would ordinarily be entailed in analyzing this bill.

A close reading of CSSB 132 indicates two sections of the bill would run afoul of the Alaska Constitution. Those two are 43.75.136, providing for payments to the Commercial Fishing and Agriculture Bank, and 43.75.131, making increased refunds to local government.

Article IX, sec. 7 of the Alaska Constitution provides as follows:

"The proceeds of any state tax or license shall not be dedicated to any special purpose except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of the constitution by the people of Alaska."

I was assisted in my efforts to check the constitutionality of the questioned sections of the bill by the opinions of two Attorneys General dated, respectively, April 4, 1969 and May 2, 1975. Both opinions not only considered the case law of this and other jurisdictions, sparse as it is, but they also reviewed the minutes of the Alaska Constitutional Convention and committees thereof. It is evident, in both these opinions, that the framers of our constitution did not want to have additional taxes earmarked or dedicated to special purposes.

"Analysis"  
CS!  
HB  
306  
CSSB  
132

The Honorable Clem Tillion  
March 12, 1979  
Page Two

CSB 174

A dedication of ten per cent of the fish tax existed at the time of the ratification of the Constitution, and the dedication clearly falls within the exemption. Problems arise when that ten per cent is increased, as in the instant bill, to thirty-three and one-third per cent. The issue of the constitutionality of increasing the percentage of an existing dedicated fund was not specifically addressed by either of the opinions reviewed. However, material contained in these opinions strongly suggests that increasing an existing dedicated fund was not intended by the Constitution.

It is equally clear that payments to the Commercial Fishing and Agriculture Bank and earmarking state tax revenue for the construction of docks, etc. by local governmental units would do violence to the Constitution of the State of Alaska.

The Attorney General's opinion of April 4, 1969 holds:

"The proceeds of any state tax or license which must be shared with local governmental units are dedicated to a special purpose and are in violation of Article IX, sec. 7 of the Alaska Constitution."

The Attorney General's opinion of May 2, 1975 states:

"Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs."

Conclusion: CSSB 132, as written, is patently unconstitutional.

Respectfully submitted,

*3 copies*  
Robert H. Ziegler, Sr.  
Chairman  
Senate Judiciary Committee

RHZ/pk.z

HB

346

Not heard 2/19/80 - will be rescheduled  
Hearing 3/25/80 - Reported out with DO PASS  
as CS SS HB 346



# Alaska State Legislature

## House

HOUSE RESOURCES COMMITTEE

FISH & GAME ISSUES

Alvin Osterback, Chairman

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

### HEARING NOTIFICATIONS

Re: Fishing Area Markers

BILL	DATE INFORMED	LETTER/PHONE	INFORMED	HEARING DATE
SS HB 346	3/21	4986	Rep. Zharoff, Sponsor	3/25
	3/21	4100	Dept. of Fish & Game	3/25
	3/21	4322	Dept. of Public Safety Mr. Sydman	3/25
	3/21	586- 2526	United Fishermen of Alaska	3/25



# Alaska State Legislature

## House

HOUSE RESOURCES COMMITTEE

FISH & GAME ISSUES

Alvin Osterback, Chairman

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

### HEARING NOTIFICATIONS

BILL	DATE INFORMED	LETTER/PHONE	INFORMED	HEARING DATE
HB346	2/19/80	4100	<p>Dept. of Fish &amp; Game Steve Penoyer, Dir. of Commercial Fisheries to testify</p> <p><i>[Faded handwritten notes: Penoyer, Dir. of Commercial Fisheries, F&amp;G]</i></p>	2/19/80

(9)

# COMMITTEE REPORT

## HOUSE

3/19/80

FURTHER:

Date: 3/25/80

Mr. Speaker:

The Committee on RESOURCES has had SSHB 346

"An Act relating to fishing area markers."

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

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

MEMBERS SIGNING  
DO PASS

[Signature]  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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[Signature]  
 CHAIRMAN

**BILL ANALYSIS**

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

<b>DEPARTMENT</b> Public Safety	<b>SPONSOR (PRINCIPAL)</b>	<b>BILL NO.</b> HB 346
<b>DEPARTMENT POSITION</b>  Oppose		
<b>DIVISION DIRECTOR</b> Col. Fred Woldstad	<b>DATE</b> 2/29/80	<b>COMMISSIONER</b> William R. Nix <i>WRS</i>
		<b>DATE</b> 2/29/80
<b>GOVERNOR'S OFFICE USE</b>		
<input type="checkbox"/> POSITION NOTED	<input type="checkbox"/> POSITION APPROVED	<input type="checkbox"/> POSITION DISAPPROVED
<b>BY:</b>		<b>DATE:</b>
<b>SUMMARY</b>		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)		
(2) OTHER AGENCIES AFFECTED BY BILL		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL	/	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
(3) PROGRAM EFFECTS OF BILL		
(4) FISCAL IMPACT: <input type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		

**(6) COMMENTS:**  
 This bill would pose a problem to enforcement. It would require that a court of law prove that a marker is new or old. Fishermen could use this bill as an excuse to fish in closed waters.

What is considered a marker? In Kodiak, rocks were painted white 10 years ago, and used to denote closed areas. The regulations denote each closed area and the markers are used to assist commercial fishermen of where the closed areas are located. The solution is for Fish & Game to update those markers that are in use and are necessary to the individual fisheries.

16.05.785 would be under  
Article 6 - Miscellaneous Provisions

Introduced: 3/19/80  
Referred: Resources

1 IN THE HOUSE

BY ZHAROFF

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 346

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing area markers."

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

8 \* Section 1. AS 16.05 is amended by adding a new section to read:

9       Sec. 16.05.785. FAILURE TO REMOVE MARKERS. If the Board of Fish-  
10 eries by regulation uses Department of Fish and Game markers to estab-  
11 lish waters closed to commercial fishing and the state fails to remove  
12 the markers when new markers are posted to establish waters closed to  
13 commercial fishing, commercial fishing is expressly permitted in the  
14 waters between the new markers and the old markers until the old markers  
15 are removed.  
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THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SS HB 346

Title An Act relating to fishing area markers

Requested by Resources Committee

Date March 24, 1980

II. FISCAL DETAIL -

Agency Affected Department of Fish and Game

Program Category Affected Natural Resources Management

BRU, Program, or Subprogram(s) Affected Division of Commercial Fisheries

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

There would be no fiscal impact, provided the intent of the Legislature is to have the requirement applied to only the markers established by the Board of Fisheries by regulation or change in regulation, and does not apply to emergency orders or regulations used in season to manage the fisheries. Furthermore, it is recognized that the Department should do a better job when changing markers as required by the Board of Fisheries regulatory action.

IV. DATE March 25, 1980

PREPARED BY

Russell H. Clark

AGENCY

Department of Fish and Game

PHONE

465-4120

Original Legislative Finance

cc: Budget and Management

Prime Sponsor (Last Legislator Named)

Office of the Governor-Keith Speckling

HB

350

Hearing 3/18/80 - tabled  
4/17/80 "  
4/21/80 - Reported out as C.S  
with new fiscal note

ols

