

# ALASKA STATE HOUSE OF REPRESENTATIVES



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**Representative Paul Seaton**

## **Answers to Questions on HB 25 posed by House Finance Subcommittee**

### **1. What specifically is the sponsor attempting to accomplish with this legislation?**

The intent of the legislation is to achieve fairness in the distribution of the Fishery Business Tax on fish that are exported out of state “unprocessed”. This bill seeks to share the tax revenue on fish that have been gutted, gilled, and iced the same way that tax revenue on fish that have been gutted, headed and frozen in a municipality is shared: 50% going directly back to the city and/or borough of landing.

### **2. What will be the specific or estimated monetary impact of this legislation on each individual community?**

Please see attached schedules marked 2A and 2B. 2A, entitled “Fish Tax: Total Distributed, Total Shared by DCCED, Total Shared Minus Exported/Unprocessed Redistributed by HB 25” details the impact of HB 25 before the money is redistributed. The first column on 2A shows all of the fish tax that was returned to cities in FY 04. This includes tax on fish processed in the city as well as fish tax revenue sharing administered by DCCED. The second column represents just the fish tax revenue sharing of DCCED. This money comes from a tax on fish exported out of state unprocessed, and fish processed outside of municipal boundaries. The third column shows what the DCCED revenue sharing program would look like minus the exported/unprocessed money, or, what it would look like composed entirely of tax revenue on fish processed outside of municipal boundaries. The last column shows the exported/unprocessed money that is redistributed in the schedule marked 2B.

2B, entitled “HB 25 ANALYSIS” shows the redistributed tax money by region. The numbers cannot be broken down on a city-by-city basis by Revenue due to confidentiality constraints.

### **3. Can we secure a 5 or 10 year history of payments to each community to document perceived trends in payment amounts?**

Please see attached schedules of Department of Commerce, Community and Economic Development Shared Fishery Business Tax payments. Note that the Shared Fishery Business Tax is composed of tax revenue collected on fish processed outside of municipal boundaries and fish that are exported out of state unprocessed. The

average exported/unprocessed tax contributed to the Shared Fishery Business Tax program during the FY00-FY 04 period was \$623,667 annually (see attached Revenue fiscal note.)

**4. How should we consider the conclusion in the March 17 Legal Services memorandum to Rep. Seaton that “...there is nothing in AS 43.75.130 that provides meaningful support for the proposition that municipalities are entitled to a portion of revenue derived by the state on fishery resources that are not processed within the municipality.”**

The March 17, 2004 Utermohle opinion should be taken in its entirety. The quote that AS 43.75.130 “provides no meaningful support” is obvious or HB 25 would not be necessary to establish legislative intent and direction. In fact, page 2, paragraph 1 states “When AS 43.75.015, 43.75.100, and 43.75.130 are construed together, it is unclear how the fisheries business tax revenue derived through AS 43.75.100 [exported/unprocessed] is to be treated for purposes of revenue sharing under AS 34.75.130.”

On page 2, paragraph 4 the Opinion states, “On examining the pertinent statutes, we conclude that there is no statutory basis for the department to distribute this revenue.”

I believe the revenue sharing conducted by the department through regulations no longer serves the legislative intent as established on page 3 from the 1979 Senate C&RA Committee File on SB 132. This legislation, which produced AS 43.75.130, did not contemplate the growth of a municipally identifiable “exported unprocessed” product category generating tax revenue that would not be shared with the municipality.

“The commissioner of revenue shall pay (1) to each municipality unified under AS 29.68.240 – 29.68.440, and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied by this chapter;”

Nowhere is there any indication that the legislature ever envisioned taking revenue generated within an identified municipality and exporting that 50% municipal “share” broadly across the other fishery management areas that did not generate the revenue.

**5. The technical comment in the 3/31/05 fiscal note from Tax and Treasury states “Some changes in section 5 are necessary to reach the intended result of the bill.” What are these changes?**

The CS that came out of House Community and Regional Affairs created the “hold-harmless” provision but failed to create a mechanism for the Department of Revenue to transfer the exported/unprocessed money to DCCED, so that they can calculate and pay the hold-harmless. Section 5 in Draft Version C corrects this by inserting language specifying that the money is transferred by Revenue to DCCED. An additional change to section 5 is the deletion of an obsolete reference in the C&RA version to fish “sold to a buyer in a municipality” (page 3, line 30).

**6. Please confirm how the technical comments in the 3/4/05 Tax Division fiscal note have been addressed.**

Technical Comments:

*The location of a sale for tax purposes is normally defined as the location from which the goods are shipped or their destination. The bill language does not provide a methodology for determining the situs of a sale although it must necessarily be the place of origination or the location of the taxpayer that sells the product.*

This comment is in regard to an early version of the bill that deals with fish sold to a buyer in a municipality. We changed the language in subsequent versions to fish “first landed in a municipality” in order to clarify that the city and borough of landing would receive the funds. This new language has been approved by the Tax Division to be a “methodology for determining the situs of a sale”.

*We expect to collect revenues attributed to 2004 and earlier years after the July 1, 2005 effective date of the bill. The Department will not possess the information necessary to distribute export tax attributable to calendar year 2004 or earlier. We recommend that an applicability clause be added to the bill to specify that it applies only to taxes collected with respect to 2005 and subsequent tax years*

In section 8 of the G version we have added an applicability clause to address this concern.

**7. Would it be appropriate to require local matching fish taxes to receive some portion of the share of the state fish tax revenue sharing?**

No.  
Local governments have a variety of ways to generate local tax revenue. Would it be appropriate to require Anchorage to impose a local gasoline tax before it could get any state road matching money because another locality raised its own revenue through a gasoline tax? The Kenai Peninsula has a general 2% sales tax and the City of Homer has a 4 1/2% sales tax. Should we say that the Aleutians East Borough could get no revenue sharing until it institutes a general sales tax? The Kenai Peninsula Borough and Homer also have a combined property tax of 13 mills. This includes fish processing facilities and a flat tax on fishing vessels. My understanding is that Western Alaska boroughs generally have chosen not to impose either property tax or sales taxes on the general population and instead have chosen to impose a resource tax on this one industry, thus the fish severance tax or landing tax for those areas. This should not give those areas any proportionate claim on the tax share of the raw fish that is generated in municipalities of Southeastern Alaska, Prince William Sound, Anchorage, the Kenai Peninsula or Kodiak.

**8. It would be helpful if the sponsor could provide a schedule of communities that self assess a local fish tax and the amount collected in recent years.**

BOROUGH/CITY	LOCAL TAX	FY04 REVENUE
1. Aleutians East Borough	2% Raw Fish Tax	\$2,600,000
2. Bristol Bay Borough	3% Raw Fish Tax	\$312,605
3. Kodiak Island Borough	.925% Severance Tax	\$746,118
4. Lake and Peninsula Borough	2% Raw Fish Tax	\$574,192
5. City and Borough of Yakutat	1% Salmon Tax	\$19,748
6. Akutan	1% Raw Fish Tax	\$622,106
7. Atka	2% Raw Fish Tax	\$27,795
8. Chignik	1% Salmon Tax	\$66,920
	2% Other Seafood Landing Tax	\$13,300
9. Egegik	2% Raw Fish Tax	\$412,575
10. Emmonak	? Raw Fish Tax	\$ ?
11. False Pass	2% Raw Fish Tax	\$88,091
12. King Cove	2% Raw Fish Tax	\$ ?
13. Pilot Point	3% Raw Fish Tax	\$ ?
14. Saint George	3% Fish and Marine Products Tax	\$0
15. Saint Paul	3% Raw Fish Tax	\$507,446
15. Sand Point	2% Raw Fish Tax	\$526,295
16. Togiak	2% Raw Fish Tax	\$30,000
17. Unalaska	2% Raw Fish Tax	\$4,190,128

**9. How should the premise that stability, predictability and certainty of tax systems are advisable be addressed in the context of this legislation?**

I agree with the premise. In fact, that is the purpose of the bill. The intent of the tax was to share back with municipalities that are impacted by the generation of the revenue 50% of the tax. Impacts and costs can be identified in a municipality as the port of landing for “exported/unprocessed,” and by returning a portion of the tax to cover these impacts, the bill simply keeps the shared revenue within the predictability of the tax system. Communities that “process” or handle fish products can have certainty that they will receive the share related to their efforts whether they process or export their products unprocessed. Communities hundreds or thousands of miles away that do not handle the product or produce the tax can have little anticipation of the predictability, or certainty of the transfer of tax generated in other areas.

**10. The argument was made in committee that certain communities need more money to maintain their harbor facilities. Should user fees or other charges cover these costs?**

Every harbor in the state has needs. The fishery business tax-sharing program is not related directly to any harbor but recognizes that generating the revenue involves infrastructure, which is vital to the economy of the state. The problem with the current structure of the “exported unprocessed” tax sharing is that the distribution removes the tax from supporting the facilities that generate the revenue and distributes it to areas that have no connection to the high value product marketing. Those facilities could be ice houses, shared handling/packaging facilities as allowed by the direct marketing bill passed in 2004, or dock facilities. User fees are almost always a component as is the shared fish tax.

**11. Should a dedicated marine fuel tax increase be considered as an alternative to the changes to the fisheries tax distribution proposed in this legislation?**

No.  
A dedicated marine fuel tax would create revenue to municipalities that sell fuel based on the quantity of fuel sold. This may or may not have any relevance to municipalities that “export unprocessed” seafood. The shared fish tax targets fish processing impacts not fuel sales impacts.

**12. How do we justify the “hold harmless” clause added in the CS in the context of the “repealer” clause that appears to be effective when the Governor signs the supplemental FY05 budget?**

The CS repealer requires a 20,000 minimum distribution to all municipalities. The FY05 supplemental is an oil cost offset, which does not go to “each municipality”, so would not qualify as the revenue sharing program trigger identified in the CS proposed.

**13. How do we justify any ‘hold harmless’ clause if the intent of the legislation is to reallocate the distribution of payments?**

Any “hold harmless” is a political compromise to accomplish the purpose of moving to the system that allocates the revenue back to the city where it was generated. The basis for the C&RA amendment was that with the canceling of revenue sharing these small communities have lost their main revenue stream. The proposed CS amendment seeks to allow some supplemental funds generated from other communities to be continue to be diverted to these small communities until a community dividend or revenue sharing system is again established.

Perhaps a three year sunset of the “hold harmless” would be an easier way to accomplish the realignment of taxes to the municipalities that generate the revenue while providing a temporary cushion for those small communities that do not participate in any fresh fish sales.

**14. Please explain the significance of schedules included in the Finance Committee bill files.**

**a. Comparison of FY 03 SRS/SAFE payments to HB 25 Hold Harmless cities**

This schedule was put in the packet simply in order to illustrate which cities and boroughs would be held-harmless under the C&RA amendment. The figures are related to FY03 revenue sharing, but do not bear significance to HB 25 except to illustrate the plausibility of the Version C termination of the hold-harmless when each municipality in the state receives at least \$20,000 in some form of revenue sharing.

**b. Comparison of Total FY04 fish tax distributed to DCCED Actual FY04 to DCCED estimated with HB25. This is particularly confusing as it seems to indicate every community experiences a reduction in funding.**

(See question #2) This schedule shows the exported/unprocessed funds subtracted from each municipality. The \$534,095 shown subtracted on the schedule is added back in under HB 25, but we do not have the data from the Department of Revenue needed to determine exactly which city would receive what. This leaves us with regional determinations only.

**15. Does the sponsor have any other succinct analysis or documentary evidence supporting the bill that should be considered by the subcommittee?**

Unfortunately, the Department of Revenue had a database meltdown in 1999 and historical report documentation cannot discriminate between the source categories of the shared tax. However the following examples illustrate the historic trends.

The purpose of the shared tax program was to share as equitably as possible one half of the raw fish tax to the municipality that generated the revenue. For those taxes that were not identified with processing in a municipality, (that is processed within the state but outside of a municipality or not processed in the State), the formula spread the shared portion across all the management areas based on proportionate percentage of total state processed volume. This seems an equitable formula for fish not processed within any municipality and will not change with any version of HB 25. However, for the product that is associated with a specific municipality, the formula confounds the intent of the shared tax revenue program.

Before 1990, there was a very small “exported unprocessed from a municipality” category. There was a little herring roe on kelp, some Southeastern roe herring and some pink salmon tendered unprocessed for canning from Southeastern processors to Prince Rupert BC when the Southeastern canneries were at capacity. Specific examples of the new trend follow:

- Beginning in about 1985 a small fishery developed flying whole Pacific cod to Korea. Although the ex vessel price was about 3 times that of locally processed cod, the season was short so the product stream was small. In 1992, the industry and the Board of Fisheries established the State water cod fishery that reserved a portion (25%) of the fast-paced January to March volume fishery to be harvested later by pots and jigs expressly to extend the season over time and increase the fishery value. The tax consequence was not even contemplated at the time. Now we see a high proportion of those fish landed in Seward and Homer going out to fresh markets.

- In 1996 federal fisheries policy changed to Individual Fishing Quota (IFQ) management which intended to spread the halibut fishery over time and to get fish on the fresh market. Previously, almost no halibut was “exported unprocessed from municipalities” and today probably about one third of all halibut is trucked whole to British Columbia or the lower 48. Some also travels by ferry or boat outside Alaska. This competition on the fresh fish market is keeping demand and ex vessel prices high. Again, the tax consequences of shifting to “exported unprocessed” was not considered during construction of the fishery plan, primarily because almost no one was aware of this quirk in the tax sharing law.
- In Southern Alaska geoduck clams have been harvested for a number of years. In the last three to four years techniques and markets have developed to allow those clams to be sold live at about three times the ex vessel price. Almost all of the market has shifted to the high value product with the help of communities involved in the production such as Craig and Ketchikan. Those communities now find that they have lost their entire shared tax because of the “exported unprocessed” provision.
- Nome has a summer King Crab fishery in Norton Sound. The highest value market for that crab is live in Japan and an increasing amount of it is now shipped that way. Although Western Alaska has worked to develop this fishery with landing, handling and flight facilities, Nome loses its portion of shared fish tax on every crab that is “exported unprocessed.”