

HOUSE FINANCE COMMITTEE
January 22, 2001
1:37 PM

TAPE HFC 01 - 17, Side A
TAPE HFC 01 - 17, Side B

CALL TO ORDER

Co-Chair Mulder called the House Finance Committee meeting to order at 1:37 PM.

MEMBERS PRESENT

Representative Eldon Mulder, Co-Chair
Representative Bill Williams, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative John Davies
Representative Carl Moses
Representative Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

Speaker Brian Porter; Representative Mary Kapsner;
Representative Joe Green; Representative Gary Stevens;
Representative Drew Scalzi; Bruce Botelho, Commissioner,
Department of Law; Steve White, Assistant Attorney General,
Department of Law; Brad Pierce, Senior Economist, Office of
Management & Budget Mary McDowell, Commissioner, Commercial
Fisheries Entry Commission, Juneau.

PRESENT VIA TELECONFERENCE

None

GENERAL SUBJECT(S):

BRIEFING OVERVIEW BY
ATTORNEY GENERAL BRUCE BOTELHO
CARLSON versus CFEC
(Commercial Fisheries Entry Commission)

The following overview was taken in log note format. Tapes and handouts will be on file with the House Finance Committee through the 22nd Legislative Session, contact 465-

2156. After the 22nd Legislative Session they will be available through the Legislative Library at 465-3808.

LOG	SPEAKER	DISCUSSION
	TAPE HFC 00 - 17 SIDE A	
000	Co-Chair Mulder	Opened the meeting and explained that the meeting would provide an overview of the Carlson versus Commercial Fisheries Entry Commission (CFEC) case.
103	BRUCE BOTELHO, COMMISSIONER, DEPARTMENT OF LAW	Spoke to the issue of the financial consequences to the State from the policy perspective. He addressed the costs of limited entry licenses.
184	Attorney General Botelho	Noted that the suit had been ongoing since 1982 and it had been before the Alaska Supreme Court twice. In the latest appeal, decided in 1996, the Court announced a formula that establishes for each year, the maximum additional amount that a nonresident may be charged. One of the main facts in the formula is the State's annual expenditure that support the industry, the higher the fees that may be charged to nonresidents. He emphasized that it was important to inform the Legislature about the potential financial liabilities the case presents.
298	Attorney General Botelho	Advised that Assistant General Steve White would provide Committee members a historical perspective of the case.
370	STEVE WHITE, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW	Stated that he had been involved with the case for 6 years. He mentioned that the main question is "how much can the fishermen and residents be charged for the same permit". By statute, nonresidents are charged \$125 dollars, and residents are charged \$60 dollars. The difference rests with permits, which is the statute being challenged.
518	Mr. White	An annual fee for entry or interim use permits shall be no less than \$10 dollars and no more than \$70 dollars.
578	Mr. White	Noted that the case had been first challenged in 1982. There are 11,000 fishermen involved in that suit. They argue that the fee structure violates the U.S. Constitution. The clause, which they challenged, is under the commerce clause. In 1989, there was an appeal to

		the Alaska Supreme Court, which was sent back to the Trial Courts, which resulted in a ruling that residents and nonresidents should be charged equally. Residents and nonresidents should be credited.
698	Mr. White	The case has been appealed and reappealed a number of times. The Supreme Court provided a formula for the determination calculation and the maximum permissible fee for a nonresident commercial fishing license or permit. The formula would take the maximum permissible fee for a nonresident permit license and would be determined through the fee for a resident permit. That number would be added to the annual fisheries budget/Alaska population times the % of State budget from oil revenues.
845	Mr. White	The class petitioned the Supreme Court decision. The Department fought that appeal and the U.S. Supreme Court denied that appeal.
899	Mr. White	Spoke to the refund issues. The Department has argued that only the six plaintiffs should be paid and that this should not be a class action suit. Additionally, the Department has argued that there should not be any interest. The Superior Court denied those arguments.
937	Mr. White	There was a trial last June and the Superior Court received six proposals including the capital costs, harbors, indirect costs of government, subsidy provided for hatcheries, etc. The Superior Court allowed only two of the provisions and struck down the others.
1030	Mr. White	At the end of the trial in June, all the categories were calculated to decide the difference between the resident and nonresident difference. The differential resulted in the amount of \$155 dollars.
1075	Mr. White	The total difference came to \$1.4 million dollars. Also, the underpayment was calculated which resulted in the amount of \$1.43 thousand dollars.
1118	Mr. White	The current plan requires that each nonresident needs to be notified in order to determine if they want the refund.
1148	Mr. White	The other refunds for the additional 17 years in question must also be determined. Following the final

		judgment, will allow an appeal to the Alaska Supreme Court.
1192	Mr. White	Believed that some of the decisions could be reversed. He did not know which ones would be reversed. Based on what the Superior Court has ruled to date, it could be quite high.
1231	Co-Chair Mulder	Asked about the \$30 million dollars outlined in the memo.
1242	Mr. White	Noted that he did not believe that the amount would be greater than that. It could be different each year depending on the variables.
1271	Representative Hudson	Inquired how far back did the claims go.
1290	Mr. White	Back to 1984. The three to one has been on the books since 1978 and was placed into statute in 1982.
1317	Mr. White	Mentioned the crewmember license fee since 1989.
1331	Representative Hudson	Asked how the percent of the State budget oil revenue was computed.
1344	Mr. White	Deferred to Mr. Pierce.
1361	BRAD PIERCE, SENIOR ECONOMIST, OFFICE OF MANAGEMENT & BUDGET	Believed that they could use the petroleum derived revenues and permanent fund earnings which amounts to 60% of the total revenues. It would be discounted by 6/10, 70% of the total funds.
1405	Representative Croft	Asked about the issues for appeal. He asked about certification and class issues. He asked what the possible interest could be.
1451	Mr. White	In 1996, the principle refunds amounted to 50% of the principle, and then was added on as interest.
1474	Representative Croft	The interest could be about \$10-\$14 million dollars. He mentioned that the appeal could be made on the budget appeal category.
1506	Mr. White	Agreed that was true for FY96. however, he stated that certification would be attached on two different theories.
1543	Vice-Chair Bunde	He asked if the residents of Alaska would be called upon to make a contribution to the fee depending on where they live.
1563	Mr. White	The Supreme Court clarified that there could only be taxation in those places where the Administration pays on those services. That would create the differential. He admitted that this could create an accounting nightmare.
1598	Vice-Chair Bunde	Commented that the more the locals

		provide, the less the State would have to contribute.
1619	Representative Davies	Six categories.
1625	Mr. White	Direct operating expenditures. Indirect operating expenditures. General governmental expenditures. Capital costs. Hatchery loan subsidy. Management for the benefit for State residents.
1719	Representative Croft	Asked what the Courts allowed?
1730	Mr. White	\$571 dollars per person.
1748	Co-Chair Mulder	Suggested that it was odd that the Supreme Court voiced a different decision for residents versus nonresidents. He stressed that it was inconsistent that they upheld that decision.
1787	Mr. White	Found that the Supreme Court upheld the ability of a person moving from state to state to uphold their livelihood.
1811	Mr. White	Pointed out that if there is a non-important constitutional right, the Courts have tolerated certain quality rights.
1853	Representative Hudson	Asked how practical it would be to find every potential recipient.
1872	Mr. White	Replied that the Limited Entry Commission has records of all those that paid. The problem rests with being able to find their current addresses.
1890	MARY MCDOWELL, COMMISSIONER, COMMERICAL FISHERIES ENTRY COMMISSION, JUNEAU	In the process the Commission will be sending out notification by March 15, 2001, to the old addresses requesting notification of any change of address.
1925	SPEAKER BRIAN PORTER	Asked about the claims.
1940	Mr. White	Asked if there was no record of that claim. Stated that the last Superior Court decision was the one made in Anchorage.
2002	Mr. White	Commented on the number of people that would not be found which could establish the dimensions of that class.
2022	Vice-Chair Bunde	Inquired about the costs of notification.
2039	REPRESENTATIVE GARY STEVENS	Asked about the payment for the Alaskan fishermen and then the ones that would be left to pay.
2076	Mr. White	Stressed that the Department of Law had made a good case presentation and that the judge was the one that made the final decision.

2101	Co-Chair Mulder	Could not understand the judge's logic, which gives preference to those that live out of State. He questioned why the courts had not taken that into consideration.
2127	Mr. White	Spoke to the retroactive charge in the amount of the rate. He stated that it would be difficult to make that a constitutional option.
2156	Co-Chair Mulder	Suggested the possible offset computations.
2167	Representative Hudson	Asked if it would help to modify the law to account for that. He inquired if it would help if the Legislature passed a Concurrent Resolution to go along with that.
2193	Mr. White	Stated that it could not hurt, however, the Supreme Court would not give it much clout.
2211	Mr. White	Commented that the Department of Law would be appealing the decision as soon as the Supreme Court makes it final judgment, anticipated to be in April 2001.
2240	Representative Croft	Asked how the State could differentiate between resident and nonresident.
2261	Mr. White	When pursuing a livelihood, the State can only charge nonresidents more if the nonresident creates a higher enforcement cost or other costs. Or if the resident themselves, received credit and that could provide the base of the amount of the credit.
2302	Representative Croft	Questioned if some sort of tax with a rebate option could work.
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024	Mr. White	Replied that could be problematic. If the Court determines that it is an out of state penalty, they tend to strike it down.
075	Representative Moses	Reminded members that he proposes that there should be an income tax on property taxes.
112	Co-Chair Mulder	ADJOURNED: The House Finance Committee adjourned at 2:25 P.M.