

**SENATE**

Introduced: 1/11/93  
 Referred: L&C, FIN

**HOUSE**

Introduced: 1/11/93  
 Referred: STA, RES, FIN

**EXECUTIVE ORDER NO. 85**

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance  
 2 with AS 24.08.210, I order the following:

3 \* **Section 1. FINDINGS.** As governor, I find that it would be in the best interests of the  
 4 efficient administration of the state to move the bonding program that serves as security for  
 5 the collection of wages and payment for raw fish from the Department of Labor to the  
 6 Department of Revenue. The Department of Revenue is the agency currently charged with  
 7 issuing licenses to fish processors and primary fish buyers, and it administers a similar  
 8 bonding program to ensure the payment of fisheries taxes.

9 \* **Sec. 2.** AS 44.25.020 is amended to read:

10 Sec. 44.25.020. **DUTIES OF DEPARTMENT.** The Department of Revenue  
 11 shall

12 (1) enforce the tax laws of the state;

13 (2) collect, account for, have custody of, invest, and manage all state  
 14 funds and all revenues of the state except revenues incidental to a program of  
 15 licensing and regulation carried on by another state department and funds managed  
 16 and invested by the Alaska State Pension Investment Board;

17 (3) register cattle brands;

18 (4) supply necessary clerical and administrative services for the  
 19 Alcoholic Beverage Control Board;

20 (5) invest and manage the balance of the power development fund in  
 21 accordance with AS 44.83.386;

22 (6) in accordance with the policies established by the board of trustees  
 23 of the Alaska State Pension Investment Board, collect, account for, have custody of,

1 invest, and manage the state funds for which the board is responsible;

2 (7) administer the surety bond program for licensure as a fish processor  
3 or primary fish buyer.

4 • Sec. 3. AS 44.25 is amended by adding new sections to read:

5 **ARTICLE 2. SURETY BOND PROGRAM FOR FISH PROCESSORS**  
6 **AND PRIMARY FISH BUYERS.**

7 Sec. 44.25.040. SECURITY FOR COLLECTION OF WAGES AND  
8 PAYMENT FOR RAW FISH. (a) A person applying for a license as a fish  
9 processor or primary fish buyer shall file with the commissioner of revenue a surety  
10 bond running to the State of Alaska conditioned upon the promise to pay (1) all  
11 persons furnishing labor to a fish processor or primary fish buyer, including  
12 contractual employee benefits; (2) independent registered commercial fishermen for  
13 the price of the raw fishery resource purchased from them; and (3) unemployment  
14 insurance contributions. If the surety bond is insufficient to satisfy all obligations  
15 under this subsection, the obligations to persons furnishing labor and to independent  
16 registered commercial fishermen shall be paid before unemployment insurance  
17 contributions are paid. The surety or sureties must be satisfactory, in the determination  
18 of the commissioner.

19 (b) The amount of the bond shall be \$10,000 unless, during the preceding five  
20 years, that amount was insufficient to satisfy a final judgment resulting from a claim  
21 asserted against the bond, cash deposits, or other security filed under this section. If  
22 \$10,000 was insufficient, the bond shall be \$50,000; if \$50,000 was insufficient, the  
23 bond shall be \$100,000. If the commissioner determines that during the preceding  
24 five years, a fish processor or primary fish buyer (1) has engaged in the business of  
25 fish processor or primary fish buyer in the state while not in compliance with this  
26 section and (2) has not yet satisfied a final judgment entered against the processor or  
27 fish buyer for payment for labor furnished to, or raw fishery resources purchased by,  
28 the processor or fish buyer, then the amount of the bond for the processor or fish  
29 buyer shall be \$100,000. In lieu of the surety bond the fish processor or primary fish  
30 buyer may file with the commissioner a cash deposit or other negotiable security  
31 acceptable to the commissioner in the amount specified for the bond. If no claim is

1 asserted under this section within two years from the date the bond, cash deposit or  
2 other security is filed, the term of the bond, cash deposit or other security shall be two  
3 years; if a claim has been asserted within two years, the term of the bond, cash  
4 deposit or other security shall be for five years.

5 (c) A bond is not required if the fish processor or primary fish buyer has  
6 more than the amount of the bond in lienable property in the state and provides proof  
7 of the property satisfactory to the commissioner.

8 (d) Upon certification by the commissioner that a person applying for a  
9 license as a fish processor or primary fish buyer has complied with this section, the  
10 Department of Revenue may issue that person a license to engage in the business of  
11 fish processor or primary fish buyer.

12 (e) The commissioner may accept the assignment of a claim held by a person  
13 against a fish processor or primary fish buyer under this section and may bring suit  
14 upon the bond, cash deposit or other security on behalf of the assignor in the superior  
15 court of the judicial district in which the work is done or in any judicial district in  
16 which jurisdiction may be obtained. This action may not be construed to limit the  
17 right of a person having a claim under this section against a fish processor or primary  
18 fish buyer to personally bring suit upon the bond, cash deposit, or other security, in  
19 which case a copy of the complaint shall be served by registered or certified mail  
20 upon the commissioner at the time suit is filed. The commissioner shall maintain a  
21 record, available for public inspection, of all suits commenced under this subsection.  
22 The service shall constitute service on the surety, and the commissioner shall transmit  
23 the complaint or a copy of it to the surety within 72 hours after it has been received.

24 (f) If the surety on the bond desires to cancel the bond, the surety may do so  
25 by giving the commissioner written notice of intention to cancel. The cancellation is  
26 effective 30 days after the notice is delivered to the commissioner.

27 (g) If a judgment is entered against the cash deposit, the commissioner, upon  
28 receipt of a certified copy of a final judgment, shall pay the judgment from the  
29 amount of the deposit.

30 Sec. 44.25.041. EXEMPTIONS FROM BONDING REQUIREMENT. (a)

31 A fish processor or primary fish buyer that does not purchase fish or hire employees

1 is exempt from the bonding requirements of AS 44.25.040.

2 (b) Restaurants, grocery stores, and established fish markets are exempt from  
3 the bonding requirement of AS 44.25.040.

4 **Sec. 44.25.042. SUSPENSION AND REVOCATION OF LICENSE.** (a) If  
5 a final judgment impairs the liability of the surety upon the bond or depletes the cash  
6 deposits or other security so that there is not in effect the bond, undertaking, cash  
7 deposit, or other security in the full amount prescribed in AS 44.25.040, the license  
8 of the fish processor or primary fish buyer shall be suspended until the liability in the  
9 required amount, unimpaired by unsatisfied judgment claims, has been furnished.

10 (b) If a bonding company cancels its bond of a fish processor or primary fish  
11 buyer, the fish processor's or primary fish buyer's license shall be revoked. The fish  
12 processor or primary fish buyer may again obtain a license by complying with the  
13 requirements of AS 44.25.040.

14 (c) If a licensed fish processor or primary fish buyer fails to fulfill the  
15 obligations as set out in AS 44.25.040, the license of the processor or buyer shall be  
16 suspended for a period of time the commissioner determines is appropriate. After three  
17 suspensions the license may be permanently revoked.

18 (d) Proceedings to suspend or revoke a license are governed by AS 44.62  
19 (Administrative Procedure Act).

20 (e) If the commissioner determines that a fish processor or primary fish buyer  
21 is acting in violation of AS 44.25.040, the commissioner shall give written notice  
22 prohibiting further action by the person as a fish processor or primary fish buyer. The  
23 prohibition continues until the person has submitted evidence acceptable to the  
24 commissioner showing that the violation has been corrected.

25 (f) A person affected by an order issued under AS 44.25.040 and this section  
26 may seek equitable relief preventing the commissioner from enforcing the order.

27 (g) In an action instituted in the superior court by the commissioner or a  
28 representative of the commissioner, a person acting in the capacity of a fish processor  
29 or primary fish buyer in violation of AS 44.25.040 may be enjoined from acting as  
30 a fish processor or primary fish buyer.

31 **Sec. 44.25.045. PENALTY FOR FAILURE TO OBTAIN BOND.** A person

1 who is required to obtain the bond required by AS 44.25.040 and who fails to obtain  
2 that bond is guilty of a class A misdemeanor. Each day a violation occurs constitutes  
3 a separate offense.

4 Sec. 44.25.047. REGULATIONS. The commissioner may adopt regulations  
5 to carry out the provisions of AS 44.25.040 - 44.25.048.

6 Sec. 44.25.048. DEFINITIONS FOR SURETY BOND PROGRAM. In  
7 AS 44.25.040 - 44.25.048, unless the context otherwise requires,

8 (1) "commissioner" means the commissioner of revenue;

9 (2) "established fish market" means a market maintained in a  
10 permanent structure exclusively for the sale of seafood to the public at retail;

11 (3) "fish" means any species of aquatic finfish, invertebrates and  
12 amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle,  
13 found in or introduced into the state, and includes fish eggs except fish eggs sold for  
14 stock enhancement purposes;

15 (4) "fish processor" means a person engaging or attempting to engage  
16 in a business for which a license is required under AS 43.75;

17 (5) "grocery store" means a store maintained for the sale of food  
18 products exclusively to the public at retail;

19 (6) "primary fish buyer" means a person, other than a cooperative  
20 corporation organized under AS 10.15, engaging or attempting to engage in the  
21 business of originally purchasing or buying any fishery resource in intrastate,  
22 interstate, or foreign commerce;

23 (7) "restaurant" includes a place maintained for the sale and  
24 on-premise consumption of food, and a street vendor who sells food prepared for  
25 immediate consumption.

26 \* Sec. 4. AS 16.10.290, 16.10.292, 16.10.293, 16.10.294(a), (b), (c), and (d), and  
27 16.10.295 are repealed.

28 \* Sec. 5. TRANSITION. (a) Contracts, rights, liabilities, and obligations created by or  
29 under a law repealed by this Order and in effect on June 30, 1993, remain in effect  
30 notwithstanding this Order's taking effect. Records, equipment, appropriations, and other  
31 property of agencies of the state whose functions are transferred under this Order shall be

1 transferred to implement the provisions of this Order.

2 (b) Litigation, hearings, investigations, and other proceedings pending under a law  
3 repealed by this Order, or in connection with functions transferred by this Order, continue in  
4 effect and may be continued and completed notwithstanding a transfer, amendment, or repeal  
5 provided for in this Order.

6 (c) Regulations relating to the surety bond program adopted by the Department of  
7 Labor under authority of AS 16.10.275 before July 1, 1993, remain in effect until regulations  
8 are adopted under AS 44.25.047 by the Department of Revenue and take effect. The  
9 Department of Revenue may enforce the Department of Labor regulations until its own take  
10 effect.

11 \* Sec. 6. This Order takes effect July 1, 1993.

DATED: \_\_\_\_\_

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Walter J. Hickel  
Governor