

H B

1 2 4

COMMITTEE REPORT

HOUSE

(11)

FURTHER:

2/5/81

Date: 4/24/81

Mr. Speaker:

The Committee on RESOURCES has had HB 124

"An Act relating to the purchase of raw fish; and providing for an effective 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 HR 124 same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

Tony Gardini

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

Tony Gardini
CHAIRMAN

Committee Substitute Bill 124 has left out certain sections of the original bill introduced by the administration. These omissions are again aimed at protecting the small processor.

HOUSE BILL 124: COMMITTEE SUBSTITUTE

SECTION 1: Amends A.S. 16.10 to allow the Commissioner to adopt regulations

SECTIONS 2, 5, and 7: These sections have been eliminated from the Committee substitute of the bill as they would have required that posted security be either a cash deposit of \$10,000. or a \$10,000. Surety Bond. The Commissioner would no longer accept real estate or property currently in the state as security. I have not included these sections as small processors with just several employees often do not have either \$10,000 for a cash deposit or \$10,000 in the bank so that he can obtain a surety bond. One example of a man who uses property for his posted security is ~~Jimmy~~ *Sidney* Huntington in Galena.

SECTION 4: This section allows the Commissioner the flexibility to waive the bonding requirement in one specific case- when an operation does not purchase fish or hire employees. This section is aimed at fishermen/processors and family operations.

SECTION 6: This bond provides for a penalty for persons required to post the bond but fail to do so.

SECTION 8: This section has been eliminated in the Committee Substitute as an immediate effective date would occur during ^{the} fishing season and would create confusion.

SECTION 9: This section provides for an effective date of December 31, 1981 so the new requirements would be in place for the 1982 fishing season

Committee Substitute Bill 124 is acceptable to the Administration and is supported by the Alaska Native Foundation and the Bering Sea Fisherman's Association.

PROPOSED COMMITTEE SUBSTITUTE, HOUSE BILL 124

AMENDMENTS TO A.S. SEC 16.10.290 SECURITY FOR COLLECTION OF WAGES AND
PAYMENT FOR RAW FISH

BACKGROUND.

While statistics are not available, a growing number of fishermen are processing their own catch. These fishermen/processors are often very small operations either consisting of a single person who catches then processes his own fish or a family unit working together. Unfortunately, these operations are subject to the same bonding requirements as large processors under AS 16.10.290. This bonding requirement is unnecessary and a serious imposition on small family operations and individuals who catch and process their own product.

Committee Substitute H.B. 124 would allow the Commissioner of Labor to waive the \$10,000. bonding requirement in cases where no fish is purchased or employees hired; i.e. for single person or family operations. The Committee Substitute of H.B. 124 further helps the small processor by retaining sections which allow real property or equipment to be posted for Security rather than only cash or a Surety Bond.

At present, the posting of Security for Collection of Wages and Payment for Raw Fish as required by A.S. 16.10.290 is required by all persons requiring a Fisheries Business License (A.S. 43.75.011), and this includes anyone who processes and sells fish (A.S. 43.75.140(3)).

The purpose of the required Security is laudable. It is aimed at protecting fishermen and processing workers against non payment. Therefore we feel it should be retained for most processing operations and Section 6 of H.B. 124 provides a penalty for persons who are required to but fail to post the bond.

The main purpose of H.B. 124 is to allow the Commissioner of Labor to waive the posting of Security when the fisherman and processor are one in the same person so that protection against non-payment is unnecessary.

Examples of cases where the existing Security requirement has been found to be onerous include:

1. Several village fishermen from Alukanuk on the mouth of the Yukon catch, smoke, then sell their own fish in the local store. Each man is now required to post a bond.
2. Two men in Mekoryuk and Hooper Bay will be longlining for halibut and cod this summer then selling their catch to the local store. In this case, too, each man is required to post \$10,000. in security, yet only he will be involved in his operation.

Committee Substitute Bill 124 has left out certain certain sections of the original bill introduced by the administration. These omissions are again aimed at protecting the small processor.

HOUSE BILL 124: COMMITTEE SUBSTITUTE

SECTION 1: Amends A.S. 16.10 to allow the Commissioner to adopt regulations

SECTIONS 2, 5, and 7: These sections have been eliminated from the Committee substitute of the bill as they would have required that posted security be either a cash deposit of \$10,000. or a \$10,000. Surety Bond. The Commissioner would no longer accept real estate or property currently in the state as security. I have not included these sections as small processors with just several employees often do not have either \$10,000 for a cash deposit or \$10,000 in the bank so that he can obtain a surety bond. One example of a man who uses property for his posted security is ~~Jimmy~~ Sidney Huntington in Galena.

SECTION 4: This section allows the Commissioner the flexibility to waive the bonding requirement in one specific case- when an operation does not purchase fish or hire employees. This section is aimed at fishermen/processors and family operations.

SECTION 6: This bond provides for a penalty for persons required to post the bond but fail to do so.

SECTION 8: This section has been eliminated in the Committee Substitute as an immediate effective date would occur during ^{the} fishing season and would create confusion.

SECTION 9: This section provides for an effective date of December 31, 1981 so the new requirements would be in place for the 1982 fishing season

Committee Substitute Bill 124 is acceptable to the Administration and is supported by the Alaska Native Foundation and the Bering Sea Fisherman's Association.

STATE OF ALASKA

DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

Kristine
JAY S. HAMMOND, GOVERNOR

P.O. BOX F30
JUNEAU, ALASKA 99811
PHONE:

465-4870

March 26, 1981

The Honorable Don Bennett
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Bennett:

Commissioner Orbeck has requested that I respond directly to you concerning the impact of the Wage and Hour Division on the Alaska fishing industry.

The number of wage and return transportation claims filed with the division by seafood processing workers against their employers are not remarkable considering the total number of people involved, the remoteness of many of the plants, and the transient nature of the worker.

I believe that the greatest impact the Wage and Hour Division may have on the industry is in the enforcement of the bonding provisions, AS 16.10.290-295. This law requires all "fish processors" and "primary fish buyers" to file with the Commissioner of Labor a surety bond (with the State of Alaska) conditioned upon the promise to pay (1) all persons furnishing labor to a fish processor or primary fish buyer, including contractual employee benefits; and (2) independent registered commercial fishermen for the price of the raw fishery resource purchased from them. The bond shall be in the amount of \$10,000.

This has been a most difficult act to enforce primarily because there is no penalty provision for those that violate the law. For example, if an individual buys fish or hires employees to process seafood and does not obtain a license from the Department of Revenue, and does not post a bond with the Department of Labor, the only action the Department of Labor can take is to issue a Cease and Desist Order and then conduct a follow-up investigation to ascertain whether or not the order is being violated. This sort of enforcement activity is vitually impossible with our limited resources.

In response to a department request, the administration has introduced legislation to address the penalty provision and other areas of the law that the department perceives to be problem areas. House Bill 124 is now assigned to the House Resources Committee. I have enclosed the department's position paper on that bill as well as a March 5, 1981 letter to the Co-Chairman of the House Resources Committee which further explains the concerns we have with the present law.

Existing statutes require certain individuals to post a bond which is probably not necessary. There are individuals and partnerships who catch and process their own product and they neither hire employees nor do they buy any fish. Yet, those in this category must post a bond because the law requires that everyone required to have a license (AS 43.75.010) with the Department of Revenue must also post a surety bond. I have also enclosed the Attorney General opinion J-66-663-79, dated April 27, 1979 which covers this point.

In the three years we have been enforcing this law, we have found many processors and buyers who are confused by the number of agencies with which they must deal. For example: one must post an Intent to Operate with the Department of Fish and Game, obtain a license from the Department of Revenue, and then post a bond with the Department of Labor; all to perform the same function. All of the agencies involved are trying to work closely on this problem. However, the Department of Fish and Game, Department of Revenue and the Department of Labor all have their own goals and objectives and obviously there are times when they are in conflict.

If J or the Wage and Hour staff can be of any assistance in proposing amendments to the act to make this law enforceable or to make it less confusing for the public. we are willing to work with the Legislature towards this purpose.

Sincerely,



Dale W. Cheek
Director
Wage and Hour Division

Enclosures:

STATE OF ALASKA

DEPARTMENT OF LABOR

JAY S. HARRISON, GOVERNOR

BOX 1145
JUNEAU, ALASKA 99811

Ph: 465-2700

March 5, 1981

The Honorable Fred Zharoff
Co-Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Zharoff:

At your request, the Department has prepared and enclosed a position paper for House Bill 124, "An Act relating to the purchase of raw fish; and providing for an effective date." This bill is of primary concern to the Department for changes that need to be enacted this year. Until ample experience had been obtained under Chapter 102, SLA 1977, the Department did not attempt to draft a bill to address the problem areas.

It was apparent from the committee hearings that certain objections have been expressed. If the Committee objects to Section 2, 3 and 5, which delete the provision "or other negotiable security," a committee substitute could be prepared omitting these sections. The Department does recognize that allowing an applicant to deposit securities such as a money market certificate is the least expensive way to comply with this requirement.

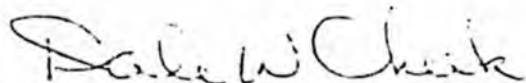
According to my testimony to the Committee, Section 4 as well as Section 6 are primary concerns of the Department. Section 4 as submitted is necessary to provide the discretion to grant waivers to those operators who neither hire employees nor purchase fish from anyone else. Section 6 which requires a penalty for those who choose neither to be licensed or bonded is a major concern. This section is supported not only by the Department of Labor but the Departments of Revenue and Fish and Game.

Section 7 repeals AS 16.10.290(c). The Department is cognizant of the abuse of this section by individuals who pledge the property of others, property without clear title or property in bankruptcy. Due to the many problems, the Department did recommend repeal. However, if there are objections, this section of the bill could be deleted and the statutory subsection left in the law. It is recognized that this is the only vehicle which allows some individuals to operate. The Department could address this problem through regulations by placing the burden of proof on the applicant, provided Section 1 was enacted.

The Honorable Fred Znaroff
March 5, 1981
Page 2

Thank you for the opportunity to provide further comments. Please advise if we can be of further assistance to the Committee. A bill to remedy the deficiencies referenced is most important.

Sincerely,



Dale Cheek, Director
Wage & Hour Division

cc: House Resources Committee

STATE OF ALASKA

DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

JAY S. HAMMOND, GOVERNOR

P.O. BOX 630
JUNEAU, ALASKA 99811

PHONE:

465-4870

April 20, 1981

The Honorable Frank Ferguson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ferguson:

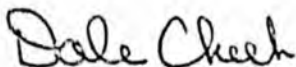
I am in receipt of a copy of the April 9, 1981 letter to you from Lynne Zeitlin Hale, Fisheries Specialist with the Alaska Native Foundation.

In that letter the writer points out that the bonding requirements in AS 16.10.290 are unnecessary and a serious imposition on small family operations who catch and process their own product.

Shortly after the Department of Labor began to enforce AS 16.10.290 we came to the same conclusion. However, under the present law we have no authority to grant waivers to anyone who is licensed as a fish buyer or fish processor. This is one of the reasons why the department requested the administration to introduce House Bill 124, which if passed into law would give the Commissioner the authority to grant waivers to those operators who neither buy fish nor hire employees. This bill is presently before the House Resources Committee.

If I can be of any further service please advise.

Very truly yours,



Dale Cheek
Director
Wage and Hour Division

cc: Commissioner Edmund Orbeck

Bill No. House Bill No. 124

Date March 5, 1981

Title "An Act relating to the Purchase of raw fish;
and providing for an effective date."

Contact: Dale W. Chees
465-4870
Judy Knight
465-2700

Chapter 102, SLA 1977 gave the Department of Labor responsibility for the enforcement of the bonding requirements related to the Purchase of Fish. Because of the inequities and difficulties experienced by the Wage and Hour Division in enforcing the requirements of AS 16.10.270 - AS 16.10.296, House Bill No. 124 was introduced this year.

Section 1 Adds a new section AS 16.10.275 which would give the Commissioner authority to adopt regulations in order to carry out the provisions of Article 6, Purchase of Fish.

Section 2 Deletes the words "or other negotiable security" from this section which would require a processor or buyer to make a cash deposit or obtain a surety bond. Experience has shown that to execute against a negotiable security such as a savings certificate requires lengthy litigation to the detriment of the worker or fisherman who must wait a considerable period of time for his wages or payment for his fish.

However, the department does recognize that allowing an applicant to deposit securities such as a Money Market Certificate is the least expensive way to address the requirements.

Section 3 Deletes "or other security" as referred to in Section 2.

Section 4 Amends AS 16.10.292 by adding a subsection which allows the Commissioner, after investigation, to grant a waiver for the bonding requirements of Article 6. Waivers may be granted only to those that do not purchase fish or hire employees. The Department is aware of many individuals or partners who catch and process their fish and who, because of the definition of a "fish processor" are required to post a bond. The current statute imposes an unnecessary and inequitable financial burden on these small operators.

Section 5 Deletes "or other security" previously described in Section 2 and Section 3.

Section 6 Adds a new section AS 16.10.295 which provides for a penalty for those who fail to obtain the bond as required by Article 6. This section provides for Class A misdemeanor for each violation. Currently the Department has the authority to suspend or revoke the license of those individuals who do not comply with the bonding requirements of AS 16.10.290--296. However,

POSITION PAPER/Department of Labor

the Department has no authority to take action against those individuals who do not obtain a license. In 1979 over 700 parties filed an intent to operate with the Department of Fish and Game and we have good reason to believe that a large number of those individuals or companies did operate within the State as primary fish buyers or processors. Less than 200 of that number actually posted the bond with the Department of Labor as required by the law. Only a slightly larger number obtained a license from the Department of Revenue.

The necessity for a penalty section is a primary concern because we have no enforcement power against those who are neither licensed nor have obtained bonding. It is apparent that these unlicensed, unbonded operators are causing the majority of the problems. The enactment of a penalty section would serve as a deterrent to those who would otherwise fail to comply with the law.

Section 7 Repeals AS 16.10.290(c) which allows the Department to waive the requirement of posting the bond if the fish processor or primary fish buyer has more than \$10,000 in lienable property in the state. In recovering against such property pledged, the department has found that in many cases the property listed is already heavily mortgaged or worth much less than the applicant alleged. In some cases the applicant did not even own the property. The Department does not have the resources to do title searches and other investigations to ascertain if the property pledged is free and clear.

Section 8 Provide for effective dates.
and 9

The Department of Labor recommends that legislation be enacted to provide for a means of enforcement as well as to alleviate the inequities that currently exist. The Department of Fish and Game and Revenue have indicated their support for this bill.

MEMORANDUM

TO: Dale W. Cheek, Director
Wage & Hour Division
Department of Labor

DATE: April 27, 1979

FILE NO: J-66-663-79

TELEPHONE NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Fishermen Subject to
Surety Bond Requirements

By: *Teo C. Spengler*
Teo C. Spengler
Assistant Attorney General

You have requested the advice of this department as to whether the security bond requirements of AS 16.10.290 apply to a self-employed fisherperson. The answer to your inquiry depends upon the exact line of business in which the person is engaging or attempting to engage.

AS 16.10.290(a) provides:

A fish processor or primary fish buyer shall file with the Commissioner of Labor a surety bond running to the State of Alaska conditioned upon the promise to pay (1) all persons furnishing labor to a fish processor or primary fish buyer, including contractual employee benefits; and (2) independent registered commercial fishermen for the price of the raw fishery resource purchased from them. The surety or sureties shall be satisfactory, in the determination of the Commissioner.

The definitions of the terms "fish processor" and "primary fish buyer" must be ascertained by reference to other statutes.

AS 16.10.296 provides definitions for terms used in Chapter 10. Therein, "primary fish buyer" is defined as "a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any raw fishery

resource in intrastate, interstate, or foreign commerce." Clearly, if an individual is purchasing any raw fishery resource, he or she is required to file the security bond, pursuant to AS 16.10.290. If an individual does not purchase any raw fishery resource, he or she is not a "primary fish buyer" under the terms of AS 16.10.296.

AS 16.10.296(3) defines "fish processor" as "a person engaging or attempting to engage in a business for which a license is required under AS 43.75.010 through .090". AS 43.75.010 requires a person engaging or attempting to engage in enumerative lines of business a connection with the state's fisheries to obtain a license. Those lines of business include (1) salmon canneries, both shore based and floating; (2) herring processing plants in the business of canning, curing, salting, freezing or making meat or oil or other process products; (3) crab canneries, both shore based and floating; and (4) clam canneries. AS 43.75.060 requires that a person engaging or attempting to engage in certain lines of business in connection with the state's commercial fisheries obtain a license. The enumerated lines of business include (1) shore-based cold storage and other fish processors, and (2) freezer ships and other floating cold storages. Thus, a person engaging in any of those lines of business is required to be licensed as a fish processor and is subject to the surety bond requirements of AS 16.10.290.

Your specific inquiry was whether a self-employed fisherperson who holds a fish processor's license but processes his or her own fish, and neither purchases fish nor hires employees, is required to post a surety bond pursuant to AS 16.10.290. Under present statutes, if the person was required under AS 43.75.010 through .090 to obtain a license, that person must post a surety bond.

TCS/lm

NOTICE

February 5, 1981

The Honorable Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would amend the bonding requirements of AS 16.10 which a fish processor or primary fish buyer must meet to qualify for a business license or fisheries business license. The processor, or person engaging or attempting to engage in a "fisheries business" as defined in AS 43.75.140(3) must obtain a fisheries business license under AS 43.75.011. The primary fish buyer must obtain an Alaska business license under AS 43.70.020. The bill would delete the existing provision allowing the processors or buyers to pledge a negotiable security rather than obtain a surety bond, permitting only a surety bond or a cash deposit. The exemption in AS 16.10.270(c) from the requirement of obtaining a bond for a person with property in the state which exceeds \$10,000 in value that is unencumbered would also be repealed. This would relieve the Department of Labor from the responsibility of investigating the value and title of the property used as security.

The bonding requirement under this bill could be waived by the commissioner for those small operations that do not purchase fish or hire employees. This bill also would establish a penalty for those processors and buyers who fail to obtain a bond, and authorizes the commissioner of labor to adopt regulations to carry out the purposes of AS 16.10.270 -- 16.10.296.

Sincerely,

SJS/

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST HOUSE BILL NO. 124
 Bill/Resolution No. _____
 Title An Act relating to the purchase of raw fish, and providing for an
 Requested by governor Date January 7, 1981
 effective date.

II. FISCAL DETAIL
 Agency Affected Labor
 Program Category Affected Worker Protection
 BRU, Program, or Subprogram(s) Affected Wage & Hour
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	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)

IV. DATE January 7, 1981 PREPARED BY *Nico Bus* Nico Bus, Finance Officer
 AGENCY Labor
 PHONE 465-2720
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

TO: Dale W. Cheek, Director
Wage & Hour Division
Department of Labor

DATE: April 27, 1979

FILE NO: J-66-663-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Fishermer Subject to
Surety Bond Requirements

By: *Teo C Spengler*
Teo C. Spengler
Assistant Attorney General

You have requested the advice of this department as to whether the security bond requirements of AS 16.10.290 apply to a self-employed fisherperson. The answer to your inquiry depends upon the exact line of business in which the person is engaging or attempting to engage.

AS 16.10.290(a) provides:

A fish processor or primary fish buyer shall file with the Commissioner of Labor a surety bond running to the State of Alaska conditioned upon the promise to pay (1) all persons furnishing labor to a fish processor or primary fish buyer, including contractual employee benefits; and (2) independent registered commercial fishermen for the price of the raw fishery resource purchased from them. The surety or sureties shall be satisfactory, in the determination of the Commissioner.

The definitions of the terms "fish processor" and "primary fish buyer" must be ascertained by reference to other statutes.

AS 16.10.290 provides definitions for terms used in Chapter 10. Therein, "primary fish buyer" is defined as "a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any raw fishery.

resource in intrastate, interstate, or foreign commerce." Clearly, if an individual is purchasing any raw fishery resource, he or she is required to file the security bond, pursuant to AS 16.10.290. If an individual does not purchase any raw fishery resource, he or she is not a "primary fish buyer" under the terms of AS 16.10.296.

AS 16.10.296(3) defines "fish processor" as "a person engaging or attempting to engage in a business for which a license is required under AS 43.75.010 through .090". AS 43.75.010 requires a person engaging or attempting to engage in enumerative lines of business a connection with the state's fisheries to obtain a license. Those lines of business include (1) salmon canneries, both shore based and floating; (2) herring processing plants in the business of canning, curing, salting, freezing or making meat or oil or other process products; (3) crab canneries, both shore based and floating; and (4) clam canneries. AS 43.75.060 requires that a person engaging or attempting to engage in certain lines of business in connection with the state's commercial fisheries obtain a license. The enumerated lines of business include (1) shore-based cold storage and other fish processors, and (2) freezer ships and other floating cold storages. Thus, a person engaging in any of those lines of business is required to be licensed as a fish processor and is subject to the surety bond requirements of AS 16.10.290.

Your specific inquiry was whether a self-employed fisherperson who holds a fish processor's license but processes his or her own fish, and neither purchases fish nor hires employees, is required to post a surety bond pursuant to AS 16.10.290. Under present statutes, if the person was required under AS 43.75.010 through .090 to obtain a license, that person must post a surety bond.

TCS/lm

STATE OF ALASKA

DEPARTMENT OF LABOR

JAY S. HAMMOND, GOVERNOR

BOX 1149
JUNEAU, ALASKA 99811
Ph: 455-2700

March 5, 1981

The Honorable Fred Zharoff
Co-Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Zharoff:

At your request, the Department has prepared and enclosed a position paper for House Bill 124, "An Act relating to the purchase of raw fish; and providing for an effective date." This bill is of primary concern to the Department for changes that need to be enacted this year. Until ample experience had been obtained under Chapter 102, SLA 1977, the Department did not attempt to draft a bill to address the problem areas.

It was apparent from the committee hearings that certain objections have been expressed. If the Committee objects to Section 2, 3 and 5, which delete the provision "or other negotiable security," a committee substitute could be prepared omitting these sections. The Department does recognize that allowing an applicant to deposit securities such as a money market certificate is the least expensive way to comply with this requirement.

According to my testimony to the Committee, Section 4 as well as Section 6 are primary concerns of the Department. Section 4 as submitted is necessary to provide the discretion to grant waivers to those operators who neither hire employees nor purchase fish from anyone else. Section 6 which requires a penalty for those who choose neither to be licensed or bonded is a major concern. This section is supported not only by the Department of Labor but the Departments of Revenue and Fish and Game.

Section 7 repeals AS 16.10.290(c). The Department is cognizant of the abuse of this section by individuals who pledge the property of others, property without clear title or property in bankruptcy. Due to the many problems, the Department did recommend repeal. However, if there are objections, this section of the bill could be deleted and the statutory subsection left in the law. It is recognized that this is the only vehicle which allows some individuals to operate. The Department could address this problem through regulations by placing the burden of proof on the applicant, provided Section 1 was enacted.

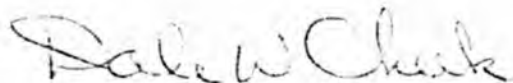
To Richard
I don't have any problem
with Charlie's recommendation

John Sund.

The Honorable Fred Zharoff
March 5, 1981
Page 2

Thank you for the opportunity to provide further comments. Please advise if we can be of further assistance to the Committee. A bill to remedy the deficiencies referenced is most important.

Sincerely,



Dale Cheek, Director
Wage & Hour Division

cc: House Resources Committee

Bill No. House Bill No 124

Date March 5, 1981

Title "An Act relating to the Purchase of raw fish;
and providing for an effective date."

Contact: Dale W. Cheek
465-4870
Judy Knight
465-2700

Chapter 102, SLA 1977 gave the Department of Labor responsibility for the enforcement of the bonding requirements related to the Purchase of Fish. Because of the inequities and difficulties experienced by the Wage and Hour Division in enforcing the requirements of AS 16.10.271 - AS 16.10.296, House Bill No. 124 was introduced this year.

- Section 1 Adds a new section AS 16.10.275 which would give the Commissioner authority to adopt regulations in order to carry out the provisions of Article 6, Purchase of Fish.
- Section 2 Deletes the words "or other negotiable security" from this section which would require a processor or buyer to make a cash deposit or obtain a surety bond. Experience has shown that to execute against a negotiable security such as a savings certificate requires lengthy litigation to the detriment of the worker or fisherman who must wait a considerable period of time for his wages or payment for his fish.
- However, the department does recognize that allowing an applicant to deposit securities such as a Money Market Certificate is the least expensive way to address the requirements.
- Section 3 Deletes "or other security" as referred to in Section 2.
- Section 4 Amends AS 16.10.292 by adding a subsection which allows the Commissioner, after investigation, to grant a waiver for the bonding requirements of Article 6. Waivers may be granted only to those that do not purchase fish or hire employees. The Department is aware of many individuals or partners who catch and process their fish and who, because of the definition of a "fish processor" are required to post a bond. The current statute imposes an unnecessary and inequitable financial burden on these small operators.
- Section 5 Deletes "or other security" previously described in Section 2 and Section 3.
- Section 6 Adds a new section AS 16.10.295 which provides for a penalty for those who fail to obtain the bond as required by Article 6. This section provides for Class A misdemeanor for each violation. Currently the Department has the authority to suspend or revoke the license of those individuals who do not comply with the bonding requirements of AS 16.10.290--296. However,

POSITION PAPER/Department of Labor

the Department has no authority to take action against those individuals who do not obtain a license. In 1979 over 700 parties filed an intent to operate with the Department of Fish and Game and we have good reason to believe that a large number of those individuals or companies did operate within the State as primary fish buyers or processors. Less than 200 of that number actually posted the bond with the Department of Labor as required by the law. Only a slightly larger number obtained a license from the Department of Revenue.

The necessity for a penalty section is a primary concern because we have no enforcement power against those who are neither licensed nor have obtained bonding. It is apparent that these unlicensed, unbonded operators are causing the majority of the problems. The enactment of a penalty section would serve as a deterrent to those who would otherwise fail to comply with the law.

Section 7 Repeals AS 16.10.290(c) which allows the Department to waive the requirement of posting the bond if the fish processor or primary fish buyer has more than \$10,000 in lienable property in the state. In recovering against such property pledged, the department has found that in many cases the property listed is already heavily mortgaged or worth much less than the applicant alleged. In some cases the applicant did not even own the property. The Department does not have the resources to do title searches and other investigations to ascertain if the property pledged is free and clear.

Section 8 Provide for effective dates.
and 9

The Department of Labor recommends that legislation be enacted to provide for a means of enforcement as well as to alleviate the inequities that currently exist. The Department of Fish and Game and Revenue have indicated their support for this bill.

STATE OF ALASKA

DEPARTMENT OF LABOR

JAY S. HAMMOND, GOVERNOR

BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2700

*Koils
File* *HB 124*

March 5, 1981

The Honorable Fred Zharoff
Co-Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Zharoff:

At your request, the Department has prepared and enclosed a position paper for House Bill 124, "An Act relating to the purchase of raw fish; and providing for an effective date." This bill is of primary concern to the Department for changes that need to be enacted this year. Until ample experience had been obtained under Chapter 102, SLA 1977, the Department did not attempt to draft a bill to address the problem areas.

It was apparent from the committee hearings that certain objections have been expressed. If the Committee objects to Section 2, 3 and 5, which delete the provision "or other negotiable security," a committee substitute could be prepared omitting these sections. The Department does recognize that allowing an applicant to deposit securities such as a money market certificate is the least expensive way to comply with this requirement.

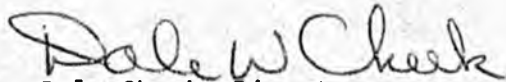
According to my testimony to the Committee, Section 4 as well as Section 6 are primary concerns of the Department. Section 4 as submitted is necessary to provide the discretion to grant waivers to those operators who neither hire employees nor purchase fish from anyone else. Section 6 which requires a penalty for those who choose neither to be licensed or bonded is a major concern. This section is supported not only by the Department of Labor but the Departments of Revenue and Fish and Game.

Section 7 repeals AS 16.10.290(c). The Department is cognizant of the abuse of this section by individuals who pledge the property of others, property without clear title or property in bankruptcy. Due to the many problems, the Department did recommend repeal. However, if there are objections, this section of the bill could be deleted and the statutory subsection left in the law. It is recognized that this is the only vehicle which allows some individuals to operate. The Department could address this problem through regulations by placing the burden of proof on the applicant, provided Section 1 was enacted.

The Honorable Fred Zharoff
March 5, 1981
Page 2

Thank you for the opportunity to provide further comments. Please advise if we can be of further assistance to the Committee. A bill to remedy the deficiencies referenced is most important.

Sincerely,




Dale Cheek, Director
Wage & Hour Division

cc: House Resources Committee

Bill No. House Bill No 124

Date March 5, 1981

Title "An Act relating to the Purchase of raw fish;
and providing for an effective date."

Contact: Dale W. Cheek
465-4870
Judy Knight 
465-2700

Chapter 102, SLA 1977 gave the Department of Labor responsibility for the enforcement of the bonding requirements related to the Purchase of Fish. Because of the inequities and difficulties experienced by the Wage and Hour Division in enforcing the requirements of AS 16.10.270 - AS 16.10.296, House Bill No. 124 was introduced this year.

- Section 1 Adds a new section AS 16.10.275 which would give the Commissioner authority to adopt regulations in order to carry out the provisions of Article 6, Purchase of Fish.
- Section 2 Deletes the words "or other negotiable security" from this section which would require a processor or buyer to make a cash deposit or obtain a surety bond. Experience has shown that to execute against a negotiable security such as a savings certificate requires lengthy litigation to the detriment of the worker or fisherman who must wait a considerable period of time for his wages or payment for his fish.
- However, the department does recognize that allowing an applicant to deposit securities such as a Money Market Certificate is the least expensive way to address the requirements.
- Section 3 Deletes "or other security" as referred to in Section 2.
- Section 4 Amends AS 16.10.292 by adding a subsection which allows the Commissioner, after investigation, to grant a waiver for the bonding requirements of Article 6. Waivers may be granted only to those that do not purchase fish or hire employees. The Department is aware of many individuals or partners who catch and process their fish and who, because of the definition of a "fish processor" are required to post a bond. The current statute imposes an unnecessary and inequitable financial burden on these small operators.
- Section 5 Deletes "or other security" previously described in Section 2 and Section 3.
- Section 6 Adds a new section AS 16.10.295 which provides for a penalty for those who fail to obtain the bond as required by Article 6. This section provides for Class A misdemeanor for each violation. Currently the Department has the authority to suspend or revoke the license of those individuals who do not comply with the bonding requirements of AS 16.10.290--296. However,

the Department has no authority to take action against those individuals who do not obtain a license. In 1979 over 700 parties filed an intent to operate with the Department of Fish and Game and we have good reason to believe that a large number of those individuals or companies did operate within the State as primary fish buyers or processors. Less than 200 of that number actually posted the bond with the Department of Labor as required by the law. Only a slightly larger number obtained a license from the Department of Revenue.

The necessity for a penalty section is a primary concern because we have no enforcement power against those who are neither licensed nor have obtained bonding. It is apparent that these unlicensed, unbonded operators are causing the majority of the problems. The enactment of a penalty section would serve as a deterrent to those who would otherwise fail to comply with the law.

Section 7 Repeals AS 16.10.290(c) which allows the Department to waive the requirement of posting the bond if the fish processor or primary fish buyer has more than \$10,000 in lienable property in the state. In recovering against such property pledged, the department has found that in many cases the property listed is already heavily mortgaged or worth much less than the applicant alleged. In some cases the applicant did not even own the property. The Department does not have the resources to do title searches and other investigations to ascertain if the property pledged is free and clear.

Section 8 Provide for effective dates.
and 9

The Department of Labor recommends that legislation be enacted to provide for a means of enforcement as well as to alleviate the inequities that currently exist. The Department of Fish and Game and Revenue have indicated their support for this bill.