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# Alaska Seafood Marketing Institute

526 Main Street Juneau, Alaska 99801 (907) 586-2902



"Promoting Alaska's Finest Resource"

March 10, 1982

TO: The Senate Labor and Commerce Committee:  
Senator Robert Mulcahy, Chairman;  
Senators Nels Anderson, Jr., Bettye Fahrenkampf, Pat Rodey and  
Richard Zeigler.

FROM: Eric Eckholm, -Executive Director  
Alaska Seafood Marketing Institute

RE: csSB771

The Alaska Seafood Marketing Institute would like to express its support for the committee substitute for Senate Bill 771. The proposal to exempt restaurants, grocery stores and retail fish markets from provisions requiring a special bond from businesses which purchase fish directly from the fishermen should provide a stimulus to growth of fresh seafood marketing within Alaska.

The bond required by the Department of Labor exists for the purpose of protecting the fisherman making substantial deliveries of product to a processor or other buyer. The committee substitute clarifies the intent of the bonding requirement, and will make it easier for fishermen and retailers to reach a greater percentage of the potential in-state market for fresh seafood.

It is clear that this bill would benefit the fishing industry in Alaska, would eliminate provisions that merit the appellation of "red tape" from the standpoint of the retailer or restaurateur; and would probably result in a time savings for employees of the Department of Labor who could devote more attention to their drive to enforce the bonding requirement for large-scale buyers and processors. We urge you to recommend passage of the bill to the entire Senate.

Sen. Mulcahy  
Em 119

Hein ✓

Original sponsor: Eliason

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 771 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act exempting restaurants, grocery stores, and  
7 established fish markets from the labor bond required  
8 of fish processors and primary fish buyers; and provid-  
9 ing for an effective date."

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

11 \* Section 1. AS 16.10 is amended by adding a new section to read:

12 Sec. 16.10.293. EXEMPTIONS FROM BONDING REQUIREMENT. (a) Restau-  
13 rants, grocery stores, and established fish markets are exempt from the  
14 bonding requirement of AS 16.10.290 - 16.10.295.

15 (b) For purposes of this section

16 (1) "established fish market" means a market maintained in a  
17 permanent structure exclusively for the sale of <sup>seafood</sup> fish to the general  
18 public at retail;

19 (2) "grocery store" means a store maintained for the sale of  
20 food products exclusively to the general public at retail;

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

24 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
25 070(c).



Official Business

# Alaska State Legislature

## Senate

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

Current Statutory Requirement for Restuarants Classified as a "Fisheries Business" (as a primary fish buyer):

- 1) Must file an "intent to operate " statement with the Department of Fish and Game
- 2) Must file weekly fish tickets with the Department of Fish and Game
- 3) Must post a \$10,000 bond with the Department of Labor
- 4) Must obtain a "fisheries business license" from the Department of Revenue
- 5) Must file a surety bond or prove lienable property or prepay the tax to the Department of Revenue
- 6) Must pay the raw fish tax to the Department of Revenue

Bill No. Senate Bill 771

Date March 10, 1982

Title "An Act excluding restaurants from the labor bond required of fish processors and primary fish buyers; and providing for an effective date."

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

*Dale Cheek*  
*Judy Knight*

Senate Bill 771 exempts "restaurants" from the bonding requirements in AS 16.10.290 - 16.10.295 and further defines "restaurant." The retail business sector has not presented a problem to the department in enforcement of AS 16.10.290 - 16.10.290. Claims for recovery of employee wages have and can be pursued through Title 23 for retail employees.

The "restaurant" is generally an established fixed business and the worker or fisherman would have ready access or other recourse to recover wages or be paid for fish sold. The street vendor generally is a self employed individual and we are informed that it is a considerable financial burden on such small operators to acquire the necessary bonding.

The exemption provided by this bill could be expanded to include retail outlets who are a fixed establishment. A similar bill (House Bill 744) would exempt all retail fish vendors and poses some concerns for those vendors who relocate frequently and sell from vans or trucks. Chapter 18, SLA 1981 provides an exemption for those operations that do not purchase fish or hire employees.

This bill would have no fiscal impact on the department.

The Department of Labor supports passage of this bill.

# ALASKA STATE LEGISLATURE - SENATE



SENATOR RICHARD I. ELIASON  
P.O. BOX 143  
SITKA, ALASKA 99835  
POUCH V  
JUNEAU, ALASKA 99811

COMMITTEES  
FINANCE  
RESOURCES  
STATE AFFAIRS

February 23, 1982

## MEMORANDUM

To: Senator Bob Mulcahy, Chairman  
Senate Labor and Commerce Committee

From: Senator Dick Eliason *Dick E*

Re: Senate Bill 771

I recently introduced S.B. 771 which would exclude restaurants from obtaining the labor bond which is required of fish processors and primary fish buyers. The bill has been referred to the Labor and Commerce Committee and I would appreciate you scheduling a hearing for it.

Under current statute a restaurant is classified as a primary fish buyer and as a fisheries business as it is the entity "who first actually and physically processes the fishery resource" (AS 43.75.015 (c)) by cooking it. Therefore restaurants must go through all of the procedures to meet requirements for processors. These include filing an "intent to operate" statement with the Fish and Game Department, filing fish tickets with the Fish and Game Department each week, posting a \$10,000 labor bond with the Labor Department, obtaining a "fisheries business license" from the Revenue Department, filing a surety bond or prove lienable property or prepay the tax to the Revenue Department, and must file and pay this raw fish tax to the Revenue Department.

Obviously these are a lot of "hoops to jump through" for a restaurant which simply wants to include fresh seafood on its menu. It is evident to anyone who dines at Alaskan restaurants that it is often difficult to find fresh Alaskan seafood offered. My goal with S.B. 771 is to encourage the availability of good fresh seafood to Alaskans and to visitors to our state.

Senator Bob Mulcahy  
February 23, 1982  
Page 2

It is apparent when studying the various requirements for restaurants that the one which is the least necessary and by far the most costly and difficult is the labor bond. The other steps have some justification (management data from fish tickets, payment of the raw fish tax as these fish would go untaxed otherwise, and so on). However, the labor bond is meant to protect fishermen and cannery workers from fly-by-night fish buyers and seasonal operators who might buy fish or hire labor and leave without paying them. This is unnecessary for restaurants and is made even more ridiculous as restaurants already must meet labor protection requirements whether they buy fish or not. The labor bond is also very expensive to obtain, particularly for a small operation.

Currently the Department of Labor does not even bother to enforce the labor bond requirement for restaurants as they feel restaurants buy only small quantities of raw fish and are not likely to default to fishermen. The risk involved with breaking the law, however, may be enough to make some restaurants avoid offering fresh fish. Others, because they can't afford to buy the labor bond, may buy and serve fish but fail to do any of the required steps including paying the rawfish tax. Therefore, the State loses the revenue on the fish which are sold in restaurants.

I believe that the cost of the raw fish tax to a restaurant is so minimal that most would not mind remaining in compliance with all of the tax and paperwork requirements if the one which is the big financial burden, the labor bond, were removed.

Again, my goal is to encourage the availability of fresh Alaskan seafood to the consumer and provide a market alternative to fishermen. I believe we can meet our goals of encouraging availability of seafood, improving compliance with the necessary and purposeful paperwork and tax requirements and simplifying the permitting process by eliminating the labor bond requirement for restaurants.

chapter is grounds for suspension of a fishing license or permit by the Department of Fish and Game. (§ 2 ch 33 SLA 1962)

Article 6. Purchase of Fish.

Section

- 270. Purchase of fish by the pound
- 280. Price disputes between fishermen and fish processors
- 290. Security for collection of wages and payment for raw fish

Section

- 292. Filing evidence of compliance
- 294. Suspension and revocation of license
- 296. Definitions

Sec. 16.10.270. Purchase of fish by the pound. (a) A fish processor or primary fish buyer shall purchase raw fish by the pound. The poundage of the fish to be purchased shall be determined by weighing the fish unless both the buyer and seller agree in writing upon a sample weighing technique which will fairly determine the average weight of the fish purchased.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both. (§ 1 ch 49 SLA 1965; am § 1 ch 34 SLA 1969; am § 1 ch 102 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "fish processor or primary fish buyer" for "primary buyer" near the beginning of subsection (a). Legislative committee report. — For report on ch. 34, SLA 1969 (CSHB 40 am S) see 1969 House Journal, p. 142.

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as certified by the Department of Fish and Game, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 30 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970)

Revisor's note (1970). — In ch. 242, SLA 1970, AS 16.10.280 was incorrectly designated AS 16.10.290.

Sec. 16.10.290. Security for collection of wages and payment for raw fish. (a) 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.

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(b) The amount of the bond shall be \$10,000. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

(c) A person applying for a license as a fish processor or primary fish buyer who has less than \$10,000 in lienable property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. No bond is required if the fish processor or primary fish buyer has more than \$10,000 in lienable property as specified in this subsection.

(d) Upon certification by the commissioner that a person applying for a license as a fish processor or primary fish buyer has complied with §§ 290 — 296 of this chapter, the Department of Revenue may issue that person a license to engage in the business of fish processor or primary fish buyer.

(e) The commissioner may accept the assignment of a claim held by a person against a fish processor or primary fish buyer under this section and may bring suit upon the bond, cash deposit or other security on behalf of the assignor in the superior court of the judicial district in which the work is done or in any judicial district in which jurisdiction may be obtained. This action shall not be construed to limit the right of a person having a claim under §§ 270 — 296 of this chapter against a fish processor or primary fish buyer to bring suit upon the bond, cash deposit or other security in his own right, in which case a copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed. The commissioner shall maintain a record, available for public inspection, of all suits commenced under this subsection. The service shall constitute service on the surety, and the commissioner shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received.

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

(g) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit. (§ 2 ch. 102 SLA 1977)

**Sec. 16.10.292. Filing evidence of compliance.** A fish processor or primary fish buyer subject to §§ 270 — 296 of this chapter shall initially file evidence of his compliance with the bonding requirements of §§ 290

— 296 of this chapter, in the form prescribed by the commissioner. (§ 2 ch 102 SLA 1977)

**Sec. 16.10.294. Suspension and revocation of license.** (a) If a final judgment impairs the liability of the surety upon the bond or depletes the cash deposits or other security so that there is not in effect the bond, undertaking cash deposit or other security in the full amount prescribed in § 290 of this chapter, the license of the fish processor or primary fish buyer shall be suspended until the liability in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(b) If a bonding company cancels its bond of a fish processor or primary fish buyer, the fish processor's or primary fish buyer's license shall be revoked. He may again obtain a license by complying with the requirements of this chapter.

(c) If a licensed fish processor or primary fish buyer fails to fulfill his obligations as set out in § 290 of this chapter, his license shall be suspended for a period of time the commissioner determines is appropriate. After three suspensions his license may be permanently revoked.

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

(e) If the commissioner determines that a fish processor or primary fish buyer is acting in violation of §§ 270 — 296 of this chapter, he shall give written notice prohibiting further action by the person as a fish processor or primary fish buyer. The prohibition continues until the person has submitted evidence acceptable to the commissioner showing that the violation has been corrected.

(f) A person affected by an order issued under this chapter may seek equitable relief preventing the commissioner from enforcing the order.

(g) In an action instituted in the superior court by the commissioner or his representative, a person acting in the capacity of a fish processor or primary fish buyer in violation of this chapter may be enjoined from acting as a fish processor or primary fish buyer. (§ 2 ch 102 SLA 1977)

**Sec. 16.10.296. Definitions.** In §§ 270 — 296 of this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of labor;
- (2) "fish" means any species of aquatic fin fish, invertebrates and amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle, found in or introduced into the state;
- (3) "fish processor" means a person engaging or attempting to engage in a business for which a license is required under AS 43.75.010 — 43.75.090;
- (4) "primary fish buyer" means 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

Effective dates. — Section 4, ch. 18, June 3, 1981, in accordance with AS SLA 1981, makes this section effective 01.10.070(c).

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as certified by the Department of Fish and Game, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970; am § 1 ch 59 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "120" for "30" near the middle of the section.

Sec. 16.10.291. Waiver of bonding requirement. The commissioner may, after investigation, grant a waiver from the bonding requirement of AS 16.10.290 -- 16.10.296 for those operations that do not purchase fish or hire employees. (AS 16.10.292(b); § 2 ch 18 SLA 1981)

Effective dates. — Section 5, ch. 18, SLA 1981 makes this section effective December 31, 1981. enacted as AS 16.10.292(b) and was renumbered by the revisor of statutes under AS 01.05.031(b).

Editor's note. — This section was

Sec. 16.10.295. Penalty. A person who is required to obtain the bond required by AS 16.10.290 -- 16.10.296 and fails to obtain that bond is guilty of a class A misdemeanor. Each day a violation occurs constitutes a separate offense. (§ 3 ch 18 SLA 1981)

Cross references. — As to sentences for misdemeanors, see AS 12.55.135. SLA. 1981, makes this section effective June 3, 1981, in accordance with AS 01.10.070(c).

Effective dates. — Section 4, ch. 18, 01.10.070(c).

Article 7. Commercial Fishing Loan Act.

Section	Section
310. Powers of the department	337. Deficiencies and transfer of entry permits after foreclosure
320. Limitations on loans	338. Entry permits as collateral
330. [Repealed]	339. Regulations
333. Loans for purchase of Alaska limited entry permits	342. Special account established
335. Default and foreclosure	360. Definitions

Sec. 16.10.310. Powers of the department. (a) The department may (1) make loans to

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(b) The d

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(i) In this section:

(1) "loan insurance commitment fee" means a fee which is a percentage of the principal amount of a loan to be insured under this section determined by the authority to be actuarially sound for the operation of the loan insurance account;

(2) "loan insurance premium" means an annual insurance premium which is a percentage of the portion of the unpaid principal amount of a loan insured under this section determined by the authority to be actuarially sound for the operation of the loan insurance account or any subaccount.

(j) Notwithstanding (a) — (i) of this section, the authority may establish additional insurance accounts to secure special obligation bonds, and may pay into an insurance account established under this subsection money made available from an appropriation or any other source. An insurance account established under this subsection is not subject to the requirements of (d) and (g) of this section.

(k) A loan may not be insured from a loan insurance account within the enterprise development fund if the loan is for a project the cost of which exceeds \$10,000,000.

(l) A loan in excess of \$1,000,000 may not be insured from a loan insurance account within the enterprise development fund unless at least 20 percent of the principal amount of the loan is retained by a federal or state chartered financial institution or the Alaska Commercial Fishing and Agriculture Bank. (§ 65 ch 106 SLA 1980; am § 39 ch 115 SLA 1981)

**Effect of amendments.** — The 1981 amendment, effective July 28, 1981, added subsections (j) — (l).

**Sec. 44.88.158. Small enterprise loan account.** (a) A small enterprise loan account is established in the enterprise development fund. The account may be composed of money or assets appropriated or transferred to the authority, interest on investments and loans of the small enterprise loan account, the unpledged income of the enterprise development fund, and other money or assets deposited in it by the authority.

(b) The authority may use money in the small enterprise loan account to purchase the guaranteed portion of a loan made by a private financial institution after June 30, 1981, to a small enterprise to pay the cost of a project, as defined in AS 44.88.220, if the loan is guaranteed by the United States or an agency or instrumentality of the United States, including, but not limited to, the Small Business Administration, the National Marine Fisheries Service, and the Farmers Home Administration.

(c) The authority may purchase loans originated by the Alaska Rural Rehabilitation Corporation which are made to agricultural en-

terprises. Loans purchased under this subsection may be secured by substitute collateral if the amount of the loan does not exceed 75 percent of the value of the total collateral for the loan. Loans may be purchased under this subsection only from money appropriated to the small enterprise loan account for that purpose. (§ 65 ch 106 SLA 1980; am § 40 ch 115 SLA 1981)

**Effect of amendments.** — The 1981 amendment, effective July 28, 1981, rewrote this section.

**Editor's notes.** — Section 50, ch. 115, SLA 1981, provides: "MULTI-FAMILY DWELLING ENTERPRISES. (a) Until July 1, 1982, the Alaska Industrial Development Authority may use the assets of the small enterprise loan account established under AS 44.88.158 to purchase a loan made to a project applicant, as defined in AS 44.88.220, for a multi-family dwelling enterprise. Loans may be purchased under this section only from money appropriated to the small enterprise loan account for that purpose.

"(b) A loan purchased under this section may not exceed \$3,000,000 or \$50,000 for each dwelling unit of a multi-family dwelling enterprise, whichever is less.

"(c) The interest rate on the portion of a loan purchased by the Alaska Industrial

Development Authority for a multi-family dwelling enterprise shall be one percent more than the interest rate, as determined under AS 18.56.098(g)(1) and (2), on a mortgage loan purchased under AS 18.56.098(g) or (h) from the proceeds of the most recent issue of taxable bonds before the loan purchased for a multi-family dwelling enterprise.

"(d) A loan may not be purchased under this section after June 30, 1982.

"(e) The authority shall adopt regulations to establish priorities for the purchase of loans for multi-family dwelling enterprises which take into account the need for multi-family housing in the state as reflected by vacancy rates in multi-family housing in different areas of the state.

"(f) In this section "multi-family dwelling enterprise" is a rental or cooperative dwelling of eight or more units."

**Sec. 44.88.159. Interest rates.** (a) The interest rate on a loan financed from the proceeds of tax-exempt bonds or excepted by the authority to be financed from the proceeds of tax-exempt bonds is equal to the cost of funds to the authority. In this subsection "cost of funds" means the true interest cost expressed as a rate on tax-exempt bonds of the authority plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing.

(b) The interest rate on a loan financed from the proceeds of taxable bonds or excepted by the authority to be financed from the proceeds of taxable bonds is equal to the cost of funds to the authority. In this subsection "cost of funds" means the true interest cost expressed as a rate on taxable bonds, plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

(c) The interest rate on a loan purchased by the authority with money in the small enterprise loan account that is not from the proceeds of the sale of a series of bonds is equal to the most recent index of Aa corporate bond yield averages as published by Moody's Investors Service. (§ 41 ch 115 SLA 1981)