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STATE OF ALASKA  
FISCAL NOTE

Revision Date March , 1983

I. REQUEST

Bill/Resolution No.: CSHB 15 (Finance)  
 Title: Commercial Fishing Loans  
 Sponsor: Hayes, Flood, Lindauer, et al.  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development  
 Program Category Affected: Development  
 BRU, Program of Subprogram(s) Affected: Loans & Veterans' Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		44.3	46.9	49.7	52.7	55.9
200 TRAVEL		7.9	8.3	8.8	9.3	9.9
300 CONTRACTUAL		3.0	3.1	3.3	3.5	3.7
400 COMMODITIES		.5	.2	.2	.2	.2
500 EQUIPMENT		5.3	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		2.7	2.8	3.0	3.2	3.4
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		63.7	61.3	65.0	68.9	73.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		63.7	61.3	65.0	68.9	73.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak Phone: 465-2510  
 Division: Loans & Veterans' Affairs Date: 3/24/83  
 Approved by Commissioner: Richard A. Lyon Date: 3/25/83  
 Department: Commerce & Economic Development

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

CSHB 15 (Finance) FISCAL NOTE ANALYSIS:

Provides for an Investigator III position. This position's primary responsibility would be to investigate the residency claims of applicants under the Commercial Fishing Loan Program. This would involve civil as well as criminal investigations. A large amount of the emphasis would be to insure that only qualified applicants receive loans and to prosecute applicants who provide fraudulent claims. There would also be a large amount of follow-up work. CSHB 15 (Finance) provides for an accelerated payback if a borrower terminates his State residency. All figures are based on a 6% inflation increase per year. FY '85 figures are slightly lower than FY '84, due to the elimination of one-time expenditures for equipment and commodities.

1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFI	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	2,838/month	34,056.00							
6.	Benefits		5,279.00							
7.	Supplemental Benefits		2,088.00							
8.	Fixed Benefits		2,880.00							
9.	TOTAL PERSONAL SERVICES		01	44,303.00						
10.	Travel		02	7,872.00						
11.	Contractual		03	2,961.00						
12.	Commodities		04	520.00						
13.	Equipment		05	5,300.00						
14.	Other			2,700.00						
15.	TOTAL COST			63,656.00						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		63,656.00						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

**13** REQUEST FOR  
NEW POSITION

AGENCY Commerce & Economic Development  
PROGRAM Economic Development  
BRU Loans & Veterans' Affairs  
COMPONENT \_\_\_\_\_

**FY 84**

Page i of 1  
Revised Date 3-23-83

HOUSE SPECIAL COMMITTEE ON STATE LOANS  
LETTER OF INTENT FOR CSHB 15 (Loans)

The Commercial Fishing Loan Program is a significant project for the State of Alaska. The program is intended to strengthen the state's fishing industry; to provide economic opportunities to persons who, because of the lack of training or lack of employment in the area of residency, do not have occupational opportunities otherwise available; and to aid persons who are economically dependent on fishing and for whom fishing has been a traditional way of life.

Because of its substantial contribution to the Alaska economy and traditional life style, the extant commercial fishing program is an extremely generous loan program and was intended to be so. The loans can be for up to \$300,000 to be paid back over a maximum of fifteen years at 10.5 percent interest. Frequently there is very little bankable collateral for the loan.

Testimony before the committee, experience of members of the committee, and other available material clearly establish that commercial fishing is a seasonal occupation, and that fishermen are extremely mobile. It has been shown that the pattern of fishing life makes it very difficult, if using the normal indices of intent over a short period such as one year, to distinguish between resident fishermen and non-resident fishermen.

The attractiveness of the program and the difficulty in effectively determining loan eligibility has led to a substantial percentage of fraudulent loan applications. According to the testimony given the committee, even with the current five-year residency requirement, a substantial number of questionable loan applications are filed and a significant number of false applications have been discovered.

Therefore, it is the opinion of the committee and of other legislators familiar with commercial fishing that a one-year residency requirement is not truly adequate to determine residency, which is largely a matter of subjective intent that must be inferred from objective evidence. While certainly a two-year residency requirement does not completely obviate the possibility of fraud, it significantly reduces it. For example, a bona fide Alaskan resident is less likely to spend two consecutive off-seasons outside than one off-season; and a non-resident is less likely to spend two consecutive off-seasons in Alaska than one off-season.

After examining the problem and the possible solutions, the committee has found that a durational residency requirement of two years is the most desirable solution to the problem. No narrower

method has been discovered which would produce satisfactory results. A broader test, such as a five-year residency requirement, would better achieve the aim of preventing fraud, but the gain from requiring a five-year pattern over requiring a two-year pattern is an incremental gain not a gain in kind. On the other hand, a one-year requirement has been shown unable to consistently distinguish a resident fisherman from a non-resident fisherman.

The committee recognizes the importance of the Commercial Fishing Loan Program to Alaska and strongly desires that the program be continued. It also recognizes the possibility of fraud and desires that this possibility be minimized. The committee firmly believes both objectives to be legitimate concerns of the state. The committee is of the considered opinion that these goals are more significant to the state than the opportunity to apply for a commercial fishing loan, after only one season as a resident, is to the individual.

The committee has been unable to find a narrower method of achieving these two objectives. Stronger anti-fraud measures would contribute nothing since the problem is an evidentiary problem, not a problem of penalties. Obviously hiring a horde of investigators would lessen the possibility of fraud, but such action would reduce the program's cost-effectiveness beyond practicality. Specifying other required indicia of residency would have little effect in preventing fraud since these could be obtained by a person desiring to commit fraud, and, more importantly, would result in people who are eligible for loans having their loan applications unfairly denied because they did not meet arbitrary criteria.

The committee understands that durational residency requirements for participation in state programs, especially requirements beyond one year, require substantial justification, and must be related to the particular evil they seek to remedy. There can be no serious question that this residency requirement does indeed relate directly to the evil of fraud in obtaining the loans. Given the facts in this particular situation, other, narrower, means of achieving the goal would not work reasonably satisfactorily. The prevention of fraud is a legitimate state objective and here the possibilities of fraudulently obtaining state benefits are unusually high. The committee is firmly convinced that the two-year requirement is adequately justified.

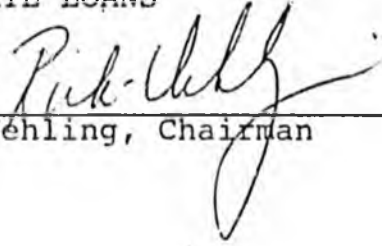
The state's interest in maintaining the fishing loan program is more important than the state's interest in minimizing fraud by requiring a two-year durational residency. It is therefore the

intent of the Legislature that, if a court of competent jurisdiction finally determines the two-year residency requirement to be unconstitutional, the two-year residency requirement should be severed and the program continued.

Should this occur, while recognizing that the effective prevention of fraud will be significantly more difficult, it is the intent of the Legislature that the administrator of the program use all means constitutionally possible to minimize the increase in successful fraud and in fraudulent applications.

Respectfully submitted,

THE HOUSE SPECIAL COMMITTEE  
ON STATE LOANS

  
\_\_\_\_\_  
Rick Uehling, Chairman

Original sponsors: Hayes, Flood,  
Lindauer, et al

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IN THE HOUSE

BY THE SPECIAL COMMITTEE  
ON STATE LOANS

CS FOR HOUSE BILL NO. 15 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing loans (AS 16.-  
10.300 - 16.10.370)."

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

\* Section 1. AS 16.10.310(a) is amended to read:

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years [FIVE YEARS] immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two [ANY ONE] of the past five years, and who actively participated in the fishery during <sup>those periods</sup> ~~that period~~ [that period] for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of two years [FIVE YEARS] immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.-370, who

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial

1 fishing for a livelihood and for whom commercial fishing has  
2 been a traditional way of life [FOR HIM] in Alaska, for the  
3 repair, restoration or upgrading of existing vessels and  
4 gear, for the purchase of entry permits and gear, and for  
5 the construction and purchase of vessels;

6 (C) corporations, partnerships, or joint ventures, 100  
7 percent of which are owned by individual commercial fishermen who  
8 have been state residents for a continuous period of two years  
9 [FIVE YEARS] immediately preceding the date of application for a  
10 loan under AS 16.10.310(a)(1)(B) and have had a crewmember or  
11 commercial fishing license under AS 16.05.480 or a permit under  
12 AS 16.43 for the year immediately preceding the date of applica-  
13 tion and any other two [ANY ONE] of the past five years, and who  
14 actively participated in the fishery during that period, for the  
15 repair, restoration or upgrading of existing vessels and gear,  
16 for the purchase of gear, and for the construction and purchase  
17 of vessels;

18 (2) designate agents and delegate its powers to them as  
19 necessary;

20 (3) adopt regulations necessary to carry out its functions;

21 (4) establish amortization plans for repayment of loans,  
22 which may include extensions for poor fishing seasons or for adverse  
23 market conditions for Alaskan products;

24 (5) enter into agreements with private lending institu-  
25 tions, other state agencies, or agencies of the federal government, to  
26 carry out the purposes of AS 16.10.300 - 16.10.370;

27 (6) enter into agreements with other agencies or organiza-  
28 tions to create an outreach program to make loans under AS 16.10.300 -  
29 16.10.370 in rural areas of the state.

1 \* Sec. 2. -- AS 16.10 is amended by adding a new section to read:

2       Sec. 16.10.315. ALLOCATION OF LOANS. The department shall  
3 allocate at least ten percent of the money that is <sup>appropriated</sup> available to make  
4 loans under AS 16.10.310 for loans of \$35,000 or less made under  
5 AS 16.10.310(a)(1)(B) and (C).

6 \* Sec. 3. AS 16.10.320 is amended by adding a new subsection to read:

7       (j) If a borrower ceases to be a state resident during the term  
8 of a loan made under AS 16.10.310 ~~16.10.370~~, the loan shall be  
9 accelerated and the outstanding principal and interest shall be repaid  
10 by the borrower within 120 days after the state residence terminates.  
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12 \* Sec. 4. This Act takes effect immediately in  
13 accordance with AS 01.10.070 e  
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**Effect of amendments.** — The 1982 amendment, effective June 16, 1982, substituted "AS 16.10.265 — 16.10.296" for "AS 16.10.270 — 16.10.296" in the introductory language, added the language beginning "and includes fish eggs" to the end of paragraph (2), and deleted "raw" preceding "fishery resource" in paragraph (4).

### 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
325. Guarantors	339. Regulations
330. [Repealed]	342. Special account established
333. Loans for purchase of Alaska limited entry permits	360. Definitions
335. Default and foreclosure	

**Sec. 16.10.310. Powers of the department.** (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the purpose of entry permits;

(B) an individual who has been a state resident for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, who (i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residences for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products;

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(5) enter into agreements with private lending institutions, other state agencies, or agencies of the federal government, to carry out the purposes of AS 16.10.300 — 16.10.370;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 — 16.10.370 in rural areas of the state.

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am § 7 ch 113 SLA 1982)

**Effect of amendments.** — The 1977 amendment in paragraph (1)(A) of subsection (a), substituted "crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43" for "commercial fishing license," inserted commas following "three years," "existing vessels and gear," and "entry permits and gear," deleted "and" following "existing vessels and gear," and inserted "for" preceding "the construction and purchase of vessels."

The 1978 amendment, in paragraph (1) of subsection (a), inserted "immediately preceding the date of application for a loan under AS 16.05.300 — 16.05.370" and substituted "any one of the past five years, and who actively participated in the fishery during that period" for "three years" in subparagraph (A) and added subparagraph (C).

The 1979 amendment substituted "one of the past five years" for "three of the past five years" in paragraph (1)(C) of subsection (a).

The 1982 amendment, effective June 25, 1982, in subsection (a), deleted "for the repair, restoration or upgrading of existing vessels and gear" following "during that period" and "and gear, and for the construction and purchase of vessels; and" following "purchase of entry permit" in subparagraph (1)(A), added present subparagraph (1)(B), substituted "AS 16.10.310(a)(1)(B)" for "AS 16.10.300 — 16.10.370" in subparagraph (1)(C), deleted "rules and" preceding "regulations" in paragraph (3), added "or for adverse market conditions for Alaskan products" to the end of paragraph (4), and added paragraph (6).

**Editor's notes.** — Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 64, ch. 113, SLA 1982, provides: "A borrower who receives a loan before the effective date of this Act [June 25, 1982] under AS 16.10.650 — 16.10.720 [now repealed] may receive a loan under

(1) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(A) does not exceed \$300,000;

(2) AS 16.10.310(a)(1)(B) or (C) if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(B) or (C) does not exceed \$100,000."

Section 65 of ch. 113, provides: "A borrower who receives a loan under AS 16.10.310 before the effective date of this Act [June 25, 1982] may receive a loan under

(1) AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act does not exceed \$100,000;

(2) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(A) after the effective date of this Act does not exceed \$300,000."

Section 66 of ch. 113 provides: "Notwithstanding AS 16.10.320(i) and secs. 64 and 65 of this Act the total of all loans that a borrower receives under (1) AS 16.10.650 — 16.10.720; (2) AS 16.10.310 before the effective date of this Act [June 25, 1982]; and (3) AS 16.10.310 after the effective date of this Act, may not exceed \$300,000."

Section 67 of ch. 113 provides: "In secs. 64-66 of this Act a loan to an associate of a borrower is considered to be a loan to the borrower. In this section 'associate of a borrower' has the same meaning set out under AS 16.10.320(d)."

**Sec. 16.10.320. Limitations on loans.** (a) A loan under AS 16.10.310 - 16.10.370

- (1) may not exceed a term of 15 years;
- (2) may not bear interest exceeding 10-1/2 percent;
- (3) shall be secured by a first priority lien and appropriate security agreement; and

(4) may not exceed 90 percent of the appraised value of the collateral used to secure the loan, except that a loan granted under AS 16.10.333 for the purchase of an Alaska limited entry permit may not exceed an amount determined in accordance with (f) or (h) of this section.

(b) A lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. secs. 1271-1279(b); 86 Stat. 909), as amended. In the case of a security agreement given to secure a loan made under AS 16.10.300 - 16.10.370 and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801-842; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code - Secured Transactions (AS 45.09.101 - 45.09.507), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. sec. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under AS 16.10.300 - 16.10.370 and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issued under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce under 46 U.S.C. secs. 808, 835 and 961.

(c) Repealed by § 72 ch 113 SLA 1982.

(d) Loans made to a borrower under AS 16.10.310(a)(1)(A) may not exceed a total of \$300,000. Loans made to a borrower under AS 16.10.310(a)(1)(B) or (C) may not exceed a total of \$100,000. A loan to an associate of the borrower is considered to be a loan to the borrower. For the purposes of this section, "associate of the borrower" means

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(1) a corporation or other organization of which the borrower is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) a person who is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities of the borrower;

(3) a trust or other estate in which the borrower has a substantial beneficial interest or as to which the borrower serves as trustee or in a similar fiduciary capacity.

(e) Two or more individual commercial fishermen who each satisfy the requirements specified in AS 16.10.310(a)(1)(B) may jointly obtain a commercial fishing loan for the construction of a fishing vessel or the purchase of an existing fishing vessel. Loans granted under this subsection

(1) may not exceed the amount specified in (d) of this section multiplied by the number of qualified commercial fishermen applying for the loan;

(2) may not exceed a term of 15 years;

(3) shall be secured by a first priority lien and appropriate security agreement;

(4) may not bear interest exceeding 10-1/2 percent; and

(5) may not exceed 90 percent of the appraised value of the collateral used to secure the loan.

(f) Except as permitted in (h) of this section, a loan made under AS 16.10.310(a)(1)(A) and (B) for the purchase of an Alaska limited entry permit may not exceed 90 percent of the appraised value of the collateral used to secure the loan.

(g) Repealed by § 72 ch 113 SLA 1982.

(h) A loan for an entry permit under AS 16.10.310(a)(1)(B) may be made for up to 100 percent of the appraised value of the collateral used to secure the loan if the borrower demonstrates that (1) the borrower has at least three years of experience as a commercial fisherman in the fishery to which the entry permit applies; and (2) the borrower has not owned an Alaska limited entry permit in the year immediately preceding the application for the loan. In this subsection "three years of experience as a commercial fisherman in the fishery" means that for an accumulated total of three fishing seasons in the same fishery the borrower has actively participated in the commercial harvest of fish under the direction of a limited entry permit holder.

(i) If a loan is made to a borrower under AS 16.10.310(a)(1)(A), a subsequent loan may not be made to the borrower or an associate of the borrower under AS 16.10.310(a)(1)(B) or (C). If a loan is made to a borrower under AS 16.10.310(a)(1)(B) or (C), a subsequent loan may be made to the borrower or an associate of the borrower under AS 16.10.310(a)(1)(A) if the total of the loans received by the borrower or the associate under AS 16.10.310 does not exceed \$300,000. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am §§ 8 — 12, 72 ch 113 SLA 1982)

**Effect of amendments.** — The 1978 amendment rewrote this section.

The 1979 amendment substituted "nine and one-half per cent" for "seven per cent" in paragraph (3) of subsection (a), in paragraph (4) of subsection (c), and in paragraph (4) of subsection (e), and deleted "except that loans granted under this subsection may bear interest at a rate not to exceed eight per cent if the commissioner determines that an increase in the interest rate is necessary for the security of the loan" from the end of paragraph (4) of subsection (c). The amendment also added the language beginning "except that a loan granted under AS 16.10.333" to the end of paragraph (5) of subsection (a), rewrote the first sentence of subsection (d), added the present second sentence of subsection (d), and added subsections (f) and (g).

The 1982 amendment, effective June 25, 1982, rewrote subsections (a) and (d); repealed subsections (c) and (g); and in subsection (e), substituted "AS 16.10.310(a)(1)(B)" for "AS 16.10.310(a)(1)(A)" in the first sentence, substituted "(d) of this section" for "(a)(1) of this section" in paragraph (1), substituted "10-½ percent" for "nine and one-half per cent" in paragraph

(4), and substituted "90 percent" for "75 percent" in paragraph (5). The amendment also substituted "Except as permitted in (h) of this section, a loan made under AS 16.10.310(a)(1)(A) and (B)" for "A loan granted under AS 16.10.333(a)" at the beginning of subsection (f), and added subsections (h) and (i).

**Editor's notes.** — In view of the renumbering of the Uniform Commercial Code in 1980 by the revisor of statutes, the reference in subsection (b) to "AS 45.05.690 — 45.05.794" has been changed to "AS 45.09.101 — 45.09.507."

Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

For limitation on loans received under repealed AS 16.10.650 — 16.10.720; AS 16.10.310 before June 25, 1982; and AS 16.10.310 after June 25, 1982, see editor's note to AS 16.10.310.

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

**Sec. 16.10.325. Guarantors.** A person may act as guarantor if the borrower has insufficient collateral to secure a loan for the purposes described in AS 16.10.310(a)(1)(B). The loan agreement shall specifically describe the property of the guarantor to be used as collateral by the borrower and shall be signed by the guarantor and the borrower. The department shall provide the guarantor with a copy of all notices sent to the borrower by the department. If the loan is for the purchase of an entry permit, the guaranty by the guarantor may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit. (§ 13 ch 113 SLA 1982)

**Effective dates.** — Section 78, ch. 113, June 25, 1982, in accordance with AS SLA 198", makes this section effective 01.10.070(c).

**Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.**

Repealed by § 14 ch 122 SLA 1980.

**Editor's notes.** — The repealed section 54, SLA 1973; § 1, ch. 177, SLA 1976; derived from § 1, ch. 134, SLA 1972; § 4, § 8, ch. 72, SLA 1979.

**Sec. 16.10.333. Loans for purchase of Alaska limited entry permits.** (a) Loans under AS 16.10.320(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit

upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43.010 — 16.43.380 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect his title to the permit or his rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under this section, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 4 ch 83 SLA 1978; am § 1 ch 106 SLA 1980)

**Effect of amendments.** — The 1980 reassignment of entry permits taken as amendment added subsection (f). security for loans after such permits are

**Cross references.** — As to the revoked, see AS 16.43.355(i).

**Sec. 16.10.335. Default and foreclosure.** (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or under AS 16.10.338, the commissioner shall provide the debtor, by registered or certified mail sent to his last known address on file with the commissioner, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner. (§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979)

**Effect of amendments.** — The 1979 amendment inserted "or under AS 16.10.338" in the introductory language of subsection (a) and substituted "his interest in the permit" for "his equitable interest" in the first sentence of subsection (b).

**Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure.** (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the department shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 16.10.333(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) Repealed by § 72 ch 113 SLA 1982.

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982)

**Cross references.** — As to the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.355(i).

**Effect of amendments.** — The 1982 amendment, effective June 25, 1982, repealed subsection (c), which read: "If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who must assume the note subject to all rights and liabilities of the original debtor. The commission shall

provide the commissioner with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43.010 — 16.43.380 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 16.10.310(a). The commissioner then shall determine, in order of presentation, any remaining qualifications. The commissioner shall allow the first applicant meeting all qualifications to assume the note."

**Sec. 16.10.338. Entry permits as collateral.** Alaska limited entry permits may be used as security for loans under AS 16.10.310(a). The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits pledged as security for loans in accordance with this section. (§ 10 ch 72 SLA 1979)

**Sec. 16.10.339. Regulations.** The commission, with the approval of the department, shall adopt regulations to implement AS 16.10.333 — 16.10.337. (§ 4 ch 83 SLA 1978)

**Sec. 16.10.340. Creation of fund.**

**Editor's notes.** — Section 63, ch. 113, SLA 1982, provides: "All assets of the fishermen's mortgage and note fund (AS 16.10.650) are transferred to the commercial fishing revolving loan fund (AS 16.10.340). Repayments of principal and

interest on loans made from the fishermen's mortgage and note fund shall be deposited into the commercial fishing revolving loan fund by the commissioner of the Department of Commerce and Economic Development as they are received."

**Sec. 16.10.342. Special account established.** (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.

(b) Repealed by § 72 ch 113 SLA 1982.

(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under AS 16.10.300 — 16.10.370 or to defray expenses incurred during foreclosure proceedings after a default by an obligor. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982)

**Effect of amendments.** — The 1982 amendment, effective June 25, 1982, repealed subsection (b), which read, "The commissioner may credit the foreclosure

expense account with money earned as a result of an increased interest rate on a commercial fishing loan granted under AS 16.10.320(c).

**Sec. 16.10.360. Definitions.** In AS 16.10.300 — 16.10.370

- (1) "commissioner" means the commissioner of commerce;
- (2) "department" means the Department of Commerce;

(3) "commission" means the Alaska Commercial Fisheries Entry Commission;

(4) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978)

Effect of amendments. — The 1978 amendment added paragraphs (3) and (4).

**Article 8. Salmon Hatcheries.**

Section	Section
380. Regional associations	440. Regulation
385. [Transferred]	460. Inspection of hatchery
420. Conditions of a permit	470. Annual report

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Editor's notes. — As to legislative findings concerning salmon enhancement and purpose of AS 16.10.375 -- 16.10.620, see § 1, ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

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**Sec. 16.10.380. Regional associations.** (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that

- (1) it is comprised of associations representative of commercial fishermen in the region;
- (2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and
- (3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20.005 — 10.20.725, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services. (§ 2 ch 161 SLA 1976; am § 2 ch 59 SLA 1979)

Effect of amendments. — The 1979 amendment added subsection (c).

fishery resource in intrastate, interstate, or foreign commerce. (§ 2 ch 102 SLA 1977)

Article 7. Commercial Fishing Loan Act.

<p>Section</p> <p>300. Declaration of policy</p> <p>310. Powers of the department</p> <p>320. Limitations on loans</p> <p>330. Sale or transfer of mortgages, bonds and notes</p>	<p>Section</p> <p>340. Creation of fund</p> <p>350. Administration of fund</p> <p>360. Definitions</p> <p>370. Short title</p>
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Legislative committee report. — For am FCC), see 1971 House Journal, p. 399; report on ch. 134, SLA 1972 (SCS CSHB 102 1972 House Journal, p. 554.

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**Sec. 16.10.300. Declaration of policy.** It is the policy of the state, under §§ 300 — 370 of this chapter, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. (§ 1 ch 134 SLA 1972; am § 1 ch 54 SLA 1973; am § 1 ch 128 SLA 1975)

**Effect of amendments.** — The 1973 amendment inserted "of a predominantly resident fishery." also inserted "the" preceding "continued maintenance."  
 The 1975 amendment inserted "the rehabilitation of the state's fisheries" and

**Sec. 16.10.310. Powers of the department.** (a) The department may

- (1) make loans to
  - (A) individual commercial fishermen who have been state residents for a continuous period of five years and have had a commercial fishing license for three years for the repair, restoration or upgrading of existing vessels and gear and for the purchase of entry permits and gear and the construction and purchase of vessels; and
  - (B) Repealed by § 2 ch 190 SLA 1976.
  - (2) designate agents and delegate its powers to them as necessary;
  - (3) adopt rules and regulations necessary to carry out its functions;
  - (4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons;
  - (5) enter into agreements with private lending institutions, other state agencies or agencies of the federal government, to carry out the purposes of §§ 300 — 370 of this chapter.
- (b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter. (§ 1

ch 134 SLA 1972; am § 2 ch 54 SLA 1973; am § 2 ch 128 SLA 1975; am § 2 ch 190 SLA 1976)

Effect of amendments. — The 1973 amendment substituted "fishing" for "gear" preceding "license" in paragraph (1) and added "and for the purchase of entry permits and gear and the construction and purchase of vessels" to the end of that paragraph of subsection (a).

The 1975 amendment designated the provisions of paragraph (1) of subsection (a) as present subparagraph (A) of that paragraph, and added subparagraph (B).

The 1976 amendment in subsection (a), repealed paragraph (1)(F), which read "permit holders under §§ 400 — 470 of this chapter, for the construction of hatchery facilities."

Editor's note. — Section 13, ch. 105, SLA 1977, effective January 1, 1978, amended paragraph (1)(A) of subsection (a) to read as follows: "(A) individual commercial fishermen who have been state residents for a continuous period of five years and have been state residents for a continuous period of five years and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under ch. 43 of this title for three years, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels; and".

**Sec. 16.10.320. Limitations on loans.** A commercial fishing loan may not exceed \$150,000. A loan may not run longer than 15 years or bear interest exceeding seven per cent, and it shall be secured by a first lien and appropriate security agreements, except that a lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. secs. 1271 — 1279b; 86 Stat. 909), as amended. In the case of a security agreement given to secure a loan made under secs. 300 — 370 of this chapter and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911 — 984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801 — 842; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code — Secured Transactions (AS 45.05.690 — 45.05.794), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. sec. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under secs. 300 — 370 of this chapter and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issue under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce

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under 46 U.S.C. secs. 808, 835 and 961. Loans may not exceed 75 per cent of the appraised value of the collateral used to secure the loan. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977)

**Effect of amendments.** — The 1973 amendment added the language beginning "except that" to the end of the second sentence and added the present third and fourth sentences.

The 1975 amendment added the language beginning "and loans granted under § 310(a)(1)(B)" to the end of the second sentence and "Except for loans granted under § 310(a)(1)(B) of this chapter" to the beginning of the fifth sentence.

The 1977 amendment substituted "\$150,000" for "\$100,000" in the first sentence, deleted language relating to collateral for loans granted under § 310(a)(1)(B) of this chapter from the end of the second sentence, and deleted "Except for loans granted under § 310(a)(1)(B) of this chapter" from the beginning of the last sentence.

**Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.** (a) The commissioner of commerce may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages, bonds and notes held by the Department of Commerce as security for loans made under this chapter.

(b) The commissioner of commerce and economic development may sell or transfer at par value to the Department of Revenue the mortgages, bonds and notes held by the Department of Commerce and Economic Development as security for loans made under this chapter. However, the commissioner of commerce and economic development may not transfer an interest in a vessel documented under the laws of the United States to the Department of Revenue, except as permitted by the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911 — 984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801 — 842; 39 Stat. 728), as amended, so long as those two Acts remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those two Acts. The Department of Revenue, for the fiscal year ending June 30, 1976, shall purchase all the mortgages, bonds and notes offered until the current principal amount of all the mortgages, bonds and notes purchased and held by the Department of Revenue equals \$7,000,000. The Department of Revenue, for the fiscal year ending June 30, 1977, shall purchase all the mortgages, bonds and notes offered until the current principal amount of all the mortgages, bonds and notes purchased and held by the Department of Revenue equals \$9,000,000. After June 30, 1977, the Department of Revenue shall purchase all the mortgages, bonds and notes offered. (§ 1 ch 134 SLA 1972; am § 4 ch 54 SLA 1973; am § 1 ch 177 SLA 1976)

**Effect of amendments.** — The 1973 amendment inserted "bonds" in subsection (a) and in the first sentence of subsection (b), added the present second and third

sentences of that subsection, and deleted the former second sentence of that subsection.

The 1976 amendment inserted "for the fiscal year ending June 30, 1976" in the third sentence of subsection (b), substituted "\$7,000,000" for "\$5,000,000" at the end of that sentence, and added the fourth and fifth sentences of that subsection.

**Sec. 16.10.340. Creation of fund.** There is a commercial fishing revolving loan fund to carry out the purpose of §§ 300 — 370 of this chapter. (§ 1 ch 134 SLA 1972; am § 2 ch 177 SLA 1976)

**Effect of amendment.** — The 1976 amendment deleted "which shall not exceed \$1,000,000" following "revolving loan fund."

**Sec. 16.10.350. Administration of fund.** The commissioner shall administer the loan fund. (§ 1 ch 134 SLA 1972)

**Sec. 16.10.360. Definitions.** In §§ 300 — 370 of this chapter  
 (1) "commissioner" means the commissioner of commerce;  
 (2) "department" means the Department of Commerce. (§ 1 ch 134 SLA 1972)

**Sec. 16.10.370. Short title.** Sections 300 — 370 of this chapter may be cited as the Commercial Fishing Loan Act. (§ 1 ch 134 SLA 1972)

**Article 8. Salmon Hatcheries.**

Section	Section
375. Regional salmon plan	443. Department assistance and cooperation
380. Regional associations	445. Egg sources
400. Permits for salmon hatcheries	450. Sale of salmon and salmon eggs by hatchery
410. Hearings before permit issuance	460. Inspection of hatchery
420. Conditions of a permit	470. Annual report
430. Alteration, suspension or revocation of permit	475. Definitions
440. Regulation	

**Editor's note.** — Section 1, ch. 111, SLA 1974, provides: "It is the intent of this Act to authorize the private ownership of salmon hatcheries by qualified nonprofit corporations for the purpose of contributing, by artificial means, to the rehabilitation of the state's depleted and depressed salmon fishery. The program shall be operated without adversely affecting natural stocks of fish in the state and under a policy of management which allows reasonable segregation of returning hatchery-reared salmon from naturally occurring stocks."

**Sec. 16.10.375. Regional salmon plan.** The commissioner shall designate regions of the state for the purpose of salmon production and have developed and amend as necessary a comprehensive salmon plan for each region, including provisions for both public and private nonprofit hatchery systems. Subject to plan approval by the commissioner, comprehensive salmon plans shall be developed by regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations

SENATE AMENDMENT

By Labor & Commerce

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

To: \_\_\_\_\_ CS HOUSE BILL No. 15 (Loans) an

PAGE: 3 LINE: 3

AMEND \*SEC. 2 TO READ:

\*Sec. 2. AS 16.10 is amended by adding a new section to read:

Sec. 16.10.315. ALLOCATION OF LOANS. The department shall allocate at least ten percent of the money that is appropriated for a state fiscal year to make loans under AS 16.10.310 for loans of \$35,000 or less made under AS 16.10.310(a)(1)(B) and (C). An allocation made under this section terminates on April 15 of the state fiscal year for which the allocation has been made.

AMENDMENTS TO CSHB 15 (LOANS) AM  
REQUESTED BY SENATOR ELIASON AT  
MARCH 29 SENATE LABOR AND COMMERCE  
COMMITTEE HEARING

Add a new sec. 4 to read:

\* Sec. 4. AS 16.10.335(a)(6) is amended to read:

(6) a statement that the note may be paid in full less unearned interest within 120 [90] days from the post-mark date of the notice;

Add a new sec. 5 to read:

\* Sec. 5. AS 16.10.335(b) is amended to read:

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a)(6) of this section, his interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner.

Add a new sec. 6 to read:

\* Sec. 6. AS 16.10.337(b) is amended to read:

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 -- 16.43.330, the department shall promptly advertise and sell the permit. If the proceeds of the sale of a permit which was not purchased with any proceeds of a loan under AS 16.10.310 -- 16.10.360 exceed the amount necessary to pay the note, in full plus penalties, cost of administering the note and costs and attorney fees, the excess will be transferred by the commissioner to the debtor [NOTIFY THE DEBTOR OF THIS FACT. THE DEBTOR HAS 30 DAYS FROM THE POST-MARK DATE OF THE NOTICE TO NOMINATE A PERSON QUALIFIED TO ASSUME THE NOTE. THE PERSON NOMINATED MUST QUALIFY UNDER THE REQUIREMENTS OF AS 16.10.333(a). IF QUALIFIED, HE MAY ASSUME ALL RIGHTS AND LIABILITIES OF THE ORIGINAL DEBTOR].

Renumber current sec. 4, the effective date, to be sec. 7.

A M E N D M E N T

TO: SCS CSHB 15(L&C)

By Mulcahy

Page 4, between line 8 and 9, insert the following:

"\* Sec. 6. SAVING PROVISION. If an application for a loan under AS 16.-10.310 - 16.10.370 is filed with the department before the effective date of this Act, eligibility for the loan shall be determined by the law in effect at the time of the filing of the application if the applicant is eligible under the terms of that law."

HOUSE JOURNAL SUPPLEMENT

March 9, 1963

No. 22

FISCAL NOTE

HB  
15

I. REQUEST  
 Bill/Resolution No. HR 15 No. 1  
 Title An Act relating to eligibility for commercial fishing loans.  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL  
 Agency Affected Department of Commerce and Economic Development  
 Program Category Affected Economic Development  
 BRU, Program, Or Subprogram(s) Affected Division of Loans & Veterans' Affairs  
 (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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		63.7	61.3	64.4		

FUNDING (Thousands of Dollars)

		63.7	61.3	64.4		
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Increased fund is required for the following reasons:

- Five-year residents have a longer track record in Alaska, which makes their residency indicators much more obvious and more easily obtainable. A one-year residency requirement would require more investigative work into the residency background of the applicant.
- During certain times of the year, many one-year residents do not have a prepared tax return, which is one of the main documents used in determining residency.
- Contact with other states will be necessary in cases which involve prepared term residency to determine the actual dates of residence.

IV. DATE \_\_\_\_\_ PREPARED BY N. A. Hovak, Director  
 AGENCY Department of Commerce & Economic Development  
 PHONE 464-2555 Division of Loans & Veterans' Affairs  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/62)  
 OMB Reviewed by: Guv Roll *BR*

Page 2 of 2

Personal Services	Location	Monthly Salary	Yearly Salary	Yearly Benefits	Total Salary & Benefits
1 Investigator III	AWA	\$ 2838	\$ 34,056		\$ 34,056
<u>Benefits</u>	SBS Benefits			\$ 2,088	
	Monthly Benefits			2,880	
	Variable Benefits			5,279	10,247
<b>Total Personal Services</b>					<b>44,303</b>
<b>TRAVEL - One trip per month</b>					
Airfare \$486 X 12 trips plus 2 days per diem @ \$85 per trip					
					7,872
<b>CONTRACTUAL</b>					
Postage				\$ 311	
Telephone @ \$2500 for long distance				2,500	
Xerox				157	2,961
<b>COMMODITIES</b>					
Calculator @ \$280				\$ 280	
Setup costs for Desk				40	
Average yearly supplies				200	520
<b>EQUIPMENT</b>					
New Position Modular Furniture Setup Costs				\$ 5,300	5,300
<b>ASHA</b>					
Space Rental				\$ 2,700	2,700
<b>Total Estimated Expenses</b>					<b>\$ 63,656</b>

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

March 21, 1983

The Honorable Rick Uehling  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Uehling:

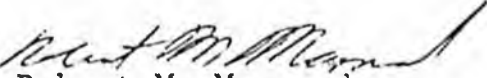
This letter is in response to your request for a brief written summary of the Department of Law's testimony before your committee on the subject of the constitutionality of a two-year residency requirement for commercial fishing loans.

Simply, we believe that the two-year requirement is very defensible under either the state or federal constitution. On the other hand, the law in this area is uncertain; any length of time beyond one year is past the present boundaries of judicially approved requirements and therefore carries a substantial risk of being found unconstitutional. If, however, any program can sustain a two-year residency requirement, both the student loan program and the commercial fishing loan program present the most compelling circumstances for such an extension. Both programs must address the very real problems of mobility of loan recipients coupled with an extremely generous loan program. Consequently, the normal superficial indicia of a subjective intent to consider oneself a citizen of the State of Alaska, such as voter registration, drivers license, and even the one-year residency requirement, are not as valid as they would be in other programs. As a result, we believe that a court could readily find that there is a rationale basis for choosing a two-year residency requirement over either a one-year residency requirement or any of the other objective standards normally used by the legislature.

If you have any questions, or if you wish further testimony on this or any other residency requirement, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

RMI:mr

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 28, 1983

SUBJECT: Commercial fishing loans  
(CSHB 15 (Loans))

TO: Senator Richard I. Eliason  
Chairman, Senate Labor and  
Commerce Committee

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked whether the provision in Sec. 3 of CSHB 15 (Loans) which provides that a loan shall be accelerated if the borrower terminates state residency creates a constitutional question.

If the requirement is addressed to a purpose independent of residency and is rationally related to that purpose, in my opinion it would be sustained as constitutional. The supporting reason offered for the clause is that termination of residency by the borrower lessens the security of the loan since collection is more difficult when the borrower is a nonresident and the underlying security may not be as well cared for.

Repayment of state loans is a valid objective. Whether the requirement furthers this purpose and is rationally related to it is a question of fact. In my opinion the requirement would be sustained if a court finds the legislature reasonably determined there was a significant correlation between loan repayment and residency.

BGB:ljb  
12/017

Box 203  
Petersburg, Ak 99833  
April 9, 1983

LJC

Governor Bill Sheffield  
Governor for Alaska  
Juneau, Alaska 99801

Dear Governor Sheffield:

I was recently reading about HB15 and the rush to get this bill approved through the Senate and House to extend the fishing loan program for gear, vessels and limited entry permits.

I have recently been made aware of the sport fishing industry - that is lodges and outfitters in the more remote areas of the State that have visitors to Alaska from all over the world for sport fishing. This is really commercial fishing in that it is a large industry that perhaps alot of us were not aware of.

Is there any way that the fishing loan program could be extended to help those types of operation for development. I would like to see the State be more involved with that segment of the commercial market as well.

This is new information for me so I am very interested in finding out everything that the State has available and is doing for this economic development.

Thank you for any information and help you can supply.

Sincerely,



Karen Hofstad

cc: Rep. Ron Wendte  
Rep. Jack McBride  
Rep. Jerry Ward  
Sen Robert Ziegler  
Sen Richard Eliason

*Hi! Haven't  
it's going to be  
busy & not  
follow up on it  
close enough  
D.*

3/28/84

KCM

Senator Eliason has requested an analysis of several proposed amendments to CSSH 16(Fin). These are set forth below with the requested comment.

Proposed amendment #1.

Page 1, line 16. After "unless" delete "the insured or another person who resides in the insured's household and is covered by the policy" and add "the person charged".

We would urge that this amendment not be adopted. The effect of the change is to permit the insurer to charge a premium surcharge or increase the premium for the violations of a person who is not normally an insured under the policy. The extension of this provision to persons not living in the household will result in a hit or miss situation as far as charging the additional for the violation. The insurer will not have reasonable access to the name and drivers license number of an incidental driver. The logic behind allowing an insurer to make a charge of this kind is that it is a measure of the increased propensity of the driver with violations to have accidents. This logic does not readily extend to the incidental driver who is not a member of the household. That driver may never again produce a driving exposure under that particular policy. If that were true it would be unreasonable to charge for an exposure that does not exist under that policy.

Proposed amendment #2.

Page 1, line 18. After "been" delete "convicted" and add a word that covers the situation of an individual pleading guilty without trial or who merely pays a fine.

This situation is already handled by insurers in the way described. If clarity is still further desired, we would suggest that the language be left as it is with an additional sentence to subsection (b) on line 18 to read: "In this subsection, 'convicted' includes a plea of guilty without trial, and the uncontested payment of a fine for the charged violation."

Proposed amendment #3.

Page 1, line 25. After "right" delete "of appeal" and add "to a hearing and to appeal".

Under AS 21.39.090, an insured does not have an automatic right to a hearing before the insurer or its rating organization. The insurer has a "right" to reject or fail to grant a hearing. This is not unreasonable as some requests are going to be frivolous and should not be heard. Still the insured denied a hearing has a right to an appeal of that action before the director. The proposed amendment tends to suggest a right to a hearing before the insurer and that is not precisely the way AS 21.39.090 is structured. An insured is still entitled to "his day in court", so abuses by an insurer will be detected. An alternative change on line 25 would be to change the words "right of appeal" to read "rights".

RENDED TITLE: SCS CSHB 15(FIN)

ACT RELATING TO COMMERCIAL FISHING LOANS (AS 16.10.300  
16.10.370); AND PROVIDING FOR AN EFFECTIVE DATE

GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: HAYES.

OTHER DOLLARS: \$0

CO-SPONSORS: FLOOD, LINDAUER, SZYMANSKI, TISCHER, PESTINGER, BUSSELL.

CURRENT STATUS: 4/16/83 CHAPTER 0007 3LA 83

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/17/83	01	0020	FIRST READING -- COMMITTEE REPORTS
01/24/83	02	0100	CMTE REFERRALS CHANGED
03/09/83	03	0431	LOAN -- CS05
03/09/83	04	0431	LOAN F/NOTES USE SUPPL #22
03/09/83	05	0432	LOAN LETTER OF INTENT
03/09/83	06	0440	MOVED FROM RES TO FIN BY UNAN CONSENT
03/19/83	07	0533	FIN -- CS08, NR01
03/19/83	08	0533	FIN F/NOTE USE SUPPL #26
03/21/83	09	0574	SECOND READING
03/21/83	10	0574	LOAN CS ADOPTED BY UNAN CONSENT
03/21/83	11	0574	AM01 ADOPTED BY UNAN CONSENT
03/21/83	12	0575	AM02 ADOPTED BY UNAN CONSENT
03/21/83	13	0575	ADVANCED TO 3RD READING BY UNAN CONSENT
03/21/83	14	0575	THIRD READING
03/21/83	15	0575	AM 03(TITLE) ADOPTED BY UNAN CONSENT
03/21/83	16	0575	PASSED BY DIV 32-00-01
03/21/83	17	0576	EFFECTIVE DATE VOTE SAME AS PASSAGE
03/21/83	18	0576	LETTER OF INTENT ADOPTED
03/21/83	19	0576	NOTICE OF RECONSIDERATION/LTR OF INTEN
03/23/83	21	0615	LETTER OF INTENT ADOPTED ON RECON

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/11/83	34	0814	CONCURRED IN SENATE AMS BY DIV 36-00-04
04/11/83	35	0814	EFFECTIVE DATE VOTE SAME AS PASSAGE
04/11/83	36	0814	LETTER OF INTENT ADOPTED BY UNAN CONSENT
04/12/83	37	0834	TRANSMITTED TO GOVERNOR
04/16/83	39	0912	SIGNED BY GOVERNOR-CH0007, EFF 04/17/83

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/22/83	20	0456	FIRST READING -- COMMITTEE REPORTS
03/31/83	22	0519	FIN CSHB REFERRAL ADDED BY UNAN CONSENT
05/31/83	23	0549	LAC -- CS03
03/31/83	24	0549	LAC F/NOTE SEN SUPPL #13
4/06/83	25	0591	FIN -- CS07
4/06/83	26	0591	FIN F/NOTE EQUALS ZERO
4/07/83	27	0621	SECOND READING
4/07/83	28	0621	FIN 07 ADOPTED BY UNAN CONSENT
4/07/83	29	0621	ADVANCED TO 3RD READING BY UNAN CONSENT
4/07/83	30	0621	THIRD READING
4/07/83	31	0621	LETTER OF INTENT ADOPTED BY UNAN CONSENT
4/07/83	32	0624	PASSED BY DIV 19-01-00
4/07/83	33	0624	EFFECTIVE DATE VOTE SAME AS PASSAGE







SENATE LABOR AND COMMERCE  
STANDING COMMITTEE  
March 29, 1983  
1:00 p.m.

Members Present: Senator Dick Eliason, Chair  
Senator Bob Mulcahy  
Senator Pat Rodey

Members Absent: \*Senator John Sackett  
Senator Don Bennett

\*Senator Sackett arrived within the first twelve minutes of the meeting.

COMMITTEE CALENDAR

CSHB 15(Loans)am

"An Act relating to commercial fishing loans (AS 16.10.300-  
AS 16.10.370); and providing for an effective date."

SB 66

"An Act relating to municipal self insurance for workers' compensation."

1:30 TELECONFERENCE--Alaska Transportation Commission Sunset Review

SB 184

"An Act extending the termination date of the Alaska Transportation  
Commission; and providing for an effective date."

WITNESS REGISTER

(CSHB 15)

Rep. Rick Uehling, Chair  
House Loans Committee  
Pouch V  
Juneau, Alaska 99811  
465-4821

Position statement: Discussed Letter of Intent

Rep. Peter Goll  
Pouch V  
Juneau, Alaska 99811  
465-4925

Position statement: Discussed legal aspects of collection provisions  
and residency.

Rep. Adelheid Hermann  
Pouch V  
Juneau, Alaska 99811  
465-4942

Position statement: Expressed support for specific provision of HB 15.

Don Hostack, Director, Div. of Business Loans and Veterans' Affairs  
Pouch D  
Juneau, Alaska 99811  
465-2510  
Position statement: Provided specific information from Loan Division  
perspective.

(SB 184--ATC SUNSET REVIEW)

Bill Schneider, Associated General Contractors  
Box 4-2500  
Anchorage, Alaska 99501  
276-5354  
Position statement: Testified in opposition to SB 35 (not on  
calendar, but relates to SB 184).

Andy Hoge, Attorney representing Alaska Truckers Association  
437 E, Suite 500  
Anchorage, Alaska 99501  
276-1726  
Position statement: Supports continuation of ATC.

John Ulsher  
6901 Dickerson Drive  
Anchorage, Alaska 99501  
337-7876  
Position statement: Supports sunset of ATC.

Ja Bynum  
Cordova, Alaska  
(No address provided by teleconference network.)

Joe Gilbertson  
Fairbanks, Alaska  
(No address provided by teleconference network.)  
Position statement: Supports sunset of ATC.

James Bishop, Bishop Brothers Inc.  
Box 2989  
Kenai, Alaska  
262-4245  
Position statement: Does not support ATC as functions now.

Arthur Robinson  
Box 3519  
Soldotna, Alaska  
262-9164  
Position statement: Supports sunset of ATC.

Tim Gunderson  
Fairbanks, Alaska 99701  
(No address provided by teleconference network.)  
Position statement: Supports sunset of ATC.

George Carter  
Fairbanks, Alaska 99701  
(No address provided by teleconference network.)  
Position statement: Supports sunset of ATC.

Lois Cook, Director, Div. of Administrative Services  
Dept. of Commerce and Economic Development  
Pouch D  
Juneau, Alaska 99811  
465-2505  
Position statement: Department favors extension of ATC for one year.

The testimony of the following witnesses was not teleconferenced.

Charles Cole, Attorney (represents Alaska Interior Airways)  
Fairbanks, Alaska  
Position statement: Supports continuation of ATC.

Jim Wilson  
P. O. Box 629  
Juneau, Alaska 99802  
586-3420, 586-6358  
Position statement: Supports sunset of ATC.

#### PREVIOUS ACTION

(Senate Labor and Commerce only.)

SB 66: Please refer to Labor and Commerce Committee Minutes for Feb. 10 and March 24, 1983.

#### ACTION NARRATIVE

Tape #15  
Side 1  
Number 010

Senator Eliason called the meeting to order with members Senator Mulcahy and Senator Rodey in attendance. The first item on the agenda was CSHB 15(Loans)an, relating to fishing loans. The committee members considered a work draft of a Labor and Commerce Committee substitute.

Rep. Rick Uehling, Chair of the House Committee on Loans, testified on HB 15, dwelling on the Letter of Intent which was added as the bill passed out of the House. Because the fishery is seasonal, they feel that a two year residency requirement is legally defensible. At the request of the Chair, he also touched on the letter of intent as it relates to severability of that requirement should it be struck down in the courts, and he addressed the acceleration clause providing for immediate payback of the loan upon the borrower's ceasing to reside in the state. Rep. Uehling cited supportive documents from Attorney General Norm Gorsuch and from the Department of Law.

Number 238

Senator Sackett's presence was noted for the record.

Number 256

Rep. Peter Goll testified on CSHB 15, concentrating his testimony on the requirements outlined in the bill. He stated that chances of loan repayment are increased by the requirement that the loan recipient have three years of active fishing experience. He also discussed the continuing residency requirement (and accelerated repayment provision), the intent of which is that Alaska subsidized loans be directed to Alaska residents; he defended this aspect of the legislation with regard to legal questions which have been suggested, using documents from Legal Services and the Attorney General.

Number 464

Rep. Adelheid Hermann testified on CSHB 15, stating support for the remarks made by Rep. Goll, including his remarks on the severability clause. She had asked that House Research Agency staff to research whether or not California, Oregon or Washington had fishing loan programs now or in the past, and the result was that none of them had. She also posed a question, which she would like answered by the department administering the loan program, concerning whether or not they were actively engaged, or intended to engage in, an outreach program for the fishing loan program as discussed in the past.

Number 505

Don Hostack, Director of DCED's Division of Business Loans and Veterans Affairs, testified on CSHB 15, asked what residency requirement the Division would use to make loan determinations if the two year requirement were severed from the legislation. Senator Rodey responded that the Attorney General would offer guidance as the legal counsel for the Division, and that the existing two year requirement would be followed until ruled out by a court of competent jurisdiction. Mr. Hostack responded to questions from committee members about the fishing loan program concerning loans to rural area residents, termination of Alaska residency, and fraud investigation.

Number 647

(Senator Sackett left the meeting.)

Number 652

The committee took up Senate Bill 66, which had received previous hearings, and for which a Labor and Commerce Committee substitute had been prepared.

Number 705

Senator Eliason recessed the meeting in order to recover a quorum to do business on SB 66.

Number 707

Senator Eliason called the meeting to order to begin the teleconference on the Sunset Review of the Alaska Transportation Commission.

Bill Schneider (Anch), with the Associated General Contractors, testified in opposition to Senate Bill 35, a measure merging the APUC and the ATC. Senator Eliason pointed out that SB 35 was not calendered for discussion. (Teleconference network had accidently sent SB 35 as part of package pertinent to the teleconference.)

Andy Hoge, attorney who represents Alaska Truckers Association, testified in favor of SB 184 and continuation of the Alaska Transportation Commission. He believes that the legislature should look closely at the performance review done by Legislative Audit, and said that as written testimony had already been submitted he would not read his statement. The Alaska Trucker's Association maintains that the ATC should be extended for four years and should concentrate effort in problem areas. The ATC should receive the money required to do their job.

Tape 15  
Side 2  
Number 6

Senator Rodey asked if Andy Hoge would favor an interim look at ATC by the Legislative Budget and Audit Committee, to which Hoge responded that a one or two year "sunset" disrupts the activity of the agency.

Number 62

Members of the committee reverted to SB 66, concerning municipal self-insurance for workers' compensation. Senator Rodey moved that the Labor and Commerce Committee Substitute for SB 66 be passed out of committee with individual recommendations. There being no objection it was so moved.

Number 81

John Ulsher (Anch) testified on the Alaska Transportation Commission, stating that he did not own a truck, but that it seemed that the trucking regulations were written for one reason, and accomplish another. He feels that the Commission has failed totally to accomplish the purpose for which they were created (among other things, to prevent cutthroat competition and protect the public). He touched on the subject of safety ("the responsibility of the owner") and stated that the Alaska Truckers' Association should sell its services to members (who would join Trucking Association) in a form of cooperative shipping; this would best serve the consumer. Does not support continuation of ATC as now functioning.

Jay Bynam (Cordova), owner of Bynam and Sons Towing, concurs with ATA (Alaska Truckers Association) in that a four year extension of ATC benefits all. To discontinue the ATC would open the way for cutthroat competition. Some regulation and control, he believes, is necessary.

Joe Gilbertson (Fairbanks) began his testimony with a brief history of transportation in Alaska, stating that Alaska always had a stable trucking industry. He favors termination of the ATC. Watching "what they were set up to do and what they actually do" he finds their activity "counterproductive all the way around" and believes they participate in restraint of trade. There are already too many state agencies, and he sees better ways to spend the money. He feels we can control and regulate better in a free-market society.

Number 370

J. Bishop (Soldotna), Chairman of the Board of Bishop Brothers, Inc., (primarily involved in seafood transport), does not support ATC as it is currently functioning. The theory of ATC is that it should protect a fragile Alaskan economy, and it seems necessary for someone to protect the public need for year-round transportation capability. That same mechanism should insure against industry practices which are contrary to the public interest. And it is in practice, and specifically regarding that last element, "which I feel that the ATC has failed miserably in its responsibility to protect the people of Alaska from monopolistic practices within air transportation in the state." Mr. Bishop further stated that the ATC should continue to operate only under circumstances where "they are moving against an entity with too much power in the state".

Number 530

Arthur Robinson (Soldotna), an attorney from the Kenai Peninsula, testified in support of allowing the ATC to terminate, as they are more concerned with the protection of established economic interests, like the air carriers, without regard to public needs. He suggested the creation of a public agency just to handle safety matters now handled by ATC, and to provide a protest forum in Alaska for what is basically a monopoly in the state.

Tim Gunderson (Fairbanks) is a twelve year resident involved in the trucking industry. He has been a Teamster for carriers in the state, and has been an owner-operator, and shareholder in an Interstate trucking company. At one time he might have supported continuation of the ATC, but, having been involved, he is today opposed to extending their ability to operate. Transportation should be on a competitive basis: the public is the best judge. A person who is insured and can show competency should be allowed to go into business. He urged the committee not to extend the termination date of the ATC.

Number 728

Richard Asay (Anchorage) testified in support of continuation of the ATC, which is helpful in keeping a vital transportation industry in the state. He has been in the trucking industry in Alaska for more than twenty years, and does not feel that deregulation is the answer.

Number 746

George Carter (Fairbanks), an 8½ year resident involved in trucking since 1968, does not support extension of the ATC, and would like to see it done away with.

Number 760

Lois Cook (Juneau), Director of the Dept. of Commerce and Economic Development's Division of Administrative Services, presented the department's position on the Alaska Transportation Commission. The department recommends the ATC be extended for a one year period in order to allow the department the opportunity to conduct a performance review. The review would assess the effect of deregulation which would take place if the ATC were allowed to terminate. The review would assess and provide for a motor safety program (including insurance) and would determine the effect of ATC termination on essential air service.

(NO FURTHER TESTIMONY WAS TELECONFERENCED.)

Charles Cole (Juneau), an attorney from Fairbanks, wished to testify on the ATC "but not necessarily teleconferencing". Therefore, the teleconference was concluded, and Mr. Cole, representing Alaska Interior Airways, testified in support of continuation of the ATC. He has, for twenty six years, been representing air carriers in Alaska. Prior to statehood the authorities consisted of the Civil Aeronautics Board and the International Commerce Commission. Those that called the shots were those who could afford to go to D.C. and woo the Federal authorities.

Number 8.1

Mr. Cole provided a historical sketch of air transportation in Alaska, from territorial days to the present, touching on the Alaska Air Commerce Act of 1960, which provided some state regulation of commerce and transportation. He strongly recommends perpetuation of the Alaska Transportation Commission for four years. He pointed out that air transportation in Alaska has developed technologically and commercially over the years.

Tape 2

Number 010

Mr. Cole described what he perceives as the negative aspects of deregulation, stating that bankers will not finance airplanes in the presence of the spectre of deregulation, and that if there was no state agency to grant regulatory authority, we would lose that authority. He feels that regulation of air commerce has been a good thing, by and large, given the developments of the last several years.

Number 146

Mr. Cole responded to a previous speaker's charges that AIA had received favored treatment by the ATC, and offered a rebuttal to allegations of favoritism resulting from AIA having a monopoly. He concluded his testimony by emphasizing the need for stability in air commerce in Alaska, and the need to chart our own destiny. "Somebody has to look

out for the little guy", and AIA favors continuing the Alaska Transportation Commission for four years.

Number 310

Jim Wilson provided final testimony on the Alaska Transportation Commission, describing himself as a "local little guy" trying to get into the business and having trouble doing it. He favors "allowing the sun to set on the ATC." Now that there is an Aeronautics Act, the ATC has outlived its usefulness. He stated that three years ago he "worked for the big guys" and would have testified on the other side of the issue. He cited problems with restrictions on contract carriers in Alaska. He cited various problems he perceives with regulation, and described the current ATC as "political". He does not favor continuation of the ATC (as it is). Mr. Cole and Mr. Wilson conducted a brief dialogue.

Number 560

There being no further testimony, Sen. Eliason adjourned the meeting.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99311  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 29, 1983

SUBJECT: Acceleration clause in HB 15  
TO: Senator Richard I. Eliason  
FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked how state residency would be determined for purposes of the acceleration clause in Sec. 3 of CSHB 15 (Loans) am. The usual definition of resident would apply. The crucial element is the intent of the person.

Since intent is a subjective matter the determination must be made from objective evidence which indicates intent. There has been substantial testimony in connection with this bill, that because of the nature of commercial fishing, it is difficult to determine residency in many instances.

While I am not familiar with the facts, it would appear these difficulties could also apply to the acceleration clause.

BGB:ljb

12/028

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JITTEAU ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 28, 1983

SUBJECT: Commercial fishing loans  
(CSHB 15 (Loans))

TO: Senator Richard I. Eliason  
Chairman, Senate Labor and  
Commerce Committee

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked whether the provision in Sec. 3 of CSHB 15 (Loans) which provides that a loan shall be accelerated if the borrower terminates state residency creates a constitutional question.

If the requirement is addressed to a purpose independent of residency and is rationally related to that purpose, in my opinion it would be sustained as constitutional. The supporting reason offered for the clause is that termination of residency by the borrower lessens the security of the loan since collection is more difficult when the borrower is a nonresident and the underlying security may not be as well cared for.

Repayment of state loans is a valid objective. Whether the requirement furthers this purpose and is rationally related to it is a question of fact. In my opinion the requirement would be sustained if a court finds the legislature reasonably determined there was a significant correlation between loan repayment and residency.

BGB:ljb  
12/017

SUMMARY OF LOANS

	# of loans	Total Amount
Section A (permits only)	99	\$ 5,302,625
Section B (targeted rural loans)	81	4,495,102
TOTAL	180	\$ 9,797,727

Under \$ 35,000

Section A	\$ 575,465
Section B	547,554
TOTAL	\$ 1,123,019

(\$979,772.70 is 10% of total)

Commercial Fish  
Section A  
Number of Loans by Location  
FY '83 to 3-18-83

Anchorage	20	Total Dollars Loaned FY '83 \$5,302,625
Bethel	2	
Chugiak	2	
Cordova	8	
Dillingham	1	
Eagle River	3	
Fairbanks	2	
Gustavus	2	
Haines	2	
Homer	8	
Juneau	7	
Kasilof	3	
Kenai	4	
Ketchikan	2	
King Cove	1	
Kipnuk	1	
Kodiak	10	
Nenana	1	
Ninilchik	1	
Palmer	1	
Petersburg	4	
Sand Point	1	
Seward	2	
Sitka	2	
Soldotna	4	
Valdez	1	
Ward Cove	1	
Wrangell	2	
Yakutat	1	
	<u>99</u>	

Commercial Fish  
Section A  
FY '83 to 3-18-83  
Loans Made \$35,000 - Under

Anchorage	\$ 16,200
Bethel	13,500
Cordova	20,250
Cordova	18,000
Fairbanks	32,850
Gustavus	19,850
Gustavus	3,660
Haines	34,965
Haines	30,000
Juneau	13,590
Juneau	12,500
Juneau	31,500
Juneau	19,425
Juneau	18,900
Juneau	31,050
Juneau	15,000
Kasilof	18,000
Ketchikan	27,000
Nenana	7,200
Petersburg	31,500
Petersburg	27,000
Petersburg	18,000
Sitka	17,000
Sitka	18,000
Ward Cove	13,000
Wrangell	19,425
Wrangell	18,000
Yakutat	30,000
28 Loans	<u>\$575,465</u>

Commercial Fish  
 Section B  
 No. of Loans by Location  
 FY '83 to 3-18-83

Aleknayik	4	Total Dollars Loaned FY '83
Anchorage	3	
Chefornak	1	\$4,495,102
Clarks Point	1	
Cordova	2	
Dillingham	1	
Egegik	1	
Falls Bay	1	
Gakona	1	
Haines	5	
Hoonah	1	
Iliamna	1	
Juneau	3	
Kasilof	2	
Kenai	1	
Kodiak	5	
Koliganek	3	
Kwigillingok	1	
Levelock	1	
Manokotak	5	
Naknek	1	
New Stuyahok	3	
Ninilchik	1	
Pelican	2	
Petersburg	8	
Pilot Point	2	
Port Alexander	1	
Port Heiden	3	
Sand Point	2	
Seward	4	
Sitka	2	
Soldotn	3	
T-e-akee Springs	1	
Togiak	2	
Unalakleet	1	
Whittier	2	
	<u>81</u>	

Commercial Fish  
Section B  
FY '83 to 3-18-83  
Loans Made \$35,000 - Under

Aleknagik	\$ 35,000
Anchorage	33,300
Anchorage	10,000
Clarks Point	18,380
Gakona	24,000
Haines	17,100
Haines	22,050
Haines	18,000
Hoonah	27,375
Juneau	30,750
Koliganek	22,500
Pelican	33,750
Petersburg	27,364
Petersburg	28,500
Petersburg	11,800
Port Alexander	18,000
Sitka	3,600
Sitka	18,000
Soldotna	33,750
Togiak	30,000
Togiak	25,710
Unalakleet	20,325
Whittier	18,300
Whittier	20,000
24 Loans	<u>\$547,554</u>

from Don Hostak - 2510

Commercial Fish  
Section A - for permits only  
Number of Loans by Location  
FY '83 to 3-18-83

		Total Dollars Loaned FY '83 \$5,302,625
Anchorage	20	
Bethel	2	
Chugiak	2	
Cordova	8	
Dillingham	1	
Eagle River	3	
Fairbanks	2	
Gustavus	2	
Haines	2	
Homer	8	
Juneau	7	
Kasilof	3	
Kenai	4	
Ketchikan	2	
King Cove	1	
Kipnuk	1	
Kodiak	10	
Nenana	1	
Ninilchik	1	
Palmer	1	
Petersburg	4	
Sand Point	1	
Seward	2	
Sitka	2	
Soldotna	4	
Valdez	1	
Ward Cove	1	
Wrangell	2	
Yakutat	1	
	<u>99</u>	

# of loans

Section A	99 loans	\$ 5,302,625
Section B	<u>81</u>	<u>4,495,102</u>
TOTAL	180	<u>\$ 9,797,727</u>

Under \$35,000

- 575,465 - sec A

547,554 - sec B

TOTAL

1,123,019 (\$979,772.70 is 10% of total)

Commercial Fish  
Section A - for permits only  
FY '83 to 3-18-83  
Loans Made \$35,000 - Under

Anchorage	\$ 16,200
Bethel	13,500
Cordova	20,250
Cordova	18,000
Fairbanks	32,850
Gustavus	19,850
Gustavus	3,660
Haines	34,965
Haines	30,000
Juneau	13,590
Juneau	12,600
Juneau	31,500
Juneau	19,425
Juneau	18,900
Juneau	31,050
Juneau	15,000
Kasilof	18,000
Ketchikan	27,000
Nenana	7,200
Petersburg	31,500
Petersburg	27,000
Petersburg	18,000
Sitka	17,000
Sitka	18,000
Ward Cove	13,000
Wrangell	19,425
Wrangell	18,000
Yakutat	30,000
28 Loans	<u>\$575,465</u>

Commercial Fish  
 Section B - rural targeted loans  
 No. of Loans by Location  
 FY '83 to 3-18-83

		Total Dollars Loaned FY '83
Aleknagik	4	\$4,495,102
Anchorage	3	
Chefornak	1	
Clarks Point	1	
Cordova	2	
Dillingham	1	
Egegik	1	
Falls Bay	1	
Gakona	1	
Haines	5	
Hoonah	1	
Iliamna	1	
Juneau	3	
Kasilof	2	
Kenai	1	
Kodiak	5	
Koliganek	3	
Kwigillingok	1	
Levelock	1	
Manokotak	5	
Naknek	1	
New Stuyahok	3	
Ninilchik	1	
Pelican	2	
Petersburg	8	
Pilot Point	2	
Port Alexander	1	
Port Heiden	3	
Sand Point	2	
Seward	4	
Sitka	2	
Soidotna	3	
Tenakee Springs	1	
Togiak	2	
Unalakleet	1	
Whittier	2	
	<u>81</u>	

Commercial Fish  
Section B rural targeted loans  
FY '83 to 3-18-83  
Loans Made \$35,000 - Under

Aleknagik	\$ 35,000
Anchorage	33,300
Anchorage	10,000
Clarks Point	18,380
Gakona	24,000
Haines	17,100
Haines	22,050
Haines	18,000
Hoonah	27,375
Juneau	30,750
Koliganek	22,500
Pelican	33,750
Petersburg	27,364
Petersburg	28,500
Petersburg	11,800
Port Alexander	18,000
Sitka	3,600
Sitka	18,000
Soldotna	33,750
Togiak	30,000
Togiak	25,710
Unalakleet	20,325
Whittier	18,300
Whittier	20,000
24 Loans	<u>\$547,554</u>

Dick - Re: HB 15 - fishing loans

Attached is a working draft on SCSCS HB 15 with the acceleration clause deleted. Billy Berrier seemed to walk that "fine line" in his letter. Concerning Mr. Berrier last line, I'm not sure if there would a correlation between loan repayment + residency. Don Hostack, off the record, stated probably more defaults in state than out of state.

Peter Goll called and indicated his desire to discuss this amendment with you + possibly testify. Evidently, Rich Untling also wishes to testify.

Reasons Why The Acceleration Clause Should Not Be Included!

- 1) Impractical - If an individual has resided in state for 2 yrs (+ in the case for permits has crewed for 3 yrs), the fisherman will not take the boat down South to fish. The fishery is in poor straits in the lower 48.
- 2) Possibly unconstitutional - It has to be shown there is a connection between loan repayment +

residency. This might be difficult to prove

3) Difficult to enforce - If an individual were to leave the state, many options would be available to him/her to circumvent the law.

a) Keep local bank + continue to maintain payment from local address

b) Keep voting absentee + maintain voter registration

c) Any other method devised by a "creative" mind

Even if the Dept were aware of the move, could the Dept enforce 120 day deadline.

4) No provisions for good faith - If an individual \*informed<sup>the</sup> Dept of proposed move + honestly, in good faith, attempted to find a buyer for permit / boat + was not able, could the individual move without <sup>re</sup>paying the loan? Would the State be in the position of hampering travel between states?

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

March 16, 1983

The Honorable Rick Uehling  
Representative  
Alaska State Legislature  
P.O.  
Juneau, Alaska 99811

Re: CSHB 15 (Loans)

Dear Representative Uehling:

You asked us to review Committee Substitute for House Bill 15 (Loans) to determine the legality of certain new sections of the bill added by the committee. Specifically, you asked for our opinion regarding section 2, which would mandate that at least 10 percent of available money be used for commercial fishing loans of \$35,000 or less, and section 3, which would accelerate the loan if a borrower ceases to be a state resident.

Unfortunately, although your request was delivered to this office on March 9, 1983, I did not receive it until March 14, 1983. As a result, I have not been able to review it in the kind of depth which would be most desirable. However, in the limited time which was available, I have developed some thoughts.

First, I see no constitutional problem with section 2. That section would require that at least 10 percent of the money that is available for commercial fishing loans be allocated for loans of \$35,000 or less. This would be a permissible exercise of the legislature's power to establish the basic guidelines for administration of the loan program by the executive branch.

On the other hand, section 3 does raise constitutional questions. However, it is my opinion that the provision would be found constitutional if challenged in the courts. This confirms my earlier off-the-cuff advice I gave to the House Special Committee on State Loans.

Section 3 would add a new subsection to AS 16.10.320. That subsection would provide in substance that a commercial fishing loan to a qualified state resident would be accelerated and repayment would be required within 120 days after the borrower ceases to be a state resident.

Initially, it is clear that the state constitutionally can limit monetary benefits, including below-market-rate commercial fishing loans in particular, to bona fide state residents. See 1982 Op. Att'y Gen. No. 12 (Alaska November 26). However, a constitutional question is raised by making such a loan due and payable 120 days after changing residency, since such a provision may be viewed as penalizing the right of Alaska residents to migrate to other states.

In the limited time available I have been unable to find any cases directly on point. However, it appears that the courts apply a balancing test in such a context to determine whether the state's interest in preserving the statutory scheme outweighs the penalty imposed on the individual. See e.g. Williams v. Zobel, 619 P.2d 422, 427 (Alaska 1980) (plurality opinion); id. at 431 n. 1 (Rabinowitz, C.J., concurring); id. at 439 (Connor, J., dissenting); Williams v. Zobel, 619 P.2d 448, 453 (Alaska 1980), reversed on other grounds, Zobel v. Williams, \_\_\_ U.S. \_\_\_, 72 L.Ed.2d 672 (1982).

In striking the balance here, we believe the courts would find that legitimate state objectives underlying section 3 outweigh any individual rights involved. Several legitimate state interests would be served by accelerating loans upon a change in residence. The most important, obviously, would be ensuring that direct state monetary benefits (i.e., subsidized loans) run only to bona fide state residents. This clearly is a permissible state objective. If loans to residents are accelerated and repaid at the time the borrower moves out of the state, that money immediately becomes available to loan to another bona fide state resident. In this way, only bona fide state residents will receive the benefits of the state loan program.

A second permissible state interest in acceleration upon a change in residency is safeguarding the fiscal integrity of the loan program. Loan administration, including bringing delinquent loans current and effecting foreclosure if necessary, will be significantly easier if the borrower is a state resident. If loans to nonresidents remain outstanding, the state may have to foreclose on collateral which is no longer within the state, may have to exercise long-arm jurisdiction over borrowers, etc. In that event, the state's ability to preserve the integrity of the revolving loan fund will be hampered significantly.

Finally, as the House Special Committee on State Loans letter of intent accompanying CSHB 15 (Loans) makes clear, one of the most difficult problems facing the commercial fishing loan program has been ensuring that only bona fide state residents

qualify. The committee noted that traditional indicia of residency are very easy to obtain. As a result, it is conceivable that nonresident loan applicants could come to Alaska for the minimum period required to qualify for a loan -- e.g., the two years which CSHB 15 (Loans) would require -- only to return immediately to some other state upon receiving the loan. An immediate acceleration clause would give the state the power to terminate the loan without the necessity of proving residency fraud at the time the loan was made. In other words, it provides a significant safeguard against residency fraud.

Against these permissible state interests must be balanced the individual's right to migrate from one state to another. We have no idea how the courts would strike the balance. Particularly with respect to loans for limited entry permits, the courts may be inclined to strike the balance in favor of the individual since the commercial fishing loan program is the only currently available mechanism for financing the purchase of a limited entry permit using the permit as collateral for the loan. 1/ In other words, no alternative financing might be available to a borrower migrating to another state.

However, against this individual interest, a number of additional factors must be balanced. The first is that nonresidents simply do not have the same right to state benefits that state residents have. Moreover, if enacted, the acceleration provision would be a part of every loan contract. A borrower may be estopped to assert that the provision is invalid. Finally, and most significantly, any decision to change residency necessarily carries with it certain consequences in terms of state benefits. Following a change in residency, the individual no longer is eligible for benefits afforded residents by his former state of residence while he is eligible for benefits afforded by his new state of residence. In this case, it would seem that one of the benefits for which eligibility would be lost is a continuing state subsidized loan.

This does not mean that a state could require

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1/ The Commercial Fishing and Agriculture Bank is authorized to finance limited entry permits using the permit as collateral. However, because of constitutional challenges to the limited entry program, CFAB currently is not taking permits as collateral for loans to finance the purchase of permits.

forfeiture of all previous benefits upon a change in residency. For example, a statute requiring repayment of all previously granted benefits would present precisely the kind of barrier to interstate migration which at least four members of the United States Supreme Court found impermissible in Zobel v. Williams, supra. (See concurring opinion of Justice Brennan.)

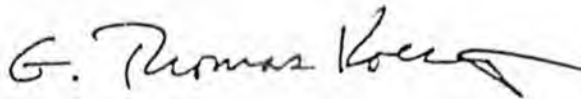
However, that is not what section 3 would accomplish. All it would do is require a person ceasing Alaska residence to forego the continuing future state subsidy of the loan.

Summarizing, it is our opinion that section 3, which would accelerate a commercial fishing loan if a borrower ceases to be a state resident, probably would be found constitutional if challenged in court. However, the question is not entirely free from doubt, and we cannot give a certain answer.

We hope this answers your question. If we can be of further assistance, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

# STATE OF ALASKA

Bill Sheffield, Governor

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

March 21, 1983

The Honorable Rick Uehling  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Uehling:

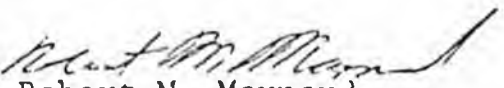
This letter is in response to your request for a brief written summary of the Department of Law's testimony before your committee on the subject of the constitutionality of a two-year residency requirement for commercial fishing loans.

Simply, we believe that the two-year requirement is very defensible under either the state or federal constitution. On the other hand, the law in this area is uncertain; any length of time beyond one year is past the present boundaries of judicially approved requirements and therefore carries a substantial risk of being found unconstitutional. If, however, any program can sustain a two-year residency requirement, both the student loan program and the commercial fishing loan program present the most compelling circumstances for such an extension. Both programs must address the very real problems of mobility of loan recipients coupled with an extremely generous loan program. Consequently, the normal superficial indicia of a subjective intent to consider oneself a citizen of the State of Alaska, such as voter registration, drivers license, and even the one-year residency requirement, are not as valid as they would be in other programs. As a result, we believe that a court could readily find that there is a rationale basis for choosing a two-year residency requirement over either a one-year residency requirement or any of the other objective standards normally used by the legislature.

If you have any questions, or if you wish further testimony on this or any other residency requirement, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

RMN:mr

DISTRICT 22

REP. JOHN G. (JACK) FULLER

CHAIRMAN, RULES COMMITTEE

ALAKANUK  
BREVIS MISSION  
CHEVAK  
DIOMEDE  
ELIM  
EMMONAK  
GAMBELL  
GOLOVIN  
HOOPER BAY  
KOTLIK  
KOYUK

NOME  
SAVOONGA  
SCAMMON BAY  
SHAKTOOLIK  
SHELDON'S POINT  
SHISHMAREF  
STEBBINS  
ST. MICHAEL  
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WALES  
WHITE MOUNTAIN



MEMBER  
FINANCE COMMITTEE  
POLICY COMMITTEE  
COMMITTEE ON COMMITTEES  
REAA BUDGET OVERSIGHT COMMITTEE  
BLUE RIBBON COMMISSION ON PERSONNEL

Alaska House of Representatives

MEMORANDUM

TO: Rep. Rick Uehling  
Chairman, Loans Committee *RU*  
Members, Loans Committee

DATE: February 23, 1983

FROM: Rep. Jack Fuller

To help you become familiar with the issue of durational residency in the state's commercial fishing loan program, I have attached information which I think you will find useful. Included is a copy of the present statute, the two letters to the Division of Business Loans from the Attorney General's office, and a copy of my letter outlining my concerns with HB 15.

A little history on this loan program might be useful. Legislative changes made to the state's fishermen's loans programs last year combined the Fishermen's Mortgage and Note Fund with the entry permit loans program. Prior to that, the department only made loans for permits; loans for boats and gear are made through AIDA. The Fishermen's Mortgage and Note Fund was designed in 1980 to help new entrants into the fisheries receive loans for entry permits, boats and gear.

The basic provisions of the program are: loans may be made for up to \$100,000 for purchase of an entry permit, boat or gear at an interest rate of 10½ percent for up to fifteen years. Loans may be made for up to 90 percent of the appraised value of collateral, except in certain instances loans may be made for up to 100 percent of the value of an entry permit. To be eligible for the program, a person must have been a resident of the state for five years, be economically dependent upon commercial fishing for a livelihood and have fished commercially as a traditional way of life. The program is targeted on persons who live in areas of the state where lack of training or lack of employment opportunities leave commercial fishing as the only economical way of making a living. Loans are to be made to fishermen who do not have alternate sources of financing available to them, which rules out fishermen who would be eligible for loans through AIDA.

I have been working on this program for a long time and there is still much to be done to assist fishermen in securing loans. A two-year residency requirement for eligibility for a commercial fishing loan would help guarantee that only true residents of the state obtain loans.

Given the high degree of mobility of fishermen, one year is insufficient to ascertain residency. It will take that long to determine who is and who is not a resident. To be fair to the real residents of this state, I hope this committee will consider going for a two-year residency requirement.

Our attorney, Billy Berrier, advises me that the committee should include a letter of intent if it adopts a two-year requirement. This letter would clearly state why the committee finds two years a reasonable requirement, and say that if the court should find it not reasonable, the legislature would have adopted the bill anyway with a shorter residency requirement. A draft is being prepared now.

To date, only one loan from this program has been made in my district. Frankly, I am worried that if it is opened up to more people by the imposition of a one-year requirement, limited funds would soon be gone. The more sophisticated fishermen would soon drain all the funds. The program received only \$1.8 million last year. To that end, I am working on language which would guarantee a certain portion of the loan funds for very small loans, say under \$30,000. I will be providing you with specific language soon.

Finally, in light of assistant attorney general Tom Koester's testimony before the committee regarding the differences between HB 15 and SB 73, I would like to propose the following amendment:

Page 1, line 17, add the following language after the word "years":

including the year immediately preceding the date of application

I believe that this will satisfy the concerns expressed in the February 22, 1983 letter to the committee.

ALAKAUK  
BREVIG MISSION  
CHEVAK  
DIOMEDE  
ELIM  
EMMONAK  
GAMBELL  
GOLCVIN  
HOOPER BAY  
KOTLIK  
KOYUK

NOME  
SAVOONGA  
SCAMMON BAY  
SHAKTOOLIK  
SHELDON'S POINT  
SHISHMAREF  
STEBBINS  
ST. MICHAEL  
TELLER  
UNALAKLEE  
WALES  
WHITE MOUNTAIN



MEMBER  
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POLICY COMMITTEE  
COMMITTEE ON COMMITTEES  
REAA BUDGET OVERSIGHT COMMITTEE  
BLUE RIBBON COMMISSION ON PERSONNEL

## Alaska House of Representatives

MEMORANDUM

TO: Rep. Rick Uehling  
Chairman, Loans Committee

DATE: February 21, 1983

FROM: Rep. Jack Fuller *JF*

SUBJECT: HB 15 - residency requirements for fishing loans

The availability of commercial fishing loans is extremely important to the people of my district and I am interested in the speedy passage of legislation which would guarantee that the program will continue. As you know, emergency regulations are only in effect until April 1983.

I would like to bring up for the committee's consideration the questions of amending the current five year residency requirement to two years, rather than the one year proposed in HB 15 and also in SB 73 introduced by the Governor.

I would like to draw your attention to the November 26, 1982 letter to Dan Hostak of the Division of Business Loans from then-Attorney General W. Condon, who points out that we are defending the two-year durational residency requirement for eligibility to apply for scholarship loans. That issue currently is before the federal court in San Francisco. Mr. Condon goes on to state that "similar considerations apply to commercial fishermen. Fishermen comprise a highly mobile population. Alaska's fisheries attract residents of many states who, of necessity, must spend a considerable amount of time in Alaska. While here, it is quite easy to obtain many of the normal indicia of Alaska residence: housing, mailing address, voter registration, driver's license, etc. Following repeal of the personal income tax, there are few negative consequences attached to declaring Alaska residency.

"Finally, the commercial fishing loan program is extremely attractive to prospective fishermen...These considerations may make it permissible for the state to require more than a one-year durational residency requirement. We will have more guidance on this question following a decision in Andress [student loan case]."

A December 6, 1982 letter to Dan Hostak from the new Attorney General, Norm Gorsuch, again raises the issue of a two-year residency requirement. I quote, "A good faith argument could be made that two years is permissible because of the highly transient nature of fishermen, although it is more likely than not that a two-year

Rep. Uehling  
February 21, 1983  
page 2

durational residency requirement would be found unconstitutional if challenged in court."

I would like to ask the committee to look further into this issue during its deliberations on HB 15. I would be interested in testimony from the Attorney General's office and from the Division of Business Loans regarding particular problems of establishing residency for fishermen.

Thank you for your consideration.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

November 26, 1982

D.A. Hostak, Director  
Division of Business Loans  
and Veterans Affairs  
Department of Commerce  
and Economic Development  
Pouch D  
Juneau, Alaska 99811

Re: Constitutionality of Residence  
Requirement for Fishing Loans  
(AS 16.10.310).  
Our file 366-161-33.

Dear Mr. Hostak:

You requested our opinion regarding the constitutionality of the five-year durational residency requirement for commercial fishing loans under AS 16.10.300--16.10.370. AS 16.10-.310(a)(1), repealed and reenacted earlier this year (1982 SLA, ch. 113, § 7), provides:

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300--16.10-.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300--16.10.370, who (i) because of lack of training or lack of employment

D.A. Hostak, Director  
Div. of Business Loans & Veterans Affairs  
Dept. of Commerce & Economic Development  
366-161-83

November 26, 1982  
Page 2

opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels.

A common feature of each of the three subparagraphs is a five-year durational residency requirement for eligibility to apply for loans. 1/

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1/ Under subparagraphs (A) and (B), individuals who have been Alaska residents for a continuous period of five years immediately preceding the date of application for a loan may apply. Under subparagraph (C), corporations, partnerships, or joint ventures, 100 percent of which are owned by commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan, may apply. Although each of the three subparagraphs differ in additional eligibility requirements and the purposes for which loans may be made, those differences do not affect the constitutionality of the five-year durational residency requirements imposed. Accordingly, there is no need to discuss each subparagraph separately.

D.A. Hostak, Director  
Div. of Business Loans & Veterans Affairs  
Dept. of Commerce & Economic Development  
366-161-83

November 26, 1982  
Page 3

For the reasons which follow, we believe each of the five-year durational residency requirements in AS 16.10.310(a)(1) is unconstitutional. Further, we believe this result is sufficiently clear that no good faith defense of the requirements could be made if they were challenged in court. Accordingly, we believe the commercial fishing loan program under AS 16.10.300 -- 16.10.370 must be suspended until the legislature changes the statutory scheme authorizing the program.

#### I. BACKGROUND

Durational residency requirements for eligibility to participate in state programs have been the subject of a number of judicial decisions, both in the Alaska Supreme Court and the United States Supreme Court. Because durational residency requirements have the effect of creating two classes of residents, only one of which is eligible to participate in the program, challenges to such requirements usually are based on the equal protection clauses of article I, section 1 of the Alaska Constitution and the Fourteenth Amendment to the United States Constitution.

An earlier opinion by this office discusses at great length the tests employed by the courts when a durational residency requirement is challenged as a denial of equal protection. 1982 Alaska Op. Atty. Gen. No. 7 (July 14) (expressing opinion that durational residency requirements for veterans loans are

D.A. Hostak, Director  
Div. of Business Loans & Veterans Affairs  
Dept. of Commerce & Economic Development  
366-161-83

November 26, 1982  
Page 4

unconstitutional). If the durational residency requirement at issue penalizes the exercise of the right to travel, either through infringement of a fundamental right (such as voting) or through denial of a basic necessity of life (such as welfare or medical services), it is unconstitutional as a denial of equal protection under the United States Constitution unless it furthers a compelling state interest. Dunn v. Blumstein, 405 U.S. 330 (1972) (voting); Shapiro v. Thompson, 394 U.S. 618 (1969) (welfare); Memorial Hospital v. Maricopa County, 415 U.S. 450 (1974) (medical care). If it does not penalize the exercise of the right to travel, it is not unconstitutional as a denial of equal protection under the United States Constitution as long as it has a rational basis. Sosna v. Iowa, 419 U.S. 393 (1975). Under the Alaska Constitution, a durational residency requirement is not unconstitutional as a denial of equal protection if it substantially furthers the legitimate purposes of the legislation and the state interest in imposing the requirement outweighs the constitutional right involved. 2/ Williams v. Zobel, 619 P.2d

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2/ As a general rule, the test for constitutionality under the Alaska Constitution when the exercise of the right to travel is not penalized is stricter than the rational basis test under the United States Constitution. Accordingly, if a challenged statute survives judicial scrutiny under the Alaska Constitution in the Alaska courts, it follows a fortiori that it is constitutional under the United States Constitution and no independent analysis is necessary. Williams v. Zobel, 619 P.2d 448, 457 (Alaska 1980); but see Zobel v. Williams, \_\_\_ U.S. \_\_\_, 72 L.Ed.2d 672 (1982).

D.A. Hostak, Director  
Div. of Business Loans & Veterans Affairs  
Dept. of Commerce & Economic Development  
366-161-83

November 26, 1982  
Page 5

422, 427 (Alaska 1980) ("Zobel I"), applying State v. Erickson,  
574 P.2d 1 (Alaska 1978).

## II. ANALYSIS

The first inquiry is whether the durational residency requirement penalizes the exercise of the right to travel either through infringement of a fundamental right or through denial of a basic necessity of life. In our opinion, the five-year durational residency requirement for a commercial fishing loan is neither an infringement of a fundamental right nor a denial of a basic necessity of life and therefore does not penalize the exercise of the right to travel.

Obtaining a commercial fishing loan is not a fundamental right for purposes of equal protection analysis. Cf. Williams v. Zobel, 619 P.2d 448, 457 (Alaska 1980) ("Zobel II") (equality in distribution of permanent fund earnings is not a fundamental right), reversed on other grounds \_\_\_ U.S. \_\_\_, 72 L.Ed.2d 672 (1982); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1262 (1980) (eligibility to apply for a limited entry permit is not a fundamental right). It also seems clear that a commercial fishing loan is not a basic necessity of life. Cf. Zobel II at 455 ("a permanent fund earnings dividend is not a 'basic necessity'").

Accordingly, we believe the five-year durational residency requirements in AS 16.10.310(a)(1) do not have to satisfy

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the compelling state interest test. This view is consistent with what appears to be the general rule applied by the United States Supreme Court that statutes providing for governmental payments of monetary benefits are entitled to a strong presumption of constitutionality and should be upheld if they have a rational basis. See, e.g., Califano v. Torres, 435 U.S. 1, 5 (1978), and cases cited. 3/

Since we believe the courts would not measure the five-year durational residency requirements of AS 16.10.310(a)(1) against the more stringent compelling state interest test, its constitutionality under the United States Constitution depends on whether it has a rational basis. Under the Alaska Constitution, it depends on whether it meets the substantially-further-the-purposes/balancing test of Erickson. Because a classification satisfying the Erickson test a fortiori satisfies the federal rational basis test, see n. 2 supra, the question becomes whether the requirements meet the Erickson test.

Under that test, the court

must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must

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3/ The Alaska Supreme Court cited Torres with apparent approval in Zobel II at 463.

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then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

Erickson, 574 P.2d at 12 (footnotes omitted).

The first step in the analysis is to identify the purposes of the legislation and determine whether those purposes are legitimate.

In AS 16.10.300, the legislature declared the policy underlying the commercial fishing loan program: "It is the policy of the state, under secs. 300--370 of this chapter, to promote the rehabilitation of the state's fisheries, development of a predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans." Three legislative purposes emerge from this statement: (1) promoting the rehabilitation of the state's fisheries; (2) promoting development of a predominantly resident fishery, and (3) promoting continued maintenance of commercial fishing gear and vessels throughout the state. Another obvious purpose -- albeit necessarily implied -- is that only bona fide state residents receive the commercial fishing loans authorized. A fifth plausible purpose -- again, only by implication -- is to limit those loans only to long-term (i.e., five-year) residents. Finally, a sixth plausible purpose -- again, only implied -- is to ensure that recipients of commercial fish-

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ing loans have an opportunity to become aware of the rigors of that profession and obtain some experience in the field before becoming independent operators.

The first purpose -- promoting rehabilitation of the state's fisheries -- clearly is permissible. See Alaska Constitution, article VIII, §§ 4 and 5.

The second purpose identified is "to promote the development of a predominantly resident fishery." AS 13.10.001 (in part). To the extent this statement is evidence of a legislative purpose to restrict Alaska's commercial fisheries to Alaska residents, there is a question whether it is permissible. 4/ How-

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4/ Originally, the courts considered that states owned the fish and wildlife resources within their borders. As a result, it was held that a state could limit the privilege of taking those resources to its own residents, *Corfield v. Coryell*, 6 F. Cas. 546 (C.C.E.D. Pa. 1823) (No. 3,230) (oysters), and that a state could prohibit shipment of those resources outside its borders once they had been reduced to capture. *Geer v. Connecticut*, 161 U.S. 519 (1896) (game birds). However, in a long line of subsequent cases, the United States Supreme Court has made clear that a state does not own the fish and wildlife resources within its borders in a proprietary sense. In *Missouri v. Holland*, 252 U.S. 416, 434 (1920), a challenge to the federal Migratory Bird Treaty Act, Justice Holmes stated: "To put the claim of the state upon title is to lean upon a slender reed." "The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource." *Toomer v. Witsell*, 334 U.S. 385, 402 (1948). Also see *Douglas v. Seacoast Products*, 431 U.S. 265, 284 (1977); *Baldwin v. Montana Fish & Game Commission*, 436 U.S. 371, 385-386 (1978); *Hughes v. Oklahoma*, 441 U.S. 322, 327-335 (1979); cf. *Brown v. Anderson*, 202 F.Supp. 96 (D. Alaska 1962) (three-judge panel) (statute granting commissioner and Board of Fish and Game authority to close registration

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ever, courts will construe statutes to avoid constitutional problems if possible. Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1978). That can be done here by reading this statement of purpose as manifesting a legislative intent that the state loans authorized be used to promote the development of a strong resident commercial fishing industry which will benefit the state through expanded employment opportunities, etc. This purpose clearly is permissible: "Encouraging and assisting the wholesome development of new business and industry in Alaska and rehabilitating and expanding existing business and industry are legitimate legislative purposes." De Armond v. Alaska State Development Corp., 376 P.2d 717, 721-722 (Alaska 1962).

The third purpose identified -- to promote continued maintenance of commercial fishing gear and vessels -- similarly is permissible under the state's general police power to legis-

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4/ (Continued)

areas or districts to commercial fishing by nonresidents held unconstitutional).

The United States Supreme Court also has made clear that it is impermissible for a state to regulate solely for the purpose of giving its residents an economic advantage over nonresidents. See, e.g., Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 (1928) (Louisiana statute prohibiting transport of shrimp outside Louisiana until head and shells removed struck down as economic protectionism); Toomer v. Witsell, supra (South Carolina nonresident fee of \$2,500 to take shrimp struck down where resident fee was \$25); Mullaney v. Anderson, 342 U.S. 415 (1952) (Alaska nonresident commercial fishing license fee of \$50 struck down where resident license fee was \$5).

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late for the welfare of its citizens.

The fourth legislative purpose identified is to limit eligibility for state commercial fishing loans to state residents. A legislative purpose to prefer state residents over non-residents in the allocation of state monetary benefits is permissible. "Generally, a state has much more authority to draw distinctions between residents and nonresidents than between long-term and short-term residents." Zobel II at 436, n. 10 (Justice Rabinowitz, concurring) (citations omitted).

Such distinctions usually are challenged under the privileges and immunities clause of article IV, section 2 of the United States Constitution, which provides "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," not the equal protection clause of the Fourteenth Amendment. The definitive pronouncement regarding the constitutionality of limiting the recipients of state monetary benefits to state residents seems to be that by Justice Washington, sitting as Circuit Justice, in Corfield v. Corvell, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (No. 3,230): "[W]e cannot accede to the proposition that, under this provision of the Constitution, the citizens of the several States are permitted to participate in all the rights which belong exclusively to the citizens of any particular State, merely upon the ground that they are enjoyed by those citizens; much less, that in regulating

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the use of the common property of the citizens of such State, the legislature is bound to extend to the citizens of all other States the same advantages as are secured to its own citizens." The proposition that a state can limit its monetary benefits to its own residents apparently is no longer open to serious question.

The fifth possible legislative purpose -- to limit eligibility for commercial fishing loans only to long-term (i.e., five-year residents) -- is not permissible. The only ground advanced to support such a distinction between residents has been that long-term residents should be entitled to some reward for their past contributions to the state. This past contributions rationale was expressly found impermissible in Zobel v. Williams, \_\_\_ U.S. \_\_\_, 72 L.Ed.2d 672 (1982).

The final possible legislative purpose identified is to ensure that the recipients of commercial fishing loans had an opportunity to become aware of the rigors of that profession and to obtain some experience. We believe that this is permissible under the state's general police power to legislate for the welfare of its citizens.

The second element of the Erickson test is to determine whether the challenged classification -- here, the five-year durational residency requirement -- substantially furthers the legitimate purposes.

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The first purpose identified is to promote rehabilitation of Alaska's fisheries. This apparently related to the former authorization in AS 16.10.310(a)(1)(B), repealed in 1976 SLA, ch. 190, § 2, for hatchery construction. The loans now authorized for the purchase of limited entry permits and the purchase and repair of vessels and gear bear little or no relation to rehabilitation of the fisheries. In fact, the opposite seems to be the case since improved vessels and gear would increase pressure on fisheries. While limiting such loans to five-year residents might mitigate this increased pressure, we believe the connection simply is too attenuated to be characterized as substantially furthering the purpose of rehabilitating Alaska's fisheries. (To the extent there is such a connection, it clearly would not survive the balancing element of the Erickson test, discussed below).

The second permissible purpose of the legislation is to promote development of a strong resident commercial fishing industry. This permissible purpose appears inextricably linked to the fourth purpose identified: limiting the benefits of the commercial fishing loan program to state residents only. To accomplish these purposes, the legislature has limited eligibility for loans to five-year residents, AS 16.10.310(a)(1)(A) and (B), and corporations, partnerships and joint ventures wholly owned by five-year residents. AS 16.10.310(a)(1)(C). The five-year dura-

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tional residency requirement thus appears to be a mechanism to ensure that only the resident fishing industry -- i.e., bona fide state residents -- qualify for the loans.

A state may require some period of residency to ensure that individuals seeking a state benefit are bona fide residents. 5/ Sosna v. Iowa, 419 U.S. 393 (1975); Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd without opinion, 401 U.S. 985 (1971); Vlandis v. Kline, 412 U.S. 441, 452-53 (1973) (dicta); Zobel II. In other words, a durational residency requirement in general bears a fair and substantial relationship to testing the bona fides of residency. The precise length of residency required seems immaterial to the "fair and substantial relationship" inquiry under Erickson; indeed, the longer the period of residency required, it would seem, the more likely it is that the applicant is a bona fide resident. 6/ The more im-

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5/ Indeed, even in cases involving fundamental rights and basic necessities of life, the courts recognize that some minimum period of residency may be required to prevent fraud. The precise length of that period may be based on the particular facts presented. Compare Dunn v. Blumstein, 405 U.S. 330 (1972) (Tennessee permitted to apply no more than 30-day residency requirement for voting), with Marston v. Lewis, 410 U.S. 679 (1973) (Arizona permitted to apply 50-day residency requirement for voting).

6/ But see Thomas v. Bailey, 595 P.2d 1, 18 (1979) (Justice Rabinowitz concurring): "Whether or not the state has a justifiable concern that state land be distributed to bona fide residents of Alaska to the exclusion of non-resident applicants, requiring a minimum of three years actual domicile to establish bona fide residence status in the state simply bears no substantial relationship to the asserted purpose of the requirement." (Footnote omitted).

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portant question, discussed below, is whether the state's interest in requiring that length of residence outweighs the rights of those denied the benefit.

The third legitimate purpose identified is the "continued maintenance of commercial fishing gear and vessels throughout the state." AS 16.10.300. We believe a five-year durational residency requirement for a commercial fishing loan bears virtually no relationship to this purpose. It is a well-known fact that a substantial portion of the commercial fishing fleet in Alaska is owned and operated by nonresidents. Moreover, it is not unreasonable to speculate that an additional portion of the commercial fishing fleet in Alaska is owned by Alaska residents who have resided here for less than five years. Both of these groups would be completely excluded from the benefits of the commercial fishing loan program by virtue of the five-year durational residency requirement. As a result, the requirement does not bear a fair and substantial relationship to the "continued maintenance of commercial fishing gear and vessels throughout the state" but, instead, may make achievement of that goal less likely than it would be if the program was open to all fishermen.

The final legitimate purpose identified is to ensure that recipients of commercial fishing loans are aware of the rigorous life of a commercial fisherman and acquire the necessary skills to pursue that profession. However, the five-year dura-

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tional residency classification is insufficiently tailored to reach this end. On the one hand, it excludes less-than-five-year residents who are experienced fishermen; on the other hand, the five-year durational residency requirements standing alone would permit any five-year resident to apply regardless of experience. In other words, the classification does not further the legitimate purpose. This familiarity and experience rationale for a three-year durational residency requirement for lobster and crab fishing licenses was rejected on this basis in Massev v. Adollonio, 387 F.Supp. 373 (D. Maine 1974).

Moreover, this legitimate purpose appears to be advanced far more effectively by other statutory eligibility requirements. AS 16.10.310(a)(1)(A) and AS 16.10.310(a)(1)(C) require that applicants must have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years and have actively participated in the fishery during that period. Alternative requirements in AS 16.10.310(a)(1)(B) are that an individual either reside in an area with no occupational opportunities other than commercial fishing or be economically dependent on commercial fishing for a livelihood if commercial fishing has been a traditional way of life for him.

The final step in the Erickson analysis is to balance the state interest furthered by the classification -- i.e., the

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durational residency requirement -- against the nature of the individual right infringed. The only permissible state interests furthered by the durational residency requirement are ensuring that only the resident fishing industry, i.e., bona fide state resident commercial fishermen, qualify for the economic benefits afforded by the state's commercial fishing loan program. The individual right infringed is that bona fide Alaska residents who do not meet the five-year requirement are absolutely precluded from participating in the program. The balance, then, is between the state's need to require five years of residency against the deprivation that less-than-five-year residents suffer.

We believe there is no question that the Alaska Supreme Court would strike the balance in favor of the less-than-five-year resident and hold the five-year durational residency requirement unconstitutional. Initially, we note that the Alaska Supreme Court historically has viewed durational residency requirements less favorably than the United States Supreme Court. Compare State v. Adams, 522 P.2d 1125 (Alaska 1974) (one-year durational residency requirement for divorce held unconstitutional under Alaska Constitution), with Sosna v. Iowa, 419 U.S. 393 (1975) (one-year durational residency requirement for divorce held constitutional under United States Constitution). Justice Rabinowitz, concurring in Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), stated that residence of three years duration was not rea-

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sonably required to ensure that only bona fide state residents qualified for grants of state land. <sup>7/</sup> Senior Justice Dimond, joined by Justice Matthews, dissenting in Zobel II, pointed out that "it has never been questioned that durational residency requirements, when valid, must be reasonable in length."

Of course, what is reasonable to one person may not be reasonable to another. However, we believe even more deferential courts would hold that the state's interest in imposing a five-year durational residency requirement to test the bona fides of residency is outweighed by the less-than-five-year resident's right to be treated equally, and would find the requirement unreasonable. In Vlandis v. Kline, 412 U.S. 414 (1973), the United States Supreme Court struck down Connecticut's four-year durational residency requirement for reduced state university tuition. The Court held that the four-year requirement created an irrebuttable presumption of nonresidency, and that the state's refusal to provide a procedure by which individuals with less than four years residency could prove that they were bona fide residents of the state constituted a denial of due process. Although the Vlandis dissenters may be correct in their argument that this due process legal theory is not sound <sup>8/</sup>, we believe

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<sup>7/</sup> See note 6, supra.

<sup>8/</sup> Justice Rehnquist, joined by Chief Justice Burger and Justice Douglas, pointed out in his dissent in Vlandis that the ma-

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the effect of the decision is clear: a four-year durational residency requirement is clearly unconstitutional.

In Vlandis, the Court noted the special problems involved when a state attempts to determine the bona fide residence of a highly mobile population:

We are aware, of course, of the special problems involved in determining the bona fide residence of college students who come from out of State to attend that State's public university. . . .

. . . The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

412 U.S. at 452-454. The Court then noted relevant criteria established by the Connecticut Attorney General: year-round residence, voter registration, place of filing tax returns, property ownership, driver's license, car registration, marital status, vacation employment, etc.

This leaves a question as to what length of durational residency may be required. Under Sosna and Zobel II, one year appears to be constitutionally permissible when fundamental

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8/ (Continued)

majority's theory that an irrebuttable presumption violates due process relied on principles of substantive due process -- i.e., "that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely." Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). This theory is not generally favored. See 412 U.S. at 467-468 and cases cited.

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rights and basic necessities of life are not involved. Under Vlandis, it seems clear that four years may not be required. Justice Rabinowitz, concurring in Thomas v. Bailey, supra, disapproved three years durational residency. Also see Massev v. Apollonio, supra (three-year durational residency requirement for lobster and crab fishing license unconstitutional under federal rational basis test).

We are vigorously defending the two-year durational residency requirement in AS 14.43.125(b) for eligibility to apply for scholarship loans under AS 14.43.090--14.43.160. Andress v. Baxter et al., No. A82-307 Civil (D. Alaska, filed August 3, 1982). Our defense is based on the fact that the residency of college students is difficult to determine, since their physical abode once they have entered college almost universally is on or adjacent to the campus they are attending. When this is coupled with the extremely liberal benefits provided qualifying student applicants, we believe a period of residency longer than one year is defensible.

Similar considerations apply to commercial fishermen. Fishermen comprise a highly mobile population. Alaska's fisheries attract residents of many states who, of necessity, must spend a considerable amount of time in Alaska. While here, it is quite easy to obtain many of the normal indicia of Alaska residence: housing, mailing address, voter registration, driv-

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er's license, etc. Following repeal of the personal income tax, there are few negative consequences attached to declaring Alaska residency.

Finally, the commercial fishing loan program is extremely attractive to prospective fishermen. The interest rate on loans under the program may not exceed 10½ percent. AS 16.10.320(a)(2). More importantly, a loan to a qualifying Alaska resident under AS 16.10.333 is the only legal way to finance the purchase of a limited entry permit using the permit itself as collateral for the loan. 9/ AS 16.43.150(g). With the price of limited entry permits ranging as high as \$250,000 and up, the desirability of using the permit itself as collateral is obvious.

These considerations may make it permissible for the state to require more than a one-year durational residency requirement. We will have more guidance on this question following a decision in Andress. However, we believe that the five-year durational residency requirements in AS 16.10.310(a)(1) clearly are unconstitutional and cannot be defended in the absence of

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9/ AS 44.81.220(a)(20) authorizes the Alaska Commercial Fishing and Agriculture Bank ("CFAB") to make loans to five-year residents with at least one year of experience in commercial fishing. However, we understand that CFAB is not making such loans at this time. The five-year eligibility requirement in AS 44.81.220(a)(20) suffers the same constitutional defect as the requirement in AS 16.10.320(a)(1). We are sending CFAB a copy of this opinion, suggesting that legislative consideration of AS 16.10.320(a)(1) also encompass the eligibility requirement in AS 44.81.210(a)(20).

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some compelling reason. 10/

### III. EFFECT OF OPINION

As set out above, it is our conclusion that the five-year durational residency requirements in AS 16.10.310(a)(1) clearly are unconstitutional. The remaining question is what effect our opinion should have on your administration of the program.

We recently undertook a thorough review of this question. Following that review, we concluded that three courses of action are possible. First, if we believe there is a significant probability that the statute would be found constitutional if challenged in court, the agency charged with administering the statute should continue implementing it. Under these circumstances, we believe the legislative will, as expressed in the statute, should be followed by the executive branch unless and until the statute is ruled unconstitutional by the courts.

Second, if a good faith argument can be made that the statute is constitutional but we believe it probably would be held unconstitutional if challenged in court, we will so state and, if appropriate (i.e. subject to practical considerations

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10/ The three-year durational residency requirement for running for state legislature was upheld in *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974) on the ground that the state had a compelling interest in ensuring the candidate is exposed to his prospective constituents and legislators are familiar with the diverse character of the state. No such compelling state interests are present here.

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of office priorities and resource availability), seek leave to file an action under article III, section 16 of the Alaska Constitution 11/ to obtain a judicial determination of the statute's constitutionality.

However, where no good faith argument can be made that the statute is constitutional, we believe it is the obligation of the attorney general to say so and, as the legal advisor to the governor and other state officers, AS 44.23.020(a), to direct that the program be shut down.

Very rarely will it be impossible to make a good faith argument that a statute is constitutional. However, we believe the five-year durational residency requirement in AS 16.10-.310(a)(1) is one of those rare exceptions. We reach this conclusion on the basis of the thorough case law review undertaken above. Durational residency requirements longer than one year

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11/ That provision provides in part that the governor "may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions." The intent of the section was to give the governor all the power necessary to prevent subordinate officials from acting in an unconstitutional manner or contrary to statute. 3 Alaska Const. Conv. Min. 1986, 2022. In such an action, of course, the central inquiry is the legality of the questioned activity (here, applying the five-year durational residency requirement). Under this provision, the effect of a referendum repeal of the Elected Public Officers Retirement System (EPORS) was tested in State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

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have been upheld as constitutional only under exceptional circumstances. The United States Supreme Court struck down a four-year durational residency requirement for highly mobile college students in Vlandis v. Kline, supra. A three-year durational residency requirement for fishing licenses was struck down on equal protection grounds in Massev v. Apollonio, supra. Justice Rabinowitz of the Alaska Supreme Court had no difficulty in finding a three-year durational residency requirement for a grant of state land unconstitutional in Thomas v. Bailey, supra (concurring opinion).

A good faith argument can be made that a durational residency requirement less than four years but more than one year is constitutional for the grant of state monetary benefits for a highly mobile group such as college students or commercial fishermen. However, this does not mean that you can continue to implement the program but with a shorter durational residency requirement than the five years specified in AS 16.10.310(a)(1). If that change is to be made, it must be made by the legislature. The attorney general, like the courts, has no authority to rewrite the law. The Alaska Constitution, article II, section 14, clearly vests the power to pass legislation in the legislature, not the executive branch.

Moreover, we do not believe you can continue to implement the program with only a minimal residency requirement (i.e.,

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30 days), as opposed to the five-year durational residency requirement as enacted by the legislature. That would require a finding that the five-year requirement is severable from the rest of the statute. Under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), a two-step test for severability is required. First it must appear that legal effect can be given to the remainder of the statute after the offensive provision is stricken. Here, the statute clearly can be given legal effect if the five-year durational residency requirement is removed.

Second, it must appear that the legislature intended the provision to stand if the offensive provision was struck. We believe the answer to this inquiry is not clear. We recognize that AS 01.10.030 provides in part that laws are to be construed as containing the following language: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected thereby." However, the Alaska Supreme Court stated in Lynden Transport that AS 01.10.030 creates only a weak presumption in favor of severability. Given the highly mobile nature of fishermen, the ease with which traditional indicia of residency can be obtained, the lack of adverse consequences to establishing such minimum indicia, and the extreme attractiveness of the program, we cannot say that the legislature would have passed this statute without

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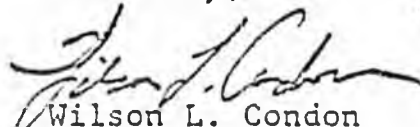
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some durational residency requirement.

As a result, we believe you have no choice but to shut down the commercial fishing loan program under AS 16.10.300--16.10.370. No further loan commitments should be granted under that program following your receipt of this opinion. 12/ We are providing copies of this opinion to Governor Hammond and Governor-elect Sheffield, and will urge them to take whatever steps are necessary to bring this matter to the attention of the Thirteenth Alaska Legislature which will be convening early next year.

If you have further questions, please contact us at your convenience.

Sincerely,



Wilson L. Condon  
Attorney General

WLC:GTK:dlm

cc: Governor Hammond  
Governor-Elect Sheffield  
Alaska Commercial Fishing Agriculture Bank

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12/ Loan commitments already made should be honored to avoid undue hardship to those who have changed circumstances in reliance on those commitments.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

December 6, 1982

D.A. Hostak, Director  
Division of Business Loans  
and Veterans Affairs  
Department of Commerce  
and Economic Development  
Pouch D  
Juneau, Alaska 99811

Re: Constitutionality of Residence  
Requirement for Fishing Loans  
(AS 16.10.310).  
Our file 366-161-83.

Dear Mr. Hostak:

In a November 26, 1982 opinion, this office concluded that the five-year durational residency requirements for commercial fishing loans in AS 16.10.310(a)(1) clearly are unconstitutional, that no good faith defense of the requirements could be advanced if they were challenged in court, and that the requirements were not severable. As a result, we concluded that the Department of Commerce and Economic Development, Division of Business Loans and Veterans' Affairs, had no choice but to suspend the program until the legislature had an opportunity to amend the enabling legislation.

Governor Sheffield asked us to review the conclusions of that opinion to determine whether the program legally can be

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reinstated between now and the time the legislature has an opportunity to address the problem created by the five-year durational residency requirement. Governor Sheffield's request stemmed from a strong desire to minimize the adverse consequences resulting from suspension of the program at this time. 1/

In response to the governor's request, we have undertaken a thorough review of the November 26, 1982 opinion. Following that review, we remain satisfied that two of the conclusions reached in that opinion are correct: (1) the five-year durational residency requirements are unconstitutional; and (2) no good faith defense of those requirements could be advanced if they were challenged in court.

However, we are not as certain about the conclusion regarding the severability of those requirements from the remainder of the statute. Under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), a two-step test for severability is employed. First, it must appear that legal effect can be given to the remainder of the statute after the offensive provision is stricken. Here, legal effect certainly can be given to all three subparagraphs of AS 16.10.310(a)(1) if the words "of five years" are deleted from each subparagraph. If those deletions

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1/ This time period -- i.e., between Thanksgiving and early Spring -- is the fishing off-season. Accordingly, it is the busiest time of year for financial transactions most directly impacted by a suspension of the commercial fishing loan program.

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are made, the eligibility requirement in general would be that applicants "have been state residents for a continuous period [OF FIVE YEARS] immediately preceding the date of application for a loan." AS 16.10.310(a)(1)(A) (material in brackets deleted).

The second element of the Lynden Transport test is that it must appear the legislature intended the remainder of the statute to stand if the offensive provision was stricken. In AS 16.10.300, the legislature declared the policy underlying the commercial fishing loan program: "It is the policy of the state, under secs. 300-370 of this chapter, to promote the rehabilitation of the state's fisheries, development of a predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans." Neither the rehabilitation of the state's fisheries nor the continued maintenance of commercial fishing gear and vessels is related, either directly or indirectly, to a durational residency requirement. If the five-year durational residency requirement is not severable and the program must be suspended as a result, these legislative purposes clearly will be thwarted. We believe the presence of legislative purposes wholly unrelated to the durational residency requirement may be viewed as evidence that the legislature intended the remainder of the statute to stand if the durational residency requirements were stricken.

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Moreover, the express legislative purpose of promoting development of a predominately resident fishery and the implied legislative purpose of ensuring that only bona fide state resident commercial fishermen qualify for commercial fishing loans both can be accomplished quite easily without a statutory five-year durational residency requirement. Without that requirement, eligibility still would be limited by statute to those who "have been state residents for a continuous period" -- i.e., bona fide Alaska residents.

In other words, all of the legitimate legislative purposes underlying both the statutory commercial fishing loan program as a whole and the specific five-year durational residency requirements can be satisfied even if the five-year requirements are severed. As a result, we believe it is reasonable to conclude that the legislature would have intended the remainder of the statutory commercial fishing loan program to stand if the unconstitutional five-year durational residency requirements were stricken.

Accordingly, under Lynden Transport, the offensive five-year durational residency requirement can be found severable. We believe that is the result the Alaska Supreme Court would reach if the question was presented to it. As a result, we believe you should reinstitute the program under AS 16.10-.310(a)(1), but without the five-year durational residency re-

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quirement. That conclusion is supported by AS 01.10.030, the state's general severability clause 2/, which the Alaska Supreme Court views as establishing at least a weak presumption in favor of severability. Williams v. Zobej, 619 P.2d 422 (Alaska 1980).

Once the five-year durational residency requirements are severed, the statute then requires only that applicants have been state residents for a continuous period immediately prior to applying for a loan as an objective test of residency. To establish a legally defensible objective standard for the length of the statutorily required continuous period of residency, we believe the Department of Commerce and Economic Development should adopt emergency regulations under AS 16.10.310(a)(3) and AS 44-.62.250.

The length of any period of residency required by such regulations should be within a range which could be defended in court. Under the cases cited in the November 26, 1982 opinion, 30 days clearly would be permissible. One year almost certainly

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2/ AS 01.10.030 provides:

Any law heretofore or hereafter enacted by the Alaska Legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected [sic] thereby."

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would be permissible. A good faith argument could be made that two years is permissible because of the highly transient nature of fishermen, although it is more likely than not that a two-year durational residency requirement would be found unconstitutional if challenged in court. To assist your department in adopting the necessary emergency regulations, we are attaching a draft finding of emergency, order of adoption, and amended regulation conforming to the requirements of AS 44.62.250. 3/

We are aware that the Alaska Supreme Court has acknowledged the doctrine of separation of powers. See e.g., Bradner v. Hammond, 553 P.2d 1 (Alaska 1976); Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Under that doctrine, some might criticize a policy under which the attorney general concludes that constitutionally offensive provisions are severed under the Lynden Transport analysis with the executive branch then proceeding to implement the remainder of the statute. 4/ It apparently was for this reason -- i.e. that severing the constitutional portion of the statute could be viewed as impermissible

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3/ Your department must then follow the additional steps outlined in the Drafting Manual for Administrative Regulations. See checklist on pp. 12-13 and chapter 5.

4/ This is precisely what happened when this department proposed to settle a court challenge to the state's longevity bonus program by severing the program's unconstitutional residency requirements and establishing a one-year durational residence requirement in their place.

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legislating by the executive branch -- that former Attorney General Condon concluded that you had no choice but to suspend the program pending a legislative solution.

However, in the extraordinary situation where a statutory requirement clearly is unconstitutional and cannot be defended in court, I believe the better result is for the legislative will expressed in the overall statutory scheme to be implemented without the constitutionally offensive provisions if they can be severed under the Lynden Transport analysis. This gives the executive branch much more flexibility when the legislature passes a statute which is unconstitutional in part. Under a policy where offensive provisions cannot be severed, the difficult choice is between continuing to implement an unconstitutional statute or suspending an entire program. However, if an offensive provision can be severed, the executive branch can implement the legislative will in a constitutional manner, thereby satisfying the programmatic desires expressed by the legislature without running afoul of constitutional constraints.

If the legislature is dissatisfied with this result, or disagrees with the attorney general's conclusion regarding severability, it always has the option of amending the statute or repealing it altogether. Ultimately, the legislature must take final responsibility for the statutes which govern the state.

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To intrude as little as possible into the legislative sphere, Governor Sheffield has made it clear that the solution outlined above is to be an interim solution only. Under AS 44.62-.260(a), emergency regulations expire 120 days after they are adopted. At that time, if the legislature has not addressed the problem presented by the unconstitutional five-year durational residency requirements, the program should again be suspended.

We are sending copies of this opinion to Senator Kerttula and Representative Hayes to ensure that the legislature has notice that the program will be suspended upon expiration of the emergency regulation if there is no legislative action before then. Consequently, the legislature will have to act if it desires the program to continue beyond the expiration date of the emergency regulation.

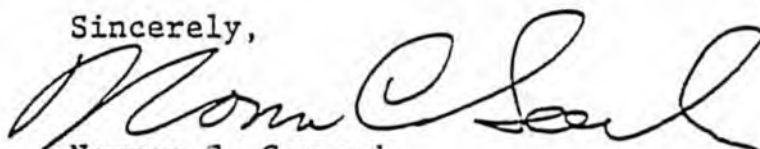
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature. The interim solution outlined above is simply a pragmatic approach to solving the problem temporarily to avoid the considerable hardship immediate suspension of the program would work on the commercial fishing industry while the legislature considers this matter.

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We will be happy to work with you in putting this suggested interim solution into practice.

Sincerely,



Norman C. Gorsuch  
Attorney General

NCG:GTK:d1m

Attachment

cc: Senator Jalmar Kerttula  
Representative Joe L. Hayes



# Alaska State Legislature

## House of Representatives

November 5, 1982

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

### MEMORANDUM

TO: The Honorable Joe Hayes  
Speaker of the House  
Anchorage

FROM: Mark K. Johnson  
Juneau

Subjects: Proposed legislation regarding (a) Commercial Fishing Loan Act and (b) Fishermen's Mortgage and Note Fund.

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Each of these programs was identified by the Attorney General in his letter of September 1, as posing constitutional problems because of durational residency requirements. After some research and reflection it was determined that attempts to cure the problems with these programs should be simple rather than complex.

In the Commercial Fishing Loan Act, AS 16.10.310-16.10.360, the Department of Commerce is given the authority to make loans to individual commercial fishermen and eligible business ventures for "the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear and for the construction and purchase of vessels...". The program also imposed a five year continuous residency requirement for eligibility for these loans.

The proposed legislation would delete the five year residency requirement entirely but expand a requirement that an applicant have actively participated in the fishery from one out of the last five years to three out of the last five years. Inasmuch as there is no residency requirement for the holding of a limited entry permit or on participation in the fishery as a crewmember, this may be a appropriate response.

Legislation creating the Fishermen's Mortgage and Note Fund, AS 16.10.650-16.10.720, also imposed a five year durational residency requirement on applicants for that program. The proposed legislative response would also delete this requirement from the law. But at the same time, the response would impose upon an applicant the burden of establishing that "he is likely to contribute to the economic stability of the state".

My understanding of the opinion of the U.S. Supreme Court in Zobel V. Williams, \_\_\_ U.S. \_\_\_, 72 L Ed 2d 672, (1982), is that the imposition of such a requirement is acceptable. Such a requirement does not suffer from the defect of being only backward looking but is rather, only concerned with the present and the future. I believe accordingly that such a requirement is a "legitimate state purpose". See the opinion of Justice Brennan at 72 L Ed 2d 672, at 684.

These last two pieces of proposed legislation represent the final areas in which legislative action is appropriate with the exception of the longevity bonus program. I will be spending some time on that issue to determine if some kind of legislative solution can be fashioned. I expect, however, that the likely conclusion is that the program must be scraped altogether or funded at a dramatically higher level.

\*Sec 1: AS 16.10.310 is amended to read:

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

(A) individual commercial fishermen who have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010-16.43.380 for any three of the past five years and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels; and

(B) corporations, partnerships or joint ventures, 100 per cent of which are owned by individual commercial fishermen who have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010-16.43.380 for any three of the last five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt rules and regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons;

(5) enter into agreements with private lending institutions, other state agencies and agencies of the federal government to carry out the purposes of AS 16.10.300-16.10.370.

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under AS 16.10.010-16.10.720.

\*Sec. 1: AS 16.10.680 is amended to read:

Sec. 16.10.680. Eligibility for loans . (a) The commissioner may purchase a mortgage or note under AS 16.10.660(b) if it secures a loan to an individual who meets one of the requirements of (b) of this section and who

(1) does not qualify for a loan for the purposes described in AS 16.10.670 under a state loan program;

(2) has not previously participated in the loan program established in AS 16.10.650-16.10.720 or in any other state loan program for the purposes described in AS 16.10.670; and

(3) meets the guidelines established by the commissioner to determine whether the applicant is reasonably likely to succeed as a commercial fisherman and be able to repay the loan.

(b) In addition to the requirements of (a)(1)-(4) of this section, the commissioner may purchase a mortgage or note under AS 16.10.660(b) only if it secures a loan to an individual who demonstrates under guidelines established by the commissioner that he is likely to contribute to the economic stability of the state and

(1) because of his lack of training or the lack of employment opportunities in the area in which he resides, he does not have occupational opportunities available to him other than commercial fishing; or

(2) he is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for him in Alaska.

(c) The commissioner may not refuse to purchase a mortgage or note from a private financial institution under AS 16.10.660(b) solely because the applicant for the loan does not have a credit history.

(d) In determining whether the applicant is reasonably likely to be able to repay the loan under (a)(4) of this section, the private financial institution shall consider the applicant's income from commercial fishing and from other sources.

## FINDING OF EMERGENCY

The Department of Commerce and Economic Development finds that an emergency exists and that the attached amendment is necessary for the immediate preservation of the public peace, health, safety, or general welfare. A statement of the facts constituting the emergency is:

1. In a November 26, 1982 opinion, the Department of Law concluded that the five-year durational residency requirements for commercial fishing loans in AS 16.10.310(a)(1)(A), (B) and (C) are unconstitutional.
2. In a December 6, 1982 opinion, the Department of Law concluded that the five-year durational residency requirements for a commercial fishing loan are severable from the remainder of the statutory program.
3. The commercial fishing loan program was initially enacted in 1972. Since that time, it has become very important to the continued viability of the commercial fishing industry in Alaska. In addition to providing financing for vessels and gear, the commercial fishing loan program provides the only mechanism for financing the purchase of limited entry permits using the permits as collateral. If the program is suspended, it will work an immediate and considerable hardship on the commercial fishing industry in Alaska. Therefore, 03 AAC 80.100 must be amended to remove the requirement that an individual be a five-year resident to qualify for a commercial fishing loan for the immediate preservation of the general welfare of the industry.
4. The Department of Law concluded that the five-year durational residency requirement in AS 16.10.310(a)(1)(A), (B) and (C) was intended to ensure that only bona fide residents of Alaska qualify for commercial fishing loans. The legislature has not funded this department with a sufficient staff to make individual inquiries of each applicant for a commercial fishing loan to determine on an individualized basis whether that applicant is in fact a bona fide resident of Alaska and, at the same time, to make the necessary evaluation of an applicant's financial situation for purposes of obtaining a loan. As a result, some legally permissible screening requirement to test the bona fides of residency must be adopted.
5. The Department of Law informs us that a one-year durational residency requirement almost certainly is constitutional when a fundamental right or basic necessity of life is not involved, and that eligibility to apply for a commercial fishing loan is not a fundamental right nor a basic necessity of life.

ADOPTION ORDER

Under authority of AS 16.10.310(a)(3), the regulation is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

DATE: December 7, 1982  
Juneau, Alaska

Richard A. Lyon, Commissioner.  
Department of Commerce and  
Economic Development

FILING CERTIFICATION

I, Stephen Alan McAlpine, Lieutenant Governor for the State of Alaska, certify that on December 7, 1982, at \_\_\_\_\_ .m., I filed the attached regulations according to the provisions of AS 44.62.

Stephen Alan McAlpine  
Lieutenant Governor

3 AAC 80.100. DEFINITION OF TERMS. Unless the context requires otherwise, in this chapter and in the forms and instructions of the commissioner

(11) "resident" means a corporation, partnership or limited partnership 100 percent of which is owned by a resident commercial fisherman or an individual who, except for brief intervals, periods of military service, or attendance at an educational or training institution has resided in the state for one year [FIVE YEARS]; "residence" is determined by where the individual

(A) is registered to vote;

(B) maintains his permanent place of abode;

(C) files his tax returns;

(D) registers or licenses his personal property, including but not limited to cars, boats, trucks and trailers;

(E) is licensed to drive; and

(F) maintains bank accounts, savings accounts, lines of credit and other financial relationships. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78; am / / , Reg. )

Authority: AS 16.10.310