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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 8, 1984

The Honorable Jalmar Kerttula  
Alaska State Senate  
Pouch V  
Juneau, Ak 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act.

Section 1 of the bill, which amends AS 16.43.150(g) to provide that the transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies that it is the intent of the legislature to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

Section 2 of the bill merely deletes reference to a federal agency that no longer exists.

Section 3 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. An exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. Similar exceptions occur, when a permit holder has paid a reduced poverty fee and is later determined not to qualify for the reduced fee; and when a permit holder pays a renewal fee with a bad check. The commission believes that it would be appropriate if the applicant were required to pay interest on the unpaid amount in these circumstances.

Section 4 of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, Op. No. 2712 (August 26, 1983), in which the court held that the commission lacks such discretion.

Section 5 of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 6 of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. The section also deletes unnecessary procedural detail that is duplicative of the provisions in AS 16.43.110(b). Section 6 also authorizes the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970(b).

Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970. The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It will enable the commission to tailor penalties to fit particular offenses.

Finally, this section of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 7 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 8 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of especial importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,

*Bill Sheffield*  
 Bill Sheffield  
 Governor

# Alaska State Legislature

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## Senate

### Committee on Resources

TO: Senator Mulcahy, Chairman  
Resources Subcommittee

FROM: Senator Fahrenkamp, Chairman   
Senate Resources Committee

DATE: February 28, 1984

RE: SB 422; HB 376

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The following bills have been referred to the Resources Committee. I am assigning them to the Subcommittee on Fisheries for consideration by the Subcommittee.

SB 422 - An Act amending the Limited Entry Act

HB 376 - Amending the Limited Entry Act; providing for landing permits; effective date.

cc: Senate Resources Committee members

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SB422  
Title: An Act amending the Limited Entry Act  
Sponsor: Governor  
Requestor: Sponsor  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game  
Program Category Affected: Natural Resource Management  
BRU, Program or Subprogram(s) Affected: Commercial Fisheries (Limited) Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.1	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact, except that dollars received deposited to Unrestricted Revenue/General Fund.

ANALYSIS: Attach a separate page for analysis (See Analysis attached.)

Prepared By: Sharman Haley Phone: 465-4081  
Division: Commercial Fisheries Entry Commission Date: 1/20/84

Approved by Commissioner: [Signature] Date: 1/24/84  
Agency: CFEC

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

## FISCAL ANALYSIS FOR SEC. 3 - "An Act Amending the Limited Entry Act"

The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

In the residency fraud investigation project conducted in 1979-1982, a 132-case sample of 2,049 suspect cases yielded 33% actionable cases of residency fraud. The suspect cases constituted 11.1% of the 18,419 total permit holders in 1979. This would indicate approximately a 3.7% actionable residency fraud rate among all permit holders in 1979.

From one year to the next, approximately 1,000 individuals drop out of the permit holder data base (5.4%) and approximately 1,340 new individuals enter. Of the 19,796 permit holders in 1983, therefore, approximately 14,400 had been permit holders in 1979 and approximately 5,400 were new to the data base. Applying the 3.7% actionable fraud rate from the 1979 study, approximately 200 of these new permit holders will be found to be actionable residency fraud cases.

Only 317 of the original 2,049 suspect cases from the 1979 study were actually investigated. Using the 33% actionable fraud rate among suspect cases, there should have been an estimated 676 actionable fraud cases in total, leaving 359 of them uninvestigated. Applying the estimated 5.4% attrition rate, approximately 290 of these actionable fraud cases remain in the permit files data base in 1983, and will be investigated in the course of the 1984 project. Adding the estimates for old and new permit holders together, a total of 490 actionable fraud cases are projected for discovery in 1984.

An examination of fee arrearages for 1978-1981 in 44 residency fraud cases shows an average of \$369 in arrearages per case per year, and an overall collection rate of 60%. Applying this to the estimated actionable residency fraud cases from 1983, an estimated \$180,800 will be assessed in fee arrearages for 1983 of which \$108,500 will be collected in FY 85.

Residency arrearages on the average will be collected 20 months after they were due. Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a sixty-day grace period) the interest on fee arrearages to be collected in FY 85 is estimated at \$17,100. For the following years, the new cases of residency fraud are estimated as 3.7% of the 1,340 new entrants, or 50 cases per year. The fee arrearage assessments are estimated at \$18,500, and collections at \$11,100. The interest on this amount for 18 months would be \$1,700.

Of the remaining 40 percent of the arrearages assessed but not collected, some are presently in adjudication and their fees will ultimately be collected; others will prevail on their residency claims and their record cleared; and still others have severed their ties to the Alaska fishery and their fee arrearages will never be collected. At present the Commission has no reliable estimate of what proportion of these remaining arrearages will ultimately be collected and in what time frame. Therefore, no attempt has been made to estimate interest on

these fees. While this unknown quantity would tend to increase revenues to the State, it may to some degree offset an error in the fiscal estimates in the opposite direction. Presumably, residency fraud investigation and enforcement will cut back on the future incidence of residency fraud, and therefore lower the amount of fee arrearages and interest due.

While the legislation would allow the Commission to charge interest when fees are overdue because the check bounced or because the applicant paid but did not qualify for the reduced poverty fee, the fiscal impact from these two categories is estimated at less than \$100 annually. Most permit holders who write the Commission bad checks pay up promptly when notified of the problem and therefore fall within the 60-day grace period. Also, the amounts of money are relatively small. Of those who don't pay promptly, most will never be collected. (They will also not be issued another fishing permit until all outstanding fees are paid.)