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# Alaska State Legislature

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## Senate

### Committee on Resources

TO: Senate Resources Committee Members  
FROM: Senate Resources Committee Staff  
RE: March 25 Hearing  
DATE: March 24, 1983

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On Friday, March 25 at 3:00 pm in the Beltz Room, the following bills will be heard:

SB 120 AN ACT RELATING TO SOIL AND WATER CONSERVATION.

The sponsor of SB 120 has requested that the Committee consider Sponsor Substitute for SB 120 in lieu of the original bill.

SSSB 120 creates the Soil and Water Conservation Board in place of the Soil Conservation Board, and replaces the current system of one Soil Conservation District (which includes the area of the entire state) divided into subdistricts, with a system of Soil and Water Conservation Districts.

The membership of the Board is increased to allow for appointment of 1 member from each of 5 geographic areas of the state; each board member must be a producer of renewable resources and have a cooperative agreement with a soil and water conservation district, rather than possessing land as is currently required. The Board's advisory duties are increased to allow them to hold public hearings and to review appeals. The Commissioner of DNR is authorized to appoint an executive director and clerical staff to assist the Board.

The following 3 bills have passed out of the Resources Subcommittee on Fisheries. Recommendations of the Subcommittee have been incorporated into draft Committee Substitutes, which will be discussed by Senator Mulcahy, Subcommittee Chairman, at the hearing.

CSSB 73 AN ACT RELATING TO COMMERCIAL FISHING LOANS, which changes the residency requirement for a commercial fishing loan from 5 years to 2 years.

CSSB 136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR, which provides exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear.

CSSB 156 AN ACT RELATING TO THE SALE, LEASE OR GRANT OF STATE HATCHERY FACILITIES, which allows the Commissioner of Fish and Game to sell, lease, or grant a state hatchery facility to a qualified regional aquaculture association.

The following two bills will also be heard:

SR 2 RELATING TO THE CROSS ISLAND WELL

SR 2 resolves that the North Slope Borough not impose restrictions in addition to those already required by the state on the operator of the Cross Island Well in the Beaufort Sea.

SB 151 AN ACT RELATING TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

The Committee will be considering further a Committee Substitute for SB 151. Additional amendments to the CS are still being prepared, and will be submitted to you under separate cover prior to Friday's hearing.

It is hoped that final Committee action could be taken on several of these bills.

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

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RECD  
9:46 A.M.  
11/29/82

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 366-161-83.

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

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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.

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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

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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. Scsna 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).

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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 13.10.300 (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. Coryell, 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 Massey v. Apollonio, 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. 395 (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. 7/ 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 8/, we believe

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7/ See note 6, supra.

8/ 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).

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

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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.

D.A. Hostak, Director  
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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).

D.A. Hostak, Director  
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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 Massey 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.,

D.A. Hostak, Director  
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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

D.A. Hostak, Director  
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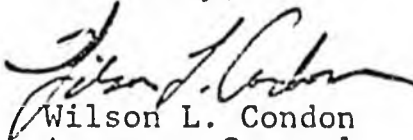
November 26, 1982  
Page 25

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:d1m

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

D.A. Hostak, Director  
Division of Business Loans & Veterans' Affairs  
Dept. of Commerce & Economic Development  
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Page 2

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.

D.A. Hostak, Director  
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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.

D.A. Hostak, Director  
Division of Business Loans & Veterans' Affairs  
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366-161-83

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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-

D.A. Hostak, Director  
Division of Business Loans & Veterans' Affairs  
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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. Zobel, 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."

D.A. Hostak, Director  
Division of Business Loans & Veterans' Affairs  
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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.

D.A. Hostak, Director  
Division of Business Loans & Veterans' Affairs  
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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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Dept. of Commerce & Economic Development  
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December 6, 1982  
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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.

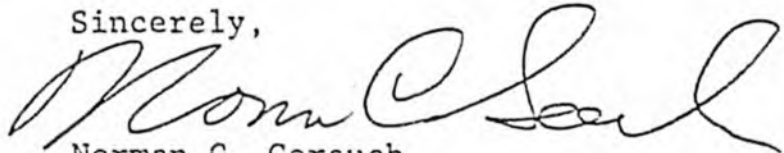
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature. 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.

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

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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

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~~, 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 available to make  
4 loans under AS 16.10.310 (for loans of \$35,000 or less made under  
5 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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The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the length of residency required to qualify for a commercial fishing loan.

The Department of Law has concluded that the five-year durational residency requirement for commercial fishing loans in AS 16.10.310(a) is unconstitutional. In the department's first opinion on that subject, dated November 26, 1982, it concluded that the unconstitutional five-year durational residency requirement was not severable from the remainder of the statute and, accordingly, that there was no alternative to shutting down the program. The program was, therefore, suspended.

Immediately upon taking office, I directed my Attorney General to review this conclusion. I was particularly concerned about the consequences of closing down the program at this time since the winter, non-fishing season is the most important time of year for fishermen to make financial arrangements (i.e., commercial fishing loans) for the upcoming season. In an opinion dated December 6, 1982, Attorney General Norman C. Gorsuch concluded that the five-year durational residency requirement was severable, that a one-year durational residency requirement would be defensible, and that the Department of Commerce and Economic Development could adopt emergency regulations to reinstitute the program.

The Department of Commerce and Economic Development adopted an amendment to 3 AAC 80.100(11) as an emergency regulation on December 7, 1982 (filed by the lieutenant governor on December 8, 1982) to reinstitute the program with a one-year residence requirement. However, at my direction they have not published notice that that regulation will be adopted as a "permanent" regulation. It is my belief that any permanent change in the five-year requirement should be made by the legislature. To that end, the attached bill changes the statutory five-year durational residency requirement to a one-year one.

The emergency regulation will expire at midnight on April 6, 1983. At that time, in the absence of legislative action amending the statute, the commercial fishing loan program again will be suspended until the legislature acts to reinstitute the program. In the meantime, one-year Alaska resident commercial fishermen may continue to apply for loans. However, after that date, applications no longer will be accepted unless the legislature acts.

Given the interest which this program and its brief suspension have generated, as well as its importance to Alaska's commercial fishing industry, I urge you to act on this measure without delay.

Sincerely,

/s/ Bill Sheffield  
Bill Sheffield  
Governor

SENATE JOINT RESOLUTION NO. 15 by the Rules Committee by Request of the Alaska Statehood Commission,

Proposing an amendment to the Constitution of the State of Alaska relating to cooperation with foreign nations,

was read the first time and referred to the Judiciary Committee.

SJR 16

SENATE JOINT RESOLUTION NO. 16 by the Rules Committee by Request of the Alaska Statehood Commission,

Making application and requesting that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States setting rules and procedures for constitutional conventions,

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

SB 76

SENATE BILL NO. 76 by the Rules Committee by Request of the Alaska Statehood Commission, entitled:

"An Act requiring an advisory vote by the qualified voters of the state on amendments to the Alaska Statehood Act."

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

SB 77

SENATE BILL NO. 77 by Senator Vic Fischer, entitled:

"An Act establishing the Alaska senior citizen employment team program and fund; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

**JOURNAL SUPPLEMENT**

2/26/83

No. 1

FISCAL NOTE

SB  
73

**I. REQUEST**

Bill/Resolution No. \_\_\_\_\_  
 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' Aff  
 (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.						
<b>TOTAL</b>		63.7	61.3	64.4	67.7	71.1

**FUNDING (Thousands of Dollars)**

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	64.4	67.7	71.1
FEDERAL FUNDS						
OTHER (Specify Source)						

**III. ANALYSIS**

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.

1/19/83 Prepared by D.A. Hostak, Director  
 Agency: Dept. of Commerce & Econ. Dev.  
 Phone 465-2555 Div of Loans & Veterans Aff



# UNITED FISHERMEN OF ALASKA

---

MAILING ADDRESS & OFFICE  
197 SOUTH FRANKLIN ST.  
JUNEAU, ALASKA 99801  
907 586-2820

Cass M. Parsons  
Executive Director

March 15, 1983

Honorable Bob Mulcahy  
Chairman  
Sub Committee on Fish  
Pouch V  
Juneau, Alaska 99811

Dear Senator Mulcahy:

I would like to comment on <sup>Senate</sup> ~~House~~ Bill <sup>73</sup> ~~15~~, loans to commercial fishermen, on behalf of the United Fishermen of Alaska. The UFA is a fishermen's organization of 1500 individual members and 18 member fishing groups from many gear types and regions throughout the state. We feel particularly qualified to testify on the state's loan programs to fishermen.

The UFA Board of Directors voted to support a two year residency requirement for the following specific reasons:

- 1) Fishermen are a very mobile group, and as such, their permanent place of residency is difficult to ascertain. Even those fishermen who have legally resided in one state for years move around with the fishing seasons and often establish temporary residences in other towns. With the major supporting infra-structure facilities located outside the state, legal Alaska state residents often spend many months in other states, building, repairing and supplying their vessels. These fishermen often establish a temporary residence outside the state of Alaska.
- 2) A very high percentage of the Alaskan fleet is comprised of vessels registered to ports outside Alaska. The fishermen aboard these boats are legal residents of another state but fish in Alaska for many months and often establish temporary residence here. A study by Natural Resources Consultants reports the following percentages of out-of-state registered vessels\* per fishery, fishing in Alaskan waters throughout the year:

\*over 5 net ton vessels only

Honorable Rick Uehling  
March 8, 1983  
Page Two

17% Salmon  
69% King crab  
48% Tanner crab  
15% Halibut  
16% Herring  
29% Ground fish

These traits of the fishing industry point to an enormous similarity in the patterns of resident and non-resident fishermen during the course of a year. The UFA believes that a longer period than one year is necessary to differentiate between the non-resident who may appear to be a resident and the legal resident.

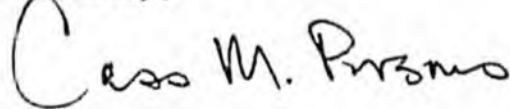
The UFA also supports legislation which would require that loans given out to fishermen from the state be paid back upon termination of the fishermen's residency. We feel that a requirement of this nature would assist the state in dissuading loan recipients from defaulting.

The UFA has voted to support a "3 of the last 5 year's" fishing experience requirement with the last year of experience immediately preceding the year during which the loan is applied for. At least three year's experience are necessary to ensure that the individual has gained the knowledge and ability to succeed in the fishery. More than 3 year's experience required may preclude younger individuals from entering the fishery.

The UFA is also concerned that the state loan program has not met the needs of rural and urban lower-income people who depend on fisheries for their livelihoods.

Thank you.

Sincerely,



Cass M. Parsons  
UFA Executive Director

CMP/jb

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 lan-

guage 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;

*Sec 1 amends this section*

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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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# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

March 15, 1983

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 73

The subcommittee has taken testimony and recommends replacing SB 73 with CS SB 73(Res) and reports CS SB 73(Res) back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy	<i>Bob Mulcahy</i> Do Pass
Senator Eliason	<i>John Eliason</i>
Senator Gilman	<i>William Gilman</i> Do Pass

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 5873  
 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  
 ERU, 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 82	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	67.7	71.1

FUNDING (Thousands of Dollars)

	FY 82	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	64.4	67.7	71.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 84	FY 85	FY 86	FY 87	FY 88
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 1/19/83

PREPARED BY D. A. Hostak, Director

AGENCY Department of Commerce & Economic Development

Original: Legislative Finance  
 cc: Budget and Management

PHONE 464-2555 Division of Loans & Veterans' Affairs

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 26, 1983

The Honorable Jalmar Kerätula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the length of residency required to qualify for a commercial fishing loan.

The Department of Law has concluded that the five-year durational residency requirement for commercial fishing loans in AS 16.10.310(a) is unconstitutional. In the department's first opinion on that subject, dated November 26, 1982, it concluded that the unconstitutional five-year durational residency requirement was not severable from the remainder of the statute and, accordingly, that there was no alternative to shutting down the program. The program was, therefore, suspended.

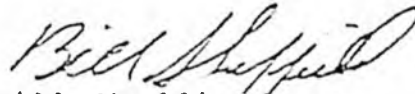
Immediately upon taking office, I directed my Attorney General to review this conclusion. I was particularly concerned about the consequences of closing down the program at this time since the winter, non-fishing season is the most important time of year for fishermen to make financial arrangements (i.e., commercial fishing loans) for the upcoming season. In an opinion dated December 6, 1982, Attorney General Norman C. Gorsuch concluded that the five-year durational residency requirement was severable, that a one-year durational residency requirement would be defensible, and that the Department of Commerce and Economic Development could adopt emergency regulations to reinstitute the program.

The Department of Commerce and Economic Development adopted an amendment to 3 AAC 80.100(11) as an emergency regulation on December 7, 1982 (filed by the lieutenant governor on December 8, 1982) to reinstitute the program with a one-year residency requirement. However, at my direction, they have not published notice that that regulation will be adopted as a "permanent" regulation. It is my belief that any permanent change in the five-year requirement should be made by the legislature. To that end, the attached bill changes the statutory five-year durational residency requirement to a one-year one.

The emergency regulation will expire at midnight on April 6, 1983. At that time, in the absence of legislative action amending the statute, the commercial fishing loan program again will be suspended until the legislature acts to reinstitute the program. In the meantime, one-year Alaska resident commercial fishermen may continue to apply for loans. However, after that date, applications no longer will be accepted unless the legislature acts.

Given the interest which this program and its brief suspension have generated, as well as its importance to Alaska's commercial fishing industry, I urge you to act on this measure without delay.

Sincerely,



Bill Sheffield  
Governor

## FINDING OF EMERGENCY

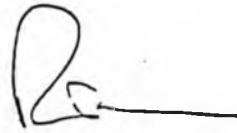
The Department of Commerce and Economic Development finds that an emergency exists and that the attached amendment is necessary for the immediate preservation of the public peace, health, safety, or general welfare. A statement of the facts constituting the emergency is:

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 amendment is therefore adopted as an emergency amendment to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

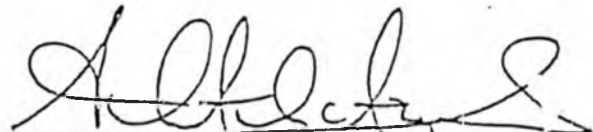
DATE: December 8, 1982  
Juneau, Alaska



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 8, 1982, at 3:40, p.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

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: CSSB 73 (Resources)  
 Title: Commercial Fishing Loans  
 Sponsor: Rules/Governor  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development  
 Program Category Affected: Development  
 BRU, Program of Subprogram(s) Affected: Loans and 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	8.4	8.9	9.4	10.0
300 CONTRACTUAL		3.0	3.2	3.4	3.6	3.8
400 COMMODITIES		.5	.2	.2	.2	.2
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		55.7	58.7	62.2	65.9	69.9

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		55.7	58.7	62.2	65.9	69.9
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:

See attached

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak  
 Division: Loans and Veterans' Affairs  
 Approved by Commissioner: Richard A. Lyon  
 Department: Commerce and Economic Development

Phone: 465-2510  
 Date: 4-4-83  
 Date: 4/6/83

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)

3/8/83

CSSB 73 (Resources)

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. All figures are based on a 6% inflation increase per year.

FISCAL NOTE  
CSSB 73 (Resources)

2. Source of funds to offset fiscal impact of bill: (Continued)

The investigative position will enable the division to carry out detailed investigations of questionable loan applicants. This will result in the division maintaining its ability to process loans while assuring that a minimum of nonqualified applicants receives State benefits.

The impact caused by the offset to the budget by the reduction of one loan examiner in the Juneau office and by a reduction in the travel budget would result in a delay in the processing of alternative energy and veterans assumption applications and the inspection of collateral as it now deems necessary.

The specific reductions would be as follows:

Form 11, page 1, line 14 reduced by \$41.4

Form 14, page 1, line 1 reduced by \$8.0

Form 15, page 1, line 1 reduced by \$5.8

Form 16, page 1, line 1 reduced by \$.5

1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.						
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.								
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION											
4.	TYPE OF EXPENDITURE			AMOUNT												
	1	2	3													
	PERSONAL SERVICES															
5.	Salary	2,838/month	34,056													
6.	Benefits		5,279													
7.	Supplemental Benefits		2,088													
8.	Fixed Benefits		2,880													
9.	TOTAL PERSONAL SERVICES		01	44,303												
10.	Travel		02	7,872												
11.	Contractual		03	2,961												
12.	Commodities		04	520												
13.	Equipment		05													
14.	Other															
15.	TOTAL COST			55,656												
	RECEIPT CODE	FUNDING SOURCE														
16.		Federal Receipts 1002														
17.		G.F. Match 1003														
18.		General Funds 1004		55,656												
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 1 of 1  
Revised Date \_\_\_\_\_