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Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/resolution No.: SB ⁸³ 78
 Title: "An Act amending the Limited Entry Act"
 Sponsor: Governor
 Requestor: Sponsor
 Date of Request:

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.0	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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

(Analysis on attached page)

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
 Division: Commercial Fisheries Entry Commission Date: 1/10/85

Approved by Commissioner: *Richard Swank* Date: 1-10-85
 Agency: C.F.E.C.

Distribution (by Agency preparing fiscal note):

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

7/1/84

SB 78

FISCAL ANALYSIS FOR SEC. ⁴~~3~~ - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,300 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: SB 78
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 Sponsor: Governor
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 Date of Request: _____

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.9	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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

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Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
 Division: Commercial Fisheries Entry Commission Date: 1/10/85
 Approved by Commissioner: *Russell Swann* Date: 1-10-85
 Agency: CFEC

Distribution (by Agency preparing fiscal note):

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

7/1/84

SB 78

4

FISCAL ANALYSIS FOR SEC. ~~8~~ - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,300 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually.

MEMORANDUM

To: House Resources Committee
From: Janet Fries, Committee Aide
Date: May 3, 1985

Re: SB 83 - AMENDING THE LIMITED ENTRY ACT

SB 83 contains a series of technical amendments to the Limited Entry Act. The enclosed memorandum from Bruce Twomley, Chairman, Commercial Fisheries Entry Commission, gives a sectional analysis of the CS for SB 83 (Resources) passed by the Senate, as well as an explanation of changes from the original bill. The original Transmittal Letter from the Governor, also enclosed, has been annotated so that it accurately reflects the CS adopted by the Senate.

The attached Fiscal Note indicates zero cost to the state with a potential increase of \$17,900 THE first year and approximately \$1,700 per year after that. This increased revenue would result from interest payments to the state on fees where a permit was issued to an applicant as a resident and the applicant was later determined to be a non-resident (Section 4).

MEMORANDUM

State of Alaska

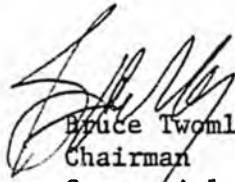
TO: House Resources Committee
M/S 3100

DATE: May 2, 1985

FILE NO:

TELEPHONE NO:

FROM:


Bruce Twomley
Chairman
Commercial Fisheries Entry Commission
M/S 0302

SUBJECT: Analysis of CSSB 83
(Res)

Introduction

CSSB 83 (Res) passed the Senate by a vote of 16 to 0 on April 25, 1985. Before its passage, three standing committees of the Senate (Resources, Judiciary, and Finance) examined the bill in detail. The only modifications to the original SB 83 were the removal of original Section 5 and substitution of a new Section 7 (consequently the numbers of former Sections 6 and 7 became 5 and 6, respectively); modification of the language in Section 5 (formerly Section 6 of SB 83); and modification of the language of Section 10.

The Commercial Fisheries Entry Commission (CFEC) supports passage of CSSB 83 (Res). Portions of the Bill are critical to the sound and efficient management of the Limited Entry Program. The following is a brief section by section analysis of the Bill.

Section 1

This amendment to the Limited Entry Act [the Act] would plug a loophole identified by a Superior Court in the State's prohibition against the leasing of entry permits. A person renting a permit to another and requiring at the end of the rental period that the permit be transferred to a third party would be subject to the prohibition.

Section 2

Section 2 would make clear that permits in an estate are exempt from the claims of creditors. Section 2 would complete a statutory scheme which exempts entry permits in all other cases. Previously it was generally understood that permits in an estate were exempt, but a Superior Court held otherwise. A majority of the State's Supreme Court reversed the Superior Court holding that the legislature intended that permits be exempt from the claims of creditors of an estate. Timperly v. Jeffries, Op. No. 2765 (December 16, 1983). However, the Court was required to vacate its decision, when one justice in the majority was asked to withdraw from the case because of a claimed conflict of interest. Supreme Court Order No. 5483 (January 11, 1984). The same majority of justices who decided Timperly remains on the Court and would reasonably be expected to decide the same issue in the same way, when it again reaches the Alaska Supreme Court. The effect of Section 2 would be to save the time and the expense required for a second lawsuit on this issue to reach the Supreme Court at considerable cost to both the private parties and to the State.

Section 3

This is a housekeeping provision which would eliminate a reference to a federal agency which no longer exists and would drop an ambiguous term.

Section 4

Out-of-state residents have made false claims of Alaska residency to the Commission in order to pay reduced permit renewal fees available to residents of Alaska. This section would authorize the Commission to charge the legal rate of interest on fee arrearages more than 60 days overdue from these nonresidents.

Section 5

Section 5 would provide the Commission with some discretion in determining which measures of hardship should reasonably be employed in a given fishery. Absent the adoption of Section 5, some twelve fisheries throughout the State would be subject to very disruptive and expensive technical legal challenges to point schemes which are reasonable as adopted by the Commission. The Senate as a whole addressed Section 5 with the adoption of the detailed statement of legislative intent originally provided by the Senate Resources Committee on March 6, 1985. A copy of the statement is attached. Adoption of Section 5 will save the costs to the State of otherwise unnecessary litigation. It will also be of benefit to several thousand fishermen reliant upon the fisheries in question.

Section 6

Section 6 is a housekeeping provision which would authorize the Commission to issue a single educational entry permit (as opposed to several permits) to an appropriate educational institution.

Section 7

This section was added by the Resources Committee at the request of Senator Zharoff to ensure that, where practicable, a hearing conducted by the Commission with respect to limitation of a fishery be held in proximity to a meeting of the Board of Fisheries.

Section 8

Section 8 involves both housekeeping and substantive changes to the existing statute which authorizes revocation of a permit belonging to one who intentionally provides false information to the Commission to obtain a benefit. Section 8 would amend the statute to make clear that the Commission has authority to do less than complete revocation by way of suspension of a permit for up to three years and the imposition of an administrative fine of not more than \$5,000. The Commission would be in a position to more closely tailor the remedy to fit the offense. Section 8 would also authorize the Commission to do more by empowering

May 2, 1985

the Commission to affect all permits in the hands of an individual who defrauds the Commission and by empowering the Commission to bring administrative proceedings against third parties to a transaction who intentionally supply false information to the Commission (for example, permit brokers).

Consistent with the Superior Court's holding in the Kjarstad case, subsection (f) makes clear that the Commission can bring enforcement proceedings against an individual who obtained a permit upon false information from the beginning of the program.

Section 9

This is a clean-up provision which ties a criminal provision of the Act to the appropriate Class A misdemeanor statute.

Section 10

Section 10 makes clear the Commission's authority to do what it has always done by regulation and in practice: protect certain information provided by fishermen from public disclosure.

BT:dan

Attachment

cc: Margot Knuth

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
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Senate Committee on Resources

March 6, 1985

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LETTER OF INTENT
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Committee Substitute for SB 83 (Resources)

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It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

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

Section 2 of the bill clarifies that the legislature intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder. This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

Section 3 of the bill merely deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."

Section 4 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not

considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the Limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies, this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 5

~~Section 6~~ of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

- Section 6 ~~Section 7~~ of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.
- Section 7 - Added in Senate Finance. See Memorandum from Chairman Twombly.
- Section 8 ~~Section 8~~ of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also deletes unnecessary procedural detail that duplicates the provisions set out in AS 16.43.110(b). The section further authorizes the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970 (b).

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

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power

to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 9 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code - (AS 11), thus helping to assure consistency.

Section 10 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,



Bill Sheffield
Governor

SB 51

The Health, Education and Social Services Committee considered SENATE BILL NO. 51 (state aid for school construction; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 51 (HESS)

and do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Josephson, DeVries, Paul Fischer and Sturgulewski.

SENATE BILL NO. 51 was referred to the Finance Committee.

SB 83

The Finance Committee considered SENATE BILL NO. 83 (amending the Limited Entry Act) and recommended the Resources Committee Substitute and Letter of Intent be adopted with a majority do pass. The report was signed by Senator Faiks, Co-Chairman and concurred in by Senators Kerttula, Paul Fischer, Eliason, Ferguson and Sackett. Senator Halford signed "no recommendation".

"Finance Letter of Intent

CS for SB 83 (RES)

It is the intent of the Legislature that the Commercial Fisheries Entry Commission shall consider applications from fishermen of the A-Y-K Fishery who qualify to receive a limited entry permit but failed to submit an application due to language, culture, poverty, lack of education, or residence in remote locations. The CFEC is requested to work with the 28 people that the Commission identified in a 2-25-80 memorandum on this matter."

SENATE BILL NO. 83 was referred to the Rules Committee.

SB 105

The Finance Committee considered SENATE BILL NO. 105 (Palmer Hay Flats State Game Refuge; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 105 (FIN)