

COMMITTEE REPORT
SENATE

FURTHER:

3/29/85

Date 4/24/85

Mr. President

The Committee on FINANCE considered SB 83
amending the Limited Entry Act.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 83 (Res)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT" (2) NEW FISCAL NOTE
- reports it back without recommendation *Res. of Fin*
Accompanied bill into committee
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Paul F. Smith

McGowan

Michael Mitchell

Paul F. Smith No Rec.

Chairman

Chairman recommendation

Ferguson

SB 83

Spc

LETTER OF INTENT

Adopted

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.

Spc

CS SB 83 (Rev)

4/24/85

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
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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.

A handwritten signature in cursive script, reading "Arliss Sturgulewski".

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

029 4B
SB 83

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: _____
 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 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.

(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: *[Signature]* 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

FISCAL ANALYSIS FOR SEC. 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.

Offered: 3/7/85
Referred: Judiciary

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 83 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act; and providing
7 for an effective date."

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

9 * Section 1. AS 16.43.150(g) is amended to read:

10 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.-

11 210, and in AS 44.81.230 - 44.81.250, an entry permit may not be[:]

12 (1) pledged, mortgaged, leased, or encumbered in any way;

13 (2) transferred with any retained right of repossession or
14 foreclosure, or on any condition requiring a subsequent transfer; or

15 (3) attached, distrained, or sold on execution of judgment
16 or under any other process or order of any court.

17 * Sec. 2. AS 16.43.150(h) is amended to read:

18 (h) Upon the death of an entry permit holder, the permanent
19 permit shall be transferred by the commission directly to the surviv-
20 ing spouse by right of survivorship unless the deceased holder has
21 expressed a contrary intent in a will that is probated. When no
22 spouse survives, the rights of the decedent pass as part of the dece-
23 dent's estate. Except as provided in AS 16.10.333 - 16.10.337,
24 AS 44.81.210, and 44.81.230 - 44.81.250, the permit is exempt from the
25 claims of creditors of the estate.

26 * Sec. 3. AS 16.43.160(c) is amended to read:

27 (c) The resident holder of an entry permit or interim-use permit
28 who has a [NET] family income falling within the federal [FEDERAL COM-
29 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the

1 commission to reflect appropriate cost-of-living differentials, is
2 subject to a maximum annual fee of \$15.

3 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

4 (d) The commission may charge interest at a rate not to exceed
5 the legal rate of interest established in AS 45.45.010 on fees more
6 than 60 days overdue.

7 * Sec. 5. AS 16.43.250(a) is amended to read:

8 (a) Following the establishment of the maximum number of units
9 of gear for a particular fishery under AS 16.43.240, the commission
10 shall adopt regulations establishing qualifications for ranking ap-
11 plicants for entry permits according to the degree of hardship which
12 they would suffer by exclusion from the fishery. The regulations
13 shall define priority classifications of similarly situated applicants
14 based upon a reasonable balance of the following hardship standards:

15 (1) degree of economic dependence upon the fishery, includ-
16 ing, when reasonable for the fishery, the [BUT NOT LIMITED TO] per-
17 centage of income derived from the fishery, reliance on alternative
18 occupations, availability of alternative occupations, investment in
19 vessels and gear;

20 (2) extent of past participation in the fishery, including,
21 when reasonable for the fishery, [BUT NOT LIMITED TO] the number of
22 years of participation in the fishery [,] and the consistency of
23 participation during each year.

24 * Sec. 6. AS 16.43.351(b) is amended to read:

25 (b) A recipient may be issued an educational entry permit valid
26 for designated fisheries [EACH FISHERY] in the administrative area the
27 commission determines to be appropriate, considering the nature of the
28 educational program and the location of the educational or vocational
29 institution. The recipient of an educational entry permit may not be

1 issued an educational entry permit [PERMITS] in more than one adminis-
2 trative area except as issued by the commission in its discretion upon
3 good cause shown.

4 * Sec. 7. AS 16.43 is amended by adding a new section to read:

5 Sec. 16.43.955. HEARINGS IN PROXIMITY TO BOARD OF FISHERIES
6 MEETINGS. When practicable, a commission hearing that deals with the
7 subject of limiting entry to a fishery shall be held on the same dates
8 on which, and in the same building or in a building adjacent to the
9 building in which, a Board of Fisheries meeting is being held.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 self or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

27 [(1) PERMIT APPLICATION;
28 (2) PERMIT TRANSFER; OR
29 (3) PERMIT RENEWAL].

1 (b) The [BEFORE REVOCATION, THE] commission shall serve the
2 respondent [PERMIT HOLDER] personally or by certified or registered
3 mail with a notice to show cause why the proposed action should not
4 take place. The notice to show cause must

5 (1) be supported by an affidavit which may be made on
6 information or belief setting out the facts which are the basis of the
7 proposed action;

8 (2) provide for at least 30 days' notice of the place,
9 date, and time of the hearing where the respondent [PERMIT HOLDER] may
10 present evidence in opposition to the proposed action; unless waived
11 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
12 shall be held within the judicial district in which the respondent
13 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
14 the state; the hearing place shall be at the discretion of the commis-
15 sion for those respondents [PERMIT HOLDERS] residing outside the
16 state;

17 (3) specify the statutes or regulations violated;

18 (4) state with particularity the action proposed to be
19 taken;

20 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
21 that the respondent's ability to permanently transfer the permits
22 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
23 proceedings has been suspended as of the date of the notice and will
24 continue to be suspended until the exhaustion of all administrative
25 and judicial remedies; and

26 (6) provide other information the commission considers
27 proper.

28 (c) A permit subject to show cause [REVOCATION] proceedings
29 under this section may not be transferred after the date of the notice

1 in (b) of this section pending exhaustion of all administrative and
2 judicial remedies arising from action taken under this section.

3 (d) The show cause [REVOCATION] hearing shall be conducted
4 before a quorum of commissioners and shall be presided over by a
5 hearing officer appointed by the commission who shall rule on the
6 presentation of evidence and other procedural matters. Hearings shall
7 be conducted in accordance with regulations adopted under AS 16.43.-
8 110(b) [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEARING,
9 THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
10 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
12 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
13 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
14 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
15 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
16 ATTORNEY BY CERTIFIED OR REGISTERED MAIL].

17 (e) The failure of a respondent [PERMIT HOLDER] properly served
18 under (b) of this section to appear at the hearing is not grounds for
19 setting aside any commission action taken. However, the commission
20 may in its discretion order a continuance or second hearing.

21 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
22 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
23 PERMIT HOLDER UNDER (b) OF THIS SECTION.

24 (g) The provisions of this section [DO NOT] apply to conduct
25 occurring after January 1, 1973, but do not affect a [THE] permit held
26 by [OF] a person who is a bona fide purchaser. Failure to correct
27 false information is a continuing offense.

28 (g) [(h)] Judicial review of commission determinations under
29 this section is in accordance with AS 44.62.560 - 44.62.570; however,

1 if a hearing de novo is granted under AS 44.62.570(d), the hearing
2 may, in the discretion of the court, be had with a jury sitting if
3 application for the jury hearing is filed with the court no later than
4 10 days after service of the notice of appeal.

5 (h) [(i)] An entry permit revoked by the commission under this
6 section that is pledged [TAKEN] as security for a loan under AS 16.-
7 10.333 or AS 44.81.230 shall be reassigned or sold as provided in
8 AS 16.10.337 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. Documents submitted to the
29 commission containing information relating to an individual's personal

1 finances and information supplied by individuals for research pur-
2 poses, produced in response to requests by the commission, are not
3 subject to public disclosure.

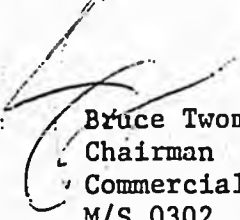
4 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
5 10.070(c).

C+V

MEMORANDUM

State of Alaska

TO: The Honorable Richard I. Eliason
Senate
M/S 3100

FROM:  Bruce Twomley
Chairman
Commercial Fisheries Entry Commission
M/S 0302

DATE: April 23, 1985

FILE NO:

TELEPHONE NO:

SUBJECT: Analysis of SB 83

Introduction

Last year a bill nearly identical to SB 83 (then SB 422) passed through the Senate Fisheries Sub-Committee, the Senate Resources Committee, and the Senate Rules Committee. Before the Bill could be placed on the floor of the Senate, the House adjourned, and the Bill was consequently withdrawn. SB 83 differs from last year's Senate Bill primarily by the addition of Section 2 and Section 7.

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 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 which 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 court system.

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 Resources Committee has addressed Section 5 in a detailed statement of legislative intent dated March 6, 1985, which accompanies SB 83. 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 statute which has authorized the Commission to bring enforcement proceedings against individuals who intentionally supply false information to the Commission. The existing statute 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

April 23, 1985

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 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 in practice: protect certain information provided by fishermen from public disclosure.

BT:dan
Attachment

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

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Handwritten signature and date: 8/83

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 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 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 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

Introduced: 1/22/85
Referred: Resources, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 83

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act."

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

8 * Section 1. AS 16.43.150(g) is amended to read:

9 (g) Except as provided in AS 16.10.333 -- 16.10.337, AS 44.81.-
10 210, and in AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

11 (1) pledged, mortgaged, leased, or encumbered in any way;

12 (2) transferred with any retained right of repossession or
13 foreclosure, or on any condition requiring a subsequent transfer; or

14 (3) attached, distrained, or sold on execution of judgment
15 or under any other process or order of any court.

16 * Sec. 2. AS 16.43.150(h) is amended to read:

17 (h) Upon the death of an entry permit holder, the permanent
18 permit shall be transferred by the commission directly to the surviv-
19 ing spouse by right of survivorship unless the deceased holder has
20 expressed a contrary intent in a will that is probated. When no
21 spouse survives, the rights of the decedent pass as part of the dece-
22 dent's estate. Except as provided in AS 16.10.333 -- 16.10.337,
23 AS 44.81.210, and AS 44.81.230 -- 44.81.250, the permit is exempt from
24 the claims of creditors of the estate.

25 * Sec. 3. AS 16.43.160(c) is amended to read:

26 (c) The resident holder of an entry permit or interim-use permit
27 who has a [NET] family income falling within the federal [FEDERAL COM-
28 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
29 commission to reflect appropriate cost-of-living differentials, is

1 subject to a maximum annual fee of \$15.

2 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

3 (d) The commission may charge interest at a rate not to exceed
4 the legal rate of interest established in AS 45.45.010 on fees more
5 than 60 days overdue.

6 * Sec. 5. AS 16.43.220(a) is amended to read:

7 (a) The commission shall adopt regulations specifying the dates
8 and places of application, the procedures to be followed in renewal of
9 the interim-use permit including the time, place of its renewal, and
10 for any other purpose incident to the administration of interim-use
11 permits for that fishery. An interim-use permit shall expire upon the
12 commission's final determination of the holder's eligibility for an
13 entry permit.

14 * Sec. 6. AS 16.43.250(a) is amended to read:

15 (a) Following the establishment of the maximum number of units
16 of gear for a particular fishery under AS 16.43.240, the commission
17 shall adopt regulations establishing qualifications for ranking ap-
18 plicants for entry permits according to the degree of hardship which
19 they would suffer by exclusion from the fishery. The regulations
20 shall define priority classifications of similarly situated applicants
21 based upon a reasonable balance of the following hardship standards:

22 (1) degree of economic dependence upon the fishery, which
23 may include [INCLUDING] but is not limited to percentage of income
24 derived from the fishery, reliance on alternative occupations, avail-
25 ability of alternative occupations, investment in vessels and gear;

26 (2) extent of past participation in the fishery, which may
27 include [INCLUDING] but is not limited to the number of years of
28 participation in the fishery, and the consistency of participation
29 during each year.

1 * Sec. 7. AS 16.43.351(b) is amended to read:

2 (b) A recipient may be issued an educational entry permit valid
3 for designated fisheries [EACH FISHERY] in the administrative area the
4 commission determines to be appropriate, considering the nature of the
5 educational program and the location of the educational or vocational
6 institution. The recipient of an educational entry permit may not be
7 issued an educational entry permit [PERMITS] in more than one adminis-
8 trative area except as issued by the commission in its discretion upon
9 good cause shown.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 himself or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

27 [(1) PERMIT APPLICATION;
28 (2) PERMIT TRANSFER; OR
29 (3) PERMIT RENEWAL].

1 (b) The [BEFORE REVOCATION, THE] commission shall serve the
2 respondent [PERMIT HOLDER] personally or by certified or registered
3 mail with a notice to show cause why the proposed action should not
4 take place. The notice to show cause must

5 (1) be supported by an affidavit which may be made on
6 information or belief setting out the facts which are the basis of the
7 proposed action;

8 (2) provide for at least 30 days' notice of the place,
9 date, and time of the hearing where the respondent [PERMIT HOLDER] may
10 present evidence in opposition to the proposed action; unless waived
11 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
12 shall be held within the judicial district in which the respondent
13 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
14 the state; the hearing place shall be at the discretion of the commis-
15 sion for those respondents [PERMIT HOLDERS] residing outside the
16 state;

17 (3) specify the statutes or regulations violated;

18 (4) state with particularity the action proposed to be
19 taken;

20 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
21 that the respondent's ability to permanently transfer the permits
22 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
23 proceedings has been suspended as of the date of the notice and will
24 continue to be suspended until the exhaustion of all administrative
25 and judicial remedies; and

26 (6) provide other information the commission considers
27 proper.

28 (c) A permit subject to show cause [REVOCATION] proceedings
29 under this section may not be transferred after the date of the notice

1 in (b) of this section pending exhaustion of all administrative and
2 judicial remedies arising from action taken under this section.

3 (d) The show cause [REVOCATION] hearing shall be conducted
4 before a quorum of commissioners and shall be presided over by a
5 hearing officer appointed by the commission who shall rule on the
6 presentation of evidence and other procedural matters. Hearings shall
7 be conducted in accordance with regulations adopted under AS 16.43.-
8 110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEAR-
9 ING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
10 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
12 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
13 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
14 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
15 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
16 ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

17 (e) The failure of a respondent [PERMIT HOLDER] properly served
18 under (b) of this section to appear at the hearing is not grounds for
19 setting aside any commission action taken. However, the commission
20 may in its discretion order a continuance or second hearing.

21 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
22 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
23 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

24 (g) The provisions of this section [DO NOT] apply to conduct
25 occurring after January 1, 1973, but do not affect a [THE] permit held
26 by [OF] a person who is a bona fide purchaser. Failure to correct
27 false information is a continuing offense.

28 (h) Judicial review of commission determinations under this
29 section is in accordance with AS 44.62.560 -- 44.62.570; however, if a

1 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
2 the discretion of the court, be had with a jury sitting if application
3 for the jury hearing is filed with the court no later than 10 days
4 after service of the notice of appeal.

5 (i) An entry permit revoked by the commission under this section
6 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
7 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
8 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission may provide
29 by regulation that documents submitted to the commission containing

1 information relating to an individual's personal finances and informa-
2 tion supplied by individuals for research purposes, produced in re-
3 sponse to requests by the commission, are not subject to public dis-
4 closure.

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

3/7/85

Date 3-28-83

Mr. President

The Committee on JUDICIARY considered SB 83
amending the Limited Entry Act.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/adopt CS for SB 83 (Res) *recommends the Resumes CS be adopted*
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

John No Rec

Tim Kelly No Rec

3/1/83 N/R

[Signature]

Chairman

NO REC.

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER:

JUDICIARY
FINANCE

1/22/85

Date 3/6/85

Mr. President

The Committee on RESOURCES considered SB 83
amending the Limited Entry Act.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for Senate Bill 83 (Resources)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature] No Recommendation

[Signature]

[Signature]
Chairman
Do Pass
Chairman recommendation

FISCAL ANALYSIS FOR SEC. 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.