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TO: The Honorable Cliff Davidson
Chairman
House Resources Committee

DATE: April 6, 1992

FAX NO: 789-6170

TELEPHONE NO: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Rich Listowski, Commissioner

SUBJECT: Governor's HB 560
SB 449

As you know, Governor Walter J. Hickel has introduced HB 560/SB 449 now referred to your House Resources Committee. The proposed Bills addresses the fact that two court decisions have declared that certain creditors may validly execute upon entry permits to enforce claims against the permit holders. The proposed legislation is the first attempt by the State to regulate transfers of entry permits due to these valid executions. The legislation does not discriminate between such creditors.

Section 3 of the proposed legislation will:

1. For the first time regulate transfers of entry permits due to valid execution;
2. Require such transfers to conform to state law;
3. Protect the revolving loan funds of the State Commercial Fishing Loan Program and the Commercial Fishing and Agricultural Bank (CFAB) by denying transfer of a permit which is security for a loan from either of these programs;
4. Attempt to protect fishers who most need their entry permits; and
5. Grant the State the right of first refusal with respect to the permit sold at a valid execution sale.

Please call, if you have any questions or comments.

cc: Lori Nottingham, Deputy Legislative Liaison, Office of the Governor
Deborah E. Behr, Esq., Assistant Attorney General
John T. Baker, Esq., Assistant Attorney General

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 449

SENATE BILL NO. 449 by the Senate Rules Committee by request of the Governor, entitled:

"An Act relating to the transfer of a limited entry permit, including a transfer due to an execution; and providing for an effective date."

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

Zero fiscal notes published today from Department of Fish and Game (2), Department of Revenue and Department of Commerce and Economic Development.

Governor's transmittal letter dated March 16:

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish procedures for, and in certain circumstances to restrict, the transfer of limited entry permits. A limited entry permit is required for the commercial taking of certain fishery resources in Alaska.

Section 2 of the bill is a housekeeping measure (1) to clarify that AS 16.43.170(b) applies to all voluntary limited entry permit transfers, not just those transfers governed by an agreement between the permit holder and a third party, and (2) to codify a longstanding practice of the state. Section 3 of the bill sets out the conditions governing the transfer of a limited entry permit when the transfer is requested due to a valid execution on that permit.

Since the enactment of AS 16.43.150(g), which protects a limited entry permit from execution by creditors, the courts have nonetheless ruled in two specific cases that a permit holder's interest in a limited entry permit may be executed upon to satisfy a third-party claim against that permit holder. Under state law, only the Commercial Fisheries Entry Commission ("the commission") is authorized to transfer title of a limited entry permit. The commission's existing statutes do not provide for transfers to a third party in the case of an execution by creditors of a permit holder. The bill is intended to address this statutory deficiency. AS 16.43.150(g) is amended in sec. 3 of the bill, to acknowledge the transfer provisions added by sec. 3 of the bill.

The conditions established in proposed AS 16.43.170(g)(1)-(5), in sec. 3 of the bill, for a transfer related to an execution on the permit conform to those conditions presently required in existing AS 16.43.170(b) for a voluntary transfer of a permit and for transfer of the title of a permit which is held by the Department of Commerce and Economic Development (DCED) under AS 16.10.300 - 16.10.370 or by the Commercial Fishing and Agriculture Bank (CFAB) under AS 44.81. Proposed AS 16.43.170(g)(4) is applicable when the limited entry permit requested to be transferred is subject to a certificate of title issued to DCED or CFAB to secure a loan extended by either entity. Presently, the commission denies a holder's request made under AS 16.43.170(b) for the transfer of the title to a limited entry permit if that permit is already subject to such a certificate. Proposed AS 16.43.170(g)(4) would allow the commission, for the same reason, to deny a request for the transfer of the title to a limited entry permit made because of a valid execution against that permit.

The Alaska Statehood Act entrusted Alaska with management of its fish and game resources to further the economic well-being of Alaska. Consistent with this responsibility, and recognizing that many Alaska fishers are dependent solely upon fishing for their livelihoods, sec. 3's proposed AS 16.43.170(g)(6) seeks to protect those fishers' permits from transfer by valid execution if the commission determines that the permit is a "necessary means of support" for the fisher and those dependent upon the fisher.

Finally, the bill provides the State of Alaska with a right of first refusal to purchase a limited entry permit requested to be transferred due to a valid execution against that permit. The state would have an opportunity to purchase a limited entry permit after an execution sale when the state's interests would be served by doing so. See proposed AS 16.43.170(g); sec. 3 of the bill. A similar opportunity is already reserved for the state under Alaska law in the event of foreclosure upon a limited entry permit by DCED or CFAB.

I urge your early and favorable consideration of this bill.

Sincerely,

/s/
Walter J. Hickel
Governor

CS FOR SENATE BILL NO. 449 (JUDICIARY)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/27/92
 Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the transfer of a limited entry permit, including a transfer due to
 2 an execution; and providing for an effective date."

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

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

5 (g) Except as provided in AS 16.10.333 - 16.10.338 [AS 16.10.333 - 16.10.337],
 6 AS 44.81.210, 44.81.225, and 44.81.230 - 44.81.250, an entry permit may not be

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

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

10 (3) attached, distrained, or sold on execution of judgment or under any other
 11 process or order of any court, except as provided in AS 16.43.170(g) and (h).

12 * Sec. 2. AS 16.43.170(b) is amended to read:

13 (b) Except as provided in (c) and (e) of this section, the holder of an entry permit may
 14 transfer the permit to another person or to the commission upon 60 days notice of intent to

1 transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12
2 months from the date of notice to the commission, the holder of an entry permit may transfer the
3 permit. If the proposed transferee, other than the commission, can demonstrate the present ability
4 to participate actively in the fishery and the transfer [AGREEMENT] does not violate any
5 provision of this chapter [AS 16.43] or regulations adopted thereunder, and if a certificate for
6 the permit under AS 16.10.333(b)(1) - (2), 16.10.338, or AS 44.81.230(b)(1) - (2) is not in
7 effect, the commission shall approve the transfer and reissue the entry permit to the transferee
8 provided that neither party is prohibited by law from participating in the transfer.

9 * Sec. 3. AS 16.43.170 is amended by adding new subsections to read:

10 (g) A person may request the commission to transfer an ent., permit due to an execution
11 on the holder's interest in that permit. The request shall be made in the form and manner
12 provided in this chapter and regulations adopted under this chapter. The commission may deny
13 a request for transfer of an entry permit due to an execution of a holder's interest in that permit
14 if

15 (1) the execution does not comply with legal requirements or otherwise is not
16 valid;

17 (2) the transfer violates this chapter or regulations adopted under this chapter;

18 (3) the proposed transferee or other party to the transfer is prohibited by law from
19 participating in the transaction;

20 (4) a certificate for the permit under AS 16.10.333(b)(1) - (2), 16.10.338, or
21 AS 44.81.230(b)(1) - (2) is in effect at the time of the proposed transfer;

22 (5) the proposed transferee of the entry permit, other than the commission, cannot
23 demonstrate the present ability to actively participate in the fishery; or

24 (6) the holder of the entry permit as shown by the records of the commission
25 demonstrates, under regulations adopted by the commission, that the entry permit is a necessary
26 means of support for the holder and those dependent upon the holder.

27 (h) Notwithstanding (g) of this section, the commission may not approve a request for
28 transfer of an entry permit after an execution sale unless the parties to the transfer offer the
29 commission a right to purchase the permit at the same price and on the same terms as those of
30 that execution sale. If the commission exercises its right to purchase the permit, the permit then
31 shall be transferred to the commission.

1 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

CS FOR SENATE BILL NO. 449 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/27/92
Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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8 (2) transferred with any retained right of repossession or foreclosure, or on any

9 condition requiring a subsequent transfer; or

10 (3) attached, distrained, or sold on execution of judgment or under any other

11 process or order of any court, except as provided in AS 16.43.170(g) and (h).

12 * Sec. 2. AS 16.43.170(b) is amended to read:

13 (b) Except as provided in (c) and (e) of this section, the holder of an entry permit may

14 transfer the permit to another person or to the commission upon (4) days notice of intent to

1 transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12
2 months from the date of notice to the commission, the holder of an entry permit may transfer the
3 permit. If the proposed transferee, other than the commission, can demonstrate the present ability
4 to participate actively in the fishery and the transfer [AGREEMENT] does not violate any
5 provision of this chapter [AS 16.43] or regulations adopted thereunder, and if a certificate for
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27 (h) Notwithstanding (g) of this section, the commission may not approve a request for
28 transfer of an entry permit after an execution sale unless the parties to the transfer offer the
29 commission a right to purchase the permit at the same price and on the same terms as those of
30 that execution sale. If the commission exercises its right to purchase the permit, the permit then
31 shall be transferred to the commission.

1 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 16, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

449

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish procedures for, and in certain circumstances to restrict, the transfer of limited entry permits. A limited entry permit is required for the commercial taking of certain fishery resources in Alaska.

Section 2 of the bill is a housekeeping measure (1) to clarify that AS 16.43.170(b) applies to all voluntary limited entry permit transfers, not just those transfers governed by an agreement between the permit holder and a third party, and (2) to codify a longstanding practice of the state. Section 3 of the bill sets out the conditions governing the transfer of a limited entry permit when the transfer is requested due to a valid execution on that permit.

Since the enactment of AS 16.43.150(g), which protects a limited entry permit from execution by creditors, the courts have nonetheless ruled in two specific cases that a permit holder's interest in a limited entry permit may be executed upon to satisfy a third-party claim against that permit holder. Under state law, only the Commercial Fisheries Entry Commission ("the commission") is authorized to transfer title of a limited entry permit. The commission's existing statutes do not provide for transfers to a third party in the case of an execution by creditors of a permit holder. The bill is intended to address this statutory deficiency. AS 16.43.150(g) is amended in sec. 1 of the bill, to acknowledge the transfer provisions added by sec. 3 of the bill.

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The Honorable Richard I. Ellason
March 16, 1992
Page 2

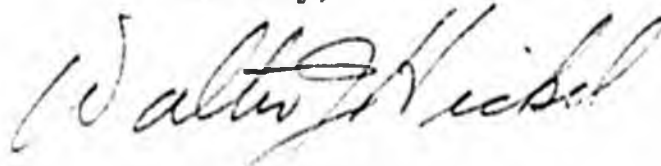
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Finally, the bill provides the State of Alaska with a right of first refusal to purchase a limited entry permit requested to be transferred due to a valid execution against that permit. The state would have an opportunity to purchase a limited entry permit after an execution sale when the state's interests would be served by doing so. See proposed AS 16.43.170(g); sec. 3 of the bill. A similar opportunity is already reserved for the state under Alaska law in the event of foreclosure upon a limited entry permit by DCED or CFAB.

I urge your early and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter J. Hickel". The signature is written in a cursive, flowing style.

Walter J. Hickel
Governor

FISCAL NOTE

Bill Version: SB 449
 (S) Publish Date: 3-16-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: 3/12/92

Department Affected: Fish and Game

Title: Transfer of limited entry permits

BRU: Commercial Fisheries

Component: Commercial Fisheries

Sponsor: Rules Committee by Governor

Requestor: _____ COMPONENT SERIAL NO.

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 Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

Changes in CSSB 449 (JUD) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary.)

3/24/92 date PC Comte Aide (initial)

Prepared By: Geron Bruce G.B.

PHONE: 465-4100

Division: Commissioner's Office

Date: 3/12/92

Approved by Commissioner: Tom Somerville

Agency: Department of Fish and Game

Date: 3/12/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBA, Gov. Legis. OSC., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Draft bill establishing procedures to
govern transfers of entry permits
 Sponsor: _____
 Requestor: _____

Department Affected: Commerce & Econ. Dev.
 BRU: Investments
 Component: _____

COMPONENT SERIAL NO.

0	3	8	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS (Attach a separate page if necessary.)
 Changes in CSSB 449 (JW) have no fiscal impact. This fiscal note is appropriate.
3/26/92 date RC Comte Aide (initial)

Prepared By: Martin J. Richard, Director Phone: 465-2510
 Division: Investments Date: 3/13/92
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 3-18-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Version: SB 449
(S) Publish Date: 3-16-92

Revision Date: _____
Title: Regulate transfer of limited entry permits due to execution
Sponsor: Governor
Requestor: _____

Department Affected: Revenue
BRU: Revenue Operations
Component: _____

Component Serial No.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

Changes in CS 5,3 449 (JUD) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: The Department of Revenue is unaffected by this legislation.

3/26/92 date RC Comte Aide (initial)

Prepared by: Rod Mourant Phone: 465-2300
Division: Commissioner's Office Date: March 12, 1992
Approved by Commissioner: Darrel J. Rexwinkel
Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 449
(S) Publish Date: 3-16-92

Revision Date: _____ Department Affected: FISH AND GAME
Title: Regulate the transfer of limited BRU: Commercial Fisheries Entry Commission
entry fishing permits Component: Limited Entry Program Administration
Sponsor: Rules Committee
Requestor: Governor COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Changes in SSB 449 (JUD) have no fiscal impact. This fiscal note is appropriate.

3/26/92
date

RC
Comte Aide (initial)

Prepared By: Roger Kolden Phone: 739-6160

Division: Commercial Fisheries Entry Commission Date: 03/11/92

Approved by Commissioner: _____

Agency: CFEC Date: 3/11/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).