

EO

85

HFIN

FILE

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1993

The Honorable Ramona L. Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Barnes:

Under the authority of art. III, sec. 23, of the Alaska constitution, I am transmitting an Executive Order transferring the fish bonding program from the Department of Labor to the Department of Revenue.

Under that program, fish processors and primary fish buyers are required to post a bond to ensure that money is in place for the payment of wage claims, claims from commercial fishermen selling their catch, and unemployment insurance contributions. This program would be more efficiently run under the Department of Revenue because the enforcement mechanism is under that department and that department already operates a similar bonding program for fishery business licenses to ensure payment of fish taxes.

Sincerely,

Walter J. Hickel
Governor

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 19, 1993

JAN 19 1993

SUBJECT: Executive Order 85

TO: Representative Bill Williams
ATTN: Mary McDowell

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether Executive Order 85 does more than transfer responsibility for administering bonding requirements for fish processors and primary fish buyers (referred to collectively as fish processors) from the Department of Labor to the Department of Revenue.

Executive Order 85 transfers responsibility for administering fish processor bonding requirements to the Department of Revenue. The Executive Order makes almost no substantive change to the fish processor bonding requirements. The existing bonding requirements of AS 16.10.290 - 16.10.295 are reenacted virtually word for word (except for necessary technical conforming changes) as a new article in AS 44.25.

However, the Executive Order will make one substantive change in the law regarding fish processor bonding. Under current law, AS 16.10.292 authorizes the commissioner of labor to prescribe the form by which a fish processor demonstrates compliance with the fish processor bonding requirements.^{1/} The Executive Order does not reenact this provision as part of the new article in AS 44.25. It is my understanding that AS 16.10.292 was not carried forward as part of the new statutes enacted by the Executive Order because it was considered to be unnecessarily duplicative of other provisions enacted by the Executive Order.

^{1/} AS 16.10.292 states:

FILING EVIDENCE OF COMPLIANCE. A fish processor or primary fish buyer subject to AS 16.10.270 - 16.10.295 shall initially file evidence of compliance with the bonding requirements of AS 16.10.290 - 16.10.295, in the form prescribed by the commissioner.

Attachment 3
1/24/93

In my opinion, the provisions of AS 16.10.292 do not duplicate other provisions contained in the Executive Order and should have been included in the Executive Order. As explained above, AS 16.10.292 expressly allows the commissioner of labor to prescribe the form by which a fish processor demonstrates compliance with the fish processor bonding requirements. This provision is beneficial because there are a couple of ways in which a processor may comply with the bonding requirement. A fish processor may comply with the bonding requirement by posting a surety bond with the commissioner of labor (AS 16.10.290(a)), by having adequate lienable property in the state (AS 16.10.290(c)), or by not purchasing fish and not hiring employees (AS 16.10.293(a)). It is helpful to the commissioner of labor to be able to specify the form by which a fish processor demonstrates compliance with the bonding requirement.

Having concluded that the Executive Order makes a significant change in the law by not reenacting provisions of AS 16.10.292, I must further conclude that the elimination of AS 16.10.292 has no practical effect on the ability of the commissioner of revenue to enforce the fish processor bonding requirements. Under the Executive Order, the commissioner of revenue is given authority to adopt regulations to carry out the provisions of the fish processor bonding statutes. The commissioner may adopt regulations that are reasonably necessary to specify the manner and form by which a fish processor demonstrates compliance with the bonding requirements.

In conclusion, the Executive Order does not make any meaningful change in the substantive provisions of state law regarding fish processor bonding requirements.

If I may be of further assistance, please advise.

GU:lmb:mi
93-006.lmb

JAN 25 1993

BILL NO: Executive Order No. 85

DATE: January 25, 1993

TITLE: Bond Program Transfer

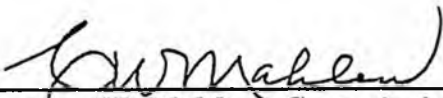
CONTACT: Arbe Williams
465-2700

Executive Order No. 85 transfers the responsibility for administering the surety bond program for licensure as a fish processor or primary fish buyer from the Department of Labor to the Department of Revenue.

The licensing of fish processors and fish buyers is administered by the Department of Revenue. Applicants must prove to Revenue that they have a bond on file with the Department of Labor before Revenue will issue the proper fisheries license. The transfer of this program will eliminate one state agency that processors and buyers will have to deal with in order to obtain the proper licensing, thereby benefiting the public by reducing the red tape required to do business in the state.

This order addresses an often voiced suggestion about the fish licensing process. The Department supports this Executive Order.

APPROVED:



Charles W. Mahlen, Commissioner

POSITION PAPER/Department of Labor

FISCAL NOTE

Bill Version: ED 85
 (S) Publish Date: 1-11-93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Revenue
 Title: Transfer Fish Bonding Program from Labor to Revenue BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO. 113

Expenditures/Revenues:	(Thousands of Dollars)					
	FY94	FY95	FY96	FY97	FY98	FY99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING:	(Thousands of Dollars)					
	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:	FY94	FY95	FY96	FY97	FY98	FY99
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 (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

This executive order transfer the bonding program for fish processors and buyers from the Department of Labor to the Department of Revenue effective July 1, 1993.

Prepared by: Larry E. Meyers, Director LEM Phone: 465-2320
 Division: Income and Excise Audit Division Date: January 6, 1993
 Approved by Commissioner: [Signature] Date: 1/11/93
 Agency: REVENUE

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FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO : ED 85
Bill Version: ED 85
(S) Publish Date: 1-11-93

Revision Date: _____
Title: Transfer of the fish bonding
program to the Department of Revenue
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Wage & Hour
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill would transfer the fish buyers and processors bonding program to the Department of Revenue (DOR). No fiscal impact is reflected here because DOL has already deleted the associated funding from the department's FY 94 budget submittal. This reduction was possible because DOL invested approximately \$25.0 in automating this program. The automated system will be provided to DOR.

Prepared by: Don Study, Director Phone: 465-6003
Division: Labor Standards & Safety Date: 1/6/93
Approved by Commissioner: Charles W. Mahlen
Agency: Department of Labor Date: 1/6/93

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Official Business

Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol

Juneau, Alaska 99801-1182

HOUSE RESOURCES COMMITTEE LETTER OF INTENT REGARDING EXECUTIVE ORDER NUMBER 85

The House Resources Committee has considered Executive Order Number 85 and has voted to move it out of Committee. However, the committee wishes to express its concern about a legal issue which was brought to the committee's attention by attorney George Utermohle of the Legislative Legal Services Division.

Mr. Utermohle noted that in moving the fish processor bonding requirements from the Department of Labor to the Department of Revenue, Executive Order 85 eliminates AS 16.10.292. Mr. Utermohle's memorandum states, "In my opinion, the provisions of AS 16.10.292 do not duplicate other provisions contained in the Executive Order and should have been included in the Executive Order." Since executive orders are meant only for the transfer of functions between state agencies and the Constitution does not permit substantive change in law to be made by executive order, the omission of the language in AS 16.10.292 poses a legal question. However, Utermohle concludes that while Executive Order 85 makes significant change in law, he "must further conclude that the elimination of AS 16.10.292 has no practical effect on the ability of the commissioner of Revenue to enforce the fish processor bonding requirements."

The House Resources Committee would like to state for the record that its approval of Executive Order 85 in no way implies approval of violation of the legal parameters of executive orders, nor should it be construed to mean that any inappropriate substantive changes proposed by executive order in the future will be accepted.

A handwritten signature in cursive script that reads "Bill Williams".

Rep. Bill Williams, Chairman
January 29, 1993

SENATE

Introduced: 1/11/93
 Referred: L&C, FIN

HOUSE

Introduced: 1/11/93
 Referred: STA, RES, FIN

EXECUTIVE ORDER NO. 85

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
 2 with AS 24.08.210, I order the following:

3 * **Section 1. FINDINGS.** As governor, I find that it would be in the best interests of the
 4 efficient administration of the state to move the bonding program that serves as security for
 5 the collection of wages and payment for raw fish from the Department of Labor to the
 6 Department of Revenue. The Department of Revenue is the agency currently charged with
 7 issuing licenses to fish processors and primary fish buyers, and it administers a similar
 8 bonding program to ensure the payment of fisheries taxes.

9 * **Sec. 2.** AS 44.25.020 is amended to read:

10 Sec. 44.25.020. DUTIES OF DEPARTMENT. The Department of Revenue
 11 shall

- 12 (1) enforce the tax laws of the state;
- 13 (2) collect, account for, have custody of, invest, and manage all state
 14 funds and all revenues of the state except revenues incidental to a program of
 15 licensing and regulation carried on by another state department and funds managed
 16 and invested by the Alaska State Pension Investment Board;
- 17 (3) register cattle brands;
- 18 (4) supply necessary clerical and administrative services for the
 19 Alcoholic Beverage Control Board;
- 20 (5) invest and manage the balance of the power development fund in
 21 accordance with AS 44.83.386;
- 22 (6) in accordance with the policies established by the board of trustees
 23 of the Alaska State Pension Investment Board, collect, account for, have custody of,

1 invest, and manage the state funds for which the board is responsible;

2 (7) administer the surety bond program for licensure as a fish processor
3 or primary fish buyer.

4 * Sec. 3. AS 44.25 is amended by adding new sections to read:

5 ARTICLE 2. SURETY BOND PROGRAM FOR FISH PROCESSORS
6 AND PRIMARY FISH BUYERS.

7 Sec. 44.25.040. SECURITY FOR COLLECTION OF WAGES AND
8 PAYMENT FOR RAW FISH. (a) A person applying for a license as a fish
9 processor or primary fish buyer shall file with the commissioner of revenue a surety
10 bond running to the State of Alaska conditioned upon the promise to pay (1) all
11 persons furnishing labor to a fish processor or primary fish buyer, including
12 contractual employee benefits; (2) independent registered commercial fishermen for
13 the price of the raw fishery resource purchased from them; and (3) unemployment
14 insurance contributions. If the surety bond is insufficient to satisfy all obligations
15 under this subsection, the obligations to persons furnishing labor and to independent
16 registered commercial fishermen shall be paid before unemployment insurance
17 contributions are paid. The surety or sureties must be satisfactory, in the determination
18 of the commissioner.

19 (b) The amount of the bond shall be \$10,000 unless, during the preceding five
20 years, that amount was insufficient to satisfy a final judgment resulting from a claim
21 asserted against the bond, cash deposits, or other security filed under this section. If
22 \$10,000 was insufficient, the bond shall be \$50,000; if \$50,000 was insufficient, the
23 bond shall be \$100,000. If the commissioner determines that during the preceding
24 five years, a fish processor or primary fish buyer (1) has engaged in the business of
25 fish processor or primary fish buyer in the state while not in compliance with this
26 section and (2) has not yet satisfied a final judgment entered against the processor or
27 fish buyer for payment for labor furnished to, or raw fishery resources purchased by,
28 the processor or fish buyer, then the amount of the bond for the processor or fish
29 buyer shall be \$100,000. In lieu of the surety bond the fish processor or primary fish
30 buyer may file with the commissioner a cash deposit or other negotiable security
31 acceptable to the commissioner in the amount specified for the bond. If no claim is

1 asserted under this section within two years from the date the bond, cash deposit or
2 other security is filed, the term of the bond, cash deposit or other security shall be two
3 years; if a claim has been asserted within two years, the term of the bond, cash
4 deposit or other security shall be for five years.

5 (c) A bond is not required if the fish processor or primary fish buyer has
6 more than the amount of the bond in lienable property in the state and provides proof
7 of the property satisfactory to the commissioner.

8 (d) Upon certification by the commissioner that a person applying for a
9 license as a fish processor or primary fish buyer has complied with this section, the
10 Department of Revenue may issue that person a license to engage in the business of
11 fish processor or primary fish buyer.

12 (e) The commissioner may accept the assignment of a claim held by a person
13 against a fish processor or primary fish buyer under this section and may bring suit
14 upon the bond, cash deposit or other security on behalf of the assignor in the superior
15 court of the judicial district in which the work is done or in any judicial district in
16 which jurisdiction may be obtained. This action may not be construed to limit the
17 right of a person having a claim under this section against a fish processor or primary
18 fish buyer to personally bring suit upon the bond, cash deposit, or other security, in
19 which case a copy of the complaint shall be served by registered or certified mail
20 upon the commissioner at the time suit is filed. The commissioner shall maintain a
21 record, available for public inspection, of all suits commenced under this subsection.
22 The service shall constitute service on the surety, and the commissioner shall transmit
23 the complaint or a copy of it to the surety within 72 hours after it has been received.

24 (f) If the surety on the bond desires to cancel the bond, the surety may do so
25 by giving the commissioner written notice of intention to cancel. The cancellation is
26 effective 30 days after the notice is delivered to the commissioner.

27 (g) If a judgment is entered against the cash deposit, the commissioner, upon
28 receipt of a certified copy of a final judgment, shall pay the judgment from the
29 amount of the deposit.

30 Sec. 44.25.041. EXEMPTIONS FROM BONDING REQUIREMENT. (a)

31 A fish processor or primary fish buyer that does not purchase fish or hire employees

1 is exempt from the bonding requirements of AS 44.25.040.

2 (b) Restaurants, grocery stores, and established fish markets are exempt from
3 the bonding requirement of AS 44.25.040.

4 Sec. 44.25.042. SUSPENSION AND REVOCATION OF LICENSE. (a) If
5 a final judgment impairs the liability of the surety upon the bond or depletes the cash
6 deposits or other security so that there is not in effect the bond, undertaking, cash
7 deposit, or other security in the full amount prescribed in AS 44.25.040, the license
8 of the fish processor or primary fish buyer shall be suspended until the liability in the
9 required amount, unimpaired by unsatisfied judgment claims, has been furnished.

10 (b) If a bonding company cancels its bond of a fish processor or primary fish
11 buyer, the fish processor's or primary fish buyer's license shall be revoked. The fish
12 processor or primary fish buyer may again obtain a license by complying with the
13 requirements of AS 44.25.040.

14 (c) If a licensed fish processor or primary fish buyer fails to fulfill the
15 obligations as set out in AS 44.25.040, the license of the processor or buyer shall be
16 suspended for a period of time the commissioner determines is appropriate. After three
17 suspensions the license may be permanently revoked.

18 (d) Proceedings to suspend or revoke a license are governed by AS 44.62
19 (Administrative Procedure Act).

20 (e) If the commissioner determines that a fish processor or primary fish buyer
21 is acting in violation of AS 44.25.040, the commissioner shall give written notice
22 prohibiting further action by the person as a fish processor or primary fish buyer. The
23 prohibition continues until the person has submitted evidence acceptable to the
24 commissioner showing that the violation has been corrected.

25 (f) A person affected by an order issued under AS 44.25.040 and this section
26 may seek equitable relief preventing the commissioner from enforcing the order.

27 (g) In an action instituted in the superior court by the commissioner or a
28 representative of the commissioner, a person acting in the capacity of a fish processor
29 or primary fish buyer in violation of AS 44.25.040 may be enjoined from acting as
30 a fish processor or primary fish buyer.

31 Sec. 44.25.045. PENALTY FOR FAILURE TO OBTAIN BOND. A person

1 who is required to obtain the bond required by AS 44.25.040 and who fails to obtain
2 that bond is guilty of a class A misdemeanor. Each day a violation occurs constitutes
3 a separate offense.

4 Sec. 44.25.047. REGULATIONS. The commissioner may adopt regulations
5 to carry out the provisions of AS 44.25.040 - 44.25.048.

6 Sec. 44.25.048. DEFINITIONS FOR SURETY BOND PROGRAM. In
7 AS 44.25.040 - 44.25.048, unless the context otherwise requires,

8 (1) "commissioner" means the commissioner of revenue;

9 (2) "established fish market" means a market maintained in a
10 permanent structure exclusively for the sale of seafood to the public at retail;

11 (3) "fish" means any species of aquatic finfish, invertebrates and
12 amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle,
13 found in or introduced into the state, and includes fish eggs except fish eggs sold for
14 stock enhancement purposes;

15 (4) "fish processor" means a person engaging or attempting to engage
16 in a business for which a license is required under AS 43.75;

17 (5) "grocery store" means a store maintained for the sale of food
18 products exclusively to the public at retail;

19 (6) "primary fish buyer" means a person, other than a cooperative
20 corporation organized under AS 10.15, engaging or attempting to engage in the
21 business of originally purchasing or buying any fishery resource in intrastate,
22 interstate, or foreign commerce;

23 (7) "restaurant" includes a place maintained for the sale and
24 on-premise consumption of food, and a street vendor who sells food prepared for
25 immediate consumption.

26 * Sec. 4. AS 16.10.290, 16.10.292, 16.10.293, 16.10.294(a), (b), (c), and (d), and
27 16.10.295 are repealed.

28 * Sec. 5. TRANSITION. (a) Contracts, rights, liabilities, and obligations created by or
29 under a law repealed by this Order and in effect on June 30, 1993, remain in effect
30 notwithstanding this Order's taking effect. Records, equipment, appropriations, and other
31 property of agencies of the state whose functions are transferred under this Order shall be

1 transferred to implement the provisions of this Order.

2 (b) Litigation, hearings, investigations, and other proceedings pending under a law
3 repealed by this Order, or in connection with functions transferred by this Order, continue in
4 effect and may be continued and completed notwithstanding a transfer, amendment, or repeal
5 provided for in this Order.

6 (c) Regulations relating to the surety bond program adopted by the Department of
7 Labor under authority of AS 16.10.275 before July 1, 1993, remain in effect until regulations
8 are adopted under AS 44.25.047 by the Department of Revenue and take effect. The
9 Department of Revenue may enforce the Department of Labor regulations until its own take
10 effect.

11 * Sec. 6. This Order takes effect July 1, 1993.

DATED: _____

Walter J. Hickel
Governor