

HB

25

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 25

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Residency requirements: fish and game licenses BRU: Administration
 Component: Administration
 Sponsor: Representative Ogan
 Requester: House Fisheries COMPONENT SERIAL NO. 479

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Kevin Brooks *Kevin Brooks*
 Division: Administration
 Approved by Commissioner: Caron Bruce *Caron Bruce*
 Agency: Department of Fish and Game

Phone: 465-5999
 Date: 1/14/97
 Date: 1/28/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: HB 25

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to residency for Fish and BRU: Fish and Wildlife Protection
Game purposes Component: Detachments
 Sponsor: Representative Ogan
 Requestor: H. Fostl COMPONENT SERIAL NO. 0490

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

This Bill will improve the Division's ability to meet program objectives and will have no significant affect on the Division's budget.

Prepared By: Lt. Joel L. Hard Phone: 269-5409
 Division: Fish and Wildlife Protection Date: January 22, 1997

Approved by Commissioner: *Joel Smith* Date: 1/31/97
 Agency: Ronald L. Otte, Department of Public Safety

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Alaska State Legislature

Co-Chair, House Resources
Community & Regional Affairs
Legislative Council
Special Committee on Fisheries
Special Committee on Oil and Gas



State Capitol
Room 128
Juneau, Alaska 99801
(907) 465-3878
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Representative Scott Ogan
House District 27

HB-25 SPONSOR STATEMENT

I have introduced HB-25 to make the residency law applying to the taking of fish and game resources a more workable, consistent, enforceable provision.

Like many other valuable state programs there is always the temptation by nonresidents to bend the rules, or circumvent the letter of the law. By changing the language in existing statute we can close some of the loop holes that have plagued law enforcement officials.

Last session this measure was supported by both the administration and overwhelmingly by the legislature.

I hope I can count on your support this session.

Thank you.

A handwritten signature in cursive script that reads "Scott Ogan".

CS FOR HOUSE BILL NO. 25(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE OGAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the issuance of hunting, trapping, and noncommercial fishing
2 licenses, tags, and permits and to residency for fish and game purposes; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 16.05.340 is amended by adding a new subsection to read:

6 (g) A hunting, trapping, or fishing license, tag, or permit for which a fee is
7 authorized under this section or for which the fee is waived or modified under
8 AS 16.05.330 - 16.05.430 may be issued only to a natural person.

9 * Sec. 2. AS 16.05 is amended by adding a new section to read:

10 Sec. 16.05.415. Determination of residency. (a) In AS 16.05.330 -
11 16.05.430, a person, except as provided in (c) - (f) of this section, is a resident if the
12 person

13 (1) is physically present in the state with the intent to remain in the
14 state indefinitely and to make a home in the state;

1 (2) has maintained the person's domicile in the state for the 12
2 consecutive months immediately preceding the application for a license;

3 (3) is not claiming residency in another state, territory, or country; and

4 (4) is not obtaining benefits under a claim of residency in another state,
5 territory, or country.

6 (b) A person who establishes residency in the state under (a) of this section
7 remains a resident during an absence from the state unless during the absence the
8 person

9 (1) establishes or claims residency in another state, territory, or country;

10 or

11 (2) performs an act, or is absent under circumstances, that are
12 inconsistent with the intent required under (a) of this section.

13 (c) A person who is a member of the military service or the United States
14 Coast Guard is a resident for the purposes of AS 16.05.330 - 16.05.430 if the person
15 has been stationed in the state for the 12 consecutive months immediately preceding
16 the application for a license. This subsection does not apply to a person who
17 establishes and maintains residency in the state under (a) and (b) of this section.

18 (d) A person who is the dependent of a resident member of the military service
19 or the United States Coast Guard under (a) or (c) of this section is a resident for the
20 purposes of AS 16.05.330 - 16.05.430 if the person has lived in the state for the 12
21 consecutive months immediately preceding the application for a license. This
22 subsection does not apply to a person who establishes and maintains residency in the
23 state under (a) and (b) of this section.

24 (e) A person who is an alien is a resident for the purposes of AS 16.05.330 -
25 16.05.430 if the person

26 (1) is physically present in the state with the intent to remain in the
27 state indefinitely and to make a home in the state;

28 (2) has maintained the person's domicile in the state for the 12
29 consecutive months immediately preceding the application for a license;

30 (3) is not claiming residency in another state, territory, or country; and

31 (4) is not obtaining benefits under a claim of residency in another state,

1 territory, or country.

2 (f) In AS 16.05.330 - 16.05.430, a person that is not a natural person, other
3 than a sole proprietorship, establishes residency by maintaining its main office or
4 headquarters in the state and providing proof, satisfactory to the commissioner, of that
5 fact to the department or an agent of the department upon demand. A sole
6 proprietorship has the same residency as the person, whether natural or otherwise, who
7 is the proprietor of the entity. The commissioner may adopt regulations as necessary
8 to implement this subsection.

9 (g) A natural person who does not qualify as a resident under (a) - (e) of this
10 section does not qualify as a resident by virtue of an interest in a resident business
11 entity under (f) of this section.

12 (h) In AS 16.05.330 - 16.05.430, a nonresident

13 (1) person is a person who does not qualify as a resident under (a) -
14 (f) of this section; and

15 (2) alien is an alien person who does not qualify as a resident under (e)
16 of this section.

17 (i) In this section, "license" means a license, tag, permit, stamp, identification
18 card, or other indicia of permission to engage in an activity subject to AS 16.05.330 -
19 16.05.430.

20 * Sec. 3. AS 16.05.940(26) is amended to read:

21 (26) "resident" means

22 (A) a person who for the [PRECEDING] 12 consecutive months
23 immediately preceding the time when the assertion of residence is made
24 has maintained the person's domicile [A PERMANENT PLACE OF ABODE]
25 in the state and who is neither claiming residency in another state, territory,
26 or country nor obtaining benefits under a claim of residency in another
27 state, territory, or country;

28 (B) [HAS CONTINUALLY MAINTAINED A VOTING
29 RESIDENCE IN THE STATE; AND IN THE CASE OF] a partnership,
30 association, joint stock company, trust, or corporation [, "RESIDENT" MEANS
31 ONE] that has its main office or headquarters in the state; a natural person

1 who does not otherwise qualify as a resident under this paragraph may not
2 qualify as a resident by virtue of an interest in a partnership, association,
3 joint stock company, trust, or corporation;

4 (C) [HOWEVER,] a member of the military service, or United
5 States Coast Guard, who has been stationed in the state for the
6 [PRECEDING] 12 consecutive months immediately preceding the time when
7 the assertion of residence is made;

8 (D) a person who is [A RESIDENT FOR THE PURPOSES OF
9 THIS PARAGRAPH, AND] the dependent of a resident member of the military
10 service, or the United States Coast Guard, and who has lived [BEEN
11 LIVING] in the state for the 12 consecutive months immediately preceding
12 the time when the assertion of residence is made; or

13 (E) [PRECEDING YEAR IS A RESIDENT FOR THE
14 PURPOSES OF THIS PARAGRAPH; AND A PERSON WHO IS] an alien
15 [BUT] who for the 12 consecutive months immediately preceding the time
16 when the assertion of residence is made [ONE YEAR] has maintained the
17 person's domicile [A PERMANENT PLACE OF ABODE] in the state and
18 who is neither claiming residency in another state, territory, or country
19 nor obtaining benefits under a claim of residency in another state,
20 territory, or country [IS A RESIDENT FOR THE PURPOSES OF THIS
21 PARAGRAPH];

22 * Sec. 4. This Act takes effect January 1, 1998.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

February 1, 1997

SUBJECT: HB 25: An act relating to the issuance of hunting, trapping, and noncommercial fishing licenses, tags, and permits and to residency for fish and game purposes (HB 25)

TO: Representative Scott Ogan
Attn: Dave Stancliff

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your request for a description of what HB 25 does.

HB 25 addresses the issue of residency for fish and game purposes generally, as well as, addressing residency for hunting, trapping, and noncommercial fishing licenses in particular.

Section 1 of the bill expresses in writing the generally understood requirement that a hunting, trapping, or noncommercial fishing license, tag, or permit may be issued only to a natural person. A natural person is a human being and not a nonhuman legal person such as a corporation, partnership, etc.

HB 25 contains two provisions relating to residency for fish and game purposes. The first provision is contained in sec. 2 of the bill and applies to the determination of residency for purposes of issuing hunting, trapping, and noncommercial fishing licenses. The second provision is contained in sec. 3 of the bill and sets out the definition of "resident" for other purposes under AS 16.

Section 2 of the bill amends AS 16.05. by adding a new section establishing how residency is determined for hunting, trapping, and noncommercial fishing licenses. The basic requirements for a person to establish residency are physical presence in the state with the intent to remain in the state and to make a home in the state; maintaining a domicile in the state for the preceding 12 months; and not doing anything contrary to the assertion of residency such as claim residency in another state or country or obtain benefits in another state or country under a claim of residency in that state or country.

A resident does not lose his or her residency in the state by being absent from the state. In order to lose residency, the person must be absent from the state and claim residency in an

Representative Scott Ogan

February 1, 1997

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other state or country or the person must do something that is not consistent with the basic requirements for residency set out in this section.

Members of the military who have been stationed in the state for the preceding 12 months and their dependents who have lived in the state for the preceding 12 months are considered as residents. These military personnel and their dependents do not have to surrender their legal residency in their home state or benefits based on their residency in another state. This bill provides that members of the Coast Guard and their dependents shall be eligible for resident status. The Coast Guard is not clearly a branch of the military service, so the bill clarifies that members of the Coast Guard and their dependents are to receive the same benefit as members of the military service and their dependents.

An alien establishes residency in the state by maintaining a domicile in the state for the preceding 12 months and not claiming residency in another state or country or obtaining a residency benefit under a claim of residency in another state or country.

In those instances where a business may apply for a license, such as a taxidermy or fur dealers license, the residency of the business is determined by the location of the business' main office or headquarters. A nonresident person who has an interest in a resident business (such as a partnership or joint venture) in the state cannot qualify as a resident by virtue of that interest in a resident business.

Section 3 of the bill amends AS 16.05.940(26) which is the general definition of "resident" for AS 16. One change that is made to this definition is the replacement of the undefined term "place of abode" with "domicile". Though the terms have substantially similar meanings in the common law, the term "domicile" is already defined in AS 16.05.940(11).¹

The other changes made to the definition of "resident" in AS 16.05.940(26) provide that residency is to be determined in a manner comparable to that used in sec. 2 of the bill. For example, a person cannot maintain residency if the person claims residency in another state or obtain benefits in another state or country under a claim of residency; a natural person cannot claim residency based on an interest in a resident business entity; members of the Coast Guard and their dependents get the same privileges as members of the military service and their dependents.

*

¹ For purposes of AS 16, "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game. AS 16.05.940(11).

Representative Scott Ogan

February 1, 1997

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In AS 16.05.940, the definition of "resident" is not as detailed as that set out in sec. 2, because there is not an apparent need for a more detailed definition for AS 16. The residency issues that have arisen relate to eligibility for resident hunting, trapping, and noncommercial fishing licenses and those are addressed by sec. 2 of the bill.

If I may be of further assistance, please advise.

GU:lmb

97-023.lmb

**Wayne
Anthony
Ross**

Wayne Anthony Ross
Edward L. Miner

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MAR 04 1997

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February 26, 1997

Representative Bill Hudson
State Capitol
Juneau, Alaska 99801-1182

Dear Bill:

Attached please find an Attorney General's opinion rendered for the Alaska Department of Public Safety.

I have a son, Brian, who is presently a First Lieutenant in the United States Marine Corps, stationed at Camp Pendleton, California. Brian was born in Alaska, lived here all of his life, and graduated from the United States Naval Academy, Class of 1994 as the top Marine Corps Officer (12th in his class).

Despite being assigned by the Corps to a billet "Outside", Brian is an Alaskan through and through. He proudly displays Alaskan personalized plates on his car (BAR¹), votes in Alaskan elections via absentee ballot, has retained his Alaskan Driver's license, and comes home to visit the old folks at least once a year. Yet, according to this AG opinion, Brian cannot get a resident hunting license to hunt or fish with his dad, mom, brothers, and sister, even if he is lucky enough to get time off during hunting season.

Our home, I hope, will always be "home" to Brian in Alaska, as long as we are alive. Alaska, itself, will always be "home" to Brian, too, and he intends to return here after his discharge, whenever that occurs. (Brian will probably make the Marine Corps his first career. After that he is talking about teaching history in Alaska.) But since the Marine Corps furnishes lodging to Brian, his place of abode is wherever the Marine Corps tells him to rest his head. He cannot be stationed here as a career, active duty officer, because the Marines don't have an active duty unit in Alaska.

It appears to me to be grossly unfair for Brian, the Roscovius boy (who I know personally), and other similarly situated young people from Alaska, who have chosen to serve their country, to lose their residency for hunting or fishing purposes, because that service must be outside the State.

¹Brian's wife has MRSBAR on her Alaska plates and is looking forward to the day they will settle in Alaska.

February 25, 1997

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May I suggest that you consider amending the current law in one of the following ways:

1. Provide that Alaskan residents' sons and daughters and brothers and sisters, who are in the military service, and who have maintained their Alaska residency status while in service, may hunt or fish as Alaskan residents provided they hunt with members of their family who are Alaskan Residents (Acceptable), or
2. Provide that Alaskan residents' sons and daughters and brothers and sisters, who are in the military service, and who have maintained their Alaska residency status while in service, may hunt or fish as Alaskan residents (Better), or
3. Provide that Alaskan residents, who have lived in Alaska for more than one year immediately prior to their military service, or during their military service, and who have maintained their Alaska residency, may hunt or fish as Alaskan residents (Better Still), or
4. Take out the provision that requires the maintenance of a permanent place of abode in Alaska for persons who are in the military service (Good).

As Alaskan parents, we often see our children leave the State for college or military service. We all hope, however, that our children will eventually choose to return to Alaska to live. Our children's ability to retain their hunting and fishing rights as Alaskan residents, despite their military service, is just another encouragement to them to come home when they can, on a temporary basis, and to return home permanently, when their service is over.

I would appreciate your assistance in making the necessary changes to this law immediately. Brian is due to come home in August for a visit, and I'm getting too old to pack a moose or caribou by myself.

Call me if you have any questions.

Best regards,



Wayne Anthony Ross, a/k/a "Dad"

STATE OF ALASKA
Department of Law
Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

Phone No. (907) 269-5100
FAX No. (907) 279-2834

FAX TRANSMITTAL SHEET

Please deliver the following pages:

DATE: May 17, 1996 TIME: _____ TOTAL NO. OF PAGES 1
(including cover sheet)

TO: Brian Stevenson Fax Nos. (907) 822-5594

RE: Military Residency Question

FR: Lance B. Nelson
Assistant Attorney General

IF YOU DO NOT RECEIVE ALL THE PAGES OR HAVE ANY PROBLEMS, PLEASE
CALL Gloria AT (907) 269-5240. THANK YOU.

REMARKS:

Under AS 16.50.940(26), if a member of the military service has not been stationed in Alaska the preceding 12 months, then he/she would have to qualify as any other resident by having maintained a permanent place of abode and a voting residence in Alaska the preceding 12 months. If John Roscovius has not maintained his own permanent place of abode in Alaska during the preceding 12 months, he they would not be a resident for fish and game purposes, even though he may well be a resident for other purposes.

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Rec 5/17/96 at NLF