

SB

146

SFIN

FILE

4/21/99

SENATE FINANCE COMMITTEE REPORT

DATE: 4/15/99

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/22/99

Finance Committee considered

SENATE BILL NO. 146

"An Act relating to the amount and disposition of the commercial fishing license fee and to the fishermen's fund; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 146 (FIN)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
 - same title
 - new title
- House Bill:
 - same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	X		
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
F&G / Admin	4/19/99		361.4

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

REPORTED OUT OF
SFC 4/21/99

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 146(FIN)

Revision Date/Time (Note if correction) _____ Dept. Affected Fish and Game
 Title Amount and Disposition of Commercial Fishing BRU Administration
 License Fee _____ Component Administration
 Sponsor Senate Finance Committee
 Requester Senate Finance Committee Component Serial No. 479

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous - Vendor Commission	3.4	9.3	9.3	9.3	9.3	9.3
TOTAL OPERATING	3.4	9.3	9.3	9.3	9.3	9.3

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	361.4	905.8	905.8	905.8	905.8	905.8
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts		(105.1)	(105.1)	(105.1)	(105.1)	(105.1)
1037 GF/Mental Health						
Other 1024 Fish & Game Fund	3.4	114.4	114.4	114.4	114.4	114.4
TOTAL	3.4	9.3	9.3	9.3	9.3	9.3

Estimate of any current year (FY99) cost: 210.4

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Assumption: The number of licenses sold annually will remain constant and approximately the same number as sold during FY98 (25,273).
 Fishermen's Fund: During FY00, a \$73.9 increase is anticipated, and during FY01 and therefore, a \$40.6 increase is projected.
 Currently, the General Fund receives \$500.1 which is 40% of the crewmember license fees. Starting in FY00, the fees will be allocated to the F&G Fund. During FY00, the \$105.1 allocated in Administration's budget for administratering the licensing program will be collected as GF/Program Receipts, and will switch to Fish and Game funds in FY2001.

Prepared by Kevin Brooks *Kevin Brooks* Phone 465-5999
 Division Director Date/Time 4/21/99 2:06 PM
 Approved by Commissioner Frank Rue *Commissioner Frank Rue* Date 4/19/99
 Agency Department of Fish and Game

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

CS FOR SENATE BILL NO. 146(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the amount and disposition of the commercial fishing license
2 fee and to the fishermen's fund; and providing for an effective date."

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

4 * **Section 1.** LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this
5 Act either destroys a valid existing dedication of the proceeds of a state tax or license or
6 creates a new dedication of the proceeds of a state tax or license.

7 * **Sec. 2.** AS 16.05.470(a) is amended to read:

8 (a) A person appointed by the commissioner to sell licenses under
9 AS 16.05.440 - 16.05.480, except salaried employees of the state, shall retain the sum
10 of 10 [15] percent of the fee for the issuance of a license. An agent shall transmit
11 monthly to the commissioner all license fees collected by the agent, less the authorized
12 commission, together with a full accounting of the fees. The commissioner shall make
13 monthly remittances of the fees collected to the proper state official. The
14 commissioner is not liable for defalcation or failure to account for the fees collected

1 by an agent, but the commissioner shall require a bond in the sum the commissioner
2 considers adequate, conditioned upon the faithful accounting of money collected.

3 * Sec. 3. AS 16.05.480(a) is amended to read:

4 (a) A person engaged in commercial fishing shall obtain a commercial fishing
5 license. The fee for the license is \$60 [\$30] for residents [,] and \$125 [\$90] for
6 nonresidents. Except for those that [WHICH] are also entry or interim-use permits,
7 all commercial fishing licenses are nontransferable. The commercial fishing license
8 shall be retained in the possession of the licensee, readily accessible for inspection at
9 all times. No more than one fee may be charged annually against a person. For the
10 purposes of this section, "commercial fishing license" includes entry permits and
11 interim-use permits issued under AS 16.43 and crewmember fishing licenses.

12 * Sec. 4. AS 16.05.480 is amended by adding a new subsection to read:

13 (e) Except as provided under AS 16.05.470 and AS 23.35.060, fees collected
14 from the sale of crewmember fishing licenses under this section may be appropriated
15 into the fish and game fund.

16 * Sec. 5. AS 23.35.060(a) is amended to read:

17 (a) There is created a fund, designated as the "fishermen's fund." The
18 Department of Revenue is the custodian of the fund and the Department of Labor shall
19 administer it. The fund shall be composed of 36 [60] percent of the money derived
20 by the state from all commercial fishermen's licenses and money appropriated to carry
21 out the purpose of this chapter.

22 * Sec. 6. This Act takes effect January 1, 2000.

SENATE FINANCE
COMMITTEE

ADOPTED

Amendment Number: 1

Bill Number: SB 146

Sponsor: Torgerson Date: 4/20/99

Logged In By: Mindy

I-LS0800ND.1 ✓

Utermohle

4/20/99

AMENDMENT

OFFERED IN THE SENATE

TO: SB 146

BY SENATOR TORGERSON

Adams - moved
no objection

- 1 Page 2, line 12:
- 2 Delete "commercial"
- 3 Insert "crewmember"

- 4 Page 2, line 24:
- 5 Delete "commercial"
- 6 Insert "crewmember"

Leman

amendment #2

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: SB 146
Sponsor: Leman Date: 4/21
Logged In By: Mindy

See ?

amend # 2

conceptual change

16.05.470 a

relating to fees paid to
vendors for issuance of licenses

change 15%

to 10%

line 24

delete deposited
add appointed



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sponsor Statement Senate Bill 146 "The Crew Fishing License Fee"

Senate Bill 146 increases the cost of a crew-member's fishing license from \$30 per resident and \$90 per non-resident to \$60 for a resident and \$125 for a non-resident license. At the current time, 60% of the crew-member license fees goes into the Fisherman's Fund which is a dedicated fund that provides emergency treatment, transportation to the nearest approved medical facility, medical care and hospitalization to commercial crew members if they are disabled in Alaska waters.

Senate Bill 146 reduces the percentage of license fees that goes into the fund from 60% to 36%. At the 36% level, the Fisherman's Fund will have the same amount of funding it receives now. The current balance of the fund is over \$9 million.

Senate Bill 146 directs 64% of the crew license fees to the Fish & Game Fund to be made available for appropriation to Commercial Fisheries Management. The intent is to direct the crew license fees to benefit the commercial fisheries industry.

LEGAL SERVICES

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

COPY

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

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

MEMORANDUM

April 1, 1999

SUBJECT: Draft bill relating to the commercial fishing license and the fishermen's fund (Work Order No. 21-I.S0800A)

TO: Senator John Torgerson
Attn: Llewellyn Lutchansky

FROM: George Utermohle
Legislative Counsel

Enclosed is a draft of a bill relating to the commercial fishing license and to the fishermen's fund as you requested. The bill raises the amount of the commercial fishing license for residents and nonresidents and changes the portion of commercial fishing license fee that is deposited into the fishermen's fund. Each of these matters comes with its own constitutional issue.

COMMERCIAL FISHING LICENSE FEE. Section 1 of the bill amends AS 16.05.480(a) to increase the commercial fishing license fee for residents from \$30 to \$50 and for nonresidents from \$90 to \$150. The proposed increase in license fees is consistent with the archaic rule of 1 to 3 resident to nonresident fee differential for commercial fishing and hunting license fees. However, the 1 to 3 differential is no longer a valid measure of a constitutional nonresident fee for commercial fishing licenses.

In a continuing series of opinions relating to differential fees for commercial fishing permits, the Alaska Supreme Court has determined that the fees paid by a nonresident commercial fisherman may not exceed the total of the fee paid by a resident plus the per capita amount of instate taxes used by the state to support state management of commercial fishing. Carlson v. State, 798 P.2d 1269 (Alaska 1990) and Carlson v. State, 919 P.2d 1337 (Alaska 1996). The Carlson cases interpret the privileges and immunities clause (art. IV, sec. 2) of the federal constitution. The privileges and immunities clause allows a person to pursue a livelihood in any state without unjust discrimination based on the person's state of residence.

The actual amount of the differential that the state may charge a nonresident is equal to the difference between the fee paid by a resident and the total per capita cost of commercial fisheries programs in the state. The per capita cost of state commercial fisheries programs is determined by dividing the total amount of state expenditures for commercial fisheries programs by the number of residents in the state. Funds received and expended by the state from federal programs should be excluded from the amount of state expenditures for commercial fisheries programs.

Senator John Torgerson

April 1, 1999

Page 2

The courts have not addressed whether the state must recalculate nonresident differentials annually. The amount of the differential will vary each year with state expenditures for commercial fisheries programs and the population of the state. I expect the courts would permit the legislature to establish nonresident license fees in statute provided that the deviation from the precise amount of the differential on a year to year is reasonable and not biased against nonresidents.

I expect that the Legislative Research section or the Legislative Finance Division could provide you with an estimate of state expenditures for commercial fisheries programs in the state and an estimate of the amount of the appropriate nonresident differential for nonresident commercial fishing licenses based on the standards set out in the Carlson case.

DEDICATION OF LICENSE FEES TO THE FISHERMEN'S FUND. The fishermen's fund, created in 1951 is a grandfathered dedicated fund, that is, one existing at the time of ratification of the Constitution. It fits within the language of Article IX Sec. 7 that "This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification..." (emphasis added). Because it is a grandfathered dedicated fund, this fund is able to continue receiving its funding through the percentage dedication of the commercial fishing license fees provided for in AS 23.35.060(a).

The enclosed bill proposes to alter the dedication of commercial fishing license fees to the fishermen's fund in two ways: first, section 1 of the bill amends AS 16.05.480(a) to increase the amount of the commercial fishing license fee; second, section 2 of the bill amends AS 23.35.060(a) to reduce the proportion of commercial fishing license fee that is dedicated to the fishermen's fund.

The Department of Law has traditionally taken a firm position that any alteration of the amount or portion of revenue allocated to a dedicated fund had the effect of destroying the dedication. The department took this position in regard to the fishermen's fund in 1978, when it said:

There can be no question that the framers of the constitution fully intended, with only the exceptions expressly stated, to bar for all time the additional dedication of any new or different state revenues for special purposes. 3, 4, and 5 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2297-2301, 2361-2390, 2401-2416, 3415-3420. The reasons for their doing this were many, but basically the reasons came down to the proposition that neither the chief executive (as the State's chief budget officer) nor the legislature (as the State's only appropriating body) should have its hands tied financially by a myriad of dedicated funds for a myriad of diverse programs and that each program must compete annually with all others for its fair share of available money. Id.

The prohibition, however, is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the

Senator John Torgerson

April 1, 1999

Page 3

constitution's ratification. The dedication of license fees for the Fishermen's Fund was first made in 1951 and later amended in 1955. § 4, ch. 100, SLA 1951; am § 1, ch. 99, SLA 1955; now codified as AS 23.35.060. Hence, when the constitution was ratified there existed a dedication of

60 percent of the money derived by the state from all commercial fishermen's licenses, including clam diggers' licenses

"[T]he continuation of any dedication . . . existing" is not prohibited. In an early opinion by this office, we opined that the legislature could neither increase the percentage of the dedication nor the amount of the levy so as to increase the amount to be dedicated. 1959 Op. Atty. Gen. No. 7. To do so would alter the dedication, not continue it. To do so would also increase the dedication, i.e., dedicate still more of the source of revenue and thereby constitute still another dedication in violation of the constitution. Nor, of course, could a new source of revenue be tapped if the dedicated source were lost or abandoned. Amendments which could have allowed such alterations were expressly rejected by the framers. 4 MINUTES 2378-2390, 2401-2411. In sum, it was concluded that, with respect to dedicated funds, the only power left to the legislature is the power to repeal the existing dedications. *Id.*

. . . .

The exception from the prohibition against dedicated funds is for the "continuance" of "existing" dedications. Reducing a dedication makes it different from that which existed, i.e., an existing dedication is not continued when it is reduced any more than it is when it is increased. Under the plain language of the constitution, any change is prohibited. The prior opinion referred to above, 1959 Op. Atty. Gen. No. 7, basing its conclusion on the framers' rejection of a proposed amendment which would have allowed for reductions in existing dedications, concluded that any alteration was a nullity. That conclusion is logically sound. There is some contradictory material in the Convention minutes, however. 4 MINUTES 2405 (dialogue between delegates V. Rivers and White, the latter acting as spokesman for the committee). How the courts would rule is uncertain, but they will give some weight to remarks of committee spokesmen. Walters v. Cease, 388 P.2d 263, 265-266 (Alaska 1964).

Here there was no reduction in the amount to be dedicated, i.e., 60 percent of a certain source, but rather an alteration -- partial elimination -- in the source. The license fees for commercial fishermen were changed to exempt persons who hold permits. Thus, the present dedication is not a "continuance" of an "existing" dedication. This office issued still another opinion soon after Statehood in which we opined that the reduction of the source invalidates the

remaining dedication. 1959 Op. Atty. Gen. No. 14. A reduction of the source was deemed to be, in effect, a repeal of the entire dedication.

This result is admittedly drastic, but there can be no question that it is logically correct. The framers rejected every effort to amend the exception language so as to allow a dedication to be altered. 4 MINUTES 2401-2405 (Rivers amendment), 2409-2412 (Kilcher amendment). Delegate White, however, acting as a spokesman for the committee, assured the delegates that, despite the logical implications of the constitution's language, an existing allocation of funds from a given source could be raised or lowered, i.e., say, from 3 percent to 6 percent, that the "continuance" did not apply to rates. He also specified that it did apply so as to prevent the legislature from discontinuing an allocation and then starting it up again sometime in the future. And he said, "The committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that." *Id.*, at 2405. How much of his remarks, if any, will be judicially accepted is unknown. But we are inclined to the view that the dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from crewmember commercial licenses -- all that is left of the source.

1978 Inf. Alaska Atty. Gen. Op. (File No. J-66-580-78) June 2 (emphasis added; footnotes omitted).

In a subsequent opinion, regarding a proposed increase in the commercial fishing license fee, the Department of Law had softened its stance on changes to dedicated funds to the extent that a change to the amount of a dedicated license fee such as the commercial fishing license fee was not clearly unconstitutional. "While it is a reasonable inference from the minutes [of the constitutional convention] that the intent of the framers was to prevent any increase in the percentage allotted to existing dedicated funds, it is not clear that the framers contemplated that an increase in the actual tax or license would constitute a new dedication. This office will, therefore, no longer take the position that an increase or decrease in the tax or license amounts to an unconstitutional act." 1981 Inf. Alaska Atty. Gen. Op., addressed to Elaine VanderSande, Administrator of the Fishermen's Fund, from Kathryn Kolkhorst, Ass't Atty. Gen., dated June 30.

In the year following the 1981 informal opinion from the Department of Law, the legislature raised the amount of the commercial license for residents and nonresidents to their current levels. Sec. 1, ch. 79, SLA 1982. Also, at that time it was the opinion of this office that the legislature could increase the amount of the commercial fishing license fee and the percentage of the fee that could be deposited into the fishermen's fund.

The Department of Law's long-standing opinion that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside" (1959 Alaska Attorney General's Opinion No. 7, page 5) seems to be

contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was delegate Barric M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

Senator John Torgerson

April 1, 1999

Page 6

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

Alaska Constitutional Convention Proceedings, pp. 2404-05 (emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the amount of a license fee without affecting the status of a dedication of the proceeds of the license fee. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the amount of the commercial fishing license or the proportion of the license fee deposited into the fishermen's fund destroys the status of the fishermen's fund as a valid dedicated fund. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision-making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated (emphasis added) that

opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the

Senator John Torgerson
April 1, 1999
Page 7

convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the intent of the enacting body.

Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court as to the legislature's ability to raise or lower the amount or rate of a dedicated license fee without destroying the dedication.

If I may be of further assistance, please advise.

GU:jdr
99-179.jdr

Enclosure

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 19, 1999

Senator John Torgerson, Chair
Senate Finance Committee
State Capitol, Room 516
Juneau, Alaska 99801

Re: SB 146 - Alaska Fishermen's Fund;
legal issues

Dear Senator Torgerson:

In keeping with my agreement not to surprise you with legal issues that might arise concerning SB 146, I am providing you with this letter which will set out some matters for consideration by the committee. SB 146 proposes to increase the fees for commercial fishing licenses and to make a proportional reduction in the percentage of those fees that are dedicated to the fishermen's fund (AS 23.35.060). The balance of the fees not dedicated to the fishermen's fund would be deposited in the fish and game fund for further appropriation by the legislature.

I advised you in our telephone conversation that the Department of Law will take the same position regarding this bill as it did regarding the change in dedication for tobacco tax receipts. For the change in the rate of dedication of the tobacco tax, we reaffirmed our earlier advice that any change in the rate of dedication threatens the continuance of the dedicated fund. However, at that time we acknowledged the history in the Minutes of the Constitutional Convention which appears to support the argument that a change in rate does not trigger an end to a pre-existing dedication. I have also attached a memorandum written to former Representative Gardner concerning legislative action which raised many of the dedicated fund issues present in SB 146. In that memorandum we cautioned Representative Gardner that a change in the rate of dedication, even though proportional with an increase in the amount of the fee, would pose a serious threat to the continuance of the dedication to the fishermen's fund.

There is an additional legal issue raised in SB 146. It is believed that your bill is intended to only direct a part of the fees paid for crewmember licenses to the Fish and Game Fund. However, section 4 of the bill provides that "[e]xcept as provided in AS 16.04.470 and AS 23.35.060, fees collected from the sale of commercial fishing licenses" would be deposited in the fish and game fund. This may apply to more receipts than you intended, as it could include fees paid for limited entry and interim use permits as well as crew member licenses. That would eliminate the general fund program receipts upon which the CFEC's budget is based and reduce contributions to the general fund by approximately \$2.5 million. This would send the revenue now generated by the CFEC to the fish and game fund rather than to the general fund as provided

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☐ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1884
PHONE: (907) 269-5100
FAX: (907) 278-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2911
FAX: (907) 451-2846

☒ P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-8800
FAX: (907) 485-8795 2520

Sen. John Torgerson
Re: SB 146

April 19, 1999
Page 2

in existing law. If this is not your intent, we recommend that you consider changing section 4 to make it clear that only the balance collected from crewmember licenses will be deposited in the fish and game fund.

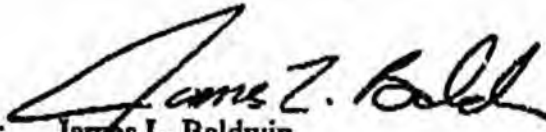
An additional amendment is suggested to the provisions in the bill appearing at page 2, lines 10 - 12. This provision appears to require the automatic deposit of a part of the commercial license fees into the fish and game fund. The fish and game fund receives revenues dedicated under federal law. The bill should be amended to add a provision that makes it clear that license fees are deposited in the fish and game fund only if the legislature appropriates the money there. This approach would be similar to the treatment given oil conservation surcharge receipts. See AS 46.08.020.

Finally, we believe you can achieve your intent in a way that avoids the dedicated fund issue involving the fishermen's fund. This issue remains a matter of concern even if the committee accepts the previously suggested amendments. You may consider another approach in lieu of changing the rate of dedication. Under this approach, the bill would leave existing law intact and would impose an additional crewmember fishing license fee generating revenue for the state general fund. The new fee provision would state that the legislature may appropriate the new revenues derived to the fish and game fund. This approach would be similar to the method used to increase the tobacco tax in AS 43.50.190. This method accomplishes your intent while avoiding the dedicated fund issue discussed above.

Let me know if we can assist you further in the committee's consideration of SB 146.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: James L. Baldwin
Assistant Attorney General

JLB:jn
Enclosure

cc: Pat Pourchot, Legislative Director
Office of the Governor

Chrystal Smith, Legal Administrator
Deborah Behr, Assistant Attorney General
Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU 99511

June 2, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Legislation on Fisher-
men's Fund
Our File: J-66-580-78

Dear Chairman Gardiner:

This responds to your inquiry of May 3, 1978, with respect to the legislation enacted last year based on advice from this office which we now believe to have been in error. */

In brief, one of our attorneys who was relatively unfamiliar with the nuances of the prohibition against dedicated funds, Alaska Const., art. IX, §7, worked with your committee last year to develop legislation which would eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits. The results are contained in sections 8 and 14, chapter 105, SLA 1977. In effect, they exempted permit holders from license fees and

*/ You also requested advice on the proper disposition of interest earned from the Fishermen's Fund. We have not yet reached a conclusion on that point but we are now convinced that no legislation is required on it, i.e., either the interest is already a part of the dedication or it is not. When our researches lead us to a conclusion, we will advise.

Hon. Terry Gardiner
June 2, 1978
Page #2

provided for payment into the Fishermen's Fund from monies collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial licenses. It was then believed that this arrangement would not offend the constitutional prohibition. We now conclude otherwise.

The Alaska Constitution, art. IX, §7, provides in relevant part as follows:

The proceeds of any state tax or license shall not be dedicated to any special purpose [with exceptions not here relevant]. . . . This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of the ratification of this section [1956] by the people of Alaska.

There can be no question that the framers of the constitution fully intended, with only the exceptions expressly stated, to bar for all time the additional dedication of any new or different state revenues for special purposes. 3, 4, and 5 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2297-2301, 2361-2390, 2401-2416, 3415-3420. The reasons for their doing this were many, but basically the reasons came down to the proposition that neither the chief executive (as the State's chief budget officer) nor the legislature (as the State's only appropriating body) should have its hands tied financially by a myriad of dedicated funds for a myriad of

Hon. Terry Gardiner
June 2, 1978
Page #3

diverse programs and that each program must compete annually with all others for its fair share of available money. Id.

The prohibition, however, is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. The dedication of license fees for the Fishermen's Fund was first made in 1951 and later amended in 1955. §4, ch. 100, SLA 1951; am §1, ch. 99, SLA 1955; now codified as AS 23.35.060. Hence, when the constitution was ratified there existed a dedication of

60 percent of the money derived by the state from all commercial fishermen's licenses, including clam diggers' licenses. . . .

"[T]he continuation of any dedication . . . existing" is not prohibited. In an early opinion by this office, we opined that the legislature could neither increase the percentage of the dedication nor the amount of the levy so as to increase the amount to be dedicated. 1959 Op. Atty. Gen. No. 7. To do so would alter the dedication, not continue it. To do so would also increase the dedication, i.e., dedicate still more of the source of revenue and thereby constitute still another dedication in violation of the constitution. Nor, of course, could a new source of revenue be tapped if the dedicated source were lost or abandoned.

Hon. Terry Gardiner
June 2, 1978
Page #4

Amendments which could have allowed such alterations were expressly rejected by the framers. 4 MINUTES 2378-2390, 2401-2411. In sum, it was concluded that, with respect to dedicated funds, the only power left to the legislature is the power to repeal the existing dedications. Id. */

In 1977, AS 23.35.060, which provides for the Fishermen's Fund dedication, was amended to read, in relevant part, as follows:

60 percent of the money derived by the state from each crewmember fishing license issued under AS 16.05.480, an equal amount of the money derived by the state from each commercial fisherman who is issued a permit under AS 16.43 [the Limited Entry Act]. . . .

The effect of the amendment is to add a dedication of a new and different revenue source, i.e., the annual fee for a commercial fisheries entry permit. It does not continue an existing dedication. **/

*/ It goes without saying that this lack of power to alter does not apply to the other exceptions, the permanent fund and dedications required under federal law.

**/ Arguably, the Buy-Back Fund established under AS 16.43.-310-320 is also a new and prohibited dedication. However, the wording of the constitution's prohibition was designed to exclude certain kinds of dedications, e.g., sinking funds, retirement funds, employment security funds. 4 MINUTES 2363 (dialogue between delegates Davis and White). The Buy-Back Fund might fall into this excepted class. We are inclined to think not, but the answer is uncertain.

Hon. Terry Gardiner
June 2, 1978
Page #5

It can be argued that the annual fee for a commercial fisheries entry permit supplants the annual fee for a commercial fisheries license for gear operators. That is, those persons no longer pay the latter, AS 16.05.480 as amended by §8, ch. 105, SLA 1977, effective January 1, 1978, but rather only the former. AS 16.43.160; 20 AAC §05.220. Not only is this argument essentially the same as those resoundingly rejected by the framers of our constitution, 4 MINUTES 2378-2390, 2401-2412, but it is simply not correct. The 1977 amendment to AS 23.35.060 unquestionably makes a dedication from a new and different source of revenue. It does not matter that the amount is the same.

When the license fee for gear operators was eliminated, the dedication for the Fishermen's Fund was reduced to 60 percent of the money received thereafter under AS 16.05.480 from crewmen's license sales. The purported dedication from fees collected from permit sales and renewals is a nullity -- without any force or effect.

The exception from the prohibition against dedicated funds is for the "continuance" of "existing" dedications. Reducing a dedication makes it different from that which existed, i.e., an existing dedication is not continued when it is reduced any more than it is when it is increased. Under the plain language of the constitution, any change is

Hon. Terry Gardiner
June 2, 1978
Page #6

prohibited. The prior opinion referred to above, 1959 Op. Atty. Gen. No. 7, basing its conclusion on the framers' rejection of a proposed amendment which would have allowed for reductions in existing dedications, concluded that any alteration was a nullity. That conclusion is logically sound. There is some contradictory material in the Convention minutes, however. 4 MINUTES 2405 (dialogue between delegates V. Rivers and White, the latter acting as spokesman for the committee). How the courts would rule is uncertain, but they will give some weight to remarks of committee spokesmen. Walters v. Cease, 388 P.2d 263, 265-266 (Alaska 1964).

Here there was no reduction in the amount to be dedicated, i.e., 60 percent of a certain source, but rather an alteration -- partial elimination -- in the source. The license fees for commercial fishermen were changed to exempt persons who hold permits. Thus, the present dedication is not a "continuance" of an "existing" dedication. This office issued still another opinion soon after Statehood in which we opined that the reduction of the source invalidates the remaining dedication. 1959 Op. Atty. Gen. No. 14. A reduction of the source was deemed to be, in effect, a repeal of the entire dedication.

This result is admittedly drastic, but there can be no question that it is logically correct. The framers

Hon. Terry Gardiner
June 2, 1978
Page #7

rejected every effort to amend the exception language so as to allow a dedication to be altered. 4 MINUTES 2401-2405 (Rivers amendment), 2409-2412 (Kilcher amendment). Delegate White, however, acting as a spokesman for the committee, assured the delegates that, despite the logical implications of the constitution's language, an existing allocation of funds from a given source could be raised or lowered, i.e., say, from 3 percent to 6 percent, that the "continuance" did not apply to rates. He also specified that it did apply so as to prevent the legislature from discontinuing an allocation and then starting it up again sometime in the future. And he said, "The committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that." Id., at 2405. How much of his remarks, if any, will be judicially accepted is unknown. But we are inclined to the view that the dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from crewmember commercial licenses -- all that is left of the source. */

*/ The convention expressly rejected an amendment that said, "but discontinuance shall not preclude reinstatement," and therefore, reinstatement of a commercial license fee for operators would not ordinarily allow reinstatement of that dedication. 4 MINUTES 2409-2412 (Kilcher amendment).

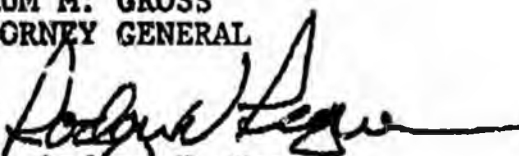
Hon. Terry Gardiner
June 2, 1978
Page #8

The problem now is whether the legislature's mistaken action last year, which resulted from our incorrect advice, can be cured. We believe that legislation retroactive to the first of this year -- the effective date of the applicable amendments from last year -- will supersede last year's legislation and cure the mistaken action. We have prepared legislation to accomplish this. It can, as you have suggested, be added to CSSB 428 am. A copy is enclosed. Last year's discontinuance of a portion of the source of the dedication was so obviously based on a mistake as to its legal effect, and its purpose could so easily have been accomplished in the manner we have proposed here that the courts should give this curative legislation its effect.

We hope this answers the committee's questions.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Enc: Proposed Legislation

SENATE FINANCE COMMITTEE

SIGN-IN

SB 146-COM. FISH LICENSE/FISHERMEN'S FUND

NAME: Kevin Brooks Subject/Bill No: SB 146
Co./Dept./Title: ADFG - Admin Svcs Director Phone: 405-5999
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: Jim Baldwin Subject/Bill No: SB 146
Co./Dept./Title: LACU Phone: 2129
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: Paul Grossi Subject/Bill No: SB 146
Co./Dept./Title: Labor / Director in Camp Phone: 415-2796
Address: Dept. of Labor Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions