

HB

194

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 28 2001

SENATE FINANCE
COMMITTEE

DATE: 4/26/01

FURTHER:

DATE TURNED
IN TO OFFICE: 28 April 2001

Finance Committee considered **CS FOR HOUSE BILL NO. 194(FIN)**
ENTRY PERMIT FEES

"An Act relating to fees for commercial fishing licenses and permits; and providing for an effective date."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
FISH + GAME / CFEC	4/24/01		✓	4
FISH + GAME / Admin.	4/17/01		✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			⊕	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	

APR 28 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 194(FIN)
(H) Publish Date: 4/18/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title: Fees for commercial fishing licenses and permits BRU: Administration
Sponsor: Representative Stevens Component: Administration
Requester: House Finance Committee Component Number: 479

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
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CHANGE IN REVENUES (1024)	227.6	649.3	649.3	649.3	649.3	649.3
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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 1024 Fish & Game Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Assumptions:

The number of licenses sold annually will remain constant.
The non-resident fee differential is estimated at \$135, raising the price of the non-resident license from \$125 to \$195.
The Fishermen's Fund contribution would be capped at \$50 per license holder per year. Fishermen's fund contributions would remain stable.

Prepared by: Kevin Brooks Phone 465-5999
Division: Administration Date/Time 4/17/01 10:00 a.m.
Approved by: Gordy Williams for Commissioner Franl Rue Date 04/17/2001
Agency: Department of Fish and Game

For distribution information, call the Governor's Legislative Office

APR 28 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB194(FIN)
(S) Publish Date: 4/26/01

Revision Date/Time (Note if correction): 4/24/01 1:17 PM Dept. Affected: Fish and Game
Title: Fees for commercial fishing licenses and permits BRU: Comm Fish (Limited) Entry Comm
Component: Comm Fish (Limited) Entry Comm
Sponsor: Representative Stevens
Requester: Senate Resources Component Number: 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
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CHANGE IN REVENUES ()	(120.0)	*	*	*	*	*
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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 (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attachment for explanation. Enactment of this bill could reduce future state liabilities for payments of refunds and interest to non-resident fishermen for fees paid in fiscal year FY2002 and beyond depending upon final outcome of Carlson v. State lawsuit.

Prepared by: Roger Kolden Phone 790-6950
Division: Commercial Fisheries Entry Commission Date/Time 4/24/01 1:17 PM
Approved by: Mary McDowell Date 04/24/2001
Agency: Commercial Fisheries Entry Commission

For distribution information, call the Governor's Legislative Office

- If HB194 is enacted (with resident fees capped at \$300), CFEC's fee-generated revenues could drop by approximately \$136.0 per licensing year, beginning with licenses for 2002, which the Commission will begin issuing in the late fall of 2001.

A Supreme Court ruling in *Carlson v. State* is expected in the summer of 2002, making a final determination of an allowable method for calculating the maximum nonresident fee differential. That method would then determine the fiscal impacts of the provisions of HB 194 in future years.

If the state prevails in its arguments to the Supreme Court regarding what state expenditures may be included in the formula, the provisions of HB 194 will generate *more* revenue from nonresident fees than the provisions of existing statute would generate.

- If HB 194 is NOT enacted, and the state continues charging fees under its current fee structure, potentially large additional liabilities will continue to accrue to the state under the Carlson lawsuit. Under the Superior Court decision, the state is continuing to accrue new, additional refund and interest costs of approximately \$1.13 million per year and approximately 250 new members are being added to the *Carlson* class each year. If the state wins on any of the issues it is appealing to the Supreme Court, that annual figure could be reduced, and if the plaintiffs win any of the issues they appeal, the additional liability that accrues to the state each year could be larger than that figure.
- If the state were to come into compliance with the Superior Court decision *without* changing the statute (that is, charge fees in accordance with both the existing statutory language, including the mandate that nonresident fees shall be three times the resident fees, *and* with the court's formula for calculating the maximum dollar amount by which nonresident fees may exceed resident fees), CFEC's fee-generated revenues would decline by more than \$3 million per year.

**Assumptions Used in Making Calculations:*

1. *The estimates of renewals in 2002 are based upon weighted averages of the most recent three years of renewals for each type of permit. (2000 being the most recent year used). These estimates are necessarily rough since the number of permits renewed can change sharply from year-to-year, particularly in unlimited fisheries. The estimated distribution of permits by fee class assume that CFEC will adopt regulations establishing annual renewal fees based upon the same indicators of economic returns that are used in the current regulations.*
2. *Continued use of five fee classes, with resident/base fees being increased by 20% in each class (HB194 caps resident/base fees at \$300, a 20% increase over current cap of \$250, so assume all classes increase in same proportion)*
3. *Estimate allowable nonresident permit differential for 2002 at \$135, which is approximately the average of allowable differentials over the most recent ten years under provisions of Superior Court ruling in Carlson class action lawsuit (calculated by OMB).*
4. *Revenues generated from permit fees have been in decline since 1994 due to fewer permits being renewed and some fisheries moving into lower fee classes due to declines in economic returns. Assuming continuation of that trend, 2002 revenues will likely be around \$3.3 million under existing statute and use of the 3-to-1 fee differential.*

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925



INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

Representative Gary Stevens

SPONSOR STATEMENT – CSHB 194 (FIN)

CSHB 194 (FIN), "An act relating to fees for commercial fishing licenses and permits", repeals current statute that requires the Commercial Fisheries Entry Commission (CFEC) to charge non-resident fishers three times the amount charged a resident fisher and replaces it with a provision that gives them the authority to charge non-resident fishers as close as is practicable to the maximum amount allowed by law. Which in some cases, may be more than 3 to 1.

As you may be aware, in 1982 Carlson and other nonresident commercial fishers sued CFEC alleging that the resident-nonresident fee differential violates the Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution. Caselaw holds that any difference in commercial license and permit fees may only be based on the amount that residents pay for the pertinent state services through taxes that are not also paid by nonresidents. Thus, the court established a formula that is used to compute the maximum difference that the state can charge for nonresident license and permit fees.

However, in a court trial in June 2000, the superior court ruled that some, but not all, of the budget categories identified by the state may be counted when calculating the annual expenditures for commercial fisheries management. By disallowing four of the six categories, the State of Alaska is faced with a potential \$22.5 million liability. The State has appealed that decision to the Alaska Supreme Court and will be arguing that the other four budget categories should be included in the formula. Meanwhile, as we continue to charge non-residents three to one, we continue to add more plaintiffs to the suit and our liability continues to grow.

By passing this piece of legislation, CFEC will discontinue the practice of charging three to one and instead will charge the maximum amount that is allowed by law. In other words, starting in January, CFEC would calculate the fee differential based on the two budget categories that the court has allowed. However, the Department of Law is hopeful that they will prevail in their appeal and once the court makes its final ruling, CFEC will be able to include some, if not all, of the other four budget categories into the formula.

Sectional Analysis of CSHB194(FIN)

Prepared by CFEC - 4/24/01

Section 1. CLARIFIES provisions in this section of current law and removes crewmember fees to be addressed elsewhere in statute— see section 2.

Current 16.05.480(a), which would be replaced by section 1 of this bill, reads:

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

Revisions made in section 1:

- Remove the fees for crewmembers from this section of law (see section 2 for new location)
- Clarifies what each of the three types of "commercial fishing licenses" entitle the holder to do (entry permit, interim-use permit, and crewmember license – see definition section p.2, line 15 of bill)
- States that crewmember licenses are nontransferable while removing incorrect implication that all entry and interim-use permits are transferable (as some limited entry permits and all interim-use permits are also nontransferable).
- Makes clear that person must hold a permit for each particular fishery in which they participate as a gear operator. (Current provision about paying only one fee is confusing as it was intended to refer only to crewmember licenses.)

Section 2. Adds subsections to 16.05.480 ESTABLISHING FEES FOR CREWMEMBER LICENSES for 2002 and following years.

(g) For residents:

Adults and children 11 years of age or older: \$60
Children under 11 years of age: \$5

(h) For nonresidents:

Adults and children 11 years of age or older: \$60 plus an additional amount that is as close as is practicable to the maximum allowed by law (that is, an amount calculated using formula determined to be constitutionally acceptable by court ruling in Carlson case.)

Children under 11 years of age: \$5 plus additional amount that is as close as is practicable to the maximum allowed by law.

Section 3. "Housekeeping" language -- simply adds two words, "establish and." to #13 on statutory list of things CFEC is authorized to do.

Section 4. "Housekeeping" change -- just deletes an obsolete and confusing provision in current law.

Section 5. -- PRIMARY PROVISION OF THE BILL ADDRESSING CARLSON CASE ISSUE: Removes the currently required 3-to-1 differential and establishes annual FEES FOR ENTRY AND INTERIM-USE PERMITS for 2002 and following years.

(e) Resident permit fees shall be no less than \$10 and no more than \$300, and reasonably reflect different rates of economic return for different fisheries.

Nonresident permit fees shall be the resident fee plus an amount that is as close as is practicable to the maximum allowed by law (that is, an amount calculated using formula determined to be constitutionally acceptable by court ruling in Carlson case.)

(f) "Poverty Fees" shall be no more than 50% of regular fees the permit holder (whether resident or nonresident) would otherwise pay. Also sets out standards for determining eligibility for the reduced fee. .

Section 6. -- Adds language to stabilize (by capping) annual contributions made into the Fishermen's Fund for each holder of a license or permit. This is to avoid a significant increase in payments into Fishermen's Fund for each nonresident fisher (which would cause an unnecessary drain on fee-generated revenues that would otherwise be available for appropriation), in years when the allowable nonresident fee differential may be high.

Sections 7-9. Effective date provisions which keep current fee structure in place for permits and crewmember licenses issued for 2001 (even if purchased after passage of the bill), and making the new fees effective immediately for all permits and licenses issued for 2002 and beyond. This is to accommodate the fact that during the final months of 2001, permits and licenses will still be issued for use during the final months of 2001, while permits and licenses for 2002 will also be sold for the coming year. Keeps fees for all permits and licenses issued for a given use year consistent regardless of purchase date.

Section 7 (in combination with section 9) repeals current fees as of Jan. 1, 2002:

- 16.05.480(f) -- \$5 crewmember license for residents and nonresidents under 11 years of age.
- 16.43.160(b) -- section mandating the 3-to-1 nonresident-to-resident permit fee differential
- 16.43.160(c) -- poverty fees

Section 8. Makes new crewmember, permit, and poverty fees; Fishermen's Fund provisions; and most of "housekeeping" provisions in bill effective immediately.

Section 9. Makes repealers in section 7, and the revisions made in section 1, effective on Jan.1, 2002.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

GOVERNMENTAL AFFAIRS SECTION
P.O. BOX 110300
DIAMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2520

April 27, 2001 (amended)

The Honorable Pete Kelly, Co-chair
Senate Finance Committee
Alaska Senate
State Capitol, Room 518
Juneau, Alaska 99801

Re: CSHB 194(FIN): Fees for commercial fishing licenses and permits

Dear Senator Kelly:

You have asked that we review the provisions of HB 194 to provide advice whether amendments proposed to the enabling act of the Fisherman' Fund would expose that fund to a claim that the fund has lost its dedicated status. The Fisherman's Fund is a dedicated fund that existed before statehood. As a pre-existing dedication, the earmarking of license fees derived from commercial fishermen's licenses was continued by the provisions of article IX, section 7 of the Alaska Constitution. A proposed amendment set out in sec. 6 of CSHB 194(FIN) would place an annual \$50 cap per license holder on the amount of commercial fishing license fees that would be allocated to the fund each year.

We construe the continuation provision of section 7 of the Alaska Constitution as effectively freezing the dedication at pre-statehood amounts and rates. *See* 1978 Inf. Op. Att'y Gen. (June 2; J66-580-78). Until 1999, the rate of dedication was set at 60% of the money derived by the state from the sale of commercial fishing licenses. In 1999, the legislature amended AS 23.35.060 to change the rate of dedication to 39% of the amount derived from this source. The rate reduction was in approximately inverse proportion to fee increases for commercial fishing licenses. We warned at the time that a change in rate may destroy the dedication. However, the legislature followed advice of legislative counsel to the contrary. Legislative counsel rely on comments made during proceedings of the constitutional convention to the effect that changes in the rate of dedication are permitted within the continuation limitation. *See* Minutes of the Alaska Constitutional Convention at 2404-5 (January 17, 1956).

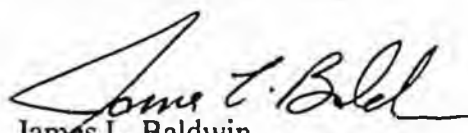
CSHB 194(FIN) would change the enabling statute for the Fishermen's Fund once again in a way intended to limit any change in the dedication through increases in commercial fishing fees. The addition of an annual \$50 cap per license holder on the amount dedicated to the fund is intended to keep the amount dedicated from fluctuating sharply if non-resident commercial fishing license fees are drastically changed by operation of a formula related to pending litigation. The cap approximates the amount paid per non-resident licensee to the

Fishermen's Fund under existing law. The cap would avoid an increase in the amount dedicated to the fund caused by events outside of the control of the legislature.

We believe that the cap approach is defensible as a means to maintain the status quo for the dedication. If the amount of the non-resident license fee is to change because of the proposed formula for calculating the allowable differential between resident and non-resident license fees, it would be prudent to divert the increase in revenues away from the fishermen's fund in the manner proposed in CSHB 194(FIN). Please keep in mind our view that a change in the rate or amount of dedication may threaten the continuity of a dedicated fund. The changes proposed to AS 23.35.060(a) in section 6 of CSHB194(FIN) are intended to alleviate that risk and are beneficial.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

BMB:JLB:jn

cc: Hon. Dave Donley, Co-chair, Senate Finance Committee
Chrystal Smith, Legislative Liaison
Deborah Behr, Legislation Attorney
Steve White, Assistant Attorney General
Department of Law
Kevin Brooks, Director, Div. of Admin. Services
Department of Fish and Game

SENATE COMMITTEE REPORT

DATE: 4/23/01

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/25/01

Resources Committee considered CS FOR HOUSE BILL NO. 194(FIN)

ENTRY PERMIT FEES

"An Act relating to fees for commercial fishing licenses and permits; and providing for an effective date."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Fish + Game	4/24/01	✓		4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Pearce</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			



UNITED FISHERMEN OF ALASKA

April 11, 2001

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1143
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

Representative Bill Williams, Chairman
House Finance Committee
Alaska State Legislature

Dear Mr. Chairman and Members of the House Finance Committee:

United Fishermen of Alaska (UFA) is comprised of 25 Alaskan groups representing over 10,000 commercial fishermen and crew members. At our spring board meeting, the board voted to raise the resident high end cap fee from \$250 to \$300. We support this position to encourage the passage of House Bill 194, to protect against increased future liability for the state, and to allow the Commercial Fisheries Entry Commission the greatest latitude under the court's ruling to charge non-resident fishermen the highest fee possible.

UFA strongly believes that the state has identified every conceivable category related to the operation of commercial fisheries in Alaska in its arguments before the court. We continue to support their effort to argue the remaining categories before the court.

HB 194 is a responsible measure and reduces the state's liability. It does not compromise the state's case and it prevents the accrual of further debt. In addition, it may even increase revenues for CFEC. We respectfully encourage you to support and move HB 194 from your committee.

Sincerely,

Jerry McCune
Government Relations

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • At-sea Processors Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Copper River Salmon Producers Association • Cordova District Fishermen United
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Northwest Setnetters Association • Old Harbor Fishermans Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters

**ESTIMATE OF FEES FOR 2002 COMMERCIAL FISHING
PERMITS AND CREWMEMBER LICENSES
UNDER PROVISIONS OF HB194
ASSUMING \$135 NONRESIDENT DIFFERENTIAL
(CURRENT FEES IN PARENTHESES)**

		RESIDENT	NONRESIDENT
PERMITS	FEE CLASS V	60 (50)	195 (150)
	FEE CLASS IV	120 (100)	255 (300)
	FEE CLASS III	180 (150)	315 (450)
	FEE CLASS II	240 (200)	375 (600)
	FEE CLASS I	300 (250)	435 (750)
ADULT CREWMEMBER		60 (60)	195 (125)
CHILD CREWMEMBER		5 (5)	140 (5)
REDUCED FEE (POVERTY)			
PERMITS -	FEE CLASS V	30 (15)	97.50 (45)
	FEE CLASS IV	60 (15)	127.50 (45)
	FEE CLASS III	90 (15)	157.50 (45)
	FEE CLASS II	120 (15)	187.50 (45)
	FEE CLASS I	150 (15)	217.50 (45)

Prepared by CFEC
4/9/01

Comparison of Fee Structure for Commercial Fishing Permits and Crewmember Licenses Under Current Law and Under Provisions of HB194

Prepared by CFEC - 4/9/01

	Current Annual Fee	Annual Fee Under Provisions of HB194
Resident Permit	Range from no less than \$10 to not more than \$250 & reasonably reflect different rates of economic return for different fisheries. (Currently, by regulation, five fee classes of \$50, 100, 150, 200, and 250)	Range from no less than \$10 to not more than \$300 & reasonably reflect different rates of economic return for different fisheries. [Sec.5]
Non-resident Permit	3 times the fees established for residents (Currently, by regulation, five fee classes of \$150, 300, 450, 600, and 750)	Resident fee plus an amount no higher than differential allowable by law. (Non-resident "surcharge" would be adjusted periodically to reflect changes in variables in formula the Supreme Court ultimately rules may be used to calculate allowable additional charge to nonresidents.) [Sec.5]
Resident Adult Crewmember License	\$60	\$60 [Sec.2]
Non-resident Adult Crewmember License	\$125	\$60 <u>plus</u> up to amount of allowable differential. [Sec. 2]
Resident Child Crewmember License	\$5	\$5 [Sec.2]
Non-resident Child Crewmember License	\$5	\$5 <u>plus</u> up to allowable differential [Sec.2]
Resident "Poverty" Permit Fee	\$15 (For all permit fee classes)	50% of regular resident fee. (Thus, \$30 for permits for which regular fee is \$60; \$60 for permits in \$120 fee class; etc.) Note: Nearly 80% of the poverty fees paid in 2000 were for resident permits in the lowest fee class. Those would increase by only \$15 under proposed change. [Sec.5]
Non-resident Poverty Permit	\$45	Up to 50% of full nonresident fee (base fee plus differential) [Sec.5]