

HB

287

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 10 2002
SENATE FINANCE

DATE: 5/9/02

FURTHER:

DATE TURNED IN TO OFFICE: 10 May 2002

Finance Committee considered HOUSE BILL NO. 287

HB 287 EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS

"An Act relating to the exemption of commercial fishing entry permits from claims of creditors, to loans to satisfy past due federal tax obligations of commercial fishing entry permit holders, and to loan origination charges for loans made by the commercial fishing loan program to refinance a debt obligation; 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#
DCED	4/24/02		✓	#3
Fish & Game	4/1/02		✓	#1

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>				
COCHAIR: <i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>				

FISCAL NOTE

REPORTED COST
 MAY 10 2002
 SENATE FINANCE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 287(FSH)
 (H) Publish Date: 3/6/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
 Title Exemption of commercial fishing entry permits BRU Comm Fish Entry Commission
from claims of creditors Component Comm Fish Entry Commission
 Sponsor Rep. Scalzi
 Requester House Fisheries Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 ()						
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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-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact

Prepared by: Roger Kolden Phone 790-6950
 Division Commercial Fisheries Entry Commission Date/Time 3/4/02 12:16 PM
 Approved by: Mary McDowell, Commissioner Date 03/04/2002
 Agency Commercial Fisheries Entry Commission

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

MAY 10 2002

Fiscal Note Number: 3
 Bill Version: CSHB 287(FIN)
 (H) Publish Date: 4/26/02
 Dept. Affected: DCED
 BRU Investments (122)
 Component Investments
 Component No. 383

Revision Date/Time (Note if correction):
 Title Exempt Entry Permits from Creditor Claims
 Sponsor Representative Scalzi
 Requester House Finance

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Cont. actual						
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 (21608)	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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the operations of this division.

Prepared by: Greg Winegar, Director
 Division Investments
 Approved by: Deborah B. Swadwick, Commissioner
 Agency Department of Community & Economic Development

Phone 465-2510
 Date/Time 4/26/02 9:16 AM
 Date 4/26/2002



Official Business

Alaska State Legislature

REPRESENTATIVE DREW SCALZI

State Capitol

Juneau, Alaska 99801-1182

(907)465-2689; (800)665-2689

FAX: (907)465-3472

Representative_Drew_Scalzi@legis.state.ak.us

Sponsor Statement

HB287 "An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit; and providing for an effective date."

Recent developments in law require a clear statement of the principle embodied in the original Limited Entry Act that limited entry permits are not property subject to the claims of creditors.

The long-term crisis facing the Alaska salmon industry due to dramatic increases in world salmon production coupled with equally dramatic reductions in salmon prices make this principle all the more important. If Alaska fishermen are forced out of the water because creditors take their limited fishing privileges, everyone in Alaska loses.

The bill also adds language to request the commission to transfer an entry permit due to an execution on a permit holder's interest in that permit *if the execution is to enforce a lien recorded with the commission* and reinforces that commercial fishing privileges granted under this chapter, including entry permits are exempt from claims of creditors, including claims under AS09.38.065 and AS 45.29.408.

This bill does not alter any current claim exemptions, but simply strengthens and clarifies the exemptions.

CS HB287 (FIN)

“An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit; and providing for a effective date.”

Major goal of the bill:

- Amend several statutes to make state laws more firm, clear and consistent on the point that commercial fishing entry permits are not property, and instead, constitute a “use privilege” that the legislature may change or revoke without compensation.

CSHB287 presents an important opportunity at a critical time:

- Hard times in Alaska's salmon industry likely to push more fishermen into financial trouble
- The need to firm up what Alaska has always contended, that permits constitute a use privilege and not property, has never been greater
- A recent federal maritime case (Quality One) has heightened the need to firm up the legal status of limited entry permits. Federal legislation may be introduced soon in response to the ruling in that case to state clearly in federal law that the federal government shall honor the legal status bestowed upon fishing permits by the governmental entity issuing the permits. Thus clarity and consistency in state law will be more important and significant than ever. Passage of this bill will put Alaska in a much better position to fully benefit from such federal legislation.
- The provisions of CSHB287 are consistent with the positions the state has taken in the past with regard to the legal status of limited entry permits as a use privilege, including the state's strong stand against efforts by creditors, such as the IRS, to seize Alaska limited entry permits.

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

State Capitol
Juneau, Alaska 99801-1132
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 8, 2002

SUBJECT: Sectional summary of CSHB 287(FIN), An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit. (Work Order No. 22-LS1106/S)

TO: Representative Drew Sculzi
Attn: Pat Hartley

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of CSHB 287(FIN), An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 09.38.015(a) to provide that limited entry permits are not exempt property for purposes of AS 09.38 which relates to property that is exempt from execution to satisfy claims of creditors.

Section 2 of the bill amends AS 16.43.170(g) to provide that the subsection applies to the transfer of an entry permit due to execution on a permit holder's interest in the permit if the execution is to enforce a lien to collect child support that is recorded with the commission under AS 25.27.230(c).

Section 3 of the bill adds a new section (16.43.945) to AS 16.43 to provide that commercial fishing privileges, including entry permits, are exempt from claims of creditors. Only claims of the commercial fishing loan program under AS 16.10.333 - 16.10.338, claims to collect child support obligations under AS 16.43.170(g), and claims of the Commercial Fishing and Agriculture Bank under provisions of AS 44.81 may be asserted against commercial fishing privileges and entry permits.

Section 4 of the bill provides that the bill takes effect immediately under AS 01.10.070(c).

GU:med
02-477.med

Bill History/Action Display



BILL: HB 287

SHORT TITLE: EXEMPT ENTRY PERMITS
FROM CREDITOR CLAIMS

BILL VERSION: CSHB 287(FIN)

SPONSOR(S): REPRESENTATIVE(S) SCALZI, Hudson, Fate, Dyson,
James

CURRENT STATUS: (S) RES

STATUS DATE: 05/01/02

THEN FIN

HEARING: (S) RES May 08 3:30 PM BUTROVICH 205 TELECONFERENCE

TITLE: "An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit; and providing for an effective date."

Jm-Date	Jm-Page	Action
01/04/02	<u>1950</u>	(H) PREFILE RELEASED 1/4/02
01/14/02	<u>1950</u>	(H) READ THE FIRST TIME - REFERRALS
01/14/02	<u>1950</u>	(H) FSH, RES, FIN
01/18/02	<u>2014</u>	(H) COSPONSOR(S): HUDSON
01/30/02	<u>2101</u>	(H) COSPONSOR(S): FATE
03/06/02	<u>2484</u>	(H) FSH RPT CS(FSH) NT 3DP 2AM
03/06/02	<u>2484</u>	(H) DP: SCALZI, KAPSNER, STEVENS;
03/06/02	<u>2484</u>	(H) AM: COGHILL, KERTTULA
03/06/02	<u>2485</u>	(H) FN1: ZERO(DFG)
03/06/02	<u>2485</u>	(H) FN2: (CED)
03/13/02	<u>2516</u>	(H) RES RPT CS(FSH) NT 6DP
03/13/02	<u>2516</u>	(H) DP: STEVENS, GREEN, MCGUIRE, FATE,
03/13/02	<u>2516</u>	(H) KAPSNER, SCALZI
03/13/02	<u>2517</u>	(H) FN1: ZERO(DFG)
03/13/02	<u>2517</u>	(H) FN2: (CED)
04/26/02	<u>3163</u>	(H) FIN RPT CS(FIN) NT 8DP 3NR
04/26/02	<u>3163</u>	(H) DP: BUNDE, HARRIS, MOSES, LANCASTER,
04/26/02	<u>3163</u>	(H) HUDSON, FOSTER, MULDER, WILLIAMS;
04/26/02	<u>3163</u>	(H) NR: WHITAKER, CROFT, DAVIES
04/26/02	<u>3163</u>	(H) FN1: ZERO(DFG)
04/26/02	<u>3163</u>	(H) FN3: ZERO(CED)
04/30/02	<u>3240</u>	(H) RULES TO CALENDAR 4/30/02
04/30/02	<u>3240</u>	(H) READ THE SECOND TIME
04/30/02	<u>3241</u>	(H) FIN CS ADOPTED UNAN CONSENT
04/30/02	<u>3241</u>	(H) ADVANCED TO THIRD READING UNAN CONSENT
04/30/02	<u>3241</u>	(H) READ THE THIRD TIME CSHB 287(FIN)

04/30/02 3241 (H) PASSED Y39 E1
04/30/02 3241 (H) EFFECTIVE DATE(S) SAME AS PASSAGE
04/30/02 3248 (H) COSPONSOR(S): DYSON, JAMES
04/30/02 3248 (H) TRANSMITTED TO (S)
04/30/02 3248 (H) VERSION: CSHB 287(FIN)
05/01/02 3065 (S) READ THE FIRST TIME - REFERRALS
05/01/02 3065 (S) RES, FIN
05/01/02 3065 (S) REFERRED TO RESOURCES

Similar Subject Match or Exact Subject Match

CHILD SUPPORT

CREDIT

DEBT

FISH & GAME (FISH)

LICENSING

LIENS

LIMITED ENTRY

LOANS

PERMITS

TAXATION

VESSELS

Bill Root: Display Bill Root



TO REPORT PROBLEMS WITH BASIS INQUIRY

LIVE KTOO STREAMS 

Return to Basis Main Menu (22 Legislature)

Return to Legislature Home Page



THE FISHERMEN'S NEWS

Quality One Case

Vol. 57, No. 5

The Voice of the Pacific Coast Fishing Fleet Since 1945

\$2.00

Own a Permit? Read this...

By Edward M. Keech

A federal appeals court in Boston has held that a maritime lien on a fishing boat extends to the boat's fishing permits. This decision increases the risks that owners of fishing permits face from the ordinary operations of fishing boats. This article describes the decision, illustrates how it affects the owners of fishing permits and discusses ways that owners of the permits might reduce the risks.

The Quality One Decision

On March 30, 2001, the First Circuit Court of Appeal decided *Gowen, Inc. v.*

F/V Quality One, No. 00-1808 (1st Cir., March 30, 2001). The court held that fishing permits were included as "appurtenances" of a fishing boat, and were subject to a maritime lien for necessities. The maritime lien execution sale, therefore, transferred ownership of the permits. The permits in question were owned by the owner of the boat, but the result would have been the same if the permits had been leased to the boat owner.

Although this decision seems wrong, there was already some suggestion from

Continued on page 3 Permit?

(Stevens) is looking at legislation that would federally firm up the State issuing permits guidelines on how they view their own classification of permits as property or not.

Permit?

Continued from front page

the Court of Appeals for the Ninth Circuit, whose decisions control on the West Coast, that fishing permits are appurtenances. *Bank of America v. F/V Penguin*, 175 F.3d 1109, 1119 (9th Cir.), cert. denied, 528 U.S. 872 (1999). In that case, the appeals court merely noted that the permits had been sold with the boat pursuant to a lien sale. There is no indication that the court actually considered whether the permits are appurtenances.

Problems Created

The *Quality One* decision creates two problems.

The first problem is straightforward. The financial risk of not paying suppliers may now be greater than anyone anticipated. This is true both for owner/operators and for those who lease their permits out to boat operators. The owner/captain has to worry that creditors may seize the permits as well as his boat.

The second problem affects permit owners who lease out their permits. The court in the *Quality One* noted rules from other cases that provides that a preferred ship mortgage does not extend to leased appurtenances, for example a fathometer

on lease, but liens for necessities, which include fuel, ice, repairs and insurance premiums, do extend to the leased appurtenances. This means that the mortgage does not cover leased permits, but other maritime liens do. As a result, a ship mortgage does not create a security interest in leased-out permits that will come ahead of lien claims for necessities.

A permit owner who wishes to lease out permits might think that the answer to these problems is to create a security interest in the permits and to record that security interest under state law. This, however, will not work. That state law security interest is not enforceable in a maritime lien foreclosure action. The permit owner will always be stuck with the problem that a preferred ship mortgage does not extend to the leased permits, while a state-law security interest is not enforceable in a maritime lien foreclosure action.

Nor would it necessarily help to cross-default the mortgage and the lease of the permits. No matter how much debt, or what kind of debt is secured by the ship mortgage, the mortgage lien does not extend to the permits, and the proceeds their sale will not flow to the mortgagee. The suppliers can, therefore, always benefit by auctioning off the boat and the permits.

Petersburg Vessel Owners Association

P.O. Box 232
Petersburg, Alaska 99833
Phone (907) 772-9323 Fax (907) 772-4495

March 8, 2002

Representative Mulder
Representative Williams
Co-Chairs
House Finance Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: Support HB 287 Exempt Entry Permits From Claims of Creditors

Petersburg Vessel Owners Association is a group of commercial fishermen who participate in a variety of fisheries statewide. Income from commercial fishing is very important to our community and to the Alaskan economy. We support this legislation to clarify the state's position that limited entry permits are access privileges, not property, and cannot be seized by creditors.

We believe that an individual's limited entry permit is his or her livelihood. If we allow permits to be seized by creditors, fishermen in debt will be unable to make a living. They will be incapable of repaying their debts or supporting themselves and their families. We feel that the language in this bill, clearly stating that entry permits cannot be seized, is essential to protect commercial fishermen, their way of life, and their ability to weather hard times.

We also support the removal of the mandatory one-half percent refinancing fee. Many fishermen have seen dramatic drops in the value of their permits and their gross revenues from fishing. Allowing refinancing at lower interest rates without additional charges and fees will allow a greater percentage of these fishermen to remain financially stable and repay the loans granted to them by the Division of Investments.

We appreciate your consideration of these comments and hope you will support this bill. If we can assist you in any way, please feel free to contact us.

Respectfully,



Cora Cromie
Director

Cc: Representative Scalzi, Representative Wilson

SUPPORT LETTER

SENATE COMMITTEE REPORT

DATE: 5/1/02

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/8/02

Resources Committee considered CS FOR HOUSE BILL NO. 287(FIN)

HB 287 EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS

"An Act relating to the exemption of commercial fishing entry permits from claims of creditors and execution on an interest in a limited entry permit; 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#
FG	3/4/02		✓	1
DCED	4/26/02		✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian L. Taylor</i>			✓	
<i>Ben Stumm</i>	✓			
<i>Gary White</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SENATE FINANCE COMMITTEE
HB 287-EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS
SIGN-IN

NAME: William Craig Subject/Bill No: HB 287
Co./Dept./Title: _____ Phone: 907-747-5917
Address: 2013 Degroff St. Sitka Zip: 99835
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

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ 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