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# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 82(STA)  
(S) Publish Date: 3/7/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title: 2001 Revisor's Bill BRU: \_\_\_\_\_  
Sponsor: RIs/Legislative Council Component: \_\_\_\_\_  
Requester: Senate State Affairs Component Number: \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: SENATE STATE AFFAIRS COMMITTEE Phone 465-4522

Senator: /s/ SENATOR THERRIAULT Date 2/20/01  
Committee Chair

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## MEMORANDUM

March 7, 2001

**SUBJECT:** CSSB 82(STA) (2001 Revisor's Bill)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** Pamela L. Finley *PF*  
Revisor of Statutes

The following is a sectional analysis of CSSB 82(STA), the 2001 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

... shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Section 24 repeals provisions that have become obsolete through other legislative action .

Sections that correct errors or oversights: Sections 1 - 4, 6 - 9, 11 - 15, and 17 - 23 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 5, 10, and 16 propose amendments to improve the form or substance of the statutory law of Alaska.

## SECTIONAL ANALYSIS

Section 1 corrects an erroneous cross-reference in AS 06.05.005(a)(3). The statute currently referenced (AS 06.05.345) concerns the articles of incorporation, whereas AS 06.05.344 addresses approvals of state banks.

Section 2 changes the definition of "minor" in AS 13.06.050(29) (the Uniform Probate Code) from those persons 19 years of age and older to those persons 18 years of age and older. The uniform act indicates that states adopting it should insert the age of majority in the definition of "minor". When AS 13.06.050 was enacted in 1972, the age of

majority was 19. However, the age of majority (established in AS 25.20.010) was changed in 1977 from 19 years to 18 years of age. At that time, the definition of "minor" in AS 13.06.050 should also have been amended but was not. This bill section makes that change.

Section 3 corrects an error in a spanned reference exempting aquatic farms and hatcheries from certain other statutes relating to fisheries. Chapter 145, SLA 1988 enacted AS 16.40.100 - 16.40.199, which authorize and regulate aquatic farms and hatcheries. That same act enacted AS 16.05.930(g), which exempted activities authorized by a permit under AS 16.40.100 or 16.40.120 from AS 16.05.330 - 16.05.720. (AS 16.05.330-16.05.430 concern sport fishing and hunting and AS 16.05.440 - 16.05.720 concern commercial fishing.) However, in another 1988 act, AS 16.05.720 was repealed and replaced by AS 16.05.722 and 16.05.723, which meant that the end of the spanned reference in AS 16.05.930(g) became incorrect. The 1993 revisor's bill (sec. 5, ch. 6, SLA 1993) corrected this error by substituting "AS 16.05.723" for "AS 16.05.720". Unfortunately, sec. 5, ch. 6, SLA 1993 also changed the beginning of the spanned reference from "AS 16.05.330" to "AS 16.05.440". In all likelihood, this error was caused by duplicating the amendment in sec. 3, ch. 6, SLA 1993, which amendment correctly began with "AS 16.05.440" and also changed "AS 16.05.720" to "AS 16.05.723". At any rate, the sectional analysis of the 1993 revisor's bill makes it clear that the only change intended was the change from "AS 16.05.720" to "AS 16.05.723". To return the text to the language as enacted, this bill section reinstates "AS 16.05.330" at the beginning of the spanned reference in AS 16.05.930(g). For reasons explained in the attached memo of George Utermohle, this amendment should not have any practical effect on fish and game licensing.

Section 4 corrects an error in ch. 67, SLA 1992 by substituting "fee paid by the client" for "fee paid the client" in AS 21.27.560(a). A fee paid the client would be an illegal rebate. This correction was requested by the Department of Law.

Section 5 expands a spanned reference in AS 21.42.500 so that more sections can be easily added to AS 21.42 in the future. It also has the effect of supplying a definition of "health care insurer" and "health care insurance plan" for AS 21.42.400, which was added last year.

Section 6 amends AS 21.54.160(4)(A) to give the correct term as used in federal law and to correct a typographical error in the reference to the federal citation.

Section 7 corrects a cross-reference to federal law in AS 21.56.050(d)(3). Currently the statute refers to a federal law (42 U.S.C. 300) that governs grants for family planning services. The federal law that defines and sets requirements for health maintenance organizations is 42 U.S.C. 300e and therefore AS 21.56.050(d)(3) is amended to reference 42 U.S.C. 300e. This amendment corrects an error in ch. 39, SLA 1993.

Section 8 amends AS 23.40.215(c) to conform to the change made to AS 23.40.215(b) by ch. 15, SLA 2000. Before the 2000 amendment, subsection (b) provided for submission to, and approval or disapproval by, the legislature of the monetary terms of a collective bargaining agreement subject to the Public Employees' Retirement Act. Subsection (c) exempted agreements between school districts or REAAs and their employees from the requirement of legislative approval. Chapter 15, SLA 2000 deleted the "approval" provision from subsection (b) and amended the submission provision. However, chapter 15, SLA 2000 did not amend subsection (c), which still exempts the agreements of school districts and REAAs from "approval by the legislature." Since subsection (b) no longer requires legislative approval, subsection (c) doesn't make much sense. Based on the assumption that subsection (c) was intended to exempt school districts and REAAs from subsection (b)'s submission and approval provisions, this bill section amends subsection (c) to refer to submission to the legislature rather than approval by the legislature.

Section 9 corrects a cross-reference in AS 24.45.041(a)(7). There is no definition of "spousal equivalent" in AS 39.50.030(g); the definition of "spousal equivalent" that applies to AS 39.50.030(g) is found in AS 39.50.200(a), and so the cross-reference is changed accordingly. This corrects an error in ch. 74, SLA 1998.

Section 10 changes "section" to "subsection" in AS 38.04.900(c) in order to make the language more accurate. The term "interested person" appears only in subsection (c).

Section 11 changes "section" to "subsection" in the last sentence of AS 38.05.810(i). The last sentence authorizes sales for less than appraised market value. Because the title of the law that enacted subsection (i)---ch. 97, SLA 1992---referred to port authorities rather than land disposals in general, the last sentence of subsection (i) could legally apply only to the port authority provisions of subsection (i). This amendment makes that clear by correcting the error in ch. 97, SLA 1992.

Section 12 amends AS 38.05.821(a) to give the full proper citation in a reference to a federal law.

Sections 13 and 14 correct an error in the Alaska Coordinate System of 1927. As originally enacted, AS 38.20.060(10) did not contain the "as" that these amendments delete. In ch. 152, SLA 1984, when AS 38.20.060(10) was amended and duplicate language was added as (b)(10), the "as" appeared, although it was not shown as being inserted as new language. These two bill sections correct that typographical error by deleting the "as" that was erroneously added in 1984.

Section 15 corrects an error in AS 38.35.120(a)(1) as amended by ch. 56, SLA 2000. Before amendment by ch. 56, AS 38.35.120(a)(1) consisted of three parts. First it required certain lessees to assume the duties of a common carrier; secondly it provided a limited exemption from the common carrier provision; and thirdly it required the lessee to refrain from unjust or unreasonable discrimination and to take the oil or natural gas

that the Regulatory Commission of Alaska shall find to be reasonable in the lessee's performance of its duties as a common carrier. Chapter 56 added another limited exemption from the common carrier provision, but it was inserted at the end, so that the prohibition against unreasonable discrimination as a common carrier ended up in the paragraph providing the exception from the common carrier provision. This bill section moves the language so that the two exceptions from the common carrier provision are next to each other.

Section 16 defines "commissioner" as the commissioner of natural resources and defines "director" as the director of the division of lands for the purposes of AS 38.95.075 and 38.95.080, which relate to trapping cabin permits. Although the division of lands is currently administering these statutes, the statutes themselves do not contain applicable definitions of the terms "commissioner" and "director". This bill section supplies those definitions.

Section 17 amends the last sentence of AS 40.15.050 so that the verb ("are") agrees with the subject ("streets, alleys, or thoroughfares"). The verb was correct in the 1953 enactment, but incorrect in the 1962 codification. The other changes are purely editorial.

Section 18 changes a reference to the "division of land and water management" to the "division of lands," which is the correct name under AS 38.05.005.

Section 19 corrects a typographical error in ch. 34, SLA 1990 in the definition of "riparian area" in AS 41.17 (commonly known as the Forest Practices Act). Without this amendment, a literal reading of the term "riparian" (which commonly means "pertaining to the bank of a river") would include the river itself as well as shores or banks of rivers that were not necessarily fish water bodies. The amendment in this bill section makes the definition consistent with other related provisions of the Forest Practices Act, especially AS 41.17.118 and 41.17.119. Although the error is found in the original Governor's bill, the references in the Governor's transmittal letter to protection of "fish streams" and "streamside areas" also suggest that "or" should have been "of". See 1989 House Journal 1476 (May 3, 1989).

Section 20 corrects a minor grammatical error in AS 43.40.100(4), which is the definition of "user" in the motor fuel tax statutes. The word "either" is removed because it should be used only when "one of two" is intended, and there are three possible ways of being a "user" under AS 43.40.100(4).

Section 21 corrects an inaccurate cross-reference in AS 44.81.245(9). The equitable permit owner's right to nominate a person to assume the loan is established by AS 44.81.250(c), not AS 44.81.245. This corrects an error in ch. 34, SLA 1996.

Section 22 corrects an error in a cross-reference in AS 44.85.320(a) (Alaska Municipal Bond Bank Authority) by changing "appointed under this section" to "appointed under AS 44.85.310". AS 44.85.310, not AS 44.85.320, authorizes appointment of a trustee.

This error occurred in a floor amendment to HB 75 (which became ch. 79, SLA 1975) in which a section was deleted and following sections renumbered, but internal references to sections were not conformed. In addition, paragraph (6) is amended so that it fits the structure of the introductory language.

Section 23 corrects an error in ch. 113, SLA 2000, last year's Uniform Commercial Code revision. The amendment removes a reference to "(c) of this section" from AS 45.29.702(b). There is no "(c) of this section". What was subsection (c) in the model act became a temporary law section---section 34, ch. 113, SLA 2000. (It provides that the Act does not affect actions, cases, or proceedings commenced before the effective date of the Act.) Section 25 makes this correction effective July 1, 2001 because that is the effective date of AS 45.29.702.

Section 24 repeals AS 08.20.180(b), which provides for four-year renewals of a chiropractor's license. This corrects an omission in ch. 94, SLA 1987, which amended AS 08.01.100(a) to require biennial renewals for licenses covered by AS 08.01. Chapter 94, SLA 1987 made conforming amendments in many statutes, but omitted AS 08.20.180(b). The regulation covering these licenses (12 AAC 02.150) specifies biennial renewals, so this repeal should not affect existing practice. This section also repeals AS 14.43.310(b)(2), AS 18.65.250, AS 39.50.200(b)(17), and AS 44.19.110 - 44.19.122, all of which relate to the Governor's Commission on the Administration of Justice. This commission was established as a conduit of federal money and an entity to administer local efforts under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. However, the underlying federal provisions were omitted in the 1984 general revision enacted in P.L. 98-473, 98 Stat. 2077, and therefore no longer exist. (See explanatory note following 42 U.S.C.S. 3711.) The Department of Law requested that AS 44.19.110 - 44.19.122 be repealed since the commission no longer exists. AS 18.65.250 is repealed because it authorizes receipt of money from the commission and neither the money nor the commission exists. AS 14.43.310(b)(2) is repealed because it establishes an advisory committee for awarding the Carroll L. "Butch" Swartz Memorial Scholarship, the advisory committee to consist of three members of the defunct commission. (Although the Department of Law indicated that the Carroll L. "Butch" Swartz Memorial Scholarship has not been funded, other references to that scholarship are left in the statutes since future funding is always possible; only the advisory committee is repealed.) A copy of the statutes to be repealed is attached.

Section 25 makes section 23 effective July 1, 2001, the effective date of AS 45.29.702.

Section 26 gives the rest of the act an immediate effective date.

**TEXT OF REPEALED STATUTES**

AS 08.20.180(b):

(b) License renewal fees are due every four years.

AS 14.43.310(b)(2):

(2) three members of the Governor's Commission on the Administration of Justice selected annually by the commission from among its membership, for the Carroll L. "Butch" Swartz memorial scholarship;

AS 18.65.250:

Sec. 18.65.250. Financial assistance.

(a) The Governor's Commission on the Administration of Justice has the authority to assist political subdivisions and police departments in meeting the costs involved by extending financial assistance for travel, per diem, tuition, and other costs.

(b) Only those political subdivisions and police departments complying with AS 18.65.130 - 18.65.290 are eligible for financial assistance authorized under AS 44.19.116. This subsection applies only to those funds made available for providing minimum police standards.

AS 39.50.200(b)(17):

(17) Governor's Commission on the Administration of Justice (AS 44.19.110);

AS 44.19.110:

Sec. 44.19.110. Establishment of the commission. The Governor's Commission on the Administration of Justice is established in the Office of the Governor.

AS 44.19.112:

Sec. 44.19.112. Membership of the commission. The commission is composed of 13 members, to include the following: the attorney general, the commissioner of public safety, the commissioner of health and social services, the chief justice of the supreme court, the public defender, one member from each house of the legislature, four other residents of the state chosen by the governor so as to give reasonable geographic and urban-rural balance, including representation from the major ethnic groups of the state, from units of local government and from other groups concerned with the administration of justice in the state, and two other residents of the state representing citizens and professional and community organizations related to delinquency prevention. Members serve at the pleasure of the governor.

AS 44.19.114:

Sec. 44.19.114. Compensation and per diem. Members of the commission receive no salary for their service on the commission but are entitled to per diem and travel expenses authorized by law for boards and commissions.

AS 44.19.116:

Sec. 44.19.116. Grants and other aid. The commission may apply for, receive and utilize grants, gifts, and other funds and aids for the execution of its programs. Grants, gifts, and other funds may be received from the federal government and from other public and private sources.

AS 44.19.118:

Sec. 44.19.118. Commission as state planning agency. The commission shall act as the state planning agency under the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

AS 44.19.120:

Sec. 44.19.120. Duties of state planning agency.

(a) As the state planning agency, the commission has the responsibility of coordinating and planning in Alaska, the federal, state, and local efforts under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(b) The commission is authorized to investigate state and local needs and seek funding for

(1) development of more effective crime prevention programs and techniques;

(2) development of programs to aid the courts in the field of criminal adjudication;

(3) development of programs to rehabilitate offenders and prevent recidivism.

(c) The commission shall assist the planning and coordination of criminal justice personnel in the Departments of Law, Health and Social Services, and Public Safety, the public defender's office, and other appropriate agencies in a manner which projects the necessary and advisable allocation, utilization, qualifications, and coordination of criminal justice personnel at the state and local level.

(d) In order to facilitate interagency communication and cooperation, the commission shall hold interagency conferences for the discussion and planning of law enforcement, crime prevention, criminal adjudication, and offender rehabilitation programs and personnel for the Departments of Law, Health and Social Services, and Public Safety, the public defender's office, and the court.

AS 44.19.122:

Sec. 44.19.122. Staffing.

(a) The attorney general may, with the approval of the governor, select a director for the execution of the program entrusted to the commission by AS 44.19.116 - 44.19.120.

(b) The director may employ personnel necessary to carry out functions assigned by this chapter. Notwithstanding any other provisions of law, personnel appointed under this section, with the exception of the director, are members of the classified service as set out in AS 39.25.100.

Senator Robin Taylor, Chair  
March 7, 2001  
Page 8

MEMORANDUM

November 21, 2000

**SUBJECT:** Aquatic Farming Triennial License  
**TO:** Pamela Finley  
Revisor of Statutes  
**FROM:** George Utermohle  
Legislative Counsel

You have asked whether a person who operates an aquatic farm or hatchery under AS 16.40.100 - 16.40.199 is subject to the aquatic farming triennial license under AS 16.05.340(a)(14).

The answer to your question appears to be no.

A person may not operate an aquatic farm or hatchery for shellfish or aquatic plants or obtain stock for an aquatic farm or hatchery without first obtaining the appropriate permit issued under AS 16.40.100 or 16.40.120, respectively, by the commissioner of fish and game.

AS 16.05.340(a)(14) establishes an aquatic farming triennial license.<sup>1</sup> The fee for the license is \$400. On its face, the triennial aquatic farming license seems applicable to anyone engaged in aquatic farming. However, there is no statutory requirement that a person who has an aquatic farm or hatchery permit under AS 16.40.100 - 16.40.199 must obtain the aquatic farming triennial license.

AS 16.05.340(a) establishes numerous licenses, permits, and tags, and sets out fees for those licenses, permits, and tags. Except for a few notable exceptions<sup>2</sup>, AS 16.05.340(a) does not impose a requirement that a person must obtain any of those licenses, tags, or permits. There is no provision in AS 16.05.340(a) that requires a person to obtain the aquatic farming triennial license. Unless there is a separate requirement for an aquatic farming triennial license outside of AS 16.05.340(a), a person should not be required to obtain the license.

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<sup>1</sup> AS 16.05.340(a)(14) states:  
(14) Aquatic farming triennial license..... 400

<sup>2</sup> AS 16.05.340(a) does contain requirements that a person must obtain big game tags, waterfowl conservation tags, and anadromous king salmon tags before taking certain big game, waterfowl, and anadromous king salmon.

Under AS 16.05.330(a)(3)<sup>3</sup> a person who is engaged in the farming of fish, fur, or game must have the appropriate license in the person's actual possession, unless an exemption is permitted under AS 16.05. This provision would apparently require a person who operates an aquatic farm for purposes of farming fish to have the appropriate licenses or tags. The terms "aquatic farming" and "fish farming" are largely synonymous in referring to the cultivation of aquatic life for human uses, except that "aquatic farming" is probably broader in that it may encompass farming of aquatic plants in addition to farming of fish. Absent a more specific provision in statute, the requirement that a person must possess a fish farming license in order to engage in fish farming is probably satisfied by obtaining an aquatic farming triennial license.

If it were not for the definition of "fish or game farming" under AS 16.05.940(15)<sup>4</sup>, a person who operates an aquatic farm or hatchery for shellfish would probably have to obtain the aquatic farming triennial license in order to satisfy the requirement of AS 16.05.330(a)(3). However, for purposes of AS 16.05.330(a), "fish" does not include shellfish as defined under AS 16.40.199. Thus a person who operates an aquatic farm or hatchery for shellfish is not subject to the license requirement of AS 16.05.330 and is not required to obtain a separate license, such as the aquatic farming triennial license under AS 16.05.340(a)(14), in order to engage in aquatic farming of shellfish.

Similarly, there is apparently no requirement that an aquatic farmer engaged in farming aquatic plants is required to obtain the aquatic farming triennial license. The requirement under AS 16.05.330(a)(3) that a person engaged in fish farming must possess the appropriate license does not apply because fish farming does not include farming of aquatic plants.

AS 16.05.330(a) apparently applies only to a fish farmer engaged in the farming of finfish (i.e., fish other than shellfish as defined under AS 16.40.199). A finfish farmer

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<sup>3</sup> AS 16.05.330(a)(3) states:

(a) Except as otherwise permitted in this chapter, without having the appropriate license or tag in actual possession a person may not engage in

...

(3) the farming of fish, fur, or game; or

...

<sup>4</sup> AS 16.05.940(15) states (emphasis added):

(15) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;

could obtain the aquatic farming triennial license under AS 16.05.340(a)(14) in order to satisfy the licensing requirement imposed by AS 16.05.330(a)(3).

In 1988, when the legislature authorized aquatic farming under AS 16.40, the legislature took steps to assure that persons engaged in aquatic farming were not subject to licensing under AS 16.05.330(a) or 16.05.340(a). First, the legislature granted an exemption from several provisions of AS 16.05 to persons engaged in aquatic farming under AS 16.40. Among the statutes made inapplicable to aquatic farms authorized under AS 16.40 were AS 16.05.330 and 16.05.340. See, sec. 8, ch. 145, SLA 1988 which enacted AS 16.05.930(g).<sup>5</sup> Second, the legislature amended the definition of "fish or game farming" under AS 16.05.940 to exclude shellfish as defined under AS 16.40.199. See, sec. 9, ch. 145, SLA 1988.

The only reason that there is now any question whether an aquatic farmer must obtain an aquatic farming triennial license is due to actions taken by the legislature in 1990 and 1993. The first legislative action amended AS 16.05.340(a)(14) to convert the fish farming biennial license into the aquatic farming triennial license. See, sec. 10, ch. 211, SLA 1990. When AS 16.05.340(a)(14) was amended in 1990, aquatic farms under AS 16.40 were exempt from the renamed license because of the exemption granted to aquatic farms and hatcheries by AS 16.05.930(g).<sup>6</sup> See, footnote 5, for the 1990 text of AS 16.05.930(g). The aquatic farming triennial license under AS 16.05.340(a)(14) and the fish farming license requirement under AS 16.05.330(a)(3) were two provisions expressly made inapplicable to persons who held aquatic farm or hatchery permits under AS 16.40. Also in 1990, the definition of "fish or game farming" (applicable to AS 16.05) excluded shellfish from the definition of "fish" and the fish farming licenses requirement under AS 16.05.330(a)(3) was inapplicable to farming of aquatic plants.

If the legislature had intended the new aquatic farming triennial license to apply to persons who held aquatic farm and hatchery permits under AS 16.40 in 1990, the legislature would have to (1) amend the exemption granted to aquatic farms under AS 16.05.930(g), (2) amend the definition of "fish or game farming" under AS 16.05.940(15) to include shellfish as defined under AS 16.40.199, and (3) amend the

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<sup>5</sup> In 1990, AS 16.05.930(g) stated:

(g) AS 16.05.330 - 16.05.720 do not apply to an activity authorized by a permit issued under AS 16.40.100 or 16.40.120, or to a person or vessel employed in an activity authorized by a permit issued under AS 16.40.100 or 16.40.120.

<sup>6</sup> The amendment of the biennial fish farming license into the triennial aquatic farming license in 1990 is a virtual nullity. At that time the triennial aquatic license was not applicable to aquatic farming of shellfish and aquatic plants due to AS 16.05.930(g) and other provisions. Also, the license was not applicable to aquatic farming of finfish because earlier during that session of the legislature, the legislature had enacted a permanent ban on finfish farming. AS 16.40.210; Ch. 91, SLA 1990.

licensing requirement under AS 16.05.330(a)(3) to include aquatic plants. The legislature did none of these things, thus I must conclude that in 1990 the aquatic farming triennial license was not intended to apply to aquatic farms and hatcheries subject to AS 16.40.

The second action taken by the legislature complicates the issue of whether operators of aquatic farms and hatcheries must obtain an aquatic farming triennial license but does not change my conclusion. In 1993, as part of the Revisor's Bill for that year, the legislature adopted an amendment to AS 16.05.930(g) that had the effect of eliminating the exemption from AS 16.05.330 - 16.05.430 originally granted to aquatic farmers in 1988.<sup>7</sup> Sec. 5, ch. 6, SLA 1993. The amendment made aquatic farmers subject to applicable provisions of AS 16.05.330 - 16.05.430. However, as discussed above, there are no provisions of AS 16.05.330 - 16.05.430 that make the fish farming requirement of AS 16.05.330(a)(3) or the aquatic farming triennial license under AS 16.05.340(a)(14) applicable to aquatic farms and hatcheries under AS 16.40. More than the elimination of the exemption from AS 16.05.330 - 16.05.430 is necessary to subject aquatic farms and hatcheries to the aquatic farming triennial license. AS 16.05.330(a) and 16.05.940(15) would also have to be amended in the manner described above.<sup>8</sup> The legislature has not made these additional changes.

**It is my conclusion that an aquatic farming activity authorized by a permit issued under AS 16.40 is not subject to the aquatic farming triennial license and that a**

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<sup>7</sup> AS 16.05.930(g) currently reads:

(g) AS 16.05.440 - 16.05.723 do not apply to an activity authorized by a permit issued under AS 16.40.100 or 16.40.120, or to a person or vessel employed in an activity authorized by a permit issued under AS 16.40.100 or 16.40.120.

<sup>8</sup> There is a possibility that the elimination of the exemption from AS 16.05.330 - 16.05.430 that was originally contained in AS 16.05.930(g) may have been a mistake. First of all, the Revisor's Bill is intended to cure technical errors and oversights in the statutes that cannot be fixed editorially and require legislative action to fix. The Revisor's Bill is not intended to address policy issues such as whether aquatic farms should be exempt from the licensing provisions of AS 16.05.330 - 16.05.430. The Sectional Analysis of the bill prepared by the Revisor of Statutes stated that AS 16.05.930(g) was amended to "correct internal references that should have been changed when AS 16.05.720 was repealed and AS 16.05.722 and 16.05.723 were added by ch. 46, SLA 1988." House Journal Supplement, No. 4, Alaska State Legislature, February 17, 1993, page 2. This explanation for the change to AS 16.05.930(g) does not make any mention of making a substantive change to the exemption granted by that subsection. Instead it refers only to a technical change made necessary by a wholly unrelated amendment to provisions related to penalties for commercial fishing violations. Thus the elimination of the exemption from the licensing provisions of AS 16.05.330 - 16.05.430 that was granted to aquatic farms and hatcheries under AS 16.05.930(g) may have been an unintended typographical or editorial error.

Senator Robin Taylor, Chair  
March 7, 2001  
Page 12

**person cannot be required to obtain an aquatic farming triennial license for an activity covered by a permit issued under AS 16.40.100 - 16.40.199.**

It may be useful to amend AS 16.05.930(g) to provide that AS 16.05.330 - 16.05.430 do not apply to activities authorized under AS 16.40.100 - 16.40.199 so that in the future the exemption is clear without having to resort to interpretation of several different statutes to determine whether aquatic farms and hatcheries under AS 16.40 are required to obtain the aquatic farming triennial license.

If I may be of further assistance, please advise.

PF:glc  
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