

HB

194

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 194(FIN)
 (H) Publish Date: 4/18/01

Revision Date/Time (Note if correction): 4/10/01 11:13 AM 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
 Spncsor: Representative Stevens
 Requester: House Finance 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 4/10/01 11:13 AM
 Approved by: Mary McDowell Date 04/10/2001
 Agency: Commercial Fisheries Entry Commission

For distribution information, call the Governor's Legislative Office

HB 194 Fiscal Note - Estimates of Potential Fiscal Impacts*

- 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. 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. *Numbers of permits distributed among five fee classes will be the same as in 2000 (the most recent licensing year figures available). Note that distribution of permits among fee classes varies considerably from year to year, so calculations made for one year based on fee class distribution in another year will necessarily be very rough estimates.*
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 average of allowable differentials over the most recent four 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 \$3.5 million under existing statute and use of the 3-to-1 fee differential.*

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
 Component: Administration
 Sponsor: Representative Stevens
 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 Frank Rue Date 04/17/2001
 Agency: Department of Fish and Game

For distribution information, call the Governor's Legislative Office

**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]

FISCAL NOTE

**STATE OF ALASKA-
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: CSHB194(FIN)
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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CAPITAL EXPENDITURES						
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 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

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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.*

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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.

Subject: House Supports Outside Fishermen Fees

Date: Fri, 20 Apr 2001 16:48:13 -0800

From: Dan Saddler <Dan_Saddler@legis.state.ak.us>

Organization: House Majority

To: reps <lsncdrs+housemajlegs@legis.state.ak.us>,
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Alaska State Legislature
House of Representatives
Representative Gary Stevens

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Juneau, Alaska 99801-1182
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FOR IMMEDIATE RELEASE: April 20, 2001

CONTACT: Rep. Gary Stevens ((907) 465-4925

House Supports Outside Fishermen Fees

Stevens' HB 194 Would Raise Permit Costs to Court-set Limit

(JUNEAU) – The House today unanimously passed House Bill 194, which would allow the state to charge non-resident commercial fishermen as much as current and anticipated court decisions will allow for permits to fish in Alaska waters.

Rep. Gary Stevens (R-Kodiak) introduced the bill in response to the state's exposure to \$22.5 million in potential liability in a 1982 class-action lawsuit by non-resident fishermen, Carlson v. Commercial Fisheries Entry Commission.

"For the past 18 years, Alaska has been charging Outside fishermen three times more than Alaska fishermen for their permits," Stevens said. While federal case law does allow such differentials, he said, they must be based only on the cost for services that residents pay for in taxes or fees not paid by nonresidents.

"There is plenty of evidence to justify charging non-residents a significant premium to fish in waters off Alaska," he said. "We pay a tremendous amount more for services from the Department of Fish and Game, for fisheries research, for our hatcheries and for ports, harbors, roads and other state infrastructure."

However, in a June 2000 ruling on the Carlson case, the Alaska Superior Court disallowed four of six categories of expenditures the state had used in calculating its formula, leaving the state liable for paying up to \$22.5 million in "overcharges" to non-resident fishermen. The state is appealing that decision, and hopes to win approval of most or all of the remaining four categories.


HB 194 does not resolve the Carlson case, but does replace the 3-1 formula with language allowing the state to charge the maximum differential allowed by law, Stevens said. While that differential would be based initially on the two budget categories allowed by the court, it would increase if and when court approves the others.

“This bill will not only halt the growth of the state’s liability in the Carlson case, but also puts into place a legally defensible formula that will make non-residents contribute their fair share toward the expenses the state incurs in supporting the nation’s most vibrant commercial fishing industry.”

HB 194 moves next to the Senate for consideration.

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Broadcasters note: Comments are available on the Majority Actuality Line 1-800-478-6540

 stevens fishfees 04202001.doc	Name: stevens fishfees 04202001.doc Type: Microsoft Word Document (application/msword) Encoding: base64 Download Status: Not downloaded with message
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