

HB

287

FISCAL NOTE

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

HB 286
Addition

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

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						
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 (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. Sedwick, 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

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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.

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. 00-1898 (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?

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.

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

Petersburg Vessel Owners Association

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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,



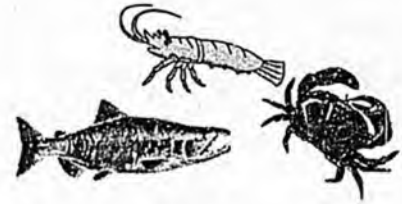
Cora Crome
Director

Cc: Representative Scalzi, Representative Wilson

SUPPORT LETTER

Southeast Alaska Fishermen's Alliance

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Juneau, AK 99801



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May 7, 2002

Alaska State Legislature
Senate Resource Committee
Senator John Torgerson, Chair
State Capitol, Room 427
Juneau, AK 99801-1182

Senator John Torgerson, Chair Senate Resource

RE: HB 287 -- Support

The Southeast Alaska Fishermen's Alliance supports HB 287. We appreciate Representative Scalzi working with the Commercial Fishing Entry Commission on this legislation to help protect limited entry permits from claims of creditors. This is important protection for the fishing industry especially during the tough times as we are currently struggling through. While changes to this legislation have diluted some of the good that this bill would have originally provided by extending the loan program for tax obligations and stronger language stating that a limited entry permit is a use privilege and not a property right, this legislation still provides additional protection that is necessary.

We hope you will support this legislation and move it out of committee.

Thank you,

Kathy Hansen
Executive Director