

SCOMM

131:26

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS: Resources

Date of Committee Action: _____

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HB 478

HOUSE BILL NO. 478

COMMERCIAL FISHING INTERIM USE PERMITS

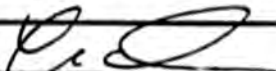
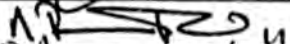
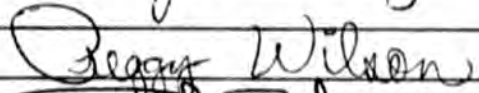
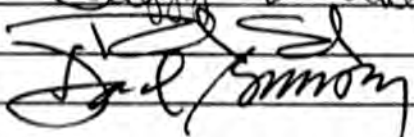
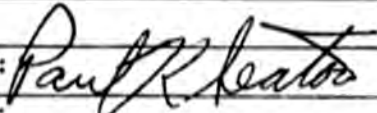
"An Act relating to the issuance of commercial fishing interim-use permits; and providing for an effective date."

Recommends it be replaced with ☐ HCS or ☐ CS for _____ (_____)
 For Senate Bills with new title: ☐ Technical Title ☐ New Title: HCR _____ ☐ Same Title ☐ New Title

☐ attach amendments
☐ add new referral to _____ Committee
☐ Letter of Intent _____ Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
		Gara				✓
	 Cheryl Heintze	HEINZE	✓			
	 Peggy Wilson	WILSON	✓			
	 Sam Samuels	SAMUELS	✓			
		WITTENBERG				✓
Chair:	 Paul Keaton	SEATON	✓			
Chair:						

Subject: Re: HB 478

Date: Fri, 27 Feb 2004 17:24:44 -0900

From: "Jon Goltz" <Jon_Goltz@law.state.ak.us>

To: <Eric_Knudson@legis.state.ak.us>

CC: <bruce_twomley@cfec.state.ak.us>, <Cameron_Yourkowski@legis.state.ak.us>, <Frank_homan@po.cfec.state.ak.us>

Eric:

I have not yet completed my analysis due to other issues that required my attention today, but my research thus far appears to point to the following conclusions.

On the retroactivity issue:

(1) Applying the bill retroactively in the criminal case that is currently in the Supreme Court would raise an issue about the "ex post facto" prohibitions of the Alaska and the U.S. constitutions. Since this bill only clarifies when the CFEC shall issue a permit - not when a permit is required - it is not clear whether retroactive application would be an ex post facto law.

(2) The bill possibly could be applied retroactively in the civil cases that seek reimbursement for past fees paid, but there are some complications. AS 01.10.100 provides that the amendment of a law does not extinguish any liability accrued under that law, "unless the . . . amending act so provides expressly." Even then, there could be a potential due process issue, although in my initial judgment no due process violation would occur.

(3) Even if the law could not be applied retroactively in any of the current court cases, a retroactive date for the bill could express the legislature's view that the Court of Appeals misinterpreted the scope of the current statute. That might have some persuasive value for the Supreme Court.

I don't see a significant down side to making the bill retroactive, as long as the legislature understands that the courts might not allow it to be applied retroactively in all circumstances.

On the issue of landing fish from international waters, I don't see any changes to this bill that could help clarify that issue. That issue mainly pertains to other statutes that require a permit. The statute that is the subject of this bill does not require a permit, it just express when the CFEC shall issue a permit.

I'll work on these issues over the weekend and be prepared to provide further testimony on Monday.

>>> Eric Knudson <Eric_Knudson@Legis.state.ak.us> 2/27/2004 4:23:46 PM
>>>

Assistant Attorney General Goltz,
If you could also send a copy of your assessment and opinion, which were

requested of you by the Fisheries committee today to Cameron Yourkowski

I would appreciate it. Cameron Yourkowski's email is included in this email.

Thank you for you work on this issue,
Eric

THE
FOLLOWING
DOCUMENT(S)
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ORIGINAL
COPIES



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

SPONSOR STATEMENT FOR HB 478

An Act relating to the issuance of commercial fishing interim-use permits.

House Bill 478 is a housekeeping measure designed to affirm and clarify that the Commercial Fisheries Entry Commission (CFEC) has the authority to issue interim-use permits in each fishery that is not subject to a maximum number (limited entry). This clarification is consistent with the intent of the original statute. The clarification is necessary, however, because the Court of Appeals recently held that the CFEC does not have the authority to issue interim-use permits to fishermen who catch halibut or sablefish beyond the three-mile limit of state waters, and then bring the halibut or sablefish into state waters for delivery and sale.

Current statutes require that fishermen in those circumstances have a state permit, AS 16.05.675. The permit requirement promotes enforcement, promotes resource data collection, and facilitates revenue collection. However, three fishermen who lacked a permit have recently prevailed in the Court of Appeals by arguing that the only permit available to them was an interim-use permit, and that the Commercial Fisheries Entry Commission lacks the authority to issue interim-use permits in fisheries that it cannot limit to a maximum number of participants. *State v. Dupier*, 74 P.2d 933 (Alaska App. 2003). The court of Appeals decision is currently under review by the Alaska Supreme Court. Regardless of the outcome in that case, clarification of the statute is desirable.

House Bill 478 amends the law, so that it clearly authorizes the CFEC to issue interim-use permits in fisheries that have not been the subject of a maximum number (limited entry). This clarification is consistent with the original intent and purpose of the current statute, and it will more clearly authorize the issuance of permits in all Alaska fisheries despite the recent Court of Appeals decision.

HB 478/A

SPONSOR STATEMENT

Jan-May, Juneau: State Capitol • Juneau, AK 99801-1121 • ph: (907) 465-3824 • fax: (907) 465-3175
June-Dec, Wrangell: PO Box 109 • Wrangell, AK 99929 • ph: (907) 874-3089 • fax: (907) 874-3055
Rep.Peggy.Wilson@legis.state.ak.us • <http://www.akRepublicans.org/wilson/> • 1-800-686-3824

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: _____

HB0478a

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: _____

Fish and Game

Title An Act relating to the issuance of commercial
fishing interim-use permits

RDU

Comm. Fish Entry Commission

Component

Commercial Fisheries Entry

Sponsor Rep. Wilson

Commission

Requester Rep. Wilson

Component No.

471

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type-Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal: ☐

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Shirley Penrose, Administrative Officer

Phone 907-790-6960

Division Commercial Fisheries Entry Commission

Date/Time 2/19/04 9:43 AM

Approved by: Mary McDowell, Commissioner

Date 2/19/2004

Agency Commercial Fisheries Entry Commission



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

MEMORANDUM

Date: February 17, 2004

To: Representative Paul Seaton, Chair House Fisheries Committee

From: Representative Peggy Wilson (W)

Re: HB 478 "Commercial Fishing Interim Use Permits"

This is a request to have HB 478 calendared for a hearing before the Special Committee on Fisheries as soon as possible.

HB 478 is legislation recommended by the Commercial Fisheries Entry Commission.

HB 478 is a housekeeping measure that will clarify the ability of the Commercial Fisheries Entry Commission to issue interim-use permits in each fishery that is not limited to a maximum number of participants. This clarification is consistent with the intent of the clarified statute.

I have attached the sponsor statement, and a copy of the legislation. Thanks for your consideration.

HB 478:

- interim use permits (unlimited)
- pending the establishment.
- Dupier (St. Supreme Court)
- 3 habitat former outside 3 miles
 - Should have issued/bought
landing permit.
 - Class Action : all refunds.

: John Goltz :

Ⓢ Friday
John Goltz
267-5100