

HB

26

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 26(FSH)
(H) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title: Short-term Commercial Fishing RDU: Administration and Support
Crewmember License Component: Administrative Services
Sponsor: Representative Moses
Requester: House Fisheries Committee Component No. 479

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual	1.7	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.7	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1024)	1.5	1.5	1.5	1.5	1.5	1.5
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.7	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
1024 Fish and Game Fund						
TOTAL	1.7	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Assumptions:

- 100 new short-term licenses will be purchased.
- Per AS 23.35.060(a) Fishermen's Fund will receive 39% of the gross revenue. Fish and Game Fund will receive 61%.
- Given the mid-year effective date, the department must print 5,000 new licenses for distribution statewide. We estimate the printing costs for these new licenses to be a one-time cost of roughly \$1,700. In the following years, this new license option will be incorporated into our standard license, so there will be no additional cost for offering this option.

(Continued on page 2)

Prepared by: Tom Lawson Phone: 465-5999
Division: Administrative Services Date/Time: 2/11/05 3:19 PM
Approved by: Acting Commissioner Wayne Regelin Date: 2/11/2005
Agency: Department of Fish and Game

FISCAL NOTE NO. 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB 26(FSH)

ANALYSIS CONTINUATION

This bill gives the department the ability to charge a \$3 administrative fee per license that would be imposed through regulation. If such a fee were imposed, printing costs would decrease by \$300 (\$3 fee x 100 new licenses sold).

Type of License Sold	Number of Licenses Sold	Amount	Total Gross Revenue	Vendor Commission	Total Commission	Total Net Revenue
Seven-day	100	\$30	\$3,000.00	10%	\$300.00	\$2,700.00
			\$3,000.00		\$300.00	\$2,700.00
<u>Break-out of Funds:</u>						
			39%	\$1,170.00		
			61%	\$1,530.00		
			Total	\$2,700.00		

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 26(FSH)
(H) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Department: Labor & Workforce Development
Title: Short-Term Com Fishing Crewmember License RDU: Workers' Compensation
Component: Fishermen's Fund
Sponsor: Representative Moses
Requester: House FSH Component Number: 343

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	*	*	*	*	*	*
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1032)	1.1	1.1	1.1	1.1	1.1	1.1

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	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
According to information provided by the Department of Fish and Game, it is anticipated 100 new licenses will be purchased. Under AS 23.35.060(a) the Fishermen's Fund will receive 39% of the revenue (\$1,053.00).

The revenues to the Fund generated by the new licenses (\$30 for a seven day license) compare favorably to those from annual licenses (\$21.06) that expose the Fund to much longer periods of potential liability. However, licensees who are tourists or otherwise inexperienced in fisheries may be more likely to sustain an injury. *Consequently, the ultimate impact on the Fund's claim payment outlays is indeterminate.

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
Division: Workers' Compensation Division Date/Time: 2/15/05 4:36 PM
Approved by: Greg O'Claray, Commissioner Date: 2/15/2005
Agency: Department of Labor and Workforce Development

Representative Carl E. Moses, House District 37
(907) 465-4451 - Adam Berg, Staff

SPONSOR STATEMENT / SECTIONAL ANALYSIS

CSHB26 (RES) – Short-Term Commercial Fishing Crewmember Licenses

The economic health of certain communities in Western Alaska has been jeopardized by unprecedented low salmon returns and / or prices. It is in the best interest of the State of Alaska and these communities to maximize options available for commercial fishermen to earn a living. One option available is to allow the purchase of short-term commercial fishing crewmember licenses. This would allow visitors an affordable way to engage in a sort of extreme tourism adventure by actually participating in the fishery as a crewmember.

Currently, tourists can go out with a commercial boat but cannot have any form of active participation without buying a full year crewmember license.

The House Fisheries Committee changed the bill as follows: The committee added a clause that prohibits fishing with rod and reel from a commercial fishing vessel and changed the length of the short-term license to seven days.

The House Resources Committee changed the bill as follows: The committee added a clause that prohibits short-term license holders from being compensated.

BILL SECTIONS 1-2: Changes the term from a "crewmember fishing license" to an "annual crewmember fishing license". (Note: The reason for the term change applies to Bill Section 4.)

BILL SECTION 3: Allows residents and non-residents to purchase a seven-day commercial fishing crewmember license for \$30. Assures that short-term license holders are prohibited from using rod and reel while on a commercial vessel and that they are ineligible for any compensation.

BILL SECTION 4: Assures that a short-term license holder is not considered a fisherman eligible for the Commercial Fishing Revolving Loan Fund.

BILL SECTION 5: Allows the Department of Fish & Game to add and collect an additional administrative fee of \$3 on licenses issued in 2005.

BILL SECTION 6: Makes the effective date July 1, 2005.

adopted 4-25-05

AMENDMENT 1A Chenault

OFFERED IN THE HOUSE FINANCE COMMITTEE
BY REPRESENTATIVE

TO: CSHB 26 (RES)

Page 2, Lines 17-19:

DELETE:

"may not be paid, receive crew shares, or receive other compensation for work performed under the license and"

withdrawn

24-LS0181V.2
Utermohle
4/5/05

AMENDMENT 2

OFFERED IN THE HOUSE
TO: CSHB 26(RES)

BY REPRESENTATIVE WEYHRAUCH

- 1 Page 2, line 19, following "vessel.":
- 2 Insert "The owner, agent of the owner, or operator of a commercial fishing vessel may
- 3 not allow or offer to allow a holder of a seven-day crewmember fishing license to engage in
- 4 commercial fishing on the vessel if the operator, crew, and vessel are not in compliance with
- 5 applicable state and federal laws regarding vessels used for the carriage of passengers for
- 6 hire."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 455-3867 or 465-2450
FAX (907) 465-2029
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2005

SUBJECT: HB 26; Short term commercial fishing crewmember licenses and the fishermen's fund (HB 26)

TO: Representative Paul Seaton
Attn: Louis Flora

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your questions regarding the effect that certain proposed changes to HB 26, relating to short term commercial fishing crewmember licenses, may have in regard to the fishermen's fund.

HB 26 proposes to create a short term commercial fishing crewmember license (the proposal varies from one-day to seven-day licenses). One of the issues raised by the proposal for short term licenses concerns whether the short term license holders should be eligible for benefits from the fishermen's fund. None of the versions of HB 26 considered by the Twenty-Fourth Alaska State Legislature have excluded short term license holders from participation in the fishermen's fund. However, you have inquired as to what the consequences may be if short term license holders were excluded from participation in the fishermen's fund.

The fishermen's fund, created in 1951, is a grandfathered dedicated fund, that is, one existing at the time of ratification of the Alaska Constitution. This dedication qualifies for grandfathering under the language of article IX, sec. 7, which states that "This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification . . ." (emphasis added). As a grandfathered dedicated fund, the fishermen's fund is funded through the dedication of a portion of the commercial fishing license fees collected under AS 16.05.480 from entry permit and interim-use permit holders and from crewmember license holders. See, AS 23.35.060(a). Provided that the dedication of a specific fund source is not significantly altered by the legislature, the stream of revenue from that source can continue to be dedicated to the identified purpose until the legislature repeals the dedication. However, because the dedication of commercial fishing license fees to the fishermen's fund is a grandfathered dedicated fund, the legislature must take care when dealing with commercial fishing license fees so as to not affect those license fees in a way that would have the effect of destroying the dedication. The Department of Law has taken a conservative approach to protect the dedication of commercial fishing license fees to the fishermen's fund and has

generally warned against any changes in the rate or the amount of the dedicated commercial fishing license fees that go into the fishermen's fund in order to prevent an inadvertent revocation of the dedication.

ONE: Would the exclusion of the short term license holders from participation in the fishermen's fund affect the dedication of commercial fishing crewmember license fees to the fishermen's fund?

The short answer is probably no.

The determination of eligibility for participation in the benefits of the fishermen's fund is separate from, and unrelated to, the dedication of commercial fishing license fees, including crewmember license fees, to the fund. Excluding short term crewmember license holders from participation in the fishermen's fund does not affect the stream of revenue or the amount or rate of revenue that is dedicated to the fishermen's fund. It is the alteration of the stream of dedicated revenue that may place the continued dedication of a revenue stream at risk. A change to the eligibility requirements for participation in the benefits of the fishermen's fund or a change in the benefits provided under the program will not affect the continued dedication of commercial fishing license fees. Therefore, an exclusion of short term crewmember license holders from participation in the fishermen's fund is unlikely to jeopardize the continued dedication of commercial fishing license fees to the fishermen's fund.

TWO: Would the exclusion of short term commercial fishing crewmember license holders from participation in the fishermen's fund violate the equal protection rights of those short term license holders?

The short answer is that the proposal to exclude short term license holders from participation in the benefits of the fishermen's fund does raise an equal protection issue. Whether the proposal would survive judicial review will depend on the state's purpose for excluding the short term license holders and the relationship between the state's purpose and the means chosen to achieve the purpose. If the state can demonstrate that it has a legitimate purpose and that the exclusion of short term license holders from participation in the fishermen's fund is reasonably and substantially related to that purpose, the proposal should survive an equal protection challenge. It is also possible that there would be no viable equal protection issue if the state can show that holders of short term licenses are not similarly situated with other commercial fishing license holders and thus the two groups are not entitled to equal access to the fishermen's fund.

Under the state equal protection clause of art. I, sec. 1, of the Alaska Constitution, the Alaska courts apply a sliding scale under which the applicable standard of review is determined by the importance of the individual rights asserted and by the degree of suspicion by which the classification scheme is viewed. As the right asserted to be violated becomes more fundamental or the classification scheme becomes more constitutionally suspect, the challenged law is subjected to more rigorous scrutiny at a

more elevated position on the sliding scale. Classifications based on race are inherently suspect and are subject to the highest level of scrutiny. As the level of scrutiny applied on the sliding scale becomes higher, the asserted governmental interests must be more compelling and the legislation's means to ends fit must be correspondingly closer. If less scrutiny is required, less important governmental objectives will be sufficient and a greater degree of under inclusiveness or over inclusiveness in the means to ends fit will be tolerated. State, Department of Revenue v. Cosio, 858 P.2d 621 (Alaska 1993); State v. Ostrosky, 667 P.2d 1184 (Alaska 1983).

A reasonable argument can be made that a short term license holder is equally entitled to the benefits of the fishermen's fund on the same basis as are other commercial fishing license holders because they are subject to the same risk of occupational injury as the other crewmembers. Also, if part of the fee paid by the short term license holders is dedicated to the fishermen's fund then it would seem only fair that they be entitled to benefit from the fund.

The right of a short term crewmember license holder to benefit from the fishermen's fund in the same manner as a person who holds an annual crewmembers license affects the short term license holder's personal economic interests and as such falls at the low end of the equal protection spectrum. The Alaska Constitution requires only that legislation affecting economic rights have a legitimate purpose and that there be a fair and substantial relationship between the purpose and means chosen to achieve the purpose in order to satisfy equal protection. Chiropractors for Justice v. State, 895 P.2d 962 (Alaska 1995); Katmailand v. Lake and Peninsula Borough, 904 P.2d 397 (Alaska 1995). If the legislature has a legitimate reason for excluding short term crewmember license holders from receiving benefits of the fishermen's fund and the exclusion of short term crewmembers from the benefits of the fund reasonably achieved that purpose then the courts are likely to uphold the legislature's decision. It is, generally, relatively easy for the state to justify discrimination between individuals at this low level of scrutiny, but the Alaska Supreme Court has invalidated some legislative enactments because the state was not able to provide sufficient justification to survive such judicial scrutiny. Gilman v. Martin, 662 P.2d 120 (Alaska 1983); Turner Construction Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988); and Gilmore v. Alaska Workers' Compensation Board, 882 P.2d 922 (Alaska 1994). The ability of the legislature to exclude short term license holders from participating in the fishermen's fund will largely depend on the legitimacy of the legislature's reasons for its decision and the ability of the legislature to narrowly craft the means chosen to achieve that purpose.

The fundamental principle underlying the concept of equal protection is that similarly situated persons are to be treated equally. The Alaska Supreme Court has found that equal protection under art. I is not violated if the person challenging the law is not similarly situated with those included or excluded, as appropriate to the particular case, under the law at issue. Brandon v. Corrections Corporation of America, 28 P.3d 269 (Alaska 2001); Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc., 13 P.2d 263 (Alaska 2001); Rutter v. Alaska Board of Fisheries, 963 P.2d 1007

Representative Paul Seaton
February 28, 2005
Page 4

(Alaska 1998). Concluding that two groups are not similarly situated necessarily implies that the different legal treatment of the two groups is justified by the differences between the groups.

If the state can establish that short term license holders were not similarly situated with annual license holders then the state may discriminate between the two groups without violating the equal protection clause. For example, if the persons who obtained short term licenses were tourists who needed a crew members license only to be present on a commercial fishing boat while it was engaged in fishing and were not employed in commercial fishing for a living then the state could reasonably argue that those persons were different from the crew members who held annual licenses and were continuously engaged in commercial fishing for a livelihood.

A further discussion of equal protection issues may be possible once a specific proposal to exclude short term crew member license holders from the benefits of the fishermen's fund is adopted, but a more definite answer concerning the equal protection issue may have to await a decision by the courts.

If I may be of further assistance, please advise.

GU:med
05-127.med



UNITED FISHERMEN OF ALASKA

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March 7, 2005

Representative Kevin Meyer, Co-Chair
House Finance Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

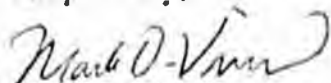
Dear Representative Meyer,

United Fishermen of Alaska (UFA) represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses. Our board of directors recently met and discussed HB 26 regarding short term commercial fishing crew license. UFA believes that a short term crew license will provide greater flexibility in fishing operations, such as in cases of emergencies, fisheries of short duration or to fill in for departing crew at the end of season. The recent amendment that prohibits the short term members from being paid is an obstacle to the practical use of the idea behind the bill.

In its present form CSHB 26 will allow short term visitors an opportunity to experience commercial fishing in Alaska without pay, which is also of some potential benefit to marketing and public relations through greater awareness of our wild fisheries and unsurpassed fisheries management.

UFA continues to support HB 26 for a short term commercial fishing crew license.

Respectfully,


Mark D. Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association United Southeast Alaska Gillnetters • Valdez Fisheries Development Association
Western Gulf of Alaska Fishermen

Adam Berg

From: Rep. Carl Moses
Sent: Monday, March 14, 2005 6:23 AM
To: Adam Berg
Subject: FW: CLARIFICATION

-----Original Message-----

From: Jorgensen, Sue [mailto:SJorgensen@CGAlaska.USCG.mil]
Sent: Friday, March 11, 2005 2:19 PM
To: 'castlerock@gci.net'
Cc: Rep. Carl Moses
Subject: CLARIFICATION

Galen Brevik of the Juneau Charter Boat Operators Association asked for clarification of the Coast Guard rules governing carriage of individuals on board.

On a commercial fishing industry vessel:

if/when an individual is hired and receives wages for his work, that individual is a crewmember.

if/when an individual goes on board and pays for the opportunity to do so (assisting with fishing or just along for the ride), that individual is a passenger for hire.

If the vessel carries a paying passenger, even though the vessel continues to commercial fish, the operator must comply with not only the commercial fishing industry safety requirements (i.e. immersion suits for every person on board, visual distress signals, survival craft, EPIRB, etc) but all the passenger vessel safety requirements (i.e. licensed operator, random drug testing program, vessel documented for "Coastwise" as well as "Fishery", Type I personal flotation devices for every person on board, etc.).

Sue Jorgensen
FV Safety Coordinator
907-463-2810
907-463-2820 (fax)
800-478-7369 (in Alaska)