

**HB**

**241**

<TARGET><BILL>HB 241</BILL><SUBJECT>HB  
241</SUBJECT><COMM>HFIN29</COMM></TARGET>

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	HB 241
Fiscal Note Number:	2
(H) Publish Date:	3/29/2016

Identifier: HB0241a-DFG-DCF-03-11-16  
 Title: NONRESIDENT SURCHARGE COMMERCIAL FISHING  
 Sponsor: MILLETT  
 Requester: House Special Committee on Fisheries, Finance

Department: Department of Fish and Game  
 Appropriation: Commercial Fisheries  
 Allocation: Statewide Fisheries Management  
 OMB Component Number: 2171

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
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>0.0</b>

**Fund Source (Operating Only)**

None							
<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>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version:**

Not applicable, initial version.
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Prepared By:	Carol A. Petraborg, Director	Phone:	(907)465-6077
Division:	Administrative Services	Date:	03/11/2016 11:50 AM
Approved By:	Kevin Brooks, Deputy Commissioner	Date:	03/11/16
Agency:	Fish and Game		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

**Analysis**

This Bill defines conditions for providing proof that an individual is not subject to the nonresident surcharge and adds the duty to the Department of Revenue to confirm eligibility of an individual to receive a permanent fund dividend to the Alaska Commercial Fisheries Entry Commission. These actions would not have a fiscal impact on the department.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	HB 241
Fiscal Note Number:	1
(H) Publish Date:	3/29/2016

Identifier: HB241-DFG-CFEC-03-16-16  
 Title: NONRESIDENT SURCHARGE COMMERCIAL FISHING  
 Sponsor: MILLETT  
 Requester: House Fisheries Committee

Department: Department of Fish and Game  
 Appropriation: Commercial Fisheries  
 Allocation: Commercial Fisheries Entry Commission  
 OMB Component Number: 471

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
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>0.0</b>

**Fund Source (Operating Only)**

None							
<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>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
 If yes, by what date are the regulations to be adopted, amended or repealed? 12/31/16

**Why this fiscal note differs from previous version:**

This fiscal note is the initial version
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Prepared By:	Shirley A. Penrose, Acting Executive Director	Phone:	(907)790-6960
Division:	Commercial Fisheries Entry Commission	Date:	03/16/2016 04:26 PM
Approved By:	Benjamin E. Brown, Commissioner	Date:	03/16/16
Agency:	Commercial Fisheries Entry Commission		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

## Analysis

At this time, the Commercial Fisheries Entry Commission (CFEC) anticipates that verifying that an applicant for issuance or renewal of a limited entry permit is eligible for an Alaska Permanent Fund dividend could be performed by existing staff. CFEC would need to create new forms which applicants would complete and submit with documentation proving dividend eligibility as provided in AS 16.43.160(e)(1)-(4). CFEC licensing staff would consider each applicant's documentation and attempt to verify the claim of dividend eligibility by accessing the Department of Revenue Permanent Fund Dividend Division's "RPFI" portal. If the applicant's documentation and CFEC's staff efforts could not verify the information using RPF, the applicant could still pursue a claim that he or she was otherwise eligible for a dividend under AS 16.43.160(e)(4), which would likely be a more time-consuming process<sup>1</sup>. Applicants found ineligible for a dividend would be required to pay the statutory nonresident surcharge.

If an applicant were to contest CFEC's determination, the applicant would be entitled to an adjudication as outlined in 20 AAC 05.1805(b)(2) and a decision would duly be issued. Under 20 AAC 05.1845, the applicant could request an administrative hearing to review the decision and through the process be issued a final decision by the commission. If the resulting decision were that the applicant was a resident, a refund would be issued for the surcharge paid.

Should CFEC determine the above process is not working with existing staff for FY 2018 and beyond, CFEC would likely seek a part-time position to perform investigations for residency verification.

20 AAC 05.290, CFEC's regulation defining residency, would need to be amended and CFEC would do so as quickly as possible upon passage of the bill so CFEC's regulations were not in conflict with the Limited Entry Act.

CFEC licensing staff currently attempt to determine an applicant's eligibility to pay resident fees, and charge the nonresident surcharge to applicants who fail to demonstrate their eligibility. Without more data, CFEC is presently not able to determine what revenues might be generated with this legislation.

CFEC also notes that it is unclear what ultimate fiscal impact HB 241 would have on the entity responsible for determining residency and collection of the nonresident surcharge. The scope and effect of Administrative Order 279 (which authorized the transfer of ministerial licensing and permitting services from CFEC to DFG) is currently under consideration.

# Alaska Legislature

## Representative Charisse Millett

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### *District 25*

### House Bill 241 Sponsor Statement

Alaska's commercial fishing industry has long attracted fisherman from across the United States, and around the world, to seek their fortunes, and join Alaskan fisherman in the state's bountiful waters. To promote the conservation and sustained yield management of fisheries resources and the economic health and stability of the industry, the state enacted policies to regulate entry into fisheries. For a commercial fishing operation to participate in a fishery with limited access, they must apply for a permit, which if accepted, comes with a fee. The state levies different fees for permit applicants and holders who are Alaska residents than those who are nonresidents.

House Bill 241 seeks to address concerns that many current permit holders and applicants who pay fees meant for residents of Alaska are in fact, living outside of the state. To better determine the qualifications for in-state residents, this bill uses existing infrastructure in the form of the Alaska Permanent Fund Corporation's eligibility criteria for the permanent fund dividend. House Bill 241 would require that the Permanent Fund Corporation confirm for the Commercial Fisheries Entry Commission that an individual applying for a permit or renewal has received, or is eligible to receive a permanent fund dividend. This would both ensure parity between definitions used by departments as well as cut down on unnecessary investigations.

This bill does not make a judgement call on fees previously set by the state, or the need for residents and nonresidents to be treated differently in our fisheries. It additionally does not limit participation in our fisheries to any one group. It simply allows the Commercial Fisheries Entry Commission to benefit from existing residency data, and to ensure that those benefiting from resident fees are truly Alaska residents.

# Alaska Legislature

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### Session:

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# Residency Overview

## Residency Definition

### Residency Definitions

### Residency Qualifications

#### **Resident:**

Alaska Resident per AS 16.05.415(a): "resident" means a person (including an alien) who is physically present in Alaska with the intent to remain indefinitely and make a home here, has maintained that person's domicile in Alaska for the 12 consecutive months immediately preceding this application for a license, and is not claiming residency or obtaining benefits under a claim of residency in another state, territory, or country; a member of the military service or U.S. Coast Guard who has been permanently stationed in Alaska for the 12 consecutive months immediately preceding this application for a license; or a dependent of a resident member of the military service or U.S. Coast Guard who has lived in Alaska for the 12 consecutive months immediately preceding this application for a license. A person who does not otherwise qualify as a resident may not qualify by virtue of an interest in an Alaska business.

Per AS 16.05.415(b): A person who establishes residency in the state in accordance with the residency provision above remains a resident during an absence from the state unless during the absence the person (1) establishes or claims residency in another state, territory, or country; or (2) performs an act, or is absent under circumstances, that are inconsistent with the intent required under the residency provision above.

For further information, see the [Residency Info Sheet \(PDF 681 kB\)](#) and [Residency Qualifications](#).

#### **Nonresident Military:**

Active duty members of the military, and their dependents, who have been *permanently* stationed in Alaska for less than 12 months.

#### **Nonresident:**

A person who does not meet Alaska residency requirements as outlined above and is a resident of the United States; or an alien who has maintained a permanent place of abode in the United States.

#### **Nonresident Alien:**

A person who is not a citizen of the United States nor has lived in the State of Alaska for the preceding 12 consecutive months.

#### **Second degree of kindred:**

"Second degree of kindred" means a father, mother, brother, sister, son, daughter, spouse, grandparent, grandchild, brother- or sister-in-law, son- or daughter-in-law, father- or mother-in-law, stepfather, stepmother, stepsister, stepbrother, stepson, or stepdaughter (5 AAC 92.990).

# Residency Overview

## Residency Qualifications

Residency Definitions

Residency Qualifications

### Do You Qualify for Resident Fishing/Hunting?

The following set of qualification may help you to determine whether or not you qualify for resident fishing/hunting (and licensing). *These guidelines are based on statutes and do not substitute for full determination of residency based on actual statutes and residency information links/documents available at page bottom.*

If you...	Yes	No	Maybe
<i>are physically present in Alaska with the intent to remain indefinitely, and</i>	✓	✗	i
<i>have maintained a home in the state for the preceding 12 months and</i>	✓	✗	i
<i>are not claiming residency in any other state or receiving benefits from residency of another state</i>	✓	✗	i
<b>OR</b>			
<i>are a member (or their dependent) of the military service stationed in Alaska for the preceding 12 consecutive months</i>	✓	✗	i

If you answered **"Yes"** to *all non-military qualifications* or **"Yes"** to the *military qualification* you probably meet residency requirements.

If you answered **"No"** or **"Maybe"** to *any of the non-military or military qualifications listed above*, you may not meet residency requirements.

For more detailed information please see our [Residency Definitions page](#) and our [Residency Info Sheet \(PDF 681 kB\)](#) or [contact a Fish and Game licensing office](#).

## ELIGIBILITY REQUIREMENTS

To qualify for a 2015 Permanent Fund Dividend you must be able to answer yes to all of the following statements.

- I was a resident of Alaska during all of calendar year 2015;
- On the date I apply for the 2016 Permanent Fund Dividend, I have the intent to remain an Alaska resident indefinitely;
- I have not claimed residency in any other state or country or obtained a benefit as a result of a claim of residency in another state or country at any time since December 31, 2014;
- I was not:
  - Sentenced as a result of a felony conviction during 2015;
  - Incarcerated at any time during 2015 as the result of a felony conviction; or
  - Incarcerated at any time during 2015 as the result of a misdemeanor conviction in Alaska if convicted of a prior felony or two or more prior misdemeanors since January 1, 1997
- If absent from Alaska for more than 180 days, I was absent on an allowable absence; and
- I was physically present in Alaska for at least 72 consecutive hours at some time during 2014 or 2015.

### Your Absence from Alaska and the PFD Program

Were you, or are you planning to be absent from Alaska? If so, you need to be aware of the rules of the Permanent Fund Dividend ( PFD) program for absences and how they affect your eligibility.

This document is intended to cover the most common circumstances related to absences as they pertain to the PFD program. This document refers to eligibility only in the context of an absence from Alaska - other requirements of the PFD program must be met to be otherwise eligible. Refer to [PFD Statutes and Regulations](#) for more detailed information or contact your nearest [PFD Office](#) to get more specific information about your absence.

You must report ALL absences over 90 days in a calendar year or if you are out of state when applying, even if the absence is allowable by the PFD program. (ie. Military, Student etc.) Failure to report absences is fraud and could result in assessment of dividends paid.

### General Rule

You may be absent from Alaska in a calendar year for up to 180 days for any reason and still be eligible for a dividend, as long as you meet all other requirements of the program.

For certain absences, you may still be eligible for a dividend even though you are absent from Alaska for more than 180 days. These absences are referred to as "allowable absences" and are described under the Allowable Absences section below.

## Absences and Residency

To remain eligible for this program while you are absent, whether one day or the whole year, you must maintain your Alaska residency and intend to return to Alaska to remain indefinitely. If you do anything to establish residency in another state or country while you are out of Alaska, such as registering to vote or filing a resident income tax return, you will not be considered a resident of Alaska for the purposes of this program.

**Example:** You move from Alaska in May to take a new job in Washington and you also purchase a home in Washington. After two weeks, you decide to come back to Alaska to live again. Even though you were gone less than 181 days, you will not qualify for the next dividend because you broke your Alaska residency and were not an Alaska resident for the entire calendar year. Your actions were inconsistent with remaining an Alaska resident.

## Reporting Absences

**REPORTING ABSENCES IS MANDATORY** if you are absent from Alaska for a total of 90 days or more during the calendar year, or if you are absent when you file your application. For purposes of the dividend program, absences are counted in cumulative days, not consecutive days, in a calendar year. The division counts the day you leave as a day in Alaska; the day you return is counted as an absence day. In other words, the day you return is counted as a day absent, the day you left is not.

**Example:** You left Alaska on March 1 and returned May 20, and again October 1 returning October 16. The total number of absence days in this example is 95 days (80 for the March 1 through May 20 absence and 15 days for the October absence). All absences must be reported on your dividend application because your total absence days exceed 90 days. Since the total number of days is less than 180 days, you may still be eligible for a dividend.

## Allowable Absences

Permanent Fund Dividend laws allow persons to be absent from Alaska for more than 180 days total in a qualifying year if they are absent for one or more of the following reasons. Additional rules may apply to each type of absence. For additional information refer to [PFD Statutes and Regulations \(PDF\)](#).

1. receiving secondary or post-secondary education on a full-time basis;
2. receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;
3. serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is
  - i. serving on active duty as a member of the armed forces of the United States; and
  - ii. eligible for a current year dividend.
4. serving under foreign or coastal articles of employment aboard an oceangoing vessel of the U.S. merchant marine;
5. receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change;

6. providing care for your parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;
7. providing care for your terminally ill family member;
8. settling the estate of your deceased parent, spouse, sibling, child or stepchild provided the absence does not exceed 220 cumulative days;
9. serving as a member of the United States Congress;
10. serving on the staff of a member from this state of the United States Congress;
11. serving as an employee of the state in a field office or other location;
12. accompanying a minor who is absent under reason (5) above;
13. accompanying another eligible resident who is absent for reasons (1), (2), (5)-(12) as the spouse, minor dependent, or disabled dependent of the eligible resident;
14. serving as a volunteer in the federal peace corps program;
15. training or competing as a member of the United States Olympic Team;
16. participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State.

**Example:** You are absent from Alaska for the entire calendar year while serving on active duty in the army in Fort Lewis, Washington. While out of state, you claimed Alaska on your Leave and Earnings Statement (LES) as your state of residency for the entire calendar year. You may be eligible for a dividend because you are on an allowable absence. However, note the 72-hour rule below.

**Example:** In January, you and your child moved to Eugene, Oregon to be with your wife who is a full-time student at the University of Oregon. Your wife was a full-time student for the whole year except summer school. You, your wife and child may all be eligible for a dividend because you are on allowable absences. Your wife is on the full-time student absence under (1) and you and your child are on allowable absence (13) accompanying an eligible resident. However, note the 72-hour rule below.

## 72-Hour Rule

All persons claiming allowable absences must be physically present in Alaska for at least 72 consecutive hours at some time during the two prior years to the current dividend year.

**Example:** You are an Alaska resident who has been stationed in Fort Benning, Georgia on active duty military service since July 1, 2013 and are applying for a 2016 dividend. You returned to Alaska from June 6 through June 11, 2014. You meet the 72 hour rule for a 2016 dividend because you were in Alaska for more than 72 consecutive hours during the two prior years (2014 and 2015).

The commissioner of the Department of Revenue may waive this rule for military members, their spouses and dependents during times of national emergency. If applicable, contact the Permanent Fund Dividend Division to see if there is a waiver in effect for the dividend year you are applying for.

**Proof of returning for 72 consecutive hours is required.** Examples of proof are travel records, in the applicant's name, showing the full dates such as airline boarding passes, airline mileage plan history, Alaska Marine Highway tickets or hotel receipts. Other types of proof may be a statement from an Alaska employer

on employer's letterhead, military orders including a PCS to move to Alaska, medical records showing treatment or hospitalization, or credit card statement or receipts showing point of sale transactions.

## Five-Year Rule

After an individual has been absent from the state for more than 180 days in each of the five preceding qualifying years, the department shall presume that the individual is no longer a state resident. The individual may rebut this presumption by providing clear and convincing evidence to the department that the individual was physically present in the state for at least 30 cumulative days during the past five years; and the individual is a state resident as defined in AS 43.23.095.

To determine whether an individual intends to return and remain in the state indefinitely, the department shall consider all relevant factors, including the length of time the individual was absent from the state compared to the length of time the individual was physically present in the state; the frequency and duration of voluntary return trips to the state during the past five years; whether the individual's intent to return to and remain in the state is conditioned on future events beyond the individual's control and the ties the individual has established with the state or another jurisdiction, as demonstrated by maintenance of a home, payment of resident taxes, registration of a vehicle, registration to vote and voting history, acquisition of a driver's license, business license, or professional license; and receipt of benefits under a claim of residency in the state or another jurisdiction and the priority that the individual gave the state on an employment assignment preference list, including a list used by military personnel.

## Absences in Addition to Allowable Absences

If you were absent for more than 180 total days in a calendar year including one or more allowable absences during the year, you have a limited number of days that you may be absent for other reasons in order to be eligible for the dividend. There are different rules that apply to the total number of days allowable depending on the circumstances.

## Military Members and Family

If you are active duty in the armed services, you and your family (spouse, minor dependent and disabled dependent) can be absent an additional 180 days if you are only claiming your active duty service time as an allowable absence. If you claim other allowable absences ([AS 43.23.008](#)), your additional days will be limited as follows:

- If claiming an absence as a full-time student in addition to your active duty service time, you are limited to 120 additional days.
- If claiming any other allowable absence in addition to your active duty service time, you are limited to 45 additional days.

**Example:** You are a military member and get discharged from active service on July 1. While you were serving in the military, your wife and minor child accompanied you. You and your family decided to spend time on the East Coast after your discharge and return to Alaska September 1 (62 days). In October, you take a vacation in California

from October 2 to November 15 (44 days). You and your family will still be eligible for a dividend because you were not absent from Alaska for more than 180 days in addition to your allowable military absence.

**Example:** You are a student at the University of Washington and graduate May 14. You stay in Seattle after school until June 1 and then take an extended vacation in Mexico until September 30 (139 days). You return to Alaska October 1. On October 15, you enlist for active duty military and are stationed outside of Alaska. Even though you are claiming a military absence and had less than 180 additional absence days, you will not be eligible for a dividend because you also claimed an allowable absence as a student. To be eligible for a dividend you would have needed to be absent less than 121 days in addition to the period(s) that you were a full-time student or on active duty military service.

## Students

If you are a full-time student in good standing, you and your family (spouse, minor dependent and disabled dependent) can be absent 120 days in addition to your education as long as you are only claiming your student absence as an allowable absence. If you claim other allowable absences, your additional days will be limited to 45 days.

**Example:** You are a student in Seattle meeting the requirements of the education allowable absence and attend school from January 5 through May 15. You then take a job in Seattle for the summer and are out of school from May 16 through August 20 (96 days). For the remainder of the year, you are in school in Seattle from August 21 through December 15. You then return to Alaska to be with family for Christmas break from December 16 through January 4 the next year. You will still be eligible for a dividend since you were on an education allowable absence during the year and the additional days you were absent was less than 121 days.

## Medical, Family Care, and Other Absences

If you are not a military member or student, and you are claiming an allowable absence of more than 180 days, you are limited to 45 additional days for any reason, regardless of the circumstances.

**Example:** You are out of state from January 5 to April 8 receiving continuous medical treatment under a licensed physician's care (an allowable absence). Later that year you are absent from August 10 through September 29 for vacation (50 days). You are absent from October 20 through December 31 again receiving continuous medical treatment under a licensed physician's care. Even though you were on an allowable absence during the year, you will not be eligible for a dividend because you had more than 45 additional days of absences during the time you were on vacation in August and September. To be eligible for a dividend, you would have needed to be absent less than 46 additional days.