

**HB**

**241**

<TARGET><BILL>HB 241</BILL><SUBJECT>HB  
241</SUBJECT><COMM>HFSH29</COMM></TARGET>

# Alaska Legislature

## Representative Charisse Millett

### Session:

State Capitol Building  
Juneau, AK 99801  
Phone (907) 465-3879  
Fax (907) 465-2069  
Toll free (888) 269-3879



### Interim:

Anchorage LIO  
716 W 4<sup>th</sup> Ave.  
Anchorage, AK 99501  
Phone (907) 269-0222  
Fax (907) 269-0223

### *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.

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*District 25*

House Bill 241  
Sectional Analysis

Section One: Defines a "non-resident" as an individual who is not eligible to receive a permanent fund dividend, and that residency may be proved by showing eligibility for a permanent fund dividend.

Section Two: Amends the duties of the Department of Revenue to include confirming for the Alaska Commercial Fisheries Entry Commission that an individual is eligible to receive a permanent fund dividend.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 241  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

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 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			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

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

BILL NO. HB241

### 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 RPFI, 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.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 241  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

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 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</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>	<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>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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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:	<u>Carol A. Petraborg, Director</u>	Phone:	<u>(907)465-6077</u>
Division:	<u>Administrative Services</u>	Date:	<u>03/11/2016 11:50 AM</u>
Approved By:	<u>Kevin Brooks, Deputy Commissioner</u>	Date:	<u>03/11/16</u>
Agency:	<u>Fish and Game</u>		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 241

**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.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 27, 2016

**SUBJECT:** Constitutionality of HB 241 (29-LS1253\A)  
(Work Order No. 29-LS1332)

**TO:** Representative Louise Stutes  
Attn: Reid Harris

**FROM:** Alpheus Bullard *AB*  
Legislative Counsel

You asked about the constitutionality of HB 241, "[a]n Act relating to the surcharge for commercial fishing permits." The bill provides, for the purpose of assessing the surcharge<sup>1</sup> a nonresident might pay for the issuance or renewal of a limited entry or interim-use commercial fishing permit (permit), that a "nonresident" is an individual who is not eligible to receive a permanent fund dividend under AS 43.23.005(a)(2) - (7)."<sup>2</sup>

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<sup>1</sup> Alaska courts have held that the state may "charge non-residents a differential which would merely compensate the State for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay." *Carlson v. State (Carlson I)*, 798 P.2d 1269, 1274 - 75 (Alaska 1990) (quoting *Toomer v. Witsell*, 334 U.S. 385, 399 (1948) (internal quotation marks omitted) (emphasis in original omitted)).

<sup>2</sup> AS 43.23.005(a)(2) - (7) require an individual to be a lawful resident of the state, absent from the state only as allowed under AS 43.23.005, and compliant with military selective service registration requirements. AS 43.23.005(a)(2) - (7) provide that:

(a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual

[...]

(2) is a state resident on the date of application;

(3) was a state resident during the entire qualifying year;

(4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;

(5) is

(A) a citizen of the United States;

The bill changes a residency requirement in AS 16.43.160 to what is, essentially, a durational residency requirement.<sup>3</sup> Reid Harris clarified that you are interested in the constitutionality of the bill as it applies to a state resident (under AS 01.10.055) who would not qualify as a "resident" under the bill's durational residency requirements.<sup>4</sup>

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(B) an alien lawfully admitted for permanent residence in the United States;

(C) an alien with refugee status under federal law;  
or

(D) an alien that has been granted asylum under federal law;

(6) was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008; and

(7) was in compliance during the qualifying year with the military selective service registration requirements imposed under 50 U.S.C. App. 453 (Military Selective Service Act), if those requirements were applicable to the individual, or has come into compliance after being notified of the lack of compliance.

<sup>3</sup> The terms "resident" and "nonresident" are not defined for the purposes of AS 16.43.160. Accordingly, under AS 01.10.020, the definition of "residency" at AS 01.10.055 controls how the term "nonresident" in AS 16.45.160 is defined. That section provides:

**Sec. 01.10.055. Residency.** (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

<sup>4</sup> Telephone conversation of January 19, 2016.

### **Short answer**

While the bill's durational residency requirements would likely be upheld by a court, the manner in which the nonresident surcharge (for the issuance or renewal of a commercial fishing permit to a "nonresident") is currently calculated may have to be changed (if the bill became law) to reflect the state's actual costs attributable to the bill's newly defined group of "nonresidents," which would include both actual nonresidents and state residents who do not meet the bill's new residency requirements. If the nonresident surcharge differential is not adjusted, the surcharge may be vulnerable to a substantive due process challenge.

### **Durational residency requirements**

Under the state equal protection clause, a durational residency requirement will be evaluated on a sliding scale under which the goal of the legislation and the importance of the individual rights affected are considered.<sup>5</sup> *State v. Anthony*, 810 P.2d 155 (1991). Whether the durational residency requirement will be upheld depends on the importance of the individual interest being affected, the importance of the state purpose asserted, and the closeness of the "fit" between the durational residency requirement and the achievement of the state's purpose. As the importance of the individual rights affected increases so does the burden on the state to demonstrate that its goal justifies the intrusion on the individual's interests in equal treatment and that the goal is rationally related to the means chosen to achieve it.

In the framework of state imposed durational residency requirements, needs-based programs like public assistance, general assistance, and emergency medical treatment provide "necessities of life" and will be assigned great importance by a court.<sup>6</sup> If the right denied is a fundamental right, like the right to run for local public office, the right will also be assigned great importance by the court.<sup>7</sup> A state program or benefit that is not

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<sup>5</sup> This memorandum examines an equal protection challenge only under the Constitution of the State of Alaska, because the state constitution's equal protection clause is more protective of individual rights than the federal constitution's equal protection clause, an analysis under the federal constitution is unnecessary. *See State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

<sup>6</sup> The United States Supreme Court has made it clear that a program that provides "basic necessities of life" based upon need cannot be subject to a durational residency requirement of one year. *See Shapiro v. Thompson*, 394 U.S. 618 (1969) (involving state welfare benefits) and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (involving medical benefits).

<sup>7</sup> In *Pelozza v. Freas*, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court struck down a three-year durational residency requirement to stand for election to the Kenai Borough Assembly. The Court in *Pelozza* noted at page 691, footnote 8: "We are inclined to consider problematic any period longer than one year" (the Court had earlier upheld a

needs-based or that does not provide "necessities" will be assigned less importance by the court. Once the importance of the specific individual right asserted is determined by the court, it will evaluate the state's interest in having a durational residency requirement (in these situations, for the most part, the state usually asserts the importance of making sure the recipient of the benefit is a bona fide resident who plans to have ties to the state). In the final step of the court's evaluation, it will examine the "fit" between the state's purpose and the means used to achieve the purpose.

**Discussion: durational residency requirement to avoid surcharge**

A court will likely apply minimum scrutiny under the state equal protection clause to an individual's interest in receiving or renewing a commercial fishing permit at a price reserved for residents, because only the individual's economic interest is implicated, this interest is not "needs-based," and the durational residency requirement does not involve suspect or quasi-suspect classifications.<sup>8</sup> The bill does not limit who may fish commercially,<sup>9</sup> instead, it affects only non-residents' and certain residents' monetary interest in avoiding a surcharge for the issuance or renewal of a commercial fishing permit. Accordingly, a court is likely to address such a right in the same manner as the

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one-year requirement to stand for election to local government (*Castner v. City of Homer*, 598 P.2d 953 (1979)).

<sup>8</sup> The United States Supreme Court has held that there is no fundamental right or suspect class involved in an equal protection analysis of a resident preference. *Martinez v. Bynun*, 461 U.S. 321, 328, (1983).

<sup>9</sup> If the bill serves to restrict who is allowed to commercially fish in the state, the bill would be subject to a higher level of scrutiny because Alaska courts have held that the right to engage in an economic endeavor within a particular industry is an important right for purposes of equal protection analysis. In order for such a classification to be valid under the state's equal protection test, it will be subjected to close scrutiny, and must have a close relation to an important governmental objective. *State, Dept. of Transportation v. Enserch Alaska Const., Inc.*, 787 P.2d 624, 631 - 632 (Alaska 1990); *Matson v. State Commercial Fisheries Entry Comm.*, 785 P.2d 1200, 1205 (Alaska 1990); and *Malabed v. N. Slope Borough*, 70 P.3d 416 (Alaska 2003).

Similarly, a state law that is interpreted by a court to affect access to a fish and game user group in Alaska will be reviewed under art. VIII, sec. 2 of the Constitution of the State of Alaska. This "Uniform Application" section subjects a state law or action to "more stringent review . . . than standard equal protection [review] under article I, section 1." *Gilbert v. Department of Fish and Game*, 803 P.2d 391, 398 (Alaska 1990). "In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important [and the] means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values." *McDowell v. State*, 785 P.2d 1, 10 (Alaska 1989).

court has addressed the right of persons to receive a PFD. Alaska courts have held that the right to receive a PFD implicates only an economic interest and so an equal protection claim concerning the denial of a dividend should be reviewed under minimum scrutiny. *Underwood v. State*, 881 P.2d 322 (Alaska 1994); *State v. Anthony*, 810 P.2d 155, 158 (Alaska 1991).<sup>10</sup>

Because a monetary interest is a less important individual right for the purposes of an equal protection analysis, the state would need only to demonstrate that this bill's residency requirements address a legitimate governmental purpose and that the requirements have a fair and substantial relationship to accomplishing this purpose. While I do not know what the intended purpose of this legislation is, any legitimate state purpose that has a fair and substantial relationship to the bill's requirements will be sufficient for the court to uphold the bill.

#### Note

The Alaska Supreme Court has upheld a differential charge based on additional expenses related to nonresidents. In the *Carlson* cases the Alaska Supreme Court held that the state may "charge nonresidents a differential which would merely compensate the State for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay." *State v. Carlson*, 65 P.3d 851, 855 quoting *Carlson v. State*, 798 P.2d 1269, 1274 - 1275 (Alaska 1990).<sup>11</sup> However, this bill would impose the surcharge on both nonresidents and those residents that do not satisfy the bill's residency requirements -- persons who may likely still pay "taxes which only residents pay." Accordingly, if the bill became law, the surcharge would need to be justified with a purpose that applies to these state residents, or it could be challenged as a violation of substantive due process by a resident who does not meet the bill's residency requirements.

The legal doctrine of substantive due process under art. I, sec. 7, Constitution of the State of Alaska, protects a person against unreasonable and arbitrary governmental action. The constitutional guarantee of substantive due process assures that legislation is not arbitrary, but is based on some rational policy. *Allam v. State*, 830 P.2d 435 (Alaska App. 1992).

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<sup>10</sup> See also *State v. Cosio*, 858 P.2d 612, 625 (1993); *Brodigan v. Alaska Dep't of Revenue*, 900 P.2d 728 (Alaska 1995); *Church v. Department of Revenue*, 973 P.2d 1125 (Alaska 1999) (PFD residency requirements were not unreasonable and were a valid imposition of a bright line rule to ease the administrative burden on the state of determining residency); *Schikora v. State Department of Revenue*, 7 P.3d 938 (Alaska 2000) (no more than 180 days out of state upheld); *Ross v. State*, 286 P.3d 495 (Alaska 2012); and *Heller v. Dep't of Revenue*, 314 P.3d 69 (Alaska 2013).

<sup>11</sup> *Carlson I*, 798 P.2d at 1274 - 75, *id.* at footnote 1.

Representative Louise Stutes  
January 27, 2016  
Page 6

Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people. The constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy.

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

*Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974).

If you have questions, please do not hesitate to contact me.

TLAB:dla  
16-049.dla

# 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>have maintained a home in the state for the preceding 12 months and</i>	✓	✗	ⓘ
<i>are not claiming residency in any other state or receiving benefits from residency of another state</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>	✓	✗	ⓘ

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.

# ALASKA LEGISLATURE

*Representative Jonathan Kreiss-Tomkins*

Angoon · Coffman Cove · Craig · Edna Bay · Elfin Cove · Game Creek · Hollis · Hoonah · Kake · Kasaan · Klawock · Kupreanof · Naukati · Pelican  
Petersburg · Point Baker · Port Alexander · Port Protection · Sitka · Tenakee Springs · Thorne Bay · Whale Pass

rep.jonathan.kreiss-tomkins@akleg.gov

Committees:  
Fisheries  
Judiciary  
Rules  
State Affairs



Juneau, Alaska 99801 (Jan. – April)  
State Capitol, Room 426  
(907) 465-3732

Sitka, Alaska 99835 (May – Dec.)  
201 Katlian Street, Ste. 103  
(907) 747-4665

## **HB 366 Sponsor Statement**

### **Improving Access and Opportunity in Alaska Fisheries**

House Bill 366 improves Alaskans' access and opportunity in Alaska fisheries.

Alaska's commercial fisheries are a critical and sustainable source of employment, income, cultural identity, and state and local tax revenue for Alaska and its people. Over 30,000 commercial fishermen harvest over \$6 billion worth of fish and shellfish in waters off Alaska each year. Many coastal communities have few alternative economic and job opportunities outside commercial fishing.

Alaskans want a vibrant and sustainable Alaska fishing industry supporting economically empowered and self-sufficient Alaska communities.

State-issued limited entry fishing permits, however, are leaving Alaska, particularly rural Alaska, and nonresident ownership is increasing. Permits are getting more expensive — the value of Alaska's limited entry salmon permits has more than doubled in the last 15 years. The high cost of entry makes it difficult for new and young Alaska fishermen to enter Alaska fisheries, a "graying of the fleet" phenomenon that is well documented. In 1980, the average age of an Alaska fishery permit holder was just over 39 years; in 2014, the average age was nearly 50.

Just as the Division of Investments' Commercial Fishing Revolving Loan Fund has helped thousands of Alaskans enter Alaska fisheries, permit banks are a tool to help Alaskans access Alaska fisheries — and to empower coastal Alaska communities with greater economic self-sufficiency.

House Bill 366 allows communities to band together and create permit banks. New and young fishermen can access permits from permit banks as a stepping stone before buying a permit outright and becoming independent fishermen. Just as one usually rents before buying a house, permit banks create the opportunity for new and young fishermen to lease a permit for a few years, make some mistakes, save some money, and get their legs solidly under them before making the major life commitment, and taking on tens or hundreds of thousands of dollars of debt, to buy a permit outright.

House Bill 366 aims to reverse the dual trends of the "graying of the fleet" and of permit out-migration from Alaska by creating a tool, similar to the Commercial Fishing Revolving Loan Fund, that improves Alaskans' access and opportunity in our fisheries.

ALASKA LEGISLATURE  
*Representative Jonathan Kreiss-Tomkins*

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rep.jonathan.kreiss-tomkins@akleg.gov

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(907) 747-4665

## HB 366 – Community Permit Banks

### Sectional Analysis, Version S

#### Section 1

Adds, to uncodified law, legislative findings regarding the importance of fisheries access and opportunity to Alaska communities.

#### Section 2

Conforming amendment to existing law. Ensures that a person fishing with a permit from a permit bank has follow the same rules regarding physical presence during operation of stationary fishing gear as any other permit holder.

#### Section 3

Conforming amendment to existing law. Allows a person fishing with a permit accessed via a permit bank to operate commercial fishing gear.

#### Section 4

Conforming amendment to existing law. Clarifies that a person fishing with a permit accessed via a permit bank need not hold a crewmember fishing license in order to engage in commercial fishing.

#### Section 5

Conforming amendment to existing law. Prohibits a person fishing with a permit accessed via a permit bank from obtaining a seven-day crewmember fishing license.

#### Section 6

Conforming amendment to existing law. Clarifies that AS 16.05.480 applies equally to permit holders and persons fishing with a permit accessed via a permit bank.

#### Section 7

Conforming amendment to existing law. Clarifies that a person fishing with a permit accessed via a permit bank can lawfully deliver and land fish in the state.

**Section 8**

Conforming amendment to existing law. Clarifies that a person fishing with a permit accessed via a permit bank can lawfully harvest, transport, and sell fish.

**Section 9**

Prohibits a permit bank from providing a permit to a person whose commercial fishing privileges are pending a suspension proceeding.

**Section 10**

Conforming amendment to existing law. Allows fish buyers and processors to legally purchase fish from a person fishing with a permit accessed via a permit bank.

**Section 11**

Conforming amendment to existing law. Allows a person fishing with a permit accessed via a permit bank to participate in hatchery openings and makes that person subject to hatchery assessments.

**Section 12**

Allows a person fishing with a permit accessed via a permit bank to participate in forming an association to levy and collect an assessment for the purposes of securing a loan from the fisheries enhancement loan program.

**Section 13**

Conforming amendment to existing law. Clarifies that a person fishing with a permit accessed via a permit bank to operate commercial fishing gear.

**Section 14**

Conforming amendment to existing law. Clarifies that a person fishing with a permit accessed via a permit bank can operate commercial fishing gear.

**Section 15**

Conforming amendment to existing law. Allows publicly controlled permit banks to lease limited entry permits.

**Section 16**

Allows a limited entry permit holder to will his or her permit to a publicly controlled permit bank upon death.

### **Section 17**

Prohibits a person fishing with a permit accessed via a permit bank from transferring the permit in the event of the person's death and from voluntarily relinquishing the permit to the state.

### **Section 18**

States that a person fishing with a permit accessed via a permit bank is not eligible for income-based reductions in Commercial Fisheries Entry Commission fees.

### **Section 19**

Conforming amendment to existing law. Makes it possible for a publicly controlled permit bank to lease state limited entry permits.

### **Section 20**

If the number of entry permits in a fishery is less than the optimum number, provides the option for the Commercial Fisheries Entry Commission to issue new permits to permit banks in addition to other applicants.

### **Section 21**

Requires a permit bank to be notified if a person accessing a permit from the bank is assessed points for a fishing violation in a salmon fishery.

### **Section 22**

A permit holder who is suspended from commercially fishing for salmon cannot participate in that fishery with a permit accessed via a permit bank.

### **Section 23**

Applies rules for suspension from a commercial salmon fishery equally to a person fishing with a permit accessed via a permit bank.

### **Section 24**

Includes community permit banks in the definition of person for the purposes of chapter AS 16.43.

### **Section 25**

**Sec 16.44.010:** Authorizes the creation of community permit banks as public corporations of the state, administratively located within the Department of Commerce, Community, and Economic Development (DCCED). Requires DCCED, in consultation with the Department of Fish and Game, to establish permit bank regions based on the Commercial Fisheries Entry Commission's salmon administrative areas (see Section 39 also).

A permit bank may be established in a region upon joint application of 2/3 of the municipalities in the region, and upon a finding by DCCED that establishing a permit bank would prevent economic distress among fishermen, improve access to fisheries for state residents, and assist communities in becoming economically self-sufficient. If the municipalities within a region do not apply to create a permit bank, no permit bank will exist in that region. Sec 16.44.010 also grants DCCED the authority to audit permit banks and dissolve permit banks that become financially insolvent.

**Sec 16.44.020:** Describes the governance of community permit banks. Each bank established under Sec 16.44.010 shall be governed by a board of directors appointed by the municipalities within the region. Each municipality may appoint a single member to the board of directors. Board members shall serve staggered three-year terms. The municipalities may choose to allow unincorporated communities to appoint members to the board as well.

Sec 16.44.020 also establishes that a majority of members constitutes a quorum for board business, that board members may not lease permits from a permit bank, that the board shall elect a chair and vice-chair, that the board may create an executive governance committee to which certain board powers are delegated, and that the board may hire a manager. A manager may not lease an entry permit from the permit bank.

Permit banks are also authorized to share administrative resources with other permit banks, with regional hatchery associations, with village or regional Native Corporations, with Alaska regional development organizations (ARDORs), or with other entities created for a purpose related to commercial fishing or services. Unless a permit bank is sharing administrative resources with one of the entities listed above, the permit bank shall be administratively located in the municipality in its region with the greatest number of active entry permits per capita as of January 1, 2016.

**Sec 16.44.030:** Allows permit bank board members to receive reasonable compensation, but compensation may not exceed the median rate of compensation provided to elected members of municipal governments in the permit bank region.

Requires permit banks to minimize administrative expenses in order to enhance the permit bank's ability to acquire limited entry permits and return maximum benefit to the people within the permit bank region.

Empowers DCCED to adopt regulations governing the administrative expenses of permit bank and the compensation of board members.

In order to ensure permit banks are self-sustaining and do not impose costs on the state, Sec 16.44.030 requires the Commissioner of DCCED to charge fees to permit banks in order to reimburse DCCED for all expenses incurred in connection with DCCED's permit bank-related duties.

**Sec 16.44.040:** Exempts community permit banks from taxes and assessments of the state, local governments, school districts, and other political subdivisions of the state. Permit banks are not exempt from paying CFEC fees on permits owned by the permit bank. The section also does not exempt lessees

of permits from paying applicable fees, taxes, or assessments, such as the fisheries business tax, applicable fisheries enhancement fees, and seafood development taxes.

**Sec 16.44.050:** Spells out powers of community permit banks, including the power to adopt bylaws, expand board membership to include unincorporated municipalities, borrow funds for the acquisition of limited entry permits, purchase and sell limited entry permits, lease limited entry permits to qualified lessees, accept grants and donations, and use funds to support programs that assist commercial fishermen.

Sec 16.44.050 requires a permit bank to lease the permits it controls by competitive bid. The permit bank must set lease terms that maintain the financial solvency of the bank, and must invest lease revenue in the purchase of additional entry permits to the greatest extent practicable. In allocating leases, permit banks shall consider factors including the lease applicant's economic and historical dependence on the fishery.

Permit banks shall submit annual reports to DCCED that summarize the permit bank's assets and activities, including the terms and conditions of leases provided by the permit bank.

**Sec 16.44.055:** Makes limited entry permits acquired by a permit bank the legal property of DCCED. Allows the permit bank to sell or lease a permit subject to approval by the Commissioner of DCCED. Provides that leasing fees and proceeds of permit sales shall be used to pay for the operations of the permit bank and for purchasing additional limited entry permits.

**Sec 16.44.060:** Permit banks may only acquire permits for fisheries prosecuted within the permit bank region. Limits a permit bank to holding 4% of the entry permits issued for a given fishery. If a fishery has 50 or fewer permits, the permit bank can hold up to two permits for that fishery.

A permit bank must own a number of permits of each permit type within the permit bank region that is proportionally representative of the total number of permits of each permit type within the permit bank region. This requirement does not apply to a permit bank that has acquired 10 or fewer permits. This requirement may also be waived by the Commissioner of DCCED upon petition approved by 2/3 of the permit bank board and upon the Commissioner finding the waiver will help the permit bank achieve its statutory purposes.

**Sec 16.44.070:** Requires permit banks to establish lease terms for permits that help the permit bank fulfill its statutory purposes. Limits the length of a permit lease to six years. The section also prohibits a person from leasing an entry permit for a particular fishery for more than six cumulative years. Prohibits subleasing of permits accessed via permit banks, but provides for emergency transfers in the case of illness, disability, death, or required military or government service. Also allows a permit bank to create a lease-to-own program.

**Sec 16.44.080:** Limits permit banks to leasing only to a resident of Alaska, defined as a person who maintains a domicile in the state and does not claim benefits of residency in another state. A permit bank may terminate the lease of a person who no longer fits the residency criteria. The section also

prohibits a permit bank from leasing a permit to a person who hold a permit for that same fishery or a person against whom proceedings are pending to suspend commercial fishing privileges.

**Sec 16.44.099:** Defines the terms "board," "commission," "commissioner," "department," "entry permit," "fishery," and "permit bank" for the purposes of AS 16.44.

#### **Section 26**

Places employees of a permit bank in the exempt service.

#### **Section 27**

Requires members of the board of directors of a permit bank to submit the same financial disclosures as other public officers.

#### **Sections 28-30**

Allows a person accessing a permit via a permit bank to participate in elections to approve or terminate salmon enhancement taxes.

#### **Sections 31-32**

Allows a person accessing a permit via a permit bank to participate in elections to approve or terminate salmon fishery assessments.

#### **Section 33**

Requires a person accessing a permit via a permit bank to pay applicable permit buy-back assessments at the same rate as a person who holds a limited entry permit.

#### **Sections 34-36**

Allows a person accessing a permit via a permit bank to participate in elections to approve or terminate a seafood development tax.

#### **Section 37**

Adds to the duties of the Department of Commerce, Community, and Economic Development the duty to carry out its permit bank-related functions under AS 16.44.

#### **Section 38**

Uncodified law requiring the length of terms of the original members of permit bank boards of directors to be determined by lot. Also specifies that a board of directors can include members from unincorporated communities from the beginning, upon request of the municipalities applying to establish a permit bank.

**Section 39**

Uncodified law stating that the boundaries of permit bank regions shall be based upon the boundaries of CFEC's salmon administrative areas as those areas existing in regulation on the effective date of this act. Each community shall be clearly assigned to a particular permit bank region.

**Section 40**

Establishes the act's effective date as January 1, 2017.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109  
PO Box 110302  
Juneau, Alaska 99811-0302  
Main: 907.789.6160  
Licensing: 907.789.6150  
Fax: 907.789.6170

To: Benjamin Brown, Commissioner      Date: March 25, 2015  
From: Frank Glass,      Subject: Residency Claims  
Adjudications Project Leader

You asked me to prepare a response to the inquiry by Reid Harris about issues presented by a constituent to Rep. Louise Stutes.

A similar request for a response was presented to the CFEC by the Office of the Governor. That inquiry included a list of 159 individuals with addresses outside of Alaska and of 2289 individuals who were said to have claimed Alaska residency but did not receive Permanent Fund dividends.

False claims of Alaska residency are a serious concern that should be investigated, but the lists generated from CFEC data and PFD data are not a good starting point for reasons including:

1. Not all qualified Alaska residents apply for PFDs. Some just neglect to do so. Others want to spite judgment creditors.
2. The PFD program bases its qualifications on a specific calendar year. CFEC licenses are based on the 12 months before permit renewal.
3. The PFD program limits the number of days the applicant can be away from Alaska; longer absences must be for specified allowable reasons. An Alaskan resident can fail to qualify for a dividend if reasons for absence are not on the allowable list.
4. The list of individuals claiming to be residents is overinclusive. Some are listed as permit holders even though their permits may have been cancelled years earlier for non-renewal; the CFEC continues to list these permits and the address of the last holder in order to preserve the unique permit number. Some listed individuals obtained their permits by transfer, after the permit had been renewed by the prior owner. Not all entries in the data base about resident status are based on declarations made on the renewal form by the permit holder.
5. Some legitimate Alaska residents can use out of state addresses if they are away for higher education, military service, or other reasons that have long been recognized as allowable absences.

My recommendation for investigating false claims of Alaska residency is to try to locate individuals who made simultaneous claims for residency-based benefits in other states.

Exchanging fishing licensing information with the State of Washington was a productive exercise in the past. Similar inquiries could be made today.

I would recommend that this line of inquiry be made by the Department of Public Safety because their investigation could be broadened to include all agencies that have benefits based on Alaska residency and because their personnel are based throughout Alaska.

The remainder of this memorandum is about the CFEC's experience in the investigation and enforcement of residency claims over the years and about my recommendations for pursuing these claims.

## **Background**

Prior to the Alaska Supreme Court's decision in *Carlson v. State*, 798 P.2d 1269 (Alaska 1990). (Carlson I.) the CFEC charged nonresidents three times the permit renewal fee paid by residents. This 3:1 differential applied to all permits held by an individual each year. But as a result of the *Carlson* case, the CFEC now charges each nonresident one annual surcharge (currently \$190) no matter how many permits they hold.

During the 1980s, the CFEC was actively investigating and pursuing enforcement actions for false residency claims. At that time, the arrearages owed to the state by nonresidents who paid resident fees could be considerable, especially for fishermen who held several permits each year.

And in addition, limited entry permit applications at the time had a ranking criterion based on the population or urban/rural character of their place of domicile. Applicants from sparsely populated or rural areas received points, while applicants from cities or densely populated areas did not. This criterion, known as "availability of alternative occupations" in the point system, although not based on Alaska residence per se, tended to favor fishermen from smaller Alaskan communities. The CFEC found that nonresidents who falsely claimed to be residents when renewing permits often made false claims about their place of domicile on their entry permit applications also.

The *Carlson* case resulted in five decisions by the Alaska Supreme Court. The final decision in the case was issued in 2012. Most of the members of the class who qualified for refunds received them in 2014.

Because the *Carlson* class action was for partial or total refunds of the differential between resident and nonresident permit and license fees dating back to 1984, the CFEC decided, in 1994, to put permit fee arrearage cases on hold, pending the final resolution of *Carlson*. It made no sense to collect arrearages that would later be repaid, with interest, to nonresident permit holders.

In permit application point systems adopted after 1987, the CFEC dropped the criterion of "availability of alternative occupations" based on the applicant's place of domicile. Participants in the fisheries limited after 1987 tended to be Alaskans from fishing communities, so it was thought to be unnecessary to use a criterion that would give most applicants the same number of points. In addition, classifications based on geography were often challenged in

court. After one Alaska Supreme Court decision, the CFEC had to revise the way it awarded availability of alternative occupations points in the salmon fisheries. *Deubelbeiss v. CFEC*, 689 P.2d 487 (Alaska 1984).

In large part due to these legal circumstances, the CFEC cut back on its investigation and enforcement of cases involving residency.

### **Administrative costs of investigation and enforcement**

When we were actively investigating false residency claims, we found that the cases that were the most easily prosecuted and proven are those where someone claiming to be an Alaska resident made simultaneous claims of being a resident somewhere else. When the CFEC was actively investigating and enforcing residency cases in the 1980s, it entered a cooperative agreement with the State of Washington where Alaska and Washington exchanged licensing information and found a number of individuals who were claiming to be residents of both states at the same time.

Some of these cases were referred to law enforcement for criminal charges. Some were pursued under the CFEC's "notice to show cause" statute, AS 16.43.960, which allowed the CFEC to revoke or suspend permits and impose fines upon proof that someone knowingly provided false information to the CFEC for the purpose of obtaining a benefit.

In cases where the individual had not made simultaneous residency claims in Alaska and another state, but we had some evidence of activities inconsistent with an Alaska domicile, the investigation and enforcement costs were considerably higher. The inquiry needed to focus on the places where the individual was physical present during the year before permit renewal, and make an inquiry about the activities of other family members, employment history, vehicle licensing and usage, property ownership, storage of personal belongings. The CFEC employed a full-time investigator to make these inquiries during the early 1980s.

But in many these cases, where the CFEC had to weigh factors consistent with Alaska residency against inconsistent factors, the CFEC was not able to prove that the individual **knowingly** made a false claim. We found a number of mistaken claims, where the claimant based a residency claim on things like registering to vote in Alaska, owning residential property in Alaska, and spending more time each year in Alaska than anywhere else, but had not actually established Alaska as their place of domicile. Without proof of a knowingly false claim, the CFEC could not impose punitive sanctions, but could collect the arrearage between the resident and nonresident fee. Before *Carlson*, that differential could amount to thousands of dollars. After *Carlson*, the differential is less than two hundred dollars per year.

The "Residency Info Sheet" link on the Residency Definition page on ADF&G's licensing web site, [www.adfg.alaska.gov/index.cfm?adfg=license.residency](http://www.adfg.alaska.gov/index.cfm?adfg=license.residency), highlights the distinction between cases based on simultaneous residency claims in two different states versus cases based on the more subjective aspects of domicile. When discussing simultaneous claims, the information sheet is unequivocal. If you vote or claim a benefit based on residency elsewhere, you cannot claim resident status in Alaska. But when examining more subjective

matters or weighing factors both consistent and inconsistent with Alaska residency, it has to use qualifiers like "probably," "could be in question," "will be taken into consideration," "appears," and "unlikely."

The CFEC does not require permit holders to provide evidence of residence at each application or renewal. But they do require that each permit holder claiming resident status check the resident box on the form. The applicant must also certify under penalty of perjury that the information on the form is correct. The regulation defining a resident for permit purposes is quoted on the form. The regulation, 20 AAC 05.290, says:

For the purpose of assessing fees for the application for, annual issuance of, or renewal of entry and interim-use permits, an individual is a resident of this state if, on the date of permit application, issuance, or renewal, and throughout the 12-month period before that date, the individual maintained their domicile in this state, did not claim residency in another state, territory, or country, and did not obtain benefits under a claim of residency in another state, territory, or country.

Probably all state agencies that have a definition of residency include the elements of domicile and absence of residency-based claims or benefits elsewhere. Durational requirements vary.

#### **Recommendation and conclusion**

Based on the CFEC's experience in investigating and enforcing residency cases, my recommendation is to focus on cases of simultaneous residency claims or benefits elsewhere. These kinds of claims include:

Fishing and hunting licenses

Voting

School tuition at public colleges and universities

Homestead exemptions

Property tax exemptions

Tax deductions/exemptions for sales of principal place of residence, travel expense, property as a business expense.

I would suggest that the Department of Public Safety take the lead in investigating residency cases. The Department has personnel throughout the state who could investigate suspicious cases in the communities where an individual claims to reside. They could also consider cases of crewmember licenses, which are issued by ADF&G, but have the same nonresident surcharge that applies to CFEC permits. And in addition, they may want to consider those with Alaska sport fishing and hunting licenses.