

LEG. FINANCE - BILLS 1981 - 1982 1626

SB 140 cont. - SB 141

1626

# Alaska State Legislature



SENATOR  
BOB MULCAHY  
REPRESENTING  
THE ALEUTIAN CHAIN,  
KODIAK ISLAND  
AND THE Pribilof Islands

HOME ADDRESS  
P.O. BOX 246  
KODIAK, ALASKA 99615  
(907) 486-3561

DURING SESSION  
POUCH V  
JUNEAU, ALASKA 99811

## State Senate

March 16, 1981

TO: Senators Don Bennett and Ed Dankworth, Co-Chairmen  
Senate Finance Committee

FROM: Senator Bob Mulcahy

SUBJ: CSSB 140 and SB 141

Enclosed is the back-up material for the above bills.

PROPOSED AMENDMENTS TO CSSB 140 THAT  
WERE NOT ADOPTED

Proposed amendment to CSSB 140.

Page 2, line 15.

The maximum term of a commitment to loan may not exceed 18 months. The renewal of a commitment to loan is at the discretion of the Commissioner of Revenue.

Proposed amendment by Commissioner Williams.

Page 2, line 15.

delete the entire line and replace it with the following:

(2) if the fund is a participant in a loan to a fish processor that has not been, or appears unlikely to be, fully repaid within a year from the time the loan was made, then the fund may not participate in a new loan to that processor unless there is in effect a reasonable and realistic agreement, acceptable to all participants in the existing loan, under which the existing loan will be repaid in a prompt and orderly fashion.

Proposed amendment by the governor.

Page 2, lines 15-18

delete the following lines:

(2) the term of a loan may not exceed one year;

(3) the loan must be secured by inventory or accounts receivable of the fish processor and may not exceed 75 percent of the appraised value of the collateral taken as security;

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 140 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a fishery product revolving loan  
7 fund; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.25 is amended by adding new sections to read:

10 ARTICLE 3. FISHERY PRODUCT REVOLVING LOAN FUND.

11 Sec. 44.25.040. ESTABLISHMENT OF LOAN FUND. The fishery product  
12 revolving loan fund is established in the Department of Revenue.

13 Sec. 44.25.045. FISHERY PRODUCT LOANS. The department may pur-  
14 chase participations in loans made to fish processors with facilities  
15 located in Alaska and which are used to finance those processors' in-  
16 ventories of canned, frozen, or processed products from Alaska fish-  
17 eries. *fishery*

18 Sec. 44.25.050. POWERS AND DUTIES OF THE DEPARTMENT. (a) The  
19 commissioner may

20 (1) designate agents and delegate powers to them as is  
21 necessary;

22 (2) adopt regulations to implement AS 44.25.040 - 44.25.065;

23 (3) make and execute contracts and other instruments to im-  
24 plement AS 44.25.040 - 44.25.065;

25 (4) purchase participations in notes and agreements securing  
26 loans in accordance with AS 44.25.040 - 44.25.065;

27 (5) require that loans in which the fund participates be  
28 secured by adequate collateral;

29 (6) acquire real or personal property by purchase, transfer,

1 or foreclosure when that acquisition is necessary to protect a note in  
2 which the fund has an interest.

3 (b) Money in the fund that is not being used for participations  
4 in fishery product loans must be invested by the department in the same  
5 manner as provided for the investment of general fund surplus under  
6 AS 37.10.070.

7 (c) Earnings and interest income from investment and fishery pro-  
8 duct loan participations must be transferred to the general fund. Re-  
9 payments of principal from investments and loan participations must be  
10 returned to the fund.

11 Sec. 44.25.035. LIMITATIONS ON LOANS. (a) Loan participations  
12 purchased under AS 44.25.040 - 44.25.065 are subject to the following  
13 limitations:

14 (1) state participation in a single loan may not exceed 90  
15 percent of the total amount of the loan;

16 (2) the term of a loan may not exceed one year;

17 (3) the loan must be secured by inventory or accounts re-  
18 ceivable of the fish processor and may not exceed 75 percent of the  
19 appraised value of the collateral taken as security;

20 (4) the loan must be originated and serviced by either the  
21 Alaska Commercial Fishing and Agriculture Bank (AS 44.81.010) or by a  
22 state or federally chartered financial institution;

23 (5) the servicing charge on the loan may not exceed one-half  
24 of one percent of the outstanding balance of the loan;

25 (6) the rate of interest, including all service fees, on the  
26 unpaid balance of one loan fund's participation in a loan shall float  
27 at the average rate at which six month U.S. Treasury bills are awarded  
28 in the weekly auction of U.S. Treasury bills, plus three and three-  
29 fourths percentage points, but may not exceed the applicable interest

rate;

(7) loans must be made only to fish processors with facilities located in Alaska;

(8) loans may not be made to fish processors which are 80 percent or more owned or controlled by aliens.

(b) Money in the fund shall be used to purchase participation in loans made to fish processors which are 50 percent or more owned or controlled by persons domiciled in Alaska until these processors needs for loans are met before the money in the fund may be used to purchase participation in loans made to fish processors which are less than 50 percent owned or controlled by persons domiciled in Alaska.

(c) For the purposes of this section

(1) "alien" means

(A) an individual who is not a citizen or national of the United States, or who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under the Immigration and Nationality Act (8 U.S.C. secs. 1101 - 1503), as amended;

(B) a person, other than an individual, that was not created or organized under the laws of the United States or of a state, or whose principal place of business is not located in any state; or

(C) a person, other than an individual, that was created or organized under the laws of the United States or of a state, or whose principal place of business is located in a state, and which is controlled by a person described in (A) or (B) of this paragraph;

(2) "control" means that a relationship exists between a person and fish processor in which the person exercises control consist-

ing of

(A) owning directly or indirectly, or having the power to vote, the percentage indicated of any class of voting security of a fish processor organized as a corporation; or

(B) influencing or affecting in any substantive manner the election of a majority of the directors or trustees of a fish processor organized as a corporation;

(3) "person" means an individual, a corporation, a partnership, an association, a joint-stock company, an estate, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated association, a government, a political subdivision of a government, or a combination of these entities.

Sec. 44.25.060. SALE OR TRANSFER OF MORTGAGES AND NOTES. The department may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages and notes held as security for loans made under AS 44.-25.040 - 44.25.065. The proceeds from the sale or transfer are assets of the fund.

Sec. 44.25.065. DEFINITIONS. In AS 44.25.040 - 44.25.065

(1) "commissioner" means the commissioner of revenue;

(2) "department" means the Department of Revenue;

(3) "fish processor" means a person engaging in a business for which a license is required under AS 43.75.010 - 43.75.090;

(4) "facilities located in Alaska" means facilities at which fisheries products are canned, frozen, or otherwise processed for inventory, including floating facilities which are documented under the laws of the United States as defined in 46 U.S.C. 801, and operate within the three-mile limit or within historic bays and inland waters of the state;

1 (5) "fishery product" means fin fish, shellfish, and fish  
2 byproducts, including but not limited to salmon, halibut, herring,  
3 flounder, crab, clam, cod, shrimp, and pollock;

4 (6) "fund" means the fishery product revolving loan fund.

5 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.  
6 070(c).



# Alaska State Legislature

## Senate

JUNEAU, ALASKA

### RESOURCES SUBCOMMITTEE ON FISHERIES

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 141 "An Act making a special appropriation to  
the Fishery Product Revolving Loan Fund"

The subcommittee has taken testimony and reports SB 141 back to the committee as a whole with the following recommendations.

Members		Recommendation
Senator Mulcahy	<u>Bob Mulcahy</u>	<u>No Pass</u>
Senator Eliason	<u>Don Eliason</u>	<u>u u</u>
Senator Gilman	<u>Don Gilman</u>	<u>No Pass</u>



# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 140 "An Act creating a Fishery Product Revolving  
Loan Fund"

The subcommittee has taken testimony and replaced SB 140 with CSSB 140 and reports CSSB 140 back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy <u>Bob Mulcahy</u>	<u>Do Pass</u>
Senator Eliason <u>Phil Eliason</u>	<u>" "</u>
Senator Gilman <u>Don Gilman</u>	<u>NO Rec</u>

STATE OF ALASKA  
THE LEGISLATURE

OFFICE OF THE CLERK  
ALASKA LEGISLATURE  
607-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1981

SUBJECT:           Constitutionality of giving first priority in  
                    the award of fishery loans to Alaskans.  
                    (CSSB 140)

TO:                 Senator Bob Mulcahy

THROUGH:          Joseph A. Guthrie  
                    Legislative Counsel

FROM:             Bernie M. Tuggle '87  
                    Legislative Legal Extern

You have asked whether first priority in the award of fishery loans under CSSB 140 could be given to companies which are owned 50 percent or more by Alaska residents. Your proposal would be subject to attack under the privileges and immunities clause by individuals and to equal protection attack by corporations.

The privileges and immunities clause, Article IV, section 2 says that:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Corporations, however, are not protected under this clause, since they are not citizens. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). Therefore, only individuals could pursue a privileges and immunities challenge against your proposal.

The purpose of the clause is:

To place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.

March 4, 1981

Paul v. Virginia, 19 L.Ed. 357 (1869). However the clause does not preclude disparity of treatment in situations where there are perfectly valid independent reasons for it. What the clause does bar is discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. A substantial reason for the discrimination would not exist unless there is something to indicate that non-citizens constitute a "peculiar source of evil" at which the discriminatory statute is aimed. Toomer v. Witsell, 92 L.Ed. 1460, 1472 (1948). Moreover, even where the presence or activity of non-residents causes or exacerbates the problem the state seeks to remedy, there must be a "reasonable relationship" between the danger posed by noncitizens, as a class, and the discrimination practiced upon them. Id., at 1473. Therefore, the privileges and immunities clause demands a two-step analysis.

First, do non-residents constitute a peculiar source of evil at which your proposal is aimed? I believe that a reasonable and persuasive argument could be made that they do. Alaska has a strong interest in regulating and controlling those things it claims to "own" (the funds for which the fishery loans would derive). Yet while this interest is by no means absolute, Baldwin v. Montana Fish & Game Comm'n, 56 L.Ed.2d 354 (1978), Alaska's ownership of the funds is a crucial factor. Hicklin v. Orbeck, 57 L.Ed.2d 397, 406 (1978). In Hicklin, the Court found that Alaska had "little or no" proprietary interest in much of the activity swept within the ambit of Alaska Hire. Id. On the other hand, under your proposal Alaska does have a significant proprietary interest, e.g., management of loan funds, and development of the fishing industry. Given this state interest in the funds which would be the source of fishery loans, non-Alaskans could be a "peculiar source of evil" if the loan funds were limited, non-Alaskans flocked to the state to get the loans, etc.

Second, is there a reasonable relationship between your proposal and the class at which your proposal is aimed. Again, I would say "yes". Non-Alaskans are not absolutely barred from receiving a loan; they must simply wait in line. I would conclude that your proposal is constitutionally valid as applied to non-Alaskan individuals.

Senator Bob Mulcahy  
Page 3  
March 4, 1981

Corporations, meanwhile, could mount a Fourteenth Amendment equal protection attack. However your proposal seems valid since it involves no suspect classes and no fundamental rights. Instead, it is an example of the type of socio-economic legislation that warrants a low level rational basis test. Usually, such a test amounts to the judiciary deferring to the legislative judgment.

While the Alaska Supreme Court no longer applies a two-tiered approach to equal protection cases, State v. Erickson, 574 P.2d 1 (Alaska 1978), the result would be the same since there are no fundamental rights or suspect classes involved with your proposal.

In summary, your proposal seems constitutionally valid both in regards to individuals and to corporations.

BMT:JAG:ljb

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3511

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT:           Constitutionality of precluding fish processors  
                    who are 80 percent or more owned by foreign  
                    nationals from obtaining fishery product loans  
                    under SB 140.

TO:                 Senator Bob Mulcahy

FROM:              Joseph A. Guthrie     *JAG*  
                    Legislative Counsel

Attached is a memorandum prepared by Bernie M. Tuggle, a  
legal extern serving with the Division of Legal Services. I  
have reviewed his memorandum and agree with the conclusions  
and advice given in it.

JAG:ljb

Attachment

# STATE OF ALASKA THE LEGISLATURE

PO. CHY. STATE DEPT. 101  
... BEAU ALASKA 1981  
907-465-3211

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

**SUBJECT:** Constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining fishery product loans under SB 140.

**TO:** Senator Bob Mulcahy

**FROM:** Bernie M. Tuggle 67  
Legislative Legal Extern

You have asked me to explore the constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining loans from the fishery product revolving loan fund which would be created by SB 140. This issue raises Fourteenth Amendment equal protection problems because your proposal would discriminate against persons on the basis of alienage.

As a practical matter, many fish processors would be organized under the corporate form of business. This raises the initial question whether corporations are protected under the equal protection clause. The answer is an unequivocal "yes". Grosjean v. American Press Co., 80 L.Ed. 660 (1936). Therefore, corporations and other types of business organizations receive the same amount of equal protection as individuals.

Traditionally, classifications based on alienage, like those based on nationality, or race, are inherently suspect and subject to the highest judicial scrutiny. Graham v. Richardson, 29 L.Ed.2d 534 (1971). However it is unclear whether strict scrutiny applies to non-resident aliens as well as resident aliens. While the numerous cases which have struck down alienage classifications have all involved resident aliens, Truax v. Raich, 60 L.Ed. 131 (1951); Takahashi v. Fish and Game Comm'n, 92 L.Ed. 1478 (1948); Graham v. Richardson, *supra*; Sugarman v. Dougall, 37 L.Ed.2d

853 (1973); In re Griffiths, 37 L.Ed.2d 910 (1973); Hampton v. Mow Sun Wong, 48 L.Ed. 495 (1976); Examining Board v. Otero, 49 L.Ed.2d 63 (1977); Nyquist v. Mauclet, 53 L.Ed.2d 63 (1977); the Court has never directly addressed this issue. The lower courts, meanwhile, have split on whether strict scrutiny is the appropriate level of judicial review for laws which discriminate against non-resident aliens. Compare Moreno v. Toll, 489 F.Supp. 658 (D. Mc. 1980) with United States v. Tsuda Maru, 429 F.Supp. 519 (D. Alaska 1979).

Matthews v. Diaz, 48 L.Ed.2d 478 (1976) suggests that classifications which discriminate against non-resident aliens are not as suspect as classifications discriminating against resident aliens.

Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests. (Emphasis in original)

Id. at 490. This possible difference in levels of judicial scrutiny will prove important as discussed below.

Another factor as to whether your proposal would pass constitutional muster would be the characterization of the benefit sought. Here, that benefit would be a fishery product loan. As a general rule, the strict scrutiny approach is applicable to state classifications based on alienage, excepting those dealing with governmental functions, in which case the less stringent rational basis test will be applied. For example in Foley v. Connelie, 55 L.Ed.2d 287 (1978), the Court upheld a New York statute limiting appointment to the state police force to United States citizens by applying a rational basis, rather than a strict scrutiny test. The application of this less demanding standard, however, was clearly limited to alienage classifications in matters involving the state's historical power to exclude aliens from participation in its political institutions. As the Court stated:

The essence of our holdings to date is that although we extend to aliens the right to education and public wel-

Senator Bob Mulcahy  
Page 4  
March 3, 1981

In summary then, if your proposal includes resident aliens, it probably would be struck down. If your proposal includes only non-resident aliens, then most likely it would survive an equal protection attack.

BMT:ljb

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 27, 1981

The Honorable Bob Mulcahy  
Senate Resources Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 140 and 141 (fish pack loans)

Dear Senator Mulcahy:

This is in response to the questions that came up during my testimony on these bills before your subcommittee.

1. Loans for inventory, not working capital. It is definitely the Governor's intent that these loans would be made to finance fish pack inventories and not to provide processors with working capital loans. As an artifact of being transformed to proper legal style, my draft references to "fish pack loans" were deleted and the present ambiguity as to intent resulted. To restore clarity, I would suggest the following amendments to the version of the bill as introduced:

p. 1, lines 15-16: "located in Alaska and which are used to finance such processors' inventories of canned, frozen or processed [PROCESSING OF] fishery products from Alaskan fisheries."

2. When loans are to be made and funded. It is our intent to use the contractual power proposed in AS 44.25.050(3) to make commitments to participate in pack financings before the fish are bought and processed. However, since the financing would be to finance only the pack or inventory (see comment 1), the execution of such commitments and the actual funding would take place only after the inventory is in existence. Funds for starting up at the beginning of the season would be from a processor's working capital and, hence, could not be advanced under this loan program.

3. Term of the loans. The Committee expressed concern that if there is no clear statutory limit to the term of the loans, processors may attempt to sell last the inventory collateralizing the loan fund's participation in order to prolong or take advantage of the lower interest rate. This

concern will be taken care of by the fact that a participation in a loan will be purchased, rather than a separate loan be made from the loan fund. The fund will be a partner in a fish pack loan, together with the banks or other financial institutions that are participating in the loan. All participants in the loan would have pro-rata, undivided interests in the collateral, and therefore, it would not be possible for a processor to pay off his higher-interest bank participations in the loan while stretching out the State's lower-interest participation.

As I testified, rigidly limiting the term of a loan to one year is unrealistic. True, in good years all the processors can work down their inventories and pay off the loan within 12 months, but good years don't come every year and it is not uncommon for a processor to need more time than that to get squared away. Our leverage over the processor is not so much that we can declare him in default and jerk the loan out from under him, as it is that we can refuse to help finance the current year's pack for him until the last year's pack loan is all cleaned up. This is much more meaningful economic power than the threat of foreclosing on an inventory that the processor would probably have been having trouble with.

I therefore recommend that line 15 on page 2 of the original bill be deleted and the following subsections renumbered accordingly.

4. Collateral. The loans will be for fish pack and will be secured by the pack and the receivables arising from the pack. Fluctuations in the market price for fish products might suddenly lower the value of the pack so that the loan it secures then represents more than 75 percent of the pack's value. What happens then? Literally under the statute, the loan would no longer be one in which we could legally participate. We would be forced to declare a default and foreclose on the loan, thereby acquiring a lot of fish products in the middle of a bad market for fish product.

The large banks that will be originating and participating in many of these loans -- the Rainiers, the Sea Firsts and the like -- know all about this business and aren't about to let themselves lose a lot of money at it. It seems to me, then, that it would be wise to share ratably in the collateral that they themselves are willing to accept, instead of hoping to protect ourselves by a fixed loan-to-value ratio that may quickly become unrealistic as the market changes. Accordingly, I suggest the following amendment to the original bill:

p. 2 lines 16-18: "(3) the state participation must be ratably secured on at least an equal basis as the participations of all other participants in the loan, which must be secured by a pledge of the fish processor's inventory being financed by the loan or the accounts receivable arising from that inventory [OF THE FISH PROCESSOR] or by other collateral acceptable to all participants in the loan [AND MAY NOT EXCEED 75 PERCENT OF THE APPRAISED VALUE OF THE COLLATERAL TAKEN AS SECURITY];"

5. Definition of "facilities located in Alaska", which determines eligibility. The committee expressed concern about the meaning of this term, particularly whether floating processors in the three-mile limit would qualify. Certainly under the present wording of the bill they could be construed as being facilities located in Alaska, and we would adopt a regulation to that effect unless the Legislature shows an intent to the contrary. However, it would be a matter of administrative discretion, and the policy taken now could be reversed in the future. Thus, if you wish to ensure that floating processors will qualify for these fish pack loans, you might add the following definition to proposed AS 44.25.065 on page 3 of the bill:

"facilities located in Alaska" means facilities at which fisheries products are canned, frozen or otherwise processed for inventory and includes such facilities both onshore and offshore, provided that the floating facilities are registered with the State of Alaska or the U.S. Coast Guard and operate within the three-mile limit or within historic bays and inland waters of the State of Alaska.

Let me conclude this letter by assuring you that I do not intend to set up a poorly run loan program if this bill passes. Safeguarding the integrity of the program while meeting the public need is the goal. This will not mean that every processor gets financing under this program, but at the same time no processor with facilities in Alaska will automatically

The Honorable Bob Mulcahy

February 27, 1981  
Page Four

be excluded. Decisions will be made on a case-by-case basis. The processor will first go to a financial institution or CFAB, which will originate and participate in the loan. The originator will be free to agree to commit to a participation or to decline it. If it agrees, the originator will invite us to participate, and we will in turn apply our independent judgment in deciding whether or not to make a commitment. The terms and conditions, the safeguards and protections, the duties and obligations will all be spelled out in great detail in the loan agreements, which we can and will insist on being to our satisfaction before we agree to participate. It is important that the statute preserve administrative flexibility to adapt, if appropriate, to the particular circumstances of the individual borrower. This bill, with the changes I have suggested, would provide a skeleton to support the program, and we will do our best to flesh it out into a healthy program.

Very truly yours,



Thomas K. Williams  
Commissioner of Revenue

TKa:mll

cc: Senator Eliason  
Senator Gilman

REQUEST

Bill/Resolution No. \_\_\_\_\_

Title An Act establishing a fish pack revolving loan fund.

Requested by \_\_\_\_\_

Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected Treasury Management

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	13.1	52.2	57.4	63.2	69.5	76.4
200 TRAVEL	3.0	12.0	13.2	14.5	16.0	17.6
300 CONTRACTUAL	2.0	2.0	2.2	2.4	2.7	2.9
400 COMMODITIES	.2	.3	.3	.4	.4	.5
500 EQUIPMENT	2.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>20.3</b>	<b>66.5</b>	<b>73.1</b>	<b>80.5</b>	<b>88.6</b>	<b>97.4</b>

FUNDING (Thousands of Dollars)

GENERAL FUND	20.3	66.5	73.1	80.5	88.6	97.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	1	1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above includes salary and benefits for State Investment Officer II. Travel cost due to nature of fishing business and review requirements for loans. Contractual expenditures for advertising for regulations, etc. Equipment for State Investment Officer.

Costs shown in FY 81 are for a three month period assuming the bill would pass by March 31. If not effective until new fiscal year, equipment costs should be moved to FY 82.

Above is predicated on use of Alaska financial institutions as seller-servicer.

*Anselm C. Staack*

IV. DATE January 26, 1981

PREPARED BY Anselm C. Staack, Treasury Comptroller

AGENCY Dept. of Revenue/Treasury Division

PHONE 465-2351

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

1	POSITION TITLE State Investment Officer II	RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	APV	APPROV	DIAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES: SALARY 3,494 x 12	41,928
5	BENEFITS 41,928 x .1533	6,428
6	FICA SBP	2,004
7	HEALTH INS. Mo. Fix. 12x150	1,800
8	TOTAL PERSONAL SERVICES 01	52,160
9	TRAVEL 02	12,000
10	CONTRACTUAL 03	2,000
11	COMMODITIES 04	300
12	EQUIPMENT 05	2,000
13	OTHER	
14	TOTAL COST	68,460

JUSTIFICATION:

Necessary to implement and monitor new Fish Pack Revolving Loan Fund.

Investment Officer will review and screen loan applications. Analyzes overall value and security and approves loan for purchase/participation. Confer with affected agencies and institutions to maintain smooth revolving loan program. Works with Alaska financial institutions for participations.

	CODE	FUNDING SOURCE
16		FED HCPTS. 1002
16		GF MATCH. 1001
17		GEN. FUND 1004 68,460
18		I-A HCPTS. 1005
19		PGM HCPTS 1021
20		OTHER

21	CONTINUATION	
22	ADDITION	XX FOR B&M USE ONLY

AA KEY NUMBER \_\_\_\_\_ COLUMN NO. \_\_\_\_\_

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

BRU Treasury Management

COMPONENT \_\_\_\_\_

**13 REQUEST FOR NEW POSITION.**

**FY 82**

# COMMITTEE REPORT

## SENATE

FURTHER: None

3/16/81

Date: May 1, 1981

Mr. President:

The Committee on FINANCE has had SB 141 making a special appropriation to the fishery product revolving loan fund

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SB 141 (Finance)  same title  new title
- and recommends individual recommendations
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Mr. J. J. ... No Rec

... letter research is accomplished

Tom D. ... No Rec

Dargun - Do Pass IF amended

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN

No Rec

Original sponsor: Rules/Governor

Funding Information

General Fund	\$40,000,000
Other Funds	-0-
	<u>\$40,000,000</u>

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 141 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-  
7 ment of Revenue for loan guarantees for commercial  
8 fish purchasers; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. The sum of \$40,000,000 is appropriated from the general  
11 fund to the Department of Revenue, fish processing loan guarantee account,  
12 (sec. 2(c), ch. 32, SLA 1980) to provide guarantees for loans made to commer-  
13 cial fish purchasers.

14 \* Sec. 2. The unexpended and unobligated portion of the appropriation  
15 made by this Act lapses into the general fund June 30, 1982.

16 \* Sec. 3. This Act takes effect on the effective date of a version of an  
17 Act entitled "An Act establishing a fishery product revolving loan fund and  
18 providing for loans and loan guarantees for commercial fish purchasers; and  
19 providing for an effective date."

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# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

TO: Senator Bennett, Co-Chairman  
and  
Senator Dankworth, Co-Chairman  
Senate Finance Committee

FROM: Senator Fahrenkamp, Chairman *BF.*  
Senate Resources Committee

DATE: March 17, 1981

RE: SB 141 "An Act making a special appropriation to  
the fishery product revolving loan fund"

---

Attached please find a copy of Senate Resources Committee's  
file on SB 141.

Attachments

BF;rk

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
DRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISE STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3034  
(907) 465-3035

## Senate

### Committee on Resources

March 13, 1981  
1:30 p.m.

Beltz Room  
211 Capitol

---

#### MEMBERS PRESENT

SENATOR FAHRENKAMP  
SENATOR FISCHER  
SENATOR ELIASON  
SENATOR GILMAN  
SENATOR MULCAHY  
SENATOR STURGULEWSKI

---

Hearing: SJR 25 "Relating to the Klondike Gold Rush  
National Historical Park"  
SCR 12 "Relating to hand trolling"  
SB 140 "An Act creating a fishery product  
revolving loan fund"  
SB 141 "An Act making a special appropriation  
to the fishery product revolving loan  
fund"

---

#### SJR 25

John McDermott, Skagway City Council, stated there had been a considerable breakdown in communication with the National Park Service. Their major problem is with the Park Service's land acquisition policy. The policy is in draft form and there has never been a public meeting on it. He stated that SJR 25 will certainly help their situation and the City Council supports it.

Skip Elliott, Skagway City Manager, stated that he had previously outlined the City's problems when he testified on

SB 36. He said that the Park Service is more receptive since the introduction of SB 36 and SJR 25.

Senator Mulcahy put forth the motion to move SJR 25 with individual recommendations.

---

SCR 12

Senator Eliason stated that the Board of Fisheries made a mistake at their last meeting in limiting hand trollers to one line. SJR 12 addresses some of the options to the problems the Board created.

Senator Mulcahy put forth the motion to move SCR 12 with individual recommendations.

---

SB 140 and SB 141

Senator Mulcahy stated that the Senate Resources Subcommittee on Fisheries held hearings on SB 140 February 11th, February 18th, and March 4th. He stated that SB 141, which is an appropriations bill of \$100 million, was not addressed in Subcommittee because it is basically a Finance Committee issue. He requested that the Committee adopt the Subcommittee's CSSB140 with one amendment:

Page 1, Line 15-16, delete the words "processing of" and replace with "such processors' inventories of canned, frozen or processed"

Senator Mulcahy put forth the motion to move CSSB 140 as amended with individual recommendations.

Senator Mulcahy put forth the motion to move SB 141 with individual recommendations.

The Chairman adjourned the hearing at 2:45 p.m.



# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 141 "An Act making a special appropriation to  
The Fishery Product Revolving Loan Fund"

The subcommittee has taken testimony and reports SB 141 back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy <u>Bob Mulcahy</u>	<u>No Pass</u>
Senator Eliason <u>Paul Eliason</u>	<u>u u</u>
Senator Gilman <u>Don Gilman</u>	<u>NO Pass</u>

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**



# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 141 "An Act making a special appropriation to  
the Fishery Product Revolving Loan Fund"

The subcommittee has taken testimony and reports SB 141 back to the committee, as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy <u>Bob Mulcahy</u>	<u>Do Pass</u>
Senator Eliason <u>Don Eliason</u>	<u>u u</u>
Senator Gilman <u>Don Gilman</u>	<u>NO Rec</u>

Funding Information  
General Fund \$100,000,000  
Other Funds -0-  
\$100,000,000

Introduced: 2/3/81  
Referred: Resources and  
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 141

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the fishery  
7 product revolving loan fund; and providing for an  
8 effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. The sum of \$100,000,000 is appropriated from the general  
11 fund to the Department of Revenue, fishery product revolving loan fund, for  
12 the purposes of implementing AS 44.25.040 -- 44.25.065.

13 \* Sec. 2. The appropriation made in sec. 1 of this Act is not a one-year  
14 appropriation and does not lapse under AS 37.25.010.

15 \* Sec. 3. This Act takes effect upon the effective date of a version of  
16 a bill entitled "An Act establishing a fishery product revolving loan fund;  
17 and providing for an effective date."

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON OILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 485-3834  
(907) 465-3835

## Senate

### Committee on Resources

#### MEMORANDUM

TO: SENATE RESOURCE COMMITTEE MEMBERS

FROM: JIM PALMER  
SENATE RESOURCES COMMITTEE STAFF

RE: CSSB 140 "AN ACT ESTABLISHING A FISHERY PRODUCT REVOLVING LOAN FUND."  
SB 141 "AN ACT MAKING A SPECIAL APPROPRIATION TO THE FISHERY PRODUCT  
REVOLVING LOAN FUND."  
SCR 12 "A RESOLUTION RELATING TO HAND TROLLING."

DATE: MARCH 5, 1981  
-----

The Subcommittee on Fisheries, chaired by Senator Mulcahy, has passed out of subcommittee CSSB 140, SB 141 and SCR 12.

These three measures have been scheduled for full committee consideration on Friday, March 13.

Attached are some informational materials relative to these bills.

- (1) copy of subcommittee substitute for SB 140.
- (2) a February 27 letter to Senator Mulcahy from the Department of Revenue on SB 140 and 141.
- (3) a memorandum from Legislative Affairs Agency on the constitutionality of precluding fish processors who are 80% or more owned by foreign nationals from obtaining fishery product loans under SB140. This memorandum was dated March 3 and was directed to Senator Mulcahy.
- (4) a memorandum to Senator Mulcahy dated March 4 on the constitutionality of giving first priority in the award of fishery loans to Alaskans.
- (5) fiscal note prepared for SB 140 by the Dept. of Revenue.

I also understand that the subcommittee will be preparing a letter of intent to accompany CSSB 140.

# STATE OF ALASKA THE LEGISLATURE

ALASKA STATE PRINTING  
ALASKA STATE PRINTING  
1975-1976

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1981

SUBJECT:            Constitutionality of giving first priority in  
                      the award of fishery loans to Alaskans.  
                      (CSSB 140)

TO:                 Senator Bob Mulcahy

THROUGH:           Joseph A. Guthrie  
                      Legislative Counsel

FROM:              Bernie M. Tuggle  
                      Legislative Legal Extern

You have asked whether first priority in the award of fishery loans under CSSB 140 could be given to companies which are owned 50 percent or more by Alaska residents. Your proposal would be subject to attack under the privileges and immunities clause by individuals and to equal protection attack by corporations.

The privileges and immunities clause, Article IV, section 2 says that:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Corporations, however, are not protected under this clause, since they are not citizens. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). Therefore, only individuals could pursue a privileges and immunities challenge against your proposal.

The purpose of the clause is:

To place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.

March 4, 1981

Paul v. Virginia, 19 L.Ed. 357 (1869). However the clause does not preclude disparity of treatment in situations where there are perfectly valid independent reasons for it. What the clause does bar is discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. A substantial reason for the discrimination would not exist unless there is something to indicate that non-citizens constitute a "peculiar source of evil" at which the discriminatory statute is aimed. Tomer v. Witsell, 92 L.Ed. 1460, 1472 (1948). Moreover, even where the presence or activity of non-residents causes or exacerbates the problem the state seeks to remedy, there must be a "reasonable relationship" between the danger posed by noncitizens, as a class, and the discrimination practiced upon them. Id., at 1473. Therefore, the privileges and immunities clause demands a two-step analysis.

First, do non-residents constitute a peculiar source of evil at which your proposal is aimed? I believe that a reasonable and persuasive argument could be made that they do. Alaska has a strong interest in regulating and controlling those things it claims to "own" (the funds for which the fishery loans would derive). Yet while this interest is by no means absolute, Baldwin v. Montana Fish & Game Comm'n, 56 L.Ed.2d 354 (1978), Alaska's ownership of the funds is a crucial factor. Hicklin v. Orbeck, 57 L.Ed.2d 397, 405 (1978). In Hicklin, the Court found that Alaska had "little or no" proprietary interest in much of the activity swept within the ambit of Alaska Hire. Id. On the other hand, under your proposal Alaska does have a significant proprietary interest, e.g., management of loan funds, and development of the fishing industry. Given this state interest in the funds which would be the source of fishery loans, non-Alaskans could be a "peculiar source of evil" if the loan funds were limited, non-Alaskans flocked to the state to get the loans, etc.

Second, is there a reasonable relationship between your proposal and the class at which your proposal is aimed. Again, I would say "yes". Non-Alaskans are not absolutely barred from receiving a loan; they must simply wait in line. I would conclude that your proposal is constitutionally valid as applied to non-Alaskan individuals.

Senator Bob Mulcahy  
Page 3  
March 4, 1981

Corporations, meanwhile, could mount a Fourteenth Amendment equal protection attack. However your proposal seems valid since it involves no suspect classes and no fundamental rights. Instead, it is an example of the type of socio-economic legislation that warrants a low level rational basis test. Usually, such a test amounts to the judiciary deferring to the legislative judgment.

While the Alaska Supreme Court no longer applies a two-tiered approach to equal protection cases, State v. Erickson, 574 P.2d 1 (Alaska 1978), the result would be the same since there are no fundamental rights or suspect classes involved with your proposal.

In summary, your proposal seems constitutionally valid both in regards to individuals and to corporations.

BMT:JAG:ljb

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JULY 1961, ALASKA 99511  
907-465-2822

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT:           Constitutionality of precluding fish processors  
                    who are 80 percent or more owned by foreign  
                    nationals from obtaining fishery product loans  
                    under SB 140.

TO:                 Senator Bob Mulcahy

FROM:             Joseph A. Guthrie  
                    Legislative Counsel

*JAG*

Attached is a memorandum prepared by Bernie M. Tuggle, a legal extern serving with the Division of Legal Services. I have reviewed his memorandum and agree with the conclusions and advice given in it.

JAG:ljb

Attachment

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AGENCIES  
ALASKA STATE OFFICE  
607-224 3111

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT:            Constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining fishery product loans under SB 140.

TO:                 Senator Bob Mulcahy

FROM:              Bernie M. Tuggle <sup>BT</sup>  
                      Legislative Legal Extern

You have asked me to explore the constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining loans from the fishery product revolving loan fund which would be created by SB 140. This issue raises Fourteenth Amendment equal protection problems because your proposal would discriminate against persons on the basis of alienage.

As a practical matter, many fish processors would be organized under the corporate form of business. This raises the initial question whether corporations are protected under the equal protection clause. The answer is an unequivocal "yes". Grosjean v. American Press Co., 80 L.Ed. 660 (1936). Therefore, corporations and other types of business organizations receive the same amount of equal protection as individuals.

Traditionally, classifications based on alienage, like those based on nationality, or race, are inherently suspect and subject to the highest judicial scrutiny. Graham v. Richardson, 29 L.Ed.2d 534 (1971). However it is unclear whether strict scrutiny applies to non-resident aliens as well as resident aliens. While the numerous cases which have struck down alienage classifications have all involved resident aliens, Truax v. Raich, 60 L.Ed. 131 (1951); Takahashi v. Fish and Game Comm'n., 92 L.Ed. 1478 (1948); Graham v. Richardson, supra; Sugarman v. Douzall, 37 L.Ed.2d

March 3, 1981

853 (1973); In re Griffiths, 37 L.Ed.2d 910 (1973); Hampton v. Mow Sun Wong, 48 L.Ed. 495 (1976); Examining Board v. Otero, 49 L.Ed.2d 63 (1977); Nyquist v. Mauclet, 53 L.Ed.2d 63 (1977); the Court has never directly addressed this issue. The lower courts, meanwhile, have split on whether strict scrutiny is the appropriate level of judicial review for laws which discriminate against non-resident aliens. Compare Moreno v. Toll, 489 F.Supp. 658 (D. Me. 1980) with United States v. Tsuda Maru, 429 F.Supp. 519 (D. Alaska 1979).

Matthews v. Diaz, 48 L.Ed.2d 478 (1976) suggests that classifications which discriminate against non-resident aliens are not as suspect as classifications discriminating against resident aliens.

Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests. (Emphasis in original)

Id. at 490. This possible difference in levels of judicial scrutiny will prove important as discussed below.

Another factor as to whether your proposal would pass constitutional muster would be the characterization of the benefit sought. Here, that benefit would be a fishery product loan. As a general rule, the strict scrutiny approach is applicable to state classifications based on alienage, excepting those dealing with governmental functions, in which case the less stringent rational basis test will be applied. For example in Foley v. Connelie, 55 L.Ed.2d 287 (1978), the Court upheld a New York statute limiting appointment to the state police force to United States citizens by applying a rational basis, rather than a strict scrutiny test. The application of this less demanding standard, however, was clearly limited to alienage classifications in matters involving the state's historical power to exclude aliens from participation in its political institutions. As the Court stated:

The essence of our holdings to date is that although we extend to aliens the right to education and public wel-

March 3, 1981

fare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.

Id. at 293. Foley, then, stands for a limited exception to the general strict scrutiny standard, and this exception will apply only in cases involving state regulation of one of the basic functions of government.

In the closest case on point, Nyquist v. Mauclet, supra, the Court struck down a New York Statute which barred resident aliens from state financial assistance for higher education. While Nyquist was a 5 to 4 decision, I believe that it would be followed and your proposal as applied to resident aliens would be struck down. Even though Nyquist is factually distinguishable, its holding is on point. The New York statute indirectly barred a resident alien from seeking higher education, i.e., he could not secure a state loan to pursue his education. Similarly, your proposal would indirectly bar a resident alien from pursuing his livelihood, i.e., he could not obtain a state loan from the fishery product revolving loan fund. Moreover, loans to fishermen could hardly be characterized as a "basic governmental function" such as holding public office. Therefore, such loans would not fit within the one recognized exception to the general rule of strict scrutiny for classifications based on alienage.

Your proposal as applied to non-resident aliens would pass constitutional muster for two reasons. First, although this area of the law is unsettled, judicial review of classifications discriminating against non-resident aliens seems to be lower than strict scrutiny. Second, the Supreme Court's cases have often emphasized that resident aliens live in American communities, must obey our laws, pay taxes, serve in the armed forces, and have made significant contributions to our country. It is the burdens which resident aliens bear along with citizens that makes discriminations against resident aliens irrational. Resident aliens are in many respects just like citizens, and classifications which disadvantage them will usually be subjected to strict judicial scrutiny. However the philosophical and legal support for this doctrine is absent when a case involves a non-resident alien.

Senator Bob Mulcahy

Page 4

March 3, 1981

In summary then, if your proposal includes resident aliens, it probably would be struck down. If your proposal includes only non-resident aliens, then most likely it would survive an equal protection attack.

BMT:ljb

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 27, 1981

The Honorable Bob Mulcahy  
Senate Resources Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 140 and 141 (fish pack loans)

Dear Senator Mulcahy:

This is in response to the questions that came up during my testimony on these bills before your subcommittee.

1. Loans for inventory, not working capital. It is definitely the Governor's intent that these loans would be made to finance fish pack inventories and not to provide processors with working capital loans. As an artifact of being transformed to proper legal style, my draft references to "fish pack loans" were deleted and the present ambiguity as to intent resulted. To restore clarity, I would suggest the following amendments to the version of the bill as introduced:

p. 1, lines 15-16: "located in Alaska and which are used to finance such processors' inventories of canned, frozen or processed [PROCESSING OF] fishery products from Alaskan fisheries."

2. When loans are to be made and funded. It is our intent to use the contractual power proposed in AS 44.25.050(3) to make commitments to participate in pack financings before the fish are bought and processed. However, since the financing would be to finance only the pack or inventory (see comment 1), the execution of such commitments and the actual funding would take place only after the inventory is in existence. Funds for starting up at the beginning of the season would be from a processor's working capital and, hence, could not be advanced under this loan program.

3. Term of the loans. The Committee expressed concern that if there is no clear statutory limit to the term of the loans, processors may attempt to sell last the inventory collateralizing the loan fund's participation in order to prolong or take advantage of the lower interest rate. This

concern will be taken care of by the fact that a participation in a loan will be purchased, rather than a separate loan be made from the loan fund. The fund will be a partner in a fish pack loan, together with the banks or other financial institutions that are participating in the loan. All participants in the loan would have pro-rata, undivided interests in the collateral, and therefore, it would not be possible for a processor to pay off his higher-interest bank participations in the loan while stretching out the State's lower-interest participation.

As I testified, rigidly limiting the term of a loan to one year is unrealistic. True, in good years all the processors can work down their inventories and pay off the loan within 12 months, but good years don't come every year and it is not uncommon for a processor to need more time than that to get squared away. Our leverage over the processor is not so much that we can declare him in default and jerk the loan out from under him, as it is that we can refuse to help finance the current year's pack for him until the last year's pack loan is all cleaned up. This is much more meaningful economic power than the threat of foreclosing on an inventory that the processor would probably have been having trouble with.

I therefore recommend that line 15 on page 2 of the original bill be deleted and the following subsections renumbered accordingly.

4. Collateral. The loans will be for fish pack and will be secured by the pack and the receivables arising from the pack. Fluctuations in the market price for fish products might suddenly lower the value of the pack so that the loan it secures then represents more than 75 percent of the pack's value. What happens then? Literally under the statute, the loan would no longer be one in which we could legally participate. We would be forced to declare a default and foreclose on the loan, thereby acquiring a lot of fish products in the middle of a bad market for fish product.

The large banks that will be originating and participating in many of these loans -- the Rainiers, the Sea Firsts and the like -- know all about this business and aren't about to let themselves lose a lot of money at it. It seems to me, then, that it would be wise to share ratably in the collateral that they themselves are willing to accept, instead of hoping to protect ourselves by a fixed loan-to-value ratio that may quickly become unrealistic as the market changes. Accordingly, I suggest the following amendment to the original bill:

p. 2 lines 16-18: "(3) the state participation must be ratably secured on at least an equal basis as the participations of all other participants in the loan, which must be secured by a pledge of the fish processor's inventory being financed by the loan or the accounts receivable arising from that inventory [OF THE FISH PROCESSOR] or by other collateral acceptable to all participants in the loan [AND MAY NOT EXCEED 75 PERCENT OF THE APPRAISED VALUE OF THE COLLATERAL TAKEN AS SECURITY];"

5. Definition of "facilities located in Alaska", which determines eligibility. The committee expressed concern about the meaning of this term, particularly whether floating processors in the three-mile limit would qualify. Certainly under the present wording of the bill they could be construed as being facilities located in Alaska, and we would adopt a regulation to that effect unless the Legislature shows an intent to the contrary. However, it would be a matter of administrative discretion, and the policy taken now could be reversed in the future. Thus, if you wish to ensure that floating processors will qualify for these fish pack loans, you might add the following definition to proposed AS 44.25.065 on page 3 of the bill:

"facilities located in Alaska" means facilities at which fisheries products are canned, frozen or otherwise processed for inventory and includes such facilities both onshore and offshore, provided that the floating facilities are registered with the State of Alaska or the U.S. Coast Guard and operate within the three-mile limit or within historic bays and inland waters of the State of Alaska.


Let me conclude this letter by assuring you that I do not intend to set up a poorly run loan program if this bill passes. Safeguarding the integrity of the program while meeting the public need is the goal. This will not mean that every processor gets financing under this program, but at the same time no processor with facilities in Alaska will automatically

The Honorable Bob Mulcahy

February 27, 1981  
Page Four

be excluded. Decisions will be made on a case-by-case basis. The processor will first go to a financial institution or CFAB, which will originate and participate in the loan. The originator will be free to agree to commit to a participation or to decline it. If it agrees, the originator will invite us to participate, and we will in turn apply our independent judgment in deciding whether or not to make a commitment. The terms and conditions, the safeguards and protections, the duties and obligations will all be spelled out in great detail in the loan agreements, which we can and will insist on being to our satisfaction before we agree to participate. It is important that the statute preserve administrative flexibility to adapt, if appropriate, to the particular circumstances of the individual borrower. This bill, with the changes I have suggested, would provide a skeleton to support the program, and we will do our best to flesh it out into a healthy program.

Very truly yours,



Thomas K. Williams  
Commissioner of Revenue

TKW:mll

cc: Senator Eliason  
Senator Gilman

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 140 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a fishery product revolving loan  
7 fund; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.25 is amended by adding new sections to read:

10 ARTICLE 3. FISHERY PRODUCT REVOLVING LOAN FUND.

11 Sec. 44.25.040. ESTABLISHMENT OF LOAN FUND. The fishery product  
12 revolving loan fund is established in the Department of Revenue.

13 Sec. 44.25.045. FISHERY PRODUCT LOANS. The department may pur-  
14 chase participations in loans made to fish processors with facilities  
15 located in Alaska and which are used to finance processing of fishery  
16 products from Alaska fisheries.

17 Sec. 44.25.050. POWERS AND DUTIES OF THE DEPARTMENT. (a) The  
18 commissioner may

19 (1) designate agents and delegate powers to them as is  
20 necessary;

21 (2) adopt regulations to implement AS 44.25.040 - 44.25.065;

22 (3) make and execute contracts and other instruments to im-  
23 plement AS 44.25.040 - 44.25.065;

24 (4) purchase participations in notes and agreements securing  
25 loans in accordance with AS 44.25.040 - 44.25.065;

26 (5) require that loans in which the fund participates be  
27 secured by adequate collateral;

28 (6) acquire real or personal property by purchase, transfer,  
29 or foreclosure when that acquisition is necessary to protect a note in

which the fund has an interest.

(b) Money in the fund that is not being used for participations in fishery product loans must be invested by the department in the same manner as provided for the investment of general fund surplus under AS 37.10.070.

(c) Earnings and interest income from investment and fishery product loan participations must be transferred to the general fund. Repayments of principal from investments and loan participations must be returned to the fund.

Sec. 44.25.055. LIMITATIONS ON LOANS. (a) Loan participations purchased under AS 44.25.040 - 44.25.065 are subject to the following limitations:

(1) state participation in a single loan may not exceed 90 percent of the total amount of the loan;

(2) the term of a loan may not exceed one year;

(3) the loan must be secured by inventory or accounts receivable of the fish processor and may not exceed 75 percent of the appraised value of the collateral taken as security;

(4) the loan must be originated and serviced by either the Alaska Commercial Fishing and Agriculture Bank (AS 44.81.010) or by a state or federally chartered financial institution;

(5) the servicing charge on the loan may not exceed one-half of one percent of the outstanding balance of the loan;

(6) the rate of interest, including all service fees, on the unpaid balance of the loan fund's participation in a loan shall float at the average rate at which six month U.S. Treasury bills are awarded in the weekly auction of U.S. Treasury bills, plus three and three-fourths percentage points, but may not exceed the applicable interest rate;

1 (7) loans must be made only to fish processors with facil-  
2 ities located in Alaska;

3 (8) loans may not be made to fish processors which are 80  
4 percent or more owned or controlled by aliens.

5 (b) Money in the fund shall be used to purchase participation in  
6 loans made to fish processors which are 50 percent or more owned or  
7 controlled by persons domiciled in Alaska until these processors needs  
8 for loans are met before the money in the fund may be used to purchase  
9 participation in loans made to fish processors which are less than 50  
10 percent owned or controlled by persons domiciled in Alaska.

11 (c) For the purposes of this section

12 (1) "alien" means

13 (A) an individual who is not a citizen or national of  
14 the United States, or who is not lawfully admitted to the United  
15 States for permanent residence, or paroled into the United States  
16 under the Immigration and Nationality Act (8 U.S.C. secs. 1101 -  
17 1503), as amended;

18 (B) a person, other than an individual, that was not  
19 created or organized under the laws of the United States or of a  
20 state, or whose principal place of business is not located in any  
21 state; or

22 (C) a person, other than an individual, that was create  
23 or organized under the laws of the United States or of a state, or  
24 whose principal place of business is located in a state, and which  
25 is controlled by a person described in (A) or (B) of this para-  
26 graph;

27 (2) "control" means that a relationship exists between a  
28 person and fish processor in which the person exercises control consist  
29 ing of

1 (A) owning directly or indirectly, or having the power  
2 to vote, the percentage indicated of any class of voting security  
3 of a fish processor organized as a corporation; or

4 (B) influencing or affecting in any substantive manner  
5 the election of a majority of the directors or trustees of a fish  
6 processor organized as a corporation;

7 (3) "person" means an individual, a corporation, a partner-  
8 ship, an association, a joint-stock company, an estate, a trust where  
9 the interests of the beneficiaries are evidenced by a security, an  
10 unincorporated association, a government, a political subdivision of a  
11 government, or a combination of these entities.

12 Sec. 44.25.060. SALE OR TRANSFER OF MORTGAGES AND NOTES. The de-  
13 partment may sell or transfer at par value or at a premium or discount  
14 to any bank or other private purchaser for cash or other consideration  
15 the mortgages and notes held as security for loans made under AS 44.-  
16 25.040 - 44.25.065. The proceeds from the sale or transfer are assets  
17 of the fund.

18 Sec. 44.25.065. DEFINITIONS. In AS 44.25.040 - 44.25.065.

19 (1) "commissioner" means the commissioner of revenue;

20 (2) "department" means the Department of Revenue;

21 (3) "fish processor" means a person engaging in a business  
22 for which a license is required under AS 43.75.010 - 43.75.090;

23 (4) "facilities located in Alaska" means facilities at which  
24 fisheries products are canned, frozen, or otherwise processed for  
25 inventory, including floating facilities which are documented under the  
26 laws of the United States as defined in 46 U.S.C. 801, and operate  
27 within the three-mile limit or within historic bays and inland waters  
28 of the state;

29 (5) "fishery product" means fin fish, shellfish, and fish

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byproducts, including but not limited to salmon, halibut, herring,  
flounder, crab, clam, cod, shrimp, and pollock;

(6) "fund" means the fishery product revolving loan fund.

\* Sec. 2. This Act takes effect immediately in accordance with AS 01.10  
070(c).

1	POSITION TITLE State Investment Officer II			RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	GOV.	PROV.	DIR.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.	

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES: SALARY 3,494 x 12	41,928
5	BENEFITS 41,928 x .1533	6,428
6	FICA SBP	2,004
7	HEALTH INS. Mo. Fix. 12x150	1,800
8	TOTAL PERSONAL SERVICES 01	52,160
9	TRAVEL 09	12,000
10	CONTRACTUAL 03	2,000
11	COMMODITIES 04	300
12	EQUIPMENT 05	2,000
13	OTHER	
14	TOTAL COST	68,460

JUSTIFICATION:

Necessary to implement and monitor new Fish Pack Revolving Loan Fund.

Investment Officer will review and screen loan applications. Analyzes overall value and security and approves loan for purchase/participation. Confer with affected agencies and institutions to maintain smooth revolving loan program. Works with Alaska financial institutions for participations.

	CODE	FUNDING SOURCE	
5		FED RCPTS. 1007	
6		GF MATCH. 1001	
7		GEN. FUND 1004	68,460
8		J-A RCPTS. 1005	
9		PGM RCPTS 1070	
10		OTHER	

11	CONTINUATION		
12	ADDITION	XX	FOR B&M USE ONLY

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

BRU Treasury Management

COMPONENT \_\_\_\_\_

FY 82

**13** REQUEST FOR NEW POSITION.

1	POSITION TITLE State Investment Officer II	RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	GOV	DIS
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE

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	CODE	FUNDING SOURCE
15		FED HCPTS. 1007
16		GF MATCH. 1001
17		GEN. FUND 1004
18		I-A HCPTS. 1008
19		PGM HCPTS 1028
20		OTHER
21	CONTINUATION	
22	ADDITION	XX

FOR B&M USE ONLY

AA KEY NUMBER \_\_\_\_\_ COLUMN NO. \_\_\_\_\_

AGENCY Department of Revenue PROGRAM Revenue Collection and Management  
 DRU Treasury Management

**13** REQUEST FOR NEW POSITION.

COMPONENT \_\_\_\_\_

**FY 82**

SB 140/41

I. REQUEST  
Bill/Resolution No. \_\_\_\_\_  
Title An Act establishing a fish pack revolving loan fund.  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL  
Agency Affected Department of Revenue  
Program Category Affected Revenue Collection and Management  
BRU, Program, or Subprogram(s) Affected Treasury Management  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	13.1	52.2	57.4	63.2	69.5	76.4
200 TRAVEL	3.0	12.0	13.2	14.5	16.0	17.6
300 CONTRACTUAL	2.0	2.0	2.2	2.4	2.7	2.9
400 COMMODITIES	.2	.3	.3	.4	.4	.5
500 EQUIPMENT	2.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>20.3</b>	<b>66.5</b>	<b>73.1</b>	<b>80.5</b>	<b>88.6</b>	<b>97.4</b>

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	20.3	66.5	73.1	80.5	88.6	97.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	1	1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above includes salary and benefits for State Investment Officer II. Travel cost due to nature of fishing business and review requirements for loans. Contractual expenditures for advertising for regulations, etc. Equipment for State Investment Officer.

Costs shown in FY 81 are for a three month period assuming the bill would pass by March 31. If not effective until new fiscal year, equipment costs should be moved to FY 82.

Above is predicated on use of Alaska financial institutions as seller-servicer.

*Anselm C. Staack*

IV. DATE January 26, 1981 PREPARED BY Anselm C. Staack, Treasury Comptroller  
AGENCY Dept. of Revenue/Treasury Division

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named) PHONE 465-2351

1	POSITION TITLE State Investment Officer II			RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	GOV.	PROV.	DIS.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

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	CODE	FUNDING SOURCE	
15		FED RCPTS. 1007	
16		GF MATCH. 1001	
17		GEN. FUND 1001	68,460
18		I-A RCPTS. 1006	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	XX	

FOR B&M USE ONLY

AA KEY NUMBER	COLUMN NO.
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AGENCY Department of Revenue PROGRAM Revenue Collection and Management

BRU Treasury Management

COMPONENT \_\_\_\_\_

**13** REQUEST FOR NEW POSITION

**FY 82**



Chapter 10. Public Funds.

Article 3. Investment and Deposit of State Funds.

Section

65. (Repealed)

70. Investment of surplus funds

Section

75. Prohibited deposits and investments in certain banks

Sec. 37.10.065. Investment of the Alaska Permanent Fund.

Repealed by § 10 ch 18 SLA 1980.

Editor's note. — Section 11, ch. 18, SLA 1980, repealed this section effective upon transfer of the Alaska permanent fund to the Alaska Permanent Fund Corporation as provided in sec. 9 of the Act.

Section 9, ch. 18, SLA 1980, effective April 9, 1980, provides: "TRANSITION. The commissioner of revenue shall transfer the Alaska permanent fund to the Alaska Permanent Fund Corporation

established by this Act after request for transfer is made by the board of trustees of the corporation. Notwithstanding AS 37.10.065(a), the commissioner of revenue may invest the money in the Alaska permanent fund in the investments described in AS 37.13.120(g) subject to the limitations of AS 37.13.120(h) and (i)."

The repealed section derived from § 1, ch. 6, SLA 1977.

Sec. 37.10.070. Investment of surplus funds. (a) When the commissioner of revenue determines that there is in the state treasury a surplus above an amount sufficient to meet current and projected cash expenditure needs, the surplus shall be invested at competitive national market rates unless otherwise provided by law in any of the following:

(1) obligations of, or obligations insured or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(3) certificates of deposit issued by United States domestic banks which are members of the Federal Deposit Insurance Corporation for which a generally recognized secondary market exists or which are secured fully at all times as to the payment of principal and interest in accordance with Alaska law;

(4) corporate debt securities with a minimum rating of "BAA" or the equivalent by a nationally recognized rating organization and the preferred and common stocks of companies which have paid dividends continuously for the last three years;

(5) commercial paper bearing the highest rating of a nationally recognized rating organization;

(6) securities of foreign governments, foreign governmental agencies, and foreign corporations the principal, interest or dividends of which are payable in either United States dollars or foreign currencies;

(7) banker: acceptance combined capital and surplus;

(8) shares of federally insured Alaska which are fully secured by principal and interest in

(9) savings certificates or associations in Alaska with payment of principal and

(10) deposits with maturity secured at all times as to the payment of principal and

(11) fixed-term certificates of credit unions in Alaska with payment of principal and

(12) foreign time deposits in foreign-owned banks and United States dollars or

(13) mortgages of title which secure agricultural or agricultural processing

(b) In making investments the commissioner shall exercise the judgment and discretion prevailing which an investment in the discretion, and intelligent investments entrusted to the permanent disposal of capital as well as probable

(c) Except as provided in this section, the commissioner may

(1) invest and reinvest between principal and

(2) sell, exchange, or investment of the general

(3) vote upon a stock special proxy or power of substitution; exercise any other option and may participate in a corporation corporate securities, debt or charge in connection with the powers of an owner of other investments held

(4) make, execute, and conveyance and in the powers granted;

(7) bankers acceptances drawn on and accepted by banks with a combined capital and surplus aggregating at least \$200,000,000;

(8) shares of federally chartered savings and loan associations in Alaska which are fully secured at all times as to the payment of principal and interest in accordance with Alaska law;

(9) savings certificates issued by state-chartered savings and loan associations in Alaska which are fully secured at all times as to the payment of principal and interest in accordance with Alaska law;

(10) deposits with mutual savings banks in Alaska which are fully secured at all times as to the payment of principal and interest in accordance with Alaska law;

(11) fixed-term certificates of indebtedness of federally insured credit unions in Alaska which are fully secured at all times as to the payment of principal and interest in accordance with Alaska law;

(12) foreign time deposits of both United States-owned and foreign-owned banks and trust companies denominated in either United States dollars or foreign currencies;

(13) mortgages of the Alaska Rural Rehabilitation Corporation which secure agricultural loans, agricultural business loans, and agricultural processing loans.

(b) In making investments, the commissioner of revenue shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

(c) Except as provided in this section, the commissioner of revenue may

(1) invest and reinvest the principal and income without distinction between principal and income;

(2) sell, exchange, convey, transfer, or otherwise dispose of an investment of the general fund by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the general fund;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in the name of the state;  
(6) do all acts whether or not expressly authorized which are considered necessary or proper for the protection of the investments.

(d) The commissioner of revenue may enter into futures contracts for the sale of investments purchased under (a) of this section only for the purpose of hedging an existing equivalent ownership position in these investments.

(e) The commissioner of revenue may enter into contracts for services providing investment advice, custody of securities, and execution of transactions, in or out of Alaska. (§ 7-1-11 ACLA 1949; am § 1 ch 140 SLA 1953; am § 1 ch 206 SLA 1970; am §§ 1, 2 ch 94 SLA 1971; am § 1 ch 4 SLA 1980; am § 6 ch 122 SLA 1980)

Cross references. — As to custody and investment, see AS 14.25.190. For further provisions allowing investment in certain mortgages of the Alaska State Housing Authority, see AS 18.55.375. For the duties of the Legislative Budget and Audit Committee relating to state investment policy, see AS 24.20.156 — 24.20.205. As to investments, see AS 39.35.110.

The first 1980 amendment, effective February 27, 1980 and retroactive to November 1, 1979 added paragraph (14); however, this amendment was repealed by the second 1980 amendment effective

July 1, 1980, which rewrote the section. Editor's note. — Section 13, ch. 122, SLA 1980, effective July 1, 1980, provides: "TRANSITION. The provision for an immediate effective date for sec. 6 of this act does not prevent the commissioner of revenue from fulfilling general fund investment commitments made before the effective date of this act (July 1, 1980). However, the provisions of AS 37.10.070, as amended by sec. 6 of this act, apply to all new general fund investments committed to and made on or after the effective date of this act."

Sec. 37.10.078. Prohibited deposits and investments in certain banks. The commissioner of revenue may not make investments or deposits with a bank doing business in Alaska which has a general practice of

- (1) charging a fee for cashing checks or warrants issued by the state or
- (2) refusing to cash checks or warrants issued by the state. (§ 11 ch 122 SLA 1980)

Effective date. — Section 17, ch. 122, SLA 1980, makes this section effective July 1, 1980, in accordance with AS 01.10.070(c).

Legislative history note. — For the adoption of the Free Conference Committee letter of intent on SB 315, see 1980 House Journal page 1964, 2018.

### Chapter 12. Alaska Renewable Resources Corporation.

Section 70. Powers

Sec. 37.12.010. Alaska Renewable Resources Corporation created.

Editor's note. — Section 1, ch. 32, SLA 1980, effective May 14, 1980, and repealed effective January 31, 1981, provides:

"COMMERCIAL FISH PURCHASERS ASSISTANCE FUND. (a) There is created in the Alaska Renewable Resources

Corporation (AS commercial fish purchase fund. The commercial assistance fund shall be the board of trustees Renewable Resources may be financed only by the legislature. (b) The Alaska Renewable Corporation may use commercial fish purchase fund to provide financial assistance to commercial purchasers of harvest. Financial assistance shall be provided with AS 37.12.050, providing financial assistance subsection the board of Alaska Renewable Resources

(1) is not required to provisions of AS 37.12.050

(2) is required to provisions of AS 37.12.050 the extent the board determines is possible limited time available to assistance to commercial 1980 salmon harvest.

(c) The approval of the commerce and economic required before application for financial the commercial fish purchase fund.

Sec. 37.12.070. Power of corporation, the board

(16) [Terminates Council on Science and the manner prescribed are to be expanded 37.12.015.

(am § 2 ch 56 SLA 19

Effect of amendment, amendment added paragraph As the rest of the section affected by the amendment, out.

Editor's note. — AS 44.19.189, referred to in part, were repealed by Executive Order 2 (1980).

Section 1, ch. 56, SLA 19 FINDINGS. The legislature

§ 43.70.050

REVENUE AND TAXATION

§ 43.75.010

Editor's note. — The repealed section SLA 1976, and subsection 2 was repealed derived from § 9, ch. 43, SLA 1949. Subsection (a) was repealed by § 4, ch. 94, by § 5, ch. 144, SLA 1978

Sec. 43.70.050. Disposal of money. All money collected by the department under this chapter shall be deposited in the general fund. (§ 11 ch 43 SLA 1949; am § 4 ch 155 SLA 1962; am § 74 ch 69 SLA 1970; am § 4 ch 144 SLA 1978)

Effect of amendment: — The 1978 amendment deleted the former second sentence, which read "The Department of Revenue shall refund to each organized borough and each city of any class 60 per cent of the money collected in the local government."

Sec. 43.70.100. Penal provisions. Repealed by § 46 ch 113 SLA 1980.

Cross reference. — For present provisions concerning criminal penalties, see AS 43.35.290. Editor's note. — The repealed section derived from § 10, ch. 43, SLA 1949.

Chapter 75. Fisheries Taxes.

Article

- 1. Taxes and Licenses (§§ 43.75.010 — 43.75.055)
- 4. General Provisions (§§ 43.75.130 — 43.75.140)

Editor's note. — As to legislative findings and purpose relating to AS 43.75 see §§ 1 and 2, ch. 79, SLA 1979 in the 1979 Temporary and Special Acts and Resolutions and editor's note following AS 43.75.011.

Article 1. Taxes and Licenses.

Section

- 10. [Repealed]
- 11. Fisheries business license
- 15. Fisheries business tax

Section

- 30. Filing return and payment of tax
- 50. [Repealed]
- 55. Security for collection of tax.

Sec. 43.75.010. Fisheries business licenses. Repealed by § 13 ch 79 SLA 1979.

Cross reference. — For present provisions covering the subject matter of the repealed section, see AS 43.75.011.

Editor's note. — The repealed section derived from § 1, ch. 62, SLA 1949; § 1, ch. 113, SLA 1951; § 1, ch. 146, SLA 1962; §§ 1, 2, ch. 44, SLA 1967.

State license tax on salmon canneries with its revenue sharing provision is not different in kind from

general gross receipts tax of Alaska Business License Act. — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1755 (File No. 2365), 584 P.2d 1115 (1976).

There is no general prohibition against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1755 (File No. 335), 584 P.2d 1115 (1976).

**Sec. 43.75.011. Fisheries business license.** A person engaging or attempting to engage in a fisheries business shall first apply for and obtain a license as provided in AS 43.75.020. (§ 3 ch 79 SLA 1979)

Editor's note. — Section 1, ch. 79, SLA 1979, provides: "FINDINGS. The legislature finds that the state has

- "(1) funded and implemented several fisheries-related development programs;
- "(2) funded and implemented fishery loan programs;
- "(3) increased its fishery protection and management program;
- "(4) funded and implemented a limited entry program; and
- "(5) embarked on a program of encouraging the development of a bottom fishing industry."

Section 2, ch. 79, SLA 1979, provides: "PURPOSE. The purposes of this Act are to

- "(1) insure that the state is able to continue its efforts toward overall fisheries-related development programs by raising additional revenue to pay for the programs;
- "(2) make the imposition of the fisheries tax more uniform among fisheries businesses; and
- "(3) provide funding for the development of new fisheries."

**Sec. 43.75.015. Fisheries business tax.** (a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

- (1) salmon canned at a shore-based cannery — four and one-half per cent;
- (2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business — three per cent;
- (3) fisheries resources processed by a floating fisheries business — five per cent.

(b) Instead of the taxes levied by (a) of this section, a person engaged in a fishery business which includes processing a developing commercial fish species is liable for and shall pay a tax equal to

- (1) one per cent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and
- (2) three per cent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may not deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other fisheries businesses, but shall include that value as part of the value of the fishery resources processed. (§ 3 ch 79 SLA 1979)

**Sec. 43.75.030. Filing return and payment of tax.** (a) A person subject to the tax shall file a return stating the value of fisheries

resources processed under this chapter, and such return shall be filed by regulation. The return shall be signed by the taxpayer or a duly authorized agent. If a receiver, trustee, or assignee, he shall file the return. Such a return shall be filed by the person of whose

(e) Every person engaged in a fisheries business which a license is required to process shall file statements under oath or affirmation under which the commissioner may determine (am §§ 5, 6 ch 79 SLA 1979)

Effect of amendments. — Substitution of "fisheries resources" for "new fisheries resources" in the first sentence of subsection (a) of AS 43.75.010 — 43.75.015. "this chapter" in the first sentence of subsection (a) and in subsection (b) and in subsection (c) deleted "such" preceding

**Sec. 43.75.050. Vessel license.** Repealed by § 4 ch 113 SLA 1980.

Cross references. — Provisions concerning civil penalties AS 43.05.223. For provisions concerning criminal penalties AS 43.05.290.

Editor's note. — The provisions derived from § 4 ch. 82, SLA 1965; § 1, 2, ch. 94, SLA 1976; § 4, ch. 94, SLA 1976; § 7, ch. 79, SLA 1979.

**Sec. 43.75.055. Sundry license.** A person applying for a license under this section shall produce during the year the extent of licensable resources against which the tax is imposed in respect to descriptive information prescribed to three times the value probably be liable for the license until the application is approved by the att

REVENUE AND TAXATION

§ 43.75.030

39, 46 S. Ct. 110, 70 L. Ed. 414, 1956, aff'd, 306 U.S. 199, 51 S. Ct. 929, 7 L. Ed. 2d 227 (1961).  
 Cited in State v. Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File Nos. 1237, 1295, 435 P.2d 100 (1972)).  
 Am. Jur. reference. — 51 Am. Jur., Taxation, § 594.

13.75.020. Application for license. (a) Application for 2 license filed with the Department of Revenue and accompanied by an amount of \$25. A separate initial fee is required for each plant specified in the application covered by the license. The application shall contain the name of the applicant, the line of business to be licensed, place of business, and other facts which the department prescribes. The applicant shall state that he agrees to pay the license tax, and that he will file a return and pay the tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied by the fee, the department shall issue the license as of the date the application is filed or mailed, and the applicant may carry on the business from the date the application was actually made. (§ 2 ch 82 SLA 1949)

13.75.030. Filing return and payment of tax. (a) A person liable to the tax shall file a return stating the value of raw fisheries products processed during the license year, computed as required by §§ 10 — 50 of this chapter, and such other information as the department prescribes by regulation. The return shall show the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, he shall file the return for the person. A tax based on the basis of such a return shall be collected in the same manner as if collected from the person of whose business he has custody and control.

(b) The return shall be made on the basis of the calendar year to the Department of Revenue at Juneau before April 1 after the close of the calendar year.

(c) The department may prescribe regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.

(d) The tax shall be paid before April 1 after the close of the calendar year.

(e) Every person engaging or attempting to engage in a business for which a license is required under §§ 10 — 50 of this chapter shall keep accurate records, make such statements under oath, file such returns, and comply with such regulations as the commissioner of revenue may prescribe.

(f) When the department considers it is necessary, it may require a person by notice served upon him, to file a return, make such statements under oath, or keep and display to it such records as it considers

State Government Title 44

sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, or otherwise, a false or fraudulent return, the department may assess the return from the information which it can obtain. A return so assessed by the department is prima facie good and sufficient for all legal purposes. (S 3 ch 82 SLA 1949; am §§ 1, 2 ch 146 SLA 1962)

Applied in *Schlothan v. Territory of Alaska*, 276 F.2d 505 (9th Cir.), cert. denied 352 U.S. 930, 80 S. Ct. 1075, 4 L. Ed. 2d 1360.

Sec. 43.75.050. Violations and penalties. (a) Repealed by § 7, SLA 1976.

(b) Repealed by § 3 ch 166 SLA 1976.

(c) If a part of a deficiency in the tax is due to fraud with intent to evade tax, 50 per cent of the total amount of the deficiency, in addition to the deficiency, shall be assessed and collected.

(d) Repealed by § 3 ch 166 SLA 1976.

(e) Repealed by § 4 ch 94 SLA 1976.

(f) A person who wilfully fails to obtain a license, pay a tax, file a return, keep or display a record, or supply the information as required by law or regulation, in violation of § 10 - 55 of this chapter, is, in addition to other penalties provided by law, guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both together with the cost of prosecution.

(g) A person who wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, is guilty of a felony, and, upon conviction, is subject to the penalties prescribed for perjury.

(h) In this section "person" includes an officer, agent, or employee of a corporation or a member, agent, or employee of a partnership. A person, as an officer, agent, employee, or member, is under duty to perform the act in respect to which the violation occurs. (S 4 ch 82 SLA 1949; am § 1 ch 17 SLA 1968; am §§ 1, 2 ch 55 SLA 1968; am § 4 ch 94 SLA 1976; am § 3 ch 166 SLA 1976)

Cross references. — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion of a deficiency of the tax, see AS 43.05.220. As to interest on taxes, see AS 43.05.225. For provisions creating a lien for unpaid taxes or license fees, see AS 43.11.050.

Effect of amendments. — The first 1976 amendment repealed subsection (a), which made a tax under this article and the penalties and interest on the tax a lien, and provided generally for such lien.

The second 1976 amendment amended subsections (a), (b) and (d), which provided for an additional amount to be added to the tax for failure to file a return, for willful neglect, for a penalty if the tax is not paid when due, and for the assessment and collection of interest on the tax, respectively.

Legislative committee report. — See report on ch. 55, SLA 1968 (HB 1968 House Journal, p. 324).

...section relates to the license... on salmon canneries... Alaska... AS 43.75.050... 26 227-196... under duress... of the tax is be... judicially... to qualify... under laws... State... Fisheries... Sup. Ct. Op. 1... Nos. 1297, 1301, 495 P.2d... construing former provision to repealed subsection... of Alaska v. Arctic Mfg... 136, 140 F. Supp. 2-6 (D. Alas...

Sec. 43.75.055. Security for license under this chapter shall be the amount of each of the taxes during the license year. The applicant shall file with the department a list of all real property owned by the licensee, showing the location and value of such property. If the lienable value of the real property is less than the amount of the tax for which the applicant is liable under this section, the department may require the applicant to file with the department a penal sum or other security in the form of a bond. (S 4 ch 84 SLA 1977)

Article 2. Cold Storage

- 1. License application and fee
2. License application and fee
3. Duty to pay tax and keep records

Sec. 43.75.060. Fisheries business license. — Any person attempting to engage in any business in connection with the state's salmon industry without a license...

(1) Shore-based cold storage facilities for salmon canneries, herring processing facilities, and other facilities shall be assessed at 10 per cent of the value of the real property...

resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return shall show the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, he shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business he has custody and control.

(e) Every person engaging or attempting to engage in a business for which a license is required under this chapter shall keep records, make statements under oath, file returns, and comply with all regulations which the commissioner of revenue may prescribe.

(am §§ 5, 6 ch 79 SLA 1979)

**Effect of amendment.** — The 1979 amendment substituted "fisheries resources" for "raw fisheries products" in the first sentence of subsection (a), deleted "AS 43.75.010 — 43.75.050 of" preceding "this chapter" in the first sentence of subsection (a) and in subsection (e), deleted "such" preceding "records,"

preceding "statements," and preceding "returns" in subsection (e), and substituted "all regulations which" for "such regulations as" in subsection (e).

As the rest of the section was not affected by the amendment, it is not set out.

#### Sec. 43.75.050. Violations and penalties.

Repealed by § 4 ch 94 SLA 1976, § 3 ch 166 SLA 1976 and §§ 45, 46 ch 113 SLA 1980.

**Cross references.** — For present provisions concerning civil penalties, see AS 43.05.220. For present provisions concerning criminal penalties, see AS 43.05.290.

**Editor's note.** — The repealed section derived from § 4, ch. 82, SLA 1949; § 1, ch. 17, SLA 1968; §§ 1, 2, ch. 55, SLA 1968; § 4, ch. 94, SLA 1976; § 3, ch. 166, SLA 1976; § 7, ch. 79, SLA 1979.

Section 52, ch. 113, SLA 1980, effective June 21, 1980, makes the repeal of subsection (a), which read: "If a part of a deficiency in the tax is due to fraud with intent to evade tax 50 per cent of the total amount of the deficiency, in addition to the deficiency, shall be assessed and collected," retroactive to January 1, 1980, and applicable to tax years beginning after December 31, 1979.

**Sec. 43.75.055. Security for collection of taxes.** Each applicant for a license under this chapter shall, in or with his application, state under oath the amount of each of the products which he expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the state against which the tax may be collected and other information with respect to description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the

probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. However, if the applicant purchases salmon for export from Alaska in the round, the amount of the bond is \$50,000 unless the applicant is the owner of lienable real property in the state of a value of at least \$50,000, and the bond must be conditioned upon payment to the fisherman of the full purchase price for the salmon and the payment of the tax in full when due. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax. (§ 4 ch 84 SLA 1967; am § 8 ch 79 SLA 1979.)

Effect of amendment. — The 1979 amendment added the present fourth sentence and added "or prepays the estimated tax" to the end of the present fifth sentence.

Article 2. Cold Storages and Other Fish Processors.

Section

60 — 95. [Repealed]

Secs. 43.75.060 — 43.75.095.

Repealed by § 13 ch 79 SLA 1979.

Editor's note. — The repealed article derived from §§ 1 — 4, ch. 97, SLA 1949; § 1, ch. 116, SLA 1951; § 1, ch. 102, SLA 1955; § 1, ch. 55, SLA 1966; §§ 3, 5, ch. 84, SLA 1967; § 1, ch. 30, SLA 1968. For present provisions covering the subject matter of the repealed article, see AS 43.75.011 et seq.

Article 3. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.

Section

100. Tax imposed on taking of fishery resource

110. Duty of taxpayer and payment of tax

120. [Repealed]

Sec. 43.75.100. Tax imposed on taking of fishery resource. (a) A person taking, purchasing, or otherwise acquiring a fishery resource covered by this chapter which has not been subject to the tax imposed in AS 43.75.015 is subject to the tax levied in AS 43.75.015 on the value of the fishery resource sold if the person

(1) transports the fishery resource to a point outside the taxing jurisdiction of the state for subsequent processing or sale to a fisheries business outside the taxing jurisdiction of the state; or

(2) sells the fishery resource to a fisheries business outside the taxing jurisdiction of the state.

(b) A person who shall pay the same would pay in the va ch 190 SLA 1959; a

Effect of amendme amendment: wrote thi

Sec. 43.75.110. subject to taxes und stating the value of acquired during the of the taxing juris 43.75.100 — 43.7 provisions of AS 4 department. The r signed by the taxp jury. If a receiver, ness, he shall mak of such return shal the person of w requirements for t to keep records an revenue are the sa (§ 2 ch. 190 SLA

Effect of amendr amendment: subst resources taxa, purc acquired" for "raw taken" and "fisheri "freezer ship, float:

Sec. 43.75.120 Repealed by §

Editor's note. — derived from § 3, ch. ch. 79, SLA 1979.

Section 130. Referred to local 135. [Repealed] 136. Appropriations and Agriculture 140. Definitions

Funding Information

General Fund \$100,000,000  
Other Funds -0-  
\$100,000,000

Introduced: 2/3/81  
Referred: Resources and  
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 141

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making a special appropriation to the fishery  
7 product revolving loan fund; and providing for an  
8 effective date."

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

\* Section 1. The sum of \$100,000,000 is appropriated from the general  
11 fund to the Department of Revenue, fishery product revolving loan fund, for  
12 the purposes of implementing AS 44.25.040 -- 44.25.065.

13

\* Sec. 2. The appropriation made in sec. 1 of this Act is not a one-year  
14 appropriation and does not lapse under AS 37.25.010.

15

\* Sec. 3. This Act takes effect upon the effective date of a version of  
16 a bill entitled "An Act establishing a fishery product revolving loan fund;  
17 and providing for an effective date."

18

19

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27

28

29

SB 141

removed from  
original bill

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
 Title An Act establishing a fish pack revolving loan fund.  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected Treasury Management

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	13.1	52.2	57.4	63.2	69.5	76.4
200 TRAVEL	3.0	12.0	13.2	14.5	16.0	17.6
300 CONTRACTUAL	2.0	2.0	2.2	2.4	2.7	2.9
400 COMMODITIES	.2	.3	.3	.4	.4	.5
500 EQUIPMENT	2.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>20.3</b>	<b>66.5</b>	<b>73.1</b>	<b>80.5</b>	<b>88.6</b>	<b>97.4</b>

FUNDING (Thousands of Dollars)

	20.3	66.5	73.1	80.5	88.6	97.4
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	1	1	1	1	1	1
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above includes salary and benefits for State Investment Officer II. Travel cost due to nature of fishing business and review requirements for loans. Contractual expenditures for advertising for regulations, etc. Equipment for State Investment Officer.

Costs shown in FY 81 are for a three month period assuming the bill would pass by March 31. If not effective until new fiscal year, equipment costs should be moved to FY 82.

Above is predicated on use of Alaska financial institutions as seller-servicer.

*Anselm C. Staack*

IV. DATE January 26, 1981 PREPARED BY Anselm C. Staack, Treasury Comptroller  
 AGENCY Dept. of Revenue/Treasury Division  
 PHONE 465-2351  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

1	POSITION TITLE State Investment Officer II				RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	SGV	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG		
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:  Necessary to implement and monitor new Fish Pack Revolving Loan Fund.  Investment Officer will review and screen loan applications. Analyzes overall value and security and approves loan for purchase/participation. Confer with affected agencies and institutions to maintain smooth revolving loan program. Works with Alaska financial institutions for participations.				
	1	2	3							
4	PERSONAL SERVICES: SALARY 3,494 x 12		41,928							
5	BENEFITS 41,928 x .1533		6,428							
6	FICA SBP		2,004							
7	HEALTH INS. Mo. Fix. 12x150		1,800							
8	TOTAL PERSONAL SERVICES		52,160							
9	TRAVEL		12,000							
10	CONTRACTUAL		2,000							
11	COMMODITIES		300							
12	EQUIPMENT		2,000							
13	OTHER									
14	TOTAL COST		68,460							
	CODE	FUNDING SOURCE								
15		FED RCPTS. 1002								
16		GF MATCH. 1003								
17		GEN. FUND 1004		68,460						
18		I-A RCPTS. 1005								
19		PGM RCPTS 1026								
20		OTHER								
21	CONTINUATION									
22	ADDITION	XX	FOR B&M USE ONLY							
4A KEY NUMBER		COLUMB. NO.								

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

BRU Treasury Management

**13** REQUEST FOR NEW POSITION.

COMPONENT \_\_\_\_\_

Page 1 of 1

REVISED DATE 1/26/81

**FY 82**

February 3, 1981

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would establish the fishery product revolving loan fund in the Department of Revenue. This bill is designed to provide short-term financing to fish processors with facilities located in Alaska. The Department of Revenue would be authorized under the bill to purchase participation interests in loans made by banks to fish processors. These loans would provide needed funds to fish processors to cover operating costs before the fishery products are sold.

I am also transmitting a bill appropriating money to the fund.

Sincerely,

*SJSHA*

Jay S. Hammond  
Governor

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 141  
 Title An Act establishing a fish pack revolving loan fund."  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected Treasury Management  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
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300 CONTRACTUAL	2.0	2.0	2.2	2.4	2.7	2.9
400 COMMODITIES	.2	.3	.3	.4	.4	.5
500 EQUIPMENT	2.0					
600 LAND & STRUCTURES						
700 GRANTS CLAIMS. ETC.						
<b>TOTAL</b>	<b>20.3</b>	<b>66.5</b>	<b>73.1</b>	<b>80.5</b>	<b>88.6</b>	<b>97.4</b>

FUNDING (Thousands of Dollars)

	20.3	66.5	73.1	80.5	88.6	97.4
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	1	1	1	1	1	1
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above includes salary and benefits for State Investment Officer II. Travel cost due to nature of fishing business and review requirements for loans. Contractual expenditures for advertising for regulations, etc. Equipment for State Investment Officer.

Costs shown in FY 81 are for a three month period assuming the bill would pass by March 31. If not effective until new fiscal year, equipment costs should be moved to FY 82.

Above is predicated on use of Alaska financial institutions as seller-servicer.

*Anselm C. Staack*

IV. DATE January 26, 1981 PREPARED BY Anselm C. Staack, Treasury Comptroller  
 AGENCY Dept. of Revenue/Treasury Division  
 PHONE 465-2351

Original: Legislative Finance  
 cc: Budget and Management.  
 Prime Sponsor (First Legislator Named)

1	POSITION TITLE State Investment Officer II				RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	GOV	APPROV	DISAPP						
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG								
3	TYPE OF EXPENDITURE				AMOUNT		JUSTIFICATION:									
	1	2	3													
4	PERSONAL SERVICES: SALARY 3,494 x 12		41,928		<p>Necessary to implement and monitor new Fish Pack Revolving Loan Fund.</p> <p>Investment Officer will review and screen loan applications. Analyzes overall value and security and approves loan for purchase/participation. Confer with affected agencies and institutions to maintain smooth revolving loan program. Works with Alaska financial institutions for participations.</p>											
5	BENEFITS 41,928 x .1533		6,428													
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19		PGM RCPTS 1028														
20		OTHER														
21	CONTINUATION															
22	ADDITION		FOR B&M USE ONLY													
4A KEY NUMBER		COLLIER NO.														

AGENCY Department of Revenue

PROGRAM Revenue Collection and Management

BRU Treasury Management

COMPONENT \_\_\_\_\_

**13** REQUEST FOR NEW  
POSITION.

Page 1 of 1

REVISED 1/26/81  
DATE

**FY 82**

February 3, 1981

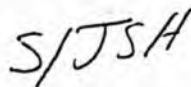
The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would establish the fishery product revolving loan fund in the Department of Revenue. This bill is designed to provide short-term financing to fish processors with facilities located in Alaska. The Department of Revenue would be authorized under the bill to purchase participation interests in loans made by banks to fish processors. These loans would provide needed funds to fish processors to cover operating costs before the fishery products are sold.

I am also transmitting a bill appropriating money to the fund.

Sincerely,



Jay S. Hammond  
Governor

# Alaska State Legislature



SENATOR  
BOB MULCAHY  
  
REPRESENTING  
THE ALEUTIAN CHAIN,  
KODIAK ISLAND  
AND THE Pribilof Islands

HOME ADDRESS  
P.O. BOX 246  
KODIAK, ALASKA 99615  
(907) 486-3561

DURING SESSION  
POUCH V  
JUNEAU, ALASKA 99811

## State Senate

March 16, 1981

TO: Senators Don Bennett and Ed Dankworth, Co-Chairmen  
Senate Finance Committee

FROM: Senator Bob Mulcahy

SUBJ: CSSB 140 and SB 141

Enclosed is the back-up material for the above bills.

PROPOSED AMENDMENTS TO CSSB 140 THAT  
WERE NOT ADOPTED

Proposed amendment to CSSB 140.

Page 2, line 15.

The maximum term of a commitment to loan may not exceed 18 months. The renewal of a commitment to loan is at the discretion of the Commissioner of Revenue.

Proposed amendment by Commissioner Williams.

Page 2, line 15.

delete the entire line and replace it with the following:

(2) if the fund is a participant in a loan to a fish processor that has not been, or appears unlikely to be, fully repaid within a year from the time the loan was made, then the fund may not participate in a new loan to that processor unless there is in effect a reasonable and realistic agreement, acceptable to all participants in the existing loan, under which the existing loan will be repaid in a prompt and orderly fashion.

Proposed amendment by the governor.

Page 2, lines 15-18

delete the following lines:

(2) the term of a loan may not exceed one year;

(3) the loan must be secured by inventory or accounts receivable of the fish processor and may not exceed 75 percent of the appraised value of the collateral taken as security;

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 140 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a fishery product revolving loan  
7 fund; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.25 is amended by adding new sections to read:

10 ARTICLE 3. FISHERY PRODUCT REVOLVING LOAN FUND.

11 Sec. 44.25.040. ESTABLISHMENT OF LOAN FUND. The fishery product  
12 revolving loan fund is established in the Department of Revenue.

13 Sec. 44.25.045. FISHERY PRODUCT LOANS. The department may pur-  
14 chase participations in loans made to fish processors with facilities  
15 located in Alaska and which are used to finance those processors' in-  
16 ventories of canned, frozen, or processed products from Alaska fish-  
17 eries.

18 Sec. 44.25.050. POWERS AND DUTIES OF THE DEPARTMENT. (a) The  
19 commissioner may

- 20 (1) designate agents and delegate powers to them as is  
21 necessary;
- 22 (2) adopt regulations to implement AS 44.25.040 - 44.25.065;
- 23 (3) make and execute contracts and other instruments to im-  
24 plement AS 44.25.040 - 44.25.065;
- 25 (4) purchase participations in notes and agreements securing  
26 loans in accordance with AS 44.25.040 - 44.25.065;
- 27 (5) require that loans in which the fund participates be  
28 secured by adequate collateral;
- 29 (6) acquire real or personal property by purchase, transfer,

1 or foreclosure when that acquisition is necessary to protect a note in  
2 which the fund has an interest.

3 (b) Money in the fund that is not being used for participations  
4 in fishery product loans must be invested by the department in the same  
5 manner as provided for the investment of general fund surplus under  
6 AS 37.15.070.

7 (c) Earnings and interest income from investment and fishery pro-  
8 duct loan participations must be transferred to the general fund. Re-  
9 payments of principal from investments and loan participations must be  
10 returned to the fund.

11 Sec. 44.25.055. LIMITATIONS ON LOANS. (a) Loan participations  
12 purchased under AS 44.25.040 - 44.25.065 are subject to the following  
13 limitations:

14 (1) state participation in a single loan may not exceed 90  
15 percent of the total amount of the loan;

16 (2) the term of a loan may not exceed one year;

17 (3) the loan must be secured by inventory or accounts re-  
18 ceivable of the fish processor and may not exceed 75 percent of the  
19 appraised value of the collateral taken as security;

20 (4) the loan must be originated and serviced by either the  
21 Alaska Commercial Fishing and Agriculture Bank (AS 44.81.010) or by a  
22 state or federally chartered financial institution;

23 (5) the servicing charge on the loan may not exceed one-half  
24 of one percent of the outstanding balance of the loan;

25 (6) the rate of interest, including all service fees, on the  
26 unpaid balance of one loan fund's participation in a loan shall float  
27 at the average rate at which six month U.S. Treasury bills are awarded  
28 in the weekly auction of U.S. Treasury bills, plus three and three-  
29 fourths percentage points, but may not exceed the applicable interest

014921

1 rate;

2 (7) loans must be made only to fish processors with facil-  
3 ities located in Alaska;

4 (8) loans may not be made to fish processors which are 80  
5 percent or more owned or controlled by aliens.

6 (b) Money in the fund shall be used to purchase participation in  
7 loans made to fish processors which are 50 percent or more owned or  
8 controlled by persons domiciled in Alaska until these processors needs  
9 for loans are met before the money in the fund may be used to purchase  
10 participation in loans made to fish processors which are less than 50  
11 percent owned or controlled by persons domiciled in Alaska.

12 (c) For the purposes of this section

13 (1) "alien" means

14 (A) an individual who is not a citizen or national of  
15 the United States, or who is not lawfully admitted to the United  
16 States for permanent residence, or paroled into the United States  
17 under the Immigration and Nationality Act (8 U.S.C. secs. 1101 -  
18 1503), as amended;

19 (B) a person, other than an individual, that was not  
20 created or organized under the laws of the United States or of a  
21 state, or whose principal place of business is not located in any  
22 state; or

23 (C) a person, other than an individual, that was created  
24 or organized under the laws of the United States or of a state, or  
25 whose principal place of business is located in a state, and which  
26 is controlled by a person described in (A) or (B) of this para-  
27 graph;

28 (2) "control" means that a relationship exists between a  
29 person and fish processor in which the person exercises control consist-

1 ing of

2 (A) owning directly or indirectly, or having the power  
3 to vote, the percentage indicated of any class of voting security  
4 of a fish processor organized as a corporation; or

5 (B) influencing or affecting in any substantive manner  
6 the election of a majority of the directors or trustees of a fish  
7 processor organized as a corporation;

8 (3) "person" means an individual, a corporation, a partner-  
9 ship, an association, a joint-stock company, an estate, a trust where  
10 the interests of the beneficiaries are evidenced by a security, an  
11 unincorporated association, a government, a political subdivision of a  
12 government, or a combination of these entities.

13 Sec. 44.25.060. SALE OR TRANSFER OF MORTGAGES AND NOTES. The de-  
14 partment may sell or transfer at par value or at a premium or discount  
15 to any bank or other private purchaser for cash or other consideration  
16 the mortgages and notes held as security for loans made under AS 44.-  
17 25.040 - 44.25.065. The proceeds from the sale or transfer are assets  
18 of the fund.

19 Sec. 44.25.065. DEFINITIONS. In AS 44.25.040 - 44.25.065

20 (1) "commissioner" means the commissioner of revenue;

21 (2) "department" means the Department of Revenue;

22 (3) "fish processor" means a person engaging in a business  
23 for which a license is required under AS 43.75.010 - 43.75.090;

24 (4) "facilities located in Alaska" means facilities at which  
25 fisheries products are canned, frozen, or otherwise processed for  
26 inventory, including floating facilities which are documented under the  
27 laws of the United States as defined in 46 U.S.C. 801, and operate  
28 within the three-mile limit or within historic bays and inland waters  
29 of the state;

1 (5) "fishery product" means fin fish, shellfish, and fish  
2 byproducts, including but not limited to salmon, halibut, herring,  
3 flounder, crab, clam, cod, shrimp, and pollock;

4 (6) "fund" means the fishery product revolving loan fund.

5 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
6 070(c).



JUNEAU, ALASKA

# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 141 "An Act making a special appropriation to  
the Fishery Product Revolving Loan Fund"

The subcommittee has taken testimony and reports SB 141 back to the committee as a whole with the following recommendations.

Members		Recommendation
Senator Mulcahy	<u>Bob Mulcahy</u>	<u>No Rec</u>
Senator Eliason	<u>D. Eliason</u>	<u>u u</u>
Senator Gilman	<u>Don Gilman</u>	<u>No Rec</u>



# Alaska State Legislature

## Senate

JUNEAU, ALASKA

RESOURCES SUBCOMMITTEE ON FISHERIES

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 140 "An Act creating a Fishery Product Revolving  
Loan Fund"

The subcommittee has taken testimony and replaced SB 140 with CSSB 140 and reports CSSB 140 back to the committee as a whole with the following recommendations.

Members		Recommendation
Senator Mulcahy	<u>Bob Mulcahy</u>	<u>Do Pass</u>
Senator Eliason	<u>Phil Eliason</u>	<u>" "</u>
Senator Gilman	<u>Don Gilman</u>	<u>NO Rec</u>

STATE OF ALASKA  
THE LEGISLATURE

POUCH - STATE CAPITOL  
GENERAL ALASKA 99511  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1981

SUBJECT:            Constitutionality of giving first priority in  
                      the award of fishery loans to Alaskans.  
                      (CSSB 140)

TO:                    Senator Bob Mulcahy

THROUGH:            Joseph A. Guthrie  
                      Legislative Counsel

FROM:                 Bernie M. Tuggle  
                      Legislative Legal Extern

You have asked whether first priority in the award of fishery loans under CSSB 140 could be given to companies which are owned 50 percent or more by Alaska residents. Your proposal would be subject to attack under the privileges and immunities clause by individuals and to equal protection attack by corporations.

The privileges and immunities clause, Article IV, section 2 says that:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Corporations, however, are not protected under this clause, since they are not citizens. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). Therefore, only individuals could pursue a privileges and immunities challenge against your proposal.

The purpose of the clause is:

To place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.

Paul v. Virginia, 19 L.Ed. 357 (1869). However the clause does not preclude disparity of treatment in situations where there are perfectly valid independent reasons for it. What the clause does bar is discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. A substantial reason for the discrimination would not exist unless there is something to indicate that non-citizens constitute a "peculiar source of evil" at which the discriminatory statute is aimed. Toomer v. Witsell, 92 L.Ed. 1460, 1472 (1948). Moreover, even where the presence or activity of non-residents causes or exacerbates the problem the state seeks to remedy, there must be a "reasonable relationship" between the danger posed by noncitizens, as a class, and the discrimination practiced upon them. Id., at 1473. Therefore, the privileges and immunities clause demands a two-step analysis.

First, do non-residents constitute a peculiar source of evil at which your proposal is aimed? I believe that a reasonable and persuasive argument could be made that they do. Alaska has a strong interest in regulating and controlling those things it claims to "own" (the funds for which the fishery loans would derive). Yet while this interest is by no means absolute, Baldwin v. Montana Fish & Game Comm'n, 56 L.Ed.2d 354 (1978), Alaska's ownership of the funds is a crucial factor. Hicklin v. Orbeck, 57 L.Ed.2d 397, 406 (1978). In Hicklin, the Court found that Alaska had "little or no" proprietary interest in much of the activity swept within the ambit of Alaska Hire. Id. On the other hand, under your proposal Alaska does have a significant proprietary interest, e.g., management of loan funds, and development of the fishing industry. Given this state interest in the funds which would be the source of fishery loans, non-Alaskans could be a "peculiar source of evil" if the loan funds were limited, non-Alaskans flocked to the state to get the loans, etc.

Second, is there a reasonable relationship between your proposal and the class at which your proposal is aimed. Again, I would say "yes". Non-Alaskans are not absolutely barred from receiving a loan; they must simply wait in line. I would conclude that your proposal is constitutionally valid as applied to non-Alaskan individuals.

Senator Bob Mulcahy  
Page 3  
March 4, 1981

Corporations, meanwhile, could mount a Fourteenth Amendment equal protection attack. However your proposal seems valid since it involves no suspect classes and no fundamental rights. Instead, it is an example of the type of socio-economic legislation that warrants a low level rational basis test. Usually, such a test amounts to the judiciary deferring to the legislative judgment.

While the Alaska Supreme Court no longer applies a two-tiered approach to equal protection cases, State v. Erickson, 574 P.2d 1 (Alaska 1978), the result would be the same since there are no fundamental rights or suspect classes involved with your proposal.

In summary, your proposal seems constitutionally valid both in regards to individuals and to corporations.

BMT:JAG:ljb

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3211

MEMORANDUM

March 3, 1981

SUBJECT:           Constitutionality of precluding fish processors  
                    who are 80 percent or more owned by foreign  
                    nationals from obtaining fishery product loans  
                    under SB 140.

TO:                 Senator Bob Mulcahy

FROM:             Joseph A. Guthrie           *JAG*  
                    Legislative Counsel

Attached is a memorandum prepared by Bernie M. Tuggle, a  
legal extern serving with the Division of Legal Services. I  
have reviewed his memorandum and agree with the conclusions  
and advice given in it.

JAG:ljb

Attachment

STATE OF ALASKA  
THE LEGISLATURE

POLICY STATE DEPT  
ALASKA LEGISLATURE  
907-465-3811

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT:           Constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining fishery product loans under SB 140.

TO:                 Senator Bob Mulcahy

FROM:              Bernie M. Tuggle <sup>BT</sup>  
Legislative Legal Extern

You have asked me to explore the constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining loans from the fishery product revolving loan fund which would be created by SB 140. This issue raises Fourteenth Amendment equal protection problems because your proposal would discriminate against persons on the basis of alienage.

As a practical matter, many fish processors would be organized under the corporate form of business. This raises the initial question whether corporations are protected under the equal protection clause. The answer is an unequivocal "yes". Grosjean v. American Press Co., 80 L.Ed. 660 (1936). Therefore, corporations and other types of business organizations receive the same amount of equal protection as individuals.

Traditionally, classifications based on alienage, like those based on nationality, or race, are inherently suspect and subject to the highest judicial scrutiny. Graham v. Richardson, 29 L.Ed.2d 534 (1971). However it is unclear whether strict scrutiny applies to non-resident aliens as well as resident aliens. While the numerous cases which have struck down alienage classifications have all involved resident aliens, Truax v. Raich, 60 L.Ed. 131 (1951); Takahashi v. Fish and Game Comm'n, 92 L.Ed. 1478 (1948); Graham v. Richardson, supra; Sugarman v. Dougall, 37 L.Ed.2d

853 (1973); In re Griffiths, 37 L.Ed.2d 910 (1973); Hampton v. Mow Sun Wong, 48 L.Ed. 495 (1976); Examining Board v. Otero, 49 L.Ed.2d 63 (1977); Nyquist v. Mauclet, 53 L.Ed.2d 63 (1977); the Court has never directly addressed this issue. The lower courts, meanwhile, have split on whether strict scrutiny is the appropriate level of judicial review for laws which discriminate against non-resident aliens. Compare Moreno v. Toll, 489 F.Supp. 658 (D. Md. 1980) with United States v. Tsuda Maru, 429 F.Supp. 519 (D. Alaska 1979).

Matthews v. Diaz, 48 L.Ed.2d 478 (1976) suggests that classifications which discriminate against non-resident aliens are not as suspect as classifications discriminating against resident aliens.

Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests. (Emphasis in original)

Id. at 490. This possible difference in levels of judicial scrutiny will prove important as discussed below.

Another factor as to whether your proposal would pass constitutional muster would be the characterization of the benefit sought. Here, that benefit would be a fishery product loan. As a general rule, the strict scrutiny approach is applicable to state classifications based on alienage, excepting those dealing with governmental functions, in which case the less stringent rational basis test will be applied. For example in Foley v. Connelie, 55 L.Ed.2d 287 (1978), the Court upheld a New York statute limiting appointment to the state police force to United States citizens by applying a rational basis, rather than a strict scrutiny test. The application of this less demanding standard, however, was clearly limited to alienage classifications in matters involving the state's historical power to exclude aliens from participation in its political institutions. As the Court stated:

The essence of our holdings to date is that although we extend to aliens the right to education and public wel-