

LEG. FINANCE - BILLS 1983 - 1984 1800
HB 14 cont. - HB 15 1800

ALASKA MINER'S ASSOCIATION

RESOLUTION

Handwritten:
4/28/82

WHEREAS, the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process;

WHEREAS, the uncertainties created by the lack of specific time limits, the proliferation of agency reviews, the number of agencies involved in the permit process, and unjustified agency requirements upon processing, permit applications have cost Alaskans millions of dollars in lost unemployment and higher prices;

WHEREAS, the social, economic and environmental health and well-being of Alaskans will be promoted by reducing the number of agencies and agency reviews involved in the permit process and by requiring state agencies to process permit applications in an expeditious manner;

BE IT RESOLVED:

1. The Alaska Miner's Association supports and advocates the orderly development of state resources.
2. The Alaska Miner's Association supports and advocates the removal of all unnecessary and duplicative regulations impeding the orderly development of the state's resources.
3. The Alaska Miner's Association supports and advocates legislation's streamlining the state's regulatory and permitting processes.
4. The Alaska Miner's Association calls upon the Alaska executive and legislative branches to actively pursue and support regulatory reform.



APR 19 1983

Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

April 13, 1983

Senator Bettye Fahrenkamp
Chairperson, Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to bring to your attention a concern of the court system about SB 219, "An Act relating to the processing of permits by state agencies."

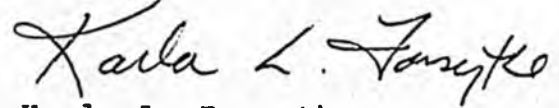
Proposed Section 44.62.636(c) provides that "an appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay."

Expediting the permit process is a worthy goal. The court's role in speeding up the process is outlined in the Alaska Constitution which allocates to the supreme court the authority to make and promulgate rules governing practice and procedure in civil and criminal cases in all courts (Article IV, Section 15). The calendaring of matters before the courts of the state is included within the rules of practice and procedure.

The chief justice of the supreme court has indicated that upon passage of the legislation, the court would consider a request to adopt a rule to give calendaring preference to permit appeals. Approaching this matter through a court rule rather than through a legislative enactment would recognize the supreme court's constitutional responsibility in determining appropriate procedural rules, while continuing to meet the legislative intent.

The court system will be glad to provide additional information or to answer any questions which may arise relating to the concerns expressed in this letter.

Sincerely,



Karla L. Forsythe
General Counsel

KLF:smh

cc: Chief Justice Edmond W. Burke
Arthur H. Snowden II
Presiding Judge Mark Rowland

from Rep. Lacher



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

PLANNING DEPARTMENT

May 11, 1983

Representative Barbara Lacher
Pouch V
Juneau, AK 99811

Dear Representative Lacher:

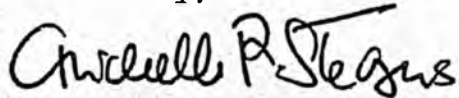
In response to the invitation to provide your office with a Matanuska-Susitna Borough position statement concerning HB 14, I would like to offer the following information.

The enclosed copy of the memorandum from your aide, Sarah Robinson, is an accurate picture of the Mat-Su Borough's interpretation of this bill. This memorandum is the result of a telephone conversation between Sarah and myself which occurred last week.

Specifically, the Borough's ability to participate in the permit review process would be limited if the proposed permit reform changes were adopted. Changes such as automatic approval if there is a deadline failure, ambiguity in defining which resource development activities are included under lead agency authority and the discretionary powers granted to DNR as the lead agency are examples where this bill does not seem to be in the best interests of all parties involved, especially the Mat-Su Borough and the Administration.

I would like to encourage you to proceed in your support of the Mat-Su Borough's opposition to this bill. If I can be of any further assistance, please let me know.

Sincerely,



Michelle R. Stearns
Senior Planner

mu

Enclosure

cc: Joe Hayes, House Speaker
Charles Bussell, Chairman, House
Judiciary Committee
Al Adams, Chairman House
Finance Committee

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

M E M O R A N D U M

TO: REPRESENTATIVE LACHER

FROM: SARAH ROBINSON

SUBJECT: HB 14

DATE: May 3, 1983

This legislation addresses the critical and controversial issue of permit reform in the Coastal Zone Management Program. Representative Martin, the prime sponsor of this bill, has argued that this legislation does not go as far in permit reform as many agencies would like but it proposes a compromise that best serves all parties involved. Representative Martin and the co-sponsors, Representatives Lindauer and Tischer, would argue that four years of attempted legislation lie behind the current form of this bill. Thus HB 14 has been under serious consideration and revision in numerous committees, and the sponsor is thus confident that this is effective and intelligent legislation.

Certain native and private corporations have been active in lobbying efforts for this bill. A strong argument used in this vein is the excessive cost added on to projects due to the time lag involved in permit review. A second argument employed is the prior litigation that has resulted due to challenges to agencies involved in the review process that are alleged have no direct bearing on the permit requested. It is implied in these arguments that the permit review process has been arbitrary and against the the very policy laid down in the formation of the Coastal Zone Management Program. Local municipalities and boroughs are accused of extending their jurisdiction through manipulation of the Coastal Zone Management Program, and state agencies are alleged to have overextended their executive powers--all to the "detriment" of economic development.

In contrast to this view, Michelle Stearns, Senior Planner of the Mat-Su Borough in charge of the Coastal Zone Management Program in the Borough, has informed me that the Borough is opposed to this bill. She listed several key problems with the bill, all of which center on the "unintended consequences" of the permit reform proposed in this bill. In particular, if one adopts the perspective of a borough and the effects of this "reform" on the ability of the boroughs to participate

in the permit review process as part of their overall planning, the bill appears to favor the DNR and native and private corporations at the expense of the borough. Stearns stated that, "if the bill's intent is to improve the permitting process overall, then the Borough would be in support of the bill; but the actual intent of this bill does not appear to be in the best interests of all parties involved. In particular the Borough's ability to actively enter the permit review process seems to have been circumvented."

The automatic approval clause, in Section 2, page 3 (c), lines 6-13 of the Labor and Commerce CS for HB 14, is not in the best interests of the Borough. If this automatic approval clause is in the best interests of anyone it is the DNR and private or native corporations. The 30 day time limit contained in this clause precludes the ability of a local borough from providing input into the permit review process.

Section 2, page 4 (c), lines 1-3 provides a loophole through which "sophisticated" applicants could withhold information and then release, in a timely manner, information to the disadvantage of local boroughs. This clause is beneficial to applicants and not state or local agencies. The limitations in this clause on the form of information submitted are subject to serious manipulations with no provision for appeal in terms of the responsiveness of the permit application.

Under (d) of the same section, page 4, lines 10-11, the "resource development activities" of the lead agency DNR is ambiguous. This vagueness can only lead to an open-ended policy interpretation on the part of the DNR. The potential dangers of this, in light of the history of prior challenges to DNR policy in the Coastal Zone Management Program, are sufficient that the need for clear legislative guidelines would seem imperative.

A further problem with the bill emerges in terms of the powers granted to DNR as the lead agency. Page 4, lines 28-29, and page 5, line 1, provides the DNR with discretionary powers to reach contrary opinions, conclusions or recommendations according to the weight of the evidence received. Given the constraints on evidence submitted, as cited above, it would seem that this proposed "permit reform" is really an elimination of the permit review process.

It would be wise to review other attempts to amend the Coastal Zone Management Program that are under consideration this session. SB 219 and reforms under consideration within the Administration should be considered before action is taken on HB 14. Statements from DEC, the Department of Law, the Department of Fish and Game, as well as DNR and other boroughs are crucial in gaining a clear perspective on this bill. Thus far the majority of input on HB 14 has been from private and native corporations.

Offered: 4/26/83
Referred: Resources, Judiciary
and Finance

Original sponsors: Martin, Lindauer
and Tischer

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 14 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to processing of permits by state
7 agencies, and to administration of the Alaska coastal
8 management program."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) the orderly development of state resources is being unneces-
12 sarily delayed by the length of time required to obtain permits from state
13 agencies, by the complexity of the permitting process, and by the number of
14 agencies involved in the permitting process;

15 (2) the uncertainties created by the lack of specific time
16 limits, the proliferation of agency reviews, the number of agencies in-
17 volved in the permit process, and unjustified agency requirements upon the
18 processing of permit applications have cost Alaskans millions of dollars in
19 lost employment and higher prices;

20 (3) the public interest has not been advanced by protracted
21 delay in the processing of permit applications by state agencies;

22 (4) by reducing the number of agencies and agency reviews in-
23 volved in the permit process, and by requiring state agencies to process
24 permit applications in an expeditious manner, the social, economic, and
25 environmental health and well-being of Alaska citizens will be promoted;
26 and

27 (5) there are many administrative orders and similar documents
28 that have been promulgated by the executive branch relating to interagency
29 review that conflict and overlap, retarding the permit issuing process.

1 * Sec. 2. AS 44.62 is amended by adding new sections to read:

2 ARTICLE 8A. PERMIT PROCESSING.

3 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource
4 agency shall by regulation classify each of the permits issued by that
5 agency within one of the two following categories:

6 (1) class I permits, for which the state agency must issue
7 a final decision within 30 days after the date of receipt of a com-
8 pleted permit application; and

9 (2) class II permits, for which, because of a necessary
10 public notice or interagency review period, a final decision cannot be
11 issued within 30 days; a final decision on a class II permit must be
12 issued within 65 days after the date of receipt of a completed permit
13 application, unless a public hearing is held on the permit, in which
14 case a final decision must be issued within 75 days of the date of
15 receipt.

16 (b) Final regulations classifying its permits shall be adopted
17 by each state resource agency by October 1, 1983, following appropri-
18 ate notice and hearing. Permits applied for after October 1, 1983,
19 must be issued in accordance with the time periods specified in (a) of
20 this section, and the provisions of the implementing regulations.

21 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
22 CESSING. (a) Upon a finding by the head of a resource agency that a
23 permit being considered involves unusually complex issues so that the
24 agency cannot render a final decision within the time period specified
25 in AS 44.62.632(a), the head of the agency may prescribe a time period
26 not to exceed a total of 120 days within which the final decision will
27 be made. The finding of the head of the agency may be appealed by the
28 applicant to the superior court under the Appellate Rules of Proce-
29 dure.

1 (b) The time period specified in AS 44.62.632(a) may be extended
2 if necessary to facilitate joint processing of a permit application by
3 state and federal agencies, but only if adherence to the time periods
4 established in AS 44.62.632(a) would cause an irreconcilable conflict
5 with a federal statute or regulation.

6 (c) Failure of a resource agency to make a final decision within
7 30 days after the receipt of a completed permit application for a
8 class I permit, within 65 days after the receipt of a completed permit
9 application for a class II permit, or within a time period extended by
10 (a) or (b) of this section or by AS 44.62.634, is approval of the
11 application. In an appeal of a permit issued by operation of this
12 subsection, the record shall be considered in the light most favorable
13 to the applicant, and the permit shall be accorded a presumption of
14 regularity.

15 (d) A state agency may not condition the issuance of a permit
16 upon the issuance of a permit from another governmental agency.

17 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource
18 agency receives a permit application that does not contain sufficient
19 information concerning the project's compliance with the agency's
20 statutes and regulations, the agency shall notify the applicant within
21 15 days after receipt of a permit application for a class I permit,
22 and within 30 days after receipt for a class II permit.

23 (b) The notification must specify those particular facts or
24 issues concerning the proposal upon which the agency requires addi-
25 tional information in order to determine whether the project will
26 conform to the agency's statutes and regulations.

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

1 Subsequent requests for additional information may be made, but must
2 relate only to new issues raised by the response to the initial noti-
3 fication. Subsequent requests do not extend the time periods speci-
4 fied in AS 44.62.632.

5 (d) Nothing in this section grants a resource agency the author-
6 ity to request information beyond the authority given to it by other
7 statutes.

8 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
9 agency that is solely responsible for issuing coastal management
10 consistency determinations under AS 46.40. For resource development
11 activities on state and federal land, water, and submerged land, the
12 lead agency is the Department of Natural Resources. In all other
13 cases, the lead agency is that resource agency that has principal
14 administrative responsibility for the type of development for which
15 the consistency determination is required, even though the development
16 may require permits from more than one resource agency. The lead
17 agency is solely responsible for preparing and submitting state com-
18 ments on federal permit applications. For classes of activities for
19 which no agency with principal responsibility exists the governor
20 shall designate a resource agency to be a lead agency for each class
21 by administrative order no later than October 1, 1983.

22 (b) In performing its functions under this section, the lead
23 agency shall consult with other resource agencies and with coastal
24 resource districts under AS 46.40. The lead agency shall consider
25 documented facts, data, opinion, conclusions, or recommendations
26 submitted by the commenting agency and the coastal resource districts
27 with an approved district coastal management program, within their
28 areas of expertise, but may, in its discretion, reach contrary opin-
29 ions, conclusions or recommendations according to the weight of the

1 evidence received. The lead agency shall balance competing factors in
2 reaching its final decision. No resource agency other than the lead
3 agency has primary expertise in the balancing of competing factors.

4 (c) Except as required by federal law no state agency other than
5 the lead agency may comment to a federal permitting agency.

6 (d) For activities involving approval of a plan of operation and
7 a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act),
8 the lead agency shall be the Department of Natural Resources.

9 (e) For activities occurring on privately owned land, and for
10 which one or more state permits or a disposal of interest in state
11 land is required to provide access to the privately owned land, or for
12 purposes otherwise ancillary to the activity, the lead agency shall be
13 the Office of the Governor, Division of Policy Development and Plan-
14 ning.

15 (f) Nothing in this section or AS 46.40 authorizes a lead agency
16 or any resource agency to deny or condition a consistency determina-
17 tion because of impacts which may be caused by activities not them-
18 selves requiring a state or federal permit or disposal of interest in
19 state land.

20 (g) In making a consistency determination under this section for
21 an activity occurring outside the boundaries of a coastal resource
22 district with an approved district plan, the lead agency or any re-
23 source agency may consider only those statewide standards and guide-
24 lines adopted by the Alaska Coastal Policy Council under AS 46.40.-
25 040(1).

26 Sec. 44.62.636. COMMENT PERIOD. (a) A coastal resource dis-
27 trict or state agency that receives a request for comment in connec-
28 tion with a permit application or plan review being processed by a
29 resource agency shall submit the comments in accordance with the

1 following schedule:

2 (1) comments on class I permits shall be submitted within
3 15 days after receipt of the request by the commenting coastal re-
4 source district or state agency;

5 (2) comments on class II permits and federal permits shall
6 be submitted within 30 days after receipt of the request by the com-
7 menting coastal resource district or state agency.

8 (b) When, under AS 44.62.633, the requesting agency has extended
9 the time periods specified in AS 44.62.632, that agency may extend the
10 time period specified in this section; however, comments submitted
11 under this subsection must be submitted no later than 30 days before
12 the date on which the lead agency must issue a final decision.

13 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) An administrative
14 appeal must be filed by the permit applicant within 10 days after the
15 date of issuance of a final decision denying or conditioning a permit
16 application. The appeal is to the head of the resource agency in-
17 volved. Administrative appeals conducted under this section are not
18 subject to the procedure in AS 44.62.330 - 44.62.630.

19 (b) An administrative appeal must be resolved within 30 days
20 from the date the appeal on a permit application is filed, or if a
21 hearing is held on the appeal, within 45 days from the date the appeal
22 was filed.

23 (c) The head of the agency may summarily dismiss an appeal
24 before the time established in (b) of this section, and the dismissal
25 is the decision on the matter for purposes of AS 44.62.638.

26 (d) In an appeal from the denial or conditioning of a permit the
27 head of the agency may, if the head of the agency determines that the
28 public interest would be served, grant the permit or remove conditions
29 of the permit until the appeal is determined.

1 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. Judicial review
2 by the superior court of a decision issued under AS 44.62.632 - 44.-
3 62.637 shall be by filing a notice of appeal in the superior court in
4 accordance with the applicable Rules of Appellate Procedure. The
5 review is governed by the provisions of AS 44.62.560(b) - (e) and
6 AS 44.62.570.

7 * Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

8 (c) As used in AS 44.62.632 - 44.62.638,

9 (1) "date of receipt" means the date on which a state
10 agency actually receives a completed application filed in accordance
11 with agency regulations and at a place identified as appropriate for
12 filing in the agency's regulations;

13 (2) "permit" means a permit, license, certification, con-
14 sistency determination, or other authorization or approval issued by a
15 resource agency as a written document that is required to be obtained
16 or is solicited from a state agency before the construction or opera-
17 tion of a project; "permit"

18 (A) does not include the approval of a unit agreement,
19 a unit development plan, or a unit exploration plan, or convey-
20 ances of interest in state land or water;

21 (B) does include all authorizations and approvals,
22 whether proprietary or regulatory, necessary to undertake a
23 project under a previously conveyed property interest;

24 (3) "project" means a new activity or expansion or addition
25 to an existing activity for which permits are required before con-
26 struction or operation; "project" does not include pursuing a trade or
27 profession, providing public health service, or operating a financial
28 institution;

29 (4) "resource agency" includes the Department of Natural

1 Resources, the Department of Environmental Conservation, and the
2 Department of Fish and Game with respect to permits issued for the
3 protection of fish habitat or the regulation of state sanctuaries,
4 refuges, and critical habitat areas.

Introduced: 1/17/83
Referred: Labor & Commerce,
Resources and Judiciary

BY MARTIN, LINDAUER
AND TISCHER

1 IN THE HOUSE

2 HOUSE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to processing of permits by state
7 agencies, and to administration of the Alaska coastal
8 management program."

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

10 * Section . FINDINGS. The legislature finds that

11 (1) the orderly development of state resources is being unneces-
12 sarily delayed by the length of time required to obtain permits from state
13 agencies, by the complexity of the permitting process, and by the number of
14 agencies involved in the permitting process;

15 (2) the uncertainties created by the lack of specific time
16 limits, the proliferation of agency reviews, the number of agencies in-
17 volved in the permit process, and unjustified agency requirements upon the
18 processing of permit applications have cost Alaskans millions of dollars in
19 lost employment and higher prices;

20 (3) the public interest has not been advanced by protracted
21 delay in the processing of permit applications by state agencies;

22 (4) by reducing the number of agencies and agency reviews in-
23 volved in the permit process, and by requiring state agencies to process
24 permit applications in an expeditious manner, the social, economic, and
25 environmental health and well-being of Alaska citizens will be promoted;
26 and

27 (5) there are many administrative orders and similar documents
28 that have been promulgated by the executive branch relating to interagency
29 review that conflict and overlap, retarding the permit issuing process.

1 * Sec. 2. AS 44.62 is amended by adding new sections to read:

2 ARTICLE 8A. PERMIT PROCESSING.

3 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource
4 agency shall by regulation classify each of the permits issued by that
5 agency within one of the two following categories:

6 (1) class I permits, for which the state agency must issue
7 a final decision within 30 days after the date of receipt of a com-
8 pleted permit application; and

9 (2) class II permits, for which, because of a necessary
10 public notice or interagency review period, a final decision cannot be
11 issued within 30 days; a final decision on a class II permit must be
12 issued within 65 days after the date of receipt of a completed permit
13 application, unless a public hearing is held on the permit, in which
14 case a final decision must be issued within 75 days of the date of
15 receipt.

16 (b) Final regulations classifying its permits, and uniform
17 procedural regulations providing for the processing of these permits,
18 shall be adopted by each state resource agency by October 1, 1983,
19 following appropriate notice and hearing. Permits applied for after
20 October 1, 1983, must be issued in accordance with the time periods
21 specified in (a) of this section, and the provisions of the implement-
22 ing regulations.

23 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
24 CESSING. (a) Upon a finding by the head of a resource agency that a
25 permit being considered involves unusually complex issues so that the
26 agency cannot render a final decision within the time period specified
27 in AS 44.62.632(a), the head of the agency may prescribe a time period
28 within which the final decision will be made. The finding of the head
29 of the agency may be appealed by the applicant to the superior court

1 under the Appellate Rules of Procedure. The time period may not be
2 extended more than 120 days beyond the time period specified in
3 AS 44.62.632(a) unless the applicant agrees otherwise.

4 (b) The time period specified in AS 44.62.632(a) may be extended
5 if necessary to facilitate joint processing of a permit application by
6 state and federal agencies, but only if adherence to the time periods
7 established in AS 44.62.632(a) would cause an irreconcilable conflict
8 with a federal statute or regulation.

9 (c) Subject to (a) and (b) of this section and AS 44.62.634,
10 failure of a resource agency to make a final decision within 30 days
11 after the receipt of a completed permit application for a class I
12 permit, or within 65 days after the receipt of a completed permit
13 application for a class II permit, is approval of the application. In
14 an appeal of a permit issued by operation of this subsection, the
15 record shall be considered in the light most favorable to the appli-
16 cant, and the permit shall be accorded a presumption of regularity.

17 (d) A state agency may not condition the issuance of a permit
18 upon the issuance of a permit from another governmental agency.

19 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource
20 agency receives a completed permit application that does not contain
21 sufficient information concerning the project's compliance with the
22 agency's statutes and regulations, the agency shall notify the appli-
23 cant within 15 days after receipt of a completed permit application
24 for a class I permit, and within 30 days after receipt for a class II
25 permit.

26 (b) The notification must specify those particular facts or
27 issues concerning the proposal upon which the agency requires addi-
28 tional information in order to determine whether the project will
29 conform to the agency's statutes and regulations.

1 (c) If a timely request under (a) and (b) of this section is
2 made, the time period specified in AS 44.62.632 is suspended from the
3 date of request to the date of full compliance with the request.
4 Subsequent requests for additional information may be made, but must
5 relate only to new issues raised by the response to the initial noti-
6 fication. Subsequent requests do not extend the time periods speci-
7 fied in AS 44.62.632.

8 (d) Nothing in this section grants a resource agency the author-
9 ity to request information beyond the authority given to it by other
10 statutes.

11 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
12 agency that is solely responsible for issuing coastal management
13 consistency determinations under AS 46.40 and for preparing and sub-
14 mitting state comments on federal permit applications. The lead
15 agency is that resource agency that has principal responsibility for
16 authorizing the overall activity, including instances where an activi-
17 ty requires permits from more than one resource agency. For classes
18 of activities for which no agency with principal responsibility exists
19 the governor shall designate a resource agency to be a lead agency for
20 each class by administrative order no later than October 1, 1982. In
21 performing its functions under this section, the lead agency shall
22 consult with other resource agencies and with coastal resource dis-
23 tricts under AS 46.40.

24 (b) Substantive consideration shall be given to the documented
25 factual statements or data submitted by resource agencies and to the
26 office of coastal management within their primary areas of expertise,
27 and to the documented factual statements or data submitted by coastal
28 resource districts made under an approved district coastal management
29 program. The lead agency shall consider opinions, conclusions or

1 recommendations submitted by the commenting agency, but may, in its
2 discretion, reach contrary opinions, conclusions or recommendations
3 according to the evidence received. The lead agency shall then bal-
4 ance competing factors in reaching its final decision. No resource
5 agency other than the lead agency has primary expertise in the balanc-
6 ing of competing factors.

7 (c) Except as required by federal law no state agency other than
8 the lead agency may comment to a federal permitting agency.

9 (d) For activities involving a disposal of interest in land and
10 a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec.
11 1341), the lead agency shall be the Department of Natural Resources.

12 (e) For activities involving a plan of operation approval under
13 a previous disposal of an interest in land and a certificate under
14 sec. 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency
15 shall be the Department of Natural Resources.

16 Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or
17 state agency that receives a request for comment in connection with a
18 permit application or plan review being processed by a resource agency
19 shall submit these comments in accordance with the following schedule:

20 (1) comments on class I permits shall be submitted within
21 15 days after the agency's receipt of the request;

22 (2) comments on class II permits and federal permits shall
23 be submitted within 30 days after the agency's receipt of the request;

24 (3) when under AS 44.62.633, the requesting agency has
25 extended the time periods specified in AS 44.62.632, that agency may
26 extend the time period specified in this section; however, comments
27 submitted under this paragraph must be submitted no later than 30 days
28 before the date on which the lead agency must issue a final decision.

29 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform

1 procedural regulations adopted under AS 44.62.632(b) must provide for
2 an administrative appeal from a final decision on a permit applica-
3 tion. The administrative appeal is to the head of the resource agency
4 involved. Except as provided in this section the procedure is con-
5 ducted under AS 44.62.330 - 44.62.630.

6 (b) The administrative appeal must be resolved within 45 days
7 after the final decision on a permit application, or, if a hearing is
8 held on the administrative appeal, within 65 days after the final
9 decision on the permit application.

10 (c) An appeal taken from a decision granting a permit may, but
11 need not, stay the issuance of the permit.

12 (d) The head of the agency may summarily dismiss an appeal
13 before the time established in this section, and the dismissal is the
14 final agency action on the matter.

15 (e) In an appeal from the denial or conditioning of a permit the
16 head of the agency may, if the head of the agency determines that the
17 public interest would be served, grant the permit or remove conditions
18 of the permit until the appeal is determined.

19 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial
20 review by the superior court of a final decision issued under AS 44.-
21 62.632 - 44.62.637 may be had by filing a notice of appeal in the
22 superior court in accordance with the applicable Rules of Appellate
23 Procedure. The review is governed by the provisions of AS 44.62.-
24 560(b) - (e) and AS 44.62.570.

25 (b) An appeal taken under this section should have preference on
26 the calendar of civil actions before the court and should be decided
27 without unnecessary delay.

28 * Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

29 (c) As used in AS 44.62.632 - 44.62.638,

1 (1) "date of receipt" means the date on which a state
2 agency actually receives a completed application filed in accordance
3 with agency regulations and at a place identified as appropriate for
4 filing in the agency's regulations;

5 (2) "permit" means a permit, license, certification, con-
6 sistency determination, or other authorization or approval issued by a
7 resource agency as a written document that is required to be obtained
8 or is solicited from a state agency before the construction or opera-
9 tion of a project; "permit"

10 (A) does not include the approval of a unit agreement,
11 a unit development plan, or a unit exploration plan, or convey-
12 ances of interest in state land or water;

13 (B) does include all authorizations and approvals,
14 whether proprietary or regulatory, necessary to undertake a
15 project under a previously conveyed property interest;

16 (3) "project" means a new activity or expansion or addition
17 to an existing activity for which permits are required before con-
18 struction or operation; "project" does not include pursuing a trade or
19 profession, providing public health service, or operating a financial
20 institution;

21 (4) "resource agency" includes the Department of Natural
22 Resources, the Department of Environmental Conservation, and the
23 Department of Fish and Game with respect to permits issued for the
24 protection of fish habitat or the regulation of state sanctuaries,
25 refuges, and critical habitat areas.

Original sponsors: Hayes, Flood,
Lindauer, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 15 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial fisheries; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 16.05.050 is amended by adding a new paragraph to read:
10 (13) sell or lease a state hatchery facility.

11 * Sec. 2. AS 16.10.310(a) is amended to read:

12 (a) The department may

13 (1) make loans to

14 (A) individual commercial fishermen who have been
15 state residents for a continuous period of two years [FIVE YEARS]
16 immediately preceding the date of application for a loan under
17 AS 16.10.300 - 16.10.370 and have had a crewmember or commercial
18 fishing license under AS 16.05.480 or a permit under AS 16.43 for
19 the year immediately preceding the date of application and any
20 other two [ANY ONE] of the past five years, and who actively
21 participated in the fishery during those periods [THAT PERIOD],
22 for the purchase of entry permits;

23 (B) an individual who has been a state resident for a
24 continuous period of two years [FIVE YEARS] immediately preceding
25 the date of application for a loan under AS 16.10.300 - 16.10.-
26 370, who

27 (i) because of lack of training or lack of en-
28 ployment opportunities in the area of residence does not
29 have occupational opportunities available other than

1 commercial fishing; or

2 (ii) is economically dependent on commercial
3 fishing for a livelihood and for whom commercial fishing has
4 been a traditional way of life [FOR HIM] in Alaska, for the
5 repair, restoration or upgrading of existing vessels and
6 gear, for the purchase of entry permits and gear, and for
7 the construction and purchase of vessels;

8 (C) corporations, partnerships, or joint ventures, 100
9 percent of which are owned by individual commercial fishermen who
10 have been state residents for a continuous period of two years
11 [FIVE YEARS] immediately preceding the date of application for a
12 loan under AS 16.10.310(a)(1)(B) and have had a crewmember or
13 commercial fishing license under AS 16.05.480 or a permit under
14 AS 16.43 for the year immediately preceding the date of applica-
15 tion and any other two [ANY ONE] of the past five years, and who
16 actively participated in the fishery during that period, for the
17 repair, restoration or upgrading of existing vessels and gear,
18 for the purchase of gear, and for the construction and purchase
19 of vessels;

20 (2) designate agents and delegate its powers to them as
21 necessary;

22 (3) adopt regulations necessary to carry out its functions;

23 (4) establish amortization plans for repayment of loans,
24 which may include extensions for poor fishing seasons or for adverse
25 market conditions for Alaskan products;

26 (5) enter into agreements with private lending institu-
27 tions, other state agencies, or agencies of the federal government, to
28 carry out the purposes of AS 16.10.300 - 16.10.370;

29 (6) enter into agreements with other agencies or

1 organizations to create an outreach program to make loans under
2 AS 16.10.300 - 16.10.370 in rural areas of the state.

3 * Sec. 3. AS 16.10 is amended by adding a new section to read:

4 Sec. 16.10.315. ALLOCATION OF LOANS. The department shall
5 allocate at least ten percent of the money that is appropriated to
6 make loans under AS 16.10.310 for loans of \$35,000 or less made under
7 AS 16.10.310(a)(1)(B) and (C).

8 * Sec. 4. AS 16.10.320 is amended by adding a new subsection to read:

9 (j) If a borrower ceases to be a state resident during the term
10 of a loan made under AS 16.10.310 - 16.10.370, the loan shall be
11 accelerated and the outstanding principal and interest shall be repaid
12 by the borrower within 120 days after the state residence terminates.

13 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 15 Date on Bill: 3/8/83
 Title: "An Act relating to commerical fishing loans;....."
 Sponsor: Special Committee on State Loans
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		53.7	61.3	
Total		53.7	61.3	

b. Revenues:

Revenue	FY 83	FY 84	FY 85	FY 86

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

1. Five-year residents have a longer track record in Alaska, which makes their residency indicators much more obvious and more easily obtainable. A two-year residency requirement would require more investigative work into the residency background of the applicant.
2. Contact with other states will be necessary in cases which involve prepared term residency to determine the actual dates of residence.
3. Followup investigative work will need to be done to insure that principal and interest on these loans is repaid within 120 days after State residency terminates.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: D. A. Hostak Phone: 465-2510
 Division: Loans & Veterans' Affairs Date: _____

Approved by Commissioner: Richard A. Lyon Date: _____
 Department: Commerce and Economic Development

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

An Act relating to the eligibility for commercial fishing loans

Personal Services	Location	Monthly Salary	Yearly Salary	Yearly Benefits	Total Salary & Benefits
1 Investigator III	AWA	\$ 2838	\$ 34,056		\$ 34,056
<u>Benefits</u>	SBS Benefits			\$ 2,088	
	Monthly Benefits			2,880	
	Variable Benefits			5,279	<u>10,247</u>
Total Personal Services					44,303
<u>TRAVEL</u> - One trip per month					
Airfare \$486 X 12 trips plus 2 days per diem @ \$85 per trip					7,872
<u>CONTRACTUAL</u>					
Postage				\$ 311	
Telephone @ \$2500 for long distance				2,500	
Xerox				<u>150</u>	2,961
<u>COMMODITIES</u>					
Calculator @ \$280				\$ 280	
Setup costs for Desk				40	
Average yearly supplies				<u>200</u>	520
<u>EQUIPMENT</u>					
New position Modular Furniture Setup Costs				\$ 5,300	5,300
<u>ASHA</u>					
Space Rental				\$ 2,700	2,700
Total Estimated Expenses					<u><u>\$ 63,656</u></u>

+ pg. 3 line 3
insert "appropriated" Asper 3/15/83
Version #2

Add after date

Original sponsors: Hayes, Flood,
Lindauer, et al

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 15 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: ~~"An Act relating to commercial fisheries."~~

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

* Section 1. AS 16.05.050 is amended by adding a new paragraph to read:

(13) sell or lease a state hatchery facility;

* Sec. 2. AS 16.10.310(a) is amended to read:

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years [FIVE YEARS] immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two [ANY ONE] of the past five years, and who actively participated in the fishery during those periods [THAT PERIOD], for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of two years [FIVE YEARS] immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.-370, who

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

The following individuals are expected to testify on CS HB 15
(Loans):

Representative Joe Hayes, prime sponsor

Representative Rick Uehling, Chair, House Special Committee on
Loans

Don Hostak, Director, Division of Business Loans & Veterans'
Affairs, Department of Commerce and Economic Development

Tom Koester, Assistant Attorney General, Department of Law

ce

H. State Finance

RECEIVED

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FEB 7 1983

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 15 No 1 LEGISLATIVE FINANCE
Title An Act relating to eligibility for commercial fishing loans.
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Commerce and Economic Development
Program Category Affected Economic Development
BRU, Program, Or Subprogram(s) Affected Division of Loans & Veterans' Affairs
(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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		63.7	61.3	64.4		

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	64.4		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

Increased fund is required for the following reasons:

- Five-year residents have a longer track record in Alaska, which makes their residency indicators much more obvious and more easily obtainable. A one-year residency requirement would require more investigative work into the residency background of the applicant.
- During certain times of the year, many one-year residents do not have a prepared tax return, which is one of the main documents used in determining residency.
- Contact with other states will be necessary in cases which involve prepared term residency to determine the actual dates of residence.

IV. DATE _____ PREPARED BY D. A. Hostak Director
 AGENCY Department of Commerce & Economic Development
 Original: Legislative Finance PHONE 464-2555 Division of Loans & Veterans' Affairs

STATE OF ALASKA
FISCAL NOTE

Revision Date April 8, 1983

I. REQUEST

Bill/Resolution No. SCSCSHB 15 (Finance)
 Title: Commercial Fishing Loans
 Sponsor: Hayes, Flood, Lindauer, et al.
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected: Loans & Veterans' Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		44.3	46.9	49.7	52.7	55.9
200 TRAVEL		7.9	8.3	8.8	9.3	9.9
300 CONTRACTUAL		3.0	3.1	3.3	3.5	3.7
400 COMMODITIES		.5	.2	.2	.2	.2
500 EQUIPMENT		5.3	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		2.7	2.8	3.0	3.2	3.4
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		63.7	61.3	65.0	68.9	73.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		63.7	61.3	65.0	68.9	73.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak *D. A. Hostak* Phone: 465-2510
 Division: Loans & Veterans' Affairs Date: 4-8-83
 Approved by Commissioner: Richard A. Lyon *R. Lyon* Date: 4/9/83
 Department: Commerce & Economic Development

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

SCSCSHB 15 (Finance) FISCAL NOTE ANALYSIS:

Provides for an Investigator III position. This position's primary responsibility would be to investigate the residency claims of applicants under the Commercial Fishing Loan Program. This would involve civil as well as criminal investigations. A large amount of the emphasis would be to insure that only qualified applicants receive loans and to prosecute applicants who provide fraudulent claims. There would also be a large amount of follow-up work. SCSCSHB 15 (Finance) provides for an accelerated payback if a borrower terminates his State residency. All figures are based on a 6% inflation increase per year. FY '85 figures are slightly lower than FY '84, due to the elimination of one-time expenditures for equipment and commodities.

1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT 6	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFI	STAFF MONTHS 12	RP NUMBER	FCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	2,838/month	34,056.00							
6.	Benefits		5,279.00							
7.	Supplemental Benefits		2,088.00							
8.	Fixed Benefits		2,880.00							
9.	TOTAL PERSONAL SERVICES		01	44,303.00						
10.	Travel		02	7,872.00						
11.	Contractual		03	2,961.00						
12.	Commodities		04	520.00						
13.	Equipment		05	5,300.00						
14.	Other			2,700.00						
15.	TOTAL COST			63,656.00						
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		63,656.00						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Commerce & Economic Development
PROGRAM Economic Development
BRU Loans & Veterans' Affairs
COMPONENT _____

FY 84

Page 1 of 1
Revised Date 3-23-83

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 6, 1982

D.A. Hostak, Director
Division of Business Loans
and Veterans Affairs
Department of Commerce
and Economic Development
Pouch D
Juneau, Alaska 99811

Re: Constitutionality of Residence
Requirement for Fishing Loans
(AS 16.10.310).
Our file 366-161-83.

Dear Mr. Hostak:

In a November 26, 1982 opinion, this office concluded that the five-year durational residency requirements for commercial fishing loans in AS 16.10.310(a)(1) clearly are unconstitutional, that no good faith defense of the requirements could be advanced if they were challenged in court, and that the requirements were not severable. As a result, we concluded that the Department of Commerce and Economic Development, Division of Business Loans and Veterans' Affairs, had no choice but to suspend the program until the legislature had an opportunity to amend the enabling legislation.

Governor Sheffield asked us to review the conclusions of that opinion to determine whether the program legally can be

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 2

reinstated between now and the time the legislature has an opportunity to address the problem created by the five-year durational residency requirement. Governor Sheffield's request stemmed from a strong desire to minimize the adverse consequences resulting from suspension of the program at this time. 1/

In response to the governor's request, we have undertaken a thorough review of the November 26, 1982 opinion. Following that review, we remain satisfied that two of the conclusions reached in that opinion are correct: (1) the five-year durational residency requirements are unconstitutional; and (2) no good faith defense of those requirements could be advanced if they were challenged in court.

However, we are not as certain about the conclusion regarding the severability of those requirements from the remainder of the statute. Under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), a two-step test for severability is employed. First, it must appear that legal effect can be given to the remainder of the statute after the offensive provision is stricken. Here, legal effect certainly can be given to all three subparagraphs of AS 16.10.310(a)(1) if the words "of five years" are deleted from each subparagraph. If those deletions

1/ This time period -- i.e., between Thanksgiving and early spring -- is the fishing off-season. Accordingly, it is the busiest time of year for financial transactions most directly impacted by a suspension of the commercial fishing loan program.

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 3

are made, the eligibility requirement in general would be that applicants "have been state residents for a continuous period [OF FIVE YEARS] immediately preceding the date of application for a loan." AS 16.10.310(a)(1)(A) (material in brackets deleted).

The second element of the Lynden Transport test is that it must appear the legislature intended the remainder of the statute to stand if the offensive provision was stricken. In AS 16.10.300, the legislature declared the policy underlying the commercial fishing loan program: "It is the policy of the state, under secs. 300-370 of this chapter, to promote the rehabilitation of the state's fisheries, development of a predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans." Neither the rehabilitation of the state's fisheries nor the continued maintenance of commercial fishing gear and vessels is related, either directly or indirectly, to a durational residency requirement. If the five-year durational residency requirement is not severable and the program must be suspended as a result, these legislative purposes clearly will be thwarted. We believe the presence of legislative purposes wholly unrelated to the durational residency requirement may be viewed as evidence that the legislature intended the remainder of the statute to stand if the durational residency requirements were stricken.

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 4

Moreover, the express legislative purpose of promoting development of a predominately resident fishery and the implied legislative purpose of ensuring that only bona fide state resident commercial fishermen qualify for commercial fishing loans both can be accomplished quite easily without a statutory five-year durational residency requirement. Without that requirement, eligibility still would be limited by statute to those who "have been state residents for a continuous period" -- i.e., bona fide Alaska residents.

In other words, all of the legitimate legislative purposes underlying both the statutory commercial fishing loan program as a whole and the specific five-year durational residency requirements can be satisfied even if the five-year requirements are severed. As a result, we believe it is reasonable to conclude that the legislature would have intended the remainder of the statutory commercial fishing loan program to stand if the unconstitutional five-year durational residency requirements were stricken.

Accordingly, under Lynden Transport, the offensive five-year durational residency requirement can be found severable. We believe that is the result the Alaska Supreme Court would reach if the question was presented to it. As a result, we believe you should reinstitute the program under AS 16.10-.310(a)(1), but without the five-year durational residency re-

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 5

quirement. That conclusion is supported by AS 01.10.030, the state's general severability clause 2/, which the Alaska Supreme Court views as establishing at least a weak presumption in favor of severability. Williams v. Zobel, 619 P.2d 422 (Alaska 1980).

Once the five-year durational residency requirements are severed, the statute then requires only that applicants have been state residents for a continuous period immediately prior to applying for a loan as an objective test of residency. To establish a legally defensible objective standard for the length of the statutorily required continuous period of residency, we believe the Department of Commerce and Economic Development should adopt emergency regulations under AS 16.10.310(a)(3) and AS 44-.62.250.

The length of any period of residency required by such regulations should be within a range which could be defended in court. Under the cases cited in the November 26, 1982 opinion, 30 days clearly would be permissible. One year almost certainly

2/ AS 01.10.030 provides:

Any law heretofore or hereafter enacted by the Alaska Legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected [sic] thereby."

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 6

would be permissible. A good faith argument could be made that two years is permissible because of the highly transient nature of fishermen, although it is more likely than not that a two-year durational residency requirement would be found unconstitutional if challenged in court. To assist your department in adopting the necessary emergency regulations, we are attaching a draft finding of emergency, order of adoption, and amended regulation conforming to the requirements of AS 44.62.250. 3/

We are aware that the Alaska Supreme Court has acknowledged the doctrine of separation of powers. See e.g., Bradner v. Hammond, 553 P.2d 1 (Alaska 1976); Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Under that doctrine, some might criticize a policy under which the attorney general concludes that constitutionally offensive provisions are severed under the Lynden Transport analysis with the executive branch then proceeding to implement the remainder of the statute. 4/ It apparently was for this reason -- i.e. that severing the constitutional portion of the statute could be viewed as impermissible

3/ Your department must then follow the additional steps outlined in the Drafting Manual for Administrative Regulations. See checklist on pp. 12-13 and chapter 5.

4/ This is precisely what happened when this department proposed to settle a court challenge to the state's longevity bonus program by severing the program's unconstitutional residency requirements and establishing a one-year durational residence requirement in their place.

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 7

legislating by the executive branch -- that former Attorney General Condon concluded that you had no choice but to suspend the program pending a legislative solution.

However, in the extraordinary situation where a statutory requirement clearly is unconstitutional and cannot be defended in court, I believe the better result is for the legislative will expressed in the overall statutory scheme to be implemented without the constitutionally offensive provisions if they can be severed under the Lynden Transport analysis. This gives the executive branch much more flexibility when the legislature passes a statute which is unconstitutional in part. Under a policy where offensive provisions cannot be severed, the difficult choice is between continuing to implement an unconstitutional statute or suspending an entire program. However, if an offensive provision can be severed, the executive branch can implement the legislative will in a constitutional manner, thereby satisfying the programmatic desires expressed by the legislature without running afoul of constitutional constraints.

If the legislature is dissatisfied with this result, or disagrees with the attorney general's conclusion regarding severability, it always has the option of amending the statute or repealing it altogether. Ultimately, the legislature must take final responsibility for the statutes which govern the state.

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 8

To intrude as little as possible into the legislative sphere, Governor Sheffield has made it clear that the solution outlined above is to be an interim solution only. Under AS 44.62-.260(a), emergency regulations expire 120 days after they are adopted. At that time, if the legislature has not addressed the problem presented by the unconstitutional five-year durational residency requirements, the program should again be suspended.

We are sending copies of this opinion to Senator Kerttula and Representative Hayes to ensure that the legislature has notice that the program will be suspended upon expiration of the emergency regulation if there is no legislative action before then. Consequently, the legislature will have to act if it desires the program to continue beyond the expiration date of the emergency regulation.

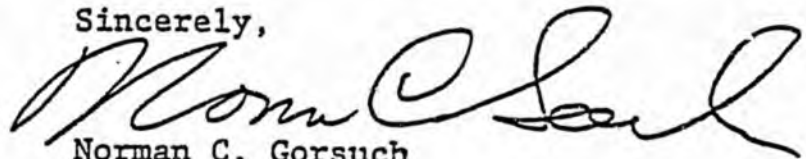
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature. The interim solution outlined above is simply a pragmatic approach to solving the problem temporarily to avoid the considerable hardship immediate suspension of the program would work on the commercial fishing industry while the legislature considers this matter.

D.A. Hostak, Director
Division of Business Loans & Veterans' Affairs
Dept. of Commerce & Economic Development
366-161-83

December 6, 1982
Page 9

We will be happy to work with you in putting this suggested interim solution into practice.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:GTK:d1m

Attachment

cc: Senator Jalmar Kerttula
Representative Joe L. Hayes



Alaska State Legislature

House of Representatives

November 5, 1982

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: The Honorable Joe Hayes
Speaker of the House
Anchorage

FROM: Mark K. Johnson
Juneau

Subjects: Proposed legislation regarding (a) Commercial Fishing Loan Act and (b) Fishermen's Mortgage and Note Fund.

Each of these programs was identified by the Attorney General in his letter of September 1, as posing constitutional problems because of durational residency requirements. After some research and reflection it was determined that attempts to cure the problems with these programs should be simple rather than complex.

In the Commercial Fishing Loan Act, AS 16.10.310-16.10.360, the Department of Commerce is given the authority to make loans to individual commercial fishermen and eligible business ventures for "the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear and for the construction and purchase of vessels...". The program also imposed a five year continuous residency requirement for eligibility for these loans.

The proposed legislation would delete the five year residency requirement entirely but expand a requirement that an applicant have actively participated in the fishery from one out of the last five years to three out of the last five years. Inasmuch as there is no residency requirement for the holding of a limited entry permit or on participation in the fishery as a crewmember, this may be a appropriate response.

Legislation creating the Fishermen's Mortgage and Note Fund, AS 16.10.650-16.10.720, also imposed a five year durational residency requirement on applicants for that program. The proposed legislative response would also delete this requirement from the law. But at the same time, the response would impose upon an applicant the burden of establishing that "he is likely to contribute to the economic stability of the state".

My understanding of the opinion of the U.S. Supreme Court in Zobel V. Williams, ___ U.S. ___, 72 L Ed 2d 672, (1982), is that the imposition of such a requirement is acceptable. Such a requirement does not suffer from the defect of being only backward looking but is rather, only concerned with the present and the future. I believe accordingly that such a requirement is a "legitimate state purpose". See the opinion of Justice Brennan at 72 L Ed 2d 672, at 684.

These last two pieces of proposed legislation represent the final areas in which legislative action is appropriate with the exception of the longevity bonus program. I will be spending some time on that issue to determine if some kind of legislative solution can be fashioned. I expect, however, that the likely conclusion is that the program must be scraped altogether or funded at a dramatically higher level.

*Sec 1: AS 16.10.310 is amended to read:

Sec. 16.10.310. Powers of the department. (a) The department may
(1) make loans to

(A) individual commercial fishermen who have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010-16.43.380 for any three of the past five years and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels; and

(B) corporations, partnerships or joint ventures, 100 per cent of which are owned by individual commercial fishermen who have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010-16.43.380 for any three of the last five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt rules and regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons;

(5) enter into agreements with private lending institutions, other state agencies or agencies of the federal government to carry out the purposes of AS 16.10.300-16.10.370.

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under AS 16.10.010-16.10.720.

*Sec. 1: AS 16.10.680 is amended to read:

Sec. 16.10.680. Eligibility for loans . (a) The commissioner may purchase a mortgage or note under AS 16.10.660(b) if it secures a loan to an individual who meets one of the requirements of (b) of this section and who

(1) does not qualify for a loan for the purposes described in AS 16.10.670 under a state loan program;

(2) has not previously participated in the loan program established in AS 16.10.650-16.10.720 or in any other state loan program for the purposes described in AS 16.10.670; and

(3) meets the guidelines established by the commissioner to determine whether the applicant is reasonably likely to succeed as a commercial fisherman and be able to repay the loan.

(b) In addition to the requirements of (a)(1)-(4) of this section, the commissioner may purchase a mortgage or note under AS 16.10.660(b) only if it secures a loan to an individual who demonstrates under guidelines established by the commissioner that he is likely to contribute to the economic stability of the state and

(1) because of his lack of training or the lack of employment opportunities in the area in which he resides, he does not have occupational opportunities available to him other than commercial fishing; or

(2) he is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for him in Alaska.

(c) The commissioner may not refuse to purchase a mortgage or note from a private financial institution under AS 16.10.660(b) solely because the applicant for the loan does not have a credit history.

(d) In determining whether the applicant is reasonably likely to be able to repay the loan under (a)(4) of this section; the private financial institution shall consider the applicant's income from commercial fishing and from other sources.

FINDING OF EMERGENCY

The Department of Commerce and Economic Development finds that an emergency exists and that the attached amendment is necessary for the immediate preservation of the public peace, health, safety, or general welfare. A statement of the facts constituting the emergency is:

1. In a November 26, 1982 opinion, the Department of Law concluded that the five-year durational residency requirements for commercial fishing loans in AS 16.10.310(a)(1)(A), (B) and (C) are unconstitutional.
2. In a December 6, 1982 opinion, the Department of Law concluded that the five-year durational residency requirements for a commercial fishing loan are severable from the remainder of the statutory program.
3. The commercial fishing loan program was initially enacted in 1972. Since that time, it has become very important to the continued viability of the commercial fishing industry in Alaska. In addition to providing financing for vessels and gear, the commercial fishing loan program provides the only mechanism for financing the purchase of limited entry permits using the permits as collateral. If the program is suspended, it will work an immediate and considerable hardship on the commercial fishing industry in Alaska. Therefore, 03 AAC 80.100 must be amended to remove the requirement that an individual be a five-year resident to qualify for a commercial fishing loan for the immediate preservation of the general welfare of the industry.
4. The Department of Law concluded that the five-year durational residency requirement in AS 16.10.310(a)(1)(A), (B) and (C) was intended to ensure that only bona fide residents of Alaska qualify for commercial fishing loans. The legislature has not funded this department with a sufficient staff to make individual inquiries of each applicant for a commercial fishing loan to determine on an individualized basis whether that applicant is in fact a bona fide resident of Alaska and, at the same time, to make the necessary evaluation of an applicant's financial situation for purposes of obtaining a loan. As a result, some legally permissible screening requirement to test the bona fides of residency must be adopted.
5. The Department of Law informs us that a one-year durational residency requirement almost certainly is constitutional when a fundamental right or basic necessity of life is not involved, and that eligibility to apply for a commercial fishing loan is not a fundamental right nor a basic necessity of life.

ADOPTION ORDER

Under authority of AS 16.10.310(a)(3), the regulation is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

DATE: December 7, 1982
Juneau, Alaska

Richard A. Lyon, Commissioner.
Department of Commerce and
Economic Development

FILING CERTIFICATION

I, Stephen Alan McAlpine, Lieutenant Governor for the State of Alaska, certify that on December 7, 1982, at _____m., I filed the attached regulations according to the provisions of AS 44.62.

Stephen Alan McAlpine
Lieutenant Governor

3 AAC 80.100. DEFINITION OF TERMS. Unless the context requires otherwise, in this chapter and in the forms and instructions of the commissioner

. . .

(11) "resident" means a corporation, partnership or limited partnership 100 percent of which is owned by a resident commercial fisherman or an individual who, except for brief intervals, periods of military service, or attendance at an educational or training institution has resided in the state for one year [FIVE YEARS]; "residence" is determined by where the individual

- (A) is registered to vote;
- (B) maintains his permanent place of abode;
- (C) files his tax returns;
- (D) registers or licenses his personal property, including but not limited to cars, boats, trucks and trailers;
- (E) is licensed to drive; and
- (F) maintains bank accounts, savings accounts, lines of credit and other financial relationships. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78; am / / , Reg.)

Authority: AS 16.10.310

Quinn

TO: HOUSE BILL 15

by FULLER

Page 2, after line 27:

Add a new section to read:

"*Sec. 2. AS 16.10 is amended by adding a new section to read:

Sec. 16.10.315. ALLOCATION OF LOANS. The department shall allocate at least ten percent of the money that is available to make loans under AS 16.10.310 for loans of \$35,000 or less made under AS 16.1.310(a) (1) (B) and (C)."

*Representative
Fuller's rationale
for section 2
of CS HB 15:*

The amendment would make it possible for small fishermen to have a better shot at getting a loan through this program. I arrived at the \$35,000 figure after consulting with a number of fishermen and fishermen's organizations in western Alaska. That is the amount it would take to outfit a skiff fishermen for herring or salmon.

The former Fishermen's Mortgage and Note Fund, now combined with the Commercial Fishing Revolving Loan Fund, has not reached a large number of the fishermen for which it was intended. In FY 81, no loans at all were made through the program as there were problems which were resolved legislatively the next year. In FY 82, 31 loans were made, but only one of them in the area above Cape Newenham, in what would be Rep. Vaska's and my districts. To date in FY 83, one loan has been made in the northwestern region of the state, 20 in Southeast (including Kodiak), one in Anchorage, 22 in Southwest/Bristol Bay, and 18 in Southeast.

The average amount of the loans made in Southeast and Kodiak is \$65,000; the loan made in Anchorage was \$90,000; in Southwest/Bristol Bay the average is \$60,000; and in Southeast it is \$35,000. To date this year, eighteen loans under \$35,000 have been made under Part B, for a total of \$433,000.

The allocation for parts A and B of the program is small, only \$1.8 million last year and this year, so the money is very quickly gone with the larger loans. Fishermen in western Alaska are not as sophisticated as fishermen in more developed parts of the state. They have never had commercial loans, the entire process is new to them, they have no credit history, and so on. The loan process simply takes longer for them. I know that in these times of declining revenues I wouldn't get very far in trying to make more money available to the program, so that all eligible applicants would be able to receive loans, so I'm taking this route to give these fishermen a chance to receive a loan. Effectively, the program will be spread out over a larger number of fishermen.

The reason I chose the ten percent figure is that it would give approximately half of the money allocated to parts B and C to these small loans. For instance, this year the budget submission for the entire program is right around \$9 million, which would give \$900,000 to

small loans. This is half of the amount allocated to the Fishermen's Mortgage and Note Fund portion of the loan program last year.

When the program ran out of money last year, there still were approximately fifty outstanding applications, so I don't think there will be any problem with using all of the money.

I should point out that this amendment is only part of my efforts at getting small loans out to commercial fishermen. I am also working on improving outreach in the rural areas, both through this program and through the present Community and Regional Affairs loan officers.

Alaska State Legislature



House of Representatives

Representative
RICK UEHLING

CHAIRMAN
HOUSE SPECIAL COMMITTEE
ON STATE LOANS
VICE-CHAIRMAN
HOUSE RESOURCES COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE
MEMBER
JOINT GAS PIPELINE COMMITTEE
HOUSE FINANCE SUBCOMMITTEE ON
ADMINISTRATION, REVENUE
AND THE GOVERNOR'S OFFICE

ANCHORAGE
DISTRICT 12 - SEAT A
1634 JUNEAU DRIVE
ANCHORAGE, ALASKA 99501
(907) 274-4256
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4821

MEMORANDUM

TO: Representative Al Adams
Chairman, House Finance Committee

FROM: Representative Rick Uehling

DATE: March 16, 1983

RE: Commercial Fishing Loans Bill [CSHB 15 (Loans)]

I suggest that the Finance Committee consider adopting the following amendment for inclusion in CSHB 15:

Page 3, line 3--delete "available" and insert "appropriated".

I believe that this change will effectively address the particular intent of the loans committee substitute without unnecessary restraints on funds received into the Commercial Fishing Revolving Loan Fund, thus preserving the revolving nature of the fund.

I encourage the committee to give this proposed amendment your favorable consideration. Thank you.

RU/wl

cc

HOUSE SPECIAL COMMITTEE ON STATE LOANS
LETTER OF INTENT FOR CSHB 15 (Loans)

The Commercial Fishing Loan Program is a significant project for the State of Alaska. The program is intended to strengthen the state's fishing industry; to provide economic opportunities to persons who, because of the lack of training or lack of employment in the area of residency, do not have occupational opportunities otherwise available; and to aid persons who are economically dependent on fishing and for whom fishing has been a traditional way of life.

Because of its substantial contribution to the Alaska economy and traditional life style, the extant commercial fishing program is an extremely generous loan program and was intended to be so. The loans can be for up to \$300,000 to be paid back over a maximum of fifteen years at 10.5 percent interest. Frequently there is very little bankable collateral for the loan.

Testimony before the committee, experience of members of the committee, and other available material clearly establish that commercial fishing is a seasonal occupation, and that fishermen are extremely mobile. It has been shown that the pattern of fishing life makes it very difficult, if using the normal indices of intent over a short period such as one year, to distinguish between resident fishermen and non-resident fishermen.

The attractiveness of the program and the difficulty in effectively determining loan eligibility has led to a substantial percentage of fraudulent loan applications. According to the testimony given the committee, even with the current five-year residency requirement, a substantial number of questionable loan applications are filed and a significant number of false applications have been discovered.

Therefore, it is the opinion of the committee and of other legislators familiar with commercial fishing that a one-year residency requirement is not truly adequate to determine residency, which is largely a matter of subjective intent that must be inferred from objective evidence. While certainly a two-year residency requirement does not completely obviate the possibility of fraud, it significantly reduces it. For example, a bona fide Alaskan resident is less likely to spend two consecutive off-seasons outside than one off-season; and a non-resident is less likely to spend two consecutive off-seasons in Alaska than one off-season.

After examining the problem and the possible solutions, the committee has found that a durational residency requirement of two years is the most desirable solution to the problem. No narrower

method has been discovered which would produce satisfactory results. A broader test, such as a five-year residency requirement, would better achieve the aim of preventing fraud, but the gain from requiring a five-year pattern over requiring a two-year pattern is an incremental gain not a gain in kind. On the other hand, a one-year requirement has been shown unable to consistently distinguish a resident fisherman from a non-resident fisherman.

The committee recognizes the importance of the Commercial Fishing Loan Program to Alaska and strongly desires that the program be continued. It also recognizes the possibility of fraud and desires that this possibility be minimized. The committee firmly believes both objectives to be legitimate concerns of the state. The committee is of the considered opinion that these goals are more significant to the state than the opportunity to apply for a commercial fishing loan, after only one season as a resident, is to the individual.

The committee has been unable to find a narrower method of achieving these two objectives. Stronger anti-fraud measures would contribute nothing since the problem is an evidentiary problem, not a problem of penalties. Obviously hiring a horde of investigators would lessen the possibility of fraud, but such action would reduce the program's cost-effectiveness beyond practicality. Specifying other required indicia of residency would have little effect in preventing fraud since these could be obtained by a person desiring to commit fraud, and, more importantly, would result in people who are eligible for loans having their loan applications unfairly denied because they did not meet arbitrary criteria.

The committee understands that durational residency requirements for participation in state programs, especially requirements beyond one year, require substantial justification, and must be related to the particular evil they seek to remedy. There can be no serious question that this residency requirement does indeed relate directly to the evil of fraud in obtaining the loans. Given the facts in this particular situation, other, narrower, means of achieving the goal would not work reasonably satisfactorily. The prevention of fraud is a legitimate state objective and here the possibilities of fraudulently obtaining state benefits are unusually high. The committee is firmly convinced that the two-year requirement is adequately justified.

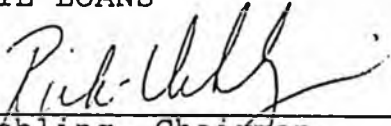
The state's interest in maintaining the fishing loan program is more important than the state's interest in minimizing fraud by requiring a two-year durational residency. It is therefore the

intent of the Legislature that, if a court of competent jurisdiction finally determines the two-year residency requirement to be unconstitutional, the two-year residency requirement should be severed and the program continued.

Should this occur, while recognizing that the effective prevention of fraud will be significantly more difficult, it is the intent of the Legislature that the administrator of the program use all means constitutionally possible to minimize the increase in successful fraud and in fraudulent applications.

Respectfully submitted,

THE HOUSE SPECIAL COMMITTEE
ON STATE LOANS



Rick Uehling, Chairman

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 16, 1983

The Honorable Rick Uehling
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: CSHB 15 (Loans)

Dear Representative Uehling:

You asked us to review Committee Substitute for House Bill 15 (Loans) to determine the legality of certain new sections of the bill added by the committee. Specifically, you asked for our opinion regarding section 2, which would mandate that at least 10 percent of available money be used for commercial fishing loans of \$35,000 or less, and section 3, which would accelerate the loan if a borrower ceases to be a state resident.

Unfortunately, although your request was delivered to this office on March 9, 1983, I did not receive it until March 14, 1983. As a result, I have not been able to review it in the kind of depth which would be most desirable. However, in the limited time which was available, I have developed some thoughts.

First, I see no constitutional problem with section 2. That section would require that at least 10 percent of the money that is available for commercial fishing loans be allocated for loans of \$35,000 or less. This would be a permissible exercise of the legislature's power to establish the basic guidelines for administration of the loan program by the executive branch.

On the other hand, section 3 does raise constitutional questions. However, it is my opinion that the provision would be found constitutional if challenged in the courts. This confirms my earlier off-the-cuff advice I gave to the House Special Committee on State Loans.

Section 3 would add a new subsection to AS 16.10.320. That subsection would provide in substance that a commercial fishing loan to a qualified state resident would be accelerated and repayment would be required within 120 days after the borrower ceases to be a state resident.

Initially, it is clear that the state constitutionally can limit monetary benefits, including below-market-rate commercial fishing loans in particular, to bona fide state residents. See 1982 Op. Att'y Gen. No. 12 (Alaska November 26). However, a constitutional question is raised by making such a loan due and payable 120 days after changing residency, since such a provision may be viewed as penalizing the right of Alaska residents to migrate to other states.

In the limited time available I have been unable to find any cases directly on point. However, it appears that the courts apply a balancing test in such a context to determine whether the state's interest in preserving the statutory scheme outweighs the penalty imposed on the individual. See e.g. Williams v. Zobel, 619 P.2d 422, 427 (Alaska 1980) (plurality opinion); id. at 431 n. 1 (Rabinowitz, C.J., concurring); id. at 439 (Connor, J., dissenting); Williams v. Zobel, 619 P.2d 448, 453 (Alaska 1980), reversed on other grounds, Zobel v. Williams, ___ U.S. ___, 72 L.Ed.2d 672 (1982).

In striking the balance here, we believe the courts would find that legitimate state objectives underlying section 3 outweigh any individual rights involved. Several legitimate state interests would be served by accelerating loans upon a change in residence. The most important, obviously, would be ensuring that direct state monetary benefits (i.e., subsidized loans) run only to bona fide state residents. This clearly is a permissible state objective. If loans to residents are accelerated and repaid at the time the borrower moves out of the state, that money immediately becomes available to loan to another bona fide state resident. In this way, only bona fide state residents will receive the benefits of the state loan program.

A second permissible state interest in acceleration upon a change in residency is safeguarding the fiscal integrity of the loan program. Loan administration, including bringing delinquent loans current and effecting foreclosure if necessary, will be significantly easier if the borrower is a state resident. If loans to nonresidents remain outstanding, the state may have to foreclose on collateral which is no longer within the state, may have to exercise long-arm jurisdiction over borrowers, etc. In that event, the state's ability to preserve the integrity of the revolving loan fund will be hampered significantly.

Finally, as the House Special Committee on State Loans letter of intent accompanying CS 15 (Loans) makes clear, one of the most difficult problems facing the commercial fishing loan program has been ensuring that only bona fide state residents

qualify. The committee noted that traditional indicia of residency are very easy to obtain. As a result, it is conceivable that nonresident loan applicants could come to Alaska for the minimum period required to qualify for a loan -- e.g., the two years which CSHB 15 (Loans) would require -- only to return immediately to some other state upon receiving the loan. An immediate acceleration clause would give the state the power to terminate the loan without the necessity of proving residency fraud at the time the loan was made. In other words, it provides a significant safeguard against residency fraud.

Against these permissible state interests must be balanced the individual's right to migrate from one state to another. We have no idea how the courts would strike the balance. Particularly with respect to loans for limited entry permits, the courts may be inclined to strike the balance in favor of the individual since the commercial fishing loan program is the only currently available mechanism for financing the purchase of a limited entry permit using the permit as collateral for the loan. 1/ In other words, no alternative financing might be available to a borrower migrating to another state.

However, against this individual interest, a number of additional factors must be balanced. The first is that nonresidents simply do not have the same right to state benefits that state residents have. Moreover, if enacted, the acceleration provision would be a part of every loan contract. A borrower may be estopped to assert that the provision is invalid. Finally, and most significantly, any decision to change residency necessarily carries with it certain consequences in terms of state benefits. Following a change in residency, the individual no longer is eligible for benefits afforded residents by his former state of residence while he is eligible for benefits afforded by his new state of residence. In this case, it would seem that one of the benefits for which eligibility would be lost is a continuing state subsidized loan.

This does not mean that a state could require

1/ The Commercial Fishing and Agriculture Bank is authorized to finance limited entry permits using the permit as collateral. However, because of constitutional challenges to the limited entry program, CFAB currently is not taking permits as collateral for loans to finance the purchase of permits.

The Honorable Rick Uehling

March 16, 1983
Page 4

forfeiture of all previous benefits upon a change in residency. For example, a statute requiring repayment of all previously granted benefits would present precisely the kind of barrier to interstate migration which at least four members of the United States Supreme Court found impermissible in Zobel v. Williams, supra. (See concurring opinion of Justice Brennan.)

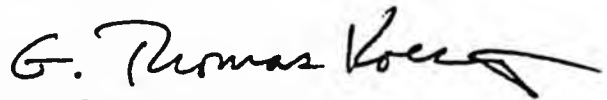
However, that is not what section 3 would accomplish. All it would do is require a person ceasing Alaska residence to forego the continuing future state subsidy of the loan.

Summarizing, it is our opinion that section 3, which would accelerate a commercial fishing loan if a borrower ceases to be a state resident, probably would be found constitutional if challenged in court. However, the question is not entirely free from doubt, and we cannot give a certain answer.

We hope this answers your question. If we can be of further assistance, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

Alaska State Legislature
House of Representatives

Al Adams
Chairman
Committee on Finance

Official Business

March 16, 1983

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320
1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

MEMORANDUM

TO: House Finance Committee Members

FROM: Al Adams, Chair *ADA*
House Finance Committee

SUBJ: CS HB 15 (Loans), relating to the commercial
fish loan program

Commercial Fishing Loan Program

AS 16.10.300 - .370 provides loans for commercial fishing. An eligible individual, corporation, partnership or joint venture may receive a loan for repair of vessels and gear, construction and purchase of vessels, or purchase of gear or limited entry permits. The amount of the loan may not exceed 90% of the appraised value of the collateral used to secure the loan. Loans up to \$300,000 are provided at 10.5 % interest for fifteen years.

Effect of the Bill on the Program

The bill seeks to address the potential unconstitutionality of the five year residency requirement in statute. Currently, the Department of Commerce and Economic Development (DCED) is operating under emergency regulations that provide for a one year residency requirement. However, these regulations expire April 6, 1983. It is hoped that the legislature will act on this bill before that date so that new regulations can be drafted reflecting legislative intent regarding residency for the program.

The bill also addresses the amount of funding available for loans under \$35,000 and an accelerated repayment plan for loan recipients who move Outside during the term of loan repayment.

Differences between CS HB 15 (Loans) and HB 15

Section 1 of the original bill provided for a one year residency requirement immediately preceding the date of application for the loan and required an applicant to have had a crew member or commercial fishing license for any three of the past five years. The CS has been modified to provide for a two year residency requirement, and possession of a license for the year immediately preceding the date of the loan application and any other two of the past five years.

The rationale behind the two year requirement is provided in the Loan Committee's proposed letter of intent. Basically, it is the Committee's desire that the program be protected from fraudulent applications to the extent constitutionally possible. Since residence is generally transitory throughout the year for a fisherman, the longer the residency requirement, the easier it will be for DCED to distinguish between a resident and a nonresident. The letter of intent has been approved by both the Department of Law and the Division of Legal Services, Legislative Affairs Agency.

The language of the CS regarding holding a license for a certain number of years is an attempt at compromise between the language provided in the original bill, and the Governor's bill on the same subject--SB 73.

Section 2 was added to the committee substitute at the request of Representative Fuller. It provides that at least 10% of the funding appropriated would be available for loans under \$35,000.

The Loan Committee Chair requests that the language of this section be changed slightly to make it clear that the intention is for 10% of the annual appropriation to be used for this purpose, not 10% of the entire revolving loan fund. He has provided language to the committee to address this problem.

Section 3 was added to the committee substitute at the request of Representative Goll. The language would provide that loan beneficiaries who move Outside during the term of loan repayment must pay off the loan within six months. The Department of Law has indicated that no legal problems will arise from this section.

Fiscal Note

DCED has requested one additional investigator

position. The department feels that the residency change will necessitate more careful review of applications. Currently, DCED passes along potentially fraudulent applications to the Office of Special Prosecutions in the Department of Law. Law does not have the personnel necessary to carefully investigate the volume of potentially fraudulent applications that have arisen due to the institution of a shorter residency requirement.

The costs associated with this position equal \$ 63,656.

CHAIRMAN
HOUSE SPECIAL COMMITTEE
ON STATE LOANS
VICE-CHAIRMAN
HOUSE RESOURCES COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE
MEMBER
JOINT GAS PIPELINE COMMITTEE
HOUSE FINANCE SUBCOMMITTEE ON
ADMINISTRATION, REVENUE
AND THE GOVERNOR'S OFFICE

Alaska State Legislature



House of Representatives

Representative
RICK UEHLING

OK

ANCHORAGE
DISTRICT 12 - SEAT A
1634 JUNEAU DRIVE
ANCHORAGE, ALASKA 99501
(907) 274-4256
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4821

MEMORANDUM

TO: Representative Al Adams
Chairman, House Finance Committee

FROM: Representative Rick Uehling

DATE: March 16, 1983

RE: Commercial Fishing Loans Bill [CSHB 15 (Loans)]

I suggest that the Finance Committee consider adopting the following amendment for inclusion in CSHB 15:

Page 3, line 3—delete "available" and insert "appropriated".

I believe that this change will effectively address the particular intent of the loans committee substitute without unnecessary restraints on funds received into the Commercial Fishing Revolving Loan Fund, thus preserving the revolving nature of the fund.

I encourage the committee to give this proposed amendment your favorable consideration. Thank you.

RJ/wl

*****CORRECTION NOTICE*****

PLEASE INSERT THIS NEW SENATE BILL FOR THE PREVIOUS BILL.

Introduced: 1/26/83
Referred: Resources, Labor and Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 73

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial fishing loans; and
7 providing for an effective date."

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

9 * Section 1. AS 16.10.310(a)(1) is amended to read:

10 (1) make loans to

11 (A) individual commercial fishermen who have been
12 state residents for one year [A CONTINUOUS PERIOD OF FIVE YEARS]
13 immediately preceding the date of application for a loan under
14 AS 16.10.300 -- 16.10.370 and have had a crewmember or commercial
15 fishing license under AS 16.05.480 or a permit under AS 16.43 for
16 [ANY ONE OF] the part year [FIVE YEARS], and who actively partic-
17 ipated in the fishery during that period, for the purpose of en-
18 try permits;

19 (B) an individual who has been a state resident for
20 one year [A CONTINUOUS PERIOD OF FIVE YEARS] immediately preced-
21 ing the date of application for a loan under AS 16.10.300 --
22 16.10.370, who (i) because of lack of training or lack of employ-
23 ment opportunities in the area of residence does not have occupa-
24 tional opportunities available other than commercial fishing; or
25 (ii) is economically dependent on commercial fishing for a live-
26 lihood and commercial fishing has been a traditional way of life
27 for the individual in Alaska, for the repair, restoration or up-
28 grading of existing vessels and gear, for the purchase of entry
29 permits and gear, and for the construction and purchase of

1 vessels;

2 (C) corporations, partnerships, or joint ventures, 100
3 percent of which are owned by individual commercial fishermen who
4 have been state residents [RESIDENCES] for one year [A CONTINUOUS
5 PERIOD OF FIVE YEARS] immediately preceding the date of applica-
6 tion for a loan under AS 16.10.310(a)(1)(B) and have had a crew-
7 member or commercial fishing license under AS 16.05.480 or a per-
8 mit under AS 16.43 for [ANY ONE OF] the past year [FIVE YEARS],
9 and who actively participated in the fishery during that period,
10 for the repair, restoration or upgrading of existing vessels and
11 gear, for the purchase of gear, and for the construction and pur-
12 chase of vessels;

13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

*****CORRECTION NOTICE*****

PLEASE INSERT THIS NEW SENATE BILL FOR THE PREVIOUS BILL.

Introduced: 1/26/83
Referred: Resources, Labor and Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 73

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial fishing loans; and
7 providing for an effective date."

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

9 * Section 1. AS 16.10.310(a)(1) is amended to read:

10

(1) make loans to

11

(A) individual commercial fishermen who have been
12 state residents for one year [A CONTINUOUS PERIOD OF FIVE YEARS]
13 immediately preceding the date of application for a loan under
14 AS 16.10.300 -- 16.10.370 and have had a crewmember or commercial
15 fishing license under AS 16.05.480 or a permit under AS 16.43 for
16 [ANY ONE OF] the past year [FIVE YEARS], and who actively partic-
17 ipated in the fishery during that period, for the purpose of en-
18 try permits;

19

(B) an individual who has been a state resident for
20 one year [A CONTINUOUS PERIOD OF FIVE YEARS] immediately preced-
21 ing the date of application for a loan under AS 16.10.300 --
22 16.10.370, who (i) because of lack of training or lack of employ-
23 ment opportunities in the area of residence does not have occupa-
24 tional opportunities available other than commercial fishing; or
25 (ii) is economically dependent on commercial fishing for a live-
26 lihood and commercial fishing has been a traditional way of life
27 for the individual in Alaska, for the repair, restoration or up-
28 grading of existing vessels and gear, for the purchase of entry
29 permits and gear, and for the construction and purchase of

1 vessels;

2 (C) corporations, partnerships, or joint ventures, 100
3 percent of which are owned by individual commercial fishermen who
4 have been state residents [RESIDENCES] for one year [A CONTINUOUS
5 PERIOD OF FIVE YEARS] immediately preceding the date of applica-
6 tion for a loan under AS 16.10.310(a)(1)(B) and have had a crew-
7 member or commercial fishing license under AS 16.05.480 or a per-
8 mit under AS 16.43 for [ANY ONE OF] the past year [FIVE YEARS],
9 and who actively participated in the fishery during that period,
10 for the repair, restoration or upgrading of existing vessels and
11 gear, for the purchase of gear, and for the construction and pur-
12 chase of vessels;

13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

Introduced: 1/17/83
Referred: Resources and Finance

BY HAYES, FLOOD, LINDAUER
SZYMANSKI AND TISCHER

1 IN THE HOUSE

2 HOUSE BILL NO. 15

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to eligibility for commercial fish-
7 ing loans."

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

9 * Section 1. AS 16.10.310(a) is amended to read:

10 (a) The department may

11 (1) make loans to

12 (A) individual commercial fishermen who have been
13 state residents for a continuous period of one year [FIVE YEARS]
14 immediately preceding the date of application for a loan under
15 AS 16.10.300 - 16.10.370 and have had a crewmember or commercial
16 fishing license under AS 16.05.480 or a permit under AS 16.43 for
17 any three [ONE] of the past five years, and who actively partic-
18 ipated in the fishery during that period, for the purchase of
19 entry permits;

20 (B) an individual who has been a state resident for a
21 continuous period of one year [FIVE YEARS] immediately preceding
22 the date of application for a loan under AS 16.10.300 - 16.10.-
23 370, who

24 (i) because of lack of training or lack of em-
25 ployment opportunities in the area of residence does not
26 have occupational opportunities available other than commer-
27 cial fishing; or

28 (ii) is economically dependent on commercial
29 fishing for a livelihood and for whom commercial fishing has

1 been a traditional way of life [FOR HIM] in Alaska, for the
2 repair, restoration or upgrading of existing vessels and
3 gear, for the purchase of entry permits and gear, and for
4 the construction and purchase of vessels;

5 (C) corporations, partnerships, or joint ventures, 100
6 percent of which are owned by individual commercial fishermen who
7 have been state residents for a continuous period of one year
8 [FIVE YEARS] immediately preceding the date of application for a
9 loan under AS 16.10.310(a)(1)(B) and have had a crewmember or
10 commercial fishing license under AS 16.05.480 or a permit under
11 AS 16.43 for any three [ONE] of the past five years, and who
12 actively participated in the fishery during that period, for the
13 repair, restoration or upgrading of existing vessels and gear,
14 for the purchase of gear, and for the construction and purchase
15 of vessels;

16 (2) designate agents and delegate its powers to them as
17 necessary;

18 (3) adopt regulations necessary to carry out its functions;

19 (4) establish amortization plans for repayment of loans,
20 which may include extensions for poor fishing seasons or for adverse
21 market conditions for Alaskan products;

22 (5) enter into agreements with private lending institu-
23 tions, other state agencies, or agencies of the federal government, to
24 carry out the purposes of AS 16.10.300 - 16.10.370;

25 (6) enter into agreements with other agencies or organiza-
26 tions to create an outreach program to make loans under AS 16.10.300 -
27 16.10.370 in rural areas of the state.

Offered: 3/9/83
Referred: Finance

Original sponsors: Hayes, Flood,
Lindauer, et al

1 IN THE HOUSE

BY THE SPECIAL COMMITTEE
ON STATE LOANS

2

CS FOR HOUSE BILL NO. 15 (Loans)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to commercial fishing loans (AS 16.-

7

10.300 - 16.10.370)."

8

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

9

* Section 1. AS 16.10.310(a) is amended to read:

10

(a) The department may

11

(1) make loans to

12

(A) individual commercial fishermen who have been

13

state residents for a continuous period of two years [FIVE YEARS

14

immediately preceding the date of application for a loan under

15

AS 16.10.300 - 16.10.370 and have had a crewmember or commercial

16

fishing license under AS 16.05.480 or a permit under AS 16.43 for

17

the year immediately preceding the date of application and any

18

other two [ANY ONE] of the past five years, and who actively

19

participated in the fishery during those periods [THAT PERIOD],

20

for the purchase of entry permits;

21

(B) an individual who has been a state resident for a

22

continuous period of two years [FIVE YEARS] immediately preceding

23

the date of application for a loan under AS 16.10.300 - 16.10.-

24

370, who

25

(i) because of lack of training or lack of em-

26

ployment opportunities in the area of residence does not

27

have occupational opportunities available other than commer-

28

cial fishing; or

29

(ii) is economically dependent on commercial

1 fishing for a livelihood and for whom commercial fishing has
2 been a traditional way of life [FOR HIM] in Alaska, for the
3 repair, restoration or upgrading of existing vessels and
4 gear, for the purchase of entry permits and gear, and for
5 the construction and purchase of vessels;

6 (C) corporations, partnerships, or joint ventures, 100
7 percent of which are owned by individual commercial fishermen who
8 have been state residents for a continuous period of two years
9 [FIVE YEARS] immediately preceding the date of application for a
10 loan under AS 16.10.310(a)(1)(B) and have had a crewmember or
11 commercial fishing license under AS 16.05.480 or a permit under
12 AS 16.43 for the year immediately preceding the date of applica-
13 tion and any other two [ANY ONE] of the past five years, and who
14 actively participated in the fishery during that period, for the
15 repair, restoration or upgrading of existing vessels and gear,
16 for the purchase of gear, and for the construction and purchase
17 of vessels;

18 (2) designate agents and delegate its powers to them as
19 necessary;

20 (3) adopt regulations necessary to carry out its functions;

21 (4) establish amortization plans for repayment of loans,
22 which may include extensions for poor fishing seasons or for adverse
23 market conditions for Alaskan products;

24 (5) enter into agreements with private lending institu-
25 tions, other state agencies, or agencies of the federal government, to
26 carry out the purposes of AS 16.10.300 - 16.10.370;

27 (6) enter into agreements with other agencies or organiza-
28 tions to create an outreach program to make loans under AS 16.10.300 -
29 16.10.370 in rural areas of the state.

1 * Sec. 2. AS 16.10 is amended by adding a new section to read:

2 Sec. 16.10.315. ALLOCATION OF LOANS. The department shall
3 allocate at least ten percent of the money that is available to make
4 loans under AS 16.10.310 for loans of \$35,000 or less made under
5 AS 16.10.310(a)(1)(B) and (C).

6 * Sec. 3. AS 16.10.320 is amended by adding a new subsection to read:

7 (j) If a borrower ceases to be a state resident during the term
8 of a loan made under AS 16.10.310 - 16.10.370, the loan shall be
9 accelerated and the outstanding principal and interest shall be repaid
10 by the borrower within 120 days after the state residence terminates.