

LEG. FINANCE - BILLS 1983 - 1984 1801
CSHB 15 - HB 17 1801

Offered: 3/31/83
Referred: Finance

Original sponsors: Hayes, Flood,
Lindauer, et al

1 IN THE HOUSE

Finance Committee
BY THE ~~LABOR AND COMMERCE COMMITTEE~~
(Finance)

2

SENATE CS FOR CS FOR HOUSE BILL NO. 15 ~~(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 commercial fishing loans (AS 16.-

7

10.300 - 16.10.370); and providing for an effective

8

date."

9

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

10

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

11

(a) The department may

12

(1) make loans to

13

(A) individual commercial fishermen who have been

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

15

immediately preceding the date of application for a loan under

16

AS 16.10.300 - 16.10.370 and have had a crewmember or commercial

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

18

the year immediately preceding the date of application and any

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

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

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for the purchase of entry permits;

22

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

23

continuous period of two years [FIVE YEARS] immediately preceding

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

25

370, who

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

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ployment opportunities in the area of residence does not

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have occupational opportunities available other than commer-

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cial fishing; or

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

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

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

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

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

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

28 (6) enter into agreements with other agencies or organiza-
29 tions to create an outreach program to make loans under AS 16.10.300 -

1 16.10.370 in rural areas of the state.

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

3 Sec. 16.10.315. ALLOCATION OF LOANS. The department shall
4 allocate at least 10 percent of the money that is appropriated for a
5 state fiscal year to make loans under AS 16.10.310 for loans of
6 \$35,000 or less made under AS 16.10.310(a)(1)(B) and (C). An alloca-
7 tion made under this section terminates on April 15 of the state
8 fiscal year for which the allocation is made.

9 * Sec. 3. AS 16.10.335(a)(6) is amended to read:

10 (6) a statement that the note may be paid in full less
11 unearned interest within 120 [90] days from the postmark date of the
12 notice;

13 * Sec. 4. AS 16.10.335(b) is amended to read:

14 (b) Upon the debtor's failure to [REINSTATE OR] satisfy the note
15 within the time specified in (a)(6) of this section, the debtor's
16 [HIS] interest in the permit is terminated by operation of law without
17 further notice. Any entry permit cards issued to the debtor [HIM]
18 under the permit shall be cancelled immediately upon receipt by the
19 commission of a certificate of termination containing a copy of the
20 notice required by (a) of this section issued by the commissioner.

21 * Sec. 5. AS 16.10.337(b) is amended to read:

22 (b) If the commission does not exercise its right of first
23 refusal within 30 days after it receives the offer, or if the permit
24 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
25 the department shall promptly advertise and sell the permit. If the
26 proceeds of the sale of a permit exceed the amount necessary to pay
27 the note in full, plus penalties, costs of administration of the note,
28 and attorney fees, the excess will be transferred by the commissioner
29 to the debtor. At any time until the permit has been sold under this

1 subsection the debtor may repurchase the permit by paying the
2 department the amount necessary to pay the note in full, plus
3 penalties, costs of administration of the note, and attorney fees, as
4 determined by the commissioner [NOTIFY THE DEBTOR OF THIS FACT. THE
5 DEBTOR HAS 30 DAYS FROM THE POSTMARK DATE OF THE NOTICE TO NOMINATE A
6 PERSON QUALIFIED TO ASSUME THE NOTE. THE PERSON NOMINATED MUST
7 QUALIFY UNDER THE REQUIREMENTS OF AS 16.10.333(a). IF QUALIFIED, HE
8 MAY ASSUME ALL RIGHTS AND LIABILITIES OF THE ORIGINAL DEBTOR].

9 → * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

Add attached amendment.

A M E N D M E N T

TO: SCS CSHB 15(L&C)

By Mulcahy

Page 4, between line 8 and 9, insert the following:

"* Sec. 6. SAVING PROVISION. If an application for a loan under AS 16.-10.310 - 16.10.370 is filed with the department before the effective date of this Act, eligibility for the loan shall be determined by the law in effect at the time of the filing of the application if the applicant is eligible under the terms of that law."

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.

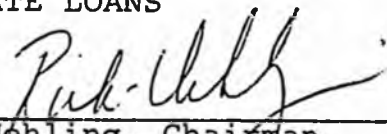
The state's interest in maintaining the fishing loan program is more important than the state's interest in minimizing fraud by requiring a two-year durational residency. It is therefore the

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

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SCS for CSHB 15 (Finance)
Title Act relating to commercial fishing loans (AS 16.10.300-16.10.370)
Requested by Senate Finance Committee Date 4/5/83

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Development
BRU, Program, or Subprogram(s) Affected 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 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES				0	0	0
200 TRAVEL				0	0	0
300 CONTRACTUAL				0	0	0
400 COMMODITIES				0	0	0
500 EQUIPMENT				0	0	0
600 LAND & STRUCTURES				0	0	0
700 GRANTS, CLAIMS, ETC.				0	0	0
TOTAL				0	0	0

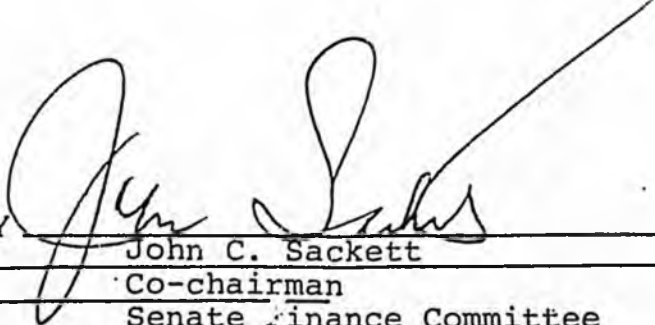
FUNDING (Thousands of Dollars)

GENERAL FUND				0	0	0
FEDERAL FUNDS				0	0	0
OTHER (Specify Fund Source)				0	0	0

POSITIONS

FULL TIME				0	0	0
PART TIME				0	0	0
TEMPORARY				0	0	0

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

IV. DATE April 5, 1983 PREPARED BY 
AGENCY John C. Sackett
PHONE Co-chairman
Senate Finance Committee
465-3753
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)



Alaska State Legislature

Senate

Official Business

SECTIONAL ANALYSIS OF SCS CS HB 15 (L&C)

Pouch V
State Capitol
Juneau, Alaska 99811

Section one

This section amends the length of residency in the state that is required for a person to receive a commercial fishing loan from five to two years. In addition this section will require a person to have an "experience factor" of three years. To receive a loan, a person must have held a crewmember or commercial fishing license, or a limited entry permit, for two of the last five years and the year immediately previous to the application for a loan. Existing law asks for a person to have held one of these licenses only for the immediately previous year.

Section two

This section is a completely new section. It requires that at least 10% of the funds appropriated in a fiscal year for commercial fishing loans be used to make loans of \$35,000 or less under AS 16.10.310 (a)(1)(B) and (C). These sections are explained in the following paragraphs.

AS 16.10.310 (a)(1)(B) makes loans to individuals who lack training or employment opportunities in their area and are therefore basically restricted to commercial fishing as a means to make a living. It also makes loans to individuals who are economically dependent upon commercial fishing and for whom commercial fishing has been a traditional way of life. These loans may be made for the purchase of a permit, for the upgrading and restoration of gear or vessels, and for the purchase of gear or vessels.

AS 16.10.310 (a)(1)(C) allows loans to be made to corporations, partnerships, and joint ventures for the upgrading or restoration of gear and vessels, for the purchase of gear, and for the construction or purchase of vessels.

Section three

This section extends by thirty days the time a debtor has, when [REDACTED] a limited entry permit is defaulted upon, to pay back the loan in full. The debtor will now have 120 days to accomplish this.

Section four

Technical changes.

Section five

This section will allow the Department of Commerce and Economic Development to advertise and sell a permit that is foreclosed upon. If the permit sells for more than is owed, plus penalties and other costs to the department, the excess shall be transferred to the debtor. At any time during this process, the debtor may repurchase the permit by paying whatever is owed, plus penalties and costs to the department.

The section removes the portion of law that allows a debtor to nominate a person to assume the debtor's note.

Section six

This section gives an immediate effective date.

STATE OF ALASKA
FISCAL NOTE

Revision Date March , 1983

I. REQUEST

Bill/Resolution No.: CSHB 15 (Finance)
 Title: Commercial Fishing Loans
 Sponsor: Haves, 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)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	65.0	68.9	73.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak Phone: 465-2510
 Division: Loans & Veterans' Affairs Date: 3/24/83
 Approved by Commissioner: Richard A. Lyon Date: 3/25/83
 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 (

CSHB 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. CSHB 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 G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.			
3.	CONTINUATION LEVEL				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							
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004			63,656.00						
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		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

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

March 21, 1983

The Honorable Rick Uehling
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Uehling:

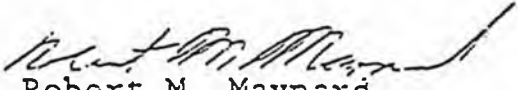
This letter is in response to your request for a brief written summary of the Department of Law's testimony before your committee on the subject of the constitutionality of a two-year residency requirement for commercial fishing loans.

Simply, we believe that the two-year requirement is very defensible under either the state or federal constitution. On the other hand, the law in this area is uncertain; any length of time beyond one year is past the present boundaries of judicially approved requirements and therefore carries a substantial risk of being found unconstitutional. If, however, any program can sustain a two-year residency requirement, both the student loan program and the commercial fishing loan program present the most compelling circumstances for such an extension. Both programs must address the very real problems of mobility of loan recipients coupled with an extremely generous loan program. Consequently, the normal superficial indicia of a subjective intent to consider oneself a citizen of the State of Alaska, such as voter registration, drivers license, and even the one-year residency requirement, are not as valid as they would be in other programs. As a result, we believe that a court could readily find that there is a rationale basis for choosing a two-year residency requirement over either a one-year residency requirement or any of the other objective standards normally used by the legislature.

If you have any questions, or if you wish further testimony on this or any other residency requirement, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMM:mr

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 CSHB 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.

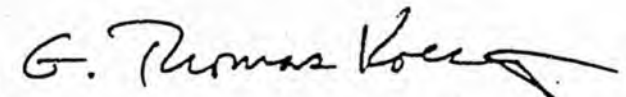
Summarizing, it is our opinion that section 3, which would accelerate a commercial fishing loan if a borrower ceases to be a state resident, probably would be found constitutional if challenged in court. However, the question is not entirely free from doubt, and we cannot give a certain answer.

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

Effect of amendments. — The 1982 amendment, effective June 16, 1982, substituted "AS 16.10.265 — 16.10.296" for "AS 16.10.270 — 16.10.296" in the introductory language, added the lan-

guage beginning "and includes fish eggs" to the end of paragraph (2), and deleted "raw" preceding "fishery resource" in paragraph (4).

Article 7. Commercial Fishing Loan Act.

Section

- 310. Powers of the department
- 320. Limitations on loans
- 325. Guarantors
- 330. [Repealed]
- 333. Loans for purchase of Alaska limited entry permits
- 335. Default and foreclosure

Section

- 337. Deficiencies and transfer of entry permits after foreclosure
- 338. Entry permits as collateral
- 339. Regulations
- 342. Special account established
- 360. Definitions

Sec. 16.10.310. Powers of the department. (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of 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 any one of the past five years, and who actively participated in the fishery during that period, for the purpose of entry permits;

(B) an individual who has been a state resident for a continuous period of 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 (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, 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;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residences for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one 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 gear, and for the construction and purchase of vessels;

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

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

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

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(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;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 — 16.10.370 in rural areas of the state:

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am § 7 ch 113 SLA 1982)

Sec 2 adds new section

Effect of amendments. — The 1977 amendment in paragraph (1)(A) of subsection (a), substituted "crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43" for "commercial fishing license," inserted commas following "three years," "existing vessels and gear," and "entry permits and gear," deleted "and" following "existing vessels and gear," and inserted "for" preceding "the construction and purchase of vessels."

The 1978 amendment, in paragraph (1) of subsection (a), inserted "immediately preceding the date of application for a loan under AS 16.05.300 — 16.05.370" and substituted "any one of the past five years, and who actively participated in the fishery during that period" for "three years" in subparagraph (A) and added subparagraph (C).

The 1979 amendment substituted "one of the past five years" for "three of the past five years" in paragraph (1)(C) of subsection (a).

The 1982 amendment, effective June 25, 1982, in subsection (a), deleted "for the repair, restoration or upgrading of existing vessels and gear" following "during that period" and "and gear, and for the construction and purchase of vessels; and" following "purchase of entry permit" in subparagraph (1)(A), added present subparagraph (1)(B), substituted "AS 16.10.310(a)(1)(B)" for "AS 16.10.300 — 16.10.370" in subparagraph (1)(C), deleted "rules and" preceding "regulations" in paragraph (3), added "or for adverse market conditions for Alaskan products" to the end of paragraph (4), and added paragraph (6).

Editor's notes. — Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 64, ch. 113, SLA 1982, provides: "A borrower who receives a loan before the effective date of this Act [June 25, 1982] under AS 16.10.650 — 16.10.720 [now repealed] may receive a loan under

(1) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(A) does not exceed \$300,000;

(2) AS 16.10.310(a)(1)(B) or (C) if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(B) or (C) does not exceed \$100,000."

Section 65 of ch. 113, provides: "A borrower who receives a loan under AS 16.10.310 before the effective date of this Act [June 25, 1982] may receive a loan under

(1) AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act does not exceed \$100,000;

(2) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(A) after the effective date of this Act does not exceed \$300,000."

Section 66 of ch. 113 provides: "Notwithstanding AS 16.10.320(i) and secs. 64 and 65 of this Act the total of all loans that a borrower receives under (1) AS 16.10.650 — 16.10.720; (2) AS 16.10.310 before the effective date of this Act [June 25, 1982]; and (3) AS 16.10.310 after the effective date of this Act, may not exceed \$300,000."

Section 67 of ch. 113 provides: "In secs. 64-66 of this Act a loan to an associate of a borrower is considered to be a loan to the borrower. In this section 'associate of a borrower' has the same meaning set out under AS 16.10.320(d)."

Sec. 16.10.320. Limitations on loans. (a) A loan under AS 16.10.310 — 16.10.370

- (1) may not exceed a term of 15 years;
- (2) may not bear interest exceeding 10-1/2 percent;
- (3) shall be secured by a first priority lien and appropriate security agreement; and
- (4) may not exceed 90 percent of the appraised value of the collateral used to secure the loan, except that a loan granted under AS 16.10.333 for the purchase of an Alaska limited entry permit may not exceed an amount determined in accordance with (f) or (h) of this section.

(b) A lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. secs. 1271-1279(b); 86 Stat. 909), as amended. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801-842; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code — Secured Transactions (AS 45.09.101 — 45.09.507), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. sec. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issued under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce under 46 U.S.C. secs. 808, 835 and 961.

(c) Repealed by § 72 ch. 113 SLA 1962.

(d) Loans made to a borrower under AS 16.10.310(a)(1)(A) may not exceed a total of \$300,000. Loans made to a borrower under AS 16.10.310(a)(1)(B) or (C) may not exceed a total of \$100,000. A loan to an associate of the borrower is considered to be a loan to the borrower. For the purposes of this section, "associate of the borrower" means

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(1) a corporation or other organization of which the borrower is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) a person who is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities of the borrower;

(3) a trust or other estate in which the borrower has a substantial beneficial interest or as to which the borrower serves as trustee or in a similar fiduciary capacity.

(e) Two or more individual commercial fishermen who each satisfy the requirements specified in AS 16.10.310(a)(1)(B) may jointly obtain a commercial fishing loan for the construction of a fishing vessel or the purchase of an existing fishing vessel. Loans granted under this subsection

(1) may not exceed the amount specified in (d) of this section multiplied by the number of qualified commercial fishermen applying for the loan;

(2) may not exceed a term of 15 years;

(3) shall be secured by a first priority lien and appropriate security agreement;

(4) may not bear interest exceeding 10-1/2 percent; and

(5) may not exceed 90 percent of the appraised value of the collateral used to secure the loan.

(f) Except as permitted in (h) of this section, a loan made under AS 16.10.310(a)(1)(A) and (B) for the purchase of an Alaska limited entry permit may not exceed 90 percent of the appraised value of the collateral used to secure the loan.

(g) Repealed by § 72 ch 113 SLA 1982.

(h) A loan for an entry permit under AS 16.10.310(a)(1)(B) may be made for up to 100 percent of the appraised value of the collateral used to secure the loan if the borrower demonstrates that (1) the borrower has at least three years of experience as a commercial fisherman in the fishery to which the entry permit applies; and (2) the borrower has not owned an Alaska limited entry permit in the year immediately preceding the application for the loan. In this subsection "three years of experience as a commercial fisherman in the fishery" means that for an accumulated total of three fishing seasons in the same fishery the borrower has actively participated in the commercial harvest of fish under the direction of a limited entry permit holder.

(i) If a loan is made to a borrower under AS 16.10.310(a)(1)(A), a subsequent loan may not be made to the borrower or an associate of the borrower under AS 16.10.310(a)(1)(B) or (C). If a loan is made to a borrower under AS 16.10.310(a)(1)(B) or (C), a subsequent loan may be made to the borrower or an associate of the borrower under AS 16.10.310(a)(1)(A) if the total of the loans received by the borrower or the associate under AS 16.10.310 does not exceed \$300,000. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am §§ 8 — 12, 72 ch 113 SLA 1982)

Effect of amendments. — The 1978 amendment rewrote this section.

The 1979 amendment substituted "nine and one-half per cent" for "seven per cent" in paragraph (3) of subsection (a), in paragraph (4) of subsection (c), and in paragraph (4) of subsection (e), and deleted "except that loans granted under this subsection may bear interest at a rate not to exceed eight per cent if the commissioner determines that an increase in the interest rate is necessary for the security of the loan" from the end of paragraph (4) of subsection (c). The amendment also added the language beginning "except that a loan granted under AS 16.10.333" to the end of paragraph (5) of subsection (a), rewrote the first sentence of subsection (d), added the present second sentence of subsection (d), and added subsections (f) and (g).

The 1982 amendment, effective June 25, 1982, rewrote subsections (a) and (d); repealed subsections (c) and (g); and in subsection (e), substituted "AS 16.10.310(a)(1)(B)" for "AS 16.10.310(a)(1)(A)" in the first sentence, substituted "(d) of this section" for "(a)(1) of this section" in paragraph (1), substituted "10-½ percent" for "nine and one-half per cent" in paragraph

(4), and substituted "90 percent" for "75 percent" in paragraph (5). The amendment also substituted "Except as permitted in (h) of this section, a loan made under AS 16.10.310(a)(1)(A) and (B)" for "A loan granted under AS 16.10.333(a)" at the beginning of subsection (f), and added subsections (h) and (i).

Editor's notes. — In view of the renumbering of the Uniform Commercial Code in 1980 by the revisor of statutes, the reference in subsection (b) to "AS 45.05.690 — 45.05.794" has been changed to "AS 45.09.101 — 45.09.507."

Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

For limitation on loans received under repealed AS 16.10.650 — 16.10.720; AS 16.10.310 before June 25, 1982; and AS 16.10.310 after June 25, 1982, see editor's note to AS 16.10.310.

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 16.10.325. Guarantors. A person may act as guarantor if the borrower has insufficient collateral to secure a loan for the purposes described in AS 16.10.310(a)(1)(B). The loan agreement shall specifically describe the property of the guarantor to be used as collateral by the borrower and shall be signed by the guarantor and the borrower. The department shall provide the guarantor with a copy of all notices sent to the borrower by the department. If the loan is for the purchase of an entry permit, the guaranty by the guarantor may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit. (§ 13 ch 113 SLA 1982)

Effective dates. — Section 78, ch. 113, June 25, 1982, in accordance with AS SLA 1982, makes this section effective 01.10.070(c).

Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.

Repealed by § 14 ch 122 SLA 1980.

Editor's notes. — The repealed section ch. 54, SLA 1973; § 1, ch. 177, SLA 1976; derived from § 1, ch. 134, SLA 1972; § 4, § 6, ch. 72, SLA 1979.

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits. (a) Loans under AS 16.10.320(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit

upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43.010 — 16.43.380 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect his title to the permit or his rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under this section, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 4 ch 83 SLA 1978; am § 1 ch 106 SLA 1980)

Effect of amendments. — The 1980 reassignment of entry permits taken as amendment added subsection (f). security for loans after such permits are

Cross references. — As to the revoked, see AS 16.43.355(j).

Sec. 16.10.335. Default and foreclosure. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or under AS 16.10.338, the commissioner shall provide the debtor, by registered or certified mail sent to his last known address on file with the commissioner, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner. (§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979)

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Effect of amendments. — The 1979 amendment inserted "or under AS 16.10.338" in the introductory language of subsection (a) and substituted "his interest in the permit" for "his equitable interest" in the first sentence of subsection (b).

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commissioner a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the department shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 16.10.333(a). If qualified, he may assume all rights and liabilities of the original debtor.

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(c) Repealed by § 72 ch 113 SLA 1982.

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982)

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

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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.

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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.

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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-

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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."

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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.

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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.

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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.

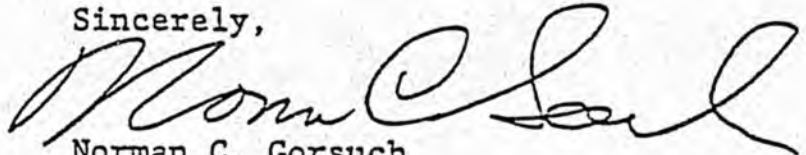
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature. 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; and 5/16/81, Reg. 78; am / / , Reg.)

Authority: AS 16.10.310

Alaska State Legislature

House of Representatives



Official Business

Al Adams
Chairman
Committee on Finance

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.

Offered: 3/9/83
Referred: Finance

Original sponsors: Hayes, Flood,
Lindauer, et al

BY THE SPECIAL COMMITTEE
ON STATE LOANS

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 15 (Loans) am

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); and providing for an effective
8 date."

9

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

10

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

11

(a) The department may

12

(1) make loans to

13

(A) individual commercial fishermen who have been

14

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

22

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

23

continuous period of two years [FIVE YEARS] immediately preceding
24 the date of application for a loan under AS 16.10.300 - 16.10.-
25 370, who

26

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

27

ployment opportunities in the area of residence does not

28

have occupational opportunities available other than commer-

29

cial fishing; or

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

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

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

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

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

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

28 (6) enter into agreements with other agencies or organiza-
29 tions to create an outreach program to make loans under AS 16.10.300 -

1 16.10.370 in rural areas of the state.

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

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

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

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

12 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).

COMMITTEE REPORT
SENATE

FURTHER:

3/22/83

Date: _____

Mr. President:

The Committee on LABOR & COMMERCE has had CSHB 15 (Loans) am

Relating to commercial fishing loans; eff. date

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with SCS for CS HB 15 (L+C) same title
 new title
- and recommends do pass with House Letter of Intent
on page 432 of the House Journal
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
Bob Mulvihy
Peter Bodoy

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
 CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date March , 1983

I. REQUEST

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

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Developer
 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:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak Phone: 465-2510
 Division: Loans & Veterans' Affairs Date: 3-30-83
 Approved by Commissioner: Richard A. Lyon Date: 3-30-83
 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 (Loans AM) 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 (Loans am) 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 G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFI	STAFF MONTHS 12	RP NUMBER	PCN 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						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		63,656.00					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		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
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 15 (Fin) Page 1 of 2 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				
Operatino		63.7	61.3	
Total		63.7	61.3	

b. Revenues:

Revenue				
---------	--	--	--	--

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

4. Disclaimer terminates.

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>
					0
<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>

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

RECEIVED

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:

1. 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.
2. 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.
3. 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
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell

Original Sponsors: Fritz, Koponen,
Lindauer and Tischer

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 16 (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 premium increases for automobile
7 insurance policies."

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

9 * Section 1. AS 21.36 is amended by adding a new section to read:

10 Sec. 21.36.400. PREMIUM INCREASES ON AUTOMOBILE INSURANCE POLI-
11 CLES. (a) An insurer may not increase the premium on an automobile
12 insurance policy unless the increase applies to all insureds of the
13 same class.

14 (b) An insurer may not increase the premium or add a surcharge
15 to an automobile insurance policy because of the issuance of a cita-
16 tion for a moving traffic violation unless the insured or another
17 person who resides in the insured's household and is covered by the
18 policy has been convicted of the violation.

19 (c) The director shall adopt regulations to determine circum-
20 stances under which an insurer may increase the premium or add a
21 surcharge to an automobile insurance policy.

22 (d) An insurer that increases the premium or adds a surcharge to
23 an automobile insurance policy shall give written notice of the in-
24 crease or surcharge at least 15 days before it takes effect, stating
25 the reason for the change and the right of appeal under AS 21.59.090.

26 (e) In this section "automobile insurance policy" means an
27 insurance policy that provides automobile liability coverage, unin-
28 sured motorist coverage, automobile medical payments coverage, or
29 automobile physical damage coverage, delivered or issued for delivery

1 in this state, insuring as the named insured one individual or a
2 husband and a wife residing in the same household, and under which the
3 insured vehicles are of the following types only:

4 (1) a motor vehicle of the private passenger or station
5 wagon type that is not used as a public or livery conveyance, and not
6 rented to others; or

7 (2) any other four-wheel motor vehicle with a load capacity
8 of 1,500 pounds or less that is not used in the occupation, profes-
9 sion, or business of the insured, not used as a public or livery
10 conveyance and not rented to others.
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The following individuals are expected to testify on SS
HB 16:

Staff of Representative Milo Fritz, prime sponsor

Don Koch, Division of Insurance, Department of Commerce
and Economic Development

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SSHB 16
Title: Auto insurance premium increases
Sponsor: Fritz
Requestor: House L&C

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Public Prot.
BRU, Program of Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

IV. ANALYSIS: ~~Attach a separate page for any Analysis~~

Prepared By: Kenneth C. Moore, Director
Division: Insurance

Phone: 465-2515
Date: 3/23/83

Approved by Commissioner: Richard A. Lyon
Department: Commerce & Economic Development

Date: 3/25/83

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

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While In Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

TO: House Finance Committee Members

FROM: Milo Fritz, Prime Sponsor

DATE: April 18, 1983

RE: SSHB 16

I request that you amend SSHB 16 as follows:

Page 1, Paragraph b, Line 15. Please insert the word solely between the words policy and because.

The paragraph would then read as follows:

(b) An insurer may not increase the premium or add a surcharge to an automobile insurance policy solely because of the issuance of a citation for a moving traffic violation unless the insured or another person who resides in the insured's household and is covered by the policy has been convicted of the violation.

Rationale: It came to our attention that a literal interpretation of paragraph B, without the amendment, would not allow an increase in the premium without a citation and conviction. The intent of this paragraph is to insure that rates are not increased due to a citation, but no conviction. We do not want to create a situation where an insurance company is denied the right to raise a policy based on fault, due to a legal technicality.

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

HOUSE BILL 16, AUTOMOBILE INSURANCE PREMIUM INCREASES

I INTRODUCED HB 16, AN ACT RELATING TO PREMIUM INCREASES FOR AUTOMOBILE INSURANCE POLICIES DUE TO A LARGE NUMBER OF COMPLAINTS BY MY CONSTITUENTS. THESE PEOPLE HAVE FELT THAT THEIR INSURANCE PREMIUMS WERE UNJUSTLY RAISED AND THAT THEY HAD NO PROCEDURE AVAILABLE TO APPEAL THE INSURER'S DECISION. THIS BILL SETS FORTH A PROCEDURE FOR AN APPEAL PROCESS BY WHICH THE GENERAL PUBLIC CAN HAVE JUSTICE SERVED. IT WILL NOT ALLOW INSURANCE COMPANIES TO RAISE THE INSURED'S PREMIUM UNLESS THEY ARE UNIFORM IN THEIR POLICY AND HAVE GIVEN THE INSURED AN OPPORTUNITY TO REFUTE THE INSURER'S CLAIM.

BULLETIN 73-5 FROM THE DEPARTMENT OF COMMERCE, DIVISION OF INSURANCE IS ADDITIONAL PROOF THAT THERE HAS BEEN A PROBLEM FOR SOME TIME. THE FACT IS THAT THIS BULLETIN AND THE PRESENT STATUTE, TITLE 21, WHICH GOVERNS INSURANCE, HAVE NOT TAKEN CARE OF THIS PROBLEM.

THERE HAS BEEN SOME CONCERN FROM THE INSURANCE INDUSTRY THAT HB 16 WOULD BE BURDENSOME ON THEM. I HOPE THAT THEY WILL PROPOSE ALTERNATIVES WHICH THE COMMITTEE CAN ACT UPON.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF COMMERCE

DIVISION OF INSURANCE / POUCH D — JUHEAU 99801

February 26, 1973

BULLETIN 73-5

TO: ALL INSURERS WRITING AUTOMOBILE INSURANCE FOR DELIVERY IN THE STATE OF ALASKA

RE: USE OF ACCIDENT INFORMATION APPEARING ON MOTOR VEHICLE RECORD ABSTRACTS ISSUED BY THE ALASKA DEPARTMENT OF PUBLIC SAFETY

An increasing number of complaints reveal that a substantial degree of abuse is occurring in connection with accident information appearing on individual motor vehicle record (MVR) "Abstracts issued by the Alaska Department of Public Safety." We have found that insurers are applying "Safe Driver Points" or rate surcharges for accidents shown on the abstract without first determining that such accidents are "At Fault" accidents.

Since the MVR abstract displays accidents without regard to fault, it is improper for an insurer to rely solely upon such an indication as justification for an additional charge. No insurer may blindly charge points or surcharge a risk for an accident appearing on the MVR abstract. In the same light, cancellations or non-renewals based on accident information appearing on the abstract will not be condoned unless supporting determination is made concerning the fault of the accident.

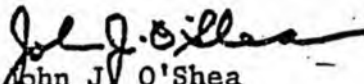
"Safe Driver Points" or rate surcharges may be charged for "At Fault" accidents involving injury to person or damage to property in excess of \$100 in which the insured or person covered under the policy is involved except accidents where:

1. The automobile was lawfully parked (An automobile rolling from a parked position need not be considered as lawfully parked, but may be considered as the operation of the last operator); or
2. Reimbursement by or on behalf of a person responsible for the accident has been made or a judgement against such persons exist; or

February 26, 1973

3. The insured or other operator residing in the same household was struck in the rear and has not been convicted of a moving traffic violation in connection with the accident; or
4. The other party was convicted of a moving traffic violation in connection with the accident and the insured was not; or
5. The insured or other operator residing in the same household was hit by a "Hit and Run" driver and same was reported to authorities within 24 hours; or
6. Damage is the result of contact with animals or fowl; or
7. Damage is limited to and caused by flying gravel, missiles or falling objects.

THIS BULLETIN IS EFFECTIVE IMMEDIATELY.


John J. O'Shea
Director

Sec. 21.39.090. Information to be furnished insureds: Hearings and appeals of insureds. Each rating organization and each insurer which makes its own rate shall, within a reasonable time after receiving written request and upon payment of the reasonable charge as it may make, furnish to an insured affected by a rate made by it, or to the authorized representative of the insured, all pertinent information concerning the rate. Each rating organization and each insurer which makes its own rates shall provide within this state reasonable means for a person aggrieved by the application of its rating system to be heard, in person or by his authorized representative, on his written request to review the manner in which the rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject the request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. A party affected by the action of the rating organization or the insurer on the request may, within 30 days after written notice of the action, appeal to the director, who, after a hearing held upon not less than 10 days' written notice to the appellant and to the rating organization or insurer, may affirm or reverse the action. (§ 1 ch 120 SLA 1966)

Sec. 21.36.400 LIMITATION ON SURCHARGES FOR AUTOMOBILE INSURANCE FOR ACCIDENTS OR VIOLATIONS.

(2) An insurer may not charge increased premium or surcharge a rate for automobile insurance based upon an automobile violation unless the insured or other operator residing in the same household has been convicted of that violation.

(b) An insurer may not charge increased premium or surcharge a rate for automobile insurance if;

- ↓
- 3 {
- (1) The automobile was lawfully parked except that an automobile rolling from a parked position may be considered as the operation of the last operator;
 - (2) Reimbursement by or on behalf of a person responsible for the accident has been made or a judgement against such persons exist;
 - (3) The insured or other operator residing in the same household was struck in the rear and has not been convicted of a moving traffic violation in connection with the accident;
 - (4) The other party was convicted of a moving traffic violation in connection with the accident;
 - (5) The insured or other person residing in the same household was hit by a hit and run driver and the accident was reported to the appropriate authorities within 24 hours;
 - (6) Damage is the result of contact with animals or fowl;
 - (7) Damage is limited to and caused by flying gravel, missiles or falling objects; or
 - (8) Loss is subject to coverage under comprehensive coverage.

~~See also, minority, etc.~~

COMMITTEE REPORT HOUSE

FURTHER:

2/3/83

Date: 3/9/83

Mr. Speaker:

The Committee on FINANCE has had HB 17

Relating to age limits under Title 14, Alcoholic Beverages.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 17 (Finance) same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Original sponsors: Martin, M.W. Miller,
M.M. Miller, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 17 (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 authorizing an advisory vote on the drinking
7 age; raising the drinking age to 21; allowing employ-
8 ment of certain minors in licensed premises; amending
9 other provisions of law relating to the drinking age;
10 providing an exemption for certain persons 19 years
11 of age; and providing for an effective date."

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

13 * Section 1. AS 04.11.090(f) is amended to read:

14 (f) The area designated as the licensed premises under a bever-
15 age dispensary license issued to a bowling alley may include the
16 concourse or lane areas of the bowling alley. Notwithstanding AS 04.-
17 16.049, the board may, upon application, authorize access by persons
18 under 21 [19] years of age to the concourse or lane areas designated
19 part of the bowling alley's licensed premises during hours when no
20 alcoholic beverages are being sold, served, or consumed.

21 * Sec. 2. AS 04.11.110(g) is amended to read:

22 (g) Notwithstanding AS 04.16.049, the board may authorize access
23 by persons under 21 [19] years of age to a club's licensed premises
24 during hours when no alcoholic beverages are sold, served, or con-
25 sumed.

26 * Sec. 3. AS 04.11.460(c) is amended to read:

27 (c) For the purposes of this section, "permanent resident" means
28 a person 21 [19] years of age or older who has established a permanent
29 place of abode.

1 * Sec. 4. AS 04.16.049(a) is repealed and reenacted to read:

2 (a) A person under the age of 21 years may not knowingly enter
3 or remain in premises licensed under this title unless

4 (1) accompanied by a parent, guardian or spouse who has
5 attained the age of 21 years;

6 (2) the person is at least 16 years of age, the premises
7 are designated by the board as a restaurant for the purposes of this
8 section, and the person enters and remains only for dining; or

9 (3) the person is under the age of 16 years, is accompanied
10 by a person over the age of 21 years, the parent or guardian of the
11 underaged person consents, the premises are designated by the board as
12 a restaurant for the purposes of this section, and the person enters
13 and remains only for dining.

14 * Sec. 5. AS 04.16.049(b) is amended to read:

15 (b) Notwithstanding (a) of this section, a licensee or an [.
16 HIS] agent [,] or employee of the licensee may refuse entry to a
17 person under the age of 21 [19] years to that part of licensed prem-
18 ises in which alcoholic beverages are sold, served, or consumed, may
19 refuse service to a person under the age of 21 [19] years, or may
20 require a person under the age of 21 [19] years to leave the portion
21 of the licensed premises in which alcoholic beverages are sold, serv-
22 ed, or consumed.

23 * Sec. 6. AS 04.16.049(c) is amended to read:

24 (c) Notwithstanding any other provision in this section, a
25 person between 16 and 19 years of age may enter and remain within the
26 licensed premises of a hotel, restaurant, or eating place in the
27 course of [HIS] employment if (1) the employment does not involve the
28 serving, mixing, delivering, or dispensing of alcoholic beverages; (2)
29 the person has the written consent of a parent or guardian; and (3)

1 an exemption from the prohibition of AS 23.10.355 is granted by the
2 Department of Labor. The board, with the approval of the governing
3 body having jurisdiction and at the licensee's request, shall design-
4 nate which premises are hotels, restaurants, or eating places for the
5 purposes of this subsection.

6 * Sec. 7. AS 04.16.049 is amended by adding a new subsection to read:

7 (d) Notwithstanding any other provision in this section, a
8 person 19 years of age or older may be employed within the licensed
9 premises of a hotel, restaurant or eating place, may enter and remain
10 within those premises for the purpose of employment, and may in the
11 course of employment, serve, deliver or dispense alcoholic beverages.

12 * Sec. 8. AS 04.16.050 is amended to read:

13 Sec. 04.16.050. POSSESSION OR CONSUMPTION BY PERSONS UNDER THE
14 AGE OF 21 [19]. A person under the age of 21 [19] years may not
15 knowingly consume, possess, or control alcoholic beverages, except
16 those furnished persons under AS 04.16.051(b).

17 * Sec. 9. AS 04.16.051(a) is amended to read:

18 Sec. 04.16.051. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS
19 UNDER THE AGE OF 21 [19]. (a) A person may not furnish an alcoholic
20 beverage to a person under the age of 21 [19] years.

21 * Sec. 10. AS 04.16.052 is amended to read:

22 Sec. 04.16.052. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS
23 UNDER THE AGE OF 21 [19] BY LICENSEES. A licensee or an [, HIS] agent
24 [.] or employee of the licensee may not with criminal negligence

25 (1) allow another person to sell, barter, or give an alco-
26 holic beverage to a person under the age of 21 [19] years within
27 licensed premises;

28 (2) allow a person under the age of 21 [19] years to enter
29 and remain within licensed premises except as provided in

1 AS 04.16.049;

2 (3) allow a person under the age of 21 [19] years to con-
3 sume an alcoholic beverage within licensed premises;

4 (4) allow a person under the age of 21 [19] years to sell
5 or serve alcoholic beverages except as provided in AS 04.16.049(d).

6 * Sec. 11. AS 04.16.060 is amended to read:

7 Sec. 04.16.060. PURCHASE BY PERSONS UNDER THE AGE OF 21 [19].

8 (a) A person under the age of 21 [19] years may not purchase alco-
9 holic beverages or solicit another to purchase alcoholic beverages for
10 the person under the age of 21 [ON HIS BEHALF].

11 (b) A person may not influence the sale, gift, or service of an
12 alcoholic beverage to a person under the age of 21 [19] years, by
13 misrepresenting the age of that person.

14 (c) A person may not order or receive an alcoholic beverage from
15 a licensee, an [HIS] agent or [,] employee of the licensee, or another
16 person, for the purpose of selling, giving, or serving it to a person
17 under the age of 21 [19] years.

18 (d) A person under the age of 21 [19] years may not enter li-
19 censed premises where alcoholic beverages are sold and offer or pre-
20 sent to a licensee or an [, HIS] agent [,] or employee of the licensee
21 a birth certificate or other written evidence of age, that [WHICH] is
22 fraudulent or false or that [WHICH] is not actually the person's [HIS]
23 own, or otherwise misrepresent the person's [HIS] age, for the purpose
24 of inducing the licensee or an [, HIS] agent [,] or employee of the
25 licensee to sell, give, serve, or furnish alcoholic beverages contrary
26 to law.

27 (e) A person [WHO HAS ATTAINED THE AGE OF 19 YEARS ACCOMPANYING
28 A PERSON] under the age of 21 [19] who is seeking to enter and remain
29 in a licensed premises under AS 04.16.049(a)(2) or (3) may not

1 misrepresent the person's age or having obtained the consent of the
2 parent or guardian required by that section [OF THE PERSON UNDER THE
3 AGE OF 19 YEARS].

4 * Sec. 12. AS 04.16.200(b)(2) is amended to read:

5 (2) the sale or offer for sale was made to a person under
6 21 [19] years of age; or

7 * Sec. 13. AS 04.16.200(c) is amended to read:

8 (c) It is an affirmative defense to a prosecution under (a) of
9 this section that no profit was involved in the solicitation or re-
10 ceipt of an order for the delivery of an alcoholic beverage. However,
11 the affirmative defense created under this subsection is not available
12 in a prosecution of a person charged with selling or offering for sale
13 alcoholic beverages to a person under 21 [19] years of age.

14 * Sec. 14. AS 04.21.020(1) is amended to read:

15 (1) the alcoholic beverages are provided to a person under
16 the age of 21 [19] years in violation of AS 04.16.051, unless the
17 licensee, agent, or employee secures in good faith from the person a
18 signed statement, liquor identification card, or drivers' license
19 meeting the requirements of AS 04.21.050(a) and 04.21.050(b), that
20 [WHICH] indicates that the person is 21 [19] years of age or older; or

21 * Sec. 15. AS 04.21.050(a) is amended to read:

22 (a) If a licensee [,] or an agent or employee of the licensee
23 questions or has reason to question whether a person entering [A]
24 licensed premises, or ordering, purchasing, attempting to purchase, or
25 otherwise procuring or attempting to procure alcoholic beverages, has
26 attained the age of 21 [19] years or is entering without consent in
27 violation of AS 04.16.049(a)(3) and has not attained the age of 16
28 years, that licensee, agent, or employee shall require the person to
29 furnish proof of age acceptable under (b) of this section or proof of

1 consent in a form determined by the board. If the person questioned
2 does not furnish proof of age acceptable under (b) of this section, or
3 if a licensee, agent, or employee questions or has reason to question
4 the validity of the proof of age furnished, the licensee, employee, or
5 agent shall require the person to sign a statement that the person
6 [HE] is over the age of 21 or 16 [19] years as appropriate. This
7 statement shall be made on a form prepared by and furnished to the
8 licensee by the board.

9 * Sec. 16. AS 04.21.050(c) is amended to read:

10 (c) A licensee, or an agent or employee of the licensee, may not
11 be charged for a violation of AS 04.16.051 - 04.16.052 if a signed
12 statement as provided in (a) of this section is secured in good faith,
13 or a valid driver's license or identification card is presented indi-
14 cating that the owner and possessor of the presented driver's license
15 or identification card is 21 or 16 [19] years of age or over as appro-
16 priate.

17 * Sec. 17. AS 23.10.355 is amended to read:

18 Sec. 23.10.355. PERSONS UNDER 21 [19]. No person under 21 [19]
19 may be employed or allowed to sell or serve alcoholic beverages or to
20 work [IN ANY ROOM OR OTHER PLACE WHERE ALCOHOLIC BEVERAGES ARE SOLD
21 FOR CONSUMPTION] on licensed [THE] premises, except as provided in
22 AS 04.16.049 [AS 04.16.049(e)].

23 * Sec. 18. EXCEPTION FOR THOSE 19 YEARS OF AGE OR OLDER AS OF
24 JANUARY 1, 1984. Notwithstanding any other provision of this title regard-
25 ing age limitations, any person born on or before December 31, 1964 may be
26 present upon licensed premises and may possess, consume, receive or pur-
27 chase alcoholic beverages as otherwise allowed under this title, and a
28 person may serve, deliver, dispense, furnish or sell alcoholic beverages to
29 a person born on or before December 31, 1964 as otherwise allowed under

1 this title.

2 * Sec. 19. The lieutenant governor shall place before the qualified
3 voters of the state at the next statewide election a question advisory to
4 the legislature as to whether the legislature should maintain the age of
5 majority at 21 years of age or enact laws that would lower the age of
6 majority to 19 years of age for the purpose of regulation of the sale,
7 consumption, possession, furnishing, barter, purchase, gift and delivery of
8 alcoholic beverages. The question shall appear on the ballot in the fol-
9 lowing form:

10 Q U E S T I O N

11 Shall the drinking age be at age 19 or age 21?

12 Leave at age 21 []

Lower to age 19 []

13 * Sec. 20. This Act takes effect January 1, 1984.
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HOUSE JOURNAL

HOUSE FINANCE COMMITTEE LETTER OF INTENT FOR CSHB 17 (FINANCE)

The House Finance Committee has considered HB 17, and has made certain amendments to the bill. CSHB 17 (Finance) raises the age at which a person may legally consume alcoholic beverages from 19 to 21. Section 7 of the bill adds a new subsection (d) to AS 04.16.049. The new subsection allows 19 and 20 year olds to be employed in hotels and restaurants and to serve alcoholic beverages, despite the fact that they may not legally consume these beverages. Subsection (d) would allow these 19 and 20 year old employees to mix alcoholic beverages. Thus, while they may serve alcoholic beverages and dispense beer and wine, employment as a bartender serving mixed drinks is prohibited. Subsection (d) has been added because the committee is aware that 19 and 20 year olds are often employed in hotels and restaurants on a part time or seasonal basis, especially while attending school. These establishments represent a major source of income for young people in this age range, and the committee does not intend to prevent this employment.

Section 18 of CSHB 17 (Finance) adds a temporary law which allows persons who reach the age of 19 on or before January 1, 1984 to continue to legally consume alcoholic beverages. This allows those persons who are now 19 and 20, and who can now legally consume alcoholic beverages, to continue to do so. The bill thus does not take away the privilege to drink from those to whom it has already been granted as of the effective date of the bill. The bill raises the drinking age from 19 to 21 for all persons born after December 31, 1964; these persons have not yet been granted the privilege to legally consume alcoholic beverages.

The committee recognizes that AS 04.16.065 will allow some 19 and 20 year old persons to legally consume alcoholic beverages, while others who are only slightly younger may not. After careful thought and discussion the committee concluded that this distinction is a reasonable one which does not unfairly discriminate against persons born after December 31, 1964. The committee is convinced that the statistics on alcohol related traffic fatalities, criminal offenses and alcoholism among the youth in this state and the nation dictate that the drinking age be raised from 19 to 21. This is a sound public policy decision which will have long term future benefits for the citizens of the state.

The committee is also cognizant, however, of the problems of effectively and fairly enforcing the new age limitation upon those persons who are now 19 and 20 years of age, and who have been legally consuming alcoholic beverages. Some of these persons can be expected to resist the withdrawal of a privilege which they are already enjoying, as contrasted to the postponement of a privilege which younger persons have not yet received. Thus, a decision was made to choose an easily determinable date, January 1, 1984, and to allow all those who have reached 19 years of age by that date to continue to legally consume alcoholic beverages. The higher drinking age will apply to all persons who reach the age of 19 on or after that date.

The committee recognizes that, to a certain extent, any lines which it draws as to age limits will be arbitrary. The drinking age could have been set at 20 1/2 or 22, for example. But the arbitrary lumping of all 19 or 20 year olds into one category, without considering whether or not some individuals had previously been accorded the privilege to consume alcoholic beverages, is a less defensible classification than one which draws a distinction between two classes of persons: those who have previously been able to drink and those who have not.

RESPECTFULLY SUBMITTED,



Al Adams, Chairman
House Finance Committee

028216

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 17 (Finance) Date on Bill: 3/8/83
 Title: An Act relating to age limits under Title 4, Alcoholic Beverages; and estab. an eff. date
 Sponsor: Martin, M.W. Miller, M.M. Miller, et. al.
 Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		67.1	118.5	170.2
Total		67.1	118.5	170.2

b. Revenues:

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

No information provided.

3. Assumptions: This bill raises the age at which a person is legally allowed to consume alcoholic beverages from 19 to 21. It does not change the current penalty provisions under Title 4; most violations of Title 4 are class A misdemeanors. It is anticipated that passage of the bill would result in approximately 150-200 additional criminal prosecutions per year statewide during the first 2 years after passage. During this period, persons who are 19 years of age or older on the effective date of the bill will continue to be permitted to possess and consume alcoholic beverages.

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: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 3/8/83

Approved by Commissioner: Norman C. Gofsuch, Attorney General Date: _____
 Department: Department of Law

5. Distribution:

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

2/15/83

Assumptions

CSHB 17

Page 2

Prosecution of consumers of alcoholic beverages under 21 years of age would be for relatively minor violations; however, the total anticipated number of such violations represents an appreciable increase in overall prosecutor workload. The number of prosecutions can be expected to steadily increase to approximately 300-400 additional prosecutions per year after the second year. This steady increase will be due to the "grandfather clause" in proposed AS 04.16.065, which ceases to have effect after January 1, 1986.

Additionally, it is anticipated that 50 to 100 prosecutions of the more serious offense of furnishing alcohol to a minor will also occur. These offenses, committed by bars, liquor stores, bootleggers, and older friends, will require vigorous prosecution by the state if the change in the drinking age is to make a meaningful change in the drinking patterns of young persons. Consequently, prosecutor resources must be increased to handle the increased workload that will result from enactment of this bill.

The impact of HB 17 is expected to result in the addition of 1.5 prosecutors by FY 1986, at the Attorney IV level (R 24A) and 1 Legal Secretary: I (R 10B), statewide. For purposes of the analysis, salary schedule A has been used. Actual placement and number of positions can only be determined after the legislature has acted and we know what bills have been approved, and once we know what fiscal notes have also been approved.

The first year of this analysis is for FY 84 and costs have been calculated on a 5 month basis to account for the time required to establish new positions and the time it takes to get a new program underway. The costs beyond FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (5 months)

	<u>AIV (PFT)</u>	<u>AIV (PPT)</u>	<u>L/SI (PFT)</u>	<u>TOTAL</u>
Personal Services	26.8	--	11.7	38.5
Travel	2.5	--	--	2.5
Contractual	4.0	--	1.0	5.0
Commod. - ongoing	0.8	--	0.8	1.6
Commod. - single time	2.0	--	1.5	3.5
Equipment - single time	1.5	--	14.5	16.0
				<u>67.1</u>

2nd Year (12 months + 6% annual inflation)

Personal Services	67.3	--	29.8	97.1
Travel	6.4	--	--	6.4
Contractual	9.1	--	2.1	11.2
Commodities	1.9	--	1.9	3.8
Equipment	--	--	--	--
				<u>118.5</u>

3rd Year (12 months + 6% annual inflation)

Personal Services	71.3	35.7	31.6	138.6
Travel	6.8	3.4	--	10.2
Contractual	9.6	4.6	2.2	16.4
Commodities	2.0	1.0	2.0	5.0
Equipment	--	--	--	--
				<u>170.2</u>

The following individuals are expected to testify on CS HB 17
(Judiciary):

Terry Martin, prime sponsor

George Mundell, Acting Director, Office of Alcoholism and Drug
Abuse, Department of Health & Social Services
(Mr. Mundell will testify on behalf of the administration for
all departments)

A representative of the Department of Law will be available to
answer questions on the DOL fiscal note

STATE OF ALASKA
FISCAL NOTE

Rec'd 5/17/83

Revision Date 1983

I. REQUEST

Bill/Resolution No.: SSCSHB 17
 Title: Advisory Vote/Drinking Age to 21
 Sponsor: Rep. Martin
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operations
 BRU, Program of Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			-0-			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not Provided

IV. ANALYSIS: SSCSHB 17 has no fiscal impact as the Division of Elections plans for the inclusion of advisory votes on the general election ballot.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director
 Division: Division of Elections
 Approved by Commissioner: [Signature]
 Department: Lieutenant Governor

Phone: 586-6181
 Date: 05-16-83
 Date: 05-16-83

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CS HB 17 Date on Bill: 2/8/83
 Title: An act relating to age limits under Title 4, Alcoholic Beverages
 Sponsor: Martin, M.W. Miller, M.M. Miller
 Requestor: House Finance

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	

b. Revenues:

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

3. Assumptions:

This bill has no fiscal impact.

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: Mary Reifed Phone: 465-2300
 Division: Commissioner Office Date: 2/28/83
 Approved by Commissioner: John D. Healy Date: 2/28/83
 Department: Revenue

5. Distribution:

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2/15/83