

LEG. FINANCE - BILLS 1985 - 1986 2176

SB 82 - SB 83

2176

COMMITTEE REPORT
SENATE

FURTHER:

4/1/85

Date 5/2/85

Mr. President

The Committee on FINANCE considered SB 82
weights and measures; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 82 (Finance)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Kirk H. ...

Paul ...

...

...

...

...

...

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

Offered: 2/26/85
Referred: Labor & Commerce
and Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE BILL NO. 82 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to weights and measures; and provid-
7 ing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 45.75.030 is amended to read:
10 Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND
11 MEASURES. The commissioner of commerce and economic development is ex
12 officio state director of weights and measures. The commissioner may
13 delegate this authority, and [DIRECTOR] may appoint state inspectors.
14 * Sec. 2. AS 45.75.040 is amended to read:
15 Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DI-
16 RECTOR]. The commissioner [DIRECTOR] is the custodian of the state
17 standards of weight and measure and of the other standards and equip-
18 ment provided for by this chapter, and [. THE DIRECTOR] shall keep
19 accurate records of the standards and equipment. The commissioner
20 [DIRECTOR] shall enforce this chapter, implement AS 44.33.020(25), and
21 [. HE SHALL] supervise the weights and measures offered for sale,
22 sold, or in use in the state.
23 * Sec. 3. AS 45.75.050(a) is amended to read:
24 (a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations
25 necessary for the enforcement of this chapter in accordance with the
26 Administrative Procedure Act (AS 44.62). These have the effect of
27 law.
28 * Sec. 4. AS 45.75.050(b) is amended to read:
29 (b) The regulations may include

1 (1) standards of net weight, measure, or count, and reason-
2 able standards of fill, for a [ANY] commodity in package form;

3 (2) rules governing the technical and reporting procedures
4 to be followed, and the report and record forms and marks of approval
5 and rejection to be used by inspectors of weights and measures in the
6 discharge of their official duties;

7 (3) exemptions from the sealing or marking requirements of
8 AS 45.75.120 for [WITH RESPECT TO] weights and measures of a character
9 or size that sealing or marking would be inappropriate, impracticable,
10 or damaging to the apparatus in question; [AND]

11 (4) for [WITH RESPECT TO] classes of weights and measures
12 of a character that annual retesting is unnecessary to continued
13 accuracy, exemptions from the requirements of AS 45.75.070 and 45.75.-
14 080 for annual testing, and schedules fixing the frequency of required
15 retests for classes of devices exempted;

16 (5) in the implementation of AS 44.33.020(25), provisions
17 governing the enforcement of the size, weight, and load limitations
18 established under AS 19.10.060; the issuance of, and the enforcement
19 of the terms of, permits for overweight and oversize vehicles; and the
20 operation of weigh stations.

21 * Sec. 5. AS 45.75.050(d) is amended to read:

22 (d) The specifications, tolerances, and regulations for commer-
23 cial weighing and measuring devices, together with amendments to them,
24 as recommended by the National Bureau of Standards and published in
25 National Bureau of Standards Handbook 44 and supplements to it, or in
26 any publication revising or superseding Handbook 44, are the specifi-
27 cations, tolerances, and regulations for commercial weighing and
28 measuring devices of the state, except as specifically modified,
29 amended, or rejected by a regulation adopted [ISSUED] by the

1 commissioner [DIRECTOR].

2 * Sec. 6. AS 45.75.060 is amended to read:

3 Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIP-
4 MENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF
5 WEIGHTS AND MEASURES WITH] a duplicate set of state standards of
6 weight and measure, referred to in this chapter as office standards.
7 The commissioner [STATE] shall also supply field standards and the
8 equipment that [WHICH] is necessary to carry out this chapter. The
9 commissioner shall verify the office standards and field standards on
10 [SHALL BE VERIFIED UPON] their initial receipt and at least once each
11 year afterward. The commissioner shall verify the office standards
12 [SHALL BE VERIFIED] by direct comparison with the state standards.
13 The commissioner shall verify the [THE] field standards [SHALL BE
14 VERIFIED] by comparison with the office standards.

15 * Sec. 7. AS 45.75.070 is amended to read:

16 Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND
17 WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least
18 once every five years, the commissioner [DIRECTOR] shall test the
19 standards of weight and measure obtained by a city that [WHICH] has
20 appointed a sealer of weights and measures, and shall approve them if
21 they are correct. The commissioner [DIRECTOR] shall inspect the
22 standards at least once every two years.

23 (b) The commissioner [DIRECTOR] shall from time to time test all
24 weights and measures used in checking the receipt or disbursement of
25 supplies in every institution maintained by money appropriated by the
26 legislature, and shall report the commissioner's [HIS] findings, in
27 writing, to the supervisory board and to the executive officer of the
28 institution concerned.

29 * Sec. 8. AS 45.75.080(a) is amended to read:

CORRECTION

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

1 (a) The commissioner [DIRECTOR] may inspect and test, to ascer-
2 tain if they are correct, all weights and measures kept, offered, or
3 exposed for sale. The commissioner [DIRECTOR] shall, at least annu-
4 ally [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect
5 and test, to ascertain if they are correct, all weights and measures
6 commercially used

7 (1) in determining the weight, measurement, or count of
8 commodities or things sold, or offered or exposed for sale, on the
9 basis of weight or of measure;

10 (2) in computing the basic charge or payment for services
11 rendered on the basis of weight or of measure or count; or

12 (3) in determining weight or measurement when a charge is
13 made for this determination.

14 * Sec. 9. AS 45.75.090 is amended to read:

15 Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR]
16 shall investigate complaints of violations of this chapter, and shall
17 [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that
18 the commissioner [WHICH HE] considers appropriate and advisable to
19 develop information on prevailing procedures in commercial quantity
20 determination, [AND] on possible violations of this chapter, and to
21 promote the general objective of accuracy in the determination and
22 representation of quantity in commercial transactions.

23 * Sec. 10. AS 45.75.100 is amended to read:

24 Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner
25 [DIRECTOR] shall, from time to time, weight or measure and inspect
26 packages or amounts of commodities kept, offered, or exposed for sale
27 to determine whether they contain the amounts represented and whether
28 they are kept, offered, or exposed for sale in accordance with law.
29 When packages or amounts of commodities do not contain the amounts

1 represented, or are kept, offered, or exposed for sale in violation of
2 law, the commissioner [DIRECTOR] may order them off sale and may mark
3 or tag them to show they are illegal. The commissioner [DIRECTOR] may
4 use recognized sampling procedures. The commissioner shall determine
5 the compliance [COMPLIANCE] of a given lot of packages [SHALL BE
6 DETERMINED] on the basis of the result obtained on a sample selected
7 from and representative of the lot.

8 (b) A [NO] person may not

9 (1) sell, or keep, offer, or expose for sale in intrastate
10 commerce a package or amount of commodity that has been ordered off
11 sale or marked or tagged as provided in this section until the package
12 or amount of commodity has been brought into full compliance with all
13 legal requirements; or

14 (2) dispose of a package or amount of commodity that is
15 ordered off sale or marked or tagged as provided in this section and
16 that does not meet legal requirements, except with the specific ap-
17 proval of the commissioner [DIRECTOR].

18 * Sec. 11. AS 45.75.110(a) is amended to read:

19 (a) The commissioner [DIRECTOR] may issue stop-use orders,
20 stop-removal orders, and removal orders for weights and measures used
21 or capable of being used commercially. The commissioner [DIRECTOR]
22 may issue stop-removal orders and removal orders for packages or
23 amounts of commodities kept, offered, or exposed for sale whenever the
24 commissioner [HE] considers it necessary or expedient in enforcing
25 this chapter.

26 * Sec. 12. AS 45.75.120 is amended to read:

27 Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS.

28 (a) The commissioner [DIRECTOR] shall approve for use and seal or
29 mark with appropriate devices the weights and measures that the

1 commissioner [WHICH HE] finds on [UPON] inspection and test to be cor-
2 rect as provided in AS 45.75.050, and shall reject and mark or tag as
3 "rejected" the weights and measures that are found [WHICH HE FINDS],
4 upon inspections or testing [TEST], to be incorrect as provided in
5 AS 45.75.050 but which in the commissioner's [HIS] best judgment may
6 be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR].
7 This sealing or marking is not required for weights and measures
8 exempted by regulation [OF THE DIRECTOR].

9 (b) The commissioner [DIRECTOR] shall condemn, and may seize and
10 destroy weights and measures found to be incorrect that [WHICH], in
11 the commissioner's [HIS] best judgment, cannot be satisfactorily
12 repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and
13 measures that [WHICH] are rejected under (a) of this section may be
14 confiscated and destroyed by the commissioner [DIRECTOR] if not cor-
15 rected as required by AS 45.75.180 or if used or disposed of contrary
16 to the requirements of AS 45.75.180.

17 * Sec. 13. AS 45.75.130 is amended to read:

18 Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE.
19 In the enforcement of this chapter and [ANY] other laws [LAW] dealing
20 with weights and measures, the commissioner [DIRECTOR] has special
21 police powers. The commissioner [HE] may arrest, without formal
22 warrant, a [ANY] person violating the law, and seize for use as evi-
23 dence, without formal warrant, incorrect or unsealed weights and
24 measures or amounts or packages of commodity, used, retained, offered,
25 or exposed for sale, or sold in violation of law. In performing these
26 [HIS] duties, the commissioner [DIRECTOR] may enter, without formal
27 warrant, a [ANY] structure or premises, and stop any person and re-
28 quire the person [HIM] to proceed to a specified place.

29 * Sec. 14. AS 45.75 is amended by adding new sections to article 2 to

1 read:

2 Sec. 45.75.131. ISSUANCE OF CITATIONS. An employee of the
3 Department of Commerce and Economic Development who is authorized by
4 the commissioner to enforce the size, weight, and load limitations
5 adopted by the Department of Transportation and Public Facilities
6 under AS 19.10.060 may issue a citation to a person who violates

7 (1) a load limitation;

8 (2) the terms of an overweight or oversize vehicle permit
9 issued under AS 44.33.020(25) and AS 45.75.040; or

10 (3) the provisions of a regulation adopted under AS 44.33.-
11 020(25) and AS 45.75.050(b)(5).

12 Sec. 45.75.132. FORM AND ISSUANCE OF CITATION. (a) A citation
13 issued under this section must be in writing. A person receiving the
14 citation is not required to sign a promise to appear in court.

15 (b) The time specified in the notice to appear on a citation
16 issued under this section must be at least 15 days after the issuance
17 of the citation, unless the person cited requests an earlier hearing.

18 (c) The commissioner is responsible for the issuance of books
19 containing appropriate citations and shall maintain a record of each
20 book and each citation contained in it. The commissioner shall re-
21 quire and retain a receipt for every book issued to an employee of the
22 department designated by the commissioner to provide investigative
23 service to enforce provisions of this chapter.

24 (d) An employee who issues a citation under this section shall
25 deposit the original or a copy of the citation with a court having
26 jurisdiction over the alleged offense. Upon its deposit with the
27 court, the citation may be disposed of only by trial in the court or
28 other official action taken by the magistrate, judge, or prosecutor.
29 The employee who issued the citation may not dispose of it or copies

1 of it or of the record of its issuance except as required under this
2 subsection and (e) of this section.

3 (e) The commissioner shall require the return of a copy of every
4 citation issued under this section and of all copies of every citation
5 that has been spoiled or on which an entry has been made and not
6 issued to an alleged violator. The commissioner shall also maintain
7 in connection with every citation issued a record of the disposition
8 of the charge by the court in which the original or copy of the cita-
9 tion was deposited.

10 (f) If the form of citation issued under this section includes
11 the essential facts constituting the offense charged and is sworn to
12 as required under the laws of this state for a complaint charging
13 commission of the offense alleged in the citation, the citation when
14 filed with a court having jurisdiction, is considered to be a lawful
15 complaint for the purpose of prosecution.

16 (g) Unless the citation has been voided or otherwise dismissed
17 by the magistrate, judge, or prosecutor, or bail has been forfeited
18 under AS 45.75.133, a person who fails to appear in court to answer a
19 citation issued under this section, regardless of the disposition of
20 the charge for which the citation was issued, is guilty of a class B
21 misdemeanor.

22 Sec. 45.75.133. BAIL FORFEITURE. (a) The supreme court shall
23 specify by rule or order those violations that are appropriate for
24 disposition without court appearance, and shall establish a schedule
25 of bail amounts. The maximum bail forfeiture amount for an offense
26 may not exceed the maximum fine specified by law for that offense. If
27 the person who has been cited can dispose of the violation without
28 court appearance, the issuing employee shall write on the citation the
29 amount of bail forfeiture applicable to the violation.

1 (b) A person cited for a violation for which a bail forfeiture
2 amount has been established under (a) of this section may, within 15
3 days after the date of the citation, mail or personally deliver to the
4 clerk of the court in which the citation is filed by the employee

5 (1) the amount of bail indicated on the citation for that
6 offense; and

7 (2) a copy of the citation indicating that the right to an
8 appearance is waived, a plea of no contest is entered and the bail is
9 forfeited.

10 (c) When the cited person has forfeited bail under (b) of this
11 section, the court shall enter a judgment of conviction. Forfeiture
12 of bail is a complete satisfaction for the violation. The clerk of
13 the court accepting the bail forfeiture shall provide the offender
14 with a receipt stating that fact.

15 (d) A cited person who fails to pay the bail forfeiture amount
16 established under (a) of this section or to appear in court as re-
17 quired, is guilty of a class B misdemeanor.

18 (e) Notwithstanding other provisions of law, if a person cited
19 for a violation for which a bail forfeiture amount has been estab-
20 lished under (a) of this section appears in court and is found guilty,
21 the court may not impose a penalty that exceeds the bail forfeiture
22 amount for that offense established under (a) of this section.

23 * Sec. 15. AS 45.75.140 is amended to read:

24 Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR
25 AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR]
26 specified in AS 45.75.070 - 45.75.100, 45.75.120, [AS 45.75.070,]
27 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised
28 by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the in-
29 structions and at the direction of the commissioner [DIRECTOR].

1 * Sec. 16. AS 45.75.150 is amended to read:

2 Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS
3 OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights
4 and measures, and the deputy sealers of weights and measures it needs.
5 If the city appoints a sealer, the city [IT] shall obtain at its
6 expense the standards of weight and measure [WEIGHTS AND MEASURES] and
7 the additional equipment, for use in the enforcement of this chapter
8 in the city, which the commissioner [DIRECTOR] prescribes.

9 (b) When the standards of weight and measure provided by a city
10 are examined and approved by the commissioner [DIRECTOR], they are the
11 official standards for the city. At least every five years, the
12 sealer shall make or arrange to have made comparisons between the
13 sealer's [HIS] field standards and appropriate standards of a higher
14 order belonging to the sealer's [HIS] city or to the state, in order
15 to maintain the field standards in accurate condition.

16 * Sec. 17. AS 45.75.160 is amended to read:

17 Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of
18 a city, and the sealer's [HIS] deputy [SEALER] when acting under the
19 sealer's [HIS] instructions and [AT HIS] direction, have the same
20 powers and shall perform the same duties within the city as those
21 granted to and imposed upon the commissioner [DIRECTOR] by AS 45.75.-
22 080 - 45.75.130 and 45.75.380.

23 * Sec. 18. AS 45.75.170 is amended to read:

24 Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a
25 sealer of weights and measures, the commissioner [DIRECTOR] has con-
26 current authority to enforce this chapter.

27 * Sec. 19. AS 45.75.180 is amended to read:

28 Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights
29 and measures rejected by the commissioner [DIRECTOR] or a sealer

1 remain subject to the control of the rejecting authority until suit-
2 able repair or disposition of them is made as required by this sec-
3 tion. The owner of a rejected weight and measure shall correct it
4 within 30 days or a longer period authorized by the rejecting author-
5 ity, [;] or [,] may dispose of it in the manner authorized by the
6 rejecting authority. The owner of rejected [REJECTED] weights and
7 measures may not use them again [BE USED] commercially until the
8 rejected weights and measures are officially reexamined [RE-EXAMINED]
9 and found to be correct or until specific written permission for their
10 use is issued by the rejecting authority.

11 * Sec. 20. AS 45.75.190(c) is amended to read:

12 (c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable
13 regulations necessary to assure that a seller determines the amounts
14 of commodity sold [ARE DETERMINED] in accordance with good commercial
15 practice and in an accurate and informative manner [AND ARE SO DETER-
16 MINED AND REPRESENTED AS TO BE ACCURATE AND INFORMATIVE].

17 * Sec. 21. AS 45.75.200(c) is amended to read:

18 (c) Under (a)(1) of this section the commissioner [DIRECTOR]
19 shall, by regulation, establish

20 (1) reasonable variations or tolerances to be allowed, that
21 [WHICH] may include variations below the declared weight or measure
22 caused by ordinary and customary exposure, only after the commodity is
23 introduced into intrastate commerce, to conditions that normally occur
24 in good distribution practice and that unavoidably result in decreased
25 weight or measure,

26 (2) exemptions for [EXEMPTION AS TO] small packages, and

27 (3) exemptions for [AS TO] commodities put up in variable
28 weights or sizes for sale to the consumer intact and either customar-
29 ily not sold as individual units or customarily weighed or measured at

1 the time of sale to the consumer.

2 * Sec. 22. AS 45.75.220 is amended to read:

3 Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in pack-
4 age form may not be so wrapped, or put in a container so made, formed,
5 or filled as to mislead the purchaser about [AS TO] the quantity of
6 the contents of the package, and the contents of a container may not
7 fall below the reasonable standard of fill that [WHICH] the commis-
8 sioner [DIRECTOR] prescribes for the commodity.

9 * Sec. 23. AS 45.75.282(b) is amended to read:

10 (b) The vendor shall retain one [ONE] of the tickets provided
11 for in (a) of this section [SHALL BE RETAINED BY THE VENDOR,] and
12 shall deliver the other [SHALL BE DELIVERED] to the purchaser at the
13 time of delivery of the commodity, or surrender the other [SURREN-
14 DERED], on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIREC-
15 TOR,] or an inspector, or a sealer[,], or a deputy sealer, who may [,
16 IF HE WANTS TO] retain it as evidence and, if it is retained, the
17 commissioner or deputy sealer [,] shall issue a weight slip in place
18 of it.

19 * Sec. 24. AS 45.75.290(b) is amended to read:

20 (b) The vendor shall retain one [ONE] of the tickets provided
21 for under (a) of this section [SHALL BE RETAINED BY THE VENDOR] and
22 shall deliver the other [SHALL BE DELIVERED] to the purchaser at the
23 time of delivery of the fuel, or shall surrender it, [BE SURRENDERED,]
24 on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR] or
25 an inspector, or a sealer or deputy sealer, who may [, IF HE DESIRES
26 TO] retain it as evidence and [, SHALL] issue a weight slip in place
27 of it for delivery to the purchaser. If the purchaser carries away
28 the [HIS] purchase, the vendor is required only to give to the pur-
29 chaser at the time of sale a delivery ticket stating the number of

1 pounds of fuel delivered to the purchaser [HIM].

2 * Sec. 25. AS 45.75.300 is amended to read:

3 Sec. 45.75.300. TEXTILE PRODUCTS. It is unlawful for a person
4 to keep for the purpose of sale, offer or expose for sale, or sell
5 textile yard goods put up or packaged in advance of sale in a bolt or
6 roll, or another [ANY OTHER] textile product put up or packaged in
7 advance of sale in another [ANY OTHER] unit, for wholesale or retail
8 sale, unless the person definitely, plainly and conspicuously marks
9 the bolt or roll, or other unit [, IS DEFINITELY, PLAINLY, AND CON-
10 SPICUOUSLY MARKED] to show its net measure in terms of yards or its
11 net weight, in terms of avoirdupois pounds or ounces, subject to the
12 following limitations and requirements:

13 (1) a unit of twine or cordage may be marked to show its
14 net measure in terms of feet; readywound bobbins not sold separately
15 are not required to be individually marked, but the package containing
16 the bobbins shall be marked to show the number of bobbins contained in
17 it and the net weight or measure of the thread on each bobbin; a unit
18 of sewing, basting, mending, darning, crocheting, tatting, hand-
19 knitting, or embroidery thread or yarn, except nylon hand-knitting
20 yarn, that is not composed in whole or in part of wool, the net weight
21 of which is less than two ounces avoirdupois, shall be marked to show
22 its net measure in terms of yards as unwound from the ball or from the
23 spool or other holder; a retail unit of a textile product sold only
24 for household use consisting of a package containing two or more
25 similar individual units that are not sold separately shall be marked
26 to show the number of individual units in the package and the net
27 weight or net measure of the product in each individual unit, but this
28 does not apply where the individual units are separately marked; a
29 unit of yarn, composed in whole or in part of wool, sold to consumers

1 for handiwork, shall be marked to show the net weight of the yarn,
2 except that a [ANY SUCH] unit of tapestry, mending, or embroidery yarn
3 that [THE NET MEASURE OF WHICH] does not exceed 50 yards in net mea-
4 sure, may be marked to show its linear measure only;

5 (2) the marking required by this section shall in all cases
6 be in combination with the name and place of business of the manufac-
7 turer, packer, or distributor of the product, or a trademark, symbol,
8 brand, or other mark that identifies the manufacturer, packer, or
9 distributor;

10 (3) reasonable tolerances shall be permitted, and the
11 commissioner shall include reasonable tolerances [THESE SHALL BE
12 INCLUDED] in regulations adopted for the enforcement of this section
13 [THAT ARE ISSUED BY THE DIRECTOR];

14 (4) this section does not apply to the following textile
15 products when sold at wholesale in bulk by net weight: cordage, agri-
16 cultural bag sewing threads, twines, yarns that are to be processed,
17 and yarns that are to be industrially converted into end-use products.

18 * Sec. 26. AS 45.75.330 is amended to read:

19 Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may
20 apply to a court for a temporary or permanent injunction restraining a
21 person from violating a provision of this chapter.

22 * Sec. 27. AS 45.75.380 is amended to read:

23 Sec. 45.75.380. OFFENSES AND PENALTIES. (a) A person commits a
24 violation subject to the penalty specified in AS 12.55.035(b)(5) if
25 the person does one or more of the following acts [A PERSON WHO, BY
26 HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF
27 ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDE-
28 MEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A
29 FINE OF NOT LESS THAN \$20 NOR MORE THAN \$200, OR BY IMPRISONMENT FOR

1 NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT
2 CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN \$50
3 NOR MORE THAN \$500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR
4 BY BOTH]:

5 (1) uses or has in possession for the purpose of using for
6 a [ANY] commercial purpose specified in AS 45.75.080, sells, offers,
7 or exposes for sale, or hire, or has in possession for the purpose of
8 selling or hiring, an incorrect weight or measure or a device or
9 instrument used to or calculated to falsify a weight or measure;

10 (2) uses or has in possession for current use, in buying or
11 selling a commodity or thing, or for hire or award, or in the computa-
12 tion of a basic charge or payment for services rendered on the basis
13 of weight or measurement, or in the determination of weight or mea-
14 surement when a charge is made for determination, a weight or measure
15 that has not been tested and sealed by the appropriate authority
16 within one year, (A) unless the person gives written notice [IS GIVEN]
17 to the appropriate authority to the effect that the weight or measure
18 is available for examination, or is due for reexamination [RE-EXAMINA-
19 TION], as the case may be, (B) unless the person receives specific
20 written permission to use the weight or measure [IS RECEIVED] from the
21 appropriate authority, or (C) unless the weight or measure is exempt
22 from sealing or annual testing requirements by AS 45.75.080 or by a
23 regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

24 (3) disposes of a rejected or condemned weight or measure
25 in a manner contrary to law or regulation;

26 (4) removes from a weight or measure, contrary to law or
27 regulation, a tag, seal, or mark placed on it by the appropriate
28 authority;

29 (5) sells or[,] offers [OR EXPOSES] for sale less than the

1 quantity the person [HE] represents of a commodity, thing, or service;

2 (6) takes more than the quantity the person [HE] represents
3 of a commodity, thing, or service when, as buyer, the person [HE]
4 furnished the weight or measure that the seller used to determine [BY
5 MEANS OF WHICH] the amount of the commodity, thing, or service [IS
6 DETERMINED];

7 (7) keeps for the purpose of sale, advertises, or offers
8 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a
9 condition or manner contrary to law or regulation;

10 (8) uses in retail trade, except in the preparation of
11 packages put up in advance of sale and of medical prescriptions, a
12 weight or measure that is not so positioned that a customer may accu-
13 rately read, from a position that may reasonably be assumed by a
14 customer, its indications [MAY BE ACCURATELY READ] and observe the
15 weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY
16 REASONABLY BE ASSUMED BY A CUSTOMER];

17 (9) hinders or obstructs the commissioner, an inspector, a
18 sealer, or a deputy sealer in the performance of official duties under
19 this chapter;

20 (10) violates a provision of an overweight or oversize
21 vehicle permit issued under AS 44.33.020(25);

22 (11) violates a weight, load, or size limitation established
23 under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.-
24 33.020(25), or AS 45.75.050(b)(5);

25 (12) violates a provision of this chapter or of a regulation
26 adopted under this chapter for which a specific penalty is not pre-
27 scribed.

28 (b) Notwithstanding the maximum fine for a violation provided
29 under (a) of this section, the commissioner shall impose on a person

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

25

(12) violates a provision of this chapter or of a regulation adopted under this chapter for which a specific penalty is not prescribed.

26

27

28

(b) Notwithstanding the maximum fine for a violation provided under (a) of this section, the commissioner shall impose on a person

29

1 quantity the person [HE] represents of a commodity, thing, or service;

2 (6) takes more than the quantity the person [HE] represents
3 of a commodity, thing, or service when, as buyer, the person [HE]
4 furnished the weight or measure that the seller used to determine [BY
5 MEANS OF WHICH] the amount of the commodity, thing, or service [IS
6 DETERMINED];

7 (7) keeps for the purpose of sale, advertises, or offers
8 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a
9 condition or manner contrary to law or regulation;

10 (8) uses in retail trade, except in the preparation of
11 packages put up in advance of sale and of medical prescriptions, a
12 weight or measure that is not so positioned that a customer may accu-
13 rately read, from a position that may reasonably be assumed by a
14 customer, its indications [MAY BE ACCURATELY READ] and observe the
15 weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY
16 REASONABLY BE ASSUMED BY A CUSTOMER];

17 (9) hinders or obstructs the commissioner, an inspector, a
18 sealer, or a deputy sealer in the performance of official duties under
19 this chapter;

20 (10) violates a provision of an overweight or oversize
21 vehicle permit issued under AS 44.33.020(25);

22 (11) violates a weight, load, or size limitation established
23 under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.-
24 33.020(25), or AS 45.75.050(b)(5);

25 (12) violates a provision of this chapter or of a regulation
26 adopted under this chapter for which a specific penalty is not pre-
27 scribed.

28 (b) Notwithstanding the maximum fine for a violation provided
29 under (a) of this section, the commissioner shall impose on a person

1 who violates a regulation or special permit governing the weight limit
2 of a motor vehicle a maximum penalty of \$.05 for each pound of weight
3 over the authorized weight limit for the vehicle.

4 * Sec. 28. AS 45.75.390(4) is repealed and reenacted to read:

5 (4) "commissioner" means the commissioner of commerce and
6 economic development or the commissioner's designee;

7 * Sec. 29. AS 28.40.050(e) and AS 45.75.360 are repealed.

8 * Sec. 30. This Act takes effect immediately in accordance with AS 01.-
9 10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 8802
Title: Relating to weights and measures
Sponsor: Rules/Governor
Requestor: _____
Date of Request: _____

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Measurement Standard

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Joseph L. Swanson Phone: 345-7750
 Division: Measurement Standards Date: 12/7/84
 Approved by Commissioner Richard A. Lyon Date: 12.5.84
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

Measurement Standards

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 82
Title: "An Act relating to weights and measures..."
Sponsor: Rules Comm. for Governor
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: _____
Administration of Justice
BRU, Program or Subprogram(s) Affected: _____
Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND					
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie
Division: Administrative Services

Phone: 465-4349
Date: 1/8/84

Approved by Commissioner: [Signature]
Agency: Department of Public Safety

Date: 1/8/84

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

7/1/84
Administrative Services

SECTIONAL ANALYSIS FOR SENATE BILL 82

An Act relating to weights and measures

Sections 1, 2 and 3

In the original Weights and Measures Act, the 1961 Legislature established that the Commissioner of Commerce was to serve as "director" of this division. However, the law is somewhat confusing therefore these sections substitute "commissioner" wherever "director" appears.

Section 4

Regulations adopted by the Division of Weights and Measures may include provisions for governing the enforcement of the size, weight and load limitations as well as enforcement of permits for overweight and oversized vehicles plus weigh stations.

Section 5

Technical clarification language.

Section 6

Substitutes "commissioner" for the confusing use of "state".

Section 7

Substitutes "commissioner" for "director".

Section 8

Substitutes "commissioner" for "director".

Also decreases the frequency of required inspections and tests of all weights and measures from semiannual to annual although more frequent inspections can still be made in problem areas.

Section 9

Substitutes "commissioner for "director" and other technical revisions.

Section 10

Substitutes "commissioner" for "director".

Section 11

Substitutes "commissioner" for "director".

Section 12

Substitutes "commissioner for "director" and other technical revisions.

Section 13

Substitutes "commissioner for "director" and other technical revisions.

Section 14

Provides the Department of Commerce with the power to issue citations for violations of load limits and overweight and oversized vehicles.

Citations must be in writing with a time specified to appear at least 15 days after issuance.

Lists what happens with a citation administratively.

Citations can be contested in court or bail may be forfeited which is equal to the maximum fine for that offense. Procedures are similar to citations for moving violations ie. traffic tickets.

Section 15

Substitutes "commissioner for "director" and other technical revisions.

Section 16

Substitutes "commissioner for "director" and other technical revisions.

Section 17

Substitutes "commissioner for "director" and other technical revisions.

Section 18

Substitutes "commissioner for "director" and other technical revisions.

Section 19

Substitutes "commissioner for "director" and other technical revisions.

Section 20

Substitutes "commissioner for "director" and other technical revisions.

Section 21

Substitutes "commissioner for "director" and other technical revisions.

Section 22

Substitutes "commissioner for "director" and other technical revisions.

Section 23

Substitutes "commissioner for "director" and other technical revisions.

Section 24

Substitutes "commissioner for "director" and other technical revisions.

Section 25

Substitutes "commissioner for "director" and other technical revisions.

Section 26

Substitutes "commissioner for "director".

Section 27

Revises those statutes relating to offenses and penalties by adding new sections relating to overweight or oversized vehicles and violations of load limits. Maximum fine would be \$300. In addition, the department may also impose a fine of 5¢ per pound for each pound over the authorized weight limit.

Section 28

Definition of commissioner.

Section 29

Immediate effective date.

Introduced: 1/22/85
Referred: Transportation, Labor & Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 82

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

9 * Section 1. AS 45.75.030 is amended to read:

10 Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND
11 MEASURES. The commissioner of commerce and economic development is ex
12 officio state director of weights and measures. The commissioner may
13 delegate this authority, and [DIRECTOR] may appoint state inspectors.

14 * Sec. 2. AS 45.75.040 is amended to read:

15 Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DI-
16 RECTOR]. The commissioner [DIRECTOR] is the custodian of the state
17 standards of weight and measure and of the other standards and equip-
18 ment provided for by this chapter, and [. THE DIRECTOR] shall keep
19 accurate records of the standards and equipment. The commissioner
20 [DIRECTOR] shall enforce this chapter, implement AS 44.33.020(25), and
21 [. HE SHALL] supervise the weights and measures offered for sale,
22 sold, or in use in the state.

23 * Sec. 3. AS 45.75.050(a) is amended to read:

24 (a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations
25 for the enforcement of this chapter in accordance with the Administra-
26 tive Procedure Act (AS 44.62). These have the effect of law.

27 * Sec. 4. AS 45.75.050(b) is amended to read:

28 (b) The regulations may include
29 (1) standards of net weight, measure, or count, and

1 reasonable standards of fill, for any commodity in package form;

2 (2) rules governing the technical and reporting procedures
3 to be followed, and the report and record forms and marks of approval
4 and rejection to be used by inspectors of weights and measures in the
5 discharge of their official duties;

6 (3) exemptions from the sealing or marking requirements of
7 AS 45.75.120 with respect to weights and measures of a character or
8 size that sealing or marking would be inappropriate, impracticable, or
9 damaging to the apparatus in question; [AND]

10 (4) with respect to classes of weights and measures of a
11 character that annual retesting is unnecessary to continued accuracy,
12 exemptions from the requirements of AS 45.75.070 and 45.75.080 for
13 annual testing, and schedules fixing the frequency of required retests
14 for classes of devices exempted;

15 (5) in implementation of AS 44.33.020(25), provisions
16 governing the enforcement of the size, weight, and load limitations
17 established under AS 19.10.060; the issuance of, and the enforcement
18 of the terms of, permits for overweight and oversize vehicles; and the
19 operation of weigh stations.

20 * Sec. 5. AS 45.75.050(d) is amended to read:

21 (d) The specifications, tolerances, and regulations for commer-
22 cial weighing and measuring devices, together with amendments to them,
23 as recommended by the National Bureau of Standards and published in
24 National Bureau of Standards Handbook 44 and supplements to it, or in
25 any publication revising or superseding Handbook 44, are the specifi-
26 cations, tolerances, and regulations for commercial weighing and
27 measuring devices of the state, except as specifically modified,
28 amended, or rejected by a regulation adopted [ISSUED] by the commis-
29 sioner [DIRECTOR].

1 * Sec. 6. AS 45.75.060 is amended to read:

2 Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIP-
3 MENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF
4 WEIGHTS AND MEASURES WITH] a duplicate set of state standards of
5 weight and measure, referred to in this chapter as office standards.
6 The commissioner [STATE] shall also supply field standards and the
7 equipment that [WHICH] is necessary to carry out this chapter. The
8 office standards and field standards must [SHALL] be verified upon
9 their initial receipt and at least once each year afterward. The
10 office standards must [SHALL] be verified by direct comparison with
11 the state standards. The field standards must [SHALL] be verified by
12 comparison with the office standards.

13 * Sec. 7. AS 45.75.070 is amended to read:

14 Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND
15 WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least
16 once every five years, the commissioner [DIRECTOR] shall test the
17 standards of weight and measure obtained by a city that [WHICH] has
18 appointed a sealer of weights and measures, and shall approve them if
19 they are correct. The commissioner [DIRECTOR] shall inspect the
20 standards at least once every two years.

21 (b) The commissioner [DIRECTOR] shall from time to time test all
22 weights and measures used in checking the receipt or disbursement of
23 supplies in every institution maintained by money appropriated by the
24 legislature, and shall report the commissioner's [HIS] findings, in
25 writing, to the supervisory board and to the executive officer of the
26 institution concerned.

27 * Sec. 8. AS 45.75.080(a) is amended to read:

28 (a) The commissioner [DIRECTOR] may inspect and test, to ascer-
29 tain if they are correct, all weights and measures kept, offered, or

1 exposed for sale. The commissioner [DIRECTOR] shall, at least annu-
2 ally [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect
3 and test, to ascertain if they are correct, all weights and measures
4 commercially used

5 (1) in determining the weight, measurement, or count of
6 commodities or things sold, or offered or exposed for sale, on the
7 basis of weight or of measure;

8 (2) in computing the basic charge or payment for services
9 rendered on the basis of weight or of measure or count; or

10 (3) in determining weight or measurement when a charge is
11 made for this determination.

12 * Sec. 9. AS 45.75.090 is amended to read:

13 Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR]
14 shall investigate complaints of violations of this chapter, and shall
15 [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that
16 the commissioner [WHICH HE] considers appropriate and advisable to
17 develop information on prevailing procedures in commercial quantity
18 determination, [AND] on possible violations of this chapter, and to
19 promote the general objective of accuracy in the determination and
20 representation of quantity in commercial transactions.

21 * Sec. 10. AS 45.75.100 is amended to read:

22 Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner
23 [DIRECTOR] shall, from time to time, weigh or measure and inspect
24 packages or amounts of commodities kept, offered, or exposed for sale
25 to determine whether they contain the amounts represented and whether
26 they are kept, offered, or exposed for sale in accordance with law.
27 When packages or amounts of commodities do not contain the amounts
28 represented, or are kept, offered, or exposed for sale in violation of
29 law, the commissioner [DIRECTOR] may order them off sale and may mark

1 or tag them to show they are illegal. The commissioner [DIRECTOR] may
2 use recognized sampling procedures. Compliance of a given lot of
3 packages must [SHALL] be determined on the basis of the result ob-
4 tained on a sample selected from and representative of the lot.

5 (b) A [NO] person may not

6 (1) sell, or keep, offer, or expose for sale in intrastate
7 commerce a package or amount of commodity that has been ordered off
8 sale or marked or tagged as provided in this section until the package
9 or amount of commodity has been brought into full compliance with all
10 legal requirements; or

11 (2) dispose of a package or amount of commodity that is
12 ordered off sale or marked or tagged as provided in this section and
13 that does not meet legal requirements, except with the specific ap-
14 proval of the commissioner [DIRECTOR].

15 * Sec. 11. AS 45.75.110(a) is amended to read:

16 (a) The commissioner [DIRECTOR] may issue stop-use orders,
17 stop-removal orders, and removal orders for weights and measures used
18 or capable of being used commercially. The commissioner [DIRECTOR]
19 may issue stop-removal orders and removal orders for packages or
20 amounts of commodities kept, offered, or exposed for sale whenever the
21 commissioner [HE] considers it necessary or expedient in enforcing
22 this chapter.

23 * Sec. 12. AS 45.75.120 is amended to read:

24 Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS.
25 (a) The commissioner [DIRECTOR] shall approve for use and seal or
26 mark with appropriate devices the weights and measures that the com-
27 missioner [WHICH HE] finds upon inspection and test to be correct as
28 provided in AS 45.75.050, and shall reject and mark or tag as "re-
29 jected" the weights and measures that are found [WHICH HE FINDS], upon

1 inspections or testing [TEST], to be incorrect as provided in AS 45.-
2 75.050 but which in the commissioner's [HIS] best judgment may be
3 satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR].
4 This sealing or marking is not required for weights and measures
5 exempted by regulation [OF THE DIRECTOR].

6 (b) The commissioner [DIRECTOR] shall condemn, and may seize and
7 destroy weights and measures found to be incorrect that [WHICH], in
8 the commissioner's [HIS] best judgment, cannot be satisfactorily
9 repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and
10 measures which are rejected under (a) of this section may be confis-
11 cated and destroyed by the commissioner [DIRECTOR] if not corrected as
12 required by AS 45.75.180 or if used or disposed of contrary to the
13 requirements of AS 45.75.180.

14 * Sec. 13. AS 45.75.130 is amended to read:

15 Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE.

16 (a) In the enforcement of this chapter and any other law dealing with
17 weights and measures, the commissioner [DIRECTOR] has special police
18 powers. The commissioner [HE] may arrest, without formal warrant, any
19 person violating the law, and seize for use as evidence, without
20 formal warrant, incorrect or unsealed weights and measures or amounts
21 or packages of commodity, used, retained, offered, or exposed for
22 sale, or sold in violation of law. In performing these [HIS] duties,
23 the commissioner [DIRECTOR] may enter, without formal warrant, any
24 structure or premises, and stop any person and require the person
25 [HIM] to proceed to a specified place.

26 (b) An employee of the Department of Commerce and Economic
27 Development who is authorized by the commissioner to enforce the size,
28 weight, and load limitations adopted by the Department of Transporta-
29 tion and Public Facilities under AS 19.10.060 may issue a citation to

1 a person who violates (1) any of those limitations, (2) the terms of
2 an overweight or oversize vehicle permit issued under AS 44.33.020(25)
3 and AS 45.75.040, or (3) the provisions of a regulation adopted under
4 AS 44.33.020(25) and AS 45.75.050(b)(5). A citation issued under this
5 section must be in writing. A person receiving the citation may not
6 be required to endorse it. The time specified in the notice to appear
7 on a citation issued under this section must be at least five days,
8 not including weekends and holidays, after the issuance of the cita-
9 tion, unless the person cited requests an earlier hearing.

10 (c) The commissioner is responsible for the issuance of books
11 containing appropriate citations and shall maintain a record of each
12 book and each citation contained in it. The commissioner shall re-
13 quire and retain a receipt for every book issued to an employee of the
14 department designated by the commissioner to provide investigative
15 service to enforce provisions of this chapter.

16 (d) An employee who issues a citation under this section shall
17 deposit the original or a copy of the citation with a court having
18 jurisdiction over the alleged offense. Upon its deposit with the
19 court, the citation may be disposed of only by trial in the court or
20 other official action taken by the magistrate, judge, or prosecutor.
21 The employee who issued the citation may not dispose of it or copies
22 of it or of the record of its issuance except as required under this
23 subsection and (e) of this section.

24 (e) The commissioner shall require the return of a copy of every
25 citation issued under this section and of all copies of every citation
26 that has been spoiled or upon which an entry has been made and not
27 issued to an alleged violator. The commissioner shall also maintain
28 in connection with every citation issued a record of the disposition
29 of the charge by the court in which the original or copy of the

1 citation was deposited.

2 (f) If the form of citation issued under this section includes
3 information and is sworn to as required under the laws of this state
4 in respect to a complaint charging commission of the offense alleged
5 in the citation, then the citation when filed with a court having
6 jurisdiction, is considered to be a lawful complaint for the purpose
7 of prosecution.

8 (g) Unless the citation has been voided or otherwise dismissed
9 by the magistrate, judge, or prosecutor, a person who fails to appear
10 in court to answer a citation issued under this section, regardless of
11 the disposition of the charge for which the citation was issued, is
12 guilty of a class B misdemeanor.

13 * Sec. 14. AS 45.75.140 is amended to read:

14 Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR
15 AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR]
16 specified in AS 45.75.070, 45.75.080, 45.75.090, 45.75.100, 45.75.120,
17 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised
18 by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the in-
19 structions and at the direction of the commissioner [DIRECTOR].

20 * Sec. 15. AS 45.75.150 is amended to read:

21 Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS
22 OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights
23 and measures, and the deputy sealers of weights and measures it needs.
24 If the city appoints a sealer, it shall obtain at its expense the
25 standards of weight and measure [WEIGHTS AND MEASURES] and the addi-
26 tional equipment, for use in the enforcement of this chapter in the
27 city, which the commissioner [DIRECTOR] prescribes.

28 (b) When the standards of weight and measure provided by a city
29 are examined and approved by the commissioner [DIRECTOR], they are the

1 official standards for the city. At least every five years, the
2 sealer shall make or arrange to have made comparisons between the
3 sealer's [HIS] field standards and appropriate standards of a higher
4 order belonging to the sealer's [HIS] city or to the state, in order
5 to maintain the field standards in accurate condition.

6 * Sec. 16. AS 45.75.160 is amended to read:

7 Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of
8 a city, and the sealer's [HIS] deputy [SEALER] when acting under the
9 sealer's [HIS] instructions and [AT HIS] direction, have the same
10 powers and shall perform the same duties within the city as those
11 granted to and imposed upon the commissioner [DIRECTOR] by AS 45.75.-
12 080 -- 45.75.130 and 45.75.380.

13 * Sec. 17. AS 45.75.170 is amended to read:

14 Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a
15 sealer of weights and measures, the commissioner [DIRECTOR] has con-
16 current authority to enforce this chapter.

17 * Sec. 18. AS 45.75.180 is amended to read:

18 Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights
19 and measures rejected by the commissioner [DIRECTOR] or a sealer
20 remain subject to the control of the rejecting authority until suit-
21 able repair or disposition of them is made as required by this sec-
22 tion. The owner of a rejected weight and measure shall correct it
23 within 30 days or a longer period authorized by the rejecting author-
24 ity, [;] or [,] may dispose of it in the manner authorized by the
25 rejecting authority. Rejected weights and measures may not again be
26 used commercially until officially re-examined and found to be correct
27 or until specific written permission for their use is issued by the
28 rejecting authority.

29 * Sec. 19. AS 45.75.190(c) is amended to read:

1 (c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable
2 regulations necessary to assure that amounts of commodity sold are
3 determined in accordance with good commercial practice and are so
4 determined and represented as to be accurate and informative.

5 * Sec. 20. AS 45.75.200(c) is amended to read:

6 (c) Under (a)(1) of this section the commissioner [DIRECTOR]
7 shall, by regulation, establish

8 (1) reasonable variations or tolerances to be allowed, which
9 may include variations below the declared weight or measure caused by
10 ordinary and customary exposure, only after the commodity is intro-
11 duced into intrastate commerce, to conditions that normally occur in
12 good distribution practice and that unavoidably result in decreased
13 weight or measure,

14 (2) exemptions [EXEMPTION] as to small packages, and

15 (3) exemptions as to commodities put up in variable weights
16 or sizes for sale to the consumer intact and either customarily not
17 sold as individual units or customarily weighed or measured at the
18 time of sale to the consumer.

19 * Sec. 21. AS 45.75.220 is amended to read:

20 Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in pack-
21 age form may not be so wrapped, or put in a container so made, formed,
22 or filled as to mislead the purchaser as to the quantity of the con-
23 tents of the package, and the contents of a container may not fall
24 below the reasonable standard of fill that [WHICH] the commissioner
25 [DIRECTOR] prescribes for the commodity.

26 * Sec. 22. AS 45.75.282(b) is amended to read:

27 (b) One of the tickets provided for in (a) of this section shall
28 be retained by the vendor, and the other shall be delivered to the
29 purchaser at the time of delivery of the commodity, or surrendered, on

1 demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an
2 inspector, or a sealer[,] or a deputy sealer, who may [, IF HE WANTS
3 TO] retain it as evidence and, if it is retained, shall issue a weight
4 slip in place of it.

5 * Sec. 23. AS 45.75.290(b) is amended to read:

6 (b) One of the tickets provided for under (a) of this section
7 shall be retained by the vendor and the other shall be delivered to
8 the purchaser at the time of delivery of the fuel, or shall be sur-
9 rendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY
10 DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF
11 HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip
12 in place of it for delivery to the purchaser. If the purchaser car-
13 ries away the [HIS] purchase, the vendor is required only to give to
14 the purchaser at the time of sale a delivery ticket stating the number
15 of pounds of fuel delivered to the purchaser [HIM].

16 * Sec. 24. AS 45.75.300 is amended to read:

17 Sec. 45.75.300. TEXTILE PRODUCTS. It is unlawful to keep for
18 the purpose of sale, offer or expose for sale, or sell textile yard
19 goods put up or packaged in advance of sale in a bolt or roll, or any
20 other textile product put up or packaged in advance of sale in any
21 other unit, for wholesale or retail sale, unless the bolt or roll, or
22 other unit, is definitely, plainly, and conspicuously marked to show
23 its net measure in terms of yards or its net weight, in terms of
24 avoirdupois pounds or ounces, subject to the following limitations and
25 requirements:

26 (1) a unit of twine or cordage may be marked to show its
27 net measure in terms of feet; readywound bobbins not sold separately
28 are not required to be individually marked, but the package containing
29 the bobbins shall be marked to show the number of bobbins contained in

1 it and the net weight or measure of the thread on each bobbin; a unit
2 of sewing, basting, mending, darning, crocheting, tatting, hand-
3 knitting, or embroidery thread or yarn, except nylon hand-knitting
4 yarn, that is not composed in whole or in part of wool, the net weight
5 of which is less than two ounces avoirdupois, shall be marked to show
6 its net measure in terms of yards as unwound from the ball or from the
7 spool or other holder; a retail unit of a textile product sold only
8 for household use consisting of a package containing two or more
9 similar individual units that are not sold separately shall be marked
10 to show the number of individual units in the package and the net
11 weight or net measure of the product in each individual unit, but this
12 does not apply where the individual units are separately marked; a
13 unit of yarn, composed in whole or in part of wool, sold to consumers
14 for handiwork, shall be marked to show the net weight of the yarn,
15 except that any such unit of tapestry, mending, or embroidery yarn,
16 the net measure of which does not exceed 50 yards, may be marked to
17 show its linear measure only;

18 (2) the marking required by this section shall in all cases
19 be in combination with the name and place of business of the manufac-
20 turer, packer, or distributor of the product, or a trademark, symbol,
21 brand, or other mark that identifies the manufacturer, packer, or
22 distributor;

23 (3) reasonable tolerances shall be permitted, and these
24 must [SHALL] be included in regulations adopted for the enforcement of
25 this section [THAT ARE ISSUED BY THE DIRECTOR];

26 (4) this section does not apply to the following textile
27 products when sold at wholesale in bulk by net weight: cordage, agri-
28 cultural bag sewing threads, twines, yarns that are to be processed,
29 and yarns that are to be industrially converted into end-use products.

1 * Sec. 25. AS 45.75.330 is amended to read:

2 Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may
3 apply to a court for a temporary or permanent injunction restraining a
4 person from violating a provision of this chapter.

5 * Sec. 26. AS 45.75.380 is amended to read:

6 Sec. 45.75.380. OFFENSES AND PENALTIES. (a) A person commits a
7 violation subject to the penalty specified in AS 12.55.035(b)(5) if
8 the person does any of the following acts [A PERSON WHO, BY HIMSELF OR
9 BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER,
10 PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND
11 UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF
12 NOT LESS THAN \$20 NOR MORE THAN \$200, OR BY IMPRISONMENT FOR NOT MORE
13 THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVIC-
14 TION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN \$50 NOR MORE
15 THAN \$500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

16 (1) uses or has in possession for the purpose of using for
17 any commercial purpose specified in AS 45.75.080, sells, offers, or
18 exposes for sale, or hire, or has in possession for the purpose of
19 selling or hiring, an incorrect weight or measure or a device or
20 instrument used to or calculated to falsify a weight or measure;

21 (2) uses or has in possession for current use, in buying or
22 selling a commodity or thing, or for hire or award, or in the computa-
23 tion of a basic charge or payment for services rendered on the basis
24 of weight or measurement, or in the determination of weight or mea-
25 surement when a charge is made for determination, a weight or measure
26 that has not been tested and sealed by the appropriate authority
27 within one year, (A) unless written notice is given to the appropriate
28 authority to the effect that the weight or measure is available for
29 examination, or is due for reexamination [RE-EXAMINATION], as the case

1 may be, (B) unless specific written permission to use the weight or
2 measure is received from the appropriate authority, or (C) unless the
3 weight or measure is exempt from sealing or annual testing require-
4 ments by AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR
5 ISSUED] under AS 45.75.050;

6 (3) disposes of a rejected or condemned weight or measure
7 in a manner contrary to law or regulation;

8 (4) removes from a weight or measure, contrary to law or
9 regulation, a tag, seal, or mark placed on it by the appropriate
10 authority;

11 (5) sells or[,] offers [OR EXPOSES] for sale less than the
12 quantity the person [HE] represents of a commodity, thing, or service;

13 (6) takes more than the quantity the person [HE] represents
14 of a commodity, thing, or service when, as buyer, the person [HE]
15 furnished the weight or measure by means of which the amount of the
16 commodity, thing, or service is determined;

17 (7) keeps for the purpose of sale, advertises, or offers
18 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a
19 condition or manner contrary to law or regulation;

20 (8) uses in retail trade, except in the preparation of
21 packages put up in advance of sale and of medical prescriptions, a
22 weight or measure that is not so positioned that its indications may
23 be accurately read and the weighing or measuring operation observed
24 from some position which may reasonably be assumed by a customer;

25 (9) hinders or obstructs the commissioner, an inspector, a
26 sealer, or a deputy sealer in the performance of official duties under
27 this chapter;

28 (10) violates a provision of an overweight or oversize
29 vehicle permit issued under AS 44.33.020(25);

1 (11) violates a weight, load, or size limitation established
2 under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.-
3 33.020(25), or AS 45.75.050(b)(5);

4 (12) violates a provision of this chapter or of a regulation
5 adopted under this chapter for which a specific penalty is not pre-
6 scribed.

7 (b) In addition to the penalty provided for in (a) of this
8 section, a fine of five cents a pound must be imposed for each pound
9 of weight by which a vehicle exceeds an allowable gross weight limita-
10 tion established by the Department of Transportation and Public Facil-
11 ities under AS 19.10.060 or a regulation adopted by that department
12 under AS 19.05.020.

13 * Sec. 27. AS 45.75.390(4) is repealed and reenacted to read:

14 (4) "commissioner" means the commissioner of commerce and
15 economic development or the commissioner's designee;

16 * Sec. 28. AS 28.40.050(e) and AS 45.75.360 are repealed.

17 * Sec. 29. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

WILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

AS 82

January 22, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Attached is a bill amending the Weights and Measures Act, AS 45.75.

In 1982, the overweight and oversize motor vehicle program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development. This transfer included the duties of operating vehicle weighing stations, issuing permits for overweight and oversize vehicles, and enforcing the vehicle size, weight, and load limits established by the Department of Transportation and Public Facilities (DOTPF). (Ch. 77, SLA 1982)

The 1982 transfer of duties was accomplished only by repealing AS 28.05.011(8) and adding a paragraph (25) to the general duties of the Department of Commerce and Economic Development listed in AS 44.33.020. This bill completes the transfer by also adding those duties to the Weights and Measures Act (secs. 2 and 4 of the bill). The bill also decreases the frequency of required inspections and tests of all weights and measures from semiannual to annual (sec. 8 of the bill). More frequent inspections and tests can still be made in problem areas, however.

Section 13 of the bill clarifies that the commissioner of commerce and economic development may authorize department employees to arrest or issue citations to persons who violate the DOTPF vehicle size, weight, and load limits, the provisions of an overweight or oversize vehicle permit, or department regulations. It also specifies procedures and rules governing those citations. This eliminates an ambiguity and possible loophole left after the 1982 transfer of enforcement authority to the department.

Section 26 of the bill amends AS 45.75.380 to increase the current maximum fine for all weights and measures offenses

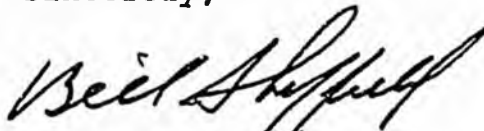
from \$200 (or five cents a pound for overweight vehicle offenses) to a \$300 fine (plus five cents a pound for overweight vehicle offenses). By making these offenses subject to the violation penalty set out in AS 12.55.035(b)(5), they are like AS 28.40.050(c)'s "infractions," and the possibility of imprisonment would be dropped, as would the increase in penalties for subsequent convictions. This change conforms to the new Criminal Code (AS 11) and the Code of Criminal Procedure (AS 12) and will provide a more effective deterrent to weights and measures violations. Severe penalties and certainty of conviction are two deterrents to unlawful conduct. It is felt that there is a greater probability of conviction under the "infraction" approach and that it would be the more effective deterrent to the various weights and measures offenses -- both statutory and regulatory. Also, under AS 45.75.130(g) (in sec. 13 of the bill), failure to respond to a citation for one of these violations would be a class B misdemeanor; cf. AS 12.25.230.

Most of the bill, including secs. 1 -- 3 and 5 -- 26, clarifies a confusing approach taken by the 1961 legislature which passed the Weights and Measures Act. For reasons which are not now clear, and which, to the extent that we can guess what they were, no longer apply, AS 47.75.030 states that the commissioner of commerce and economic development is the director of weights and measures, and throughout the chapter many references are made to the director. To avoid confusion with the director of the division of measurement standards, who is currently assigned to administer the Act, this bill changes all of those references to the director to be references to the commissioner.

The bill also makes "housekeeping" amendments to clean up outdated language and to correct several citations.

All of these changes in the Weights and Measures Act will increase the effectiveness and efficiency of implementation of the Act, especially the overweight and oversize vehicle program.

Sincerely,



Bill Sheffield
Governor

COMMITTEE REPORT
SENATE

FINANCE

FURTHER:

2/26/85

Date 29 MARCH 85

Mr. President

L&C

SB 82

The Committee on _____ considered _____
weights and measures; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Bill Ray

MEMBERS HAVING
OTHER RECOMMENDATIONS

McEason
Chairman

Do Pass
Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER:

L & C
FINANCE

1/22/85

Date FEBRUARY 25, 1985

Mr. President

The Committee on TRANSPORTATION considered SB 82
weights and measures; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 82 (TRANS)
- new title
- same title and recommends) DO PASS
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

Joe Josephson

Paula Frick

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]

Chairman

DO PASS

Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER:

3/29/85

Date 4/24/85

Mr. President

The Committee on FINANCE considered SB 83
amending the Limited Entry Act.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 83 (Res)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT" (2) NEW FISCAL NOTE
- reports it back without recommendation *Res. of Fin* *Accompanied bill into committee*
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Paul F. ...

McGowan

Michael ...

Paul ... No Rec.

Chairman

Chairman recommendation

Ferguson

SB 83

Spc

LETTER OF INTENT

Adopted

IT IS THE INTENT OF THE LEGISLATURE THAT THE COMMERCIAL FISHERIES ENTRY COMMISSION SHALL CONSIDER APPLICATIONS FROM FISHERMEN OF THE A-Y-K FISHERY WHO QUALIFY TO RECEIVE A LIMITED ENTRY PERMIT BUT FAILED TO SUBMIT AN APPLICATION DUE TO LANGUAGE, CULTURE, POVERTY, LACK OF EDUCATION, OR RESIDENCE IN REMOTE LOCATIONS. THE CFEC IS REQUESTED TO WORK WITH THE 28 PEOPLE THAT THE COMMISSION IDENTIFIED IN A 2-25-80 MEMORANDUM ON THIS MATTER.

Spc

CS SB 83 (Rev)

4/24/85

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

A handwritten signature in cursive script, reading "Arliss Sturgulewski".

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

029 4B
SB 83

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: _____
 Title: "An Act amending the Limited
 Entry Act"
 Sponsor: Governor
 Requestor: Sponsor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game
 Program Category Affected: _____
 Natural Resource Management
 BRU, Program or Subprogram(s) Affected:
 Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.9	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

(Analysis on attached page)

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
 Division: Commercial Fisheries Entry Commission Date: 1/10/85
 Approved by Commissioner: *Bruce Swank* Date: 1-10-85
 Agency: *CFEC*

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

FISCAL ANALYSIS FOR SEC. 3 - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,300 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually.

Offered: 3/7/85
Referred: Judiciary

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 83 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act; and providing
7 for an effective date."

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

9 * Section 1. AS 16.43.150(g) is amended to read:

10 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.-

11 210, and in AS 44.81.230 - 44.81.250, an entry permit may not be[:]

12 (1) pledged, mortgaged, leased, or encumbered in any way;

13 (2) transferred with any retained right of repossession or
14 foreclosure, or on any condition requiring a subsequent transfer; or

15 (3) attached, distrained, or sold on execution of judgment
16 or under any other process or order of any court.

17 * Sec. 2. AS 16.43.150(h) is amended to read:

18 (h) Upon the death of an entry permit holder, the permanent
19 permit shall be transferred by the commission directly to the surviv-
20 ing spouse by right of survivorship unless the deceased holder has
21 expressed a contrary intent in a will that is probated. When no
22 spouse survives, the rights of the decedent pass as part of the dece-
23 dent's estate. Except as provided in AS 16.10.333 - 16.10.337,
24 AS 44.81.210, and 44.81.230 - 44.81.250, the permit is exempt from the
25 claims of creditors of the estate.

26 * Sec. 3. AS 16.43.160(c) is amended to read:

27 (c) The resident holder of an entry permit or interim-use permit
28 who has a [NET] family income falling within the federal [FEDERAL COM-
29 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the

1 commission to reflect appropriate cost-of-living differentials, is
2 subject to a maximum annual fee of \$15.

3 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

4 (d) The commission may charge interest at a rate not to exceed
5 the legal rate of interest established in AS 45.45.010 on fees more
6 than 60 days overdue.

7 * Sec. 5. AS 16.43.250(a) is amended to read:

8 (a) Following the establishment of the maximum number of units
9 of gear for a particular fishery under AS 16.43.240, the commission
10 shall adopt regulations establishing qualifications for ranking ap-
11 plicants for entry permits according to the degree of hardship which
12 they would suffer by exclusion from the fishery. The regulations
13 shall define priority classifications of similarly situated applicants
14 based upon a reasonable balance of the following hardship standards:

15 (1) degree of economic dependence upon the fishery, includ-
16 ing, when reasonable for the fishery, the [BUT NOT LIMITED TO] per-
17 centage of income derived from the fishery, reliance on alternative
18 occupations, availability of alternative occupations, investment in
19 vessels and gear;

20 (2) extent of past participation in the fishery, including,
21 when reasonable for the fishery, [BUT NOT LIMITED TO] the number of
22 years of participation in the fishery [,] and the consistency of
23 participation during each year.

24 * Sec. 6. AS 16.43.351(b) is amended to read:

25 (b) A recipient may be issued an educational entry permit valid
26 for designated fisheries [EACH FISHERY] in the administrative area the
27 commission determines to be appropriate, considering the nature of the
28 educational program and the location of the educational or vocational
29 institution. The recipient of an educational entry permit may not be

1 issued an educational entry permit [PERMITS] in more than one adminis-
2 trative area except as issued by the commission in its discretion upon
3 good cause shown.

4 * Sec. 7. AS 16.43 is amended by adding a new section to read:

5 Sec. 16.43.955. HEARINGS IN PROXIMITY TO BOARD OF FISHERIES
6 MEETINGS. When practicable, a commission hearing that deals with the
7 subject of limiting entry to a fishery shall be held on the same dates
8 on which, and in the same building or in a building adjacent to the
9 building in which, a Board of Fisheries meeting is being held.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 self or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

27 [(1) PERMIT APPLICATION;
28 (2) PERMIT TRANSFER; OR
29 (3) PERMIT RENEWAL].

1 (b) The [BEFORE REVOCATION, THE] commission shall serve the
2 respondent [PERMIT HOLDER] personally or by certified or registered
3 mail with a notice to show cause why the proposed action should not
4 take place. The notice to show cause must

5 (1) be supported by an affidavit which may be made on
6 information or belief setting out the facts which are the basis of the
7 proposed action;

8 (2) provide for at least 30 days' notice of the place,
9 date, and time of the hearing where the respondent [PERMIT HOLDER] may
10 present evidence in opposition to the proposed action; unless waived
11 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
12 shall be held within the judicial district in which the respondent
13 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
14 the state; the hearing place shall be at the discretion of the commis-
15 sion for those respondents [PERMIT HOLDERS] residing outside the
16 state;

17 (3) specify the statutes or regulations violated;

18 (4) state with particularity the action proposed to be
19 taken;

20 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
21 that the respondent's ability to permanently transfer the permits
22 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
23 proceedings has been suspended as of the date of the notice and will
24 continue to be suspended until the exhaustion of all administrative
25 and judicial remedies; and

26 (6) provide other information the commission considers
27 proper.

28 (c) A permit subject to show cause [REVOCATION] proceedings
29 under this section may not be transferred after the date of the notice

1 in (b) of this section pending exhaustion of all administrative and
2 judicial remedies arising from action taken under this section.

3 (d) The show cause [REVOCATION] hearing shall be conducted
4 before a quorum of commissioners and shall be presided over by a
5 hearing officer appointed by the commission who shall rule on the
6 presentation of evidence and other procedural matters. Hearings shall
7 be conducted in accordance with regulations adopted under AS 16.43.-
8 110(b) [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEARING,
9 THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
10 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
12 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
13 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
14 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
15 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
16 ATTORNEY BY CERTIFIED OR REGISTERED MAIL].

17 (e) The failure of a respondent [PERMIT HOLDER] properly served
18 under (b) of this section to appear at the hearing is not grounds for
19 setting aside any commission action taken. However, the commission
20 may in its discretion order a continuance or second hearing.

21 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
22 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
23 PERMIT HOLDER UNDER (b) OF THIS SECTION.

24 (g)] The provisions of this section [DO NOT] apply to conduct
25 occurring after January 1, 1973, but do not affect a [THE] permit held
26 by [OF] a person who is a bona fide purchaser. Failure to correct
27 false information is a continuing offense.

28 (g) [(h)] Judicial review of commission determinations under
29 this section is in accordance with AS 44.62.560 - 44.62.570; however,

1 if a hearing de novo is granted under AS 44.62.570(d), the hearing
2 may, in the discretion of the court, be had with a jury sitting if
3 application for the jury hearing is filed with the court no later than
4 10 days after service of the notice of appeal.

5 (h) [(i)] An entry permit revoked by the commission under this
6 section that is pledged [TAKEN] as security for a loan under AS 16.-
7 10.333 or AS 44.81.230 shall be reassigned or sold as provided in
8 AS 16.10.337 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. Documents submitted to the
29 commission containing information relating to an individual's personal

1 finances and information supplied by individuals for research pur-
2 poses, produced in response to requests by the commission, are not
3 subject to public disclosure.

4 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
5 10.070(c).

C+V

MEMORANDUM

State of Alaska

TO: The Honorable Richard I. Eliason
Senate
M/S 3100

FROM: *[Signature]* Bruce Twomley
Chairman
Commercial Fisheries Entry Commission
M/S 0302

DATE: April 23, 1985

FILE NO:

TELEPHONE NO:

SUBJECT: Analysis of SB 83

Introduction

Last year a bill nearly identical to SB 83 (then SB 422) passed through the Senate Fisheries Sub-Committee, the Senate Resources Committee, and the Senate Rules Committee. Before the Bill could be placed on the floor of the Senate, the House adjourned, and the Bill was consequently withdrawn. SB 83 differs from last year's Senate Bill primarily by the addition of Section 2 and Section 7.

Section 1

This amendment to the Limited Entry Act [the Act] would plug a loophole identified by a Superior Court in the State's prohibition against the leasing of entry permits. A person renting a permit and requiring at the end of the rental period that the permit be transferred to a third party would be subject to the prohibition.

Section 2

Section 2 would make clear that permits in an estate are exempt from the claims of creditors. Section 2 would complete a statutory scheme which exempts entry permits in all other cases. Previously it was generally understood that permits in an estate were exempt, but a Superior Court held otherwise. A majority of the State's Supreme Court reversed the Superior Court holding that the legislature intended that permits be exempt from the claims of creditors of an estate. Timperly v. Jeffries, Op. No. 2765 (December 16, 1983). However, the Court was required to vacate its decision, when one justice in the majority was asked to withdraw from the case because of a claimed conflict of interest. Supreme Court Order No. 5483 (January 11, 1984). The same majority of justices which decided Timperly remains on the Court and would reasonably be expected to decide the same issue in the same way, when it again reaches the Alaska Supreme Court. The effect of Section 2 would be to save the time and the expense required for a second lawsuit on this issue to reach the Supreme Court at considerable cost to both the private parties and to the State court system.

Section 3

This is a housekeeping provision which would eliminate a reference to a federal agency which no longer exists and would drop an ambiguous term.

Section 4

Out-of-state residents have made false claims of Alaska residency to the Commission in order to pay reduced permit renewal fees available to residents of Alaska. This section would authorize the Commission to charge the legal rate of interest on fee arrearages more than 60 days overdue from these nonresidents.

Section 5

Section 5 would provide the Commission with some discretion in determining which measures of hardship should reasonably be employed in a given fishery. Absent the adoption of Section 5, some twelve fisheries throughout the State would be subject to very disruptive and expensive technical legal challenges to point schemes which are reasonable as adopted by the Commission. The Senate Resources Committee has addressed Section 5 in a detailed statement of legislative intent dated March 6, 1985, which accompanies SB 83. A copy of the statement is attached. Adoption of Section 5 will save the costs to the State of otherwise unnecessary litigation. It will also be of benefit to several thousand fishermen reliant upon the fisheries in question.

Section 6

Section 6 is a housekeeping provision which would authorize the Commission to issue a single educational entry permit (as opposed to several permits) to an appropriate educational institution.

Section 7

This section was added by the Resources Committee at the request of Senator Zharoff to ensure that, where practicable, a hearing conducted by the Commission with respect to limitation of a fishery be held in proximity to a meeting of the Board of Fisheries.

Section 8

Section 8 involves both housekeeping and substantive changes to the statute which has authorized the Commission to bring enforcement proceedings against individuals who intentionally supply false information to the Commission. The existing statute authorizes revocation of a permit belonging to one who intentionally provides false information to the Commission to obtain a benefit. Section 8 would amend the statute to make clear that the Commission has authority to do

April 23, 1985

less than complete revocation by way of suspension of a permit for up to three years and the imposition of an administrative fine of not more than \$5,000. The Commission would be in a position to more closely tailor the remedy to fit the offense. Section 8 would also authorize the Commission to do more by empowering the Commission to affect all permits in the hands of an individual who defrauds the Commission and by empowering the Commission to bring administrative proceedings against third parties to a transaction who intentionally supply false information to the Commission (for example, permit brokers).

Consistent with the Superior Court's holding in the Kjarstad case, subsection (f) makes clear that the Commission can bring enforcement proceedings against an individual who obtained a permit upon false information from the beginning of the program.

Section 9

This is a clean-up provision which ties a criminal provision of the Act to the appropriate Class A misdemeanor statute.

Section 10

Section 10 makes clear the Commission's authority to do what it has always done in practice: protect certain information provided by fishermen from public disclosure.

BT:dan
Attachment

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Handwritten signature and date: 8/83

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

Section 1 of the bill, which amends AS 16.43.150(g) to provide that the transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies that it is the intent of the legislature to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

Section 2 of the bill clarifies that the legislature intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder. This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

Section 3 of the bill merely deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."

Section 4 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not

considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the Limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies, this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 6 of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

Section 7 of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 8 of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also deletes unnecessary procedural detail that duplicates the provisions set out in AS 16.43.110(b). The section further authorizes the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970(b).

Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970. The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It does this by enabling the commission to tailor penalties to fit particular offenses.

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power

to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 9 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 10 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,



Bill Sheffield
Governor

Introduced: 1/22/85
Referred: Resources, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 83

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act."

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

8 * Section 1. AS 16.43.150(g) is amended to read:

9 (g) Except as provided in AS 16.10.333 -- 16.10.337, AS 44.81.-
10 210, and in AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

11 (1) pledged, mortgaged, leased, or encumbered in any way;

12 (2) transferred with any retained right of repossession or
13 foreclosure, or on any condition requiring a subsequent transfer; or

14 (3) attached, distrained, or sold on execution of judgment
15 or under any other process or order of any court.

16 * Sec. 2. AS 16.43.150(h) is amended to read:

17 (h) Upon the death of an entry permit holder, the permanent
18 permit shall be transferred by the commission directly to the surviv-
19 ing spouse by right of survivorship unless the deceased holder has
20 expressed a contrary intent in a will that is probated. When no
21 spouse survives, the rights of the decedent pass as part of the dece-
22 dent's estate. Except as provided in AS 16.10.333 -- 16.10.337,
23 AS 44.81.210, and AS 44.81.230 -- 44.81.250, the permit is exempt from
24 the claims of creditors of the estate.

25 * Sec. 3. AS 16.43.160(c) is amended to read:

26 (c) The resident holder of an entry permit or interim-use permit
27 who has a [NET] family income falling within the federal [FEDERAL COM-
28 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
29 commission to reflect appropriate cost-of-living differentials, is

1 subject to a maximum annual fee of \$15.

2 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

3 (d) The commission may charge interest at a rate not to exceed
4 the legal rate of interest established in AS 45.45.010 on fees more
5 than 60 days overdue.

6 * Sec. 5. AS 16.43.220(a) is amended to read:

7 (a) The commission shall adopt regulations specifying the dates
8 and places of application, the procedures to be followed in renewal of
9 the interim-use permit including the time, place of its renewal, and
10 for any other purpose incident to the administration of interim-use
11 permits for that fishery. An interim-use permit shall expire upon the
12 commission's final determination of the holder's eligibility for an
13 entry permit.

14 * Sec. 6. AS 16.43.250(a) is amended to read:

15 (a) Following the establishment of the maximum number of units
16 of gear for a particular fishery under AS 16.43.240, the commission
17 shall adopt regulations establishing qualifications for ranking ap-
18 plicants for entry permits according to the degree of hardship which
19 they would suffer by exclusion from the fishery. The regulations
20 shall define priority classifications of similarly situated applicants
21 based upon a reasonable balance of the following hardship standards:

22 (1) degree of economic dependence upon the fishery, which
23 may include [INCLUDING] but is not limited to percentage of income
24 derived from the fishery, reliance on alternative occupations, avail-
25 ability of alternative occupations, investment in vessels and gear;

26 (2) extent of past participation in the fishery, which may
27 include [INCLUDING] but is not limited to the number of years of
28 participation in the fishery, and the consistency of participation
29 during each year.

1 * Sec. 7. AS 16.43.351(b) is amended to read:

2 (b) A recipient may be issued an educational entry permit valid
3 for designated fisheries [EACH FISHERY] in the administrative area the
4 commission determines to be appropriate, considering the nature of the
5 educational program and the location of the educational or vocational
6 institution. The recipient of an educational entry permit may not be
7 issued an educational entry permit [PERMITS] in more than one adminis-
8 trative area except as issued by the commission in its discretion upon
9 good cause shown.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 himself or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

27 [(1) PERMIT APPLICATION;
28 (2) PERMIT TRANSFER; OR
29 (3) PERMIT RENEWAL].

1 (b) The [BEFORE REVOCATION, THE] commission shall serve the
2 respondent [PERMIT HOLDER] personally or by certified or registered
3 mail with a notice to show cause why the proposed action should not
4 take place. The notice to show cause must

5 (1) be supported by an affidavit which may be made on
6 information or belief setting out the facts which are the basis of the
7 proposed action;

8 (2) provide for at least 30 days' notice of the place,
9 date, and time of the hearing where the respondent [PERMIT HOLDER] may
10 present evidence in opposition to the proposed action; unless waived
11 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
12 shall be held within the judicial district in which the respondent
13 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
14 the state; the hearing place shall be at the discretion of the commis-
15 sion for those respondents [PERMIT HOLDERS] residing outside the
16 state;

17 (3) specify the statutes or regulations violated;

18 (4) state with particularity the action proposed to be
19 taken;

20 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
21 that the respondent's ability to permanently transfer the permits
22 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
23 proceedings has been suspended as of the date of the notice and will
24 continue to be suspended until the exhaustion of all administrative
25 and judicial remedies; and

26 (6) provide other information the commission considers
27 proper.

28 (c) A permit subject to show cause [REVOCATION] proceedings
29 under this section may not be transferred after the date of the notice

1 in (b) of this section pending exhaustion of all administrative and
2 judicial remedies arising from action taken under this section.

3 (d) The show cause [REVOCATION] hearing shall be conducted
4 before a quorum of commissioners and shall be presided over by a
5 hearing officer appointed by the commission who shall rule on the
6 presentation of evidence and other procedural matters. Hearings shall
7 be conducted in accordance with regulations adopted under AS 16.43.-
8 110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEAR-
9 ING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
10 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
12 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
13 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
14 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
15 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
16 ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

17 (e) The failure of a respondent [PERMIT HOLDER] properly served
18 under (b) of this section to appear at the hearing is not grounds for
19 setting aside any commission action taken. However, the commission
20 may in its discretion order a continuance or second hearing.

21 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
22 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
23 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

24 (g) The provisions of this section [DO NOT] apply to conduct
25 occurring after January 1, 1973, but do not affect a [THE] permit held
26 by [OF] a person who is a bona fide purchaser. Failure to correct
27 false information is a continuing offense.

28 (h) Judicial review of commission determinations under this
29 section is in accordance with AS 44.62.560 -- 44.62.570; however, if a

1 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
2 the discretion of the court, be had with a jury sitting if application
3 for the jury hearing is filed with the court no later than 10 days
4 after service of the notice of appeal.

5 (i) An entry permit revoked by the commission under this section
6 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
7 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
8 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission may provide
29 by regulation that documents submitted to the commission containing

1 information relating to an individual's personal finances and informa-
2 tion supplied by individuals for research purposes, produced in re-
3 sponse to requests by the commission, are not subject to public dis-
4 closure.

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

3/7/85

Date 3-28-83

Mr. President

The Committee on JUDICIARY considered SB 83
amending the Limited Entry Act.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 83 (Res) *recommends the Res since CS be adopted*
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

John No Rec

Tim Kelly No Rec

3/1/83 N/R

[Signature]

Chairman

NO REC.

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER:

JUDICIARY
FINANCE

1/22/85

Date 3/6/85

Mr. President

The Committee on RESOURCES considered SB 83
amending the Limited Entry Act.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for Senate Bill 83 (Resources)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature] No Recommendation

[Signature]

[Signature]
Chairman
Do Pass
Chairman recommendation

FISCAL ANALYSIS FOR SEC. 3 - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,300 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually.