

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 444 thru SB 459 143

SB

444

5/2/88
#(Jud)

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to eligibility
for permanent fund dividends
Sponsor: House State Affairs
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Please see attached.

Prepared By: Ervin B. Jones, Director Phone: 465-2323
Division: Permanent Fund Dividend Division Date: April 28, 1988

Approved by Commissioner: Hugh Malone Date: _____
Agency: Revenue

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

RECEIVED

APR 29 1988

LEGISLATIVE FINANCE

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CSCSSB 444 (State Affairs)
As of April 28, 1988

This legislation would reduce the number of eligible applicants for Permanent Fund Dividends by approximately 6,000 in 1989. Although an exact figure is not possible, this reduction in applicants will serve to increase future Permanent Fund Dividends by approximately \$10.

Since persons now filing from out-of-state represent a substantial part of the Division's civil investigation effort, any real reduction will result in some decreased administrative costs in the FY 91 budget request, all else being equal. Some portion of the potential savings will be directed to increasing our efforts in criminal investigation, to reduce the potential for fraudulent filings. See attached position paper.

DEPARTMENT OF REVENUE
POSITION PAPER ON
HCS SB 444 (State Affairs)

Introduction

The Department of Revenue supports HCS SB 444 (State Affairs). This bill tightens up the rules on Permanent Fund Dividend eligibility and makes those rules easier to enforce. The bill would raise the annual dividend by at least \$15.

HCS SB 444 (State Affairs) would go a long way to reverse a trend allowed by current law. The number of people receiving Permanent Fund Dividends is falling, but the number of people receiving Permanent Fund Dividends who apply from out of state is rapidly increasing.

Approximately 12,500 dividends are now going to people who give out-of-state addresses when they file. This is more than two percent of all 1987 Permanent Fund Dividends, and represents a 25 percent increase over the figure for 1986. The Department of Revenue estimates that a minimum of two-thirds of this group -- at least 8,000 people -- are gone from the state for more than a year by the time they receive a dividend. Approximately 300 people are receiving 1986 and 1987 Permanent Fund Dividends who have not physically touched Alaska in more than five years.

Loopholes in the Eligibility Requirements for Permanent Fund Dividends

The substantial and growing number of people receiving Permanent Fund Dividends who apply from outside of Alaska is the product of some loopholes in the eligibility requirements for Permanent Fund Dividends.

Under current law, there are three requirements for someone to receive a Permanent Fund Dividend. First, the person must file an application between April 1 and June 30. Second, the person applying has to be a resident of Alaska for at least the six consecutive months between October 1 and March 31. Third, a person must be a state resident on the date of application. Thus, to get a dividend, someone must be a state resident for most of the fall and winter and still claim to be a resident for one day in the spring (AS 43.23.005 and 15 AAC 23.625).

There are two requirements for someone to be a state resident. First, the person must have an intent to remain permanently if that person is physically present in the state, and must have an intent to return and remain permanently if the person is absent (AS 43.23.095 and 15 AAC 23.665(k)). Second, the person either must be physically present in Alaska for 90 days or more between October 1 and March 31 or be absent for an allowable reason (called an "allowable absence"). The law also requires someone to have an allowable absence if he or she is absent more than 60 consecutive days from the state between October 1 and March 31.

Allowable absences thus draw a sharp line dividing those people who claim an intent to make Alaska their permanent home. If such a person is gone from Alaska for most of the winter or gone for all of the spring without an allowable absence, that person cannot legally receive that year's Permanent Fund Dividend. If a person has an allowable absence, on the other hand, that person may be gone for all of the winter window, gone for all of the spring filing period, and gone for all of the rest of the year -- year after year after year.

Under current law, there is no flat rule against someone coming to Alaska for a day, leaving the state on an allowable absence, and collecting Permanent Fund Dividends as long as he or she retains the allowable absence while never setting foot in the state again.

Approximately 95 percent of those people receiving 1987 dividends who applied for them from outside the state also claimed allowable absences. More than \$8 million in dividends went to this group.

Approach of CS SB 444 (Finance)

The legislation passed by the Senate would add two rules to current law concerning eligibility for Permanent Fund Dividends. The first additional rule is that, with several exceptions, applicants must be physically present the day they apply. Since the legislation does not change the application period, this would mean that applicants not fitting into the exceptions would have to be physically present in Alaska each spring for one day.

The exceptions to the physical-presence requirement at the time of application are:

1. active duty military members;
2. full-time secondary, postsecondary, or vocational students;
3. persons receiving medical treatment that is not available in the state;
4. members of Congress; and
5. any other group that the Commissioner of Revenue may allow by regulation.

The second additional rule established by CS SB 444 (Finance) is that applicants cannot claim an allowable absence for more than five consecutive years unless the applicant claims one of four exceptions. This rule means that after spending five winters in a row outside the state, all applicants not fitting into one of the exceptions must physically live in Alaska for most of the sixth winter.

The four exceptions to the "five-year cutoff" rule are:

1. persons receiving medical treatment that is not available in the state;
2. members of Congress;
3. spouses and dependents of persons receiving medical treatment that is not available in the state; and
4. spouses and dependents of members in Congress.

The effect of these rules and exceptions in CS SB 444 (Finance) is to create four classes of allowable absences. They are:

- A. Persons who have to come back one day each spring but do not have to move back after five years away to spend the sixth winter in Alaska. Included in this class are: (1) Congressional spouses and dependents; and (2) medical cases' spouses and dependents.
- B. Persons who have to come back to Alaska after five consecutive years away to spend the sixth winter in the state but do not have to return each spring to apply while physically present in the state: (1) active duty military members; (2) full-time secondary, postsecondary, or vocational students; and (3) any other persons the Commissioner of Revenue may allow by regulation.
- C. Persons not subject to either rule. Included in this class are: (1) persons receiving medical treatment that is not available in the state; and (2) members of Congress.
- D. Persons subject to both rules. Persons claiming all other allowable absences are subject to both rules.

The bill passed by the Senate also establishes civil penalties for applicants who engage in willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility.

Approach of HCS SB 444 (State Affairs)

The Senate bill is preferable to current law. The Department of Revenue favors HCS SB 444 (State Affairs), however, because the Department believes this bill is simpler, more fair, and more stable than the Senate version of the legislation. In addition, HCS SB 444 (State Affairs) draws a line between applicants consistent with the dividend program's philosophy. Finally, HCS SB 444 (State Affairs) will raise the dividend by a greater amount than the Senate bill would.

In contrast to the two additional rules and multiple exceptions contained in the Senate bill, HCS SB 444 (State Affairs) includes one rule on eligibility. That rule is that any applicant claiming an allowable absence must also have been physically present in Alaska at some time since July 1 two years previous to the year of application.

Adding this requirement would establish a relatively easily measured indicator of the intent held by the person claiming Alaska residency while living elsewhere. The bill's enactment would reflect a legislative presumption that the person who truly intends to return and remain permanently will retain sufficient ties to the state to be present at least one day in two years. This additional requirement would also make sure that Permanent Fund Dividend recipients have not completely lost touch with Alaska.

Requiring the applicant to certify that he or she has been physically present at some time is an administratively simple way of testing a person's intent to return and remain permanently in Alaska. The application form already requires that an applicant certify his or her residency on the date of application, and also requires that two other persons certify the applicant's residency. This legislation would allow the Department of Revenue to require the applicant and these two certifying witnesses to attest to the additional simple fact that the applicant has been in Alaska since July 1 two years before.

This requirement will make it more likely that dividends will be spent in Alaska. Now, more than \$8 million in dividends goes to people who apply from outside Alaska.

Putting this money back into the state has another benefit. If this bill passed, the Department of Revenue estimates that in 1989 at least 10,000 fewer people will receive dividends than would under current law. This will increase the dividend by more than \$15 per Alaskan.

The proposed legislation also establishes civil penalties for both applicants and certifying witnesses for willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility. Current law allows two methods of dealing with individuals who have wrongly claimed permanent fund dividends. One method is available against all individuals who have received dividends to which they were not entitled, whatever their state of mind. This method is the assessment, an administrative procedure in which the Department of Revenue attempts to recover the dividend which the individual received (AS 43.23.035(b)). The other method is criminal prosecution, which is aimed only at those who have intentionally engaged in fraud (the crime is "unsworn falsification" under AS 11.56.210). Intent to defraud can be difficult to prove, especially to the high standard of beyond a reasonable doubt required by the criminal law.

The proposed legislation would authorize the Department of Revenue to seek civil penalties which could exceed the value of the dividend(s) wrongly obtained for those who have engaged in undesirable behavior short of intentional fraud. The bill would establish civil fines of up to \$5,000 for those who are found to have engaged in willful misrepresentation, gross negligence, or reckless disregard of material facts involving their eligibility for dividends. The standard of proof required would be lower than that required in criminal prosecutions.

The civil penalties would apply to such conduct by certifying witnesses as well as by the applicants. This approach is appropriate given the importance of the certifications given by the certifying witnesses that the applicant satisfies all the requirements.

Timing of SB 444

This bill would take effect January 1, 1989 and will have its first impact on the 1989 dividend distribution. This is appropriate, because printing deadlines make it too difficult to make the changes in the 1988 dividend application forms which would be required if the changes in the law went into effect this year.

Information about the loopholes in the Permanent Fund Dividend program appears to be spreading, however, which makes it critical for the Legislature to pass a bill this session which can go into effect for the 1989 dividend distribution. With the one-year lag between passage and implementation effectively forced by printing deadlines, the Legislature must take action this session, or the earliest dividend distribution it can affect will be in 1990.

Paying dividends to the people who claim to be Alaskans but have been gone for years is not what the program is all about. We believe this bill is needed to protect the integrity of the dividend program.

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 4/12/88

3/14/88
Mr. President:

Finance Committee considered SB 444

eligibility for permanent fund dividends and providing civil penalties for certain conduct involving permanent fund dividends; efd

and recommended

replace with CS SB 444 (Finance) same title
 or adopt CS new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)
 new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Jim Duncan
Paul Strick
Paul V. Ziegler

Dolores Bailey
Wanda R. ...
John ...

Rick Halford NO REC
Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to eligibility
for permanent fund dividends
Sponsor: Hensley, Kerttula, Abood et.al.
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Please see attached.

Prepared By: Ervin B. Jones, Director
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: March 10, 1988

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 3/10/88

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

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CS SB 444 (Fin)
As of March 10, 1988

This legislation would reduce the number of eligible applicants for Permanent Fund Dividends by approximately 10,000 in 1989. Although an exact figure is not possible, this reduction in applicants will serve to increase future Permanent Fund Dividends by approximately \$15.

Since persons not filing from out-of-state represent a substantial part of the Division's civil investigation effort, any real reduction will result in some decreased administrative costs in the FY 91 budget request, all else being equal. Some portion of the potential savings will be directed to increasing our efforts in criminal investigation, to reduce the potential for fraudulent filings. See attached position paper.

Original sponsors: Hensley, Kerttula,
Abood and Eliason

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 444 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to eligibility for permanent fund
7 dividends and providing civil penalties for certain
8 conduct involving permanent fund dividends; and
9 providing for an effective date."

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

11 * Section 1. AS 43.23.005(a) is amended to read:

12 (a) An individual is eligible to receive one permanent fund
13 dividend each year in an amount to be determined under AS 43.23.025 if
14 the individual applies to the department, and if

15 (1) on the date of application the individual is a state
16 resident; [AND]

17 (2) the individual was a state resident for a period of at
18 least six consecutive months immediately preceding April 1 of the
19 current dividend year; and

20 (3) on the date of application the individual is physically
21 present in the state.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

23 (b) The department shall prescribe and furnish an application
24 form for claiming a permanent fund dividend. The application must
25 contain a statement of eligibility and a certification of residency in
26 substantially the following form:

27 I certify that

28 () I am a state resident on the date of this ap-
29 plication, [AND] I have been a state resident for at

1 least six months immediately preceding April 1 of the
2 current dividend year, and I am physically present as
3 defined in AS 43.23.095 on the date of this applica-
4 tion; or

5 () (name), the individual on whose behalf I am
6 applying, is a state resident on the date of this
7 application, [AND] has been a state resident for at
8 least six months immediately preceding April 1 of the
9 current dividend year, and is physically present as
10 defined in AS 43.23.095 on the date of this applica-
11 tion.

12 I understand that a false claim of eligibility
13 [RESIDENCY] to obtain a permanent fund dividend for
14 myself or for another is a criminal offense, [AND]
15 that if convicted I will forfeit future [PERMANENT
16 FUND] dividends, and that I must repay all [PERMA-
17 NENT FUND] dividends that have been paid to me. I
18 understand that if I wilfully misrepresent, exer-
19 cise gross negligence, or recklessly disregard a
20 material fact regarding my eligibility for a perma-
21 nent fund dividend I will forfeit the dividend, be
22 subject to a civil fine of up to \$5,000, and lose
23 my eligibility for the next five dividends. I un-
24 derstand that these penalties are [THIS PENALTY IS]
25 in addition to any criminal penalties imposed.

26 _____
27 (signature of individual,
28 parent, guardian, or other
29 authorized representative)

1 * Sec. 3. AS 43.23.035 is amended by adding a new subsection to read:

2 (c) An individual who, in claiming a permanent fund dividend,
3 wilfully misrepresents, exercises gross negligence, or recklessly
4 disregards a material fact pertaining to eligibility forfeits the
5 dividend, is subject to a civil fine of up to \$5,000, and loses eli-
6 gibility to receive the next five dividends following the forfeited
7 dividends. The commissioner may commence proceedings in court to
8 enforce this subsection.

9 * Sec. 4. AS 43.23.095 is amended to read:

10 Sec. 43.23.095. DEFINITIONS. In this chapter,

11 (1) "Alaska permanent fund" means the fund established by
12 art. IX, sec. 15 of the state constitution;

13 (2) "commissioner" means the commissioner of revenue;

14 (3) "department" means the Department of Revenue;

15 (4) "dividend fund" means the fund established by AS 43.-
16 23.045;

17 (5) "individual" means a natural person;

18 (6) "permanent fund dividend" means a right to receive a
19 payment from the dividend fund;

20 (7) "physically present" means being physically present in
21 the state, or, if not physically present, absent only for

22 (A) medical treatment that is not available in the
23 state;

24 (B) service in Congress;

25 (C) military service;

26 (D) full-time secondary, postsecondary, or vocational
27 education; or

28 (E) other reasons that the commissioner may establish
29 by regulation;

1 (8) "state resident" means an individual who is physically
2 present [IN THE STATE] with the intent to remain permanently in the
3 state or, if the individual is not physically present [IN THE STATE],
4 intends to return to the state and

5 (A) is absent only for any of the following reasons:

6 (i) medical treatment that is not available in
7 the state;

8 (ii) service in the Congress; or

9 (iii) to accompany, as a spouse or dependent, an
10 individual who is eligible for a permanent fund dividend under
11 (i) or (ii) of this subparagraph; or

12 (B) has not been absent during the six months immedi-
13 ately preceding April 1 for more than five consecutive years and
14 is absent only for any of the following reasons:

15 (i) [(A)] vocational, professional, or other spe-
16 cific education for which a comparable program was not
17 reasonably available in the state;

18 (ii) [(B)] secondary or postsecondary education;

19 (iii) [(C)] military service;

20 [(D) MEDICAL TREATMENT;

21 (E) SERVICE IN CONGRESS;]

22 (iv) [(F)] other reasons that [WHICH] the commis-
23 sioner may establish by regulation; or

24 (v) [(G)] service in the Peace Corps;

25 (9) [(8)] "year" means a calendar year.

26 * Sec. 5. This Act takes effect January 1, 1989.

Adopted by SFC
4/12/88

5-1919B
Cook
4/11/88

Original sponsors: Hensley, Kerttula,
Abood and Eliason

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 444 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to eligibility for permanent fund
7 dividends and providing civil penalties for certain
8 conduct involving permanent fund dividends; and
9 providing for an effective date."

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11 * Section 1. AS 43.23.005(a) is amended to read:

12 (a) An individual is eligible to receive one permanent fund
13 dividend each year in an amount to be determined under AS 43.23.025 if
14 the individual applies to the department, and if

15 (1) on the date of application the individual is a state
16 resident; [AND]

17 (2) the individual was a state resident for a period of at
18 least six consecutive months immediately preceding April 1 of the
19 current dividend year; and

20 (3) on the date of application the individual is physically
21 present in the state.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

23 (b) The department shall prescribe and furnish an application
24 form for claiming a permanent fund dividend. The application must
25 contain a statement of eligibility and a certification of residency in
26 substantially the following form:

27 I certify that

28 () I am a state resident on the date of this ap-
29 plication, [AND] I have been a state resident for at

1 least six months immediately preceding April 1 of the
2 current dividend year, and I am physically present as
3 defined in AS 43.23.095 on the date of this applica-
4 tion; or

5 () (name), the individual on whose behalf I am
6 applying, is a state resident on the date of this
7 application, [AND] has been a state resident for at
8 least six months immediately preceding April 1 of the
9 current dividend year, and is physically present as
10 defined in AS 43.23.095 on the date of this applica-
11 tion.

12 I understand that a false claim of eligibility
13 [RESIDENCY] to obtain a permanent fund dividend for
14 myself or for another is a criminal offense, [AND]
15 that if convicted I will forfeit future [PERMANENT
16 FUND] dividends, and that I must repay all [PERMA-
17 NENT FUND] dividends that have been paid to me. I
18 understand that if I wilfully misrepresent, exer-
19 cise gross negligence, or recklessly disregard a
20 material fact regarding my eligibility for a perma-
21 nent fund dividend I will forfeit the dividend, be
22 subject to a civil fine of up to \$5,000, and lose
23 my eligibility for the next five dividends. I un-
24 derstand that these penalties are [THIS PENALTY IS]
25 in addition to any criminal penalties imposed.

26
27 _____
28 (signature of individual,
29 parent, guardian, or other
authorized representative)

1 * Sec. 3. AS 43.23.035 is amended by adding a new subsection to read:

2 (c) An individual who, in claiming a permanent fund dividend,
3 wilfully misrepresents, exercises gross negligence, or recklessly
4 disregards a material fact pertaining to eligibility forfeits the
5 dividend, is subject to a civil fine of up to \$5,000, and loses eli-
6 gibility to receive the next five dividends following the forfeited
7 dividends. The commissioner may commence proceedings in court to
8 enforce this subsection.

9 * Sec. 4. AS 43.23.095 is amended to read:

10 Sec. 43.23.095. DEFINITIONS. In this chapter,

11 (1) "Alaska permanent fund" means the fund established by
12 art. IX, sec. 15 of the state constitution;

13 (2) "commissioner" means the commissioner of revenue;

14 (3) "department" means the Department of Revenue;

15 (4) "dividend fund" means the fund established by AS 43.-
16 23.045;

17 (5) "individual" means a natural person;

18 (6) "permanent fund dividend" means a right to receive a
19 payment from the dividend fund;

20 (7) "physically present" means being physically present in
21 the state, or, if not physically present, absent only

22 (A) for medical treatment that is not available in the
23 state;

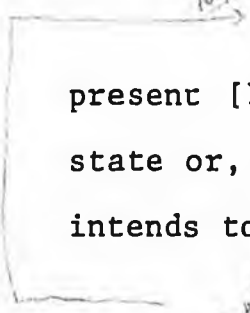
24 (B) for service in Congress; or

25 (C) for military service;

26 (D) for full time secondary, postsecondary, or vocational education; or

27 (8) "state resident" means an individual who is physically
28 present [IN THE STATE] with the intent to remain permanently in the
29 state or, if the individual is not physically present [IN THE STATE],
intends to return to the state and

Noted Am #1



Am #2 Adopted (E) other reasons the -3- commissioner may establish by regulation;

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(A) is absent only for any of the following reasons:

(i) medical treatment that is not available in the state;

(ii) service in the Congress; or

(iii) to accompany, as a spouse or dependent, an individual who is eligible for a permanent fund dividend under (i) or (ii) of this subparagraph; or

(B) has not been absent during the six months immediately preceding April 1 for more than five consecutive years and is absent only for any of the following reasons:

(i) [(A)] vocational, professional, or other specific education for which a comparable program was not reasonably available in the state;

(ii) [(B)] secondary or postsecondary education;

(iii) [(C)] military service;

[(D) MEDICAL TREATMENT;

(E) SERVICE IN CONGRESS;]

(iv) [(F)] other reasons that [WHICH] the commissioner may establish by regulation; or

(v) [(G)] service in the Peace Corps;

(9) [(8)] "year" means a calendar year.

* Sec. 5. This Act takes effect January 1, 1989.

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

SENATE BILL 444

A BILL TO REDUCE
THE FLOW OF PERMANENT FUND DIVIDENDS
OUT OF ALASKA

Summary

Alaska's population is falling and so is the number of permanent fund dividends paid -- but the number of people filing for and receiving dividends outside the state is growing. The number of people applying for 1987 dividends from out of Alaska and receiving the checks out of Alaska is expected to increase by more than 25 percent over the figure for 1986. The total will be about 12,500 people, which represents more than two percent of all recipients for 1987. More than \$8 million will be sent to those filing for and receiving dividends outside of Alaska.

The proposed legislation would add to the eligibility requirements for dividends the condition that an applicant be physically present in the state on the date of application, which can anytime be between April 1 and June 30. In addition, the proposed legislation would cut off a person's ability to receive dividends if he or she was not physically present in Alaska during most of the eligibility period (October 1 - March 31) for more than five consecutive years.

The Problem

Alaska statutes set out two requirements before someone can receive a permanent fund dividend. A person is eligible to apply if that person (1) has been a state resident for at least the six consecutive months between October 1 and March 31, and (2) is a state resident on the date of application (AS 43.23.005). The requirement of the intent to make Alaska a permanent home is absolute.

The requirement of physical presence in Alaska, however, does not mean that a person has to spend each day of the October 1 - March 31 eligibility period in the state. By regulation, a person is allowed to spend up to 60 consecutive days -- and 90 total days -- outside the state during the winter eligibility period without it affecting eligibility (15 AAC 23.665(k)). If a person is gone more than two months straight or more than three months total, however, that person is only eligible if he or she has an "allowable absence."

Back-up from Senator Hensley

Absences which are allowable by statute are: (1) vocational, professional and other education which is not reasonably available in Alaska; (2) postsecondary or secondary education; (3) military service; (4) medical treatment; (5) service in Congress; and (6) service in the Peace Corps (AS 43.23.095).

The statute provides that the Department of Revenue, which administers the program, may add other allowable absences. Absences made allowable by regulation are: (1) service on the staff of a U.S. Senator or U.S. Representative for Alaska; (2) prisoners and minors committed to state custody; (3) service as a state employee; (4) any absence whose "nature and duration . . . are temporary and are consistent with an intent to return to the state and remain permanently in the state" (the "catch-all" exception); and (5) spouses, children, and other dependents of residents who are absent for allowable reasons (15 AAC 23.665(a-j and l)).

Allowable absences thus draw a sharp line dividing those people who claim an intent to make Alaska their permanent home. If such a person is gone from Alaska for most of the winter or gone for all of the spring without an allowable absence, that person cannot legally receive that year's permanent fund dividend. If a person has an allowable absences, on the other hand, that person may be gone for all of the winter window, gone for all of the spring filing period, and gone the whole rest of the year -- year after year after year.

Under current law, there is no flat rule against someone coming to Alaska for a day, leaving the state on an allowable absence, and collecting permanent fund dividends as long as he lives while never setting foot in the state again. There are some regulations requiring the Department of Revenue to scrutinize with particular care absences claimed for state employment, medical purposes, certain educational purposes, or the catch-all exception. There is also a regulation placing the burden on the applicant to prove intent to return and remain permanently in Alaska if absences claimed for secondary or postsecondary education, military service in Congress or Congressional staff, state employment, or the catch-all exception exceed five years.

Despite these regulations, 300 people who have not been in Alaska for more than five years were paid 1986 dividends. The growing use of allowable absences has caused a substantial increase in the number of people applying for and receiving permanent fund dividends outside of Alaska. The total is estimated to be about 12,500 for 1987. This is more than a 25% jump over the 1986 at a time when the state's estimated population and total number of dividend recipients are both dropping. More than two percent of 1987 dividends will go to this group, which represents more than \$8 million. About 95% of this group claimed an allowable absence in 1987.

The Proposed Remedy: SB 444

The proposed legislation adds a requirement of physical presence in the state on the date of application. Formerly, a person could be gone all year, after year, and still claim a dividend if that person claimed an allowable absence and an intent to return and remain permanently. This requirement will provide an additional test of a person's intent to return to and remain permanently in the state. It will also make sure that the person has not completely lost touch with Alaska. Finally, this requirement will make it more likely dividends will be spent in Alaska.

Requiring the applicant to certify that he or she is physically present on the date of application and provide two other persons who will certify the same is an administratively feasible way of accomplishing these goals. This requirement will not be an excessive burden on the applicant, as he or she can choose any day to file among the 90 days of the April 1 - June 30 filing period. The only exceptions for this requirement of physical presence are medical treatment not available in Alaska and service in Congress. Spouses and dependents of the first two groups will also be eligible.

The proposed legislation also makes a flat rule cutting off allowable absences after five consecutive years (with the same narrow exceptions as proposed for the requirement of physical presence on the date of application). The effect of this, when combined with the requirement of physical presence when applying, is to allow a person to be gone for most of the winter five years in a row while being present for one day in the spring each year, but after that time require an applicant to return to Alaska to spend most of the winter.

Finally, the proposed legislation establishes civil penalties for willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility. Current law allows two methods of dealing with individuals who have wrongly claimed permanent fund dividends. One method is available against all individuals who have received dividends to which they were not entitled, whatever their state of mind. This method is the assessment, an administrative procedure in which the Department of Revenue attempts to collect the dividend which the individual received. (AS 43.23.035b)) The other method is criminal prosecution, which is aimed only at those who have intentionally engaged in fraud. (The crime is "unsworn falsification" under AS 11.56.210.) Intent to defraud can be difficult to prove, especially to the high standard of beyond a reasonable doubt required by the criminal law.

The proposed legislation would authorize the Department of Revenue to seek civil penalties which could exceed the value of the dividend(s) wrongly obtained for those who have engaged in undesirable behavior short of intentional fraud. The bill would establish civil fines of up to \$5,000 for those who are found to have engaged in willful misrepresentation, gross negligence or reckless disregard of material facts involving their eligibility for dividends. The standard of proof required would be lesser than that required on criminal prosecutions.

My office was assisted in the preparation of this explanation of SB 444 by Cliff Groh, Special Assistant to the Commissioner of Revenue - 465-2323.

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

QUESTIONS AND ANSWERS ON SB 444

LEGISLATION TIGHTENING UP PERMANENT

FUND DIVIDEND ELIGIBILITY

REQUIREMENTS

Q. What are the requirements for someone to receive a Permanent Fund Dividend under the law today?

A. First, the person applying has to be a resident of Alaska for at least the six consecutive months between October 1 - March 31. Second, a person must be a state resident on the date of application, sometime between April 1 and June 30 of each year. (AS 43.23.005 and 15 AAC 23.625) Thus to get a dividend, someone must be a state resident for most of the fall and winter and still claim to be a resident for one day in the spring.

Q. What does it take to be a state resident?

A. First, that the person either must be physically present in Alaska for 90 days or more between October 1 and March 31 or be absent for an allowable reason (called an "allowable absence").

Second, the person must have an intent to remain permanently if that person is physically present in the state, and must have an intent to return and remain permanently if the person is absent. (AS 43.23.095 and 15 AAC 23.665(k)) (The law also requires someone to have an allowable absence if he or she is absent more than 60 total days in the state between October 1 and March 31.)

Q. Which absences are allowable?

A. Absences which are allowable by statute are: (1) vocational, professional, and other specific education which is not reasonably available in Alaska; (2) postsecondary or secondary education; (3) military service; (4) medical treatment; (5) service in Congress; and (6) service in the Peace Corps (AS 43.23.095).

The statute also provides that the Department of Revenue, which administers the program, may add other allowable absences. Absences made allowable by regulation are: (1) service on the staff of a U.S. Senator or U.S.

Representative for Alaska; (2) prisoners and minors committed to state custody; (3) service as a state employee; (4) any absence whose "nature and duration . . . are temporary and are consistent with an intent to return to the state and remain permanently in the state" (the "catch-all" exception); and (5) spouses, children and other dependents of residents who are absent for allowable reasons (15 AAC 23.665(a-j and 1)).

Q. If the law recognizes allowable absences, does this mean that someone applying for the dividend does not have to be physically present in the state even for one day of the year?

A. That's right. Allowable absences draw a sharp line dividing those people who claim an intent to make Alaska their permanent home. If such a person is gone from Alaska for most of the winter or gone for all of the spring without an allowable absence, that person cannot legally receive that year's permanent fund dividend. If a person has an allowable absence, on the other hand, that person may be gone for all of the winter residency period, gone for all of the spring filing period, and gone the whole rest of the year - year after year after year.

Q. Are there any barriers under current law to stop completely someone from coming to Alaska for a day, leaving on an allowable absence, and receiving Permanent Fund Dividends for as long as the person keeps the allowable absence without ever setting foot in the state again?

A. No, there is no flat rule preventing that from happening.

There are some regulations requiring the Department of Revenue to scrutinize with particular care absences claimed for state employment, medical purposes, certain educational purposes, or the catch-all exception. There is also a regulation placing the burden on the applicant to prove intent to return and remain permanently in Alaska if absences are claimed for more than five years for secondary or postsecondary education, military service, service in Congress or Congressional staff, state employment, or the under catch-all exception.

Q. Do these regulations prevent people from receiving dividends who have not been in Alaska for five years or more?

A. No. Three hundred people received dividends in 1986 who stated that they had not been physically present in Alaska for five years or more.

Q. What is the effect of the law permitting allowable absences on the number of people receiving dividends out of Alaska?

A. The growing use of allowable absences has caused a substantial increase in the number of people applying for and receiving permanent fund dividends outside of Alaska. The total is estimated to be about 12,500 for 1987. This is more than a 25% jump over 1986 at a time when the state's estimated population and total number of dividend recipients are both dropping. More than two percent of 1987 dividends will go to this group, which represents more than \$8 million. About 95% of this group claimed an allowable absence in 1987.

Q. How would SB 444 remedy this problem?

- A. SB 444 would: (1) require that an applicant for a Permanent Fund Dividend be physically present in the State on the date of application (the application period is April 1 - June 30); (2) establish a flat prohibition on a person's ability to receive a Permanent Fund Dividend after five consecutive years claiming any allowable absence; and (3) establish civil penalties for willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility.
- Q. What effect would this legislation have on what a person would need to receive a permanent Fund Dividend?
- A. A person would always need an intent to make Alaska his or her permanent home. A person could still be absent on an allowable absence during the entire eligibility period of October 1 - March 31. The person would have to return to be physically present in Alaska on the date the person applies - which could be during the filing period of April 1 - June 30. The person could be absent five years in a row during the October 1 - March 31 eligibility period, but would need to return to Alaska to spend most of the October 1 - March 31 period in the sixth year to be eligible for that sixth year.
- Q. Why does the legislation add a requirement of physical presence?
- A. This requirement will provide an easily measured indicator of a person's intent to return to Alaska and remain permanently. If enacted, the bill would reflect a legislative presumption that the person who truly intends to return and remain permanently will retain sufficient ties to the state to be present at least one day during the 90-day filing period.
- Q. Why does the legislation set the date of application as the time the applicant must be physically present in the state?
- A. Requiring the applicant to certify that he or she is physically present on the date of application is an administratively simple way of testing a person's intent to return and remain permanently in Alaska. The application form already requires that an applicant certify his or her residency on the date of application, and also requires that two other persons certify the applicant's residency. This legislation would allow the Department of Revenue to require the applicant and these two certifying witnesses to attest to the additional simple fact that the applicant is here in Alaska the date he or she signs the form.
- Q. Will this requirement of physical presence on the date of application be an excessive burden on the applicant?
- A. No. The applicant can choose any day of the 90-day filing period (April 1 - June 30) to return to file.
- Q. Are there any exceptions to the proposed rules that applicants must be physically present on the date of application and cannot claim allowable absences after five consecutive years of being gone from the state during the eligibility period?

A. Yes, there are two narrow exceptions. The only exceptions to both proposed rules are to obtain medical treatment not available in Alaska or service in Congress. Spouses and dependents of these two groups will also be eligible.

Q. What effect will these charges have on each dividend?

A. The Department of Revenue has estimated that if this bill became law, in the first year each dividends would be at least \$15 higher than it would otherwise be.

Q. How do the new proposed civil penalties work?

A. The proposed legislation establishes civil penalties for willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility. Current law allows two methods of dealing with individuals who have wrongly claimed permanent fund dividends. One method is available against all individuals who have received dividends to which they were not entitled, whatever their state of mind. This method is the assessment, an administrative procedure in which the Department of Revenue attempts to collect the dividend which the individual received. (AS 43.23.035(b)) The other method is criminal prosecution, which is aimed only at those who have intentionally engaged in fraud. (The crime is "unsworn falsification" under AS 11.56.210.) Intent to defraud can be difficult to prove, especially to the high standard of beyond a reasonable doubt required by the criminal law.

The proposed legislation would authorize the Department of Revenue to seek civil penalties which could exceed the value of the dividend(s) wrongly obtained for those who have engaged in undesirable behavior short of intentional fraud. The bill would establish civil fines of up to \$5,000 for those who are found to have engaged in willful misrepresentation, gross negligence, or reckless disregard of material facts involving their eligibility for dividends. The standard of proof required would be over them that required on criminal prosecutions.

Q. What is the overall effect of this bill?

A. This legislation both tightens up the rules for eligibility for Permanent Fund Dividends and makes those rules easier to apply.

My office was assisted in preparation of this explanation of SB 444 by Cliff Groh, Special Assistant to the Commissioner of Revenue - 465-2323.

How many PFD s were paid?

1986- 532,000 1987- 530,000

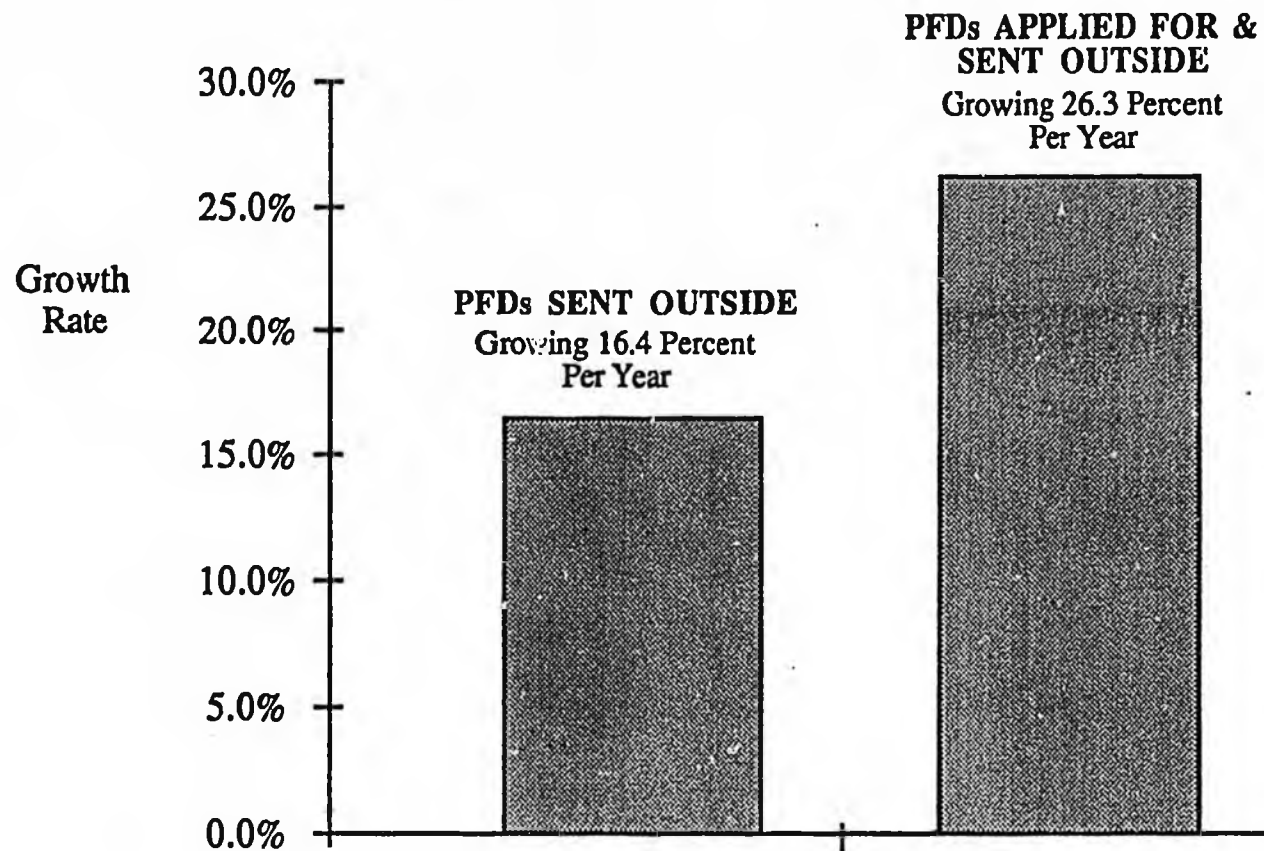
*How many of these PFDs were
paid to out-of-state addresses?*

1986- 19,500 1987- 22,700

*Of these PFDs,
how many were paid
to persons who also
applied from out-of-state?*

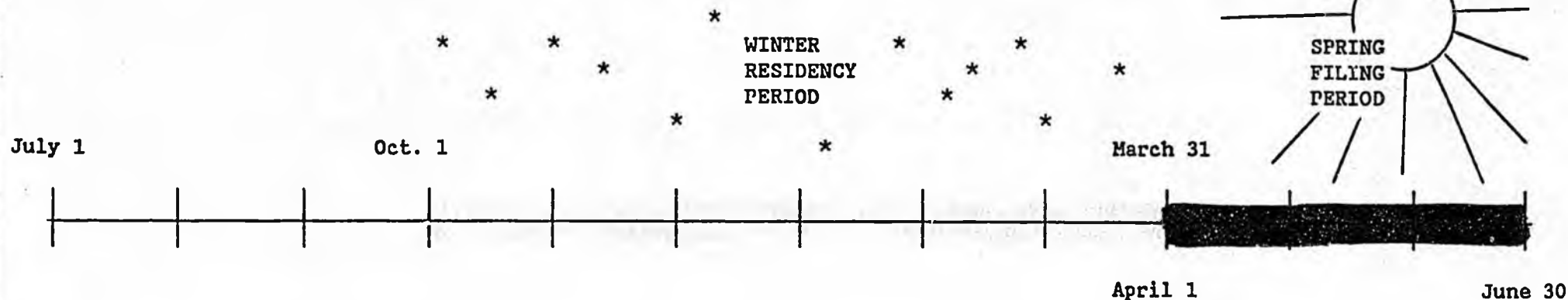
1986- 9,900 1987- 12,500

Changes In Permanent Fund Dividends: 1986-87



SB 444
TIGHTENING UP ON ELIGIBILITY REQUIREMENTS
FOR PERMANENT FUND DIVIDENDS

THE PERMANENT FUND DIVIDEND YEAR



Requirements for PFD eligibility

Winter Residency Period

1. Intent to make Alaska a permanent home.
2. Physical presence for more than half of the winter or an allowable absence.

Applicant's Application Day During Spring Filing Period

1. Timely application.
2. Intent to make Alaska a permanent home.
3. Physical presence on the date of application or an allowable absence.

CURRENT
LAW

SB 444 includes all current requirements and adds these additional requirements.

SB 444:
ADDITIONAL
REQUIREMENTS

Requires physical presence for most of the winter after five years of allowable absences (cuts off allowable absences after five years out of the state).

Physical presence on the date of application.

Senate Bill 444

- * Requires physical presence on the date of application during spring filing period (with a few narrow exceptions) in addition to existing eligibility requirements.

- * Absences during winter residency period not allowed after five years (with the same narrow exceptions).

- * Establishes civil penalties for misconduct in application. (Intentional fraud still a criminal offense).

- * Adds at least \$8 million to Alaska economy in 1989.

- * Effective date: January 1, 1989.

DEPARTMENT OF REVENUE
POSITION PAPER ON
SB 444

Introduction

The Department of Revenue supports SB 444. This bill tightens up the rules on Permanent Fund Dividend eligibility and makes those rules easier to enforce. The bill would raise the annual dividend by at least \$15, and carries a zero fiscal note.

SB 444 would go a long way to reverse a trend allowed by current law. Both the state population and the number of people receiving Permanent Fund Dividends are falling. But the number of people receiving Permanent Fund Dividends who apply from out of state is rapidly increasing.

More than 12,000 dividends are now going to people who give out-of-state addresses when they file. This is more than two percent of all 1987 Permanent Fund Dividends, and represents a 25 percent increase over the figure for 1986. The Department of Revenue estimates that a minimum of two-thirds of this group -- at least 8,000 people -- are gone from the state for more than a year by the time they receive a dividend. Approximately 300 people are receiving 1986 and 1987 Permanent Fund Dividends who have not physically touched Alaska in more than five years.

Loopholes in the Eligibility Requirements for Permanent Fund Dividends

The substantial and growing number of people receiving Permanent Fund Dividends who apply from outside of Alaska is the product of some loopholes in the eligibility requirements for Permanent Fund Dividends.

Under current law, there are three requirements for someone to receive a Permanent Fund Dividend. First, the person must file an application between April 1 and June 30. Second, the person applying has to be a resident of Alaska for at least the six consecutive months between October 1 and March 31. Third, a person must be a state resident on the date of application. Thus, to get a dividend, someone must be a state resident for most of the fall and winter and still claim to be a resident for one day in the spring (AS 43.23.005 and 15 AAC 23.625).

There are two requirements for someone to be a state resident. First, the person must have an intent to remain permanently if that person is physically present in the state, and must have an intent to return and remain permanently if the person is absent (AS 43.23.095 and 15 AAC 23.665(k)). Second, the person either must be physically present in Alaska for 90 days or more between October 1 and March 31 or be absent for an allowable reason (called an "allowable absence"). The law also requires someone to have an allowable absence if he or she is absent more than 60 consecutive days from the state between October 1 and March 31.

Allowable absences thus draw a sharp line dividing those people who claim an intent to make Alaska their permanent home. If such a person is gone from Alaska for most of the winter or gone for all of the spring without an allowable absence, that person cannot legally receive that year's Permanent Fund Dividend. If a person has an allowable absence, or the other hand, that person may be gone for all of the winter window, gone for all of the spring filing period, and gone for all of the rest of the year -- year after year after year.

Under current law, there is no flat rule against someone coming to Alaska for a day, leaving the state on an allowable absence, and collecting Permanent Fund Dividends as long as he or she retains the allowable absence while never setting foot in the state again.

Approximately 95 percent of those people receiving 1987 dividends who applied for them from outside the state also claimed allowable absences. More than \$8 million in dividends went to this group.

SB 444's Approach

If enacted, SB 444 would make several changes consistent with the dividend program's philosophy. First, the legislation adds to current law a requirement that an applicant be physically present in Alaska on the date of application, which can be anytime between April 1 and June 30. The bill provides for only narrow exceptions to this requirement: (1) medical treatment not available in Alaska; (2) service in Congress; and (3) spouses and dependents of these people in (1) and (2).

Adding the requirement of physical presence on the date of application would establish a relatively easily measured indicator of the intent held by the person claiming Alaska residency while living elsewhere. The bill's enactment would reflect a legislative presumption that the person who truly intends to return and remain permanently will retain sufficient ties to the state to be present at least one day during the three-month filing period. This additional requirement would also make sure that Permanent Fund Dividend recipients have not completely lost touch with Alaska.

Requiring the applicant to certify that he or she is physically present on the date of application is an administratively simple way of testing a person's intent to return and remain permanently in Alaska. The application form already requires that an applicant certify his or her residency on the date of application, and also requires that two other persons certify the applicant's residency. This legislation would allow the Department of Revenue to require the applicant and these two certifying witnesses to attest to the additional simple fact that the applicant is here in Alaska the date he or she signs the form. This requirement of physical presence on the date of application will not be an excessive burden on the applicant as the applicant can choose any day of the three-month filing period (April 1 - June 30) to file.

This requirement will also make it more likely that dividends will be spent in Alaska. Now, more than \$8 million in dividends goes to people who apply from outside Alaska.

Putting this money back into the state has another benefit. If this bill passed, the Department of Revenue estimates that in 1989 at least 10,000 fewer people will receive dividends than would under current law. This will increase the dividend by more than \$15 per Alaskan.

SB 444 also cuts off allowable absences after five consecutive years (with the few narrow exceptions that apply to the physical presence rule). When combined with the requirement of physical presence when applying, the effect of this is to allow a person to be gone for most of the winter five years in a row while being present for one day in the spring each year. The following year, the applicant would have to return to Alaska to spend most of the winter.

Finally, the proposed legislation establishes civil penalties for willful misrepresentation, gross negligence, or reckless disregard of material facts concerning eligibility. Current law allows two methods of dealing with individuals who have wrongly claimed permanent fund dividends. One method is available against all individuals who have received dividends to which they were not entitled, whatever their state of mind. This method is the assessment, an administrative procedure in which the Department of Revenue attempts to recover the dividend which the individual received (AS 43.23.035(b)). The other method is criminal prosecution, which is aimed only at those who have intentionally engaged in fraud (the crime is "unsworn falsification" under AS 11.56.210). Intent to defraud can be difficult to prove, especially to the high standard of beyond a reasonable doubt required by the criminal law.

The proposed legislation would authorize the Department of Revenue to seek civil penalties which could exceed the value of the dividend(s) wrongly obtained for those who have engaged in undesirable behavior short of intentional fraud. The bill would establish civil fines of up to \$5,000 for those who are found to have engaged in willful misrepresentation, gross negligence, or reckless disregard of material facts involving their eligibility for dividends. The standard of proof required would be lower than that required in criminal prosecutions.

Timing of SB 444

This bill would take effect January 1, 1989 and will have its first impact on the 1989 dividend distribution. This is appropriate, because printing deadlines make it too difficult to make the changes in the 1988 dividend application forms which would be required if the changes in the law went into effect this year.

Information about the loopholes in the Permanent Fund Dividend program appears to be spreading, however, which makes it critical for the Legislature to pass a bill this session which can go into effect for the 1989 dividend distribution. With the one-year lag between passage and implementation effectively forced by printing deadlines, the Legislature must take action this session, or the earliest dividend distribution it can affect will be in 1990.

Paying dividends to the people who claim to be Alaskans but have been gone for years is not what the program is all about. We believe this bill is needed to protect the integrity of the dividend program.

1 IN THE SENATE BY HENSLEY, KERTTULA, ABOOD
AND ELIASON

2 SENATE BILL NO. 444

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to eligibility for permanent fund
7 dividends and providing civil penalties for certain
8 conduct involving permanent fund dividends; and
9 providing for an effective date."

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

11 * Section 1. AS 43.23.005(a) is amended to read:

12 (a) An individual is eligible to receive one permanent fund
13 dividend each year in an amount to be determined under AS 43.23.025 if
14 the individual applies to the department, and if

15 (1) on the date of application the individual is a state
16 resident; [AND]

17 (2) the individual was a state resident for a period of at
18 least six consecutive months immediately preceding April 1 of the
19 current dividend year; and

20 (3) on the date of application the individual is physically
21 present in the state.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

23 (b) The department shall prescribe and furnish an application
24 form for claiming a permanent fund dividend. The application must
25 contain a statement of eligibility and a certification of residency in
26 substantially the following form:

27 I certify that

28 () I am a state resident on the date of this ap-
29 plication, [AND] I have been a state resident for at

1 * Sec. 3. AS 43.23.035 is amended by adding a new subsection to read:

2 (c) An individual who, in claiming a permanent fund dividend,
3 wilfully misrepresents, exercises gross negligence, or recklessly
4 disregards a material fact pertaining to eligibility forfeits the
5 dividend, is subject to a civil fine of up to \$5,000, and loses eli-
6 gibility to receive the next five dividends following the forfeited
7 dividends. The commissioner may commence proceedings in court to
8 enforce this subsection.

9 * Sec. 4. AS 43.23.095 is amended to read:

10 Sec. 43.23.095. DEFINITIONS. In this chapter,

11 (1) "Alaska permanent fund" means the fund established by
12 art. IX, sec. 15 of the state constitution;

13 (2) "commissioner" means the commissioner of revenue;

14 (3) "department" means the Department of Revenue;

15 (4) "dividend fund" means the fund established by AS 43.-
16 23.045;

17 (5) "individual" means a natural person;

18 (6) "permanent fund dividend" means a right to receive a
19 payment from the dividend fund;

20 (7) "physically present" means being physically present in
21 the state, or, if not physically present, absent only

22 (A) for medical treatment that is not available in the
23 state;

24 (B) for service in Congress; or

25 (C) to accompany, as a spouse or dependent, an indi-
26 vidual who is eligible for a permanent fund dividend under (A) or
27 (B) of this paragraph;

28 (8) "state resident" means an individual who is physically
29 present [IN THE STATE] with the intent to remain permanently in the

CORRECTION

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

1 IN THE SENATE

BY HENSLEY, KERTTULA, ABOOD
AND ELIASON

2

SENATE BILL NO. 444

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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8 conduct involving permanent fund dividends; and
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 43.23.005(a) is amended to read:

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

15

(1) on the date of application the individual is a state
16 resident; [AND]

17

(2) the individual was a state resident for a period of at
18 least six consecutive months immediately preceding April 1 of the
19 current dividend year; and

20

(3) on the date of application the individual is physically
21 present in the state.

22

* Sec. 2. AS 43.23.015(b) is amended to read:

23

(b) The department shall prescribe and furnish an application
24 form for claiming a permanent fund dividend. The application must
25 contain a statement of eligibility and a certification of residency in
26 substantially the following form:

27

I certify that

28

() I am a state resident on the date of this ap-

29

plication, [AND] I have been a state resident for at

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least six months immediately preceding April 1 of the current dividend year, and I am physically present as defined in AS 43.23.095 on the date of this application; or

() (name), the individual on whose behalf I am applying, is a state resident on the date of this application, [AND] has been a state resident for at least six months immediately preceding April 1 of the current dividend year, and is physically present as defined in AS 43.23.095 on the date of this application.

I understand that a false claim of eligibility [RESIDENCY] to obtain a permanent fund dividend for myself or for another is a criminal offense, [AND] that if convicted I will forfeit future [PERMANENT FUND] dividends, and that I must repay all [PERMANENT FUND] dividends that have been paid to me. I understand that if I wilfully misrepresent, exercise gross negligence, or recklessly disregard a material fact regarding my eligibility for a permanent fund dividend I will forfeit the dividend, be subject to a civil fine of up to \$5,000, and lose my eligibility for the next five dividends. I understand that these penalties are [THIS PENALTY IS] in addition to any criminal penalties imposed.

(signature of individual,
parent, guardian, or other
authorized representative)

1 * Sec. 3. AS 43.23.035 is amended by adding a new subsection to read:

2 (c) An individual who, in claiming a permanent fund dividend,
3 wilfully misrepresents, exercises gross negligence, or recklessly
4 disregards a material fact pertaining to eligibility forfeits the
5 dividend, is subject to a civil fine of up to \$5,000, and loses eli-
6 gibility to receive the next five dividends following the forfeited
7 dividends. The commissioner may commence proceedings in court to
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10 Sec. 43.23.095. DEFINITIONS. In this chapter,

11 (1) "Alaska permanent fund" means the fund established by
12 art. IX, sec. 15 of the state constitution;

13 (2) "commissioner" means the commissioner of revenue;

14 (3) "department" means the Department of Revenue;

15 (4) "dividend fund" means the fund established by AS 43.-
16 23.045;

17 (5) "individual" means a natural person;

18 (6) "permanent fund dividend" means a right to receive a
19 payment from the dividend fund;

20 (7) "physically present" means being physically present in
21 the state, or, if not physically present, absent only

22 (A) for medical treatment that is not available in the
23 state;

24 (B) for service in Congress; or

25 (C) to accompany, as a spouse or dependent, an indi-
26 vidual who is eligible for a permanent fund dividend under (A) or
27 (B) of this paragraph;

28 (8) "state resident" means an individual who is physically
29 present [IN THE STATE] with the intent to remain permanently in the

1 state or, if the individual is not physically present [IN THE STATE],
2 intends to return to the state and

3 (A) is absent only for any of the following reasons:

4 (i) medical treatment that is not available in
5 the state;

6 (ii) service in the Congress; or

7 (iii) to accompany, as a spouse or dependent, an
8 individual who is eligible for a permanent fund dividend
9 under (i) or (ii) of this subparagraph; or

10 (B) has not been absent during the six months immedi-
11 ately preceding April 1 for more than five consecutive years and
12 is absent only for any of the following reasons:

13 (i) [(A)] vocational, professional, or other spe-
14 cific education for which a comparable program was not
15 reasonably available in the state;

16 (ii) [(B)] secondary or postsecondary education;

17 (iii) [(C)] military service;

18 [(D) MEDICAL TREATMENT

19 (E) SERVICE IN CONGRESS;]

20 (iv) [(F)] other reasons that [WHICH] the commis-
21 sioner may establish by regulation; or

22 (v) [(G)] service in the Peace Corps;

23 (9) [(8)] "year" means a calendar year.

24 * Sec. 5. This Act takes effect January 1, 1989.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/2/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88
Mr. President:

DATE TURNED INTO OFFICE 3/11/88

State Affairs Committee considered SB 444

eligibility for permanent fund dividends and providing civil penalties for certain conduct involving permanent fund dividends; efd

and recommended:

replace with CS _____ same title
 new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

Committee Backup Attached

S B

4 5 5

5/6/88
= calendar

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 455 (L&C)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 4/30/88 Agency Affected: Office of the Governor
Title: "An Act relating to commercial BRU: Executive Operations
fishing vessel safety...
Sponsor: Zharoff and Szvmanski Components: Executive Office
Requestor: Zharoff

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL		16.8				
CONTRACTUAL		10.3				
SUPPLIES		.6				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		27.7				

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		27.7				
FEDERAL FUNDS						
OTHER						
TOTAL		27.7				

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Michael A. Nizich, Director Phone: 465-3616
Division: Division of Administrative Services Date: 5/4/88

Approved by Commissioner: [Signature] Date: 5/6/88
Agency: Office of the Governor

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

RECEIVED
MAY 6 1988
LEGISLATIVE FINANCE

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 455 (L&C)

Section 1 of CSSB 455(L&C) establishes in the Office of the Governor the Fishing Vessel Safety Interim Commission. The Commission consists of "at least seven members" appointed by the Governor. These members are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sections (c) through (e) outline the work requirements of the Commission as follows:

- Suggest, review, and recommend legislation, regulations, and guidelines that address safety equipment requirements and educational programs that contribute to the successful application of safety and life-saving equipment on commercial fishing vessels.
- Consider and review proposals relating to the development and implementation of educational programs at the high school and community college level to increase the level of awareness regarding the application and use of safety and life-saving equipment on commercial fishing vessels.
- Consider guidelines, requirements, and standards relating to the maintenance, servicing, and upgrading of safety and life-saving equipment and recommend a permanent method for the State to evaluate current and future needs relating to legislation, regulations, guidelines, and standards for commercial fishing vessel safety.
- Report its recommendations to the Governor and the Legislature by January 15, 1989.

It is assumed that the Commission will have a start-up date of no earlier than July 1, 1988, with a termination date of January 16, 1989.

This fiscal analysis estimates travel and per diem for seven Commission members from throughout Alaska (air fares based on travel to and from Juneau, Anchorage, Dillingham, and Kodiak for Juneau, Anchorage, Dillingham, Kodiak, Kenai, Sitka, and Ketchikan) to four 3-day meetings. Total travel costs: 16.8.

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 455 (L&C)

Contractual expenses included in the estimate are meeting room rental, advertising, and clerical services for transcription of minutes and production of reports for four meetings in FY 89; long distance telephone charges, printing and binding of the final report to the Governor; and photocopies. Estimates are based on previous expenditures for similar councils, interim commissions, and working groups. Total Contractual: 10.3.

Estimates for supplies are for normal office supplies (paper, pens, folders, etc.) for use at Council meetings and for Council publications. Total Supplies: .6.

SENATE COMMITTEE REPORT

FURTHER

5/2/88

DATE TURNED INTO OFFICE 5/5/88

Mr. President:

FINANCE Committee considered SB 455

safety equipment for commercial fishing vessels; efd

and recommended

replace with _____ CS _____) same title
 or adopt _____ CS SB 455 (LTC)) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

21.5

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: Dan Hinkle, Dan Duncan, Paul Lee, Dan Frick, Fred H. Stewart]

[Handwritten signature: Rick Hafford]
Chairman signature and recommendation

Committee Backup attached

3/21/88 s/x:0
No SFC

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Office of the Governor
 Title: An Act relating to safety equipment for commercial fishing... PERU: Executive Operations
 Sponsor: Labor and Commerce Comm. Components: Executive Office
 Requestor: Sen. Tim Kelly

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL		16.8	33.7	16.8		
CONTRACTUAL		4.4	8.8	10.3		
SUPPLIES		.3	.6	.6		
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		21.5	43.1	27.7		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		21.5	43.1	27.7		
FEDERAL FUNDS						
OTHER						
TOTAL		21.5	43.1	27.7		

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Michael A. Nizich, Director Phone: 465-3616
 Division: Division of Administrative Services Date: 3/14/88

Approved by Commissioner: _____ Date: 3/14/88
 Agency: Office of the Governor

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

RECEIVED
MAR 23 1988

116 456

Original sponsors: Zharoff and Szymanski

1 IN THE SENATE
2
3 CS FOR SENATE BILL NO. 455 (L&C)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FIFTEENTH LEGISLATURE - SECOND SESSION
6 A BILL
7 For an Act entitled: "An Act relating to commercial fishing vessel safety
8 and safety equipment; and providing for an effective
9 date."
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
11 * Section 1. INTERIM COMMISSION ESTABLISHED; REPORT. (a) There is
12 established in the Office of the Governor the Fishing Vessel Safety Interim
13 Commission. The commission consists of at least seven members appointed by
14 the governor. Members must be knowledgeable and experienced in the areas
15 of commercial fishing vessels or vessel safety and life-saving methods and
16 systems. At least one member shall represent each of the following:
17 (1) the commercial fishing industry;
18 (2) fishermen's associations;
19 (3) the safety equipment industry, which includes businesses
20 manufacturing, supplying, or servicing marine safety and life-saving equip-
21 ment;
22 (4) the marine insurance industry;
23 (5) education; and
24 (6) the United States Coast Guard.
25 (b) Commission members are entitled to per diem and travel expenses
26 authorized for boards and commissions under AS 39.20.180.
27 (c) The purpose of the commission is to suggest, review, and recom-
28 mend legislation, regulations, guidelines, and standards that address
29 safety equipment requirements and educational programs that contribute to
the successful application of safety and life-saving equipment on

1 commercial fishing vessels.

2 (d) The commission shall consider and review proposals relating to
3 the development and implementation of educational programs at the high
4 school and community college level to increase the level of awareness among
5 participants and potential participants in the commercial fishing industry
6 with respect to the necessity, application, and use of safety and life-sav-
7 ing equipment on commercial fishing vessels. The commission shall encour-
8 age the involvement of fishermen's associations, processor associations, or
9 other trade associations or industry groups in the implementation of pro-
10 posed educational programs. The commission shall also consider guidelines,
11 requirements, and standards relating to the maintenance, servicing, and
12 upgrading of safety and life-saving equipment and recommend a permanent
13 method for the state to evaluate current and future needs relating to
14 legislation, regulations, guidelines, and standards for commercial fishing
15 vessel safety.

16 (e) The commission shall report its recommendations to the governor
17 and the legislature by January 15, 1989.

18 (f) The commission is terminated January 16, 1989.

19 (g) In this section "commission" means the Fishing Vessel Safety
20 Interim Commission established under (a) of this section.

21 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:


P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Co-Chairman
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: May 3, 1988

RE: CS For Senate Bill 455 - "An Act relating to safety equipment for commercial fishing vessels; and providing for an effective date."

I respectfully request that CSSB 455 be scheduled for a hearing before the Senate Finance Committee.

The bill originally established minimum requirements for safety equipment on commercial fishing vessels. As amended by the Senate Labor and Commerce Committee on April 29, it now only provides for creation of a Fishing Vessel Safety Interim Commission in the Office of the Governor. The commission will look at the difficult issues both I and other interested legislators encountered in trying to establish safety equipment standards for Alaska's commercial fishing industry, and will report back to the legislature in January.

Thank you for your consideration of this request.

Attached, as backup, is the following information:

1. Letter from the United Fishermen's Marketing Association in Kodiak, which initiated the legislation.
2. List of 1987 fishing vessel casualties, from the February issue of the Alaska Fisherman's Journal.
3. Article about legislative efforts to address safety on commercial fishing vessels, from the March issue of American Politics.

United Fishermen's Marketing Association, Inc.

P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453



TO: Senator Fred Zharoff
Representative Cliff Davidson

FROM: Jeff Stephan

DATE: Friday, 5 February, 1988

SUBJECT: The possibility of State legislation that would require minimum safety equipment aboard commercial fishing vessels

Thank-you both for the time that you spent with us during your recent visit to Kodiak. As you may remember, one of the issues that we raised with you was the possibility of establishing State legislation that would require minimum safety equipment aboard commercial fishing vessels. We have had very preliminary discussions regarding this issue, and it appears that the industry could probably support something of this nature. I have had similar discussions in the past regarding this issue with many members of the fishing community with regard to Federal legislation that has been proposed that attempts to do that same thing. This Federal legislation is still in Congress because of certain objections regarding certain aspects of the bill that do not relate to safety equipment. My discussions with the industry regarding the Federal legislation also led me to believe that the fishing community could support the concept of requiring minimum safety equipment aboard commercial fishing vessels. UFMA hopes to have a general meeting sometime soon to further judge industry reaction to State or Federal requirements that propose to impose minimum requirements for life-saving and safety equipment on commercial fishing vessels.

One approach would be to address Survival Suits, Life Rafts, and EPIRBS.

Survival Suits: For example, legislation may require that survival suits be required aboard all commercial fishing vessels by July 1, 1988. This legislation may require that all survival suits be equipped with some form of locating-light by January 1, 1989. There are several very good lights for this use sold already. Preliminarily, it appears that strobe-lights are best, but it may be that any light sold for this purpose is sufficient for purposes of legislation. "Lights", as used for purposes of this legislation should be defined, and I'm sure that the Coast Guard could help with this definition. Further, this legislation may require that all survival suits be equipped with TYPE B EPIRBS by January 1, 1990.

LIFE RAFTS: Legislation may stipulate that life rafts are required aboard all commercial fishing vessels. Legislation may contemplate exempting vessels of less than 5 net tons from this requirement. Certain life raft standards should be established. The Coast Guard could also help in this regard since they have existing requirements and standards for life rafts.

Senator Fred Zharoff
Representative Cliff Davidson
5 February, 1988
page 2

EPIRBS: Legislation may want to stipulate that at least 1 CLASS A EPIRB be required on a commercial fishing vessel. The legislation may contemplate exempting vessels of less than 5 net tons from this requirement also. TYPE B EPIRBS should be considered as a requirement for use on survival suits (as mentioned above).

Although there is proposed Federal legislation that addresses this issue, it has faced much objection in the past because of many provisions that do not relate to safety equipment. Also, there is no way of knowing how long we will have to wait for Federal legislation to address this issue. Alaska is certainly the State that will be most affected by the passage (or lack of passage) of this type of legislation. Maybe it is time for Alaska to act unilaterally in dealing with minimum life-saving and safety-equipment requirements.

Thank-you for your attention to our concerns regarding this issue. Please contact me if your have any questions.

cc: UFMA Directors



er Reads oat Crew''

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Mary Lou Sanelli

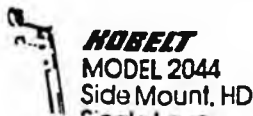


Fishing Vessel Casualties in 1987

Date	Name	Length/Type	Location	Outcome
Jan. 4	Lady Blue	90	Unimak Pass	Sank
Jan. 16	Henna	83/tender	Whale Head Is.	Sank
Jan. 28	Laura	48	Shelikof Strait	Sank
Feb. 4	Pacific Star	40	Aleutians	Rogue wave, 1 lost
Feb. 6	Amatuli	112/crab	St. George Is.	Fire, quelled
Mar. 8	Birgit N	123/crab	Aleutians	Grounded & destroyed
Mar. 20	All Alaskan	340/ processor	Pribilofs	Grounded, later demolished
Apr. 4	Katy Too	30	Icy Straits	Intentional grounding, total loss
Apr. 8	Naknek	81/tender	Wells Bay	Grounded, sank
Apr. 21	Jamie Lynn	93/crab	Dutch Harbor	Sank under tow; 3 lost
May x	Ranger	55/longliner	Sitka	Sank
May x	Tempest	230/ processor	Pribilofs	Skiff accident, 1 lost
May 5	Hotline	42/halibut	Kodiak	Sank, 4 lost
May 5	Chavro	halibut	Seward	Sank, 1 lost
May 5	Kahitna II	47/halibut	Cape Resurrection	Sank
May 5	Kvingo	38/halibut	Coronation Is.	Sank
June 11	Southern Viking	tender	Sutwick Is.	Sank
June 16	Miss Universe	86/tender	Semidi Is.	Sank, 3 lost
June 16	Annihilator	44/seine	Chignik	Burned
June 18	Jenner Sea	26	Lynn Canal	Grounding
June 19	Cape Chacon	44/seine	Cordova	Sank, 1 lost
July 2	Magi	30	Naked Is.	Sank
July 8	Cross Sound	seine	Grenville Channel	Sank
July 14	Galaxy		Dutch Harbor	Boom accident, 1 lost
July 25	Binkl	43	Admiralty Island	Sank, 1 lost
July 29	Marge	36	Grand Is.	Sank
Aug. 4	Charneal	28	Marrowstone Is.	Capsized, towed
Sep. 19	Nordfjord	127	Gulf	Sank, 5 lost
Oct. 1	Wicklow	28	Astrolab Bay	Grounded & destroyed
Nov. 1	Rex	40/troll	Sitka	Sank, 1 lost
Nov. 5	Uyak II	130/rawl	Kodiak	Sank, 4 lost

(Editor's Note: This list of casualties was compiled from past issues of the JOURNAL, plus information supplied by several Coast Guard Marine Safety Offices. The MSO for Western Alaska (everything west and north of Icy Bay, except for Prince William Sound, which has its own MSO) also supplied the JOURNAL with a list of about 125 vessel casualties; the list included no details except to note approximately 40 injuries and deaths.

DO YOU WANT THE BEST BUILT, BEST BACKED, BEST PRICED ENGINE CONTROLS AVAILABLE TODAY?



2.

3813 Legation St. NW
Washington DC 20015
February 26, 1988

Representative Cliff Davidson
Alaska State Legislature
PO Box V
Juneau, AL 99811

Dear sir:

I was interested to learn of the commercial fishing safety bill you have introduced into the Alaska legislature. As you will see from the attached article, my wife and I have been working hard at getting a similar bill through the US Congress. A lot of opposition has come from fishing vessel owners and their lobbyists, who claim to be speaking for the crewmen in places like Alaska.

One of the reasons the House bill has been having a hard time is because the safety issue is linked to the issue of compensation for injured seamen. Finding a solution to this problem which vessel owners and trial lawyers can accept has been very difficult. At a markup meeting of the House Merchant Marine and Fisheries Committee on February 24, the safety portion of the bill was voted on and approved. But nothing was reported out pending further discussions of the compensation issue, hopefully in the next few weeks.

If the compensation issue cannot be solved, most of the Committee members are ready to approve a simple safety bill that calls for life rafts, EPIRBs, survival suits, emergency communications equipment and other safety equipment which the Coast Guard may prescribe. The only outspoken opponent of this course is Congressman Don Young of Alaska, who stated for the record that he would oppose a pure safety bill on the floor.

Since our son died on the Western Sea in 1985, some two hundred people have lost their lives on commercial fishing vessels. Many of them would have been saved if simple survival equipment were required. For example, the four crewmen who died when the Wayward Wind sunk off Kodiak last month would still be alive if there had been a life raft available. I read the other day of a 3800 ton processor with a crew of 105 which has just been completed; under existing law the owners need only provide life jackets for the crew- no life rafts, no survival suits, no seaworthiness inspections. The law before the House (HR 1841) would require processors to be inspected and carry survival equipment.

I certainly support your efforts in Alaska. A similar bill is before the California legislature. But I really think that the issue must be dealt with on the Federal level, since fishing vessels operate in so many different jurisdictions. Peggy and I would welcome your support, particularly with the Alaska Congressional delegation.

We look forward to hearing from you.

Sincerely yours,

Bob Barry

THE MISSION OF PEGGY BARRY

by Ivy Harper

Letters have always been a lifeline. For Alaskan authorities in the summer of 1985, a soggy but still legible letter in the jeans pocket of a body found floating near Kodiak Island enabled them to identify the fair-haired youth.

For Robert and Peggy Barry, letters that summer from their 20-year-old son Peter provided a glimpse of Alaska through his observing eyes. Throughout his first trip to the John Muir coast, Peter Barry sent home stories about the soaring scenery, the Kodiak bears, camping on the beach, clam digging, hosing the "slime line" at a fish processing plant and finally, tragically, working the deck on a salmon boat. And, despite death, those letters provide his family with a lasting presence and treasured memories of the introspective Yale anthropology student.

The discovery of Peter Barry's body on August 20, 1985, was the first indication local fishermen had that all was not well with the Western Sea, the boat Barry had boarded five days earlier with its captain and four other crewmen. Coast Guard employees immediately began search and rescue operations in a fruitless effort to locate the overdue ship and any survivors.

Meanwhile, Robert and Peggy Barry received the telephone call that every parent fervently hopes never to receive—the one that regretfully informs them. But in this case, Alaskan state officials, Coast Guard authorities and resident fishermen were not merely messengers bearing the grievous news of Peter Barry's accident; they were willing, forthright critics of the country's commercial fishing industry. What Robert learned during his two-day stay in Alaska to claim the body of his middle child forever altered the Barrys' lives and plunged them into the maze-like world of fishing vessel safety and insurance.

Robert learned that his son unsuspect-

ingly boarded a deathtrap—an unstable vessel with rotten planking that had never been inspected and did not carry lifeboats or rafts, survival suits or an emergency position indicator radio beacon (EPIRB). And he learned that had the owner of the 70-year-old wooden purse seiner lived, he wouldn't have broken a single law.

As implausible as that sounded to them at the time, the Barrys said, they were told that this nation's 33,000 uninspected commercial fishing vessels are virtually regulation-free. Vessel owners are not required to provide basic safety and survival equipment, boats need not be inspected, stability checks are voluntary and neither training for crew nor licensing for skippers is required.

"We were stunned, shocked," Peggy said. "We absolutely couldn't believe what we were hearing."

It got worse. They discovered that commercial fishing has by far the poorest safety record of any American industry and that many locals were also "disgusted by the lack of regulation"—information that especially haunted the Barrys in those first few months after their son died. If art imitated life, Willie would wail "Mama don't let your babies grow up to be fishermen," because the accidental death rate for cowboys of the sea is seven times the industrial average. Some 250 boats and an average of 75 lives are lost every year in vessel flooding, capsizing, fire or explosion disasters. And yet this is an industry that, to this day, puts the final responsibility for safety and survival on individual crew members.

National Fisherman magazine once editorialized that crewmen should provide their own immersion suits (they cost about \$300) or "switch to another boat." The editorial drew an angry response from the director of the U.S. Marine Safety Association: "What about a quality life raft (\$3,350) that is properly



Pam Glass

Commercial fishing has by far the poorest safety record of any American industry and many are "disgusted by the lack of regulation."

installed and serviced or an EPIRB. (8375) with an up-to-date battery? Should a crewman provide these also? We think not. Crewmen—fishermen—should not have to worry about these items any more than a passenger on a liner or ferry should worry about whether there are adequate life jackets. Those who go to sea to fish should only worry about whether they can do an already difficult job—catching fish."

The issue of voluntary versus mandatory safety regulations was being debated with little urgency or intensity when the Barrys entered the vessel safety picture in the fall of 1985. Overwhelmed by their loss and the feeling that their son was a victim not of the sea but of negligence, the Barrys vowed to push for reform. They joined a passionate, but geographically scattered, group of marine safety advocates whose crusade for change had been building momentum, but whose efforts had been stymied by, among other factors, lack of a persistent voice in Washington, D.C. The Barrys, Washington residents, became that voice. And Peggy, however emotionally unprepared, became spokesman by default when her husband left for Sweden in the fall of 1985 to head the U.S. delegation to the Conference on Disarmament in Europe.

She remained in the United States, immersing herself in marine safety issues, and expanded her role as mother, homemaker and part-time volunteer teacher to include outspoken, well-versed marine safety advocate. As her understanding of the issue deepened, so did her commitment. She collected newspaper clippings, pored over statistics, contacted legislators, met with editorial writers, attended hearings, drafted testimony and dissected opposing testimony. Slowly, Peggy transformed two rooms in her four-story northwest Washington home into a national clearinghouse for other relatives of victims at sea—Pete Zimny, Robert Darling, Leland and June Welsh, Rosemary and Roderick Hofer, Maxine and Don Klingenberg and Mary Finch Hoyt (press secretary to Rosalyn Carter)—parents who shared a common anguish and sense of frustration at the appalling safety record of an industry that had claimed the lives of people they loved.

And now, two and a half years after her involvement began, Peggy is roundly credited as the engine that has propelled safety reform legislation to its present position, which is miles farther than it has ever been before. As this issue of *American Politics* goes to press, unprecedented and historic fishing vessel safety

and insurance legislation is moving swiftly (by Hill standards) through Congress,

National Fisherman once editorialized that crewmen should provide their own \$300 immersion suits or "switch to another boat."

and some version of several bills under consideration is expected to pass both houses and become law this spring.

The Commercial Fishing Industry Vessel Safety and Compensation Act, introduced by Rep. Gerry Studds (D-Mass.), establishes requirements for basic safety equipment and provides guidelines for timely compensation for temporary injuries incurred by seamen on fishing industry vessels. Similar legislation has been introduced in the Senate by Sen. John Chafee (R-R.I.). Ardent safety crusaders, while supportive of the Studds-Chafee legislation, prefer HR 1836, a bill introduced by Rep. Mike Lowry (D-Wash.), which addresses safety alone. In addition to mandating safety equipment, it requires crew licensing and Coast Guard inspection of vessels. But Lowry's bill is unlikely to move because it has a price tag and doesn't deal with insurance. (The industry has been plagued for years by unaffordable and unavailable marine insurance. Throughout the last two decades, concern for safety has been systematically eclipsed by industry concern about insurance premiums and caps on compensation.)

Not everyone is optimistic that safety legislation is imminent. Richard Hiscock, an independent marine safety expert and advocate who operates out of his home in North Chatham, Mass., said, "I won't believe legislation until I see President Reagan sign the bill."

Hiscock's skepticism is understandable. Historically, fishing vessel owners have virulently opposed Government regulation on the grounds that Government intervention will subject them to rules drafted by bureaucrats "who don't

know the pointy end from the fat end of a boat." A fiercely independent, rugged, often well-off group of entrepreneurs, they dismiss legislators and safety advocates as outsiders unable to comprehend what happens on a fishing boat who will submarine the fishing industry with costly, ignorant legislation. And an unspoken fatalism, a sense that "when your number's up, it's up," pervades the brotherhood—all the more reason to resist legislation.

"The fishing industry has traditionally lobbied that regulation would put them out of business," said John Sabella, director of the North Pacific Fishing Vessel Owners Association's fishing vessel safety program. "I'm not trying to argue the logic of this, I'm simply telling you that the historical record [shows] Congress has always bought the argument that it would be a financial penalty that the industry couldn't bear as well as the idea that these guys are buying into a share of the risk as well as the reward. Fishermen are joint-venture partners going for a share of the catch, not employer-employee. And for a long time, Congress generally regarded them as capable enough seamen, because fishing is a profession that's traditionally been handed down from father to son, that they could cope with the normal hazards they face." normal hazards they face."

Safety advocates generally agree with that overview, but argue that many fisheries (the Bering Sea, for example) have expanded rapidly and that the traditional image of the pop-and-sons operation no longer holds true across the board. "Congress's resistance [to regulating the fishing industry] stems from their collective desire to cling to one last frontier in America," said Hiscock, explaining why Congress has allowed the industry to go unregulated despite its disastrous safety record. "A great romance about fisheries exists, very similar to farming but even more intense. I know coastal representatives have been clinging to that sentiment for years. Unfortunately, vessel owners are businessmen who need to be regulated or they have a tendency to run amok."

And while there is no one voice that speaks for the industry, it is generally agreed that lobbyists for vessel owners and fish processors have been extremely effective at the Congressional committee level in maintaining the status quo. And as fishing methods and processing operations have become increasingly sophisticated, so too have industry representatives. Not only does the commercial fishing industry belong to and operate general trade associations and foundations, it runs species-specific ones that protect salmon, shrimp and tuna fishing

interests. Until recently, these lobbyists battled any kind of mandatory regulation.

That Peggy Barry managed, in just over two years, and on a personal outlay of \$1,000 for postage and photocopying costs, to focus so much attention on the safety issue that even vessel owners are resigned to the inevitability of safety legislation, is nothing short of remarkable.

The Barrys were unaware when they began their quest for mandatory safety legislation that they were going up against a phalanx of industry members wary of an outsider pushing a safety agenda. "We have been referred to as outsiders," said Peggy Barry. "The *Alaska Fishermen's Journal* turned that into an advantage, suggesting that the industry needed 'outsiders' to point out their faults." Odd as it may sound, considering the number of marine fatalities, Peggy was the first relative of a victim-at-sea ever to agitate and become a household name within the close-knit fishing industry, an industry dominated by men, many of whom are described by one Hill aide as "supremely macho." And so, while Peggy is publicly praised by some in the industry, there is a strong undercurrent of resentment toward her among many who maintain that Robert Barry's credentials and connections (he is the deputy director of Voice of America and served as U.S. Ambassador to Bulgaria from 1981 to 1984) are the real reason for the Barrys' inroads.

"I never have and never will use my official position in the Government in any capacity on this issue," said Robert Barry. "When I go and meet with anybody, I do it as a private citizen on my own time. Besides, Peggy has, for the most part, met with the congressmen and senators and others, and they certainly don't react to her because of my position. Whatever influence we have is not based on who we are, but on what we have to say."

"Fishermen have been dying for years, then one Yalie dies and the whole world seems to get up in arms," said Sabella. "Fishermen die far away in remote places and they're never seen again and the public basically doesn't pay much attention. Peter Barry happened to be a very publicized case, and his parents happened to be extremely influential people. The sad stories of the Barrys and Peter Zimny and a few other of these people have been touted in the media ad nauseum, and yet there are people that have been dying up here. When the A-boats went down that took 14 people, most of whom were related, from the small community of Anacortes. There are

enormous tragedies in this industry, and all of us regret them greatly and work

Barry learned during his stay in Alaska to claim the body, that his son had unsuspectingly boarded a deathtrap—an unstable vessel with rotten planking that had never been inspected and did not carry lifeboats.

very hard to insure that they don't happen."

Sabella is widely recognized for his safety program, a voluntary training course funded in part by the National Marine Fisheries Service. He calls his work the most extensive effort to control casualties ever undertaken in the U.S. commercial fishing industry and says the program has essentially become a condition of employment along the Seattle waterfront.

Peggy Barry praises Sabella's program, but she maintains that parts of it are too costly for the average vessel owner. And because it is voluntary, it has no impact on operators who are not conscientious enough to participate if not required to by law. "It's a splendid program, but it serves the elite of the industry. To say that it completely covers all the fishing vessels on the Seattle waterfront simply is not true. The Western Sea was based out of Seattle."

She adds that Sabella once told her, "Your son never would have gotten a job around here." She responded that she wished that sort of exclusivity had prevented her son from being hired in Alaska. The fact remains, she says, that 15,000 college students just like Peter, naive about the dangers and difficulties of commercial fishing, migrate to Alaska

every summer.

"Young people respond to such ads as that which appeared in the February 1986 issue of *Newsweek*, which virtually promised a summer's income of \$5,000 to \$7,000," she said in testimony before Congress. She also cites the cover of a popular outdoors magazine that dazzled readers with the claim that they could earn \$8,000 an hour fishing in Alaska.

Earl Comstock, fisheries aide to Sen. Ted Stevens (R-Alaska), says it is unfair to accuse the fishing industry of luring college students to Alaska through hyped-up advertisements. "I'm from the West Coast and I had to do quite a bit of checking to find out how you go about getting a deck job on a fishing boat," Comstock said.

And Sabella argues that no competent vessel owner will take on a college student as a crew member. Talking about Alaska, Sabella said: "A lot of the college kids work in the processing plants, but getting a deck job on a fishing boat is something guys spend years trying to do. College kids go to Alaska because it's a great romance and they wind up working the slime line on a fish processor and decide once is enough, so most of them don't come back. A salmon seiner can gross a million bucks a year and the crew makes real good money... on a high line boat. Jobs on those boats are hard to come by and few between.

"The reason he (Peter Barry) got a job on a bum boat was because he didn't know what he was doing. College students don't just stroll out here for the summertime and get a high-paying job on a good boat. Fishing is a real career—this is serious business. That guy that drove the Western Sea probably couldn't hire anybody else but a college kid."

Asked if college students offered a deck job should automatically respond, "I wouldn't want to join any crew that would have me for a member," Sabella said. "Probably."

"The root of the problem of fishing vessel safety is human error," Sabella stresses. "Today's fishing vessels are better built and equipped than they ever have been historically. And yet no vessel is ever safe from the threat of human mistake. A lot of the critics of the fishing industry are parlor people who simply do not realize that making a living at sea is dangerous no matter how you cut it."

Sabella was correct in his assessment of the captain of the Western Sea. As the Barrys discovered later, the crewman Peter Barry replaced quit because he was nervous about the ship's seaworthiness. Too inexperienced to be

suspicious. Peter only felt lucky that a deck job had opened up. After earning next to nothing digging for clams and leaving the cannery where he had worked earlier rather than cross a picket line, he was eager to land a job where he might earn good money while experiencing the beauty and excitement of a state he had studied for years. The Western Sea seemed like the fulfillment of a promise.

But knowing that the Western Sea was not a typical "good" boat is small solace to the Barrys, because regardless of how hard their son had to look to find his deck job and how many warning signs he innocently overlooked, he found a job that killed him. And the Barrys contend that, naive or not, college student or career fisherman, all workers should be protected, to the extent humanly possible, from a hazardous working environment.

A National Transportation Safety Board study issued in September strongly echoed the Barrys' position: "In many casualties, the absence of basic safety equipment drastically narrowed the chances that the captain and the crew members would survive in the harsh sea environment." In a scathing indictment of the commercial fishing industry, the N.T.S.B. called for sweeping regulation of fishing vessels and fishermen, in many cases proposing rules far stricter than those incorporated in pending Congressional legislation. "The use of voluntary training and manuals to improve the poor safety record in the industry was started at least as early as 1968, but has not been successful," the Board concluded.

The Barrys, deeply troubled to hear their son typecast pejoratively as a "Yalie," have let the taunts slide. Early on, as they realized how intense the opposition to their efforts would be, they decided to concentrate strictly on the cause.

But, if they were to be labeled as well-connected outsiders, the Barrys would not allow vessel owners the luxury of being insiders and of representing, as they so often claimed, the "man on the boat." In testimony before the Senate Commerce Committee last December, Peggy wrote: "In three years of hearings on fishing vessel safety and insurance there has been a great deal of testimony, much of it repetitious, from lobbyists and industry groups. What is missing is the testimony of the men on the boats, the crewmen ... who risk their lives and health with every voyage. We have learned that frank testimony of this sort is hard to come by, because the crewman who calls for new mandatory safety requirements is likely to be, at best, unpopular in the industry and, at worst, unemployable. We [the Barrys] have been con-

tacted by a number of professional fishermen who want to tell their story,

Fishing vessel owners have virulently opposed regulations drafted by bureaucrats "who don't know the pointy end from the fat end of a boat."

but fear being blackballed if they do so."

In her testimony, Peggy's forceful public persona surges to the fore, punctuated by a lancet-like delivery that has moved more than a handful of House and Senate members. But privately, she still trembles when she talks about Peter's death, struggling to finish sentences, occasionally trailing off. And both Peggy and Robert, while aware that they are the point people for the issue, shy away from credit, stressing work done by other victims' relatives and rerouting the conversation back to the issues involved in the safety campaign.

But Capitol Hill aides working on the issue unanimously recognize the Barrys as catalysts for the movement. "There is no question that, with respect to the safety issue, the Barrys have been and continue to be the carriers of the flag," said Jeff Pike, fisheries aide to Studds. Echoing that sentiment, a top Senate commerce aide said, "It is fair to say that the safety issue has moved because of the force and sheer doggedness of Peggy Barry."

Hiscock is more blunt. "I always suspected it would take the death of the right-slash-wrong person before Congress would seriously act on this issue."

The Barrys' work has raised the consciousness of representatives of inland districts, but more important, they have had a profound impact on legislators from fishing districts. Ted Stevens is one of them.

"I think if you look at people like Senator Stevens, it is clear that he is now more interested in the safety aspect than he is in the insurance aspect—a complete turnaround from his position two years

ago," Robert Barry said. "Before 1985, Congressional hearings were held on fishing vessel safety and insurance, but the whole thrust of the thing was vessel insurance. That's what the committee was interested in, and that's what the industry was interested in. Then, the focus began to change, the safety part began to be more important."

So much so, the Barrys believe, that even if an impasse develops among negotiators hammering out the insurance parts of the legislation, a safety-only bill will sail through Congress. But the Barrys, like Hiscock, are not completely confident that their efforts won't be thwarted at the last minute. Last spring, a safety and insurance bill was shelved when the Association of Trial Lawyers of America successfully opposed a cap on liability claims. "I think that there is maybe a 50-50 chance that the part of the bill that deals with compensation will not work out [and] there won't be a compromise that's findable between the trial lawyers and the fishing industry," Robert says of this year's bill.

Although the controversial cap has been removed from the current bill, Peggy said a case could be made that "some of the trial lawyers and some in the fishing industry, their main goal is to see that no safety bill passes. One way of accomplishing that is to link the two and make sure they never get separated."

But even without the insurance provision, the bill may pass strictly as safety legislation. "I've heard from everybody, and people are generally reluctant to say this, but they've all said, Well, if there's no way of finding something that will cover the insurance problem, then something's going to be done about safety without the insurance provisions," said Robert hopefully.

Safety should not be held hostage to insurance, Peggy added, pointing out that the Administration, the Congress and the industry itself are on record in favor of mandatory safety equipment. (The Coast Guard recently reversed its opposition to mandatory safety equipment.) That may make it difficult to kill the safety parts of the legislation simply because separate insurance problems cannot be resolved. And not to pass a bill, insurance notwithstanding, is, the Barrys say, "to condemn people to death."

Listen to Peggy Barry describe the last three years of her life, and the stories of John Walsh and Candy Lightner come to mind. What those parents-turned-activists are to missing children and Mothers Against Drunk Driving, Peggy Barry is to fishing vessel safety.

The bereaved parent as catalyst for ma-

job legislation—a painfully familiar theme throughout the 1980s. And now the decade closes with yet another movement galvanized by the upset of life's natural order—a child predeceasing his parents.

Peggy knows she can never bring her son back. She knows that the light feeling parents have when all their children are alive and healthy will never return. She also knows that more fishermen will return safely to their shores because of her work.

She reads from a letter she received from an American couple now living in Australia whose 29-year-old son drowned when the *Uyak II*, a commercial fishing vessel, capsized in a calm sea in one minute because of a flooded lazaret. "If an experienced fisherman like Greg can get caught by lack of knowledge of a boat's reliability, what possible chance do these young college students who flock by the thousands to work in the summer have? Some have no idea whatsoever what they are doing, what the job description is, what basic safety rules to follow, what survival gear is needed or how to use it, nor any idea of what to do in case of an accident. No other industry in the United States could get away with this type of neglect for their employees' welfare."

Letters are a lifeline, but now the lifeline stretches between parents hoping somehow to make sense of tragedy and to channel their grief into constructive change. "We've asked only for the safest possible workplace and that the man in the boat be adequately prepared," Peggy said. "This is all we ask for, not miracles." ●

Ivy Harper, a Washington writer, worked for former Rep. John J. Cavanaugh and for the United States Tuna Foundation. This is her second contribution to American Politics.

continued from page 37

Unfortunately, the Democrats have been able to convince a lot of people over the years that they are the only ones who really give a damn about minorities. They spend a lot of time talking about the problems that affect minorities most acutely. And, most important, they spend a lot of time talking to minorities. If Republicans hope to wean blacks, Hispanics and other traditional Democrats away, we're going to have to begin doing the same thing. It's going to take more than talking, though, to produce some real gains for those minorities. It remains to be seen whether either party is up to that task. ●

Does the Deficit Matter?

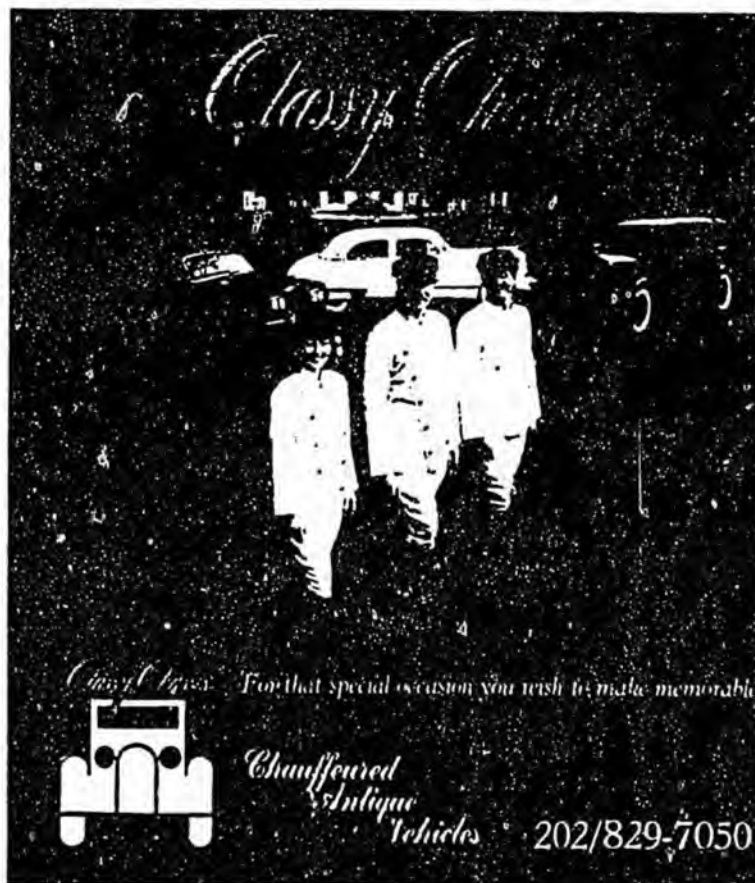
BALANCED BUDGETS AND AMERICAN POLITICS

By JAMES D. SAVAGE

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Since the stock market crash in October, reducing the federal government's budget deficit has become a top priority among our nation's leaders. A topical issue but hardly a new one, balancing the federal budget has been a perennial source of conflict in American political life. James D. Savage here explores the causes and development of the nation's preoccupation with this issue, arguing that the American fascination with the idea of balancing the federal budget is deeply rooted and reflects more than a contemporary concern about interest rates, inflation, depression, or even the outcome of the ongoing budget debates. \$27.95

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Introduced: 2/16/88
Referred: Labor and Commerce and
Resources

5-1961A

1 IN THE SENATE

BY ZHAROFF AND SZYMANSKI

2

SENATE BILL NO. 455

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

10 * Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 35. SAFETY STANDARDS FOR COMMERCIAL FISHING VESSELS.

12 Sec. 30.35.010. SURVIVAL SUITS. (a) A vessel engaged in
13 commercial fishing in state water is required to be equipped with a
14 survival suit for each person on board the vessel.

15 (b) A survival suit required under (a) of this section must be
16 equipped with a safety light and a Class B emergency position in-
17 dicating radio beacon.

18 (c) In this section "safety light" means a United States Coast
19 Guard approved personal rescue light.

20 Sec. 30.35.020. LIFE RAFTS AND LIFE BOATS. A vessel larger than
21 five net tons engaged in commercial fishing in state water is required
22 to be equipped with a United States Coast Guard approved life raft or
23 life boat, or a combination of life rafts or life boats, capable of
24 accommodating every person on board the vessel.

25 Sec. 30.35.030. CLASS A EPIRBs. A vessel larger than five net
26 tons engaged in commercial fishing in state water is required to be
27 equipped with a Class A emergency position indicating radio beacon.

28 * Sec. 2. APPLICABILITY. The requirement of AS 30.35.010(b), enacted
29 by sec. 1 of this Act, that survival suits be equipped with lights applies

1 to all vessels engaged in commercial fishing after December 31, 1988. The
2 requirement of AS 30.35.010(b), enacted by sec. 1 of this Act, that sur-
3 vival suits be equipped with Class B emergency position indicating radio
4 beacons applies to all vessels engaged in commercial fishing after
5 December 31, 1989. The requirement of AS 30.35.030, enacted by sec. 1 of
6 this Act, that certain vessels be equipped with Class A emergency position
7 indicating radio beacons applies to all vessels larger than five net tons
8 engaged in commercial fishing after December 31, 1988.

9 * Sec. 3. This Act takes effect July 1, 1988.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB (L&C)
PUBLISH DATE: 4/29/88 SENATE

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Office of the Governor
 Title: An Act relating to safety equipment for commercial fishing BRU: Executive Operations
 Sponsor: Labor & Commerce Committee Components: Executive Office
 Requestor: Senator Tim KELLY

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *J. M. [Signature]* Phone: _____
 Division: *J. Soc. L&C* Date: *4/29/88*

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

3/15/88
S(LHC)
RIS

FISCAL NOTE

REQUEST: -

Revision Date: _____ Agency Affected: Public Safety
Title: "An act relating to safety equipment for commercial fishing vessels..." BRU: Fish & Wildlife Protection
Sponsor: Zharoff and Symanski Components: Marine Enforcement
Requestor: Senate Labor & Commerce Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

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	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509
Division: Fish & Wildlife Protection Date: 2/24/88
Approved by Commissioner: A. Hoetski, Dep. Comm. Date: 3-14-88
Agency: Department of Public Safety

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
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Impacted Agency(ies)

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MAR 14 1988

SB 455

SENATE COMMITTEE REPORT

FURTHER

FINANCE

4/30/88

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered SB 455 _____

safety equipment for commercial fishing vessels; efd

and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Chairman signature and recommendation

[] Committee Backup attached

Waived 5/2

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: RESOURCES
FINANCE

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88 DATE TURNED INTO OFFICE _____

Mr. President:

L&C Committee considered SB 455

safety equipment for commercial fishing vessels; efd

map out
and recommended:

replace with CS SB 455 LOC same title
 attached amendment(s) and new title

do pass

+ do pass.

do not pass

no recommendation

individual recommendations

further referral to _____

DFW

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS
[Signatures]

OTHER RECOMMENDATIONS

Tim Kelly - Do Pass
Chairman signature and recommendation

Committee Backup Attached

S B

4 5 9

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 4/27/88

3/24/88
Mr. President:

Finance Committee considered SB 459

confidentiality of shellfish stock abundance surveys conducted by the Department of Fish and Game; efd

and recommended

[] replace with _____ CS _____) [] same title
[x] or adopt _____ CS SB 459 (Res)) [x] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [x] previous
[x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: John P. ...]

Rick Halford (do pass)
Chairman signature and recommendation

[] Committee Backup attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION SSB 459 (Res)
PUBLISH DATE: 3/24/88

3/19/88
5 (Res)
Fin
B

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Confidentiality of shellfish
abundance surveys
Sponsor: Zharoff
Requestor: Senate Resources

Agency Affected: Fish and Game
BRU: Commercial Fisheries
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Al Didier Phone: 465-4120
Division: Commercial Fisheries Date: 3/16/88
Approved by Commissioner: Wm. H. Kelly Date: 3-16-88
Agency: Fish and Game

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

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MAR 17 1988
LEGISLATIVE FINANCE

58459



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish & Game	DIVISION Commercial Fish.	BILL NUMBER SB 459	SPONSOR Zharoff
SHORT TITLE OF BILL Confidentiality of shellfish stock abundance surveys			
DEPARTMENT POSITION Neutral			
PREPARED BY Al Didier	DATE 3/16/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3-16-88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Unknown
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill would make confidential until the end of the current fishing season; all information from shellfish abundance surveys which show the abundance of shellfish by sampling location.

ANALYSIS OF BILL/PROGRAM EFFECTS

See Attached

AMENDMENTS PROPOSED

(c) Shellfish stock abundance survey information that reveals shellfish catch by sampling location is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.120 until the close of the fishing season for which the survey was conducted.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Analysis of Bill/Program Effects

PRO: This bill may permit the department to open seasons in areas which have small, localized shellfish populations. If the locations of these populations are publicized prior to the fishing season, effort could be concentrated and the department would be reluctant to allow a fishery. If some fishermen are not aware of these concentrations, effort may be more dispersed and a short opening might be possible without the risk of overharvest.

CON: Assessment surveys are often used to set guideline harvest levels prior to a fishery. The public has always had the opportunity to critique these surveys and confirm the validity of the guideline harvest levels before the season. This process will not be possible under the proposed legislation.

Shellfish populations are generally not highly mobile and shellfish surveys often indicate the availability of recruitment in future years. Since this information will only remain confidential during the current season, a fisherman could refer to the survey conducted the previous year to identify probable shellfish concentrations. This may tend to dilute the possible benefits cited above.

Original sponsor: Zharoff

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 459 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidentiality of crab stock
7 abundance survey information held by the Department
8 of Fish and Game; and providing for an effective
9 date."

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

11 * Section 1. AS 16.05.815 is amended to read:

12 Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN REPORTS AND
13 RECORDS. (a) Except as provided in (b) and (c) of this section,
14 records required by regulations of the department concerning the
15 landings of fish, shellfish or fishery products, and annual statis-
16 tical reports of buyers and processors required by regulation of the
17 department are confidential and may not be released by the department
18 except that the department may release

19 (1) any of its records and reports to the National Marine
20 Fisheries Service as required for preparation and implementation of
21 the fishery management plans of the North Pacific Fishery Management
22 Council within the fishery conservation zone; however, information
23 released to the National Marine Fisheries Service under this paragraph
24 may not disclose the identity of individual fishermen or their ves-
25 sels;

26 (2) any of its records and reports to the Department of
27 Revenue and to the Commercial Fisheries Entry Commission to assist
28 them in carrying out their statutory responsibilities;

29 (3) records or reports of the total value purchased by each

1 buyer to a municipality that levies and collects a tax on fish, shell-
2 fish, or fishery products if the municipality

3 (A) requires records of the landings of fish, shell-
4 fish, or fishery products to be submitted to it for purposes of
5 verification of taxes payable; and

6 (B) maintains the confidentiality of reports and
7 records that it receives under this paragraph;

8 (4) such records and reports as necessary to be in confor-
9 mity with a court order;

10 (5) on request, the report of a person to the person whose
11 fishing activity is the subject of the report; and

12 (6) fish tickets and fish ticket information to the divi-
13 sion of fish and wildlife protection, Department of Public Safety.

14 (b) Except as provided in (c) of this section, records [RECORDS]
15 or reports received by the department which do not identify individual
16 fishermen, buyers, or processors or the specific locations where fish
17 have been taken are public information.

18 * Sec. 2. AS 16.05.815 is amended by adding a new subsection to read:

19 (c) Crab stock abundance survey information that reveals crab
20 catch by sampling location is confidential and is not subject to
21 inspection or copying under AS 09.25.110 - 09.25.120 until the close
22 of the fishing season for which the survey was conducted.

23 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259
DURING SESSION:
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474


RECEIVED MAR 29 1988

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Co-Chairman
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: March 29, 1988

RE: CS For Senate Bill 459 - "An Act relating to the confidentiality of crab stock abundance surveys conducted by the Department of Fish and Game; and providing for an effective date."

CSSB 459 moved out of the Senate Resources Committee last week with five "do pass" recommendations. The bill carries a zero fiscal note. It is now before the Senate Finance Committee. I respectfully request that CSSB 459 either be waived by the Finance Committee or scheduled for a hearing at the earliest possible opportunity.

Attached is a sectional analysis, a copy of the Department of Fish and Game's analysis of the bill, and the fiscal note. The amendment suggested by Fish and Game was adopted. "Shellfish" also was changed to "crab" to be more specific. It was the feeling of the Resources Committee that the pros in Fish and Game's analysis far outweigh the cons.

Thank you for your consideration of this request.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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SECTIONAL ANALYSIS

Revised 3/28/88

Senate Bill 459 - "An Act relating to the confidentiality of crab stock abundance surveys conducted by the Department of Fish and Game; and providing for an effective date."

- SECTION 1 CONFIDENTIAL NATURE OF CERTAIN REPORTS AND RECORDS. Adds references to new paragraph (c) in the statutes that describe which Department of Fish and Game information is confidential and which is public information.
- SECTION 2 New paragraph (c). Crab stock abundance survey information that reveals crab catches by sampling location is confidential until after the close of the fishing season for which the survey was conducted. This information is specifically exempted from the public records statutes, AS 09.25.110 - 09.25.120.
- SECTION 3 Immediate effective date.

1 IN THE SENATE

BY ZHAROFF

2

SENATE BILL NO. 459

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the confidentiality of shellfish
7 stock abundance surveys conducted by the Department
8 of Fish and Game; and providing for an effective
9 date."

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

11 * Section 1. AS 16.05.815 is amended to read:

12 Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN REPORTS AND
13 RECORDS. (a) Except as provided in (b) and (c) of this section,
14 records required by regulations of the department concerning the
15 landings of fish, shellfish or fishery products, and annual statis-
16 tical reports of buyers and processors required by regulation of the
17 department are confidential and may not be released by the department
18 except that the department may release

19 (1) any of its records and reports to the National Marine
20 Fisheries Service as required for preparation and implementation of
21 the fishery management plans of the North Pacific Fishery Management
22 Council within the fishery conservation zone; however, information
23 released to the National Marine Fisheries Service under this paragraph
24 may not disclose the identity of individual fishermen or their ves-
25 sels;

26 (2) any of its records and reports to the Department of
27 Revenue and to the Commercial Fisheries Entry Commission to assist
28 them in carrying out their statutory responsibilities;

29 (3) records or reports of the total value purchased by each

1 buyer to a municipality that levies and collects a tax on fish,
2 shellfish, or fishery products if the municipality

3 (A) requires records of the landings of fish, shell-
4 fish, or fishery products to be submitted to it for purposes of
5 verification of taxes payable; and

6 (B) maintains the confidentiality of reports and
7 records that it receives under this paragraph;

8 (4) such records and reports as necessary to be in confor-
9 mity with a court order;

10 (5) on request, the report of a person to the person whose
11 fishing activity is the subject of the report; and

12 (6) fish tickets and fish ticket information to the divi-
13 sion of fish and wildlife protection, Department of Public Safety.

14 (b) Except as provided in (c) of this section, records [RECORDS]
15 or reports received by the department which do not identify individual
16 fishermen, buyers, or processors or the specific locations where fish
17 have been taken are public information.

18 * Sec. 2. AS 16.05.815 is amended by adding a new subsection to read:

19 (c) Information contained in a shellfish stock abundance survey
20 that reveals the location of shellfish harvests is confidential and is
21 not subject to inspection or copying under AS 09.25.110 - 09.25.120
22 until the close of the fishing season during which the survey is
23 conducted.

24 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3-10 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88 DATE TURNED INTO OFFICE _____
Mr. President:

RESOURCES Committee considered ~~ES~~ SB 459 (b)

confidentiality of shellfish stock abundance surveys conducted by the
Department of Fish and Game; efd

and recommended:

Morarty
 replace with CS SB 459 (res) same title
 new title

- attached amendment(s) and
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

OFM

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

McLellan

Carlin Spurgul

Paul Gish

John Blodgett Do Pass
Chairman signature and recommendation

Committee Backup Attached