SCOMM
114:18

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sponsor Statement
Senate Bill 146
"The Crew Fishing License Fee"

Senate Bill 146 increases the cost of a crew-member's fishing license from $30 per resident and $90 per non-resident to $60 for a resident and $125 for a non-resident license. At the current time, 60% of the crew-member license fees goes into the Fisherman's Fund.

Senate Bill 146 reduces the percentage of license fees that goes into the fund from 60% to 39%. At the 39% level, the Fisherman's Fund will have the same amount of funding it receives now. The current balance of the fund is over $9 million.

Senate Bill 146 directs 61% of the crew license fees to the Fish & Game Fund to be made available for appropriation to Commercial Fisheries Management in the FY 00 operating budget.

The intent is to direct the crew license fees to benefit the commercial fisheries industry.

CS FOR SENATE BILL NO. 146(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/27/99
Offered: 4/22/99

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the amount and disposition of the commercial fishing license fee and to the fishermen's fund; and providing for an effective date."

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

*** Section 1.** LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act either destroys a valid existing dedication of the proceeds of a state tax or license or creates a new dedication of the proceeds of a state tax or license.

*** Sec. 2.** AS 16.05.470(a) is amended to read:

(a) A person appointed by the commissioner to sell licenses under AS 16.05.440 - 16.05.480, except salaried employees of the state, shall retain the sum of **10** [15] percent of the fee for the issuance of a license. An agent shall transmit monthly to the commissioner all license fees collected by the agent, less the authorized commission, together with a full accounting of the fees. The commissioner shall make monthly remittances of the fees collected to the proper state official. The commissioner is not liable for defalcation or failure to account for the fees collected

by an agent, but the commissioner shall require a bond in the sum the commissioner considers adequate, conditioned upon the faithful accounting of money collected.

*** Sec. 3.** AS 16.05.480(a) is amended to read:

(a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is **$60** [$30] for residents [,] and **$125** [$90] for nonresidents. Except for those **that** [WHICH] are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

*** Sec. 4.** AS 16.05.480 is amended by adding a new subsection to read:

(e) Except as provided under AS 16.05.470 and AS 23.35.060, fees collected from the sale of crewmember fishing licenses under this section may be appropriated into the fish and game fund.

*** Sec. 5.** AS 23.35.060(a) is amended to read:

(a) There is created a fund, designated as the "fishermen's fund." The Department of Revenue is the custodian of the fund and the Department of Labor shall administer it. The fund shall be composed of **39** [60] percent of the money derived by the state from all commercial fishermen's licenses and money appropriated to carry out the purpose of this chapter.

*** Sec. 6.** This Act takes effect January 1, 2000.

FISCAL NOTE

No. 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BIL Bill Version: CSSB 146(FIN)
(S) Publish Date: 4-27-99

Revision Date/Time (Note if correction):
Title: Com. Fish License/Fishermen's Fund

Sponsor: Senate Finance
Requester: Senate Rules

Department Affected: Labor
BRU: Workers' Compensation
Component: Fishermen's Fund

COMPONENT SERIAL NO. 343

EXPENDITURES/REVENUES: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE	(20.9)	(53.3)	(53.3)	(53.3)	(53.3)	(53.3)
FUND SOURCE #	1032	1032	1032	1032	1032	1032

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

This bill provides for a change to the revenue formula and affects the amount of money that is required under law to be deposited into the Fishermen's Fund. The impact to the Fishermen's Fund is that designated revenue from the sale of commercial fishing licenses will be reduced. While the increase to the resident license fee combined with a reduction to the percentage designated for the Fishermen's Fund results in an increase of approximately $3.60 per license, the same is not true for nonresidents. Nonresident licenses will increase form $90.00 to $125.00, however, with the percentage of the funds designated as Fishermen's Fund being reduced from 60% to 36%, this translates into a reduction per nonresident license of $9.00. Revenue figures are projections only, due to the unpredictability of the fishing industry and the level of participants in any given year.

Prepared by: Paul Grossi, Director
Division: Workers' Compensation
Phone : 465-2790
Date/Time: 4/22/99 2:44 PM

Approved by Commissioner: Ed Flanagan, Commissioner
Agency: Department of Labor
Date: 4/22/99

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FISCAL NOTE

No. 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: CSSB 146(FIN)
(S) Publish Date: 4-22-99

Revision Date/Time (Note if correction) _____
Dept. Affected Fish and Game
Title Amount and Disposition of Commercial Fishing
BRU Administration
License Fee
Component Administration
Sponsor Senate Finance Committee
Requester Senate Finance Committee
Component Serial No. 479

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous - Vendor Commission	3.4	9.3	9.3	9.3	9.3	9.3
TOTAL OPERATING	**3.4**	**9.3**	**9.3**	**9.3**	**9.3**	**9.3**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**361.4**	**905.8**	**905.8**	**905.8**	**905.8**	**905.8**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts		(105.1)	(105.1)	(105.1)	(105.1)	(105.1)
1037 GF/Mental Health						
Other 1024 Fish & Game Fund	3.4	114.4	114.4	114.4	114.4	114.4
TOTAL	**3.4**	**9.3**	**9.3**	**9.3**	**9.3**	**9.3**

Estimate of any current year (FY99) cost: 210.4

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Assumption: The number of licenses sold annually will remain constant and approximately the same number as sold during FY98 (25,273).

Fishermen's Fund: During FY00, a $73.9 increase is anticipated, and during FY01 and therefore, a $40.6 increase is projected.

Currently, the General Fund receives $500.1 which is 40% of the crewmember license fees. Starting in FY00, the fees will be allocated to the F&G Fund. During FY00, the $105.1 allocated in Administration's budget for administratering the licensing program will be collected as GF/Program Receipts, and will switch to Fish and Game funds in FY2001.

Prepared by Kevin Brooks Kevin Brooks Phone 465-5999
Division Director Date/Time 4/21/99 2:06 PM
Approved by Commissioner Frank Rue Conan Bruce for Date 4/19/99
Agency Department of Fish and Game

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 19, 1999

Senator John Torgerson, Chair
Senate Finance Committee
State Capitol, Room 516
Juneau, Alaska 99801

Re: SB 146 - Alaska Fishermen's Fund; legal issues

Dear Senator Torgerson:

In keeping with my agreement not to surprise you with legal issues that might arise concerning SB 146, I am providing you with this letter which will set out some matters for consideration by the committee. SB 146 proposes to increase the fees for commercial fishing licenses and to make a proportional reduction in the percentage of those fees that are dedicated to the fishermen's fund (AS 23.35.060). The balance of the fees not dedicated to the fishermen's fund would be deposited in the fish and game fund for further appropriation by the legislature.

I advised you in our telephone conversation that the Department of Law will take the same position regarding this bill as it did regarding the change in dedication for tobacco tax receipts. For the change in the rate of dedication of the tobacco tax, we reaffirmed our earlier advice that any change in the rate of dedication threatens the continuance of the dedicated fund. However, at that time we acknowledged the history in the Minutes of the Constitutional Convention which appears to support the argument that a change in rate does not trigger an end to a pre-existing dedication. I have also attached a memorandum written to former Representative Gardner concerning legislative action which raised many of the dedicated fund issues present in SB 146. In that memorandum we cautioned Representative Gardner that a change in the rate of dedication, even though proportional with an increase in the amount of the fee, would pose a serious threat to the continuance of the dedication to the fishermen's fund.

There is an additional legal issue raised in SB 146. It is believed that your bill is intended to only direct a part of the fees paid for crewmember licenses to the Fish and Game Fund. However, section 4 of the bill provides that "[e]xcept as provided in AS 16.04.470 and AS 23.35.060, fees collected from the sale of commercial fishing licenses" would be deposited in the fish and game fund. This may apply to more receipts than you intended, as it could include fees paid for limited entry and interim use permits as well as crew member licenses. That would eliminate the general fund program receipts upon which the CFEC's budget is based and reduce contributions to the general fund by approximately $2.5 million. This would send the revenue now generated by the CFEC to the fish and game fund rather than to the general fund as provided

in existing law. If this is not your intent, we recommend that you consider changing section 4 to make it clear that only the balance collected from crewmember licenses will be deposited in the fish and game fund.

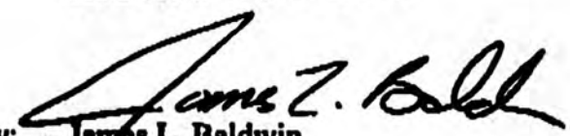
An additional amendment is suggested to the provisions in the bill appearing at page 2, lines 10 - 12. This provision appears to require the automatic deposit of a part of the commercial license fees into the fish and game fund. The fish and game fund receives revenues dedicated under federal law. The bill should be amended to add a provision that makes it clear that license fees are deposited in the fish and game fund only if the legislature appropriates the money there. This approach would be similar to the treatment given oil conservation surcharge receipts. See AS 46.08.020.

Finally, we believe you can achieve your intent in a way that avoids the dedicated fund issue involving the fishermen's fund. This issue remains a matter of concern even if the committee accepts the previously suggested amendments. You may consider another approach in lieu of changing the rate of dedication. Under this approach, the bill would leave existing law intact and would impose an additional crewmember fishing license fee generating revenue for the state general fund. The new fee provision would state that the legislature may appropriate the new revenues derived to the fish and game fund. This approach would be similar to the method used to increase the tobacco tax in AS 43.50.190. This method accomplishes your intent while avoiding the dedicated fund issue discussed above.

Let me know if we can assist you further in the committee's consideration of SB 146.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By: James L. Baldwin
Assistant Attorney General

JLB:jn
Enclosure

cc: Pat Pourchot, Legislative Director
Office of the Governor

Chrystal Smith, Legal Administrator
Deborah Bjur, Assistant Attorney General
Department of Law

OPINION NO. 22

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

June 2, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Legislation on Fishermen's Fund
Our File: J-66-580-78

Dear Chairman Gardiner:

This responds to your inquiry of May 3, 1978, with respect to the legislation enacted last year based on advice from this office which we now believe to have been in error. */

In brief, one of our attorneys who was relatively unfamiliar with the nuances of the prohibition against dedicated funds, Alaska Const., art. IX, §7, worked with your committee last year to develop legislation which would eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits. The results are contained in sections 8 and 14, chapter 105, SLA 1977. In effect, they exempted permit holders from license fees and

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*/ You also requested advice on the proper disposition of interest earned from the Fishermen's Fund. We have not yet reached a conclusion on that point but we are now convinced that no legislation is required on it, i.e., either the interest is already a part of the dedication or it is not. When our researches lead us to a conclusion, we will advise.

provided for payment into the Fishermen's Fund from monies collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial licenses. It was then believed that this arrangement would not offend the constitutional prohibition. We now conclude otherwise.

The Alaska Constitution, art. IX, §7, provides in relevant part as follows:

> The proceeds of any state tax or license shall not be dedicated to any special purpose [with exceptions not here relevant]. . . . This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of the ratification of this section [1956] by the people of Alaska.

There can be no question that the framers of the constitution fully intended, with only the exceptions expressly stated, to bar for all time the additional dedication of any new or different state revenues for special purposes. 3, 4, and 5 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2297-2301, 2361-2390, 2401-2416, 3415-3420. The reasons for their doing this were many, but basically the reasons came down to the proposition that neither the chief executive (as the State's chief budget officer) nor the legislature (as the State's only appropriating body) should have its hands tied financially by a myriad of dedicated funds for a myriad of

diverse programs and that each program must compete annually with all others for its fair share of available money. Id.

The prohibition, however, is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. The dedication of license fees for the Fishermen's Fund was first made in 1951 and later amended in 1955. §4, ch. 100, SLA 1951; am §1, ch. 99, SLA 1955; now codified as AS 23.35.060. Hence, when the constitution was ratified there existed a dedication of

> 60 percent of the money derived by the state from all commercial fishermen's licenses, including clam diggers' licenses. . . .

"[T]he continuation of any dedication . . . existing" is not prohibited. In an early opinion by this office, we opined that the legislature could neither increase the percentage of the dedication nor the amount of the levy so as to increase the amount to be dedicated. 1959 Op. Atty. Gen. No. 7. To do so would alter the dedication, not continue it. To do so would also increase the dedication, i.e., dedicate still more of the source of revenue and thereby constitute still another dedication in violation of the constitution. Nor, of course, could a new source of revenue be tapped if the dedicated source were lost or abandoned.

Amendments which could have allowed such alterations were expressly rejected by the framers. 4 MINUTES 2378-2390, 2401-2411. In sum, it was concluded that, with respect to dedicated funds, the only power left to the legislature is the power to repeal the existing dedications. Id. */

In 1977, AS 23.35.060, which provides for the Fishermen's Fund dedication, was amended to read, in relevant part, as follows:

> 60 percent of the money derived by the state from each crewmember fishing license issued under AS 16.05.480, an equal amount of the money derived by the state from each commercial fisherman who is issued a permit under AS 16.43 [the Limited Entry Act]. . . .

The effect of the amendment is to add a dedication of a new and different revenue source, i.e., the annual fee for a commercial fisheries entry permit. It does not continue an existing dedication. **/

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*/ It goes without saying that this lack of power to alter does not apply to the other exceptions, the permanent fund and dedications required under federal law.

**/ Arguably, the Buy-Back Fund established under AS 16.43.-310-320 is also a new and prohibited dedication. However, the wording of the constitution's prohibition was designed to exclude certain kinds of dedications, e.g., sinking funds, retirement funds, employment security funds. 4 MINUTES 2363 (dialogue between delegates Davis and White). The Buy-Back Fund might fall into this excepted class. We are inclined to think not, but the answer is uncertain.

It can be argued that the annual fee for a commercial fisheries entry permit supplants the annual fee for a commercial fisheries license for gear operators. That is, those persons no longer pay the latter, AS 16.05.480 as amended by §8, ch. 105, SLA 1977, effective January 1, 1978, but rather only the former. AS 16.43.160; 20 AAC §05.220. Not only is this argument essentially the same as those resoundingly rejected by the framers of our constitution, 4 MINUTES 2378-2390, 2401-2412, but it is simply not correct. The 1977 amendment to AS 23.35.060 unquestionably makes a dedication from a new and different source of revenue. It does not matter that the amount is the same.

When the license fee for gear operators was eliminated, the dedication for the Fishermen's Fund was reduced to 60 percent of the money received thereafter under AS 16.-05.480 from crewmen's license sales. The purported dedication from fees collected from permit sales and renewals is a nullity -- without any force or effect.

The exception from the prohibition against dedicated funds is for the "continuance" of "existing" dedications. Reducing a dedication makes it different from that which existed, i.e., an existing dedication is not continued when it is reduced any more than it is when it is increased. Under the plain language of the constitution, any change is

prohibited. The prior opinion referred to above, 1959 Op. Atty. Gen. No. 7, basing its conclusion on the framers' rejection of a proposed amendment which would have allowed for reductions in existing dedications, concluded that any alteration was a nullity. That conclusion is logically sound. There is some contradictory material in the Convention minutes, however. 4 MINUTES 2405 (dialogue between delegates V. Rivers and White, the latter acting as spokesman for the committee). How the courts would rule is uncertain, but they will give some weight to remarks of committee spokesmen. Walters v. Cease, 388 P.2d 263, 265-266 (Alaska 1964).

Here there was no reduction in the amount to be dedicated, i.e., 60 percent of a certain source, but rather an alteration -- partial elimination -- in the source. The license fees for commercial fishermen were changed to exempt persons who hold permits. Thus, the present dedication is not a "continuance" of an "existing" dedication. This office issued still another opinion soon after Statehood in which we opined that the reduction of the source invalidates the remaining dedication. 1959 Op. Atty. Gen. No. 14. A reduction of the source was deemed to be, in effect, a repeal of the entire dedication.

This result is admittedly drastic, but there can be no question that it is logically correct. The framers

rejected every effort to amend the exception language so as to allow a dedication to be altered. 4 MINUTES 2401-2405 (Rivers amendment), 2409-2412 (Kilcher amendment). Delegate White, however, acting as a spokesman for the committee, assured the delegates that, despite the logical implications of the constitution's language, an existing allocation of funds from a given source could be raised or lowered, i.e., say, from 3 percent to 6 percent, that the "continuance" did not apply to rates. He also specified that it did apply so as to prevent the legislature from discontinuing an allocation and then starting it up again sometime in the future. And he said, "The committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that." Id., at 2405. How much of his remarks, if any, will be judicially accepted is unknown. But we are inclined to the view that the dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from crewmember commercial licenses -- all that is left of the source. */

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*/ The convention expressly rejected an amendment that said, "but discontinuance shall not preclude reinstitution," and therefore, reinstitution of a commercial license fee for operators would not ordinarily allow reinstitution of that dedication. 4 MINUTES 2409-2412 (Kilcher amendment).

The problem now is whether the legislature's mistaken action last year, which resulted from our incorrect advice, can be cured. We believe that legislation retroactive to the first of this year -- the effective date of the applicable amendments from last year -- will supersede last year's legislation and cure the mistaken action. We have prepared legislation to accomplish this. It can, as you have suggested, be added to CSSB 428 am. A copy is enclosed. Last year's discontinuance of a portion of the source of the dedication was so obviously based on a mistake as to its legal effect, and its purpose could so easily have been accomplished in the manner we have proposed here that the courts should give this curative legislation its effect.

We hope this answers the committee's questions.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Enc: Proposed Legislation