

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2693 SLC HB 15 - HB 16

2092

Commercial Fish
Section A
Number of Loans by Location
FY '83 to 3-18-83

Anchorage	20	Total Dollars Loaned
Bethel	2	FY '83
Chugiak	2	\$5,302,625
Cordova	8	
Dillingham	1	
Eagle River	3	
Fairbanks	2	
Gustavus	2	
Haines	2	
Homer	8	
Juneau	7	
Kasilof	3	
Kenai	4	
Ketchikan	2	
King Cove	1	
Kipnuk	1	
Kodiak	10	
Nenana	1	
Ninilchik	1	
Palmer	1	
Petersburg	4	
Sand Point	1	
Seward	2	
Sitka	2	
Soldotna	4	
Valdez	1	
Ward Cove	1	
Wrangell	2	
Yakutat	1	
	<u>99</u>	

Commercial Fish
Section A
FY '83 to 3-18-83
Loans Made \$35,000 - Under

Anchorage	\$ 16,200
Bethel	13,500
Cordova	20,250
Cordova	18,000
Fairbanks	32,850
Gustavus	19,850
Gustavus	3,660
Haines	34,965
Haines	30,000
Juneau	13,590
Juneau	12,500
Juneau	31,500
Juneau	19,425
Juneau	18,900
Juneau	31,050
Juneau	15,000
Kasilof	18,000
Ketchikan	27,000
Nenana	7,200
Petersburg	31,500
Petersburg	27,000
Petersburg	18,000
Sitka	17,000
Sitka	18,000
Ward Cove	13,000
Wrangell	19,425
Wrangell	18,000
Yakutat	30,000
28 Loans	<u>\$575,465</u>

Commercial Fish
Section B
No. of Loans by Location
FY '83 to 3-18-83

Aleknayik	4	
Anchorage	3	
Chefornak	1	
Clarks Point	1	
Cordova	2	
Dillingham	1	
Egegik	1	
Falls Bay	1	
Gakona	1	
Haines	5	
Hoonah	1	
Iliamna	1	
Juneau	3	
Kasilof	2	
Kenai	1	
Kodiak	5	
Koliganek	3	
Kwigillingok	1	
Levelock	1	
Manokotak	5	
Naknek	1	
New Stuyahok	3	
Ninilchik	1	
Pelican	2	
Petersburg	8	
Pilot Point	2	
Port Alexander	1	
Port Heiden	3	
Sand Point	2	
Seward	4	
Sitka	2	
Soldotn	3	
Tep-akee Springs	1	
Togiak	2	
Unalakleet	1	
Whittier	2	
	<u>81</u>	
		Total Dollars Loaned FY '83 \$4,495,102

Commercial Fish
Section B
FY '83 to 3-18-83
Loans Made \$35,000 - Under

Aleknagik	\$ 35,000
Anchorage	33,300
Anchorage	10,000
Clarks Point	18,380
Gakona	24,000
Haines	17,100
Haines	22,050
Haines	18,000
Hoonah	27,375
Juneau	30,750
Koliganek	22,500
Pelican	33,750
Petersburg	27,364
Petersburg	28,500
Petersburg	11,800
Port Alexander	18,000
Sitka	3,600
Sitka	18,000
Soldotna	33,750
Togiak	30,000
Togiak	25,710
Unalakleet	20,325
Whittier	18,300
Whittier	20,000
24 Loans	<u>\$547,554</u>

from Don Hostak - 2510

Commercial Fish
Section A - for permits only
Number of Loans by Location
FY '83 to 3-18-83

		Total Dollars Loaned FY '83 \$5,302,625
Anchorage	20	
Bethel	2	
Chugiak	2	
Cordova	8	
Dillingham	1	
Eagle River	3	
Fairbanks	2	
Gustavus	2	
Haines	2	
Homer	8	
Juneau	7	
Kasilof	3	
Kenai	4	
Ketchikan	2	
King Cove	1	
Kipnuk	1	
Kodiak	10	
Nenana	1	
Ninilchik	1	
Palmer	1	
Petersburg	4	
Sand Point	1	
Seward	2	
Sitka	2	
Soldotna	4	
Valdez	1	
Ward Cove	1	
Wrangell	2	
Yakutat	1	
	<u>99</u>	

of loans

Section A	99 loans	\$ 5,302,625
Section B	<u>81</u>	<u>4,495,102</u>
TOTAL	180	<u>\$ 9,797,727</u>

Under \$35,000

- 575,465 - sec A

547,554 - sec B

TOTAL

1,123,019 (\$979,772.70 is 10% of total)

Commercial Fish
Section A - for permits only
FY '83 to 3-18-83
Loans Made \$35,000 - Under

Anchorage	\$ 16,200
Bethel	13,500
Cordova	20,250
Cordova	18,000
Fairbanks	32,850
Gustavus	19,850
Gustavus	3,660
Haines	34,965
Haines	30,000
Juneau	13,590
Juneau	12,600
Juneau	31,500
Juneau	19,425
Juneau	18,900
Juneau	31,050
Juneau	15,000
Kasilof	18,000
Ketchikan	27,000
Nenana	7,200
Petersburg	31,500
Petersburg	27,000
Petersburg	18,000
Sitka	17,000
Sitka	18,000
Ward Cove	13,000
Wrangell	19,425
Wrangell	18,000
Yakutat	30,000
28 Loans	<u>\$575,465</u>

Commercial Fish
 Section B - rural targeted loans
 No. of Loans by Location
 FY '83 to 3-18-83

		Total Dollars Loaned FY '83
Aleknagik	4	\$4,495,102
Anchorage	3	
Chefornak	1	
Clarks Point	1	
Cordova	2	
Dillingham	1	
Egegik	1	
Falls Bay	1	
Gakona	1	
Haines	5	
Hoonah	1	
Iliamna	1	
Juneau	3	
Kasilof	2	
Kenai	1	
Kodiak	5	
Koliganek	3	
Kwigillingok	1	
Levelock	1	
Manokotak	5	
Naknek	1	
New Stuyahok	3	
Ninilchik	1	
Pelican	2	
Petersburg	8	
Pilot Point	2	
Port Alexander	1	
Port Heiden	3	
Sand Point	2	
Seward	4	
Sitka	2	
Soi dotna	3	
Tenakee Springs	1	
Togiak	2	
Unalakleet	1	
Whittier	2	
	<u>81</u>	

Commercial Fish
Section B rural targeted loans
FY '83 to 3-18-83
Loans Made \$35,000 - Under

Aleknagik	\$ 35,000
Anchorage	33,300
Anchorage	10,000
Clarks Point	18,380
Gakona	24,000
Haines	17,100
Haines	22,050
Haines	18,000
Hoonah	27,375
Juneau	30,750
Koliganek	22,500
Pelican	33,750
Petersburg	27,364
Petersburg	28,500
Petersburg	11,800
Port Alexander	18,000
Sitka	3,600
Sitka	18,000
Soldotna	33,750
Togiak	30,000
Togiak	25,710
Unalakleet	20,325
Whittier	18,300
Whittier	20,000
24 Loans	<u>\$547,554</u>

Dick - Re: HB 15 - fishing loans

Attached is a working draft on SCSCS HB 15 with the acceleration clause deleted. Billy Berrier seemed to walk that "fine line" in his letter. Concerning Mr. Berrier last line, I'm not sure if there would be a correlation between loan repayment + residency. Don Hostack, off the record, stated probably more defaults in state than out of state.

Peter Goll called and indicated his desire to discuss this amendment with you + possibly testify. Evidently, Rich Untling also wishes to testify.

Reasons Why The Acceleration Clause Should Not Be Included!

- 1) Impractical - If an individual has resided in state for 2 yrs (+ in the case for permits has crewed for 3 yrs), the fisherman will not take the boat down South to fish. The fishery is in poor straits in the lower 48.
- 2) Possibly unconstitutional - It has to be shown there is a connection between loan repayment +

residency. This might be difficult to prove

3) Difficult to enforce - If an individual were to leave the state, many options would be available to him/her to circumvent the law.

a) Keep local bank + continue to maintain payment from local address

b) Keep voting absentee + maintain voter registration

c) Any other method devised by a "creative" mind

Even if the Dept were aware of the move, could the Dept enforce 120 day deadline.

4) No provisions for good faith - If an individual *informed^{the} Dept of proposed move + honestly, in good faith, attempted to find a buyer for permit / boat + was not able, could the individual move without ^{re}paying the loan? Would the State be in the position of hampering travel between states?

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

March 16, 1983

The Honorable Rick Uehling
Representative
Alaska State Legislature
P.O.
Juneau, Alaska 99811

Re: CSHB 15 (Loans)

Dear Representative Uehling:

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

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

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

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

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

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

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

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

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

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

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

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

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

This does not mean that a state could require

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

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

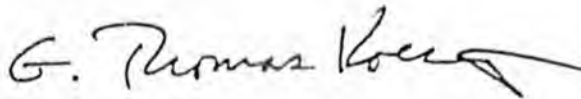
However, that is not what section 3 would accomplish. All it would do is require a person ceasing Alaska residence to forego the continuing future state subsidy of the loan.

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

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

March 21, 1983

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

Dear Representative Uehling:

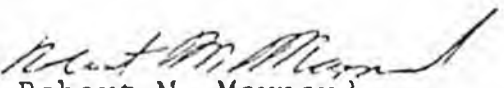
This letter is in response to your request for a brief written summary of the Department of Law's testimony before your committee on the subject of the constitutionality of a two-year residency requirement for commercial fishing loans.

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

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMN:mr

DISTRICT 22

REP. JOHN G. (JACK) FULLER

CHAIRMAN, RULES COMMITTEE

ALAKANUK
BREVIS MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK

NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN



MEMBER
FINANCE COMMITTEE
POLICY COMMITTEE
COMMITTEE ON COMMITTEES
REAA BUDGET OVERSIGHT COMMITTEE
BLUE RIBBON COMMISSION ON PERSONNEL

Alaska House of Representatives

MEMORANDUM

TO: Rep. Rick Uehling
Chairman, Loans Committee *RU*
Members, Loans Committee

DATE: February 23, 1983

FROM: Rep. Jack Fuller

To help you become familiar with the issue of durational residency in the state's commercial fishing loan program, I have attached information which I think you will find useful. Included is a copy of the present statute, the two letters to the Division of Business Loans from the Attorney General's office, and a copy of my letter outlining my concerns with HB 15.

A little history on this loan program might be useful. Legislative changes made to the state's fishermen's loans programs last year combined the Fishermen's Mortgage and Note Fund with the entry permit loans program. Prior to that, the department only made loans for permits; loans for boats and gear are made through AIDA. The Fishermen's Mortgage and Note Fund was designed in 1980 to help new entrants into the fisheries receive loans for entry permits, boats and gear.

The basic provisions of the program are: loans may be made for up to \$100,000 for purchase of an entry permit, boat or gear at an interest rate of 10½ percent for up to fifteen years. Loans may be made for up to 90 percent of the appraised value of collateral, except in certain instances loans may be made for up to 100 percent of the value of an entry permit. To be eligible for the program, a person must have been a resident of the state for five years, be economically dependent upon commercial fishing for a livelihood and have fished commercially as a traditional way of life. The program is targeted on persons who live in areas of the state where lack of training or lack of employment opportunities leave commercial fishing as the only economical way of making a living. Loans are to be made to fishermen who do not have alternate sources of financing available to them, which rules out fishermen who would be eligible for loans through AIDA.

I have been working on this program for a long time and there is still much to be done to assist fishermen in securing loans. A two-year residency requirement for eligibility for a commercial fishing loan would help guarantee that only true residents of the state obtain loans.

Given the high degree of mobility of fishermen, one year is insufficient to ascertain residency. It will take that long to determine who is and who is not a resident. To be fair to the real residents of this state, I hope this committee will consider going for a two-year residency requirement.

Our attorney, Billy Berrier, advises me that the committee should include a letter of intent if it adopts a two-year requirement. This letter would clearly state why the committee finds two years a reasonable requirement, and say that if the court should find it not reasonable, the legislature would have adopted the bill anyway with a shorter residency requirement. A draft is being prepared now.

To date, only one loan from this program has been made in my district. Frankly, I am worried that if it is opened up to more people by the imposition of a one-year requirement, limited funds would soon be gone. The more sophisticated fishermen would soon drain all the funds. The program received only \$1.8 million last year. To that end, I am working on language which would guarantee a certain portion of the loan funds for very small loans, say under \$30,000. I will be providing you with specific language soon.

Finally, in light of assistant attorney general Tom Koester's testimony before the committee regarding the differences between HB 15 and SB 73, I would like to propose the following amendment:

Page 1, line 17, add the following language after the word "years":

including the year immediately preceding the date of application

I believe that this will satisfy the concerns expressed in the February 22, 1983 letter to the committee.

ALAKAUK
BREVIG MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLCVIN
HOOPER BAY
KOTLIK
KOYUK

NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEE
WALES
WHITE MOUNTAIN



MEMBER
FINANCE COMMITTEE
POLICY COMMITTEE
COMMITTEE ON COMMITTEES
REAA BUDGET OVERSIGHT COMMITTEE
BLUE RIBBON COMMISSION ON PERSONNEL

Alaska House of Representatives

MEMORANDUM

TO: Rep. Rick Uehling
Chairman, Loans Committee

DATE: February 21, 1983

FROM: Rep. Jack Fuller *JF*

SUBJECT: HB 15 - residency requirements for fishing loans

The availability of commercial fishing loans is extremely important to the people of my district and I am interested in the speedy passage of legislation which would guarantee that the program will continue. As you know, emergency regulations are only in effect until April 1983.

I would like to bring up for the committee's consideration the questions of amending the current five year residency requirement to two years, rather than the one year proposed in HB 15 and also in SB 73 introduced by the Governor.

I would like to draw your attention to the November 26, 1982 letter to Dan Hostak of the Division of Business Loans from then-Attorney General W. Condon, who points out that we are defending the two-year durational residency requirement for eligibility to apply for scholarship loans. That issue currently is before the federal court in San Francisco. Mr. Condon goes on to state that "similar considerations apply to commercial fishermen. Fishermen comprise a highly mobile population. Alaska's fisheries attract residents of many states who, of necessity, must spend a considerable amount of time in Alaska. While here, it is quite easy to obtain many of the normal indicia of Alaska residence: housing, mailing address, voter registration, driver's license, etc. Following repeal of the personal income tax, there are few negative consequences attached to declaring Alaska residency.

"Finally, the commercial fishing loan program is extremely attractive to prospective fishermen...These considerations may make it permissible for the state to require more than a one-year durational residency requirement. We will have more guidance on this question following a decision in Andress [student loan case]."

A December 6, 1982 letter to Dan Hostak from the new Attorney General, Norm Gorsuch, again raises the issue of a two-year residency requirement. I quote, "A good faith argument could be made that two years is permissible because of the highly transient nature of fishermen, although it is more likely than not that a two-year

Rep. Uehling
February 21, 1983
page 2

durational residency requirement would be found unconstitutional if challenged in court."

I would like to ask the committee to look further into this issue during its deliberations on HB 15. I would be interested in testimony from the Attorney General's office and from the Division of Business Loans regarding particular problems of establishing residency for fishermen.

Thank you for your consideration.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

November 26, 1982

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

Re: Constitutionality of Residence
Requirement for Fishing Loans
(AS 16.10.310).
Our file 366-161-33.

Dear Mr. Hostak:

You requested our opinion regarding the constitutionality of the five-year durational residency requirement for commercial fishing loans under AS 16.10.300--16.10.370. AS 16.10-.310(a)(1), repealed and reenacted earlier this year (1982 SLA, ch. 113, § 7), provides:

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300--16.10-.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300--16.10.370, who (i) because of lack of training or lack of employment

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

November 26, 1982
Page 2

opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels.

A common feature of each of the three subparagraphs is a five-year durational residency requirement for eligibility to apply for loans. 1/

1/ Under subparagraphs (A) and (B), individuals who have been Alaska residents for a continuous period of five years immediately preceding the date of application for a loan may apply. Under subparagraph (C), corporations, partnerships, or joint ventures, 100 percent of which are owned by commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan, may apply. Although each of the three subparagraphs differ in additional eligibility requirements and the purposes for which loans may be made, those differences do not affect the constitutionality of the five-year durational residency requirements imposed. Accordingly, there is no need to discuss each subparagraph separately.

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

November 26, 1982
Page 3

For the reasons which follow, we believe each of the five-year durational residency requirements in AS 16.10.310(a)(1) is unconstitutional. Further, we believe this result is sufficiently clear that no good faith defense of the requirements could be made if they were challenged in court. Accordingly, we believe the commercial fishing loan program under AS 16.10.300 -- 16.10.370 must be suspended until the legislature changes the statutory scheme authorizing the program.

I. BACKGROUND

Durational residency requirements for eligibility to participate in state programs have been the subject of a number of judicial decisions, both in the Alaska Supreme Court and the United States Supreme Court. Because durational residency requirements have the effect of creating two classes of residents, only one of which is eligible to participate in the program, challenges to such requirements usually are based on the equal protection clauses of article I, section 1 of the Alaska Constitution and the Fourteenth Amendment to the United States Constitution.

An earlier opinion by this office discusses at great length the tests employed by the courts when a durational residency requirement is challenged as a denial of equal protection. 1982 Alaska Op. Atty. Gen. No. 7 (July 14) (expressing opinion that durational residency requirements for veterans loans are

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

November 26, 1982
Page 4

unconstitutional). If the durational residency requirement at issue penalizes the exercise of the right to travel, either through infringement of a fundamental right (such as voting) or through denial of a basic necessity of life (such as welfare or medical services), it is unconstitutional as a denial of equal protection under the United States Constitution unless it furthers a compelling state interest. Dunn v. Blumstein, 405 U.S. 330 (1972) (voting); Shapiro v. Thompson, 394 U.S. 618 (1969) (welfare); Memorial Hospital v. Maricopa County, 415 U.S. 450 (1974) (medical care). If it does not penalize the exercise of the right to travel, it is not unconstitutional as a denial of equal protection under the United States Constitution as long as it has a rational basis. Sosna v. Iowa, 419 U.S. 393 (1975). Under the Alaska Constitution, a durational residency requirement is not unconstitutional as a denial of equal protection if it substantially furthers the legitimate purposes of the legislation and the state interest in imposing the requirement outweighs the constitutional right involved. 2/ Williams v. Zobel, 619 P.2d

2/ As a general rule, the test for constitutionality under the Alaska Constitution when the exercise of the right to travel is not penalized is stricter than the rational basis test under the United States Constitution. Accordingly, if a challenged statute survives judicial scrutiny under the Alaska Constitution in the Alaska courts, it follows a fortiori that it is constitutional under the United States Constitution and no independent analysis is necessary. Williams v. Zobel, 619 P.2d 448, 457 (Alaska 1980); but see Zobel v. Williams, ___ U.S. ___, 72 L.Ed.2d 672 (1982).

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

November 26, 1982
Page 5

422, 427 (Alaska 1980) ("Zobel I"), applying State v. Erickson,
574 P.2d 1 (Alaska 1978).

II. ANALYSIS

The first inquiry is whether the durational residency requirement penalizes the exercise of the right to travel either through infringement of a fundamental right or through denial of a basic necessity of life. In our opinion, the five-year durational residency requirement for a commercial fishing loan is neither an infringement of a fundamental right nor a denial of a basic necessity of life and therefore does not penalize the exercise of the right to travel.

Obtaining a commercial fishing loan is not a fundamental right for purposes of equal protection analysis. Cf. Williams v. Zobel, 619 P.2d 448, 457 (Alaska 1980) ("Zobel II") (equality in distribution of permanent fund earnings is not a fundamental right), reversed on other grounds ___ U.S. ___, 72 L.Ed.2d 672 (1982); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1262 (1980) (eligibility to apply for a limited entry permit is not a fundamental right). It also seems clear that a commercial fishing loan is not a basic necessity of life. Cf. Zobel II at 455 ("a permanent fund earnings dividend is not a 'basic necessity'").

Accordingly, we believe the five-year durational residency requirements in AS 16.10.310(a)(1) do not have to satisfy

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

November 26, 1982
Page 6

the compelling state interest test. This view is consistent with what appears to be the general rule applied by the United States Supreme Court that statutes providing for governmental payments of monetary benefits are entitled to a strong presumption of constitutionality and should be upheld if they have a rational basis. See, e.g., Califano v. Torres, 435 U.S. 1, 5 (1978), and cases cited. 3/

Since we believe the courts would not measure the five-year durational residency requirements of AS 16.10.310(a)(1) against the more stringent compelling state interest test, its constitutionality under the United States Constitution depends on whether it has a rational basis. Under the Alaska Constitution, it depends on whether it meets the substantially-further-the-purposes/balancing test of Erickson. Because a classification satisfying the Erickson test a fortiori satisfies the federal rational basis test, see n. 2 supra, the question becomes whether the requirements meet the Erickson test.

Under that test, the court

must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must

3/ The Alaska Supreme Court cited Torres with apparent approval in Zobel II at 463.

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

November 26, 1982
Page 7

then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

Erickson, 574 P.2d at 12 (footnotes omitted).

The first step in the analysis is to identify the purposes of the legislation and determine whether those purposes are legitimate.

In AS 16.10.300, the legislature declared the policy underlying the commercial fishing loan program: "It is the policy of the state, under secs. 300--370 of this chapter, to promote the rehabilitation of the state's fisheries, development of a predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans." Three legislative purposes emerge from this statement: (1) promoting the rehabilitation of the state's fisheries; (2) promoting development of a predominantly resident fishery, and (3) promoting continued maintenance of commercial fishing gear and vessels throughout the state. Another obvious purpose -- albeit necessarily implied -- is that only bona fide state residents receive the commercial fishing loans authorized. A fifth plausible purpose -- again, only by implication -- is to limit those loans only to long-term (i.e., five-year) residents. Finally, a sixth plausible purpose -- again, only implied -- is to ensure that recipients of commercial fish-

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

November 26, 1982
Page 8

ing loans have an opportunity to become aware of the rigors of that profession and obtain some experience in the field before becoming independent operators.

The first purpose -- promoting rehabilitation of the state's fisheries -- clearly is permissible. See Alaska Constitution, article VIII, §§ 4 and 5.

The second purpose identified is "to promote the development of a predominantly resident fishery." AS 13.10.001 (in part). To the extent this statement is evidence of a legislative purpose to restrict Alaska's commercial fisheries to Alaska residents, there is a question whether it is permissible. 4/ How-

4/ Originally, the courts considered that states owned the fish and wildlife resources within their borders. As a result, it was held that a state could limit the privilege of taking those resources to its own residents, *Corfield v. Coryell*, 6 F. Cas. 546 (C.C.E.D. Pa. 1823) (No. 3,230) (oysters), and that a state could prohibit shipment of those resources outside its borders once they had been reduced to capture. *Geer v. Connecticut*, 161 U.S. 519 (1896) (game birds). However, in a long line of subsequent cases, the United States Supreme Court has made clear that a state does not own the fish and wildlife resources within its borders in a proprietary sense. In *Missouri v. Holland*, 252 U.S. 416, 434 (1920), a challenge to the federal Migratory Bird Treaty Act, Justice Holmes stated: "To put the claim of the state upon title is to lean upon a slender reed." "The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource." *Toomer v. Witsell*, 334 U.S. 385, 402 (1948). Also see *Douglas v. Seacoast Products*, 431 U.S. 265, 284 (1977); *Baldwin v. Montana Fish & Game Commission*, 436 U.S. 371, 385-386 (1978); *Hughes v. Oklahoma*, 441 U.S. 322, 327-335 (1979); cf. *Brown v. Anderson*, 202 F.Supp. 96 (D. Alaska 1962) (three-judge panel) (statute granting commissioner and Board of Fish and Game authority to close registration

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

November 26, 1982
Page 9

ever, courts will construe statutes to avoid constitutional problems if possible. Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1978). That can be done here by reading this statement of purpose as manifesting a legislative intent that the state loans authorized be used to promote the development of a strong resident commercial fishing industry which will benefit the state through expanded employment opportunities, etc. This purpose clearly is permissible: "Encouraging and assisting the wholesome development of new business and industry in Alaska and rehabilitating and expanding existing business and industry are legitimate legislative purposes." De Armond v. Alaska State Development Corp., 376 P.2d 717, 721-722 (Alaska 1962).

The third purpose identified -- to promote continued maintenance of commercial fishing gear and vessels -- similarly is permissible under the state's general police power to legis-

4/ (Continued)

areas or districts to commercial fishing by nonresidents held unconstitutional).

The United States Supreme Court also has made clear that it is impermissible for a state to regulate solely for the purpose of giving its residents an economic advantage over nonresidents. See, e.g., Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 (1928) (Louisiana statute prohibiting transport of shrimp outside Louisiana until head and shells removed struck down as economic protectionism); Toomer v. Witsell, supra (South Carolina nonresident fee of \$2,500 to take shrimp struck down where resident fee was \$25); Mullaney v. Anderson, 342 U.S. 415 (1952) (Alaska nonresident commercial fishing license fee of \$50 struck down where resident license fee was \$5).

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

November 26, 1982
Page 10

late for the welfare of its citizens.

The fourth legislative purpose identified is to limit eligibility for state commercial fishing loans to state residents. A legislative purpose to prefer state residents over non-residents in the allocation of state monetary benefits is permissible. "Generally, a state has much more authority to draw distinctions between residents and nonresidents than between long-term and short-term residents." Zobel II at 436, n. 10 (Justice Rabinowitz, concurring) (citations omitted).

Such distinctions usually are challenged under the privileges and immunities clause of article IV, section 2 of the United States Constitution, which provides "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," not the equal protection clause of the Fourteenth Amendment. The definitive pronouncement regarding the constitutionality of limiting the recipients of state monetary benefits to state residents seems to be that by Justice Washington, sitting as Circuit Justice, in Corfield v. Corvell, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (No. 3,230): "[W]e cannot accede to the proposition that, under this provision of the Constitution, the citizens of the several States are permitted to participate in all the rights which belong exclusively to the citizens of any particular State, merely upon the ground that they are enjoyed by those citizens; much less, that in regulating

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

November 26, 1982
Page 11

the use of the common property of the citizens of such State, the legislature is bound to extend to the citizens of all other States the same advantages as are secured to its own citizens." The proposition that a state can limit its monetary benefits to its own residents apparently is no longer open to serious question.

The fifth possible legislative purpose -- to limit eligibility for commercial fishing loans only to long-term (i.e., five-year residents) -- is not permissible. The only ground advanced to support such a distinction between residents has been that long-term residents should be entitled to some reward for their past contributions to the state. This past contributions rationale was expressly found impermissible in Zobel v. Williams, ___ U.S. ___, 72 L.Ed.2d 672 (1982).

The final possible legislative purpose identified is to ensure that the recipients of commercial fishing loans had an opportunity to become aware of the rigors of that profession and to obtain some experience. We believe that this is permissible under the state's general police power to legislate for the welfare of its citizens.

The second element of the Erickson test is to determine whether the challenged classification -- here, the five-year durational residency requirement -- substantially furthers the legitimate purposes.

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

November 26, 1982
Page 12

The first purpose identified is to promote rehabilitation of Alaska's fisheries. This apparently related to the former authorization in AS 16.10.310(a)(1)(B), repealed in 1976 SLA, ch. 190, § 2, for hatchery construction. The loans now authorized for the purchase of limited entry permits and the purchase and repair of vessels and gear bear little or no relation to rehabilitation of the fisheries. In fact, the opposite seems to be the case since improved vessels and gear would increase pressure on fisheries. While limiting such loans to five-year residents might mitigate this increased pressure, we believe the connection simply is too attenuated to be characterized as substantially furthering the purpose of rehabilitating Alaska's fisheries. (To the extent there is such a connection, it clearly would not survive the balancing element of the Erickson test, discussed below).

The second permissible purpose of the legislation is to promote development of a strong resident commercial fishing industry. This permissible purpose appears inextricably linked to the fourth purpose identified: limiting the benefits of the commercial fishing loan program to state residents only. To accomplish these purposes, the legislature has limited eligibility for loans to five-year residents, AS 16.10.310(a)(1)(A) and (B), and corporations, partnerships and joint ventures wholly owned by five-year residents. AS 16.10.310(a)(1)(C). The five-year dura-

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

November 26, 1982
Page 13

tional residency requirement thus appears to be a mechanism to ensure that only the resident fishing industry -- i.e., bona fide state residents -- qualify for the loans.

A state may require some period of residency to ensure that individuals seeking a state benefit are bona fide residents. 5/ Sosna v. Iowa, 419 U.S. 393 (1975); Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd without opinion, 401 U.S. 985 (1971); Vlandis v. Kline, 412 U.S. 441, 452-53 (1973) (dicta); Zobel II. In other words, a durational residency requirement in general bears a fair and substantial relationship to testing the bona fides of residency. The precise length of residency required seems immaterial to the "fair and substantial relationship" inquiry under Erickson; indeed, the longer the period of residency required, it would seem, the more likely it is that the applicant is a bona fide resident. 6/ The more im-

5/ Indeed, even in cases involving fundamental rights and basic necessities of life, the courts recognize that some minimum period of residency may be required to prevent fraud. The precise length of that period may be based on the particular facts presented. Compare Dunn v. Blumstein, 405 U.S. 330 (1972) (Tennessee permitted to apply no more than 30-day residency requirement for voting), with Marston v. Lewis, 410 U.S. 679 (1973) (Arizona permitted to apply 50-day residency requirement for voting).

6/ But see Thomas v. Bailey, 595 P.2d 1, 18 (1979) (Justice Rabinowitz concurring): "Whether or not the state has a justifiable concern that state land be distributed to bona fide residents of Alaska to the exclusion of non-resident applicants, requiring a minimum of three years actual domicile to establish bona fide residence status in the state simply bears no substantial relationship to the asserted purpose of the requirement." (Footnote omitted).

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

November 26, 1982
Page 14

portant question, discussed below, is whether the state's interest in requiring that length of residence outweighs the rights of those denied the benefit.

The third legitimate purpose identified is the "continued maintenance of commercial fishing gear and vessels throughout the state." AS 16.10.300. We believe a five-year durational residency requirement for a commercial fishing loan bears virtually no relationship to this purpose. It is a well-known fact that a substantial portion of the commercial fishing fleet in Alaska is owned and operated by nonresidents. Moreover, it is not unreasonable to speculate that an additional portion of the commercial fishing fleet in Alaska is owned by Alaska residents who have resided here for less than five years. Both of these groups would be completely excluded from the benefits of the commercial fishing loan program by virtue of the five-year durational residency requirement. As a result, the requirement does not bear a fair and substantial relationship to the "continued maintenance of commercial fishing gear and vessels throughout the state" but, instead, may make achievement of that goal less likely than it would be if the program was open to all fishermen.

The final legitimate purpose identified is to ensure that recipients of commercial fishing loans are aware of the rigorous life of a commercial fisherman and acquire the necessary skills to pursue that profession. However, the five-year dura-

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

November 26, 1982
Page 15

tional residency classification is insufficiently tailored to reach this end. On the one hand, it excludes less-than-five-year residents who are experienced fishermen; on the other hand, the five-year durational residency requirements standing alone would permit any five-year resident to apply regardless of experience. In other words, the classification does not further the legitimate purpose. This familiarity and experience rationale for a three-year durational residency requirement for lobster and crab fishing licenses was rejected on this basis in Massev v. Adollonio, 387 F.Supp. 373 (D. Maine 1974).

Moreover, this legitimate purpose appears to be advanced far more effectively by other statutory eligibility requirements. AS 16.10.310(a)(1)(A) and AS 16.10.310(a)(1)(C) require that applicants must have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years and have actively participated in the fishery during that period. Alternative requirements in AS 16.10.310(a)(1)(B) are that an individual either reside in an area with no occupational opportunities other than commercial fishing or be economically dependent on commercial fishing for a livelihood if commercial fishing has been a traditional way of life for him.

The final step in the Erickson analysis is to balance the state interest furthered by the classification -- i.e., the

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

November 26, 1982
Page 16

durational residency requirement -- against the nature of the individual right infringed. The only permissible state interests furthered by the durational residency requirement are ensuring that only the resident fishing industry, i.e., bona fide state resident commercial fishermen, qualify for the economic benefits afforded by the state's commercial fishing loan program. The individual right infringed is that bona fide Alaska residents who do not meet the five-year requirement are absolutely precluded from participating in the program. The balance, then, is between the state's need to require five years of residency against the deprivation that less-than-five-year residents suffer.

We believe there is no question that the Alaska Supreme Court would strike the balance in favor of the less-than-five-year resident and hold the five-year durational residency requirement unconstitutional. Initially, we note that the Alaska Supreme Court historically has viewed durational residency requirements less favorably than the United States Supreme Court. Compare State v. Adams, 522 P.2d 1125 (Alaska 1974) (one-year durational residency requirement for divorce held unconstitutional under Alaska Constitution), with Sosna v. Iowa, 419 U.S. 393 (1975) (one-year durational residency requirement for divorce held constitutional under United States Constitution). Justice Rabinowitz, concurring in Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), stated that residence of three years duration was not rea-

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

November 26, 1982
Page 17

sonably required to ensure that only bona fide state residents qualified for grants of state land. ^{7/} Senior Justice Dimond, joined by Justice Matthews, dissenting in Zobel II, pointed out that "it has never been questioned that durational residency requirements, when valid, must be reasonable in length."

Of course, what is reasonable to one person may not be reasonable to another. However, we believe even more deferential courts would hold that the state's interest in imposing a five-year durational residency requirement to test the bona fides of residency is outweighed by the less-than-five-year resident's right to be treated equally, and would find the requirement unreasonable. In Vlandis v. Kline, 412 U.S. 414 (1973), the United States Supreme Court struck down Connecticut's four-year durational residency requirement for reduced state university tuition. The Court held that the four-year requirement created an irrebuttable presumption of nonresidency, and that the state's refusal to provide a procedure by which individuals with less than four years residency could prove that they were bona fide residents of the state constituted a denial of due process. Although the Vlandis dissenters may be correct in their argument that this due process legal theory is not sound ^{8/}, we believe

^{7/} See note 6, supra.

^{8/} Justice Rehnquist, joined by Chief Justice Burger and Justice Douglas, pointed out in his dissent in Vlandis that the ma-

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

November 26, 1982
Page 18

the effect of the decision is clear: a four-year durational residency requirement is clearly unconstitutional.

In Vlandis, the Court noted the special problems involved when a state attempts to determine the bona fide residence of a highly mobile population:

We are aware, of course, of the special problems involved in determining the bona fide residence of college students who come from out of State to attend that State's public university. . . .

. . . The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

412 U.S. at 452-454. The Court then noted relevant criteria established by the Connecticut Attorney General: year-round residence, voter registration, place of filing tax returns, property ownership, driver's license, car registration, marital status, vacation employment, etc.

This leaves a question as to what length of durational residency may be required. Under Sosna and Zobel II, one year appears to be constitutionally permissible when fundamental

8/ (Continued)

majority's theory that an irrebuttable presumption violates due process relied on principles of substantive due process -- i.e., "that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely." Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). This theory is not generally favored. See 412 U.S. at 467-468 and cases cited.

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

November 26, 1982
Page 19

rights and basic necessities of life are not involved. Under Vlandis, it seems clear that four years may not be required. Justice Rabinowitz, concurring in Thomas v. Bailey, supra, disapproved three years durational residency. Also see Massev v. Apollonio, supra (three-year durational residency requirement for lobster and crab fishing license unconstitutional under federal rational basis test).

We are vigorously defending the two-year durational residency requirement in AS 14.43.125(b) for eligibility to apply for scholarship loans under AS 14.43.090--14.43.160. Andress v. Baxter et al., No. A82-307 Civil (D. Alaska, filed August 3, 1982). Our defense is based on the fact that the residency of college students is difficult to determine, since their physical abode once they have entered college almost universally is on or adjacent to the campus they are attending. When this is coupled with the extremely liberal benefits provided qualifying student applicants, we believe a period of residency longer than one year is defensible.

Similar considerations apply to commercial fishermen. Fishermen comprise a highly mobile population. Alaska's fisheries attract residents of many states who, of necessity, must spend a considerable amount of time in Alaska. While here, it is quite easy to obtain many of the normal indicia of Alaska residence: housing, mailing address, voter registration, driv-

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

November 26, 1982
Page 20

er's license, etc. Following repeal of the personal income tax, there are few negative consequences attached to declaring Alaska residency.

Finally, the commercial fishing loan program is extremely attractive to prospective fishermen. The interest rate on loans under the program may not exceed 10½ percent. AS 16.10.320(a)(2). More importantly, a loan to a qualifying Alaska resident under AS 16.10.333 is the only legal way to finance the purchase of a limited entry permit using the permit itself as collateral for the loan. 9/ AS 16.43.150(g). With the price of limited entry permits ranging as high as \$250,000 and up, the desirability of using the permit itself as collateral is obvious.

These considerations may make it permissible for the state to require more than a one-year durational residency requirement. We will have more guidance on this question following a decision in Andress. However, we believe that the five-year durational residency requirements in AS 16.10.310(a)(1) clearly are unconstitutional and cannot be defended in the absence of

9/ AS 44.81.220(a)(20) authorizes the Alaska Commercial Fishing and Agriculture Bank ("CFAB") to make loans to five-year residents with at least one year of experience in commercial fishing. However, we understand that CFAB is not making such loans at this time. The five-year eligibility requirement in AS 44.81.220(a)(20) suffers the same constitutional defect as the requirement in AS 16.10.320(a)(1). We are sending CFAB a copy of this opinion, suggesting that legislative consideration of AS 16.10.320(a)(1) also encompass the eligibility requirement in AS 44.81.210(a)(20).

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

November 26, 1982
Page 21

some compelling reason. 10/

III. EFFECT OF OPINION

As set out above, it is our conclusion that the five-year durational residency requirements in AS 16.10.310(a)(1) clearly are unconstitutional. The remaining question is what effect our opinion should have on your administration of the program.

We recently undertook a thorough review of this question. Following that review, we concluded that three courses of action are possible. First, if we believe there is a significant probability that the statute would be found constitutional if challenged in court, the agency charged with administering the statute should continue implementing it. Under these circumstances, we believe the legislative will, as expressed in the statute, should be followed by the executive branch unless and until the statute is ruled unconstitutional by the courts.

Second, if a good faith argument can be made that the statute is constitutional but we believe it probably would be held unconstitutional if challenged in court, we will so state and, if appropriate (i.e. subject to practical considerations

10/ The three-year durational residency requirement for running for state legislature was upheld in *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974) on the ground that the state had a compelling interest in ensuring the candidate is exposed to his prospective constituents and legislators are familiar with the diverse character of the state. No such compelling state interests are present here.

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

November 26, 1982
Page 22

of office priorities and resource availability), seek leave to file an action under article III, section 16 of the Alaska Constitution 11/ to obtain a judicial determination of the statute's constitutionality.

However, where no good faith argument can be made that the statute is constitutional, we believe it is the obligation of the attorney general to say so and, as the legal advisor to the governor and other state officers, AS 44.23.020(a), to direct that the program be shut down.

Very rarely will it be impossible to make a good faith argument that a statute is constitutional. However, we believe the five-year durational residency requirement in AS 16.10-.310(a)(1) is one of those rare exceptions. We reach this conclusion on the basis of the thorough case law review undertaken above. Durational residency requirements longer than one year

11/ That provision provides in part that the governor "may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions." The intent of the section was to give the governor all the power necessary to prevent subordinate officials from acting in an unconstitutional manner or contrary to statute. 3 Alaska Const. Conv. Min. 1986, 2022. In such an action, of course, the central inquiry is the legality of the questioned activity (here, applying the five-year durational residency requirement). Under this provision, the effect of a referendum repeal of the Elected Public Officers Retirement System (EPORS) was tested in State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

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

November 26, 1982
Page 23

have been upheld as constitutional only under exceptional circumstances. The United States Supreme Court struck down a four-year durational residency requirement for highly mobile college students in Vlandis v. Kline, supra. A three-year durational residency requirement for fishing licenses was struck down on equal protection grounds in Massev v. Apollonio, supra. Justice Rabinowitz of the Alaska Supreme Court had no difficulty in finding a three-year durational residency requirement for a grant of state land unconstitutional in Thomas v. Bailey, supra (concurring opinion).

A good faith argument can be made that a durational residency requirement less than four years but more than one year is constitutional for the grant of state monetary benefits for a highly mobile group such as college students or commercial fishermen. However, this does not mean that you can continue to implement the program but with a shorter durational residency requirement than the five years specified in AS 16.10.310(a)(1). If that change is to be made, it must be made by the legislature. The attorney general, like the courts, has no authority to rewrite the law. The Alaska Constitution, article II, section 14, clearly vests the power to pass legislation in the legislature, not the executive branch.

Moreover, we do not believe you can continue to implement the program with only a minimal residency requirement (i.e.,

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

November 26, 1982
Page 24

30 days), as opposed to the five-year durational residency requirement as enacted by the legislature. That would require a finding that the five-year requirement is severable from the rest of the statute. Under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), a two-step test for severability is required. First it must appear that legal effect can be given to the remainder of the statute after the offensive provision is stricken. Here, the statute clearly can be given legal effect if the five-year durational residency requirement is removed.

Second, it must appear that the legislature intended the provision to stand if the offensive provision was struck. We believe the answer to this inquiry is not clear. We recognize that AS 01.10.030 provides in part that laws are to be construed as containing the following language: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected thereby." However, the Alaska Supreme Court stated in Lynden Transport that AS 01.10.030 creates only a weak presumption in favor of severability. Given the highly mobile nature of fishermen, the ease with which traditional indicia of residency can be obtained, the lack of adverse consequences to establishing such minimum indicia, and the extreme attractiveness of the program, we cannot say that the legislature would have passed this statute without

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

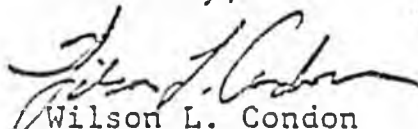
November 26, 1982
Page 25

some durational residency requirement.

As a result, we believe you have no choice but to shut down the commercial fishing loan program under AS 16.10.300--16.10.370. No further loan commitments should be granted under that program following your receipt of this opinion. 12/ We are providing copies of this opinion to Governor Hammond and Governor-elect Sheffield, and will urge them to take whatever steps are necessary to bring this matter to the attention of the Thirteenth Alaska Legislature which will be convening early next year.

If you have further questions, please contact us at your convenience.

Sincerely,



Wilson L. Condon
Attorney General

WLC:GTK:dlm

cc: Governor Hammond
Governor-Elect Sheffield
Alaska Commercial Fishing Agriculture Bank

12/ Loan commitments already made should be honored to avoid undue hardship to those who have changed circumstances in reliance on those commitments.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

December 6, 1982

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

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

Dear Mr. Hostak:

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

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

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

December 6, 1982
Page 2

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

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

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

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

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

December 6, 1982
Page 3

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

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

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

December 6, 1982
Page 4

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

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

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

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

December 6, 1982
Page 5

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

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

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

2/ AS 01.10.030 provides:

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

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

December 6, 1982
Page 6

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

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

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

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

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

December 6, 1982
Page 7

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

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

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

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

December 6, 1982
Page 8

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

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

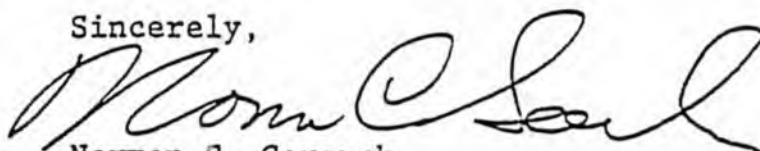
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature.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

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

December 6, 1982
Page 9

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

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:GTK:d1m

Attachment

cc: Senator Jalmar Kerttula
Representative Joe L. Hayes



Alaska State Legislature

House of Representatives

November 5, 1982

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: The Honorable Joe Hayes
Speaker of the House
Anchorage

FROM: Mark K. Johnson
Juneau

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

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

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

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

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

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

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

*Sec 1: AS 16.10.310 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDING OF EMERGENCY

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

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

ADOPTION ORDER

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

DATE: December 7, 1982
Juneau, Alaska

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

FILING CERTIFICATION

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

Stephen Alan McAlpine
Lieutenant Governor

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

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

(A) is registered to vote;

(B) maintains his permanent place of abode;

(C) files his tax returns;

(D) registers or licenses his personal property, including but not limited to cars, boats, trucks and trailers;

(E) is licensed to drive; and

(F) maintains bank accounts, savings accounts, lines of credit and other financial relationships. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78; am / / , Reg.)

Authority: AS 16.10.310

H

B

16

CSSSHB 16 (Fin): An Act relating to premium increases for automobile insurance policies.

The Administration supports this bill. It requires that an insurance company increasing automobile insurance premiums must advise the affected person before the increase can take effect, and must also apprise the affected person of his appeal rights under AS 21.39.090. This is intended to resolve those situations where an insurance company increases its premiums unjustly and without explanation.



Richard A. Lyon, Commissioner

DATE: 5/16/83

ACTION NARRATIVE

TAPE#36 (Side A)
Recording
Number 0002

The meeting was called to order at 8:55 a.m. by Chairman Furnace. Members present were: Representatives Furnace, Uehling, Cowdery and Ringstad. Members absent were: Representatives Koponen, Malone and Wendte. The item for consideration was HB 16.

Number 0012

Representative Milo Fritz, Prime Sponsor of HB 16, explained his reasons for introducing the bill.

Number 0060

There was discussion by committee members and Rep. Fritz relating to insurance policies. The Chairman invited Don Koch from the Division of Insurance with the Department of Commerce and Economic Development to join in the discussion.

Number 0077

Don Koch said that he opposes HB 16 because there is already a mechanism which addresses the issue, however the problem is that most insurers are not aware of it.

Discussion continued.

Number 0316

Ken Moore, Director of the Division of Insurance with the Department of Commerce and Economic Development, explained the genesis of the problem. He cited mechanization - the institution of the computer as primary factors.

There was additional discussion by the committee, Ken Moore and Rep. Fritz concerning the problem and possible resolutions to the problem.

Number 0423

Rep. Furnace suggested that Rep. Fritz and Don Koch jointly examine proposed additions to the bill. He also recommended that Rep. Fritz draft a Sponsor Substitute to include the additional provisions.

Number 0431

There being no further business to come before the committee at this time, Chairman Furnace adjourned the meeting at 9:30 a.m.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
March 17, 1983
8:49 a.m.

Members Present: Rep. Furnace, Chairman
Rep. Uehling, Vice-Chairman
Rep. Cowdery
Rep. Koponen
Rep. Ringstad
Rep. Wendte

Members Absent: Rep. Malone

COMMITTEE CALENDAR

HB 16 "An Act relating to premium increases for
automobile policies."

HB 131 "An Act relating to unlawful practices in
the sale or rental of real property."

WITNESS REGISTER

Representative Vernon Hurlbert
Alaska State Legislature
Capitol Building, Room 511
Pouch V
Juneau, Alaska 99811
465-3799

Position Statement: Joined the committee in discussion on HB 131
of which he is the Prime Sponsor.

PREVIOUS ACTION

HB 16 See previous House Labor & Commerce
Committee Meeting minutes from: March 16,
1983.

Statutory Reference: Statutory Reference:
AS 21.36

HB 131 See previous House Labor & Commerce
Committee Meeting minutes from: March 3,
March 11, and March 15, 1983.

Statutory Reference: AS 18.80.240

ACTION NARRATIVE

TAPE#37 (Side A)
Recording
Number 0002

The meeting was called to order by Chairman Furnace at 8:49 a.m. Members present were: Representatives Furnace, Uehling, Cowdery, Koponen, Ringstad and Wendte, who left after the meeting started. Rep. Malone arrived at 9:08 a.m.

Chairman Furnace stated the purpose of the meeting was to resume discussion on House Bills 16 and 131.

Number 0016

Chairman Furnace set up a subcommittee to investigate various areas of concern relating to the Alaska Power Authority. He appointed Representatives Ringstad, Wendte and Uehling to the committee, with Rep. Ringstad to serve as Chairman. Rep. Furnace asked the subcommittee to prepare an outline identifying the areas which the committee proposes to report back to the full committee in 7 days. He offered the assistance of Jeff Barry, Professional Aide, with the project. He placed a 30-day time limit within which the subcommittee would take a week to prepare an outline of the areas of concern, and in the remaining time formulate conclusions and recommendations. He advised that all other committee members were welcome to sit in on the subcommittee.

Number 0041

The committee assumed discussion concerning the subcommittee.

Number 0070

Chairman Furnace directed the committee's attention to HB 16.

Number 0078

He advised the committee of Rep. Fritz's request that he be given about a week to work with the Division of Insurance to redraft the bill in the form of a Sponsor Substitute.

Number 0086

Chairman Furnace asked that any additional deliberation on HB 16 be postponed until it is remitted by the Prime Sponsor.

Number 0088

The committee took up discussion on HB 131. Rep. Furnace suggested that the committee consider the proposed amendment to the bill

and recommended that if the bill is amended, that an additional hearing be scheduled for Tuesday, March 22, to allow tenants and landlords the opportunity to respond to the total bill.

Number 0112 Chairman Furnace asked Representative Vernon Hurlbert, Prime Sponsor of the bill, to join in the discussion.

Number 0118 Chairman Furnace called a brief recess.

Number 0128 The meeting reconvened.

Number 0130 Chairman Furnace recognized that Rep. Malone had joined the meeting.

Discussion concerning the language in the bill continued.

Number 0269 After examining Number 8, Section (d) of the proposed amendment, Rep. Ringstad moved "to change the 'established' to 'designed' and adopt the amendment."

There was additional discussion concerning the language in question.

Number 0298 Rep. Ringstad moved to change his original motion to read, "'designed or established' solely for occupancy by singles."

There was further discussion by committee members.

Number 0381 Chairman Furnace restated the motion. The committee discussed their concerns with the word 'singles'.

Number 0399 Rep. Malone opposed the amendment and explained why.

Number 0423 Chairman Furnace called for a vote by showing of hands on the revised amendment. Representatives Uehling, Ringstad, Cowdery and Furnace voted in favor of the motion. Representatives Koponen and Malone voted not in favor. The motion passed, however Chairman Furnace served notice of reconsideration.

Number 0445 Chairman Furnace called for a vote by showing of hands on the main motion as

amended. Representatives Ringstad, Cowdery, Uehling and Furnace voted in favor. Representatives Koponen and Malone voted not in favor.

Number 0444

Rep. Furnace stated that the amendment needed more work and he proposed to meet with committee members at a later time in order to work on improving the language of the bill. He scheduled the hearing on HB 131 to resume on Tuesday, March 22.

Number 0457

There being no further items to come before the committee at this time, the meeting was adjourned at 9:40 a.m.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
March 30, 1983
8:49 a.m.

Members Present: Rep. Furnace, Chairman
Rep. Uehling, Vice-Chairman
Rep. Cowdery
Rep. Ringstad

Members Absent: Rep. Koponen
Rep. Malone
Rep. Wendte

COMMITTEE CALENDAR

SSHB 16 "An Act relating to premium increases for
automobile insurance policies."
HB 246 "An Act relating to the deregulation of
interest rates; and providing for an
effective date."

WITNESS REGISTER

John George, Deputy Director
Division of Insurance
Department of Commerce & Economic Development
Pouch D
Juneau, Alaska 99811
465-2515
Position Statement: Testified on SSHB 16.

Ralph Bennett, Finance Aide
Representative Bob Bettisworth's Office
Capitol Building, Room 500
Pouch V
Juneau, Alaska 99811
465-4967
Position Statement: Testified in behalf of Representative Bob
Bettisworth, Prime Sponsor of HB 246.

Gary Jenkins
National Federation of Independent Businesses
P.O. Box 194
Auke Bay, Alaska 99821
586-4100
Position Statement: Testified in opposition of HB 246.

Jim Hackett
Alaska Bankers Association
645 G Street
Anchorage, Alaska
265-5754

Position Statement: Answered questions by the committee concerning HB 246.

Win Gruening
B.M. Behrends Banks
P.O. Box 1367
Juneau, Alaska 99802
586-6800

Position Statement: Testified in support of HB 246.

Don Magnusson
Alaska Retail Association
174 South Franklin Street
Juneau, Alaska 99801
586-6706

Position Statement: Advised the committee that he was withholding testimony until April 7, when the hearing will be taken up again.

PREVIOUS ACTION

SSHB 16

03/21/83: SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 16. by Fritz, Koponen, Lindauer and Tischer, entitled:

"An Act relating to premium increases for automobile insurance policies."

was read the first time and referred to the Labor & Commerce and Finance Committees.

See previous House Labor & Commerce Committee Meeting minutes on HB 16 from: March 16, and March 17, 1983.

Statutory Reference: AS 21.36

HB 246

03/11/83: HOUSE BILL NO. 246 by Bettisworth, entitled:

"An Act relating to the deregulation of interest rates; and providing for an effective date."

was read the first time and referred to the Labor & Commerce Committee.

Statutory Reference: AS 06.20.230(a); AS

06.40.120(c); AS 45.10.120(b); AS
45.10.120(c); AS 45.45.010(a); AS
06.20.230(b) & (c); AS 06.45.060(5)(A)(vi);
and AS 45.45.010(b)

ACTION NARRATIVE

TAPE#45 (Side A)
Recording
Number 0002

The meeting was called to order by Chairman Furnace at 8:49 a.m. Members present were: Representative Furnace, Uehling, Cowdery and Ringstad. Representatives Koponen and Malone were absent and Wendte arrived at 8:53 a.m.

Before the committee were two pieces of legislation: SSHB 16 and HB 246.

Number 0024

The committee took up discussion on SSKB 16.

John George, Deputy Director of the Division of Insurance with the Department of Commerce and Economic Development, shared with the committee some of the work that transpired between he and the Prime Sponsor of the bill, Rep. Fritz, in their endeavor to upgrade the bill.

Number 0043

John George said that the bill requires insurance companies to give their clients a 15-day written notice of rate increases and if the client feels that the increase is unmerited, he/she may resolve the issue with the insurance company rather than going to a hearing.

There was discussion by committee members and John George concerning the bill.

Number 0152

Rep. Cowdery moved and asked unanimous consent that SSKB 16 be advanced to the next committee of referral. There were no objections and it was so ordered.

Number 0157

The committee then took up discussion on HB 246. Chairman Furnace gave the committee a brief overview of the bill.

Number 0166

Ralph Bennett, Financial Aide to Representative Bob Bettisworth, Prime Sponsor of the HB 246, presented an in-depth analysis of the legislation.

- Number 0175 In Rep. Bettisworth behalf, Ralph Bennett stated that banks should be allowed to charge an interest rate that reflects market conditions in the market place.
- Number 0180 He discussed the implications of usury ceilings, saying that usury laws do not allow banks to respond to changes in market rates and preserve a reasonable level of profit.
- Number 0218 Gary Jenkins of the National Federation of Independent Businesses testified in opposition of HB 246 in its present form. He expressed concern over the removal of all controls and stated that the limits should be removed in order for banks to have a proper rate of return.
- There was discussion by committee members and Gary Jenkins concerning various aspects of the bill.
- Number 0334 Jim Hackett of the Alaska Banking Association and Win Gruening of B.M. Behrends Bank came before the committee.
- Number 0341 Win Gruening commented on some areas from earlier testimony. Concerning the removal of the usury ceiling, he stated that it is not the intent of banks to raise the rate of return, they would like to be able to service all segments of the market, however due to the restrictions of the usury ceilings, they are not able to do so.
- Number 0346 In regard to discount rates, Win Gruening said that he does not believe that discount rates reflect a true market rate because discount rates are artificially controlled and subject to political pressure. He said that truer market rates are determined by prevailing crime rates throughout the country and by government auctions on bonds.
- Number 0377 Win Gruening explained the implications of deregulation.
- Number 0421 He also expressed his support of the bill and stated that it is a step towards establishing a free market for both the large and small borrower.

There was discussion by committee members with Win Gruening and Jim Hackett answering questions by the committee.

TAPE#45 (Side B)
Recording
Number 0000

Continuation of questions and discussion.

Number 0080

Rep. Wendte asked if the committee could be provided a chart reflecting the impact of discount rates.

Number 0127

Jim Hackett commented on Rep. Wendte's request.

Number 0161

Don Magnusson of the Alaska Retail Association advised the committee that he was withholding testimony until April 7, when the hearing will be taken up again.

Number 0168

There being no further items to come before the committee at this time, Chairman Furnace adjourned the meeting at 9:44 a.m.

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

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

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

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

~~and the operator, etc.~~

Bill Fact Sheet

Date Received _____

Bill Number HB16 Title _____

Fiscal Note - Date Requested _____ Date Received _____

- Of Whom _____

Dept. Position Paper - Date Requested 5/13 Date Received _____

- Of Whom Katherine Wallen

Resource People

Initial Hearing - Date 5/18/83

People Contacted

Wes - 5/13

Fritz - 4833 - 5/13

Katherine Wallen - 5/13

Follow-up Hearing - Date _____

Final Action _____ Date _____

PROPOSED TITLE: CSSSHB 16(FIN)
SUBJECT: ACT RELATING TO PREMIUM INCREASES FOR AUTOMOBILE INSURANCE POLICIES

GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: FRITZ.

OTHER DOLLARS: \$0

CO-SPONSORS: KOPONEN, LINDAUER, TISCHER.

CURRENT STATUS: 5/29/84 CHAPTER 0062 SLA 84

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/21/83	01	0573	FIRST READING -- COMMITTEE REPORTS
03/31/83	02	0694	L&C -- DP04, NR01
03/31/83	03	0694	L&C F/NOTE EQUALS ZERO
04/20/83	04	0939	FIN -- CS10, NR01
04/26/83	05	1040	SECOND READING
04/26/83	06	1041	FIN CS ADOPTED BY UNAN CONSENT
04/26/83	07	1041	ADVANCED TO 3RD READING BY UNAN CONSENT
04/26/83	08	1041	THIRD READING
04/26/83	09	1041	PASSED BY DIV 39-00-01
05/14/84	26	3894	TRANSMITTED TO GOVERNOR
05/29/84	27	4177	SIGNED BY GOVERNOR-CH0062, EFF 08/27/84
***	**	**	*** *** **

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/27/83	10	0818	FIRST READING -- COMMITTEE REPORTS
05/23/83	11	1900	L&C -- DP02, NR01
03/09/84	12	2312	RLS -- OTHER04
03/09/84	13	2314	SECOND READING
03/09/84	14	2314	JUD COMM REFERRAL ADDED UNAN CONSENT
03/09/84	15	2314	RECOMMITTED TO JUD BY UNAN CONSENT
04/16/84	16	2754	JUD -- DP03
04/30/84	17	2881	RLS -- OTHER05
04/30/84	18	2883	POSTPONED UNTIL 05/03/84 UNAN CONSENT
05/03/84	19	2910	RECOMMITTED TO L&C BY UNAN CONSENT
05/03/84	20	2982	MOVED FROM L&C TO RLS BY UNAN CONSENT
05/12/84	21	3051	RLS -- OTHER04
			TAKEN UP IMMEDIATELY
05/12/84	22	3056	SECOND READING
05/12/84	23	3056	ADVANCED TO 3RD READING BY UNAN CONSENT
05/12/84	24	3056	THIRD READING
05/12/84	25	3056	PASSED BY DIV 12-04-04
***	**	**	*** *** **

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

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

Phone: 465-2515

Date: 3/23/83

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

Date: 3/25/83

Distribution:

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

3/8/83

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



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

House of Representatives
MILO FRITZ

HOUSE BILL 16, AUTOMOBILE INSURANCE PREMIUM INCREASES

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

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

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

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF COMMERCE

DIVISION OF INSURANCE POUCH D — JUNEAU 99801

February 26, 1973

BULLETIN 73-5

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

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

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

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

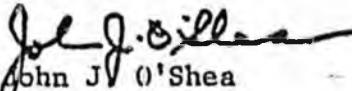
"Safe Driver Points" or rate surcharges may be charged for "At Fault" accidents involving injury to person or damage to property in excess of \$100 in which the insured or person covered under the policy is involved except accidents where:

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

February 26, 1973

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

THIS BULLETIN IS EFFECTIVE IMMEDIATELY.


John J. O'Shea
Director

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

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
March 16, 1983
8:55 a.m.

Members Present: Rep. Furnace, Chairman
Rep. Uehling, Vice-Chairman
Rep. Cowdery
Rep. Ringstad

Members Absent: Rep. Koponen
Rep. Malone
Rep. Wendte

COMMITTEE CALENDAR

HB 16 "An Act relating to premium increases for
automobile insurance policies."

WITNESS REGISTER

Representative Milo Fritz
Alaska State Legislature
Capitol Building, Room 114
Pouch V
Juneau, Alaska 99811
465-4833
Position Statement: Prime Sponsor of HB 16.

Don Koch
Division of Insurance
Department of Commerce & Economic Development
Pouch D
Juneau, Alaska 99811
465-2577
Position Statement: Answered questions by the committee
concerning HB 16.

Ken Moore, Director
Division of Insurance
Department of Commerce & Economic Development
Pouch D
Juneau, Alaska 99811
465-2515
Position Statement: Gave testimony of HB 16.

PREVIOUS ACTION

HB 16 There was no previous action to record.
Statutory Reference: AS 21.36

ONCE AGAIN H.B. 16, " AN ACT RELATING TO PREMIUM INCREASES FOR AUTOMOBILE INSURANCE POLICIES", IS BEFORE THE SENATE FOR CONSIDERATION. THIS LEGISLATION WAS INTRODUCED BY REPRESENTATIVE MILO FRITZ IN RESPONSE TO A LARGE NUMBER OF COMPLAINTS BY HIS CONSTITUENTS. THESE PEOPLE FELT THAT THEIR INSURANCE PREMIUMS WERE UNJUSTLY RAISED AND THAT THEY HAD NO PROCEDURE TO APPEAL THE INSURER'S DECISION. HB 16 STATES THAT THE INSURANCE COMPANY WILL NOTIFY THE INSURED OF THE SIMPLE PROCEDURE FOR AN APPEAL PROCESS WHICH IS PRESENTLY IN LAW.

HB 16 WAS WRITTEN IN CONSULTATION WITH THE INSURANCE INDUSTRY LOBBYIST, AND THE DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE. THIS LEGISLATION FURTHER CLARIFIES THE PRESENT LAW AND GIVES THE ORDINARY CITIZEN AN EXPLANATION OF HIS/HER RIGHTS. THIS BILL COVERS PRIVATE, PERSONAL VEHICLES ONLY, AND DOES NOT EFFECT COMMERCIAL INSURANCE COVERAGE.

I RECOMMEND PASSAGE OF THIS LEGISLATION.

ADDITIONAL INFORMATION

1) SECTION 1 (a) - A CONCERN MAY ARISE AS TO THE DEFINITION OF "SAME CLASS". IF AN INDIVIDUAL IS INVOLVED IN AN ACCIDENT AT WHICH HE/SHE WAS AT FAULT, THE DRIVER WOULD BE PLACED IN ANOTHER CLASS IN WHICH ALL IN THAT CLASS HAD BEEN INVOLVED IN AN ACCIDENT IN WHICH THEY WERE AT FAULT. EACH TIME A DRIVER HAS A VIOLATION/ACCIDENT HE/SHE GOES INTO A DIFFERENT

*I AM PREPARED TO ANSWER ANY QUESTIONS,
MEET WITH ANYONE AT ANY
PLACE - JUST*

*TRAVEL ANYWHERE, MEET WITH ANYONE -
JUST PLEASE DISPOSE OF THIS BILL -*

CLASS. THEREFORE, THIS LANGUAGE IS NOT RESTRICTING THE INSURANCE COMPANY.

SECTION 1(b) - THIS SECTION GUARANTEES THAT THE INSURANCE COMPANY CANNOT RAISE RATES ONLY BECAUSE THE INSURER WAS ISSUED A CITATION. THE DRIVER MUST HAVE BEEN CONVICTED ON THE VIOLATION.

THE INSURANCE POLICY COVERS ONLY THE PEOPLE RESIDING IN THE HOUSEHOLD BECAUSE INSURERS DO NOT HAVE THE TOOLS AVAILABLE TO INCREASE RATES WITH EQUILITY. MOTOR VEHICLE RECORDS OF AN INDIVIDUAL ARE CONFIDENTIAL RECORDS UNDER AS 28.15.151. WHILE AN INSURER CAN ACCESS THE RECORD OF ITS INSURED AND MEMBERS OF THE HOUSEHOLD WITH THE AGREEMENT OF THOSE PERSONS, IT CANNOT DO SO WITH OTHERS. THE DRIVER THAT GENERATES A VIOLATION WHILE DRIVING A VEHICLE BELONGING TO SOMEONE ELSE DOES NOT AVOID A CHARGE ON HIS/HER POLICY FOR THAT INCIDENT. THE DRIVERS OWN INSURER HAS THE ABILITY TO CHARGE FOR THE VIOLATION.