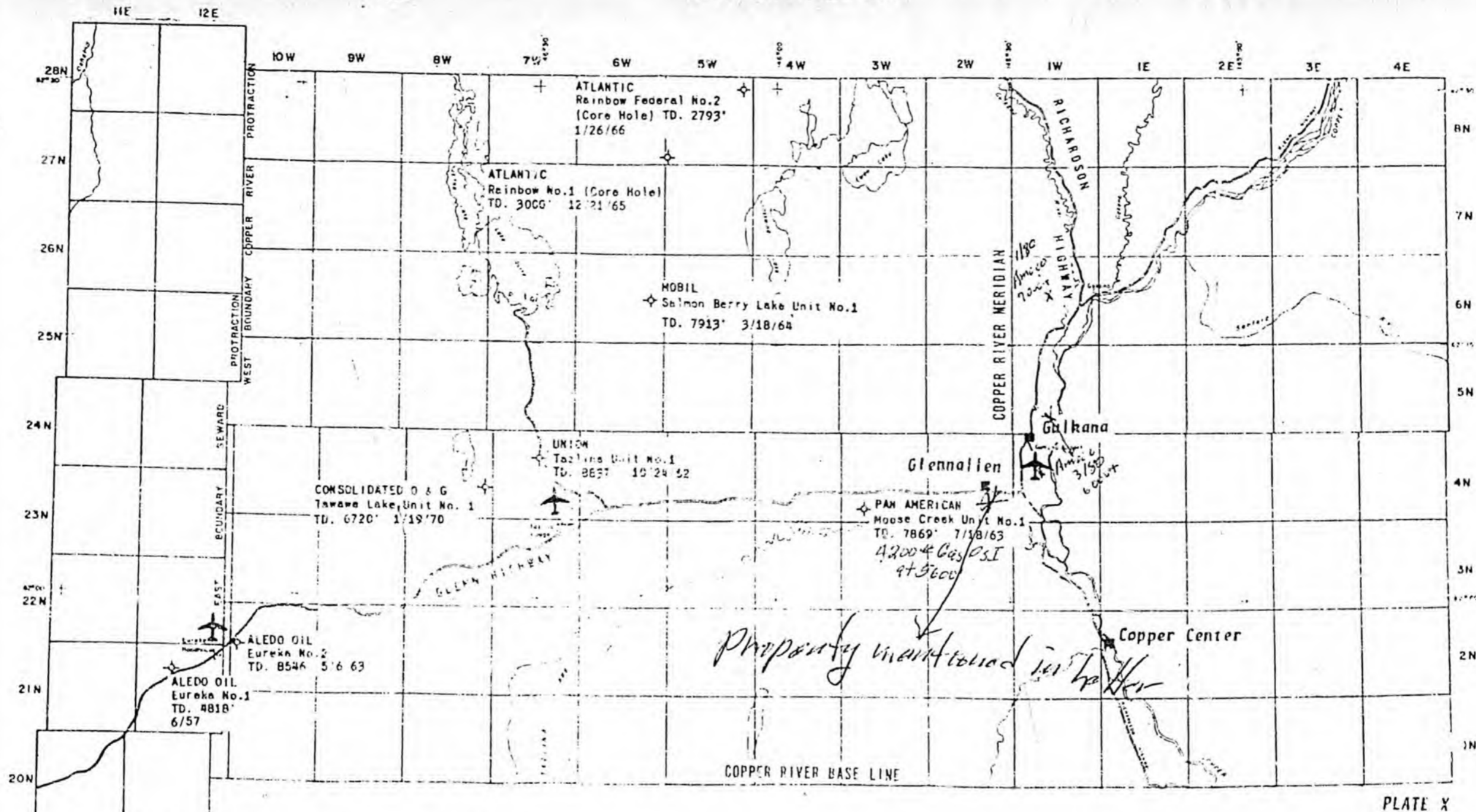


ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86 / 2

2813 SRES • SB 62 - SB 79 • 2113

COPPER RIVER BASIN MAP



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Scale: 1"=8 miles

PLATE X

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, RESOURCES COMMITTEE

4016 EVERGREEN  
FAIRBANKS, ALASKA 99701

907-479-3550



Senate

WHILE IN JUNEAU  
POUCH-V  
JUNEAU, ALASKA 99811  
OFFICE 907-465-3760  
RESOURCES COMMITTEE  
907-465-3804  
HOME 907-752-9182

January 25, 1983

Dear President Kerttula:

This letter is to notify you officially as President of the Senate that I have an indirect and personal conflict of interest with Senate Bill #62, "An Act relating to an appropriation for a feasibility study Copper River Basin natural gas for electric power generation." This measure has been referred for consideration to the Senate Resources Committee, the committee of first referral. It has a further referral to the Senate Finance Committee.

This conflict of interest arises from the fact that I have now and have had for five years a financial interest in an oil and gas lease in the Copper River Basin. This legislation would directly aid in the development of leases in this area by studying the use of Copper River Basin gas by local utilities in the generation of electricity.

I have been in contact with the Attorney General and his staff as to the proper and legally correct procedure to follow in this situation. He has advised me that if and when the Resources Committee considers SB 62, I should not chair that committee session. Accordingly, if and when the committee considers this legislation, Senator Ziegler, Vice-Chairman of the Resources Committee, will serve as chairman.

It is my utmost desire to avoid any semblance of impropriety that would reflect upon the integrity of this body or any of its members.

Sincerely,

Senator Bettye Fahrenkamp  
Chairman  
Senate Resources Committee

BF/jp

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B

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# Alaska State Legislature

BETTYE FAHRENKAMP  
CHAIRMAN  
ROBERT H. ZIEGLER, SR.  
VICE-CHAIRMAN  
DICK ELIASON - PAUL FISCHER  
VIC FISCHER - BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
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## Senate

### Committee on Resources

TO: Senate Resources Committee Members  
FROM: Senate Resources Committee Staff  
RE: March 25 Hearing  
DATE: March 24, 1983

-----  
On Friday, March 25 at 3:00 pm in the Beltz Room, the following bills will be heard:

SB 120 AN ACT RELATING TO SOIL AND WATER CONSERVATION.

The sponsor of SB 120 has requested that the Committee consider Sponsor Substitute for SB 120 in lieu of the original bill.

SSSB 120 creates the Soil and Water Conservation Board in place of the Soil Conservation Board, and replaces the current system of one Soil Conservation District (which includes the area of the entire state) divided into subdistricts, with a system of Soil and Water Conservation Districts.

The membership of the Board is increased to allow for appointment of 1 member from each of 5 geographic areas of the state; each board member must be a producer of renewable resources and have a cooperative agreement with a soil and water conservation district, rather than possessing land as is currently required. The Board's advisory duties are increased to allow them to hold public hearings and to review appeals. The Commissioner of DNR is authorized to appoint an executive director and clerical staff to assist the Board.

The following 3 bills have passed out of the Resources Subcommittee on Fisheries. Recommendations of the Subcommittee have been incorporated into draft Committee Substitutes, which will be discussed by Senator Mulcahy, Subcommittee Chairman, at the hearing.

CSSB 73 AN ACT RELATING TO COMMERCIAL FISHING LOANS, which changes the residency requirement for a commercial fishing loan from 5 years to 2 years.

CSSB 136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR, which provides exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear.

CSSB 156 AN ACT RELATING TO THE SALE, LEASE OR GRANT OF STATE HATCHERY FACILITIES, which allows the Commissioner of Fish and Game to sell, lease, or grant a state hatchery facility to a qualified regional aquaculture association.

The following two bills will also be heard:

SR 2 RELATING TO THE CROSS ISLAND WELL

SR 2 resolves that the North Slope Borough not impose restrictions in addition to those already required by the state on the operator of the Cross Island Well in the Beaufort Sea.

SB 151 AN ACT RELATING TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

The Committee will be considering further a Committee Substitute for SB 151. Additional amendments to the CS are still being prepared, and will be submitted to you under separate cover prior to Friday's hearing.

It is hoped that final Committee action could be taken on several of these bills.

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

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

RECD  
9:46 A.M.  
11/29/82

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 366-161-83.

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

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Div. of Business Loans & Veterans Affairs  
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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/

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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.

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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

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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. Scsna 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

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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).

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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

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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

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

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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-

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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 13.10.300 (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-

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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

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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-

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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).

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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. Coryell, 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

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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.

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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-

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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-

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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).

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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-

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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 Massey v. Apollonio, 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

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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. 395 (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-

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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

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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-

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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

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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  
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366-161-83

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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-

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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

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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).

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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

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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.

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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.

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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).

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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 Massey 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.,

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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

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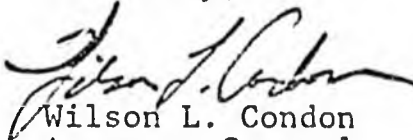
November 26, 1982  
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some durational residency requirement.

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:d1m

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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2/ AS 01.10.030 provides:

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

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

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

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

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

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

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

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

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

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

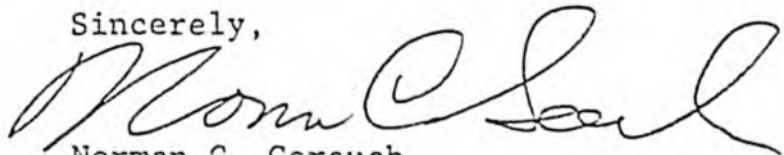
The administration is considering proposing legislation to remedy this problem, although no decision has been made in that regard. However, any permanent solution to the problem created by the unconstitutional five-year durational residency requirement in AS 16.10.310(a)(1) must be provided by the legislature.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

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

Sincerely,



Norman C. Gorsuch  
Attorney General

NCG:GTK:dln

Attachment

cc: Senator Jalmar Kerttula  
Representative Joe L. Hayes

Original sponsors: Hayes, Flood,  
Lindauer, et al

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IN THE HOUSE

BY THE SPECIAL COMMITTEE  
ON STATE LOANS

CS FOR HOUSE BILL NO. 15 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing loans (AS 16.-  
10.300 - 16.10.370)."

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

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

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years [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 the year immediately preceding the date of application and any other two [ANY ONE] of the past five years, and who actively participated in the fishery during <sup>those periods</sup> ~~that period~~, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of two years [FIVE YEARS] immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.-370, who

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial

1 fishing for a livelihood and for whom commercial fishing has  
2 been a traditional way of life [FOR HIM] in Alaska, for the  
3 repair, restoration or upgrading of existing vessels and  
4 gear, for the purchase of entry permits and gear, and for  
5 the construction and purchase of vessels;

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

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

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

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

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

27 (6) enter into agreements with other agencies or organiza-  
28 tions to create an outreach program to make loans under AS 16.10.300 -  
29 16.10.370 in rural areas of the state.

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

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

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

7       (j) If a borrower ceases to be a state resident during the term  
8 of a loan made under AS 16.10.310 - 16.10.370, the loan shall be  
9 accelerated and the outstanding principal and interest shall be repaid  
10 by the borrower within 120 days after the state residence terminates.  
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The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the length of residency required to qualify for a commercial fishing loan.

The Department of Law has concluded that the five-year durational residency requirement for commercial fishing loans in AS 16.10.310(a) is unconstitutional. In the department's first opinion on that subject, dated November 26, 1982, it concluded that the unconstitutional five-year durational residency requirement was not severable from the remainder of the statute and, accordingly, that there was no alternative to shutting down the program. The program was, therefore, suspended.

Immediately upon taking office, I directed my Attorney General to review this conclusion. I was particularly concerned about the consequences of closing down the program at this time since the winter, non-fishing season is the most important time of year for fishermen to make financial arrangements (i.e., commercial fishing loans) for the upcoming season. In an opinion dated December 6, 1982, Attorney General Norman C. Gorsuch concluded that the five-year durational residency requirement was severable, that a one-year durational residency requirement would be defensible, and that the Department of Commerce and Economic Development could adopt emergency regulations to reinstitute the program.

The Department of Commerce and Economic Development adopted an amendment to 3 AAC 80.100(11) as an emergency regulation on December 7, 1982 (filed by the lieutenant governor on December 8, 1982) to reinstitute the program with a one-year residence requirement. However, at my direction they have not published notice that that regulation will be adopted as a "permanent" regulation. It is my belief that any permanent change in the five-year requirement should be made by the legislature. To that end, the attached bill changes the statutory five-year durational residency requirement to a one-year one.

The emergency regulation will expire at midnight on April 6, 1983. At that time, in the absence of legislative action amending the statute, the commercial fishing loan program again will be suspended until the legislature acts to reinstitute the program. In the meantime, one-year Alaska resident commercial fishermen may continue to apply for loans. However, after that date, applications no longer will be accepted unless the legislature acts.

Given the interest which this program and its brief suspension have generated, as well as its importance to Alaska's commercial fishing industry, I urge you to act on this measure without delay.

Sincerely,

/s/ Bill Sheffield  
Bill Sheffield  
Governor

SENATE JOINT RESOLUTION NO. 15 by the Rules Committee by Request of the Alaska Statehood Commission,

Proposing an amendment to the Constitution of the State of Alaska relating to cooperation with foreign nations,

was read the first time and referred to the Judiciary Committee.

SJR 16

SENATE JOINT RESOLUTION NO. 16 by the Rules Committee by Request of the Alaska Statehood Commission,

Making application and requesting that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States setting rules and procedures for constitutional conventions,

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

SB 76

SENATE BILL NO. 76 by the Rules Committee by Request of the Alaska Statehood Commission, entitled:

"An Act requiring an advisory vote by the qualified voters of the state on amendments to the Alaska Statehood Act."

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

SB 77

SENATE BILL NO. 77 by Senator Vic Fischer, entitled:

"An Act establishing the Alaska senior citizen employment team program and fund; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

**JOURNAL SUPPLEMENT**

2/26/83

No. 1

FISCAL NOTE

SB  
73

**I. REQUEST**

Bill/Resolution No. \_\_\_\_\_  
 Title An Act relating to eligibility for commercial fishing loans.  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

**II. FISCAL DETAIL**

Agency Affected Department of Commerce and Economic Development  
 Program Category Affected Economic Development  
 BRU, Program, Or Subprogram(s) Affected Division of Loans & Veterans' Aff  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

**EXPENDITURES (Thousands of Dollars)**

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		63.7	61.3	64.4	67.7	71.1

**FUNDING (Thousands of Dollars)**

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	64.4	67.7	71.1
FEDERAL FUNDS						
OTHER (Specify Source)						

**III. ANALYSIS**

Increased fund is required for the following reasons:

Five-year residents have a longer track record in Alaska, which makes their residency indicators much more obvious and more easily obtainable. A one-year residency requirement would require more investigative work into the residency background of the applicant.

During certain times of the year, many one-year residents do not have a prepared tax return, which is one of the main documents used in determining residency.

Contact with other states will be necessary in cases which involve prepared term residency to determine the actual dates of residence.

1/19/83 Prepared by D.A. Hostak, Director  
 Agency: Dept. of Commerce & Econ. Dev.  
 Phone 465-2555 Div of Loans & Veterans Aff



# UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE  
197 SOUTH FRANKLIN ST.  
JUNEAU, ALASKA 99801  
907 586-2820

Cass M. Parsons  
Executive Director

March 15, 1983

Honorable Bob Mulcahy  
Chairman  
Sub Committee on Fish  
Pouch V  
Juneau, Alaska 99811

Dear Senator Mulcahy:

I would like to comment on <sup>Sewt</sup> ~~House~~ Bill <sup>73</sup> ~~15~~, loans to commercial fishermen, on behalf of the United Fishermen of Alaska. The UFA is a fishermen's organization of 1500 individual members and 18 member fishing groups from many gear types and regions throughout the state. We feel particularly qualified to testify on the state's loan programs to fishermen.

The UFA Board of Directors voted to support a two year residency requirement for the following specific reasons:

- 1) Fishermen are a very mobile group, and as such, their permanent place of residency is difficult to ascertain. Even those fishermen who have legally resided in one state for years move around with the fishing seasons and often establish temporary residences in other towns. With the major supporting infra-structure facilities located outside the state, legal Alaska state residents often spend many months in other states, building, repairing and supplying their vessels. These fishermen often establish a temporary residence outside the state of Alaska.
- 2) A very high percentage of the Alaskan fleet is comprised of vessels registered to ports outside Alaska. The fishermen aboard these boats are legal residents of another state but fish in Alaska for many months and often establish temporary residence here. A study by Natural Resources Consultants reports the following percentages of out-of-state registered vessels\* per fishery, fishing in Alaskan waters throughout the year:

\*over 5 net ton vessels only

Honorable Rick Uehling  
March 8, 1983  
Page Two

17% Salmon  
69% King crab  
48% Tanner crab  
15% Halibut  
16% Herring  
29% Ground fish

These traits of the fishing industry point to an enormous similarity in the patterns of resident and non-resident fishermen during the course of a year. The UFA believes that a longer period than one year is necessary to differentiate between the non-resident who may appear to be a resident and the legal resident.

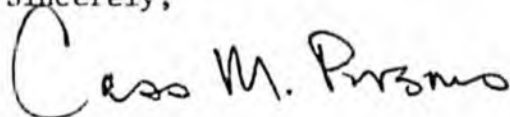
The UFA also supports legislation which would require that loans given out to fishermen from the state be paid back upon termination of the fishermen's residency. We feel that a requirement of this nature would assist the state in dissuading loan recipients from defaulting.

The UFA has voted to support a "3 of the last 5 year's" fishing experience requirement with the last year of experience immediately preceding the year during which the loan is applied for. At least three year's experience are necessary to ensure that the individual has gained the knowledge and ability to succeed in the fishery. More than 3 year's experience required may preclude younger individuals from entering the fishery.

The UFA is also concerned that the state loan program has not met the needs of rural and urban lower-income people who depend on fisheries for their livelihoods.

Thank you.

Sincerely,



Cass M. Parsons  
UFA Executive Director

CMP/jb

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

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

Article 7. Commercial Fishing Loan Act.

Section	Section
310. Powers of the department	337. Deficiencies and transfer of entry permits after foreclosure
320. Limitations on loans	338. Entry permits as collateral
325. Guarantors	339. Regulations
330. [Repealed]	342. Special account established
333. Loans for purchase of Alaska limited entry permits	360. Definitions
335. Default and foreclosure	

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

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the purpose of entry permits;

*Sec 1 amends this section*

(B) an individual who has been a state resident for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, who (i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

*Sec 1 amends this section*

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

*Sec 1 amends this section*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Repealed by § 72 ch 113 SLA 1982.

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

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# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

March 15, 1983

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 73

The subcommittee has taken testimony and recommends replacing SB 73 with CS SB 73(Res) and reports CS SB 73(Res) back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy	<u>Bob Mulcahy</u> Do Pass
Senator Eliason	<u>Pat Eliason</u>
Senator Gilman	<u>Edman Defass</u>

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 5873  
 Title An Act relating to eligibility for commercial fishing loans.  
 Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development  
 Program Category Affected Economic Development  
 ERU, Program, Or Subprogram(s) Affected Division of Loans & Veterans' Affairs  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		63.7	61.3	64.4	67.7	71.1

FUNDING (Thousands of Dollars)

	FY 82	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		63.7	61.3	64.4	67.7	71.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

Increased fund is required for the following reasons:

- Five-year residents have a longer track record in Alaska, which makes their residency indicators much more obvious and more easily obtainable. A one-year residency requirement would require more investigative work into the residency background of the applicant.
- During certain times of the year, many one-year residents do not have a prepared tax return, which is one of the main documents used in determining residency.
- Contact with other states will be necessary in cases which involve prepared term residency to determine the actual dates of residence.

IV. DATE 1/19/83

PREPARED BY D. A. Hostak, Director

AGENCY Department of Commerce & Economic Development

Original: Legislative Finance  
 cc: Budget and Management

PHONE 464-2555 Division of Loans & Veterans' Affairs

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 26, 1983

The Honorable Jalmar Kerätula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the length of residency required to qualify for a commercial fishing loan.

The Department of Law has concluded that the five-year durational residency requirement for commercial fishing loans in AS 16.10.310(a) is unconstitutional. In the department's first opinion on that subject, dated November 26, 1982, it concluded that the unconstitutional five-year durational residency requirement was not severable from the remainder of the statute and, accordingly, that there was no alternative to shutting down the program. The program was, therefore, suspended.

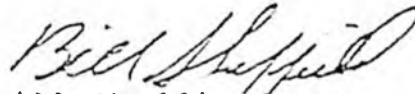
Immediately upon taking office, I directed my Attorney General to review this conclusion. I was particularly concerned about the consequences of closing down the program at this time since the winter, non-fishing season is the most important time of year for fishermen to make financial arrangements (i.e., commercial fishing loans) for the upcoming season. In an opinion dated December 6, 1982, Attorney General Norman C. Gorsuch concluded that the five-year durational residency requirement was severable, that a one-year durational residency requirement would be defensible, and that the Department of Commerce and Economic Development could adopt emergency regulations to reinstitute the program.

The Department of Commerce and Economic Development adopted an amendment to 3 AAC 80.100(11) as an emergency regulation on December 7, 1982 (filed by the lieutenant governor on December 8, 1982) to reinstitute the program with a one-year residency requirement. However, at my direction, they have not published notice that that regulation will be adopted as a "permanent" regulation. It is my belief that any permanent change in the five-year requirement should be made by the legislature. To that end, the attached bill changes the statutory five-year durational residency requirement to a one-year one.

The emergency regulation will expire at midnight on April 6, 1983. At that time, in the absence of legislative action amending the statute, the commercial fishing loan program again will be suspended until the legislature acts to reinstitute the program. In the meantime, one-year Alaska resident commercial fishermen may continue to apply for loans. However, after that date, applications no longer will be accepted unless the legislature acts.

Given the interest which this program and its brief suspension have generated, as well as its importance to Alaska's commercial fishing industry, I urge you to act on this measure without delay.

Sincerely,



Bill Sheffield  
Governor

## 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 amendment is therefore adopted as an emergency amendment to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

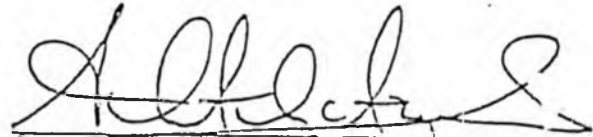
DATE: December 8, 1982  
Juneau, Alaska



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 8, 1982, at 3:40, p.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

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: CSSB 73 (Resources)  
 Title: Commercial Fishing Loans  
 Sponsor: Rules/Governor  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development  
 Program Category Affected: Development  
 BRU, Program of Subprogram(s) Affected: Loans and Veterans' Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		44.3	46.9	49.7	52.7	55.9
200 TRAVEL		7.9	8.4	8.9	9.4	10.0
300 CONTRACTUAL		3.0	3.2	3.4	3.6	3.8
400 COMMODITIES		.5	.2	.2	.2	.2
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		55.7	58.7	62.2	65.9	69.9

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		55.7	58.7	62.2	65.9	69.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

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

See attached

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak  
 Division: Loans and Veterans' Affairs  
 Approved by Commissioner: Richard A. Lyon  
 Department: Commerce and Economic Development

Phone: 465-2510  
 Date: 4-4-83  
 Date: 4/6/83

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

CSSB 73 (Resources)

FISCAL NOTE ANALYSIS:

Provides for an Investigator III position. This position's primary responsibility would be to investigate the residency claims of applicants under the Commercial Fishing Loan Program. This would involve civil as well as criminal investigations. A large amount of the emphasis would be to insure that only qualified applicants receive loans and to prosecute applicants who provide fraudulent claims. All figures are based on a 6% inflation increase per year.

FISCAL NOTE  
CSSB 73 (Resources)

2. Source of funds to offset fiscal impact of bill: (Continued)

The investigative position will enable the division to carry out detailed investigations of questionable loan applicants. This will result in the division maintaining its ability to process loans while assuring that a minimum of nonqualified applicants receives State benefits.

The impact caused by the offset to the budget by the reduction of one loan examiner in the Juneau office and by a reduction in the travel budget would result in a delay in the processing of alternative energy and veterans assumption applications and the inspection of collateral as it now deems necessary.

The specific reductions would be as follows:

Form 11, page 1, line 14 reduced by \$41.4

Form 14, page 1, line 1 reduced by \$8.0

Form 15, page 1, line 1 reduced by \$5.8

Form 16, page 1, line 1 reduced by \$.5

1.	POSITION TITLE Investigator III				RANGE/STEP 18A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.		
3.	CONTINUATION LEVEL	ADDITION	JUSTIFICATION							
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	2,838/month	34,056							
6.	Benefits		5,279							
7.	Supplemental Benefits		2,088							
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES		01	44,303						
10.	Travel		02	7,872						
11.	Contractual		03	2,961						
12.	Commodities		04	520						
13.	Equipment		05							
14.	Other									
15.	TOTAL COST			55,656						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		55,656						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

**13** REQUEST FOR  
NEW POSITION

AGENCY COMMERCE & ECONOMIC DEVELOPMENT  
PROGRAM ECONOMIC DEVELOPMENT  
BRU LOANS & VETERANS' AFFAIRS  
COMPONENT \_\_\_\_\_

**FY 84**

Page 1 of 1  
Revised Date \_\_\_\_\_

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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT



*SENATE  
you may want  
to review - hold  
in any event (SB 79)*

**BILL SHEFFIELD, GOVERNOR**

**DEPARTMENT OF LABOR**

BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-2700

December 1, 1983

To All Interested Parties:

Enclosed is a copy of the federal Occupational Safety and Health Administration's final rule on Hazard Communication. It is my understanding that this regulation became effective November 25, 1983.

The regulation, however, is not effective in Alaska because the State operates its own occupational safety and health program. Our agreement with OSHA requires us to adopt a regulation as effective as OSHA's within six months of the date of the final rule.

*✓ by May 25*

Before the department formally proposes a regulation, we will be holding an informal workshop on the federal regulation to determine if changes or additions are needed to assure that the Alaska regulation that is adopted carries out the intent of Senate Bill 79.

We invite you to attend this workshop to be held on January 5, 1984 in Anchorage at the Department of Labor Building at 3301 Eagle Street, Room 308. Please contact Richard Arab in Juneau at 465-4856 or Max Andrews in Anchorage at 264-2599 if you have any questions.

Sincerely,

*for* *W. Sandan*  
Jim Robison  
Commissioner

Enclosure

- cc: Eileen Plate, Special Assistant
- Stan Godsoe, Chief, V.C.
- Max Andrews, Industrial Hygienist
- Steve Kadish, Alaska Health Project

*work w/ Kadish (V. Fischer)  
Who at AK Health Project?  
Porecho +*

DEPARTMENT OF LABOR

BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4856

November 28, 1983

Mr. Steve Kadish  
Executive Director  
Alaska Health Project  
P.O. Box 10-1037  
Anchorage, Alaska 99510

Dear Mr. Kadish:


Thank you for your letter of November 22, 1983 requesting clarification of certain provisions of S.B. 79.

The action that is required to respond to these concerns is the promulgation of regulations. The department is now ready to develop regulations because federal OSHA has, at long last, adopted a final rule on their Hazard Communication regulation.

I am enclosing three copies of these regulations for your review. The OSHA regulations may not be the total answer to Alaska's needs but it gives us a good starting point. As you know, Alaska's regulations have to be "at least as effective" as OSHA regulations.

I am sending copies of the OSHA regulations to the persons who helped draft S.B. 79 and would like to hold an informal workshop before the department formally proposes similar regulations. The timing of such a workshop may be a problem as the holiday season is approaching. I will be in Anchorage December 5 through 7 and perhaps we can get together and come up with a plan of action.

Sincerely,

  
Richard Arab, Deputy Director  
Division of Labor Standards  
and Safety

Enclosures

cc: Commissioner Jim Robison  
Senator Fahrenkamp  
Senator Vic Fisher  
Senator Josephson  
Senator Sturgulewski  
Mick Hotrum  
Art Robson  
Kevin Dougherty  
Stan Godsoe

Subpart 1910 of Title 29 of the Code of Federal Regulations (CFR) is hereby amended by adding a new §1910.1200 to read as follows:

§1910.1200 Hazard communication.

(a) Purpose. The purpose of this section is to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated, and that information concerning their hazards is transmitted to affected employers and employees within the manufacturing sector. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

This occupational safety and health standard is intended to address comprehensively the issue of evaluating and communicating chemical hazards to employees in the manufacturing sector, and to preempt any state law pertaining to this subject. Any state which desires to assume responsibility in this area may only do so under the provisions of §18 of the Occupational Safety and Health Act (29 U.S.C. 651 et. seq.) which deals with state jurisdiction and state plans.

(b) Scope and application. (1) This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers in SIC Codes 20 through 39 (Division D, Standard Industrial

Classification Manual) to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers in SIC Codes 20-39.

(2) This section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) This section applies to laboratories only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and,

(iii) Employers shall ensure that laboratory employees are apprised of the hazards of the chemicals in their workplaces in accordance with paragraph (h) of this section.

(4) This section does not require labeling of the following chemicals:

(i) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. ss136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(ii) Any food, food additive, color additive, drug, or cosmetic, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. ss301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Food and Drug Administration;

(iii) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. s201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol Tobacco, and Firearms; and,

(iv) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. ss2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. ss1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

(5) This section does not apply to:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. ss 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) Articles; and,

(v) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.

(c) Definitions.

"Article" means a manufactured item (i) which is formed to a specific shape or design during manufacture, (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer in SIC Codes 20 through 39 with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100°F (37.8°C), but below 200°F (93.3°C), except any mixture having components with flashpoints of 200°F (93.3°C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°F (21.1°C); or

(ii) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100°F (37.8°C) as determined by ASTM D-323-72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems are not considered to be containers.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to manufacturing purchasers.

"Employee" means a worker employed by an employer in a workplace in SIC Codes 20 through 39 who may be exposed to hazardous chemicals under normal operating conditions or foreseeable emergencies, including, but not limited to production workers, line supervisors, and repair or maintenance personnel. Office workers, grounds maintenance personnel, security personnel or non-resident management are generally not included, unless their job performance routinely involves potential exposure to hazardous chemicals.

"Employer" means a person engaged in a business within SIC Codes 20 through 39 where chemicals are either used, or are produced for use or distribution.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (e.g. accidental or possible) exposure.

"Flammable" means a chemical that falls into one of the following categories:

(i) "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) "Gas, flammable" means:

(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(iii) "Liquid, flammable" means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

(iv) "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in §1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79))-for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79))-for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

"Hazard warning" means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the hazards of the chemical(s) in the container(s).

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries, for the purpose of supplying them to distributors or manufacturing purchasers within the United States.

"Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

"Manufacturing purchaser" means an employer with a workplace classified in SIC Codes 20 through 39 who purchases a hazardous chemical for use within that workplace.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section.

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent -O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130°F (54.4°C) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information (including chemical name or other unique chemical identifier) that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

"Unstable (reactive)" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means to package, handle, react, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment at one geographical location containing one or more work areas.

(d) Hazard determination. (1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(2) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which

is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

(i) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or,

(ii) Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition).

The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard.

(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(i) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition);

(ii) International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note: The Registry of Toxic Effects of Chemical Substances published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(5) The chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows:

(i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a

component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section;

(iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and,

(iv) If the employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director. The written description may be incorporated into the written hazard communication program required under paragraph (e) of this section.

(e) Written hazard communication program.

(1) Employers shall develop and implement a written hazard communication program for their workplaces which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas);

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas; and,

(iii) The methods the employer will use to inform any contractor employers with employees working in the employer's workplace of the hazardous chemicals their employees may be exposed to while performing their work, and any suggestions for appropriate protective measures.

(2) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this paragraph (e).

(3) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director, in accordance with the requirements of 29 CFR 1910.20 (e).

(f) Labels and other forms of warning. (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

- (i) Identity of the hazardous chemical(s);
- (ii) Appropriate hazard warnings; and
- (iii) Name and address of the chemical manufacturer, importer, or other responsible party.

(2) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (18 U.S.C. ss1801 et seq.) and regulations issued under that Act by the Department of Transportation.

(3) If the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(4) Except as provided in paragraphs (f)(5) and (f)(6) the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged, or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and

(ii) Appropriate hazard warnings.

(5) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by paragraph (f)(4) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(6) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(7) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(8) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(9) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(g) Material safety data sheets. (i) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet for each hazardous chemical which they use.

(2) Each material safety data sheet shall be in English and shall contain at least the following information:

(i) The identity used on the label, and, except as provided for in paragraph (i) of this section on trade secrets:

(A) If the hazardous chemical is a single substance, its chemical and common name (s);

(B) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,