

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3527 HLAB SB 367 - SB 469

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RECORDS CERTIFICATION



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Date

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HOUSE
COMMITTEE REPORT

(7)

JUDICIARY

Date referred: 4/14/86

FURTHER REFERRALS: FINANCE

DATE: April 21, 1986

The LABOR & COMMERCE Committee has considered CSSB 367(Fin)am

"An Act relating to Alaskan resident employment preference; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with House CS for CS SB 367(LTC) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Savane

Mike Kovach

Steve Leary

Bob Miller

Bob Fisher

Mike Dan

Alyce Shirley - No Lec

Mike Savane

Chairman

Cramer ✓
4/23/86

Original sponsors: Faiks, Josephson,
Sturgulewski, et al

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 367 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Alaskan resident employment
7 preference; and providing for an effective date."

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

9 * Section 1. PURPOSE. The legislature recognizes that the state has a
10 significant unemployment problem. This Act is intended to better fulfill
11 the state's duty of loyalty to its citizens, reduce unemployment among
12 residents of the state, remedy social harms resulting from chronic unem-
13 ployment, and assist economically and socially disadvantaged residents. If
14 the courts find that a portion of AS 36.10 is unconstitutional, the public
15 interest requires that the remaining portions be implemented as fully as
16 possible.

17 * Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

18 (c) The legislature finds that the following factors are reason-
19 able but not exclusive indicators of the ratio of nonresident to
20 resident employees in the state:

21 (1) the ratio of applicants for unemployment insurance who
22 list out-of-state residences to applicants who list residences in the
23 state;

24 (2) the ratio of employees who are subject to unemployment
25 insurance coverage and who did not apply for or were denied a perma-
26 nent fund dividend to employees who were found eligible for a divi-
27 dend.

28 (d) The legislature finds that

29 (1) the number of state residents who are unable to find

1 work is considerably higher than is reflected by unemployment rates
2 based on nationally accepted measures;

3 (2) many rural state residents who wish to work do not seek
4 employment as frequently as necessary to meet federal definitions of
5 unemployment because of continuing lack of employment opportunities in
6 rural areas of the state.

7 * Sec. 3. AS 36.10.070 is repealed and reenacted to read:

8 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
9 employer subject to hiring requirements under this chapter may request
10 the Department of Labor to assist in locating qualified, eligible
11 employees. After receiving a request for assistance, the department
12 shall refer qualified, eligible, available residents to the employer
13 to fill the employer's hiring needs. The employer shall cooperate
14 with the department.

15 (b) If the department is unable to refer a sufficient number of
16 qualified, eligible, available residents able to perform the work, the
17 commissioner of labor may approve the hiring of residents who are not
18 eligible for preference and nonresidents for the balance of the re-
19 quest.

20 * Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

21 (b) The commissioner of labor shall adopt regulations to encour-
22 age and require the hiring of residents to the maximum extent permit-
23 ted by law.

24 * Sec. 5. AS 36.10 is amended by adding new sections to read:

25 Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and
26 the commissioner of labor shall report annually to the legislature and
27 the governor on the status of employment in the state, the effect of
28 nonresident employment on the employment of residents in the state,
29 and methods to increase resident hire. The report shall be submitted

1 by January 31 of each year.

2 Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is
3 eligible for an employment preference under this chapter if the person
4 certifies eligibility as required by the Department of Labor, is a
5 resident, and

6 (1) is receiving unemployment benefits under AS 23.20 or
7 would be eligible to receive benefits but has exhausted them;

8 (2) is not working and has registered to find work with a
9 public or private employment agency or a local hiring hall;

10 (3) is underemployed or marginally employed as defined by
11 the department; or

12 (4) has completed a job-training program approved by the
13 department and is either not employed or is engaged in employment that
14 does not use the skills acquired in the job-training program.

15 (b) In approving job-training programs under (a) of this sec-
16 tion, the department shall use information and findings from other
17 state and federal agencies as much as possible.

18 (c) An employer subject to a resident hiring requirement under
19 this chapter shall certify that persons employed as residents under
20 the preference were eligible for the preference at the time of hiring.

21 (d) A labor organization that dispatches members for work on a
22 public works project under a collective bargaining agreement shall
23 certify that persons dispatched as residents to meet a preference were
24 eligible for the preference at the time of dispatch.

25 (e) An employer or labor organization may request assistance from
26 the Department of Labor in verifying the residence of an applicant.

27 Sec. 36.10.150. DETERMINATION OF ZONE OF UNDEREMPLOYMENT. (a)
28 Immediately following a determination by the commissioner of labor
29 that a zone of underemployment exists, and for the next two fiscal

1 years after the determination, qualified residents of the zone who are
2 eligible under AS 36.10.140 shall be given preference in hiring for
3 work on each project under AS 36.10.180 that is wholly or partially
4 sited within the zone. The preference applies on a craft-by-craft or
5 occupational basis.

6 (b) The commissioner of labor shall determine the amount of work
7 that must be performed under this section by qualified residents who
8 are eligible for an employment preference under AS 36.10.140. In
9 making this determination, the commissioner shall consider the nature
10 of the work, the classification of workers, availability of eligible
11 residents, and the willingness of eligible residents to perform the
12 work.

13 (c) The commissioner shall determine that a zone of underemploy-
14 ment exists if the commissioner finds that

15 (1) the rate of unemployment within the zone is substan-
16 tially higher than the national rate of unemployment;

17 (2) a substantial number of residents in the zone have
18 experience or training in occupations that would be employed on a
19 public works project;

20 (3) the lack of employment opportunities in the zone has
21 substantially contributed to serious social or economic problems in
22 the zone; and

23 (4) employment of workers who are not residents is a pecu-
24 liar source of the unemployment of residents of the zone.

25 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
26 TRESSED ZONES. (a) Immediately following a determination by the
27 commissioner that an economically distressed zone exists, and for the
28 next two fiscal years after the determination, qualified residents of
29 the zone who are eligible under AS 36.10.140 shall be given preference

1 in hiring for at least 50 percent of employment on each project under
2 AS 36.10.180 that is wholly or partially sited within the zone. The
3 preference applies on a craft-by-craft or occupational basis.

4 (b) The commissioner shall determine that an economically dis-
5 tressed zone exists if the commissioner finds that

6 (1) the per capita income of residents of the zone is less
7 than 90 percent of the per capita income of the United States as a
8 whole, or the unemployment rate in the zone exceeds the national rate
9 of unemployment by at least five percentage points;

10 (2) the lack of employment opportunities in the zone has
11 substantially contributed to serious social or economic problems in
12 the zone; and

13 (3) employment of workers who are not residents is a pecu-
14 liar source of unemployment of residents of the zone.

15 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
16 ITY RESIDENTS. (a) Immediately following a determination by the
17 commissioner that the minority residents of a zone are economically
18 disadvantaged, and for the next two fiscal years after the determina-
19 tion, qualified minority residents of the zone who are eligible under
20 AS 36.10.140 shall be given preference in hiring for at least 25
21 percent of employment on each project under AS 36.10.180 that is
22 wholly or partially sited within the zone. The preference applies on
23 a craft-by-craft or occupational basis.

24 (b) The commissioner shall determine that the minority residents
25 of a zone are economically disadvantaged if the commissioner finds
26 that

27 (1) the percentage of civilian minority residents in the
28 zone exceeds the percentage of civilian minority residents in the
29 state;

1 (2) either the percent of unemployment of civilian minority
2 residents of the zone is at least two times the percent of unemploy-
3 ment of nonminority residents of the zone or the civilian minority
4 population of the zone has suffered past economic discrimination;

5 (3) the economic disadvantage of civilian minority resi-
6 dents of the zone has substantially contributed to serious social or
7 economic problems in the zone; and

8 (4) employment of workers who are not residents is a pecu-
9 liar source of unemployment of civilian minority residents of the
10 zone.

11 (c) In this section, a person is considered to be a member of a
12 minority if the person is Hispanic, Asian or Pacific Islander, Ameri-
13 can Indian or Alaskan Native, or Black as those terms are defined by
14 the Equal Employment Opportunity Commission.

15 Sec. 36.10.175. PREFERENCE FOR ECONOMICALLY DISADVANTAGED FEMALE
16 RESIDENTS. (a) Immediately following a determination by the commis-
17 sioner that the female residents of a zone are economically disadvan-
18 taged, and for the next two fiscal years after the determination,
19 qualified female residents of the zone who are eligible under AS 36.-
20 10.140 shall be given preference in hiring for at least 25 percent of
21 employment on each project under AS 36.10.180 that is wholly or par-
22 tially sited within the zone. The preference applies on a craft-by-
23 craft or occupational basis.

24 (b) The commissioner shall determine that the female residents
25 of a zone are economically disadvantaged if the commissioner finds
26 that

27 (1) either the percent of unemployment of female residents
28 of the zone is at least two times the percent of unemployment of male
29 residents of the zone or the female population of the zone has

1 suffered past economic discrimination;

2 (2) the economic disadvantage of female residents of the
3 zone has substantially contributed to serious social or economic prob-
4 lems in the zone; and

5 (3) employment of workers who are not residents is a pecu-
6 liar source of unemployment of female residents of the zone.

7 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
8 erences established in AS 36.10.150 - 36.10.175 apply to work per-
9 formed

10 (1) under a contract for construction, repair, preliminary
11 surveys, engineering studies, consulting, maintenance work, or any
12 other retention of services necessary to complete a given project that
13 is let by the state or an agency of the state, a department, office,
14 state board, commission, public corporation, or other organizational
15 unit of or created under the executive, legislative or judicial branch
16 of state government, including the University of Alaska and the Alaska
17 Railroad Corporation, or by a political subdivision of the state
18 including a regional school board with respect to an educational
19 facility under AS 14.11.020;

20 (2) on a public works project under a grant to a municipal-
21 ity under AS 37.05.315;

22 (3) on a public works project under a grant to a named
23 recipient under AS 37.05.316;

24 (4) on a public works project under a grant to an unincor-
25 porated community under AS 37.05.317; and

26 (5) on any other public works project or construction
27 project that is funded in whole or in part by state money.

28 (b) If the governor has declared an area to be an area impacted
29 by an economic disaster under AS 44.33.285, then the preference for

1 residents of the area established under AS 44.33.285 - 44.33.310
2 supersedes the preference under AS 36.10.150 - 36.10.175 for contracts
3 awarded by the state.

4 (c) The commissioner shall define the boundaries of a zone
5 within which a preference applies.

6 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
7 meet resident hire requirements under this chapter shall comply with
8 the reporting provisions that the commissioner of labor determines are
9 reasonably necessary to carry out this chapter. Except for statis-
10 tical data, all information regarding specific employees is confiden-
11 tial and may not be released by Department of Labor. However,
12 confidential employee information may be shared between departments
13 for purposes of this chapter.

14 Sec. 36.10.200. CRIMINAL PENALTIES. (a) A person who makes a
15 false sworn statement in connection with a certification of eligibil-
16 ity for an employment preference under this chapter is subject to
17 criminal prosecution for perjury as provided in AS 11.56.200.

18 (b) A person who makes an unsworn falsification, with the intent
19 to mislead a public servant in the performance of a duty, in connec-
20 tion with a certification of eligibility for an employment preference
21 under this chapter, is subject to criminal prosecution as provided in
22 AS 11.56.210.

23 (c) In addition to criminal penalties imposed by state law, if a
24 person is convicted of a crime in connection with a false statement
25 made in a certification required under AS 36.10.140, and the convic-
26 tion is not reversed, that person shall forfeit all future rights to
27 eligibility for an employment preference under this chapter.

28 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any crimi-
29 nal penalties imposed, after a hearing the department may impose a

1 civil penalty on a person who, in connection with certification of
2 eligibility for an employment preference under this chapter,

3 (1) made a false sworn statement; or

4 (2) made an unsworn falsification with intent to mislead a
5 public servant in the performance of a duty.

6 (b) The amount of the civil penalty under (a) of this section
7 for a person who falsely certifies that the person is eligible for an
8 employment preference under this chapter is not more than \$400 for
9 each false certification. The person also forfeits all future rights
10 to eligibility for an employment preference under this chapter.

11 (c) The amount of the civil penalty under (a) of this section
12 for an employer who falsely certifies that employees are residents
13 eligible for a preference under this chapter is not more than \$2,000
14 for each of the first five false certifications. The penalty for the
15 sixth false certification made by an employer and for each false
16 certification thereafter is at least \$2,000 and not more than \$4,000.

17 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
18 this chapter, or the application of a provision to a person or circum-
19 stance, is held invalid, the remainder of this chapter and the appli-
20 cation to other persons or circumstances shall not be affected by the
21 holding. The remainder shall be enforced to the greatest extent
22 constitutionally permissible under the constitutions of the United
23 States and the State of Alaska.

24 Sec. 36.10.990. DEFINITIONS. In this chapter

25 (1) "qualified" means possesses the requisite education,
26 training, skills, or experience to perform the work;

27 (2) "zone" includes a census area in the state, an economic
28 region of the state, and the state as a whole.

29 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:

1 (9) "resident" means a person who establishes residency
2 under AS 01.10.055.

3 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

4 (e) The Department of Labor shall require a municipality awarded
5 a grant for a public works project under (a) of this section to comply
6 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
7 ment generated by the grant.

8 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

9 (b) The Department of Labor shall require a recipient awarded a
10 grant for a public works project under (a) of this section to comply
11 with the hiring preferences under AS 36.10.150 - 36.10.175 for employ-
12 ment generated by the grant.

13 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

14 (b) The Department of Labor shall require the qualified incor-
15 porated entity awarded a grant or agents or contractors with whom the
16 Department of Community and Regional Affairs contracts under (a) of
17 this section to comply with the requirements of AS 36.10.150 - 36.10.-
18 175 for employment enerated by the grant or contract if the grant or
19 contract is for a public works project.

20 * Sec. 10. The provisions of this Act do not apply to a contract en-
21 tered into before the effective date of this Act unless the contract in-
22 cludes a provision requiring compliance with laws regarding the hiring of
23 Alaska residents that take effect during the term of the contract.

24 * Sec. 11. AS 36.10.010 and AS 36.95.010(4) and (5) are repealed.

25 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



JAN FAIKS
FOUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

April 10, 1986

MEMORANDUM

TO: Members, Senate Finance Committee

FROM: Senator Jan Faiks *Jan Faiks*

SUBJECT: Background on CS for Senate Bill 367 (Finance),
an Act relating to Alaskan resident employment
preference

I. The Problem

The problem of nonresident hire in Alaska was the topic of a report recently completed by the Department of Labor. Entitled "Nonresidents Working in Alaska", this report presents statistics that are based upon the 1984 employment season.

For that year, Alaska had the fifth highest unemployment rate in the country. Non-Alaskans represented about 1/5 of the instate labor force. For any one month, there were never less than 19,000 persons unemployed in Alaskans and there were never less than 16,000 nonresidents working here.

II. History of Past Local Hire Legislation

In 1960, the Legislature passed AS 36.10.010. This law requires 90-95% local hire on public construction projects. It was amended in 1972, 1976, and 1978.

In January of this year, the Alaska Supreme Court struck down the 1978 version of AS 36.10.010. In the case of Robison v. Francis, the Court said that this local hire law violates the Privileges and Immunities Clause of the U.S. Constitution. Simply stated, this clause says that a state

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

must give nonresidents the same privileges that it gives residents.

Last session, the Legislature added findings in order to strengthen this law.

III. What Francis v. Robison Says

Although the Supreme Court did not tell us how to write a valid local hire law, it did provide some general guidelines about what could and what could not be contained in statute.

For a constitutional local hire law, the state must show that there is a "substantial justification" for burdening the right of nonresidents to get a job in Alaska. The state must show documented proof that non-Alaskans are a "peculiar source" of the high unemployment here.

Furthermore, the law's method must be closely tailored to meet the problem. That is, the law must benefit unemployed Alaskans, just not Alaskans in general.

Finally, the state should show a link between high unemployment and resulting "social ills". That is, there should be a documented connection between our high unemployment rate and our high incidence of drug and alcohol abuse, domestic violence, suicide, and so forth.

IV. What CS for Senate Bill 367 (Finance) Does

Like AS 36.10.010, this bill requires local hire on public construction projects. However, it has been tailored to satisfy the constitutional questions raised by the Francis decision. Also, it has been amended to conform with the latest version of its companion, House Bill 466, and to suggestions made by the Department of Labor.

After reciting the purpose of the bill in Section 1, Section 2 adds more findings to those added by the legislature during last session. These findings support the need for local hire legislation and identify methods for determining if nonresidents are a "peculiar source" of high local unemployment.

If employers request assistance in locating eligible residents, Section 3 requires the Department of Labor to help them. If no eligible residents are available, this

section allows employers to hire ineligible residents and nonresidents.

Section 4 authorizes the Commissioner to adopt local hire regulations.

Section 5 contains the substantive requirements for local hire on public construction projects. It requires the Department of Labor to prepare an annual report on nonresident hire in the State. It also requires the Department to identify among the six economic regions of the state three types of areas. These are underemployment areas, economically distressed areas, and areas where female and minority residents are economically disadvantaged.

Once these areas have been identified, for the following two years eligible residents must be given preference for hire. This preference applies to any construction projects which are contracted by a municipality or which are funded by state funds or grants.

For projects located in underemployment and economically distressed areas, residents will be eligible for the hiring preference if they are unemployed, underemployed, or marginally employed. For projects in underemployment areas, the Commissioner will determine the amount of work that must be performed by these residents. For projects in economically distressed areas, these residents must be given preference for at least one-half of the jobs.

For projects located in areas where female or minority residents are economically disadvantaged, these residents must be given preference for at least one-fourth of the jobs.

Eligibility for the hiring preference will be established by a self-certification process. Section 5 establishes criminal and civil penalties for making false certifications.

Section 6 defines residency according to one's physical presence in the state for at least thirty days and by other indications of intent to remain here.

Sections 7 through 9 require the Department of Labor to enforce the resident hiring preference against municipalities and grantees of state funds. According to Section 10, the Act does not apply to construction contracts issued before the effective date of this act unless these contracts adopt the effect of local hire laws passed during

their lifetime. Section 11 repeals conflicting statutory definitions of the terms "qualified" and "resident".

Section 12 repeals AS 36.10.010, the current local hire law which was declared unconstitutional. Section 13 says that if the state does not appeal the Alaska Supreme Court's decision, the repeal of AS 36.10.010 takes effect on the effective date of this bill or at the state's deadline for appealing this decision, whichever is later. If the state does appeal the Francis decision, the repeal will take effect on the date the U.S. Supreme Court declines to review the appeal or the date the U.S. Court upholds our Court's decision. If the Supreme Court overturns the state court and upholds our current local hire law, then AS 36.10.010 will not be repealed and will remain on the books.

Section 14 gives the other sections of the bill an immediate effective date.

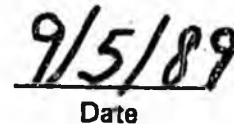
Thank you.



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Signature of Camera Operator


Date

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HOUSE
COMMITTEE REPORT

(7)

Date referred: 4/16/86

FURTHER REFERRALS: FINANCE

DATE: Apr 21, 1986

The LABOR & COMMERCE Committee has considered SB 469

"An Act exempting commercial fishermen from workers' compensation coverage."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Favara

Steve Korman

Mike...

...

...

Mike Favara
Chairman

Pouch V
Juneau, Alaska 99811

Alaska State Legislature
House of Representatives

Phone:
(907) 465-3892



Labor and Commerce Committee

LETTER OF INTENT - SB 469
4/21/1986

It is the intent of the Legislature that SB 469, An Act exempting commercial fishermen from workers' compensation coverage, be used to clarify potential issues, not to imply that fishermen may have been covered by workers' compensation prior to the enactment of the legislation.

Introduced: 4/1/86
Referred: Labor and Commerce

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2

SENATE BILL NO. 469

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act exempting commercial fishermen from workers'

7

compensation coverage."

8

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

9

* Section 1. AS 23.30.230 is amended by adding a new subsection to

10 read:

11

(b) A commercial fisherman, as defined in AS 16.05.940, is not

12

covered by this chapter.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 469
 Title : "An Act exempting commercial
 Fishermen from Workers' Compensation"
 Sponsor : Senate Labor & Commerce
 Requestor : Senate Labor & Commerce
 Date of Request : 4/2/86

FISCAL DETAIL

Agency Affected : Labor
 BRU : Workers' Compensation
 Components : Workers' Compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Jacqueline McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 4/3/86
 Approved by Commissioner: Jim Robison Date: 4/3/86
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

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FISCAL DETAIL

Agency Affected : Labor
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EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jacqueline McClintock Phone : 465-2790
 Division : Workers' Compensation Date : 4/3/86

Approved by Commissioner : Jim Robison Date : 4/3/86
 Agency : Labor

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor

AS16.05.940

CHAPTER = 16.05
 SECTION = 16.05.940
 TITLE = 16
 HEADINGS TITLE 16.
 Fish and Game.
 CHAPTER 05.
 Fish and Game Code.
 ARTICLE 7.
 General Provisions.
 CITATION Sec. 16.05.940.

CATCH LINE

DEFINITIONS.

TEXT In AS 16.05 - AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as

specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(10) "fish derby" means a contest in which prizes are awarded for catching fish;

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 AS 16.40;

(15) "hunting" means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(18) "operator" means the individual by law made responsible for the operation of the vessel;

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the

state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(24) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(25) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state,

but does not include aircraft.

HISTORY (Sec. 2 art I ch 95 SLA 1959; am secs. 1 - 4 ch 131 SLA 1960; am sec. 1 ch 21 SLA 1961; am secs. 1, 2 ch 102 SLA 1961; sec. 9 art VII ch 94 SLA 1959; am sec. 23 ch 131 SLA 1960; am sec. 1 ch 160 SLA 1962; am secs. 13, 14 ch 31 SLA 1963; am sec. 2 ch 32 SLA 1968; am sec. 3 ch 73 SLA 1970; am sec. 1 ch 91 SLA 1970; am sec. 4 ch 10 SLA 1970; am sec. 1 ch 90 SLA 1972; am sec. 5 ch 82 SLA 1974; am secs. 26, 82 ch 127 SLA 1974; am secs. 18 - 20 ch 206 SLA 1975; am sec. 12 ch 105 SLA 1977; am secs. 14, 15 ch 151 SLA 1978; am sec. 1 ch 78 SLA 1979; am sec. 1 ch 24 SLA 1980; sec. 4 ch 74 SLA 1982; am sec. 24 ch 132 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS23.30.230 DOCUMENT

CHAPTER = 23.30

SECTION = 23.30.230

TITLE = 23

HEADINGS TITLE 23.

Labor and Workers' Compensation.

CHAPTER 30.

Alaska Workers' Compensation Act.

ARTICLE 6.

General Provisions.

CITATION Sec. 23.30.230.

CATCH LINE

PERSONS NOT COVERED.

TEXT As defined by regulations adopted by the board, part-time baby sitters, cleaning persons, harvest help and similar part-time or transient help are not covered by this chapter.


HISTORY (Sec. 33(3) ch 193 SLA 1959)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Bill No. SB No. 469

Date April 3, 1986

Title "An Act exempting commercial fishermen from workers' compensation coverage."

Contact:  Jacquie McClintock
465-2790

The Department has no objection to the provisions of SB 469 exempting commercial fishermen from workers' compensation coverage.

This legislation does not change any current practice in Alaska's Workers' Compensation System, but does serve to clarify "twilight zone" issues of potentially overlapping coverage that have resulted from various Supreme Court decisions.

APPROVED:



Jim Robison
Commissioner



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 469: Summary

This measure exempts commercial fisherman from workers' compensation coverage and seeks to correct a potentially difficult situation which developed out of a 1962 Alaska Supreme Court Case. (See back up report)

Currently, commercial fisherman have access to injury compensation under Federal Maritime Law, and workers comp coverage would provide duplicate remedies. Without this exemption, a vessel owner would be required to carry both P&I coverage for federal maritime remedies, as well as a workers' compensation policy. As a further consideration, it was not the original intention of the workers' compensation act that commercial fisherman be provided such coverage, and this measure clarifies that exemption in statute.

A REPORT ON THE COST AND AVAILABILITY
OF MARINE INSURANCE IN ALASKA

BY

A. W. HALL

SENIOR ADVISOR, SENATE ADVISORY COUNCIL
30 January 1986

STATE OF ALASKA
LEGISLATIVE COUNCIL
OFFICE OF THE CLERK
JANUARY 30, 1986

BACK UP INFORMATION

fledgling self insurance program with limited capital reserves should not be subject to such risk. Fortunately, such insurance is obtainable from private insurance companies although at a high premium. If the present efforts to improve the system of providing compensation for injured fishermen are successful, then premium costs should be reduced.

C. THE ALASKA WORKMAN'S COMPENSATION LAW

It is recommended that an amendment be passed to the Alaska Workman's Compensation law that exempts commercial fishermen from the provisions of the act. This is desirable for the following reasons.

1. It was not the original intent of the act that commercial fishermen be covered by it.
2. Fishermen have access to a system of injury compensation under maritime law.
3. A duplication of programs is unnecessarily confusing and is unaffordably expensive.
4. Although described as inadequate, the existing system of compensating injured fishermen is presently under study for the purpose of possible congressional overhaul. A solution defined by federal law would be much more definitive and efficient than a system characterized by overlapping jurisdictions and duplications of effort and cost.

D. COMMERCIAL FISHERIES MANAGEMENT

It is recommended that a legislative resolution be passed requesting that safety be a factor to be considered in the development of all fishery management plans and regulations.

E. EDUCATION

It is recommended that the University of Alaska be directed to investigate the possibility of developing instructional programs on fishing vessel risk management or safety at sea that could be taught through the marine advisory program or community college system.

It is quite possible that a program such as this could be an important part of any organized effort to improve the safety record of the fishing industry. Like driver education programs it could be used as a means to improve individual abilities using reduced insurance premiums as an incentive.

F. MANDATORY SAFETY REQUIREMENTS

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February 10, 1986

Craig S. Wiese
University of Alaska
Marine Advisory Program
P.O. Box 103160
Anchorage, Alaska 99510

Dear Craig:

Enclosed you will find a brief summary of the presentation I made at the seminar. I hope this is sufficient for your purposes.

Very truly yours,


Michael A. Barcott

MAB:kl
10831

Enclosure

The insurance crisis in the marine industry in Alaska is, in part, merely a reflection of the fact that litigation costs and awards are getting higher. This fact is in turn, in part, merely a reflection of the fact that the fishing industry in Alaska has numerous dangers inherent in the industry. In one area, however, insurance premiums are higher than need be because of an unnecessary duplication of coverage and remedies to fishermen. The nature of that duplication and the ease with which it can be eliminated are easily explained.

In 1962 the Alaska Supreme Court considered the case of a fisherman who was injured on his vessel while that vessel was tied to a dock. It was undisputed that this fisherman would have available to him the full panoply of federal maritime remedies which are generally seen as extremely generous and beneficent to the fishermen. The question presented to the Alaska Supreme Court was whether the fisherman was also entitled to benefits under the terms of the Alaska Workers' Compensation Act. Looking to two factors, the court concluded that this fisherman fell within the "twilight zone" of coverage between the federal maritime remedies and the Alaska Workers' Compensation Act, and was entitled to the benefits of either or both. See Cordova Seafoods v. Estes, 370 P.2d 180 (1962). The factors looked to by the Alaska Supreme Court in determining that there was coverage under the Alaska Workers' Compensation Act were (1) the fact that the employee had

some shore-side duties (digging bait); and (2) that the nature of his fishing business was inherently of a local concern.^{1/}

Virtually all fishermen have some shoreside duties including mending gear, storing pots, buying food for the galley, or other such activities. Under the Estes case, those fishermen are entitled to benefits under the Alaska Workers' Compensation Act if injured while the vessel is tied up to the dock. If the fisherman does not have Alaska Workers' Compensation coverage in addition to his standard P&I coverage, there is a presumption under the Alaska Workers' Compensation Act that the accident was caused by the negligence of the vessel owner and that there was no contributory negligence on the part of the injured employee. See AS 23.30.080. These claims can be asserted in civil litigation. There may be coverage under the standard P & I policy for such litigation. However, the vessel owner comes into such a lawsuit with one hand tied behind his back because of the presumptions which exist if there is no insurance. In addition, if there is no insurance and the employee should chose to pursue his workers' compensation remedy, the vessel owner will have to pay any such award out of his pocket. Depending upon the severity of the

^{1/} Subsequently, in 1981, the Alaska Supreme Court concluded that a fisherman who was injured while his vessel was underway was not entitled to the benefits of the Alaska Workers' Compensation Act. See Anderson v. Alaska Packers Assoc., 635 P.2d 1182 (Alaska 1981).

injury, such awards can easily reach six figures. With this twofold penalty for the failure to insure under the Alaska Workers' Compensation Act the prudent owner must carry both a standard P&I policy for federal maritime remedies and a workers' compensation policy. This overlap in coverages need not exist and creates an unnecessary expense to the vessel owner.

A fisherman working on a fishing vessel has available to him extremely generous remedies under the federal maritime law. The only time that such a fisherman is additionally entitled to the benefits of the Alaska Workers' Compensation Act is in the fortuitous event that his injury occurs while the vessel is tied up. Fishermen who are injured at sea do not have available to them the remedies of the Alaska Workers' Compensation Act. The normal shore-based employee does not have available to him the benefits of the federal maritime law. It is only in this peculiar case of a fisherman who is injured while his vessel is tied up that duplicate coverage exists. There is no justifiable policy reason for providing such a duplication of remedies when that duplication mandates increased insurance costs. The most effective way of eliminating this coverage is through the Alaska legislature. Coverage under the terms of the Alaska Workers' Compensation Act is purely a matter of state law. Such coverage can easily be eliminated with a very minor amendment to the Alaska Workers' Compensation Act. Such an amendment would preclude the necessity of the vessel owner having Alaska Workers' Compensation

Act coverage. Although this is but a very small slice of the insurance premium, it is a simple, justifiable, and easily obtained legislative remedy to partially reduce the significant exposure that a vessel owner has for personal injury insurance premiums.