

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5468 SRES SB 304 - SB 362 / 104

SENATE-HOUSE JOINT SUPPLEMENT

No. 7

5/15/87

SB 304 &
HB 320

dexed with or clutter the real property recording system. The section pulls together as class A documents all documents made recordable throughout existing law and also includes documents made recordable in class A by departmental regulation. Class B includes any other document a person may wish to place in the public records for a private purpose, generally for safekeeping. Throughout the bill the traditional recording function is confined to class A, while class B is provided as a service that does not give constructive notice and would not be searched in a real property title search.

By (b)(1) a document that is a conveyance must be acknowledged or proven to be eligible for recording. Since every document by which an interest in land is transferred (except a will) is a conveyance, all such documents must be acknowledged or proven before they are recordable whether or not the term "acknowledged" or "proven" is used in listing the document as recordable.

Paragraph (b)(5) allows affidavits to be recorded. Recorded affidavits in other states have been helpful in clearing land titles and have caused no special problems. Paragraph (b)(7) broadly affords the opportunity to record a document that limits property rights, including a Public Land Order. Paragraph (b)(12) provides for recording a bankruptcy petition; 11 U.S.C. sec. 549(c) gives a particular legal effect to a recorded bankruptcy petition where a transfer of real property to a good faith purchaser is involved. Paragraph (b)(13) provides for recording a traditional notice of cases pending in Alaska and United States courts that affect Alaska real property. Paragraph (b)(14) provides for recording a lis pendens from outside the state in specified domestic relations cases where persons dealing with Alaska marital property should know a property settlement is pending; and (b)(16) provides for recording an order or judgment from such a case. Paragraph (b)(51) is a category called "fixture filing" in the 1972 uniform amendments to the UCC. (Reference: AS 45.09.313 and 45.09.402(f)). Paragraph (b)(55), an armed forces report of separation, is an example of a document not related directly related to real property but specifically made recordable by another statute, AS 26.10.070.

Subsection (c) allows recordation of all documents made recordable by other law or by regulation of the department.

AS 40.17.120

SOURCE: USLTA sec. 2-310.

COMMENT: This USLTA section is based upon the law of Pennsylvania and provides in simple terms for the recording of a memorandum of a lease. Some state laws on the subject are much more complex. A memorandum of lease avoids cluttering the records with lengthy documents of temporary significance.

AS 40.17.130

SOURCE: (a) is from USLTA sec. 6-210 with changes and (b) is from USLTA sec. 6-211 with changes.

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COMMENT: This section provides for an action to compel recording, clarifies the state's liability, and limits the conditions for liability of recording employees.

AS 40.17.900

SOURCE: (1) is original drafting; (2) is based on Rule 902, Alaska Rules of Evidence; (3) is from USLTA sec. 1-201; (4) is founded on AS 44.37.025; (5) is based on USLTA sec. 1-201; (6) is original drafting (7) is based upon USLTA sec. 1-201; (8) and (9) are original drafting; and (10) is based on USLTA sec. 1-201.

COMMENT: The broad definition of "document" is used in the draft to permit advanced technology in recording. Paragraph (7) makes acceptance for recording the event that determines when a document is recorded.

Sections 2-26

Except for sec. 7, which changes a statutory reference to conform to the new 40.17 chapter, sections 2 through 26 deal with plats, floor and constructions plans, and maps, and can be considered as a unit.

Some of the existing statutes on plats used the terms "file" and "record" interchangeably. Although statutory directions are not always clear, existing practice is to not record plats but to keep them on file in the recording offices.

Section 2 through 26 (except sec. 7) require that plats and plans be kept on file and that they be recorded, that is, copied into public records. In generations past, recording required laborious coping in longhand. These days a document is quickly copied by a photo process exactly in the form in which it is presented. (By AS 40.17.030 in the bill, if a plat, map or other document cannot be copied, it is not accepted for recording.)

The bill is drafted both for the existing system and for the future time when most use of the recording system will be through remote terminals. As noted above, plats, plans and maps that are required to be filed for public access will also be recorded so they can be viewed and copied at remote terminals. Since not all needs for a plat or plan will be met by the recorded copy, the original will be available in the district recorder's office to the same extent as at present.

Sections 2 through 26 (except sec. 7) accomplish this purpose for the following:

- maps Sec. 2 (AS 19.10.260(2))--state highway right-of-way
- plats Sec. 3 (AS 29.40.090(b))--subdivision and dedication
- plats Sec. 4 (As 29.40.110(b))--subdivision and dedication
- Sec. 5 (AS 29.40.150)--subdivision and dedication plats
- Sec. 6 (AS 29.40.180)--subdivision and dedication plats

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- Sec. 8 (AS 34.07.020(14))--condominium floor plans
- Sec. 9 (AS 34.07.030)--condominium floor plans and survey maps
- Sec. 10 (AS 34.07.040(a))--condominium floor plans
- Sec. 11 (AS 34.07.050)-- condominium floor plans
- Sec. 12 (AS 34.08.090)--common interest community plats/plans
- Sec. 13 (AS 34.08.140(b))-- common interest community plats/plans
- Sec. 14 (AS 34.08.140(d))-- common interest community plats/plans
- Sec. 15 (AS 34.08.160(b))-- common interest community plats/plans
- Sec. 16 (AS 34.08.170(b))-- common interest community plats/plans
- Sec. 17 (AS 34.08.170(f))-- common interest community plats/plans
- Sec. 18 (AS 34.08.170(h))-- common interest community plats/plans
- Sec. 19 (AS 34.08.180(a))-- common interest community plats/plans
- Sec. 20 (AS 34.08.200(b))-- common interest community plats/plans
- Sec. 21 (AS 34.08.210(a))-- common interest community plats/plans
- Sec. 22 (AS 34.08.250(c))-- common interest community plats/plans
- Sec. 23 (AS 34.08.320(a))-- common interest community plats/plans
- Sec. 24 (AS 34.08.440(h))-- common interest community plats/plans
- Sec. 25 (AS 34.08.700)-- common interest community plats/plans
- Sec. 26 (AS 34.08.740(a))-- common interest community plats/plans
- Sec. 27 (AS 34.08.990(30))-- common interest community plats/plans

Section 28

SOURCE: This section is original drafting.

COMMENT: Recording of a master form is provided by AS 40.17.050 in section 1 of this bill. Section 28 is inserted to prevent a possible misuse of the recordable form.

Sections 29 - 37

Except as indicated for sec. 36, sections 28 - 37 are included for the same purpose as sections 2 - 27. Sections 29 - 37 accomplish this purpose for the following:

- Sec. 29 (AS 38.04.045(b))--state subdivision plats
- Sec. 30 (AS 40.15.010)--subdivision and dedication plats
- Sec. 31 (AS 40.15.020)--subdivision and dedication plats
- Sec. 32 (AS 40.15.030)--subdivision and dedication plats
- Sec. 33 (AS 40.15.040)--subdivision and dedication plats

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Sec. 34 (AS 40.15.050)--subdivision and dedication
plats
Sec. 35 (AS 40.15.060)--subdivision and dedication
plats
Sec. 36 (AS 40.15.070)--subdivision and dedication
plats
Sec. 37 (AS 40.15.075)--subdivision and dedication
plats

Section 36 also changes the specified platting authority for certain areas of the state from the Division of Lands to the Department of Natural Resources.

Section 38

SOURCE: AS 40.19.010--40.19.050 are the Uniform Federal Lien Registration Act (1978), with significant changes and deletions.

COMMENT: Several features of the Uniform Federal Lien Registration Act (1978) were found to be objectionable or unnecessary and are changed or deleted from this bill. The changes and deletions were all approved, according to the original sectional analysis, by the Internal Revenue Service, are:

- (1) The uniform act provides for "filing" of federal liens. This bill provides for recording them. Filing requires the recorder to retain paper liens and releases, a procedure inconsistent with the photocopying system in use for documents generally in the recorder's offices. Although 26 U.S.C. sec. 6323 refers to "filing" of federal tax liens, the original sectional analysis indicated that IRS regional counsel considers the term to be used broadly to include recording, the procedure called for in this bill.
- (2) The uniform act provides generally for filing (here the term includes recording) of both real and personal property liens with the recorder but calls for filing liens on personal property of corporations and partnerships with the "secretary of state." This is an apparent reference to Uniform Commercial Code filing. Federal law (26 U.S.C. sec. 6323) contains no such requirement. The original sectional analysis indicated that recording officials of King County, Washington had indicated that adoption of the provision in that state led to much confusion there. It is deleted from AS 40.19.020--40.19.050 in this bill, which provides a single method of recording all federal liens.
- (3) The uniform act provides that the recorder, upon request, shall certify whether liens are filed against a named person. This would be a departure from the tradition that the recorder only keep the records available for search and not be required to search them. The provision is deleted from AS 40.19.040 in this bill.
- (4) The uniform act sets fees and provides for billing. Since statutes are a poor place for such details, and since AS 44.37.025(b) gives broad power to the Department of Natural Resources to set fees and establish procedures, the provisions are deleted from this bill.

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A repealer at the end of the bill provides for repeal of the obsolete earlier version of the Uniform Federal Tax Lien Registration Act (AS 43.10.090--43.10.150) which was adopted by Alaska as ch. 94, CLA 1933. Existing state law is inadequate mainly because (1) it lacks provisions for determining where personal property will be deemed to be located; (2) it requires separate tax liens indices that are unnecessary and are not being kept as separate indices; and (3) its provisions for physically attaching a release to the original lien is not workable for recorded liens.

Section 39

SOURCE: AS 43.10.042

COMMENT: By this section, the method of recording federal tax liens in AS 40.19.040 in the bill is made applicable to state tax liens also.

Section 40

SOURCE: AS 44.37.025

COMMENT: The changes are designed to be compatible both with the existing system and with a central place of recording. The original sectional analysis indicated that the revisor of statutes might wish to move this section to Title 40 with recording statutes rather than leave it in Title 44 with statutes on duties of state departments.

Section 41

COMMENT: Except as indicated earlier in the commentary for sections 2-26 of the bill, there is no clear reason for the distinction made in existing laws that provide for filing some documents and recording (copying) others. With the concept of a central place of recording where all records (copies) are to be stored with access through remote terminals, maintaining the distinction between filing and recording becomes impractical. Keeping original documents such as tax liens on file instead of recording them would be cumbersome and would serve no useful purpose. In keeping with this concept, the various statutes are listed in which terminology should be changed to "record" from "file" or "file for record."

Section 42

This section repeals the following sections:

- AS 34.15.260, Recording conveyances and conveyances as evidence;
- AS 34.15.270, Conveyances executed and acknowledged under former laws;
- AS 34.15.290, Certificate of reception and recording of conveyance;
- AS 34.15.290, Invalidity of unrecorded conveyance;
- AS 34.15.300, Record or transcript of conveyance as evidence;
- AS 34.15.310, Recording instrument of defeasance;

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- AS 34.15.320, Powers to convey and contracts to sell or purchase land;
- AS 34.15.330, Revocation;
- AS 34.15.340, Other real instruments that may be recorded;
- AS 34.15.345, Disclosure of address of record purchaser;
- AS 34.15.350, Definition;
- AS 34.20.020, Discharge of mortgage by entry in margin of record;
- AS 43.10.090, Filing notices of liens and certificates of discharge;
- AS 43.10.100, Entry and filing of tax lien notices in Federal Tax Lien Index;
- AS 43.10.110, Entry of discharge certificate in Federal Tax Lien Index and attachment to notice of lien;
- AS 43.10.120, Manner of furnishing Federal Tax Lien Index and Federal Tax Lien Notices file;
- AS 43.10.130, Purpose;
- AS 43.10.140, Interpretation;
- AS 43.10.150, Short title.

Section 43

Makes the act effective January 1, 1989.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

April 10, 1987

The Honorable Bettye Fahrenkamp
Chairman, Alaska Legislative Council
P.O. Box V, State Capitol
Juneau, Alaska 99811

RE: Bill on recording and recorded documents

Dear Senator Fahrenkamp:

The attached bill is submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that it be introduced in the Fifteenth Legislature.

The bill has been in the legislature before. In the Thirteenth Legislature it was HB 342/SB245 which in turn was a somewhat revised version of SB 78 of the Twelfth Legislature. In the Fourteenth Legislature it was HB 244/SB 197.

The commission continues to believe the legislation is needed and, in fact, overdue. It appears that the recording system is being left behind in the state's communication system. The bill would lay the groundwork for recording in a central place that is connected electronically with recording offices around the state. From those offices documents would be transmitted and in those offices the central records could be searched with equipment available in each office.

The bill provides that each existing recording office could participate in the interconnected system only when that office is ready and the central office is ready for it. Full statewide participation would evolve over whatever time period proved to be feasible.

As a necessary part of providing the framework for an electronically interconnected system, the bill gathers together and clarifies provisions on recording that are scattered through Alaska Statutes. Other features of the bill include provision for recording a subordinate class of document for

Senator Fahrenkamp
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safekeeping only and provision for recording federal liens
consistent with the Uniform Federal Lien Registration Act.

Respectfully submitted,

Tamara Brandt Cook

Tamara Brandt Cook
Executive Secretary
Alaska Code Revision Commission

TBC:mkr
m11/006

cc: Hon. Steve Cowper
Hon. Jay Rabinowitz, Chief Justice
Executive Director, Legislative Affairs Agency

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Alaska Code Revision Commission

FROM: Dick Regan, Research Director *like Regan*

DATE: February 4, 1985

RE: Reintroduction of recording bill

The attached transmittal and general features part of the commentary are proposed for submission with the commission's bill on recording and recordable documents. No change is required in the balance of the commentary. The emphasis in the transmittal is on those aspects of the bill that make it a vehicle for a future high technology system. That might get legislative attention. However, it can be changed if you prefer emphasis to be on the general cleanup aspect of the bill.

As this is penciled, a question (a small one, I think) has again raised its head: John Abbott met with DNR representatives and got their commitment to support the bill if a Blacks Law Dictionary definition of "conformed copy" could be included. John left it to me to deal with the question, and I agreed with Joe Burch of DNR that we would use the definition although I had reservations. In the LAA review of the bill the definition was independently challenged, and I was called over to discuss it. The outcome is discarding the definition but using the term "exact or conformed copy" in the text of the bill in place of the term "conformed copy". That should satisfy Burch, but I will assure that it is explained and worked out so it will not jeopardize DNR support. I think it a small matter in the larger picture.

LAA will have the bill in retyped form for introduction by the time of the commission meeting.

DR:chw
Enclosures

ALASKA CODE REVISION COMMISSION



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February 15, 1985

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

The Honorable Jack Fuller
Chairman, Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Bill on recording and recorded documents

Dear Chairman Fuller:

The attached bill is submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that it be introduced in the Fourteenth Legislature.

The bill has been in the legislature before. In the Thirteenth Legislature it was HB 342/SB 245 which in turn was a somewhat revised version of SB 78 of the Twelfth Legislature.

The commission continues to believe the legislation is needed and, in fact, overdue. It appears that the recording system is being left behind in the state's communication system. The bill would lay the groundwork for recording in a central place that is connected electronically with recording offices around the state. From those offices documents would be transmitted and in those offices the central records could be searched with equipment available in each office.

The bill provides that each existing recording office could participate in the interconnected system only when that office is ready and the central office is ready for it. Full statewide participation would evolve over whatever time period proved to be feasible.

As a necessary part of providing the framework for an electronically interconnected system, the bill gathers together and clarifies provisions on recording that are scattered through Alaska Statutes. Other features of the bill include provision for recording a subordinate class of document for safekeeping only and provision for recording federal liens consistent with the Uniform Federal Lien Registration Act.

Differences between this bill and the corresponding bill first introduced are explained in the attached commentary and section analysis.

The Department of Natural Resources joins the commission in urging enactment of the bill in its present form.

Respectfully submitted,

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Attachments

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Executive Director, Legislative Affairs Agency

FEBRUARY, 1985
ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY DRAFT ON
RECORDING AND RECORDED DOCUMENTS

GENERAL FEATURES OF THE BILL

A bill drafted by the Alaska Code Revision Commission to revise the law on the public recording system was in the Twelfth Legislature as SB 78 and in the Thirteenth Legislature as HB 342/SB 245. There were significant changes in the bill between the Twelfth and Thirteenth Legislatures. Because of other priorities, the bill in the Thirteenth Legislature got little attention and did not move out of committee. That bill is here reintroduced without material change. Since the changes are to the initial form of the bill, notes on changes relate back to SB 78 of the Twelfth Legislature. The attached bill is a redrafted SB 78 with changes to accommodate some requests from title companies and by the Department of Natural Resources.

Existing AS 34.15.260--34.15.350, AS 34.20.020, and AS 43.10.090--43.10.150 would be repealed by the bill.

The main purpose of the bill remains the same: (1) to gather together and clarify the jumble of Alaska law on recording, and (2) to provide a structure for future centralized recording. That structure, with other provisions in the bill, would make it possible to use existing and future advanced technology for transmitting, indexing, storing, retrieving and searching title documents. There is continually improving technology available for computer assisted search of documents in which the image of the document is called up from central storage and viewed at a remote terminal and copied at the remote terminal if a copy is needed. With safeguards in the bill, and with flexibility for either rapid or gradual extension of the high technology system into recording districts, there need be no

lessening of access to recording and retrieval in any recording district during development of the improved system.

Most of SB 78 is carried over into the attached bill, but there are some changes.

A provision in SB 78 would have removed a requirement of existing law that a conveyance be acknowledged before a person authorized to take an oath. This provision in the bill proved to be extremely controversial, as did its corollary that permitted recording of an unacknowledged conveyance. Although title company representatives who testified about the provision agreed that there are shortcomings in the practices of some notaries public, they urged that the acknowledgment requirement not be dropped. The commission has accepted their position in the attached redrafted bill.

SB 78 provided for recording of subdivision plats and certain other maps and plats. The attached bill continues the requirement of SB 78 that these plats and maps be recorded. However, it adds the requirement that the original be retained in the recording office, the practice under existing law. What results is a system in which access to the original plat is retained, but the document also is photocopied as a record that may be called up for viewing at a remote terminal where copies can be taken off.

An innovative part of the bill carried over from SB 78 is a provision for recording two general classes of documents. Section 40.17.110 defines the two classes. Class A includes documents relating to title to real property and includes all other documents required or permitted to be recorded by other statute or by regulation of the Department of Natural Resources. Recording of a class A document would provide constructive notice of the document to all persons, and therefore

would protect the rights of the person whose document is recorded. The second class of document, class B, would be recordable for safekeeping but with no constructive notice afforded by the recording. Any document that is not included in class A and that can be processed by the recording equipment falls into class B.

In order to meet the concerns of the Department of Natural Resources, a requirement is added to the bill that class B convenience recording be physically separate from class A constructive notice recording. In the attached bill class B recording will be done only at a central recording office in the state. A separate indexing system will be used to further assure that the class A system is safe from any possible confusion with class B convenience recording.

While the bill deals with all recorded documents in general, it also deals specifically with federal liens. Existing Alaska law on federal liens is the obsolete Uniform Federal Tax Lien Registration Act, AS 43.10.090--43.10.150, adopted in Alaska in 1933. That Act would be repealed and replaced by proposed AS 40.19.010--40.19.030. The new sections follow the current Uniform Federal Lien Registration Act (1978) with changes and deletions to fit Alaska's statewide recording system. The form of these sections has been approved by the Internal Revenue Service at both the state and national levels. The bill applies part of these sections to state tax liens as well.

SECTION ANALYSIS

Sections 1-19

Sections 1 through 19 deal with plats and maps and can be considered as a unit.

Some of the existing statutes on plats use the terms "file" and "record" interchangeably. Although statutory directions are not always clear, existing practice is to not record

A provision in SB 78 would have removed a requirement of existing law that a conveyance be acknowledged before a person authorized to take an oath. This provision in the bill proved to be extremely controversial, as did its corollary that permitted recording of an unacknowledged conveyance. Although title company representatives who testified about the provision agreed that there are shortcomings in the practices of some notaries public, they urged that the acknowledgment requirement not be dropped. The commission has accepted their position in the attached redrafted bill.

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An innovative part of the bill carried over from SB 78 is a provision for recording two general classes of documents. Section 40.17.110 defines the two classes. Class A includes documents relating to title to real property and includes all other documents required or permitted to be recorded by other statute or by regulation of the Department of Natural Resources. Recording of a class A document would provide constructive notice of the document to all persons, and therefore would protect the rights of the person whose document is recorded. The second class of document, class B, would be recordable for safekeeping but with no constructive notice afforded by the recording. Any document that is not included in class A and that can be processed by the recording equipment falls into class B.

In order to meet the concerns of the Department of Natural Resources, a requirement is added to the bill that class B convenience recording be physically separate from class A constructive notice recording. In the attached bill class B recording will be done only at a central recording office in the state. A separate indexing system will be used to further assure that the class A system is safe from any possible confusion with class B convenience recording.

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SECTION ANALYSIS

Sections 1-19

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Some of the existing statutes on plats use the terms "file" and "record" interchangeably. Although statutory directions are not always clear, existing practice is to not record plats but to keep them on file in the recording offices.

Sections 1 through 19 change existing law and practice. They retain provisions for keeping plats on file but add the requirement that they be recorded; that is, copied into public records. In generations past, recording required laborious copy-

ing in longhand. These days a document is quickly copied by a photo process exactly in the form in which it is presented. (By AS 40.17.030 in the bill, if a plat, map, or other document cannot be copied, it is not accepted for recording.)

The bill is drafted both for the existing system and for the future time when most use of the recording system will be through remote terminals. As noted above, plats and maps that are required to be filed for public access will also be recorded so they can be viewed and copied at remote terminals. Since not all needs for a plat will be met by the recorded copy, the original will be available in the district recorder's office to the same extent as at present.

The first nineteen sections of the bill make this change for the following:

- Sec. 1 (AS 19.10.260(2))--state highway right-of-way maps
- Sec. 2 (AS 29.33.160(b))--subdivision and dedication plats
- Sec. 3 (AS 29.33.170)--subdivision and dedication plats
- Sec. 4 (AS 29.33.190)--subdivision and dedication plats
- Sec. 5 (AS 29.33.200)--subdivision and dedication plats
- Sec. 6 (AS 29.33.230)--subdivision and dedication plats
- Sec. 7 (AS 34.07.020(14))--condominium floor plans
- Sec. 8 (AS 34.07.030)--condominium floor plans & survey maps
- Sec. 9 (AS 34.07.040(a))--condominium floor plans
- Sec. 10 (AS 34.07.050)--condominium floor plans
- Sec. 11 (AS 34.08.045(b))--state subdivisions
- Sec. 12 (AS 40.15.010)--subdivision and dedication plats
- Sec. 13 (AS 40.15.020)--subdivision and dedication plats
- Sec. 14 (AS 40.15.030)--subdivision and dedication plats
- Sec. 15 (AS 40.15.040)--subdivision and dedication plats
- Sec. 16 (AS 40.15.050)--subdivision and dedication plats
- Sec. 17 (AS 40.15.060)--subdivision and dedication plats

Sec. 18 (AS 40.15.070)--subdivision and dedication plats

Sec. 19 (AS 40.15.075)--subdivision and dedication plats

Section 20

The main body of the bill is Section 18. It creates a new chapter 17 in title 40 to replace AS 34.15.260--34.15.350. In it the Uniform Simplification of Land Transfers Act is the basis for several of the sections and is referred to in these notes as the USLTA. Alaska Statute numbers are used here for reference within the section.

AS 40.17.010

SOURCE: The section is original drafting.

COMMENT: This section is an overview of the recording system expressed in terms of the recording and retrieval services to be provided by the Department of Natural Resources. References to class B documents in (c) and to class A documents in (d) can be clarified by looking at AS 40.17.110 in the bill where class A and class B are defined. Class A may be thought of as the existing recording system, while class B is a new and subordinate system with no purpose beyond providing a convenience to persons who wish a permanent repository of a copy of any document. Therefore, the concentration of the bill is on class A recording.

Basic to the class A system are provisions for future recording in a central place by electronic transmission of documents from offices for the various recording districts, and records will be available for search in those offices.

By subsection (c), the date for starting the class B system is the effective date of the bill. Although recording of class B documents will be in one central place, the B system is relatively informal and recording B documents in a central place need not wait for readiness of electronic transmittal and access. Central recording of B documents is to permit tight

control by the recorder--one of the devices to assure that class B convenience recording is kept separate from the class A system.

In contrast, central recording of documents in the basic "constructive notice" (class A) recording system can be, and perhaps must be, deferred. One or more recording districts at a time can be shifted to central recording based upon readiness for the transfer as reflected in appropriations the department requests and receives for the purpose. (Reference (a)(4)). Under (d), complete transfer to central recording in class A is mandated only when the DNR staff and equipment are ready. The broad standard of readiness in (d) seems necessary at this stage since no malfunction of the class A system can be risked. (d) should be read with AS 44.37.025 which gives the Department of Natural Resources broad authority over establishing, modifying, or discontinuing recording districts

AS 40.17.020

SOURCE: AS 34.15.260 with major changes and additions. Part of existing AS 34.15.260 also appears in Sections 40.17.080 and 40.17.090 in this bill.

COMMENT: (a) is traditional recording law except for reference to "class A" documents. "Class A" is the class of traditional recorded (constructive notice) documents listed and defined in Sec. 110, as opposed to "class B" which is all other documents.

(b) provides that certified copies of documents recorded or filed in public recording offices in other states or in the Bureau of Land Management are entitled to recordation as class A documents. It is sometimes necessary to go to these records to complete a chain of title. Recording is defined in the general definitions section, AS 40.17.040.

AS 40.17.030

SOURCE: (a)(1) is from USLTA § 2-301(a)(1); (a)(2)

is from USLTA § 2-301(a)(2); (a)(3) is from USLTA § 2-301(a)(3); (a)(4) and (a)(5) are original drafting; (a)(6) is AS 34.15.345 paraphrased; (b) is original drafting; and (c) is from USLTA § 2-301(b).

COMMENT: The form requirements of this section are applicable to all documents offered for recording. The section fits the definition of "document" which may even be in the form of electronic signals so long as the form is compatible with equipment in the recording office.

(a)(4) contains only a minimal reference to the requirement of indexing information. Indexing is the subject of the following section, 040. (a)(5) is to discourage the unauthorized presentation of a document for recording and to provide a record of how each document came to the recording office. At present, a document is mailed back after it is recorded. (a)(6) is information needed by municipalities to keep up real property tax rolls and provides assistance in locating parties to transactions.

Because anything can be recorded as a class B document, subsection (b) requires that the name of the person in whose behalf a class B document is recorded be included in or accompany the document when it is presented for recording. This should prevent the recording of anonymous defamatory material.

Regarding (c), in its redrafted form the bill leaves intact the requirement that a conveyance must be acknowledged before it can be recorded. Reference AS 40.17.110(b)(1) in the bill. The term is broadly defined in the "definitions" section, AS 40.17.140, to mean any transfer of an interest in real property other than by will or operation of law. But where another document is made recordable by law, only the form requirements of that law and this section apply.

AS 40.17.040

SOURCE: The section is original drafting.

COMMENT: In the bill, indexing of class A documents has been left to regulation of the department responsible for the recording system. Indexing a document to a specific tract is highly desirable. But parts of the state are not sufficiently accustomed to the existing formalities of recording to make it practical to require sophisticated tract indexing information in all recording districts. Regulation is the more flexible approach and seems the desirable one for the present. Unofficial tract indices are kept at present and would be continued in any event.

The index of class B documents is kept with the class B records at one central recording office, another safeguard to ensure that class B recording will not be confused with class A.

The indexing of class B documents is specifically limited to emphasize that class B is for personal safekeeping of documents not part of the chain of title to real property. It is intended that a title search should never involve searching the class B index.

AS 40.17.050

SOURCE: The section is from USLTA § 2-309.

COMMENT: The purpose of allowing the recording of master forms is to reduce the volume of documents recorded. A final sentence of USLTA § 2-309(a) provides: "This section does not affect contractual relations of parties to a title transaction." The sentence is omitted as superfluous.

Indexing of a master form is not covered here since indexing is to be generally covered by regulation.

AS 40.17.060

SOURCE: AS 34.15.270, paraphrased.

COMMENT: The section of Alaska Statutes this section

would replace applies only to "conveyances" and provides that a conveyance legal when executed remains recordable and retains "the same force as evidence." The redraft is broader since it applies to all class A documents. The reference to "same force as evidence" is not included since it is considered to be unnecessary. The "force" of recorded documents as evidence is covered in AS 40.17.090. See also Rule 1005, Alaska Rules of Evidence.

AS 40.17.070

SOURCE: (a) is from USLTA § 6-203; (b) is original drafting; (c) and (d) are based upon USLTA § 6-204(a) and 6-204(b), with additions; (e) is from USLTA § 6-204(c); (f) is from USLTA § 6-205(a); (g) is from USLTA § 6-205(d); (h) is from USLTA § 6-201(b); and (i) is from USLTA § 6-204(d) paraphrased.

COMMENT: The recorder's duties are spelled out in this section. (b) is another provision to assure that class B recording will not be confused with class A. (b) does not refer to book and page indexing, but book and page indexing is consistent with it and can be continued so long as it is useful. Consistent with the definition of "record", (c) requires acceptance (recording) of a recordable document without delay in the order in which it is received. (c) and (d) make it clear that the time of recording is the time of acceptance even when a document is erroneously rejected and later accepted. If a person is damaged by erroneous rejection of a recordable class A document, the person's remedy is to seek damages from the state under AS 40.17.130 in this bill. The reference in (i) is to a master form recorded under AS 40.17.050.

AS 40.17.080

SOURCE: (a) is from AS 34.15.260(a); (b) is from AS 34.15.290; (c) is AS 34.20.010 redrafted; and (d) is from USLTA § 3-206 paraphrased.

COMMENT: Law on constructive notice is gathered in this section. Constructive notice is limited to class A documents which are defined in AS 40.17.110 in the bill. Within class A existing and traditional law is perpetuated. (d) allows a title searcher to assume that no contract or deed was executed pursuant to a recorded option or earnest money agreement after passage of a reasonable period of time.

AS 40.17.090

SOURCE: (a) is from AS 34.15.260(c)(1). (b) and (c) are based upon USLTA § 2-305(a) and (b), which in turn are based upon the Model Act Concerning Evidentiary Effect of the Record. (d) is original drafting; and (e) is from USLTA § 2-305(c) and Alaska Rules of Evidence, Rule 301(c).

COMMENT: This section is generally designed to pull together provisions for the evidentiary effect of recorded documents. (a) makes a recorded conveyance in proper form admissible in evidence without further proof. This is consistent with Rule 1005, Alaska Rules of Evidence. (b) and (c) provide in detail for several rebuttable presumptions arising from recording in class A. By Alaska Rule of Evidence 301(a), a presumption created here would not shift the burden of proof, but a person seeking to avoid the presumption would have to present some evidence to rebut it.

AS 40.17.100

SOURCE: as 34.15.310 redrafted.

COMMENT: No change in the substance of existing law is intended by this section, but the statutory language is simplified.

AS 40.17.110

SOURCE: (a) is original drafting. (b) is a list of documents derived from the following sources, with substantial

changes in some instances. (b)(1) as indicated in the subparagraph; (b)(2) is from AS 34.15.320(a)(1) and AS 34.15.330; (b)(3) is from AS 34.15.320(a)(2); (b)(4) is original drafting; (b)(5) is from Conn. Gen. Stat. Ann. 47-1(a); (b)(6) is from AS 34.20.130; (b)(7), (b)(8) and (b)(9) are original drafting; (b)(10) is from AS 34.15.340(a)(6); (b)(11) is from AS 34.15.-340(a)(1); (b)(12) is based upon Bankruptcy Rule 602; (b)(13) is from AS 34.15.340(a)(2); (b)(14) and (b)(15) are original drafting; (b)(16) is from AS 34.15.340(a)(3); (b)(17) is from AS 34.15.340(a)(4); (b)(18) is from AS 34.15.340(a)(5); (b)(19) is from AS 06.30.560; (b)(20) is from AS 09.30.010; (b)(21) is from AS 09.40.050; (b)(22) is from AS 09.55.370; (b)(23) is from AS 19.05.090; (b)(24) is from AS 10.30.020; (b)(25) is from AS 10.15.230--10.15.235; (b)(26) is from AS 10.15.260; (b)(27) is from AS 13.26.265; (b)(28) is from AS 23.10.047; (b)(29) is from AS 23.20.200; (b)(30) is from AS 23.30.165; (b)(31) is from AS 27.10.050 and AS 27.10.070, AS 38.05.185--38.05.220 and 38.05.-245; (b)(32) is from AS 27.10.020 and AS 27.15.010; (b)(33) is from AS 27.10.160; (b)(34) is from AS 27.10.190; (b)(35) is from AS 40.15; (b)(36) is from AS 32.10.010 and 32.10.240; (b)(37) is from AS 34.07; (b)(38) is from AS 34.07.030; (b)(39) is from AS 34.20.120; (b)(40) is from AS 34.20.070--34.20.080; (b)(41) is from AS 34.35.064; (b)(42) is from AS 34.35.065; (b)(43) is from AS 34.35.069; (b)(44) is from AS 34.35.070, 34.35.085, 34.35.-160, 34.35.185, 34.35.240, 34.35.250, 34.35.305, 34.35.330, 34.-35.405, 34.35.440 and 34.35.450; (b)(45) is from AS 34.35.071; (b)(46) is from AS 34.35.072; (b)(47) is from AS 34.35.080; (b)(48) is from AS 43.10.042; (b)(49) is from AS 43.10.090--43.10.-150 (and see sec. 19 of this bill); (b)(50) is from AS 46.25.-160; (b)(51) is from the UCC, §§ 9-313(1)(b) and 9-402(5); (b)(52) and (b)(53) are original drafting; (b)(54) is from AS 19.10.260(2). (b)(55) is from AS 26.10.070(a); (b)(56). (b)(57) and (c) and (d) are original drafting.

COMMENT: This section maintains control over what recorded documents will constitute constructive notice in the real property recording system (class A), but permits other writings to be recorded in a class B that will not be indexed with or clutter the real property recording system. The section pulls together as class A documents all documents made recordable throughout existing law and also includes documents made recordable in class A by departmental regulation. Class B includes any other document a person may wish to place in the public records for his own private purpose, generally for safekeeping. Throughout the bill the traditional recording function is confined to class A, while class B is provided as a service that does not give constructive notice and would not be searched in a real property title search.

By (b) (1) a document that is a conveyance must be acknowledged or proven to be eligible for recording. Since every document by which an interest in land is transferred (except a will) is a conveyance, all such documents must be acknowledged or proven before they are recordable whether or not the term "acknowledged" or "proven" is used in listing the document as recordable.

(b)(5) allows affidavits to be recorded. Recorded affidavits in other states have been helpful in clearing land titles and have caused no special problems. (b)(7) broadly affords the opportunity to record a document that limits property rights, including a Public Land Order. (b)(12) provides for recording a bankruptcy petition which appears still to be required by Bankruptcy Rule 602(a). (b)(13) provides for recording a traditional notice of cases pending in Alaska and United States courts that affect Alaska real property. (b)(14) provides for recording a lis pendens from outside the state in

specified domestic relations cases where persons dealing with Alaska marital property should know a property settlement is pending; and (b)(16) provides for recording an order or judgment from such a case. (b)(51) is a category called "fixture filing" in the 1972 uniform amendments to the UCC. (Reference: AS 45.09.313(1) and 45.09.402(F)). (b)(55), an armed forces report of separation, is an example of a document not related directly related to real property but specifically made recordable by another statute, AS 26.10.070.

(c) is to include in class A all documents made recordable by other law or by regulation of the department.

AS 40.17.120

SOURCE: USLTA § 2-310.

COMMENT: This USLTA section is based upon the law of Pennsylvania and provides in simple terms for the recording of a memorandum of a lease. Some state laws on the subject are much more complex. A memorandum of lease avoids cluttering the records with lengthy documents of temporary significance.

AS 40.17.130

SOURCE: (a) is from USLTA § 6-210 with changes and (b) is from USLTA § 6-211 with changes.

COMMENT: This section provides for an action to compel recording, clarifies the state's liability, and limits the conditions for liability of recording employees.

AS 40.17.140

SOURCE: (1) is original drafting; (2) is from USLTA § 1-201; (3) is based on Rule 902, Alaska Rules of Evidence; (4) is founded on AS 44.37.025 (part of Executive Order 47 which became law during 1980); (5) is from USLTA § 1-201; (6) is original drafting; (7) is based upon USLTA § 1-201; (8) and (9)

are original drafting; and (10) is from USLTA § 1-201.

COMMENT: The broad definition of "document" is used in the draft to permit advanced technology in recording. (7) makes acceptance for recording the event that determines when a document is recorded.

Section 21

SOURCE: AS 40.19.010--40.19.250 are the Uniform Federal Lien Registration Act (1978), with significant changes and deletions.

COMMENT: Several features of the Uniform Federal Lien Registration Act (1978) were found to be objectionable or unnecessary and are changed or deleted from this bill. The changes and deletions, all approved by the Internal Revenue Service, are:

(1) The uniform act provides for "filing" of federal liens. This bill provides for recording them. Filing requires the recorder to retain paper liens and releases, a procedure inconsistent with the photocopying system in use for documents generally in the recorder's offices. Although 26 U.S.C. § 6323 refers to "filing" of federal tax liens, IRS regional counsel considers the term to be used broadly to include recording, the procedure called for in this bill.

(2) The uniform act provides generally for filing (here the term includes recording) of both real and personal property liens with the recorder but calls for filing liens on personal property of corporations and partnerships with the "secretary of state." This is an apparent reference to Uniform Commercial Code filing. Federal law (26 U.S.C. § 6323) contains no such requirement. We are informed by recording officials of King County, Washington that adopting of the provision in that state led to much confusion there. It is deleted from AS 40.19.-

020--40.19.040 in this bill, which provides a single method of recording all federal liens.

(3) The uniform act provides that the recorder, upon request, shall certify whether liens are filed against a named person. This would be a departure from the tradition that the recorder only keep the records available for search and not search them himself. The provision is deleted from AS 40.19.-040 in this bill.

(4) The uniform act sets fees and provides for billing. Since statutes are a poor place for such details, and since AS 44.37.025(b) gives broad power to the Department of Natural Resources to set fees and establish procedures, the provisions are deleted from this bill.

A repealer at the end of the bill provides for repeal of the obsolete earlier version of the Uniform Federal Tax Lien Registration Act (AS 43.10.090--43.10.150) which was adopted by Alaska as ch. 94, SLA 1933. Existing state law is inadequate mainly because (1) it lacks provisions for determining where personal property will be deemed to be located; (2) it requires separate tax lien indices that are unnecessary and are not being kept as separate indices; and (3) its provision for physically attaching a release to the original lien is not workable for recorded liens.

Section 22

SOURCE: The section is original drafting.

COMMENT: Recording of a master form is provided for by AS 40.17.050 as it appears in section 20 of this bill. This section is to outlaw a possible misuse of the recordable form.

Section 23

SOURCE: AS 43.10.042.

COMMENT: By this section, the method of recording

federal tax liens in AS 40.19.040 in the bill is made applicable to state tax liens also.

Section 24

SOURCE: AS 44.37.025.

COMMENT: The changes are designed to be compatible both with the existing system and with a central place of recording.

The Revisor of Statutes might wish to change this section to Title 40 with recording statutes rather than to leave it in Title 44 with statutes on duties of state departments.

Section 25

COMMENT: There is not a clear reason for the distinction made in existing laws that provide for filing some documents and recording (copying) others. With the concept of a central place of recording where all records (copies) are to be stored with access through remote terminals, maintaining the distinction between filing and recording becomes impractical. Keeping original documents such as tax liens on file instead of recording them would be cumbersome and would serve no useful purpose. In keeping with this concept, in (d) of the section the various statutes are listed in which terminology should be changed to "record" from "file" or "file for record." The sections listed in (d) are gathered together in a binder and marked up for assistance to the Revisor of Statutes.

Section 26

COMMENT: Sections included in this repealer are discussed in the general comments at the start of these notes.

Section 27

COMMENT: It is primarily preparation for recording and indexing class B documents that warrants a deferred effective date. Amendment of the bill before passage could require an earlier or later date.

INDEX TO RECORDING BILL

Secs. 1-19

Amending AS sections to provide for filing and recording of plats and maps, as detailed at start of Section Analysis.

Sec. 20

Creating a Chapter 17 in Title 40 on RECORDING IN PUBLIC RECORDS.

AS 40.17.010--PLACE OF RECORDING AND ACCESS TO RECORDS

AS 40.17.020--RECORDING CONVEYANCES

AS 40.17.030--FORMAL REQUISITES FOR RECORDING

AS 40.17.040--INDEXING

AS 40.17.050--INCORPORATION OF MASTER FORM

AS 40.17.060--DOCUMENTS EXECUTED UNDER FORMER LAW

AS 40.17.070--DUTIES OF RECORDER

AS 40.17.080--EFFECT OF RECORDING ON TITLE AND RIGHTS:
CONSTRUCTIVE NOTICE

AS 40.17.090--CONVEYANCES AND RECORDED DOCUMENTS AS
EVIDENCE

AS 40.17.100--RECORDING A RECONVEYANCE

AS 40.17.110--CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING

AS 40.17.120--RECORDING MEMORANDUM OF LEASE

AS 40.17.130--ACTIONS AGAINST RECORDER AND STATE

AS 40.17.140--DEFINITIONS

Sec. 21

Creating a Chapter 19 in Title 40 on RECORDING FEDERAL LIENS.

AS 40.19.010--SCOPE

AS 40.19.020--PLACE OF RECORDING

AS 40.19.030--EXECUTION OF NOTICES AND CERTIFICATES

AS 40.19.040--DUTIES OF RECORDER

AS 40.19.050--UNIFORMITY OF APPLICATION AND CONSTRUCTION

Sec. 22

AS 34.15.015--USE OF RECORDED MASTER FORM

Sec. 23

AS 43.10.042--RECORDING LIEN AND CERTIFICATE OF DISCHARGE

Sec. 24

AS 44.37.025--RECORDING (basic authority of Department of
Natural Resources)

Sec. 25

Listing sections in which Revisor of Statutes is to
change terminology.

Sec. 26

Repealer.

Sec. 27

Effective date.

SB

309

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE _____

1/26/88
Mr. President:

Resources _____ Committee considered SB 309

definition of commercial fisherman under statutes regulating
commercial fishing
and recommended

replace with _____ CS SB 309 (res)) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations


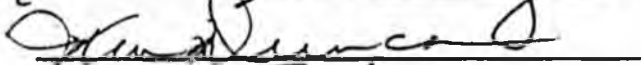
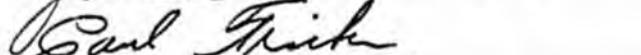
further referral to _____

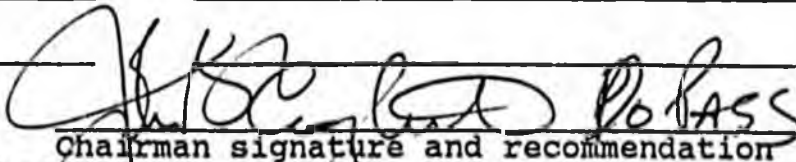
letter of intent adopted _____

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS


Chairman signature and recommendation

Committee Backup attached



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99816 (907) 486-5269


DURING SESSION:

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

DISTRICT N

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

TO: Senator Jack Coghill
Chairman
Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: March 15, 1988

RE: Senate Bill 309 -- "An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing."

SB 309 amends 16.05.940(4) to eliminate processing workers on floating fish processing vessels from the definition of "commercial fisherman".

In 1986, the legislature passed a bill that exempted commercial fishermen from workers' compensation coverage. This was done for two reasons: (1) Commercial fishermen were not originally intended to be covered by workers' compensation. (2) Injured commercial fishermen are compensated under the provisions of maritime law; workers' compensation coverage would be an unnecessary duplication. The bill had the effect of affirming and clarifying the Department of Labor's current interpretation of the law.

The passage of the bill, however, resulted in one, unintentional side effect. Under current statutes, processing workers on board floating seafood processing vessels have been defined as "commercial fishermen" since they are part of the crew of a "floating craft used in transporting fish". Under the new law, they were now exempt from workers' compensation coverage, which raised havoc with floating processors' insurance rates. It was never the intent of the legislature to prevent processing vessel workers from being covered by workers' compensation.

The second major problem SB 309 addresses is to remedy an inconsistency in state law. As commercial fishermen, floating processing vessel workers have been required to hold commercial fishing licenses. The proceeds from the sales of commercial fishing licenses go to the Fishermen's Fund, a compensation program for injured commercial fishermen. Under a previous attorney general's opinion, however, floating processing workers are barred from receiving any benefits from the Fishermen's Fund. In the interest of basic fairness, people who receive no benefits from the fund should not be forced to pay into it.

A recent attorney general's opinion (attached), dated Oct. 20, 1987, straightened out much of the above by declaring that processing workers did not, in fact, need to have commercial fishing licenses. The attorney general determined that processing workers on seafood processing vessels were

manufacturing employees (the same as their counterparts in a shoreside processing plant) and distinct from the traditional definition of a "commercial fisherman". Still, there would no harm in amending the statute to reflect the present and, I believe, correct interpretation.

Backup information for SB 109 is attached, as follows:

1. Department of Labor fiscal note.
2. Chronology of events.
3. Attorney General's opinion, dated Oct. 20, 1987, stating that processing workers on mobile floating processing vessels are not required to hold commercial fishing licenses.
4. Attorney General's opinion, dated Feb. 22, 1984, stating that workers on floating processing ships need commercial fishing licenses and workers in shorebased processing plants do not.
5. Attorney General's opinion, dated Nov. 15, 1982, stating that floating processor workers do not qualify for Fishermen's Fund benefits.
6. Excerpt from the Division of Legal Service's "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes", October, 1984, recommending legislative review of this issue.
7. Copies of the relevant state statutes, 16.05.480 (Commercial fishing license) and 16.05.940(4) (Definition of commercial fisherman).
8. Chapter 77 from the 1986 session laws, "An Act Exempting commercial fishermen from workers' compensation coverage."

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 309

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to the definition
of commercial fisherman."
Sponsor: Zharoff
Requestor: Senate Labor & Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790
Division: Workers' Compensation Date: 1/22/88

Approved by Commissioner: Jim Samoson Date: 1/22/88
Agency: Labor

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

CHRONOLOGY OF EVENTS SURROUNDING SB 309

- Nov., 1982 - Attorney General issues opinion (Asst. A.G. Gary Amendola to Glenn Lundell, deputy commissioner, Dept. of Labor, Nov. 15, file #366-252-83) saying that crewmembers on board floating fish processing vessels are not, by definition, engaged in "commercial fishing" and they do not qualify for Fisherman's Fund benefits (a special fund, administered by the Department of Labor, for compensating injured commercial fishermen).
- Feb., 1984 - Attorney General issues opinion (Asst. A.G. Kathleen McGuire to Lt. Col. Tetzlaff, Div. of Fish & Wildlife Protection, Feb. 22, file #166-358-84) saying that employees on board floating processing vessels, since they are engaged in the transport of fish, are required to have commercial fishing licenses.
- Oct., 1984 - The legislature's Division of Legal Services notes in its "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes" the inconsistency in the two previous AG opinions -- floating processing workers are required to have commercial fishing licenses, but they are denied Fisherman's Fund benefits. Legislative review is recommended.
- May, 1986 - As part of an effort to clear up ambiguities and problems in regard to marine insurance, the Alaska Legislature passes a bill exempting commercial fishermen from workers' compensation.
- Spring, 1987 - Seafood processors contact Senator Zharoff. They complain their insurance companies have informed them that since the employees on floating processing vessels are defined as "commercial fishermen", and since commercial fishermen are now exempt from workers' compensation, the insurance companies will no longer sell the processors workers' compensation coverage. Instead, the processors must buy more expensive marine protection and indemnity (P&I) insurance policies.
- May, 1987 - Senate Bill 309 introduced in an effort to resolve the problem.
- Summer, 1987 - Seafood processors complain about Fish and Wildlife Protection officers boarding their processing vessels to enforce the requirement that all workers have commercial fishing licenses.
- Oct., 1987 - Attorney General issues opinion (Asst. A.G. Sarah McCracken to Col. Jack Jordan, director, Div. of Fish and Wildlife Protection, Oct. 20, file #661-87-0428) saying that processing workers on board mobile floating vessels are not "commercial fishermen" and do not need to hold commercial fishing licenses.

MEMORANDUM

State of Alaska DEPARTMENT OF LAW

TO: Col. Jack Jordan, Director
Division of Fish & Wildlife
Protection
Department of Public Safety

DATE: October 20, 1987

FILE NO: 661-87-0428

TELEPHONE NO:

THRU:

SUBJECT: Commercial fishing
licenses: applicability
to processors

FROM: Sarah E. McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

A March 17, 1987, memorandum from then Acting Director Capt. James Nutgrass requested our advice regarding various aspects of Alaska's commercial fisheries licensing statutes (copy of memorandum attached). The memorandum asks essentially three questions requiring interpretation of relevant law:

1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?

2. Are crewmembers on a tender or mobile floating processor required to hold commercial fishing licenses?

3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A subsidiary question raised by the memorandum is whether the definition of "fish" in AS 16.05.940(10), as that term is used in the licensing requirement at AS 16.05.480 and in the definition of "commercial fishing" in AS 16.05.940(5), includes fish that are already dead or processed.

Our summary response to these questions is that an employee on a mobile floating processor or catcher-processor whose sole function is to work on the fish processing line (gutting, packing, or maintaining freezing equipment, etc.) and who does not engage in actual fishing activities (setting and hauling nets, operating and repairing gear) or in the navigation and operation of the vessel (independent of its processing functions) is not required to obtain a commercial fishing license. However, if that person, in addition to mere processing of fish, also engages in fishing activities or activities related

to the navigation or operation of the vessel itself, he must obtain a commercial fishing license. Crewmembers engaged in the operation and navigation of tenders or mobile floating processors that transport unprocessed fish must obtain commercial fishing licenses. The skipper or crew of a freight vessel used only to transport processed fish need not hold a commercial fishing license. Our analysis follows.

1. Commercial fishing license requirement.

The genesis of your inquiry is AS 16.05.480(a), which requires every person engaged in "commercial fishing" in waters subject to Alaska's jurisdiction to obtain a commercial fishing license from the state. 1/ This provision has existed in virtually identical form since the first state fish and game code was enacted in 1959. 2/

The term "commercial fishing" is defined in AS 16.05.940(5) as follows:

(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

1/ The full text of AS 16.05.480(a) provides:

Sec. 16.05.480. Commercial fishing licenses. (a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

2/ Sec. 6, art. III, ch. 94, SLA 1959.

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;

This definition, with the exception of reference to the failure to have a valid subsistence permit in possession, has also existed in virtually the same form since statehood. 3/

On its face, AS 16.05.480(a), as its terms are defined in AS 16.05.940(5), requires a commercial fishing license only of those persons who are actually taking, fishing for, or possessing fishery resources with the intent of selling them.

As explained in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-358-84), "possession" of fish requires a degree of ownership or control. A person who merely works on a processing line at a cannery and whose sole function is to process fish does not exercise the requisite indicia of possession to fit within the meaning of a person "taking, fishing for, or possessing" fish to require a license. See cases cited in 1984 Inf. Op. Att'y Gen., supra. In this regard, the principle of statutory construction that when legislative intent is unclear, the meaning of doubtful words may be determined by referring to associated words (noscitur a sociis) is applicable, as explained below. See 2A N. Singer Sutherland Statutory Construction, §47.16 (4th ed. 1984); see also State, Real Estate Comm'n v. Johnston, 682 P.2d 383, 386-87 (Alaska 1984).

To the extent that the word "possession" in AS 16.05.940(5) is unclear, it should be interpreted in light of the related terms "taking" and "fishing" for fish. 4/ In this

3/ Sec. 2(n), art. I, ch. 94, SLA 1959.

4/ The term "take" is defined in AS 16.05.940(31) as follows:

(3) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take,
(Footnote continued)

context, we believe "possession" of fish should be interpreted to mean possession that is associated with fishing activities, i.e., exercising some control over the fish, as opposed to mere handling of fish in a processing plant. We believe this applies regardless of whether the worker is processing fish on board a floating or a stationary processing vessel. 5/ Similarly, a person who is merely processing fish on board a catcher-processor and who does no other function related to fishing or the operation of the vessel, would not require a commercial fishing license. 6/

2. Definition of "commercial fisherman."

The above conclusions are consistent with the interpretation of AS 23.35 articulated in 1982 Inf. Op. Att'y Gen. (Nov. 15; 366-252-83), that employees processing fish on floating processors are not "commercial fishing" and hence do not qualify for "fisherman's fund" benefits. (Copy of memorandum attached). That memorandum noted, however, that "the [D]epartment [of Fish and Game] has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement."

The ambiguity regarding whether employees on floating cannery vessels or fish processors are "commercial fishing" derives from the statutory definition of "commercial fisherman" set out at AS 16.05.940(4):

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to

(Footnote continued)

pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

5/ To the extent that this conclusion departs from that reached in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-350-84), the earlier memorandum is hereby overruled on this point only.

6/ We recognize that on many catcher processors, crewmembers participate at times in all aspects of the operation -- both fishing and processing. These crewmembers would require a license.

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;

The term "commercial fisherman" is not actually used in AS 16.05.480(a) nor in AS 16.05.940(5), the operative provisions that require a person engaged in "commercial fishing" to obtain a commercial fishing license. However, the existence of the definition in AS 16, and its ostensibly broad application to "the crews of floating craft used in transporting fish," raises some question as to whether employees who work on fish processing lines aboard vessels are "commercial fishermen" and whether that definition correlates precisely with the definition of "commercial fishing" in AS 16.05.940(5).

The relationship between the definition of "commercial fisherman" in AS 16.05.940(4) and the class of persons who must obtain commercial fishing licenses is fortified by two factors: (1) the legislative history of the term and (2) interpretive regulations.

First, the statutory definition of "commercial fisherman" in AS 16.05.940(4) derives from section 2(o), ch. 94, SLA 1959. 7/ The present statutory requirement regarding

7/ The text of that definition provided:

(o) "Commercial fisherman": an individual who fishes commercially for, takes or attempts to take fish, shellfish, or other fishery resources of Alaska by any means, and including every individual aboard boats operated for fishing
(Footnote continued)

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commercial fishing licenses derives from section 6, article III, ch. 94, SLA 1959, which provided:

Sec. 6. Commercial Fishing License. A commercial fishing license shall be obtained by each and every individual before he shall become engaged as a fisherman as above defined. The fee for such license shall be \$10.00 for residents, and \$15.00 for non-residents.

There is no definition of "fisherman" in ch. 94, SLA 1959; however, there is the above definition of "commercial fisherman" set out in section 2(o), article III, ch. 94, SLA 1959, and logically this must be the definition referred to in section 6. Thus, unlike the present statutory language at AS 16.05.480(a) that requires commercial fishing licenses of people engaged in "commercial fishing," the statutory language from which this provision derives did reference the definition of "commercial fisherman," and each "commercial fisherman" had to obtain a license.

Although we have found no legislative history that sheds light on the reason for the language change from section 6, article III, ch. 94, SLA 1959 to the language now in AS 16.05.480(a), it does not appear that there was any legislative intent to divorce the statutory license requirement in AS 16.05.480(a) from the definition of "commercial fisherman." Hence we believe that the current definition of "commercial fisherman" should be read in harmony with AS 16.05.480(a) and be a guide in interpreting who must obtain a license.

(Footnote continued)

purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned, whether such participation be on shares or as employee or otherwise; provided, however, this shall not apply to anyone aboard a licensed vessel merely as a visitor or guest who does not directly or indirectly participate in the said taking. The term "commercial fisherman" shall also include the crews of tenders or other floating craft used in transporting fish.

The above conclusion is strengthened also by the fact that the board of fisheries has adopted a regulation, 5 AAC 39.110(a), that requires a "commercial fisherman" who does not hold a valid interim-use or entry permit to obtain a "crew member fishing license." 8/ In the absence of any discreet definition of "commercial fisherman" in the administrative code, we interpret this term in light of the statutory definition of "commercial fisherman" in AS 16.05.940(4). We also read "crewmember fishing license" as included within the definition of "commercial fishing license" in AS 16.05.480(a). 9/

Based upon the above analysis, we believe that the definition of "commercial fisherman" in AS 16.05.940(4) should be a guideline in determining who is "commercial fishing" and hence required to obtain a commercial fishing license. However, although the definition of "commercial fisherman" appears to cover broadly the "crews of tenders or other floating craft used in transporting fish," we do not find that this covers employees aboard floating craft who merely process fish and who do not engage in the operation or navigation of the vessel. This

8/ The text of 5 AAC 39.110(a) provides:

5 AAC 39.110. Crew member fishing license requirements. (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crew member fishing license is not required for the holder of a valid interim-use or entry permit card.

9/ As 16.05.480 specifies that "'commercial fishing license' includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses." The term "crew" is defined in 5 AAC 39.110(e) as:

(e) In this section, "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(4), who is actively engaged in the operation of fishing gear that is being operated in the manner described in 5 AAC 39.107.

conclusion is based upon a review of the statutory scheme as a whole and a reading of associated words within the definition of "commercial fisherman," explained below.

3. Scope of "crews of other floating craft used to transport fish."

First, as discussed above, we do not view AS 16.05.480(a), standing alone, as requiring persons who merely process fish to hold a commercial fishing license. The statutory definition of "commercial fisherman," while, as explained above, relevant in interpreting who must hold a license, should be construed in harmony with the terms used in AS 16.05.480(a). See generally State v. First Nat. Bank of Anchorage, 660 P.2d 406, 413 (Alaska 1982).

Second, reading doubtful words in harmony with associated words in AS 16.05.940(4), we believe that "tenders or other floating craft used in transporting fish" relates to craft used in taking and transporting raw, rather than fully processed fish. AS 16.05.940(4) specifies that "commercial fisherman" "includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products ..." (Emphasis added). Since tenders transport raw fish, we believe that the term "tenders and other floating craft used in transporting fish" must be read in association with the rest of AS 16.05.940(4) to refer to vessels used to transport raw or partially processed fish, as opposed to barges carrying fully processed fishery products to market. ^{10/} We also do not view an employee on a processing vessel who merely processes fish and does not engage in other aspects of the

^{10/} Captain Nutgrass had requested in particular an interpretation of the word "fish" defined in AS 16.05.940(10); he suggested that if "fish" includes dead (processed) fish, by logical extension "personnel of airlines and freight companies transporting fish to market would be required to have commercial fishing licenses." For the reasons stated above, we conclude that in context, the term "fish" as used in AS 16.05.940(4) does not include fully processed fish. However, we also believe that the general definition of "fish" in AS 16.05.940(10) (which includes fish "in any stage of its life cycle") does include dead and processed fish, unless the context otherwise provides.

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vessel's operation to be a "crewmember" within the meaning of a person engaged in "commercial fishing." Such a broad interpretation would not harmonize with the other language (discussed above) in AS 16.05.940(4) and AS 16.05.940(5). 11/

4. Summary.

In summary, your specific questions and our answers are as follows:

Q.1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?

A. No, so long as the person does not engage in any

11/ It may be of some use to compare certain other state and federal laws that distinguish between crewmembers who operate vessels and other employees aboard. For example, the Fair Labor Standards Act provides certain exceptions from minimum wage requirements for employees who process, can, or pack fish or shell fish "at sea as an incident to ... fishing operations" (29 U.S.C. §213(a)(5)), and for "seamen." (29 U.S.C. §213(b)(6)). The latter term is defined as an employee who performs "service which is rendered primarily as an aid in the operation of [a] vessel as a means of transportation, provided he performs no substantial amount of work of a different character." 29 C.F.R. §783.31. See also 29 C.F.R. §783.32. And see Worthington v. Icicle Seafoods, Inc., 796 F.2d 337, 338 (9th Cir. 1986). Under Alaska law, the minimum wage exemption only applies to "seamen." AS 23.10.060(12). Thus, in some areas of law, a distinction is made between the functions of seamen (who may be viewed as "crewmen") and employees who merely process fish. (However, compare citizenship requirements for "seamen" on certain large documented vessels. 46 U.S.C. §8103(b) and 46 U.S.C. §8701(a)(7) and (b). The term "seamen" is not defined in these statutes and there appears to be a difference of interpretation as to whether the term "seamen" applies only to the deck crew and persons in a position directly related to navigation, or to any employee engaged in any capacity on the vessel. See e.g. definition of "seamen" under merchant seamen protection and relief law, 46 U.S.C. §10101(3))

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activities relating to operation and navigation of the vessel (other than processing).

Q.2. Do crewmembers on a tender or mobile floating processor require a commercial fishing license?

A. Yes, but in context a "crewmember" does not include a person whose sole activity is processing fish.

Q.3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A. No.

I hope this answers all the questions raised in Captain Nutgrass's request. If we can be of further assistance on this matter, please let us know.

SEM/jmo

cc: Hon. Don W. Collinsworth, Comm'r, ADF&G
Norman Cohen, Deputy Comm'r,
Ken Parker, Dir., Div. of Comm'l Fisheries
Bob Clasby, Comm'l Fisheries
Larri I. Spengler, AGO
Lance Nelson, AGO

a:JORDAN.MOA

MEMORANDUM

State of Alaska

TO: Lt. Col. Tetzlaff
Div. of Fish & Wildlife
Protection
Dept. of Public Safety

DATE: February 22, 1984

FILE NO 166-358-84

TELEPHONE NO 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Commercial Fishery
Licenses

By: Kathleen McGuire *KM*
Assistant Attorney General

You requested an opinion as to whether workers assigned to shore-based canneries must possess a commercial fishing license under AS 16.05.480.

The summary answer is that shore-based cannery workers do not need a commercial fishing license. AS 16.05.480(a) provides in part that "a person engaged in commercial fishing shall obtain a commercial fishing license" and AS 16.05.940(2) defines a commercial fisherman as "every individual aboard a boat operated for fishing purposes..." which includes "the crew of tenders or other floating craft used in transporting fish."

The two statutes read together make it clear that employees of canneries attached to land do not need commercial fishing licenses because they are not aboard a boat that is transporting fish. However, employees aboard floating processors that transport fish do require commercial fishing licenses.

Specifically, you have asked whether employees of shore-based but floating cannery are required to hold a commercial fishing license under AS 16.05.480(a). Two types of canneries are prevalent in Alaska: shore-based and floating. For tax purposes, AS 43.75.140(5) and (6) define shore-based canneries as including floating craft that are permanently attached to land, or remain in the same location in the state for an entire tax year. 1/

1/ AS 43.75.015 provides tax advantages to processors that are shore-based. AS 43.75.140 extinguishes those tax advantages, if the processors move their location. Because of the tax advantage, few shore-based canneries will be moving. However, if the shore-based canneries do move they are considered floating processors and their employees would be required to hold commercial fishing licenses under AS 16.05.480(a).

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Based upon the above definitions, the employees of a floating shore-based facility would be exempt under the definition of "commercial fisherman" in AS 16.05.940(2) because the floating shore-based facility would not be used for "transporting" fish because it must remain in the same location all year.

The employees of a floating shore-based facility would also be exempt under the definition of "commercial fishing" in AS 16.05.940(3). AS 16.05.940(3) defines possessing fish as commercial fishing. Although cannery workers handle fish, they are not in possession. Tinglev v. Brown, 380 So.2d 1289 (Fla. 1980). Possession requires a degree of ownership or control. Florida v. Brider, 386 So.2d 818, 819 (Fla. Dist. Ct. App. 1980). Cannery workers universally do not have ownership or control of the fish they handle.

CONCLUSION

Employees of shore-based floating canneries are not required to have a commercial fishing license. Employees of floating canneries are required to have a commercial fishing license.

KIM/ssr

MEMORANDUM

State of Alaska

TO: Glenn H. Lundell
Deputy Commissioner
Department of Labor

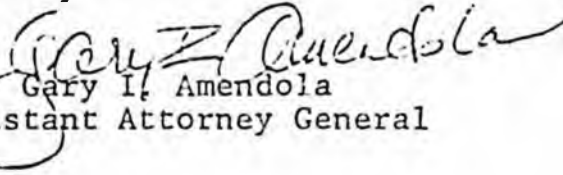
DATE: November 15, 1982

FILE NO: 366-252-83

TELEPHONE NO: 465-3603

FROM: Wilson L. Condon
Attorney General

SUBJECT: Interpretation of
Statute regarding
Workers on Fish
Processors

By: 
Gary I. Amendola
Assistant Attorney General

Under AS 23.35 and under the proper circumstances, "fishermen" can obtain medical and related benefits through a fund known as the "fisherman's fund". You have asked whether fish processing employees injured while working on a fish processor qualify for fisherman's fund benefits. You have also asked, in the event that the answer is in the affirmative, whether only specific employees on the processor are entitled to those benefits.

AS 23.35.070 states:

BENEFITS. A fisherman, upon becoming disabled, is entitled to receive benefits as follows: Immediately after he sustains an injury or disability arising out of an accident directly connected with his operations as a fisherman, either ashore, in the state, or in Alaska water, or suffers an occupational disease, the fisherman is entitled to emergency treatment, transportation to the nearest place where approved medical facilities are available, medical care and hospitalization. As used in this section, "Alaska water" means the inland and territorial water of the state and the fishery conservation zone adjacent to the state established by sec. 101 of the Fishery Conservation and Management Act of 1976, P.L. 94-265 (16 U.S.C. 1801 et seq.).

AS 23.35.080 -- AS 23.35.140 indicate the extent of other benefits offered, the manner in which the benefits may be provided, and the time and monetary limitations on benefits.

AS 23.35.150(4) reads:

"fisherman" means a person who is licensed by the state to engage in commercial fishing under

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AS 16.05.480 or who is the holder of a permit issued under AS 16.43 and who, at the time injury is sustained or illness is contracted, is actually so engaged or is occupied in Alaska in preparing or dismantling boats or gear used in commercial fishing.

I am advised by representatives of the Department of Revenue that all crewmembers on board a floating fish processor are required to have commercial fishing licenses.

I am advised by representatives of the Department of Fish and Game that all persons working on board a harvester/processor and on board tenders are required to have commercial fishing licenses. See AS 16.05.480 and AS 16.05.940(2). The department has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement. For purposes of this opinion, however, the resolution of that particular issue is not necessary.

In order to qualify as a "fisherman" under AS 23.35 and therefore qualify for "fisherman's fund" benefits, a person must not only be licensed to engage in commercial fishing or be the holder of a limited entry permit, the person must also at the time the injury is sustained or illness is contracted, (1) be engaged in commercial fishing, or (2) occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

The "plain meaning" rule of statutory construction requires that an unambiguous statute be read to mean what it clearly expresses. There is thus no need to interpret it except to the extent that the words themselves have inexact meaning. State v. Alex, 646 P.2d 203, 208, n.4 (Alaska 1982); Application of Babcock, 387 P.2d 694, 696 n.6 (Alaska 1963); 2A Sutherland, Statutes and Statutory Construction, § 46.01, at 48-49 (4th Ed. Sands, 1973). There is little question that employees on fish processors are not commercial fishing nor occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

However, to the extent one could argue otherwise, reference to related statutes in order to interpret a particular statute is customary if there is some ambiguity perceived. 2A Sutherland, Statutes and Statutory Construction, § 51.01, at 287-289 (4th Ed. Sands, 1973). The fish and game statute which

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defines "commercial fishing" does not include employees on fish processors. AS 16.05.940(3) states:

"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.

It is our view, therefore, that employees processing fish on a floating processor are not "commercial fishing" and do not qualify for "fisherman's fund" benefits.

GIA/bap

AS 16.05.480(a)
AS 16.05.940

WORKERS AT SHORE-BASED CANNERIES NEED
NOT POSSESS COMMERCIAL FISHING LICENSE.

In response to an inquiry from the division of fish and wildlife protection, the Attorney General stated that an employee of a shore-based floating cannery is not required to have a commercial fishing license, but that an employee of a floating cannery is required to have a commercial fishing license. The Attorney General stated that the definition of "commercial fisherman" includes "the crew of tenders or other floating craft used in transporting fish" (AS 16.05.940(4)). Therefore, those who transport fish must have the license; those who don't transport fish need not have the license, the Attorney General concluded. AS 16.05.480 requires that a person "engaged in commercial fishing" obtain a commercial fishing license. The definition of "commercial fishing" does not include "transporting" (AS 16.05.940(5)). Thus, one must have a commercial fishing license if one is engaged in commercial fishing, regardless of whether one is a commercial fisherman or is involved in transporting. In a previous opinion the Attorney General stated that "there is little question that employees on fish processors are not commercial fishing . . ." Op. Atty. Gen. (Alaska, November 15, 1982). On that basis, the Attorney General concluded that processor employees were not entitled to benefits of the fisherman's fund. Now, however, the Attorney General is saying that employees on floating processors are engaged in commercial fishing. Op. Atty. Gen. (Alaska, February 22, 1984)

The intent of the Legislature is not clear. The Attorney General has construed the law in an apparently inconsistent manner, saying that certain persons must have a license because they are engaged in commercial fishing, but they should be denied fisherman's fund benefits because they are not engaged in commercial fishing. Legislative review is recommended.

(b) A person appointed by the commissioner of revenue under AS 16.05.460 to issue licenses under AS 16.05.440 — 16.05.480, except salaried employees of the state, shall retain the sum of 15 per cent of the interim-use or entry permit fee for assisting in completion of the annual application or renewal form for the interim-use or entry permit. An agent shall transmit promptly to the Commercial Fisheries Entry Commission all application or renewal forms and fees collected by the agent, less the authorized commission, together with a full accounting of the fees. The commissioner and the Commercial Fisheries Entry Commission are not liable for defalcation or failure to account for the fees collected by an agent, but the commissioner shall require a bond in the sum the commissioner considers adequate, conditioned upon the faithful accounting of money collected. (§ 5 art III ch 94 SLA 1959; am § 9 ch 31 SLA 1963; am § 1 ch 8 SLA 1977; am §§ 5, 6 ch 105 SLA 1977)

Sec. 16.05.475. Registration of fishing vessels. (a) A person may not employ a fishing vessel in the water of Alaska unless it is registered under the laws of the state. Vessels registered under the laws of another state, and persons residing in another state, are not excused from this provision.

(b) The term "employ", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any activities involving the use or navigation of fishing vessels.

(c) The term "registered under the laws of the state", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any existing requirements regarding registration, licenses, permits, and similar matters imposed by law or regulation together with modifications of them and with any additional requirements the board finds necessary to maximize the authority of the state to apply and enforce fisheries regulations under the Fishery Conservation and Management Act of 1976 (P.L. 94-265, 90 Stat. 331, 16 U.S.C. 1801 et seq.).

(d) The term "fishing vessel", as used in this section, means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

- (1) fishing, or
- (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. (2 ch 105 SLA 1977)

Sec. 16.05.480. Commercial fishing license. (a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except

for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

(b) A person applying for a resident commercial license under this section shall provide the proof of residence which the department requires by regulation.

(c) *(Repealed, § 12 ch 123 SLA 1978.)* § 6 art III ch 94 SLA 1959; am § 19 ch 131 SLA 1960; am § 1 ch 93 SLA 1966; am § 2 ch 42 SLA 1968; am § 8 ch 105 SLA 1977; am §§ 1, 2, 12 ch 123 SLA 1978; am § 1 ch 79 SLA 1982)

Effect of amendments. — The 1982 amendment increased the fees in the second sentence of subsection (a) from \$10 to \$30 for residents and from \$30 to \$90 for nonresidents.

Editor's notes. — Sixty percent of the fees collected under this section is deposited in the fishermen's fund, AS 23.35.060. For opinions of the Attorney General regarding constitutional limits on

altering the amount of a license fee upon which a dedicated fund is based, see annotations following Article IX, section 7 in the Alaska Constitution pamphlet.

Opinions of attorney general. — Discrimination against aliens and nonresidents in issuance of fishing licenses. — See 1959 Op. Att'y Gen., No. 15.

NOTES TO DECISIONS

Constitutionality of former provisions. — See *Anderson v. Mullaney*, 13 Alaska 332, 191 F.2d 123 (9th Cir. 1951), aff'd, 13 Alaska 342 U.S. 415, 72 S. Ct. 428, 96 L. Ed. 458 (1952).

States have a right to exact a higher license fee from nonresidents than from residents for the privilege of hunting game within its borders. *Anderson v. Smith*, 71 F.2d 493 (9th Cir. 1934).

Principle upon which such right is based. — This right to discriminate is based upon the principle that the state

owns the wild fish and game within its borders and therefore has a right to determine the conditions upon which persons may reduce the same to possession and ownership. *Anderson v. Smith*, 71 F.2d 493 (9th Cir. 1934).

Discrimination between resident and nonresident fishermen in prescribing license fees. — See *Anderson v. Smith*, 8 Alaska 470, aff'd, 71 F.2d 493 (9th Cir. 1934).

Applied in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

Sec. 16.05.490, Vessel license. (a) As a condition to delivery or landing of fish or engaging in commercial fishing in the state, a license is required for a commercial vessel, including a vessel used in charter service for the recreational taking of fish and shellfish.

(b) *(Repealed, § 19 ch 105 SLA 1977.)*

(c) *(Repealed, § 19 ch 105 SLA 1977.)*

(d) *(Repealed, § 19 ch 105 SLA 1977.)*

(e) *(Repealed, § 19 ch 105 SLA 1977.)* § 7 art III ch 94 SLA 1959; am § 20 ch 131 SLA 1960; am § 1 ch 48 SLA 1963; am § 19 ch 105 SLA 1977.

certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action.

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

(f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes. (S 28 art 1 ch 94 SLA 1959; am § 1 ch 7 SLA 1972; am § 2 ch 104 SLA 1972; am § 4 ch 82 SLA 1974; am §§ 16, 17 ch 206 SLA 1975; am § 1 ch 20 SLA 1976; am § 13 ch 151 SLA 1978; am § 4 ch 23 SLA 1983)

Effect of amendments. — The 1983 amendment added subsection (f).

Editor's notes. — For legislative intent, see § 1, ch. 151, SLA 1978, in the 1978 Temporary and Special Acts and Resolves.

Legislative history reports. — For report on ch. 151, SLA 1978 (HB 960), see 1978 House Journal, p. 1154.

NOTES TO DECISIONS

Quoted in *State v. Semaken*, Ct. App. Op. No. 107 (File No. 6384), 648 P.2d 114 (1982).

Sec. 16.05.940. Definitions. In this chapter

(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

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AN ACT
Exempting commercial fishermen from workers'
compensation coverage.

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

(b) A commercial fisherman, as defined in AS 16.05.940, is not covered by this chapter.

SB

116

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to fisheries tax sharing."
Sponsor: Fischer, Kerttula
Requestor: Senate Resources

Agency Affected: Department of Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Ketter
Division: Income and Excise Audit

Phone: 465-2320
Date: January 12, 1988

Approved by Commissioner: _____
Agency: _____

Date: 1/14/88

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

*
* DELIVER TO: LIOCDAN *
*
* ORIGINAL *
* SENT: 01/15/88 TIME: 13:45 *
* FROM: LIOCDAN *
* SUBJECT: SRES; FISHERIES; PL#1; 1-15-88 *
* PRINT DATE: 01/15/88 TIME: 13:45 *
*

**** ANCHORAGE PARTICIPANT LIST ****

THE FOLLOWING PEOPLE ARE STANDING BY TO PARTICIPATE IN TODAY'S
SENATE RESOURCES: FISHERIES TELECONFERENCE:

TO OBSERVE:

- 1.) RON MCCOY
- 2.) D. HARRISON
- 3.) ART KENNEDY
- 4.) AV GROSS
- 5.) J. MAUGUS
- 6.) JANE MERRY
- 7.) G. LINZ
- 8.) CHIP DENNERLEIN
- 9.) AL KUMP
- 10.) BILL MTNN
- 11.) FRANK PEGUO
- 12.) R. FLUSH
- 13.) JIM BARMICHAEL
- 14.) RICH FIGAR
- 15.) MATT FROLL

EDM DAVID J

 *
 * DELIVER TO: LTCCDAN *
 *
 * ORIGINAL *
 * SENT: 01/15/88 TIME: 13:42 *
 * FROM: LTCCFBX *
 * SUBJECT: SRES;FL51 - SB317&ANWAR;1-15-8 *
 * PRINT DATE: 01/15/88 TIME: 13:42 *
 *

*****PARTICIPANTS*****

DATE: _____ JANUARY 15, 1988 _____
 SITE: _____ FAIRBANKS _____
 SPONSOR: _____ SENATE RESOURCES _____
 SUBJECT: _____ SB 317 FISHERIES TAX REFUNDS AND AN ANWR BRIEFING _____
 MODERATOR: _____ FRAN _____

TESTIFY:
 NAME REPRESENTING ADDRESS PHONE #

OBSERVE:
 NAME REPRESENTING ADDRESS PHONE #

1. DEBORAH HONEA -- DOYON
2. ROSEMARIE MAHER -- DOYON
3. MORRIS THOMPSON -- DOYON
- 4.)
- 5.)
- 6.)

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*****
*
* DELIVER TO: LIODAN
*
* ORIGINAL
* SENT: 01/15/88 TIME: 13:45
* FROM: LIOCKO)
* SUBJECT: SRES; PL #1; ANWR; 1-15-88
* PRINT DATE: 01/15/88 TIME: 13:45
*
*****

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DATE: JANUARY 15, 1988
SPONSOR: SENATE RESOURCES
SUBJECT: SB 317, ANWR
SITE: KODIAK L.J.O.
MODERATOR: MARY JO SIMMONS

```

PARTICIPANT LIST

```

*****
TO OBSERVE
NAME/REPRESENTING ADDRESS PHONE #
1. DAVE WOODRUFF
2. WAYNE SELBY
3. MATT HOLMES / KMXT RADIO STATION

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der this section not later than 60 days after receiving the application."

Sec. 43.75.034. Tax credit report [Repealed effective February 15, 1992]. Not later than the 15th legislative day of each regular legislative session the Department of Revenue, in conjunction with the Department of Commerce and Economic Development, shall submit to the legislature a report on the fisheries business tax credit program under AS 43.75.032. The report shall describe the expenditures for which a credit was approved during the previous tax year and, if possible, the increase in employment and processing capacity by the fisheries businesses for which the credit was approved. (§ 2 ch 79 SLA 1986; r § 8 ch 79 SLA 1986)

Postponed repeal. — Section 8, ch. 79, SLA 1986 repeals this section, effective February 15, 1992.

Article 3. General Provisions.

Section

130. Refund to local governments

140. Definitions

Sec. 43.75.130. Refund to local governments. (a) Except as provided in (d) of this section, the commissioner of revenue shall pay

(1) to each unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied under this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied under this chapter; and

(3) to each borough

(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied under this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied under this chapter.

(b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person entitled to a credit under AS 43.75.032 shall be calculated as if the person's tax had been collected without applying the credit.

(c) [Repealed effective January 1, 1992] Within 60 days after a credit is approved under AS 43.75.032 for a capital expenditure involving a shore-based fisheries business facility or cooperative seafood industrial park located or to be located in a municipality, the municipality may adopt an ordinance directing the department to reduce the municipality's refund under this section over a period of not more

than three years by an amount not exceeding 25 percent of the capital expenditure.

(d) Notwithstanding the provisions of (a)(2) and (a)(3)(B) of this section, the commissioner shall pay

(1) to each city that is located in a borough incorporated after June 16, 1987 the following percentages of the tax revenue collected in the city from taxes levied under this chapter:

(A) 45 percent of the taxes collected during the calendar year in which the borough is incorporated;

(B) 40 percent of the taxes collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 35 percent of the taxes collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 30 percent of the taxes collected during the third calendar year after the calendar year in which the borough is incorporated; and

(2) to each borough that is incorporated after June 16, 1987 the following percentages of the tax revenue collected in the cities located within the borough from taxes levied under this chapter:

(A) 5 percent of the taxes collected during the calendar year in which the borough is incorporated;

(B) 10 percent of the taxes collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 15 percent of the taxes collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 20 percent of the taxes collected during the third calendar year after the calendar year in which the borough is incorporated.

(e) Notwithstanding the provisions of (d) of this section, a city may adopt an ordinance to transfer a portion of the funds received under (d)(1) of this section to the borough in which the city is located.

(f) In this section, "tax revenue collected" includes the amount credited against taxes under AS 43.75.018. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970; am § 10 ch 218 SLA 1976; am § 11 ch 79 SLA 1979; am § 10 ch 117 SLA 1981; am § 73 ch 74 SLA 1985; am §§ 4, 7 ch 79 SLA 1986; am § 8 ch 58 SLA 1987; am §§ 1, 2 ch 80 SLA 1987)

Postponed repeal. — Section 7, ch. 79, SLA 1986 repeals subsection (c), effective January 1, 1992.

Revisor's notes. — Subsection (f) enacted as (d). Renumbered in 1987.

Effect of amendments. — The 1985 amendment in paragraph (1) substituted "unified Municipality" for "municipality unified under AS 29.68.240 — 29.68.440."

The 1986 amendment added subsections (b) and (c).

The first 1987 amendment added subsection (f).

The second 1987 amendment, effective June 16, 1987, in subsection (a) substituted "Except as provided in (d) of this section, the" for "The" at the beginning of the section and substituted "under", for "by" throughout the subsection and added subsections (d) and (e).

5-1346L
Chenoweth
01/14/88

Original sponsors: Fischer and Kerttula

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 317 (Res)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the refunds of fisheries tax
7 proceeds to municipalities; and providing for an
8 effective date."

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

10 * Section 1. AS 43.75.130(e) is amended to read:

11 (e) Notwithstanding the provisions of (d) of this section, a
12 city may adopt an ordinance to transfer all or a portion of the funds
13 received under (d)(1) of this section to the borough in which the city
14 is located. A borough may adopt an ordinance to transfer all or a
15 portion of the funds received under (a)(3)(B) and (d)(2) of this
16 section to the city in which the tax revenue was collected.

17 *. Sec. 2. This Act takes effect July 1, 1988.

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Stankulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Elason

Box V
Juneau, Alaska 99811
(907) 465-1007

M E M O R A N D U M

TO: Members of the Senate Committee on Resources

FROM: Committee Staff

RE: CSSB 317 (Res), "An Act relating to the refunds of fisheries tax proceeds to municipalities."

This legislation provides for a more equitable distribution of the fisheries business tax.

CSSB 317 (Res) amends AS 43.75.130(e) to allow boroughs to adopt ordinances to transfer all or a portion of received fisheries business tax to the city in which the tax was collected. It also allows a city to transfer all or a portion of the business tax to the borough.

Presently, a city may adopt an ordinance to transfer all of its fisheries business tax, but does not have the option of transferring a portion. A borough will now have the option of transferring all or a portion to a city within the borough. The Department of Revenue now pays 25 percent of the amount of tax revenue collected within a city to the city.

The fisheries business tax is collected from fish processors by the Department of Revenue. Rates are 3-5 percent depending on what fish species is processed and where the processing occurs. Generally, floating processors are taxed at 5 percent and shore-based processors at 3 percent.

For every dollar collected DOR shares 50 cents with municipalities. Cities presently receive 25 cents of each dollar.

Total fisheries business taxes paid to municipalities FY'87:

Boroughs-- \$3,598,441.42
Cities --- \$4,361,558.58

S B

340

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

FURTHER: Finance

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

1/13/88 DATE TURNED INTO OFFICE _____

Mr. President:
Resources _____ Committee considered SB 340

moratoriums on agricultural loan payments

and recommended:

replace with CS SB 340 (res) same title
 new title

attached amendment(s) and

do pass

+ maj do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Jan Duca
Paul Fisher

W. Fanning No Rec

[Signature] Do Pass
Chairman signature and recommendation

Committee Backup Attached

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coqhill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturculewski
Sen. Jim Duncan
Sen. Fred Zhanoff
Sen. Dick Eliason

36 People Participating

Box V
Juneau, Alaska 99811
(907) 465-1007

M E M O R A N D U M

TO: Members of the Senate Resources Committee

FROM: Staff

RE: SB 340, One year extension of moratorium on agricultural loan payments

Many farmers have expressed the need to have an additional year of abeyance of their agricultural land payments. They cite the current downturn in the economy as the primary reason why it would be difficult, and in some cases impossible, to begin paying the principle and interest on their land payments.

Currently in order to meet requirements for the moratorium, the farmer must expend sweat equity and production equal to the land payments. Interest continues to accrue during the moratorium.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

January 21, 1988

The Honorable Jack Coghill
Chairman, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

Subject

SB 340, which is entitled, "An Act relating to moratoriums on agricultural loan payments," but which actually extends the land payment moratorium period on agricultural land to six years from the current five.

Position

The Department of Natural Resources opposes this bill as it is currently titled because we oppose moratoriums on agricultural loan payments. We do not, however, object to a one year extension of the existing agricultural land payment moratorium period.

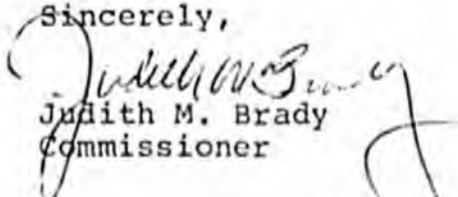
Recommendation

Because the state enters into contractual agreements with land purchasers and does not provide agricultural land loans, we recommend that the title of this bill be changed to more accurately reflect the bill's contents and avoid any confusion about its relation to Agricultural Revolving Loan Fund programs.

We suggest the following new title for SB 340: "An Act extending the moratorium period on agricultural land payments."

Please let me know if you would like additional information.

Sincerely,


Judith M. Brady
Commissioner

cc: Senator Kerttula
Senator Szymanski
Rod Swope
Bob Evans

FISCAL NOTE

REQUEST:

Revision Date: 1/21/88
Title: Moratoriums on Ag Loan Payments
Sponsor: Sen. Kerttula, Szymanski
Requestor: Senate Resources Committee

Agency Affected: Natural Resources
BRU: Land & Water Management
Agricultural Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* The moratorium extension will not result in additional operating expenses for DNR, but could result in a delay of payments to the state for agricultural land.

Prepared by: Carol Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 1/21/88

Approved by Commissioner: [Signature]
Agency: Department of Natural Resources

Date: 1/21/88

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

legal and equitable rights the purchaser has in the land.

(g) The purchaser may appeal the director's decision to the commissioner within 30 days. The final decision by the department is reviewable under AS 44.62.560.

(h) The commissioner may declare a moratorium of up to five years on payments on a sale of agricultural land under this section if (1) the commissioner determines that the moratorium is in the best interest of the state; (2) the commissioner certifies and the contract purchaser agrees to perform farm development, crop production, and harvesting, not including land clearing or related activity, requiring the expenditure of amounts equivalent to the payments that would otherwise be made during the moratorium; (3) the sale of the agricultural land takes place after July 1, 1979; and (4) the contract purchaser is in compliance with the development plan specified in the purchase contract at the time the purchaser applies for a moratorium under this subsection and remains in compliance with the development plan during the moratorium. Interest payments are subject to the moratorium but interest continues to accrue during the moratorium. (§ 3 art IV ch 169 SLA 1959; am § 5 ch 176 SLA 1978; am §§ 26, 27 ch 85 SLA 1979; am §§ 17, 18 ch 113 SLA 1981; am §§ 23, 24 ch 152 SLA 1984; am § 1 ch 165 SLA 1984)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

AS 38.05.078, referred to in subsection (b), was repealed by § 7, ch 103, SLA 1983.

Sec. 38.05.070. Generally.

Cross references. — For moratorium until July 1, 1988, and related provisions, on issuance of a land lease under this sec-

tion for the operation of a commercial fin-fish farm, see ch. 70, SLA 1987, in the Temporary and Special Acts.

Article 4. Disposal of Timber and Materials.

Section

115. Limitations and conditions of sale

Sec. 38.05.115. Limitations and conditions of sale. (a) The commissioner shall determine the timber and other materials to be sold, and the limitations, conditions and terms of sale. The limitations, conditions and terms shall include the utilization, development and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of

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S B

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-MAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: Finance

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

1/18/88 DATE TURNED INTO OFFICE

Mr. President:

Resources Committee considered SB 353

extending the agricultural production credit law

and recommended:

[] replace with CS _____ [] same title
[] attached amendment(s) and [] new title

[] do pass

[] do not pass

[] no recommendation

[x] individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

[Signature]

OTHER RECOMMENDATIONS

Ed Duncan - No Rec.
Sen. Fournier No Rec
Paul Fitch No Rec.

[Signature]
Chairman signature and recommendation

[] Committee Backup Attached

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1798
PHONE: (907) 465-2400

January 21, 1988

The Honorable Jack Coghill
Chairman, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

Subject

Senate Bill 353, which extends the agricultural production credit law.

Position

The Department of Natural Resources is concerned that this extension of the existing agricultural production credit program for sales through 1991 could have disastrous effects on the Agricultural Revolving Loan Fund (ARLF) and its ability to service the loan needs of viable agricultural operations.

Background

The ARLF has not received an appropriation of funds since FY 1986. Its current balance is approximately \$7.6 million which will be used to provide an estimated \$3 to 4 million in loans each year. Because the production credits program reduces or eliminates income to the ARLF, as do other farm debt relief programs such as debt restructuring and Delta debt renegotiation, unless additional dollars are appropriated or the fund begins to revolve, the ARLF balance will soon decline to zero.

Recommendation

To provide minimal protection to the ARLF if the production credits program is extended, change the program so that:
(1) it applies to no more than 50% of the total ARLF interest owed by any one borrower and; (2) it applies only to borrowers that are current on ARLF loan payments at the time the credit is applied.

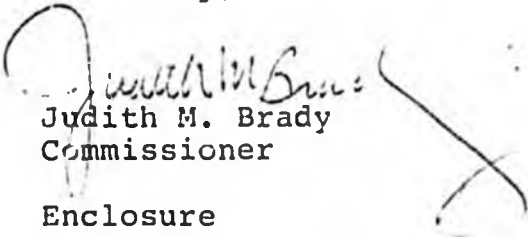
Senator Coghill

-2-

January 21, 1988

I have enclosed information about costs to the ARLF of the production credit program. Please let me know if you have additional questions.

Sincerely,


Judith M. Brady
Commissioner

Enclosure

cc: Senator Kerttula
Senator Szymanski
Rod Swope
Bob Evans

FISCAL NOTE

REQUEST: _____

Revision Date: 1/21/88
Title: Extending Agricultural Production Credits
Sponsor: Sen. Cochill, Berttula, Sz, manski
Requestor: Senate Resources Committee

Agency Affected: Natural Resources
BRU: Agricultural Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*Extending the production credit program will not result in additional operating expenses for DNR but could result in the attached estimated loss in revenues to the Agricultural Revolving Loan Fund.

Prepared by: Carol Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 1/21/88

Approved by Commissioner: *Indira W. B...*
Agency: Department of Natural Resources

Date: 1/21/88

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

LOSS IN ARLF REVENUES
FROM PRODUCTION CREDITS

1986	Production Credits	\$340,055	
1987	Production Credits	\$539,997	
1988	Production Credits	\$322,135	YTD*
Total Cost to ARLF		\$1,208,187	
1989	Estimated Credits	\$450,000	
1990	Estimated Credits	\$510,000	
1991	Estimated Credits	\$540,000	

*YTD - Year to Date

Extending the production credit program will effectively eliminate most interest income to the loan fund for all loans that are restructured, within the proposed extension period. This could result in an ARLF with insufficient dollars to fund loan requests or operating costs.

S B

362



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB362	SPONSOR Eliason
SHORT TITLE OF BILL Dude Creek Critical Habitat Area			
DEPARTMENT POSITION Support			
PREPARED BY Bruce H. Baker	DATE 2/12/88	COMMISSIONER'S SIGNATURE <i>Walter R. Kelly</i>	DATE 2/12/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Community of Gustavus
ORGANIZATIONAL SUPPORT FOR BILL Community of Gustavus	ORGANIZATIONAL OPPOSITION TO BILL None known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of establishing the Dude Creek Critical Habitat Area is to protect and enhance the wet meadow habitat that is the key roosting area for migrating lesser sandhill cranes, to protect lesser sandhill cranes, and for the continued public use and enjoyment of the area.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Establishes the Dude Creek Critical Habitat Area.
2. Identifies the purpose for which the area is established.
3. Provides for the management of the Dude Creek Critical Habitat Area including the development of a management plan.
4. Clarifies the status of mental health lands in the Dude Creek Critical Habitat Area.

AMENDMENTS PROPOSED

Clarifying amendments:

The purpose statement should appear in statute, therefore, it should have a statute number, probably AS 16.20.610(b).

A final section should be added which states, "This Act takes effect immediately under AS 01.10.070(c)."

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB362
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Dude Creek Critical Habitat
Area
Sponsor: _____
Requestor: _____

Agency Affected: Department of Fish and Game
BRU: Habitat Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		\$40,800				
TRAVEL		2,000				
CONTRACTUAL		6,720				
SUPPLIES		1,000				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		\$50,520 *				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		\$50,520				
FEDERAL FUNDS						
OTHER		\$50,520				
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Preparation of the Dude Creek Critical Habitat Area Management Plan

Prepared by: Bruce H. Baker *Richard D. Baker* Phone: 465-4105
Division: Habitat Division Date: 2/12/88
Approved by Commissioner: Don W. Wilk FOR Date: 2/12/88
Agency: Department of Fish and Game

Distribution (by preparer): *Amount required if two plans are prepared concurrently
Legislative Finance If existing schedule of one plan per year is adhered to,
Legislative Sponsor the operating budget would be adequate and this fiscal
Requestor note would not be necessary.
Office of Management and Budget
Impacted Agency(ies)

Dude Creek Critical Habitat Area

-Preparation of the Dude Creek Critical Habitat Area Management Plan will take one year to complete and require the following expenses:

Personnel

Habitat Biologist	(18c)	6 months	4500/month	27,000
Game Biologist	(16c)	2 months	4000/month	8,000
Drafting Technician	(14d)	1 month	3500/month	3,500
Clerk/Typist	(8a)	1 month	2300/month	2,300
				<u>\$40,800</u>

Travel

Staff travel to Gustavus and Juneau				2,000
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Contractual

Telephone	75/month x 12 months	900
Photocopy	10/month x 12 months	120
Advertising /public notices		1,000
Aerial photography		700
Printing/photographic/blueprinting		4,000
		<u>\$6,720</u>

Supplies

Office supplies		1,000
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TOTAL		\$50,520
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CS (ves) add to 1

SB36 2

A M E N D M E N T

Offered in the SENATE

BY ELIASON

TO: SB 362

Page 1, line 7, after "Area":

Insert "; and providing for an effective date"

Page 1, lines 9 - 13:

Delete all bill material.

Page 1, line 14:

Delete "Sec. 2"

Insert "Section 1"

Page 1, line 15, after "(a)":

Insert "The purpose of the Dude Creek Critical Habitat Area is the protection and enhancement of the wet meadow habitat that is the key roosting area for migrating lesser sandhill cranes, for the protection of lesser sandhill cranes, and for the continued public use and enjoyment of the area.

(b)"

Reletter remaining subsections.

Page 1, line 26:

Delete "(a)"

Insert "(b)"

Page 2, line 3:

Delete "(b)"

Insert "(c)"

Page 2, line 7:

Delete "(a)"

Insert "(b)"

Page 2, after line 10:

Insert a new bill section to read:

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

DUDE CREEK CRITICAL HABITAT AREA

Letter of Intent

It is the intent of the Senate Resources Committee that surface vegetation and soils be maintained to preserve the wetlands nature of the critical habitat area and provide protection to migrating Lesser Sandhill Cranes.

In creating the Dude Creek Critical Habitat Area, the Senate Resources Committee also intends that hunting, fishing, and trapping activities will continue to occur in accordance with harvest regulations as established by the Boards of Fisheries and Game. The following public uses and activities: wildlife viewing; firewood harvesting; mechanized and non-mechanized access; hiking; berry picking; and grazing will be allowed to the extent that they are compatible with the purpose for which the area is established. The Department of Fish and Game will conduct specific fact finding, including public hearings in Gustavus, prior to making final determination of the compatibility of above uses.

The Department of Fish and Game is to consult with the community of Gustavus in the preparation and implementation of a management plan for the Dude Creek Critical Habitat Area. In the event that the community forms an Advisory Committee, the department will work closely with that committee in preparation of the plan.

Senator Dick Eliason
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Eliason,

In January, 1984, a referendum (enclosure 1) was sent to all registered Gustavus voters, asking whether they favored creation of a 4100-acre Critical Habitat Area to protect migrating sandhill cranes. This capped a two-year community effort to research the need for protection and the various protective options available. About 180 ballots were sent out; 91 people chose to vote; 66 favored the proposal and 25 opposed it.

A committee of Gustavus residents was then formed to act on this mandate. In consultation with Dobra Clausen, ADF&G, Habitat Division, we developed a package of background information (enclosure 2), a proposed draft of enabling legislation (enclosure 3), and a boundary map (enclosure 4). This material has now been displayed at the post office for several weeks, and to date we have received no adverse comment on it. We hope that you and Representative Goll will now begin the process of enactment into law.

In the course of our work on the crane issue, three clearcut community opinions have emerged. First, there is strong sentiment in favor of crane protection. Second, people favor the idea of a Critical Habitat if the community is fully involved in preparing legislation and management plan. And third, many feel that human use should be regulated only to the extent necessary. In particular, the following public uses and activities should be allowed: wildlife viewing, firewood harvesting, mechanical and non-mechanical access, hiking, berry picking, and grazing, unless such activities are documented to be detrimental to the migrating sandhill cranes or their habitat.

There is general agreement that present use types and amounts are not threatening the cranes or their habitat in the area proposed for legislative action. The protective effort was begun because cranes have been substantially excluded from other parts of Gustavus and could be eliminated throughout if future use and development proceed in an unplanned fashion.

Lloyd Prouty, Debbie Woodruff, Morgan DeBoer and I will be glad to provide further information or assist in any way you wish.

Sincerely,

Grog Strevoler, Chairman
"Crane Committee"

Box 94

Gustavus Community Association Referendum JANUARY, 1984

Established two years ago, the referendum was initiated to sample the opinions of the whole community, that is the registered voters of this election district. While not legally binding it is nonetheless recognized by the State of Alaska as a valid polling device.

Those responding are requested to return the completed referendum questions no later than Feb. 5th by mailing them to Box 62 Gustavus, AK 99826.

I. Road Maintenance-

Fact: In 1983 the Alaska State Legislature appropriated \$115,000 to upgrade Tong Road, Same Old Road, Salmon River Road and Rink River Road. An additional 27 thousand dollars was appropriated which was not used. The question arises on whether or not to spend this money for the maintenance of existing roads or upgrading other roads or returning the money to the state. Since receiving this request for this referendum, solicited legal opinion states that the GCA can be held liable for damages incurred as a result of this recent upgrade or any future maintenance or improvements to the roads or the Goode River Bridge.

Question:

1. The \$27,000 should be used for maintaining the four recently upgraded roads. Yes No
2. The \$27,000 should be used to upgrade other local access roads. Yes No
3. The \$27,000 should be used to hire a professional engineer to inspect the recently upgraded roads and to pay for any necessary corrections for safety, therefore minimizing liability to GCA. Yes No
4. The \$27,000 should be returned to the State. Yes NO

Pro Statement:

The \$27,000 could be used for several years to maintain local access roads, including snow removal. It has been estimated that it would cost somewhere between \$3,000 and \$6,000 a year to maintain these local access roads.

Winter snow removal would allow access year round and would allow the Fire Department and EMTs to respond to fire and medical emergencies. Pot holes could be filled in the spring and the roads could be graded throughout the spring.

Con Statement:

The acceptance of the \$27,000 will put the community in the road maintenance business while the intent of the \$115,000 was to bring the roads up to standard. Acceptance establishes a precedent for other new roads that will be built, with the community expected to maintain them. This also represents another step in our inertia towards local government, and if and when Gustavus incorporated road maintenance and liability costs would be substantial.