

STATE OF ALASKA

EXECUTIVE ORDER NO. 85

1993



1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
2 with AS 24.08.210, I order the following:

3 * Section 1. FINDINGS. As governor, I find that it would be in the best interests of the
4 efficient administration of the state to move the bonding program that serves as security for
5 the collection of wages and payment for raw fish from the Department of Labor to the
6 Department of Revenue. The Department of Revenue is the agency currently charged with
7 issuing licenses to fish processors and primary fish buyers, and it administers a similar
8 bonding program to ensure the payment of fisheries taxes.

9 * Sec. 2. AS 44.25.020 is amended to read:

10 Sec. 44.25.020. DUTIES OF DEPARTMENT. The Department of Revenue
11 shall

12 (1) enforce the tax laws of the state;

13 (2) collect, account for, have custody of, invest, and manage all state
14 funds and all revenues of the state except revenues incidental to a program of
15 licensing and regulation carried on by another state department and funds managed
16 and invested by the Alaska State Pension Investment Board;

17 (3) register cattle brands;

1 (4) supply necessary clerical and administrative services for the
2 Alcoholic Beverage Control Board;

3 (5) invest and manage the balance of the power development fund in
4 accordance with AS 44.83.386;

5 (6) in accordance with the policies established by the board of trustees
6 of the Alaska State Pension Investment Board, collect, account for, have custody of,
7 invest, and manage the state funds for which the board is responsible;

8 (7) administer the surety bond program for licensure as a fish
9 processor or primary fish buyer.

10 * Sec. 3. AS 44.25 is amended by adding new sections to read:

11 ARTICLE 2. SURETY BOND PROGRAM FOR FISH PROCESSORS
12 AND PRIMARY FISH BUYERS.

13 Sec. 44.25.040. SECURITY FOR COLLECTION OF WAGES AND
14 PAYMENT FOR RAW FISH. (a) A person applying for a license as a fish
15 processor or primary fish buyer shall file with the commissioner of revenue a surety
16 bond running to the State of Alaska conditioned upon the promise to pay (1) all
17 persons furnishing labor to a fish processor or primary fish buyer, including
18 contractual employee benefits; (2) independent registered commercial fishermen for
19 the price of the raw fishery resource purchased from them; and (3) unemployment
20 insurance contributions. If the surety bond is insufficient to satisfy all obligations
21 under this subsection, the obligations to persons furnishing labor and to independent
22 registered commercial fishermen shall be paid before unemployment insurance
23 contributions are paid. The surety or sureties must be satisfactory, in the determination
24 of the commissioner.

25 (b) The amount of the bond shall be \$10,000 unless, during the preceding five
26 years, that amount was insufficient to satisfy a final judgment resulting from a claim
27 asserted against the bond, cash deposits, or other security filed under this section. If
28 \$10,000 was insufficient, the bond shall be \$50,000; if \$50,000 was insufficient, the
29 bond shall be \$100,000. If the commissioner determines that during the preceding
30 five years, a fish processor or primary fish buyer (1) has engaged in the business of

1 fish processor or primary fish buyer in the state while not in compliance with this
2 section and (2) has not yet satisfied a final judgment entered against the processor or
3 fish buyer for payment for labor furnished to, or raw fishery resources purchased by,
4 the processor or fish buyer, then the amount of the bond for the processor or fish
5 buyer shall be \$100,000. In lieu of the surety bond the fish processor or primary fish
6 buyer may file with the commissioner a cash deposit or other negotiable security
7 acceptable to the commissioner in the amount specified for the bond. If no claim is
8 asserted under this section within two years from the date the bond, cash deposit or
9 other security is filed, the term of the bond, cash deposit or other security shall be two
10 years; if a claim has been asserted within two years, the term of the bond, cash
11 deposit or other security shall be for five years.

12 (c) A bond is not required if the fish processor or primary fish buyer has
13 more than the amount of the bond in lienable property in the state and provides proof
14 of the property satisfactory to the commissioner.

15 (d) Upon certification by the commissioner that a person applying for a
16 license as a fish processor or primary fish buyer has complied with this section, the
17 Department of Revenue may issue that person a license to engage in the business of
18 fish processor or primary fish buyer.

19 (e) The commissioner may accept the assignment of a claim held by a person
20 against a fish processor or primary fish buyer under this section and may bring suit
21 upon the bond, cash deposit or other security on behalf of the assignor in the superior
22 court of the judicial district in which the work is done or in any judicial district in
23 which jurisdiction may be obtained. This action may not be construed to limit the
24 right of a person having a claim under this section against a fish processor or primary
25 fish buyer to personally bring suit upon the bond, cash deposit, or other security, in
26 which case a copy of the complaint shall be served by registered or certified mail
27 upon the commissioner at the time suit is filed. The commissioner shall maintain a
28 record, available for public inspection, of all suits commenced under this subsection.
29 The service shall constitute service on the surety, and the commissioner shall transmit
30 the complaint or a copy of it to the surety within 72 hours after it has been received.

1 (f) If the surety on the bond desires to cancel the bond, the surety may do so
2 by giving the commissioner written notice of intention to cancel. The cancellation is
3 effective 30 days after the notice is delivered to the commissioner.

4 (g) If a judgment is entered against the cash deposit, the commissioner, upon
5 receipt of a certified copy of a final judgment, shall pay the judgment from the
6 amount of the deposit.

7 Sec. 44.25.041. EXEMPTIONS FROM BONDING REQUIREMENT. (a)
8 A fish processor or primary fish buyer that does not purchase fish or hire employees
9 is exempt from the bonding requirements of AS 44.25.040.

10 (b) Restaurants, grocery stores, and established fish markets are exempt from
11 the bonding requirement of AS 44.25.040.

12 Sec. 44.25.042. SUSPENSION AND REVOCATION OF LICENSE. (a) If
13 a final judgment impairs the liability of the surety upon the bond or depletes the cash
14 deposits or other security so that there is not in effect the bond, undertaking, cash
15 deposit, or other security in the full amount prescribed in AS 44.25.040, the license
16 of the fish processor or primary fish buyer shall be suspended until the liability in the
17 required amount, unimpaired by unsatisfied judgment claims, has been furnished.

18 (b) If a bonding company cancels its bond of a fish processor or primary fish
19 buyer, the fish processor's or primary fish buyer's license shall be revoked. The fish
20 processor or primary fish buyer may again obtain a license by complying with the
21 requirements of AS 44.25.040.

22 (c) If a licensed fish processor or primary fish buyer fails to fulfill the
23 obligations as set out in AS 44.25.040, the license of the processor or buyer shall be
24 suspended for a period of time the commissioner determines is appropriate. After three
25 suspensions the license may be permanently revoked.

26 (d) Proceedings to suspend or revoke a license are governed by AS 44.62
27 (Administrative Procedure Act).

28 (e) If the commissioner determines that a fish processor or primary fish buyer
29 is acting in violation of AS 44.25.040, the commissioner shall give written notice
30 prohibiting further action by the person as a fish processor or primary fish buyer. The

1 prohibition continues until the person has submitted evidence acceptable to the
2 commissioner showing that the violation has been corrected.

3 (f) A person affected by an order issued under AS 44.25.040 and this section
4 may seek equitable relief preventing the commissioner from enforcing the order.

5 (g) In an action instituted in the superior court by the commissioner or a
6 representative of the commissioner, a person acting in the capacity of a fish processor
7 or primary fish buyer in violation of AS 44.25.040 may be enjoined from acting as
8 a fish processor or primary fish buyer.

9 Sec. 44.25.045. PENALTY FOR FAILURE TO OBTAIN BOND. A person
10 who is required to obtain the bond required by AS 44.25.040 and who fails to obtain
11 that bond is guilty of a class A misdemeanor. Each day a violation occurs constitutes
12 a separate offense.

13 Sec. 44.25.047. REGULATIONS. The commissioner may adopt regulations
14 to carry out the provisions of AS 44.25.040 - 44.25.048.

15 Sec. 44.25.048. DEFINITIONS FOR SURETY BOND PROGRAM. In
16 AS 44.25.040 - 44.25.048, unless the context otherwise requires,

17 (1) "commissioner" means the commissioner of revenue;

18 (2) "established fish market" means a market maintained in a
19 permanent structure exclusively for the sale of seafood to the public at retail;

20 (3) "fish" means any species of aquatic finfish, invertebrates and
21 amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle,
22 found in or introduced into the state, and includes fish eggs except fish eggs sold for
23 stock enhancement purposes;

24 (4) "fish processor" means a person engaging or attempting to engage
25 in a business for which a license is required under AS 43.75;

26 (5) "grocery store" means a store maintained for the sale of food
27 products exclusively to the public at retail;

28 (6) "primary fish buyer" means a person, other than a cooperative
29 corporation organized under AS 10.15, engaging or attempting to engage in the
30 business of originally purchasing or buying any fishery resource in intrastate,

1 interstate, or foreign commerce;

2 (7) "restaurant" includes a place maintained for the sale and
3 on-premise consumption of food, and a street vendor who sells food prepared for
4 immediate consumption.

5 * Sec. 4. AS 16.10.290, 16.10.292, 16.10.293, 16.10.294(a), (b), (c), and (d), and
6 16.10.295 are repealed.

7 * Sec. 5. TRANSITION. (a) Contracts, rights, liabilities, and obligations created by or
8 under a law repealed by this Order and in effect on June 30, 1993, remain in effect
9 notwithstanding this Order's taking effect. Records, equipment, appropriations, and other
10 property of agencies of the state whose functions are transferred under this Order shall be
11 transferred to implement the provisions of this Order.

12 (b) Litigation, hearings, investigations, and other proceedings pending under a law
13 repealed by this Order, or in connection with functions transferred by this Order, continue in
14 effect and may be continued and completed notwithstanding a transfer, amendment, or repeal
15 provided for in this Order.

16 (c) Regulations relating to the surety bond program adopted by the Department of
17 Labor under authority of AS 16.10.275 before July 1, 1993, remain in effect until regulations
18 are adopted under AS 44.25.047 by the Department of Revenue and take effect. The
19 Department of Revenue may enforce the Department of Labor regulations until its own take
20 effect.

21 * Sec. 6. This Order takes effect July 1, 1993.

DATED: January 11, 1993

/s/ Walter J. Hickel
Walter J. Hickel, Governor