

ALASKA STATE LEGISLATURE

Session

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Senate Committee on World Trade,
Technology and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

Sponsor Statement Senate Bill 275

Senate Bill 275 addresses longstanding attempts to determine compensation to the State of Alaska for harvests of common property geoduck clams that may remain on aquatic farm sites. Farmers need to clear their sites of wild geoducks in preparation for planting geoduck seed and lack of resolution on this issue has been a substantial impediment to the development of Alaska's geoduck farming industry.

The Alaska Supreme Court decided on April 16, 2004, that aquatic farm sites should contain only insignificant populations of wild geoduck clams. The Legislature expedited a bill that defined "insignificant" populations of geoducks as less than 2,000 pounds per acre. Since it appeared some sites already leased to farmers might exceed that amount, the legislation allowed ADF&G to determine "reasonable compensation" to the state for the harvest of "significant" wild geoduck stocks.

The last-minute timing of the decision did not leave the legislature enough time to debate different rates of compensation. Consequently, this measure provides the legislature with the opportunity to regain its taxing authority by allowing the legislature to set rates of compensation for the taking of state resources.

The first section of SB275 directs the Alaska Department of Fish and Game to consider the economic health of aquatic farming as it develops regulations. This section was developed in recognition of Article 8, Section 15 of the Alaska Constitution which allows the state to "promote the efficient development of aquaculture in the State."

When the actual costs are included, the Department rate represents an approximate 75% tax rate on the *net* profits of harvesting these geoducks, far higher than any other tax rate on resources in Alaska. Therefore, SB275 sets the tax rate for live geoducks at 10% of the gross value. This figure was determined by using ADF&G's formula of providing the state with 50 percent of the net profits of the sales. ADF&G's figure was lower because the agency did not consider all the verifiable costs of the farmers in particular the 3.5% Fisheries Business Tax. In addition, farmers also are required to replace each wild geoduck harvested by planting five juvenile geoducks on the farm site.

The bill also sets a tax rate of 3% on processed geoducks. The 3% rate was suggested by geoduck farmers during the public comment period on the proposed regulations as a good faith offer to provide some compensation to the state, even though they would lose money if they had to sell processed geoducks.

SENATE BILL NO. 275

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR MCGUIRE

Introduced: 2/10/10

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to aquatic farming and to payment made to the Department of Fish**
2 **and Game for the removal of wild stock of a shellfish species that exceeds an**
3 **insignificant amount; and providing for an effective date."**

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

5 *** Section 1.** AS 16.05.050(a) is amended to read:

6 (a) The commissioner has, but not by way of limitation, the following powers
7 and duties:

8 (1) through the appropriate state agency and under the provisions of
9 AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other
10 lawful means, land, buildings, water, rights-of-way, or other necessary or proper real
11 or personal property when the acquisition is in the interest of furthering an objective or
12 purpose of the department and the state;

13 (2) under the provisions of AS 36.30, to design and construct
14 hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish

1 and game resources of the state;

2 (3) to accept money from any person under conditions requiring the
3 use of the money for specific purposes in the furtherance of the protection,
4 rehabilitation, propagation, preservation, or investigation of the fish and game
5 resources of the state or in settlement of claims for damages to fish or game resources;

6 (4) to collect, classify, and disseminate statistics, data and information
7 that, in the commissioner's discretion, will tend to promote the purposes of this title
8 except AS 16.51 and AS 16.52;

9 (5) to take, capture, propagate, transport, buy, sell, or exchange fish or
10 game or eggs for propagating, scientific, public safety, or stocking purposes;

11 (6) under the provisions of AS 36.30, to provide public facilities where
12 necessary or proper to facilitate the taking of fish or game, and to enter into
13 cooperative agreements with any person to effect them;

14 (7) to exercise administrative, budgeting, and fiscal powers;

15 (8) under the provisions of AS 36.30, to construct, operate, supervise,
16 and maintain vessels used by the department;

17 (9) to authorize the holder of an interim-use permit under AS 16.43 to
18 engage on an experimental basis in commercial taking of a fishery resource with
19 vessel, gear, and techniques not presently qualifying for licensing under this chapter in
20 conformity with standards established by the Alaska Commercial Fisheries Entry
21 Commission;

22 (10) not later than January 31 of each year, to provide to the
23 commissioner of revenue the names of those fish and shellfish species that the
24 commissioner of fish and game designates as developing commercial fish species for
25 that calendar year; a fish or shellfish species is a developing commercial fish species
26 if, within a specified geographical region,

27 (A) the optimum yield from the harvest of the species has not
28 been reached;

29 (B) a substantial portion of the allowable harvest of the species
30 has been allocated to fishing vessels of a foreign nation; or

31 (C) a commercial harvest of the fish species has recently

1 developed;

2 (11) to initiate or conduct research necessary or advisable to carry out
3 the purposes of this title except AS 16.51 and AS 16.52;

4 (12) to enter into cooperative agreements with agencies of the federal
5 government, educational institutions, or other agencies or organizations, when in the
6 public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

7 (13) to implement an on-board observer program authorized by the
8 Board of Fisheries under AS 16.05.251(a)(13); implementation

9 (A) must be as unintrusive to vessel operations as practicable;

10 and

11 (B) must make scheduling and scope of observers' activities as
12 predictable as practicable;

13 (14) to sell fish caught during commercial fisheries test fishing
14 operations;

15 (15) to establish and charge fees equal to the cost of services provided
16 by the department, including provision of public shooting ranges, broodstock and eggs
17 for private nonprofit hatcheries, department publications, and other direct services, and
18 reasonable fees for the use of state facilities managed by the department; fees
19 established under this paragraph for tours of hatchery facilities, commercial use of
20 sport fishing access sites, and for operation of state hatchery facilities by private
21 aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

22 (16) to permit and regulate aquatic farming in the state in a manner
23 that **promotes the economic health and sustainability of the aquatic farming**
24 **industry**, ensures the protection of the state's fish and game resources, and improves
25 the economy, health, and well-being of the citizens of the state;

26 (17) to operate state housing and facilities for employees, contractors,
27 and others in support of the department's responsibilities and to charge rent that is
28 consistent with applicable collective bargaining agreements, or, if no collective
29 bargaining agreement is applicable, competitive with market conditions; rent received
30 from tenants shall be deposited in the general fund;

31 (18) to petition the Alaska Commercial Fisheries Entry Commission,

1 unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to
2 establish a moratorium on new entrants into commercial fisheries

3 (A) that have experienced recent increases in fishing effort that
4 are beyond a low, sporadic level of effort;

5 (B) that have achieved a level of harvest that may be
6 approaching or exceeding the maximum sustainable level for the fishery; and

7 (C) for which there is insufficient biological and resource
8 management information necessary to promote the conservation and sustained
9 yield management of the fishery;

10 (19) to promote fishing, hunting, and trapping and preserve the
11 heritage of fishing, hunting, and trapping in the state.

12 * **Sec. 2.** AS 16.40.100(f) is amended to read:

13 (f) If the wild stock of a shellfish species to be cultured at an aquatic farm site
14 exceeds the amount determined by the department to be an insignificant population
15 and if the commissioner determines in writing that removal from the site of that
16 portion of the stock that exceeds an insignificant population would benefit the public
17 and that removal of the stock by a person other than the permittee would unreasonably
18 interfere with the operation of the aquatic farm, the commissioner may authorize the
19 permittee to remove and sell the excess amount of the wild stock from the site, if, **in**
20 **addition to the fisheries business tax imposed under AS 43.75.015,** the permittee
21 pays [REASONABLE COMPENSATION, AS DEFINED BY THE
22 DEPARTMENT,] to the department **compensation in the amount of 10 percent of**
23 **the ex-vessel value of the excess amount of the wild stock in the case of a live**
24 **product and three percent of the ex-vessel value of the excess amount of the wild**
25 **stock in the case of a processed product** for the harvest and sale of the excess wild
26 stock. The department shall deposit the money received under this subsection into the
27 general fund. The legislature may appropriate the money received under this section to
28 the department for shellfish management and enhancement.

29 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

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SECTIONAL ANALYSIS SENATE BILL 275

Section 1 adds that the Commissioner of the Alaska Department of Fish & Game should consider the economic health and sustainability of the aquatic farming industry when it develops regulations for the aquatic farming industry.

Section 2 amends the statute stating that the commissioner may authorize the permittee to remove and sell the excess amount of the wild stock if the permittee pays the department compensation in the amount of 10 % of the ex-vessel value for live products and 3% of the ex-vessel value for a processed product on top of the 3.5% fisheries business tax.

Section 3 provides an effective date for this Act.

Information provided by Alaska Shellfish Growers Association
Rodger Painter 957-0704
Paul Fuhs 351-0407

Senate Bill 275

Reasonable compensation for significant wild geoducks on geoduck farms. Previous legislation required "reasonable compensation" but did not set a compensation rate.

The Association is proposing compensation to the state in the amount of 50% of the net profits from harvesting surplus wild geoducks from farm sites.

\$3.50/lb average exvessel price provided by Fish and Game = gross revenue

Farmer costs for harvesting and replacing wild geoducks:

\$2.00/lb payment to commercial divers for harvesting geoducks

\$0.57/lb reseeding cost

\$0.12/lb PSP testing

\$0.11/lb State raw fish tax

\$2.80/lb Total farmer harvesting cost

\$3.50 minus \$2.80 = \$0.70/lb X 50% tax = \$0.35

\$3.50/lb ex vessel price divided by \$0.35 = 10% of exvessel value

When this 10% is added to the raw fish tax, it would be a total of 13.5% in taxes paid to the state. **Return to State: \$0.47/lb. Return to farmer: \$0.35/lb.**

Is this reasonable?

This is four times the amount paid by the commercial geoduck divers. In addition, the farmers must replace and leave the same number of geoducks on the farm site at the end of their lease as were there when they started.

Comparison of Impacts of Different Geoduck Tax Rates

The following is a comparison of ADF&G's two attempts to set a tax rate for "reasonable compensation" for the taking of significant stocks of wild geoducks on aquatic farm sites with a 10% gross value tax. This would apply only to 7 farms leased by the state prior to changes in state law forced by a state supreme court ruling. Current pre-leasing surveys by ADF&G (paid by the applicant) will ensure no new sites with "significant" wild stocks are leased and permitted by the state.

| | ADF&G | Farmers | |
|---------------------------------------|------------------|------------------|---|
| Harvest Cost (vessel, fuel, deckhand) | \$ 1.62 | \$ 2.00 | Veriified by farmers with receipts. |
| Testing Fees (PSP, water) | \$ 0.27 | \$ 0.27 | |
| Reseeding (hatchery seed) | \$ - | \$ 0.57 | Used then eliminated by ADF&G. 5-1 replacement. |
| Fisheries Business Tax | \$ 0.11 | \$ 0.11 | |
| Totals | \$ 2.00 | \$ 2.95 | |
| 2006-2007 Average Ex-vessel Value | \$ 3.50 | \$ 3.50 | |
| "Net" Profit per Lb. | \$ 1.50 | \$ 0.55 | |
| 50% Gross Value Tax | \$ 1.75 | \$ 1.75 | |
| Farmer profit/loss | \$ (0.25) | \$ (1.20) | |
| 21% Gross Value Tax | \$ 0.74 | \$ 0.74 | |
| Farmer Profit/Loss | \$ 0.77 | \$ (0.19) | |
| 10% Gross Value Tax | \$ 0.35 | \$ 0.35 | |
| Farmer Profit/Loss | \$ 1.15 | \$ 0.20 | |

What the Public Gets Out of the 10% Tax

| | |
|------------------------------|----------------|
| Gross Value Tax | 10% |
| Fisheries Business Tax | 3.50% |
| Effective Tax rate | 13.50% |
| Tax Revenue per pound | \$ 0.47 |

Plus five juvenile geoduck clams per wild adult harvested.

What the Farmer Gets/Lb. **\$ 0.20**