

HOUSE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/9/00

Referred: House Special Committee on Fisheries, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to registration for commercial set gillnet fishing sites; relating**
2 **to leases for shore fisheries development; and providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
5 section to read:

6 FINDINGS AND POLICY. (a) The legislature finds that

7 (1) commercial set netting is an important economic activity;

8 (2) the location of a set gillnet site on state land could be an important
9 determinant of the success of a commercial set gillnet operation;

10 (3) to the extent permissible under the public trust doctrine, providing a
11 limited, exclusive use privilege for set gillnet sites will encourage the orderly utilization of
12 state shore fishery land; and

13 (4) the creation and operation of a commercial set gillnet registration system
14 could provide the state with a reasonable economic return for the use of state land and serve

1 to minimize the costs of administering the program.

2 (b) It is the policy of the state to recognize the traditional and unique features of the
3 set gillnet fishery in this state.

4 * **Sec. 2.** AS 38.05.035(e)(6) is amended to read:

5 (6) before a public hearing, if held, or in any case not less than 21 days
6 before the sale, lease, or other disposal of available land, property, resources, or
7 interests in them other than a sale, lease, or other disposal of available land or an
8 interest in land for oil and gas under (5) of this subsection, the director shall make
9 available to the public a written finding that, in accordance with (1) of this subsection,
10 sets out the material facts and applicable statutes and regulations and any other
11 information required by statute or regulation to be considered upon which the
12 determination that the sale, lease, or other disposal will best serve the interests of the
13 state was based; however, a written finding is not required before the approval of

14 (A) a contract for a negotiated sale authorized under
15 AS 38.05.115;

16 (B) a **registration for a commercial set gillnet fishing site**
17 **under AS 38.05.828** [LEASE OF LAND FOR A SHORE FISHERY SITE
18 UNDER AS 38.05.082];

19 (C) a permit or other authorization revocable by the
20 commissioner;

21 (D) a mineral claim located under AS 38.05.195;

22 (E) a mineral lease issued under AS 38.05.205;

23 (F) an exempt oil and gas lease sale under AS 38.05.180(d) of
24 acreage subject to a best interest finding issued within the previous 10 years or
25 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a
26 best interest finding issued within the previous 10 years, unless the
27 commissioner determines that substantial new information has become available
28 that justifies a supplement to the most recent best interest finding for the
29 exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale
30 acreage; however, for each oil and gas lease sale described in this
31 subparagraph, the director shall call for comments from the public; the

1 director's call for public comments must provide opportunity for public
 2 comment for a period of not less than 30 days; if the director determines that
 3 a supplement to the most recent best interest finding for the acreage is required
 4 under this subparagraph,

5 (i) the director shall issue the supplement to the best
 6 interest finding not later than 90 days before the sale;

7 (ii) not later than 45 days before the sale, the director
 8 shall issue a notice describing the interests to be offered, the location
 9 and time of the sale, and the terms and conditions of the sale; and

10 (iii) the supplement has the status of a final written best
 11 interest finding for purposes of (i) and (l) of this section;

12 (G) a shallow gas lease authorized under AS 38.05.177 in an
 13 area for which leasing is authorized under AS 38.05.177;

14 (H) a surface use lease under AS 38.05.255;

15 * **Sec. 3.** AS 38.05.075(a) is amended to read:

16 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.082,]
 17 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section, leasing shall
 18 be made at public auction to the highest qualified bidder as determined by the
 19 commissioner. In the public notice of a lease to be offered at public auction, the
 20 commissioner shall specify a minimum acceptable bid and the lease compensation
 21 method. The lease compensation method shall be designed to maximize the return on
 22 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
 23 An aggrieved bidder may appeal to the commissioner within five days for a review of
 24 the determination. The leasing shall be conducted by the commissioner and the
 25 successful bidder shall deposit at the auction the first year's rental or other lease
 26 compensation as specified by the commissioner, or that portion of it that the
 27 commissioner requires in accordance with the bid. The commissioner shall require,
 28 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
 29 appraisal costs reasonably incurred by another qualified bidder acting in accordance
 30 with the regulations of the commissioner or incurred by the department under
 31 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal

1 costs is determined by the commissioner to be the highest qualified bidder under this
 2 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
 3 costs or to the department if the department incurred the costs. All costs for survey
 4 and appraisal shall be approved in advance in writing by the commissioner. The
 5 commissioner shall immediately issue a receipt containing a description of the land or
 6 interest leased, the price bid, and the terms of the lease to the successful qualified
 7 bidder. If the receipt is not accepted in writing by the bidder under this subsection,
 8 the commissioner may offer the land for lease again under this subsection. A lease,
 9 on a form approved by the attorney general, shall be signed by the successful bidder
 10 and by the commissioner within the period specified in the auction notice.

11 * **Sec. 4.** AS 38.05.825(a) is amended to read:

12 (a) Unless the commissioner finds that the public interest in retaining state
 13 ownership of the land clearly outweighs the municipality's interest in obtaining the
 14 land, the commissioner shall convey to a municipality tide or submerged land
 15 requested by the municipality that is occupied or suitable for occupation and
 16 development if the

17 (1) land is within or contiguous to the boundaries of the municipality;

18 (2) use of the land would not unreasonably interfere with navigation
 19 or public access;

20 (3) municipality has applied to the commissioner for conveyance of the
 21 land under this section;

22 (4) land is not subject to a **registration for a commercial set gillnet**
 23 **fishing site under AS 38.05.828 or a** shore fisheries lease under **former**
 24 **AS 38.05.082**, or, if the land is subject to a shore fisheries lease **or registration for**
 25 **a commercial set gillnet fishing site**, the commissioner determines it is in the best
 26 interests of the state to convey the land;

27 (5) land is classified for waterfront development or for another use that
 28 is consistent or compatible with the use proposed by the municipality, or the proposed
 29 use of the land is consistent or compatible with a land use plan adopted by the
 30 municipality, the department, or the Alaska Coastal Policy Council; and

31 (6) land

1 (A) is required for the accomplishment of a public or private
2 development approved by the municipality;

3 (B) is the subject of a lease from the state to the municipality;
4 or

5 (C) has been approved for lease to the municipality.

6 * **Sec. 5.** AS 38.05.825(d) is amended to read:

7 (d) A conveyance under this section may contain only those restrictions
8 required by law, including AS 38.05.127 and (b) of this section, or required to support
9 a finding that the conveyance is in the best interest of the state. Land conveyed is
10 subject to the public trust doctrine that may be enforced by the state in a court of
11 competent jurisdiction. The municipality shall be required to ensure that reasonable
12 access to public waters and tidelands is provided. The municipality may not lease or
13 register land conveyed under this section for shore fisheries, but after conveyance, the
14 land may be registered with the department for a commercial set gillnet fishing
15 site under AS 38.05.828 unless [LEASED BY THE STATE FOR SHORE
16 FISHERIES UNDER AS 38.05.082 IF] the commissioner has determined
17 [DETERMINES] that registration [THE LEASE] is incompatible [COMPATIBLE]
18 with the municipality's use of the land. Title to land conveyed under this section that
19 is retained by the municipality reverts to the state upon the dissolution of the
20 municipality.

21 * **Sec. 6.** AS 38.05 is amended by adding a new section to read:

22 **Sec. 38.05.828. Registration for commercial set gillnet fishing sites.** (a)

23 A person who holds, and is currently authorized to use, a valid limited entry or
24 interim-use permit, if required under AS 16.43, for, and who intends to fish
25 commercially in, an area open to commercial set gillnet salmon fishing by the
26 Department of Fish and Game may register a commercial set gillnet fishing site on tide
27 and submerged land in that area, to anchor a commercial set gillnet, as provided in this
28 section.

29 (b) Registration of a commercial set gillnet fishing site under this section does
30 not convey or otherwise create a compensable interest in state land, and does not
31 constitute a disposal of state land for purposes of AS 38.05.945 and 38.05.035(e).

1 Registration in compliance with this section creates a revocable use privilege that gives
2 the registrant priority over other commercial set gillnet fishers for the use of the site
3 for commercial set gillnet fishing. The public retains the right to access on and
4 through a registered site. The commissioner may revoke the use privilege at any time
5 without compensation to the registrant. The state reserves the right to grant or convey
6 tideland and mineral leases, other leases, rights-of-way, easements, licenses, permits,
7 and other conveyances of an interest in land at a registered site.

8 (c) A person may register a commercial set gillnet fishing site by plainly
9 marking the site with the person's name and limited entry permit number, submitting
10 to the department a completed form provided by the department stating the precise
11 geographic coordinates of the location of the shoreward and seaward ends of the set
12 gillnet, and paying the registration fee established by the commissioner. Registration
13 is complete upon full compliance with this subsection.

14 (d) The department shall indicate registered sites on the state public land
15 records and may make a list of registered sites available on the Internet.

16 (e) The holder or the estate of a holder of a use privilege for a registered
17 commercial set gillnet fishing site may transfer the privilege to an individual who
18 meets the requirements of (a) of this section by paying a fee established by the
19 commissioner and registering the transfer on a form provided by the department. A
20 transfer under this subsection does not affect the date of the site's registration under
21 (c) of this section.

22 (f) An annual use fee for a registered site must be paid by December 31 of
23 each year by each registrant of the site. If the annual use fee is not paid by
24 December 31, a late annual use fee must be paid by the date established by the
25 commissioner by regulation. The use fee paid under this section covers the period of
26 time from January 1 through December 31 of a calendar year. The commissioner shall
27 by regulation establish a reasonable annual use fee and late annual use fee.

28 (g) A registration and use privilege under this section is automatically revoked
29 upon the registrant's

30 (1) failure to hold a valid limited entry or interim-use salmon set gillnet
31 permit currently authorizing fishing the relevant fishery, if a permit is required under

1 AS 16.43;

2 (2) failure to timely pay the annual use fee or, if applicable, the late
3 annual use fee, under (f) of this section;

4 (3) failure of the registrant or emergency transferee to use the site for
5 lawful commercial set gillnet fishing for a period of more than one year;

6 (4) voluntary submission to the department of an affidavit of
7 abandonment of the site; or

8 (5) registration of an additional site if the additional site, in
9 combination with any other site registered by the same person, contains more net than
10 is authorized by the Department of Fish and Game.

11 (h) The commissioner may adopt regulations necessary to implement this
12 section.

13 (i) Persons with competing claims of priority for a use privilege for a
14 registered commercial set gillnet fishing site may agree to mediation or binding
15 arbitration to resolve the conflict. A person may bring a declaratory judgment action
16 in the superior court to determine priority among claimants for a use privilege for a
17 registered commercial set gillnet fishing site. The department may not adjudicate
18 conflicts between persons with competing claims of priority for a use privilege for a
19 registered commercial set gillnet fishing site.

20 (j) In a resolution or determination under this (i) of this section of a conflict
21 regarding priority for a use privilege, priority for the use privilege is to be accorded
22 to the person with the earliest registration for the site, except that

23 (1) if the site was registered by a person within three years after the
24 site was registered for the first time by another person whose registration and use
25 privilege for the site has not been revoked under this section, priority for the use
26 privilege is to be accorded to one of the registrants based upon an evaluation of the
27 following criteria:

28 (A) the length of time each registrant has been engaged in
29 commercial set gillnet fishing in the area;

30 (B) the proximity of each registrant's commercial set gillnet
31 fishing activity to the set gillnet site; and

1 (C) the present ability of each registrant to use the site for
2 commercial set gillnet fishing for its maximum potential;

3 (2) the holder of a shore fishery lease that is in good standing at the
4 time of a competing claim for priority under (i) of this section is to be accorded
5 priority for the use privilege, regardless of the date of issuance of the lease; and

6 (3) the holder of a shore fishery lease who registered the commercial
7 set gillnet fishing site under (c) of this section before expiration of the lease is to be
8 accorded priority for the use privilege if the lease was in good standing at the time of
9 the holder's registration and regardless of the date of issuance of the lease.

10 * **Sec. 7.** AS 38.05.082 is repealed.

11 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section
12 to read:

13 TRANSITION: PROCESS FOR PENDING SHORE FISHERY LEASE
14 APPLICATIONS ACCEPTED AND FILED BY THE DEPARTMENT OF NATURAL
15 RESOURCES BEFORE THE EFFECTIVE DATE OF THIS ACT. Notwithstanding the repeal
16 of AS 38.05.082 by sec. 7 of this Act, the Department of Natural Resources shall process an
17 application for a shore fishery lease under the provisions of former AS 38.05.082 if the
18 Department of Natural Resources accepted and filed the application before the effective date
19 of secs. 1 - 7 of this Act. The Department of Natural Resources may issue a lease under this
20 section if the requirements of former AS 38.05.082 have been met. The provisions of former
21 AS 38.05.082 apply to a lease issued under this section.

22 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section
23 to read:

24 TRANSITION: REGULATIONS. The Department of Natural Resources may
25 immediately proceed to adopt regulations to implement changes made by secs. 1 - 7 of this
26 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
27 before the effective date of secs. 1 - 7 of this Act.

28 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).