

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE WILSON

Introduced: 4/27/07

Referred: House Special Committee on Fisheries, Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the authority of the Board of Fisheries to allocate within fisheries;**
2 **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 section
5 to read:

6 PURPOSE AND INTENT. (a) The purpose of the amendment to AS 16.05.251(e) by
7 sec. 2 of this Act and the enactment of AS 16.05.251(j) by sec. 3 of this Act is to validate and
8 reaffirm the longstanding authority of the Board of Fisheries to allocate fishery resources
9 within a fishery and to ensure the validity of all existing administrative regulations adopted
10 under the authority of that statute.

11 (b) It is the intent of the legislature to expressly overrule those portions of the
12 decisions of the Alaska Supreme Court in *Grunert v. State*, 109 P.3d 924, 930-32 (Alaska
13 2005) and *State, Alaska Board of Fisheries v. Grunert*, 139 P.3d 1226, 1235-39 (Alaska 2006)
14 holding that the Board of Fisheries may not allocate within a fishery, thereby affirming the

1 validity of regulations, other than cooperative regulations, that may have been called into
2 question by the rationale used by the Alaska Supreme Court in those cases.

3 (c) The purpose of AS 16.05.251(j), added by sec. 3 of this Act, is to preserve those
4 portions of the decisions of the Alaska Supreme Court in *Grunert v. State*, 109 P.3d 924
5 (Alaska 2005) and *State, Alaska Board of Fisheries v. Grunert*, 139 P.3d 1226 (Alaska 2006)
6 holding that the Board of Fisheries may not authorize cooperative salmon fisheries without
7 express legislative authorization and clarify that nothing in this Act or the board's allocation
8 criteria authorizes the board to allocate to an individual fisherman based on a fisherman's
9 individual catch history.

10 * **Sec. 2.** AS 16.05.251(e) is amended to read:

11 (e) The Board of Fisheries may allocate fishery resources among **and within**
12 personal use, sport, guided sport, and commercial fisheries. The board shall adopt
13 criteria for the allocation of fishery resources and shall use the criteria as appropriate
14 to particular allocation decisions. The criteria may include factors such as

15 (1) the history of each personal use, sport, guided sport, and
16 commercial fishery;

17 (2) the number of residents and nonresidents who have participated in
18 each fishery in the past and the number of residents and nonresidents who can
19 reasonably be expected to participate in the future;

20 (3) the importance of each fishery for providing residents the
21 opportunity to obtain fish for personal and family consumption;

22 (4) the availability of alternative fisheries resources;

23 (5) the importance of each fishery to the economy of the state;

24 (6) the importance of each fishery to the economy of the region and
25 local area in which the fishery is located;

26 (7) the importance of each fishery in providing recreational
27 opportunities for residents and nonresidents.

28 * **Sec. 3.** AS 16.05.251 is amended by adding a new subsection to read:

29 (j) Nothing in (e) of this section authorizes the Board of Fisheries, without
30 separate express statutory authorization, to allocate to

31 (1) a cooperative fishery; or

1 (2) an individual fisherman based on individual catch history.

2 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **RETROACTIVITY.** Sections 2 and 3 of this Act are retroactive to March 17, 2005.

5 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).