

**S B**

**205**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: March 22, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/6/90

The RESOURCES Committee considered:

CSSB 205 (RESOURCES)

CS SB NO. 205 (Res)

LEASE OF CERTAIN TIDELAND TO NONRESIDENTS

"An Act relating to the rental fee charged for shore fisheries leases; and providing for an effective date."

**RECOMMENDATIONS:**

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [ ] do pass
- [ ] do not pass
- [  ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_

- [  ] fiscal note(s) 3/5/90 DNR
- [ ] zero fiscal note(s) \_\_\_\_\_
- [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

FOSTER

*Richard Foster*  
\_\_\_\_\_  
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SIGNING:

(Check approp. column)

Do Not Pass    No Rec    Amend

Signature	Name	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	DAVIDSON	<input checked="" type="checkbox"/>		
<i>Michael Davis</i>	M. DAVIS		<input checked="" type="checkbox"/>	
<i>Blair Hudson</i>	HUDSON	<input checked="" type="checkbox"/>		
<i>Ben Sharp</i>	SHARP		<input checked="" type="checkbox"/>	
<i>William Furnace</i>	FURNACE	<input checked="" type="checkbox"/>		
<i>William Naurace</i>	NAURACE		<input checked="" type="checkbox"/>	
<i>David Jacko</i>	JACKO	<input checked="" type="checkbox"/>		

*Cliff Davidson*

Chairman's Signature

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 205 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rental fee charged for shore  
7 fisheries leases; and providing for an effective  
8 date."

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

10 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the  
11 residents of the state are responsible for the general financial support of  
12 the programs of state government and that the vast majority of support for  
13 the programs of state government comes from taxes and revenue from state-  
14 owned land. To a large extent, those who are nonresidents of the state do  
15 not financially support the programs of state government that provide  
16 services to both residents and nonresidents within the state. These ser-  
17 vices include the administration of the various state departments and  
18 agencies and their programs and specifically include the management of the  
19 tideland leasing program. While the United States Constitution prevents  
20 the state from discriminating in its delivery of services to nonresidents,  
21 the Constitution does not prevent the state from charging nonresidents a  
22 differential that compensates the state for the costs and expenses that  
23 nonresidents impose on state government.

24 \* Sec. 2. AS 38.05.082(c) is amended to read:

25 (c) A lease for set net fishing may be issued for any period not  
26 exceeding 10 years. If the commissioner determines that the land is  
27 not being utilized for the purpose for which the lease is issued, the  
28 lease may be declared void. The director shall establish and may  
29 revise a [REASONABLE] rental fee for the lease to nonresidents of the

1 state that includes a revenue generating component and [, EQUAL TO]  
2 the administrative costs involved in processing the leasehold applica-  
3 tions. The director shall establish and may revise a rental fee for  
4 residents of the state that includes a revenue generating component  
5 and one-fifth of the administrative costs involved in processing the  
6 leasehold applications. The revenue generating component of the  
7 rental fee established or revised by the director shall be \$75 for  
8 residents and nonresidents.

9 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
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A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. DAVIDSON

TO: CSSB 205 (Resources)

Page 1, line 29, after "revise":

Insert "under (f) - (i) of this section"

Page 2, after line 8:

Insert a new bill section to read:

"\* Sec. 3. AS 38.05.082 is amended by adding new subsections to read:

(f) The dollar amounts in the revenue generating component in (c) of this section change, as provided in (g) - (i) of this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(g) The dollar amounts change on October 1 of each <sup>year</sup> third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(h) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the

rebasings factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(i) The director shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (g) of this section; and

(2) promptly after the changes occur, changes in the index required by (h) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index."

Renumber the following bill section accordingly.



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

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 • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

#### MEMORANDUM

TO: Rep. Cliff Davidson  
Rep. Curt Menard  
Co-Chairmen - House Resources Committee

FROM: Sen. Fred F. Zharoff *Fred F. Zharoff*

DATE: April 20, 1990

RE: CS For Senate Bill 205 - "An Act relating to the rental fee charged for shore fisheries leases; and providing for an effective date."

CSSB 205 extends to shore leases the same principle that is now used for commercial fishing licenses, fisheries permit renewals, hunting and trapping licenses, and university tuition. That is, different fee structures can be applied to residents and nonresidents for the use of the resources and the services of the state.

The purpose of the differential in CSSB 205 is to capture a greater share of the cost that Alaskans bear year-round for the management of the tidelands leasing program, the protection and regulation of the marine environment, and the management of our fisheries resources.

The current version of CSSB 205 has been drafted in such a way so as to pass the nondiscrimination test in Alaska's constitution. The language -- provided by Mr. Tom Koester, assistant attorney general -- breaks shore leases into two components: a lease fee (the revenue-generating component) and the administrative fee. The revenue fee must be the same for residents and nonresidents, but the state may charge nonresidents for more of the administrative costs than it does residents.

CSSB 205 also restructures the shorelands leasing program in such a way that more revenue can be collected, which will enable the program to pay for itself. CSSB 205 carries a positive fiscal note of approximately \$210,500.

There is one aspect of the bill, however, that was left unresolved in the most recent version. I wish to work with the Resources Committee on a CS that would cap the lease fee at \$75, so as not to unduly burden state residents when they acquire their shore leases.

The following backup information is attached:

1. Department of Natural Resources position paper, addressed to Resources Chair Sen. Bettye Fahrenkamp. The amendment DNR recommended was incorporated into the Resources CS.
2. Fiscal note.
3. Letter from Mr. G. Thomas Koester, assistant attorney general, dated Jan. 19, 1990.
4. Letter from Mr. Gary Gustafson, director of the Division of Land and Water Management, dated Feb. 9, 1990.
5. Memorandum from Mr. Richard Bradley, Legal Services Division, giving the definition of a "resident".
6. List of current market values of Alaska salmon set net limited entry permits and the number of nonresidents holding those permits.
7. State statutes.

RECEIVED FEB 27 1990

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

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

OFFICE OF THE COMMISSIONER

①

February 26, 1990

The Honorable Bettye Fahrenkamp  
Chair  
Senate Resource Committee  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 205, An Act relating to the lease of certain tideland to nonresidents of the state.

Position: The department supports the concept of this bill.

Background: The current committee substitute provides for two components, an administrative component and a revenue generating component. The administrative component provides that non-residents would pay the full administrative cost of the program, and residents would pay one-fifth that amount in recognition of other contributions of residents.

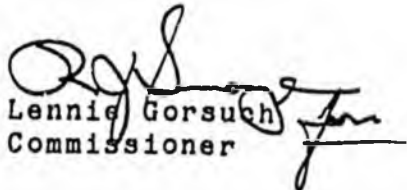
The committee substitute is revenue neutral which is mandatory, since this program is administered under program receipts. The department recommends SB 205 contain administrative flexibility to adjust rental fees to cover future costs of administering the program. The figures included in the committee substitute work with the current resident to non-resident ratio. If the ratio changes, the figures would not be revenue neutral.

Recommended language:

The director shall establish a rental fee for the lease to nonresidents of the state that includes a revenue generating component, plus the administrative cost to administer the program; the director shall establish a fee for the residents of the state that consists of a revenue generating component, plus 1/5 of the administrative costs. The revenue generating component is equal for both residents and non-residents.

I appreciate the opportunity to work with you and your staff on this legislation. We continue to be available if you have further questions.

Sincerely,

  
Lennie Gorsuch  
Commissioner

cc: Committee Members  
Bill Sponsor  
Bob Evans  
Denby Lloyd

bcc: Janet Burleson

STATE OF ALABAMA  
1990 LEGISLATIVE SESSION

BILL VERSION: CS SB 205 (Res)  
PUBLISH DATE: 3/5/90

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FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90  
Title: An act relating to the lease of certain tideland to nonresidents of the state.  
Sponsor: Zharoff  
Requestor: Senate Resources Committee

Agency Affected: Natural Resources  
BRU: Land & Water Mgmt  
Components: Land & Water Mgmt

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		210.5	210.5	210.5	210.5	210.5

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program to the authorized program receipts amount. These figures are based on the current CS using \$115.0 for residents in the revenue generating component and 1/5 of the administrative costs for residents. See page 2.

Prepared by: Larry Ostrovsky Phone: 465-2400  
Division: Commissioner's Office Date: 26-Feb-90  
Approved by Commissioner: [Signature] Lonnie Gorsuch Date: 26-Feb-90  
Agency: Department of Natural Resources

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

Changes in CS SB 205 (Res) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996

*[Signature]*  
Larry Ostrovsky

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 19, 1990

RECEIVED 1 21 1990

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STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

The Honorable Fred Zharoff  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

Re: SB 205

Dear Senator Zharoff:

At an April 6, 1989 Senate Judiciary Committee meeting, we expressed some concern with Senate Bill ("SB") 205, a bill which you sponsored and which would charge nonresidents a rental fee equal to five times the fee charged residents for a shore fisheries lease. At that time, we indicated that we would get back to you with some language which we believe would accomplish your goal -- ensuring that nonresidents pay their full share of the costs of administering the shore fisheries leasing program -- without presenting constitutional problems.

The easiest way to do this would be to determine the administrative costs of the program, pro rate that cost over all existing shore fishery leases, require that nonresidents pay the full prorated cost for their individual leases, but require residents to pay only one-fifth that amount in recognition of their contributions to the cost of the program through other means (e.g., taxes, revenues from other state-owned lands, etc.).

The problem with this approach is that it would not be revenue neutral. AS 38.05.082(c) currently provides that the annual rental (for both residents and nonresidents) is the prorated cost of the program. Reducing the amount residents must pay also would reduce the total revenue.

A possible solution is to provide that the annual rental fee consists of two components: (1) a revenue-generating component, which both residents and nonresidents must pay; and (2) a prorated administrative cost component which nonresidents must pay while residents would be charged only one-fifth of that amount in recognition of their contributions toward payment of the administrative costs through other means.

Honorable Fred Zharoff

January 19, 1990  
Page 2

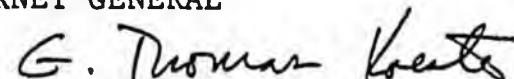
For your consideration, we have enclosed a draft proposed committee substitute for SB 205 incorporating the foregoing concept. As you will note, we have left blank the amount of the revenue-generating component. We understand the Department of Natural Resources is currently recalculating the cost of the program, and will supply you with the necessary figure when it is available.

As always, the provision of this draft language should be considered a drafting service and not necessarily administration support for the bill.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:

  
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

Enclosure

cc w/enc.: Honorable Lennie Gorsuch  
Commissioner  
Department of Natural Resources

Honorable Don Collinsworth  
Commissioner  
Department of Fish and Game

DRAFT PROPOSED COMMITTEE SUBSTITUTE FOR SB 205

For an Act entitled: "An Act relating to the rental fee charged for shore fisheries leases."

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

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the residents of the state are responsible for the general financial support of the programs of state government, and that the vast majority of support for the programs of state government comes from taxes and revenues from state-owned lands. To a large extent, those who are nonresidents of the state do not financially support the programs of state government that provide services to both residents and nonresidents within the state. These services generally include the administration of the various state departments and agencies and their programs and specifically include the management of the tideland leasing program. While the United States Constitution prevents the state from discriminating in its delivery of services to nonresidents, the Constitution does not prevent the state from charging nonresidents a differential that compensates the state for the costs and expenses that nonresidents impose on state government.

\* Sec. 2. AS 38.05.082(c) is amended to read:

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The

director shall establish a [REASONABLE] rental fee for the lease to nonresidents of the state that is[.] equal to \$\_\_\_\_\_ plus the administrative costs involved in processing the leasehold applications. The rental fee for residents of the state is \$100.00 plus one-fifth of the administrative costs involved in processing the leasehold applications.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

RECEIVED FEB 13 1990 (4)

STEVE COWPER, GOVERNOR

3601 C STREET  
P.O. BOX 107005  
ANCHORAGE, ALASKA 99510 7005  
PHONE: (907) 561-2020

February 9, 1990

The Honorable Fred Zharoff  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 205

Dear Senator Zharoff:

Recently, you received a letter dated January 19, 1990, from G. Thomas Koester of the Department of Law, Office of the Attorney General, regarding Senate Bill 205 (SB 205), a bill which you sponsored. As indicated by Mr. Koester in the January 19 letter, the Division of Land and Water Management of the Department of Natural Resources has recalculated the administrative costs of the shore fishery lease program. Direct administrative costs for the shore fishery leasing program in FY 91 are expected to be \$250,000. Based on past fiscal years' revenue streams, 85% of the total administrative costs, or \$212,500 should be defrayed by the shore fishery lease rental payments. The remaining 15% is covered by application and plat fees. By FY 91, we expect to have 1,100 issued leases. At an annual rent of \$200, these 1,100 leases would generate the revenue needed to cover these costs.

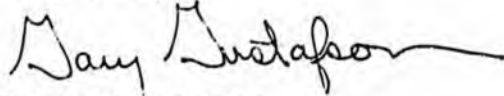
Enclosed is a work sheet incorporating the Department of Law's recommended revenue generating and pro rated cost components. The worksheet contains a revenue generating component of \$115. This is the amount necessary to make the proposal revenue neutral. It entails raising each resident's annual rental by \$5.00. The additional \$5.00 may not be adequate to justify the additional administrative costs of raising the rent.

In closing, the Division of Land and Water Management is generally supportive of the intent of Senate Bill 205. We strongly recommend SB 205 contain administrative flexibility to

The Honorable Fred Zharoff  
February 9, 1990  
Page 2

adjust rental to cover the costs of running the program. We certainly appreciate the opportunity to work with you and your staff on this important piece of legislation.

Cordially,

A handwritten signature in cursive script that reads "Gary Gustafson". The signature is written in dark ink and is positioned above the typed name.

Gary Gustafson  
Director

GG:BS:ref

Enclosure

cc: G. Thomas Koester  
Janet Burleson  
Veronica Gilbert

February 9, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component <sup>(1)</sup>	\$ 115	Revenue Generating Component <sup>(1)</sup>
\$ + 40	1/5 of Admin Costs <sup>(2)</sup>	\$ + 200	100% of Admin Costs <sup>(2)</sup>
<u>\$ 155</u>		<u>\$ 315</u>	
x 850	No. of Resident Lessees	x 250	No. of Nonresident Lessees
<u>\$131,750</u>	Revenue Derived from Residents	<u>\$78,750</u>	Revenue Derived from Nonresidents

Revenue Derived From Resident and Nonresident Lease Rent \$210,500

<sup>(1)</sup>Revenue generating component is the same for residents and nonresidents and not discriminatory.

<sup>(2)</sup>Direct administration costs projected for FY 91 to be defrayed by lease rental of 1,100 lessees is \$212,500. Under present rent rate, total revenue derived is \$165,000.

a:sfrent

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 23, 1988

SUBJECT: Fees for set net sites  
(Work Order No. 6-0369)

TO: Senator Fred Zharoff

FROM: Richard A. Bradley  
Legislative Counsel *RB*

The bill enclosed responds to your request.

I may say that we have not reexamined the constitutional question addressed in the attorney general's you provided to us.

I have not defined the term "resident". As such, the definition provided at AS 01.10.055. would apply; the section provides:

Sec. 01.10.055. RESIDENCY. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, that may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

Senator Fred Zharoff  
Page 2  
December 23, 1988

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

If I may be of further assistance, please advise.

Enclosure

RAB:gc  
WKG5/036

SET NET PERMIT PRICES AS OF JANUARY 31, 1990 AND THE NUMBER OF NONRESIDENTS HOLDING SET NET PERMITS AS OF DECEMBER 31, 1988.

<u>Set Net Permits</u>	<u>Average Value</u>	<u>Total Permits</u>	<u>Non-Residents</u>	<u>Percentage</u>
Yakutat	\$ 41,000	164	29	17.7
Prince William Sound	64,167	30	3	10.0
Cook Inlet	84,100	743	83	11.2
Kodiak	95,000	187	39	20.9
Alaska Peninsula	79,156	113	19	16.8
Bristol Bay	62,944	941	229	24.3
TOTAL		<u>2,178</u>	<u>402</u>	<u>18.4</u>

Source: Commercial Fisheries Entry Commission

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*Sec. 38.05.077. Classification and disposal of remote parcels. Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.1*

*Sec. 38.05.078. Purchase of land in a remote parcel. Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.1*

**Sec. 38.05.079. Remote cabin permit.** (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land was classified for that purpose under former AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.945.

(b) The fee for a remote cabin permit is \$100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or the assigns of the permittee. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979; am § 98 ch 6 SLA 1984)

**Effect of amendments.** — The 1984 amendment made a series of technical and internal reference changes throughout subsection (a).

**Sec. 38.05.080. Rejection of bids.** Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961)

NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).



**Sec. 38.05.082. Leases for shore fisheries development.** (a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries development

includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development, and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

**Effect of amendments.** — The 1984 amendment changed the internal reference in subsection (d).

**Opinions of attorney general.** — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not

unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 04.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

**Sec. 38.05.085. Term of lease.** (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, the lessee may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make an appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year period of the lease or of each subsequent 10-year period of the lease;

(2) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62);

(3) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

# 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

May 3, 1990

The Honorable Curt Menard  
The Honorable Cliff Davidson  
Co-Chairmen, House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Chairmen Menard and Davidson:

Subject: It is my understanding that the sponsor of SB 205, an act relating to the rental fee charged for shore fishery leases, may propose an amendment in the House Resources Committee. The amendment, as included in the work draft of a committee substitute recently provided the department, provides that the revenue generating component of the rental fee shall be \$75 for residents and non-residents.

The department strongly opposes this proposed amendment. We earlier worked with the sponsor to arrive at the language in the current committee substitute (March 2, 1990). The original language is consistent with the legal advice offered the sponsor by the Department of Law and would not impact the department's revenue generation ability.

However, the amendment contained in the proposed House CS for SB 205 would adversely impact our ability to generate revenue from this program. At present, the revenue generation component from shore fishery leases is \$115 per year for both residents and non-residents. If adopted, the CS would reduce the revenue generation component to \$75 per year, and would generate about \$44,000 per year less than we do at the present time (\$40/lease reduction x 1,100 leases = \$44,000/annum). The entire shore fishery lease program is run on a program receipt basis and generates about \$185,000 per year.

As you know, the shore fishery lease program is extremely important to an estimated 1,100 lessees, many of whom make their primary income from the program. A reduction in annual income of \$44,000 represents almost one-quarter of our program receipts.

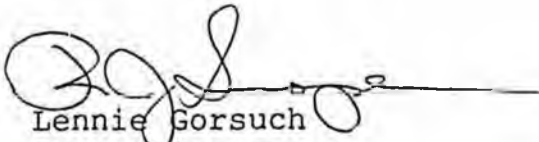
May 3, 1990

This would greatly curtail our ability to run the program and will increase our backlog tremendously.

When the shore fish program began in 1964, the revenue generation component was \$40 per year. Since then, the rental fee has increased only to \$115 per year. Rental fees are generally not specified in statute because they are then very difficult to change, even when associated costs increase. Instead, agencies specify fees in regulation, as is presently the case with shore fish lease rentals. If any changes are proposed to the fee schedule, these regulations will receive full public review prior to any decision.

In summary, this amendment would seriously curtail our ability to run an effective shore fishery program and reduce our revenue generation capability substantially. I urge you to take these concerns into consideration as you act on the amendment. The department supports the bill in its original form, but opposes the sponsor's amendment. However, should the amendment be adopted, the revised fiscal note from the department should be attached.

Sincerely,



Lennie Gorsuch  
Commissioner

Enclosure

cc: Senator Fred Zharoff  
House Resource Committee Members  
Bob Evans, Legislative Liaison  
Office of the Governor  
Denby Lloyd, Special Staff Assistant  
Office of the Governor  
Gary Gustafson, Director  
Division of Land & Water Management  
Department of Natural Resources

*15 per admin component*

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION : CSSB 205  
PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: 3-May-90  
Title: An act relating to the rental fee charged for shore fisheries leases.  
Sponsor: Zharoff  
Requestor: House Resources Committee

Agency Affected: Natural Resources  
BRU: Land & Water Mgmt  
Components: Land & Water Mgmt

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	44.0	44.0	44.0	44.0	44.0	44.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	44.0	44.0	44.0	44.0	44.0	44.0

CAPITAL						
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REVENUE	150.0	166.5	166.5	166.5	166.5	166.5
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FUNDING: (Thousands of Dollars)

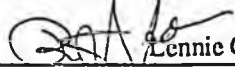
GENERAL FUND	44.0	44.0	44.0	44.0	44.0	44.0
FEDERAL FUNDS						
OTHER						
TOTAL	44.0	44.0	44.0	44.0	44.0	44.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This replaces the Department's earlier fiscal note of February 26, 1990.

Prepared by: Gary Gustafson Phone: 465-2400  
Division: Land & Water Management Date: 3-May-90  
Approved by Commissioner:  Lennie Gorsuch Date: 3-May-90  
Agency: Department of Natural Resources

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