

SB

205

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/5/90

FURTHER:

DATE TURNED INTO OFFICE: 3/15/90

The Finance Committee considered

SB 205

"An Act relating to the lease of certain tideland to nonresidents of the state."

and recommended:

replace with \_\_\_\_\_ CS  
 or adopt \_\_\_\_\_ CS

same title  
 new title  
 technical title change (HB only)

attached amendment(s)

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) DNR - Revenue 210.5 2/26/90

zero fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

SIGNING DO PASS:

J. Duncan

[Signature]

[Signature]

Paul Frank

[Signature]

1.

[Signature] (DO PASS)

OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90 Agency Affected: Natural Resources  
 Title: An act relating to the lease of certain BRU: Land & Water Mgmt  
 tideland to nonresidents of the state.  
 Sponsor: Zharoff Components: Land & Water Mgmt  
 Requestor: Senate Resources Committee

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: 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 205 (Res) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996  
 page 1 of 2  
*Larry Ostrovsky*

February 26, 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.

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 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 equal for  
8        residents and nonresidents.

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



# 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 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PIRIBILOF ISLANDS • SHUMAGIN ISLANDS

### MEMORANDUM

TO: Senator Rick Uehling  
Co-Chairman  
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: March 9, 1990

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

CSSB 205 accomplishes two objectives.

First, it restructures the shorelands leasing program for setnet sites so the program will be able to bring in enough revenue to pay for itself.

Second, it 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 was provided by Mr. Tom Koester, assistant attorney general. It 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 carries a positive fiscal note of approximately \$210,500.

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. Letter from Mr. G. Thomas Koester, assistant attorney general, dated Jan. 19, 1990.
3. Letter from Mr. Gary Gustafson, director of the Division of Land and Water Management, dated Feb. 9, 1990.
4. Memorandum from Mr. Richard Bradley, Legal Services Division, giving the definition of a "resident".
5. List of current market values of Alaska salmon set net limited entry permits and the number of nonresidents holding those permits.
6. State statutes.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

RECEIVED FEB. 26, 1990 (1)  
STEVE COWPER, GOVERNOR

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

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 ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

January 19, 1990

RECEIVED

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

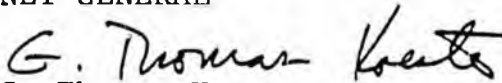
January 19, 1990  
Page 2

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:dln

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 15 1990

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.

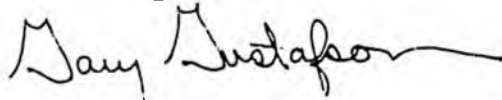
Enclosed is a work sheet incorporating the Department of Law's recommended revenue generating and pro rated cost components. The worksheet contains a revenue generating component of \$115. This is the amount necessary to make the proposal revenue neutral. It entails raising each resident's annual rental 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,



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>
\$ 155		\$ 315	
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

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3900

4

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

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

**STATE OF ALASKA  
1989 LEGISLATIVE SESSION**

**BILL VERSION : SB 205**  
**PUBLISH DATE : 4/7/89**

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Natural Resources  
 Title: An act relating to the lease of BRU: Land and Water Management  
certain tideland to nonresidents of the state.  
 Sponsor: Senator Zharoff Components: \_\_\_\_\_  
 Requestor: Senate Judiciary Committee

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>		<b>120.0</b>	<b>120.0</b>	<b>120.0</b>	<b>120.0</b>	<b>120.0</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**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 up to the authorized program receipt amount.

Prepared by: Larry Ostrovsky Phone: 465-2400  
 Division: Commissioner's Office Date: 24-Mar-89  
 Approved by Commissioner: Lennie Gorsuch Date: \_\_\_\_\_  
 Agency: Department of Natural Resources

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

The current rental fee for set net leases is \$150.00 per year. SB 205 seeks to raise the rental rate for nonresidents to five times the rate charged to residents, which would equal \$750.00 per year. This would generate \$600.00 additional dollars for set net leases issued to nonresidents. The department estimates there are between 200 and 250 nonresident fishermen with set net leases. These figures are based on statistics from the Commercial Fisheries Entry Commission's annual report. Using the conservative estimate of 200, this would generate \$120,000 per year.

STEVE COWPER, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

March 31, 1989

The Honorable Jan Faiks  
Chair  
Senate Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

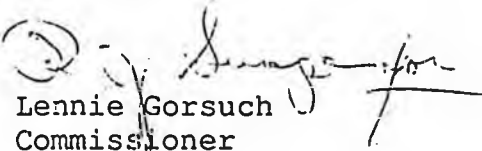
Dear Senator Faiks:

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

Position: The Department of Natural Resources is not opposed to the concept of this bill; however, there may be constitutional questions which need to be addressed by the Attorney General.

Background: This bill provides that the rental fee for set-net leases issued to nonresidents be five times the lease fee charged to residents of the state. The lease fee is currently \$150 per year. The set-net lease program is supported through program receipts, and this amendment will not incur additional costs to the department. Additionally, there will be new revenues generated, which are reflected in the attached fiscal note.

Sincerely,

  
Lennie Gorsuch  
Commissioner

cc: Senator Fred Zharoff  
Senate Judiciary Committee  
Denby Lloyd, Special Staff Assistant  
Office of the Governor  
Bob Evans, Legislative Liaison  
Office of the Governor  
Gary Gustafson, Director  
Division of Land and Water Management

Enclosure