

S B

205



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

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MAR 23 1989


JAN FAIKS
SENATE OFFICE

DISTRICT N

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

MEMORANDUM

TO: Senator Jan Faiks
Chair
Senate Judiciary Committee

FROM: Senator Fred F. Zharoff 

DATE: March 21, 1989

RE: Senate Bill 205 - "An Act relating to the lease of certain tideland to nonresidents of the state."

I respectfully request that SB 205 be scheduled for a hearing before the Senate Judiciary Committee at the committee's earliest convenience.

SB 205 raises the rental fees that nonresidents must pay for leases of tideland for set net fishing sites. Under this bill, nonresidents would be charged a fee five times the fee charged to residents. The purpose of this differential is to capture a greater share of the cost that Alaskans bear year-round for the management of the tideland leasing program, the protection and regulation of the marine environment, and the management of our fisheries resources.

Alaska's statutes and departmental fee schedules contain many instances where residents and nonresidents are charged different fees. Some examples:

Commercial Fishing License - \$30 for residents, \$90 for nonresidents.

Limited entry and interim-use fisheries permits - \$250 maximum for residents, \$750 maximum for nonresidents.

University of Alaska tuition - \$1,013-\$1,298 for residents, \$2,573-\$2,858 for nonresidents.

The Division of Insurance also has an extensive list of fees in which different rates are charged to residents and nonresidents. The Division of Occupational Licensing charges nonresident collection agencies double the fees it charges resident collection agencies.

SB 205 extends this same principle of the resident/nonresident differential to the rental fees the Department of Natural Resources charges for leases of set net fishing sites.

The following backup information is attached:

1. Letter from Assistant Attorney General Larri Spengler, Aug. 22, 1988, explaining why nonresidents may be charged higher fees than residents.
2. List of current market values of Alaska salmon set net limited entry permits and number of nonresidents holding those permits. Though not an exact measurement, permit values do tend to reflect the level of profitability in the fishery.

SET NET PERMIT PRICES AS OF FEB. 28, 1989 AND NUMBER OF NONRESIDENTS HOLDING SET NET PERMITS AS OF DEC. 31, 1988.

<u>Set Net Permits</u>	<u>Average Value</u>	<u>Total Permits</u>	<u>Nonresidents</u>	<u>Percentage</u>
Yakutat	\$ 31,000	164	29	17.7
Prince William Sound	\$ 49,833	30	3	10.0
Cook Inlet	\$ 63,286	743	83	11.2
Kodiak	\$ 76,019	187	39	20.9
Alaska Peninsula	\$ 85,542	113	19	16.8
Bristol Bay	\$ 62,286	941	229	24.3

Source: Commercial Fisheries Entry Commission

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 14, 1989

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

Re: SB 205

Dear Senator Faiks:

Senate Bill ("SB") 205, by Senator Zharoff, would amend AS 38.05.082(c) to provide that nonresidents would pay five times the amount paid by Alaska residents to lease state tidelands for set net fishing. The constitutionality of a similar fee differential between residents and nonresidents -- the requirement in AS 16.43.160(b) that nonresidents pay three times the amount paid by Alaska residents for the issuance and annual renewal of limited entry permits -- has been challenged in Carlson v. State, 3AN-84-5790 Civ. We are defending the constitutionality of the limited entry permit fee differential, in part, on the ground that it is justified to ensure that nonresidents pay their fair share of the costs of state activities protecting the marine environment and the state's fishery resources.

To justify a fee differential between residents and nonresidents, the courts require evidence of the costs of the various programs which, it is asserted, justify the differential, and a showing that the differential is reasonably related to the difference in contributions toward those costs by residents and nonresidents. SB 205 would use some of the same justifications for the fee differential with respect to tidelands rental fees that we are citing as justification for the fee differential with respect to limited entry permit fees. In the absence of empirical data regarding the cost of various state programs to protect the marine environment and fishery resources, our ability to defend the constitutionality of the fee differential for limited entry permits could be substantially undermined if we use that identical justification to support a fee differential for tideland leases.

STEVE COWPER, GOVERNOR

REPLY TO:

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

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

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

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MAR 14 1989

JAN FAIKS
SENATE OFFICE

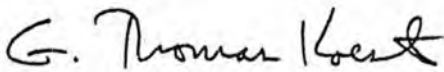
The Honorable Jan Faiks, Chair
Senate Judiciary Committee

March 14, 1989
Page 2

We would be happy to discuss these matters with you or
the committee at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Zharoff
Commissioner Gorsuch
Commissioner Collinsworth
Commissioner Twomley
Bob Evans

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 206
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

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

August 22, 1988

The Hon. Fred Zharoff
Alaska State Legislature
720 Mill Bay Road, Room 231
Kodiak, AK 99615

AUG 29 1988

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

Re: Leases to non-state residents
Our file: 663-88-0480

Dear Senator Zharoff:

You have inquired whether the state could statutorily require that leases of state land for hunting or fishing lodges, for example, be limited to Alaska residents only, and whether non-state residents could be charged more for such leases than state residents. As discussed below, it appears likely that the state could limit leases of state lands to state residents, depending on what purpose was expressed. It also appears that the state might be able to charge non-state residents more for leases than state residents, but in practical effect that would probably result in state residents obtaining leases for less than fair market value, a policy choice which the legislature would obviously have to consider carefully.

Leasing land for purposes other than the extraction of natural resources is currently governed by AS 38.05.070 -- AS 38.05.105. The general guidelines for leasing are set out in AS 38.05.070, and leasing procedures in AS 38.05.075, neither of which contains a state resident limitation. There are no statutes governing leasing land for the specific purpose you use as an example in your opinion request, namely leasing land for hunting or fishing lodges.

With respect to AS 38.05.082, a specific statute governing leases for shore fisheries development that does not now limit issuance of state tidelands leases to residents of Alaska, this office has in the past expressed the view that it could be amended to add such a limitation. 1983 Op. Att'y Gen. No. 3 (April 21). We explained that such a limitation would have to be shown to be "reasonable, not arbitrary, and [it] must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Id.*, at 6-7, quoting *Gilman v. Martin*, 662 P.2d 120, 125 (Alaska 1983), in turn quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1983). Our office noted with respect to the prospect of restricting shore fishery

leases to residents that "since article VIII, section 17, of the Alaska Constitution requires that 'laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation,' it is especially important that any residency requirement be based upon valid constitutional and statutory objectives." 1983 Op. Att'y Gen. No. 3 (April 21), p. 7.

In Gilman v. Martin, 662 P.2d 120 (Alaska 1983), the Alaska Supreme Court was examining a land sale lottery ordinance of the Kenai Peninsula Borough which, among other things, restricted participants to residents of the borough. The court noted that the borough contended its discrimination against non-residents was not unconstitutional and that "one of the purposes of the state's grant of land to it was to permit the borough to sell the land to its residents." Id. at 126. The borough argued that thus "all boroughs may limit the sale of land received from the state to residents of the boroughs." Id. Unfortunately for the borough's argument, which the court said otherwise "might have been worthy of consideration," the ordinance did not state that to be its purpose. Id. Instead, it specifically indicated that its purpose was to "resolve existing controversies regarding access and title." Id. The court concluded that the decision by the borough to restrict the sale of its land through the lottery to borough residents -- "and thereby assist only 44 percent of the land owners in resolving existing controversies regarding access and title" -- was "unreasonable" and without "some ground of difference having a fair and substantial relation to the [avowed] object of the legislation, so that all persons similarly circumstanced [are] treated alike." Id. at 126-27 (brackets in original).

Thus, it is clear that in evaluating a statutory restriction of state land leases to state residents, a court would look closely at whether the purpose of the legislation amounted to a legitimate governmental objective, and secondly, whether the means chosen (the limitation to state residents) further the purported goals. Alaska Pacific Assurance Company v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). An example of a goal which might well be considered legitimate by a court is one similar to the one mentioned by the court in Gilman, distribution of state land to state residents. That could be particularly persuasive if there was not sufficient land being made available for lease for all residents desiring to have some, at least if non-residents were also allowed to apply. On the other hand, if the purpose were, for example, to discourage newcomers from moving to

Alaska, the purpose might not be viewed as legitimate, given the United States Constitution's protection of interstate commerce.

*
You have also inquired whether it is possible to impose a different rate structure for nonresident leases, "similar to the one in place for hunting and fishing licenses whereby non-residents could be charged a higher fee." Under Alaska statutes, non-state residents can be charged up to three times the amount as state residents for engaging in commercial fishing. AS 16.05.480; AS 16.43.160. In that instance, we believe the fee differential is constitutional because the sum that nonresidents pay only compensates the state for their share of the state's expenses in conserving and managing its fisheries. The United States Supreme Court has explained that the "state is not without power...to charge nonresidents a differential which would merely compensate the state for any added enforcement burden they may impose or for any conservation expenditures." Toomer v. Whitsell, 334-US-385, 398-9 9 (1948).

In a broader context, the Alaska Supreme Court has noted that "freedom from disparate taxation is not a federally protected fundamental right for the purpose of equal protection analysis under the 14th Amendment." Williams v. Zobel, 619 P.2d 422, 427 (Alaska 1980). Logically, the same conclusion could be reached with respect to disparate leasing fees. Accordingly, the appropriate standard of review would be to determine whether the classification bears a fair and substantial relation to a legitimate governmental objective. Id. Thus, if some rationale exists for charging non-state residents higher fees than residents, it would appear that a differential leasing fee schedule could be authorized. For example, if non-state residents were escaping bearing their share of the leasing program's administrative costs, a differential compensating for that might well be justified. (In such a case, Alaska residents would be shouldering their share by money from their state's resources being allocated to pay the administrative costs.)

The possibility of different fees, however, raises a practical problem. Currently, under AS 38.05.075 and AS 38.05.840, in general land leased in Alaska is already required to be leased at fair market value. Since it would not be likely that non-state residents would wish to pay greater than fair market value for the lease of state land in Alaska, it appears that the only way to impose a fee differential based on residency would be to allow state residents to lease state land at less than fair market value. For example, currently AS 38.05.810 provides that state land may be leased (or otherwise disposed of) to a state or federal agency or a political

Senator Fred Zharoff
663-88-0480

August 22, 1988
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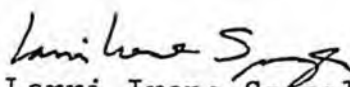
subdivision for less than the appraised value if that is determined by the Commissioner of Natural Resources to be "fair and proper and in the best interests of the public." Whether the legislature would wish to forego receiving the full fair market value for leases of state land to residents is obviously a policy choice. If the legislature determined that such a choice was desirable, it should explain its reasons, so that it is clear that the differential bears a substantial relationship to a legitimate governmental objective, as discussed above.

Another policy question that the legislature may wish to consider with respect to both alternatives--limitation of leases to residents and fee differentials--is whether subleasing by residents to nonresidents should be statutorily prohibited. If it were not, whatever purpose the legislature believed was being served by the basic enactment could be circumvented. Obviously, whether subleasing would pose a problem would depend on what purposes the legislature wanted to further. If use of state land by state residents was the purpose, the situation might be different than if the goal was to foster state residents making money off of state land.

In sum, with the proper legislative findings demonstrating the legitimacy of the ends, and the connection of the means to the ends, leases of state lands could be statutorily limited to state residents, or a higher fee could be charged to non-state residents for those leases.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Larri Irene Spengler
Assistant Attorney General

LIS:tg

cc: Judith Brady, Commissioner
Department of Natural Resources

Rod Swope, Special Assistant
Office of the Governor

Tom Koester, Assistant Attorney General
Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 21, 1983

AG OP #03, 1983

The Honorable Jerry Ward
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Can the state require shore
fisheries lessees to be
residents?
Our file: 366-511-83

Dear Representative Ward:

Thank you for your recent request regarding the constitutionality of shore fishery leases under AS 38.05.082 and the possibility of amending its provisions to require that shore fisheries leases be restricted to residents of Alaska.

In summary, we believe the provision does satisfy the U.S. and Alaska Constitutions, and it can be amended to exclude nonresidents.

A. Statutory Background

Section 82(a) of the Alaska Land Act (ch. 160, SLA 1959) provides for the lease of tide and submerged lands for fisheries development purposes. Specific mention is made of shore leases for set net sites. Associated legislative findings evidence the need to limit the number of set net sites in the "interest of conservation." Sec. 1, ch. 93, SLA 1963.

Implementing regulations provide for the establishment

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
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of tidelands leases in all areas open to fishing by the Alaska Board of Fisheries. 11 AAC 64.200. The distance between sites corresponds to minimum distances the board allows between gill nets. 11 AAC 64.100. Set net areas in various parts of the state are limited by regulation to beaches exposed at low tide (5 AAC 06.331(e)), specified distances from shore (5 AAC 06.31(i)(2)) and portions of waterways (5 AAC 03.331(b); 5 AAC 04.331(b); 5 AAC 05.331(e); 5 AAC 07.31(e)). In many areas, strong tidal currents (Cook Inlet) or deep water (Kodiak, Prince William Sound) make it possible to fish set gill nets only from beaches.

Regulations of the Alaska Board of Fisheries provide for set net fishing for salmon in all areas of the state except Southeast Alaska, the Aleutian Islands and Chignik. 1/ According to recent data from the Alaska Commercial Fisheries Entry Commission, of 4529 fishermen who have received set net permits for 1983, only 350 are nonresidents, or 7.7% of the total. 2/ Appendix A gives the area breakdown.

1/ See Title 5, Alaska Administrative Code at sections .330 of chapters 3 -- 7, 9, 12, 15, 21, and 24.

2/ A resident for purposes of licensing under AS 16.05.480 is a person who has maintained a permanent place of abode in Alaska for 12 consecutive months and who has continually maintained his voting residence here. AS 16.05.940(14).

Although other provisions of the Alaska Land Act include residency requirements (e.g., AS 38.05.057, 38.05.058, and 38.05.069), the shore fisheries provisions include no residency restriction.

B. AS 38.05.082 Does Not Establish An Exclusive Right Of Fishery

Your question regarding the validity of shore fisheries leases under the Constitution of Alaska requires analysis of art. VIII, sec. 15 which prohibits creation or authorization of an "exclusive right or special privilege of fishery . . . in the natural waters of the State."

As explained in the attached March 13, 1963 Attorney General's Opinion, establishment of individual tidelands leases for fisheries purposes does not violate this section. This opinion notes that individual uses of tidelands are based on real property rights and do not represent an exclusive fishery interest in "the natural waters of the state." The opinion points to the predecessor provision of art. 15 in the federal law applicable to the Territory of Alaska. That statute, known as the White Act, 43 Stat. 464, 48 U.S.C. § 221 (June 6, 1924), also prohibited exclusive rights to fisheries. However, that prohibition did not preclude exclusive use of tideland property for a limited number of fish traps. See e.g., Dow v. Ickes, 123 F.2d 909, 916 (D.C. Cir. 1941).

In other words, as long as a lease of tidelands grants

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
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only a property interest, the lease is compatible with art. VIII, sec. 15.

In this case, the shore fishery lease is strictly a property interest. The lease does not grant an interest in water nor does it assure an exclusive share or quota of fish or have any other bearing on harvests. 3/ Indeed, set net fishermen usually compete with other gear types 4/ and, even where set nets are the only legal gear type, 5/ a shore fisheries lease is no guarantee that fish will actually be harvested.

Accordingly, it is our opinion that AS 38.05.082 does not create an exclusive right of fishery and therefore is not

3/ The Alaska Board of Fisheries is responsible for establishing fishing areas, methods and means, seasons and periods, and all other fisheries management requirements. AS 16.05.251(a). The commissioner of the Alaska Department of Fish and Game has joint authority to set seasons and areas. AS 16.05.060.

4/ For example, both drift gill nets and set gill nets are permitted in Norton Sound (5 AAC 04.330), the Yukon area (5 AAC 05.330), Bristol Bay (5 AAC 06.330), the Kuskokwim (5 AAC 07.330), the Alaska Peninsula (5 AAC 09.330(a) -- (e)), Kodiak (5 AAC 18.330(b)(1)), the Cook Inlet area (5 AAC 21.330), and the Eshamy District of the Prince William Sound area (5 AAC 124.331(b)(51)); set gill nets and troll gear share fishing opportunities in the Yakutat area under 5 AAC 30.330.

5/ Set nets only are permitted in the Kotzebue-Northern area (5 AAC 03.330), Port Clarence (5 AAC 04.330), Alaska Peninsula (5 AAC 09.330(f)(3)), and part of the Alitak area Kodiak (5 AAC 18.330(b)(5)), and in the Northern district of Cook Inlet (5 AAC 21.330).

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
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unconstitutional under art. VIII, sec. 15 of the Alaska Constitution.

C. Residency Requirements

Your letter also refers to the possibility of amending AS 38.05.082 to limit issuance of state tidelands leases for fisheries development to residents of Alaska. Since the leasehold interest in question is not a fisheries interest, but is an interest in property originating in the Alaska Land Act, it is possible to grant an exclusive land interest to residents of Alaska only if such restrictions do not violate the equal protection clauses of the U.S. and Alaska Constitutions.

Several recent cases have struck down the award of various benefits based solely on length of residency, especially where that residency referred to accumulated years of residence before the enactment of the statute. Williams v. Zobel, 619 P.2d 422 (Alaska 1980); Williams v. Zobel, 619 P.2d 448 (Alaska 1980); Williams v. Zobel, ___ U.S. ___, 102 S.Ct. 2309 (1982). However, courts have allowed a broad variety of other state services to be reserved to residents. These include college tuition, Vlandis v. Kline, 412 U.S. 441 (1973); termination of marriage relationships, Sosna v. Iowa, 419 U.S. 393 (1975); voting privileges, Dunn v. Blumstein, 405 U.S. 330 (1972) and others so long as a certain durational length of residency is not a

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
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qualifying factor. 6/ We believe grants of interests in land owned by the state are included in this group. In fact, on April 1, 1983, the Alaska Supreme Court issued an opinion regarding the validity of restricting land grants to residents. In that case the Kenai Peninsula Borough restricted a local land lottery to borough residents. Gilman v. Martin, slip op. no. 2652 (April 1, 1983). The court found that sale of land to residents might have been permissible if "the purpose of the lottery was to benefit its residents." Id at 15. However, in that case the court invalidated the borough's residency restriction because there was no indication that the ordinance was benefiting area residents. Instead, the ordinance was designed to sell land to "adjoining property owners or to leaseholders so as to resolve existing controversies regarding access and title." Id. No reason was given for the differential treatment between residents and non-residents.

Therefore, though it is possible to restrict land disposals to residents, the restriction "must be reasonable, not

6/ The state may, however, require some minimum period of presence in the state as an objective test of a bona fide claim of residency in order to avoid having to make more detailed and time consuming inquiries into a person's subjective intent, Williams v. Zobel, ___ U.S. ___, 102 S.Ct. 2309 (1982). The permissible length of this period will depend on the nature of the interest or activity involved and the legislative reasons for restricting access to only residents.

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
Page 7

arbitrary, and must rest upon some grounded difference having a fair and substantial relation to the object of the legislation." Gilman v. Martin, supra at 13. In particular since Article 8, Section 17, of the Alaska Constitution requires that "(l)aws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation," it is especially important that any residency requirement be based upon valid constitutional and statutory objectives. For example, the legislation must comply with the natural resource provisions of article VIII, particularly sections 1 and 2 regarding the utilization and development of Alaska's land resources in the maximum public interest.

In addition, it is extremely important that the legislature treat the shore fisheries leases as interests in land and not as fisheries interests. As you know, art. VIII, § 15 of the Alaska Constitution prohibits the creation or authorization of an "exclusive right or or special privilege of fishery." Therefore, it would not be possible to exclude specific individuals or groups on the authority of fisheries considerations.

If the legislature decides to impose a residency requirement on shore fishery lessees, adequate due process consideration should be given to the existing leasehold interests of the 350 nonresidents. The due process provision of the Alaska

Honorable Jerry Ward
Representative
Alaska State Legislature

April 21, 1983
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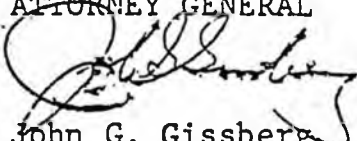
Constitution at art. I, sec. 7 provides special protections to property interests and they cannot be arbitrarily taken away. Herscher v. State Dept. of Commerce, 568 P.2d 996, 1002 (Alaska 1977); Nichols v. Eckert, 504 P.2d 1359, 1362 (Alaska 1973). Thus, in order to apply a residency requirement retrospectively to existing leasehold interests, the state would have to demonstrate a legitimate governmental purpose for nullifying an individual's existing interest. Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974).

If you have further questions regarding the shore fisheries statute or additional information regarding non-resident use, please contact us at your convenience.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


John G. Gissberg
Assistant Attorney General

JGG:eja

Attachment:

cc: Honorable Don W. Collinsworth, Commissioner
Department of Fish and Game

Honorable Esther Wunnicke, Commissioner
Department of Natural Resources

Sec. 38.05.077. Classification and disposal of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.078. Purchase of land in a remote parcel. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

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 38.5.300 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. 03.

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

right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Access to
Navigable
Waters

SECTION 14. Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

No Exclusive
Right of
Fishery

SECTION 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

(The amendment to this section was approved by the voters of the state August 22, 1972 and became effective October 14, 1972. This amendment added the second sentence.)

Protection
of Rights

SECTION 16. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

* Uniform
Application

SECTION 17. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Private
Ways of
Necessity

SECTION 18. Proceeding in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization

Sec. 38.05.077. Classification and disposal of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.078. Purchase of land in a remote parcel. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

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. 03.

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

right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

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Waters

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