

S B

205

SENATE COMMITTEE REPORT

FURTHER

FIN

4/7/89

DATE TURNED INTO OFFICE

3/2/90

Mr. President:

RESOURCES

Committee considered

SB 205

lease of certain tideland to nonresidents of the state

and recommended

- replace with _____ CS SB 205 (RES)) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and _____) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

- FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new DNR updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature]

 Chairman signature and recommendation

Committee Backup attached

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

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
1990 LEGISLATIVE SESSION

BILL VERSION : SB 205
PUBLISH DATE : _____

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: [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)

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
<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

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

⁽²⁾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.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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

DURING SESSION:

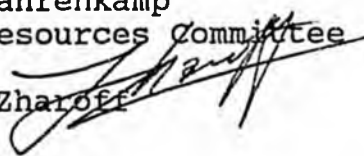
P. O. BOX V, JUNEAU, ALASKA, 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

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

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: February 13, 1990

RE: Senate Bill 205 - "An Act relating to the rental fee charged for shore fisheries leases."

I wish to request that a hearing be scheduled for SB 205 at the committee's earliest convenience.

SB 205 extends the same principle to shore leases for commercial set net sites that is now used for commercial fishing licenses, fisheries permit renewals, hunting and trapping licenses, and university tuition. That is, different fees charged to residents and nonresidents for the use of the resources and the services of the state.

The purpose of the differential contained in SB 205 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 resource.

Constitutional questions were raised about SB 205 when it was heard in the Senate Judiciary Committee. The bill passed out with the understanding that Mr. Tom Koester, assistant attorney general, would provide the Senate with an alternate draft addressing the constitutional issues. Mr. Koester has provided me with the new draft language. I propose that the new draft of SB 205 (attached) be taken up as a Resources CS. The Department of Natural Resources will provide the committee with the dollar amount that should be inserted in the blank on page 1, line 29.

By copying the department with this memorandum, I wish to request a new position paper and fiscal note for the Resources Committee.

The following backup information is attached:

1. Letter from Mr. G. Thomas Koester, assistant attorney general, dated Jan. 19, 1990.

2. Department of Natural Resources position paper and fiscal note, dated March 31, 1989.
3. Letter from Ms. Larri Irene Spengler, assistant attorney general, dated Aug. 22, 1988, explaining why nonresidents may be charged higher fees than residents.
4. Memorandum from Mr. Richard A. Bradley, Legal Services Division, dated Dec. 23, 1988, 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. Though not an exact measurement, permit values tend to reflect the level of profitability in a fishery.
6. State statutes.

cc: Mr. Larry Ostrosky
Department of Natural Resources

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

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.

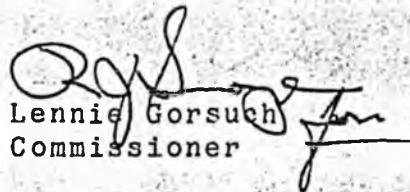
Recommended language:

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.

The CS SB 205 (Res) of 3/2/90
replaces the \$115 figure with this
lang. As you remember we were ready
to move the bill but needed Sen Zharov's ~~input~~
approval.

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

March 6, 1989

SENATE JOURNAL

p. 644

SB 205

SENATE BILL NO. 205 by Senator Zharoff, entitled:

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

was read the first time and referred to the Judiciary Committee, the Resources Committee and the Finance Committee.

April 7, 1989

SENATE JOURNAL

p. 1109

SB 205

The Judiciary Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state). Senator Szymanski, Vice-Chair, signed "do pass." Senator Halford signed "do pass after findings established." Senator Pearce signed "no recommendation."

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 205 was referred to the Resources Committee.

March 5, 1990

SENATE JOURNAL

p. 2709

SB 205

The Resources Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 205 (Resources), entitled:
"An Act relating to the rental fee charged for shore fisheries leases; and providing for an effective date."

and do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Frank, Zharoff, Sturgulewski and Kerttula.

SB 205 cont'd

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 205 was referred to the Finance Committee.

March 15, 1990

SENATE JOURNAL

p. 2865

SB 205

The Finance Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state) and a majority of the committee recommended that the Resources Committee Substitute offered on page 2709 be adopted and do pass. The report was signed by Senator Uehling, Co-Chair, and concurred in by Senators Duncan, Frank, Pearce, and Fischer.

Previous fiscal notes.

SENATE BILL NO. 205 was referred to the Rules Committee.

1990 LEGISLATIVE SESSION

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

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) |

my Ostrovsky

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
<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

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

⁽²⁾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.

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
certain tideland to nonresidents of the state. BRU: Land and Water Management
 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						
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		120.0	120.0	120.0	120.0	120.0

FUNDING: (Thousands of Dollars)

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

Page 2
SB 205

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.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS SB 205
PUBLISH DATE: _____

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						
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REVENUE		210.5	210.5	210.5	210.5	210.5
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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)

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
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⁽²⁾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.

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 99801-0300
PHONE: (907) 465-3600

January 17, 1990

RECEIVED JAN 19 1990

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

(2)
STEVE COWPER, GOVERNOR

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

March 31, 1989

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

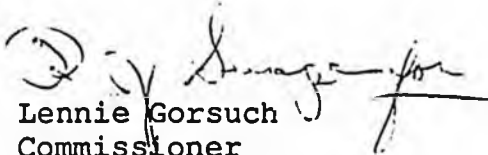
Dear Senator Faiks:

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

August 22, 1988

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

AUG 29 1988

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

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

3

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

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
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

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

6

§ 38.05.077

PUBLIC LANDS

§ 38.05.082

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

(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)

BILL: SB 205

NAME:

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

PRIME SPONSOR: ZHAROFF

CURRENT STATUS: (S) RES THEN FIN

STATUS DATE: 04/07/89

HEARING:(S) RES FEB 26 01:30 PM BUTROVICH ROOM 205

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SB 205 Journal & Committee Action Page 2 of 2

Current Status: (S) RES

Date	Page	Action
1 03/06/89	644	(S) READ THE FIRST TIME - REFERRAL(S)
2 03/06/89	644	(S) JUDICIARY, THEN RESOURCES, FINANCE
3 04/06/89	N/A	(S) JUD AT 1:30 PM BUTROVICH ROOM 205
4 04/06/89	N/A	(S) MINUTE(JUD)
5 04/07/89	1109	(S) JUD RPT 2DP 1NR
6 04/07/89	1109	(S) FN PUBLISHED (DNR)
7 04/07/89	1109	(S) REFERRED TO RESOURCES
8 02/26/90	N/A	(S) RES AT 1:30 PM BUTROVICH ROOM 205

Senate Judiciary Minutes

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BASIS Committee Minutes

The first order of business was SB 205 (Lease of certain tideland to nonresidents of the state). Senator Szymanski explained that current law provides that the commissioner of the Department of Natural Resources may issue a lease for set net fishing, and the lease may be for a period not to exceed 10 years. DNR must establish a reasonable rental for the lease equal to the administrative costs involved in processing lease applications.

The current law does not distinguish between residents and nonresidents. SB 205 amends this law to provide that the rental for the nonresidents of the state shall be five times the fee charged for residents. The state will still be charging residents a fee that is equal to the administrative costs of processing an application, but nonresidents must pay five times that amount.

Number 010

Tom Koester, Assistant Attorney General, Department of Law,

Selection=>

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BASIS Committee Minutes

said there is a similar nonresident fee differential statute which relates to the fees charged for applying and renewing limited entry permits. The courts will sustain the constitutionality of a differential fee between residents and nonresidents if it can be demonstrated that there reasonable relationship between the fee charged nonresidents and the added enforcement burden that they impose on the state because of their nonresidency. The Department of Law is defending the nonresident fee differential in the limited entry permit case on these grounds.

Koester said their sense is that they would prefer to wait until the Supreme Court resolves the limited entry fee differential case before another statute is enacted imposing a fee differential on nonresidents using the same justification. At the minimum, if the bill was to go forward, they would hope that the legislature would, in fact, develop through the hearing process data regarding the additional costs of enforcement with respect to

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BASIS Committee Minutes

nonresidents so that there would be some data in the legislative record that they could use if and when a lawsuit is brought challenging the constitutionality of a

fee differential between residents and nonresidents in the tidelands leasing context.

Number 068

Senator Zharoff said he doesn't think the legislation sets any real precedents in what is done in other areas where fees are different for residents and nonresidents, particularly in the area of the fishing industry. The nonresident fee for a commercial license is substantially higher than what a resident pays.

Senator Zharoff's particular concern is with the Bristol Bay area where there are a large number of nonresidents that fish the area, who have been making substantial returns, and are leaving nothing in the state in return.

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BASIS					Committee	Minutes					

The revenues that's generated from the shore leases helps pay for that segment in DNR, and Senator Zharoff would like to increase those program receipts on the users that come in and utilize the services and then leave. Currently, the shore lease is approximately \$50. In order for the Department of Natural Resources to continue providing the service for that particular part of their budget, they have started a program to increase the shore leases for everybody up to \$150. He feels it is a resource that belongs to the people of the state and that some consideration should be given to Alaskan residents.

Number 120

Senator Szymanski said everyone wants to do this, but the key question is whether or not we can give the Department of Law, who would potentially have to defend the differential, the foundation to do so, because they don't believe that the findings contained in the bill would carry

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through and support a court challenge at this time. Koester agreed and said the difficulty is that in the Carlson versus State case, they have developed data with respect to enforcement and are using that data to justify the fee differential for the limited entry permit, and it comes out just about right in that case. The problem is that you can't add on additional justification. One way that it could work is if the processing fee that DNR is charging is about what their administrative costs work out to be for the program

Senator Halford said he thought it was essential to get DNR's budget component in front of the committee and to establish a differential represents bringing nonresidents up to the total cost of providing the service. This could then be so stated in the findings of the bill, he said.

Number 180

There was some discussion on whether it would be better to

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BASIS					Committee	Minutes					

put this foundation in the legislation in the Judiciary Committee, or wait until it is before the Resources Committee or the Finance Committee. Senator Zharoff said he would prefer to have the bill move and thinks it can be handled in either of the two subsequent committees of referral.

Number 195

Senator Pearce referred to an opinion dated April 21, 1983, from Mr. Gissberg saying it would be legal to shut off the ability of nonresidents to receive tideland leases. Senator Zharoff said he didn't recall any of the discussion that may have taken place at that time, but he thought there would be constitutional problems if an attempt were made to exclude nonresidents from that type of activity. Koester added that he is not convinced that that earlier opinion was correct.

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BASIS					Committee	Minutes					

Senator Halford stressed that if the bill is passed on, it is essential to make sure that these findings are changed, because if they are left in, it endangers itself and the existing court case on other use of these findings.

Senator Szymanski stated it would be his intent to take a

motion to move the bill from committee with a letter of transmittal to the next committee of referral requesting that a hearing be held that specifically addresses an appropriate findings section. Senator Halford suggested that Mr. Koester help in the drafting of the letter to outline what needs to be established. Koester agreed and said he would contact DNR and see that they have that information available for the next hearing on the legislation.

Number 249

Senator Halford moved and asked unanimous consent that SB

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BASIS

205 be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

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SB 205 Journal & Committee Action Page 2 of 2

Current Status: (S) RES

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1	03/06/89	644	(S) READ THE FIRST TIME - REFERRAL(S)
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BASE'S Journal Text

04/07/89 SENATE JOURNAL PAGE 1109

SB 205

The Judiciary Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state). Senator Szymanski, Vice-Chair, signed "do pass." Senator Halford signed "do pass after findings established." Senator Pearce signed "no recommendation."

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 205 was referred to the Resources Committee.

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B005-LAST PAGE

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Journal & Committee Action
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Page 2 of 2

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Senate Judiciary Minutes

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Committee Minutes

nonresidents so that there would be some data in the legislative record that they could use if and when a lawsuit is brought challenging the constitutionality of a

fee differential between residents and nonresidents in the tidelands leasing context.

Number 068

Senator Zharoff said he doesn't think the legislation sets any real precedents in what is done in other areas where fees are different for residents and nonresidents, particularly in the area of the fishing industry. The nonresident fee for a commercial license is substantially higher than what a resident pays.

Senator Zharoff's particular concern is with the Bristol Bay area where there are a large number of nonresidents that fish the area, who have been making substantial returns, and are leaving nothing in the state in return.

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
BASIS					Committee Minutes						

The revenues that's generated from the shore leases helps pay for that segment in DNR, and Senator Zharoff would like to increase those program receipts on the users that come in and utilize the services and then leave. Currently, the shore lease is approximately \$50. In order for the Department of Natural Resources to continue providing the service for that particular part of their budget, they have started a program to increase the shore leases for everybody up to \$150. He feels it is a resource that belongs to the people of the state and that some consideration should be given to Alaskan residents.

Number 120

Senator Szymanski said everyone wants to do this, but the key question is whether or not we can give the Department of Law, who would potentially have to defend the differential, the foundation to do so, because they don't believe that the findings contained in the bill would carry

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PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
BASIS					Committee Minutes						

through and support a court challenge at this time. Koester agreed and said the difficulty is that in the Carlson versus State case, they have developed data with respect to enforcement and are using that data to justify the fee differential for the limited entry permit, and it comes out just about right in that case. The problem is that you can't add on additional justification. One way that it could work is if the processing fee that DNR is charging is about what their administrative costs work out to be for the program

Senator Halford said he thought it was essential to get DNR's budget component in front of the committee and to establish a differential represents bringing nonresidents up to the total cost of providing the service. This could then be so stated in the findings of the bill, he said.

Number 180

There was some discussion on whether it would be better to

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BASIS					Committee Minutes						

put this foundation in the legislation in the Judiciary Committee, or wait until it is before the Resources Committee or the Finance Committee. Senator Zharoff said he would prefer to have the bill move and thinks it can be handled in either of the two subsequent committees of referral.

Number 195

Senator Pearce referred to an opinion dated April 21, 1983, from Mr. Gissberg saying it would be legal to shut off the ability of nonresidents to receive tideland leases. Senator Zharoff said he didn't recall any of the discussion that may have taken place at that time, but he thought there would be constitutional problems if an attempt were made to exclude nonresidents from that type of activity. Koester added that he is not convinced that that earlier opinion was correct.

Number 218

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
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BASIS					Committee Minutes						

Senator Halford stressed that if the bill is passed on, it is essential to make sure that these findings are changed, because if they are left in, it endangers itself and the existing court case on other use of these findings.

Senator Szymanski stated it would be his intent to take a

) motion to move the bill from committee with a letter of transmittal to the next committee of referral requesting that a hearing be held that specifically addresses an appropriate findings section. Senator Halford suggested that Mr. Koester help in the drafting of the letter to outline what needs to be established. Koester agreed and said he would contact DNR and see that they have that information available for the next hearing on the legislation.

Number 249

Senator Halford moved and asked unanimous consent that SB

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BASIS

205 be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

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PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

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).
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6-0369H

Bradley

2/26/90

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

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29 ABLE] rental fee for the lease to nonresidents of the state that is

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[,] equal to \$115 plus the administrative costs involved in processing the leasehold applications. The rental fee for residents of the state is \$115 plus one-fifth of the administrative costs involved in processing the leasehold applications.

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

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX SA
JUNEAU, ALASKA 99811-0400

To: Fisheries Business Tax Credit Applicants

The Department of Revenue recently learned that several very large and many small construction projects at shore based processing facilities would not be completed by December 31, 1989. In all cases, these projects had received prior approval from the Department for the fisheries businesses tax credit. At the time of credit approval, applicants fully intended to complete construction and installation of the processing equipment. In many instances, circumstances beyond the control of the fisheries business delayed project completion.

In 1986 when the original regulations pertaining to the credit program were written, the Department, in keeping with legislative intent, required that a project or installation be complete, and the processing equipment be placed into useful service before credit would be granted. Early on, many fish processing companies began aggressive construction projects, fully intending to have them completed by December 31, 1989. Delays in obtaining manufacturing equipment, short construction seasons and unforeseen problems in obtaining permits pushed back completion in several instances. Without a change in the Department's regulations, many fisheries businesses were faced with losing all potential tax credits for failing to meet the December deadline.

Because of the significant financial impact this would have on Alaska's shore based fish processing industry, the Commissioner of Revenue determined an emergency existed and adopted emergency regulations on December 20, 1989. A copy of his order and the emergency regulations are attached.

For those fish processors having construction projects which are "substantially complete" by December 31, 1989, which were approved in advance for the credit and which are placed into useful service by December 31, 1990, tax credits may be granted for expenditures made on the project by December 31, 1989.

If your business has made expenditures which were pre-approved for credit, and those improvements to or construction of a fisheries processing plant will not be completed by this year's end, the expenditures may still be eligible for credit.

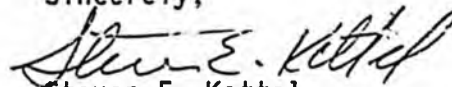
To obtain the credit, you must apply for a waiver of the placed in service rule and send us the following information:

- (1) the status of the construction and verification that construction is substantially complete as of December 31, 1989;
- (2) current status of the project at the time of application; and
- (3) an explanation of the facts and circumstances that delayed or postponed completion of the project beyond December 31, 1989.

This application should be made prior to March 31, 1990, preferably with your 1989 Fisheries Business Tax Return.

If you have any questions, please call or write us as soon as possible.

Sincerely,



Steven E. Kettel
Director
Income & Excise Audit Division
(907) 465-2320

FINDING OF EMERGENCY

The Department of Revenue, Income and Excise Audit Division finds that an emergency exists and the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. The facts constituting the emergency are as follows:

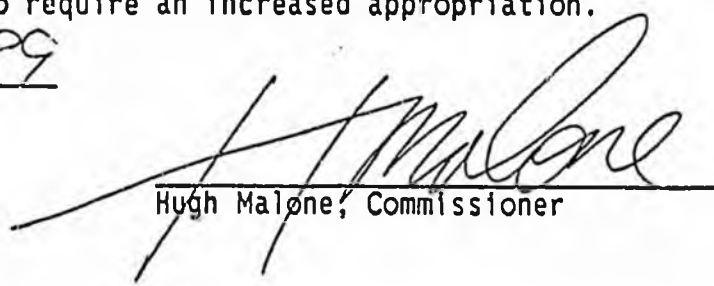
Taxpayers have made considerable capital expenditures in the State to construct fisheries processing facilities and acted in good faith to complete and place the facilities in service by December 31, 1989. Due to unforeseen circumstances, some taxpayers may be unable to fully complete construction of their facilities even though the facilities will be substantially complete by December 31. Since future investment decisions may be contingent on the availability of fisheries business tax credits and time is of the essence, tax credits available to taxpayers as of December 31 must be specified or fixed through this regulation.

ADOPTION ORDER

Under the authority of AS 43.05.080, the regulation is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

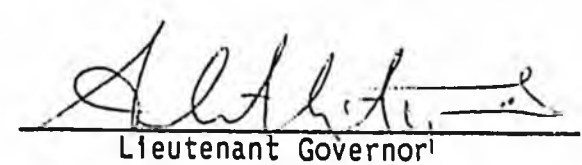
This action is not expected to require an increased appropriation.

DATE: Dec 21, 1989
Juneau, Alaska


Hugh Malone, Commissioner

FILING CERTIFICATION

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on December 22, 1989, at 11:30 a.m. I filed the attached regulations according to the provisions of AS 44.62.


Lieutenant Governor

Effective December 22, 1989.
Register 113, April 1990.

Expires April 20, 1990
unless made "permanent"
by the adopting agency.

15 AAC 75 is amended by adding a new section to read:

15 AAC 75.085. EXCEPTION TO PLACED IN SERVICE RULE. (a) A fisheries business is entitled to a credit for those expenditures actually made through December 31, 1989 and approved by the department for improvements made to depreciable property or for new plant construction, even though improvements or construction were not completed and the facility was not placed in service as of December 31, 1989 if the following conditions are met:

(1) the expenditures for the construction of new plant or plant improvements were substantially made on or before December 31, 1989;

(2) facts and circumstances beyond the control of the fisheries business taking the credit delayed or postponed the placing in service of the facility or improvements beyond December 31, 1989;

(3) completion of the improvements or construction, and placement of the improvements or facility into useful service are made prior to December 31, 1990; and,

(4) the fisheries business applies for and receives a waiver from the department as provided in this section from the placed in service rule as provided by 15 AAC 75.080.

(b) On or before the due date of its 1989 fisheries business tax return, a fisheries business shall apply in writing to the department for a waiver from the placed in service rule and provide the following information:

(1) the status of the construction and verification that construction of the facility was substantially complete as of December 31, 1989;

(2) the current status of the construction as of the time of applying for the waiver; and,

(3) a complete explanation of those facts and circumstances that delayed or postponed completion of the construction beyond December 31, 1989.

(c) A fisheries business is not entitled to a tax credit for expenditures made prior to December 31, 1989 if it fails to obtain a waiver from the placed in service rule

(1) prior to claiming credit for those expenditures on its fisheries business tax return; or,

(2) before the due date of the return, whichever is earlier.

(d) For purposes of this section, substantially complete means that more than 50% of the total expenditures for approved improvements or new plant construction were made by December 31, 1989.

(e) Credit is limited in all cases to those expenditures actually made prior to January 1, 1990. (Eff. 12/22/89, Register 113)

Authority: AS 43.05.080
AS 43.75.032
4

Expires April 20 1990
unless made "permanent"
by the adopting agency.